Memorandum

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To: Medical Executive Committee, CHOC Children's Hospital

Cc: Administrative Affairs Committee, CHOC Children's Hospital
Cyndi Chabot, CPMSM, Director Medical Staff, CHOC Children's Hospital

From: Erin Muellenberg, Esq.

Re: **Executive Summary - Proposed Revisions to CHOC Children's Hospital Medical Staff Bylaws**

Enclosed, please find new draft CHOC Medical Staff Bylaws. These draft Bylaws were initially prepared by legal counsel in 2011. Since then, the Administrative Affairs Committee ("Committee") has reviewed the draft Bylaws and made numerous recommended revisions and changes. The Committee's proposed revisions to the draft Bylaws are in tracked changes and comment boxes note when the change was reviewed/recommended by the Committee. In this executive summary, we explain some of the more significant differences between these draft Bylaws and the current Medical Staff Bylaws and the rationale for these changes.

DEFINITIONS

- Recommended Change: Definitions have been added for the terms "Contractor," "Health Care Facility," "Pediatrician-in-Chief," "Subcontractor," and "Surgeon-in-Chief." Rationale: The expansion of the definitions will assist in interpretation of the Bylaws where there may be an ambiguity.
- Recommended Change: The term "Good Standing" is defined with respect to all members and with respect to medical staff officers. Rationale: The definition makes clear that there is a heightened level of good standing for medical staff officers.
- Recommended Change: The current Medical Staff Bylaws have a single definition for "member, practitioner, or applicant." These definitions have been separated. Rationale: The combined

definition could cause confusion, as a "member" will have different rights and responsibilities than an "applicant," and "practitioner" can refer to both an applicant and a member.

- Recommended Change: The definition of "Telemedicine" is revised. Rationale: Reflects changes enacted via AB 415 (2011) to Business & Professions Code §2290.5 changing the terminology and definition of telehealth, and to clarify that subset of telehealth services to which CMS and TJC telemedicine rules apply.

ARTICLE 1 – NAME AND PURPOSES

- Recommended Change: Article 1 of the current Bylaws only includes the name of the Medical Staff. Article 1 now includes recommended language regarding the Medical Staff's structure, purposes and responsibilities, including the responsibility to set and enforce expectations regarding members' professional conduct and behavior. Rationale: Medical Staff Bylaws typically include such provisions, which aid in understanding how the Medical Staff is organized and its key tasks.

ARTICLE 2 – MEDICAL STAFF MEMBERSHIP

Section 2.2 Qualifications for Membership

- Recommended Change: Section 2.2-2.a. is revised to make it clear that out-of-state telemedicine providers need not be licensed in California, but must be registered with the Medical Board. Rationale: Business & Professions Code Section 2052.5 establishes a registration program to permit out-of-state physicians to register to practice telemedicine in California.
- Recommended Change: Section 2.2-2.c.1. provides for board certification exemption in certain circumstances. Rationale: There are some practitioners with specialized skills and expertise that do not meet the board certification requirements.
- Recommended Change: Section 2.2-2.c.4., which pertains to anesthesia residents in their final year for proctoring, is deleted. Rationale: Determined by the Department of Anesthesia to no longer be necessary.
- Recommended Change: Section 2.2-4 provides for waiver of certain qualifications by the Board, after consulting with the MEC, if necessary to serve the best interests of the hospital and its patients. Rationale: This provision provides CHOC with some flexibility in the event that a practitioner does not necessarily meet all of the qualification requirements.

Section 2.3 Effect of Other Affiliations

- Recommended Change: Language revised to allow denial of privileges to someone who is not a member of a group that holds an exclusive contract. Rationale: As written, Section 2.3 of the current Bylaws would seem to eliminate the ability to deny privileges to someone who is not a member of a group that holds an exclusive contract.

Section 2.5 Administrative and Contract Practitioners *(Section 5.6 of the current Bylaws)*

- Recommended Change: The language under Section 2.5-3 regarding Subcontractors is revised. Rationale: For consistency with Section 4.7-3 of the draft Bylaws and to clarify that only privileges, not medical staff membership, may be terminated pursuant to termination of a contract between hospital and Contractor or Contractor and Subcontractor.

Section 2.6 Basic Responsibilities of Medical Staff Membership *(Section 2.5 of the current Bylaws)*

- Recommended Change: Military and veteran status are added to Section 2.6-11. Rationale: To comply with new state law. [*See* Cal. Civ. Code § 12920 *et seq*.]

Section 2.7 Standards of Conduct

- Recommended Change: A code of conduct provision is included in the draft Bylaws. Rationale: This provision, as well as corresponding provisions in the Rules, should give the Medical Staff effective tools for dealing with disruptive behavior.

