MEMORANDUM

DT: January 27, 2019

TO: Amy Melnick, Executive Director, National Coalition for Hospice and Palliative Care

FR: Cathy Allen, The Board Doctor, LLC

RE: Rationale for Proposed Changes to NCHPC Bylaws

Green highlighting refers to policies that have been created or revised elsewhere.

Article I, Section 1 (and subsequent). Name. I recommend changing “Organization” to “Corporation” whenever it refers to NCHPC itself. This change preserves the word “organization” to refer to member organizations. (“Coalition” can be reserved to refer to the member organizations, the meetings and decisions of which are the corporation’s key program.)

Article I, Section 2. Purpose. I recommend striking the reference to “members.” See below.

Article III. Membership. In your articles of incorporation, you have checked the box “This corporation is to have no members” and I recommend leaving it that way and making the bylaws consistent with the idea that there are no corporate members. “Member” is a legal term which has meaning under Virginia Nonstock Corporation Law. According to my research, Virginia has two other options beyond “no members” but my recommendation is for the bylaws and the articles of incorporation to be aligned. I am recommending clearly separating the corporate governance decision-making of the board from coalition policy (program) decision-making of the organizational members. Bylaws should address only the former. Further, if the goal is to make governance easier on staff, leaving governance to the board and not extending it to some class of members makes great sense. Much of this language will be used for the new governance and coalition operations policies.

Article IV, Section 2. Size, Election and Terms of Board members. Added provisions spelling out how a person is elected to the board and clarifying terms/term limits. Changed “must” to “may” to indicate this is an option, not a requirement. Added language to clarify that a board officer can finish their term even if their board term expires.

Article IV, Sections 3 and 4: Meetings. Added language allowing board business to be conducted via telephone or video conferencing, just to make certain actions taken in this manner cannot be challenged later.
**Article IV, Section 6: Quorum.** Removed “from time to time” as I don’t understand how this clause functions in the sentence or what it provides for.

**Active IV, Section 8. Action Without a Meeting.** Added a provision so “in writing” approval could also be collected on paper. A paragraph describing how a question is properly put before the board to vote is embedded in the draft governance policy.

**Article IV, Section 9. Vacancies.** Added language clarifying the terms/term limits.

**Article IV, Section 10. Removal.** A new paragraph providing authority to the board to remove a board member when needed. Having such a section is considered a governance best practice.

**Article IV, Section 12. Committees.** As above, I recommend separating the board’s governance function (and therefore its committees) from the decision-making, and committees, of the coalition. The coalition operations policies have language outlining the establishment and functioning of those committees.

**Article V, Section 1. Number (of Officers.)** Language has been struck that allows the board to leave officer positions open and to combine officer roles in certain circumstances. It is in the organization’s best interest for the board to make a priority of ensuring that all three of those roles are always filled with people who are committed to their responsibilities.

**Article V, Section 2. Election and Term of Office (Officers.)** Clarifies the language and provides for a staggering of terms so that all three officers do not change at once.

**Article V, Section 3. Removal.** Removed agent or anyone with a contract from this section. Seems cleaner. Board members don’t have contract rights. Policy about hiring/firing the E.D. is vested with the Board.

**Article V, Section 4. Vacancies.** Clarifies the term limit provision.

**Article V, Section 5. President.** Presidents are not CEOs in organizations that have executive directors who are CEOs.

**Article V, Section 6. Secretary.** Language about staff designee is redundant since it does not say here that the secretary takes the minutes only that s/he ensures the minutes are taken. Duties should be assigned by the board, not just the president.

I recommend removing the language regarding Corporate Seal (see also Article X) because my research indicated that corporate seals are no longer in common use, in Virginia or anywhere. There is a reference to seals in the Virginia Nonstock Corporation Law, but it merely indicates this is something boards may do. There is a recent Virginia court case where a landlord/tenant lease was found to be invalid because it was not sealed but the court provided a number of alternatives to a seal that were also not used. Recommending deleting corporate seal language as it is not relevant.

**Article V, Section 7. Treasurer.** Need more research about personal liability language. As with the secretary, I advise removing the provision that the president can assign duties to the treasurer. This
authority should belong to the board. The sentence about personal liability was struck because it is redundant. Article VI, regarding Indemnification, protects members and officers from liability.

**Article VI. Indemnification.** NOTE: I am not an attorney and I don’t ever pretend to understand indemnification language. I don’t know what is advisable or needed in Virginia and don’t know of a model nonprofit in Virginia whose language we could find.

**Article VII. Conflicts of Interest.** This language is an exact replica of language that appears in the IRS’s sample Conflict of Interest Policy in the Instructions for Form 1023, revised 12/17. Nothing in the IRS guidance suggests the language needs to be in bylaws, only that they recommend every organization have a COI policy in place. (In fact, while they provide the sample, they note that organizations should modify the language and adopt something that is relevant for them.) I recommend keeping bylaws as streamlined as possible. I have prepared a document that would replace NCHPC’s existing COI policy and disclosure form, using the IRS sample.

**Article VIII. Contracts, Loans, Checks and Deposits.** As with indemnification, as a non-attorney I hesitate to put my seal of approval on any language like this. It appears simple enough so I have no issue with it.

**Article X. Corporate Seal.** See above under secretary’s duties.

**Article XI. Waiver of Notice.** This language is redundant to the waiver provision of Article IV, Section 5.

**Signatures.** I do not believe it is necessary to have signed copies of the bylaws, especially after the first set of amendments are adopted. I would make sure the Title of the document include the revision date and maybe keep that in the footer as well.