

Proposed Amendments to By-Law 10 of the College of Kinesiologists of Ontario

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The following are proposed amendments to By-Law 10 of the College of Kinesiologists of Ontario.

### Document Layout

The document is structured in a table that sets out the current by-law provision, the proposed changes (additions are in red, deletions are struck out) and the rationale for the change.

### Consultation

Upon approval of the proposed By-law 10 amendments for circulation, a 60-day external consultation will take place in advance of presenting final proposed changes to Council at its March 2023 meeting. College staff will review all feedback received during the consultation, and Council will be provided with final changes and information obtained during the consultation process for Council's review and approval in March 2023. Once the amendments are approved, staff will communicate these changes to registrants and other stakeholders.

### By-Law 10: Election of Officers

Current by-law provision	Proposed change	Rationale / Explanation
<p><b>10.02 Eligibility to Vote in an Electoral District</b>                      A member is eligible to vote in the electoral district in which the member, as of January 1st of the election year, primarily practises, or if the member is not engaged in the practise of Kinesiology, in which the member has primary residence.</p>	<p><b>10.02 Eligibility to Vote in an Electoral District</b>                      A member <u>who holds a certificate of registration in good standing with the College (in the General or Inactive Class)</u> is eligible to vote in the electoral district in which the member, as of January 1st of the election year, primarily practises, or if the member is not engaged in the practise of Kinesiology, in which the member has primary residence.</p>	<p>Explicitly permit members of the College in the Inactive Class to vote. Derived from legal advice that this is currently permitted under the By-laws, but it may be helpful to make it explicit.</p>
<p><b>10.02 Eligibility to Vote in an Electoral District</b></p>	<p><b>10.02 Eligibility to Vote in an Electoral District</b>                      A member, who <u>holds a certificate of registration in good standing with the</u></p>	<p>This paragraph pertains to eligibility to vote in electoral district 7.</p>

<p>A member, who is eligible in Electoral District 7 to run for election, is eligible to vote in Electoral District 7.</p>	<p><del>College and is eligible in Electoral District 7 to run for election</del> <u>a member of a faculty or department of kinesiology of a university in Ontario</u>; is eligible to vote in Electoral District 7.</p>	<p>Amended for clarity (inserted explicit reference to holding a certificate of registration in good standing).</p> <p>Amended to avoid circular references in voting eligibility and eligibility to stand for election.</p>
<p>N/A</p>	<p><b><u>10.03 Assignment of Electoral District</u></b>  <del>Where there may be ambiguity regarding a member's Electoral District, the Registrar may, for the purposes of voting and election eligibility, assign the member to an Electoral District that most closely matches the member's primary practice or primary residence.</del></p>	<p>Insertion proposed to allow for discretion/ensure that a member may vote in elections even if their primary practice or residence may not be clearly aligned with any given electoral district.</p> <p>This is also found in College of Physiotherapists by-laws.</p>
<p><b>10.05 Maximum Term</b>  A member who has served on Council for nine consecutive years is ineligible for election to Council until a full three year-term has passed since that member last served on Council. The first nine year-period does not commence until after the first election in each electoral district.</p>	<p><b><del>10.06</del> 10.05 Maximum Term</b>  A member who has served on Council for <del>nine two (2) consecutive three (3) year terms</del> <u>years</u> is ineligible for election to Council until a full three (3) year term has passed since that member last served on Council. This maximum term applies to new members of Council elected on or after July 2023. Members elected or appointed to Council prior to July 2023 may serve for a maximum term of nine (9) years. <del>The first nine year period does not commence until after the first election in each electoral district.</del></p>	<p>Change proposed in keeping with CNO by-laws (which may be viewed as consistent with the CNO's "Vision 2020", which was broadly supported by the College, and with the provincial government's proposed governance modernization and reforms). Included language specifying that this applies to members elected or appointed on or after July 2023. Members elected or appointed to Council prior to July 2023 may serve for up to nine (9) consecutive years.</p> <p>Also consistent with governance practices highlighted in the Cayton Report on the College of Dental Surgeons of British Columbia (Microsoft Word - 190117 Cayton Report FINAL.docx (gov.bc.ca), pg. 75, s. 9.24) and Cayton - Williams Report on</p>

