

## Talking Points: Revision of Sexual Misconduct Policy

- The current policy of Palo Duro Presbytery was drafted in 1998. Although the policy is still useful, given changes in secular law and culture, definitions needed to be updated.
- The revision before you adapts the policy adopted by PCUSA in 2011 and updated in 2013. In the updating process, it made sense to follow the PCUSA format as much as possible. Other presbyteries have done the same.
- Major differences in our existing policy and the proposed policy:
  - Expanded definitions of what constitutes “sexual misconduct,” including misuse of technology.
  - Clarification of obligation in Texas to report suspected child abuse. In Texas, for clergy, there is no “priest/penitent” confidentiality regarding suspected child abuse. It must be reported
  - A section entitled “Long Term Healing of Congregations” has been removed. Justification: Simplification. The purpose of the renewed policy is to describe what is not permitted and the immediate obligation. We may want to re-visit this issue in the future, but for now, we seek to clarify the standards of conduct.
  - In the same way, the revision does not include sample forms for job application. Soon, we hope to revise these forms, as necessary.

# **PALO DURO PRESBYTERY SEXUAL MISCONDUCT PREVENTION POLICY AND PROCEDURES**

## **I. Policy Statement**

It is the policy of Palo Duro Presbytery (hereinafter referred to as the Presbytery) that all church members, church officers, non-member employees, and volunteers of congregations, councils, and entities of the Church within the jurisdiction of the Presbytery are 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 in Scripture, and of the ministerial, pastoral, employment, and professional relationship. It is never permissible or acceptable for a church member, officer, employee, or volunteer to engage in sexual misconduct.

## **II. Standards of Conduct**

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."<sup>1</sup>

The basic principles of conduct guiding this policy are as follows:<sup>2</sup>

1. Sexual misconduct is a violation of the role of pastors, employees, volunteers, counselors, supervisors, teachers, and advisors of any kind who are called upon to exercise integrity, sensitivity, and caring in a trust relationship. It breaks the covenant to act in the best interests of parishioners, clients, co-workers, and students.

2. Sexual misconduct is a misuse of authority and power that breaches Christian ethical principles by misusing a trust relation to gain advantage over another for personal pleasure in an abusive, exploitative, and unjust manner. If the parishioner, student, client, or employee initiates or invites sexual content in the relationship, it is the pastor's, counselor's, officer's, or supervisor's responsibility to maintain the appropriate role and prohibit a sexual relationship.

3. Sexual misconduct takes advantage of the vulnerability of persons who are less powerful to act for their own welfare, including children. 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.

## **III. Definitions**

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<sup>1</sup> (Book of Order, G-2.0104a).

<sup>2</sup> ... As [God] who called you is holy, be holy yourselves in all your conduct; [1 Peter 1:15]

... Tend the flock of God that is in your charge, . . . not under compulsion but willingly, ... not for sordid gain but eagerly. Do not lord it over those in your charge but be examples to the flock. [ 1 Peter 5:2-3]

... You know that we who teach will be judged with greater strictness. [James. 3:1] (Source: NRSV)

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

**1. Child sexual abuse;** including, 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 the adult person or of a third person. The behavior may or may not involve touching. Sexual behavior between a child and an adult is always considered forced whether consented to by the child. In the Presbyterian Church (U.S.A.), the sexual abuse definition of a child is anyone under age eighteen.

**2. 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 ordered ministry or position”<sup>3</sup>

**3. 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.

**4. Sexual conduct** is offensive, obsessive, or suggestive language or behavior, unacceptable visual contact, unwelcome touching or fondling that is injurious to the physical or emotional health of another.

**5. Sexual Malfeasance** is defined by the broken trust resulting from sexual activities within a professional ministerial relationship that results in misuse of office or position arising from the professional ministerial relationship.

**6. Misuse of technology** is use of technology that results in sexually harassing or abusing another person, including texting, or emailing suggestive messages and images to persons with whom one has a ministerial relationship. It is never appropriate to view pornography on church property. When this includes a person under the age of eighteen, it is

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<sup>3</sup> Book of Order, D-10.0401c.

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.

## **B. Other Definitions**

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

**2. 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.

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

**4. Employee** is the comprehensive term used to cover individuals who are hired or called to work for the for the Church, the Presbytery, or churches for salary or wages.

**5. 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 council.

**6. Council** is a representative body composed of ruling elders and Ministers of the Word and Sacrament: 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 nonmembers as employees.

**7. 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.<sup>4</sup>

**8. Mandated Reporter** includes a person under the PCUSA constitution who is mandated to report to the civil authorities any reasonably held belief that there will be future harm and is also 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.

**9. Persons Covered** by this policy includes church members, church officers, Ministers of the Word and Sacrament, and nonmembers who are employees or volunteers of the Presbytery. All other councils or entities of the General Assembly are urged to create a sexual misconduct policy using the guidelines set out in this policy.

