


**DOR22-13**

Certificate of Need  
Determination of Reviewability  
Ambulatory Surgical Facility and Ambulatory Surgery Center  
(Do not use this form for any other type of ASC/F project)

Certificate of Need submissions must include a fee in accordance with Washington Administrative Code [\(WAC\) 246-310-990](#).

The Department of Health (department) will use this form to determine whether my ambulatory surgical center or facility requires a Certificate of Need under state law and rules. Criteria and consideration used to make the required determinations are Revised Code of Washington [\(RCW\) 70.38](#) and Washington Administrative Code [\(WAC\) 246-310](#). I certify that the statements in the submissions are correct to the best of my knowledge and belief. I understand that any misrepresentation, misleading statements, evasion, or suppression of material fact in this application may be used to take actions identified in [WAC 246-310-500](#).

My signature authorizes the department to verify any responses provided. The department will use such information as appropriate to further program purposes. The department may disclose this information when requested by a third party to the extent allowed by law.

Owner/Operator Name of the surgical facility as it appears on the UBI/Master Business License Northwest Orthopaedic Specialists, P.S.	
Clinical Practice UBI #: 601261743 Surgery Center UBI #: 601261743	Federal Tax ID (FEIN) # 91-1502837
Mailing Address 601 West Fifth Avenue, Suite 400 Spokane, WA 99204	Surgery Center Address 12410 E Sinto Ave, Suite B Spokane Valley, WA 99216-2280
Website Address: nworthopaedicspecialists.com	
Phone number (10-digit): (509) 343-3904	Email Address: sbrenden@nwos-spokane.com
Name and Title of Responsible Officer (Print): Stephanie Brenden, CFO	Signature of Responsible Officer:  Date of Signature:
Identify the purpose of your request:	
<input checked="" type="checkbox"/> New Facility	<input type="checkbox"/> Facility Expansion – Operating Room Increase
<input type="checkbox"/> Change of Ownership	<input type="checkbox"/> Facility Expansion – Service Increase
<input type="checkbox"/> Facility Relocation	<input type="checkbox"/> Other (please provide a letter describing)

**Certificate of Need  
Determination of Reviewability Application**

## Table of Contents

1. Cover Page.....	1
2. Table of Contents.....	2
3. Narrative Facility Description.....	3
4. Determination of Reviewability Form 260-014.....	4-6
5. Governance Document – Corporate Bylaws (Question #7).....	7-21

### **Narrative Facility Description:**

Northwest Orthopaedic Specialists, P.S. (NWOS) is planning an expansion of services including an Ambulatory Surgical Facility at the Spokane Valley location at 12410 E Sinto Ave, Spokane Valley, WA 99216.

Currently NWOS occupies suite 201 of the Sinto Ave building with an orthopaedic specialty clinic. The most recent full year of revenue and visits are listed under question #8 of the application for this existing clinic.

In March, 2021 NWOS purchased the Sinto Ave building and is planning to expand services in this same building including:

- Suite 101 – New orthopaedic walk-in clinic and physical therapy
- Suite C – New MRI
- **Suite B – New ASC/F with 2 procedure rooms**

The increased revenue and patient visits listed under question #8 for the projected first full year of operation include these expanded services.

NWOS anticipates providing orthopaedic hand procedures and pain management injection procedures in the new ASC/F.




**Certificate of Need  
Determination of Reviewability  
Ambulatory Surgical Facility and Ambulatory Surgery Center  
(Do not use this form for any other type of ASC/F project)**

Certificate of Need submissions must include a fee in accordance with Washington Administrative Code [\(WAC\) 246-310-990](#).

The Department of Health (department) will use this form to determine whether my ambulatory surgical center or facility requires a Certificate of Need under state law and rules. Criteria and consideration used to make the required determinations are Revised Code of Washington [\(RCW\) 70.38](#) and Washington Administrative Code [\(WAC\) 246-310](#). I certify that the statements in the submissions are correct to the best of my knowledge and belief. I understand that any misrepresentation, misleading statements, evasion, or suppression of material fact in this application may be used to take actions identified in [WAC 246-310-500](#).

My signature authorizes the department to verify any responses provided. The department will use such information as appropriate to further program purposes. The department may disclose this information when requested by a third party to the extent allowed by law.

Owner/Operator Name of the surgical facility as it appears on the UBI/Master Business License Northwest Orthopaedic Specialists, P.S.	
Clinical Practice UBI #: 601261743  Surgery Center UBI #: 601261743	Federal Tax ID (FEIN) # 91-1502837
Mailing Address 601 West Fifth Avenue, Suite 400 Spokane, WA 99204	Surgery Center Address 12410 E Sinto Ave, Suite B Spokane Valley, WA 99216-2280
Website Address: nworthopaedicspecialists.com	
Phone number (10-digit): (509) 343-3904	Email Address: sbrenden@nwos-spokane.com
Name and Title of Responsible Officer (Print): Stephanie Brenden, CFO	Signature of Responsible Officer:  Date of Signature:
Identify the purpose of your request:	
<input checked="" type="checkbox"/> New Facility	<input type="checkbox"/> Facility Expansion – Operating Room Increase
<input type="checkbox"/> Change of Ownership	<input type="checkbox"/> Facility Expansion – Service Increase
<input type="checkbox"/> Facility Relocation	<input type="checkbox"/> Other (please provide a letter describing)

