

**NAGLE  
OBARSKI PC**  
*Attorneys & Counselors at Law*

222 South Mill Street, Suite 200  
Naperville, Illinois 60540

t. 630.355.8100  
f. 630.355.8185

Brien J. Nagle  
[bjnagle@nagleobarski.com](mailto:bjnagle@nagleobarski.com)

Rebecca Boyd-Obarski  
[robarski@nagleobarski.com](mailto:robarski@nagleobarski.com)

Ian Holzhauer  
[ian@nagleobarski.com](mailto:ian@nagleobarski.com)

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RE: APPNA CABL Amendments

Dear Dr. Hamid and Dr. Agha:

This letter is in response to the inquiry from a member regarding whether a Board of Trustees comprised of 8 elected members and 3 ex officio members, as set forth in the proposed bylaw amendments, would be in violation of the Illinois Not for Profit Act, 805 ILCS 105 (the "Act"), Section 108.10(b). That section of the law states: "(b) The bylaws may establish a variable range for the size of the board by prescribing a minimum and maximum (which may not be less than 3 or exceed the minimum by more than 5) number of directors. If a variable range is established, unless the bylaws otherwise provide, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the directors without further amendment to the bylaws."


The proposed amendments would not be in violation of the Act for the following reasons. The Act defines "board of directors" as: "the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated". 805 ILCS 105/101.80(d)

All Illinois not for profit corporations must annually report officers and directors to the Illinois Secretary of State. Several years ago APPNA determined that the Executive Officers (as the Executive Committee) were the appropriate group to be reported as the Board of Directors. The APPNA Board of Trustees are not the board of directors, so Section 108.10(b) is not relevant.

Further though, and more importantly, that section of the Act is being misunderstood. The purpose of 108.10(b) is to give the not for profit corporation flexibility in determining the best number of members for its governing body. The Act require a minimum of 3 directors, but rather than requiring a corporation to determine the exact number of directors it will have, it allows a corporation, by its bylaws, to set a range for the number of directors it may need (e.g., 4 – 9 directors). Thus if a board for some period of time has less than the maximum it does not have to amend its bylaws. This section of the Act restricts the span of the range of that flexibility to 5. For example, a corporation's bylaws may say the corporation shall have between 10 and 15 directors, it may *not* say between 10 and 20 directors, that range is too wide.

Please let me know if you have further questions about this matter.

Very best regards,

  
Rebecca Boyd-Obarski

C: J. Wozniak, APPNA