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BOARD OF REGENTS

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Policy 13D: Defense and Indemnification of University of Colorado Employees ^[1]

1. Policy

The Board of Regents relies on the provisions of the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., (Governmental Immunity Act), as the statement of its obligation to defend and indemnify University of Colorado employees and sets forth below authority for the administration of the policy. For the purpose of this policy an employee is defined as in the Governmental Immunity Act.i

The board expects that, as stated in the Board's Risk Management Policy, each university employee will take individual responsibility for the creation of an environment that protects and enhances the reputation and assets of the university in a responsible and cost-effective manner.

2. Authority for Making Decisions

A. The Governmental Immunity Act requires the university to make certain decisions regarding the defense and indemnification of employees who are the subject of claims that may be related to their university employment. These include:

1. Deciding whether the university will provide for the defense of the employee;ii
2. Where the decision in paragraph A.(1) above is affirmative, deciding in what manner the defense will be provided, that is, whether counsel will be provided by the university or whether the university will cover the reasonable costs of legal representation by an attorney of the employee's choosing;iii
3. Deciding whether the university will provide a commitment of indemnification of the employee;iv
4. Where the complaint includes claims for punitive or exemplary damages or damages for outrageous conduct, deciding whether to tender a defense of the employee and, in the context of settlement, whether to provide a conditional or unconditional commitment of indemnification;
5. Deciding whether to seek reimbursement of defense costs from the employee when the employee has been provided with a defense by the university and is found by a court to have acted outside the scope of employment or in a willful and wanton manner; and

6. Deciding whether to pay an award of punitive or exemplary damages or damages for outrageous conduct.

B. Except with respect to the decision to pay punitive or exemplary damages described in paragraph A.(6) above, the authority to make these decisions shall be as follows:

1. Where the claim is made against a university employee other than an administrative officer of the Board of Regents or a member of the Board of Regents:
 - a. In the case of medical malpractice claims in which the University of Colorado Self-Insurance and Risk Management Trust (Self-Insurance Malpractice Trust) is implicated, the decision will be made by the Self-Insurance Malpractice Trust.
 - b. In all other cases, the decision will be made by the president of the university or the president's designee, according to procedures to be determined by the president.
2. Where the claim is made against a university employee who is an administrative officer of the Board of Regents, the decision shall be made by the chair of the Board of Regents after consultation with the full Board. An administrative officer of the Board of Regents may appeal an adverse decision of the chair to the full board.
3. Where the claim is made against a member of the Board of Regents, including the chair of the board, the decision shall be made by an affirmative vote of the remaining members of the Board of Regents, provided that a quorum of the board may be achieved by the members who are not named as defendants in the action. In the event that such a quorum is not possible, the decision shall be made by independent counsel designated by an affirmative vote of the Board of Regents.

C. With respect to the decision to pay punitive or exemplary damages as described in paragraph A.(6) above, the decision may be made only by resolution of the Board of Regents.

3. General

A. Nothing contained in this defense and indemnification policy is intended as or shall be construed as a waiver of the governmental immunity of the university or of the state of Colorado.

B. This defense and indemnification policy shall be interpreted and applied according to the laws of the state of Colorado.

- i. According to the Governmental Immunity Act: "Public employee" means an officer, employee, servant, or authorized volunteer of the public entity, whether or not compensated, elected, or appointed . . . "authorized volunteer" means a person who performs an act for the benefit of a public entity at the request of and subject to the control of such public entity.
C.R.S. 24-10-103(4)(a). With respect to health care practitioners, who may also be public employees according to the statute, see the detailed definitions in C.R.S. 24-10-103(4)(b).
- ii. Where a claim against a public employee arises out of injuries sustained from an act or omission of such employee which occurred or is alleged in the complaint to have occurred during the performance of his duties and within the scope of his employment, the public entity shall be liable for the reasonable costs of the defense and reasonable attorney fees of its public employee unless: (a) It is determined by a court that the injuries did not arise out of an act or omission of such employee occurring during the

performance of his duties and within the scope of his employment or that the act or omission of such employee was willful and wanton . . . ; or (b) The public employee compromises or settles the claim without the consent of the public entity. C.R.S. 24-10-110(1.5).

- iii. Where the public entity is made a codefendant with its public employee, it shall notify such employee in writing within fifteen days after the commencement of such action whether it will assume the defense of such employee. Where the public entity is not made a codefendant, it shall notify such employee whether it will assume such defense within fifteen days after receiving written notice from the employee of the existence of such action. C.R.S. 24-10-110(4).
- iv. The university may provide for the defense of the employee while at the same time deferring the decision whether to indemnify the employee against a judgment or settlement. A decision on indemnification may be made at any time during the course of litigation, from the time the complaint is filed until there has been a full determination of the claim by a court.
- v. An ?administrative officer of the Board of Regents? is an administrative officer who reports directly to the Board of Regents for some or all of his or her functions: that is, the president, the treasurer, and the secretary of the university and of the Board of Regents.

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