

SEXUAL MISCONDUCT POLICY

I. Policy Statement

It is the policy of the Presbyterian Church (U.S.A.) (“PCUSA”) and Highland Presbyterian Church (“HPC”) that all HPC members, officers, employees, and volunteers are to maintain the integrity of the ministerial, employment, and professional relationship at all times. It is **never** permissible or acceptable for a HPC member, officer, employee, or volunteer to engage in sexual misconduct.

II. Definitions

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

- a. Child sexual abuse: including, but 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 or not consented to by the child. A “child” is anyone under age eighteen (18).
- b. 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).
- c. 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:
 - i. 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;
 - ii. submission to or rejection of such conduct is used as the basis for employment decisions affecting such an individual;
 - iii. 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
 - iv. 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.
- d. Rape or sexual contact by force, threat, or intimidation.
- e. Sexual conduct (such as 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.
- f. Sexual Malfeasance: 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.

g. Misuse of technology: 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 HPC property. When this includes a person under the age of eighteen (18), it is considered child abuse. There is never an expectation of personal privacy when using any type of technological equipment (including, but not limited to, computers, laptops, projectors or other devices) owned by HPC.

III. Standards of Conduct

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

1. Sexual misconduct is a violation of the role of Teaching Elders, Ruling Elders, 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 members, 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 member, student, client, or employee initiates or invites sexual content in the relationship, it is the Teaching Elder's, Ruling Elder'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.

IV. Church Response to Allegations of Sexual Misconduct

A. Principles

In responding to allegations of sexual misconduct: (1) members, officers, and employees of HPC should seek healing and assure the protection of all persons; (2) the privacy of persons should be respected and confidentiality of communications should be maintained; and (3) members, officers, and employees should seek to uphold the dignity of all persons involved, including persons who allege harm, persons accused of sexual misconduct, and the families and communities of each.

B. Reporting Requirements

1. Reporting Sexual Misconduct

a. Child Sexual Abuse: A person who witnesses child sexual abuse or who receives a report of child sexual abuse should first comply with Kentucky law regarding reporting of dependency, abuse or neglect. Kentucky Revised Statutes Section 620.030 provides, in pertinent part:

Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Department of Kentucky State Police; the [Cabinet for Health and Family Services] or its designated representative; the Commonwealth's attorney or the county attorney; by telephone or otherwise.

Any person who knows or has reasonable cause to believe that a child has been sexually abused should contact one of the local law enforcement authorities, including the Louisville Police Department Crimes Against Children Unit (574-2465) and Child Protective Services (595-4550).

Supervisors of employees at HPC who receive reports of child abuse also have a duty to report under KRS 620.030:

Any supervisor who receives from an employee a report of suspected dependency, neglect, or abuse shall promptly make a report to the proper authorities for investigation.

Supervisors at HPC who receive a report from an employee or any other source of suspected child abuse should report it to the law enforcement agencies listed above.

b. Adult Sexual Abuse – a person who witnesses or receives a report of sexual abuse of an adult should first comply with Kentucky law regarding reporting of dependency, abuse or neglect. Under Kentucky law related to reporting of adult abuse, adult: “ means a person eighteen (18) years of age or older who, because of mental or physical dysfunctioning, is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services.” (Kentucky Revised Statutes Section 209.020(4)). Kentucky Revised Statutes Section 209.030 provides, in pertinent part

Any person, including but not limited to physician, law enforcement officer, nurse, social worker, cabinet personnel, coroner, medical examiner, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, shall report or cause reports to be made in accordance with the provisions of this chapter.