		<p>OCSWSSW (OCSWSSW-governance-report.pdf), pg. 21, s. 4.17)</p> <p>Removed reference to “The first nine year period[...]” as it appears to be out-dated, likely a reference to the initial cycle of elections after the College was proclaimed.</p>
N/A	<p><b>10.07 Maximum Term Exceeded</b>  <u>Where there may be exceptional circumstances, such as where Council may not be properly constituted or may not have quorum, a member may exceed their maximum term limit for up to 6 months or until the member’s successor is elected or appointed.</u></p>	<p>Consistent with some other Colleges (for instance, CPSO, OCT). Note that such an exception may be very specific and time-limited (CPSO provision allows for 6 months).</p>
<p><b>10.09 Eligibility for Election</b>  A member is eligible for election to Council in Electoral Districts 1 through 6, if on the closing date of nominations and anytime up to and including the date of the election:</p> <ul style="list-style-type: none"> <li>i. the member is eligible to vote in the electoral district in which the member is nominated;</li> <li>ii. the member is not the subject of any disciplinary or incapacity proceedings;</li> <li>iii. no findings of professional misconduct, incompetence or incapacity has been made against the member in the preceding three years;</li> <li>iv. the member is not subject to any order, direction, or term, condition</li> </ul>	<p><b>10.1009 Eligibility for Election (Districts 1 through 6)</b>  A member is eligible for election to Council in Electoral Districts 1 through 6, if on the closing date of nominations and anytime up to and including the date of the election:</p> <ul style="list-style-type: none"> <li><del>ix.</del> <u>the member is eligible to vote in the electoral district in which the member is nominated holds a certificate of registration in good standing with the College in the General or Inactive Class of registration;</u></li> <li><del>ix.x.</del> <u>the member primarily practises in, has been assigned by the Registrar to or, if they are not practising the profession, resides in the Electoral</u></li> </ul>	<p>Title: Ensure the reader is clear that this by-law pertains to those electoral districts</p> <p>i. In keeping with legal advice (that Inactive Class eligibility may be made explicit as opposed to its current, implicit status).  This also replaces the current 10.09.i, which refers to voting eligibility as impacting eligibility for election. This appeared to be a potentially confusing circular reference.</p> <p>ii. Inserted to promote greater clarity regarding eligibility.</p> <p>v., vi. These changes are consistent with other Colleges, as well as with the principles of the QA program (not punitive, confidential and open exchange of information). Other</p>

