



RESTATED BYLAWS OF THE  
WESTERN CAROLINA MEDICAL SOCIETY FOUNDATION

As Amended on 6/1/11

ARTICLE I: OFFICES

SECTION 1. Principal Office: The principal office of the WCMS Foundation shall be located at 304 Summit Street, North Carolina, or at such other places as may be determined by the Trustees.

SECTION 2. Other Offices: The Foundation may have offices at such other places, either within or without the State of North Carolina, as the Board of Trustees may determine or as the affairs of the Foundation may require.

ARTICLE II: PURPOSES

SECTION 1. Purposes: The Foundation is organized exclusively for charitable, educational, and scientific purposes, including such activities within the meaning of Section 501 (c)(3) of the Internal Revenue Code of 1986, or the corresponding section of any future federal tax code. To the extent not inconsistent with the preceding, these purposes include furthering improvement of the health and of the medical care of the people of Western North Carolina, and to serve as the physicians' voice advocating for the health of the medical profession, the health of the community, and the health of the patient.

SECTION 2. Policies: No part of the net earnings of the Foundation shall inure to the benefit of or be distributable to its members, trustees, officers or other private person except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distribution in furtherance of the purposes set forth in Article II, Section 1, above. No substantial part of its activities shall involve or carry on propaganda or otherwise attempt to influence legislation, or participate in or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office, including the publishing or distribution of any statements.

ARTICLE III: BOARD OF TRUSTEES

SECTION 1. General Powers: A Board of Trustees shall manage The Foundation. In addition to its other powers, the Board of Trustees shall have full power, except as prohibited by the

terms of any instrument of gift, devise, bequest, or other transfer, at its sole discretion, to change the form of any investment and for that or other purposes of the Foundation to dispose of any securities or other property held by the Foundation.

SECTION 2. Number, Term and Qualifications: The Board of Trustees shall consist of not more than fifteen (15) and not fewer than seven (7) voting members. Within this range, the exact number of Board members shall be determined by the Board of Trustees. Each trustee shall hold office until such trustee's successor is elected and qualified or until such trustee's death, resignation, retirement, removal, or disqualification. Members of the Western Carolina Medical Society Association (the "Association") shall constitute a majority of the Foundation's Board of Trustees. Members of the Association are those physicians and others who have been accepted for membership into the Association in accordance with the Constitution and Bylaws of the Association. Membership on the Board shall not be denied to any individual because of race, color, religion, creed, ethnic affiliation, national origin, sex, sexual orientation, age or handicap.

SECTION 3. Election of Trustees: The Board of Directors of the Association shall elect Trustees of the Foundation in accordance with Association bylaws. The Annual Meeting is the occasion at which Trustees of the Foundation are announced for the calendar year. The Foundation's Board of Trustees shall submit nominations, but the Association may elect any qualified person as a Board Member, whether or not nominated by the Board of Trustees

SECTION 4. Removal: the Board of Directors of the Association may remove any trustee from office only for cause.

SECTION 5. Vacancies: Any vacancy in the Board of Trustees due to the death, resignation, retirement, removal or disqualification of a trustee during the trustee's term of office, or due to an increase in the number of authorized Trustees, shall be appointed by the Board of Directors of the Association. The Foundation's Board of Trustees shall submit nominations, but the Association may elect any qualified person as a Board Member, whether or not nominated by the Board of Trustees. A Trustee appointed to fill a vacancy caused by death, resignation, retirement, removal or disqualification of a trustee shall serve for the unexpired term of the trustee's predecessor in office.

SECTION 6. Ex Officio Trustees: There shall be five (5) Ex Officio Trustees. These persons shall be Ex Officio Trustees during their terms of office in the Association: (1) President of the Association, (2) President-Elect of the Association, and (3) a physician representative from the Buncombe County Medical Society & Alliance Endowment Advisory Committee who shall have full voting rights, and (4) a representative from the Buncombe County Medical Society Alliance nominated by the Buncombe County Medical Society Alliance Board of Directors and (5) the Executive Vice-President, CEO of the Association, who shall not have voting rights.

