

**AMENDED AND RESTATED**

**BYLAWS**

**OF THE**

**AMERICAN COLLEGE OF PROSTHODONTISTS**  
**EDUCATION FOUNDATION**

Adopted: 1985

Revised: February 23, 2008 by the ACPEF

Approved: February 25, 2008 by the American College of Prosthodontists Board of Directors  
(Sole Member)

Revised and approved: September 12, 2012; October 29, 2019; November 12, 2019 by the  
American College of Prosthodontists Board of Directors (Sole Member)

**CORPORATE BYLAWS  
OF THE  
AMERICAN COLLEGE OF PROSTHODONTISTS  
EDUCATION FOUNDATION**

**ARTICLE I.  
NAME AND PURPOSE**

Section 1.1. **Corporate Name.** The name of the corporation shall be AMERICAN COLLEGE OF PROSTHODONTISTS EDUCATION FOUNDATION, an Illinois not-for-profit corporation (the “Foundation”)

Section 1.2. **Corporate Purposes.** The purposes of the Foundation are to operate exclusively for charitable, scientific, research or educational purposes within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), in the course of which operation;

(a) No part of the net earnings of the Foundation shall inure to the benefit of, or be distributable to, its members, Directors, officers, or other persons, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein;

(b) No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Foundation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office except as authorized under the Code;

(c) Notwithstanding any other provisions of these bylaws, the Foundation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are deductible under 170(c)(2) of the Code (or the corresponding provision of any future United States Revenue Law);

and in the furtherance thereof:

(i) To promote the interests of The American College of Prosthodontists and other organizations formally affiliated with, controlled by, or controlling any of the foregoing organizations which fall within the categories of § 501(c)(3) or 501(c)(6) of the Code and are not nonprivate foundations under § 509(a)(e) of the

Code (the "qualifying beneficiaries"), by donation, loan or otherwise.

(ii) To raise funds for any or all organizations described in subsection (a) of this section from the public and from all other sources available;

(iii) To receive, maintain and administer such funds and to expend principal and income therefrom in furtherance of the purposes of affiliated organizations.

(iv) To own, lease, donate or otherwise deal with all property, real and personal, to be used in furtherance of these purposes.

(v) To contract with other organizations, for-profit and not-for-profit, with individuals, and with governmental agencies in furtherance of these purposes.

Section 1.3. **Corporate Powers.** The Foundation shall have all of the powers granted by the General Not For Profit Foundation Act of the State of Illinois (the "Act"), including the power to purchase, take, receive, lease as lessee, take by gift, devise or bequest, or otherwise acquire, and to own, hold, use and otherwise deal in and with any real or personal property, or any interest therein, in or out of this State.

Section 1.4. **Corporate Offices.** The Foundation shall have and continuously maintain in Chicago, Illinois, a registered office and a registered agent and may have other offices within or without the State of Illinois as the Board of Directors may from time to time determine.

## **ARTICLE II. MEMBERSHIP**

Section 2.1. **Membership in the Foundation.** The sole member of the Foundation shall be The American College of Prosthodontists, an Illinois not-for-profit corporation (the "Sole Member"). The Sole Member shall have powers and voting rights to do the following:

(a) Appoint and remove, with or without cause, all the Directors of the Foundation.

(b) Nominate to the Foundation's Board of Directors all candidates for selection as Chair and Vice Chair of the Foundation. (*revised and approved by the Sole Member Oct. 29, 2019*)

(c) Remove, with or without cause, the Chair, Vice Chair or Executive Director of the Foundation, subject to any contract rights.

(d) Amend the Foundation's articles of incorporation and bylaws.

(e) Approve each annual budget and long-range plan of the Foundation before expenditures may be made pursuant thereto.

(f) Approve each annual list of proposed donations and amounts of donations or grants not included in the annual budget and make proposals to deviate therefrom throughout each year in the amount of \$50,000 or more.

