

THE AMERICAN BOARD OF OPHTHALMOLOGY: BYLAWS

Revised January 2013

ARTICLE I: NAME

Section 1.1 The name of this Corporation is THE AMERICAN BOARD OF OPHTHALMOLOGY.

ARTICLE II: OBJECTS AND POLICY; POWERS

Section 2.1 The principal purpose of the Corporation, in conformity with the purposes and powers expressed in Article II of its Articles of Incorporation, is to determine the eligibility of candidates who seek certification by the Corporation, to conduct examinations of eligible candidates, to issue certificates to those who meet the Corporation's requirements and pass its examinations, to require Maintenance of Certification (MOC™) of its Time-limited Diplomates, and to offer MOC to its remaining Diplomates. No candidate shall be granted the certificate without passing the Written Qualifying and Oral Examinations, and no Diplomate shall be granted recertification without completing the MOC requirements. The intent of both the initial certification of candidates and the maintenance of certification is to provide assurance to the public that an ophthalmologist certified by the Corporation has successfully completed an approved educational program and evaluation process which includes components designed to assess the medical knowledge, judgment, professionalism and clinical and communication skills required to provide quality patient care in ophthalmology.

Section 2.2 It is the prerogative of the Corporation to determine the professional qualifications of any candidate to take the examinations.

Section 2.3 It is and shall be the policy of the Corporation to maintain its autonomy.

Section 2.4 The Corporation shall have, without limitation and notwithstanding the foregoing statements of mission and corporate purposes, all of the powers granted by the Pennsylvania Nonprofit Corporation Law, whether exercised in or out of this Commonwealth.

Section 2.5 The principal office of the Corporation shall be located in Bala Cynwyd-, Pennsylvania or such other location as the Board of Directors may from time to time determine. The Corporation shall have and continuously maintain a registered office and a registered agent in the Commonwealth of Pennsylvania, whose office address is identical with such registered office, and may relocate or have other offices within or without the Commonwealth of Pennsylvania as the Board of Directors may from time to time determine.

Section 2.6 The Corporation recognizes the rights of all persons to equal opportunity in employment, compensation, promotion, education or positions of leadership, and shall not at any time discriminate against any employee, applicant for employment, director, officer,

contractor or any other person with whom it deals, because of race, creed, color, physical disability, sex, sexual orientation, national origin or age.

ARTICLE III: DIRECTORS AND EMERITUS DIRECTORS

Section 3.1 Eligibility of Directors; Public Directors.

(a) The Board of Directors of this Corporation shall be comprised of not less than twelve (12) nor more than twenty-four (24) individuals who satisfy the eligibility requirements set forth in the Articles of Incorporation and these Bylaws and who shall be elected in the manner provided for in Section 3.2 of this Article. With the exception of Public Directors, no person shall be eligible to serve as a Director unless he or she currently is certified by this Corporation and is actively participating in Maintenance of Certification.

(b) Public Directors may be elected by the Board of Directors to bring viewpoints from the public to the deliberations of the Corporation. Public Directors shall have such qualifications as may be specified by the Board of Directors from time to time. At no time shall there be more than two Public Directors in office. Notwithstanding anything to the contrary in these Bylaws, the tenure of any Public Director may not exceed two terms. Any Public Director who is elected to a second term shall be a member of the Executive Committee. Public Directors may be involved in any issues affecting or involving the Corporation as deemed appropriate by the Executive Director, except a Public Director may not participate in the administration of or grading of any examination.

Section 3.2 The Board of Directors, as it may be comprised from time to time, shall have the power and authority to determine the size of the Board of Directors subject to the provisions of Section 3.1 hereof and to elect members of the Board of Directors, subject to the provisions of subparagraphs (a) through (d) hereof, from a slate of individuals nominated in the manner set forth in these Bylaws:

(a) Each person elected as a Director of the Corporation (including any Public Director, but excluding the Executive Director) shall serve for the term (not exceeding four [4] years) for which he or she was elected, commencing the first day of January of the year in which the term of service is scheduled to begin; provided, however, that the number of persons so elected and their terms of office shall be fixed and staggered by the Board of Directors; and further provided that no person shall be eligible to serve as a Director for more than eight (8) years. A Director elected to complete another person's term shall complete that other person's term and shall be eligible to serve as a Director for a maximum of eight (8) years.

(b) Newly elected members of the Board of Directors shall not be entitled to vote until their term of office begins, but they may, upon invitation of the existing Board of Directors or the Executive Director, participate in the meetings of the Corporation and the oral examination of candidates for certification prior to the commencement of their term.