SECTION 7. At Large Trustees: Members of the Board of Trustees who are not Ex Officio Trustees shall be At Large Trustees and shall be elected as provided in Article III, Section 3.

SECTION 8. Term of Office, At Large Trustees: Trustees shall be eligible for election for a term of three (3) years. At Large Trustees may serve no more two (2) consecutive three (3) year terms; however, a trustee may be elected for an additional term or terms after that trustee has not been a member of the Board for at least one year. An At Large Trustee's three-year term that is interrupted by election as WCMS Association President and/or President-Elect may be resumed

upon completion of the Ex Officio term (as provided in Article III, Section 6). Initial Trustees will be appointed for staggered terms of 1, 2 and 3 years by the Association Board of Directors.

#### ARTICLE IV: MEETINGS OF TRUSTEES

SECTION 1. Annual and Regular Meetings: Regular meetings of the Board of Trustees shall be fixed by Board resolution. One regular meeting shall be designated as the annual meeting of the Board of the Foundation. Notice of annual and regular meetings shall be given at least ten, but not more than fifty days before the meeting by any usual means of communication.

SECTION 2. Special Meetings: Special meetings of the Board of Trustees may be called at any time with at least ten, but not more than fifty days notice by any usual means of communication by the Chairman or by petition of a majority of the Trustees. Such meetings may be held within or without the State of North Carolina, as fixed by the person or persons calling the meeting.

SECTION 3. Waiver of Notice: Any trustee may waive notice of any meeting. Such waiver must be in writing, signed by the trustee entitled to the notice, and filed with the minutes or corporate records. The attendance by a trustee at a meeting shall constitute a waiver of notice of such meeting, except where a trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 4. Quorum: The presence of no less than one-third of the total membership of the Board of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. "Present" is defined as in-person, telephone call-in, videoconference, and other technologies that allow board members regardless of geographical location to participate in the meeting simultaneously.

SECTION 5. Manner of Acting: Except as otherwise required by law or as provided in these bylaws or in the Constitution, the Board may take action in the following ways:

- (1) Actions taken at a meeting: The act of the majority of the Trustees present at a meeting at which a quorum is present shall be an act of the Board. Meetings may be held in person, by conference telephone call, by videoconference, or by any other means that will permit all participants to communicate simultaneously.
- (2) Actions taken without a meeting: Action may be taken (a) by a written ballot to which all of the members of the Board have responded, and the majority vote will be deemed the action of the Board of Trustees; or (b) by a majority of the Trustees, provided written consent to the action in question is signed by all the Trustees. All written ballots and written consents must be filed with the proceedings of the Board. Ballots and consents may be collected and documented electronically.

SECTION 6. Presumption of Assent: A trustee who is present at a meeting of the Board of Trustees at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless (1) the trustee objects at the beginning of the meeting, or promptly upon his or her arrival, to holding the meeting or transacting business at the meeting; or (2) the trustee's contrary vote is recorded or his or her dissent or abstention is otherwise entered in the minutes of the meeting; or (3) the trustee files a written notice of dissent or abstention with the person acting as

the Secretary of the meeting before its adjournment, or forwards such notice by registered mail to the Secretary/Treasurer of the Foundation immediately after adjournment of the meeting. Such right of dissent or abstention shall not apply to a trustee who voted in favor of the action taken.

## ARTICLE V: OFFICERS

SECTION 1.     Officers of the Foundation: The officers of the Foundation are a Chair, Vice-Chair, Secretary, Treasurer, Chief Executive Officer and other officers the Board of Trustees may elect. No officer may hold more than one office at any given time.

SECTION 2.     Election and Term: the Board of Trustees shall elect the officers of the Foundation annually. Each officer shall hold office until the officer's successor is elected and qualified or until the officer's death, resignation, retirement, removal, or disqualification.