(g) Approve any contract or loan obligating the Foundation to expend or repay an amount of \$50,000 or more which was not included in a previously approved annual budget.

(h) Approve all plans of merger, consolidation, or voluntary dissolution and the creation of any subsidiary organization.

(i) Approve the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all, the property and assets of the Foundation.

(j) Approve the creation or acquisition of majority-owned or controlled subsidiaries, affiliates or joint ventures by the Foundation.

Section 2.2. **Action by Sole Member.** The Sole Member shall act by executing and delivering to the Chair, Vice Chair, Executive Director or Secretary of the Foundation a written instrument or instruments, signed by an authorized officer of the Sole Member, setting forth the action taken and the applicable corporate authorizations or directions from the Board of Directors of the Sole Member. The action of the Sole Member shall be deemed to have been taken on the dates the written instruments are so delivered unless the instruments provide otherwise.

### **ARTICLE III. BOARD OF DIRECTORS**

Section 3.1. **Powers.** The ACPEF Board of Directors shall manage and govern the affairs of the Foundation, shall exercise its powers and shall control its property. It shall determine compliance with the Foundation's stated purposes and shall have the power and authority to do and perform all acts or functions not inconsistent with these bylaws or the Foundation's articles of incorporation.

Section 3.2. **Composition.** The Board of Directors shall consist of not fewer than nine (9) nor more than twenty-one (21) voting Directors. The number of Directors/At-Large Directors may be fixed or changed from time to time, within the minimum and the maximum, by the Directors/At-Large Directors without further amendment to the bylaws. No decrease shall have the effect of shortening or lengthening the term of an incumbent Director/At-Large Director.

Directors of the Board must be one of the following categories:

(a) Directors. Directors of the Foundation must be Active members as defined by Article III, Section 3.2(a) (2016) of the ACP Bylaws. ACP member-directors

must be in good standing and have voting privileges. *(revised and approved by the Sole Member Nov. 12, 2019)*

- (b) At-Large Directors. Other directors of the Foundation Board may be ACP non-members or ACP members not classified in subsection (a) above and as defined by Article III, Section 3.2 (2016) of the ACP Bylaws. At-Large Directors are without vote. This provision shall not apply to At-Large Directors serving at the time this provision was adopted. *(revised and approved by the Sole Member Nov. 12, 2019)*

### Section 3.3. **Qualifications**

(a) **By Position.** Eight (8) individuals shall be members of the Board by virtue of either their election as an Officer of the Foundation or the College (see Article II), or their position or affiliation with the Foundation or the College:

- 1) ACPEF Chair
- 2) ACPEF Vice Chair
- 3) ACPEF Secretary
- 4) ACPEF Treasurer
- 5) ACP President
- 6) ACP President-Elect
- 7) ACP Division Director, Education & Research
- 8) Executive Director

(b) At-large. The balance of the Board shall be at-large Directors.

(c) **Additional Criteria.** Criteria for the selection of at-large Directors shall include one's favorable standing in the community, demonstration of professional skills, acceptable personal character and commitment to the purposes and mission of the Foundation. The Sole Member shall strive to achieve a heterogeneous Board composition to ensure linkages with the various organizations and communities which are vital to the success of the Foundation. The ACPEF Board should reflect the diverse nature of the specialty.

Section 3.4. **Appointment and Terms of Directors.** The at-large membership of the Board shall be divided into three (3) approximately equal groups. Directors shall be eligible to serve three (3) year staggered terms, or until their successors have been appointed, for a maximum of six (6) years. This prohibition shall not apply to Directors serving at the time this term limit provision is adopted or to a sitting officer.

Section 3.5. **Nomination and Election Procedures.** Nominations for Directors may be received from any ACP member/donor to the ACPEF in good standing and must be received in writing by the Chair of the Nominating Committee according to the schedule announced to the Membership. The Nominating Committee will put forth not more than two (2) candidates for each of the open position from among the nominees for the Sole Member.