## Existing Facility Status

Complete for all applications concerning existing facilities

1. The CN Program previously determined the facility was not subject to CN Review (if yes, attach DOR letter)

☐ Yes ☒ No

2. If this request is for a change in ownership provide the following information:

Current facility's name	
Current facility's address	
Current facility's license number	ASF.FS.
Current facility's Certificate of Need status	<input type="checkbox"/> Exempt DOR# _____
	<input type="checkbox"/> Approved CN# _____
Anticipated change of ownership month and year	

3. If this request is for the relocation of an existing facility, provide the following information:

Current facility's address	
Anticipated relocation month and year	

## Facility Information

4. Although you are not required to apply for an ASF license before a CN determination is issued, have you or do you intend to, apply for a license?\*

☒ Yes, intend to apply ☐ No  
☐ Yes, here is the facility's license #ASF.FS. \_\_\_\_\_

\*Your answer to this question will allow the CN program to effectively coordinate the licensure process with other DOH offices.

- 5.

Number of existing operating and procedure rooms:	0
Number of new operating and procedure rooms:	2 procedure
Total:	2 procedure

For Certificate of Need purposes operating and procedure rooms are one in the same.

## Clinical and Surgical Services

6. Check all surgical procedures currently performed in the facility.

<input type="checkbox"/> Ear, Nose, & Throat	<input type="checkbox"/> Gynecology	<input type="checkbox"/> Oral Surgery
<input type="checkbox"/> Plastic Surgery	<input type="checkbox"/> Gastroenterology	<input type="checkbox"/> Maxillo facial
<input type="checkbox"/> Orthopedics	<input type="checkbox"/> Podiatry	<input type="checkbox"/> General Surgery
<input type="checkbox"/> Ophthalmology	<input type="checkbox"/> Pain Management	<input type="checkbox"/> Urology
<input type="checkbox"/> Other (describe)		

☒ This is a new facility, no surgical procedures are currently performed



Check all new surgical procedures proposed to be performed in the facility

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Ear, Nose, & Throat    | <input type="checkbox"/> Gynecology                 | <input type="checkbox"/> Oral Surgery    |
| <input type="checkbox"/> Plastic Surgery        | <input type="checkbox"/> Gastroenterology           | <input type="checkbox"/> Maxillo facial  |
| <input checked="" type="checkbox"/> Orthopedics | <input type="checkbox"/> Podiatry                   | <input type="checkbox"/> General Surgery |
| <input type="checkbox"/> Ophthalmology          | <input checked="" type="checkbox"/> Pain Management | <input type="checkbox"/> Urology         |
| <input type="checkbox"/> Other (describe)       |   |  |

## Primary Purpose of the Facility

- The Certificate of Need Program must understand how a facility operates in order to determine the facility's primary purpose. Typically, governance documents can aid the department in this understanding. These could be in the form of operating agreements, shareholder agreements, or corporate governing documents. Provide any documentation that could aid in this understanding.
- A facility that receives more than 50% of their income or 50% of their visits from surgeries is subject to CN requirements. In order to determine if your project is subject to CN review, please provide the current (existing facility) and proposed (new facility) percentages of income and visits for clinical and surgical services. Include all assumptions used to determine the percentages provided.

This site's revenue	Most recent full year of operation Year: <u>2020</u>	Projected first full year of operation after the proposed changes Year: <u>2023</u>
Total revenue for clinical services	\$2,461,839	\$5,500,000
Total revenue for surgical services	\$0	\$2,665,000
<b>Total revenue</b>	<b>\$2,461,839</b>	<b>\$8,165,000</b>

This site's patient visits	Most recent full year of operation Year: <u>2020</u>	Projected first full year of operation after the proposed changes Year: <u>2023</u>
Total clinical patient visits	14,840	33,509
Total surgical patient visits	0	4,945
<b>Total patient visits</b>	<b>14,840</b>	<b>38,454</b>

**AMENDED AND RESTATED BYLAWS  
OF  
NORTHWEST ORTHOPAEDIC SPECIALISTS, P.S.**

**March 23, 2021**

These Amended and Restated Bylaws (the "Bylaws") supersede and replace in their entirety any prior bylaws of Northwest Orthopaedic Specialists, P.S. (the "Corporation").

**ARTICLE I  
SHAREHOLDERS**

Section 1. Annual Meeting. The annual meeting of the shareholders of the Corporation shall be held in March of each year. The failure to hold an annual meeting at the time stated in these Bylaws does not affect the validity of any corporate action.

Section 2. Special Meeting. Except as otherwise provided by law, special meetings of shareholders of this Corporation shall be held whenever called by any officer or by the Board of Directors or one or more shareholders.

