

ARTICLES OF RESTATEMENT

OF

THE AMERICAN BOARD OF PEDIATRICS FOUNDATION

Pursuant to Section 55A-10-06 of the General Statutes of North Carolina, the undersigned nonprofit corporation hereby submits the following for the purpose of restating its Articles of Incorporation:

1. The name of the corporation is THE AMERICAN BOARD OF PEDIATRICS FOUNDATION.
2. The corporation's articles of incorporation are hereby amended and restated in their entirety by the Amended and Restated Articles of Incorporation attached hereto.
3. These Amended and Restated Articles of Incorporation were adopted by the Board of Directors. The corporation has no members.
4. These Articles will be effective upon filing.

This the _____ day of _____, 2018.

THE AMERICAN BOARD OF PEDIATRICS
FOUNDATION

By: _____

Name: David G. Nichols, MD, MBA

Title: President & CEO

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
THE AMERICAN BOARD OF PEDIATRICS FOUNDATION
A NONPROFIT CORPORATION

ARTICLE I
NAME

The name of the corporation is The American Board of Pediatrics Foundation.

ARTICLE II
PURPOSES AND LIMITATIONS

The corporation is organized and shall be operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any future United States Internal Revenue law) (the "Code"). The corporation shall operate for the benefit of, to perform the functions of, and to carry out the purposes of The American Board of Pediatrics, Inc. ("ABP"), an organization recognized as a public charity pursuant to Section 501(c)(3) of the Code. In addition, the corporation may engage in any and all lawful activities incidental to the foregoing purposes.

In favor of classification, at its option, as a non-private foundation under Code Section 509(a)(3)(A), the corporation shall:

- (1) At all times be operated, supervised, and controlled by ABP acting through its Board of Directors in accordance with Code Section 509(a)(3)(B), and
- (2) not be controlled directly or indirectly by one or more disqualified persons (as defined in Code Section 4946), other than foundation managers or one or more organizations described in Sections 509(a)(1) and 509(a)(2), in accordance with Code Section 509(a)(3)(C).
- (3)

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its directors, officers or any "private shareholder or individual" within the meaning of Section 501(c)(3) of the Code; provided, however, that the corporation 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 in these Articles of Incorporation. No substantial part of the activities of the corporation shall be the carrying on of

propaganda, or otherwise attempting to influence legislation, and the corporation 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. Notwithstanding any other provision of these Articles of Incorporation, the corporation shall not carry on any activities not permitted to be carried on:

- (1) By a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or
- (2) By a corporation, contributions to which are deductible under Sections 170(c)(2) and 2055 of the Code, or
- (3) By a charitable or religious corporation created under the North Carolina Nonprofit Corporation Act.

ARTICLE III NATURE OF CORPORATION

The corporation is a “charitable or religious corporation,” as that term is defined in §55A-1-40(4) of the North Carolina Nonprofit Corporation Act.

ARTICLE IV MEMBERS/BOARD OF DIRECTORS

The corporation has no members.

At all times, the affairs and management of the corporation shall be under the direction of a Board of Directors. The method of election of directors shall be set out in the Bylaws of the corporation, however, any director may be removed from office, with or without cause, by action of the Board of Directors of ABP.

To the fullest extent permitted by the North Carolina Nonprofit Corporation Act as now in effect or as it may hereafter be amended, no person who is serving or who has served as a director of the corporation shall be personally liable to the corporation for monetary damages for breach of duty as a director. No amendment or repeal of this Article III nor the addition of any provision to these Articles of Incorporation inconsistent with this Article III, shall eliminate or reduce the protection granted herein with respect to any matter that occurred prior to such amendment, repeal, or addition.

ARTICLE V PRINCIPAL OFFICE, REGISTERED AGENT, AND REGISTERED OFFICE

The principal office of the corporation is located at the following address:

111 Silver Cedar Court
Chapel Hill, North Carolina 27514-1651
County: Orange

The registered agent of the corporation is David G. Nichols and the registered office of the corporation is located at the following address:

111 Silver Cedar Court
Chapel Hill, North Carolina 27514-1651
County: Orange

ARTICLE VI
DISSOLUTION

Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, distribute all remaining assets to ABP, provided that if ABP shall no longer exist or qualify as a Section 501(c)(3) organization, the Board of Directors shall dispose of, distribute or expend all of the remaining assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the court of competent jurisdiction in the county in which the registered office of the corporation in the State of North Carolina 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.