Section 3.6. **Voting.** Each Director, including those serving *ex officio*, shall have one (1) vote on any matter submitted to the Board of Directors.

Section 3.7. **Advisors to the ACPEF Board.** The Board of Directors may designate 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.

Section 3.8. **Vacancies.** Vacancies due to death, resignation, removal or otherwise shall be filled by the Sole Member, such successor to serve for the remainder of the term of the vacant Director.

Section 3.9. **Meetings of the Board.** The annual meeting of the Board of Directors shall be held in the first quarter following the end of the Foundation's fiscal year each year at such time and place as shall be designated by the Board. The purposes of the annual meeting shall be (a) to seat the new Directors appointed that year by the Sole Member; (b) to elect the officers of the Foundation for the coming year; and (c) to transact such other business as may be desirable.

The Board of Directors shall hold regular meetings at least quarterly at the principal office of the Foundation or at such place and at such time as may be designated by the Board Chair in the notice. The annual meeting may be counted as one of the quarterly regular meetings.

Section 3.10. **Notice.** Written notice of all meetings of the Board shall be mailed or delivered by electronic means, to each Board member at least seven days before the date of the meeting, which notice shall, in the case of special meetings, state generally the nature of the business to be taken up at the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed, properly addressed envelope, first class, postage prepaid. If sent by electronic means, such notice shall be considered delivered when transmitted.

Section 3.11. **Waiver of Notice.** Notice of the time, place and purpose of any meeting of the Directors may be waived by electronic means, or other writing, either before or after such meeting has been held. Attendance at any meeting, except for the sole purpose of objecting to the holding of such meeting, shall constitute waiver of notice of such meeting.

Section 3.12. **Action by Unanimous Consent.** Any action that may be taken at a Board meeting may be taken without a Board meeting if a unanimous written consent is executed as required by the action.

Section 3.13. **Quorum.** For all meetings of the Board of Directors (other than action taken by unanimous written consent), a simple majority of the Directors then serving, including those serving *ex officio*, who shall be present in person or by telephone, shall constitute a quorum for the transaction of business, but a lesser number may adjourn the meeting from time to time until a quorum shall be present.

Section 3.14. **Procedure.** *The Standard Code of Parliamentary Procedure* (latest edition) shall govern procedure at all meetings of the Board of Directors and its committees where not covered expressly by these bylaws.

Section 3.15. **Compensation.** Directors shall receive no compensation as such but may be reimbursed for reasonable expenses incurred in attending meetings or otherwise on behalf of the Foundation. A Director shall not be precluded from serving the Foundation in any other capacity and receiving compensation therefore. Any contract with or compensation paid to any Director shall be approved by the Board or by the Executive Committee without the participation in the decision by the affected Director.

Section 3.16. **Attendance.** Inasmuch as attendance at Board meetings and participation in committee work are so important to the Director's discharge of his or her responsibilities of office, if a Director does not attend at least one-half (1/2) of the Board meetings in any year, or at least one-half (1/2) of his or her committee meetings in any year, then, in the absence of extenuating circumstances appropriately documented, the Director is deemed to have resigned at the end of the organizational year. Any member may attend a Board meeting as an observer, except when the meeting is in Executive Session.

Section 3.17. **Conflicts of Interests.** The ACPEF Board shall adopt a conflict of interest policy addressing possible duality of interest and possible conflicts on the part of the Foundation's Directors, Officers, and Committee Members with BOD delegated power, agents and employees of the Foundation, as necessary, to comply with applicable state and federal law.

#### **ARTICLE IV. OFFICERS OF THE FOUNDATION**

Section 4.1. **Officers.** The officers of the Foundation shall be a Chair, a Vice Chair, an Executive Director, a Secretary, and a Treasurer. Duties of the Officers shall be those conventionally associated with the official title.

