

# THE AMERICAN BOARD OF OPHTHALMOLOGY: BYLAWS

Revised November 2022

## ARTICLE I: GENERAL

**1.1 Name.** The name of this entity is the American Board of Ophthalmology (ABO), a nonprofit organization incorporated in the state of Minnesota and exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended.

**1.2 Location.** The principal office is in Doylestown, Pennsylvania or elsewhere as determined by the Board of Directors.

**1.3 Purpose.** The principal purposes of the ABO are to determine the eligibility of candidates who seek certification by the ABO, to conduct examinations of eligible candidates, and to issue certificates to those who meet the ABO's requirements and pass its examinations. The intent of both initial certification and Continuing Certification is to assure the public that an ophthalmologist certified by the ABO has successfully completed an approved educational program and evaluation process designed to assess the medical knowledge, clinical judgment, and professionalism required to provide high-quality patient care.

**1.4 Mission.** To serve the public by certifying ophthalmologists through the verification of competencies.

### 1.5 Principles.

- 1.5.1** Certification promotes and recognizes aspirational goals, not minimum standards.
- 1.5.2** Certification is a lifelong process that promotes excellence through continuous improvement.
- 1.5.3** Certification should be voluntary, as our founders intended.
- 1.5.4** Certification should be challenging and meaningful, yet not burdensome to busy practitioners.
- 1.5.5** ABO diplomates are professionals and colleagues, and we honor them accordingly.
- 1.5.6** The ABO stewards its finances with integrity and transparency.
- 1.5.7** The ABO is an independent certifying board of practicing ophthalmologists who collaborate whenever possible with professional societies, organizations, and other stakeholders who strive to advance excellence.

**1.6 Restrictions.** All policies and activities of the ABO are consistent with applicable federal, state, and local antitrust, trade regulation and other requirements. Additionally, all policies and activities are consistent with applicable tax exempt requirements, including the requirements that ABO not be organized for-profit and that no part of its net earnings inure to the benefit of any private individual.

**1.7 Rights.** The ABO recognizes the rights of all persons to equal opportunity in employment, compensation, promotion, education, and 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.

**1.8 Prerogative.** It is the prerogative of the ABO to determine and verify the professional qualifications of any candidate to take its examinations.

**1.9 Definitions.** The following defined terms used in these Bylaws shall have the following meanings:

(a) "ABO" means the American Board of Ophthalmology, a Minnesota nonprofit corporation exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended.

(b) "Articles" means the Restated Articles of Incorporation of ABO as filed with the Secretary of State of the State of Minnesota and in full force and effect at any point in time.

(c) "Board" means the Board of Directors of the ABO.

(e) "Director" means an individual serving on the Board.

(f) The terms "Chair," "Vice-Chair," and "Chief Executive Officer (CEO)" are defined in Article 4.

## **ARTICLE 2: BOARD OF DIRECTORS**

**2.1 Board of Directors.** The powers of the ABO shall be exercised by or under the direction of the Board, and the business and affairs of ABO shall be managed by the Board.

**2.2 Function.** The Board shall be vested with the management and control of the property, business, and affairs of the ABO. It shall determine compliance with the ABO's stated mission and principles and shall have the power and authority to do and perform all acts or functions not inconsistent with these Bylaws and/or Articles.

**2.3 Qualifications of Directors.** Directors shall have such qualifications as may be specified by the Board. Public Directors may be elected by the Board to bring viewpoints from the public to the deliberations of the ABO. Public Directors shall have such qualifications as may be specified by the Board from time to time. At no time shall there be more than two (2) Public Directors on the Board. Except for Public Directors, no person shall be eligible to serve as a Director unless he or she currently is in active clinical practice, is certified by the ABO, and is actively participating in the ABO's Continuing Certification program. The CEO of the ABO shall be a member of the Board and entitled to the same voting rights of other Directors. A Public Director may not participate in the administration of or grading of any examination.