**10. Response** is the action taken pursuant to this policy 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 and their

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<sup>4</sup> Book of Order, D-10.0000.

families and others, and (4) pastoral care and rehabilitation for the accused and care for their families.

**11. Civil 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.

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

**13. Volunteer** is the term used for those who provide services for the Presbytery. 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.

#### **IV. Responding to Allegations of Sexual Misconduct**

##### **A. Principles**

1. In responding to allegations of sexual misconduct, members, officers, and employees of the Presbytery 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.

2. In responding to allegations of sexual misconduct, members, officers, and employees of the Presbytery 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.

3. The Presbytery has jurisdiction over its members, officers, and employees such that if a member, officer, or employee is alleged to have committed an offense against Scripture or the Book of Order it 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 Book of Order that trigger the disciplinary processes of the Presbytery in the Book of Order. In the case of an active non-member who is employed or volunteers with the church, the procedures of the written personnel policies of the council or entity will cover the individual.

4. If the person accused of sexual misconduct is no longer a member, officer, or employee of the Presbytery, but the conduct occurred while the person was acting on behalf of the Presbytery, the Presbytery or 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 Presbytery may appoint an administrative committee or commission to hear the allegations of sexual misconduct. The Presbytery may also take measures to prevent future occurrences of harm through education and policy.

5. Prohibited behavior addressed by this policy may result in criminal and/or civil charges filed under secular law.

## **B. Reporting Requirements**

### **1. Reporting Sexual Misconduct.**

a. A person needing to report that a member, officer, employee, or volunteer subject to this policy has committed sexual misconduct is encouraged to seek guidance from a PC(USA) minister of the Word and Sacrament or ruling elder regarding filing the report.

b. Congregation: 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 Minister of the Word and Sacrament, 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 in the Rules of Discipline of the Book of Order. If the accused is a nonmember employee or volunteer, the church will respond by using procedures set forth by the session of the congregation.

c. Presbytery: If the person who is accused of committing sexual misconduct is a Minister of the Word and Sacrament member, the report of allegations should be made to the stated clerk of the Presbytery. If the report of allegations is placed in writing, the Presbytery will respond by using the procedures in the Rules of Discipline of the Book of Order. If the person who is accused of committing sexual misconduct is a volunteer or nonmember employee of the Presbytery, the report of allegations may be made to any of the staff or volunteers of the Presbytery. The Presbytery will respond by using procedures set forth by policy or bylaws of the Presbytery.

**d. A report should be made regardless of the application of disciplinary or secular statutes of limitation.**

### **2. Receiving Reports of Sexual Misconduct**

a. 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 Presbytery and may be made to a variety of officers or leaders within the Presbytery. 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.

b. 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 should be dealt with as

matters of highest confidentiality, both before and after they have been submitted to appropriate authorities as outlined below.

c. The first person to learn of an incident of sexual misconduct should not undertake an inquiry alone or question either 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 hesitant to talk to “higher authorities,” the person who has received the initial report has a special pastoral responsibility to build trust and willingness to speak with the accuser, lest the church be unable to respond because no one is able to give firsthand information.

d. The person receiving the initial report of allegations of sexual misconduct shall analyze the relationship of the person accused of sexual misconduct with PDP 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 Presbytery.

e. 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 report of allegations of sexual misconduct in writing from a member of the Presbytery alleging another member or officer of the Presbytery committed an offense must be acted on according to the Rules of Discipline of the Book of Order. If a clerk or stated clerk receives a report of allegations in writing from a nonmember of the Presbytery alleging another member or officer of the Presbytery 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 Presbytery may make the written statement that will automatically trigger the Rules of Discipline of the Book of Order.

### **3. Mandatory Reporting of Child Abuse**

**a. Requirements of the Book of Order.** All ruling elders, deacons, Certified Christian Educators, and Ministers of the Word and Sacrament must report knowledge of child abuse to the civil and ecclesiastical authorities according to the Book of Order. The Book of Order requires that

“Any member of this church engaged in ordered ministry and any certified Christian educator employed by this 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-4.0302)

Further:

“In the exercise of pastoral care, Ministers of the Word and Sacrament (also called ministers of the Word and Sacrament) and ruling elders who have been commissioned by a presbytery to limited pastoral service (G-2.10), shall maintain a relationship of trust and confidentiality, and shall hold in confidence all information revealed to them in the course of providing care and all information relating to the exercise of such care.

When the person whose confidences are at issue gives express consent to reveal confidential information, then a Minister of the Word and Sacrament or a ruling elder commissioned to pastoral service may, but cannot be compelled to, reveal confidential information.

A Minister of the Word and Sacrament or a ruling elder commissioned to pastoral service may reveal confidential information when she or he believes that there is risk of imminent bodily harm to any person<sup>5</sup>. **Texas law imposes an additional responsibility to report suspected child abuse and neglect regardless of the existence of a pastoral relationship. See subparagraph B immediately following.** 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. These reports should be made within a reasonable time of receiving the information.