Section 4.2. **Election and Term of Office.** Officers of the Foundation (except for the Executive Director) shall be elected or appointed annually at the annual meeting of the Foundation Board, provided that the Chair, and Vice Chair shall be elected from among those nominated by the Sole Member. If the election and appointment of officers shall not be held at such meeting, such election and appointment shall be held as soon thereafter as conveniently may be arranged. Each officer shall hold office until his or her successor shall have been duly elected or appointed.

(a) **Chair.** Shall serve no more than three (3) successive full terms of one (1) year; provided, however, that this prohibition shall not apply to the Chair serving at the time this term limit provision is adopted. Upon completion of one (1) and up to three (3) terms, the Chair rolls off the ACPEF Board and relinquishes any remaining terms as Director. Should the Chair be unable to perform his/her duties, the position shall be filled by the Vice Chair for the remainder of the unexpired term of office, at which time the Vice Chair shall, by normal succession, fill the office.

(b) **Vice Chair.** Shall serve no more than three (3) successive full terms of one (1) year; provided, however, that this prohibition shall not apply to the vice chair serving at the time this term limit provision is adopted. Upon completion of one (1) and up to three (3) terms, the Vice Chair shall succeed to the Chairpersonship upon the vacancy of the

chair position. Should the Vice Chair be unable to fulfill his/her terms of office, the Chair, with approval from the Sole Member, shall appoint a Director to serve in the vacant position for the remaining portion of the term. In the event there is no Director available to fill such a position, the office shall remain vacant and the additional duties assumed by the remaining Officers until positions are filled by election. If the Vice Chair chooses not to ascend to the chair position, the Vice Chair rolls-off the ACPEF Board and relinquishes any remaining terms as Director.

(c) Secretary. serve no more than three (3) successive full terms of one (1) year; provided, however, that this prohibition shall not apply to the Secretary serving at the time this term limit provision is adopted. Upon completion of one (1) and up to three (3) terms, the Secretary rolls off the ACPEF Board and relinquishes any remaining terms as Director. Should the Secretary be unable to fulfill his/her terms of office, the Chair shall appoint a Director to serve in the vacant position for the remaining portion of the term. In the event, that there is no Director available to fill such a position, the office shall remain vacant and the additional duties assumed by the remaining Officers until positions are filled by election.

(d) Treasurer. The Treasurer shall serve no more than three (3) successive full terms of one (1) year; provided, however, that this prohibition shall not apply to the Treasurer serving at the time this term limit provision is adopted. Upon completion of one (1) and up to three (3) terms, the Treasurer rolls off the ACPEF Board and relinquishes any remaining terms as Director. Should the Treasurer be unable to fulfill their terms of office, the Chair shall appoint a Director to serve in the vacant position for the remaining portion of the term. In the event, that there is no Director available to fill such a position, the office shall remain vacant and the additional duties assumed by the remaining Officers until positions are filled by election

(e) Directors/At-Large Directors. The composition of the ACPEF Board shall be divided into three (3) approximately equal groups. Directors/At-Large Directors shall be eligible to serve for a maximum of two staggered three-year terms. No Director/At-Large Director shall hold office for more than two (2) terms of any length; provided, however, that this prohibition shall not apply to Directors/At-Large Directors serving at the time this term limit provision is adopted to a sitting Director/At-Large Director. Should a Director/At-Large Director be unable to perform their duties, the Chair, with approval of the Sole Member, shall appoint a successor to fill the vacancy of the remaining term.

Section 4.3. **Chair responsibilities.** The Chair shall be the chief policy officer of the Foundation and shall have all the duties which that position would customarily require. They shall preside at all meetings of the Board and shall be an *ex officio* member of all Board committees. They shall perform such other duties assigned under these bylaws or as may be prescribed by the Board from time to time. While the Chair does not report directly to the President of the Sole Member, the corporate system in which the Foundation is a component requires an ongoing collaborative relationship between the Chair and the ACP President.

