

Sexual Misconduct Policy and Procedures
Adopted by Grace Presbytery on December 10, 2015

I. Policy Statement

The Grace Presbytery Sexual Misconduct Policy is based on the policy of the Presbyterian Church (U.S.A.) – hereinafter referred to as PCUSA. The policy calls on all teaching elders, councils (including officers, employees and members), church members, church officers, and nonmember employees and volunteers of churches to maintain the integrity of the ministerial, employment, and professional relationship at all times. Persons who engage in sexual misconduct are in violation of the principles set forth in Scripture, and also of the ministerial, pastoral, employment and professional relationship. It is never permissible or acceptable for any of the persons covered by this policy to engage in sexual misconduct.

Distribution:

Copies of this policy and its procedures are available to all councils. Specifically, within the bounds of Grace Presbytery, this policy and its procedures will be made available and recommended to all sessions within the presbytery. Sessions are urged to adapt this document for application to the local church.

In adopting this document, Grace Presbytery shall require that all teaching elders, commissioned ruling elders, certified Christian educators under its jurisdiction, all employees and volunteers serving the presbytery abide by its provisions.

This policy and its procedures shall be made available to persons who accuse others of misconduct, including those who are or claim to be victims of sexual misconduct and their families.

II. Standards of Conduct for All Engaged in Ministry in Grace Presbytery

The ethical conduct of all who minister in the name of Jesus Christ is of vital importance to the church because through these representatives an understanding of God and the gospel's good news is conveyed. "Their manner of life should be a demonstration of the Christian gospel in the church and in the world." (Book of Order, G-20104)

The basic principles of conduct guiding this policy are as follows:

1. Sexual misconduct is not acceptable. It is a violation of an individual by a person who has a supervisory position or roles involving religious, moral, spiritual counseling, teaching or instruction. These persons are called upon to exercise integrity, sensitivity, and caring in a trust relationship. Sexual misconduct breaks the covenant to act in the best interests of the persons being supervised or counseled.
2. Sexual misconduct is a misuse of authority and power that breaches Christian ethical principles by misusing a trust relationship to gain advantage over another for personal pleasure in an

abusive, exploitative, and unjust manner. If the person being supervised or counseled initiates or invites sexual content in the relationship, it is the responsibility of the person providing supervision or counseling to maintain the appropriate role and prohibit any sexual relationship, contact, conduct or harassment.

3. Sexual misconduct takes advantage of the vulnerability of persons, including children, who are less powerful and unable to act for their own welfare. It is antithetical to the gospel call to work as God's servant in the struggle to bring wholeness to a broken world. It violates the mandate to protect the vulnerable from harm.

4. Sexual misconduct may include but is not restricted to offensive, obsessive or suggestive language or behavior, unacceptable visual contact, unwelcome touching or fondling, rape or sexual contact by force, threat or intimidation, or a relationship the parties believe to be consensual.

5. Sexual conduct between a teaching elder (minister), commissioned ruling elder or certified Christian educator and a church member or counselee, is only permissible in the context of their marriage.

6. Sexual malfeasance (wrongdoing by a person who holds a position of trust) is defined by the broken trust resulting from sexual activities within a professional ministerial relationship.

7. Sexual misconduct includes misuse of technology to communicate harassing or abusive messages and images to persons with whom one has a ministerial relationship. It is never appropriate to view pornography on church property. When this misuse of technology includes a person under the age of eighteen, it is considered child abuse. There is never an expectation of personal privacy when using technological equipment owned by a church or church entity or within the context of ministry.

Definitions:

Sexual Misconduct is the comprehensive term used in this policy to include:

Child sexual abuse includes, but is not limited to, any contact or interaction between a child and an adult when the child is being used for the sexual stimulation of another person. The behavior may or may not involve touching. Sexual behavior between a child and an adult is always considered forced whether or not the child consents. In the PCUSA the sexual abuse definition of a child is anyone under age eighteen.

Sexual abuse as defined in the Book of Order: "Sexual abuse of another person is any offense involving sexual conduct in relation to (1) any person under the age of eighteen years or anyone over the age of eighteen years without the mental capacity to consent; or (2) any person when the conduct includes force, threat, coercion, intimidation, or misuse of office or position" (Book of Order, D-10.0401c).

Sexual harassment defined for this policy is as follows: unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or their continued status in an institution;
- b. submission to or rejection of such conduct is used as the basis for employment decisions affecting such an individual;
- c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment; or
- d. an individual is subjected to unwelcome sexual jokes, unwelcome or inappropriate touching, or display of sexual visuals that insult, degrade, and/or sexually exploit men, women, or children

III. Church Response to Allegations of Sexual Misconduct

A. PRINCIPLES

In responding to allegations of sexual misconduct, members, officers, and employees of the church should seek healing and assure the protection of all persons. Where possible, the privacy of persons should be respected and confidentiality of communications should be maintained.

In responding to allegations of sexual misconduct, members, officers, and employees of the church should seek to uphold the dignity of all persons involved, including persons who are alleging harm, persons who are accused of sexual misconduct, and the families and communities of each.

