

**AMENDED AND RESTATED  
BYLAWS  
OF  
MCKENNA FOUNDATION**

**ARTICLE 1  
NAME, LOCATION AND PURPOSE**

1.1 Name. The name of the corporation is McKenna Foundation ("Corporation").

1.2 Principal Office. The principal office of the Corporation shall be located in the City of New Braunfels, Comal County, Texas.

1.3 Purpose. The Corporation is organized exclusively for charitable, scientific, and educational purposes as an organization described in section 501(c)(3) of the Code, or corresponding provisions hereinafter in effect, and in accomplishment of such purposes, the Corporation is to be administered solely for the benefit and support of McKenna Management, a Texas non-profit corporation (the "Beneficiary"). The Corporation shall be administered solely for the benefit and support of the Beneficiary by providing financial assistance and benefit to the Beneficiary through whatever means are determined by the Board of Trustees, including, but not limited to, making distributions to the Beneficiary. In addition, the purposes of the Corporation are:

- (a) to advance the well-being of the New Braunfels community;
- (b) to own, construct, lease, maintain and manage facilities and services designed to promote wellness and improve the health of the community;
- (c) to financially support, develop, coordinate and provide management, consulting and administrative services to institutions and programs in furtherance of the Corporation's purposes;
- (d) to promote a broad range of health and wellness focused facilities, programs and services in the Corporation's community;
- (e) to undertake any other actions in furtherance of or incident to the above purposes; and
- (f) to take any other actions as may be permitted under the Texas Business Organizations Code, as amended, as now or hereafter in effect.

More specifically the Corporation is created solely as an organization described in section 501(c)(3) of the Code, or corresponding provisions hereafter in effect, and exempt from taxation under section 501(a) of Code, or corresponding provisions hereinafter in effect. No part of its net earnings shall inure to the benefit of any private member, trustee, or individual; no part of its

activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

**ARTICLE 2**  
**MEMBERS**

2.1 Members. The Corporation shall have no members.

**ARTICLE 3**  
**BOARD OF TRUSTEES**

3.1 Number, Tenure, Election, and Vacancies. The direction and management of the affairs of the Corporation and the control and disposition of its properties and funds shall be vested in a Board of Trustees (the "Board") which shall consist of not less than nine (9) and not more than thirteen (13) persons. The Board shall, by resolution, restate the membership of the Board on the effective date of these bylaws and their terms of office. Each trustee shall serve for the trustee's term of office, and subject to Section 6.4 of these Bylaws, until a successor is duly appointed and qualifies. A vacancy shall be declared in any seat on the Board upon the death or resignation of the occupant thereof, or upon the disability of any occupant rendering the occupant permanently incapable of participating in the management and affairs of the Corporation. Subject to the remainder of this paragraph, upon the expiration of the term of office of a trustee, the respective successors shall be nominated by the Nominating and Governance Committee and approved by the affirmative vote of a majority of the Board present for terms of three (3) years with at least a majority of such persons being selected from among persons who are residents of the Corporation's service area. The Nominating and Governance Committee shall nominate only one successor for each vacancy on the Board. Prior to the Nominating and Governance Committee's nomination of successors, the Nominating and Governance Committee shall request all trustees to suggest names of potential successors to the Nominating and Governance Committee for its consideration. From the effective date of these Bylaws through January 31, 2015, two (2) of the trustees shall be designated in writing to the Corporation by CHRISTUS Health, a Texas non-profit corporation; from February 1, 2015 through January 31, 2022, one (1) of the trustees shall be designated in writing to the Corporation by CHRISTUS Health. The period from the effective date of these Bylaws through January 31, 2022 is the "CHRISTUS Health Representation Period." Each person designated as a trustee by CHRISTUS Health (each a "CHRISTUS Health trustee") must be, throughout the person's term, (i) a CHRISTUS Health Vice President or System Director, (ii) the Administrator of CHRISTUS Santa Rosa Hospital – New Braunfels, or (iii) Chief Executive Officer for the San Antonio Region of, or a member of the Board of Directors of, CHRISTUS Santa Rosa Health Care Corporation. The term of one of the two CHRISTUS Health Trustees (who shall be selected by the Corporation, if not designated in writing by CHRISTUS Health), shall terminate on January 31, 2015; the term of the remaining CHRISTUS Health trustee shall terminate on January 31, 2022. A vacancy in the position of a CHRISTUS Health trustee shall be filled by a person designated in writing to the Corporation by CHRISTUS Health. In case of an appointment to fill a vacancy, the term of the successor shall be for the unexpired term for which the former occupant thereof was appointed. Any trustee whose term of office has expired may be appointed

