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February 17, 2005

VIA MESSENGER

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
Room 623
999 E Street, N.W.
Washington, D.C. 20463

AOR 2005-3

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: American College of Obstetricians and Gynecologists
REQUEST FOR ADVISORY OPINION

Dear Mr. Norton:

On behalf of The American College of Obstetricians and Gynecologists ("ACOG"), an incorporated membership organization, I hereby request, in accordance with 2 U.S.C. § 437f and 11 C.F.R. § 112.1, that the Federal Election Commission ("Commission") issue an advisory opinion confirming:

- (1) that another membership organization, Ob-Gyns for Women's Health ("OGWH"), is "affiliated" with ACOG within the meaning of the Commission's regulations and rulings related thereto;
- (2) if affiliated, that it is permissible for OGWH, together with OGWH's separate segregated fund ("SSF"), to solicit certain of ACOG's members for contributions to OGWH's SSF; and
- (3) if such solicitations are permissible, that two specified categories of ACOG members are solicitable.

ACOG's purpose in submitting this advisory opinion request ("Request") is to enable ACOG to develop policies and procedures concerning the sale of its membership lists to OGWH and/or individual members of OGWH who have indicated that they intend to utilize such lists, if legally permissible, to solicit contributions to OGWH's SSF. As an organization operating under Section 501(c)(3) of the federal Internal Revenue Code ("IRC"), ACOG is prohibited from, and would not, engage in political activities.

INTRODUCTION

This Request is organized as follows:

Background – Affiliated Organizations

ACOG
OGWH
Ob-Gyn PAC
ACOG / OGWH Relationship

Background – Applicable ACOG Membership Categories

1. Fellows
2. Junior Fellows

Advisory Opinion Request

1. ACOG and OGWH are "affiliated" within the meaning of the Commission's regulations and rulings.
2. If ACOG and OGWH are affiliated, then it is permissible for OGWH and Ob-Gyn PAC to solicit eligible ACOG members for contributions to Ob-Gyn PAC.
3. If such OGWH/Ob-Gyn PAC solicitations of ACOG members are permissible, ACOG's Fellows and Junior Fellows may be solicited because they are "members" within the meaning of the Commission's definition thereof.

Conclusion

Appendix A: ACOG – Membership Organization Criteria

Attachment 1: ACOG Articles
Attachment 2: ACOG Bylaws

Appendix B: OGWH -- Membership Organization Criteria

Attachment 1: OGWH Articles
Attachment 2: OGWH Bylaws

BACKGROUND – AFFILIATED ORGANIZATIONS

ACOG: Founded in 1951, ACOG is a private, voluntary membership organization,¹ incorporated without capital stock under the laws of the State of Illinois and operating as a nonprofit, tax-exempt educational and charitable organization under IRC Section 501(c)(3). ACOG's membership, consisting principally of "Fellows" who are physicians in the active phase of their careers specializing in obstetric - gynecological care,² has grown to over 46,000. As stated in its "Operational Mission Statement," ACOG is "dedicated to the advancement of women's health through education, practice, research and advocacy." In carrying out its Mission Statement, ACOG works primarily in four areas: (1) serving as

¹ ACOG is a "membership organization" within the meaning of the Commission's definition thereof at 11 C.F.R. § 114.1(e)(1). See Appendix A and attachments thereto.

² In addition to ACOG Fellows, who must be physicians whose professional activity is devoted to the practice of obstetrics and/or gynecology, there are other categories of Fellows (e.g., Junior Fellows (principally Residents), Life Fellows (primarily retired physicians), Honorary Fellows, etc.), as well as other categories of membership (e.g., Associate Members).

a strong advocate for quality health care for women, (2) maintaining the highest standards of clinical practice and continuing education for its members, (3) promoting patient education and stimulating patient understanding and involvement in medical care, and (4) increasing awareness among its members and the public of the changing issues facing women's health care.

OGWH: OGWH is a private, voluntary membership organization,³ incorporated without capital stock in June 2000 under the laws of the District of Columbia. OGWH operates as a nonprofit, tax-exempt social welfare organization under Section 501(c)(4) of the IRC. Established by vote of ACOG's Executive Board, OGWH's primary purpose is to advocate ACOG's legislative priorities before the U.S. Congress.⁴ Accordingly, OGWH's stated purposes are "advocating laws and public policies that support quality health care for women; advocating laws and public policies that support the field of obstetrics and gynecology; and increasing awareness among its members and the public of the changing public policies and legislation related to women's health care."⁵

As of December 2004, OGWH had approximately 7,700 members. Although membership in OGWH is open to anyone who pays annual dues to the organization,⁶ OGWH's membership is comprised almost exclusively of ACOG Fellows, Junior Fellows and other ACOG members. Indeed, ACOG Fellows alone comprise in excess of 95% of OGWH's members.

However, ACOG members are not automatically members of OGWH. Membership in OGWH is separate and voluntary, and is both expressly solicited by OGWH and encouraged by ACOG (*e.g.*, ACOG's annual membership dues statement offers the option thereon to pay OGWH membership dues as well). During 2004, approximately 25% - 30% of ACOG's Fellows were members of OGWH.

Though closely related (*see* "ACOG / OGWH Relationship," below), OGWH operates as a separate organization from ACOG. According to OGWH, it covers its own costs of operation, maintains its own membership database, outsources its accounting, tax accounting and legal services needs, maintains its own website and listserv to OGWH members, etc.

OB-GYN PAC: The Ob-Gyns for Women's Health PAC ("Ob-Gyn PAC") was created as an SSF by vote of the OGWH Board in January 2001.⁷ OGWH (as the SSF's "connected organization"⁸) and Ob-

³ Like ACOG, OGWH is a "membership organization" as defined by the Commission at 11 C.F.R. § 114.1(e)(1). *See* Appendix B and attachments thereto.

⁴ ACOG's status as an IRC Section 501(c)(3) organization imposes limitations on ACOG's ability to engage directly in such advocacy activities.

⁵ OGWH Bylaws, Article I, Section 1.02.

⁶ OGWH Bylaws, Article III, Section 3.02.

⁷ *See* "Statement of Organization" (FEC Form 1), dated January 16, 2001. *See also* amendment to Statement of Organization, filed September 1, 2004, identifying name change. (Following OGWH approval in late 2004 of its name change from the original Physicians for Women's Health, the SSF inadvertently filed its amended Statement of Organization with the Commission prior to OGWH's formal filing of its Articles of Amendment to the OGWH Articles to reflect that name change.)

⁸ 11 C.F.R. § 100.6. In contrast to OGWH, ACOG is not, and cannot be, a connected organization to Ob-Gyn PAC (or any SSF, for that matter), because ACOG is prohibited from sponsoring an SSF as a consequence of its status as an IRC Section 501(c)(3) organization.

Gyn PAC solicit contributions to Ob-Gyn PAC only from OGWH's members.⁹ Although authorized to do so under the Commission's regulations applicable to solicitations by membership organizations (*see* 11 C.F.R. §114.7(a)), OGWH and Ob-Gyn PAC do not presently solicit contributions from OGWH members' families, nor from OGWH's executive or administrative personnel and their families.

ACOG / OGWH Relationship: While ACOG and OGWH are legally separate incorporated organizations, there are substantial ties between them:

1. As stated above, OGWH was established by vote of the ACOG Executive Board.
2. Also, as stated above, OGWH's principal purpose is to advocate before the Congress ACOG's legislative priorities.
3. Further, as stated above, OGWH's membership consists almost exclusively of individuals who are ACOG members.
4. Significantly, the OGWH Bylaws require that OGWH's Board of Directors, which exercises exclusively the policy-making and governance authority of the organization,¹⁰ "shall consist of 10 directors who shall be: a. [ACOG's] current President; b. ACOG's Immediate Past President; c. ACOG's President Elect; d. ACOG's Secretary; e. ACOG's Treasurer; f. ACOG's Past President most recently retired from the Executive Board who is available; g. a former member from ACOG's Executive Committee; h. an ACOG Junior Fellow or Fellow who has been in practice for less than five (5) years; i. a past ACOG District Chair; and j. one (1) member appointed by the other directors."¹¹
5. OGWH officers are elected by the OGWH Board of Directors. Presently, OGWH has two officers: (a) the OGWH President is the Immediate Past President of ACOG (and his predecessor as OGWH President likewise was the then-Immediate Past President of ACOG), and (b) the OGWH Secretary/Treasurer is a member of the ACOG Executive Board and is the Secretary of ACOG.
6. ACOG, pursuant to contractual agreement, employs OGWH to render advocacy services to ACOG.
7. ACOG employees provide various advocacy-related services for OGWH pursuant to a contractual agreement whereby OGWH pays ACOG for such services.
8. By contractual agreement, OGWH leases office space from ACOG and pays ACOG for general and administrative services associated with such leased space.

⁹ OGWH's members also include foreign nationals (as defined at 11 C.F.R. § 110.20(a)(3)), but neither OGWH nor Ob-Gyn PAC solicit or accept contributions from such foreign national members.

¹⁰ OGWH's members have no voting rights. OGWH Bylaws, Article III, Section 3.03.

¹¹ OGWH Bylaws, Article II, Section 2.02.

BACKGROUND – APPLICABLE ACOG MEMBERSHIP CATEGORIES

This Request focuses on two of ACOG's membership categories, both of which qualify as "members" under the Commission's applicable criteria at 11 C.F.R. § 114.1(e)(2):

1. **Fellows:** An ACOG *Fellow* must be a physician whose professional activity is devoted to the practice of obstetrics and/or gynecology. A candidate for Fellow, in his/her application therefor, must satisfy ACOG-specified criteria for membership, including (i) be board-certified in obstetrics and gynecology, (ii) have completed an ob-gyn residency program within ACOG's geographic confines, (iii) have an active license to practice medicine, (iv) demonstrate a continuous limitation of training and/or professional activities to obstetrics and/or gynecology for the five years immediately prior to applying for membership, (v) to provide for adequate peer evaluation, have practiced in the same community for at least one year prior to the submission of an application, and (vi) have attained high ethical and professional standing. Admission of a Fellow candidate satisfying the membership criteria requires endorsement by two qualified Fellows, and election by ACOG's Executive Board (which is the body vested with general management and governance authority over ACOG).

