

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS DISTRICT
FORT SMITH DIVISION *I*

FILED
JUN - 8 A 10:48
Lane Fairchild
CIR. CLERK SEB. CO.

MERCY HOSPITAL FORT SMITH f/k/a
ST. EDWARD MERCY MEDICAL CENTER and
SPARKS REGIONAL MEDICAL CENTER

PLAINTIFFS

v.

Case No. CV-18-0736

FORT SMITH EMERGENCY MEDICAL SERVICES,
GALEN HUNTER, BOB LANGSTON, JEFF BEAUCHAMP,
JAMES GREENE, BRUCE CRABTREE, DENNIS BAUER and
TIM HEARN

DEFENDANTS

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, Mercy Hospital Fort Smith f/k/a St. Edward Mercy Medical Center (“Mercy”) and Sparks Regional Medical Center (“Sparks”), by and through their counsel at Kutak Rock, LLP, for their Complaint for Declaratory Judgment, state the following:

Parties and Jurisdiction

1. Separate Plaintiff Mercy is a nonprofit corporation organized and existing under the laws of the state of Arkansas with its principal place of business in Fort Smith, Arkansas.
2. Separate Plaintiff Sparks is a nonprofit corporation organized and existing under the laws of the state of Arkansas with its principal place of business in Fort Smith, Arkansas.
3. Defendant Fort Smith Emergency Medical Services (“EMS”) is a nonprofit corporation organized and existing under the laws of the state of Arkansas with its principal place of business in Fort Smith, Arkansas.
4. Upon information and belief, Separate Defendant Galen Hunter (“Mr. Hunter”) is an individual and resident of Sebastian County, Arkansas who holds himself out to be a member of the board of directors of EMS.

5. Upon information and belief, Separate Defendant Bob Langston ("Mr. Langston") is an individual and resident of Sebastian County, Arkansas who holds himself out to be a member of the board of directors of EMS.

6. Upon information and belief, Separate Defendant Jeff Beauchamp ("Mr. Beauchamp") is an individual and resident of Sebastian County, Arkansas who holds himself out to be a member of the board of directors of EMS.

7. Upon information and belief, Separate Defendant James Greene ("Mr. Greene") is an individual and resident of Sebastian County, Arkansas who holds himself out to be a member of the board of directors of EMS.

8. Upon information and belief, Separate Defendant Bruce Crabtree ("Mr. Crabtree") is an individual and resident of Sebastian County, Arkansas who holds himself out to be a member of the board of directors of EMS.

9. Upon information and belief, Separate Defendant Dennis Bauer ("Mr. Bauer") is an individual and resident of Sebastian County, Arkansas who holds himself out to be a member of the board of directors of EMS.

10. Mr. Hunter, Mr. Langston, Mr. Beauchamp, Mr. Greene, Mr. Crabtree and Mr. Bauer may be collectively referred to hereinafter as the "Purported Board".

11. Upon information and belief, Separate Defendant Tim Hearn ("Tim Hearn") is an individual and resident of Sebastian County, Arkansas who holds himself out to be executive director of EMS.

12. The events giving rise to this Complaint occurred in Fort Smith, Arkansas.

13. This action seeks a determination as to the rights, status and legal relations of the parties hereto.

14. This Court has jurisdiction over the parties and subject matter herein, and venue is proper in the Fort Smith division of Sebastian County.

History of EMS

15. On or about December 14, 1978, Don Flanders, Franklin Hawkins and Larry Randall caused Twin City Ambulance Service to be incorporated as an Arkansas nonprofit corporation.

16. True and Correct Copies of the Certificate of Incorporation, Order of Incorporation and Articles of Incorporation of Twin City Ambulance Service are attached hereto collectively as Exhibit "A".

17. Among other things, the Articles of Incorporation of Twin City Ambulance Service provided that the corporation was being incorporated under the Arkansas Nonprofit Act of 1963 (the "1963 Act"), and that membership in the corporation was vested equally in Sparks and Mercy (*See Ex. "A", p. 2, 5*).

18. On or about February 25, 1983, a special joint meeting of the members and directors of Twin City Ambulance Service was held wherein the foregoing unanimously approved an amendment to the Articles of Incorporation changing the name of Twin City Ambulance Service to EMS, the same being filed with the Arkansas Secretary of State on or about March 4, 1983. A true and correct copy of the amendment and minutes of Twin City Ambulance Service reflecting the approval of the same are attached hereto as Exhibit "B."

19. On or about December 27, 1999, EMS adopted its by-laws (the "99 By-laws"), a true and correct copy of which are attached hereto as Exhibit "C".

20. Among other things, the 99 By-laws provided that membership in EMS remained equally in Sparks and Mercy.

21. The 99 By-laws further provided that the board of directors of EMS would consist of six directors – three of whom were to be appointed by Mercy and three of whom were to be appointed by Sparks.

22. None of the Purported Board were appointed by Mercy or Sparks, nor were any of their appointments confirmed by the affirmative vote of Mercy or Sparks.

23. On or about June 11, 2013, Mr. Hearn (in his purported capacity as Secretary) and Mr. Crabtree (in his purported capacity as President) caused to be executed that certain Certificate of Amendment of Fort Smith Emergency Medical Services Electing to be Governed by the Arkansas Non Profit Corporation Act of 1993, ACA § 4-33-101 (the “2013 Articles Amendment”), and caused the same to be filed with the Arkansas Secretary of State on or about June 21, 2013.

24. A true and correct copy of the filed 2013 Articles Amendment is attached hereto as Exhibit “D”.

25. Among other things, the 2013 Articles Amendment purported to set forth the election of EMS to be governed by the Arkansas Non Profit Corporation Act of 1993 (the “1993 Act”) (as opposed to the 1963 Act).

26. Upon executing the 2013 Articles Amendment, Mr. Hearn and Mr. Crabtree went on to execute a purported set of by-laws entitled “Bylaws of Fort Smith EMS, June 7, 2013” (the “2013 By-Laws”), a true and correct copy of which is attached hereto as Exhibit “E”.

27. The 2013 By-Laws are in stark contrast to the 99 By-Laws in a number of regards, one being that the 2013 By-Laws purportedly removed Mercy and Sparks from their respective positions as members of EMS.

28. Indeed, one of the chief distinctions between the 1963 Act and the 1993 Act is that in the latter a corporation is not required to have members.

29. The intent and result of the 2013 actions of EMS, memorialized in the foregoing instruments (the efficacy of the same being disputed), was the complete removal of Mercy and Sparks from their respective roles in corporate governance equation of EMS.

30. These actions occurred without notice to Mercy or Sparks.

The Dispute

31. The foregoing paragraphs are incorporated by reference as if set forth word for word herein.

32. EMS was organized to fulfill an important role in patient care in the river valley.

33. In addition to emergency transfers of patients from the community to hospitals, EMS also provides patient transfer services where patients are taken from Mercy and Sparks to other facilities for various reasons.

34. Mercy and Sparks were contacted by Dr. James Bledsoe, Director of the State Medical Trauma System, regarding the Fort Smith community being an outlier on the time it takes to get trauma patients transferred to a higher level of care when needed.

35. A timely transfer of a trauma patient has a direct correlation on that patient's outcome and future prognosis.

36. These concerns were shared with the leadership of EMS and there has not been an improvement on the time it takes to transfer trauma patients to the appropriate care venue.

37. Additionally, while Mercy and Sparks pay EMS in conjunction with patient transfers, historically both Plaintiffs regularly paid money to EMS for staffing and other costs

that were not directly tied to any particular service that EMS was providing and which essentially subsidized its existence.

38. Moreover, EMS has used the practice of attempting to balance bill the Plaintiffs for charges that should not be borne by a hospital and contravene standard medical billing practices.

39. Pursuant to A.C.A. § 4-28-218, Mercy and Sparks in their capacities as members of EMS requested of Mr. Hearn an opportunity to inspect the books and records of EMS.

40. Mr. Hearn, through counsel, responded by indicating that as a result of the 2013 Articles Amendment, EMS was no longer required to have members, and Mercy and Sparks' request was declined.

41. This was news to Mercy and Sparks. Notably, the 2013 By-Laws do not directly indicate that Mercy and Sparks had been "removed" as members of EMS by the adoption thereof, and Mr. Hearn was now contending for the first time that Mercy and Sparks were no longer members of EMS.

42. As a result of the dispute, on June 7, 2018, Mercy and Sparks called a meeting of the members of EMS for the purpose of electing directors for the purpose of forming a properly constituted board.

43. Attached hereto as Exhibit "F" are true and correct copies of a notice of said meeting along with the minutes therefrom reflecting the resolution of the Members as to the appointment of the directors of EMS.

44. During the meeting, Greta Wilcher, Ryan Gehrig, Jennifer Thomas, Dan McKay, Brandon Bullard and Stephanie Whiteacre (collectively, the "Plaintiffs' Board") were appointed by Mercy and Sparks respectively as the board of directors of EMS.

45. Mercy and Sparks now seek a declaratory judgment deeming the 2013 Articles Amendment and the 2013 By-Laws to be invalid and ineffective, confirming the status of Mercy and Sparks as members of EMS pursuant to the 1963 Act, the original articles of incorporation and otherwise, and confirming the validity of the appointment of the Plaintiffs' Board as the lawful and acting board of directors of EMS.

Composition of the Purported Board

46. The foregoing paragraphs are incorporated by reference as if set forth word for word herein.

47. As set forth above, neither Mercy nor Sparks appointed the members of the Purported Board.

48. Pursuant to the 1963 Act, the first board of directors shall be named in the articles and thereafter, the board shall be elected by the vote of the membership of the corporation.

49. The 99 By-Laws were largely in keeping with the requirements of the act and required that board members as well as successors to fill vacancies be appointed or ratified (respectively) by Mercy and Sparks.

50. Because the Purported Board is not composed of directors who were appointed or confirmed by the vote of Mercy or Sparks, the Purported Board is in contravention of the requirements of the 1963 Act and the 99 By-Laws and the actions thereof should be deemed ineffective – particularly insofar as the actions are in derogation of the rights of Mercy and Sparks.

Invalidity of 2013 Articles Amendment

51. The foregoing paragraphs are incorporated by reference as if set forth word for word herein.

52. As set forth above, the 2013 Articles Amendment sought to adopt the 1993 Act as the operative statutory framework by which EMS would be governed.

53. The 2013 Articles Amendment indicates that it was unanimously approved by the board of directors as well as the members in a special joint meeting held on June 11, 2013 at 12:00 p.m. (Exhibit "D," p. 2)

54. This statement was patently false as neither Mercy nor Sparks approved the 2013 Articles of Amendment.

55. Upon information and belief, there was no meeting of the board of directors – much less a meeting of the board and the members of EMS – on June 11, 2013.

56. As part of its investigation of this matter, Mercy and Sparks requested that Mr. Hearn provide them with certain information.