to succeed himself or herself; provided, a person shall be limited to three (3) successive terms as a trustee. For purposes of the preceding sentence, completion of an unexpired term to fill a vacancy shall be counted as a term of office only if the unexpired term is greater than 18 months. Once a person serves three (3) successive terms as a trustee, that person may be appointed as a trustee only after the person's absence from the Board for twelve (12) months. Further, a person who has served three (3) successive terms as a trustee, and is reappointed as a trustee after the person's absence from the Board for twelve (12) months, shall be limited to three (3) terms for a total of six (6) terms. Notwithstanding the foregoing, the Board, in its discretion, may vote to extend the term of the immediate past Chair for a period of up to two (2) years beyond the three (3) term limit, so long as in doing so, the Board does not exceed the maximum total number of trustees, as listed in this Section 3.1. Any trustee may be removed from the Board at any time, with or without cause, by the Board of Directors; provided, a CHRISTUS Health trustee shall be removed by the Board upon the written direction of CHRISTUS Health and may not otherwise be removed without the consent of CHRISTUS Health, which consent shall not be unreasonably withheld. In all events, no person shall be appointed as a trustee who is older than 73 years of age at the beginning of such three (3) year term as a trustee. The provisions of this Section and Section 8.1 as to CHRISTUS Health and CHRISTUS Health Trustees shall expire and be of no further force and effect on the earlier of (i) January 1, 2023 or (ii) the termination of the Grant Agreement dated January 31, 2008 between CHRISTUS and the Foundation, and acknowledged by McKenna Health System, prior to the payment by CHRISTUS of all amounts described in Section 1.1 of such Grant Agreement.

3.2 Annual Meeting. The annual meeting of the Board shall be held in December of each year on a date and at a time determined by the Board for the election of officers and the transaction of such other business as may lawfully come before the meeting. It shall be the duty of the Secretary of the Corporation to give ten (10) days' notice of such meeting to each trustee, or by mail to each trustee not personally notified.

3.3 Regular Meetings. Regular meetings of the Board shall be held at such times as may be fixed from time to time by resolution of the Board. Such meetings shall take place at such place as the Board may determine:

3.4 Special Meetings. Special meetings of the Board shall be held whenever called by the Secretary of the Corporation upon the direction of the Chair of the Corporation or upon written-request of any two (2) trustees.

3.5 Notice. Except as provided herein, notice of the time and place of special meetings of the Board, including proposed actions under Sections 3.9 and 3.10, shall be given not less than three (3) days before the meeting, either personally (including by telephone or any electronic means) or by mailing such notice to each trustee at the trustee's address as the same appears on the records of the Corporation. Such notice need not be given to any trustee who attends such meeting in person, nor to any trustee who shall waive notice of such meeting, whether before or after such meeting. Except as otherwise expressly provided herein or by statute, notice of any meeting of the Board need not state the business to be transacted thereat.

3.6 Quorum and Proxy; Majority Vote. A quorum for the transaction of business by the Board shall be the presence of at least a majority of the number of trustees constituting the whole Board; however, trustees present by proxy may not be counted toward a quorum. The act of the majority of the trustees present in person or by proxy at a meeting at which a quorum is present shall be the act of the Board, except as otherwise specifically provided by law, by the Certificate of Formation, or by these bylaws. The trustees present at any meeting, whether or not less than a quorum, by a majority vote may adjourn the meeting from time to time and a meeting may be held as adjourned without further notice, at which, if a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed.