ARTICLE 3 – CATEGORIES OF THE MEDICAL STAFF

Section 3.3 Courtesy Medical Staff

- Recommended Change: Section 3.3-1 is revised to provide that the provider must be a medical staff member at another California hospital that is accredited through an accreditation body that has been granted deeming status by the Centers for Medicare and Medicaid Services. Rationale: This change would broaden the pool to those hospitals that are accredited by DNV or HFAP.
- Recommended Change: Section 3.3-2 clarifies that Courtesy members can hold a Section office. Rationale: The law permits Courtesy members to hold Section offices.

Section 3.4 Consulting Medical Staff

- Recommended Change: Section 3.4-1.d. is revised to clarify that hospital must be accredited through an accreditation body that has been granted deeming status by the Centers for Medicare and Medicaid Services. Rationale: This change would broaden the pool to those hospitals that are accredited by DNV or HFAP.

Section 3.5 Provisional Staff

- Recommended Change: Language is added under Section 3.5-3.a. Rationale: To clarify that (a) completion of core privilege proctoring is a prerequisite for moving beyond provisional status, and (b) a practitioner can be "elevated" to another status, even if he or she has not completed proctoring for special privileges.

Section 3.8 The Community Active/Pediatrics/Family Practice Physicians

- Recommended Change: Section 3.8-1 is revised to provide that the provider must be a medical staff member at another California hospital that is accredited through an accreditation body that has been

granted deeming status by the Centers for Medicare and Medicaid Services. Rationale: This change would broaden the pool to those hospitals that are accredited by DNV or HFAP.

- Recommended Change: Section 3.8-2.a. is deleted and Section 3.8-2.f. is added to provide that member may be a candidate for Medical Executive Committee Community Active Member or Medical Executive Committee, Member at Large. Rationale: Practical changes to reflect current practice.

Section 3.9 Affiliate Staff

- Recommended Change: Section 3.9-1 is revised to provide that the provider must be a medical staff member at another California hospital that is accredited through an accreditation body that has been granted deeming status by the Centers for Medicare and Medicaid Services. Rationale: This change would broaden the pool to those hospitals that are accredited by DNV or HFAP.

- Recommended Change: Section 3.9-2 is revised so that membership on the Affiliate staff category is not limited to 10 years. Rationale: The Committee sees no reason for such a time restriction.

Section 3.10 Administrative Staff

- Recommended Change: Paragraph inserted to describe the voting rights of members assigned to the Administrative Staff. Rationale: Bylaws should address voting rights for this category.

Section 3.11 Research Staff

- Recommended Change: Section 3.11 provides for a research staff category. Rationale: Numerous physicians engage in research at the hospital and are not involved in patient care. The Medical Staff needs a special category to cover these physicians.

Section 3.13 Limited License Exceptions to Prerogatives *(Section 3.12 of the current Bylaws)*

- Recommended Change: Section 3.13 language clarifies that DDS, DMD and DPM limited license members are entitled to hold office. Rationale: CMS allows doctors of dental surgery or dental medicine, and doctors of podiatric medicine to hold office. [*See* 42 CFR § 482.22(b)(3)]

ARTICLE 4 – PROCEDURES FOR APPOINTMENT AND REAPPOINTMENT (INCLUDING TELEMEDICINE PRIVILEGES) *(ARTICLE V IN THE CURRENT BYLAWS)*

Section 4.2 Applicant's Burden *(Section 5.1 of the current Bylaws)*

- Recommended Change: More detailed language regarding the applicant's burden that expands on concepts already in the current Bylaws. Rationale: Thoroughly sets forth the applicant's burdens with regard to appointment and reappointment.

Section 4.3 Application for Appointment *(Section 5.2 of the current Bylaws)*

- Recommended Change: Section 4.3-1.b. specifies that references may not be from relatives, partners or current associates in practice. Rationale: This language is consistent with language on the California Participating Physician Application form.

- Recommended Change: Section 4.3-1.n. provides that the applicant must disclose whether she/he has been placed under mandatory proctoring at another health care facility. Rationale: This is an important consideration in determining eligibility for medical staff membership.

Section 4.4 Processing the Application *(Section 5.3 of the current Bylaws)*

- Recommended Change: Section 4.4-2.d. specifies that the applicant must notify the CEO and Credentials Committee within seven days of a change in the information contained in his/her application. Rationale: Important to specify a deadline for notification of changes.
- Recommended Change: Section 4.4-2.g. includes medical groups, foundations, and other peer review bodies as entities requiring consents to disclosure. Rationale: Medical groups and foundations may be peer review bodies. This proposed language reflects the peer review information sharing requirement under Business & Professions Code Section 809.08.
- Recommended Change: Section 4.4-6.c. provides for instances where the MEC recommends appointment for some, but not all, of the requested privileges. Rationale: This situation is not specifically addressed in the current Bylaws.
- Recommended Change: Section 4.4-6.d. addresses deferral of the MEC's recommendation. Rationale: For clarification regarding deferral.
- Recommended Change: Section 4.4-7.c.6. reflects TJC requirements. Rationale: The current Bylaws include a less flexible higher standard than required by TJC under Standard MS06.01.11, EP 6.
- Recommended Change: New language is proposed under Section 4.4-9 regarding reappointment after an adverse appointment decision. Rationale: The new language is more comprehensive and enforceable, and takes into account rulings of recent court decisions related to waiting periods.