<p>and limitation of the Discipline Committee, the Fitness to Practise Committee or the Quality Assurance Committee;</p> <p>v. the member has not been an employee, officer or director of any professional association or certifying body in the health care and health related fields for one year prior to the date of nomination for the Council of the College of Kinesiologists of Ontario, such that a real or apparent conflict of interest may arise, including but not limited to being an employee, officer or director of the Ontario Kinesiology Association. In the first year of elections following the date of proclamation, the time lapse required before accepting nomination shall be six months prior to the closing date of nominations;</p> <p>vi. the member has not been disqualified from the Council or a committee of the Council in the previous three (3) years;</p> <p>vii. the member is not a member of the Council or of a committee of the College of any other health profession; and</p> <p>viii. the member has not been a member of the staff of the College at any time within the preceding three (3) years.</p>	<p><u>District in which they have been nominated;</u></p> <p><del>x</del>.xi. the member is not the subject of any disciplinary or incapacity proceedings of the College or any other regulatory body;</p> <p><del>xi</del>.xii. the member has not been the subject of a finding of professional misconduct, incompetence or incapacity in the preceding three years at the College or with any other regulatory body;</p> <p><del>xiii</del>. the member is not subject to any order <del>or</del>, direction, <del>or term</del>, <del>condition and limitation</del> of the Discipline Committee, the Fitness to Practise Committee <del>or the Quality Assurance Committee at</del> of the College or with any other regulatory body;</p> <p><del>iii</del>.xiv. <u>the member's certificate of registration is not subject to any terms, conditions and limitations other than those that apply to all members in the member's class of registration</u></p> <p><del>xv</del>. the member has not been in a leadership position, including but not limited to being an employee, officer or director of any professional association or certifying body related to the profession for three years prior to the date of nomination for the Council of the College of Kinesiologists of Ontario, such that</p>	<p>parts of this by-law appear to be adequate to prevent someone who may have committed professional misconduct, be incompetent or incapacitated from standing for election.</p> <p>viii. Explicit reference to 3 year cooling-off period, consistent with other Colleges, including CNO, by-laws. Intended to promote compliance with proposed/expected governance reforms.</p> <p>Also consistent with recommendations from the Cayton Report regarding the College of Dental Surgeons of British Columbia (inquiry-into-the-performance-of-the-college-of-dental-surgeons-of-british-columbia.pdf (professionalstandards.org.uk)) (see pg. 21 of this document, s. 3.35).</p>
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	<p>a real or apparent conflict of interest may arise;</p> <p><del>ii</del>.xvi. <u>three (3) calendar years have passed since the member last served on Council for the maximum term;</u></p> <p><del>vii</del>.xvii. the member has not been disqualified from the Council or a committee of the College in the previous three (3) years;</p> <p><del>xviii</del>.xviii. the member is not a member of the Council or of a committee of the college of any other health profession;</p> <p><del>ix</del>.xix. the member has not been a member of the staff of the College at any time within the preceding three (3) years;</p> <p><del>x</del>.xx. the member is not holding a responsible position with any organization/group whose mandate or interests conflict with the College;</p> <p><del>xi</del>.xxi. the member is not a consultant to third party providers engaged by the College;</p> <p><del>xii</del>.xxii. the member has not resigned from Council within the previous three years other than for health or personal reasons acceptable to Council;</p> <p><del>xiii</del>.xxiii. the member is not in default of payment of any fees, fines, costs, or other amounts owed to the College;</p> <p><del>xiv</del>.xxiv. the member is not in default of completing and submitting any required form or information to the College;</p>	
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	<p><del>i-xxv.</del> the member does not have a criminal finding of guilt that is relevant to the registrant's ability to practise the profession;</p> <p><del>-xxvi.</del> the member is not the subject of a charge that is relevant to the registrant's ability to practise the profession; and</p> <p><del>xxvii.</del> before the nomination deadline, the member has successfully completed any qualification process established by the Council.</p>	
<p>A member is eligible for election to Council in Electoral District 7 if on the closing date of nominations the member has not accepted nomination in any other electoral district and anytime up to and including the date of the election:</p> <ul style="list-style-type: none"> <li>i. the member is a full-time member of faculty or department in an Ontario university degree program in Kinesiology;</li> <li>ii. the member is eligible to vote in the electoral district in which the member is nominated;</li> <li>iii. the member is not the subject of any disciplinary or incapacity proceedings;</li> <li>iv. no findings of professional misconduct, incompetence or incapacity has been made against the member in the preceding three years;</li> <li>v. the member is not subject to any order, direction, or term, condition</li> </ul>	<p><b><u>10.11 Eligibility for Election (District 7)</u></b></p> <p>A member is eligible for election to Council in Electoral District 7 if on the closing date of nominations the member has not accepted nomination in any other electoral district and anytime up to and including the date of the election:</p> <ul style="list-style-type: none"> <li>x. the member is a <del>full-time</del> member of a faculty or department in an Ontario university degree program in Kinesiology;</li> <li>xi. the member <del>is eligible to vote in the electoral district in which the member is nominated;</del> holds a <u>certificate of registration in good standing with the College;</u></li> <li>xii. the member is not the subject of any disciplinary or incapacity proceedings of the College or any other regulatory body;</li> <li>xiii. the member has not been the subject of a finding of professional</li> </ul>	<p>Title: Improve clarity of by-laws (10.09 including separate sections for Districts 1-6 and District 7 may have resulted in some confusion when citing articles/items of by-law 10.09).</p> <ul style="list-style-type: none"> <li>i. Consistent with language in the Kinesiology Act, 2007. "Full-time" faculty/department member does not appear to be a requirement in legislation.</li> <li>ii. Removed what appeared to be a circular reference to eligibility to vote as a criteria for eligibility to stand for election.</li> <li>v., vi. These changes are consistent with other Colleges, as well as with the principles of the QA program (not punitive, confidential and open exchange of information). Other parts of this by-law appear to be adequate to prevent someone who may have committed professional misconduct, be</li> </ul>