3.7 Standing Committees. There shall be the following standing committees and such other committees as the Board may authorize:

(a) Executive Committee. The Executive Committee shall be made up of the Chair, Vice Chair, Secretary and, if still a trustee, the most recent past Chair. The Chair shall serve as the Executive Committee chairperson. Actions of the Executive Committee shall be subject to approval by the Board, except to the extent provided otherwise in a resolution of the Board pertaining to a particular matter, transaction, or undertaking, in which case, the Executive Committee shall have and may exercise all of the authority of the Board in the management of the business and affairs of the Corporation with respect to the subject of such resolution, including power to authorize the seal, if any, of the Corporation to be affixed to all papers which may require it. The Executive Committee shall keep regular minutes of its proceedings and report the same to the Board when requested by the Board. Any member of the Executive Committee may be removed, for or without cause, by the affirmative vote of two-thirds (2/3) of the whole Board. If any vacancy or vacancies occur in the Executive Committee, such vacancy or vacancies shall be filled by the affirmative vote of a majority of the whole Board.

(b) Audit and Finance Committee.

(i) The Audit and Finance Committee shall consist of at least four (4) trustees, including the current Chair, who shall serve as a voting, ex officio member, and three (3) trustees nominated by the Executive Committee and approved by the Board. The Audit and Finance Committee may ask Corporation employees to serve in an advisory capacity to the Audit and Finance Committee;

(ii) The Audit and Finance Committee's duties shall include, but are not limited to, the following:

(A) Review with staff an annual operating budget for capital expenditures and Corporation operations;

(B) Advise the Board and President on the proposed annual budget;

(C) Consider any budget amendments prior to submission to the Board for approval;

(D) Develop multi-year plans and long-range financial goals that integrate strategic plan objectives and initiatives;

(E) Present all budget and budget amendment proposals to the Board for approval;

(F) Make recommendations for changes in Corporation operations to ensure sound fiscal management;

(G) Create, approve, update and review (as necessary) policies and procedures for financial transactions that help ensure the assets of the Corporation are protected;

(H) Monitor adherence to the budget and financial policies and procedures;

(I) Recommend procedures to ensure that the Corporation's finances are conducted legally, ethically, and in accordance with proper accounting rules and applicable laws and regulations;

(J) Recruit and recommend to the Board the appointment of the independent auditor(s);

(K) Review the draft audit and Form 990 as prepared by the independent auditor;

(L) Arrange for the independent auditor to present the audit report to the Board;

(M) Review the management recommendation letter (SAS No. 112) from the independent auditor and follow up on any issues mentioned; and

(N) Recommend policies and practices to prevent financial fraud, including an understanding of the areas of risk as they relate to potential fraud within the Corporation, as well as accumulating the fraud-related findings of the independent auditor.

(iii) The Audit and Finance Committee shall meet as often as necessary to conduct business.

(c) Investment Committee.

(i) The Investment Committee shall consist of at least four (4) trustees, including the current Chair, who shall serve a voting, ex officio member, and three (3) trustees nominated by the Executive Committee and approved by the Board. The Investment Committee may ask Corporation employees to serve in an advisory capacity to the Investment Committee;

(ii) The Investment Committee's duties shall include, but are not limited to, the following:

(A) Present to the Board for their approval proposed modifications to the Corporation's investment policy detailing the objectives of the investment portfolio, guidelines on the asset allocation of the portfolio based on a predetermined level of risk tolerance, authorizations for executing transactions and disposition of earned income;

(B) Oversee that provisions of the investment policy are followed by the Corporation, investment managers and/or advisors of the Investment Committee;

(C) Review the investment policy at least annually make recommendations to the Board for approval of any changes in the Corporation's investment policy.

(D) Evaluate and hire investment managers and/or advisors;  
and

(E) Review and report the performance of Corporation's investment portfolio.

(iii) The Investment Committee shall meet as often as necessary to conduct business.

(d) Nominating and Governance Committee.

