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Division of Corporations  
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BASIC AMENDMENT

MEDICAL SPECIALISTS OF THE PALM BEACHES, INC.

(9/2)

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Page Count	08
Estimated Charge	\$35.00

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Amendment

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# Florida Department of State

## Division of Corporations

### Public Access System

Sandra B. Mortham, Secretary of State

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FLORIDA DEPARTMENT OF STATE  
Sandra B. Mortham  
Secretary of State

September 1, 1998

MEDICAL SPECIALISTS OF THE PALM BEACHES, INC.  
5700 LAKE WORTH RD  
204  
LAKE WORTH, FL 3346308

SUBJECT: MEDICAL SPECIALISTS OF THE PALM BEACHES, INC.  
REF: P95000038395

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

If the document was approved by a majority vote of the shareholders, it should also contain a statement that the number of votes cast by the shareholders was sufficient for approval.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6906.

Darlene Connell  
Corporate Specialist

FAX Aud. #: H98000016215  
Letter Number: 698A00044945

Division of Corporations - P.O. BOX 6327 - Tallahassee, Florida 32314

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**ARTICLES OF THIRD AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF**

**MEDICAL SPECIALISTS OF THE PALM BEACHES, INC.**

**FILED**  
98 SEP -2 PM 12:30  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Section 607.1006, Florida Statutes, MEDICAL SPECIALISTS OF THE PALM BEACHES, INC. adopts the following Articles of Third Amendment to its Articles of Incorporation:

**FIRST:** The name of the corporation is MEDICAL SPECIALISTS OF THE PALM BEACHES, INC. ("MSPB").

**SECOND:** Article V of the Articles of Incorporation of the Corporation is amended in its entirety to read as follows:

**"ARTICLE V  
CAPITAL STOCK**

The Corporation is authorized to issue one thousand (1,000) shares of Class A common stock of one cent (\$0.01) par value, ten thousand (10,000) shares of Class B common stock of one cent (\$0.01) par value, and one thousand (1,000) shares of Class C common stock of one cent (\$0.01) par value. The relative rights, preferences and limitations of the Corporation's common stock are set forth below:

**A. Class A Stock**

1. **Voting.** Each outstanding share of Class A common stock shall be entitled to one (1) vote on each matter submitted to a vote of the shareholders. Shareholders of Class A common stock are entitled to cumulate their votes for the election of directors.

2. **Dividends.** Each outstanding share of Class A common stock shall be entitled to participate equally with each other outstanding share of Class A common stock on all dividends distributed by the Corporation to the shareholders.

Mitchell D. Schepps FL Bar Member 979139  
Rosen & Reade, LLP  
Phillips Point, West Tower  
777 South Flagler Drive, Suite 1102  
West Palm Beach FL 33401  
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**B. Class B Stock**

1. Voting. Except as expressly required by applicable law, these Articles of Incorporation or the Bylaws of the Corporation, Class B common stock shall have no voting rights; except that, Class B shareholders shall be entitled to vote on any amendment to the Articles of Incorporation or Bylaws which would, by the terms if enacted, serve to diminish or eliminate the relative redemption rights and rights to dividends or distributions of Class B common stock as described below in these Articles of Incorporation.

2. Dividends. Class B common stock shall have no dividend rights, except if a dividend is declared to distribute the proceeds of a sale of substantially all of the assets of the Corporation or to distribute the proceeds derived from a corporate restructuring, merger or combination (as distinguished from dividends to distribute funds from operations in the ordinary course of business or net proceeds from the sale, exchange, transfer or other disposition of all or substantially all of the Corporation's ancillary services operations). In the event of such a dividend, each outstanding share of Class B common stock shall be entitled to participate equally with each other outstanding share of Class B common stock.

**C. Class C Stock**

1. Voting. Each outstanding share of Class C common stock shall be entitled to one (1) vote on each matter submitted to a vote of the shareholders. Shareholders of Class C common stock are entitled to cumulate their votes for the election of directors. It is the intent of these Articles that each outstanding share of Class C common stock shall have a vote equal to the voting rights of one (1) share of Class A common stock and that the Class C common stock shall vote together with the shares of Class A common stock as a single class, unless otherwise required by law.

2. Dividends. Except as otherwise provided in this paragraph C.2., each outstanding share of Class C common stock shall be entitled in each instance in which the Corporation's Board of Directors declares a dividend on shares of Class A common stock to the payment of the following dividends: (i) with respect to a dividend declared during the first (1<sup>st</sup>) twelve (12) month period in which such Class C share is outstanding (the "First Anniversary Year"), a dividend equal in amount to one-third (1/3) of the dividend payable on each share of Class A common stock, and (ii) with respect to a dividend declared during the second (2<sup>nd</sup>) twelve (12) month period in which such Class C share is outstanding (the "Second Anniversary Year"), a dividend in an amount equal to two-thirds (2/3) of the dividend payable on each share of Class A common stock. Notwithstanding anything contained in this paragraph C.2. or these Articles to the contrary, Class C common stock shall have no

H98000016215

H98000016215

dividend rights with respect to a nonliquidating (i.e., operating) dividend to distribute the net proceeds of a sale, exchange, transfer or other disposition of all or substantially all of the Corporation's ancillary services operations.