<p>and limitation of the Discipline Committee, the Fitness to Practise Committee or the Quality Assurance Committee;</p> <p>vi. the member is not an employee, officer or director of any professional kinesiology association, or any association where the majority number of members provide kinesiology services, such that a real or apparent conflict of interest may arise, including but not limited to being an employee, officer or director of the Ontario Kinesiology Association;</p> <p>vii. the member has not been disqualified from the Council or a committee of the Council in the previous three (3) years;</p> <p>viii. the member is not a member of the Council or of a committee of the College of any other health profession; and</p> <p>ix. the member has not been a member of the staff of the College at any time within the preceding three (3) years.</p>	<p>misconduct, incompetence or incapacity in the preceding three years at the College or any other regulatory body;</p> <p><del>xiv. the member is not subject to any order or direction of the Discipline Committee, the Fitness to Practise Committee of the College or with any other regulatory body;</del></p> <p><del>xv. the member's certificate of registration is not subject to any terms, conditions and limitations other than those that apply to all members in the member's class of registration</del></p> <p><del>xiv. the member is not subject to any order, direction, or term, condition and limitation of the Discipline Committee, the Fitness to Practise Committee or the Quality Assurance Committee of the College or any other regulatory body;</del></p> <p><del>xvi. the member has not been in a leadership position, including but not limited to being an employee, officer or director of any professional association, or certifying body related to the profession for three years prior to the date of nomination for the Council of the College of Kinesiologists of Ontario, such that a real or apparent conflict of interest may arise;</del></p> <p><del>xvii. three (3) calendar years have passed since the member last</del></p>	<p>incompetent or incapacitated from standing for election.</p> <p>viii. Explicit reference to 3 year cooling-off period, consistent with other Colleges, including CNO, by-laws. Intended to promote compliance with proposed/expected governance reforms.</p> <p>Consistent with recommendations from the Cayton Report regarding the College of Dental Surgeons of British Columbia (inquiry-into-the-performance-of-the-college-of-dental-surgeons-of-british-columbia.pdf (professionalstandards.org.uk)) (see pg. 21 of this document, s. 3.35).</p>
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served on Council for the maximum term:

- ~~xviii.~~ the member has not been disqualified from the Council or a committee of the College in the previous three (3) years;
- ~~ix.~~ the member is not a member of the Council or of a committee of the college of any other health profession;
- ~~iii.~~ ~~xx.~~ the member has not been a member of the staff of the College at any time within the preceding three (3) years;
- ~~x.~~ ~~xxi.~~ the member is not holding a responsible position with any organization/group whose mandate or interests conflict with the College;
- ~~ix.~~ ~~xxii.~~ the member is not a consultant to third party provider engaged by the College;
- ~~x.~~ ~~xxiii.~~ the member has not resigned from Council within the previous three years other than for health or personal reasons acceptable to Council;
- ~~x.~~ ~~xxiv.~~ the member is not in default of any fees, fines, costs, or other amounts owed to the College;
- ~~i.~~ ~~xxv.~~ the member is not in default of any completing and submitting any required form or information to the College;
- ~~x.~~ ~~xxvi.~~ the member does not have a criminal finding of guilt that is relevant to the registrant's ability to practise the profession;

	<p>xxvii. the member is not the subject of a charge that is relevant to the registrant's ability to practise the profession; and</p> <p>xxviii. before the nomination deadline, the member has successfully completed any qualification process established by the Council.</p>	
<p><b>10.13 Nominations</b></p> <p>The nomination shall be signed by the candidate and by at least two (2) members who support the nomination and who are eligible to vote in the electoral district in which the election is to be held. Electronic signatures will be permissible through the online voting process. A nomination for election from Electoral District 7 shall be signed by the candidate and by at least three (3) members who support the nomination and who are eligible to vote in Electoral District 7. At the close of the nomination period, if no candidates eligible to be nominated in an electoral district have been nominated, the Registrar shall establish a new election schedule, including, where necessary, a new date for the election. The timeframes outlined in By-laws 10.11 and 10.12 do not apply where the Registrar is acting under this By-law. The nominations for that election shall be re-opened for a minimum of fifteen days or such greater number of days as determined by the Registrar.</p>	<p><b>10.153 Nominations</b></p> <p>The nomination shall be signed by the candidate. Electronic signatures will be permissible through the online voting process. A nomination for election from Electoral District 7 shall be signed by the candidate. At the close of the nomination period, if no candidates eligible to be nominated in an electoral district have been nominated, the Registrar shall establish a new election schedule, including, where necessary, a new date for the election <u>and a new call for nomination(s)</u>. The timeframes outlined in By-laws 10.11 and 10.12 do not apply where the Registrar is acting under this By-law. The nominations for that election shall be re-opened for a minimum of fifteen days or such greater number of days as determined by the Registrar. <del>The new election schedule may permit two additional calls for nomination prior to the seat of the member on Council being declared vacant.</del></p>	<p>Revised to streamline the process of declaring a seat vacant where no nominations are received. A single additional call for nominations prior to declaring the seat vacant is consistent with other CNO by-laws.</p> <p>Intent to ensure that the process of declaring a seat vacant is streamlined and clear.</p>