Following action on the candidate's application and election to membership, a Fellow affirmatively accepts ACOG's offer of membership via the payment of initial membership dues, and thereafter must pay annual membership dues -- in an amount predetermined from time to time by ACOG -- in order to maintain such membership in ACOG. A Fellow has full voting rights in ACOG, including the right to vote for national ACOG officers and for Fellows-at-Large sitting on ACOG's Executive Board. Accordingly, Fellows satisfy the Commission's definition of "members" of a membership organization. *See* 11 C.F.R. § 114.1(e)(2)(ii) and (iii).

2. **Junior Fellows:** A candidate for *Junior Fellow* membership, in his/her application therefor, must satisfy ACOG-specified criteria for membership -- namely, the candidate/applicant must be either a resident in an approved program in obstetrics and gynecology or a recent graduate of such a program with immediate and continued limitation of professional activities exclusively to obstetrics and/or gynecology, and have attained high ethical and professional standing. A Junior Fellow candidate/applicant must be proposed by a Fellow, and approved by ACOG's Vice President - Fellowship Activities (under delegation from the Executive Board).

Following action on the candidate's application and election to membership, a Junior Fellow affirmatively accepts ACOG's offer of membership via the payment of initial membership dues, and thereafter must pay annual membership dues -- in an amount predetermined from time to time by ACOG -- in order to maintain such membership in ACOG. Accordingly, Junior Fellows satisfy the Commission's definition of "members" of a membership organization (*see* 11 C.F.R. § 114.1(e)(2)(ii)), even though Junior Fellows are ineligible to vote or hold office in ACOG.

ADVISORY OPINION REQUEST

OGWH desires -- consistent with the Commission's regulations governing solicitations for contributions to SSFs -- to modify its present policy of soliciting contributions only from its

approximately 7,700 members. Toward that end, OGWH believes that, as a consequence of the ACOG / OGWH affiliate relationship and pursuant to Commission regulations and rulings authorizing solicitation of members of affiliated organizations, OGWH and/or Ob-Gyn PAC may solicit contributions directly from eligible categories of ACOG members.

As referenced above, ACOG's IRC 501(c)(3) status restricts its authority to engage in political activities. Consequently, if OGWH and/or OGWH members request copies of ACOG's applicable membership lists, ACOG would be required to sell such membership lists thereto at their fair market value (and presumably would, if requested, sell such lists in the future when updated to reflect ACOG membership changes). However, before selling applicable membership lists to OGWH and/or individual OGWH members with knowledge of their intent to utilize these lists to solicit ACOG's members (specifically, ACOG Fellows and Junior Fellows) for contributions to Ob-Gyn PAC, ACOG desires Commission concurrence in the form of an Advisory Opinion confirming the permissibility of such solicitations.

Accordingly, ACOG requests that the Commission confirm that:

1. **ACOG and OGWH are "affiliated" within the meaning of the Commission's regulations and rulings.**

Procedurally, the Commission has determined that, "[w]hen deciding whether one corporation is affiliated with another corporation for solicitation purposes, the Commission has applied the criteria for determining whether the corporations' PACs (presuming each entity has one) would be deemed affiliated for contribution purposes" (emphasis added).¹² Therefore, the status of ACOG and OGWH as affiliates is examined on the basis of the Commission's regulations pertaining to "affiliated committees" at 11 C.F.R. §§ 100.5(g) and 110.3(a).

Based on the facts set forth above under the heading "ACOG / OGWH Relationship," ACOG urges that the Commission confirm its affiliation with OGWH under the *per se* affiliation standard¹³ at 11 C.F.R. §§ 100.5(g)(3)(v) and 110.3(a)(2)(v) – namely, that affiliation exists between entities "established, financed, maintained or controlled by – . . . (v) The same person or group of persons."¹⁴ Although OGWH is not a subsidiary of ACOG, OGWH, as previously explained, was established by ACOG, and the OGWH Bylaws' specified makeup of the Board of Directors (*see* Article II, Section

¹² Advisory Opinion 1988-14 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5922, at p. 11,439], *citing* Advisory Opinions 1984-36, 1983-48, 1982-18, 1980-18, 1979-77 and 1979-56. *See also* Advisory Opinion 1981-55 (stating that "[w]hile the [Commission's regulations on affiliation] are primarily applicable to whether political committees are affiliated for purposes of reporting affiliation and sharing contribution limitations, . . . they also address the relationship between organizations other than political committees that may wish to solicit contributions from each others' members for the political committee(s) sponsored by either of the organizations or by both of them" [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5635, at p. 10,817]).

¹³ Advisory Opinion 1999-16, for example, distinguishes between "*per se*" affiliation criteria and "the factors that are examined in the context of an overall relationship to determine affiliation in the absence of *per se* affiliation" [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 6296, at p. 12,465].

¹⁴ Because the nature of the ACOG / OGWH relationship is not one of State/local affiliates in a multitiered organization or federation, ACOG does not rely on 11 C.F.R. §§ 100.5(g)(3)(iv) and 110.3(a)(2)(iv), the *per se* affiliation standard applicable to "[a] membership organization . . . and/or related State and local entities of that organization or group"

2.02) that operates and governs OGWH (*i.e.*, OGWH's members are non-voting) indicates that OGWH likewise is "maintained or controlled by . . . [t]he same . . . group of persons." Similarly, there are substantial overlaps in relation to the two organizations' officers. In addition, OGWH's membership, which pays annual dues in support of OGWH operations, consists almost exclusively of ACOG members.

Alternatively, if the Commission were unable to determine ACOG and OGWH affiliation under the indicated *per se* standard, ACOG asserts that affiliation should be found by examination of the factors identified at 11 C.F.R. §§ 100.5(g)(4)(ii) and 110.3(a)(3)(ii) with reference to the overall relationship between the two membership organizations. Specifically, examination of that overall relationship between ACOG and OGWH – based, again, on the facts set forth above under "ACOG / OGWH Relationship" – indicates that the affiliation factors at, *inter alia*, clauses (B), (C), (D), (E), (F) and (I) of the applicable regulations are satisfied.

Thus, for example, the OGWH Bylaws' explicit specification of the numerous ACOG officers and past officers who must constitute the OGWH Board of Directors – which exercises exclusively OGWH's policy-making and governance authority – demonstrates that ACOG "has the authority or ability to direct or participate in the governance of [OGWH] . . . through provisions of . . . bylaws" (11 C.F.R. §§ 100.5(g)(4)(ii)(B) and 110.3(a)(3)(ii)(B)).¹⁵ Similarly, the fact that OGWH's entire membership (presently, approximately 7,700 individuals) consists almost exclusively of ACOG members demonstrates that ACOG and OGWH have "a common or overlapping membership . . . which indicates a formal or ongoing relationship between the [two] . . . organizations . . . (11 C.F.R. §§ 100.5(g)(4)(ii)(D) and 110.3(a)(3)(ii)(D)). Likewise, the facts set forth above indicate "a formal or ongoing relationship" between ACOG and OGWH in the context of their "common or overlapping officers or employees" (11 C.F.R. §§ 100.5(g)(4)(ii)(E) and 110.3(a)(3)(ii)(E)), and the specified role on OGWH's Board of Directors of certain past ACOG officers and Executive Board members (11 C.F.R. §§ 100.5(g)(4)(ii)(F) and 110.3(a)(3)(ii)(F)). And, establishment of OGWH by vote of ACOG's Executive Board demonstrates that ACOG "had an active [and] significant role in the formation of [OGWH]" (11 C.F.R. §§ 100.5(g)(4)(ii)(I) and 110.3(a)(3)(ii)(I)).

Accordingly, given their overall relationship and the overwhelming evidence of "a formal or ongoing relationship" between them, ACOG requests that the Commission find that ACOG and OGWH are affiliated under the cited *per se* standard or, alternatively, under the relevant factors criteria.

2. If ACOG and OGWH are affiliated, then it is permissible for OGWH and Ob-Gyn PAC to solicit eligible ACOG members for contributions to Ob-Gyn PAC.

ACOG understands that, under Commission regulations and rulings, a membership organization such as OGWH and its SSF (*i.e.*, Ob-Gyn PAC) may solicit contributions to the SSF from the eligible members of an affiliated membership organization such as ACOG. However, before selling its membership lists to persons that ACOG knows intend to utilize such lists to solicit ACOG's members, ACOG requests confirmation that such solicitations are permissible.

¹⁵ See OGWH Bylaws, Article II, Section 2.02. *Contrast* Advisory Opinion 2004-41, issued December 16, 2004 (at "B" under "Legal Analysis").

In this regard, ACOG cites Advisory Opinion 1981-55. There, based on the more limited affiliation indicia in effect at that time,¹⁶ the Commission first found affiliation between the American Medical Association ("AMA"), described therein as "a not-for-profit corporation and membership organization consisting of individuals possessing a Doctor of Medicine, or the equivalent, or pursuing a course of study leading to such a degree," and the American Medical Association Auxiliary, Inc. ("Auxiliary"), described as "a not-for-profit corporation and membership organization which purpose . . . is to 'assist programs of the AMA that improve the health and quality of life for all people.'"¹⁷ Thus, the entities examined in Advisory Opinion 1981-55 were, like ACOG and OGWH, both nonprofit membership organizations that were incorporated.

Having determined that the two incorporated membership organizations were affiliated (under the more restrictive rules then in effect), the Commission then ruled in Advisory Opinion 1981-55 that the AMA and its SSF, the American Medical Association Political Action Committee ("AMPAC"), could in fact solicit contributions from members of the affiliated Auxiliary:

[T]he PAC of the first organization may extend its solicitable class to include the members of its affiliate, as well as its own members.

* * *

Accordingly, AMPAC, the separate segregated fund of the AMA, may solicit contributions from the members of the Auxiliary.¹⁸

The Commission's specific regulations pertaining to solicitations by membership organizations or corporations without capital stock, apart from trade associations, are silent with respect to the authority to solicit the members of an affiliated membership organization or corporation without capital stock.¹⁹ However, Advisory Opinion 1981-55 addresses affiliated membership organizations having a relationship analogous to the ACOG / OGWH relationship, and apparently provides controlling precedent by which the Commission can, as requested by ACOG (and assuming ACOG and OGWH are affiliated), confirm the permissibility of OGWH/Ob-Gyn PAC solicitation of contributions from eligible ACOG members.

¹⁶ Subsequently, the Commission substantially revised the affiliation regulations both to elaborate on, and add to, the factors that could be considered to determine the existence of an affiliated relationship. See 54 Fed. Reg. 34,098 (Aug. 17, 1989).

¹⁷ CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5635, at p. 10,816.