Section 4.5 Reappointments and Requests for Modifications of Such Status or Privileges *(Section 5.4 of the current Bylaws)*

- Recommended Change: Section 4.5-3.d. specifies that applications for reappointment will be processed by the MEC in the same manner as applications for appointment. Rationale: Not specified in the current Bylaws.
- Recommended Change: Section 4.5-4 is revised to clarify extension of appointments. Rationale: The current Bylaws provision is inconsistent with state law, TJC standards, and CMS Conditions of Participation. Unfortunately, there is no "approved" way to automatically extend an appointment beyond the two year maximum, even if the delay is attributable to the hospital. The best "fix" is to continue to treat the application as "reappointment," rather than an initial appointment.
- Recommended Change: Section 4.5-5 is revised to make it clear that privileges will not expire simply because an application for reappointment is not received timely. Subsequent applications by a member will be treated as an initial application. Rationale: Until the member's privileges actually expire, the hospital may not suspend them simply because the reappointment application has not yet been completed.

Section 4.6 Leave of Absence *(Section 5.5 of the current Bylaws)*

- Recommended Change: Section 4.6-1 is revised to make it clear that any medical staff member can request a leave of absence. Rationale: Language previously limited leaves of absence to active and courtesy members without reason.
- Recommended Change: Section 4.6-3 language is changed to limit a practitioner's hearing rights for a leave of absence to circumstances when the hearing is required by law. Rationale: Granting full hearing rights for leaves of absence is unnecessary and would expend resources.

ARTICLE 5 – PRIVILEGES *(ARTICLE VI IN THE CURRENT BYLAWS)*

Section 5.3 Delineation of Privileges in General *(Section 6.2 of the current Bylaws)*

- Recommended Change: Section 5.3-3 addresses telemedicine privileges. Rationale: Telemedicine is not specifically addressed in the current Bylaws. The new language states that telemedicine providers must be fully credentialed by CHOC and identifies that telemedicine services include tele-radiology, tele-psychiatry and robotic telemedicine.

Section 5.4 Admissions; Responsibility for Care; History and Physical Requirements; and Other General Restrictions on Exercise of Privileges by Limited License Practitioners *(Section 6.4 of the current Bylaws)*

- Recommended Change: Section 5.4-4 clarifies that the Chair of the Department of Surgery, or the chair's designee, will be in charge of surgical procedures performed by dentists and podiatrists. Rationale: The previous language using the term "under the overall supervision" was confusing.

Section 5.6 Disaster and Emergency Privileges *(Section 6.6 of the current Bylaws)*

- Recommended Change: Section 5.6-1 identifies those individuals responsible for granting disaster privileges to volunteer licensed independent practitioners. Rationale: Required by TJC Standard EM.02.02.13, EP 2.
- Recommended Change: Section 5.6-2 clarifies that the Department Chair(s), President of Staff or Hospital Administrator must declare the situation an emergency before the exercise of emergency privileges. Rationale: Not specified in the current Bylaws.

ARTICLE 6 – ALLIED HEALTH PROFESSIONALS *(ARTICLE IV IN THE CURRENT BYLAWS)*

- No change. AHP provisions remain in the Rules and Regulations.

ARTICLE 7 – PERFORMANCE EVALUATION AND MONITORING *(ARTICLE VI IN THE CURRENT BYLAWS)*

- Recommended Change: This new Article covers Ongoing Professional Practice Evaluation (OPPE) and Focused Professional Practice Evaluation (FPPE) and is consistent with CHOC's current OPPE and FPPE plans. This Article also includes the proctoring provisions described in Article VI of the current Bylaws. Rationale: Including OPPE and FPPE requirements in the Bylaws gives them greater weight. According to TJC, FPPE includes proctoring, so it makes sense for proctoring to be included in this new Article.

ARTICLE 8 – MEDICAL STAFF OFFICERS (AND VICE PRESIDENT OF MEDICAL AFFAIRS/CHIEF MEDICAL OFFICER) *(ARTICLE IX IN THE CURRENT BYLAWS)*

Article 8 – Medical Staff Officers (And Vice President of Medical Staff Affairs/Chief Medical Officer)

Section 8.1 Medical Staff Officers — General Provisions *(Section 9.1 of the current Bylaws)*

- Recommended Change: Section 8.1-2.e. specifies that officers need only be board certified if available. Rationale: Board certification may not be available for an officer's specialty.
- Recommended Change: Section 8.1-2.f. provides that officers may be a Ph.D./Psy.D., or DDS/DMD. Rationale: Under California law, Medical Staffs cannot discriminate against non-MD/DO members in office holding, except for President of Staff and other "medical" offices.