Section 3. Place of Meetings. Meetings of shareholders shall be held at Spokane, Washington, or at such place within or without the State of Washington as determined by the Board of Directors, pursuant to proper notice.

Section 4. Notice. Written notice of each shareholders' meeting stating the time and place and, in case of a special meeting, the purpose(s) which such meeting is called, shall be given by the Corporation, not less than ten (10) (unless a greater period of notice is required by law in a particular case) nor more than sixty (60) days prior to the date of the meeting, to each shareholder of record entitled to vote (unless required by law to send notice to all shareholders regardless of whether or not such shareholders are entitled to vote), to the shareholder's address as it appears on the current record of shareholders of this Corporation. If mailed with first-class postage, such notice shall be deemed to be effective when mailed to the shareholders at such address as provided above. If notice is sent to a shareholder's address, e-mail address, telephone number, or other number appearing on the records of the Corporation by telegraph, e-mail, teletype, or facsimile, the notice is effective when dispatched.

Section 5. Waiver of Notice. A shareholder may waive any notice required to be given by these Bylaws, or the Corporation's Articles of Incorporation, as may be amended from time to time (the "Articles"), or any of the corporate laws of the State of Washington, before or after the meeting that is the subject of such notice. A valid waiver is created by any of the following three methods: (a) in writing, signed by the shareholder entitled to the notice and delivered to the Corporation for inclusion in its corporate records; (b) attendance at the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; or (c) failure to object at the time of presentation of a matter not within the purpose or purposes described in the meeting notice.



Section 6. Quorum. At any meeting of the shareholders, a majority in interest of all the shares entitled to vote, represented by shareholders of record in person or by proxy, shall constitute a quorum of that voting group for action on that matter. When a quorum is present at any meeting, action on a matter is approved by a voting group if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless the question is one upon which by express provision of law or of the Articles or of these Bylaws a different vote is required. Once a quorum is present, shareholders may continue to transact business at the meeting notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

Section 7. Proxy and Voting. Shareholders of record may vote at any meeting either in person or by proxy executed in writing. A proxy is effective when received by any member of the Board of Directors. A proxy is valid for eleven (11) months unless a longer period is expressly provided in the proxy. Subject to the provisions of the laws of the State of Washington, and unless otherwise provided in the Articles, each holder of shares of stock in this Corporation shall be entitled at each shareholders' meeting to one vote on each matter submitted to a vote for every share of stock standing in such shareholder's name on the books of this Corporation.

Section 8. Action Without a Meeting. If the Articles provide for actions by shareholders by less than unanimous written consent, then the shareholders of this Corporation are authorized to take such action upon compliance with the requirements set forth in the Articles. As of the date of these Bylaws, the Articles do provide for actions by shareholders by less than unanimous written consent.

If the Articles do not provide for actions by shareholders by less than unanimous written consent, any action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the shareholders entitled to vote with respect to the subject matter thereof.

Section 9. Conference Telephone. Meetings of the shareholders may be effectuated by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at such meeting.

Section 10. Powers Reserved to Shareholders. Exhibit A attached hereto and incorporated herein is the "NWOS Governance Grid," which sets forth various actions and related approval requirements (including, but not limited to, those actions requiring Super-Majority shareholder approval). Any amendments or substantive changes to Exhibit A shall require approval of a majority of the Board of Directors, provided, however, that any actions outlined on Exhibit A requiring shareholder approval shall also require that same referenced threshold of shareholder approval in order to amend or change that action item and/or its approval requirement.

Section 11. Adjournment. A majority of the shares represented at the meeting, even if less than a quorum, may adjourn the meeting from time to time. At such reconvened meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally notified. If a meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if a new date, time, or place is announced at the meeting before adjournment; however, if a new record date for the adjourned meeting is or must



be fixed in accordance with the corporate laws of the State of Washington, notice of the adjourned meeting must be given to persons who are shareholders as of the new record date.

## **ARTICLE II**

### **BOARD OF DIRECTORS**

Section 1. Number and Qualifications. The business affairs and property of this Corporation shall be managed by a Board of Directors (the "Board of Directors" or the "Board").

a. Qualifications. A person must meet all of the following qualifications to be a director of this Corporation: (1) must be a shareholder of the Corporation; (2) must be an employee of the Corporation; and (3) except as otherwise provided in RCW 18.100.118, as now or hereafter amended, must be duly licensed or otherwise legally authorized to render medical services within the State of Washington.

b. Number of Directors. The number of directors shall be nine (9), with three (3) of the nine (9) consisting of the Corporation's President, Vice President, and Treasurer, and the other six (6) director positions elected and filled in accordance with Article II, Section 2, below. Of the six (6) elected directors, there must be at least one (1) shareholder elected from each of the Corporation's business locations.

Section 2. Election—Term of Office. Each elected director shall serve for a term of two (2) years. The Board of Directors shall stagger the terms of the members of the Board so that, as near as possible, one-half (1/2) of the members of the Board of Directors are appointed at every other annual meeting of the Board of Directors. In the event the number of directors are ever increased for any reason, the Board of Directors is authorized to stagger the terms of new director(s) in a manner consistent with a scheme of staggering determined by the Board of Directors.

