



Bylaws
of
Mercyhurst College
(A Non-Profit Corporation)

Last revised Oct. 22, 2011

Mission Statement

Consistent with its Catholic identity and Mercy heritage, Mercyhurst College educates women and men in a culture where faith and reason flourish together, where the beauty and power of the liberal arts combine with an appreciation for the dignity of work and a commitment to serving others. Confident in the strength of its student-faculty bonds, the College community is inspired by the image of students whose choices, in life and work, will enable them to realize the human and spiritual values embedded in everyday realities and to exercise leadership in service toward a just world.

Non-Discrimination Policy

It has been the College's longstanding policy and practice to respect, protect and promote dignity and equal opportunity for all members of the Mercyhurst College community and to prohibit unlawful discrimination and harassment against current and prospective students, faculty and employees. The College documented this policy and practice in a resolution first adopted by the Board of Trustees on June 30, 2005, and revised it Oct. 22, 2011 to read:

Mercyhurst College values diversity and is committed to the goal of achieving equal opportunity for all.

For that reason, Mercyhurst abides by federal, state and local law in admissions, employment and all services and programs provided.

Mercyhurst does not unlawfully discriminate on the basis of race, color, religion, creed, sex, citizenship status, ancestry, national or ethnic origin, age, familial status, sexual orientation, physical or mental disability, military or veteran status or any other legally protected characteristic or because of any individual's legally protected activities.

Mercyhurst complies with federal, state and local legislation and regulations regarding nondiscrimination. This policy applies to faculty, administration and staff, applicants for employment, students and applicants for educational programs and activities.

Article I

Purpose, Office and Fiscal Year

Section 1.01. Purpose.

Mercyhurst College, hereafter the "College," is organized for purposes of establishing and operating a college for men and women, with power to confer the baccalaureate degree and such other degrees as may be duly authorized. The College does not contemplate pecuniary gain or profit, incidental or otherwise to its directors, hereafter designated "Trustees." These purposes are charitable and educational within the terms and provisions of Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended, and its regulations as they now exist or as they may be amended. The College shall not participate or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

Section 1.02. Registered Office

The registered office of the College in Pennsylvania shall be at 501 E. 38th St., Erie, PA 16546, until otherwise established by an amendment of the articles or by the Board of Trustees, and a record of such change is filed with the Department of State in the manner provided by law.

Section 1.03. Other Offices

The College may also have offices at such other places within Erie County, Pa. as the Board of Trustees may from time to time appoint or the business of the College may require.

Section 1.04. Fiscal Year

The fiscal year of the College shall be June 1 to May 31 of each year.

Section 1.05. Non-profit Corporation Law

These bylaws are prepared in accordance with the Pennsylvania Non-Profit Corporation Law of 1988 (the "Act").

Article II

Notice, Waivers-Meetings Generally

Section 2.01. Manner of Giving Notice

Whenever written notice is required to be given to any person under the provisions of the Pennsylvania Non-profit Corporation Law of 1988 or by the articles of these bylaws, it may be given to the person either personally or by sending a copy by United States first class or express mail, postage prepaid, or by facsimile or electronic mail to the address supplied by the Trustee to the College for the purpose of notice. If the notice is sent by mail, it shall be deemed to have been given to the entitled person when deposited in the United States mail, or in the case of facsimile or electronic mail, when received.

Section 2.02. Notice of Meetings of Board of Trustees

(a) General Rule.

Notice of the annual meeting and regular meetings of the Board of Trustees shall be given to each Trustee by telephone or in writing at least 10 days before the time at which the meeting is to be held. Notice to each Trustees of every special meeting of the Board of Trustees shall be given at least 24 hours in the case of notice by telephone; 48 hours in the case of notice by express mail; or 5 days in the case of notice by first class United States mail. Every such notice shall state the time and place of the meeting. Neither the business to be transacted nor the purpose of any meeting of the Board need be specified in a notice of the meeting.

(b) Notice of Action by Trustees on Bylaws. Refer to Section 8.09.

Section 2.03. Waiver of Notice

(a) Written Waiver.

Whenever written notice is required to be given to any person under the provisions of the Act or by the articles of these bylaws, a waiver in writing, signed by the person or persons entitled to the notice, whether before or after the time stated, shall be deemed equivalent to the giving of notice. Neither the business to be transacted nor the purpose of any meeting need be specified in the waiver of notice of the meeting, except as otherwise required by this subsection.

(b) Waiver by Attendance.

Attendance of a person at any meeting shall constitute a waiver of notice of the meeting, except where a person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened. In the case of a special meeting of members, however, the waiver must specify the general nature of the business to be transacted.

Section 2.04. Modification of Proposal Contained in Notice

Whenever the language of a proposed resolution is included in a required written notice of a meeting under the provisions of the Act or the articles of these bylaws, the meeting considering the resolution may without further notice adopt it, with such clarifying or other amendments as do not enlarge its original purpose.

Section 2.05. Exception to Requirement of Notice

Whenever any notice of communication is required to be given to any person under the provisions of the Act or by the articles of these bylaws or by the terms of any agreement or other instrument or as a condition precedent to taking any corporate action, communication with that person is then unlawful. In such case the giving of the notice or communication to that person shall not be required.