Abuse under this statute is defined to include sexual abuse.

c. Mandatory Reporting of Abuse Under the *Book of Order*

i. The *Book of Order* mandates that Teaching Elders and Ruling Elders and Christian educators report sexual misconduct

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 a risk of future physical harm or abuse. (G-4.0302)

- ii. In accordance with G-4.0302, Teaching Elders, Ruling Elders, and Christian educators employed by HPC and who volunteer at HPC must report abuse in the manner described below in subsection (e).
- iii. All persons covered by this policy have an additional duty to:
 - A. comply with Kentucky law regarding reporting of sexual abuse; and
 - B. report knowledge of child sexual abuse to their supervisor, the Clerk of Session or the chair of the Personnel Committee.

d. Other Sexual Misconduct: A person needing to report that a member, officer, employee, or volunteer of HPC has committed sexual misconduct is encouraged to seek guidance from a minister or elder regarding filing the report.

e. To Whom To Report Sexual Misconduct: If the person who is accused of committing sexual misconduct is a Teaching Elder, the report of allegations should be made to the Clerk of Session or the chair of the Personnel Committee.

If the person who is accused of committing sexual misconduct is a member, Ruling Elder, deacon, employee or volunteer of HPC, the report of allegations should be made to the Pastor/Head of Staff, 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 follow the procedures set forth in the Rules of Discipline of the *Book of Order*.

If the accused is a nonmember employee or volunteer, the church will use the procedures set forth by the Session in this policy.

2. Receiving Reports of Sexual Misconduct

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 accuser, 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.

The first person to learn of an incident of sexual misconduct should not undertake an inquiry alone or question either the accuser or the accused unless the incident is divulged in the process of pastoral care, counseling, or a therapy session. If the accuser 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.

The person receiving the initial report of allegations of sexual misconduct shall analyze the relationship of the person accused of sexual misconduct with HPC and the PCUSA and shall make sure that the allegations of offense are filed with the governing body with jurisdiction over the person accused. This may be done by the person alleging harm or by any member of HPC and 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 put it in writing. If that person is incapable or unwilling to put the allegations in writing, the person who received the report should document the conversation and ask the person who made the report to read it and sign it. A report of allegations of sexual misconduct in writing from a member of HPC or the PCUSA alleging another member or officer of HPC or the PCUSA committed an offense must be acted on according to the Rules of Discipline of the *Book of Order*. If the Clerk of Session receives a report of allegations in writing from a non-member of HPC or the PCUSA alleging another member or officer of HPC or 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 HPC or the PCUSA may make the written statement that will automatically trigger the Rules of Discipline of the *Book of Order*.

C. Responding

The appropriate governing body or entity response will vary according to the relationship of HPC and the PCUSA with the person accused of sexual misconduct. Church members and officers are subject to inquiry and discipline (censure and correction) under the *Book of Order*. Employees who are not members of the congregation 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 sexual misconduct has been received by the Clerk of Session, the Clerk of Session will report to the Session that an offense has been alleged and that the Session will proceed according to the procedures set forth in the Rules of Discipline of the *Book of Order*. The Session may 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 accuser and/or the accused.

The Session 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 may vote to suspend an employee or put the employee on administrative leave pending the outcome of an investigation.

The Session has original jurisdiction in disciplinary cases involving members, elders, and

deacons of the church. A presbytery has original jurisdiction in disciplinary cases involving Teaching Elders/ministers of Word and Sacrament. A presbytery may dissolve a pastoral relationship when the “Word imperatively demands it” (G-11.0103o). 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 or stated clerk shall report the renunciation at the next meeting of the governing body and shall record the renunciation in the minutes of the governing body. The status of any pending charges may be shared with the governing body at that time.

If the accused is an employee of HPC and investigation of her/his conduct is covered by the *Book of Order*, in the course of or at the conclusion of the investigative process, the Session of HPC will vote to decide upon any appropriate disciplinary action against the accused, up to and including termination of employment.

2. Accused Not Covered by Book of Order

When the Session receives an accusation of offense of sexual misconduct against a nonmember employee or volunteer, its response will be guided by the policies in the HPC Employee Handbook.