Section 3. Powers of Directors. The Board of Directors shall have the entire management of the business of this Corporation. In addition to the powers and authorities by these Bylaws and the Articles expressly conferred upon it, the Board of Directors may exercise all such corporate powers of this Corporation and do all such lawful acts and things as are not by statute or by the Articles or by these Bylaws directed to be exercised or done by the shareholders, including, but not limited to, those actions as outlined on Exhibit A hereto.

Section 4. Regular Meetings. Regular meetings of the Board of Directors shall be held at such places, and at such times as the Board by vote may determine, and, if so determined, no notice thereof need be given. Notwithstanding the foregoing, the Board of Directors shall meet no less than quarterly.

Section 5. Special Meetings. Special meetings of the Board of Directors may be held at any time or place whenever called by any officer or two or more directors, notice thereof being given to each Director by the officer calling or by the officer directed to call the meeting.

Section 6. Notice. Notice of special meetings of the Board of Directors, stating the date, time, and place thereof, shall be given at least two (2) days prior to the date of the meeting. Such notice may be oral or written. Oral notice may be communicated in person or by telephone, wire



or wireless equipment, which does not transmit a facsimile of the notice. Oral notice is effective when communicated.

Written notice may be transmitted by mail, private carrier, e-mail, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment which transmits a facsimile of the notice. Written notice is effective at the earliest of the following: (a) when dispatched, if notice is sent to the director's address, e-mail address, telephone number, or other number appearing upon the records of the Corporation; (b) when received; (c) two (2) days after its deposit in the U.S. mail if mailed with first-class postage; (d) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

Section 7. Waiver of Notice. A director may waive notice of a special meeting of the Board either before or after the meeting, and such waiver shall be deemed to be equivalent of giving notice. The waiver must be in writing, signed by the director and entitled to the notice and delivered to the Corporation for inclusion in its corporate records. Attendance of a director at a meeting shall constitute waiver of notice of that meeting unless said director attends for the express purpose of objecting to the transaction of business because the meeting has not been lawfully called or convened.

Section 8. Conference Telephone. Meetings of the Board of Directors or any committee designated by the Board of Directors may be effectuated by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at such meetings.

Section 9. Quorum of Directors. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business. When a quorum is present at any meeting, a majority of the members present thereat shall decide any question brought before such meeting, except as otherwise provided by law or the Articles or by these Bylaws. Any change in compensation shall require the approval of two-thirds (2/3) of the Board of Directors.

Section 10. Adjournment. Notice of the adjourned meeting or of the business to be transacted there, other than by announcement at the meeting of which the adjournment is taken, shall not be necessary. At an adjourned meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting as originally called.

Section 11. Action Without a Meeting. Any action required or permitted to be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors. Action by consent is effective when the last director signs the consent, unless the consent specifies a later date.

Section 12. Resignation and Removal. Any director of this Corporation may resign at any time by giving written notice to the Board of Directors, the President, the Secretary, or the Chief Executive Officer of the Corporation. Any such resignation is effective when the notice is delivered, unless the notice specifies a later date.



The shareholders, at a special meeting called expressly for that purpose, may remove from office with or without cause one or more previously elected directors and elect their successors. A director may be removed only if the number of votes cast for removal exceeds the number of votes cast against removal.

Section 13. Vacancies. Unless otherwise provided by law, if the office of any elected director becomes vacant by any reason, the directors may, by the affirmative vote of the majority of the remaining directors, though less than a quorum, choose a successor or successors who shall hold office for the unexpired term of the predecessor director. Vacancies in the Board of Directors may also be filled for the unexpired term by the shareholders at a meeting called for that purpose, unless such vacancies shall have been filled by the directors.

Section 14. Compensation. By resolution of the Board of Directors, each director may be paid expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a stated salary as director, or a fixed sum for attendance at each meeting of the Board of Directors, or both. No such payment shall preclude any director from serving this Corporation in any other capacity and receiving compensation therefor.

Section 15. Presumption of Assent. A director of this Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless: (a) the director objects at the beginning of the meeting, or promptly upon the director's arrival, to the holding of the meeting or transacting business at the meeting; (b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) the director shall file written dissent or abstention with the presiding officer of the meeting before such adjournment or to the Corporation within a reasonable time after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 16. Delegation of Financial Authority Policy; Committees.

a. Attached hereto and incorporated by reference herein as Exhibit B is the Delegation of Financial Authority Policy approved the Board of Directors; the Board and any Corporation officers, directors, or managers have been delegated with financial authority as set forth in Exhibit B (subject to shareholder approval as may be specified therein). Any amendments or substantive changes to Exhibit B shall require approval of a majority of the Board of Directors, provided, however, that any actions outlined on Exhibit B requiring shareholder approval shall also require that same referenced threshold of shareholder approval in order to amend or change that action item and/or its approval requirement.