Section 4.4. **Vice Chair responsibilities.** The Vice Chair shall serve as chair *pro tempore* in the absence of the Board Chair, shall serve *ex officio* on the Executive Committee,



and shall perform such other duties as are assigned by the Chair or the Board. The Vice Chair shall succeed to Chair following the completion of the term(s) of the Chair.

Section 4.5. **Executive Director responsibilities.** The Executive Director shall be the chief executive officer of the Foundation and shall be the direct executive representative of the Board of Directors in the management of the Foundation. The Executive Director shall have a dual reporting relationship to both the Foundations' Board of Directors and the Sole Member's President. The Executive Director shall be an *ex officio* voting member of the Board of Directors and shall have all the duties and authority which such position would customarily require, including, but not limited to the following:

- (a) Working with the Foundation's staff to ensure that proper policies are established;
- (b) Submitting to the Board for approval a plan of organization for the conduct of the various activities of the Foundation and recommending changes when necessary;
- (c) Presenting written plans for the achievement of the Foundation's specific objectives and periodically reviewing and evaluating such plans;
- (d) Preparing an annual budget showing the expected revenue and expenditures as required by the Board and by the Sole Member;
- (e) Supervising the financial affairs to ensure that funds are collected and expended to the best possible advantage of the Foundation;
- (f) Presenting to the Board and its various committees, periodic reports reflecting the activities of the Foundation and such other special reports as may be required by the Board;
- (g) Attending meetings of the Board, serving as an *ex officio* member on its committees, and coordinating the preparation of Board meeting materials;
- (h) Representing the Foundation in its relationships with its affiliated organizations and, where authorized, with the public; and
- (i) Performing such other duties as may from time to time be assigned by the Board Chair or the Board.

Section 4.6. **Secretary responsibilities.** The Secretary shall act as official custodian of all records, reports and minutes of the Foundation, the Board of Directors and committees, shall be responsible for the keeping and reporting of records of all meetings of the Board of Directors and shall perform such other duties as are customarily performed by or required of corporate secretaries.

Section 4.7. **Treasurer responsibilities.** The Treasurer shall be the chief financial officer of the Foundation. The Treasurer shall ensure that a true and accurate accounting of the financial transactions of the Foundation is made periodically, that reports of such transactions are presented to the Board of Directors, The Treasurer shall perform such other duties as are customarily required of corporate treasurers and as from time to time may be assigned by the Chair or by the Board.

Section 4.8. **Removal.** Any officer or agent elected or appointed by the Board may be removed by the Board or the Sole Member, respectively, whenever in their judgment the best interests of the Foundation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. In addition, pursuant to its reserved powers, the Sole Member may remove the Chair, Vice Chair or Executive Director at any time, with or without cause. *(revised and approved by the Sole Member Oct. 29, 2019)*

Section 4.9. **Vacancies.** A vacancy in the chair or vice chair positions because of death, resignation, removal or otherwise, shall be filled for the unexpired portion of the term by the Sole Member. Vacancies in the secretary and treasurer positions, shall be appointed by the Chair and filled with current director(s) on the Foundation Board. Director vacancies may be appointed by the Chair, with approval of the Sole Member, to fill the vacancy of the remaining term. Vacancies may be filled at any meeting of the Board.

## **ARTICLE V. COMMITTEES OF THE BOARD OF DIRECTORS**

Section 5.1. **Standing Committees.** Committees of the ACPEF Board shall be standing or special. Standing committees shall be the Executive Committee, Finance Committee, Joint Nominating Committee and the Annual Appeal Committee. The Chair shall appoint all committee chairs and members. Each committee shall have at least two (2) Directors. Terms will be for three (3) years except as otherwise provided in this Article, individuals who are not Directors of the Foundation may serve as voting committee members.

Section 5.2. **Executive Committee.** The Executive Committee, composition shall include the Chair, Vice Chair, Secretary, Treasurer and Executive Director.

