

**BY-LAWS**  
**OF**  
**NEW ENGLAND EYE INSTITUTE, INC.**  
**(a Massachusetts Non-Profit Corporation)**

11/14/08

## BY-LAWS

of

NEW ENGLAND EYE INSTITUTE, INC.

### ARTICLE 1

#### The Corporation

1.1 Name. The name of this Corporation is the “New England Eye Institute, Inc.” which may hereinafter be referred to throughout these By-Laws as the “Corporation.”

1.2 Purpose. The purposes of the Corporation are as set forth in the Corporation’s Articles of Organization, as they may be amended from time to time and it shall engage in activities for the aforesaid purposes in such a manner as to maintain the qualification of the Corporation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States internal revenue law) (“Section 501(c)(3)”).

1.3 Articles of Organization. These By-Laws, the powers of the Corporation and its Members and Directors, and all matters concerning the conduct and regulation of the business of the Corporation, shall be subject to the provisions of the Corporation’s Articles of Organization, as they may be amended from time to time, and in the case of any conflict, the Articles of Organization shall govern

### ARTICLE 2

#### Location of Offices of Corporation

The principal office of the Corporation shall be located in the Commonwealth of Massachusetts, provided that the Corporation may establish and maintain offices in such other locations as may be fixed from time to time by the Board of Directors.

### ARTICLE 3

#### Sole Member

3.1 Sole Member. The New England College of Optometry (the “College”) shall be the sole member of the Corporation (the “Sole Member”).

3.2 Annual Meeting. The annual meeting of the Sole Member (“Annual Meeting”) shall be held during the last quarter of each fiscal year at such time or place as may be fixed by the Sole Member and stated in the notice of the annual meeting, or at such other earlier or later date and time as shall be determined from time to time by the Sole Member. The purpose of the Annual Meeting shall be to conduct such business as may properly come before it at the meeting.

3.3 Special Meetings. Special meetings of the Sole Member (“Special Meetings”), whether in lieu of the Annual Meeting or otherwise, may be held at any time when called by the sole Member.

3.4 Place of Meetings. All meetings of the Corporation shall be held at the principal office of the Corporation in Massachusetts or at such other place within or outside of Massachusetts as shall be fixed by the Sole Member, the Directors or the Chair.

3.5 Notice of Meetings. A written notice of each meeting of the Sole Member, stating the place, date and time and the purposes of the meeting, shall be given at least seven (7) days before the meeting to the Sole Member by delivery in hand to the office of the President of the sole member or in any other manner authorized by applicable law. No such notice need be given to the Sole Member if a written waiver of notice, duly executed on its behalf by an authorized person before or after such meeting, shall be filed with the records of the meeting. No waiver need specify the purposes of the meeting unless such purposes were required to be specified in the notice of the meeting.

3.6 Action by Writing. Any action required or permitted to be taken at any meeting of the Sole Member may be taken without a meeting if the Sole Member consents to the action in writing and the written consent is filed with the records of the meetings of the Corporation. Such consent shall be treated for all purposes as a vote at a meeting.

#### ARTICLE 4 Board of Directors

4.1 Composition; Term of Office. Through the date of adoption of these By-laws to June 30, 2009, the Board of Directors shall consist of those persons elected by the Sole Member, at the Annual Meeting held May 31, 2008, or thereafter, to be Directors. Effective July 1, 2009 the persons who from time to time hold office as Trustees of the College (whether by election or ex-officio) shall be the Directors of the Corporation for the same period as such persons serve as Trustees of the College. Each such person shall be a Director of the Corporation until such person shall cease to be a Trustee of the College, and at such time such person ceases to be a Trustee of the College for any reason, such person shall automatically cease to be a Director of the Corporation. Other than the President, serving in an *ex officio* capacity on the Board of Trustees of the College and until June 30, 2009, the “Faculty Representative” who serves on the Board of Trustees of the College, no employee of the College or the Corporation may be a Director, provided, however, that any member of the Board of Directors who is an employee of the College or the Corporation at the time of adoption of these By-laws may continue to serve as a member of the Board of Directors until the expiration of his/her present term. The term “employee”, for purposes of this Section 3.2, shall mean any person for whom the College or the Corporation is required to issue a federal tax form W-2

4.2 Authority. The business and affairs of the Corporation shall be controlled and governed by the Board of Directors (sometimes referred to in these By-laws as the “Board”), which shall have the right to exercise all powers of the Corporation as permitted by law except such powers as are expressly reserved herein or by law to the Sole Member.