<p>The new election schedule may permit two additional calls for nomination prior to the seat of the member on Council being declared vacant.</p> <p>The Registrar shall notify in writing each member in the electoral district in which there is an election, of the date of the election and the deadline for returning nominations.</p>	<p>The Registrar shall notify in writing each member in the electoral district in which there is an election, of the date of the election and the deadline for returning nominations.</p>	
<p><b>10.28 Postal Disruption</b></p> <p>If a material component of the election employs the use of Canada's postal system and if there is an interruption of mail service during a nomination or election, the Registrar shall extend the holding of nominations and election for such minimum period of time as the Registrar considers necessary to compensate for the interruption.</p>	<p><del>10.28 Postal Disruption</del></p> <p><del>If a material component of the election employs the use of Canada's postal system and if there is an interruption of mail service during a nomination or election, the Registrar shall extend the holding of nominations and election for such minimum period of time as the Registrar considers necessary to compensate for the interruption.</del></p>	<p>Identified as potentially redundant, given the College's use of electronic voting.</p>
<p><b>10.29 Grounds for Disqualification</b></p> <p>The Council shall disqualify an elected or selected member from sitting on Council if the elected or selected member:</p> <ul style="list-style-type: none"> <li>i. is subject of any disciplinary or incapacity proceeding;</li> <li>ii. is found to have committed an act of professional misconduct or is found to be incompetent by a panel of the Discipline Committee;</li> <li>iii. is found to be an incapacitated member by a panel of the Fitness to Practise Committee;</li> </ul>	<p><del>10.3029</del> <b>Grounds for Disqualification</b></p> <p>The Council shall disqualify an elected or selected member from sitting on Council if the elected or selected member:</p> <ul style="list-style-type: none"> <li>xv. is subject of any disciplinary or incapacity proceeding of the College or any other regulatory body;</li> <li>xvi. is found to have committed an act of professional misconduct or is found to be incompetent by a panel of the Discipline Committee of the College or any other regulatory body;</li> </ul>	<p>xvi. Intended to remove explicit reference to Quality Assurance (this is in keeping with some other Colleges, as well as the intent and philosophy of the Quality Assurance Committee. Note that other items in this by-law explicitly reference professional misconduct, incompetence and incapacity.</p>