**2.4 Number and Election of Directors.** The Board shall determine by resolution the total number of Directors to serve at any time. However, the Board shall consist of not fewer than ten (10) persons and not more than eighteen (18) persons. The Directors shall be elected by the Board. The CEO shall be an ex-officio, fully voting member of the Board. The CEO's status as a member of the Board shall not be considered in determining the number of Directors.

**2.5 Term.** Each person elected as a Director of the ABO (including any Public Director, but excluding the CEO) shall serve for the term (not exceeding four years) for which he or she was elected, commencing the first day of January of the calendar year in which the term of service is scheduled to begin. A Director may be re-elected for a second four-year term.

**2.6 Term Limits.** Each Director shall hold office until (a) the expiration of the term for which he or she was elected, or (b) his or her earlier death, resignation, or removal. No Director may serve on the Board for more than eight (8) years total; provided, however, that the CEO shall remain a voting member of the Board as long as he or she holds the office of CEO of the ABO.

**2.7 New Directors.** Newly elected members of the Board shall not be entitled to vote until their term of office begins, but they may, upon invitation of the then-current Board or the CEO, participate as an observer in the meetings of the Board and the oral examination of candidates for certification prior to the commencement of their term.

**2.8 Vacancies.** Vacancies on the Board resulting from the death, resignation, or removal of a Director, shall be filled by a majority vote of the remaining Directors even if less than a quorum. Each person so elected shall be a Director to serve up to two full four-year terms.

**2.9 Resignations.** Any Director may resign at any time by giving written notice to the ABO. The resignation shall be effective upon receipt by ABO or at such subsequent time as may be specified in the notice of resignation.

**2.10 Removal of a Director.** Any Director may be removed from office without identifying a cause for such removal upon a two-thirds vote of the other members of the Board.

**2.11 Voting Rights.** Each Director shall be entitled to one vote on each matter coming before the Board.

**2.12 Compensation of Directors.** The ABO may compensate Directors for service on the Board. Directors also may be reimbursed for reasonable, documented expenses paid or incurred by a Director while engaged in activities on behalf of the ABO.

**2.13 Chief Executive Officer.** The CEO, duly elected by the Board with the powers described in a separate job description approved by the Board, shall serve the ABO under contract for a term not to exceed five (5) years, renewable once. No person shall be permitted to serve as CEO 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 CEO may serve additional one-year appointments if so

approved by a two-thirds vote of the Board, to a maximum of five (5) additional years. The CEO shall be an ophthalmologist who is certified by the ABO and is actively participating in the ABO's MOC program.

**2.14 Emeritus Directors.** Former Directors of the ABO will be known as Emeritus Directors. The Board may appoint Emeritus Directors to serve as examiners for the oral examinations and for other such duties as the Board may, from time to time, determine in accordance with the provisions of these Bylaws. Such appointees shall serve at the pleasure of the Board.

### **ARTICLE 3: MEETINGS OF THE BOARD OF DIRECTORS**

**3.1 Place of Meetings.** The Board may hold its meetings at such places as the Board may determine and/or as may be designated in the notice of the meeting.

**3.2 Notice.** Notice of any meeting of the Board, or notice for any other purpose under these Bylaws, must be sent in writing unless oral notice is reasonable under the circumstances and documented in the minutes of the meeting to which it applies. Written notice can be sent by mail, overnight delivery service, facsimile, or electronic mail.

**3.3 Regular Meetings.** The Board may hold its regular meetings at such place and time as shall be designated by the Chair. The Board shall transact such business as may properly be brought before its meetings.

**3.4 Special Meetings of the Board.** The Chair or a majority of the Directors then in office may call a special meeting of the Board, which special meeting shall be held at such time and place as shall be designated in the call for the meeting. At least three work days notice of any special meeting shall be given to each Director by written notice. Such notice shall state the time and place of such special meeting but need not state the purpose of the special meeting; provided, however, if the purpose of the meeting is to consider an amendment to these Bylaws, to consider a fundamental business transaction (as defined in Article 3.5), or for any other Board action for which these Bylaws require that the purpose of the special meeting be stated, the notice of the special meeting shall state such purpose.