**b. Reporting Requirements of Civil Authorities.**

The preceding provisions of the Book of Order attempt to balance conflicting moral duties for officers of the Presbyterian Church (U.S.A.). **However, Texas law requires the reporting of suspected child abuse or neglect without regard to any privilege between the minister and the person receiving pastoral care.**<sup>6</sup>

**C. Responding to a Report of Sexual Misconduct**

The proper council or entity response will vary according to the relationship of the Presbytery 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 council or entity that employs them.

**1. Cooperation with Secular Authorities.** 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.

**2. Accused Covered by Book of Order**

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<sup>5</sup> G-4.0301.

<sup>6</sup> Texas Family Code Sec. 261.101.



a. 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.

**b. Session original jurisdiction.** 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.

**c. The Presbytery's original jurisdiction.** The Presbytery has original jurisdiction in disciplinary cases involving Ministers of the Word and Sacrament. A presbytery may dissolve a pastoral relationship when the "Word imperatively demands it."<sup>7</sup> However, a presbytery may only place a Minister of the Word and Sacrament 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 of the Word and Sacrament member accused of child abuse should be placed on administrative leave (D-10.0106). Permanent judicial commission (PJC) members who will conduct this risk evaluation based upon the allegations and a hearing will seek secular legal advice, as necessary.

**d. Commissioned Ruling Elders/Commissioned Lay Pastors.** The Presbytery has original jurisdiction in disciplinary cases involving commissioned ruling elders and commissioned lay pastors.

**e. Renunciation of jurisdiction.** When a church officer renounces jurisdiction, the clerk 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.

### **3. Accused Not Covered by Book of Order.**

a. When an accusation of offense of sexual misconduct is made against a nonmember employee or volunteer, the council shall 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.

b. The committee or commission that will respond to the allegation of offense of sexual misconduct will do the following:

i. Determine whether the allegation gives rise to a reasonable suspicion of sexual misconduct by the accused.

ii. If so, gather additional information necessary to decide about correcting the behavior.

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<sup>7</sup> (G2.0904).

iii. 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.

iv. Inform the victim and the accused of the remedy.

v. In all cases, the 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.

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

#### D. Council or Entity Record Keeping

1. The council or entity should 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 as far as possible.

2. 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 Presbytery when necessary.

3. 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 Book of Order requires that all councils adopt and implement a sexual misconduct policy (G-3.0106). The General Assembly has urged all councils and related entities to establish policies, procedures, that make it a violation of the employer's work rules to engage in sexual misconduct and that encourage reporting of sexual misconduct. The Presbytery will take appropriate steps to inform members, employees, and volunteers of sexual misconduct policy and the standards of conduct and the procedures for effective response when receiving a report of sexual misconduct.

#### B. Employment Practices

1. Record Keeping. Accurate record keeping is an essential part of hiring and supervision practices of the Presbytery. The Presbytery shall maintain a personnel file on every employee, including Ministers of the Word and Sacrament s. 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 which may be required, by law, to be kept in separate files.

## 2. Prescreening Applicants

a. The Presbytery will follow 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. A background check, including a national criminal background check, shall be performed on all applicants that may interact with children and youth.

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

### c. References.

i. The employing entity is responsible for contacting references for prospective.

ii. Ministers of the Word and Sacrament, employees, or volunteers. A written record of conversations or correspondence with references should be kept in the Minister of the Word and Sacrament or employee's personnel file.

iii. The Presbytery will delegate responsibility for previous employer reference checks to the Executive Presbyter or other appropriate person.

iv. The Executive Presbyter is authorized to give a reference, and is obligated to give truthful information regarding allegations, inquiries, and administrative or disciplinary action related to sexual misconduct of the applicant.

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

d. 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

### A. Distribution

Copies of this policy and its procedures shall be made available to all council and entity offices. It is intended as guidance for this mid-council, churches, and related entities and if properly implemented by them can be used by church members, church officers, employees, and volunteers. This policy and its procedures should 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.

## B. Training.

1. Since the issue of sexual misconduct has become an ever more present reality, there is an emerging need to educate and train a wide variety of persons. Persons needing this specific education include: Ministers of the Word and Sacrament ; volunteers; officers; nonprofessional and professional staff; ministerial candidates; professionals who will be working with this issue within the denomination; members of the congregation; and council staff including supervisors, employees, and stated clerks.

2. Education for these persons and groups will be different on a group-by-group basis. A primary requirement for all persons should be common knowledge regarding professional and ministerial boundaries, the General Assembly Sexual Misconduct policy, and this policy.

3. 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 offering education in a variety of settings. There are already numerous resource materials available that could be adapted to a congregation's setting.

4. 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.