The PCUSA has jurisdiction over its members, officers, and employees. If a member, officer, or employee is alleged to have committed an offense against Scripture or the PCUSA Constitution, the church has the duty to inquire into the allegations and, if the allegations are proven, to correct the behavior of the member, officer, or employee and ensure the safety of others in the community. Allegations of sexual misconduct are always considered allegations of offense against Scripture or the PCUSA Constitution that initiate the disciplinary processes of the PCUSA set forth in the Book of Order. In the case of an active non-member who is employed or volunteers with the Church, the individual will be covered by the procedures of the written personnel policies of the council or entity.

If the person accused of sexual misconduct is no longer a member, officer, or employee of the PCUSA, but the conduct occurred while the person was acting on behalf of the PCUSA, the church does not have jurisdiction to correct the behavior, but it does have a duty to hear the allegations of offense and to take measures to prevent future occurrences of harm. The council may appoint an administrative committee or commission to hear the allegations of sexual misconduct.

The council may also take measures to prevent future occurrences of harm through education and policy.

B. REPORTING REQUIREMENTS

1. Reporting Sexual Misconduct

A person needing to report that a teaching elder, commissioned ruling elder, certified Christian educator or employee of the presbytery has committed sexual misconduct is encouraged to seek guidance from the Stated Clerk or General Presbyter of the presbytery regarding filing the report.

Local Church: The Presbytery does not have jurisdiction over employees of local churches, only teaching elders. If the person who is accused of committing sexual misconduct is a member, ruling elder, deacon, volunteer, or employee of a congregation, the report of allegations should be made to the pastor, the clerk of session, or the chair of the personnel committee. If the accused is a member or officer of the church, the church will respond by using the procedures set forth in the Rules of Discipline of the Book of Order. If the accused is a non-member employee or volunteer, the church will respond by using procedures set forth by the session of the congregation in their personnel policies.

Presbytery: Any allegation of sexual misconduct by a teaching elder, commissioned ruling elder, certified Christian educator, volunteer, member or non-member employee of the presbytery shall be reported in writing to the Stated Clerk of the presbytery. The Stated Clerk will ensure that the presbytery responds according to the procedures set forth in the Rules of Discipline of the Book of Order, policy or bylaws of the presbytery.

Higher Council or Entity of the General Assembly: If the person who is accused of committing sexual misconduct is an employee or volunteer of a synod, the General Assembly or any entity established by a synod or the General Assembly, contact the Stated Clerk of that particular synod or General Assembly.

2. Receiving Reports of Sexual Misconduct

Reports of allegations of sexual misconduct will occur in a variety of ways.

Because a council or entity cannot control to whom the victim of sexual misconduct will speak first, it is important that officers, employees, and persons highly visible to church members and visitors understand how reports of incidents are channeled to the proper person. The allegations may come from persons who have or who do not have a formal relationship with the PCUSA, and may be made to a variety of officers or leaders within the PCUSA. It is the duty of these officers to see that any allegation of sexual misconduct is reported appropriately keeping in mind the mandatory reporting requirements for allegations of child abuse.

Reports of allegations of sexual misconduct should never be taken lightly or disregarded, and allowed to circulate without concern for the integrity and reputation of the victim, the accused,

and the church. Reports of allegations must be matters of the highest confidentiality, both before and after they have been submitted to appropriate authorities as outlined below.

The first person to hear an incident of sexual misconduct should not undertake an inquiry alone or question the victim or the accused unless the incident is divulged in the process of pastoral care, counseling, or a therapy session. If the victim is reluctant to talk to “higher authorities,” the person who has received the initial report has a special pastoral responsibility to build trust and a willingness to speak with the accuser, lest the church be unable to respond because no one is able to give firsthand information.

The person receiving the initial report of allegations of sexual misconduct shall analyze the relationship of the person accused of sexual misconduct with the PCUSA and shall make sure that the allegations of offense are filed with the council with jurisdiction over the person accused. This may be done by the person alleging harm or by any member of the PCUSA.

If the report is made orally, the person receiving the report of allegations should request that the person making the report of allegations place it in writing. A written report of allegations of sexual misconduct from a member of the PCUSA alleging another member or officer of the PCUSA committed an offence must be acted upon according to the Rules of Discipline in the Book of Order. If a Clerk of Session or Stated Clerk receives a report of allegations in writing from a non-member of the PCUSA alleging another member or officer of the PCUSA committed sexual misconduct, the report also should be acted on according to the Rules of Discipline of the Book of Order. If the person who makes the report is unwilling or unable to place it in writing, any member of the PCUSA may make the written statement that will automatically initiate the Rules of Discipline of the Book of Order.

3. Mandatory Reporting of Child Abuse

a. Teaching Elders, Ruling Elders, Commissioned Ruling Elders, Certified Christian Educators and Deacons

“Any member of this church engaged in ordered ministry and any certified Christian educator employed by the church or its congregations, shall report to ecclesiastical and civil legal authorities knowledge of harm, or the risk of harm, related to the physical abuse, neglect and/or sexual molestation or abuse of a minor or an adult who lacks mental capacity when (1) such information is gained outside of a confidential communication as defined in G-4.0301, (2) she or he is not bound by an obligation of privileged communication under law, or (3) she or he reasonably believes that there is risk of future physical harm or abuse.” G-40302

b. Mental Health Services Provider

Chapter 81 of the Texas Civil Practice & Remedies Code imposes certain reporting obligations on mental health services providers and their employers when the provider or employer has reasonable cause to suspect that a patient has been the victim of sexual

exploitation by a mental health services provider. A “mental health services provider” includes a member of the clergy. Chapter 81 of the Texas Civil Practice & Remedies Code is set forth in Appendix C and should be consulted in determining whether, when, how and to whom reports should be made of suspected sexual exploitation by a mental health services provider.