(c) The Executive Director of the Corporation, duly elected by the Board of Directors pursuant to Article V of the Bylaws and with the powers described in a separate job description approved by the Board of Directors, shall serve the Corporation under contract for a term not to exceed five (5) years. No person shall be permitted to serve as Executive Director for more than ten (10) years, except that if a replacement has not been selected by the end of the individual's tenth year of service, the Executive Director may serve additional one-year appointments if so approved by a two-thirds vote of the Board of Directors, to a maximum of five additional years. No person shall be eligible to serve as Executive Director unless he or she is a present or past Director.

(d) The Executive Director shall be an ex-officio, fully voting member of the Board of Directors. The Executive Director's status as a Director ex-officio shall not be considered in determining the number of Board of Directors and the classes of tenure as set forth in subparagraph (a) above. If, at the time of his or her election as Executive Director, an individual is serving as an elected Director and will not have completed a term of service as described in Section 3.2(a) by the time he or she begins a term as Executive Director, he or she shall cease to be an elected Director as of the beginning of the term as Executive Director. The Board of Directors, through its nominations process, may elect a new Director to complete the unexpired portion of the term as Director and such individual shall be entitled to serve as a Director for a maximum period of eight (8) years as described in Section 3.2(a).

(e) The tenure, duties, powers and rights of Directors elected under the Bylaws of this Corporation existing prior to amendment shall not be curtailed, affected or restricted by virtue of the amendment of this Article.

Section 3.3 Any vacancy among the elected members of the Board of Directors may be filled for his or her unexpired term by the Board of Directors, and such individual shall be entitled to serve as a Director for a maximum period of eight (8) years as described in Section 3.2(a).

Section 3.4 Former Directors of the Corporation (except for Public Directors) will be known as Emeritus Directors. The Board of Directors may appoint Emeritus Directors to serve as examiners for the oral examinations and for other such duties as the Board of Directors may, from time to time, determine in accordance with the provisions of these Bylaws. Such appointees shall serve at the pleasure of the Board of Directors.

ARTICLE IV: FUNCTIONS OF BOARD OF DIRECTORS

Section 4.1 The Board of Directors shall be vested with the management and control of the property, business, and affairs of the Corporation. It shall determine compliance with the Corporation's stated mission and purposes and shall have the power and authority to do and perform all acts or functions not inconsistent with these Bylaws or the Corporation's Articles of Incorporation.

Section 4.2

Meetings

4.2.1 Regular meetings of the Board of Directors shall be held from time to time (but not less often than once each year) at such time and place, within or without the Commonwealth of Pennsylvania, may be fixed from time to time by resolution adopted by the Board of Directors. Members of the Board of Directors may participate in a regular meeting of the Board of Directors by means of a conference telephone or similar communication equipment whereby all persons participating in the meeting can hear each other, and participation in such process shall constitute presence in person at such meeting.

4.2.2 Special meetings of the Board of Directors may be called by the Chair or by any five (5) of the Directors who send written requests to the Executive Director, and such meetings shall be held at such time and place, within or without the Commonwealth of Pennsylvania, as may be designated in the notice of such meeting. Members of the Board of Directors may participate in a special meeting of the Board of Directors by means of a conference telephone or similar communication equipment whereby all persons participating in the meeting can hear each other, and participation in such process shall constitute presence in person at such meeting.

4.2.3 Written notice of all meetings of the Board shall be sent by first class mail, private courier, electronic mail or facsimile by the Corporation to each Director at his or her residence or designated place of business at least three (3) days prior to the meeting. Written notice shall be considered delivered: if sent by first class mail, five (5) days after (a) it is deposited in the United States mail in a sealed, properly addressed envelope, first class, postage prepaid; (b) if sent by private courier, when placed in the hands of the courier in a sealed, properly addressed envelope; (c) if sent by facsimile, when the receipt of the facsimile is confirmed by facsimile printout; and (d) if sent via electronic mail, when receipt of the e-mail is confirmed through returned response. Written notice shall, in the case of a special meeting, state generally the nature of the business to be taken up at the meeting.

4.2.4 Notice of any meeting of the Board of Directors may be waived by a Director either before, at, or after such meeting, by a writing signed by such Director. Each Director, by his or her attendance and participation in the action taken at any meeting of the Board of Directors, shall be deemed to have waived notice of such meeting.