4.3 Meetings. The Board of Directors shall hold annual meetings each year and may select the time and place for annual and other meetings of the Board. Other meetings of the Board of Directors may be called by the Chair and shall be called by the Secretary upon the written request of any four members of the Board. Notice in writing shall be given of the date, time, place, and purpose of such meeting to all Directors at least three (3) days in advance of such meeting. Any such meetings may be conducted as joint meetings with the Board of Trustees of the College, and a call of any meeting and notice thereof may be joint with the Board of the College.

4.4 Quorum and Voting. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. At any meeting of the Board of Directors at which a quorum is present, a majority of those Directors present shall decide any matter, unless a different vote is specified by law, the Articles of Organization, or these By-laws.

4.5 Meetings by Remote Communication. Directors may attend any annual, regular or special meeting, and any committee member may attend any committee meeting, through telephonic, electronic, or other means of communication by which all participants have the ability to participate in all discussions and vote on a substantially simultaneous basis. Such participation shall constitute presence in person at such meeting.

4.6 Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or at any meeting of any Committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the Directors or voting committee members, as the case may be, with respect to such subject matter. Such consent, which may be signed in counterparts or which consent may be communicated by electronic mail, shall have the same force and effect as a vote of the Board of Directors or such committee.

4.7 Waiver of Notice for Meetings. Whenever any notice of a meeting is required to be given to any Director under the Articles of Organization, these By-laws, or the laws of Massachusetts, a waiver of notice in writing signed by the Director, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

4.8 Compensation. Directors as such shall not receive any salaries or other compensation for their services on the Board. Subject to compliance with Article 11 below and the Corporation’s conflict of interest policy as then in effect, Directors shall not be precluded from serving the Corporation in any other capacity and receiving reasonable compensation for serving

in such other capacity.

4.9 Resignation. Any Director may resign by delivering a written resignation to the Chair or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time.

4.10 Use of Electronic Mail. Any requirement for “notice” pursuant to these By-laws may be satisfied by electronic mail provided that the person who is being notified has assented to receipt of notice in such manner and has approved the address to which such notice is sent. Any consent under these By-laws may be conveyed by facsimile or electronic mail.

## ARTICLE 5 Officers

5.1 Enumeration and Qualifications. The officers of the Corporation shall include a Chair, a President, a Treasurer, a Secretary, a chief executive or chief operating officer, a chief financial officer and such other officers as the Directors shall appoint. An officer may but need not be a Director of the Corporation. Any two or more offices may be held by the same person. Subject to other provisions of these By-Laws, officers shall hold office until the first regular meeting of the Directors following the Annual Meeting and until their respective successors take office. An officer may resign by delivering written resignation to (a) the President or Secretary, (b) the Board of Directors, or (c) the Corporation at its executive office. Every resignation shall, unless otherwise specified therein, take effect and be deemed accepted upon its receipt.

5.2 Board Chair. Through the date of adoption of these By-laws to June 30, 2009 or such earlier date as a vacancy shall arise in such position, the Board Chair shall be the person elected to such position in accordance with the Bylaws of this Corporation as previously in effect. Effective July 1, 2009 or said earlier date of a vacancy, the Board Chair of the College shall serve as Board Chair of this Corporation. The Chair shall preside at all meetings of the Directors, except as the Directors shall otherwise determine. The Chair shall have such other powers and duties as may be conferred by these By-laws or as may be determined by the Directors.