All persons covered by this policy have an additional duty to report knowledge of child sexual abuse to the employing entity, supervisor, or council representative. All persons should be informed of and must comply with state and local laws regarding incidents of actual or suspected child sexual abuse. These reports should be made within a reasonable time of receiving the information.

These provisions of the Book of Order attempt to balance conflicting moral duties for officers of the PCUSA.

For teaching elders and commissioned ruling elders, the provision strives to balance the duty to protect children from future harm with the duty of a pastor to hold in confidence any information revealed to them during the exercise of pastoral care in any ministry setting as defined in G-4.0301 in the Book of Order.

For ruling elders, deacons, and certified Christian educators, the provisions strive to balance the duty of an officer of the church to protect children from harm and any secular duty the officer may have to hold in confidence any information revealed as a result of a secular relationship such as attorney/client, counselor/client, or physician/patient. The secular duties will be a function of secular law and may vary from state to state.

C. RESPONDING

The appropriate council or entity response will vary according to the relationship of the PCUSA with the person who is accused of sexual misconduct. Church members and officers are subject to inquiry and discipline (censure and correction) under the Book of Order. Non-church member employees and volunteers are subject to oversight and correction by the governing body or entity that employs them.

1. Accused Covered by Book of Order

When an allegation of offense of sexual misconduct has been received by the Clerk of Session or Stated Clerk of the presbytery, the clerk of the council will report to the council that an offense has been alleged and that the council will proceed according to the procedures set forth in the Rules of Discipline of the Book of Order. The council should appoint an investigating committee to inquire into the allegations. The investigating committee must promptly begin its inquiry into the allegations. Delay may cause further harm to the victim and/or the accused.

Councils and entities must cooperate with civil authorities in an investigation of child sexual abuse or other criminal sexual misconduct. Church disciplinary proceedings cannot interfere with

a criminal investigation by civil authorities and may have to be suspended until these are completed.

The session has original jurisdiction in disciplinary cases involving members, ruling elders, and deacons of the church, each congregation having jurisdiction only over its own members.

A presbytery has original jurisdiction in disciplinary cases involving teaching elders (and to a limited degree, commissioned ruling elders and certified Christian educators). A presbytery may dissolve a pastoral relationship when the “church’s mission under the Word imperatively demands it” (G-2.0904). However, a presbytery may only place a minister on administrative leave when allegations of child abuse have been received and the presbytery has followed the Book of Order procedures to conduct its risk evaluation to determine whether or not a minister member accused of child abuse should be placed on administrative leave (D-10.0106). It is recommended that the permanent judicial commission (PJC) members who will conduct this risk evaluation based upon the allegations and a hearing should also take into account secular legal advice.

When a church officer renounces jurisdiction, the Clerk of Session or Stated Clerk shall report the renunciation at the next meeting of the council and shall record the renunciation in the minutes of the council. The status of any pending charges may be shared with the council at that time.

2. Accused Not Covered by Book of Order

When a council receives an accusation of offense of sexual misconduct against a non-member employee or volunteer, the procedural response of the council or entity will be guided by the written personnel policies of the council or entity. Usually the council or entity will have a personnel committee that will be responsible for the inquiry. If a council does not have a personnel committee, it may appoint either a committee or administrative commission for the review of the allegation.

The committee or commission responding to the allegation of sexual misconduct will do the following:

- a. Determine whether or not the allegation gives rise to a reasonable suspicion of sexual misconduct by the accused.
- b. If so, gather additional information necessary to make a decision about correcting the behavior.
- c. Determine any remedies, including limiting ministry, suspension, or termination necessary and advisable under the circumstances. If the accused is a member of another denomination, that denomination will be notified of the allegations and the response.
- d. Inform the victim and the accused of the remedy.

- e. In all cases, the personnel committee shall prepare a written report, which shall be included in the accused's permanent personnel file. The accused shall be allowed to attach any written statements to said documents, also for permanent inclusion in the permanent file.

All procedures shall follow the guidelines set forth by the council, employing agency, or entity.

3. Council or Entity Record Keeping

The council or entity shall keep detailed records of its actions and minutes of its deliberations and its conversations with the accuser, the accused, and other parties involved, correspondence, and copies of the reports received from committees or commissions. Such records will be kept confidential. In Case #208-6, the General Assembly Permanent Judicial Commission (GAPJC) interpreted the Rules of Discipline to say that a council or entity may share the contents of inquiry reports with other councils or entities of the PCUSA when necessary. The clerk of the council or director of the entity will maintain the records while the inquiry is in process.