4.2.5 A majority of the whole Board of Directors shall constitute a quorum for the transaction of business, except that when a vacancy or vacancies exist, a majority of the remaining Directors shall constitute a quorum.

4.2.6 Each Director present at a meeting, including the Executive Director, shall be entitled to one vote. A Director will be presumed to have voted in favor of any matter enacted unless his or her negative vote or abstention is recorded in the minutes.

4.2.7 Any action which might be taken at a meeting of the Board of Directors may be taken without a meeting if done in writing and signed by all Directors then in office.

4.2.8 All Directors and Emeritus Directors shall receive their travel expenses and a per diem allowance for attending meetings of the Board of Directors or examinations. Nothing herein contained shall be construed to preclude any Director or Emeritus Director from serving this Corporation in any other capacity and receiving proper compensation therefor.

Section 4.3 There shall be an Executive Committee of the Board of Directors consisting of the Chair, Vice-Chair, Executive Director of the Board of Directors, Public Directors in their second term, and the Chairs of the Written Examinations Committee, the Oral Examinations Committee, Finance Committee, Admissions Committee, Nominating and Governance Committee, Examiners Committee and the Maintenance of Certification Committee. The immediate past Chair of the Board of Directors shall be an ex-officio voting member thereof if he or she is still a Director whose term has not expired. During the period between regular meetings of the Board of Directors, the Executive Committee shall be vested with all powers and authority which the Board of Directors may exercise, provided the actions of such Executive Committee shall not revoke prior but still effective action taken by the Board of Directors. The Executive Committee shall report its actions to the Board of Directors at each regular meeting of the Board of Directors.

Section 4.4 Either the Executive Committee, the Board of Directors, or both may, upon the request of two or more of its respective members, meet in executive session. If the purpose of the executive session is to discuss the performance of the Executive Director or whether to renew the contract with the Executive Director, the Executive Director shall be excused from that portion of the executive session.

Section 4.5 The Board of Directors may in its sole discretion by resolution designate individuals or representatives of other organizations (such as controlled affiliates) as nonvoting advisors to the Board, who shall be entitled to notice of and to attend all meetings of the Board, who may express their views, but who shall not be entitled to vote or to attend executive sessions unless expressly invited. Such designations shall state the term of appointment of the advisor, failing which any such designation shall expire at the first regular meeting of the Board of Directors following the first anniversary of the designation by the Board of Directors of the advisor in question or upon the earlier death or resignation of the advisor. All such advisors shall be covered by the Corporation's policies on confidentiality, conflicts and dualities of interest and shall be entitled to the protections of Article IX hereof.

Section 4.6 The Chair or his or her designee shall see to it that the minutes of the proceedings of the Board of Directors are kept by the Corporation.

ARTICLE V: OFFICERS

Section 5.1 The officers of the Corporation shall consist of a Chair, a Vice-Chair, an Executive Director, and such other officers as may from time to time be elected by the Board of Directors. The Chair shall also serve as President of the Corporation, and the Vice-Chair of the Corporation shall serve as Vice-President. The Executive Director shall serve as Treasurer of the Corporation or otherwise appoint a Director to serve such function. Public Directors shall not be eligible to serve as officers of the Corporation.

Section 5.2 Any officer may be removed from his or her office with or without cause by a two-thirds (2/3) vote of the entire Board of Directors. If there is a vacancy among the officers of the Corporation by reason of death, resignation, removal, or otherwise, such vacancy shall be filled for the unexpired term by the Board of Directors from among the then-current Directors.

Section 5.3 The Board of Directors shall elect annually from within its number a Chair and a Vice-Chair, who shall hold office until their successors are elected and qualify. Absent special circumstances, the Chair shall be elected from among those directors who are serving the fourth year of their second term of office, and the Vice-Chair shall be elected from among those Directors who are serving the third year of their second term of office.

Section 5.4 The Chair shall preside at all meetings of the Board of Directors and of the Executive Committee and, in cooperation with the Executive Director and staff of the Corporation, shall prepare agendas for all meetings of the Board of Directors. The Chair, after consulting with the Executive Director, shall appoint members of all Committees, unless otherwise provided in the Bylaws or resolution creating the same. The Chair shall be an ex-officio voting member of all Committees, sub-Committees, or special Committees, other than the Executive Committee, of which he or she shall be Chair, and the Hearing Committee, of which he or she shall be a member. The Chair, where and when appropriate, shall assist the Executive Director in the performance of his or her duties. In the event of the absence or disability of the Executive Director, the Board of Directors shall designate the Chair to perform the duties and have the powers of the Executive Director. The Chair shall have the power to sign checks drawn on the accounts of the Corporation in the absence or disability of the Executive Director and shall have such other duties as may from time to time be prescribed by the Board of Directors.

