

N98000002848

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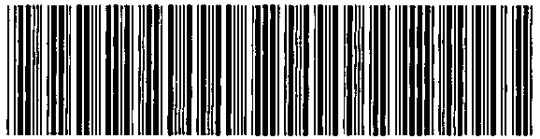
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TALLAHASSEE, FLORIDA
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Amended cc
Restated
@ 8/20/09

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: American Society for Metabolic and Bariatric

DOCUMENT NUMBER: Surgery Foundation, Inc. N98000002848

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Michael Hartney
(Name of Contact Person)

(Firm/ Company)

11665 Avena Place, Ste. 202
(Address)

San Diego, CA 92128
(City/ State and Zip Code)

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Michael Hartney at (858) 385-2774
(Name of Contact Person) (Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount made payable to the Florida Department of State:

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> \$35 Filing Fee | <input type="checkbox"/> \$43.75 Filing Fee & Certificate of Status | <input checked="" type="checkbox"/> \$43.75 Filing Fee & Certified Copy (Additional copy is enclosed) | <input type="checkbox"/> \$52.50 Filing Fee Certificate of Status Certified Copy (Additional Copy is enclosed) |
|--|---|---|--|

Mailing Address
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address
Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF**

**AMERICAN SOCIETY FOR METABOLIC AND
BARIATRIC SURGERY FOUNDATION, INC.**

(a Corporation Not for Profit)
Document Number N98000002848

FILED STATE
SECRETARY OF
TALLAHASSEE, FLORIDA
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Article I-Name

The name of the Corporation is American Society for Metabolic and Bariatric Surgery Foundation, Inc.

Article II- Principal Office

The address of the Corporation's principal office is 100 SW 75th Street, Ste. 201, Gainesville, Florida 32607.

Article III- Registered Agent and Registered Office

The name of the Corporation's registered agent and the registered address are: Joseph Nadglowski, 100 SW 75th Street, Ste. 201, Gainesville, Florida 32607.

Article IV- Duration

The Corporation shall exist perpetually.

Article V-Purpose

1. This Corporation is a nonprofit corporation and is not organized for pecuniary gain or the private gain of any person. It is organized under the Not for Profit Corporation Act of the State of Florida and is organized exclusively for charitable, educational and scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986. This corporation will not carry on any other activities not permitted to be carried on by (a) a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law, or (b) a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States internal revenue law. No activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

2. Within the context of these general purposes, the Corporation's specific purposes are to aid and promote, primarily through the use of direct or indirect contributions of funds from

the general public, awareness of obesity, awareness and advancement of bariatric surgery, and education in and regarding bariatric surgery among general surgeons, medical professionals, surgeons in training, residents and fellows, general nutritionists and schools conferring degrees in nutrition, the general nursing profession, the general medical profession, the general health management industry, and the general public.

Article VI-Non-Stock Corporation

The Corporation shall be non-stock, and no dividends or pecuniary profits shall be declared or paid to any person.

Article VII-Directors

The authorized number of members of the Board of Directors shall be an odd number of at least eleven (11) but no more than fifteen (15). The qualifications of Directors, the manner of election and the terms of office of Directors shall be as set forth in the Corporation's Bylaws.

Article VIII-Officers

The Officers of the Corporation shall consist of a President and a Secretary-Treasurer. The qualifications of Officers, the manner of election and the terms of office of the Officers shall be as set forth in the Corporation's Bylaws.

Article IX-Members

The Corporation shall have no members.

Article X-Indemnification

To the fullest extent permitted by law, and except as provided in Section 617.0834 of Florida Statutes, this Corporation shall indemnify its directors (i.e., Members of the Board), officers, employees and agents as provided in Sections 617.0831 and 607.0850 of Florida Statutes. The right of indemnification includes the right to advancement of expenses as provided in and as determined in accordance with said statutes.

Article XI-Distribution of Assets Upon Dissolution or Liquidation

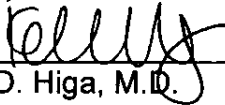
No part of the net earnings, properties or assets of the Corporation, on dissolution or otherwise, shall inure to the benefit of any private person or individual, or to any director or officer of the Corporation. In the event of liquidation or dissolution, all properties and assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed to a nonprofit fund, foundation or corporation that is organized and operated exclusively for charitable purposes and that has established its exempt status under Internal Revenue Code section 501(c)(3).

Article XII-Amendments

These Articles may be amended by a vote of a majority of the Directors.

WHEREFORE, the foregoing Amended and Restated Articles of Incorporation of American Society for Metabolic and Bariatric Surgery Foundation, Inc., a Florida Not for Profit Corporation, were duly adopted by the Board of Directors of said Corporation on July 21, 2009, there being no members entitled to vote on the amendments, to become effective immediately. These Amended and Restated Articles of Incorporation supersede all prior versions.

Executed this 4 day of August, 2009.



Kelvin D. Higa, M.D.
President

Articles of Amendment
to
Articles of Incorporation
of

American Society for Metabolic and Bariatric

(Name of Corporation as currently filed with the Florida Dept. of State)

Surgery Foundation, Inc. N98000002848

(Document Number of Corporation (if known))

Pursuant to the provisions of section 617.1006, Florida Statutes, this *Florida Not For Profit Corporation* adopts the following amendment(s) to its Articles of Incorporation:

A. If amending name, enter the new name of the corporation:

The new name must be distinguishable and contain the word "corporation" or "incorporated" or the abbreviation "Corp." or " Inc." "Company" or "Co." may not be used in the name.

B. Enter new principal office address, if applicable:

(Principal office address MUST BE A STREET ADDRESS)

C. Enter new mailing address, if applicable:

(Mailing address MAY BE A POST OFFICE BOX)

D. If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:

Name of New Registered Agent:

New Registered Office Address:

(Florida street address)

(City)

_____, Florida

(Zip Code)

New Registered Agent's Signature, if changing Registered Agent:

I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.

Signature of New Registered Agent, if changing

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:

(Attach additional sheets, if necessary)

<u>Title</u>	<u>Name</u>	<u>Address</u>	<u>Type of Action</u>
_____	_____	_____	<input type="checkbox"/> Add <input type="checkbox"/> Remove
_____	_____	_____	<input type="checkbox"/> Add <input type="checkbox"/> Remove
_____	_____	_____	<input type="checkbox"/> Add <input type="checkbox"/> Remove

E. If amending or adding additional Articles, enter change(s) here:
(attach additional sheets, if necessary). (Be specific)

Article VII-Directors is amended to read as follows:

"The authorized number of members of the Board of Directors shall be an odd number of at least eleven (11) but no more than fifteen (15). The qualifications of Directors, the manner of election and the terms of office of Directors shall be as set forth in the Corporation's Bylaws."

See attached Amended and Restated Articles of Incorporation

The date of each amendment(s) adoption: July 21, 2009
(date of adoption is required)

Effective date if applicable: _____
(no more than 90 days after amendment file date)

Adoption of Amendment(s) **(CHECK ONE)**

- The amendment(s) was/were adopted by the members and the number of votes cast for the amendment(s) was/were sufficient for approval.
- There are no members or members entitled to vote on the amendment(s). The amendment(s) was/were adopted by the board of directors.

Dated July 21, 2009

Signature Kelvin D. Higa
(By the chairman or vice chairman of the board, president or other officer-if directors have not been selected, by an incorporator – if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

Kelvin D. Higa, MD
(Typed or printed name of person signing)

President
(Title of person signing)