IV. Prevention and Risk Management

A. IMPLEMENTATION

The General Assembly urges all councils and related entities including colleges, universities, and theological institutions, to establish policies and procedures that make it a violation of the employer's work rules to engage in sexual misconduct and that encourage reporting of sexual misconduct. Councils and entities are strongly encouraged to take appropriate steps to inform members, employees, volunteers, and students of the standards of conduct and the procedures for effective response when receiving a report of sexual misconduct.

B. LIABILITY AND INSURANCE

A council or entity can be held liable for harm caused by sexual misconduct of an officer, minister, or employee based on a number of legal theories. Councils and entities should take such potential liability into consideration when establishing hiring and supervisory practices.

Councils and entities should regularly inform their liability insurance carriers of the activities and programs they operate or sponsor and of the duties and responsibilities of officers, employees, and volunteers. The standard insurance policy should usually be enhanced by endorsements to cover specific exposures such as camps, day-care operations, shelters, or other outreach programs.

It is also recommended that councils and entities obtain an endorsement to their general liability insurance policy specifically covering sexual abuse and molestation. Such coverage may provide for legal defense expenses and judgments in civil suits brought against the council or entity, its officers, directors, or employees.

C. EMPLOYMENT PRACTICES

1. Record Keeping

Accurate record keeping is an essential part of hiring and supervision practices of churches, councils, and related entities. Every council and entity should maintain a personnel file on every employee, including ministers. The file should contain the application for employment, any employment questionnaires, background checks, references responses, and all other documents related to an employee's employment, except records that may be required, by law, to be kept in separate files.

2. Prescreening Applicants

Councils and entities are urged to establish thorough and consistent hiring practices. If an applicant is unknown to the employer, the employer should confirm the applicant's identity by requiring photographic identification such as a driver's license. The council should perform a background check, including a national criminal background check, on all applicants that may have interaction with children and youth.

Part of pre-employment screening should include specific questions related to discovering previous complaints of sexual misconduct.

3. References

The employing council or entity is responsible for contacting references for prospective ministers, employees, or volunteers. A written record of conversations or correspondence with references should be kept in the minister or employee's personnel file.

The person within the council or entity authorized to give a reference is obligated to give truthful information regarding allegations, inquiries, and administrative or disciplinary action related to sexual misconduct of the applicant.

If false or misleading information is given by the applicant, or relevant information is withheld, the applicant should be eliminated from consideration.

Applicants should be informed of negative comments regarding sexual misconduct and shall be given an opportunity to submit additional references or to give other evidence to correct or respond to harmful information obtained from a reference.

V. Educating and Training – Awareness

Since the issue of sexual misconduct has become a more present reality, there is an emerging need to educate and train a wide variety of persons. Persons needing this specific education include: ministers; volunteers; officers; nonprofessional and professional staff; ministerial candi-

dates; professionals who will be working with this issue within the denomination; members of the congregation; and councils staff including supervisors, employees, and Stated Clerks.

Education provided or required for these persons and groups may be different on a group-by-group basis. The presbytery or the session, as appropriate, should develop or implement educational materials or courses appropriate for all such groups, or may contract with expert entities to provide such materials or courses. A minister-member not currently residing in the presbytery, or any other group mentioned above with good cause, may undertake alternative education in accordance with this policy. If the member should demonstrate to the Stated Clerk of Grace Presbytery that such alternative education is substantially equivalent to that provided under this paragraph.

Theological institutions should include material in their existing curriculum on sexual ethics including the appropriate use of ministerial power, the General Assembly policy and its procedures on sexual misconduct, and other resources. It is further urged that the appropriate presbytery committee(s) include training for inquirers, candidates, newly ordained pastors, and new pastors to their presbyteries regarding sexual misconduct, especially including education on their specific policy and procedures.

Much of a congregation's education currently happens in response to an actual case of sexual misconduct. However, it is recommended that the congregation be as proactive in this area as possible offering education in a variety of settings. There are already numerous resource materials available that could be adapted to a congregation's setting.

Employing entities need to make sure all employees are well acquainted with, understand, and abide by their policy and procedures. Employing entities should offer additional training and resources, such as: a workshop during staff meeting; lunchtime discussion group; articles and books made available; etc.

Any professional (therapists, attorneys, advocates, mediators, arbitrators) used by a council should have access to experts qualified in the field of sexual misconduct if they themselves are not.

Grace Presbytery encourages all teaching elders, commissioned ruling elders and certified Christian educators to participate in educational events sponsored by the Committee on Ministry which outline professional and ministerial boundaries, the General Assembly Sexual Misconduct Policy, and this presbytery policy.

Appendix A: Definitions

Accused is the term used to represent the person against whom a claim of sexual misconduct is made.

Accuser is a term used to represent the person claiming knowledge of sexual misconduct by a person covered by this policy. The accuser may or may not have been the victim of the alleged sexual misconduct. A person such as a family member, friend, or colleague may be the accuser.

Church when spelled with the initial capitalized refers to the Presbyterian Church (U.S.A.). When spelled with the initial in lowercase, it refers to local churches. The word congregation is used loosely for members and participants.

Employee is the comprehensive term used to cover individuals who are hired or called to work for salary or wages.