(i) The Nominating and Governance Committee shall consist of three (3) trustees, including the most recent past Chair, and two (2) non-officer trustees appointed by the current Chair. If no past Chair serves as a trustee, three (3) non-officer trustees shall be appointed by the current Chair. A trustee must serve on the Board for at least two (2) years before the trustee is eligible to serve on the Nominating and Governance Committee.

(ii) The Nominating and Governance Committee's duties shall include, but are not limited to, the following:

(A) Prepare and deliver to the full Board a recommended slate of trustees and officers to be elected at least twenty (20) days prior to the annual meeting;

(B) Solicit suggested nominations from the Board of successor trustees to be elected;

(C) Nominate successor trustees for each vacancy on the Board;

(D) Solicit suggested nominations from the Board of officers to be elected. Nominations for the office of Chair from the Board shall be in writing, signed by no less than two trustees, and received by a member of the Nominating Committee not less than ten (10) days prior to the annual meeting;

(E) No nominations for the office of Chair shall be accepted at the annual meeting. Nominations for the offices of Vice Chair and Secretary shall be accepted at the annual meeting;

(F) Conduct the election of the trustees and officers at the annual meeting by written ballot, if necessary;

(G) Address conflicts of interest pursuant to the Corporation's conflict of interest policy;

(H) Arrange for and plan Board education and development presentations and/or activities;

(I) Arrange for and/or conduct Board orientation for successor trustees; and

(J) Regularly report to the Board.

(iii) The Nominating and Governance Committee shall meet as often as necessary to conduct business.

3.8 Other Committees. The Board may, by resolution passed by a majority of the whole Board, designate additional committees, each committee to consist of three or more persons, and each such committee shall have such power and authority and shall perform such functions as may be provided in such resolution; however, such committee(s) shall not have the power to have and exercise the authority of the Board. The Board shall appoint a committee chairperson of each designated committee. Such committee or committees shall have such name or names as may be designated by the Board and shall keep regular minutes of their proceedings and report the same to the Board when requested by the Board. Any member of a committee may be removed, for or without cause, by the affirmative vote of two-thirds (2/3) of the whole Board.

If any vacancy or vacancies occur in a committee, such vacancy or vacancies shall be filled by appointments made in the same manner as provided in the case of the original appointments.

3.9 Action Without a Meeting. Any action required by to be taken at a meeting of the trustees of the Corporation (or any action that may be taken at a meeting of any committee of the Corporation) may be taken without a meeting if (a) notice of such proposed action is provided to all trustees or committee members as set forth in Section 3.5, (b) a consent in writing, setting forth the action to be taken, is signed by a sufficient number of trustees (or committee members) as would be necessary to take that action at a meeting at which all of the trustees (or committee members) were present and voted, and (c) each written consent bears the date of signature of each trustee (or committee member) who signs the consent and the other requirements of Subchapter E of Chapter 6 of the Texas Business Organizations Code, as amended from time to time (the "BOC"), or its successor, are complied with. Prompt notice of the taking of any action by trustees or committee members without a meeting by less than unanimous written consent shall be given to all trustees or committee members, as the case may be, who did not consent in writing to the action.

3.10 Participation by Conference Telephone. Members of the Board or members of any committee designated by the Board may participate in and hold a meeting of the Board or such committee, pursuant to notice as required by Section 3.5, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

3.11 Conflict of Interest Policy. The Corporation shall have and enforce a conflict of interest policy. The Board shall adopt a conflict of interest policy.

#### **ARTICLE 4** **GENERAL OFFICERS**

4.1 Election. The officers of the Corporation shall be a President, Chair, Vice Chair, Secretary, and such other officers as may be determined and selected by the Board. The officers of the Corporation shall be elected by the Board at the regular annual meeting of the Board. New offices may be created and filled at any meeting of the Board of Directors. The officers so elected shall hold office for a period of one year and until their successors are elected and qualify. The offices of Chair, Vice Chair, and Secretary shall be held by members of the Board. Other offices are not required to be held by a member of the Board.