b. The Board of Directors shall establish a Finance Committee, and may by resolution designate one or more other committees, each of which shall have authority to act to the extent provided in such resolution. With respect to the Finance Committee:

1. The Finance Committee shall generally make recommendations to the Board related to financial matters; without limiting the generality of the



foregoing, the Finance Committee shall make recommendations as set forth on **Exhibit B.**

2. The Finance Committee shall consist of six (6) voting members, which shall include the Corporation's Treasurer, President, and four (4) individuals (each of whom must be shareholders of the Corporation) elected annually by a majority of the Board of Directors; the Corporation's immediate prior year President and the Corporation's current Chief Financial Officer shall also serve on the Finance Committee as non-voting members. The Chief Financial Officer shall preside over Finance Committee meetings, and in the event the Chief Financial Officer is unable to attend a Finance Committee meeting, the Chief Executive Officer shall preside over such meeting. Members of the Finance Committee may be re-elected each year and are not limited to only one year of service on the Finance Committee. If a Finance Committee elected position shall become vacant for any reason, a majority of the Board of Directors shall elect a replacement to serve the remaining term.

3. The Finance Committee shall meet no less than monthly.

### **ARTICLE III** **OFFICERS**

Section 1. Positions. The elected officers of the Corporation may be a President, Vice President, and a Treasurer, as elected by the Board of Directors. The Board of Directors shall elect a Secretary, who may be an administrator or employee of the Corporation. The Corporation may employ a Chief Executive Officer and Chief Financial Officer, and the Board of Directors shall determine their respective terms of employment and authority, which may be set forth in these Bylaws, the related employment agreements, by resolution, or as otherwise set forth in **Exhibit A** and **Exhibit B.** The Chief Executive Officer shall, when present, preside at all meetings of the shareholders and Board of Directors; in the event the Chief Executive Officer is unable to attend, the Chief Financial Officer shall preside at the meetings of the shareholders or Board of Directors. Except as otherwise provided in RCW 18.100.118, as now or hereafter amended, the President, Vice President, and Treasurer shall be duly licensed or otherwise legally authorized to render medical services within the State of Washington.

Section 2. Additional Officers and Agents. The Board of Directors, at its discretion, may appoint a general manager, one or more assistant treasurers, and one or more assistant secretaries and such other officers or agents as it may deem advisable, and prescribe the duties thereof.

Section 3. Term of Office. The President, Vice President, and Treasurer shall each serve one (1)-year terms, provided, however, that following the Vice President's one (1)-year term, he or she will then automatically become the President, and following the Treasurer's one (1)-year term, he or she will then automatically become the Vice President. In the event for any reason the President, Vice President, or Treasurer must resign or there is otherwise a vacancy in such officer position, then the Board of Directors shall elect a replacement to serve the remaining term. Each officer shall hold office until expiration of his or her term (and, in the case of the Treasurer, when a successor shall have been elected and qualified) or until said officer's death or until said officer

shall have resigned or shall have been removed in the manner hereafter provided. The appointment of an officer does not itself create contract rights.

Section 4. Powers and Duties. If the Board of Directors elects persons to fill the officer positions, such officer shall have the following powers and duties:

a. President. The President shall serve on the Board of Directors and Finance Committee. In the event the Chief Executive Officer or the Chief Financial Officer are unable to attend, the President shall preside at meetings of the shareholders or the Board of Directors. The President shall perform such other duties and have such other authority as the Board of Directors shall designate.

b. Vice President. The Vice President shall serve on the Board of Directors. During the absence or disability of the President, the Vice President shall exercise all functions of the President. The Vice President shall have such powers and discharge such duties as may be assigned from time to time to such Vice President by the Board of Directors.

c. Secretary. The Secretary shall keep accurate minutes of all meetings of the shareholders and the Board of Directors, and shall perform all the duties commonly incident to this office, and shall perform such other duties and have such other powers as the Board of Directors shall designate. In the Secretary's absence, an assistant secretary shall be designated to perform the Secretary's duties.

d. Treasurer. The Treasurer shall serve on the Board of Directors and Finance Committee. The Treasurer shall perform such other duties as the Board of Directors shall designate.

Section 5. Execution of Instruments. Subject to Board approval or as otherwise set forth on **Exhibit B** hereto, the President shall have the power to execute and deliver on behalf of and in the name of the Corporation certain instruments requiring the signature of an officer of the Corporation, except where the execution and delivery thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. Unless authorized to do so by these Bylaws or by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the Corporation in any way, to pledge its credit, or to render it liable pecuniary for any purpose or in any amount.

Section 6. Salaries. The salaries, if any, of the officers shall be determined by the Board of Directors. No officers shall be prevented from receiving such salary by reason of the fact that said officer is also a member of the Board, provided, however, that such Board member shall abstain from Board decisions related directly to his or her salary as an officer.

Section 7. Resignation or Removal. Any officer of this Corporation may resign at any time by giving written notice to the Board of Directors, President, or Chief Executive Officer of the Corporation. Any such resignation is effective when the notice is delivered, unless the notice specifies a later date.



