

CANCERCARE MANITOBA

BY-LAW NO. 2

**RESPECTING THE RELEASE AND INDEMNIFICATION
OF DIRECTORS AND OFFICERS**

OF

CANCERCARE MANITOBA

BY-LAW NO. 2

A By-law respecting the release and indemnification of Directors and Officers of CancerCare Manitoba.

1. The following definitions shall apply to this By-law:
 - a) "Appointment" in the case of an Officer means appointment by the Board of Directors as an Officer of the Cancer Authority, and in the case of a Director means membership on the Board of Directors of the Cancer Authority;
 - b) "Board" means the Board of Directors of the Cancer Authority;
 - c) "Cancer Authority" means CancerCare Manitoba;
 - d) "Claims" includes all manner of actions, causes or action, suits, claims, demands and proceedings which may be brought or made against a Director or an Officer;
 - e) "Director" means the Chair or a Director on the Board at the time of any occurrence or non-occurrence or any part thereof, giving rise to a claim.
 - f) "Officer" means a person who is an Officer of the Cancer Authority at the time of any occurrence or non-occurrence or any part thereof, giving rise to a claim; and,
 - g) "Term" in the case of an Officer means the period of time in which they hold office as an Officer of the Cancer Authority, and in the case of a Director means the period of time in which they hold office as a Director of the Cancer Authority.
2. The Cancer Authority and the successors and assigns of the Cancer Authority shall defend, indemnify and save harmless every Director and Officer and the heirs, executors, and administrators of every Director and Officer 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 or by the Officer during their respective Term 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 Officer's part, all of the foregoing being collectively referred to as "the Indemnity".
3. The Cancer Authority and the successors and assigns of the Cancer Authority forever remise, release, acquit and discharge every Director and Officer and the heirs, executors and administrators of every Director and Officer of and from all Claims which the Cancer Authority 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 or Officer during their respective, 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 Officer'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 or Officer, the following shall apply:
 - a) Upon being served with notice of the Claim the Director or Officer shall advise the Chair of the Board of the Claim;
 - b) A preliminary determination shall be made by the Cancer Authority as to whether indemnification of the Director or Officer 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 Cancer Authority an undertaking by or on behalf of the Director or Officer, in form satisfactory to the Cancer Authority's counsel, that any loss, costs, damages or expenses paid by the Cancer Authority on behalf of the Director or Officer will be repaid to the Cancer Authority 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 Officer 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 Cancer Authority for all legal costs and damages in the event that it is determined that the Director or Officer 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 Officer and the counsel for the Cancer Authority shall meet and appoint counsel acceptable to both parties. Should both parties be unable to agree on counsel, the Cancer Authority shall unilaterally appoint counsel. The Cancer Authority accepts responsibility for the conduct of the action, and the Director or Officer must cooperate fully with counsel;
 - e) The Cancer Authority shall pay any damages or costs awarded against the Director or Officer in the Claim;
 - f) The Cancer Authority shall pay any sum required to be paid by the Director or Officer in connection with the settlement of the Claim if such settlement is approved by the Cancer Authority before the same is finalized;

- g) The Cancer Authority shall pay all legal fees, costs and disbursements in the Claim;
 - h) If the Director or Officer fails to cooperate with his or her counsel at all times, the Cancer Authority may abrogate the Release and the Indemnity;
 - i) Notwithstanding clauses 2 and 3, the Release and the Indemnity afforded a Director or Officer shall apply to the extent that the Director or Officer is not covered by any scheme of professional or other liability insurance. If the Director or Officer is covered by such scheme of professional or other liability insurance, the Release and the Indemnity afforded a Director or Officer 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 Officer against a scheme of professional or other general liability insurance, the Cancer Authority shall, upon receipt from the Director or Officer of a properly executed assignment to the Cancer Authority of that Claim, pay all damages, costs, legal fees and disbursement contemplated by clause 4, and the Cancer Authority shall be subrogated to the rights of the Director or Officer against the insurer with respect to the disputed Claim, and may sue on these rights in the name of the Director or Officer;
 - j) The Release and the Indemnity are effective retroactively to the date the Director's or Officer's respective Term commenced; and,
 - k) 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 Officer.
5. This By-law shall apply to and provide release and indemnification for all previous Directors and Officers of the Cancer Authority *mutatis mutandis*.

Approved by the Board of Directors of CancerCare Manitoba, this 25th day of August, 2022.

Chair

Vice-Chair

Approved by the Minister of Health, this 17th day of November, 2022.

The Honorable Audrey Gordon
Minister of Health or her delegate