57. In response, Mr. Hearn provided Mercy and Sparks with minutes from a meeting of the board of directors where a potential amendment to by-laws appears to have been discussed.

58. A true and correct copy of the May 31, 2013 board meeting minutes provided by Mr. Hearn is attached hereto as Exhibit "G".

59. The May 31, 2013 board meeting minutes do not reference any proposed amendment to articles of incorporation and do not indicate that either of the members participated in the meeting.

60. Mr. Hearn did not provide any meeting minutes for June 11, 2013, and in fact the May 31, 2013 minutes indicate that the only thing that transpired on June 11th was the submission of the draft 2013 By-Laws to the Purported Board via electronic mail.

61. Pursuant to A.C.A. § 4-33-1701, domestic corporations incorporated prior to January 1, 1994 were required to elect to be governed by the 1993 Act if they wished to be so-governed, and such election was required to be approved by the affirmative vote of a majority of the members if the corporation had members.

62. In other words, EMS's articles could not be amended to elect to be governed by the 1993 Act unless both Mercy and Sparks (the only two members) affirmatively voted for the amendment.

63. Because neither Mercy nor Sparks voted to adopt the 2013 Articles Amendment, the same was ineffective.

64. Because Mercy and Sparks were never removed as members of EMS, Mercy and Sparks remained (and still remain) members of EMS.

Invalidity of 2013 By-Laws

65. The foregoing paragraphs are incorporated by reference as if set forth word for word herein.

66. As set forth above, the Purported Board is improperly constituted and was so at the time of the purported adoption of the 2013 By-Laws.

67. Because the Purported Board was improperly constituted, the attempted amendment of the By-Laws was invalid and the 2013 By-Laws are of no effect.

68. However, even if the Purported Board was properly constituted, the attempted adoption of the 2013 By-Laws was ineffective.

69. The 99 By-Laws provided that the "act of the majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors." *See Ex. "C"*.

70. The 99 By-Laws provided no other mechanism for voting or action by the board.

71. From the information Mercy and Sparks have been able to obtain, it appears that the possibility of amending the 99 By-Laws was discussed at the meeting of the Purported Board on May 31, 2013.

72. However, the May 31, 2013 meeting minutes do not indicate that a vote was held and, in fact, indicate that the 2013 By-Laws were sent to the Purported Board via electronic mail some time thereafter.

73. Finally, to the extent EMS contends that the 2013 Article Amendment was effective, the attempted adoption of the 2013 By-Laws (which contained changes from the 99 By-Laws concerning the number of directors, the composition of the board, the term of office of the directors and the method in which directors were elected or seated) required the consent of a two thirds majority of the members pursuant to A.C.A. § 4-33-1021(a)(2).

74. Even as amended by the 2013 Article Amendment, the Articles of Incorporation of EMS continue to reflect that there are two members – Mercy and Sparks.

75. Because the 2013 By-Laws were not approved by Mercy and Sparks, they were not effectively adopted and are of no effect.

Relief Sought

76. The foregoing paragraphs are incorporated by reference as if set forth word for word herein.

77. The actions of Mr. Hearn and the Purported Board as described above have caused substantial uncertainty.

78. Mercy and Sparks request a declaratory judgment invalidating the actions of EMS with respect to the adoption of the 2013 Articles Amendment and the 2013 By-Laws, holding

that the Purported Board is improperly constituted and therefore void, and determining that the Plaintiffs' Board is the properly appointed board of directors of EMS.

79. Mercy and Sparks further request that such injunctive and equitable relief issue as may be necessary to fulfill the prayer set forth above, including but not limited to orders to the Defendants as well as their officers, agents, contractors and employees to turn over control of EMS as well as its books, records, accounts, and all other assets both tangible and intangible.

80. Mercy and Sparks reserve the right to amend this Complaint and to join such additional parties and raise such additional claims as investigation of the facts alleged herein may warrant.

WHEREFORE Mercy and Sparks respectfully pray that they be granted relief as requested above, for their costs and attorney's fees incurred herein, and for all other relief to which they may be entitled.

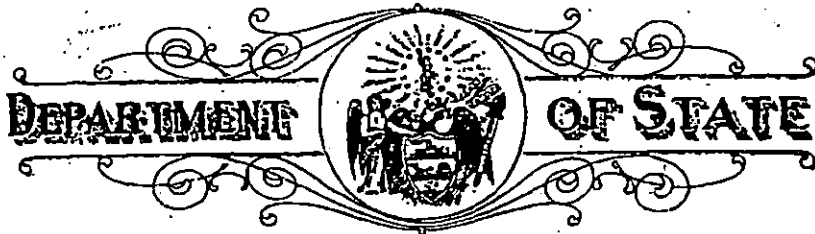
Respectfully submitted,

KUTAK ROCK LLP

By: 

Kyle T. Unser, Ark. Bar No. 2007133
Max Deitchler, Ark. Bar No. 2012200
234 East Millsap Road, Suite 200
Fayetteville, AR 72703
(479) 973-4200 Telephone
(479) 973-0007 Facsimile
kyle.unser@kutakrock.com
max.deitchler@kutakrock.com

STATE OF ARKANSAS



Winston Bryant, Secretary of State

CERTIFICATE OF INCORPORATION OF DOMESTIC
NON-PROFIT CORPORATION

I, Winston Bryant, Secretary of State of the
State of Arkansas, Do Hereby Certify, That

TWIN CITY AMBULANCE SERVICE

has filed in the office of the Secretary of State, a duly
certified copy of its Articles of Association in
compliance with the provisions of the law, with their
petition for incorporation under the name or style of

TWIN CITY AMBULANCE SERVICE

they are therefore hereby declared a body politic and
corporate, by the name and style aforesaid, with all the
powers, privileges and immunities granted in the law
thereunto appertaining.

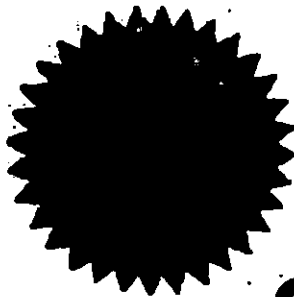
In Testimony Whereof,
I have hereunto set my hand and
affixed my official Seal

This 27th day of December 19 78

WINSTON BRYANT

Secretary of State

By *Sunnee Nichols*
Deputy



EXHIBIT

A

FILED
FT. SMITH DIST.
JAN 3 1979
P. CLEGG

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS

FORT SMITH DISTRICT

TWIN CITY AMBULANCE SERVICE

In The Matter Of
Twin City Ambulance Service, a
non-profit corporation, No. 21-78-984

ORDER

On this 1st day of December, 1978, comes on to
the Court the petition of Twin City Ambulance Service, a non-

profit corporation, for permission to establish itself as a
non-profit corporation under the provisions of Ark. Stat.

Ann. Sec. 64-1901 (supplement 1966), as amended, the same
to engage in, own, operate and otherwise

being Act. 176 of the Acts of Arkansas of 1965, as amended,
convenient, useful or incidental to the

and the Court, after having examined the articles of incorporation
the same extent as natural persons. In all

which are attached to the petition as Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, together
with all other matters of record, finds that the articles

conform to law, that they are for a lawful purpose and that
the best interests of the public and that they should be

therein, and that the petitioners should be
approved by the Court for non-profit status.

To sell, convey, mortgage, pledge, lease, convey, lease, or otherwise
IT IS THEREFORE BY THE COURT ORDERED AND DECREED AND

ADJUDGED that the corporation should be established as a non-profit
service together with the articles of incorporation, and

the same are hereby approved in all respects for non-profit
status.

The acts of the Court
powers granted by law to the Court.

It is the order of the Court that the corporation shall be established
to pay reasonable compensation for services rendered and to make payments and distributions

corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions

to, its members, directors, trustees, officers, or other private persons, except that the

in furtherance of the purposes set forth in the articles of the corporation that it

may be engaged in or propaganda, or other

thereby certify this is a true and full copy of the original in accordance with the publishing or

name and affixed the seal of the aforesaid Court (this in on behalf of any candidate for

STATE OF ARKANSAS
COUNTY OF SEBASTIAN)
FORT SMITH DISTRICT)
(CERTIFICATE

By _____
Circuit Clerk
Deputy

FILED
FT. SMITH DIST.

ARTICLES OF INCORPORATION

OF

TWIN CITY AMBULANCE SERVICE

We, the undersigned, as incorporators, hereby associate ourselves together to form and establish a corporation not for profit under the laws of the State of Arkansas.

FIRST: The name of the corporation is Twin City Ambulance Service.

SECOND: The period of duration of the corporation shall be perpetual.

THIRD: The purposes for which the corporation is organized are:

To engage in, own, operate and otherwise generally provide an ambulance service for the health, safety and welfare of the general public and to do any and all things necessary, convenient, useful or incidental to the attainment of its purposes as fully and to the same extent as natural persons lawfully might or could do so long as consistent with law.

To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold improve, use and otherwise deal in real or personal property, or any interest therein, wherever situated.

To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets and to make contracts or incur liabilities; borrow money, issue its notes, bonds and other obligations; and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income all in a manner not inconsistent with those powers granted by Act number 176 of 1963 of the Acts of Arkansas.

Related charitable purposes.

FOURTH: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, directors, trustees, officers or other private persons, except 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 Article THIRD hereof. No substantial part of the activities of the corporation shall ever be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, nor 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, the corporation

shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are deductible under Section 170 (c) (2) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

FIFTH: Upon the dissolution of the corporation, the Board of Trustees shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the 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 Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Trustees shall determine. Any such assets not so disposed of shall be disposed of by the Circuit Court of the county in which the principal office of the corporation 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.

SIXTH: The principal place of business of the corporation shall be: 112 North 20th Street, Fort Smith, Arkansas, 72901.

The name and address of the resident agent for service of the corporation is: Mr. Robert Hawley, 112 North 20th Street, Fort Smith, Arkansas, 72901.

SEVENTH: The names and addresses of the persons who are to serve as the incorporators are:

Don Flanders
20 Berry Hill Road
Fort Smith, Arkansas 72901

Franklin Hawkins
4701 Free Ferry Road
Fort Smith, Arkansas 72901

Larry Randall
5100 East Valley Road
Fort Smith, Arkansas 72901

EIGHTH: The names and addresses of the initial Board of directors are:

Don Flanders
20 Berry Hill Road
Fort Smith, Arkansas 72901

Chick (Morris) Boren
7616 Westminister
Fort Smith, Arkansas 72901

Franklin Hawkins
4701 Free Ferry Road
Fort Smith, Arkansas 72901

Robert Young, III
2414 Hendricks
Fort Smith, Arkansas 72901

Robert Gilbert
2013 Wedgewood
Fort Smith, Arkansas 72901

Larry Randall
5100 East Valley Road
Fort Smith, Arkansas 72901

Sam Landrum, M. D.
15 Riverlyn Drive
Fort Smith, Arkansas 72901

NINTH: Membership in the corporation shall be equally in Sparks Regional Medical Center and St. Edward Mercy Medical Center of Fort Smith, Sebastian County, Arkansas.