5.3 President. Through the date of adoption of these By-laws to June 30, 2009 or such earlier date as a vacancy shall arise in such position, the President shall be the person elected to such position in accordance with the Bylaws of this Corporation as previously in effect. Effective July 1, 2009 or said earlier date of a vacancy, the President of the College shall serve as President of this Corporation. The President shall have such other powers and duties as customarily belong to the office of the President or as may be designated from time to time by the Board of Directors

5.4 Chief Executive Officer or Chief Operating Officer. Effective July 1, 2009 or such earlier date as may be established by the Board of Directors, a chief executive officer or chief operating officer may be appointed by and shall report to the President, and shall have charge of the day to day affairs of the Corporation subject to the supervision of the President.

5.5 Treasurer. Through the date of adoption of these By-laws to June 30, 2009 or such earlier date as a vacancy shall arise in such position, the Treasurer shall be the person elected to such position in accordance with the Bylaws of this Corporation as previously in effect. Effective July 1, 2009 or said earlier date of a vacancy, the Treasurer of the College shall serve as the Treasurer of the Corporation. The Treasurer shall perform such duties as may from time to time be assigned by the Board of Directors or the Chair.

5.6 Chief Financial Officer. A chief financial officer shall be employed by the Corporation and in general shall have overall supervision and charge of and responsibility for the financial operations of the Corporation. The chief financial officer shall be appointed by and shall report to the President. The chief financial officer shall perform such duties and exercise such powers as are common to the office of chief financial officer of a health care organization, and perform such other duties as may from time to time be assigned by the President.

5.7 Secretary. Through the date of adoption of these By-laws to June 30, 2009 or such earlier date as a vacancy shall arise in such position, the Secretary shall be the person elected to such position in accordance with the Bylaws of this Corporation as previously in effect. Effective July 1, 2009 or said earlier date of a vacancy, the Secretary of the College shall serve as Secretary of this Corporation. The Secretary shall keep or maintain the minutes of the meetings of the Board of Directors; be responsible to see that all notices are given in accordance with the provisions of these By-laws; be custodian of the corporate records and records of committees of the Board of Directors and keep the same in proper order; and in general perform all such duties as may from time to time be customarily incident to the office of secretary or as may be assigned by the Board of Directors, the President or the Chair.

5.8 Assistant Treasurer; Assistant Secretary. The Board may from time to time elect one or more persons to the offices of Assistant Treasurer or Assistant Secretary who may, for the term designated by the Board, act in the absence or disability of the Treasurer or Secretary, respectively, and may have such other powers and perform such other duties as the Board may from time to time designate.

## ARTICLE 6 Committees

6.1 Committees Generally. The Board of Directors may create such standing and special committees as it determines to be in the best interest of the Corporation in addition to the committees identified in these By-laws. The Board Chair may, in addition, appoint such special or ad hoc committees as the Chair sees fit. The members of the Committee shall be appointed by the Chair except to the extent specific appointments are otherwise provided in these By-laws. Except for the Executive Committee which must consist entirely of Directors, committees may include among their membership individuals who are not members of the Board of Directors, but a majority of the voting members of each Standing Committee (and including for this purpose the

Chair and the President) must be members of the Board of Directors. The Chair of the Board and the President shall be ex-officio voting members of all committees. The Board, or the Chair, as the appointing entity, shall determine the duties, powers, and composition of such special or ad hoc committees, except that there may not be delegated to such committees those powers which by law or these By-laws may not be delegated. Committees shall submit to the Board of Directors, at such meetings as the Board may determine, a report of the actions and recommendations of such committees. Any special or ad hoc committee may be terminated at any time by the Board of Directors, or if appointed by the Chair, by the Chair. The provisions of Sections 4.4 (Quorum and Voting), 4.5 (Meetings by Remote Communications), 4.6 (Action Without a Meeting), 4.7 (Waiver of Notice of Meetings) and 4.10 (Use of Electronic Mail) shall apply to all committees. The Board of Directors may from time to time establish more detailed descriptions of the functions of one or more of the Committees, in addition to the descriptions included in these By-laws.