¹⁸ *Id.* at pp. 10,816, 10,817.

¹⁹ See 11 C.F.R. § 114.7(a). However, ACOG notes that the Commission's "Campaign Guide for Corporations and Labor Organizations" (June 2001) clarifies, at page 23 thereof, that "[a] connected organization or its SSF may also solicit the executive and administrative personnel, stockholders and members (and the families of those persons) of the connected organization's subsidiaries, branches, divisions, affiliates and state or local units" (emphasis added).

3. If such OGWH/Ob-Gyn PAC solicitations of ACOG members are permissible, ACOG's Fellows and Junior Fellows may be solicited because they are "members" within the meaning of the Commission's definition thereof.

The Commission defines "member" at 11 C.F.R. §114.1(e)(2). Under the stated criteria, ACOG understands that both Fellows and Junior Fellows are members within the meaning of that definition, and therefore solicitable.

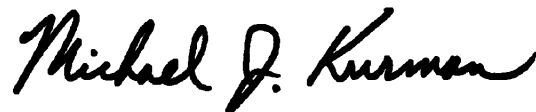
As indicated above, Fellows and Junior Fellows must satisfy specific ACOG requirements to qualify for membership. Candidates for each of those membership categories must apply for membership, be accepted/elected by ACOG, and affirmatively accept membership therein by payment of initial dues. Thereafter, Fellows and Junior Fellows, in order to maintain membership status, must pay membership dues annually in an amount predetermined from time to time by ACOG.²⁰

Consequently, ACOG requests that the Commission confirm that ACOG's Fellows and Junior Fellows are members who may be solicited by OGWH/Ob-Gyn PAC if such solicitations of ACOG's members are in fact permissible.

CONCLUSION

For the reasons stated herein, ACOG requests that the Commission issue an Advisory Opinion confirming the positions set forth in this advisory opinion request. If there are questions, or if elaboration is required on the matters addressed herein, please contact the undersigned at any time.

Respectfully submitted,



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Appendices A and B (and attachments thereto)

²⁰ Additionally, as described above, Fellows have full voting rights. (Junior Fellows are ineligible to vote.)

APPENDICES

APPENDIX A: ACOG -- Membership Organization Criteria

Attachment 1: ACOG Articles

Attachment 2: ACOG Bylaws

APPENDIX B: OGWH -- Membership Organization Criteria

Attachment 1: OGWH Articles

Attachment 2: OGWH Bylaws

ACOG -- MEMBERSHIP ORGANIZATION CRITERIA

ACOG is a "membership organization" as defined at 11 C.F.R. § 114.1(e):

ACOG is a "corporation without capital stock" (11 C.F.R. § 114.1(e)(1)). *See* 1951 "Articles of Incorporation" (amended in 1956 to change the corporation's name from "American Academy of Obstetrics and Gynecology" to the present "The American College of Obstetricians and Gynecologists")("ACOG Articles")(Attachment 1). *See also* "The American College of Obstetricians and Gynecologists Bylaws," as amended through May 2004 ("ACOG Bylaws") (Attachment 2).

Further:

(i) ACOG "[i]s composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's . . . bylaws . . ." (11 C.F.R. 114.1(e)(1)(i)). ACOG's membership consists principally of "Fellows" who "shall have the right to vote and to hold office in [ACOG]" (ACOG Bylaws, Article IV, Section 4). As elaborated in the Request at p. 5, "Fellows" (and, as indicated therein, "Junior Fellows") meet the regulatory criteria for "members" of a membership organization under the Commission's applicable definition at 11 C.F.R. § 114.1(e)(2).

(ii) ACOG "[e]xpressly states the qualifications and requirements for membership in its . . . bylaws . . ." (11 C.F.R. § 114.1(e)(1)(ii)). *See* ACOG Bylaws, Articles IV (re: Fellows), V (re: Junior Fellows), VI (re: Honorary Fellows), VII (re: Life Fellows), VIII (re: Associate Members) and IX (re: Educational Affiliates).

(iii) ACOG in fact "[m]akes its . . . bylaws . . . available to its members upon request" (11 C.F.R. § 114.1(e)(1)(iii)). Moreover, the ACOG Bylaws are available to the general public (*i.e.*, not simply ACOG members) on the ACOG website at www.acog.org.

(iv) ACOG "[e]xpressly solicits persons to become members" (11 C.F.R. § 114.1(e)(1)(iv)). ACOG's website reports that "about 95 percent of American obstetrician-gynecologists are affiliated with ACOG." ACOG has a Vice President for Fellowship Activities who is responsible for the membership services department that, among other functions, actively solicits members. Membership solicitation activities focus on recruitment of Junior Fellows through residency programs, as most Fellows were initially elected to ACOG membership in the Junior Fellows category. Recruitment activities also include solicitation of new members on ACOG's website, and at booths at ACOG-sponsored meetings.

(v) ACOG "[e]xpressly acknowledges the acceptance of membership . . ." (11 C.F.R. § 114.1(e)(v)). For example, a Fellowship Certificate is provided to those physicians elected as Fellows to ACOG. At their discretion, ACOG Fellows may also have their names included in ACOG's publicly-available "Physician Directory." Junior Fellows receive a "Letter of Election" and membership card upon their election to ACOG membership.

(vi) ACOG in fact "[i]s not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office (11 C.F.R. § 114.1(e)(vi)). *See* ACOG Articles, Paragraph 5(a)(re: purposes); ACOG Bylaws, Article II,

Section 1 (re: objectives); ACOG "Operational Mission Statement" (quoted at Request, p. 2). In addition, as stated in the Request (at p. 1), ACOG operates under IRC Section 501(c)(3) and "is prohibited from, and would not, engage in political activities." See also ACOG Articles, Paragraph 5(b)(2).

Attachment 1 -- ACOG Articles

Attachment 2 -- ACOG Bylaws

**THE ARTICLES OF INCORPORATION UNDER
THE GENERAL NOT-FOR-PROFIT CORPORATION ACT**

To Edward J. Barrett, Secretary of State, Springfield, Illinois:

We, the undersigned, W.D. Beacham, MD, Ralph A. Reis, MD, and Herbert E. Schmitz, MD, being natural persons of the age of twenty-one years or more and citizens of the United States, for the purpose of forming a corporation under the "General Not-For-Profit Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

1. The name of the corporation is the American Academy of Obstetrics and Gynecology.
2. The period of duration of corporation is Perpetual.
3. The address of its initial Registered Office in the State of Illinois is 116 South Michigan Avenue in the City of Chicago, County of Cook, and the name of its initial Registered Agent at said address is Ralph A. Reis, MD.
4. The first Board of Directors shall be ten (10) in number; their names being as follows: W.D. Beacham, MD, New Orleans, Louisiana; Carl P. Huber, MD, Indianapolis, Indiana; Louis H. Douglass, MD, Baltimore, Maryland; Ralph A. Reis, MD, Chicago, Illinois; Herbert E. Schmitz, MD, Chicago, Illinois; Philip F. Williams, MD, Philadelphia, Pennsylvania; Robert Glenn Craig, MD, San Francisco, California; John Parks, MD, Washington, DC; Samuel B. Kirkwood, MD, Winchester, Massachusetts; and Charles B. Kimball, MD, Seattle, Washington.
5.
 - a. The purposes for which the corporation (hereinafter referred to as the "College") is organized are: to foster and stimulate improvements in all aspects of the health care of women; to establish and maintain the highest possible standards for education; to foster the highest standards of practice in its relationship to public welfare; to promote high ethical standards in practice; to promote publications and encourage contributions to medical and scientific literature.
 - b. Notwithstanding the foregoing or any other provision of these Articles of Incorporation:
 - (1) The College is organized and shall be operated exclusively for educational, scientific and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal revenue statute and as described above, and no part of the net earnings of the College shall inure to the benefit of, or be distributable to, its members, Executive Board members, officers or other private persons, except that the College 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 above.
 - (2) No substantial part of the activities of the College shall be the carrying on of propaganda, or otherwise attempting, to influence legislation (except as provided in Section 501(h) of the Code or the corresponding provision of any future United States Internal revenue statute); and the College shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

continued . . .

**Articles of Incorporation
Page 2**

- (3) The College 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 Code or the corresponding provision of any future United States Internal revenue statute or (B) by a corporation, contribution; to which are deductible under Section 170(c)(2) of the Code or the corresponding provision of any future United States Internal revenue statute.
6. In the event of the dissolution of the College, the Executive Board shall, after paying or making provision for the payment of all the liabilities of the College, dispose of all the remaining assets of the College exclusively for the purposes of the College in such manner, or to such organization or organizations as shall at the time qualify as tax-exempt under Section 501(c)(3) of the Code or the corresponding provision of any future United States Internal revenue statute, as the Executive Board shall determine. Any of such assets not so disposed of shall be disposed of by the court of general jurisdiction of the county in which the principal office of the College is then located, exclusively for such purposes in such manner, or to such organization or organizations which are organized and operated exclusively for such purposes, as said court shall determine.

*The Articles of Incorporation were amended on May 11, 1954, to change the name of the corporation to The American College of Obstetricians and Gynecologists.



ACOG Bylaws

Amended May 2004

**The American College of Obstetricians and Gynecologists
Women's Health Care Physicians
PO Box 96920
409 12th Street, SW, Washington, DC 20090-6920
(202) 638-5577**

The American College of Obstetricians and Gynecologists Bylaws

Amended May 2004

ARTICLE I

Name

The name of the corporation is The American College of Obstetricians and Gynecologists, hereinafter sometimes referred to as "the College."

ARTICLE II

Objectives and Powers

Section 1. Objectives. The objectives of the corporation shall be to foster and stimulate improvements in all aspects of the health care of women; to establish and maintain the highest possible standards for education; to foster the highest standards of practice in its relationship to public welfare; to promote high ethical standards in practice; to promote publications and encourage contributions to medical and scientific literature.

Section 2. Powers. The College shall have all the powers of a not-for-profit corporation as are now or shall hereafter be conferred by the statutes of the State of Illinois.

ARTICLE III

Membership

Section 1. Fellows in All Categories. Fellows shall be elected in accordance with the bylaws of the College and with such additional rules which may from time to time be adopted. This shall include active, Honorary, Life, Corresponding, and Junior, and such other categories as may be established by the Executive Board.

Section 2. Other Membership Categories. These shall include Associate Members, Educational Affiliates, and such other categories as may be established by the Executive Board.