Article III

Board of Trustees

Section 3.01. Board Authority and Responsibilities

(a) Board Authority and Responsibilities.

Unless otherwise provided in the Articles of Incorporation or by statute, all powers vested by law in the College shall be exercised by or under the authority of the Board of Trustees, and the business and affairs of the College shall be managed under the direction of the Board. These bylaws and other Board policy statements shall take precedence over all other institutional statements, documents and policies.

(b) The Board of Trustees shall have the authority to carry out all lawful functions that are permitted by these bylaws or by the Articles of Incorporation. This authority, in consultation with the President, shall include but not be limited to these illustrative functions:

1. Determine and periodically review the College's mission and purpose;
2. Appoint the President who shall be the College's chief executive officer, and set appropriate terms of employment, including compensation;

3. Support the President and annually assess his or her performance based on mutually agreed upon goals and other criteria;
4. Provide advice and consent concerning other key institutional officers who serve at the pleasure of the President;
5. Review and approve proposed changes in the College's academic program and other major enterprises consistent with the College's mission, plans and financial resources;
6. Determine matters of faculty tenure upon the recommendation of the Vice President for Academic Affairs and the President of the College;
7. Review and take appropriate action regarding the budget of the College, which shall be submitted to the Board upon recommendation of the President;
8. Authorize any changes in tuition, room, board and fees within the College;
9. Authorize the construction of new buildings and major renovations of existing buildings of the College;
10. Authorize the sale, purchase or lease of land or buildings for the use of the College;
11. Authorize and promote major fund-raising activities of the College;
12. Authorize the incurring of debts by the College and the securing thereof by mortgage and the pledge of real and personal property, tangible and intangible, presently owned or to be acquired by the College.

Section 3.02. Personal Liability

(a) Standard of Care: Justifiable Reliance.

A Trustee shall stand in a fiduciary relationship to the College and perform his or her duties as a Trustee, including duties as a member of any committee of the Board upon which the Trustee may serve in good faith and in a manner the Trustee reasonably believes to be in the best interest of the College. A Trustee shall act and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances in performing his or her duties. A Trustee shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data that are in each case prepared or presented by any of the following:

1. Trustee reasonably believes to be reliable and competent in the matters presented;
2. Counsel, public accountants or other persons as to matters that the Trustee reasonably believes to be within the professional or expert competence of such person;
3. A committee of the Board upon which the Trustee does not serve that is duly designated in accordance with law to handle or recommend matters within its designated authority and which the Trustee reasonably believes to merit confidence.

A Trustee, however, shall not be considered to be acting in good faith if the Trustee has knowledge concerning the matter in question that would cause his or her reliance to be unwarranted.

(b) Consideration of Factors.

In considering the best interest of the College, the Board of Trustees and its individual members shall consider while discharging the duties of their respective positions and committee assignments, the effects of any action upon employees, suppliers and customers of the College and upon communities in which offices or other establishments of the College are located, and all other pertinent factors. The consideration of those factors shall not constitute a violation of subsection (a).

(c) Presumption.

Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a Trustee or any failure to take any action shall be presumed to be in the best interest of the College.

(d) Personal Liability of Trustees.

A trustee shall not be personally liable, as such, for monetary damages of any action taken, or any failure to take any action unless the Trustee has breached or failed to perform the duties of his or her office under this section; and the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

The provisions of the above paragraph shall not apply to the responsibility or liability of a Trustee pursuant to any criminal statute, or the liability of a Trustee for the payment of taxes pursuant to local, State or Federal law.

(e) Notation of Dissent.

A Trustee who is present at a meeting of the Board of Trustees or of a committee of the Board at which time action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent is entered in the Minutes of the meeting, or the Trustee files a written dissent to the action with the secretary of the meeting before adjournment, or transmits the dissent in writing to the Secretary of the Board immediately at the adjournment of the meeting.

Section 3.03. Qualifications

A trustee shall be at least 18 years of age and, except for those Trustees provided for in Section 3.05 (a) of this article and those Trustees elected to fill a vacancy, shall be elected by the Board of Trustees.

Section 3.04. Number

Until amendment of these bylaws, the Board of Trustees shall consist of not less than 30 but not more than 40 Trustees. The Board of Trustees of the College shall include at least five (5) members of the Sisters of Mercy of the Americas. Such members shall be nominated by the Institute of the Sisters of Mercy of the Americas, Regional Community of Erie (the "Sisters"), or its successor, and elected by the Board of Trustees. Should any members of the Sisters nominated by the Sisters not be elected by the College's Board of Trustees for any reason, the Sisters shall nominate replacements until such time as the requisite minimum five (5)-member requirement is satisfied.

Section 3.05. Terms of Trusteeship

(a) General Rule.

A trustee shall be elected to serve a term of four years and until his or her successor shall be elected and qualified. A Trustee is eligible to be elected for additional terms.

(b) Rotation and Modification of Terms.

Annually the Board of Trustees or the Committee on Trustees shall review the membership of the Board of Trustees so as to assure both continuous service of qualified Trustees and the selection of new Trustees. The terms of the Trustees shall be staggered so that not more than one-quarter of the Trustees are subject to reelection in any year. The Executive Committee is authorized periodically to modify members' terms to ensure compliance with these bylaws and to promote the orderly renewal or recruitment of members of the Board.