Section 8.2 Method of Selection — General Officers *(Section 9.1 of the current Bylaws)*

- Recommended Change: Under Section 8.2-2.a. language is proposed regarding composition of the Nominating Committee. Diversity of representation is also specified as a factor for considering appropriate nominees. Rationale: These provisions are typically included in medical staff bylaws.
- Recommended Change: Section 8.2-2.c. is limited to further nominations for the positions of President-Elect and/or Secretary-Treasurer, and language is inserted providing for notice to voting members. Rationale: Due process entitles voting members to notice of further nominations for the positions of President-Elect and/or Secretary-Treasurer.
- Recommended Change: Section 8.2-3 is revised to allow for the option of electronic voting, provides for witnessed counting of written ballots, and allows election results to be announced via e-mail. Rationale: Provides the Medical Staff with flexibility. Witnessing of the counting of ballots lends to the legitimacy/integrity of the election process.

Section 8.3 Recall of Officers *(Section 9.1-6 of the current Bylaws)*

- Recommended Change: Specifies that a 2/3 vote of the MEC is required to recall of a general Medical Staff Officer. Rationale: Proportion of votes not previously specified.

Section 8.4 Filling Vacancies *(Section 9.1-8 of the current Bylaws)*

- Recommended Change: Section 8.4-1 includes proposed language regarding continuity of leadership for the President of Staff position. Rationale: To ensure continuity of leadership in case a President position should be vacant either early or late in the term.

Section 8.5 Duties of Officers *(Section 9.2 of the current Bylaws)*

- Recommended Change: Sections 8.5-1.l. and 8.5-1.m. are added to the President of Staff's duties. Rationale: Representing the Medical Staff's views and policies to the Board and CEO, serving as an ex officio member of the Board and on the Joint Conference Committee are typical functions for the President of Staff that should be included under his/her list of duties.
- Recommended Change: Additional duties are added for the President-Elect of Staff under Section 8.5-2. Rationale: To clearly delineate President-Elect of Staff's duties.
- Recommended Change: Section 8.5-3.h. is deleted. Rationale: It should not be the Secretary's duty to excuse meeting absences on behalf of the MEC.

ARTICLE 9 – COMMITTEES *(ARTICLE XI IN THE CURRENT BYLAWS)*

Section 9.1 General *(Section 11.2 of the current Bylaws)*

- Recommended Change: Section 9.1-4 now provides that the President of Staff and the Chief Executive Officer (as ex-officio members) are not entitled to vote at committee meetings. Rationale: Ex-officio members are typically not entitled to vote.
- Recommended Change: The following language is deleted from Section 9.1-5 "after consulting with the President of Staff regarding Medical Staff members, and the Chief Executive Officer regarding hospital staff." Rationale: To reflect current practice.
- Recommended Change: Section 9.1-6 is revised so that committee members can only serve additional terms with approval from the MEC. Rationale: Ensures that other members have an opportunity to serve on medical staff committees.
- Recommended Change: Section 9.1-7 language provides that a vacant chair position will be filled by the vice chair for the remainder of the term. Rationale: Method of filling vacant committee chair position should be included in the Bylaws.
- Recommended Change: Section 9.1-10 has new conflict of interest language for committee members. Rationale: The language is more robust than that in the current Bylaws.

Section 9.2 Medical Executive Committee *(Section 11.3 of the current Bylaws)*

- Recommended Change: Under Section 9.2-1.a. the word "office" is replaced with "position" and the MEC may allow a member to serve more than two consecutive terms. Rationale: To clarify that an MEC member may not serve more than two consecutive terms in the same position (a.k.a. office), unless agreed to by the MEC.

- Recommended Change: Section 9.2-1.b. reorders the list of medical staff members and adds the positions of Chief Operating Officer and Chief Nursing Officer as ex officio non-voting members and removes the Pediatric Subspecialty Faculty Representative and Ambulatory Services Medical Director. Rationale: Practical change to reflect actual practice.
- Recommended Change: Section 9.2-1.c. includes a sentence providing that the MEC may invite other individuals at its discretion. Rationale: Gives the MEC flexibility.
- Recommended Change: Section 9.2-1.f. is revised to remove the limitation that no more than one third of the voting MEC members be from the same medical partnership or corporation. Rationale: This change was made for internal consistency within the Bylaws and to comply with TJC requirements. Section 11.3-1 of the current Bylaws states "All members of the medical staff are eligible for Medical Executive Committee membership." Likewise, TJC Standard MS.02.01.01, EP 3 provides "All members of the organized medical staff, of any discipline or specialty, are eligible for membership on the medical staff executive committee." Placing such a limitation on the composition of the MEC may be considered a restriction on the eligibility of certain members from the same partnership/corporation to serve on the MEC in violation of TJC Standard MS.02.01.01, EP 3 and the Bylaws themselves.
- Recommended Change: Section 9.2-3 provisions encompass, in varying form, those provisions in Section 11.3-2 of the current Bylaws, in addition to other MEC duties. Rationale: These MEC duties are typically contained in medical staff bylaws. TJC Standard MS.01.01.01, EP 20 requires that the Medical Staff Bylaws describe the authority delegated to the MEC, so it is important for all of the MEC's duties to be included in the Bylaws.