Section 5.5 The Vice-Chair shall assist the Chair in the performance of his or her duties and, during the absence or disability of the Chair, shall perform the duties and have the powers of the Chair. He or she shall have such other duties as may from time to time be prescribed by the Board of Directors.

Section 5.6 The Board of Directors may delegate to the Executive Director the authority to appoint, and to fix the duties, compensation and terms of office of, such other officers, employees and agents of the Corporation as the Executive Director deems necessary.

Such persons as may be so appointed shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors or the appointing officer.

ARTICLE VI: COMMITTEES

Section 6.1 The Chair of the Board of Directors, after consulting with the Executive Director, shall appoint the following Standing Committees:

1. Admissions Committee
2. Communications Committee
3. Conflict of Interest Committee
4. Examiners Committee
5. Executive Committee
6. Executive Director Evaluation and Compensation Committee
7. Finance Committee
8. Hearing Committee
9. Maintenance of Certification Committee
10. Nominating and Governance Committee
11. Oral Committee
12. PORT/DOCK Committee
13. Written Examinations Committee

The Chair of each Standing Committee shall be a Director, and the members of each Committee shall also be Directors. Public Directors may be appointed to serve members of the Admissions, Communications, Conflict of Interest, Examiners, Executive, Finance, and Hearing (non-voting) Committees and may serve as Chair of a Standing Committee as determined by the Board of Directors. Each Standing Committee shall draft a Committee charter. Once a charter is completed by the Standing Committee in question, the charter should be submitted to the Nominating and Governance Committee for review and approval and then forwarded to the Board of Directors for its approval. Each Standing Committee should review its respective charter on an annual basis, and the Nominating and Governance Committee should review the charters of all Standing Committees on an annual basis. In addition to the authority, duties and responsibilities expressly conferred upon a Standing Committee by these By-Laws, a Standing Committee shall have the authority, duties and responsibilities set forth in its respective charter (but subject to applicable law, the Articles of Incorporation and these By-Laws). The charter of a Standing Committee may set forth the quorum requirements or other requirements for the conduct of business by that Standing Committee.

Section 6.2 Each Committee shall record minutes of its deliberations, recommendations and conclusions. Reasonable notice of the meetings of any Committee shall be given to the members thereof and to the Chair, the Vice Chair, and the Executive Director (other than in the case of the Compensation Committee), all of whom shall have the right to attend and participate in the deliberations of the Committee. The Chair, the Vice Chair, the

Executive Director (other than in the case of the Compensation Committee), and the chair of the Committee in question may invite to any Committee meeting such individuals as they may select who may be helpful to the deliberations of the Committee. To the extent that the Board of Directors believes from time to time that a Standing Committee's charge or job description in these bylaws is inadequate, and for each special Committee established, the Board of Directors shall approve written charges to enhance the Committee's ability to perform its responsibilities.

Section 6.3 The Examiners Committee shall, from time to time, solicit and receive suggestions from the Directors regarding individuals who should be considered as Examiners and shall assemble and maintain information on the availability, qualifications and performance of ophthalmologists who are certified by the Corporation and who may be available as Examiners. In conjunction with the Executive Director, the Examiners Committee shall select the primary and reserve lists of Examiners for the Oral Examinations and coordinate an orientation program for Examiners. The Chair of the Nominating and Governance Committee shall serve as a voting member of the Examiners Committee.

Section 6.4 The Nominating and Governance Committee shall make nominations for the officers to be elected by the Board of Directors at the annual meeting. Additional nominations may be made from the floor. The Nominating and Governance Committee shall submit to the Board of Directors, at a regular or special meeting of the Board of Directors, a list of recommended nominees for directors of the Board of Directors. The list presented by the Nominating and Governance Committee must contain, at a minimum, a number of nominees equal to the number of vacancies of officers and Directors for which the election is being held. Where a vacancy or vacancies on the Board of Directors will occur by reason of normal expiration of a Director's term, the list of nominees shall be submitted to the Board of Directors approximately one year before the vacancy is expected to occur. Additional nominations may be made from the floor. The Board of Directors may vote at any of its regular meetings to increase or decrease the number of Directors in accordance with Article 3.2 of these Bylaws and, in such instance, may elect not to fill an expected vacancy or elect more than the number of Directors that would be provided to fill expected vacancies. The members of the Nominating and Governance Committee shall consist of all Directors in their second four-year term of office. The Vice-Chair of the Board of Directors will serve as Chair of the Nominating and Governance Committee

Section 6.5 The Communications Committee shall consider the public representation of the ABO in print, audio, or online to ensure that it supports the ABO mission whether in the ABO's own products or in media controlled by others. The acquisition and disclosure of information about candidates and diplomates will be reviewed for accuracy and appropriate confidentiality. The Committee will ensure a secure system of archiving communications among Directors, employees and external organizations about official ABO business.

