



Upstate New York Synod

Evangelical Lutheran Church in America

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PROFESSIONAL MISCONDUCT POLICY

SC/R14.13.a. Professional Misconduct of a Sexual Nature by Rostered Ministers of Word and Sacrament and Word and Service

1. INTRODUCTION

Ministers of Word and Sacrament and ministers of Word and Service are charged with special responsibility for the gospel and for their leadership of the people of God. In conjunction with the requirements of their specific ministries as set forth by the Evangelical Lutheran Church in America pursuant to ELCA Bylaw 10.21.11., it is expected that their conduct be exemplary in all matters of morality and personal ethics. Therefore, the Upstate New York Synod (Synod) of the Evangelical Lutheran Church in America (ELCA) is committed to preventing sexual misconduct within the Church and to responding with justice and compassion when such misconduct occurs.

The Synod recognizes that responding to allegations of sexual misconduct requires determination, sensitivity, flexibility, and respect for all persons affected, including the victim, the rostered person, their families and friends, the congregation, the synod, and the whole church. This policy is intended to provide a framework for guidance in dealing with these cases while preserving the Synod's discretion to treat each person and each case in the manner necessitated by differing facts, circumstances, and needs of those affected. This policy cannot be imposed as rigid law, binding the Synod and others to its dictates; it must be interpreted and applied compassionately in accordance with the theological and biblical principles of the Gospel.

A. DEFINITIONS

1. "Sexual Misconduct"

Ministers of Word and Sacrament and ministers of Word and Service are expected to be trustworthy. Their church office places them in a position of power with access to a variety of resources and a sacred context in which congregants depend upon them to behave in a godly manner. Ministerial power is heightened when congregants come to them for pastoral care or counseling. Church leaders are responsible for maintaining appropriate boundaries and prohibiting sexual contact, even if a congregant asks for a sexual relationship or consents to one. There is no such thing as mutual consent between rostered ministers and a congregant. Sexual misconduct is the abuse of power and the betrayal of trust.

Sexual misconduct includes a wide range of verbal and/or physical behaviors which are sexual in nature. Examples of verbal behaviors include: suggestive comments, sexual innuendoes, questions seeking the details of a congregant's intimate relationships, self-disclosure of his or her partner's sexual inadequacies to a congregant, and/or tales of his or her sexual experiences or exploits. Examples of physical behaviors include: a prolonged hug when a brief one is customary, pressing a congregant up against his or her body, kissing on the lips when a kiss on the cheek would be appropriate, an inappropriate gift to a congregant such as lingerie, sexual contact which may be painful or may be arousing and satisfying to one or both persons involved.

This policy is intended to address sexual misconduct that may lead to discipline of a pastor or rostered layperson under Chapter 20 of *Constitution, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*.

2. “Complainant”

As used in this Statement of Policy “complainant” means a person who reports to the Office of the Bishop that he or she is a victim of alleged sexual misconduct. When the victim is a minor or a person lacking capacity the complainant may be a supporting adult.

3. “Rostered Person,” “Pastor,” or “Clergy”

As used in this Statement of Policy, “rostered person” “pastor” and “clergy” include rostered ministers of Word and Sacrament and of Word and Service. This Statement of Policy will assume that the rostered person who is accused of sexual misconduct is under call to a congregation, but the policy applies and the process may be adapted to calls in other circumstances.

4. “Resource Team”

As used in this Statement of Policy the “resource team” is a group appointed by the Bishop and approved by the Synod Council Executive Committee. The team will consist of clergy and lay people of the Synod who have received special training in the area of professional misconduct of a sexual nature and/or congregational healing. The Bishop may call on team members for advice and counsel. At the Bishop's request, members will assist the Bishop by meeting with a complainant and/or alleged offender, investigating an allegation, and offering support and healing to congregations. The Bishop may also ask other persons to assist in situations where a resource team member is not available. These persons will be considered members of the resource team for purposes of policy.

II. RESPONSE PROCEDURES

A. REPORTING AN ALLEGATION OF PROFESSIONAL MISCONDUCT OF A SEXUAL NATURE

1. Initial Contact

The Bishop of the Upstate New York Synod is to be contacted by the complainant personally. The complainant should make known that this is an emergency. If the allegation is made in regard to the Synod Bishop, contact should be made with the Presiding Bishop of the ELCA at 1-800-NET-ELCA.