**3.5 Quorum and Acts of the Board.** A simple majority of Directors then in office shall constitute a quorum for the transaction of business. The acts of a majority of the Directors present and voting at a meeting at which a quorum is present shall be the acts of the Board. Provided there is a quorum, a two-thirds vote is required for approval of the following actions: (a) removal of a Director; (b) hiring or termination of the CEO; (c) amendment of these Bylaws; (d) changes specifically required by law; and (e) any fundamental business transaction involving the ABO, e.g., merger, consolidation, conversion to a member organization, sale of all or substantially all of the assets of ABO, conversion to a for-profit organization, or a similar transaction or series of transactions with the same effect as any of the foregoing.

**3.6 Organization.** Every meeting of the Board shall be presided over by the Chair, or in the absence of the Chair, the Vice-Chair. By appointment of the Chair, the CEO may preside over meetings of the Board. The ABO Administrator, or in his or her absence, a person appointed by the Chair, shall act as secretary of the meeting.

**3.7 Consent of Directors Without a Meeting.** Any action that may be taken at a meeting of the Directors may be taken without a meeting, if a unanimous consent in writing, setting forth the action so taken, shall be signed by all Directors then in office and filed with the Administrator. Each Director may deliver such written consent in counterpart signature and may deliver such written consent to the ABO by regular or electronic mail.

**3.8 Votes.** Each Director present at a meeting, including the CEO, 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.

**3.9 Executive Session.** The Board, upon the request of two or more of its Directors, may meet in executive session. If the purpose of the executive session is to discuss the CEO, the CEO shall be excused from that portion of the executive session.

**3.10 Advisors.** The Board may in its sole discretion by resolution designate individuals or representatives of other organizations as nonvoting advisors to the Board, who shall be entitled to notice of and to attend invited 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 following the first anniversary of the designation by the Board of the advisor in question or upon the earlier death or resignation of the advisor. All such advisors shall abide by the ABO's then-current policies on confidentiality, conflicts, and dualities of interest.

**3.11 Minutes.** The CEO or his or her designee shall ensure that the minutes of the proceedings of the Board are kept by the ABO.

## **ARTICLE 4: OFFICERS**

**4.1 Officers.** The officers of the ABO shall be the Chair of the Board (the Chair), the Vice-Chair of the Board (the Vice-Chair), and the Chief Executive Officer (CEO). Each officer serves in such position at the pleasure of the Board. Public Directors shall not be eligible to serve as officers of the ABO.

**4.1.1 Chair and Vice-Chair.** The Board shall elect annually from within its number a Chair and Vice-Chair, who shall hold office until their successors are elected. The Chair and Vice-Chair shall be elected from among those Directors who are in their second four-

year term of office.

**4.1.1.1 Chair.** The Chair shall preside at all meetings of the Board in accordance with Article 3.6 above. She or he shall have a term of office of one year.

**4.1.1.2 Vice-Chair.** 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. She or he shall have a term of office of one year.

**4.1.2 Chief Executive Officer.** The Chief Executive Officer is appointed by and under the general supervision of the Board. The CEO shall have general supervision over the business and operations of the ABO, subject to the endorsement of the Board.

**4.2 Duties.** The CEO and ABO staff shall prepare agendas for all meetings of the Board in consultation with the Chair. The CEO, after consulting with the Chair, shall appoint members of all committees, unless otherwise provided in the Bylaws or resolution creating the same. The Chair and CEO shall be ex-officio voting members of all committees. In the event of the absence or disability of the CEO, the Board shall designate the Chair to perform the duties and have the powers of the CEO. The Chair shall have the power to sign checks drawn on the accounts of the ABO in the absence or disability of the CEO and shall have such other duties as may from time to time be prescribed by the Board. The Board may delegate to the CEO the authority to appoint, and to fix the duties, compensation, and terms of office of, such other officers, employees, and agents of the ABO as the CEO deems necessary.

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

## **ARTICLE 5: COMMITTEES**

**5.1 General.** The Board has the authority to create committees of the Board. Each committee of the Board shall have at least two Directors as members. There shall be the following standing committees of the Board: the Credentials Committee, the Finance Committee, the Audit Committee, the Initial Certification Committee, the Continuing Certification Committee, and the Examination Development Committee. The Board may create other such committees as it determines advisable. A Director may attend, as a non-voting observer, a meeting of a committee of which s/he is not a member unless the committee is conducting an executive session in which only committee members may participate.