6.2 Standing Committees. There shall be the following standing committees of the Board of Directors: Executive Committee, Audit and Compliance Committee, Finance and Business Affairs Committee, Clinical System Committee, Development Committee and Governance Committee.

6.3 Executive Committee. From and after July 1, 2009 and thereafter, the Executive Committee shall be the persons from time to time comprising the Executive Committee of the College. The Executive Committee may function as a joint committee with the Executive Committee of the College and without the necessity of separate notices, meetings or minutes. The Executive Committee shall perform such duties and carry out such responsibilities as may be referred to it by the Board of Directors, to the extent permitted by law.

A quorum of the Executive Committee shall consist of five members. Any action taken shall be entered into the written record of the Executive Committee and reported at the next meeting of the Board of Directors.

The Executive Committee shall have and may exercise, at all times when the Board is not in session, all the power and authority of the Board with respect to the affairs of the Corporation, except that the Executive Committee shall not have the authority to fill vacancies on the Board or the Executive Committee, elect or remove officers, or amend the By-laws.

The Board may ratify, amend, or rescind any action taken by the Executive Committee, but neither the failure to ratify such an action nor any amendment to or rescission of such action shall serve to invalidate any action theretofore taken by or in the name of this Corporation pursuant to the action of the Executive Committee in accordance with these By-laws as being the duly authorized action of this Corporation.

6.4 Audit and Compliance Committee. The Audit and Compliance Committee of the

College shall serve as the Audit and Compliance Committee of the Corporation. The two Committees may function as a joint committee and without the necessity of separate notices, meetings or minutes. The Committee shall have the same duties and responsibilities with respect to the Corporation as are set forth in the College By laws with respect to the College.

6.5 Clinical System Committee. The Clinical System Committee of the College shall serve as the Clinical System Committee of the Corporation. The two Committees may function as a joint committee without the necessity of separate notices, meetings or minutes. The Committee shall have the same duties and responsibilities with respect to the Corporation as are set forth in the College By laws with respect to the College. The chief executive or chief operating officer appointed under Section 5.4 above shall serve as staff to the Committee, and other employees may be appointed to assist the Committee.

6.6 Development Committee. The Development and Alumni Relations Committee of the College shall serve as the Development Committee of the Corporation. The two Committees may function as a combined committee and without the necessity of separate notices, meetings or minutes. The Committee shall have the same duties and responsibilities with respect to the Corporation as are set forth in the College By laws with respect to the College. The chief development officer of the College shall serve as staff to the Committee, and other employees may be appointed to assist the Committee.

6.7 Finance and Business Affairs Committee. The Finance and Business Affairs Committee of the College shall serve as the Finance and Business Affairs Committee of the Corporation. The two Committees may function as a joint committee and without the necessity of separate notices, meetings or minutes. The Committee shall have the same duties and responsibilities with respect to the Corporation as are set forth in the College By laws with respect to the College. The chief financial officer shall serve as staff to the Committee and other employees may be appointed to assist the Committee.

6.8 Governance Committee. The Governance and Trusteeship Committee of the College shall serve as the Governance Committee of the Corporation . The two Committees may function as a joint committee and without the necessity of separate notices, meetings or minutes. The Committee shall have the same duties and responsibilities with respect to the Corporation as are set forth in the College By laws with respect to the College. The Secretary of the Corporation shall serve as staff to the Committee and other employees may be appointed to assist the Committee.

## ARTICLE 7 Corporate Transactions

7.1 Contracts. The Board Chair and the President, acting singly, or any officer or agent as authorized by the Board of Directors, may execute contracts and any other instruments



agreements in the name of and on behalf of the Corporation. No person shall sign any such contract or instrument unless authorized above or by the Board of Directors to do so.