**BYLAWS
OF
THE AMERICAN BOARD OF PEDIATRICS FOUNDATION**

**ARTICLE I
NAME AND LOCATION**

SECTION 1. NAME

As set out in the Articles of Incorporation, the name of the corporation shall be: The American Board of Pediatrics Foundation. The corporation shall be hereinafter referred to as the "Foundation."

SECTION 2. LOCATION

The principal business office of the Foundation shall be located at a place chosen for this purpose by the President and approved by the American Board of Pediatrics, Inc. (ABP), through that entity's Board of Directors (ABP Board).

**ARTICLE II
BOARD OF DIRECTORS**

SECTION 1. QUALIFICATIONS

The Foundation's Board of Directors must possess those experiences, talents, and attributes that will assist the Foundation and ABP in furtherance of the latter's mission. Directors must declare all relevant conflicts of interest to ensure that they can be managed as outlined in the ABP Conflict of Interest policy. Directors, other than non-physicians, must be certified by the ABP or another American Board of Medical Specialty Board and meet the current requirement of the Maintenance of Certification (MOC) throughout their term of appointment.

SECTION 2. NUMBER AND COMPOSITION

Per the corporation's Articles of Incorporation, this corporation's Board of Directors shall be composed as directed by the ABP Board. At present, and until such time as the ABP Board issues a new directive, the Foundation's Board shall consist of nine (9) Directors, comprised of as follows:

Five (5) -Members shall consist of the current Executive Committee of the ABP;

Two (2) At-Large Members shall have professional expertise in matters of child health research or policy, and

Two (2) Public Members shall be non-physicians who are knowledgeable in matters relating to children and health affairs in general.

The five Directors consisting of the current ABP Executive Committee shall be collectively referred to herein as the "Executive Committee Directors." The four Directors comprised of the two At-Large Members and two Public Members shall be collectively referred to herein as the "Non-Executive Committee Directors".

SECTION 3. SELECTION

The Non-Executive Committee Directors shall not be serving as Directors of the ABP Board. The Non-Executive Committee Directors shall be nominated by the ABP Nominating Committee. The ABP Board will, in turn, appoint each such Director from the nomination slate.

SECTION 4. TERMS

The terms of the Executive Committee Directors shall be concurrent with each individual's term on the American Board of Pediatrics' Executive Committee. The terms of Non-Executive Committee Directors shall be three (3) years. The Non-Executive Committee Director's term begins the first day of January after their selection. In the event that the seating of any Non-Executive Committee Director is delayed beyond January 1 of the first year of the term of that individual, the term of that Director shall be for the remainder of that year plus two additional years, at which point such Director shall be considered to have served a full term of three years. Each of the Non-Executive Committee Directors shall be eligible for one additional term for no more than a total of six years cumulatively as a Director.

SECTION 5. REMOVAL, DISQUALIFICATION, AND VACANCIES

Per the corporation's Articles of Incorporation, "Any director may be removed from office, with or without cause, by action of the Board of Directors of the ABP" (Article III, first sentence).

A director is automatically disqualified from service if and at such time that they cease to satisfy the qualifications set forth above in Article II, SECTION 1.

If there be a vacancy in a Non-Executive Committee Director seat, the ABP Board, at its sole discretion, may exercise any of the following options:

- i. identify a successor from the existing slate of nominees for the Non-Executive Committee Director category to fill the unexpired term,
- ii. identify a successor from a slate of nominees prepared by the ABP Nominating Committee for a full three-year term, or
- iii. leave the position vacant.

A vacancy among the Executive Committee Directors shall be filled by action of the ABP Board.

SECTION 6. GENERAL POWERS AND DUTIES

The affairs of the Foundation shall at all times be subject to the management of the Foundation Board in accord with the Foundation's purpose, which is "to operate for the benefit of, to perform the functions of, and to carry out the purposes of" the ABP. Among other things, the Foundation Board shall determine policies for all activities of the Foundation, decide upon disbursement of funds (including awards of grants, support of conferences and other activities, and payment of administrative expenses of the Foundation), and plan appropriate efforts and activities in support of the mission of the ABP.