SECTION 3.     Removal: Any officer or agent elected or appointed by the Board of Trustees may be recommended for removal, with cause by the affirmative 2/3 vote of the remaining Trustees whenever in the Board's judgment the best interests of the Foundation will be served; but such removal shall not affect the contract rights, if any, of the person so removed. Any removal of a trustee is subject to approval by the Association Board of Directors.

SECTION 4.     Chair: The Chair of the Foundation shall be elected by the Board of Trustees and shall serve as the official Foundation representative. The Chair shall preside at all meetings of the Foundation shall serve as an Ex Officio, voting member of all committees. The Chair shall appoint committee chairs and committee members.

SECTION 5.     Vice-Chair: In the absence of the Chair, the Vice-Chair shall perform the duties of the Chair, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chair. The Vice-Chair shall perform such other duties as may be assigned by the Chair or the Board of Trustees.

SECTION 6.     Secretary: The Secretary shall: (a) keep the minutes of the meetings of the Board of Trustees and of the Executive Committee in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) maintain, authenticate, and be custodian of the corporate records and of the seal of the Foundation and see that the seal of the Foundation is affixed to all documents the execution of which on behalf of the Foundation under its seal is duly authorized; and (d) in general perform all duties incident to the office of Secretary and such other duties as may be assigned by the President or by the Board of Trustees, or by these bylaws. Checks may be signed for the Foundation by the Secretary or by agents authorized to do so by the Board. The Secretary may delegate certain administrative functions if authorized by the Board of Trustees.

SECTION 7.     Treasurer: The Treasurer is responsible for review and oversight of financials in accordance with the policies of The Foundation. The Treasurer is responsible for coordinating with WCMS staff the preparation of periodic financial reports and statements, and preparation of the annual budget for action by the Board of Trustees. The Treasurer is responsible for presenting the most recent financial statements at each Board meeting.

SECTION 8.     Terms of Office: The terms of office shall be one calendar year.

SECTION 9.      Chief Executive Officer: The Board shall employ either directly or through contract a chief executive officer who shall be the general administrative officer and business manager of the Foundation, and who may employ, supervise, and dismiss administrative and clerical staff in order to efficiently implement the decisions of the Board of Trustees and to conduct the business of the Foundation. The Chief Executive Officer is appointed by, accountable to, and serves at the pleasure of the Board of Directors.

## ARTICLE VI: COMMITTEES

SECTION 1.      Executive Committee: The Executive Committee shall be the administrative body of the Foundation and shall act for the Foundation between Board of Trustees meetings. For such actions to remain official Foundation policy, the Board of Trustees at its next meeting shall ratify all such actions. The Board of Trustees shall elect annually an Executive Committee to be composed of one (1) At Large Trustee, the Chair, Vice-Chair, Secretary/Treasurer and the chief executive officer of the Foundation. A majority of members of the Executive Committee shall be members of the Association. The function of the Executive Committee shall be to perform any administrative duties expressly authorized by the Board of Trustees and the Board may prescribe any other matters as.

SECTION 2.      Committees: Committees, task forces, work groups, not having the authority of the Board in the management of the Foundation may be appointed by the Chair. The Chair shall prescribe the duties and functions of such committees. The Chair may appoint non-Board of trustee members to these committees, task forces or work groups.

## ARTICLE VII: CONTRACTS, LOANS, CHECKS AND DEPOSITS

SECTION 1.      Contracts: The Board of Trustees may authorize any officer or agent to enter into any contract or to execute and deliver any instrument on behalf of the Foundation, and such authority may be general or confined to specific instances.

SECTION 2.      Loans: 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 Board of Trustees. Such authority may be general or confined to specific instances.

SECTION 3.      Checks and Drafts: All checks, drafts or other orders for payment of money issued in the name of the Foundation shall be signed by the Treasurer or other officer or agent of the Foundation in such manner as shall be determined by resolution of the Board of Trustees.

SECTION 4.      Deposits: All funds of the Foundation not otherwise employed shall be deposited to the credit of the Foundation in such depositories, as the Board of Trustees shall direct.