(c) Resignation.

Any Trustee may resign at any time upon written notice to the Chair of the Board. The resignation shall be effective upon receipt by the Chair or at such subsequent time as shall be specified in the notice of resignation.

(d) Removal.

All Trustees shall serve at the pleasure of the Board. A Trustee may be removed from office upon affirmation of the vote of two-thirds of disinterested Trustees.

Section 3.06. Election of Trustees

(a) Designation and Election of Trustees.

Seven Trustees shall serve by virtue of their offices. They are:

1. The President of the College who shall serve as an ex officio member of the Board without voting authority;
2. The President of the Institute of the Sisters of Mercy of the Americas, Regional Community of Erie, or its successor (the "Sisters"), or the designee of the President of the Sisters, who shall constitute one of the five trustee positions guaranteed to the Sisters of Mercy under Section 3.04 of these bylaws;
3. The President of College Council;
4. The President of Faculty Senate;
5. The President of Mercyhurst Student Government;
6. The Chair of President's Associates;
7. The President of Mercyhurst College Alumni Association.

Apart from this manner of selection, these Trustees shall have such other qualifications as are expected of all Trustees.

(b) Subsequent Trustees.

Pursuant to the Act, all Trustees not specifically appointed a Trustee in Section 3.06 (a) shall be elected by an affirmative vote of a majority of the existing Trustees of the College. In elections for Trustees, voting need not be by ballot, except upon request made by a Trustee entitled to vote at the election and before the voting begins. The candidates receiving the highest number of votes shall be elected.

Section 3.07. Vacancies

(a) General Rule.

Vacancies on the Board of Trustees, including vacancies resulting from an increase in the number of Trustees, may be filled by a majority vote of the remaining members of the Board even when less than a quorum; and each person so selected shall serve for the balance of the unexpired term until a successor has been selected and qualified or until his or her death, resignation or removal.

(b) Action by Resigned Trustee.

When one or more Trustees resign from the Board effective at a future date, the Trustees then in office, including those who have so resigned, all have power by vote to fill the vacancies. The vote shall take effect when the resignation(s) become effective.

Section 3.08. Place of Meeting

Meetings of the Board of Trustees may be held at such place within Erie County, Pa. or elsewhere as the Board of Trustees may from time to time determine or as may be designated in the notice of the meeting.

Section 3.09. Organization of Meetings

At every meeting of the Board of Trustees, the Chair, or in the case of a vacancy in the office or absence of the Chair, a Vice Chair shall act as chair of the meeting.

Section 3.10. Regular Meetings

The Trustees shall meet at least annually during the months of May/June and at such other times as Trustees shall determine. Notice shall be given to each Trustee pursuant to Article II, along with an agenda of business. At a properly convened annual meeting Trustees shall elect fellow Trustees as Chair, Vice Chair and Secretary by an affirmative vote of a majority of Trustees attending.

Section 3.11. Special Meeting

Special meetings of the Board of Trustees shall be held whenever requested in writing by the President or by four (4) or more Trustees.

Section 3.12. Action by Board of Trustees

(a) General Rule.

A majority of the Trustees in office shall be necessary to constitute a quorum for the transaction of business; and a majority of the Trustees present and voting at a meeting at which a quorum is present shall act on behalf of the Board of Trustees unless a greater number is required under the provisions of the Act, the Articles of Incorporation or any provisions of these bylaws.

(b) Action by Written Consent or Without A Formal Meeting.

Any action required or permitted to be taken by the Board of Trustees or by any committee may be taken without a meeting if, prior to or subsequent to the action, a consent or consents signed by a majority of all of the Trustees in office, or by a majority of committee members in the case of committee action, is filed with the Secretary of the Board as soon as practical. Meetings may be conducted by United States mail, electronic mail, facsimile, conference call, telegram, or in any other way the Trustees decide, provided a written consent that sets forth the actions taken is signed by each appropriate Trustee and filed with the Minutes of the proceeding as soon as practical.

(c) Use of Conference Telephone and Similar Equipment

One or more persons may participate in a meeting of the Board of Trustees by means of a conference telephone or similar communication equipment whereby all persons participating in the meeting can hear each other. Such participation shall constitute presence in person at the meeting.

Section 3.13. Compensation

The Board of Trustees shall serve without compensation, although each may be reimbursed for expenses that have been approved by the President or by the Board of Trustees.

Section 3.14. Interested Trustees or Officers Quorum

(a) General Rule.

A contract or transaction shall not be void or voidable solely for the reason that such was entered into between the College and one or more of its Trustees or officers; or between the College and another corporation, partnership, joint venture, trust or other enterprise in which one or more of its Trustees or officers are directors or officers or have a financial or other interest; or because the Trustee or officer is present at or participates in the meeting of the Board of Trustees that authorize the contract or transaction; or solely because his, her or their votes are counted for that purpose, if:

- The material facts as to the relationship or interest of the contract or transaction are disclosed or are known to the Board of Trustees, and the Board authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Trustees even though the disinterested Trustees are less than a quorum; or
- The contract or transaction is fair to the College at the time it is authorized, approved or ratified by the Board of Trustees.