TENTH: These Articles may be amended at any meeting of the Board of Directors by a majority vote. A copy of all amendments shall be filed with the Secretary of State within thirty (30) days after their passage.

SIGNATURES OF INCORPORATORS:

Don Flanders
DON FLANDERS

Franklin Hawkins
FRANKLIN HAWKINS

Larry Randall
LARRY RANDALL

VERIFICATION

STATE OF ARKANSAS)
) SS
COUNTY OF SEBASTIAN)

Come now Don Flanders, Franklin Hawkins and Larry Randall and being duly sworn on oath state that they have read the foregoing Articles of Incorporation of Twin City Ambulance Service and that the matters contained therein are true to the best of their knowledge, information and belief.

Don Flanders
DON FLANDERS

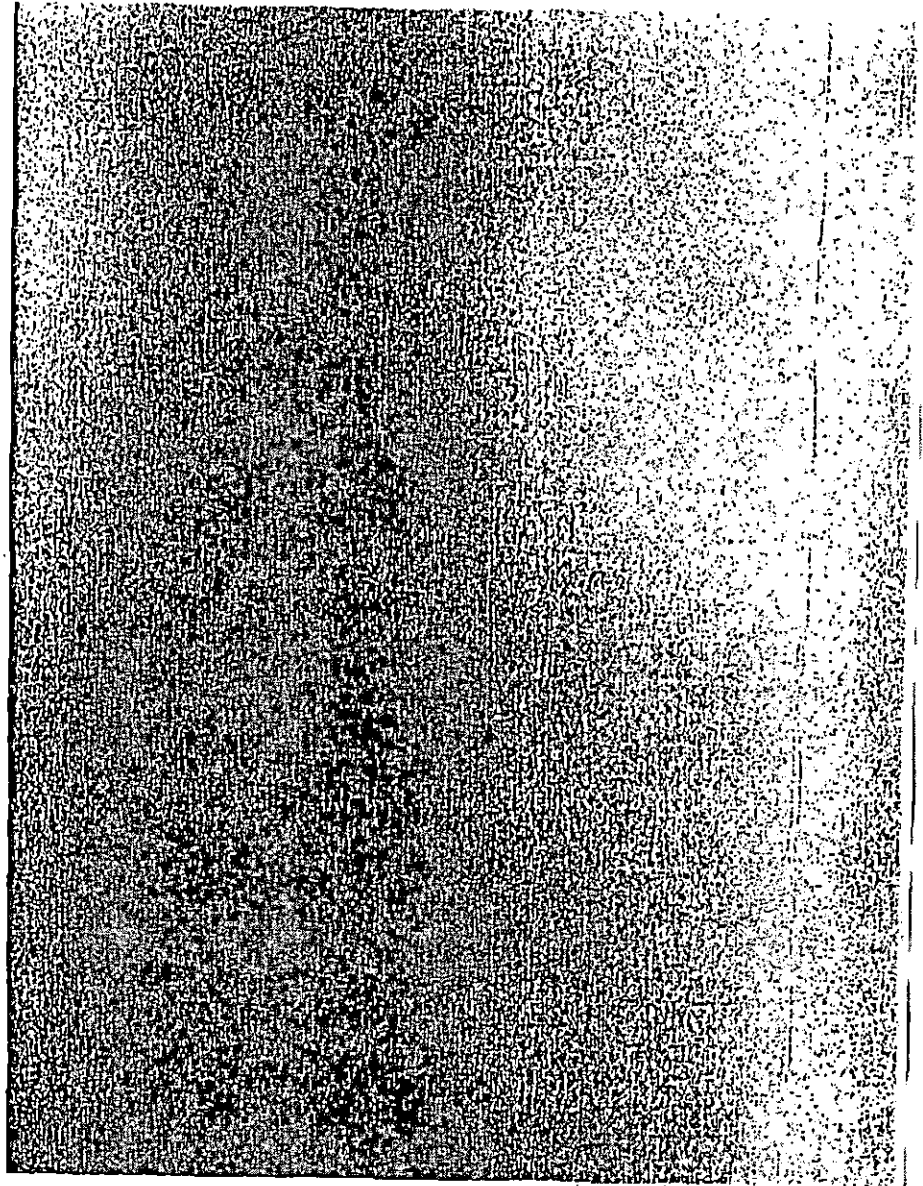
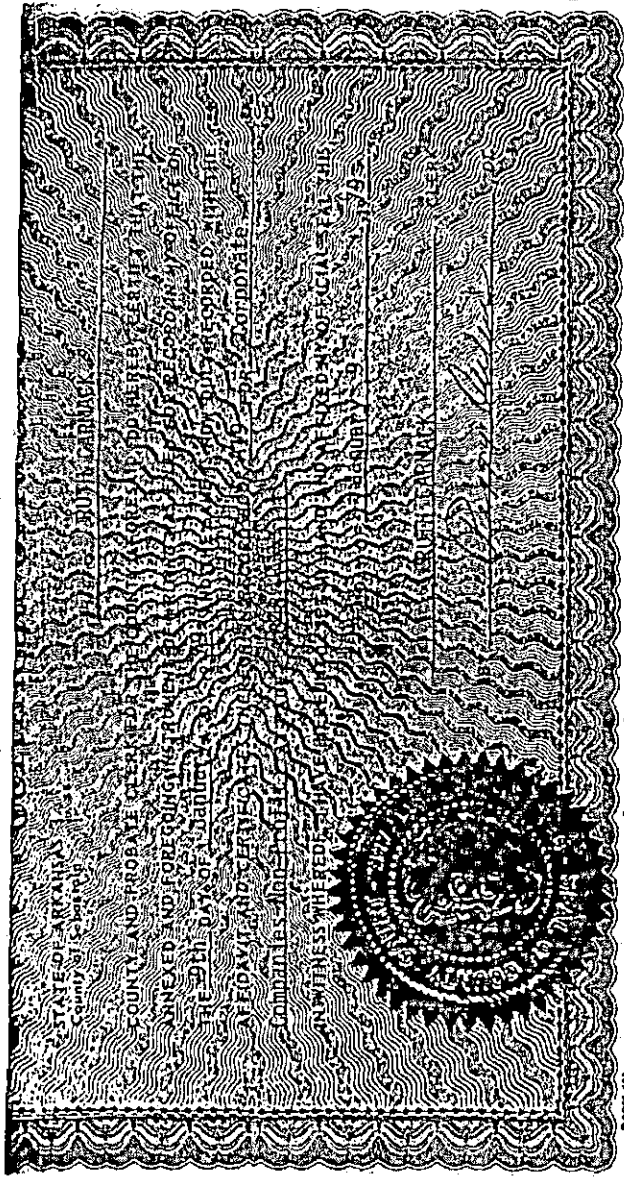
Franklin Hawkins
FRANKLIN HAWKINS

Larry Randall
LARRY RANDALL

Subscribed and sworn to before me this 14th day of December, 1978.

Caroleen Yitworth
Notary Public

My commission expires:
Nov. 28, 1981



CERTIFICATE OF RECORD

STATE OF ARKANSAS
County of Sebastian
NANCY BREWER

ss. Fort Smith District

I, ~~Raul K. Brewer~~, Clerk of the Circuit Court and Ex-Officio Recorder for the County aforesaid, do hereby certify that the annexed and foregoing Instrument of writing was filed for record in my office on the 4 day of Jan., A. D. 19 79 at 3:41 o'clock P. M., and the same is now duly recorded with acknowledgment and certificate thereon, ^{Articles of Inc. Book} ~~Instrument~~ No. I, Page 229.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal

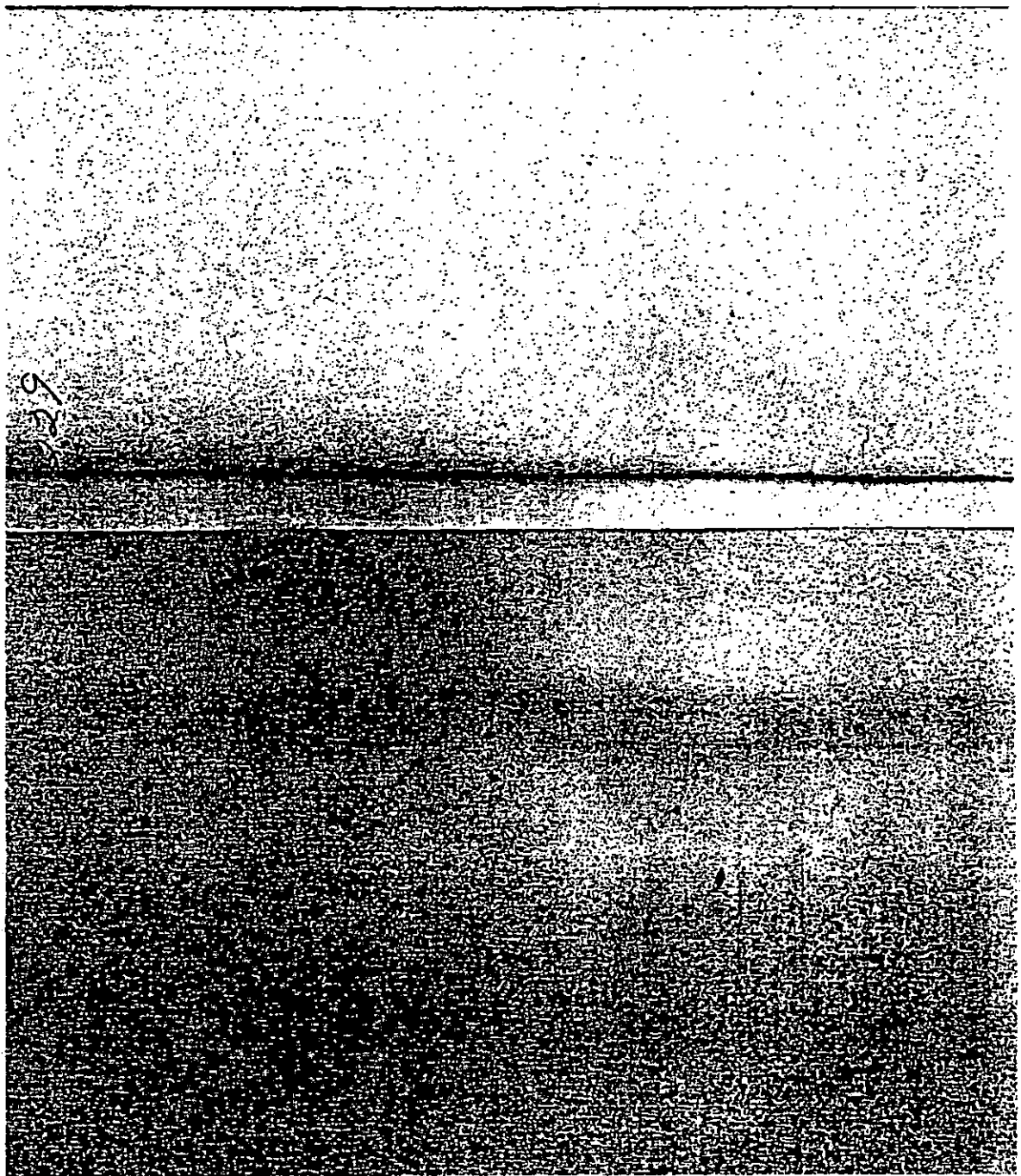
this 4 day of Jan., A. D. 19 79.