Entity is the term used to refer to any program or office managed by a board, committee, council, or other body whose membership is elected by a governing body.

Council is a representative body composed of ruling elders and teaching elders (ministers): sessions, presbyteries, synods, and the General Assembly. A council may establish entities such as day-care centers, conference centers, camps, or homes for the aged. A council may have both church members and non-members as employees.

Inquiry is the term used in the Rules of Discipline to determine whether charges should be filed based upon allegations of an offense received by a council. See Book of Order, D-10.0000.

Mandated Reporter is described by some states' laws as a person who is required to report any and all suspected incidents of child abuse, including child sexual abuse that come to their attention. State laws vary from defining "all persons having knowledge" as mandated reporters to specifying very limited lists of professions whose members are required to report.

Persons covered by this policy include church members, church officers, ministers, and non-members who are employees or volunteers.

Response is the action taken by the council or entity when a report of sexual misconduct is received. It may include (1) inquiry into facts and circumstances, (2) possible disciplinary action – administrative or judicial or both, (3) pastoral care for victims, their families and others, and (4) pastoral care and rehabilitation for the accused and care for their families.

Secular authorities are the governmental bodies, whether city, county, state, or federal, who are given the responsibility to investigate, criminally prosecute, and/or bring civil charges against individuals accused of sexual crimes or offenses against adults and children.

Secular law is the body of municipal, state, and federal laws and is often referred to collectively as civil and criminal law. Prohibited behavior addressed by this policy may result in criminal and/or civil charges filed under secular law.

Victim is a person claiming to have been harmed and/or abused by a person covered under this policy.

Volunteers include persons elected or appointed to serve on boards, committees, and other groups. For purposes of this policy, volunteers are treated the same as employees.

Appendix B: Meeting the Needs of All Involved

In cases of sexual misconduct there are needs that have to be met for the good of all persons, groups, and entities. In order to ensure that the council is ready to meet the variety of needs that may be present, an independent response coordination team may be named. This team will not investigate the allegation or in any way function as an investigating committee for disciplining members or officers, but should confine itself to coordinating a process that will meet the specific needs of victims and their families (if any), the accused and family (if any), employing entities, congregations, and governing bodies.

A. The Needs of the Victim

The council, employing entity, and response coordination team should assure that adequate treatment and care are available for alleged victims of sexual misconduct and their families. Sometimes, the victim or family is so angry and alienated from the church, that offers of help may be perceived as insincere or as attempts of a cover-up. If the victim or family at first refuses, the church should continue to offer help. Above all the church should not act in a self-protective manner by ignoring the victim and their families.

The extent of the damage to the victims of sexual misconduct will vary from person to person, and is influenced by such factors as the degree or severity of abuse, the age and emotional condition of the victim, human dynamics, and the importance of one's religious faith. The council, entity, and response coordination team is to assume in all cases that the victim has been wounded by the experience.

Feelings of guilt, shame, anger, mistrust, lowered self-esteem, unworthiness, and feelings of alienation from God, self, the religious community, and family are frequent injuries suffered by victims. It is important for the response coordination team to be sensitive to the victim's pain and need for healing, and to act by making appropriate pastoral care available.

The following are some of the needs of the victim:

1. To be heard and taken seriously: From the time that the victim is first able to indicate that sexual misconduct has occurred, that person should receive immediate attention and serious consideration from all church representatives.
2. To receive pastoral and therapeutic support: The victim may require spiritual and professional assistance as a result of sexual misconduct. The response coordination team should offer to help arrange for such support from a pastor and therapist, if the victim desires. Discussions with such people would be confidential, privileged conversations.
3. To be informed about church process and progress with regard to the accusation: One member of the response coordination team should be the church contact person for the victim. Frequently, this contact person will give the victim information as to what is happening in the church as a result of the accusation.

4. To receive legal advice: The response coordination team should suggest that the victim might benefit from independent legal advice. (Legitimate claims might be more effectively pursued and false claims discouraged.) If requested, the response coordination team should suggest ways in which independent legal advice can be obtained.
 - a. To be assured of an advocate of one's own choosing: A victim may need continuing moral support from one individual who is present while the church process deals with the accusation. This advocate may be a relative, friend, or someone suggested by the response coordination team. This advocate could speak for the victim, if necessary.
 - b. To be assured that justice will be pursued: The victim needs to be told by the response coordination team, and shown by the processes of the church, that justice is being pursued through fact-finding, truth-telling, confrontation and agreement that may include removal or temporary exclusion of the accused from office or adjudication of the complaint.
 - c. To receive healing and reconciliation: In addition to specific forms of restitution mentioned above, the victim needs to receive a sense of healing and reconciliation with all concerned – the self, the family, the church and, ideally, the accused. The response coordination team can help bring this about using the church's processes and resources. While the above are needs of the victim, one recognizes that all of these needs may also not be met through a reasonable handling of a specific case, but may only occur over a lengthier period of time. All of these needs, however, should be taken seriously and compassionately, and the rights of the victim respected.