ARTICLE IV

Fellows, Their Qualifications, Proposal, Election, and Privileges

Section 1. Qualifications. A candidate for Fellowship in The American College of Obstetricians and Gynecologists must demonstrate the following qualifications and must meet the following requirements to the satisfaction of the Executive Board:

- a. Board certification in obstetrics and gynecology by the American Board of Obstetrics and Gynecology, Inc., or other certification as determined by the Executive Board.

- b. Continuous limitation of training and/or professional activities to obstetrics and/or gynecology for five years prior to the date of application. Exception may be made by the Executive Board.
- c. Demonstration of evidence of high ethical and professional standing, including clinical ability and experience.

Section 2. Proposals for Fellowship. The name of a candidate for Fellowship shall be proposed by a Fellow and shall be endorsed by a second Fellow in the candidate's district, neither of whom is a national, district, or section officer.

Section 3. Election. Election to Fellowship shall be by procedures established by the Executive Board.

Section 4. Privileges. Fellows shall have the right to vote and to hold office in the College. No Fellow may serve simultaneously in more than one elected office of the College, including the national, district, and section level.

ARTICLE V

Junior Fellows, Their Qualifications, Proposal, Election, and Privileges

Section 1. Qualifications. A candidate for Junior Fellowship must meet the following requirements to the satisfaction of the Executive Board:

Current participation in an approved residency program in obstetrics and gynecology; or, upon successful completion of such a program, immediate and continued limitation of professional activities exclusively to obstetrics and/or gynecology. Such training and/or practice shall be within the geographic confines of the College. Exception may be made by the Executive Board.

Section 2. Proposal and Election.

- a. The name of a candidate for Junior Fellowship shall be proposed by a Fellow in the candidate's district. The proposer may be a section, district, or national officer. The candidate's program director also may be the proposer.
- b. Election to Junior Fellowship shall be by procedures established by the Executive Board.

Section 3. Termination of Junior Fellowship. Junior Fellowship shall terminate:

- a. Upon election to another category of Fellowship in the College.

- b. Upon failure of the Junior Fellow to submit an application for Fellowship in the College within one year after the Junior Fellow becomes eligible to apply for Fellowship or Corresponding Fellowship, or within ten years after starting graduate training in obstetrics and gynecology, whichever occurs first. Exception may be made according to procedures established by the Executive Board.
- c. For other reasons as described in ARTICLE X with respect to Fellows.

Section 4. Privileges. Junior Fellows shall not be eligible to vote or hold office, but shall have the right to vote and hold office as related to Junior Fellow activities.

Section 5. Organization of Junior Fellows. Junior Fellows shall be organized according to guidelines established by the Executive Board, and shall not adopt bylaws but may adopt policies and procedures that do not conflict with College bylaws or policies.

ARTICLE VI

Honorary Fellows, Their Qualifications, Nomination, Election, and Privileges

Section 1. Qualifications. An individual of outstanding achievement in the field of obstetrics and gynecology, or in an allied discipline, from any country, may be elected to Honorary Fellowship.

Section 2. Nomination and Election. Nomination and election shall be according to procedures established by the Executive Board.

Section 3. Privileges. Honorary Fellows shall not be eligible to vote or hold office, and they shall not be required to pay initiation fees or national, district, or section dues.

ARTICLE VII

Life Fellows, Their Qualifications, Election, and Privileges

Section 1. Qualifications and Election. Any Fellow of the College, in good standing, who requests such action because of retirement or other sufficient reason, may be transferred to Life Fellowship according to procedures established by the Executive Board.

Section 2. Privileges. Life Fellows shall not be eligible to vote, hold office, or serve on the Committee on Nominations.

ARTICLE VIII

Associate Members (National and International), Their Qualifications, Election, and Privileges

Section 1. Qualifications. Any physician who has given valuable service in obstetrics and/or gynecology and who is not eligible to be a Fellow may be elected to Associate Membership.

Section 2. Election. Election to Associate Membership, in either category, shall be according to procedures established by the Executive Board.

Section 3. Privileges. Associate Members shall not be eligible to vote or hold office.

Section 4. Termination.

- a. Associate Member status may be terminated for resignation, delinquency, death, or other cause deemed sufficient by the Executive Board, without prior notice or hearing.
- b. Any Associate Member whose status has been terminated may reapply to the College under procedures established by the Executive Board.

ARTICLE IX

Educational Affiliates, Their Qualifications, and Appointment

Section 1. Qualifications. Any physician in a medical education or training program that would not qualify for Junior Fellowship, any medical student, or any individual with an advanced degree who through professional training and/or experience in women's health care is able to further the purposes of the College may be appointed an Educational Affiliate of the College.

Section 2. Appointment. Appointment to Educational Affiliate status shall be by procedures established by the Executive Board.

Section 3. Termination.

- a. Educational Affiliate status may be terminated by resignation, delinquency, death, or other cause deemed sufficient by the Executive Board, without prior notice or hearing.
- b. Any Educational Affiliate whose status has been terminated may reapply to the College under procedures established by the Executive Board.

ARTICLE X

Discipline and Termination of Fellowship

Section 1. Disciplinary Actions. The Executive Board shall have the power to issue a warning, censure, suspend for a stated period of time, or expel a Fellow in any category for failure to maintain the requirements for such Fellowship, for violations of the *Code of Professional Ethics* of the College, or for any other cause, which in its judgment shall be deemed sufficient. Disciplinary actions shall be decided according to procedures established by the Executive Board. These procedures shall include providing written notification to the Fellow of the reasons for the disciplinary action, the opportunity for a hearing, and a right to appeal to the Executive Board.

Section 2. Expulsion. An affirmative vote of at least two-thirds of the members of the Executive Board present at a duly constituted meeting shall be necessary to expel a Fellow in any category. Upon expulsion, all rights and privileges of Fellowship shall be forfeited and terminated. The certificates of Fellowship in the College shall be surrendered. Any Fellow who has been expelled may reapply to the College according to procedures established by the Executive Board.

Section 3. Delinquency. Fellows, Junior Fellows, and Corresponding Fellows must pay all dues and assessments required by the College, including national, district, and section dues. A Fellow, Junior Fellow, or Corresponding Fellow who fails to pay national, district, or section dues or assessments within six months after they become due shall be given notice of the delinquency and shall be terminated from Fellowship if timely payment is not made. Any individual whose Fellowship has been terminated for reasons of delinquency may be reinstated according to procedures established by the Executive Board.

ARTICLE XI

Elected National Officers and Other Executive Board Members

Section 1. National Officers. The national officers of the College shall consist of the following:

President	Treasurer
President Elect	Secretary
Immediate Past President	Assistant Secretary
Vice President	Executive Vice President

Section 2. Committee on Nominations.

a. Composition.

1. The three past presidents most recently retired from the Executive Board who are available shall serve on the committee, and one of them shall serve as chair, according to procedures established by the Executive Board.
 2. Each district shall have one representative as a member of the committee and two alternates to be selected in the following manner:
 - (a) The district chairs who have retired from the Executive Board during the calendar year preceding the first meeting of the committee shall serve as the representatives of their districts on the committee.
 - (b) A representative for each of the remaining districts shall be elected by his or her district advisory council at the time of the annual district meeting.
 - (c) Two alternate representatives shall be elected in order of preference by each district advisory council at the time of the annual district meeting.
 3. Two additional members of the Committee on Nominations shall be Fellows from two different districts who are within the first five years of Fellowship, selected according to procedures established by the Executive Board. Neither one shall be from the same district as a past president who is a member of the Committee on Nominations. No person shall serve in this capacity for more than one year.
 4. No member of the Executive Board or salaried employee of the College shall serve on the Committee on Nominations.
 5. No person shall serve on the committee for more than three consecutive years.
- b. Duties.** The duties of the Committee on Nominations shall be to prepare a slate of nominees, one for each vacant national officer or Fellow-at-Large Executive Board position, from among the names submitted to the committee under the procedures described in Section 3 of this Article; that is, President Elect, Vice President, Treasurer, Secretary, Assistant Secretary, and Fellow-at-Large on the Executive Board, in that order.

Section 3. Candidates for Nomination.

- a. Each district advisory council shall encourage appropriate candidates from within the district to submit their credentials and documents for candidacy for vacant national officer or Fellow-at-Large Executive Board positions.
- b. Each district advisory council may also submit the names, credentials, and documents of up to one candidate for each vacant national officer or Fellow-at-Large Executive Board

position. This shall be done according to procedures established by the Executive Board.

- c. Candidates for nomination must declare the office or offices for which they are candidates according to procedures established by the Executive Board. Candidates for a Fellow-at-Large Executive Board position must be within the first five years of Fellowship at the time of nomination.
- d. No salaried employee of the College shall be eligible for nomination.

Section 4. Election. The slate of nominees for all elective offices shall be submitted in writing to all voting Fellows at least thirty days before the Annual Meeting. The election of all nominees shall be by majority vote of all Fellows, in person or by proxy, voting at the Annual Business Meeting. Nominations will not be accepted from the floor during the Annual Business Meeting.

Section 5. Term of Office. The President, President Elect, Immediate Past President, Vice President, and Assistant Secretary shall serve a one-year term of office which shall expire upon adjournment of the Annual Business Meeting following their election or accession to office. At the expiration of their terms of office, the President Elect shall automatically become President and the President shall automatically become Immediate Past President. The Treasurer and Secretary shall serve for three years, with their terms of office expiring at the adjournment of the Annual Business Meeting three years following their election. The Fellows-at-Large on the Executive Board shall serve for two years with their terms of office expiring at the adjournment of the Annual Business Meeting two years following their election.

Section 6. Re-election. Officers shall be eligible for re-election. The Treasurer and Secretary, however, shall not serve more than two three-year terms. Additionally, the Fellows-at-Large on the Executive Board shall not serve more than one term as a Fellow-at-Large.

Section 7. Duties of Officers.