~~Raul K. Brewer~~, Circuit Clerk

Nancy Brewer

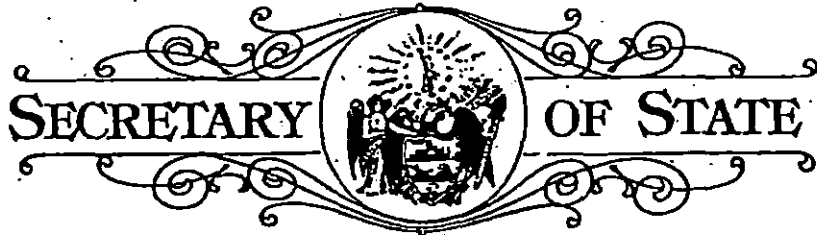
By [Signature] Deputy Clerk

1978-1979



629

STATE OF ARKANSAS



PAUL RIVIERE, SECRETARY OF STATE

*To All to Whom These Presents Shall Come, Greeting
I, Paul Riviere, Secretary of State of the State of Arkansas, do
hereby certify that the following and hereto attached instrument of
writing is a true and perfect copy of*

C.V. 78-986

CERTIFICATE OF AMENDMENT

OF

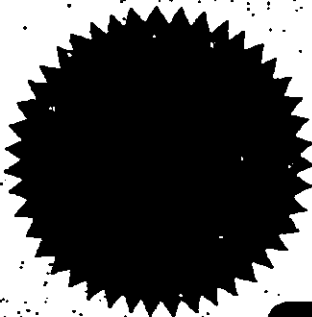
TWIN CITY AMBULANCE SERVICE

CHANGING NAME TO

FORT SMITH EMERGENCY MEDICAL SERVICES

Filed in this office:
March 4, 1983

FILED
F.T. SMITH DIST.
83 MAR 10 AM 10:10
CIV. CLERK: E.B. COO.



*In Testimony Whereof, I have hereunto
set my hand and affixed my official Seal.
Done at office in the City of Little Rock,
this 4th day of March 19 83*

PAUL RIVIERE

By *Wanda Johnson* Secretary of State
Deputy

EXHIBIT
B

X-132

We do further certify as follows:

(a) That the correct name of this corporation as now on file in the office of the Secretary of State of the State of Arkansas is Twin City Ambulance Service and the future name shall be Fort Smith Emergency Medical Services.

(b) That the above and foregoing is a true and correct copy of a resolution adopted by the members and directors of this corporation to amend Article First of the original Articles of Incorporation as set forth aforesaid.

(c) That said amendment was adopted on the 30th day of December, 1982.

(d) That a quorum of all of the members and directors of the corporation was present and approved the adoption of the resolution changing the name of this corporation from Twin City Ambulance Service to Fort Smith Emergency Medical Services.

We do further certify that as the President and Secretary of said corporation we were authorized at said meeting to execute the within Articles of Amendment in behalf of said corporation, and that we have full access to the minutes of the meetings of the members and directors of said corporation, and that the above and foregoing resolution appears in the minute books of said corporation, and is a true and correct copy of said resolution adopted at said meeting on the date aforesaid and that said resolution has not been altered, amended or changed and is in full force and effect.

IN WITNESS WHEREOF, this corporation has caused these Articles of Amendment to be executed in duplicate by its President, attested by its Secretary, and its corporate seal affixed hereunto this 25th day of February, 1983.

TWIN CITY AMBULANCE SERVICE

By Travis A. Miles
President



James E. Hackney
Secretary

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) SS
COUNTY OF SEBASTIAN)

BE IT REMEMBERED, that on this day personally came before me, the undersigned, a notary public within and for the county and state aforesaid, Travis A. Miles and James E. Hackney, being the President and Secretary, respectively, of Twin City Ambulance Service, a corporation, who had been designated by said corporation to execute the above and foregoing Articles of Amendment, to me personally well known, who stated that they were the President and Secretary of said corporation and were duly authorized in their respective capacities to execute the foregoing Articles of Amendment for and in behalf of said corporation, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth, and that the same is true and correct to the best of their knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as such notary public, this 25th day of February, 1983.

Dandra Olate
Notary Public

My Commission Expires:

6-26-89

CERTIFICATE OF RECORD

OF ARKANSAS
of Sebastian

ss. Fort Smith District

ncy Brewer, Clerk of the Circuit Court and Ex-Officio Recorder for the County aforesaid, do hereby certify
: annexed and foregoing Instrument of writing was filed for record in my office on the 10th day
March, A. D. 1983, at 10:09 o'clock A. M., and the same is now duly recorded with
ledgment and certificate thereon, Articles of Inc. K, Page 132
~~Instrument No.~~

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal

this 10th day of March, A. D. 1983.

By [Signature] Deputy Clerk

indemnified may be entitled under any bylaw, agreement, vote of Directors of the corporation or disinterested Directors or otherwise, and any procedure provided for by any of the foregoing, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, fiduciary or agent and shall inure to the benefit of heirs, executors and administrators of such a person. In addition to indemnification rights granted under this Article 7, and not in lieu hereof, those indemnified hereunder shall be entitled to the same rights with respect to indemnification as are provided by statute under the Arkansas Ark. Ann. Code 4-33-111, *et seq.* (Arkansas Non-Profit Corporation Act).

7.6 **No Indemnification in Criminal Actions.** No indemnification shall be made in respect to any criminal action or proceeding as to which a person covered by Article 7 shall have been adjudged to be guilty unless and only *to the extent that the court in which such action or proceeding was brought shall determine upon application that, despite the adjudication of guilt, but in view of all the circumstances of the case, such person is entitled to indemnification for such expenses or fines which such court shall deem proper.*

7.7 **Period of Indemnification.** Any indemnification pursuant to this Article 7 shall be applicable to acts or omissions which occurred prior to the adoption of this Article 7, and shall continue as to any indemnified party who has ceased to be a director, officer, employee, fiduciary or agent of

the corporation and shall inure to the benefit of the heirs and personal representatives of such indemnified party. The repeal or amendment of all or any portion of these Bylaws which would have the effect of limiting, qualifying or restricting any of the powers or rights of indemnification provided or permitted in this Article 7 shall not, solely by reason of such repeal or amendment, eliminate, restrict or otherwise affect the right or power of the corporation to indemnify any person, or affect any right of indemnification of such person, with respect to any acts or omissions which occurred prior to such repeal or amendment.

7.8 **Insurance.** By action of the Board of Directors, notwithstanding any interest of the Directors in such action, the corporation may, subject to Section 7.11 hereof, purchase and maintain insurance, in such amounts as the board may deem appropriate, on behalf of any person indemnified hereunder against any liability asserted against him or her and incurred by him or her in his or her capacity of or arising out of his or her status as an agent of the corporation, whether or not the corporation would have the power to indemnify him or her against such liability under applicable provisions of law. The corporation will also purchase and maintain insurance, in such amounts as the board may deem appropriate, to insure the corporation against any liability, including without limitation, any liability for the indemnifications provided in this Article 7.

7.9 **Right to Impose Conditions to Indemnification.** The corporation shall have the right to impose, as conditions to any indemnification provided or

permitted in this Article 7 or otherwise, such reasonable requirements and conditions as the Board of Directors may deem appropriate in each specific case, including but not limited to any one or more of the following: (a) that any counsel representing the person to be indemnified in connection with the defense or settlement of any action shall be counsel that is mutually agreeable to the person to be indemnified and to the corporation; (b) that the corporation shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated or threatened against the person to be indemnified; (c) that any and all Directors and officers liability insurance proceeds available be exhausted prior to the corporation's expenditure of corporate funds for indemnification; and (d) that the corporation shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified person's right of recovery, and that the person to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the corporation.

- 7.10 **Limitation on Indemnification.** Notwithstanding any other provision of these Bylaws, the corporation shall neither indemnify any person nor purchase any insurance in any manner or to any extent that would jeopardize or be inconsistent with qualification of the corporation as an organization exempt from federal income taxation under Section 501(a) of the Internal Revenue Code or would result in liability under Section 4941 of the Internal Revenue Code.

ARTICLE VIII – CONFLICT OF INTEREST

- 8.1 **Conflict Defined.** A conflict of interest may exist when the interests or concerns of any director, officer or staff member may be seen as competing with the interests or concerns of this corporation. A conflict of interest arises when any "responsible person" or any "party related to a responsible person" has an "interest adverse to the corporation." A "responsible person" is any individual in a position to exercise substantial influence over the affairs of the corporation, and specifically includes, without limitation, Directors and officers of the corporation. A "party related to a responsible person" includes his or her extended family (including spouse, ancestors, descendants and siblings, and their respective spouses and descendants), an estate or trust in which the responsible person or any member of his or her extended family has a beneficial interest or a fiduciary responsibility, or an entity in which the responsible person or any member of his or her extended family is a director, trustee or officer or has a financial interest." An "interest adverse to the corporation" includes any interest in any contract, transaction or other financial relationship with the corporation, and any interest in an entity whose best interests may be impaired by the best interests of the corporation including, without limitation, an entity providing any goods or services to or receiving any goods or services from the corporation, an entity in which the corporation has any business or financial interest, and an entity providing goods or services or performing activities similar to the

goods or services or activities of the corporation. All Officers, Directors, etc. shall scrupulously avoid any conflict between their own interests and the interests of Fort Smith EMS.

- 8.2 **Disclosure Required**. Any possible conflict of interest shall be disclosed to the Board of Directors by the person concerned. When any conflict of interest is relevant to a matter requiring action by the Board of Directors, the interested person shall call it to the attention of the Board of Directors or its appropriate committee and such person shall not vote on the matter; provided however, any director disclosing a possible conflict of interest may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof.
- 8.3 **Absence from Discussion**. The person having the conflict shall retire from the room in which the board or its committee is meeting and shall not participate in the final deliberation or decision regarding the matter under consideration. However, that person shall provide the board or committee with any and all relevant information.
- 8.4 **Minutes**. The minutes of the meeting of the board or committee shall reflect that the conflict of interest was disclosed and that the interested person was not present during the final discussion or vote and did not vote. When there is uncertainty as to whether a conflict of interest exists, the matter shall be resolved by a vote of the Board of Directors or its committee, excluding the person concerning whose situation the uncertainty has arisen.