Super-Majority approval is needed to remove from office any officer or agent. The removal shall be without prejudice to the contract rights, if any, of the person so removed. The appointment of an officer or agent shall not of itself create contract rights.

Section 8. Vacancies. If the office of any officer or agent becomes vacant by any reason, the Board of Directors may, by the affirmative vote of a majority of its members, elect a successor or successors who shall hold office for the unexpired term.

#### **ARTICLE IV**

#### **CERTIFICATES OF SHARES AND THEIR TRANSFER**

Section 1. Issuance; Certificates of Shares. No shares of this Corporation shall be issued unless authorized by the Board. Such authorization shall include the maximum number of shares to be issued, the consideration to be received, and a statement that the Board considers the consideration to be adequate. Except as otherwise provided in RCW 18.100.116 or 18.100.118, as now or hereafter amended, the shares of this Corporation may be owned only by an individual who is duly licensed or legally authorized to render medical services within the State of Washington.

Certificates for shares of the Corporation shall be in such form as is consistent with the provisions of the Washington Business Corporation Act and shall state:

- a. The name of the Corporation and that the Corporation is organized under the laws of the State of Washington;
- b. The name of the person to whom issued; and
- c. The number and class of shares and the designation of the series, if any, which such certificate represents.

The certificate shall be signed by original or facsimile signature of two officers of the Corporation, and the seal of the Corporation may be affixed thereto.

Section 2. Loss of Certificates. In case of the loss, mutilation, or destruction of a certificate of stock, a duplicate certificate may be issued upon such terms as the Board of Directors shall prescribe.

Section 3. Transfer Books. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the Board of Directors may fix in advance a record date for any such determination of shareholders, such date in any case to be not more than seventy (70) days and, in case of a meeting of shareholders, not less than ten (10) days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When

a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section 4. Voting Record. The officer or agent having charge of the stock transfer books for shares of this Corporation shall make at least ten (10) days before each meeting of shareholders a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each. Such record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

## **ARTICLE V**

### **BOOKS AND RECORDS; FINANCIAL STATEMENTS**

Section 1. Books and Records. The Corporation:

a. Shall keep as permanent records minutes of all meetings of its shareholders and Board of Directors, a record of all actions taken by the shareholders or Board of Directors without a meeting, and a record of all actions taken by a committee of the Board of Directors exercising the authority of the Board of Directors on behalf of the Corporation;

b. Shall maintain appropriate accounting records;

c. Or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each; and

d. Shall keep a copy of the following records at its principal office:

- (1) The Articles and all amendments or restatements thereto;
- (2) The Bylaws and all amendments or restatements thereto;
- (3) The minutes of all shareholders' meetings, and records of all actions taken by shareholders without a meeting, for the past three (3) years;
- (4) Its financial statements for the past three (3) years, including balance sheets showing in reasonable detail the financial condition of the Corporation as of the close of each fiscal year, and an income statement showing the results of its operations during each fiscal year prepared on the basis of generally accepted accounting principles or, if not, prepared on a basis explained therein;
- (5) All written communications to shareholders generally within the past three (3) years;
- (6) A list of the names and business addresses of its current Board members and officers; and



(7) Its most recent annual report delivered to the Secretary of State of Washington.

Section 2. Consolidation. Although the Corporation has an NWOS Division and an Inland Division, the Corporation shall have consolidated billing, accounting, and financial reporting.

Section 3. Financial Statements. Not later than four (4) months after the close of its fiscal year, and in any event prior to the annual meeting of shareholders, the Corporation shall prepare a balance sheet and income statement as of the close of the fiscal year. Upon written request, the Corporation shall mail to any shareholder a copy of the most recent balance sheet and income statement. If the annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by the statement required in RCW 23B.16.200, which is signed by the President or a person responsible for the Corporation's accounting records.

## **ARTICLE VI**

### **INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS**

Section 1. Definitions. As used in this Article:

a. "Act" means the Washington Business Corporation Act, as now or hereafter amended.

b. "Another enterprise" means a corporation (other than the Corporation), partnership, joint venture, trust, association, committee, employee benefit plan, or other group or entity.

c. "Corporation" means NORTHWEST ORTHOPAEDIC SPECIALISTS, P.S., and any domestic or foreign predecessor entity which, in merger or other transactions, ceased to exist.

d. "Director" means each person who is or was a director of the Corporation or an individual who, while a director of the Corporation, is or was serving, at the request of the Corporation, as a director, officer, partner, trustee, employee, or agent of Another Enterprise.

e. "Expenses" includes counsel fees.

f. "Indemnitee" means each person who was, is, or is threatened to be made a party to or is involved (including without limitation as a witness) in any Proceeding because the person is or was a director, officer, employee, or agent of the Corporation and who possesses indemnification rights pursuant to the Articles, these Bylaws, or other corporate action. The term shall also include, for officers, employees, or agents, service at the Corporation's request as a director, officer, partner, trustee, employee, or agent of Another Enterprise.

g. "Loss" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable Expenses incurred with respect to a Proceeding.

h. "Party" includes an individual who was, is, or is threatened to be named a defendant or respondent in a Proceeding.

i. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative. Proceeding shall include derivative shareholders' actions.

j. "Super-Majority" means the approval of the holders of outstanding shares having not less than sixty-seven percent (67%) of the votes entitled to be cast with respect to such matter, voting together as a single group.