7.2 Checks; Indebtedness. All checks, drafts, or orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the Corporation, shall be signed by the Chair, President or chief financial officer, or such other officer or agent of the Corporation as from time to time may be determined by the Board of Directors. In the absence of such determination of the Board, such instruments shall be signed by the Chair, President or chief financial officer.

7.3 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, brokerages, or other depositories as the Board of Directors shall select.

7.4 Contributions. The Board of Directors or any authorized officer or agent may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Corporation.

## ARTICLE 8 Books and Records

The Corporation shall keep at the principal office of the Corporation correct and complete books and records of account; minutes of the proceedings of Board of Directors; and a register of the names and addresses of the members of the Board of Directors. All books, and records of the Corporation may be inspected by any Director for any proper purpose at any reasonable time subject always to compliance with the obligations of the Director as to confidentiality of non-public information.

## ARTICLE 9 Restrictions on Activities

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its Directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation. Except to the extent permitted by the Internal Revenue Code, whether pursuant to an election under Section 501(h) or otherwise, no substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and the Corporation shall neither participate nor intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these By-laws, neither the Corporation nor any Director, officer, employee, agent, or

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

ARTICLE 10  
Dissolution

In the event of dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation to the extent assets of the Corporation permit, dispose of all the assets of the Corporation to the College as sole Member, so long as the College is an exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code (or corresponding provision of any future United States Internal Revenue law) (“Section 501(c)(3)”) and otherwise shall dispose of such assets in accordance with the Articles of Organization of the Corporation and with the approval of the sole Member.

ARTICLE 11  
Conflicts of Interest

The Board shall adopt and implement a conflict of interest policy for its members which policy may be a joint policy with the policy of the College. Directors shall be required to make periodic written disclosures of relationships that may constitute a conflict of interest and shall submit such statement, together with an acknowledgement of such member’s confidentiality obligations, to the Governance Committee or to such officer as the Chair may designate, which disclosure may be a joint disclosure with disclosure to the College.

Subject to compliance with such conflict of interest policy, and subject to the last sentence of this paragraph, the Corporation may enter into contracts or transact business with one or more of its Directors or Officers, or with any Corporation, association, trust, company, organization, or other concern in which any one or more of its Directors or officers are directors, officers, trustees, shareholders, beneficiaries, stockholders, or otherwise interested and other contract or transactions in which any one or more of its Directors or officers is in any way interested, and in the absence of fraud, no such contract or transaction shall be invalidated or in any way affected by the fact that such Directors or officers of the Corporation have or may have interests which are or might be adverse to the interest of the Corporation even though the vote or action of Directors or officers having such adverse interests may have been necessary to obligate the Corporation upon such contract or transaction. No Director or Officer shall be disqualified from holding office as Director or Officer of the Corporation by reason of any such interests which may be adverse to the Corporation. In the absence of fraud, no Director or Officer having

such adverse interest shall be liable to the Corporation or to any member or creditor thereof or to any other person for any loss incurred by it under or by reason of such contract or transaction, nor shall any such Director or Officer be accountable for any gains or profits realized thereon. Provided, however, nothing herein shall be deemed to authorize transactions with employees of the Corporation or entities in which any such employee has a financial interest except such transactions that are directly related to such person's employment relationship, and further provided that the Corporation may in any instance enter into transactions with publicly held entities in which any such Director, officer or employee holds less than a 2% interest.

#### ARTICLE 12 Confidentiality

Each member of the Board of Directors, officers and members of committees, as well as other persons attending meetings of the Board of Directors or committees will be bound by an obligation to hold in confidence and not to disclose proceedings of any such meetings or information made available at such meetings to the extent that such information is not in the public domain and is not required to be disclosed pursuant to applicable law or orders of regulatory bodies having jurisdiction. Nothing contained in this Article is intended to limit the proper dissemination of proceedings or information to or among the Board or its committees nor the performance of the duties and obligations of the officers of the Corporation and their designees in conducting the business of the Corporation.