4.2 Attendance at Meetings. The Chair, and in the Chair's absence the Vice Chair, shall call meetings of the Board to order and shall act as the presiding officer of such meetings, and the Secretary of the Corporation shall act as Secretary of all such meetings, but in the absence of the Secretary the presiding officer may appoint any person present to act as Secretary of the meeting.

4.3 Duties. The principal duties of the several officers are as follows:

(a) President. The President shall be the chief executive officer of the Corporation and, subject to the control of the Board, shall have general charge and supervision of the administration of the affairs and business of the Corporation. The President or the Chair shall see that all orders and resolutions of the Board are carried into effect. The President or the Chair shall sign and execute all legal documents and instruments in the name of the Corporation when authorized to do so by the Board and shall perform such other duties as may be assigned to the President from time to time by the Board. The President shall also have the power to appoint and remove subordinate employees. The President shall submit to the Board plans and suggestions for the work of the Corporation, shall direct its general correspondence, and shall present recommendations in each case to the Board for decision. The President shall submit a report of the activities and business affairs of the Corporation at each annual meeting of the Board and at other times when called upon so to do by the Board.

(b) Chair. The Chair shall preside at all meetings of the Board and shall serve as a representative of the Corporation. The Chair or the President shall sign and execute all legal documents and instruments in the name of the Corporation when authorized to do so by the Board and shall perform such other duties as may be assigned to the Chair from time to time by the Board. The Chair shall serve as a voting, ex officio member of all standing committees, other than the Nominating and Governance Committee, and such other committees as the Board may authorize. The Chair shall be limited to two (2) successive terms as Chair.

(c) Vice Chair. The Vice Chair shall discharge the duties of the Chair in the event of the Chair's absence or disability for any cause whatever and shall perform such additional duties as may be prescribed from time to time by the Board.

(d) Secretary. The Secretary shall have charge of the records and correspondence of the Corporation under the direction of the Chair and shall be the custodian of the seal (if any) of the Corporation. The Secretary shall give notice of and attend all meetings of the Board. The Secretary shall take and keep accurate minutes of all meetings of the Board. The Secretary shall discharge such other duties as shall be assigned to the Secretary by the Chair or the Board. In case of the absence or disability of the Secretary, the Board may appoint an assistant Secretary to perform the duties of the Secretary during such absence or disability.

4.4 Vacancies. Whenever a vacancy shall occur in any general office of the Corporation, such vacancy shall be filled by the Board by the election of a new officer who shall hold office until the next annual meeting and until a successor is elected and qualifies.

## ARTICLE 5 **APPOINTIVE OFFICERS AND AGENTS**

5.1 Appointive Officers and Agents. The Board may appoint such officers and agents in addition to those provided for in Article 4, as may be deemed necessary, who shall have such authority and perform such duties as shall from time to time be prescribed by the Board. All

appointive officers and agents shall hold their respective offices or positions at the pleasure of the Board and may be removed from office or discharged by the Board at any time with or without cause; provided that removal without cause shall not prejudice the contract rights, if any, of such officers and agents.

## **ARTICLE 6** **GENERAL PROVISIONS**

6.1 Rules. The deliberations of the Board shall be in accordance with rules adopted from time to time by the Board. If no such rules are adopted, deliberations of the Board shall be in accordance with the latest edition of Robert's Rules of Order.

6.2 Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

6.3 Seal. The Corporation may have a seal and said seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced. Any officer of the Corporation shall have authority to affix the seal to any document requiring it.

6.4 Resignation. Any trustee, officer, or committee member may resign at any time by giving written notice to the Chair or the Secretary. Such resignation shall take effect at the time specified therein or, if no date be specified, on the date of its receipt.

6.5 Notices. Whenever under the provisions of these bylaws notice is required to be given to any trustee or committee member, and no provision is made as to how such notice shall be given, it shall not be construed to mean personal notice, but any such notice may be given in writing, by mail, postage prepaid, addressed to such trustee or committee member at such address as appears on the books of the Corporation. Any notice required or permitted to be given by mail shall be deemed to be given at the time when the same be thus deposited, postage prepaid, in the United States mail. Whenever any notice is required to be given to any trustee or committee member under these bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

6.6 Construction. Article and section headings in these bylaws are for convenience only and shall not affect the construction hereof. Pronouns used in these bylaws shall be construed as feminine, masculine, or neuter, as the context requires, and words of singular number in these bylaws shall be construed as plural, as the context requires.

