

Morgan Lewis

MEMORANDUM

TO: William T. Reynolds, Jr.
Speaker of the House
American Academy of PAs

FROM: Matthew R. Elkin

DATE: January 6, 2020

SUBJECT: SR-2255

In response to a challenge regarding the validity of SR-2255 and whether it is in compliance with AAPA bylaws, per your request we provide the following information and analysis.

I. Relevant Bylaws and Policies

Article VI, Section 2 of the AAPA Bylaws provide that the composition of the AAPA House of Delegates ("**HOD**") shall be as follows:

The voting membership of the House of Delegates shall consist of the immediate past and current House Officers, one delegate elected by each officially recognized specialty organization, one delegate elected from each caucus, **delegates elected from Chapters**, and delegates elected from the Student Academy of the AAPA. All delegates, other than those of the Student Academy, shall be fellow members of the Academy. Student delegates shall be student or fellow members of the Academy. **The delegates from the Chapters, specialty organizations, and caucuses are elected by the fellow members of those organizations.**¹

Article VII, Section 2, of the AAPA Bylaws states:

Dual Roles with AAPA Constituent Organizations. Members of AAPA's Board of Directors may not hold elected voting positions **in** the Academy's constituent organizations (COs). Directors may hold elected or appointed non-voting positions **in** the Academy's COs.²

"Constituent organizations" is defined as consisting of "state, the District of Columbia, U.S. territories and federal services chapters; specialty organizations; caucuses; and special interest groups; as defined in AAPA policy."³

"Constituent organizations" are further described in BA-2300 where there is also no statement that the HOD is a "constituent organization."

¹ AAPA Bylaws, Article VI, Section 2 (bold emphasis added).

² AAPA Bylaws, Article VII, Section 2(bold emphasis added).

³ AAPA Bylaws, Article IV.

SR-2103 states:

The **members of the House of Delegates are considered fiduciaries of AAPA** when they are exercising that authority granted to them in the articles of incorporation and are subject to fiduciary duties with respect to that limited authority. Further, **meetings of the House of Delegates must be treated as director meetings** to the extent that the House of Delegates is acting to enact policies establishing the collective values, philosophies, and principles of the PA profession.

Bylaw Article VI, Section 1 states:

The House of Delegates shall be solely responsible for establishing such rules of procedure, **which are not inconsistent with these Bylaws**, the Articles of Incorporation, or existing law, as may be necessary for carrying out the activities of the House (i.e. House of Delegates Standing Rules)."

SR-2255 states:

In accordance with Bylaws Article VII, Section 2, current members of AAPA's Board of Directors may not serve as a delegate from a constituent organization.

II. Analysis

SR-2255, like all subordinate governing policies, is subject to higher authority governing documents such as the Bylaws and the Articles of Incorporation. In this case, SR-2255 is inconsistent with both Article VI, Section 2 and Article VII, Section 2 of the AAPA Bylaws.

Bylaws Article VI (the article pertaining to the HOD) states the composition of the HOD:

Article VI, Section 2: Composition. The voting membership of the House of Delegates shall consist of the immediate past and current House Officers, **one delegate elected by each officially recognized specialty organization, one delegate elected from each caucus, delegates elected from Chapters**, and delegates elected from the Student Academy of AAPA.

This bylaw provision states who is a delegate in the HOD – in this case those elected by each of the specialty, caucus and chapter organizations.

The restrictions on those delegates are also stated in that bylaw – in this case that they must be AAPA members and elected by the fellow members of those organizations. There are no other restrictions or qualifications on the HOD composition.

Bylaws Article VII (the article pertaining to the Board) is entitled, and refers to, AAPA Constituent Organizations:

Article VII, Section 2: Dual Roles with AAPA Constituent Organizations. Members of AAPA's Board of Directors may not hold elected **voting positions in the Academy's constituent organizations** (COs). Directors may hold elected or appointed non-voting positions in the Academy's COs.

This bylaw provision precludes a Board member from serving the "Dual Role" on the Board and in an elected voting position "in" a constituent organization. Board members are not precluded from serving concurrently in any body that is not a constituent organization. Although a constituent organization elects delegates to serve in the HOD, the HOD is part of the AAPA and not a constituent organization. HOD

delegates are elected voting positions in the HOD, in the AAPA, not in the constituent organization or any body within a constituent organization.

Indeed, when delegates are serving in the HOD, they are reminded in SR-2103 that “**members of the House of Delegates are considered fiduciaries of AAPA**” (not fiduciaries of a constituent organization) to “enact policies establishing the collective values, philosophies, and principles of the PA profession.”

By contrast, the recent SR-2255 states:

In accordance with Bylaws Article VII, Section 2, current members of AAPA’s Board of Directors may not serve as a delegate from a constituent organization.

This new rule intends to change the composition of HOD and exclude Board members from serving as an HOD delegate when they meet the conditions and qualifications in the bylaw governing HOD composition Article VI, Section 2.

Any change or limits on the composition of who can serve in the HOD would have to be implemented through a modification of that bylaw provision. If the fiduciaries at the HOD and the Board, who approved Article VII, Section 2, intended to modify the composition of the HOD, as SR-2255 intends to do, they could have amended the Bylaws pertaining to the composition of the HOD to impose any additional qualifications or exclusion on the composition of the HOD, but they did not.

Furthermore, the bylaw provision referenced in SR-2255 (“In accordance with Bylaws Article VII, Section 2”) is the Article referring to the Board not Article VI, which pertains to the HOD. And SR-2255 makes no reference to the HOD at all. Instead it imposes a condition or qualification on the members of the Board - namely, that directors may not “hold elected voting positions **in the Academy’s constituent organizations.**” If Article VII, Section 2 were to apply to the HOD, it would have to at least reference the HOD – but it does not.

III. Conclusion

Since SR-2255 is inconsistent with the AAPA bylaws, I recommend that SR-2255 be rescinded as soon as is practical.

Any rescission action must be taken at an in-person or telephonic meeting (where attendees can all “simultaneously hear each other”) or by unanimous written consent of all delegates (required for actions without a meeting).⁴ Both of these options present their own unique challenges that may not present a comprehensive discussion and understanding of the issue at hand. Thus, the soonest possible time to rescind SR-2255 would be as the first item of business at the next in-person HOD meeting in May 2020.

In order to propose a change to the composition of the HOD by putting limitations on the delegates that may serve in the HOD, this may be properly accomplished by amending Article VI, Section 2 of the AAPA Bylaws.

⁴ The HOD is considered a fiduciary body and must conduct its meetings in compliance with NC §§55-8-20 and 55-8-21 which require actions be taken at a meeting or by unanimous written consent.