## 5.2 Audit Committee

The Audit Committee shall be composed of current non-officer Directors and Emeritus Directors, a Public Director, and one or more Emeritus Directors, one of whom will serve as Committee Chair. The Chair of the Finance Committee will serve as an ex-officio, non-voting member of the Audit Committee. The Audit Committee shall have the following responsibilities and authority:

- a. Assist the Board's oversight of (1) the integrity of the financial statements of the ABO; (2) ABO's compliance with legal requirements related to financial statements; (3) the independent auditor's qualifications and independence; and (4) the selection, retention, and evaluation of the independent auditors.
- b. Recommend acceptance of such financial statements to the Board.
- c. Perform other pertinent duties related to financial compliance as determined by the Board.

## 5.3 Continuing Certification Committee

The Continuing Certification Committee shall consist of Directors, one of whom serves as Committee Chair, and may include up to two volunteers. The Continuing Certification Committee shall have the following responsibilities and authority:

- a. Define the purpose and function of the Continuing Certification process.
- b. Recommend policies to the Board concerning Continuing Certification, oversee the administration of such policies, and carry out functions as may be delegated by the Board.

## 5.4 Credentials Committee

The Credentials Committee shall consist of the Chair, the Vice-Chair, the CEO, a Public Director, and other Directors. A non-officer Director shall serve as Committee Chair. The Credentials Committee shall have the following responsibilities and authority:

### 5.4.1 Conflict of Interest

- a. Recommend policies to the Board concerning conflicts of interest, oversee the administration of such policies, and carry out functions as may be delegated by the Board.
- b. 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, including policy related to programs marketed as "Board review courses."
- c. Review the conflict of interest policy and annual conflict of interest disclosures required from each Board Director.

### 5.4.2 Volunteers

- a. Solicit and receive suggestions from Directors regarding individuals who should be considered as volunteers and maintain information on the availability, qualifications, and performance of ophthalmologists who are certified by the ABO.

### **5.4.3 Eligibility**

- a. Recommend policies to the Board concerning eligibility of candidates seeking to be certified by the ABO, oversee the administration of such policies, and carry out functions as may be delegated by the Board.
- b. Evaluate the requirements and policy governing eligibility to seek and retain Board Certification.
- c. Evaluate credentials of applicants whose eligibility has been questioned by any Director, or whose eligibility to take the examinations of the Board may require that an exception be made. Recommend action (including American with Disabilities Act accommodations) on these applications to the Board.

### **5.4.4 Disciplinary Sanctions**

- a. Recommend policies to the Board concerning disciplinary sanctions, oversee the administration of such policies, and carry out functions as may be delegated by the Board.
- b. Recommend actions regarding candidates and diplomates that come to the committee for review for various reasons, including but not limited to loss or restriction of medical licensure, false advertising, copyright issues, cheating, or unethical or unprofessional behavior.
- c. Manage all hearings conducted in matters arising under Article 7 and report its findings and recommendations to the Board.

## **5.5 Examination Development Committee**

The Examination Development Committee shall consist of Directors, one of whom serves as Committee Chair, and may include up to three volunteers. The Examination Development Committee shall have the following responsibilities and authority:

- a. Recommend policies to the Board concerning examination development activities, oversee the administration of examination development activities, and carry out functions as may be delegated by the Board.

## **5.6 Finance Committee**

The Finance Committee shall consist of the Chair, the Vice-Chair, the CEO, a Public Director, and Directors who are not members of the Audit Committee. A non-officer Director shall serve as Committee Chair. The Finance Committee shall have the following responsibilities and authority:

- a. Report and make recommendations to the Board after considering ABO's financial policies, budgets, accounts investment philosophy, and performance.
- b. Provide liaison with investment counsel and accountants.
- c. Review compensation policies and make compensation recommendations to the Board.
- d. Carry out functions as may be delegated by the Board.