- a. **President.** The President shall preside at all meetings of the College and of the Executive Board. He or she shall deliver a presidential address at the Annual Clinical Meeting and shall perform all other duties usually associated with the office of President, including the appointment and direction of all committees authorized by the Executive Board except the Committee on Nominations. He or she shall be an ex officio member of all committees except the Committee on Nominations. Whenever, in the opinion of the Executive Board, the President is unable to fulfill the duties, these shall be assumed by the Vice President.
- b. **President Elect.** The President Elect shall name committee appointees, except the Committee on Nominations, during his or her term of office. These appointees will begin to function on the assumption of the presidency by the President Elect. If the President Elect is permanently unable to perform the duties, the Executive Board shall elect a successor from nominees submitted by the Committee on Nominations.
- c. **Immediate Past President.** The Immediate Past President shall carry out the duties assigned by the President. If the Immediate Past President is permanently unable to perform the duties, the most recent available past president shall replace him or her.
- d. **Vice President.** The Vice President shall assist and cooperate with the President. When for any reason the President is unable to serve as President, the Vice President shall act in his or her stead and shall assume the duties of the President if the President is temporarily unable to perform them. If the President is permanently unable to perform the duties, the Vice President becomes President. If the Vice President is per-

manently unable to perform the duties, the Executive Board shall elect a successor.

- a. **Treasurer.** The Treasurer shall be responsible for collecting all monies, for making all authorized disbursements, for rendering an account thereof at the Annual Business Meeting, and for arranging an annual audit of College accounts. The Treasurer shall be under bond upon such terms, conditions, and for such amounts as shall be prescribed by the Executive Board. If the Treasurer is permanently unable to perform the duties, the Executive Board shall elect a successor.
- f. **Secretary.** The Secretary shall be responsible for the records of all meetings of the College and of the Executive Board, and for the correspondence of the College, and shall perform all the ordinary duties of the office. The Secretary shall be an ex officio member of all committees, except the Committee on Nominations.
- g. **Assistant Secretary.** The Assistant Secretary shall assist the Secretary and replace the Secretary whenever necessary. The Assistant Secretary shall serve as chair of the Committee on Credentials. If the office of Assistant Secretary becomes vacant, the Executive Board shall elect a successor.
- h. **Executive Vice President.** The Executive Vice President shall be responsible for overall management of the College office under policies of the Executive Board. The Executive Vice President is appointed by the Executive Board.

ARTICLE XII

Annual and Special Meetings

Section 1. Annual Business Meeting. A meeting of the College, to be known as the Annual Business Meeting, shall be held each year.

Section 2. Time and Place of the Annual Business Meeting. The time and place of the Annual Business Meeting shall be designated by the Executive Board. The Secretary shall give notice thereof by mail to each Fellow not less than five nor more than sixty days before the date of the meeting.

Section 3. Transaction of Business. Election of officers, certification of replacements for the Executive Board, and transaction of other business shall be conducted at the Annual Business Meeting.

Section 4. Special Meetings. Special meetings of the College may be called by the Executive Board for such time and place as it may designate provided notice thereof by mail shall have been given to each Fellow not less than five nor more than sixty days before the date of the meeting, which notice shall state the purpose or purposes for which the meeting is called.

Section 5. Quorum and Manner of Acting. Five percent of the Fellows of the College, in person or by proxy, shall constitute a quorum for the transaction of business at the Annual Business or any specially called meeting of the College. An act of the majority of the Fellows voting in person or by proxy shall be an act of the Fellows.

ARTICLE XIII

Executive Board

Section 1. Members. The Executive Board shall consist of the President, Immediate Past President, President Elect, Vice President, Treasurer, Secretary, Assistant Secretary, Public Member, chair of the Junior Fellow College Advisory Council, the district chairs, two Fellows-at-Large, and one ex officio representative from each of the subspecialties recognized by the American Board of Obstetrics and Gynecology, Inc. (ABOG).

Section 2. Powers and Duties. The general management of the College shall be vested in the Executive Board, whose powers and duties shall be those ordinarily held and performed by the board of directors of a corporation. It shall:

- a. Transact all business required to carry out the objectives of the organization arising in the interim between Annual Meetings.
- b. Manage, control, and conserve the property interests of the College.
- c. Elect or appoint Fellows, Junior Fellows, Honorary Fellows, Life Fellows, Corresponding Fellows, Associate Members, and Educational Affiliates.
- d. Fix initiation fees, national dues, and special assessments of Fellows, Junior Fellows, Corresponding Fellows, Associate Members, Educational Affiliates, and adjunct members of sections.
- e. Approve district and section dues.
- f. Fix boundaries of districts and sections and create new districts and sections when necessary.
- g. Call special meetings of the College.
- h. Create standing and temporary committees.
- i. Act as the nominating committee for the position of Public Member.
- j. Resolve disputes between the section, district, and national levels of the organization, including an appropriate process of appeal.
- k. Transact all business, not otherwise provided for, that may pertain to the College.

Section 3. Time and Place of Meetings. The President of the College shall set the time and place of the meetings of the Executive Board. At least fifteen days notice of such meetings shall be given by the Secretary.

Section 4. Quorum and Manner of Acting.

- a. Fifty percent of the members of the Executive Board shall constitute a quorum for the transaction of business.
- b. The act of a majority of the members of the Executive Board present at a duly called meeting at which a quorum is present shall be the act of the Executive Board, unless the act of a greater number is required by law, the Articles of Incorporation, or these bylaws.
- c. Executive Board members may participate in and act at any meeting of the Executive Board through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can communicate with each other.
- d. Any action to be taken at a meeting of the Executive Board may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all of the Executive Board members entitled to vote.

Section 5. Public Member. The Public Member shall be nominated by the Executive Board, and the name submitted in writing to all voting Fellows at least thirty days before the Annual Meeting. The election shall be by majority vote of all Fellows, in person or by proxy, voting at the Annual Business Meeting. The term of office shall be two years, expiring at the adjournment of the Annual Business Meeting two years following the election. The Public Member shall not serve more than two terms.

Section 6. Ex Officio Representatives. The ex officio representatives shall be ACOG Fellows who are certified in ABOG-recognized subspecialties, one from each ABOG-recognized subspecialty, and nominated by the subspecialty organizations selected according to procedures established by the Executive Board. Only one subspecialty representative shall be allowed to vote. Procedures to select the voting representative shall be established by the Executive Board. The term of office

for each representative shall be one year, expiring at the adjournment of the Annual Business Meeting one year following selection. An ex officio representative shall not serve more than one term.

Section 7. Executive Committee. The Executive Committee shall consist of the President, Immediate Past President, President Elect, at least one district chair, and other members as appointed by the Executive Board. It shall transact business arising in the interim between Executive Board meetings, and shall have such other powers and duties as authorized by the Executive Board. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business.

ARTICLE XIV Districts

Section 1. Membership.

- a. **General.** The membership of each district shall consist of Fellows in all categories, whose official address is within the district, except as otherwise provided by the Executive Board.
- b. **Adjunct District Members.** In those districts where other obstetric and gynecologic societies exist, any member of such societies who is not eligible to be and has not been a Fellow in the College may be elected to nonvoting membership in that district; such nonvoting member to be designated as an adjunct member of the district. Such election shall be carried out according to procedures and subject to restrictions and conditions established by the Executive Board. Adjunct members of the district shall not be members of the national organization of the College, and they shall not be eligible to hold office in the district. They may take part in district activities not in conflict with the foregoing definition of the status of adjunct members.

Section 2. District Officers. The district officers shall consist of a chair, a vice chair, and such other officers as may be required by the districts or by the Executive Board. To be eligible for election or appointment to, or continued service in, a district officer position, a Fellow's principal place of business must be in the district or branch of military service he or she represents.

- a. **Term of Office.** The district chair and vice chair shall serve in their respective offices for a term of three years and may not succeed themselves. They shall assume office at the next district meeting following their election. A Fellow may serve only one term as district vice chair and one term as district chair.
- b. **Method of Election.** A district Nominating Committee shall be formed to prepare a slate of nominees to replace the retiring district officers according to procedures established by the Executive Board. The most immediately available past district chair shall serve as the chair of the Nominating Committee. The slate adopted shall be sent to all Fellows of the district for balloting by mail according to procedures established by the Executive Board.
- c. **Replacement.** Whenever, in the opinion of the district advisory council and subject to Executive Board guidelines, a district officer, other than the district chair, has vacated, or has failed or is unable to fulfill the duties of the office, the district advisory council shall elect a replacement to complete the unexpired term. When the officer is the district chair, the district vice chair shall replace him or her to complete the unexpired term.

Section 3. Duties of District Chair.

- a. To serve on the Executive Board and submit reports and recommendations to the Executive Board.

- b. To consider problems arising in the district and act upon them.
- c. To call and preside at the annual business meeting and at other meetings of the district.
- d. To call and preside at the meetings of the district advisory council.
- e. To direct and coordinate the activities of the section chairs in the district.
- f. To encourage recruitment and other activities of Junior Fellows in the district.
- g. To appoint members of district standing and ad hoc committees.
- h. To evaluate the qualifications of applicants for Fellowship in all categories and to make recommendations to the Executive Board.

Section 4. Duties of District Vice Chair. The district vice chair shall assist the district chair. When, for any reason, the district chair is unable to serve in the capacity as district chair, the district vice chair shall replace him or her.

Section 5. District Advisory Council.

- a. The district advisory council shall consist of the district officers, section chairs, and such other representatives as selected by the council. Section vice chairs shall serve as members when so defined by the district policies and procedures. District and section officers shall be the only voting members of the district advisory council.
- b. The advisory council shall not adopt bylaws but may adopt policies and procedures for the management of its own affairs, provided such policies and procedures are not in conflict with College bylaws or policies.
- c. Each district advisory council, through its district chair, shall be responsible to the Executive Board for the management of the affairs of the College within its district. Its duties shall include the following:
 1. To meet at least once annually.
 2. To transact all district business arising in the interim between annual business meetings of the district, as is necessary to carry out the objectives of the College within the district.
 3. To manage, control, and conserve the property interests of the district.
 4. To fix district and section dues of Fellows, subject to the approval of the Executive Board.
 5. To define the duties of district officers.
 6. To create standing and ad hoc committees of the district and to provide any necessary definition of committee duties.
 7. To vote by mail or electronic means when necessary.
 8. To manage the affairs of a section when both section chair and section vice chair are unable to act.
 9. To replace a section officer, other than the section chair, who, in the opinion of the council and subject to Executive Board guidelines, has vacated or has failed or is unable to fulfill the duties of the office. When the officer is the section chair, the section vice chair shall replace him or her to complete the unexpired term.
 10. To review, for approval or disapproval, a proposal by a section to adopt section policies and procedures.
 11. To receive the slate of section officers as determined by the section Nominating Committee.

Section 6. Internal Regulations.

- a. The district activities, policies, and procedures shall not conflict with College bylaws or policies.
- b. The district and section officers may not obligate the College

In any manner unless specifically authorized by the Executive Board.