Section 9.3 Joint Conference Committee *(Section 11.4 of the current Bylaws)*

- Recommended Change: Section 9.3-2.c. includes a dispute resolution by neutral mediator provision. Rationale: This provision is designed to assist the Medical Staff and CHOC in complying with Business & Professions Code Section 2282.5, which requires that CHOC have an organized medical staff.

ARTICLE 10 – DEPARTMENTS AND SECTIONS *(ARTICLE X IN THE CURRENT BYLAWS)*

Section 10.5 Department Chair and Vice Chair *(Section 10.6 of the current Bylaws)*

- Recommended Change: The qualifications listed under Section 10.5-1 are an amalgam of recommended CHA model provisions and those provisions in the current Bylaws. Rationale: This list of qualifications is more comprehensive than in the current Bylaws and helps assure compliance with California hospital licensing regulations relating to the qualifications of clinical service/department chiefs.
- Recommended Change: Section 10.5-1.h. provides that chairs and vice chairs should be required to attend at least 75% of Department and assigned committee meetings. Rationale: Participation in meetings is an important qualification for chairs and vice chairs.

- Recommended Change: Section 10.5-2 now includes additional nomination criteria. Rationale: Nomination criteria included to mirror the MEC Nomination Committee guidelines.
- Recommended Change: Section 10.5-3 specifies that the MEC may only approve a chair's or vice chair's self-succession for one additional term under extraordinary circumstances. Rationale: Limiting self –succession to extraordinary circumstances provides other members with an opportunity to serve in chair and vice-chair leadership positions.
- Recommended Change: The roles and responsibilities listed under Section 10.5-5 are an amalgam of recommended CHA model provisions and those provisions in the current Bylaws. Rationale: This list is more comprehensive than in the current Bylaws and meets TJC requirements. MS.01.01.01, EP 3, provides that the requirements of EP 36 (required roles and responsibilities of department chairs) must be stated in the Bylaws.
- Recommended Change: Section 10.5-6 is added to include the roles and responsibilities of Members-At-Large. Rationale: Important to delineate their roles and responsibilities in the Bylaws.

Section 10.7 Section Chair *(Section 10.7 of the current Bylaws)*

- Recommended Change: Section 10.7-2 includes "good citizen" language as a qualification for section chairs. Rationale: Designed to help ensure that good leaders without behavioral issues hold section chair positions.
- Recommended Change: Section 10.7-5 now includes additional section chair duties. Rationale: To mirror those duties of the department chair.

ARTICLE 11 – MEETINGS *(ARTICLE XII IN THE CURRENT BYLAWS)*

Section 11.1 Medical Staff Meetings *(Section 12.1 of the current Bylaws)*

- Recommended Change: Section 11.1-1 provides for general medical staff meetings at least once a year. Rationale: The current Bylaws do not provide for general meetings and California regulations require the medical staff to meet "regularly." Meeting annually is probably the minimum amount necessary to satisfy meeting "regularly." [*See* 22 C.C.R. § 70703]
- Recommended Change: Section 11.1-2 permits the Board to call a special medical staff meeting upon written request of 10% of the active members, and provides that notice of special meetings will be electronically delivered. Rationale: Provides active members with a means of calling a special meeting.

Section 11.3 Notice of Meetings *(Sections 12.1 and 12.2 of the current Bylaws)*

- Recommended Change: Section 11.3-1 clarifies the notice requirements for regular meetings. Rationale: Notice of regular meetings need only be given at the start of each year, unless the time, date or place of the meeting is subject to change.

- Recommended Change: Section 11.3-3 provides that meeting attendance shall constitute waiver of notice of such meeting. Rationale: This provision is typically included in medical staff bylaws and limits meeting attendees from later contesting action taken at meetings on the basis that they did not receive notice.

Section 11.4 Quorum *(Section 12.3 of the current Bylaws)*

- Recommended Change: Under Section 11.4-1 the quorum is 33% for actions at special medical staff meetings, other than actions to amend the Bylaws or the rules and regulations or for the election or removal of Medical Staff officers. Rationale: The quorum in the current Bylaws is 25%. A higher quorum of one-third is recommended.

Section 11.5 Manner of Action *(Section 12.4 of the current Bylaws)*

- Recommended Change: Permits committee action by internet conference. Rationale: Consistent with the CHA Model Bylaws and reflects current state of the art.