B. The Needs of the Accused

The council or entity shall offer treatment and care for the accused as well as alleged victims and families. If the accused is a minister, this is the primary responsibility of the Committee on Ministry. Feelings of guilt, shame, anger, mistrust, lowered self-esteem, depression, unworthiness, and feelings of alienation from God, self, the religious community, and family are often experienced by the accused. In addition, there may be fear of job loss, incarceration, and indignation if an allegation is false.

When a person is found not guilty of charges of sexual misconduct, it is important for the council or entity to see that the decision is disseminated as widely as possible within their power, unless doing so would further injure the person accused.

1. Personal Care: Whether the allegations about the accused are eventually found to be true or not, the accused deserves to be treated with Christian kindness and respect. The response coordination team may suggest that the accused seek spiritual support or professional counseling. People in staff positions, such as general presbyters or stated clerks, should not engage in personal counseling of the accused because of their potential involvement in disciplinary process.

2. **Economic Security and Care for Family of Accused:** When an allegation of sexual misconduct has been made against a minister, the economic security of the accused is directly threatened, along with reputation, career, and family relationships. Again, the Committee on Ministry can be of assistance. The response coordination team may alert the Committee on Ministry to the possible spiritual, emotional, and financial needs of the family of the accused and recommend expert resources.

C. The Needs of a Congregation in a Context of Sexual Misconduct

The council, employing entity, and response coordination team should be aware of the problems a congregation or employing entity may experience following allegations of sexual misconduct by a minister, employee, or volunteer. The allegations may polarize the congregation or organization, damage morale, create serious internal problems, and even limit the trust a congregation may place in succeeding pastors. Efforts should be taken to recognize and identify the problems and heal any damage that may be done to the congregation or organization.

When there is sexual misconduct on the part of a minister, non-ordained staff, or volunteer in a particular congregation, a number of needs unique to that congregation will emerge since sexual misconduct impacts congregations in different ways. Therefore, these needs will not necessarily emerge in the same sequence in each situation. Depending on the parties involved in the sexual misconduct, some of the needs may not emerge. In any event, those managing the church's response to the sexual misconduct will want to know that the following needs may emerge:

1. **Pastoral care:** Members and staff of the congregation will need pastoral care. If it is the pastor who is involved in the sexual misconduct, care will need to be provided by another member of the ordained staff (if the church is a multiple-staff church) or by a trained interim pastor. If the pastor leaves as a result of sexual misconduct, in extreme cases a trained interim pastor or consultant in sexual misconduct may need to work with the congregation for an extended period of time. If it is not a pastor who is involved in the sexual misconduct, then the pastor will provide the needed care for the congregation. The pastor, if not previously trained in this specialty area, will need to consult with denominational specialists who will advise how to proceed and any anticipated problems.
2. **Information about the case:** Members of the congregation will need opportunities both to receive and give information. If a case of sexual misconduct becomes a matter of public knowledge within a congregation and if a pastor has been found guilty of sexual misconduct, the interim pastor or consultant may hold appropriate meetings with individuals, small groups, or with the whole congregation. Such meetings should provide information about sexual misconduct in general, Presbyterian polity and our judicial process, and how others who may have been victimized may be heard and ministered to. If the offender is not the pastor, then the pastor may perform these functions. At such meetings, one may expect members to vent their feelings. An opportunity for this to happen should be provided. If this venting does not take place, then it may create serious problems for the future of the congregation, for future pastors, and for the council. Dynamics may differ somewhat in racial ethnic churches, but no empirical studies have yet demonstrated different dynamics.

3. Resource persons: In light of the above needs, the following are resource persons whose services would be valuable to a congregation in the context of sexual misconduct: a trained interim pastor, a Committee on Ministry representative knowledgeable in polity and the effects of sexual misconduct in the church, a consultant or therapist with knowledge and experience in dealing with sexual misconduct, an attorney who can discuss legal aspects of a case, and an insurance agent who can advise the congregation about their exposure to liability or coverage.

It is the responsibility of each council to establish policy and its procedures governing cases of sexual misconduct in that jurisdiction. The PCUSA policy and its procedures are intended to guide the development of council policy and procedures.

Appendix C

Civil Practice and Remedies Code

Title 4. Liability in Tort

Chapter 81. Sexual Exploitation by Mental Health Services Provider

Sec. 81.001. DEFINITIONS. In this chapter:

- 1) "Mental health services" means assessment, diagnosis, treatment, or counseling in a professional relationship to assist an individual or group in:
 - A. alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;
 - B. understanding conscious or subconscious motivations;
 - C. resolving emotional, attitudinal, or relationship conflicts; or
 - D. modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning

- 2) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:
 - A. licensed social worker as defined by Section 505.002, Occupations Code;
 - B. chemical dependency counselor as defined by Section 504.001, Occupations Code;
 - C. licensed professional counselor as defined by Section 503.002, Occupations Code;
 - D. licensed marriage and family therapist as defined by Section 502.002, Occupations Code;
 - E. member of the clergy;
 - F. physician who is practicing medicine as defined by Section 151.002, Occupations Code;
 - G. psychologist offering psychological services as defined by Section 501.003, Occupations Code; or
 - H. special officer for mental health assignment certified under Section 1701.404, Occupations Code.