The Bishop (or other person) contacted by the complainant will 1) assure the complainant that the Synod does not tolerate sexual misconduct and takes seriously all reports of such misconduct; 2) express care and concern for the complainant; 3) explain the Synod's process for responding to reports of sexual misconduct and offer to provide a copy of this Statement of policy; 4) answer the complainant's questions about the policies and procedures of the Synod; 5) when the complainant is anonymous, encourage the complainant to identify herself or himself and the pastor involved in the misconduct; 6) notify the Synod's attorney.

Recognizing that reports of sexual misconduct will occur in a variety of ways, it is important that reports are channeled to the Bishop's office. An inquiry or questioning of the complainant should not be conducted until the Bishop's office has been contacted.

2. Written Allegation

The complainant will be asked to submit a written allegation. The allegation shall be given/sent to the Bishop; Upstate New York Synod of the Evangelical Lutheran Church in America, 116 W. Glen Ave. Syracuse, NY, 13205. Phone 315-299-4955.

The allegations shall include the following information:

- (1) Names of person involved
- (2) A description of the allegation which includes relevant circumstances, context, dates, and details of the incident(s).
- (3) Religious bodies/religious affiliations/agencies of the parties involved (such as church or church camp with national church name).

Insofar as possible, the Bishop will respect the wishes of the complainant regarding confidentiality. However, at some point, the Bishop may be required by civil law or by the governing documents of the ELCA to disclose the identity of the complainant. In unusual circumstances, the fact that the Bishop is responsible to the Synod may require that he or she act contrary to the wishes of the complainant. Sometimes, the identity of the complainant may become known despite the best efforts of the Bishop to protect that person's identity. The Bishop cannot guarantee confidentiality to a complainant.

3. Initial Recommendation

After receiving the initial contact, the Bishop, in consultation with some resource team members, may determine whether or not the process will continue. If the process does not continue, the Bishop will notify the complainant. If the process continues, the complainant will be informed of the status of the process. An initial meeting will be held with the alleged offender when the decision is made to continue the process.

4. Withdrawal of Application

When the complainant submits a written allegation to the Bishop, the procedures in the Synod policy will be followed until the process is completed. If the complainant withdraws/denies the written allegation, the Bishop, in consultation with resource team members involved in this case, will decide if the process will continue. Any written allegation, as well as the results of any investigation, will be placed in the rostered person's file and noted on his/her record.

5. If the Allegation Involves a Minor or a Person Lacking Capacity

If the allegation involves a child, 17 years old or younger, the supportive adult (e.g. parent, relative, teacher, or friend) will report the allegation immediately to the Bishop's office. Please inform the Bishop's office if a report is made to a legal authority. An assessment will be made if this allegation falls under the Mandated Reporting laws. The Synod encourages appropriate adults to make reports to the New York State Child Abuse Hotline. If the Hotline report is appropriate and has not been made, the Bishop will arrange to file such a report. When details of the allegation are received, the Bishop, in consultation with the persons in charge of the safety of the child, will identify the supportive adult who will continue to communicate with the child and, if necessary, communicate on the child's behalf. The supportive adult will submit the written allegation to the Bishop or to the designated resource team members. A supportive adult will be encouraged to act on behalf of a person lacking capacity.

6. Allegations of Past Unreported Sexual Misconduct

Allegations may be made regarding sexual misconduct which occurred in past years. The complainant may wish to participate in a healing process with the alleged offender without engaging in the formal process herein stated. If a written allegation is submitted to the Bishop's office, it will be taken seriously. There will be a response based upon the wishes of the complainant, the nature of the allegation and the discretion of the Bishop.

B. INITIAL RESPONSE TO THE COMPLAINANT

1. Initial Response

In a timely manner, the Bishop will appoint two or three resource team members to be involved in the proceedings. The team members will meet with the complainant.

The complainant may bring a supportive person. If possible, the same team members will also be present in the initial meeting with the alleged offender.

2. Documentation

Resource team members responding to the allegations will keep notes with such information as date, time, place, context, and statements of complainant, the rostered person who is the alleged offender and other involved parties. Any meeting will conclude with the team members preparing a written summary which is factual in nature, avoiding personal feelings and speculations in documentation.