Section 11.6 Minutes *(Section 12.5 of the current Bylaws)*

- Recommended Change: Requires committees to maintain a permanent file of their meeting minutes. Rationale: California regulations require medical staffs to keep minutes on file. [*See* 22 CCR § 70703(c)]

Section 11.7 Attendance Requirements *(Section 12.6 of the current Bylaws)*

- Recommended Change: Section 11.7-2 provides for at least 10 days prior written notice via certified mail/return receipt for special appearances. Failure to appear may be grounds for automatic suspension. Rationale: The current Bylaws only provide for seven days notice. 10 days is thought to be a more reasonable notice period. Automatic suspension for failure to appear is consistent with the CHA Model Bylaws, and is an effective method for encouraging attendance.

ARTICLE 12 – CONFIDENTIALITY, IMMUNITY, RELEASES AND INDEMNIFICATION *(ARTICLE XIII IN THE CURRENT BYLAWS)*

Section 12.1 Authorization and Conditions *(Section 13.1 of the current Bylaws)*

- Recommended Change: This provision is from the CHA Rules and Regulations. Rationale: CHOC currently places similar provisions in its Bylaws, but the CHA language is slightly more thorough.

Section 12.3 Breach of Confidentiality *(Section 13.2-2 of the current Bylaws)*

- Recommended Change: This provision is from the CHA Model Bylaws. Rationale: The language is more robust than that contained in the current Bylaws.

Section 12.4 Access to and Release of Confidential Information

- Recommended Change: Section 12.4- 1.d. greatly expands with whom the Medical Staff can share information. Rationale: We believe that this is appropriate under both new state law and general policy. Please note that the revised language does not mandate expanded sharing. [*See* Cal. Bus. & Prof. Code §809.08].

Section 12.8 Indemnification

- Recommended Change: An indemnification provision is included. Rationale: The current Bylaws do not include such a provision. An indemnification provision is typically included in bylaws to protect medical staff officers and members from liability.

ARTICLE 13 – PERFORMANCE IMPROVEMENT AND CORRECTIVE ACTION *(ARTICLE VII IN THE CURRENT BYLAWS)*

- Recommended Change: Article 13 is based on the CHA Model Bylaws. Rationale: The CHA model takes a comprehensive approach to its performance improvement/corrective action chapter that differs from the current Bylaws. The CHA model appears to focus on both TJC requirements as well as TJC attitudes.

Section 13.1 Peer Review Philosophy

- Recommended Change: Section 13.1-1 includes a mission statement. Rationale: Not mandatory, but sets the tone for this Article.
- Recommended Change: Section 13.1-4.b. provides that a request for corrective action may be submitted orally to the MEC. Rationale: The current Bylaws only allow the request to be relayed in writing.
- Recommended Change: Section 13.1-5 includes an expedited review process. Rationale: This is not in the current Bylaws; however, an expedited review process is very useful when it is not clear whether a concern rises to the level of a formal investigation, or when action must be taken immediately before a formal investigation.
- Recommended Change: Section 13.1-7 requires the MEC to take action within 90 days. Rationale: The current Bylaws require the MEC to take action within 60 days of the investigation's conclusion, which may be too limiting.
- Recommended Change: Reporting language for medical disciplinary action is included under Section 13.1-7 .b. Rationale: To comply with the new reporting requirements under Business & Professions Code Section 805.01.

- Recommended Change: Section 13.1-9.a. provides that corrective action decision shall become final if the Board of Directors affirms it or takes no action on it within 70 days after receiving the notice of decision from the MEC. Rationale: Conforms with required fair process procedure.

- Recommended Change: Section 13.1-10 states that the Board of Directors must ensure the responsible governance of the hospital in the event that the Medical Staff fails in any of its substantive duties or responsibilities. Rationale: This is a statement of fact, but could be controversial.

Section 13.2 Summary Restriction or Suspension *(Section 7.2 of the current Bylaws)*

- Recommended Change: Section 13.2-1.a. permits the CEO, in addition to the President of Staff, to summarily restrict or suspend a medical staff member, but does not permit a department chair to do so. Rationale: Avoids any issues of bias or competitive circumstances.

- Recommended Change: Section 13.2-1.d. outlines the notice requirements for a summary suspension. Rationale: These notice requirements are not in the current CHOC Bylaws. Although not required, it is advisable to have provisions that guide the notification of a summary action in an informative and useful manner. However, it does place additional procedural burdens on the Medical Staff.

- Recommended Change: Under Section 13.2-2 the MEC must meet within one week of a summary action being imposed. If the MEC cannot meet, an MEC subcommittee may meet instead. Rationale: The current Bylaws require the meeting within 15 days. Because of reporting requirements, we recommend meeting within one week, or at least no more than 10 days. Meeting of an MEC subcommittee may be advisable if it is difficult to get a MEC quorum with short notice. However, many medical staffs take the position that summary action should be addressed by the entire MEC. The current Bylaws provide that failure to attend the meeting if requested by the MEC is a waiver of the member's hearing rights. Such a provision is inconsistent with California law, so it is not included in the draft Bylaws.