8.5 **Annual Review.**

A copy of this conflict of interest statement shall be furnished each director, officer and staff member who is presently serving the corporation, or who may hereafter become associated with the corporation, each of whom shall execute on an annual basis a conflict of interest declaration and disclosure form approved by Fort Smith EMS or set forth in its Policies and Procedures Manual. This policy shall be reviewed annually for the information and guidance of Directors, officers and staff members. Any new Directors, officers or staff members shall be advised of this policy upon undertaking the duties of such office.

ARTICLE IX - SARBANES-OXLEY POLICY

9.1 **Sarbanes-Oxley Policy.**

No officer, director, employee or agent of Fort Smith EMS shall take any harmful action with the intent to retaliate against any person, including interference with employment or livelihood, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any offense. Nor will any officer, director, employee or agent of Fort Smith EMS take any harmful action with intent to retaliate against any employee or member of the Fort Smith EMS for reporting to an appropriate senior management or elected official of Fort Smith EMS the suspected misuse, misallocation or theft of any Fort Smith EMS resources.

No officer, director, employee or agent of Fort Smith EMS shall knowingly destroy a document with the intent to obstruct or influence the investigation or proper administration of any matter within the jurisdiction of any government department or agency or in relation to or contemplation of any such matter or case.

ARTICLE X – DISSOLUTION

10.1 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, dispose of all of the assets of the Corporation exclusively for the purpose 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 Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such assets not disposed of shall be disposed of by the Circuit Court of the county in which the principal office of the Corporation 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.

ARTICLE XI – MISCELLANEOUS

- 11.1 **Account Books and Minutes.** The corporation 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. All books and records of the corporation may be inspected by any director or his or her accredited agent or attorney, for any proper purpose at any reasonable time.
- 11.2 **Fiscal Year and Audit.** The fiscal year of the corporation shall be January 1 through December 31 of each year, inclusive. After the close of each fiscal year of the corporation, financial transactions of the corporation for the preceding fiscal year shall be audited by certified public accountants, as directed by the Board of Directors, and a report of the audit and other financial reports shall be made to the Board of Directors.
- 11.3 **Loans to Directors and Officers Prohibited.** No loans shall be made by the corporation to any of its Directors or officers, employees or agents. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until it is repaid.
- 11.4 **No Private Inurement.** The corporation is not organized for profit and is to be operated exclusively for the promotion of social welfare in accordance with the purposes stated in the corporation's Articles of Incorporation. The net earnings of the corporation shall be devoted exclusively to charitable and educational purposes and shall not inure to

the benefit of any private individual. No director or person from whom the corporation may receive any property or funds shall receive or shall be entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the corporation be paid as salary or compensation to, or distributed to, or inure to the benefit of any member of the Board of Directors; provided, however, that (a) reasonable compensation may be paid to any director while acting as an agent, contractor, or employee of the corporation for services rendered in affecting one or more of the purposes of the corporation; (b) any director may, from time to time, be reimbursed for his or her actual and reasonable expenses incurred in connection with the administration of the affairs of the corporation; and (c) the corporation may, by resolution of the Board of Directors, make distribution to persons from whom the corporation has received contributions previously made to support its activities to the extent such distributions represent no more than a return of all of a part of the contributor's contributions.

11.5 **References to Internal Revenue Code.** All references in these Bylaws to provisions of the Internal Revenue Code are to the provisions of the Internal Revenue Code of 1986, as amended, and shall include the corresponding provisions of any subsequent federal tax laws.

11.6 **Severability.** The invalidity of any provision of these Bylaws shall not affect the other provisions hereof, and in such event these Bylaws shall be construed in all respects as if such invalid provisions were omitted.

11.7 **Amendments.** These Bylaws may be amended, repealed or modified, and new Bylaws adopted, by the affirmative vote of a majority of the Board of Directors of the corporation. Any notice of a meeting at which these Bylaws are to be amended, repealed or modified shall include notice of such proposed action. A copy of these Bylaws plus a copy of any amendments thereto shall be sent to Fort Smith EMS.

BYLAWS CERTIFICATE

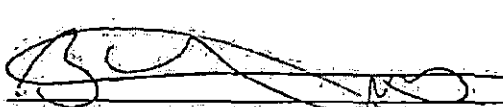
The undersigned certify that the President and Secretary, respectively, of Fort Smith EMS, an Arkansas corporation, are authorized to execute this certificate on behalf of said corporation, and further certify that the foregoing Bylaws, consisting of 31 pages, including this page, constitute the Bylaws of the corporation, and are duly adopted by the Board of Directors of the corporation at their regular meeting.

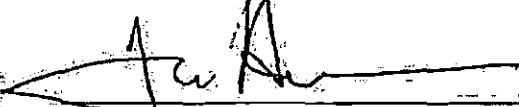
Dated: June 11, 2013


Bruce Crabtree, President


Tim Hearn, Secretary

APPROVAL OF BYLAWS


President


Secretary-Treasurer

Bylaws revised this 11th day of June, 2013

June 4, 2018

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mercy Hospital Fort Smith,
f/k/a St. Edward Mercy Medical Center
7301 Rogers Avenue
Fort Smith, AR 72903
Attn: Ryan Gehrig

Mercy Health Fort Smith Communities
7301 Rogers Avenue
Fort Smith, AR 72903
Attn: Robbie J. Hinz

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Sparks Regional Medical Center
211 Crawford Memorial Drive
Van Buren, AR 72956
Attn: Dan McKay

CHSPSC, LLC, as manager of
Sparks Regional Medical Center
4000 Meridian Boulevard
Franklin, TN 37067
Attn: Marc Goldstone

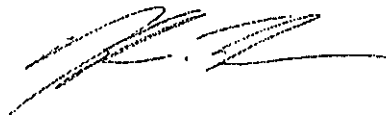
**Notice of Annual Meeting of the Members of
Fort Smith Emergency Medical Services
To be held June 7, 2018**

Dear members of Fort Smith Emergency Medical Services:

On behalf of Mercy Health Fort Smith Communities, this letter shall serve as notice that the annual, regular meeting of the membership of Fort Smith Emergency Medical Services (the "Corporation"), will be held on June 7, 2018, at 2:00 p.m., Central Time, in the Executive Board Room at Mercy Hospital, Fort Smith, 7301 Rogers Ave., Fort Smith, AR 72903, in accordance with Article III of the bylaws of the Corporation dated October 27, 1999.

The purpose of the meeting will be to elect the board of directors of the Corporation and to transact such other business as may be necessary and may properly come before the members.

Sincerely,



Kyle T. Unser

MINUTES OF THE 2018 ANNUAL MEMBERSHIP MEETING

OF

FORT SMITH EMERGENCY MEDICAL SERVICES

In accordance with the Arkansas Nonprofit Corporation Act, Act 176 of 1963 (the "Act") and the bylaws dated October 27, 1999 (the "Bylaws") of Fort Smith Emergency Medical Services, an Arkansas nonprofit corporation (the "Corporation"), the 2018 Annual Meeting of the Membership of the Corporation was held on June 7, 2018 in the Executive Board Room of Mercy Hospital in Fort Smith, Arkansas.

Ryan Gehrig, President of Mercy Hospital Fort Smith, was present and authorized to act on behalf of Mercy Hospital Fort Smith f/k/a St. Edward Mercy Medical Center ("Mercy"). Dan McKay, President of Fort Smith HMA d/b/a Sparks Regional Medical Center ("Sparks"), was present and authorized to act on behalf of Sparks. Mercy and Sparks are collectively referred to as "Members," and each individually as a "Member."

Also present was Robbie Hinz.

Mr. Gehrig presided over the meeting, and Mr. McKay served as secretary. Mr. Gehrig stated that all of the Members of the Corporation, via their representatives, were in attendance, and, therefore, a quorum of the membership was present.

1. Notice. Mr. Gehrig stated that no notice of a regular, annual meeting of the membership is required by the Bylaws. To the extent that any notice of such meeting was required by applicable law or otherwise, Mr. Gehrig moved that any such notice be waived. Mr. McKay seconded the motion, and the Members unanimously voted to waive such notice, if any, required for the annual meeting.

2. Election of Directors. Mr. Gehrig began a discussion regarding the election of directors of the Corporation. Mr. Gehrig stated that, in accordance with Article IV, Section 2 of the Bylaws, the Corporation shall have six (6) directors, three (3) of whom shall be named by Sparks, and three (3) of whom shall be named by Mercy. In accordance with the Bylaws, Mr. Gehrig stated that such directors should be appointed to staggered, three (3) year terms.

After a discussion was had, the following resolution was passed on the motion of Mr. Gehrig, a second by Mr. McKay and the unanimous vote of the Members:

RESOLVED, that the following six (6) persons, three (3) of whom are named by Mercy and three (3) of whom are named by Sparks, shall be, and hereby are, elected as directors of the Corporation:

<u>Director:</u>	<u>Named by:</u>	<u>To serve until:</u>
Greta Wilcher	Mercy	June 2019
Ryan Gehrig	Mercy	June 2020
Jennifer Thomas	Mercy	June 2021
Dan McKay	Sparks	June 2019
Brandon Bullard	Sparks	June 2020
Stephanie Whiteacre	Sparks	June 2021

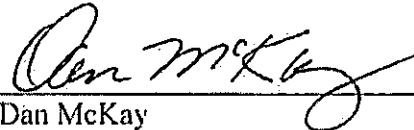
3. Other Business. Mr. Gehrig opened the floor for the introduction of any new business. Mr. Hinz indicated that Mr. Tim Hearn through counsel, Mark Moll, had recently taken the position in correspondence that the company no longer had any members as a result of the adoption of a "Certificate of Amendment of Fort Smith Emergency Medical Services Electing to be Governed by the Arkansas Non Profit Corporation Act of 1993" (the "2013 Amendment") purportedly adopted on or around June 11, 2013, as well as a set of by-laws of even date therewith. In the documents provided by Mr. Hearn, it is indicated that the members approved the amendment.

After a discussion was had, the following resolution was passed on the motion of Mr. Gehrig, a second by Mr. McKay and the unanimous vote of the Members:

RESOLVED, that Mercy and Sparks formally repudiate the 2013 Amendment as well as any by-laws promulgated in conjunction therewith, that Mercy and Sparks being duly represented by appropriately authorized representatives, confirm that such actions were not approved by the members of the company and that the same are rejected by the members, and that the company continues to be governed by the Bylaws and the Act.

4. Adjournment. There being no further business to come before the meeting, on the motion of Mr. McKay, a second by Mr. Gehrig and the unanimous vote of the Members present, the meeting was adjourned.

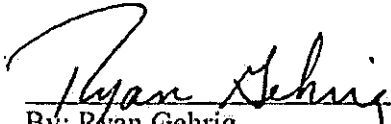
Respectfully Submitted,



Dan McKay
 President, Fort Smith HMA d/b/a Sparks
 Regional Medical Center

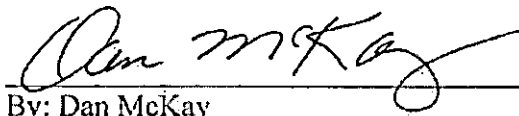
Adopted by the Members on the 7th of June, 2018.