## 5.7 Governance Committee

The Governance Committee shall consist of the Chair, the Vice-Chair, the CEO and non-officer Directors, one of whom serves as Committee Chair. The Governance Committee shall have the responsibilities and authority to assist the Board in fulfilling its responsibilities with respect to matters relating to governance of the Board and:

### 5.7.1 Nominations

- a. Recommend policies to the Board concerning nominations and governance, oversee the administration of such policies, and carry out functions as may be delegated by the Board.
- b. Make recommendations to the Board for officers of the Board.
- c. Make recommendations to the Board for new Directors based on input from the Chair, Vice-Chair, CEO, and other standing committees. Such recommendations shall include the desired qualifications of a new Board Director(s). The Committee will provide a summary of the desired qualifications and lists of volunteers to the Board to solicit nominations for new Board Directors. The Governance Committee will review all nominations and present a list of recommended nominees to the Board approximately one year before the appointment is expected to occur. Additional nominations may be made from the floor. All nominations shall be given to the Chair in sufficient time to permit notice thereof to be given to all Directors at least ten days prior to a meeting. The Board may vote at any of its regular meetings to increase or decrease the number of Directors 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.
- d. Nominate ABO representatives to other organizations, including, but not limited to the American Academy of Ophthalmology Council and the Accreditation Council for Graduate Medical Education's Ophthalmology Residency Review Committee.

**5.8.2 Board Evaluation.** Conduct periodic evaluations of the Board and its committees.

### 5.7.3 Volunteers

- a. Recommend policies to the Board concerning volunteers, oversee the administration of such policies, and carry out functions as may be delegated by the Board.
- b. Manage and review volunteer training, education, and recognition programs.
- c. Solicit and appoint volunteers to ABO standing committees as defined by the bylaws for each committee and in Section **5.11 Volunteers**.

## 5.8 Initial Certification Committee

The Initial Certification Committee shall consist of Directors, one of whom serves as Committee Chair, and may include up to two volunteers. The Initial Certification Committee shall have the following responsibilities and authority:

- a. Define the purpose and function of the initial certification process.

- b. Recommend policies to the Board concerning initial certification, oversee the administration of such policies, and carry out functions as may be delegated by the Board.

### **5.9 Professionalism and Engagement Committee**

- a. The Professionalism and Engagement Committee shall consist of up to four Directors, one of whom will serve as chair, as approved by the Chair, a Public Director, and up to two non-Director volunteers. The Career-Long Competence and Professionalism Committee shall have the responsibility and authority to promote excellence, career-long learning, and professionalism by building connections with ophthalmologists in training and in practice.

**5.10 Committee Organization.** Except as otherwise designated by the Board, each committee shall be chaired by a Director and shall establish its own operating procedures in compliance with these Bylaws. Each committee shall keep regular minutes of its proceedings and make a report to the Board at a regular meeting. Each committee shall determine its times and places of meetings.

Each standing committee shall draft a committee charter which shall be approved by the Board. Each committee should review its respective charter annually, and the Chair and CEO shall review the charters of all committees annually. The Chair, the Vice-Chair, the CEO, 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 believes that a committee's charters or duties in these bylaws is inadequate, and for each special committee established, the Board shall approve written changes to enhance the committee's ability to perform its responsibilities.

The Chairs of the various committees shall present their agendas/reports in writing, whenever practicable, to the Chair of the Board via the ABO office.

By resolution, the Board may create such additional committees, sub-committees, work groups, or task forces as it deems appropriate. The designated entity shall limit its activities to the accomplishment of the specific task(s) for which it was created, and shall have no power to act except such as specifically conferred by action of the Board. Upon completion of the tasks for which it was created, a special designated entity shall stand discharged.

**5.11 Volunteers.** Volunteers and volunteer committees are foundational to the ABO's mission and strategic goals. The Board has the authority to create committees of the Board and to appoint members to such committees. The Board also has the authority to create committees which may, but need not, include any Directors. Voting and non-voting volunteers may be appointed to committees by the Board of Directors. Volunteers are appointed to committees for expertise that significantly contributes to the committee's work.