3. Meeting with Complainant

The resource team members will arrange a meeting with the complainant in a timely manner. The team members will address the following concerns when indicated:

- a. Be supportive of the complainant and family and express the concern of the church for them.
- b. Listen to the complainant's allegation.
- c. Assess the nature and seriousness of the accusation.
- d. Assess if the complainant would be in danger if her/his identity is revealed to the rostered person. How, when, and to whom the person's identity will be revealed throughout the process needs to be stated with consideration given to the complainant's desires.
- e. Provide the complainant with information about the Statement of Policy Regarding Professional Misconduct of a Sexual Nature of the Upstate New York Synod.
- f. Determine whether or not the complainant is willing/able to participate in the investigative procedures.
- g. If a written allegation has not been received, request one at that time.
- h. Determine what response the complainant would like from the Synod.
- i. The Synod may offer to provide funds for a specified number of counseling sessions.

4. After Initial Meeting with Complainant

The Bishop in consultation with the resource team members, will decide whether or not to continue the process. If the process is to continue, the team members will arrange to meet with the rostered person who is the alleged offender.

C. NOTIFYING THE ROSTERED PERSON WHO IS THE ALLEGED OFFENDER

1. Meeting with the Rostered Person

The resource team members involved in this case will arrange a meeting with the rostered person who is the alleged offender. The rostered person may bring a supportive person. At the time of the meeting, the team members will inform the alleged offender of the allegation. If the written allegation has been received, it will be presented at that time. The team members will address the following concerns when indicated:

- a. Be supportive of the rostered person and family and express the concern of the church for them.
- b. Provide the opportunity for the rostered person to respond to the allegation.
- c. Request the rostered person to prepare a written response to the allegation. The written response will assist the team members in determining the appropriate course of action.
- d. Provide information about the Statement of Policy Regarding Professional Misconduct of a Sexual Nature of the Upstate New York Synod.
- e. A request may be made by the Bishop, in consultation with the team members, that the rostered person be evaluated at a recommended treatment center. This treatment center may be different than the possible rehabilitation center that may be used at a later date.
- f. The Bishop, in consultation with the team members, will write a statement specifying under what conditions ministerial tasks may or may not be conducted by the rostered person. This statement may be shared with key leaders of the rostered person's congregation/agency.
- g. According to the Constitution of the Upstate New York Synod (S18.) the Bishop in his or her sole discretion may, when such allegations prohibit the pastoral office to be conducted effectively, temporarily suspend the rostered person without prejudice and with pay. The congregation will pay for supply pastors.
- h. If the investigation is to continue, the Bishop will call a meeting with the key leaders of the rostered person's congregation/agency.

D. INFORMING THE KEY LEADERS OF THE ROSTERED PERSON'S CONGREGATION/AGENCY

1. Meeting with Key Leaders

The Bishop will decide, in consultation with the resource team members involved in the case, which key leaders are to be invited. The team members will then notify the key leaders of the meeting. The team members will attend the meeting and present a description of the complainant's allegation and the rostered person's response. This disclosure does not include the name of the complainant. The team members will address the following concerns when indicated.

- a. Provide information about the Statement of Policy Regarding Professional Misconduct of a Sexual Nature of the Upstate New York Synod.
- b. Clarify that an allegation is not determined true or false until a thorough investigation has been made.
- c. Report how the rostered person will continue ministry. This decision will be made by the Bishop in consultation with the team members.
- d. Express concern for leaders and members.

- e. Insist that the key leaders not divulge any confidential information.
- f. Keep key leaders informed of the status of the investigation.

E. INVESTIGATION

1. Procedure

The resource team members involved in this case will investigate allegations in a timely manner. The investigation will include any relevant inquiry which may or may not substantiate the complainant's allegations.

The investigation will be executed discreetly without implicating the rostered person or complainant. Confidentiality will be maintained throughout the investigation as much as possible.

2. Recommendations

When the team members have concluded their investigation, they will consult with the Bishop regarding future proceedings. The Bishop may initiate the consultation and/or discipline procedures as set forth in the Constitution of the Upstate New York Synod and the ELCA. The complainant, the rostered person and key leaders will be notified of future proceeding.

3. Discipline

If the team members recommend that there be constitutional action, the Bishop may bring charges in accordance with the provisions and bylaws of the Evangelical Lutheran Church in America and the Upstate New York Synod. The victim, the offender and members of the offender's congregation/agency will receive notice of this action. The Synod Council Executive Committee of the Synod and the rostered person's Dean will also receive notice of this action.

4. Forgiveness

The matter in which we respond to our sin in the Lutheran tradition is through the process of repentance. Repentance is an act of contrition in which confession and a change in behavior is sought. Repentance by the convicted offender is to be sought. One can be forgiven without being reinstituted into the former position of church leadership. Demonstration of repentance may include some restitution to the victim(s) or congregation/agency to assist in healing and closure.