MERCY HOSPITAL FORT SMITH,
f/k/a St. Edward Mercy Medical Center



By: Ryan Gehrig.
Its: Authorized Representative

FORT SMITH HMA D/B/A SPARKS REGIONAL MEDICAL CENTER



By: Dan McKay
Its: Authorized Representative

5

Fort Smith EMS
Board Meeting
August 23, 2013

Minutes for meeting, May 31, 2013

Present: Dennis Bauer, Jeff Beauchamp, Mike Richards
Tim Hearn, Jennifer Thomas, Bob Langston,
Galen Hunter, Ben Shipley

Call to Order: Vice President of the Board, Galen Hunter

Minutes: Minutes of the Previous Meeting were approved as printed.

Financials: Financials and stats were provided and open for discussion. Discussion followed. Financials were approved.

Old Business

Tim presented an update on the Zoll Link software along with the Stancil recording device software for the 911 center. Dispatching software has also been updated Elm Grove Station is up and running and we are monitoring response times in that area. Shift rotation times were also discusses. Posting maps were presented.

New Business

1. Bylaws were presented. Ben Shipley talked about the Bylaws and answered questions from the board. Revisions to the Bylaw draft were submitted by members of the board. The Board decided that after the amended bylaws were submitted, they would be emailed out to the voting members for approval. Full Audio is available.
2. 1701 South Greenwood Ave. Station was discussed. Tim presented pics on the improvements needed at that station that included a canopy and fence. Board approved improvements to Greenwood avenue station up to \$15,000
3. Zoll road safety was presented. Road safety is the "Black Box" of the ambulance. Power point presentation was shown and purchase of Road Safety was approved.
4. Tim presented a real estate contact for purchasing the land at 3421 Duke Ave. Appraisals were presented from \$325K to an appraisal for just the land at \$153K. Tim recommended that we purchase the land without taking any loans. Motion made and second to purchase the land and continue the lease with the church, approved.

Medical Directors report None Given

No further business.



Meeting Adjourned

06/11/13 Bylaws were submitted via email to all voting board members. Bylaws were approved as printed and a resolution to the Secretary of State for amendment was submitted by Ben Shipley

06/25/13 After viewing the current condition of the building purchased at 3421 Duke Ave. A Real Estate Lease for the building was approved for Inner Circle Ministries to lease the property "as is" and be responsible for any/all repairs for the sum of \$1 per month. Email vote approved.

ARTICLES OF AMENDMENT OF
TWIN CITY AMBULANCE SERVICE

CHANGING NAME TO
FORT SMITH EMERGENCY MEDICAL SERVICES

FILED

MAR 04 1983

We, the undersigned, being the President and Secretary
respectively, of Twin City Ambulance Service, San Arkansas
non-profit corporation, do hereby certify as follows:

PAUL RIVIERE
SECRETARY OF STATE

That a special joint meeting of the members and directors
of this corporation was held on the 30th day of December
1982, at 12:00 p.m., pursuant to call and waiver of notice
signed by all the members and directors of record and there
being a quorum the following resolution was presented and
unanimously adopted:

WHEREAS, the Board of Directors of Twin City Ambulance
Service has recommended that the name of said corporation
be changed to Fort Smith Emergency Medical Services.

NOW, THEREFORE, BE IT RESOLVED by the members of this
corporation that they accept the recommendations of the
Board of Directors and that the name of this corporation
be changed to Fort Smith Emergency Medical Services by
amending Article First of the original Articles of
Incorporation of this corporation, and that hereafter
or until further amendment, Article First of said
original Articles of Incorporation shall read as follows:

"First: The name of this corporation shall be:
FORT SMITH EMERGENCY MEDICAL SERVICES".

AND BE IT FURTHER RESOLVED that the President and
Secretary of this corporation be, and they are hereby,
authorized and directed to file a certified copy of
this resolution with the Secretary of State of the
State of Arkansas, as a certified amendment to the
original Articles of Incorporation of this corporation,
and that they further file a certified copy of this
resolution with the County Clerk of Sebastian County,
Arkansas, all as required by law.

AND BE IT FURTHER RESOLVED that said officers be authorized
to do and perform each and every other act and deed
required to be done by law to amend said Articles of
Incorporation, and the members of this corporation
hereby ratify and confirm the acts and deeds of said
officers done and performed in connection therewith.

FILED
MAR 10 1983
FORT SMITH DIST.

**BYLAWS
OF
FORT SMITH EMERGENCY
MEDICAL SERVICES**

Article I.

Name

The name of the Corporation shall be Fort Smith Emergency Medical Services hereinafter referred to as the Corporation.

Article II.

Purpose

1. The purposes for which the Corporation is formed as set forth in its Certificate of Incorporation, as from time to time amended, are:
 - (a) To engage in, own, operate and otherwise generally provide an ambulance service for the health, safety and welfare of the general public and to do any and all things necessary, convenient, useful or incidental to the attainment of its purposes as fully and to the same extent as natural persons lawfully might or could do so long as consistent with law.
 - (b) To purchase, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in real or personal property, or any interest therein, wherever situated.
 - (c) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets and to make contracts or incur liabilities; borrow money, issue its notes, bonds, and other obligations; and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income all in a manner not inconsistent with those powers granted by Act number 176 of 1963 of the Acts of Arkansas.
 - (d) Related charitable purposes.



Article III.

Membership

Membership in this Corporation shall be equally in Sparks Regional Medical Center and St. Edward Mercy Medical Center of Fort Smith, Arkansas. A regular meeting of membership shall be held annually without other notice than this bylaw for the purpose of electing directors and transacting such other business as may be necessary.

Article IV.

Board of Directors

1. **General Powers.** The business and affairs of the Corporation shall be managed by its Board of Directors.
2. **Number, Tenure and Qualifications.** The number of directors of the Corporation shall be six (6), three (3) of whom shall be named by Sparks Regional Medical Center, three (3) of whom shall be named by St. Edward Mercy Medical Center. The directors shall be elected for a three (3) year term and shall serve until their successors are elected and qualified, the initial directors to serve staggered terms so that the number of directors elected each year shall be as nearly equal, as shall be practicable. Directors may succeed themselves.
3. **Regular Meeting.** A regular meeting of the Board of Directors shall be held without other notice than this bylaw annually after the meeting of the membership for selection of directors as soon as practical at a time and place to be announced. The Board of Directors shall also meet quarterly and may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.
4. **Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) directors who may fix the place for holding any special meeting of the Board of Directors called by them.
5. **Notice.** Notice of any special meeting shall be given at least three (3) days previously thereto by written notice delivered personally or mailed to each director at his business or residence address, or by telegram. If mailed, such notice shall be deemed to have been delivered when deposited in the United States mails so addressed, with postage prepaid. If notice given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

6. Quorum. A majority of the number of directors fixed by number 2 of this Article IV shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.
7. Manner of Acting. The act of the majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.
8. Vacancies. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of the sponsoring group of the director for which the vacancy arises. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.
9. Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Article V.

Officers

1. Number. The officers of the Corporation shall be President, Vice President, Secretary and Treasurer. The offices of Secretary and Treasurer may be held by the same individual.
2. Election and Term of Office. The officers of the Corporation shall be elected by the Board of Directors annually to serve a one (1) year term. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Officers may succeed themselves.
3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgement the best interest of the Corporation would be served.
4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

5. President. The President shall be the principle executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation. He shall, when present, preside at all meetings of the Board of Directors. He may sign, with the Secretary or other proper officer of the Corporation as authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.
6. Vice President. In the absence of the President or in the event of his death, inability or refusal to act, the Vice-President shall perform the duties of the President and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.
7. Secretary-Treasurer. The Secretary-Treasurer shall:
 - (a) Keep the minutes of the Board of Directors 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) Be custodian of the corporate records and of the seal of the Corporation and see that the seal is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized.
 - (d) Have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for monies due and payable to the Corporation from any source whatsoever and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provision of these by-laws.
 - (e) In general perform all of the duties incident to the office of Secretary-Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.
 - (f) Shall sign and be responsible for filing all federal and state tax returns and any and all returns required by law to be filed by the Corporation and shall be responsible for payment of any tax liabilities. He is authorized to sign any documents incident or related to the corporate tax returns.

Article VI.

Contracts, Loans, Checks & Deposits

1. **Contracts.** The Board of Directors may authorize any officer or officers, agents or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.
2. **Loans:** No loan shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by resolution of the Board of Directors. Such authority may be general or confined to specific instances.
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 Corporation shall be signed by the President and/or the Secretary-Treasurer.
4. **Deposits.** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

Article VII.

Fiscal Year

The fiscal year of the Corporation shall begin on the first day of each year and end on the last day of each year.

Article VIII.

Seal

The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Corporation and the state of the Corporation and the words "Corporate Seal".

Article IX.

Waiver of Notice

Unless otherwise provided by law, whenever any notice is required to be given to any corporate member or director of the Corporation under the provisions of these Bylaws or under the provisions of the Articles of Incorporation, a waiver of notice in writing, signed by the person or persons entitled to such notice, whether before or after the time stated in the notice, shall be deemed equivalent to the giving of such notice.

Article X.

Corporate Limitations

No part of the net earning of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except 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 Article II. No substantial part of the activities of the Corporation shall be the carrying on of propoganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, nor 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 by-laws, the Corporation shall not carry on any other activities not permitted to be carried on;

- (a) By a Corporation exempt from federal income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or the corresponding provisions of any future United States Internal Revenue Law).
- (b) By a Corporation, contributions to which are deductible under Section 170 (c) (2) of the Internal Revenue Code of 1954 (or corresponding provision of any future United States Internal Revenue Law).

Article XI.

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, dispose of all of the assets of the Corporation exclusively for the purpose 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 Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any such assets not disposed of shall be disposed of by the Circuit Court of the county in which the principal office of the Corporation 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.

Article XII.

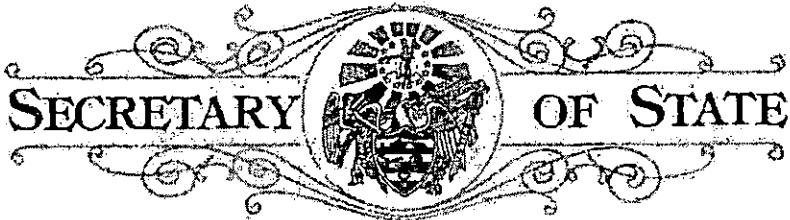
Amendments

These Bylaws may be altered, amended, or repealed at any quarterly meeting of the Board of Directors by a majority vote or at any special meeting by a majority vote when the proposed amendment has been set out in the notice of such meeting.