- 3) "Patient" means an individual who seeks or obtains mental health services. The term includes a person who has contact with a special officer for mental health assignment because of circumstances relating to the person's mental health.

- 4) "Sexual contact" means:
 - A. "deviate sexual intercourse" as defined by Section 21.01, Penal Code;
 - B. "sexual contact" as defined by Section 21.01, Penal Code;
 - C. "sexual intercourse" as defined by Section 21.01, Penal Code; or
 - D. requests by the mental health services provider for conduct described by Paragraph (A), (B), or (C).
"Sexual contact" does not include conduct described by Paragraph (A) or (B) that is a part of a professionally recognized medical treatment of a patient.

- 5) "Sexual exploitation" means a pattern, practice, or scheme of conduct, which may include sexual contact that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted practice while treating a sexual or marital dysfunction.

- 6) "Therapeutic deception" means a representation by a mental health services provider that sexual contact with, or sexual exploitation by, the mental health services provider is consistent with, or a part of, a patient's or former patient's treatment.

- 7) "Mental health services," as defined by this section, provided by a member of the clergy does not include religious, moral, and spiritual counseling, teaching, and instruction.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1102, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.731, eff. Sept. 1, 2001.

Sec. 81.002. SEXUAL EXPLOITATION CAUSE OF ACTION. A mental health services provider is liable to a patient or former patient of the mental health services provider for damages for sexual exploitation if the patient or former patient suffers, directly or indirectly, a physical, mental, or emotional injury caused by, resulting from, or arising out of:

- 1) sexual contact between the patient or former patient and the mental health services provider;
- 2) sexual exploitation of the patient or former patient by the mental health services provider; or
- 3) therapeutic deception of the patient or former patient by the mental health services provider

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.003. LIABILITY OF EMPLOYER.

- a) An employer of a mental health services provider is liable to a patient or former patient of the mental health services provider for damages if the patient or former patient is injured as described by Section 81.002 and the employer:
 - 1) fails to make inquiries of an employer or former employer, whose name and address have been disclosed to the employer and who employed the mental health services provider as a mental health services provider within the five years before the date of disclosure, concerning the possible occurrence of sexual exploitation by the mental health services provider of patients or former patients of the mental health services provider; or
 - 2) knows or has reason to know that the mental health services provider engaged in sexual exploitation of a patient or former patient and the employer failed to:
 - A. report the suspected sexual exploitation as required by Section 81.006; or
 - B. take necessary action to prevent or stop the sexual exploitation by the mental health services provider.
- b) An employer or former employer of a mental health services provider is liable to a patient or former patient of the mental health services provider for damages if the patient or former patient is injured as described by Section 81.002 and the employer or former employer:
 - 1) knows of the occurrence of sexual exploitation by the mental health services provider of a patient or former patient;
 - 2) receives a specific request by an employer or prospective employer of the mental health services provider, engaged in the business of providing mental health services, concerning the possible existence or nature of sexual exploitation by the mental health services provider; and
 - 3) fails to disclose the occurrence of the sexual exploitation
- c) An employer or former employer is liable under this section only to the extent that the failure to take the action described by Subsection (a) or (b) was a proximate and actual cause of damages sustained.
- d) If a mental health professional who sexually exploits a patient or former patient is a member of the clergy and the sexual exploitation occurs when the professional is acting as a member of the clergy, liability if any under this section is limited to the church, congregation, or parish in which the member of the clergy carried out the clergy member's pastoral duties:
 - 1) at the time the sexual exploitation occurs, if the liability is based on a violation of Subsection (a); or
 - 2) at the time of the previous occurrence of sexual exploitation, if the liability is based on a violation of Subsection (b).

- e) Nothing in Subsection (d) shall prevent the extension of liability under this section beyond the local church, congregation, or parish where the current or previous sexual exploitation occurred, as appropriate under Subsection (d), if the patient proves that officers or employees of the religious denomination in question at the regional, state, or national level:
 - 1) knew or should have known of the occurrences of sexual exploitation by the mental health services provider;
 - 2) received reports of such occurrences and failed to take necessary action to prevent or stop such sexual exploitation by the mental health services provider and that such failure was a proximate and actual cause of the damages; or
 - 3) knew or should have known of the mental health professional's propensity to engage in sexual exploitation.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1199 (S.B. 43), Sec. 1, eff. June 17, 2011.

Sec. 81.004. DAMAGES.

- a) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.
- b) In addition to an award under Subsection (a), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.005. DEFENSES.

- a) It is not a defense to an action brought under Section 81.002 or 81.003 that the sexual exploitation of the patient or former patient occurred:
 - 1) with the consent of the patient or former patient;
 - 2) outside the therapy or treatment sessions of the patient or former patient; or
 - 3) off the premises regularly used by the mental health services provider for the therapy or treatment sessions of the patient or former patient.
- b) It is a defense to an action brought under Section 81.002 or 81.003 by a former patient that the person was not emotionally dependent on the mental health services provider when the sexual exploitation began and the mental health services provider terminated mental health services with the patient more than two years before the date the sexual exploitation began.
- c) A person is considered not emotionally dependent for purposes of this chapter if the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the mental health services provider are not such that the mental health services provider knows or has reason to believe that the patient or former patient is unable to withhold consent to the sexual exploitation.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.006. DUTY TO REPORT.