(b) Quorum.

Common or interested Trustees may be counted in determining the presence of a quorum at a meeting of the Board, which authorizes a contract or transaction specified in subsection (a).

Section 3.15. Trustee Emeritus

The Trustees may from time to time elect as Trustee Emeritus a Trustee who has served with distinction and who has contributed significantly to the Board, the College or the Mercyhurst community. A Trustee Emeritus shall be given this standing for an initial four-year period and renewable upon the recommendation of the Executive Committee/Nominating Committee and approved by the Board.

A Trustee Emeritus shall be:

- Nonvoting on the Board of Trustees, but may be a member of a standing or subcommittee of the board;
- Sent notices and Minutes of all Board meetings;
- Encouraged to attend all Board functions and meetings.

Section 3.16. Trustee Leave of Absence

Any Trustee may request a leave of absence from the Board by submitting the request in writing to the Committee on Trustees. A leave of absence may be granted for medical reasons or such other good cause as determined by the Committee on Trustees. The Committee on Trustees may approve a leave of absence up to two years. A leave of absence may exceed two years only upon approval of the Board of Trustees.

Article IV

Officers of the Board and College

Section 4.01. Officers of the Board

(a) General Rule.

The Trustees shall elect annually the officers of the Board, including the Chair, one or more Vice Chairs, the Secretary and such other officers as necessary.

(b) Terms and Responsibilities of the Chair and Vice Chair of the Board.

The Chair and Vice Chair shall be elected annually by the Trustees and ordinarily shall serve for at least three consecutive years. Vacancies may be filled at any time by a majority vote of the members of the Board; but election or reelection shall normally take place at the annual meeting.

The Chair shall:

- Preside at all Board and Executive Committee meetings;
- Have the right to vote on all questions;
- Appoint committee chairs and vice chairs;
- Determine the composition of all Board committees, with the exception of the Executive Committee, the composition of which is outlined in Section 5.02 of these bylaws;
- Serve as a spokesperson for the Board;
- Serve as Chair of the Executive Committee;
- Serve as an *ex officio* member of all other standing committees of the Board, except the Audit Committee; and
- Have other duties as the Board may prescribe from time to time.

In the absence of the Chair, the Vice Chair shall perform the duties of the office of the Chair, including presiding at Board of Trustees meetings, Executive Committee meetings and academic functions of the college. The Vice Chair shall serve as an *ex officio* member of the Audit Committee and shall have other powers and duties as the Board may from time to time prescribe. He or she may or may not be nominated to succeed the Chair when a vacancy occurs.

(c) Terms and Responsibilities of the Secretary of the Board.

The Secretary shall be elected annually by the Trustees and shall ordinarily serve for at least three consecutive years.

The Secretary shall ensure that:

- The Board of Trustees is acting in accordance with these bylaws;
- Bylaw amendments are promptly made as necessary;

- Minutes of Board, Executive Committee and standing committee meetings are accurate and distributed to all Trustees;
- Meetings are properly scheduled and Trustees notified;
- Board policy statements and other official records are properly maintained.

The Secretary shall perform other duties as prescribed from time to time by the Board and may be assisted in all duties by one or more Assistant Secretaries, an administrator or staff member designated by the President.

(d) Resignation of Officers of the Board.

Any officer may resign at any time upon written notice, effective upon receipt by the Chair of the Board or at such subsequent time as may be specified in the notice of resignation.

(e) Vacancies of Officers.

A vacancy by any officer because of death, resignation, removal, disqualification or any other cause shall be filled by the Board of Trustees or by the officer or committee to which the power to fill such a position has been delegated; and if the position is one for which these bylaws prescribe a term, it shall be filled for the unexpired portion of the term.

[Section 4.02. Officers of the College](#)

The Trustees shall elect the President of the College. Additional corporate officers of the College, including but not limited to Vice Presidents, a Treasurer, one or more Assistant Treasurers may from time to time be created by resolution of the Trustees.

The President shall designate the persons to fill such offices along with the terms and conditions of their engagements, subject to the advice and consent of the Board. Nothing in this section shall preclude the President from designating further administrative and academic officers of the College within the scope of the authority contained in the following section.

(a) President.

The President serves at the pleasure of the Board of Trustees for such term, compensation, and other terms of employment to be determined by mutual agreement. The President shall be the chief executive officer of the College and shall report at least annually to the Trustees on the state of the College. The President shall be charged with the responsibility and have plenary authority for all acts necessary to implement the decision of the Trustees in furtherance of the purposes of the College set forth in its Articles of Incorporation and in these bylaws, including but not limited to the following:

1. Attend all meetings of the Trustees and be, by virtue of the office, a member of all standing or special committees of the Board except the Audit Committee;
2. Organize and reorganize when necessary the administration of the College;
3. Organize and reorganize when necessary the faculty of the College;
4. Contract for and otherwise engage personnel necessary to the College;
5. Supervise the administration and faculty of the College;

6. Bring to the attention of the Trustees all matters that may advance the purposes for which the College is formed, and implement such decisions made by the Trustees;
7. Encourage and provide for the creation of such committees, councils and associations from constituent parts of the academic community, including officers of the administration, faculty and members of the student body, as will aid the Trustees in the discharge of their duties to further the purposes of the College;
8. Represent the College in the academic and general communities;
9. Supervise the preparation of the annual operating and capital budgets of the College and present such budgets to the Trustees for review and approval;
10. Execute on behalf of the College all contracts or engagements required or as may be required by resolution of the Trustees;
11. Deposit records of significance and timeline importance with the Mercyhurst Archives throughout presidential tenure as property of the college to be catalogued in the Mercyhurst Accession for historical documentation.