ARTICLE XV Sections

Section 1. Membership.

- a. *General.* The membership of each section shall consist of Fellows in all categories whose official address is within the section, except as otherwise provided by the Executive Board.
- b. *Adjunct Section Members.* In those sections where other obstetric and gynecologic societies exist, any member of such societies, who is not eligible to be and has not been a Fellow in the College, may be elected to nonvoting membership in that section; such nonvoting member to be designated as an adjunct member of the section. Such election shall be carried out according to procedures and subject to restrictions and conditions established by the Executive Board. Adjunct members of the section shall not be members of the district or the national organization of the College, and they shall not be eligible to hold office in the section. They may take part in section activities not in conflict with the foregoing definition of the status of adjunct members.

Section 2. Section Officers. The section officers shall consist of a chair, a vice chair, and such other officers as may be required by the sections. To be eligible for election or appointment to, or continued service in, a section officer position, a Fellow's principal place of business must be in the section or branch of the military service he or she represents.

- a. *Term of Office.* The section chair and vice chair shall serve in their respective offices for a term of three years and may not succeed themselves. They shall assume office at the next annual district business meeting following their election. A Fellow may not serve more than one term as section vice chair and one term as section chair without written approval of the Executive Board upon recommendation of the district advisory council.
- b. *Method of Election.* A section Nominating Committee shall be formed to prepare a slate of nominees to replace the retiring section officers according to procedures established by the Executive Board. The most immediately available past section chair shall serve as the chair of the Nominating Committee. The slate adopted shall be sent to all Fellows of the section for balloting by mail according to procedures established by the Executive Board.
- c. *Dues.* Section dues may be proposed to the district advisory council by the section officers or existing section advisory council.
- d. *Policies and Procedures.* Sections shall not have bylaws but may adopt policies and procedures by approval of the section officers or existing section advisory council, subject to approval by the district advisory council.

Section 3. Duties of Section Chair.

- a. To serve as a member of the district advisory council.
- b. To keep informed about the purposes and policies of the College and the conditions in the section relating to these policies.
- c. To consider problems in the section and to submit reports and recommendations to the district chair and the district advisory council.
- d. To coordinate the activities of the Fellows and Junior Fellows so that the section exerts a strong influence to improve the health care of women at the local level.

- e. To stimulate interest in the specialty of obstetrics and gynecology and in the College among medical students, residents, nurses, and other health personnel in the section.
- f. To evaluate the qualifications of applicants for Fellowship from the section and to make recommendations to the district chair.
- g. To appoint section committees as necessary.
- h. To preside at meetings of the section advisory council when such council is authorized by section policies and procedures. When a section advisory council is authorized, section officers shall be the only voting members of the section advisory council.

Section 4. Duties of Section Vice Chair.

- a. To appoint and direct a section Membership Committee.
- b. To assist the section chair.
- c. To serve in the capacity as section chair when, for any reason, the section chair is unable to serve.

Section 5. Internal Regulations. The section activities, policies, and procedures shall not conflict with district or with College bylaws or policies.

ARTICLE XVI Publications

The Executive Board shall foster and promote publications and contributions to medical and other scientific literature connected with the objectives and purposes of the College. Payment of dues shall entitle Fellows in all categories and most members to a subscription of *Obstetrics & Gynecology* and other publications designated by the Board as a benefit of membership.

ARTICLE XVII Parliamentary Authority

Robert's Rules of Order Newly Revised shall apply to the proceedings of the College, except in such cases as are covered by the bylaws.

ARTICLE XVIII Offices

The corporation shall have, and continuously maintain, in the State of Illinois, a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Illinois as the Executive Board may determine.

ARTICLE XIX Contracts and Checks

Section 1. Contracts. The Executive Board may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, 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.

Section 2. Checks. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation, and in such manner as shall be established by the Executive Board.

ARTICLE XX

Fiscal Year

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

ARTICLE XXI

Indemnification

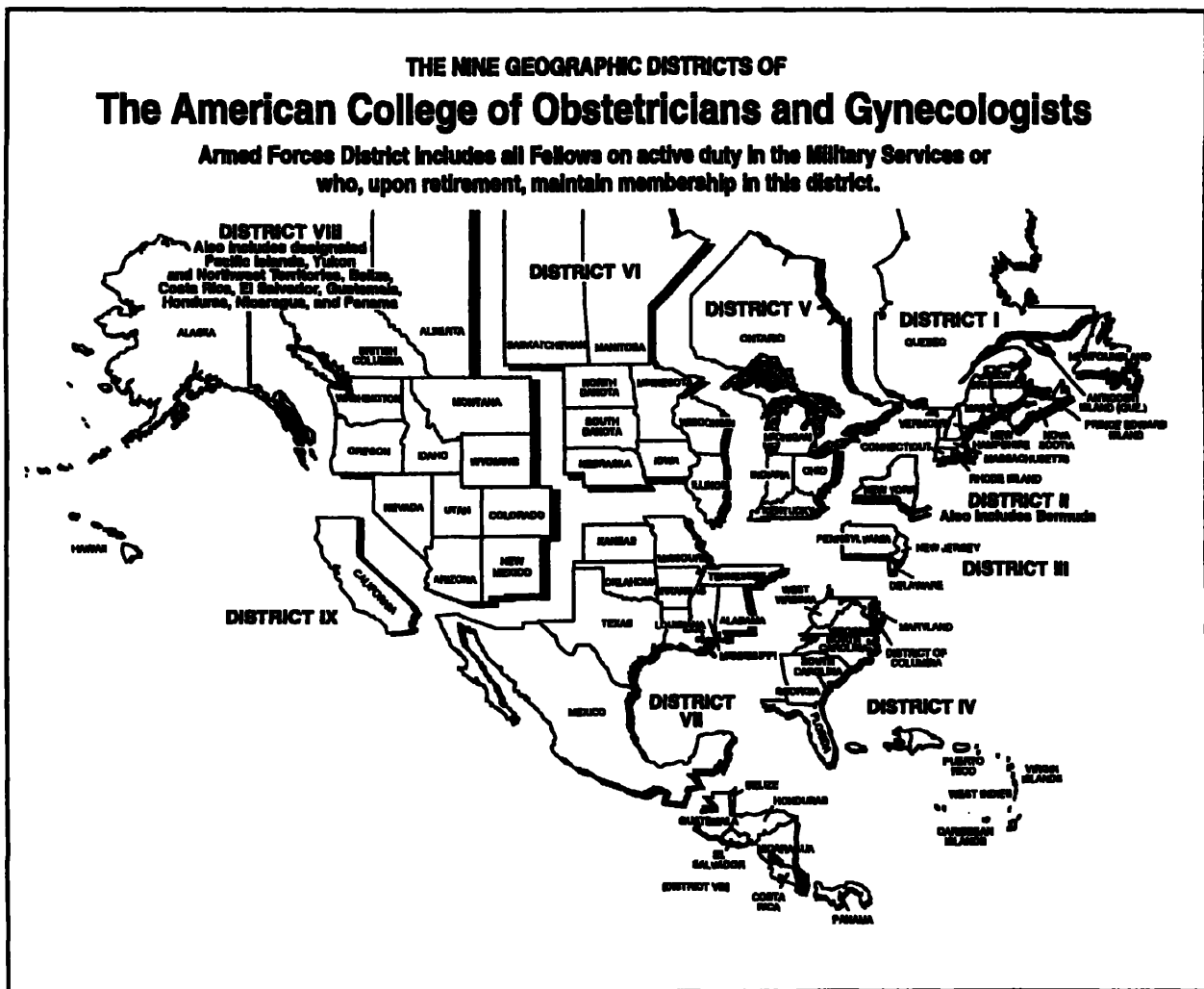
The College shall indemnify its officers, Executive Board members, committee members, employees, and each person serving at the request of the College as a representative to another organization as a member, director, trustee or officer or delegate to the other organization, against such liabilities, costs, and expenses, in such manner,

under such circumstances, and to such extent as is required or permitted by applicable Illinois law. The College may purchase and maintain insurance against the financial obligations described herein.

ARTICLE XXII

Amendments

Vote on proposed amendments to these bylaws shall be taken at the Annual Business Meeting of the College. Official written notification of proposed amendments approved by the Executive Board at two duly constituted meetings shall be submitted to the Fellows at least thirty days before the Annual Business Meeting at which the vote is to be taken. A two-thirds vote of the Fellows voting, in person or by proxy, on any proposed amendment shall be required for its adoption.



OGWH – MEMBERSHIP ORGANIZATION CRITERIA

OGWH is a "membership organization" as defined at 11 C.F.R. § 114.1(e):

OGWH is a "corporation without capital stock" (11 C.F.R. § 114.1(e)(1)). See "Articles of Incorporation of Ob-Gyns for Women's Health," and 2004 Articles of Amendment thereto ("OGWH Articles")(Attachment 1).¹ See also "Bylaws of Ob-Gyns for Women's Health," adopted as of July 14, 2000 and as subsequently amended ("OGWH Bylaws")(Attachment 2).²

Further:

(i) OGWH "[i]s composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's . . . bylaws . . ." (11 C.F.R. 114.1(e)(1)(i)). OGWH is governed by its Board of Directors (see OGWH Bylaws, Article II), all of whom "must be members in good standing of [OGWH]" (OGWH Bylaws, Article III, Section 3.02).

(ii) OGWH "[e]xpressly states the qualifications and requirements for membership in its . . . bylaws . . ." (11 C.F.R. § 114.1(e)(1)(ii)). See OGWH Bylaws, Article III, Section 3.02 ("Members of [OGWH] shall be those people who pay annual dues to [OGWH] of a specific amount predetermined by [OGWH].").

(iii) OGWH in fact "[m]akes its . . . bylaws . . . available to its members upon request" (11 C.F.R. § 114.1(e)(1)(iii)).

(iv) OGWH "[e]xpressly solicits persons to become members" (11 C.F.R. § 114.1(e)(1)(iv)). See OGWH Bylaws, Article III, Section 3.01 ("[OGWH] shall expressly solicit persons to become members of the organization . . ."). OGWH very actively solicits members among, *inter alia*, ACOG's membership.

(v) OGWH "[e]xpressly acknowledges the acceptance of membership . . ." (11 C.F.R. § 114.1(e)(v)). See OGWH Bylaws, Article III, Section 3.01 ("[OGHW] . . . shall expressly acknowledge the acceptance of membership, such as by sending a membership card or adding the member's name to a newsletter list.").