Section 2. Right to Indemnification. The Corporation shall indemnify and hold each Board member and Corporation officer harmless against any and all Loss except for Losses arising out of: (a) the Indemnitee's acts or omissions finally adjudged to be intentional misconduct or a knowing violation of law, (b) the Indemnitee's approval of certain distributions or loans by such Indemnitee which are finally adjudged to be in violation of RCW 23B.08.310, or (c) any transaction in which it is finally adjudged that the Indemnitee personally received a benefit in money, property, or services to which the Indemnitee was not legally entitled. Except as provided in Section 6 of this Article, the Corporation shall not indemnify an Indemnitee in connection with a Proceeding (or part thereof) initiated by the Indemnitee unless such Proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. If, after the effective date of this Article, the Act is amended to authorize further indemnification of Board members or Corporation officers, then Board members and Corporation officers shall be indemnified to the fullest extent permitted by the Act, as so amended.

Section 3. Contribution. If the indemnification provided in Section 2 of this Article is not available to be paid to Indemnitee for any reason other than those set forth in subparagraphs (a), (b), and (c) of Section 2 of this Article (for example, because indemnification is held to be against public policy even though otherwise permitted under Section 2) then in respect of any Proceeding in which the Corporation is jointly liable with Indemnitee (or would be if joined in such Proceeding), the Corporation shall contribute to the amount of loss paid or payable by Indemnitee in such proportion as is appropriate to reflect (a) the relative benefits received by the Corporation on the one hand and the Indemnitee on the other hand from the transaction from which such Proceeding arose, and (b) the relative fault of the Corporation on the one hand and the Indemnitee on the other hand in connection with the events which resulted in such loss, as well as any other relevant equitable consideration. The relative fault of the Corporation on the one hand and the Indemnitee on the other shall be determined by a court of appropriate jurisdiction (which may be the same court in which the Proceeding took place) with reference to, among other things, the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent the circumstances resulting in such loss. Corporation agrees that it would not be just and equitable if contribution pursuant to this Section 3 was determined by pro rata allocation or any other method of allocation which does not take account of the foregoing equitable considerations.



The right to indemnification conferred in this Article shall include the right to be paid by the Corporation all expenses (including attorney's fees) incurred in defending any Proceeding in advance of its final disposition; provided, however, that the payment of such expenses in advance of the final disposition of any Proceeding shall be made upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced in the event and only to the extent it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Corporation under the Act, the Articles, or this Article, or otherwise, for such expenses.

Section 4. Notification and Defense of Claim. Promptly after receipt by Indemnatee of notice of commencement of any Proceeding, Indemnatee must, if a claim in respect thereof is to be made against the Corporation under this Article, notify the Corporation of the commencement thereof; with respect to any such Proceeding as to which Indemnatee has notified Corporation of the commencement thereof:

a. The Corporation will be entitled to participate therein at its own expense;

b. Except as otherwise provided below, to the extent that it may wish, the Corporation, jointly with any other indemnifying party similarly notified, will be entitled to assume the defense thereof, with counsel satisfactory to Indemnatee. After notice from the Corporation to Indemnatee of its election to assume the defense thereof, the Corporation will not be liable to Indemnatee under this Article for any legal or other expenses subsequently incurred by Indemnatee in connection with the defense thereof, other than reasonable costs of investigation or as otherwise provided below. Indemnatee shall have the right to employ its counsel in such Proceeding, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnatee unless (1) the employment of counsel by Indemnatee has been authorized by the Corporation, (2) Indemnatee shall have reasonably concluded that there may be a conflict of interest between the Corporation and Indemnatee in the conduct of the defense of such Proceeding, or (3) the Corporation shall not in fact have employed counsel to assume the defense of such Proceeding, in any of which cases the fees and expenses of counsel shall be at the expense of the Corporation. The Corporation shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Corporation or as to which Indemnatee shall have made the conclusion provided in (2) of this subparagraph; and

c. The Corporation shall not be liable to indemnify Indemnatee under this Article for any amounts paid in settlement of any Proceeding affected without its written consent. The Corporation shall not settle any Proceeding in any manner which would impose any penalty or limitation on Indemnatee without Indemnatee's written consent. Neither the Corporation nor Indemnatee will unreasonably withhold its consent to a proposed settlement.