## ARTICLE VIII: FINANCES

SECTION 1.      Use of Income: All gifts to the Foundation or other income not otherwise restricted by the donor shall go into the general fund of the Foundation and shall be used exclusively for the Foundation and its programs in accordance with the general purposes of the Foundation, as described in and limited by Article II, Section 2 of these Bylaws.

The Foundation may receive, manage, invest, and disburse restricted gifts only when such gifts are consistent with the purposes of the Foundation, as described in and limited by Article II, Section 2 of these Bylaws. The Foundation may make distributions to organizations, provided such organization is (a) organized exclusively for charitable, scientific or educational purposes, and (b) qualified as an organization exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section. The Board of Trustees shall have the discretion whether or not to accept a restricted gift if consistent with the foregoing. The Board may provide procedures for the establishment of special or designated funds.

SECTION 2.      Contributions and Disbursements: All contributions received by the Foundation shall be deposited by the Treasurer or delegated to WCMS staff to deposit in special accounts in banks, trust companies, or other depositories the Board may select. All disbursements shall be made under proper authority of the Board. The Treasurer or delegated WCMS staff shall record all contributions to and disbursements from the Foundation and such records shall be subject to examination at any reasonable time, upon request, by any trustee.

SECTION 3.      Audit: Each year the Board shall select a firm of certified public accountants to audit the financial accounts of the Foundation.

## ARTICLE IX: GENERAL PROVISIONS

SECTION 1.      Seal: The corporate seal shall consist of two concentric circles between which is the name of the Foundation and in the center of which is inscribed "CORPORATE SEAL" or "SEAL"; and such seal, as impressed on the margin hereof, is hereby adopted as the corporate seal of the Foundation.

SECTION 2.      Waiver of Notice: Whenever any notice is required to be given to any trustee under the provisions the Constitution of the Foundation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. All such waivers shall be filed with the minutes or corporate records.

SECTION 3.      Indemnification: Each person who is or was a trustee or officer of the Foundation or any person who may have served at the Foundation's request as a trustee or officer of another Foundation, partnership, joint venture, trust or other enterprise shall be indemnified to the fullest extent permitted by law against liability and reasonable litigation expenses, including attorney's fees, incurred in connection with any proceeding in which such person has been made or threatened to be made a party by reason of having been such trustee or officer, except in relation to matters as to which such person shall be determined by the Board to have acted in bad faith or to have engaged in willful misconduct in the performance of duty. Such determination shall be made by a majority vote of a quorum of the Board consisting of directors not at the time parties to the proceeding. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of no contest or its equivalent is not, of itself, determinative that the person did not meet the standard of conduct required. Expenses incurred by such trustee or officer in defending a proceeding may be paid by the Foundation before the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the trustee or officer to repay such amounts unless it is ultimately determined that such person is entitled to be indemnified by the Foundation pursuant to this section. The right to indemnification conferred herein shall be a contract right, and each officer

or trustee acting after the adoption of this section shall be deemed to have acted in reliance on this right to indemnification.

SECTION 4.      Fiscal Year: The fiscal year of the Foundation shall be the calendar year, January 1 – December 31, unless changed by the Board of Trustees.

SECTION 5.      Amendments: Except as otherwise provided herein, these bylaws may be amended or repealed and new bylaws may be adopted by the affirmative vote of a majority of the Trustees then holding office at any regular or special meeting of the Board of Trustees, upon approval by the Board of the Association.

SECTION 6.      Rules of Order: The deliberations of the Foundation shall be governed by parliamentary procedure as contained in Davis Rules of Order.

SECTION 7:      Limitations to Activities and Exercise of Powers: The following limitations shall specifically apply to the activities and exercise of powers of the Foundation:

(1) Notwithstanding any other provision of these articles, the Foundation shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

(2) Upon the dissolution of the Foundation, its assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the organization 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.

ATTESTED:

\_\_\_\_\_ Date: \_\_\_\_\_  
Secretary

Prepared: 6/17/06