- Section 6.6** The Admissions Committee shall consider all matters that may properly come within its province and shall report its recommendations to the Board of Directors. It shall evaluate the credentials of applicants whose eligibility for acceptance has been questioned by the Executive Director and shall report to the Board of Directors as to such applicants' eligibility for certification and recertification, all in accordance with the Rules and Regulations of the Corporation.
- Section 6.7** The Conflict of Interest Committee shall consider all matters that may properly come within its province and shall report its recommendations to the Board of Directors. It shall consider all real or perceived issues, events, and relationships for conflict of interests with regard to directors, staff, candidates, diplomates, vendors and other related or potentially related persons or organizations.
- Section 6.8** The Written Examinations Committee shall prepare the questions and frame the rules of the written examinations, subject to the approval of the Board of Directors.
- Section 6.9** The Oral Examination Committee shall be vested with such power and authority to create and administer the oral examinations as may be delegated to it from time to time by the Board of Directors. In exercising such power and authority, the Committee shall organize and conduct the oral examinations in a manner that shall be reasonable and nondiscriminatory.
- Section 6.10** The Finance Committee shall receive and study regular reports from the Executive Director on all matters relating to the fiscal affairs of the Board of Directors, which shall include the annual report of the auditor. It shall report thereon to the Board of Directors. The Committee shall perform such other duties as the Board of Directors may direct.
- Section 6.11** The Maintenance of Certification Committee shall be responsible for all credentialing programs of the Board of Directors which are not delegated to other standing Committees of the Board of Directors.
- Section 6.12** The PORT/DOCK Committee shall prepare the questions and frame the rules of the MOC examinations, subject to the approval of the Board of Directors.
- Section 6.13** The Hearing Committee shall be responsible for all hearings conducted in matters arising under Section 8.1 and shall report its findings and

recommendations to the full Board of Directors. The Hearing Committee shall consist of the Chair, the Vice-Chair, two Directors in their second term, and one Director in his or her first term on the Board of Directors. A Public Director may serve as a non-voting member of the Hearing Committee.

Section 6.14 The Executive Director Evaluation Committee shall be responsible for periodic evaluations of the Executive Director. The Executive Director shall not be eligible to serve on the Executive Director Evaluation Committee.

Section 6.15 The Chairs of the various Committees shall present their agendas/reports in writing, whenever practicable, to the Chair of the Board of Directors via the Corporation's office at least ten (10) days before a scheduled meeting.

Section 6.16 By resolution, the Board of Directors may from time to time create such additional Committees, sub-Committees and task forces as may be deemed expedient. A special Committee shall limit its activities to the accomplishment of the specific tasks for which it was created, and shall have no power to act except such as is specifically conferred by action of the Board. Upon completion of the tasks for which it was created, a special Committee or task force shall stand discharged.

ARTICLE VII: RULES AND REGULATIONS

Section 7.1 The Board of Directors shall have authority to issue from time to time, and thereafter to amend, rules and regulations relating to the issuance and maintenance by the Corporation of certificates as to proficiency in the practice of ophthalmology and the revocation thereof.

ARTICLE VIII: REVOCATION AND PROBATION

Section 8.1 The Board of Directors shall have the authority to impose ~~or~~ disciplinary sanctions upon a candidate or a Diplomate and shall have the authority to revoke any certificate issued by the Corporation or to place the Diplomate on probation for a fixed or indefinite time or some combination of these, pursuant to rules and regulations established by the Board of Directors, for any of the following reasons:

(a) the certificate was issued contrary to or in violation of any rule or regulation of the Corporation;

(b) the person to whom the certificate was issued was not eligible to receive it;

(c) substantial misstatement or omission of a material fact to the Board of Directors in an application or in any other information submitted to the Board of Directors;

(d) any license of the person to practice medicine is not, or ceases to be, a valid and unrestricted license to practice medicine within the meaning set forth in the Rules and Regulations of the Board of Directors;