(b) Vice Presidents.

The Vice Presidents shall serve for such term(s) and have such authority and responsibilities as the President shall determine in consultation with the Board of Trustees. In the case of disability of the President, the Board of Trustees shall determine which Vice President or other individual shall perform the President's duties. In the ordinary absence of the President, the chief executive shall designate the senior administrator to act on his or her behalf.

(c) Treasurer.

The Treasurer, whether designated or elected, shall have custody of all funds and papers representative of financial transactions and holdings of the College. The Treasurer shall:

- Receive all funds for the College in all ways transferred to it;
- Disburse funds of the College as the President or Trustees direct;
- Perform those duties and have those powers as are customarily incidental to the office of treasurer.

Section 4.03. Vacancies in Officers of the College

The President shall fill a vacancy of any officer of the College resulting from death, resignation, removal, disqualification, or any other cause. Any officer of the College may resign at any time upon written notice to the President and in keeping with the separation terms as specified in his or her contract or as otherwise agreed by the parties.

Section 4.04. Authority of Officers of the College

All officers of the College shall have such authority and perform such duties in the management of the College as outlined by the President or as stated by resolutions or described in these bylaws of the Board of Trustees.

Section 4.05. Disallowed Compensation

Any payments made to an officer or employee of the College such as a salary, commission, bonus, interest, rent, travel or other expense that would be a deductible expense for a “for-profit” corporation and that would be disallowed as a deductible expense by the Internal Revenue Service, shall be reimbursed by the officer or employee of the College to the full extent of such disallowance. It shall be the duty of the Board of Trustees to enforce payment of each such amount disallowed. In lieu of payment by the officer or employee, proportionate amounts, subject to the determination of the Trustees, may be withheld from future compensation payments until the amount owed to the College has been recovered.

Section 4.06. Bonding

The College may secure the fidelity of any or all of its officers by bond or otherwise.

Section 4.07. Standard of Care

Except as otherwise provided in the articles, an officer of the college shall perform his or her duties as an officer in good faith in a manner he or she reasonably believes is in the best interest of the College and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. A person who so performs his or her duties shall not be liable by reason of having been an officer of the College.

Article V

Committees of the Board

Section 5.01. Appointment

The Board of Trustees shall establish such standing and *ad hoc* committees as it deems appropriate to the discharge of its responsibilities. Each such committee shall serve at the pleasure of the Board and exercise such responsibilities and authority in the business and management of the College as determined by the Board. The President of the College shall appoint at least one vice president or member of the administrative staff to assist each committee and its members in the performance of their functions and responsibilities.

The Board of Trustees shall establish such standing and *ad hoc* committees as it deems appropriate to the discharge of its responsibilities. Each such committee shall serve at the pleasure of the Board and exercise such responsibilities and authority in the business and management of the College as determined by the Board.

Each committee shall have a written statement of purpose and primary responsibilities as approved by the Board. In addition, each committee shall have appropriate rules of procedure or policy guidelines as it or the Board approves. Each committee shall annually review such statement for its appropriateness and adequacy, shall keep Minutes of all meetings, and shall report as necessary on its work to the Board of Trustees.

The creation of such committees shall not operate to relieve the Board of Trustees of any responsibility under any applicable law. No committee will have the authority of the Board in reference to any of the following:

- Filling vacancies in offices or Board of Trustees;
- Adopting, amending or repealing the bylaws;

- Amending or repealing any resolution of the Board;
- Acting on matters committed to another committee of the Board by these bylaws or resolutions of the Board.

Section 5.02. Executive Committee

(a) Composition and Officers of the Executive Committee.

At the annual meeting the Trustees shall select an Executive Committee which shall consist of the following: President, Chair, Immediate Past Chair, Vice Chair(s), Secretary of the Board, President of the Sisters or her designee selected pursuant to Section 3.06 (a) (2) of these bylaws, and the chair of each standing committee of the Board.

The Chair and Secretary of the Board of Trustees also shall act as Chair and Secretary of the Executive Committee, respectively.

(b) Executive Committee Meetings.

The Executive Committee shall meet at the call of the President or the Chair and it shall have full authority to act for and on behalf of the Trustees. Action of the Executive Committee shall be subject to ratification by the Board of Trustees at the next meeting. The Executive Committee shall also act as the Nominating Committee.

(c) Authority of the Executive Committee.