(a) The Executive Committee shall have the power to transact all regular business of the Foundation during the interim between the meetings of the Board provided any action taken shall not conflict with the policies and expressed wishes of the Board. Such Executive Committee shall keep minutes of its meeting and report its actions at the next meeting of the Board for the Board's review.

(b) The Executive Committee shall have and be vested with all powers of the Board, except as prohibited by law.

Section 5.3. **Finance Committee** shall consist of eight (8) members: Treasurer (Chair) Chair, Vice Chair, Secretary, Executive Director, three (3) Directors and the Director of Finance and Administration. It shall be the duty of this committee to assist the BOD in fulfilling its financial oversight responsibilities including: assuring the integrity of the Foundation's financial accounting processes and internal controls, independent financial audit, and tax filings; reviewing revenues and expenditures, balance sheet, investments and other matters related to the Foundation's financial condition; and formulating the annual budget based on BOD approved strategic and operational plans and submitting the budget to the BOD for approval.

Section 5.4. **Nominating Committee** The Nominating committee shall consist of nine (9) Active Members or Active Fellows: ACP Immediate Past-President (Chair and will appoint the Committee members), the ACP President Elect, one (1) member of the ACP Board, ACPEF

Vice Chair, two (2) ACPEF Directors (appointed by the ACPEF Chair), and three (3) members at-large not currently serving on either Board from among the current eligible ACP voting members of which two (2) have served as recent Section Officers. It shall be the duty of this committee to annually select and forward nominees to the ACP BOD:

(a) For all Officers, Division Directors, ACPEF Directors, Regional Directors, and members to the Council for the American Board of Prosthodontics to be elected by eligible ACP voting members;

(b) For the Awards of Distinction and the Founders Society Award consistent with the policy for these awards. *(revised and approved by the Sole Member Oct. 29, 2019)*

Section 5.5. **Annual Appeal Committee.** The Annual Appeal committee shall be responsible for soliciting funds from ACP members to support programs and the Foundation endowment. The Annual Appeal Committee Chair, Vice Chair or Co-Chairs will be appointed by the Board Chair.

Section 5.6. **Special Committees.** Special Committees and/or task forces shall be appointed by the Chair with the concurrence of the Board for special tasks as circumstances warrant. Chairs and committee members shall be appointed by the Chair of the Board. Only their chairs need be Directors. A special committee or Task Force shall limit its activities to the accomplishment of the 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 be sunset.

Section 5.7. **Committee Procedures.** 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, all of whom shall have the right to attend and participate in the deliberations of the committee. The Chair, the Executive Director or committee Chairs may invite to any committee meeting such individuals as they may select who may be helpful to the deliberations of the committee. A majority of the members of each committee shall constitute a quorum for the transaction of business and the act of a majority of the members of any committee present at a meeting at which a quorum is present shall be the action of the committee.

## **ARTICLE VI. FISCAL MATTERS**

Section 6.1. **Contracts.** The Executive Director shall be authorized to execute contracts on behalf of the Foundation. Any contract obligating the Foundation to expend an amount of \$50,000 or more that was not included in an annual budget specifically approved by the Sole Member shall be submitted to the Sole Member for approval before being obligated.

Section 6.2. **Loans and Indebtedness.** No loans shall be contracted on behalf of the Foundation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the ACPEF Board with such authority being either general or confined to specific instances. No loan shall be granted to an officer or Director of the Foundation. Any loan in the

amount of \$50,000 or more that was not included in an annual budget specifically approved by the Sole Member must be submitted to the Sole Member for approval.

Section 6.3. **Checks, Drafts, etc.** All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Foundation or to the Foundation, shall be signed or endorsed by officers of the Foundation who shall be authorized as signatories on the accounts of the Foundation by resolution of the Board of Directors. The signatures of such persons may be by facsimile where expressly authorized but shall not be preprinted on the instrument.

Section 6.4. **Deposits.** All funds of the Foundation not otherwise employed shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the Board may select.