SECTION 7. MEETINGS

The Foundation Board shall hold meetings, as follows:

- (a) Board Meetings. The Foundation Board shall meet no less than twice a year on a date, time, and place as the President shall designate.
- (b) Additional Meetings. Additional meetings of the Foundation Board may be called by the President or by any two Directors. The date and time of each such additional

meeting shall be determined by the majority opinion of the Directors. Additional meetings shall be by telephone, webinar, or in person at the ABP office.

SECTION 8. NOTICES

Electronic or written notice of each meeting of the Foundation Board shall be given to each Director at least ten days prior to the date of such meeting. Neither the business to be transacted at, nor the purposes of, any meeting of the Foundation Board need be specified in the notice of such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Director at the Director's address as it appears on the records of the Foundation, with postage thereon prepaid.

SECTION 9. QUORUM

A majority of the Directors of the Foundation shall be necessary to constitute a quorum for the transaction of business at any meeting of the Foundation Board.

SECTION 10. MANNER OF ACTING

The act of a majority of the Directors present at a meeting of the Foundation Board at which a quorum is present shall be the act of the Foundation Board, unless by express provision of applicable statute, the charter or these Bylaws the act of a greater number of Directors is required, in which case such express provision shall govern and control.

SECTION 11. REPORTING REQUIREMENT

The Foundation Board shall report to the ABP Board at least twice per year.

SECTION 12. PARLIAMENTARY PROCEDURE

The parliamentary procedure to be followed at all regular and special meetings shall be that designated in Robert's (Revised) Rules of Order, except insofar as they may be waived or relaxed by the presiding officer with the consent of the majority present at the particular meeting.

ARTICLE III

COMMITTEES OF THE BOARD OF DIRECTORS

SECTION 1. EXECUTIVE COMMITTEE

The Executive Committee Directors shall serve as the Foundation's Executive Committee. Between meetings of the Foundation Board, the Executive Committee shall have and may exercise the authority of the Foundation Board in the management of the Foundation, except that the Executive Committee shall not have authority as to the following matters:

- (a) The dissolution, merger or consolidation of the Foundation, the amendment of the charter of the Foundation, or the sale, lease or exchange of all or substantially all of the property of the Foundation;
- (b) The designation of any committee or the filling of vacancies in the Foundation Board or in any committee;
- (c) The amendment or repeal of the Bylaws, or the adoption of new Bylaws; and

- (d) The amendment or repeal of any resolution of the Foundation Board, which by its terms shall not be so amendable or repealable.

SECTION 2. FINANCE COMMITTEE

The Executive Committee Directors shall serve as the Finance Committee of the Foundation and shall meet on the same day as meetings of the Foundation's Board meeting and at such other times as the Foundation Board or the Finance Committee requires.

SECTION 3. ADDITIONAL COMMITTEES

The Foundation Board, by resolution adopted by a majority of the number of Directors then in office, from time to time may designate one or more additional committees of the Foundation Board, except that no Foundation committee shall have authority as to the following matters:

- (a) The dissolution, merger or consolidation of the Foundation, the amendment of the charter of the Foundation, or the sale, lease or exchange of all or substantially all of the property of the Foundation;
- (b) The designation of any such committee or the filling of vacancies in the Foundation Board or in any such committee.
- (c) The amendment or repeal of the Bylaws, or the adoption of new Bylaws, and
- (d) The amendment or repeal of any resolution of the Foundation Board, which by its terms shall not be so amendable or repealable.

ARTICLE IV

TELEPHONE PARTICIPATION AND WAIVER OF NOTICE

SECTION 1. TELEPHONE PARTICIPATION

Any one or more of the Directors of the Foundation or members of any committee thereof may participate in their respective meetings by means of a conference telephone or similar communications device which allows all persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

SECTION 2. WAIVER OF NOTICE

Whenever any notice of meeting is required to be given under the provisions of the North Carolina Nonprofit Corporation Act or under the provisions of the charter 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 deemed equivalent to the giving of such notice. Attendance of a Director or member of a committee thereof at any meeting shall constitute a waiver of notice of such meeting except where a Director or member of a committee thereof attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE V
OFFICERS

SECTION 1. BOARD OFFICERS

The officers of the Foundation shall consist of the Chair, Chair-Elect, and the Secretary-Treasurer elected and serving in such respective capacities on the ABP Board. In addition, the Foundation Board shall have a President.

