

MANITOBA INSTITUTE FOR PATIENT SAFETY INC./
INSTITUT MANITOBAIN SUR LA SECURITE DES PATIENTS INC.

BY-LAW NO.2
RESPECTING THE RELEASE AND INDEMNIFICATION OF
DIRECTORS AND OFFICERS

June 2013

1. The following definitions shall apply to this By-Law:
 - a) "Corporation" means MANITOBA INSTITUTE FOR PATIENT SAFETY INC. / INSTITUT MANITOBAIN SUR LA SECURITE DES PATIENTS INC.;
 - b) "Board" means the Board of Directors of the Corporation;
 - c) "Claims" includes all manner of actions, causes or action, suits, claims, demands and proceedings which may be brought or made against an employee or a Director or a Volunteer or a Committee Member,
 - d) "Staff" – means individuals under a contract of employment with the Corporation and/or seconded to the Corporation (either as an Officer of the Corporation or otherwise) at the time of any occurrence or non-occurrence or any part thereof, giving rise to a claim;
 - e) "Employee" means a person in employment of the Corporation (either as an Officer of the Corporation or otherwise) at the time of any occurrence or non-occurrence or any part thereof, giving rise to a claim;
 - f) "Employment" in the case of an employee means employment by the Corporation, and in the case of a Director means membership on the Board of Directors of the Corporation; and
 - g) "Director" means the Chair or a Director on the Board, appointed or elected, at the time of any occurrence or non-occurrence or any part thereof, giving rise to a claim;
 - h) "Volunteer" means a person who is not a Staff or Employee but who is identified as a volunteer for specific purposes;
 - i) "Committee Member" means a person who is not a Staff or an Employee of the Corporation, but who is a member of a Committee struck by the Corporation (either board or otherwise);

2. The Corporation and the successors and assigns of the Corporation shall defend, indemnify and save harmless every Director, Staff, Employee, Volunteer and Committee Member and the heirs, executors, and administrators of every Director, Staff and Employee, Volunteer or Committee Member from and against every claim for loss, costs, damages and expenses with respect to, or in any way arising out of, anything in good faith done, or not done, or caused, permitted or authorized to be done or not to be done, by the Director during the Director's term of office or by the Staff/Employee in the course of or supposed course of secondment/employment or by the Volunteer or Committee Member during the course of carrying out their assigned duties with the Corporation provided the conduct which gave rise to the claim did not include any dishonest, fraudulent, criminal or malicious act or omission on the Director's or Staff's, Employee's or Volunteer's or Committee Member's part, all of the foregoing being collectively referred to as "the indemnity".

3. The Corporation and the successors and assigns of the Corporation forever remise, release, acquit and discharge every Director, Staff, Employee, Volunteer and Committee Member and the heirs, executors and administrators of every Director, Staff, Employee, Volunteer and Committee Member of and from all claims which the Corporation has had or now has or hereafter can, shall or may have, for, or by reason or in any way arising out of, anything in good faith done, or not done, or caused, permitted or authorized to be done, or not done, by the Director during the term of the Director's office or Staff/Employee in the course of, or supposed course of secondment/employment, or by the Volunteer or Committee Member during the course of carrying out assigned duties with the Corporation provided the conduct which gave rise to the claim did not include any dishonest, fraudulent, criminal or malicious act or omission on the Director's, Employee's, Volunteer's or Committee Member's part, all of the foregoing being collectively referred to as "the release".

4. In the event and each time that a claim to which the Indemnity applies is brought against a Director, Staff, Employee, Volunteer or Committee Member, the following shall apply:

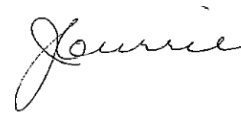
- a) Upon being served with notice of the claim the Director or Staff or Employee or Volunteer or Committee Member shall advise the Chair of the Board of the claim;
- b) A preliminary determination shall be made by the Corporation as to whether indemnification of the Director or Staff or Employee or Volunteer or Committee Member is proper in the circumstances because such person has met the applicable standard of conduct set forth in clause 2 of this By-Law;
- c) If the preliminary determination described in clause (b):
 - i) is that indemnification is proper in the circumstances, there shall be delivered to the Corporation an undertaking by or on behalf of the Director or Staff or Employee or Volunteer or Committee Member, in form satisfactory to the Corporation's counsel, that any loss, costs, damages or expenses paid by the Corporation on behalf of the Director or Staff or Employee or Volunteer or Committee Member will be repaid to the Corporation if it shall ultimately be determined that such person failed to meet the applicable standard set forth in clause 2;
 - ii) is that indemnification is not proper in the circumstances, the Director or Staff or Employee or Volunteer or Committee Member will be solely responsible for the conduct of the defence and the payment of any damages or costs resulting therefrom, subject always to the right to contest the preliminary determination made hereunder and to pursue Indemnity from the Corporation for all legal costs and damages in the event that it is determined that the Staff or Employee or Director or Volunteer or Committee Member in fact met the applicable standard of conduct set forth in clause 2.
- d) Upon receiving notice of a claim in accordance with clause a), and after a positive preliminary determination has been made and the undertaking provided, the Director or Staff or Employee or Volunteer or Committee Member and the counsel for the Corporation shall meet and appoint counsel acceptable to both parties. Should both parties be unable to agree on counsel, the Corporation shall unilaterally appoint counsel. The Corporation accepts responsibility for the conduct of the action, and the Director or Staff or Employee or Volunteer or Committee Member must cooperate fully with counsel;
- e) The Corporation shall pay any damages or costs awarded against the Director or Staff or Employee or Volunteer or Committee Member in the claim;
- f) The Corporation shall pay any sum required to be paid by the Director or Staff or Employee or Volunteer or Committee Member in connection with the settlement of the claim if such settlement is approved by the Corporation before the same is finalized;
- g) The Corporation shall pay all legal fees, costs and disbursements in the claim;
- h) If the Director or Staff or Employee or Volunteer or Committee Member fails to cooperate with his or her counsel at all times, the Corporation may abrogate the Release and the Indemnity;
- i) Notwithstanding clauses 2 and 3, the Release and the Indemnity afforded a Director or Staff or Employee or Volunteer or Committee Member shall apply to the extent that the Director or Staff or Employee or Volunteer or Committee Member is not covered by any scheme of professional or other liability insurance. If the Director or Staff or Employee or Volunteer or Committee Member is covered by such scheme of professional or other liability insurance, the Release and the Indemnity afforded a Director or Staff or Employee or Volunteer or Committee Member shall apply to only that part of such claim which is in excess of the amount recoverable or recovered from such insurance. In the case of a dispute as to the

eligibility of a claim made by a Director or Staff or Employee or Volunteer or Committee Member against a scheme of professional or other general liability insurance, the Corporation shall, upon receipt from the Director or Staff or Employee or Volunteer or Committee Member of a properly executed assignment to the Corporation of that claim, pay all damages, costs, legal fees and disbursement contemplated by clause 4, and the Corporation shall be subrogated to the rights of the Director or Staff or Employee or Volunteer or Committee Member against the insurer with respect to the disputed claim, and may sue on these rights in the name of the Director or Staff or Employee or Volunteer or Committee Member;

- j) The Release and the Indemnity are effective retroactively to the date the Director or Staff or Employee or Volunteer or Committee Member commenced employment or was appointed to the Board of Directors or appointed to the committee or secured as a Volunteer.
- k) The Release and the Indemnity shall in no way affect the rights of the Corporation, its successors and assigns, to discipline or dismiss any Staff or Employee for just cause for anything done, or not done, or caused, permitted or authorized to be done, or not done, by the Staff or Employee in the course of, or supposed course of secondment/employment;
- l) Notwithstanding clauses 2 and 3, the Release and the Indemnity shall not apply to the operation of a motor vehicle, as defined in The Highway Traffic Act, by a Director or Staff or Employee or Volunteer or Committee Member in the course of, or supposed course of, secondment or employment or carrying out of assigned duties with the Corporation.

- 5. Amendment of By-law.** This By-law may be repealed or amended by the Board and sanctioned by an affirmative vote of two-thirds (2/3) of the members within Class B present at a meeting duly called for the purpose of considering the said repeal or amendment.

Adopted and approved by the Board of Directors of MANITOBA INSTITUTE FOR PATIENT SAFETY INC. / INSTITUT MANITOBAIN SUR LA SECURITE DES PATIENTS INC. this 6th day of March, 2013.



Chair