Section 6.5. **Budgets.** The Board of Directors of the Foundation shall prepare or have prepared the annual capital and operating budgets of the Foundation, which shall be subject to approval by the Sole Member.

Section 6.6. **Gifts.** The ACPEF Board may accept on behalf of the Foundation any contribution gift, bequest or device for the general purpose or for any special purpose of the Foundation.

Section 6.7. **Bonds.** All agents of the Foundation responsible for the receipt, custody or disbursement of funds shall give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board shall determine.

Section 6.8. **Fiscal Year.** Each year the ACPEF Board shall submit to the Sole Member a written report of its activities, including financial statements and all donations received and disbursements made by the Foundation.

Section 6.9. **Audit.** Each year the ACPEF Board shall submit to the Sole Member an external audit of the financial affairs of the Foundation.

## **ARTICLE VII. BOOKS AND RECORDS**

Section 7.1. **Maintenance of Records.** The Foundation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board of Directors and committees having any authority of the Board of Directors and shall keep at the principal office a record giving the name and address of the Sole Member entitled to vote. All books and records of the Foundation may be inspected by the Sole Member or the Sole Member's agent or attorney for any proper purpose at any reasonable time.

## **ARTICLE VIII. INDEMNIFICATION**

Section 8.1. **Definitions.** For the purposes of this Article, the following terms are defined as follows:

(a) References to “the Foundation” shall include, in addition to the surviving corporation, any merging corporation (including any corporation having merged with a merging corporation) absorbed in a merger which, if its separate existence had continued, would have had the power and authority to indemnify its Directors, advisory Directors, officers, employees, committee members, or agents so that any party who was a Director, advisory Director, officer, employee, committee member or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article with respect to the surviving corporation as such party would have with respect to such merging corporation if its separate existence had continued.

(b) References to “other enterprises” shall include employee benefit plans.

(c) References to “fines” shall include any excise taxes assessed on a party with respect to an employee benefit plan.

(d) References to “serving at the request of the Foundation” shall include any service as a Director, advisory Director, officer, employee, member of a committee, or agent of the Foundation which imposes duties on, or involves services by such Director, advisory Director, officer, employee, member of a committee or agent with respect to an employee benefit plan, its participants, or beneficiaries. A party who acted in good faith and in a manner the party reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Foundation” as referred to in this Article.

#### Section 8.2. **Basic Indemnification.**

(a) The Foundation may indemnify 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 Foundation) by reason of the fact that the party is or was a Director, advisory Director, officer, employee, member of a committee or agent of the Foundation, or was serving at the request of the Foundation as a Director, advisory Director, officer, employee, member of a committee, or agent of another corporation, partnership, joint venture, trust or enterprise, in which it is a corporate member or owns shares of capital stock or of which it is a creditor, against expenses (including attorneys’ fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by the party in connection with such action, suit, or proceeding if the party acted in good faith and in a manner the party reasonably believed to be in, or not opposed to, the best interests of the Foundation and, with respect to any criminal action or proceeding, had no reasonable cause to believe the party’s conduct was unlawful.

(b) The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *non contendere* or its equivalent shall not, of itself, create a presumption that the party did not act in good faith and in a manner which the party reasonably believed to be in or not opposed to the best interests of the

Foundation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the party's conduct was unlawful.

(c) It is intended that the scope of this indemnification provision shall always be as extensive as that allowed by the applicable statutes of the State of Illinois, as they are amended from time to time.

Section 8.3. **Actions by or in the Right of the Foundation.**

(a) The Foundation may indemnify 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 Foundation to procure a judgment in its favor by reason of the fact that the party is or was a Director, advisory Director, officer, employee, member of a committee, or agent of the Foundation, or is or was serving at the request of the Foundation as a Director, advisory Director, officer, employee, member of a committee, or agent of another corporation, partnership, joint venture, trust or another enterprise in which it is a corporate member or owns shares of capital stock or of which it is a creditor, against expenses (including attorney's fees) actually and reasonably incurred by the indemnified party in connection with the defense or settlement of such action or suit if the party acted in good faith and in a manner the party reasonably believed to be in or not opposed to the best interests of the Foundation.