SECTION 2. ELECTION OF OFFICERS

The officers of the Foundation Board shall be elected by the ABP Board of Directors to assume office on January 1 of the following year.

SECTION 3. DUTIES AND POWERS OF THE OFFICERS

The Chair, Chair-Elect, and Secretary-Treasurer shall possess and exercise all those powers and duties generally pertaining to such offices as well as any particular powers and duties prescribed by law or these bylaws.

The Chair-Elect shall perform the duties of the Chair in the Chair's absence or disability unless otherwise determined by the Foundation Board.

The Secretary-Treasurer shall keep, or cause to be kept, adequate records of all meetings, fiscal affairs, and audits of the Foundation. The Board of Directors may authorize the Secretary-Treasurer to delegate any or all of his/her duties to the President.

SECTION 4. THE PRESIDENT

The ABP President shall be the Foundation's Chief Executive Officer and President of the Foundation. Under the general supervision of its officers, he or she shall see that all orders and resolutions of the Foundation Board are carried into effect and shall supervise and control all of the business and affairs of the Foundation, including the maintenance and supervision of all records, supervision of the preparation of minutes of the proceedings of the Foundation Board, the giving of all notices of meetings, the conduct of correspondence, and supervision of the maintenance and use of all property of the Foundation. The President shall execute bonds, mortgages and other contracts under the seal of the Foundation if required except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the President to some other officer or agent of the Foundation. He or she shall be responsible for the receipt of monies and the payment of bills. He or she shall be responsible for the preparation of the annual budget, which the Secretary-Treasurer shall present to the Foundation Board annually. The President shall implement corporate objectives and policies. He or she shall gather background information to assist the Foundation Board in their deliberations and shall generally assist the elected officers in the discharge of their duties. The President shall perform such other duties as may be prescribed by the Foundation Board or these Bylaws. He or she may delegate some or all of these aforementioned responsibilities to be carried out by other officers or agents of the Foundation.

SECTION 5. RESIGNATIONS

Any officer may resign at any time by giving written notice to the Chair or the Secretary-Treasurer of the Foundation. Any such resignation shall take effect when the written notice is delivered unless such notice specifies a future time, in which case such resignation shall take effect at the time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6. REMOVAL

Any officer may be removed by the Foundation Board whenever in its judgment the best interests of the Foundation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

SECTION 7. DISQUALIFICATION

Except for the President, any person serving as an officer shall automatically and immediately become disqualified to be and cease to be an officer if and at such time as such person ceases to be a Director of the Foundation Board of Directors.

ARTICLE VI FISCAL MATTERS

SECTION 1. FISCAL YEAR

The fiscal year of the Foundation shall commence on November 1 and end on October 31 of each year.

SECTION 2. THE SECRETARY-TREASURER

The Secretary-Treasurer shall present an annual budget at a regularly scheduled meeting of the Foundation Board. The proposed budget shall be reviewed in advance of its presentation by the Finance Committee, which shall make recommendations concerning its adoption. The budget shall show the estimated costs of maintaining the Foundation's business office, of conducting meetings, of operating standing and special committees, and of funding its initiatives. It shall be the responsibility of the Secretary-Treasurer to propose annually to the Foundation Board guidelines for construction of the budget with recommendations for variances therefrom. These recommendations may vary according to the amount of revenue available from the annual investment revenues generated by the ABP Contingency Reserves. The budget may provide for discretionary funds to be used by the President as deemed appropriate. The Foundation Board shall determine the amount of funds that may be dispersed by the President without approval of the Secretary-Treasurer.

SECTION 3. SURETY BONDS

At the expense of the Foundation, all officers and agents of the Foundation responsible for the receipt, custody, and disbursement of funds shall furnish fidelity bonds in the amount and with a surety or sureties approved by the Board of Directors.