The Personnel Committee will respond to any allegation of offense of sexual misconduct as follows:

- a. If an employee is the accuser or the accused, the Personnel Committee will determine if it is appropriate to put the employee on paid administrative leave or unpaid suspension during an investigation.
- b. When the Personnel Committee receives allegations of sexual misconduct it will within five (5) days of the report meet and appoint two (2) of its members (“Investigators”) to conduct a confidential investigation of the allegations so as to gather additional information necessary for the Personnel Committee to make a decision whether sexual misconduct occurred.
 - i. The Investigators will notify the accused of the allegations against her/him. The accuser(s) and the accused(s) will be invited to submit any information and evidence they have pertaining to the allegations.
 - ii. The Investigators will as promptly as possible interview witnesses (including the accuser(s) and the accused(s)) and are permitted to gather physical evidence, including documents, correspondence, email, and other paper and electronic records and other physical evidence related to the allegations. All interviews will be documented with notes. Participants in the investigations shall respect the confidentiality of the investigation. Breach of confidentiality can result in discipline for employees up to and including termination of employment.

- iii. If the accuser(s) or accused(s) is an employee, the Investigators, after executing a confidentiality agreement, will be permitted access to the employment records of the employee and the computer records of the employee, if they appear relevant to the investigation.
- c. At the conclusion of the investigation the Investigators will prepare a written report summarizing the evidence gathered and their opinion as to whether the accused(s) engaged in sexual misconduct in violation of this policy.
 - i. The report will be confidential and will be submitted in confidence to members of the Personnel Committee and the Head of Staff, who is an *ex officio* member of the Personnel Committee. If the Head of Staff is the accused, the report will not be given to the Head of Staff.
 - ii. The Personnel Committee will review the report and meet with the Investigators to discuss the investigation and the evidence. The Personnel Committee will then vote to determine if it agrees with the decision of the Investigators.
 - iii. The Personnel Committee will then ask the Session to schedule a special-called meeting, with appropriate notice to members of Session, for the sole purpose of discussing the investigation.
- d. During the meeting the Session will go into executive session to: (1) discuss the investigation; (2) consider the report; (3) deliberate to make a final decision concerning whether the accused(s) engaged in sexual misconduct; and, if so, (4) determine any appropriate remedies for the accuser(s) and discipline for the accused(s).
 - i. The Session may ask to review the evidence gathered by the Investigator.
 - ii. The Session may interview the accuser(s) or accused(s) before rendering its final decision or it may rely upon the records of the investigator pertaining to interviews.
 - iii. The Session may meet in more than one meeting to deliberate and make its decision.
- e. The Personnel Committee will inform the accuser(s) and the accused(s) of the decision of the Session, including any remedies and discipline. The report will be in summary fashion and any disciplinary action will be included in the accused(s) personnel file.
- f. The written report of the Investigators, all of the evidence they gathered, and any records created by the Personnel Committee and the Session related to the investigation and subsequent meetings will be gathered by the Chair of the Personnel Committee and kept in a locked closet or cabinet in the church office accessible only to the Head of Staff and the Chair of the Personnel Committee and their successors.

3. Governing Body or Entity Record Keeping

The Personnel Committee and the Session will 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. The Session may share the contents of inquiry reports with other governing bodies or entities of the PCUSA when necessary. The Clerk of Session will maintain the records while the inquiry is in process.

V. Educating and Training- Awareness

This policy will be provided to all new employees and training will be provided by the Head of Staff. The Session will receive annual training on this policy at its annual retreat.

Report of Suspected Sexual Misconduct

Reported by: _____

Name _____

Title _____

Address _____

City, State, and Zip Code _____

Telephone _____

Date of Report: _____

Person suspected of misconduct:

Name

_____ Title _____

Address _____

City, State, and Zip Code _____

Telephone _____

Other person(s) involved (witness or victims):

Name _____ Title _____

Age _____ Sex _____

Address _____

City, State, and Zip Code _____

Telephone _____

Report of Suspected Sexual Misconduct

Describe incident(s) of suspected sexual misconduct, including date(s), time(s), and location(s):

Identify eyewitnesses to the incident, including names, addresses, and telephone numbers, where available: _____

Sample Exhibit E

Approved by the Session of Highland Presbyterian Church February 15, 2012