(e) violation of rules and regulations of the Board of Directors relating to the Written Qualifying, Oral or Maintenance of Certification Examinations and applications to take the examinations;

(f) presenting or distributing, or aiding, or assisting another person(s) to present or distribute, a forged document or other written instrument purporting to have been issued by or under the authority of the Board of Directors to evidence that a candidate, Diplomate, or any other person(s) is currently or was previously certified by the Board of Directors, when that is not the case, or claiming orally or in writing, or assisting another person(s) to claim, that a candidate, Diplomate, or any other person(s) is currently or was previously certified by the Board of Directors, when that is not the case;

(g) engaging in any conduct that materially disrupts any examination or that could reasonably be interpreted as threatening or abusive toward any examinee, proctor or staff; or

(h) any other matter deemed appropriate by the Board of Directors.

Section 8.2 If a hearing is required by the Rules and Regulations of the Corporation, such hearing shall be held before the Hearing Committee pursuant to the procedures set forth in the Rules and Regulations as amended from time to time.

Section 8.3 The Board of Directors shall have the right to publish the final decision and any factual findings that might help to explain the reasons for such decision in any matter arising under Section 8.1.

ARTICLE IX: INDEMNIFICATION

Section 9.1 Third Party Actions. Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was the Executive Director, a director, officer or Committee member of the Corporation, or is or was serving at the request of the Corporation as a Director, officer or trustee of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation against expenses (including reasonable attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed

to, the best interests of the Corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceedings by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 9.2 Derivative Actions. Any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was the Executive Director, a Director, officer or committee member of the Corporation, or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation against expenses (including attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation; except, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or willful misconduct in the performance of his or her duty to the Corporation unless and only to the extent that the Court of Common Pleas of Montgomery County or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Common Pleas or such other court shall deem proper.

Section 9.3 Mandatory Indemnification. To the extent that a Director or officer as above described has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.1 or Section 9.2 or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 9.4 Procedure for Effecting Indemnification. Any indemnification under Section 9.1 or Section 9.2 (unless ordered by a court) shall be made only as authorized in the specific case upon a determination that indemnification of the person in question is proper in the circumstances because he or she has met the applicable standard of conduct set forth in such Section. Such determination shall be made:

(a) By the vote of the Board of Directors consisting of Directors who were not parties to such action, suit or proceedings; or

(b) If such action is not obtainable, or even if obtainable the vote of the disinterested Directors so directs, by independent legal counsel in a written opinion.

Section 9.5 Advancing Expenses. Expenses incurred by the Executive Director, a director, officer or Committee member of the Corporation in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of that person to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article.

Section 9.6 Supplementary Coverage. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be the Executive Director, a director, officer or Committee member of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 9.7 When Indemnification Not Made. Indemnification pursuant to this Article shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

Section 9.8 Grounds. Indemnification pursuant to this Article, under any Bylaw, agreement, vote of Directors or otherwise, may be granted for any action taken or any failure to take any action and may be made whether or not the Corporation would have the power to indemnify the person under any provision of law except as provided in this Article and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the Corporation. Such indemnification is declared to be consistent with the public policy of the Commonwealth of Pennsylvania.

Section 9.9 Power to Purchase Insurance. The Corporation may, by action of the Board, purchase and maintain insurance on behalf of any person who is or was the Executive Director, a director, officer or Committee member of the Corporation, or is or was serving at the request of the Corporation as a Director, officer or trustee of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of this Article.

Section 9.10 Creation of a Fund to Secure or Insure Indemnification. The Corporation may create a fund of any nature, which may, but need not be, under the control of a Director, or otherwise secure or insure in any matter its indemnification obligations, whether arising under or pursuant to this Article or otherwise.

ARTICLE X: FISCAL YEAR

Section 10.1 The fiscal year of the Corporation shall commence on January 1 and end on December 31 that year.

ARTICLE XI: AMENDMENTS

Section 11.1 These Bylaws may be amended or revised, (a) in the manner specified in Section 4.2.7 of these Bylaws, or (b) by the affirmative vote of two-thirds (2/3) of the Board of Directors, at any annual, regular, or special meeting; provided written notice of the proposed amendment or revision shall have been given to all Directors at least ten (10) days prior thereto. Such notice having been given, the language of the proposed amendment or revision may be changed at the meeting at which it is considered, so long as unrelated matters are not added to or attached to the amendment or revision as provided in the notice.