SECTION 4. AUDIT

A firm of certified public accountants, approved by the ABP Audit Committee annually, shall verify the financial position of the Foundation and the results of its operation for the year. There shall be presented annually to the Directors an annual report, verified by the Chair, Secretary-

Treasurer, and President, containing financial statements for the preceding fiscal year of the Foundation, audited by the independent public accountants of the Foundation, and containing such other information as may be required by law.

SECTION 5. RECORDS

The Foundation shall maintain at its principal office a record of its proceedings and of the proceedings of its committees and subcommittees; and appropriate, complete, and accurate books or records of account. All such records, books, and records of account may be inspected in accordance with law by any Director or his/her agent or attorney for any proper purpose during usual business hours.

ARTICLE VII

INDEMNIFICATION OF MEMBERS, OFFICERS, AND OTHERS

SECTION 1.

The Foundation:

(i) shall 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 by reason of the fact that he/she is or was a Foundation Director; officer of the Foundation; President of the Foundation; member of any committee of or established by the Foundation, or is or was serving at the request of the Board of Directors as a member, officer, employee, or agent of another organization, and

(ii) may indemnify any other 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 by reason of the fact that he/she is or was serving as an employee or agent of the Foundation, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him/her in connection with such action, suit, or proceeding if he/she acted in good faith and in a manner he/she was 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 his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he/she 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 that his/her conduct was unlawful.

SECTION 2.

The Foundation:

(i) shall 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 he/she is or was a Foundation Director; officer of the Foundation; President of the Foundation;; member of any committee of or established by the

Foundation, including subcommittees; or is or was serving at the request of the Board of Directors as a member, officer, employee, or agent of another organization, and

(ii) may indemnify any other person who was or is a party or is threatened to be made 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 he/she is or was serving as an employee or agent of the Foundation against expenses (including attorneys' fees) actually and reasonably incurred by him/her in connection with the defense or settlement of such action or suit if he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Foundation, except 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 misconduct in the performance of his/her 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 the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

SECTION 3.

To the extent that any person who is or may be indemnified under this Article has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in this Article, or in defense of any claim issue or matter therein, he/she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him/her in connection therewith.

SECTION 4.

Any indemnification under Section 1 or Section 2 of this Article (unless ordered by a court) shall be made by the Board of Directors only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because the person to be indemnified has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article. Such determination shall be made (i) 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 (ii) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

SECTION 5.

Expenses 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 by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the person whose expenses are to be paid to repay such amount if it shall ultimately be determined that he/she is not entitled to be indemnified by the Foundation as authorized in this Article.

SECTION 6.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under any bylaw, agreement, vote of disinterested Directors, or otherwise, both as to action in his/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 hold the position which resulted in a right to indemnity under this Article and shall inure to the benefit of the heirs, executors, and administrators of such person.

SECTION 7.

The Foundation shall have a power to purchase and maintain insurance on behalf of any person who is or was an officer, employee, or agent of the Foundation, or is or was serving at the request of the Board of Directors as a member, officer, employee, or agent of another organization, against any liability asserted against him/her and incurred by him/her in any such capacity, or arising out of his/her status as such, whether or not the Foundation would have the power to indemnify him/her against such liability under the provisions of this Article.

SECTION 8.

For the purposes of this Article, references to the Foundation shall include, in addition to any resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its Directors, an officer, an employee, or an agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a Director, an officer, an employee, or an agent of another organization, and shall stand in the same position under the provisions of this Article with respect to the resulting or surviving corporation as he/she would have with respect to such constituent corporation if its separate existence had continued.

ARTICLE VIII ASSETS AND COMPENSATION

No part of the net earnings or assets of the Foundation shall inure to the benefit of any Director or officer of the Foundation; provided, however, that nothing in these Bylaws shall prevent the Foundation from providing a modest honorarium and reimbursing the reasonable out-of-pocket expenses incurred by the Directors or officers of the Foundation in the performance of their duties.

ARTICLE IX BYLAW AMENDMENTS

These Bylaws may be amended, altered or repealed and new Bylaws may be adopted by action of the Foundation Board.

Amended and Adopted as Final October 2017