(vi) OGWH in fact "[i]s not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office (11 C.F.R. § 114.1(e)(vi)). See OGWH Articles, Fourth Paragraph; OGWH Bylaws, Article I, Section 1.02. See also OGWH Bylaws, Article V.

Attachment 1 -- OGWH Articles

Attachment 2 -- OGWH Bylaws

¹ The attached OGWH Articles refer to "Physicians for Women's Health," the corporation's original name. As reflected in the Articles of Amendment attached thereto, in late 2004, the name was changed to Ob-Gyns for Women's Health.

² The most recent amendment to the OGHW Bylaws, in September 2004, reflected the corporate name change from Physicians for Women's Health to Ob-Gyns for Women's Health.

ARTICLES OF INCORPORATION
OF
PHYSICIANS FOR WOMEN'S HEALTH

FILE
IN - 7 200

**TO: Department of Consumer and Regulatory Affairs
Corporations Division
Washington, D.C.**

We, the undersigned natural persons of the age of eighteen years or more, acting as incorporators, adopt the following Articles of Incorporation pursuant to the District of Columbia Non-Profit Corporation Act:

FIRST: The name of the corporation is **Physicians for Women's Health.**

SECOND: The period of duration is **perpetual.**

THIRD: The corporation shall have non-voting members whose classes, qualifications, rights and privileges, shall be as set forth in the bylaws.

FOURTH: The corporation is organized and will be operated exclusively for the purposes of:

- **advocating laws and public policies that support quality health care for women;**
- **advocating laws and public policies that support the field of obstetrics and gynecology; and**
- **increasing awareness among its members and the public of the changing public policies and legislation related to women's health care.**

In pursuance of these purposes it shall have the powers to do all things necessary, proper and consistent with maintaining its tax-exempt status under section 501(c)(4). All references to sections in these Articles refer to the Internal Revenue Code of 1986 as amended or to comparable sections of subsequent internal revenue codes. The corporation shall not participate or intervene in political campaigns on behalf of or in opposition to any candidate for public office to an extent which would disqualify it from tax exemption under section 501(c)(4). Notwithstanding any other provision of these Articles or of any Bylaws adopted thereunder, this corporation shall not take any action not permitted by the laws which then apply to this corporation.

FIFTH: No part of the net earnings of the corporation shall inure to the benefit of or be distributed to any director, employee or other individual, partnership, estate, trust or corporation having a personal or private interest in the corporation. Compensation for services actually rendered and reimbursement for expenses actually incurred in attending to the affairs of this corporation shall be limited to reasonable amounts. Upon dissolution of the corporation, its assets shall be disposed of exclusively for the purposes of the corporation or distributed to such organizations organized and operated exclusively for the promotion of social welfare or for charitable purposes which shall, at the time, qualify as exempt organizations under sections 501(c)(4) or 501(c)(3).

SIXTH: The registered agent is Gail Harmon and the address, including street and number, of its initial registered office is 1726 M Street, NW, Suite 600, Washington, DC, 20036.

SEVENTH: The internal affairs of the corporation shall be regulated by its Board of Directors as described in the Bylaws. The members of the Board of Directors shall be those individuals elected, from time to time, in accordance with the Bylaws. The number of directors constituting the initial Board of Directors is five (5), and the names and addresses, including street number, of the persons who are to serve as the initial directors until the first annual meeting, or until their successors are elected and qualified, are:

Thomas C. Rowland, Jr., MD
South Carolina Ob-Gyn
1333 Taylor Street, Suite 2D
Columbia, SC 29201

Frank C. Miller, MD
Department of Ob-Gyn, Room C-375
University of Kentucky College of Medicine
800 Rose Street
Lexington, KY 40536-0293

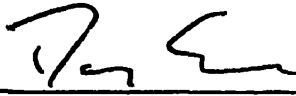
W. Benson Harer, Jr., MD
PO Box 30206
San Bernardino, CA 92413-0206

Michael T. Mennuti, MD
Department of Ob-Gyn
University of Pennsylvania Medical Center
3400 Spruce Street
Philadelphia, PA 19104-4283

Thomas F. Purdon, MD
Arizona Health Sciences Center
1501 N. Campbell Ave., PO Box 245078
Tucson, AZ 85724-0001

EIGHTH: The names and addresses, including street and number, of the incorporators are:

- (1) **Doug Smith**
1726 M Street, Suite 600
Washington, DC 20036
- (2) **Mark Villaverde**
1726 M Street, Suite 600
Washington, DC 20036
- (3) **Robin Speaks**
1726 M Street, Suite 600
Washington, DC 20036



Doug Smith

Date: 6-7-00



Mark Villaverde

Date: 6/7/00

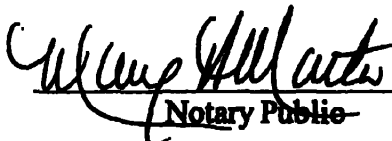


Robin Speaks

Date: 6-7-00

DC

I, MARY A MARTIN, a Notary Public, hereby certify that on the 7 day of June 2000, Doug Smith, Mark Villaverde and Robin Speaks appeared before me and signed the foregoing document as incorporators, and have averred that the statements therein contained are true.



Notary Public

My Commission Expires:
July 14, 2002

ARTICLES OF AMENDMENT

TO

ARTICLES OF INCORPORATION

OF

PHYSICIANS FOR WOMEN'S HEALTH

Department of Consumer and Regulatory Affairs

Washington, D.C. 20002

Pursuant to the provisions of the District of Columbia Nonprofit Corporation Act, the undersigned adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the Corporation is Physicians for Women's Health.

SECOND: The following amendment of the Article: of Incorporation was adopted by the Corporation in the manner prescribed by the District of Columbia Nonprofit Corporation Act:

Article 1 is hereby amended to read, "The name of the corporation is Ob-Gyns for Women's Health."

FILE

OCT - 6 2004

THIRD: The amendment was adopted by unanimous written consent signed by all members of the Board of Directors, there being no members having voting rights in respect thereof.

Date: 9/25/04

Physicians for Women's Health

BY: James Johnson

[President or Vice President]

ATTEST: Miriam S.

[Secretary or Assistant Secretary]

- 1 -

**BYLAWS
OF
OB-GYNS FOR WOMEN'S HEALTH**

**As Adopted As of July 14, 2000
Amended April, May and July 2001, January 2002, July 2003, May 2004, September 2004**

ARTICLE I

NAME AND PURPOSES

Section 1.01. Name. The name of the organization is Ob-Gyns for Women's Health.

Section 1.02. Purpose. The Corporation is a social welfare organization and is organized for the purposes of:

- advocating laws and public policies that support quality health care for women;
- advocating laws and public policies that support the field of obstetrics and gynecology; and
- increasing awareness among its members and the public of the changing public policies and legislation related to women's health care.

ARTICLE II

AUTHORITY AND DUTIES OF DIRECTORS

Section 2.01. Authority of Directors. The Board of Directors ("the Board") is the policy-making body of the Corporation and may exercise all the powers and authority granted to the Corporation by law.

Section 2.02. Number and Selection. The Board shall consist of ten (10) directors who shall be:

- a. the American College of Obstetricians and Gynecologists's (ACOG) current President;
- b. ACOG's Immediate Past President;
- c. ACOG's President Elect;

- d. ACOG's Secretary;
- e. ACOG's Treasurer;
- f. ACOG's Past President most recently retired from the Executive Board who is available;
- g. a former member from ACOG's Executive Committee;
- h. an ACOG Junior Fellow or Fellow who has been in practice for less than five (5) years;
- i. a past ACOG District Chair; and
- j. and one (1) member appointed by the other directors.

Vacancies existing by reason of resignation, death, incapacity or removal before the expiration of her/his term shall be filled by a majority vote of the remaining directors for the remainder of the unexpired term. Each director shall be a member in good standing of the Corporation.

The following members of the Board shall serve two (2) year terms, which may be extended by the Board for an additional two (2) years at the end of each term:

- a. former member from ACOG's Executive Committee;
- b. an ACOG Junior Fellow or Fellow who has been in practice for less than five (5) years; and
- c. a past ACOG District Chair.

Section 2.03. Compensation. Board members shall not be compensated for serving on the Board, but may be reimbursed for actual expenses incurred on behalf of the Corporation. Board members who also serve as employees of the Corporation may be compensated for their service as employees.

Section 2.04. Resignation. Resignations are effective upon receipt by the Secretary of the Board of written notification, or receipt by the President or other officer if the Secretary is resigning.

Section 2.05. Meetings. The Board shall hold at least one regular meeting annually. Any or all members of the Board may participate in a meeting by conference telephone or similar communications equipment, so long as members participating in such meeting can hear one another. Regular meetings shall be at such times and places as the Board shall determine. Special meetings may be called by any two directors with telephone or written notice.

Section 2.06. Quorum and Voting. A quorum shall consist of a majority of the total number of Board members in office. All decisions shall be by majority vote of those present at a meeting at which a quorum is present.

Section 2.07. Action Without a Meeting. Any action required or permitted to be taken at a meeting of the Board (including amendment of these Bylaws) or of any committee may be taken without a meeting if all the members of the Board or committee consent in writing to taking the action without a meeting and to approving the specific action. Such consents shall have the same force and effect as a unanimous vote of the Board or of the committee as the case may be.

Section 2.08. Committees. The Board may, by resolution adopted by a majority of the Directors in office, establish committees of the Board composed of at least two (2) Directors.

The Board may delegate to a Committee such authority as may be necessary or desirable for the efficient management of the property, affairs, business, and/or activities of the Corporation.

ARTICLE III

MEMBERS

Section 3.01. Solicitation and Acknowledgment. The Corporation shall expressly solicit persons to become members of the organization and shall expressly acknowledge the acceptance of membership, such as by sending a membership card or adding the member's name to a newsletter list.

Section 3.02. Qualifications. Members of the Corporation shall be those people who pay annual dues to the Corporation of a specific amount predetermined by the Corporation. All members of the Board of Directors must be members in good standing of the Corporation.

Section 3.03. Rights. Members will have no voting rights and will receive the Corporation's publications.

ARTICLE IV

AUTHORITY AND DUTIES OF OFFICERS

Section 4.01. Officers. The officers of the Corporation shall be a President, a Secretary/Treasurer, and such other officers as the Board may designate. Two or more offices may be held by the same person, except the offices of Secretary/Treasurer and President.