10/27/99
Date


Fort Smith Emergency Medical Services

STATE OF ARKANSAS



Mark Martin

ARKANSAS SECRETARY OF STATE

To All to Whom These Presents Shall Come, Greetings:

I, Mark Martin, Arkansas Secretary of State of Arkansas, do hereby certify that the following and hereto attached instrument of writing is a true and perfect copy of

Articles of Amendment

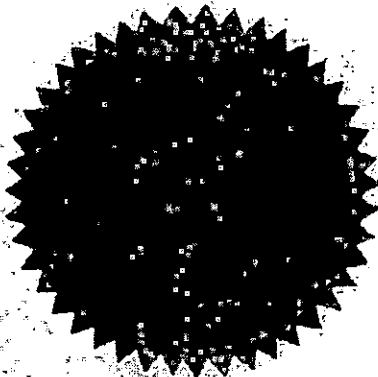
of

FORT SMITH EMERGENCY MEDICAL SERVICES

filed in this office

June 21, 2013.

In Testimony Whereof, I have hereunto set my hand and affixed my official Seal. Done at my office in the City of Little Rock, this 21st day of June, 2013.



Mark Martin

Arkansas Secretary of State

EXHIBIT

D



CERTIFICATE OF AMENDMENT OF FORT SMITH EMERGENCY MEDICAL SERVICES ELECTING TO BE GOVERNED BY THE ARKANSAS NON PROFIT CORPORATION ACT OF 1993, ACA §4-33-101

ARTICLES OF AMENDMENT OF FORT SMITH EMERGENCY MEDICAL SERVICES

The undersigned, being the President and Secretary of Fort Smith Emergency Medical Services, an Arkansas non-profit corporation, does hereby certify as follows:

That a special joint meeting of the members and directors of this corporation was held on the 11th day of June, 2013, at 12:00 o'clock p.m., pursuant to call and waiver of notice signed by all the members and directors of record and there being a quorum the following resolution was presented and unanimously adopted:

WHEREAS, the Board of Directors of Fort Smith Emergency Medical Services, following the recommendation of corporate counsel, desires that the members and directors of the corporation be governed by the Arkansas Non Profit Corporation Act of 1993, ACA §4-33-101.

NOW, THEREFORE, BE IT RESOLVED by the members and Board of Directors of this corporation that they accept the recommendations of the Board of Directors and that the corporation elects to be governed by the Arkansas Non Profit Corporation Act of 1993, ACA §4-33-101.

AND BE IT FURTHER RESOLVED that the President and Secretary of this corporation be, and they are hereby, authorized and directed to file a certified copy of this resolution with the Secretary of State of the State of Arkansas, as a certified amendment to the original Articles of Incorporation of this corporation, and that they further file a certified copy of this resolution with the county Clerk of Sebastian county, Arkansas, all as required by law.

AND BE IT FURTHER RESOLVED that said officers be authorized to do and perform each and every other act and deed required to be done by law to amend said Articles of Incorporation, and the members of this corporation hereby ratify and confirm the acts and deeds of said officers done and performed in connection therewith.

We do further certify as follows:

(a) That the above and foregoing is a true and correct copy of a resolution adopted by the members and directors of this corporation to amend the original Articles of Incorporation as set forth aforesaid.

(b) That said amendment was adopted on the 11th day of June, 2013.

(c) That a quorum of all the members and directors of the corporation were present approved the adoption of the resolution electing to be governed by the Arkansas Non Profit Corporation Act of 1993, ACA §4-33-101.

We do further certify that as the President and secretary of said corporation we were authorized at said meeting to execute the within Articles of Amendment on behalf of said corporation, and that we have full access to the minutes of the meetings of the members and directors of said corporation, and that the above and foregoing resolution appears in the minute books of said corporation, and is a true and correct copy of said resolution adopted at said meeting on the date aforesaid and that said resolution has not been altered, amended or changed and is in full force and effect.

IN WITNESS WHEREOF, this corporation has caused these Articles of Amendment to be executed in duplicate by its president, attested by its Secretary on this 11th day of June, 2013.

**FORT SMITH EMERGENCY
MEDICAL SERVICES**

By: 
Tim Hearn, Secretary-Treasurer

By: 
Bruce Crabtree, President

CORPORATION ACKNOWLEDGMENT

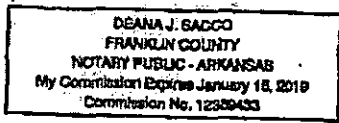
STATE OF ARKANSAS)
) ss
COUNTY OF SEBASTIAN)

On this day before me, a Notary Public, duly commissioned, qualified and acting within and for said County and State, appeared in person the within-named Tim Hearn, to me personally well known, who stated that he was the Secretary-Treasurer of Fort Smith Emergency Medical Services, a nonprofit corporation, and further stated that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have set my hand and official seal this 11th day of June, 2013.

Deana Sacco
Notary Public

My Commission Expires: 1/15/19



**CORPORATE RESOLUTION OF FORT SMITH
EMERGENCY MEDICAL SERVICES**

COMES NOW Tim Hearn, the Secretary-Treasurer of Fort Smith Emergency Medical Services and hereby verifiably states that the following resolution was unanimously adopted by the Board of Directors of Fort Smith Emergency Medical Services on June 11th, 2013, to-wit:

"BE IT RESOLVED; that the current Bylaws of Fort Smith Emergency Medical Services be revoked and replaced, that the corporation elects to be governed by the Arkansas Non Profit Corporation Act of 1993, ACA §4-33-101; *et seq.*, and directs corporate counsel to prepare all necessary documents and filings with the Secretary of State to accomplish same."

By the signature below and in my capacity as Secretary-Treasurer of Fort Smith Emergency Medical Services, I verifiably confirm that this is a duly authorized corporate resolution of Fort Smith Emergency Medical Services:

**FORT SMITH EMERGENCY
MEDICAL SERVICES**

By: 
Tim Hearn, Secretary-Treasurer

Business and Commercial Services
State Capitol
Little Rock, AR 72201



Mark Martin
Arkansas Secretary of State

Office of the Secretary of State
Packing Slip

June 21, 2013

Page 1 of 1

CROSS, GUNTER, WITHERSPOON & GALCHUS, P.C.
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Fort Smith, AR 72903

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Total Payments Received			\$50.00

Notice per Act 1008 of 2007 - A corporate filing with the Arkansas Secretary of State does not necessarily give you the right to use your proposed corporate name, corporate name, assumed or fictitious name in this state if the use violates someone else's trade name, trademark, or service mark rights under the trademark laws of the United State, this state, or the common law. Prior to your use of the name, you are encouraged to research the names and marks of other parties used or registered in this state, or registered in the United States Patent and Trademark Office, or consult an attorney to determine the existence of any conflicting rights.

User ID: diane.gahr

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TTY (501) 682-3420

BYLAWS
OF
FORT SMITH EMS

JUNE 7, 2013

EXHIBIT

E

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**AMENDED
BYLAWS
OF
FORT SMITH EMS**

ARTICLE I – PURPOSE AND POWERS

1.1 Purpose.

The Corporation shall have such purposes as are now or may hereafter be set forth in its Articles of Incorporation.

1.2 Powers.

The Corporation shall have such powers as are now or may hereafter be granted by the Nonprofit Corporation Act of the State of Arkansas, except as such powers may be otherwise modified hereby or by the Articles of Incorporation of the Corporation.

ARTICLE II – DIRECTORS

2.1 Number, Qualifications, Terms and Duties of Directors.

The direction and management of the business and affairs of the Corporation and shall be vested in the Board of Directors ("Board"). The Board shall consist of up to seven (7) persons, but this number shall be subject to change from time to time by amendment of the Bylaws. In addition to the seven (7)-person Board of Directors, there shall be several *ex officio* positions that shall be held by non-voting members of the Board. These *ex officio* members will include a member of the Fire Department, a

representative of HMA Fort Smith, LLC, a representative of Mercy Fort Smith and an ER physician who shall act as the Medical Director. The *ex officio* members of the Board are serving in a non-voting capacity and are appointed by their organizations. The Directors of the Board shall be divided into three groups as nearly equal in number as possible. Initially, the Directors of the first group shall serve for a term of one (1) year, those of the second group for a term of two (2) years, and those of the third group for a term of three (3) years. Each Director shall hold office until his or her successor is elected and qualified, or until his or her death, resignation or removal. Directors shall serve for a maximum of two consecutive terms. At each subsequent annual meeting of Directors, the successors of those Directors whose term then expires shall be elected to serve for a term of three years and until their successor are elected and qualified, or until their death, resignation or removal. Each Director must attend a minimum of fifty percent (50%) of regular and special Board meetings per year. If a Director fails to meet this minimum, his or her office will become vacant and filled as provided below. At the discretion of the Board Chair, imposition of this rule may be waived due to extenuating circumstances. Other than the Executive Director of the Corporation (who shall be an *ex-Officio* member of the Board of Directors), no staff member or employee of the Corporation shall serve as a Director. Other criteria for membership on the Board of Directors shall be established by the Board of Directors from time to time. Any vacancies on the Board for any cause,

except a vacancy created by an increase in the Membership of the Board, may be filled by the remaining Directors in office. A Director elected to fill any vacancy shall hold office for the unexpired term of his/her predecessor and until his/her successor is elected and qualified. Each Director shall serve without salary or other pecuniary benefits. Each Director shall make a good faith attempt to attend all meetings of the Board. Absences from such meetings must be considered by the Board Development Committee in determining qualifications for reappointment by the Board.

2.2 Nomination of Directors.

Recommendations for Director nominees shall be submitted to the Board Nominating Committee no later than _____ of each calendar year. Such recommendation shall be forwarded to the Chairperson of the Board. The Board Nominating Committee shall, after giving due consideration to all such recommendations and such other persons as it may wish to consider present its nominations for Directors.

2.3 Vacancies.

Any Director may resign at any time by giving written notice to the board chair, president or the secretary of the corporation. Such resignation shall take effect at the time specified therein or immediately if no time is specified, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any unfilled position or vacancy occurring in the Board of Directors for any reason may be filled by the affirmative vote of a majority of the remaining Directors

present at a meeting though less than a quorum, provided that the total number of Directors shall not exceed the maximum number set out by the Board of Directors from time to time. Any Directors elected to an unfilled position shall serve until the next annual meeting of Directors, at which time they may be nominated and elected to terms in accordance with these bylaws. A Director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office and until his or her successor is elected and qualified, or until his or her death, resignation or removal.

2.4 Meetings.

A regular annual meeting of the Board of Directors shall be held at the time and place determined by the Board for the purpose of electing Directors and Officers and for the transaction of other business as it may come before the meeting. The Board of Directors shall provide by resolution the time and place for the holding of each of the regular meetings, with a copy of the approved resolution which sets the date, time and place of regular meetings of the Board of Directors to be provided to each Director and to any new Director upon his or her election, and such resolution shall serve as official notice of the regular meetings of the Board of Directors. In the discretion of the Board chair or upon direction by the Board, reminder notices regarding upcoming meetings may be sent to Directors; however, such reminder notices do not constitute official notice of regular meetings. Copies of the Board resolution setting forth the

schedule of regular meetings may be sent to Directors in accordance with the methods and definitions outlined in Section 4.6 regarding special meetings.