#### ARTICLE 13 No Personal Liability

Neither the Member nor any officer, Director, or other person serving as a member of any committee pursuant to these By-laws shall be personally liable to the Corporation for monetary damages for or arising out of a breach of fiduciary duty in such capacity as a Member, or as an officer, Director or committee member notwithstanding any provision of law imposing such liability; provided, however, that the foregoing shall not eliminate or limit the liability of a member or an officer, Director or such committee member to the extent that such liability is imposed by applicable law (i) for a breach of such person's duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, or (iii) for any transaction from which such person derived an improper personal benefit.

#### ARTICLE 14 Indemnification

The Corporation shall, to the extent legally permissible, indemnify each person who may serve or who has served at any time as an officer, Director, or the Member of the Corporation, or at its request as a member of any committee of the Corporation or as a director, trustee, officer, employee, or other agent of any organization in which the Corporation owns shares or of which it

is a creditor, against all expenses and liabilities, including, without limitation, counsel fees, judgments, fines, excise taxes, penalties and settlement payments, reasonably incurred by or imposed upon such person in connection with any Proceeding in which he, she or it may become involved by reason of his, her or its service in such capacity set forth above; provided that no indemnification shall be provided for any such person with respect to any matter as to which he, she or it shall have been finally adjudicated in any proceeding not to have acted in good faith in the reasonable belief that such action was in the best interests of the Corporation; or in the case of criminal proceedings, if such person or entity is adjudicated to have committed a knowing violation of law, and further provided that any compromise or settlement payment shall be approved by a majority vote of a quorum of Disinterested Directors. The term "Disinterested Director" shall mean a Director who is neither (i) a party to the proceeding for which indemnification is sought nor (ii) a person having a familial, financial, professional or employment relationship with the person for whom indemnification is sought which relationship would, in the circumstances, reasonably be expected to influence the Director's judgment in voting on the decision being made, provided that serving as a Trustee of the Member shall not disqualify a person from being determined to be a "Disinterested Director." The term "Proceeding" shall mean any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, regulatory, arbitral or investigative, whether formal or informal.

Expenses, including counsel fees, reasonably incurred by any such person or entity in connection with the defense or disposition of any such Proceedings may be paid from time to time by the Corporation in advance of the final disposition thereof upon receipt of a written undertaking by such person or entity to repay the amounts so paid to the Corporation if it is ultimately determined that indemnification for such expenses is not authorized under this Article. Such expenses may be authorized by a majority of Disinterested Directors.

The indemnification provided hereunder shall inure to the benefit of the heirs, executors and administrators of persons entitled to indemnification hereunder. The right of indemnification under this Article shall be in addition to and not exclusive of all other rights to which any person or entity may be entitled. Nothing contained in this Article shall affect any rights to indemnification to which corporate personnel may be entitled by contract or otherwise under applicable law.

This Article constitutes a contract between the Corporation and the indemnified persons or entity. No amendment or repeal of the provisions of this Article which adversely affects the right of an indemnified person or entity under this Article with respect to those acts or omissions which occurred at any time prior to such amendment or repeal.

#### ARTICLE 15 Amendments to By-laws

Prior to July 1, 2009, these By-laws may be amended or repealed only by the Sole

Member. On or after July 1, 2009 these Bylaws may be amended only by the Sole Member following the affirmative vote of a majority of the entire Board of Directors, at any regular meeting or at any special meeting called therefor, provided, however, that notice of any proposed amendment shall be transmitted to all members of the Board of Directors at least ten (10) days before the meeting at which said proposed amendment is to be voted.

ARTICLE 16  
Ex Officio Rights

All persons holding positions on the Board of Directors or on committees on an *ex officio* basis shall be entitled to receive notice of all meetings of the Board or the Committee, as the case may be, shall be included in determining a quorum and shall have full voting rights, except as otherwise expressly provided in the relevant provision in which such *ex officio* status is granted.

(End of By-laws)