Section 4.02. Election of Officers; Terms of Office. Officers shall serve one (1) year terms. The President and Secretary/Treasurer shall be elected by the Board at its annual meeting.

Officers shall be eligible for reelection.

Vacancies existing by reason of resignation, death, incapacity or removal before the expiration of a term shall be filled by the Board for the remainder of the unexpired term.

Section 4.03. Resignation. Resignations are effective upon receipt by the Secretary/Treasurer of the Board of a written notification, or by the President or other officer if the Secretary/Treasurer is resigning.

Section 4.04. Removal. An officer may be removed from his or her corporate office by a majority of the directors in office at a meeting whenever in the Board's judgment the best interests of the Corporation will be served thereby. The removal of a person from corporate office will not terminate or otherwise affect any contractual relationship between that individual and the corporation.

ARTICLE V

SEPARATE SEGREGATED FUND

Section 5.01. The Corporation may establish a separate segregated fund from which contributions to and expenditures on behalf of federal candidates will be made. The separate segregated fund shall register with the Federal Election Commission as a federal political committee and all contributions to and from and expenditures from the separate segregated fund shall be in compliance with the Federal Election Campaign Act, as amended, and the corresponding federal election regulations.

Section 5.02. The separate segregated fund shall be governed by a PAC Committee that will make all decisions regarding federal candidates on whose behalf the separate segregated fund should make contributions or expenditures. The PAC Committee shall be composed of twenty-three (23) members and shall include the Corporation's 10 (10) directors plus thirteen (13) non-directors. The thirteen (13) non-director members of the PAC Committee shall be appointed by the Board and should include:

- a. at least three (3) persons nominated by obstetric-gynecologic specialty or subspecialty societies; and
- b. two (2) of the other non-director members shall be physicians who have been in practice for less than five (5) years.

The non-director members appointed by the Board shall reflect the diversity of the ACOG membership.

Section 5.03. The chair of the PAC Committee shall be appointed by the Secretary/Treasurer of the Corporation.

Section 5.04. The thirteen (13) non-director members of the PAC Committee shall serve three (3) year terms and may serve for up to two (2) consecutive terms. Vacancies shall be filled by the Board for the remainder of the unexpired term.

Section 5.05. The treasurer of the separate segregated fund shall be a senior staff person of the Corporation.

Section 5.06 A non-director member of the PAC Committee may be removed by a majority of the board of directors in office at a meeting whenever, in the Board's judgment, the Committee member has vacated, or has failed, or is unable to fulfill his or her Committee duties. The Board shall appoint a member to serve the remainder of the removed member's term.

ARTICLE VI

INDEMNIFICATION

Section 6.01. Definitions.

"Matter" shall mean any actual or threatened civil, criminal, or administrative action, arbitration proceeding, claim, suit, proceeding or appeals therefrom, or any criminal, administrative, or Congressional (or other body's) investigation, hearing, or other proceeding.

"Eligible Person" shall mean any person who at any time was or is a director, a member or any committee or subcommittee, an officer, or an employee of the corporation.

Section 6.02. Right to Indemnification. Any Eligible Person made a party to or involved in a Matter by reason of his or her position with or service to the corporation may, to the fullest extent permitted by law, be indemnified by the corporation against all liabilities and all expenses reasonably incurred by him or her arising out of or in connection with such Matter, except in relation to Matters as to which (i) the Eligible Person failed to act in good faith and for a purpose which he or she reasonably believed to be in the best interests of the corporation, or (ii) in the case of a criminal Matter, the person had reasonable cause to believe that his or her conduct was unlawful, or (iii) the person shall be adjudged to be liable for misconduct or negligence in the performance of a duty.

Section 6.03. Limitation on Right of Indemnification. Except where an Eligible Person has been successful on the merits with respect to such Matter, any indemnification hereunder shall be made only after (i) the Board (acting by a quorum consisting of Directors who were not involved in such Matter) determines that such Eligible Person met the applicable indemnification standard set forth in section 6.02 above; or (ii) in the absence of a quorum, a finding is rendered in a

written opinion by independent legal counsel that such person or persons met the applicable indemnification standard set forth in paragraph section 6.02 above.

Section 6.04. Other Rights. The right of indemnification shall not be deemed exclusive of any other right to which any person may be entitled in addition to the indemnification provided hereunder. This indemnification shall in the case of the death of the person entitled to indemnification, inure to the benefit of his or her heirs, executors or other lawful representative.

Section 6.05. Interim Indemnification. The corporation may, with respect to a Matter described in 6.02, advance attorneys' fees as interim indemnification to any Eligible Person if the following conditions are satisfied: (i)(a) the Board (acting by a quorum consisting of Directors who are not involved in such litigation) determines that such Eligible Person is likely to meet the applicable indemnification standard set forth in section 6.02, or (b) in the absence of such a quorum, a finding is rendered in a written opinion by independent legal counsel that such Eligible Person is likely to meet the applicable indemnification standard set forth in 6.02 above; and (ii) such Eligible Person (a) requests such interim indemnification, (b) agrees to repay such interim indemnification promptly upon a determination unfavorable to him or her under section 6.03 and (c) deposits a bond or equivalent security.

Section 6.06. Insurance. The Board may authorize the purchase of and maintain insurance on behalf of any Eligible Person against any liability asserted against or incurred by him which arises out of such person's status in such capacity, or out of acts taken in such capacity, whether or not the Corporation would have the power to indemnify the person against that liability under law.

ARTICLE VII

FINANCIAL ADMINISTRATION

Section 7.01. Fiscal Year. The fiscal year of the Corporation shall be January 1 - December 31 but may be changed by resolution of the Board.

Section 7.02. Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidence of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation, and in such manner as shall from time to time be determined by action of the Board.

Section 7.03. Contracts. A majority of the directors in office may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, 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.

Section 7.04. Reports to the Directors. Complete financial statements shall be presented to and reviewed by the Board after the close of each fiscal year.

ARTICLE VIII

CONFLICTS OF INTEREST

The Board shall by resolution adopt a conflict of interest policy applicable to officers, directors, members of committees of the Board, and employees, that shall define conflicts of interest (including competing financial interests or fiduciary duties), require that conflicts be disclosed and the conflicted person be recused from any decision-making with regard to the matter.

ARTICLE IX

COMPENSATION

The Board shall adopt a policy establishing procedures for reviewing and setting financial compensation to any individual exercising substantial influence over the corporation to ensure that such compensation is no more than reasonable and does not otherwise result in an excess benefit to the person, and requiring that adequate documentation be maintained to support the basis for setting such compensation.

ARTICLE X

RECORDS

Section 10.01. Recordkeeping. The Secretary or his or her designee shall keep or cause to be kept adequate minutes of all Board or committee meetings, and all meetings of committees with Board-designated powers reflecting at a minimum the names of those in attendance, any resolutions passed and the outcomes of any votes taken. When potential conflicts of interests are discussed, the minutes shall include: the names of the persons who disclosed financial interests; the nature of the financial interests; whether or not the Board determined that a conflict existed; the names of the persons present for the discussions and votes related to the relevant transaction or arrangement; the content of those discussions, including any alternative transactions or arrangements; and a record of the vote. At the request of any participating Board member, the records of such discussions and individual votes may be kept sealed, with only the outcome

reported publicly.

Section 10.02. Public Disclosure. After receiving IRS recognition of its 501(c)(4) status, the corporation shall keep available for public inspection at its principal place of business and any branch office copies of the Form 1024 (exemption application) as filed and any Form 990 (information tax return) filed within the past three years. Names and identifying information of contributors shall be redacted from publicly available copies. In addition, as required by the tax code and regulations, the corporation shall either 1) make such materials widely available to the public, such as by posting on the Internet, or 2) provide copies of the materials to any member of the public making a request in person during normal business hours or in writing. This public disclosure obligation shall be no broader than required by law and shall not apply, for example, if the corporation is the target of a campaign of harassment.

ARTICLE XI

AMENDMENT OF BYLAWS

Except for Section 2.02 regarding the number, selection and tenure of directors, which may be changed only by a majority vote of the ACOG Executive Board, these Bylaws may be amended by a majority vote of the entire Board, provided seven (7) days prior notice is given of the proposed amendment or provided all members of the Board waive such notice, or by unanimous consent in writing without a meeting pursuant to Section 2.07.

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Arent Fox
ATTORNEYS AT LAW

Michael J. Kurman
202.857.6345 DIRECT
202.857.6395 FAX
kurman.michael@arentfox.com

March 2, 2005

VIA MESSENGER

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
Room 623
999 E Street, N.W.
Washington, D.C. 20463

Re: American College of Obstetricians and Gynecologists
Request for Advisory Opinion (filed February 17, 2005)
REPLY TO COMMISSION STAFF TELEPHONE INQUIRY

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2005 MAR -2 P 3:38

Dear Mr. Norton:

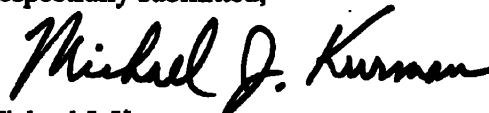
On behalf of The American College of Obstetricians and Gynecologists ("ACOG"), I respond herein to two (2) inquiries – from attorneys in the Office of the General Counsel during a telephone conversation on February 25, 2005 – seeking clarifications regarding ACOG's "Request for Advisory Opinion" filed with the Federal Election Commission ("Commission") on February 17, 2005 ("Request"). That telephone conversation constituted your Office's 10-day notification pursuant to 11 C.F.R. § 112.1(d).

First, ACOG reconfirms that the third aspect of its Request (*i.e.*, "If such OGWH/Ob-Gyn PAC solicitations of ACOG members are permissible, ACOG's Fellows and Junior Fellows may be solicited because they are 'members' within the meaning of the Commission's definition thereof.") specifies only Fellows (*see* ACOG Bylaws, Article IV) and Junior Fellows (*see* ACOG Bylaws, Article V).

Second, regarding the inquiry as to ACOG's potential "sale of its membership lists to OGWH and/or individual members of OGWH" (*see* Request at 1; *see also* Request at 6), ACOG has consulted with OGWH and hereby modifies the Request as follows: any such future sales of its membership lists for the reasons and under the circumstances stated in the Request will be made only to OGWH or to Ob-Gyn PAC, and not to individual members of OGWH or Ob-Gyn PAC.

If there are additional questions, please contact the undersigned at any time.

Respectfully submitted,



Michael J. Kurman

*Counsel to The American College of
Obstetricians and Gynecologists*