<p>iv. fails to attend two consecutive meetings of the Council or of a committee in which he or she is a member, without reasonable cause in the opinion of Council;</p> <p>v. fails to attend a hearing or review of a panel for which the member has been selected, without reasonable cause in the opinion of Council;</p> <p>vi. ceases to either have a primary practice of Kinesiology or primary residence in the electoral district in which the member was elected;</p> <p>vii. becomes an employee, officer or director of any professional kinesiology association such that a real or apparent conflict of interest may arise, including but not limited to being an employee, officer or director of the Ontario Kinesiology Association;</p> <p>viii. becomes a member of the Council of or a committee of the College of any other health profession;</p> <p>ix. breaches the conflict of interest provision(s) for members of Council and committees, in the opinion of the Council, after being given notice of the concern and an opportunity to respond to the concern;</p> <p>x. fails to discharge properly or honestly any office to which the member has been elected or selected, in the opinion of the Council, after being given notice of the concern and an opportunity to respond;</p>	<p>xvii. is found to be an incapacitated member by a panel of the Fitness to Practise Committee of the College or any other regulatory body;</p> <p>xviii. fails to attend two consecutive meetings of the Council or of a committee in which he or she is a member, without reasonable cause in the opinion of Council;</p> <p>xix. fails to attend a hearing or review of a panel for which the member has been selected, without reasonable cause in the opinion of Council;</p> <p>xx. ceases to either have a primary practice of Kinesiology or primary residence in the electoral district in which the member was elected;</p> <p>xxi. assumes a leadership position, including but not limited to being an employee, officer or director of any professional association or certifying body related to the profession such that a real or apparent conflict of interest may arise;</p> <p>xxii. becomes a member of the Council of or a committee of the college of any other health profession;</p> <p>xxiii. breaches the conflict of interest provision(s) for members of Council and committees, in the opinion of the Council, after being given notice of the concern and an opportunity to respond to the concern;</p> <p>xxiv. fails to discharge properly or honestly any office to which the member has been elected or</p>	
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<p>xi. becomes in default of payment of any fees prescribed by by-law or any fine or order for costs imposed by the College or court of law;</p> <p>xii. becomes in default of providing any information required by the College;</p> <p>xiii. ceases to hold a certificate of registration; or</p> <p>xiv. is found guilty of a criminal offence which, in the opinion of Council, is of such a nature that warrants disqualification.</p>	<p>selected, in the opinion of the Council, after being given notice of the concern and an opportunity to respond;</p> <p>xxv. defaults on the payment of any fees, fines, costs, or other amounts owed to the College or court of law;</p> <p>xxvi. defaults in submitting any required form or information to the College;</p> <p>xxvii. ceases to hold a certificate of registration; or</p> <p>xxviii. is found guilty of a criminal or other offence which, in the opinion of Council, is considered relevant to the member's ability to practise the profession and is of such a nature that warrants disqualification;</p> <p>xxix. Is charged with a criminal or other offense which, in the opinion of Council, is considered relevant to the member's ability to practise the profession and is of such a nature that warrants disqualification;</p> <p><del>xxx. is subject to any order, direction, or term, condition and limitation of the Discipline Committee, the Fitness to Practise Committee or the Quality Assurance Committee of the College or any other regulatory body;</del></p> <p><del>xxx.</del> <u>is subject to any terms, conditions and limitations applied to the member's certificate of registration other than those that apply to all members in the member's class of registration</u></p> <p>xxxi. Becomes a member of the staff of the College;</p>	
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	<p>xxxii. is holding a responsible position with any organization/group whose mandate or interests conflict with the College;</p> <p>xxxiii. is a consultant to third part providers engaged by the College; or</p> <p>xxxiv. resigns from Council other than for health or personal reasons acceptable to Council.</p>	
<p><b>10.31 Vacancies</b>  In this section, elected members include any Council members appointed under By-laws 10.32(ii), 10.32(iii), 10.33(i), or 10.33(ii)  The President shall declare the office of the member on the Council to be vacant if:</p> <ul style="list-style-type: none"> <li>i. an elected member of the Council dies, resigns or is disqualified from sitting on the Council; or</li> <li>ii. during an election for Council, no candidates eligible for nomination in an electoral district have been nominated after two additional calls for nominations.</li> </ul> <p>Any members appointed or elected to the Council to fill a vacancy will be deemed to serve the balance of the former elected member's term.</p>	<p><b>10.3<del>2</del>1 Vacancies</b>  In this section, elected members include any Council members appointed under By-laws 10.32(ii), 10.32(iii), 10.33(i), or 10.33(ii)  The President shall declare the office of the member on the Council to be vacant if:</p> <ul style="list-style-type: none"> <li>iii. an elected member of the Council dies, resigns or is disqualified from sitting on the Council; or</li> <li>iv. during an election for Council, no candidates eligible for nomination in an electoral district have been nominated after <del>two</del><u>one</u> additional calls for nominations.</li> </ul> <p>Any members appointed or elected to the Council to fill a vacancy will be deemed to serve the balance of the former elected member's term. <u>Time spent as a member of Council following appointment or election to fill a vacancy is not considered for the purposes of determining an individual's maximum term limit.</u></p>	<p>ii. Change from "two" to "one" additional call for nominations proposed for consistency with change to 10.15.</p> <p>Proposed insertion of statement pertaining to time spent on Council to fill a vacancy is consistent with other Colleges (including CNO), also may decrease any perception of "cost" associated with serving to fill a vacancy.</p>