3. Conversion of Class C Stock to Class A Stock. Each share of Class C common stock shall automatically convert into one (1) share of Class A common stock on the first (1<sup>st</sup>) day of the third (3<sup>rd</sup>) twelve (12) month period in which such Class C share is outstanding (the "Third Anniversary Year"). As promptly as possible after the surrender of the Class C common stock, the Corporation shall deliver or cause to be delivered to such shareholder a stock certificate representing one (1) share of Class A common stock issued in the name of the stockholder. Such conversion shall be deemed to have been made, for all purposes, beginning with the first (1<sup>st</sup>) day of the Third Anniversary Year such Class C common share is outstanding. Certificates representing shares of Class A common stock shall contain a restrictive legend as set forth in the Corporation's Shareholders' Agreement.

4. Equal Dignity With Class A Stock. Except as otherwise set forth in paragraph C.2. of this Article V with respect to dividends during the First and Second Anniversary Years, a share of Class A and Class C common stock shall be treated with equal dignity for all purposes, including, without limitation, these Articles of Incorporation, the Bylaws of the Corporation, and the Shareholders' Agreement of the Corporation, including any amendments thereto.

D. Liquidation Rights. For purposes of determining rights to distributions upon liquidation of the Corporation, Class A common stock, Class B common stock and Class C common stock shall be treated as one (1) class, with each outstanding share participating equally with each other outstanding share.

E. Redemption Rights.

1. Purchase of Shares. In the event a shareholder's employment by the Corporation is terminated for any reason, including, without limitation, the voluntary termination, disability or death of the shareholder, the shareholder or his or her estate shall sell to the Corporation all of the shares owned by such shareholder on the effective date of termination, and the Corporation shall purchase all of such shares from the shareholder upon the following terms and conditions:

(a) The purchase price per share for the shares purchased hereunder shall be determined by the Accountant and shall be the sum of (i) the Value per Share on the Valuation Date plus (ii) the Real Estate Value per Share on the Valuation Date (the "Purchase Price"). The determination of the Accountant shall be final and binding upon the parties. The Purchase Price shall be subject to offset for any amounts owed by the shareholder to Corporation.

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(b) The Purchase Price determined by the Accountant shall be conclusive and binding upon the parties. The parties agree that a judgment of any court of competent jurisdiction may be entered upon the determination made by the Accountant of the Purchase Price. Immediately upon the completion of the Accountant's determination of the Purchase Price, the Corporation shall cause the Accountant to deliver simultaneously to the Corporation and the shareholder, or the estate of the deceased shareholder whose shares are being purchased, a written statement setting forth the Accountant's determination of the Purchase Price.

Notwithstanding the foregoing, in the event of death, retirement or disability, the other shareholders of the Physician Subgroup of which shareholder was a member, shall be entitled to purchase the Class B common stock of the shareholder, provided all of the members of the Physician Subgroup shall give the Corporation notice of exercise of this right within thirty (30) days of the event giving rise to the right of redemption, which notice shall be signed by all members of the Physician Subgroup including the shareholder (or his estate, if applicable) and shall instruct the Corporation of the terms of the transfer. The Corporation shall be permitted to conclusively rely on any such writing. If such notice of exercise is not given to the Corporation within such thirty (30) day period, the members of the Physician Subgroup shall have no further rights to acquire such shares.

## 2. Term of Purchase of Shares.

(a) Voluntary Termination. In the event of a voluntary termination of employment by the shareholder, other than retirement or relocation outside the State of Florida, the Purchase Price (as adjusted) shall be paid by the Corporation to the shareholder in successive equal monthly installments, without interest, over a period of five (5) years, subject to Paragraph 3 below. The payment of installments shall commence on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) month after the effective date of the shareholder's termination. Upon termination of employment due to the retirement of the shareholder or the relocation outside of the State of Florida, the Purchase Price (as adjusted) shall be paid by the Corporation to the shareholder in twenty-four (24) successive equal monthly installments of principal and interest, such interest being at a rate equal to the then current Federal Short-Term Rate, subject to Paragraph 3 below. The payment of installments of principal and interest shall commence on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) month after the effective date of the shareholder's termination.

(b) Disability or Death. Upon termination of the shareholder's employment as a result of the disability or death of the shareholder, payment of the Purchase Price shall be made by the Corporation to the shareholder, or the shareholder's estate in twelve (12) successive equal monthly installments of principal and interest, such interest being at a rate equal to the then current Federal Short-Term

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H98000016215

Rate. The payment of installments of principal and interest shall commence on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) month following the shareholder's employment termination date resulting from death or disability.