The Executive Committee shall have authority to act for the Board of Trustees on all matters except for the following, which shall be reserved for the Board:

- Selecting or terminating a President;
- Electing Trustees or officers of the Board;
- Changing institutional mission and purpose;
- Changing the Charter or Articles of Incorporation;
- Incurring additional corporate indebtedness;
- Selling College assets or tangible property;
- Adopting the annual budget;
- Conferring degrees.

These bylaws or other Board policies may reserve other powers for the Board of Trustees.

In addition to its authority to take action on emergency matters that cannot or should not be deferred to the Board's next scheduled meeting, the Executive Committee shall oversee the work of Board committees, the College's strategic planning process and progress on planning goals, the Board's responsibility to support the President and assess his or her performance, and review annually the President's compensation and terms of employment.

Section 5.03. Standing Committees

The Chair shall appoint the chairs, vice chairs and members of the standing committees and subcommittees by the fall meeting of the Board of Trustees. These committees are:

- Committee on Academic Affairs
- Committee on Audit
- Committee on Budget and Finance
- Committee on Buildings and Grounds
- Committee on Mission
- Committee on Student Life
- Committee on Trustees
- Committee on College Advancement
 - Subcommittee on Development
 - Subcommittee on Endowment Management or Investments

(b) From time to time the Chair also may appoint other subcommittees, task forces or *ad hoc* committees. The Chair may modify or increase the membership of any committee, subcommittee, task force or *ad hoc* committee in force to include committee appointments for recently elected Trustees and for such other purposes as the Chair deems appropriate.

(c) At least one (1) of the five (5) members of the Sisters who is elected to Board of Trustees pursuant to Section 3.04 of these bylaws shall be appointed to act as a full voting member of the Executive Committee, the Committee on Budget and Finance, the Committee on Mission, and the Committee on Trustees (or the equivalent committees as may be established from time to time).

Section 5.04. Committee on Trustees

(a) Composition.

The Committee on Trustees shall have at least five (5) members and not more than seven (7), all of who shall be voting Trustees. The Chair of the Board of Trustees shall appoint the committee's chair, vice chair and members for a renewable one-year term.

(b) Purpose.

The purpose of the Committee on Trustees is to serve as the Board's agent to:

1. Research, identify and consider cultivation strategies for promising trustee candidates;
2. Recommend committed individuals to the Executive Committee as candidates for possible nomination to the Board of Trustees;
3. Ensure that regular programs for new Trustees, including orientation, and in-service education are established and maintained;
4. Review the performance of incumbent Trustees who are eligible for reelection and report such to the Executive Committee;
5. Periodically recommend initiatives by which the Board shall assess its performance;
6. Propose and periodically review the adequacy of the Statement of Trustee Responsibilities as adopted by the Board. (Refer to Section 3.01)

The Committee on Trustees shall establish its own rules of procedure in consultation with the Chair of the Board, the President and the Board of Trustees.

Article VI

Indemnification of Trustees, Officers and Other Authorized Representatives

Section 6.01. Scope of Indemnification

(a) General Rule.

The College shall indemnify an indemnified representative against any liability incurred in connection with any proceeding in which the indemnified representative may be involved as a party or otherwise by reason of the fact that such person is or was serving in an indemnified capacity, including without limitation liabilities resulting from any actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence or act giving rise to strict or product liability, except:

1. Where applicable law expressly prohibits such indemnification;
2. Where the conduct of the indemnified representative has been finally determined by a court to:
 - Constitute willful misconduct or recklessness within the meaning of 15 Pa.C.S.A. Section 518(b) and Section 5746 (b) or any superseding provision of the law sufficient in the circumstances to bar indemnification against liabilities arising from the conduct; or
 - Be based upon or attributable to the receipt by the indemnified representative from the College of a personal benefit to which the indemnified representative is not legally entitled; or
 - Be to the extent such indemnification has been finally determined in a final adjudication to be otherwise unlawful.

(b) Partial Payment.

If an indemnified representative is entitled to indemnification in respect to a portion, but not all, of any liabilities to which such person may be subject, the College shall indemnify such indemnified representative to the maximum extent for such portion of the liabilities.

(c) Presumption.

The termination of a proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the indemnified representative is not entitled to indemnification.

(d) Definitions. For purposes of this Article:

1. "Indemnified capacity" means any and all past, present and future service by an indemnified representative in one or more capacities as a Trustee, officer, employee or agent of the College; or at the request of the College, as a Trustee, officer, employee, agent, fiduciary or Trustee of another Corporation, partnership, joint venture, trust, employee-benefit plan or other entity or enterprise;

2. "Indemnified representative" means any and all Trustees and officers of the College and any other person designated as an indemnified representative by the Board of Trustees (which may, but need not, include any person serving at the request of the College, as a Trustee, officer, employee, agent, fiduciary or trustee of another College, partnership, joint venture, trust, employee-benefit plan or other entity or enterprise);
3. "Liability" means any damage, judgment, amount paid in settlement, fine, penalty, punitive damages, excise tax assessed with respect to an employee-benefit plan, or cost or expense of any nature, including, without limitation, attorneys fees and disbursements; and
4. "Proceeding" means any threatened, pending or completed action, suit, appeal or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the College, a class of its security holders or otherwise.

Section 6.02. Proceedings Initiated by Indemnified Representatives.