**5.11.1 Volunteer Appointment.** Volunteers are appointed for one calendar year. Annual re-appointment may be made up to a maximum of four additional one-year terms. Re-appointment is not automatic and is based on each member's continued contribution to the committee. Committee members who are appointed chair are eligible to serve an additional three years in that position.

## **ARTICLE 6: RULES AND REGULATIONS**

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

## **ARTICLE 7: REVOCATION AND PROBATION**

**7.1** The Board shall have the authority to impose disciplinary sanctions upon a candidate or a Diplomate and shall have the authority to revoke any certificate issued by the ABO 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, for any of the following reasons:

7.1.1 the certificate was issued contrary to or in violation of any rule or regulation of the ABO;

7.1.2 the person to whom the certificate was issued was not eligible to receive it;

7.1.3 substantial misstatement or omission of a material fact to the Board in an application or in any other information submitted to the Board;

7.1.4 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;

7.1.5 violation of ABO rules and regulations of the ABO relating to the Written Qualifying, Oral, or Continuing Certification examinations and applications to take the examinations;

7.1.6 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 to evidence that a candidate, Diplomate, or any other person(s) is currently or was previously certified by the Board, 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, when that is not the case;

7.1.7 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

7.1.8 any other matter deemed appropriate by the Board.

**7.2** If a hearing is required by the Rules and Regulations of the ABO, such hearing shall be held pursuant to the procedures set forth in the then-current Rules and Regulations. The Board 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 Article 7.1.

## **ARTICLE 8: INDEMNIFICATION**

**8.1 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 ABO) by reason of the fact that he or she is or was the CEO, a Director, officer, or committee member of the ABO, or is or was serving at the request of the ABO as a Director, officer, or trustee of another corporation, partnership, joint venture, trust, or other enterprise, or a professional advisor or consultant, shall be indemnified by the ABO 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 ABO, 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 that he or she reasonably believed to be in, or not opposed to, the best interests of the ABO, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

**8.2 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 ABO to procure a judgment in its favor by reason of the fact that he or she is or was the CEO, a Director, officer, or committee member of the ABO, or is or was serving at the request of the ABO as a Director, officer, or trustee of another corporation, partnership, joint venture, trust or other enterprise, or a professional advisor or consultant, shall be indemnified by the ABO 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 ABO; 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 ABO unless and only to the extent that the Court of Common Pleas of Montgomery County in the Commonwealth of Pennsylvania 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 that the Court of Common Pleas in the Commonwealth of Pennsylvania or such other court shall deem proper.

**8.3 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 Article 7 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.

**8.4 Procedure for Effecting Indemnification.** Any indemnification under Article 7 (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 Article. Such determination shall be made:

**8.4.1** By the vote of the Board consisting of Directors who were not parties to such action, suit, or proceedings; or

**8.4.2** 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.

**8.5 Advancing Expenses.** Expenses incurred by the CEO, a Director, officer, or Committee member of the ABO in defending a civil or criminal action, suit, or proceeding may be paid by the ABO 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 ABO as authorized in this Article.

**8.6 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 CEO, a Director, officer, or committee member of the ABO and shall inure to the benefit of the heirs, executors and administrators of such a person.

**8.7 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.

**8.8 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 ABO 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 ABO. Such indemnification is declared to be consistent with the public policy of the Commonwealth of Pennsylvania.

**8.9 Power to Purchase Insurance.** The ABO may, by action of the Board, purchase and maintain insurance on behalf of any person who is or was the CEO, a Director, officer, or committee member of the ABO, or is or was serving at the request of the ABO 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 ABO would have the power to indemnify him or her against such liability under the provisions of this Article.

**8.10 Creation of a Fund to Secure or Insure Indemnification.** The ABO 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 9: FISCAL YEAR**

**9.1** The fiscal year of the ABO shall commence on January 1 and end on December 31 that year.

#### **ARTICLE 10: AMENDMENTS**

**10.1** These Bylaws may be amended or revised, by the affirmative vote of two-thirds (2/3) of the Board, 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.