3. Payment Limitations. In the event that in any fiscal year of the Corporation the aggregate amount of installment payments to which shareholders and former shareholders are entitled by virtue of share redemption as provided in the shareholders agreement can be reasonably expected to exceed five percent (5%) of the revenues (determined on a cash basis) of the Corporation for that fiscal year, payment shall be made to such shareholders and former shareholders on a pro rata basis (in proportion to the amount paid and otherwise payable to each shareholder and former shareholder during the fiscal year) so the aggregate amount of all installment payments does not exceed the five percent (5%) limitation. If the five percent (5%) limitation will be exceeded in a fiscal year, payments shall be made on a first-in-first-paid basis, such that the full required payments will be made to those persons so entitled in the order in which rights to payments arose. Any unpaid amounts will be carried over to the following year, but the five percent (5%) limitation in the subsequent year shall continue to apply, such that in no fiscal year will more than five percent (5%) of the Corporation's revenues (determined on a cash basis) for that year be paid out for redemption of shares. Whether to redeem shares in any instance where such redemption is optional and the amount of funds available for installment payments shall be within the discretion of the Board of Directors of the Corporation (the "Board") and its decisions on all such matters shall be final and binding. The Board will seek the advice of its accountants and other financial advisors in reaching such decisions and shall take into account the Corporation's projected needs for cash, including appropriate reserves in reaching these decisions, although it shall be free to disregard such advice in the exercise of its authority.

4. Definitions.

4.1 "Accountant" shall mean the firm of accountants serving the Corporation on a regular basis, or, in the event the Corporation shall not have such a firm, by an independent certified public accountant selected by the Corporation.

4.2 "Value per Share" shall mean the book value per share computed, on the basis of the number of shares outstanding at the Valuation Date, by the Accountant based on the books and records of the Corporation on a basis consistent with the past practices of the Corporation and the following provisions: (i) marketable securities, if any, shall be valued at fair market value as of the Valuation Date, less the expenses of sale which would have been payable if such securities had been sold on the Valuation Date; (ii) life insurance owned by the Corporation on the life of any Person shall be valued by the Accountant at its cash surrender value, if any, at the Valuation Date; (iii) the value of any real estate owned by the Corporation

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on the Valuation Date shall be excluded from the determination of the Value per Share; (iv) any accounts receivable of the Corporation related to the rendition of professional medical services (as distinguished from accounts receivable arising from ancillary medical services) as of the Valuation Date shall be excluded from the determination of the Value per Share; (v) accounts receivable of the Corporation, net of contractual allowances and a reasonable bad debt allowance, from ancillary medical services as of the Valuation Date shall be included in the determination of the Value per Share; and (vi) goodwill and going concern value shall be excluded from the determination of the Value per Share.

4.3 "Federal Short-Term Rate" shall mean the applicable federal rate for debt instruments with a term of not over three (3) years, in accordance with section 1274(d) of the Internal Revenue Code of 1986, as it may be amended from time to time, or comparable provisions of subsequent legislation.

4.4 "Physician Subgroup" shall mean any of a number of operating divisions of the Corporation recognized from time to time by the Board, and made up of one or more physicians who are employees of the Corporation.

4.5 "Pro Rata" shall mean, as of any particular date, that portion of an amount attributable to a particular shareholder determined on the basis of the number of shares of Class A stock, Class B stock and/or Class C stock, as applicable, owned by the shareholder in proportion to the total number of shares of Class A stock, Class B stock and/or Class C stock, as applicable, issued and outstanding.

4.6 "Real Estate Value per Share" shall mean the real estate value per share determined by the Accountant and shall be equal to (i) the fair market value of all real estate owned by the Corporation as determined by an appraiser selected by the Board, divided by (ii) the number of shares issued and outstanding on the Valuation Date. The cost of the appraiser shall be borne equally by the Corporation and the shareholder, or the estate of the deceased shareholder, whose shares are being purchased and such determination shall be final and binding for all purposes.

4.7 "Valuation Date" means the last day of the calendar quarter preceding the calendar quarter in which any event occurs causing the Corporation to purchase shares hereunder."

**THIRD:** This Amendment was approved by the Board of Directors and recommended to the Corporation's shareholders on August 26, 1998.

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**FOURTH:** This Amendment was approved and adopted by a majority of the Corporation's shareholders on August 26, 1998. The number of votes cast by the shareholders was sufficient for approval.

The undersigned, as President of the Corporation, has executed these Articles of Third Amendment on August 27, 1998.

**MEDICAL SPECIALISTS OF THE  
PALM BEACHES, INC.**

By   
Robert E. Tomé, M.D., President

MSPB-Articles of Third Amendment.wpd

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