Section 13.3 Automatic Suspension or Limitation *(Section 7.3 of the current Bylaws)*

- Recommended Change: Section 13.3-4 refers to the Medical Staff rules and regulations with regard to medical record requirements and deadlines. Rationale: This provides the Medical Staff with greater flexibility to change such requirements.

- Recommended Change: Sections 13.3-6 and 13.3-7 have been inserted to address voluntary resignation in the context of a member's failure to comply with patient privacy requirements. Rationale: Reinforces the fact that members are required to comply with HIPAA and other patient privacy laws and gives the Medical Staff a means of disciplining those members who do not abide by patient privacy requirements.

- Recommended Change: Pursuant to Section 13.3-8, felony convictions require automatic suspension. Rationale: The current Bylaws provide that the member "may" be suspended; however, this Section is about automatic suspension, which generally does not have discretion.

- Recommended Change: Section 13.3-10 provides for automatic suspension/termination upon exclusion from a federal/state payor program. Rationale: Having someone on staff who has been excluded from Medicare/Medi-Cal can cause lots of payment/compliance issues for CHOC.
- Recommended Change: Under Section 13.3-11, membership will be automatically resigned if a member remains under automatic suspension for more than six months. Rationale: Avoids need for termination under a disciplinary action that might be reportable.
- Recommended Change: Section 13.3-12.b. is included to provide for limited review by the MEC of automatic actions. Rationale: To account for potential mistakes erroneously resulting in automatic actions.
- Recommended Change: Section 13.3-14 expressly requires the MEC to request from the practitioner information about action at another hospital and to evaluate that information. If after such evaluation, the MEC determines action is necessary, it is authorized to take it based solely on the events at the other hospital if it finds that there is a reasonable likelihood that the same or a similar event could occur at CHOC resulting in care that may be detrimental to a patient. Rationale: This approach has not been addressed by a California court, but we believe it to be defensible and a better option than the CHA Model Bylaws provision that allow medical staffs to take automatic action based solely on the fact that another hospital has taken action.

Section 13.6 Joint Corrective Action

- Recommended Change: This provision allows CHOC and CHOC Children's at Mission Hospital to take joint actions together. Rationale: Allows greater coordination and sharing of resources.

ARTICLE 14 – HEARINGS AND APPELLATE REVIEWS *(ARTICLE VIII IN THE CURRENT BYLAWS)*

Section 14.1 General Provisions *(Section 8.1 of the current Bylaws)*

- Recommended Change: Section 14.1-1 includes a mission statement for this Article. Rationale: Outlines goals of the hearing provisions and basis for interpretation.

Section 14.2 Grounds for Hearing *(Section 8.2 of the current Bylaws)*

- Recommended Change: Section 14.2-3 includes only those actions that legally require a hearing. Rationale: The current Bylaws include hearing rights for matters that do not legally entitle a practitioner to a hearing.

Section 14.4 Mediation of Peer Review Disputes

- Recommended Change: Provision for optional mediation is included. Rationale: Can be a more cost effective, expeditious alternative in the right circumstances.

Section 14.5 Hearing Procedure *(Section 8.4 of the current Bylaws)*

- Recommended Change: Section 14.5-1 provides at least 30 days notice after a request before the hearing can start. A hearing must commence between 30-60 days from notice of the hearing. Rationale: The current Bylaws provide that a hearing can start as early as 15 days after receipt of request for hearing; such a timeframe gives little opportunity for the parties to prepare. The current Bylaws also provide that hearings to challenge summary suspensions should begin no more than 45 days after the receipt of the request; however, such a shortened time period may be impractical.

- Recommended Change: Section 14.5-3.a. includes several changes to hearing committee appointments, including requiring the hearing panel be composed of at least three members and permitting the President of Staff to appoint members from any staff category, as appropriate. Rationale: The current Bylaws require a committee of at least five members; we recommend against this minimum, as finding and coordinating such a large committee (with alternates) is difficult. The current Bylaws require the committee to be appointed from the active staff, unless that is not feasible. We believe it better to give the President of Staff the option to appoint from any staff category as is appropriate on a case-by-case basis. The current Bylaws have provisions that do not allow direct competitors to serve; this is a difficult standard to define and is better observed on a case-by-case basis. Also, the current Bylaws allow JRC members to be absent from hearing sessions; we strongly recommend not including such a provision in the Bylaws.

- Recommended Change: Section 14.5-3.b. provides the option of a designated hearing panel. Rationale: This is a new option we recommend so that hearings can be performed more efficiently.