(b) No indemnification shall be made in respect of any claim, issue, or matter as to which such party shall have been adjudged to be liable for negligence or misconduct in the performance of the party's duty to the Foundation unless and only to the extent that 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 circumstances of the case, such party is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 8.4. **Indemnification when Successful on the Merits.** To the extent that a Director, advisory Director, officer, employee, member of a committee or agent of the Foundation has been successful, on the merits or otherwise, in defense of any action, suit, or proceeding referred to in Section 1 and 2 of this Article or in defense of any claim, issue, or matter therein, the party shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by the party in connection therewith; provided, however, nothing contained in this Section shall limit the ability of the Foundation to provide indemnity, including costs of counsel, as provided elsewhere in these bylaws.

Section 8.5. **Appropriate Authorization for Payment of Indemnification.** Any indemnification under Sections 1 and 2 of this Article (unless ordered by a court) shall be made by the Foundation only as authorized in the specific case upon a determination that the indemnification of the indemnified party is proper in the circumstances because the party has met the applicable standard of conduct set forth in Sections 1 or 2 of this Article. Such determination shall be made.

(a) By the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit, or proceeding, or

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

(c) By the Sole Member of the Foundation.

Section 8.6. **Payment in Advance of Final Disposition**. Expenses (including attorneys' fees) incurred in defending a civil or criminal action, suit or proceeding may be paid by the Foundation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in Section 4 of this Article upon receipt of a written undertaking by or on behalf of a Director, advisory Director, officer, employee, member of a committee or agent of the Foundation to repay such amount unless it shall ultimately be determined that the party is entitled to be indemnified by the Foundation.

Section 8.7. **Non-exclusivity of Indemnification Rights**. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the disinterested Directors, or otherwise, both as to action in the party's official capacity and as to action in another capacity while holding such office, and shall continue as to a party who has ceased to be Director, advisory Director, officer, employee, committee member, or agent and shall inure to the benefit of the heirs, executors, administrators of such a party.

Section 8.8. **Purchase of Director and Officer Liability Insurance**. The Foundation may purchase and maintain insurance on behalf of any party who is or was a Director, advisory Director, officer, employee, member of a committee, or agent of the Foundation, or who is or was serving at the request of the Foundation as a Director, advisory Director, officer, employee, member of a committee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such party and incurred by such party in any such capacity, or arising out of the party's status as such, whether or not the Foundation would have the power to indemnify such party against such liability under the provisions of this Article.

## **ARTICLE IX. NON-DISCRIMINATION**

Section 9.1. **Non-Discrimination**. The Foundation recognizes the rights of all persons to equal opportunity in employment, compensation, promotion, education, positions of leadership and power, 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, gender, sexual orientation, national origin or age.

## **ARTICLE X. BYLAW AMENDMENTS**

Section 10.1. **Bylaw Amendments**. These bylaws may be reviewed and amended by the two-thirds vote of the members of the Board of Directors then serving at any meeting of the Board, provided that a brief description of such proposed amendment(s) shall have been

published in advance of or with the notice of the meeting, and provided, further, that the Sole Member of the Foundation shall have expressly approved such amendment(s) before becoming effective. In accordance with its reserved powers, the Sole Member of the Foundation may amend these bylaws at any time.

## **ARTICLE XI. DISSOLUTION**

Section 11.1 **Corporate Dissolution.** In the event of the dissolution of the Foundation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Foundation, distribute in any proportions considered prudent, all of the assets of the Foundation to THE AMERICAN COLLEGE OF PROSTHODONTISTS, if then in existence and if qualified under Section 501(c)(6) of the Code, otherwise in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law) and as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in the state in which the principal office of the Foundation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.