Section 5. Certain Procedures Relating to Indemnification.

a. For the purpose of pursuing rights to indemnification under this Article, the Indemnatee shall (1) submit to the Board a sworn statement of request of indemnification



("Indemnification Statement") of averring that he is entitled to indemnification hereunder; and (2) present to the Corporation reasonable evidence of all amounts for which indemnification is requested. Submission of an Indemnification Statement to the Board shall create a presumption that the Indemnatee is entitled to indemnification hereunder, and the Company shall, within sixty (60) calendar days after submission of the Indemnification Statement, make the payments requested in the Indemnification Statement to or for the benefit of the Indemnatee, unless (A) within such sixty (60) calendar day period it shall be resolved by a majority vote of the directors who were not and are not parties to the threatened Proceeding (Disinterested Director) that the Indemnatee is not entitled to the indemnification under this Article; provided, however, in no event shall the number of directors be less than two (2); (B) such vote shall be based upon clear and convincing evidence (sufficient to rebut the foregoing presumption); (C) the Indemnatee shall receive such period notice in writing of such vote, which notice shall disclose with particularity the evidence upon which the vote is based.

The provisions of this Section are intended to be procedural only and shall not affect the right of the Indemnatee to indemnification under this Article so long as the Indemnatee follows the prescribed procedure, in any determination that the Indemnatee is not entitled to indemnification and any failure to make the payments requested in the Indemnification Statement shall be subject to judicial review by any court of competent jurisdiction.

b. The right to indemnification conferred in this Article shall include the right to be paid by the Corporation all expenses (including attorney's fees) incurred in defending any Proceeding in advance of its final disposition; provided, however, that the payment of such expenses in advance of the final disposition of any Proceeding shall be made upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced in the event and only to the extent it shall ultimately be determined that such director or officer is not entitled to be indemnified by the Corporation under the Act, the Articles, or this Article, or otherwise, for such expenses.

Section 6. Right of Indemnatee to Bring Suit. If a claim under this Article is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for expenses incurred in defending a proceeding in advance of its final disposition, in which case the applicable period shall be twenty (20) days, the Indemnatee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, to the extent successful in whole or in part, the Indemnatee shall be entitled to be also paid the expense of prosecuting such claim. Neither the failure of the Corporation (including its Board of Directors, its shareholders, or independent legal counsel) to have made a determination prior to the commencement of such Proceeding that indemnification of or reimbursement or advancement of expenses to the Indemnatee is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Directors, its shareholders, or independent legal counsel) that the Indemnatee is not entitled to indemnification or to the reimbursement or advancement of expenses, shall be a defense to the Proceeding or create a presumption that the Indemnatee is not so entitled.



Section 7. Indemnification of Employees and Agents of the Corporation. The Corporation may, by action of its Board of Directors from time to time, provide indemnification and pay expenses in advance of the final disposition of an action to employees and agents of the Corporation, with the same scope and effect as the provisions of this Article with respect to the indemnification and advancement of expenses of directors and officers of the Corporation or pursuant to rights granted pursuant to, or provided by, the Act or otherwise.

Section 8. Contract Right. Rights of indemnification under this Article shall continue as to an Indemnitee who has ceased to be a Board member or Corporation officer, as long as Indemnitee shall be subject to any possible action, by reason of the fact that Indemnitee was a Board member or Corporation officer or serving in any other capacity referred to herein, and shall inure to the benefit of his or her heirs, executors, and administrators. The right to indemnification conferred in this Article shall be a contract right upon which each Board member or Corporation officer shall be presumed to have relied in determining to serve or to continue to serve as such. Any amendment to or repeal of this Article shall not adversely affect any right or protection of a Board member or Corporate officer for or with respect to any acts or omissions of such Board member or Corporate officer occurring prior to such amendment or repeal.

Section 9. Severability. If any provision of this Article or any application thereof shall be invalid, unenforceable, or contrary to applicable law, the remainder of this Article, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, unenforceable, or contrary to applicable law, shall not be affected thereby and shall continue in full force and effect.

## **ARTICLE VII AMENDMENTS**

Section 1. By the Shareholders. These Amended and Restated Bylaws may be amended or repealed by the affirmative vote of a majority of the shares present at any meeting of the shareholders if notice of the proposed amendment is contained in the notice of the meeting, or as evidenced by signature on a written consent of the shareholders by a majority of the shares held by the shareholders.

Section 2. By the Board of Directors. Exhibit A and Exhibit B to these Amended and Restated Bylaws shall be reviewed annually by the Board of Directors and may be amended by the affirmative vote of a majority of the Board of Directors at any meeting of the Board, if notice of the proposed amendment is contained in the notice of the meeting, or as evidenced by signature on a written consent of a majority of the Board of Directors, subject to Article I, Section 10, and Article II, Section 16.a, herein. Any nonsubstantive updates or changes to Exhibit A or Exhibit B need not be approved by formal amendment and can be evidenced by the Corporation's Secretary (and included in the Corporation's books and records).

The undersigned Secretary of NORTHWEST ORTHOPAEDIC SPECIALISTS, P.S., does hereby certify that the above and foregoing Amended and Restated Bylaws of said Corporation were adopted by the directors as the Amended Bylaws of NORTHWEST ORTHOPAEDIC SPECIALISTS, P.S., and that the same do now constitute the Bylaws of this Corporation.

DATED this 23 day of March, 2021.

  
Secretary