- Recommended Change: Section 14.5-3.c. provides that, in the MEC's sole discretion, an arbitrator may be used and includes criteria for arbitrator selection. Rationale: The current Bylaws only allow the appointment of an arbitrator if both parties agree to using one, and only if the arbitrator is mutually acceptable to both parties. This is not required by law, and we advise (a) that the MEC have the sole discretion to appoint an arbitrator, and (b) that the process for selection, not the arbitrator him/herself, be mutually acceptable. California law requires that the selection of an arbitrator be through a "mutually acceptable process." This can result in delay, so we have included a process that, by virtue of accepting membership, the member has deemed acceptable. This concept of acceptance has not been tested in court; therefore, we recommend that the Medical Staff confer with counsel on a case-by-case basis on whether and how to use this provision.

- Recommended Change: Section 14.5-4.b. includes a revised process for selection of a hearing officer by the MEC. Rationale: California case law limits the ability of the MEC to appoint a hearing officer over the practitioner's objections. This provision addresses that issue, but has not been tested in court.

- Recommended Change: Section 14.5-4.e. clarifies that only the JRC has the authority to terminate a hearing. Rationale: California case law prohibits hearing officers from unilaterally terminating a hearing; only the JRC has that authority.

- Recommended Change: Section 14.5-5 limits attorney representation at hearings and is known as the "potted plant" approach. Rationale: We recommended this provision because it helps keep "peer

review" in the hands of physicians, rather than attorneys. The final paragraph allows the parties to opt for full attorney representation, if they both agree.

- Recommended Change: Section 14.5-10 excludes witness addresses from the witness list. Rationale: including addresses can have a chilling effect on witness participation.
- Recommended Change: A definition for "reasonable and warranted" is included under Section 14.5-15.f. Rationale: "Reasonable and warranted" is the statutorily required standard, but is not defined in the law. We have included a proposed definition that we believe is appropriate and defensible; however, it has not been tested in court.
- Recommended Change: Section 14.5-18 requires each hearing committee member to be present at each hearing session. Rationale: In the interests of fairness to the affected practitioner.

Section 14.6 Appeal *(Section 8.5 of the current Bylaws)*

- Recommended Change: Section 14.6-1 clarifies that the Board of Directors takes final action regarding appointment and termination decisions. Rationale: The current Bylaws provide that the action or recommendation, if not appealed, becomes final. However, the Board, not the JRC or MEC, always must take the final action with regard to appointment and termination decisions.

Section 14.7 Administrative Action

- Recommended Change: This Section addresses actions by the hospital administration against medical staff members for administrative reasons. Rationale: This provision is not typical in medical staff bylaws; however, it may help avoid confusion between actions taken by the administration for non-medical staff reasons.

Section 14.12 Exceptions to Hearing Rights *(Section 8.6 of the current Bylaws)*

- Recommended Change: Practitioners whose membership and/or privileges were granted pursuant to an exclusive use policy are not entitled to any hearing rights under Article 14 of the Bylaws. Rationale: This provision is not in the current Bylaws. The Medical Staff is not required to provide such practitioners with a hearing.

Section 14.3 Joint Hearings and Appeals with CHOC Children's at Mission Hospital CHOC Children's at Mission Hospital

- Recommended Change: When all parties agree, CHOC and CHOC Children's at Mission Hospital may hold joint hearings. Rationale: Allows greater coordination and sharing of resources.

ARTICLE 15 – GENERAL PROVISIONS *(ARTICLE XIV IN THE CURRENT BYLAWS)*

Section 15.1 Rules and Policies *(Section 14.1 of the current Bylaws)*

- Recommended Change: Section 15.1-2 allows a majority of voting members of the Medical Staff to directly propose rules. Rationale: TJC Standard MS.01.01.01 requires a provision allowing the Medical Staff to directly propose rules. 51% of the staff was selected as the minimum so that it is clear that the proposed rule is supported by a majority of the voting staff.

- Recommended Change: Section 15.1-4 covers the formulation and adoption of Section Rules. Rationale: The current Bylaws do not address Section rules.
- Recommended Change: Section 15.1-5 covers the formulation and adoption of Medical Staff policies. Rationale: The current Bylaws do not address policies.
- Recommended Change: Section 15.1-6 includes a conflict management mechanism. Rationale: TJC Standard MS.01.01.01 requires conflict management provisions.

Section 15.4 Legal Counsel

- Recommended Change: This Section authorizes the Medical Staff to retain legal counsel with MEC approval. Rationale: California law requires a provision in bylaws allowing medical staffs to retain legal counsel.

Section 15.8 Nominations for Medical Staff Representatives

- Recommended Change: Section added. Rationale: The Medical Staff has representatives to local, state, and national hospital medical staff sections.

ARTICLE 16 – ADOPTION AND AMENDMENT OF BYLAWS *(ARTICLE XV IN THE CURRENT BYLAWS)*

- Recommended Change: This Article includes a combination of provisions from the CHA Model Bylaws and provisions from the current Bylaws. Rationale: The CHA provisions are much more detailed than the current Bylaws provisions.

Enclosure