Notwithstanding any other provision of this article, the College shall not indemnify under this article an indemnified representative for any liability incurred in a proceeding initiated (which shall not be deemed to include counter-claims or affirmative defenses) or participated in as an intervener or amicus curiae by the person seeking indemnification unless such initiation of or participation in the proceeding is authorized, either before or after its commencement, by the affirmative vote of a majority of the Trustees in office. This section does not apply to reimbursement of expenses incurred in successfully prosecuting or defending the rights of an indemnified representative granted by or pursuant to this article.

Section 6.03. Advancing Expenses

The College shall pay the expenses (including attorneys fees and disbursements, subject, however, to Section 6.06) incurred in good faith by an indemnified representative in advance of the final disposition of a proceeding described in Section 6.01, or the initiation of or participation in which is authorized pursuant to Section 6.02, upon receipt of an undertaking by or on behalf of the indemnified representative to repay the amount if it is ultimately determined by a court that such person is not entitled to be indemnified by the College pursuant to this article. The financial ability of an indemnified representative to repay an advance shall not be a prerequisite to the making of such advance.

Section 6.04. Securing of Indemnification Obligations

To further effect, satisfy or secure the indemnification obligations provided herein or otherwise, the College may maintain insurance, obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the College, or use any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Trustees shall deem appropriate. Absent fraud, the determination of the Board of Trustees with respect to such amounts, costs, terms and conditions shall be conclusive against all security holders, officers and Trustees and shall not be subject to voidability.

Section 6.05. Payment of Indemnification

An indemnified representative shall be entitled to indemnification within 30 days after a written request for indemnification has been delivered to the Secretary of the Board, subject, however, to Section 6.06.

Section 6.06. Procedure

As soon as practicable after receipt by an indemnified representative of notice of the commencement of any action, suit or proceeding specified in this article, the indemnified representative shall, if a claim with respect may be made against the College under this article, notify the College in writing of the commencement or threat.

The omission to notify the College, however, shall not relieve the College from any liability under this Article unless the College shall have been prejudiced thereby or from any other liability, which it may have to the indemnified representative other than under this article.

With respect to any such action as to which the indemnified representative notifies the College of the commencement or threat thereof, the College may participate at its own expense; and, except as otherwise provided below, to the extent that it desires. The College jointly with any other indemnifying party similarly notified, shall be entitled to assume the defense thereof, with counsel selected by the College to the reasonable satisfaction of the indemnified representative.

After notice from the College to the indemnified representative of its election to assume the defense thereof, the College shall not under this article be liable to the indemnified representative for any legal or other expenses subsequently incurred by the indemnified representative in connection with the defense other than as otherwise provided below.

The indemnified representative shall have the right to employ his or her own counsel in such action, but the fees and expenses of such counsel incurred after notice from the College of its assumption of the defense shall be at the expense of the indemnified representative unless: (1) the employment of counsel by the indemnified representative shall have been authorized by the College; (2) the indemnified representative shall have reasonably concluded that there may be a conflict of interest between the College and the indemnified representative in the conduct of the defense of such proceeding; or (3) the College shall not in fact have employed counsel to assume the defense of such action.

The College shall not be entitled to assume the defense of any proceeding brought by or on behalf of the College or as to which the indemnified representative shall have reasonably concluded that there may be a conflict of interest.

Section 6.07. Contribution

If the indemnification provided for in this article or otherwise is unavailable for any reason in respect of any liability or portion thereof, the College shall contribute to the liabilities to which the indemnified representative may be subject in such proportion as is appropriate to reflect the intent of this article or otherwise.

Section 6.08. Mandatory Indemnification of Trustees, Officers, etc.

To the extent that an authorized representative of the College has been successful on the merits or otherwise in defense of any action or proceeding referred to in 15 Pa.C.S.A. §5741 or §5742 or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys fees and disbursements) actually and reasonably incurred by such person in connection therewith.

Section 6.09. Contract Rights Amendment or Repeal

All rights under this article shall be deemed a contract between the College and the indemnified representative pursuant to whom the College and each indemnified representative intends to be legally bound. Any repeal, amendment or modification shall be prospective only and shall not affect any rights or obligations then existing.

Section 6.10. Scope of Article

The rights granted by this article shall not be deemed exclusive of any other rights to which those seeking indemnification, contribution or advancement of expenses may be entitled under any statute, agreement, vote of shareholders or disinterested Trustees or otherwise, both as to action in an indemnified capacity and as to action in any other capacity. The indemnification, contribution and advancement of expenses provided by or granted pursuant to this article shall continue to a person who has ceased to be an indemnified representative in respect of matters arising prior to such time, and shall inure to the benefit of the heirs, executors, administrators and personal representatives of such a person.

Section 6.11. Reliance on Provisions

Each person who shall act as an indemnified representative of the College shall be deemed to be doing so in reliance upon the rights provided by this article.

Section 6.12. Interpretation

The provisions of this article are intended to constitute bylaws authorized by 15 Pa.C.S.A. Section 518 and Section 5746.

Article VII

Conflict of Interest

(a) General Rule.