There shall be no less than four (4) regular quarterly meetings of the Board in each twelve-month period commencing January 1 of each year.

A Director may participate in a meeting of the Board by means of a conference telephone or similar communications equipment provided all Directors participating in the meeting are able to hear one another.

2.5 Special Meetings.

The Chairperson of the Board may call a Special Meeting of the Board whenever it is deemed necessary, and shall call a Special Meeting whenever requested to do so in writing by three (3) Directors. Notice of Special Meetings shall be mailed to Directors at their last known addresses at least five (5) days before the date of such Meetings. Said notice may be waived by a written waiver signed by all of the Directors who receive no such notice of a meeting.

2.6 Notice.

Notice shall be given to each Director at his or her last known business or home address by the mailing of written notice, or by personal or facsimile delivery of written notice or by telephonic or electronic mail or similar method notice (and the method of notice need not be the same to each director) (collectively, "**Notice**"). If mailed, such Notice shall be deemed to be given when deposited in the U.S. mail with postage thereon prepaid. If

sent by facsimile, such Notice shall be deemed to be given when the transmitting facsimile machine prints a delivery confirmation notice. If sent by means of electronic mail or other similar method, such Notice shall be deemed to be given when the transmitting computer records the notice as "sent." If given by telephonic means, such Notice shall be deemed to be given when the verbal notice has been given to the director, assistant or a family member of the director, or has been left as voice-mail or similar message.

2.7 Waiver of Notice.

Any Director may waive notice of any meeting before, at, or after such meeting. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted nor the purpose of, any meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

2.8 Presumption of Assent.

A Director of the corporation who is present at a meeting of the board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting, or unless he or she shall file his or her written dissent to such action with the person acting as the

secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action

2.9 **Quorum and Voting.**

A majority of the Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Each Director shall be entitled to one (1) vote and the vote of a majority of the Directors present in person at a meeting at which a quorum is present shall be the act of the board of Directors unless a greater number is specifically required by these Bylaws, by the corporation's Articles of Incorporation or by law. If less than a quorum is present at a meeting, Directors may be contacted by phone or other audible electronic means for their vote on issues that come before the board of Directors, and they shall be deemed to be present at the meeting for all purposes.

A majority of the Membership of the Board shall constitute a quorum for the transaction of business, and each Director shall be entitled to one (1) vote. The act of a majority of the Membership of the Board, present at a meeting at which a quorum is present, shall be the act of the Board, unless a greater number is specially required by the Bylaws, by the Articles of Incorporation or by law.

2.10 **Consent in Writing.**

If all the Directors of the Board, as the case may be, severally or

collectively consent in writing to any action taken or to be taken by the Corporation, and the number of such Directors constitutes a quorum for such action, such action shall be valid Corporation action as though it had been authorized at a meeting of the Board.

ARTICLE III – OFFICERS

3.1 Number.

The officers of the Corporation shall be President, Vice President, Secretary and Treasurer. The offices of Secretary and Treasurer may be held by the same individual.

3.2 Election.

The officers of the corporation shall be elected from a slate provided by the Nominating Committee, for a term commencing on the date next succeeding the date of the annual meeting of directors, by the corporation's directors at their annual meeting. Each officer shall hold office for a term of one (1) year or until his or her successor shall have been duly elected and shall have qualified, or until his or her earlier death, resignation or removal. Officers may succeed themselves.

3.3 Term of Office and Vacancies.

Officers shall hold office for a term of one (1) year, or until their successors are elected. Vacancies, however caused, shall be filled by the Board at the next regularly scheduled meeting, or at a special meeting called for that purpose.

3.4 **Removal.**

Any officer or agent may be removed by a majority of the Board of Directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not in itself create contract rights.

3.5 **Vacancies.**

Any officer may resign at any time, subject to any rights or obligations under any existing contracts between the officer and the corporation, by giving written notice to the board chair or the president. An officer's resignation shall take effect at the time specified in such notice or immediately if no time is specified, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office, however occurring, may be filled for the unexpired portion of the term by action of the Board of Directors if the vacant position is normally held by a director or by the president.

3.6 **Number and Qualifications.**

The officers of the corporation shall consist of those enumerated in Section 3.1. No staff member shall serve as a director of the corporation except the Executive Director.

PRESIDENT AND CHAIRPERSON OF THE BOARD.

The President and Chairperson of the Board shall, when present, preside at all meetings of the Board of Directors. He may sign, with the Secretary or other proper officer of the Corporation as authorized by the Board of Directors, any deeds, mortgages,

bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and Chairperson of the Board and such other duties as may be prescribed by the Board of Directors from time to time.

VICE PRESIDENT.

In the absence of the President or in the event of his death, inability or refusal to act, the Vice-President shall perform the duties of the President and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

SECRETARY-TREASURER.

The Secretary-Treasurer shall:

- (a) Keep the minutes of the Board of Directors 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) Be custodian of the corporate records and of the seal of the Corporation and see that the seal is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized.
- (d) Have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for monies due and payable to the Corporation from any source whatsoever and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provision of these by-laws.
- (e) In general perform all of the duties incident to the office of Secretary-Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.
- (f) Shall sign and be responsible for filing all federal and state tax returns and any and all returns required by law to be filed by the Corporation and shall be responsible for payment of any tax liabilities. He is authorized to sign any documents

incident or related to the corporate tax returns.

The Secretary-Treasurer is the Executive Director and is a non-voting member of the Board.

EXECUTIVE DIRECTOR. The Board shall employ an Executive Director who, as Chief Executive Officer under its direction, shall carry on the general affairs of the Corporation. It shall be his/her duty to approve the expenditure of the money appropriated by the Board and the Executive Committee in accordance with the budget submitted in advance by the Finance Committee and approved by the Board.

He/She shall make periodic reports to the Board and the Executive Committee concerning the programs of the Corporation. He/She shall comply with all orders from the Board and the Executive Committee for the control of the agents, servants and employees of the Corporation, and all such servants, agents and employees shall report to and be responsible to him/her. He/She shall perform such other duties as may be determined by the Board or the Executive Committee.

IMMEDIATE PAST PRESIDENT OF THE BOARD. The past President will serve on the Board, and will provide advice and counsel to the Corporation's officers.

ARTICLE IV – COMMITTEES OF THE BOARD

4.1 Designation of the Committees.

The Board may, by resolution adopted by a majority of the entire Board, designate an Executive Committee and one or more other standing or special committees; each such committee, other than the Executive Committee, to consist of up to three Directors. The Board may designate one or more Directors as alternate Members of any committee, who may replace any absent or disqualified Member at any meeting of the committee. In the absence or disqualification of a Member, and the alternate or alternates, if any, designated for such committee Members,

the Member or Members thereof present at any meeting and entitled to vote, whether or not they constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified Member. Members of a committee shall serve for a one year term or until their successors are appointed.

4.2 Committee Chair.

The board chair shall appoint all committee chairs for the ensuing year within a reasonable time after the annual meeting of the Board of Directors. Committee chairs shall be members of the corporation's Board of Directors. If the Board of Directors charters a new committee by resolution at a meeting other than the annual meeting of the Board of Directors, the board chair shall appoint its chair at the time the committee is chartered or within a reasonable time after that board meeting.

4.3 Committee Meetings.

Meetings of the committees of the Board may be called by the respective chairpersons thereof or by any two Members of the committee. At all meetings of any committee, a majority of the Members of the committee shall constitute a quorum for the transaction of business, and the act of a majority of the Members present at any meeting thereof at which there is a quorum, shall be the act of the committee, except as may be otherwise specifically provided for by these Bylaws.

4.4 **Board Nominating Committee.**

The Board shall designate a Board Nominating Committee which shall be responsible for proposing persons for election as Directors, proposing Directors for officer positions, and board member orientation. The Board Nominating Committee will also have the responsibility of evaluating the efficacy of the Board, each committee, and each Director and make recommendations to the Board as to how to manage each of these. However, any Director may present nominations from the floor in addition to those presented by the Board Nominating Committee. The Board Nominating Committee will also be responsible for oversight of the Bylaws and all policies of the Corporation, Board Member orientation, and evaluation of the Executive Director's performance.

4.5 **Other Committees.**

The Board may designate from time to time such other committees as it may deem necessary which shall have and exercise the authority of the Board to the extent provided in the resolution designating the committee.

ARTICLE V – CONTRACTS, LOANS, CHECKS AND DEPOSITS

5.1 **Contracts.**

The Board of Directors may authorize any officer or officers, agents or agent to enter into any contract not to exceed \$25,000 capital expenditure, or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

5.2 **Loans.**

No loan shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by resolution of the Board of Directors. Such authority may be general or confined to specific instances.

5.3 **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 Corporation shall be signed by a designated voting member of the Board and/or the Secretary-Treasurer.

5.4 **Deposits.**

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

ARTICLE VI – FISCAL YEAR

6.1 **Fiscal Year.**

The fiscal year of the Corporation shall begin on the first day of each year and end on the last day of each year.

ARTICLE VII – INDEMNIFICATION

7.1 **Indemnification Permitted.**

The corporation 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 corporation), by reason of the fact that he or she is or was a director, officer, employee, fiduciary or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust or other enterprise; against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, and with respect to any criminal action or proceeding, had reasonable cause to believe his or her conduct was unlawful.

The corporation 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 by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, fiduciary or agent of the corporation or is or

was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorney fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation; but no indemnification shall be made in respect of any claim, issue, or matter as to which such person has been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such court deems proper.

7.2 **Indemnification Required.** To the extent a director, officer, employee, fiduciary or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Article 7, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by him or her in connection therewith.

7.3 **Determination of Permitted Indemnification.** Any indemnification under Article 7 (unless ordered by a court), shall be made by the corporation

only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, fiduciary or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Article 7, above. Such determination shall be made by the Board of Directors of the corporation by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or, if such 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 by the Directors of the corporation.

7.4 **Advancement of Expenses.** Expenses (including attorney fees) incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized in Article 7 upon receipt from the director, officer, employee, fiduciary or agent of a written affirmation of his or her good faith belief that he or she has met the standard of conduct set forth in Article 7 above, and upon receipt of an undertaking by, or on behalf of, the director, officer, employee, fiduciary or agent to repay such amount unless it is ultimately determined that he or she is entitled to be indemnified by the corporation as authorized in this Article 7. The Corporation will purchase Director's and Officer's liability insurance to cover these expenses.

7.5 **Other Indemnification Rights.** The indemnification provided by this Article 7 shall not be deemed exclusive of any other rights to which those