- a) If a mental health services provider or the employer of a mental health services provider has reasonable cause to suspect that a patient has been the victim of sexual exploitation by a mental health services provider during the course of treatment, or if a patient alleges sexual exploitation by a mental health services provider during the

course of treatment, the mental health services provider or the employer shall report the alleged conduct not later than the 30th day after the date the person became aware of the conduct or the allegations to:

- 1) the prosecuting attorney in the county in which the alleged sexual exploitation occurred; and
 - 2) any state licensing board that has responsibility for the mental health services provider's licensing.
- b) Before making a report under this section, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous.
- c) A report under this section need contain only the information needed to:
- 1) identify the reporter;
 - 2) identify the alleged victim, unless the alleged victim has requested anonymity; and
 - 3) express suspicion that sexual exploitation has occurred.
- d) Information in a report is privileged information and is for the exclusive use of the prosecuting attorney or state licensing board that receives the information. A person who receives privileged information may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. The identity of an alleged victim of sexual exploitation by a mental health services provider may not be disclosed by the reporter, or by a person who has received or has access to a report or record, unless the alleged victim has consented to the disclosure in writing.
- e) A person who intentionally violates Subsection (a) or (d) is subject to disciplinary action by that person's appropriate licensing board and also commits an offense. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.007. LIMITED IMMUNITY FROM LIABILITY.

- a) A person who, in good faith, makes a report required by Section 81.006 is immune from civil or criminal liability resulting from the filing of that report.
- b) Reporting under this chapter is presumed to be done in good faith.
- c) The immunity provided by this section does not apply to liability resulting from sexual exploitation by a mental health services provider of a patient or former patient.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.008. ADMISSION OF EVIDENCE.

- a) In an action for sexual exploitation, evidence of the plaintiff's sexual history and reputation is not admissible unless:
 - 1) the plaintiff claims damage to sexual functioning; or
 - 2) (2)(A) the defendant requests a hearing before trial and makes an offer of proof of the relevancy of the history or reputation; and
 - (2)(B) the court finds that the history or reputation is relevant and that the probative value of the evidence outweighs its prejudicial effect

- b) The court may allow the admission only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other such evidence may be introduced.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 81.009. LIMITATIONS.

- a) Except as otherwise provided by this section, an action under this chapter must be filed before the third anniversary of the date the patient or former patient understood or should have understood the conduct for which liability is established under Section 81.002 or 81.003.
- b) If a patient or former patient entitled to file an action under this chapter is unable to bring the action because of the effects of the sexual exploitation, continued emotional dependence on the mental health services provider, or threats, instructions, or statements by the mental health services provider, the deadline for filing an action under this chapter is tolled during that period, except that the deadline may not be tolled for more than 15 years.
- c) This section does not apply to a patient or former patient who is a "child" or a "minor" as defined by Section 101.003, Family Code, until that patient or former patient has reached the age of 18. If the action is brought by a parent, guardian, or other person having custody of the child or minor, it must be brought within the period set forth in this section.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.07, eff. Sept. 1, 1997.

Sec. 81.010. INJUNCTIVE RELIEF AGAINST GOVERNMENTAL UNITS.

- a) In this section, "governmental unit" has the meaning assigned by Section 101.001(3)(B).
- b) Subject to Subsection (c), a patient, a former patient, or another person acting on behalf of a patient or former patient may bring an action under this section against a governmental unit that is an employer of a mental health services provider, including a special officer for mental health assignment, who commits any conduct described by Section 81.002(1), (2), or (3) in relation to the patient or former patient. In an action brought under this subsection, the patient or former patient may obtain:
 - 1) an order requiring the governmental unit to discharge the mental health services provider who committed the conduct;
 - 2) court costs; and
 - 3) reasonable attorney's fees, as determined by the court.
- c) A patient, former patient, or person acting on behalf of a patient or former patient may not bring an action under Subsection (b) unless, 60 days before the date that action is to be filed, the person notifies the governmental unit in writing of its intention to bring an action under this section. The notice must reasonably describe the facts giving rise to the claim. If, before the 60th day after the date the notice is provided under this section, the governmental unit discharges the mental health services provider who committed the conduct with respect to which the claim is filed, the person may not bring suit under Subsection (b).
- d) Governmental immunity to suit is waived and abolished only to the extent of the liability created by Subsection (b).

Added by Acts 1999, 76th Leg., ch. 1102, Sec. 2, eff. Sept. 1, 1999.

Signature Page

Please Detach and Return to the Stated Clerk of Grace Presbytery

Check whichever applies to you:

- Teaching Elder
- Certified Christian Educator
- Commissioned Ruling Elder
- Employee of Grace Presbytery
- Volunteer Serving in Grace Presbytery

I have read Sexual Misconduct Policy and Procedures, a covenantal agreement within Grace Presbytery, Presbyterian Church (U.S.A.) and by my signature below, agree to abide by the standards therein.

Printed Name

Signature

Date of Signature

Return this form to:

Stated Clerk
Grace Presbytery
6100 Colwell Blvd. Suite 100
Irving, Texas 75039