A Trustee shall be considered to have a conflict of interest if he or she:

1. Has an existing or potential financial or other interests that could/would impair or appear to impair his or her independent, unbiased judgment in the discharge of his or her responsibilities to the College;
2. Is aware that a member of his or her family has financial or other interests that could/would impair or appear to impair the Trustee's independent judgment in the discharge of his or her responsibilities to the College. For the purpose of this provision, a family member is defined as a spouse, parent, sibling, child, or any other relative residing in the same household as the Trustee.

(b) Disclosure.

All Trustees shall disclose to the Board any possible conflict of interest at the earliest practical time. Further, the Trustee shall absent him or her from discussion of, and abstain from voting on, such matters under consideration by the Board of Trustees or its committees. Each Trustee shall complete and sign by May 15 of each year (or the first business day thereafter if May 15 falls on a weekend or holiday) a conflict of interest disclosure form provided annually by the Secretary of the Board of Trustees.

The Minutes of such meeting shall reflect that a disclosure was made and that the Trustee with a conflict or possible conflict abstained from voting. Any Trustee who is uncertain as to whether a conflict of interest may exist in any matter may request that the Board, Committee on Trustees or Executive Committee resolve the question in his or her absence by majority vote. Each Trustee shall complete and sign a disclosure form provided annually by the Secretary of the Board of Trustees.

Article VIII

Miscellaneous

Section 8.01. Corporate Seal

The College shall have a corporate seal in the form of an oval containing the name of the College, the year of incorporation and such other details as may be approved by the Board of Trustees.

Section 8.02. Checks

All checks, notes, bills of exchange or other orders in writing shall be signed by such person or persons as the Board of Trustees designates in these bylaws, or by any person authorized by resolution of the Board of Trustees.

Section 8.03. Contracts

(a) General Rule.

The Board of Trustees may authorize and deliver any instrument on behalf of the College, and such authority may be general or confined to specific instances.

(b) Statutory Form of Execution of Instruments.

Any note, mortgage, evidence of indebtedness, contract or other document, or any assignment or endorsement executed or entered into between the College and any other person, when signed by one or more officers or agents having actual or apparent authority to sign it, such as the President and Treasurer, Secretary and Executive Vice President of Administration, or Assistant Secretary and Assistant Treasurer, shall be held to have been properly executed for and in behalf of the College, without prejudice to the rights of the College against any person who shall have executed the instrument in excess of his or her actual authority.

Section 8.04. Deposits

All funds of the College shall be deposited from time to time to the credit of the College in such banks, trust companies or other depositories as the Board of Trustees may approve or designate; and all such funds shall be withdrawn only upon checks signed by such one or more officers or employees as the Board of Trustees shall from time to time determine.

Section 8.05. Corporate Records

The College shall keep complete and accurate books and records of account and Minutes of the proceedings of the Trustees. Any books, Minutes or other records may be in written form or any other form capable of being converted into written form within a reasonable time.

Section 8.06. Financial Reports

The College shall furnish the members of the Board of Trustees with annual financial statements, including at least a Statement of Financial Position as of the end of each fiscal year and a Statement of Activities for the fiscal year. The financial statements shall be prepared on the basis of generally accepted accounting principles if the College prepares financial statements for the fiscal year on that basis for any purpose.

The College shall send the annual financial statements to the members of the Board of Trustees within 150 days after the close of each fiscal year.

The annual financial statements shall be audited by a certified public accountant and accompanied by the report of the accountant.

Section 8.07. Dissolution

Upon dissolution of the College or the winding up of its affairs, the assets of the College shall be distributed exclusively to charitable, religious, scientific, testing for public safety, literary or educational organizations which would then qualify under the provisions of Section 501(c) (3) of the Code and its regulations as they now exist or as they may hereafter be amended. Preference shall be given to the Sisters of Mercy of the Americas and be subject to the existing rights of the Sisters of Mercy pursuant to the Agreement with the College dated September 1, 1993, which is attached to these bylaws.

Section 8.08. Amendment of Bylaws

(a) Notice of Action by Trustees on Bylaws.

In the case of a meeting of the Board of Trustees that has as one of its purposes action on the bylaws, a 30-day written notice prior to the meeting shall be given to each Trustee informing him or her that the purpose, or one of the purposes of the meeting is to consider the adoption, amendment or repeal of the bylaws. There shall be included in, or enclosed with the notice, a copy of the proposed amendment(s) or a summary of the changes to be effected.

(b) Amendment or Repeal of Bylaws.

These bylaws may be amended or repealed, or new bylaws may be adopted by an affirmative vote of two-thirds of the Board of Trustees in office at any regular or special meeting of Trustees. Any change in these bylaws shall take effect when adopted unless otherwise provided in the resolution effecting the change.

(c) Review of Bylaws.

The Secretary of the Board of Trustees and the Executive Committee shall review these bylaws periodically and recommend any necessary changes to be brought before the Board of Trustees for amendment.

CERTIFICATION

I certify that the foregoing Bylaws of Mercyhurst College were duly adopted by the Trustees of the college and are in full force and effect as of the date of this certification.

Witness my hand as Secretary and the corporate seal of the college this
Twenty-second day of October 2011.



Robert S. Miller
Secretary

RAL: md

File Trustees/ Doc Final 2011 Bylaws with revisions