## **ARTICLE 7** **INDEMNIFICATION OF TRUSTEES AND OFFICERS**

7.1 Persons Indemnified. The Corporation shall, to the fullest extent permitted by law, indemnify any person who is or was a trustee, officer, employee, or agent of the Corporation and any person who is or was serving at the request of the Corporation as a trustee, director, officer, partner, venturer, proprietor, employee, agent, or similar functionary of another foreign or domestic Corporation, partnership, joint venture, sole proprietorship, trust, employee benefit

plan, or other enterprise who, because such person is or was serving in such capacity, was, is, or is threatened to be made a named defendant or respondent in (a) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative; (b) any appeal in such an action, suit, or proceeding; and (c) any inquiry or investigation that could lead to such an action, suit, or proceeding, against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses (including court costs and attorneys' fees) actually incurred by such person in connection with any such action, suit, proceeding, appeal, inquiry, or investigation, but if such action, suit, proceeding, appeal, inquiry, or investigation was brought by or on behalf of the Corporation, such indemnification shall be limited to reasonable expenses actually incurred by such person in connection with such action, suit, proceeding, appeal, inquiry, or investigation.

7.2 Advancements. The Corporation shall pay or reimburse reasonable expenses (including court costs and attorneys' fees) in advance of the final disposition of an action, suit, proceeding, appeal, inquiry, or investigation described in Section 7.1, but only after the Corporation receives a written affirmation of the person receiving the payment or reimbursement of the person's good faith belief that the person has met the standard of conduct necessary for indemnification under this Article and a written undertaking by or on behalf of such person, consisting of an unlimited general obligation, secured or unsecured, of such person, to repay the amount paid or reimbursed if it is ultimately determined that the person has not met those requirements, which undertaking shall be accepted without reference to financial ability to make repayment.

7.3 Insurance. The Corporation may purchase and maintain insurance on behalf of any person described in Section 7.1 against any liability asserted against the person and incurred by the person in a capacity described in Section 7.1 or arising out of the person's status as such a person, whether or not the Corporation would have the power to indemnify the person against that liability under this Article.

7.4 No Indemnification. A person shall not be indemnified by the Corporation under this Article in the case of any criminal proceeding, if the person had cause to believe the person's conduct was unlawful, or with respect to any action, suit, proceeding, appeal, inquiry, or investigation in which such person is found liable (a) on the basis that personal benefit was improperly received by the person, whether or not the benefit resulted from an action taken in such person's official capacity, or (b) to the Corporation.

## ARTICLE 8 **AMENDMENTS AND GOVERNING LAW**

8.1 Amendments. These bylaws may be altered, amended, or repealed and new bylaws may be adopted by the Board at any regular meeting or at any special meeting called for that purpose; provided, no amendment to these bylaws regarding the total number of trustees on the Board or the appointment, removal, or rights of the CHRISTUS Health trustees, the provisions of Article 7, or this Section 8.1 may be made without the approval of CHRISTUS Health. Written notice of such amendment shall be given to the Board and, if CHRISTUS

Health's approval is required, CHRISTUS Health, not less than ten (10) days prior to the meeting at which such amendment is voted on.

8.2 Texas Law. It is expressly recognized that when these bylaws are silent as to the manner of performing any corporate function, the provisions of the Texas Business Organizations Code shall control.

**CERTIFICATE**

I, the undersigned officer of McKenna Foundation, a Texas non-profit corporation (the "Corporation"), do hereby certify that the foregoing Amended and Restated Bylaws were duly adopted as the Bylaws of the Corporation at a meeting of the Board of Trustees on March 5, 2012.

Dated: March 5, 2012

By: Wes S. Board  
Name: WES S. BOARD  
Title: Chairman of Board