5. Unfounded Allegation

If the allegation is not proven at the conclusion of the investigation, the process will be considered complete. The team members will meet at separate times with the following persons to inform them of the results: the complainant, the rostered person offender and the key congregational leaders. The results will also be noted in the rostered person's file.

F. RECOMMENDATIONS FOR THE AFTER-CARE OF THE CONGREGATION

The Bishop, in consultation with the resource team and key congregational leaders, will establish a plan for after-care of the congregation.

1. Removal of the Rostered Person

If the rostered person is removed for disciplinary reasons, the Bishop will appoint an intentional interim pastor to the congregation. The interim pastor will work with members of the resource team to structure a process of recovery for the congregation.

2. The Rostered Person Accused of Unfounded Allegations

The team members will continue to offer support and resources to the rostered person who has been accused of unfounded allegations. The rostered person will be exonerated before those who knew of the allegation and such exoneration shall be noted in the rostered person's file. The team members may suggest ways in which reconciliation may be sought between the rostered person and the complainant.

3. The Complainant

The team may suggest ways of healing and reconciliation for the complainant.

4. Notice of Professional Misconduct of a Sexual Nature by a Rostered Person Formerly in the Upstate New York Synod

When the Bishop receives notice of a former rostered person of the Upstate New York Synod is being disciplined for professional misconduct of a sexual nature, he or she in consultation with the leadership of the former rostered person's congregation will decide how the news will be shared. If the news is shared, the Bishop will assign resource team member(s) as a resource to those affected.

5. Follow Up

The Bishop and/or resource team will work with congregations and others to help ensure that care and support are available to those harmed by clergy sexual misconduct. Synod personnel cannot provide this individual care themselves, but it will assist the primary and secondary victims of sexual misconduct to find resource persons and materials that might help them on their journey to healing. The Bishop will assist the congregation in dealing with the pain and disruption caused by the pastor's misconduct and will help the congregation continue in its mission and ministry for the sake of the Gospel.

F. FORMAL HEARING

Disciplinary proceedings are the process by which the ELCA determines if a pastor is guilty of the charges and, if so, what the penalty should be. The process is governed by Chapter 20 of the *Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America* and by the Rules Governing Disciplinary Proceedings.

G. DISCLOSURE

Except in unusual circumstances, the Bishop will disclose all serious allegations of clergy sexual misconduct. Experience has demonstrated that disclosure speeds the healing of the primary and secondary victims of the misconduct, empowers unknown victims to come forward and seek help, protects others from being victimized by the same pastor, starts the congregation on the path to new health, and demonstrates the commitment of the ELCA to deal openly and honestly with the problem.

Decisions regarding who will make what disclosure to whom and when will vary from case to case. In general, though, the Bishop will abide by the following guidelines:

1. Typically, disclosure of clergy sexual misconduct will be made to the leadership of the pastor's congregation, to the members of the pastor's present congregation, to synods where the pastor was previously rostered, and to other pastors within the Conference or the entire Synod. In some situations, wider disclosure to previous congregations, to the entire Synod, or even to the news media may be made as well.
2. In most cases, disclosure will be made when (1) the pastor admits to committing sexual misconduct; (2) the pastor resigns his or her call or from the clergy roster of the ELCA after being accused of sexual misconduct; (3) the pastor is placed on leave of absence or temporarily suspended in response to an allegation of sexual misconduct; (4) the pastor is suspended or removed from the clergy roster as a result of formal disciplinary proceedings; or (5) secular legal proceedings (civil or criminal) are initiated against the pastor. Other events may give rise to the need for disclosure as well.
3. The Bishop intends to work closely with the congregational leaders regarding appropriate disclosure to the members of the congregation. The victim's concerns regarding disclosure will be considered as well. The actual announcement to the congregation will be made by one or more of the leaders, or by the bishop, and usually to the adult members only.
4. To protect the privacy of those harmed by the misconduct, only the following will be disclosed: (1) the fact that the pastor has been accused of, admitted to, resigned, or been found guilty of committing sexual misconduct; (2) the gender of the complainant; (3) whether the complainant was an adult or a minor at the time of the misconduct; and sometimes (4) whether the complainant was a member of the pastor's congregation or a person to whom the pastor was providing pastoral care. Disclosure should never include the name of the complainant or facts from which she or he could readily be identified. If the pastor has denied the allegations, that fact will also be disclosed.
5. Persons who believe that they have been harmed (directly or indirectly) by the pastor will be invited to contact the leaders of the congregation, the Synod, or others who have agreed to be available to those persons.

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