



Sexual Ethics

Part 1

2013

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POLICY ON SEXUAL ETHICS

The Texas Annual Conference of United Methodist Church is committed to providing a safe, respectful, and nurturing environment in keeping with God's sacred trust. Sexual misconduct on the part of any clergyperson, employee, or volunteer of any congregation, institution, organization, or agency within the Conference violates the mission of the church to make disciples of Jesus Christ for the transformation of the world. Sexual harassment is expressly prohibited and will not be tolerated.

Sexual misconduct includes sexual abuse, sexual harassment, and sexual exploitation. The guidelines for the prohibition of sexual abuse or molestation of a minor (under 18 years of age) are set forth more specifically in the Safe Sanctuary Policies, which is incorporated into these guidelines.

The Texas Annual Conference believes that every person is created in the image of God (Genesis 1:27), that all Christians are equal in Christ (Galatians 3:26-28), and that we are called to love our neighbors as well as enemies (Matthew 5:42). We are committed to the prevention of sexual misconduct, harassment or abuse in any form and to address allegations justly. "Contrary to the nurturing community, sexual harassment creates improper, coercive, and abusive conditions wherever it occurs in society. Sexual harassment undermines the social goal of equal opportunity and the climate of mutual respect between men and women." (*Book of Discipline* 2012, ¶161.I) Furthermore, "Violent, disrespectful, or abusive sexual expressions do not confirm sexuality as God's good gift." (*Book of Discipline* 2012, ¶161.H)

The Texas Annual Conference bears affirmative responsibility to create an environment of hospitality for all persons that encourages respect, equality and kinship in Christ. We will neither condone nor tolerate instances of sexual misconduct, harassment or abuse.

Definitions

"**Sexual misconduct** within ministerial relationships is a betrayal of sacred trust. It is a continuum of sexual or gender-directed behaviors by either a lay or clergy person within a ministerial relationship (paid or unpaid). It can include child abuse, adult sexual abuse, harassment, rape or sexual assault, sexualized verbal comments or visuals, unwelcome touching and advances, use of sexualized materials including pornography, stalking, sexual abuse of youth or those without capacity to consent, or misuse of the pastoral or ministerial position using sexualized conduct to take advantage of the vulnerability of another." (*Book of Resolutions* 2012, p. 136)

"**Sexual harassment** [is] any unwanted sexual comment, advance, or demand, either verbal or physical that is reasonably perceived by the recipient as demeaning, intimidating, or coercive. ... Sexual harassment includes, but is not limited to, the creation of a hostile or abusive working environment resulting from discrimination on the basis of gender." (*Book of Discipline* 2012, ¶161.I) "[I]t is unwanted sexual or gender-directed behavior within a pastoral, employment, ministerial (including volunteers), mentor, or colleague relationship that is so severe or pervasive that it alters the conditions

of employment or volunteer work or unreasonably interferes with the employee or volunteer's performance by creating a hostile environment that can include unwanted sexual jokes, repeated advances, touching, displays, or comments that insult, degrade, or sexually exploit women, men, elders, children, or youth." (*Book of Resolutions* 2012, p. 136)

"**Sexual abuse** [in ministry] is a form of sexual misconduct and occurs when a person within a ministerial role of leadership (lay or clergy, pastor, educator, counselor, youth leader, or other position of leadership) engages in sexual contact or sexualized behavior with a congregant, client, employee, student, staff member, coworker, or volunteer." (*Book of Resolutions* 2012, p. 136) Sexual abuse within the ministerial relationship involves a betrayal of sacred trust, a violation of the ministerial role and exploitation of those who are vulnerable. In *the State of Texas*, sexual misconduct by clergy can be a criminal offense.

Furthermore, "the **use of pornography** in church programs, on church premises or with church property by persons in ministerial roles (lay and clergy) is a form of sexual misconduct." (*Book of Resolutions* 2012, p. 162)

Reporting

Reporting abuse of children and youth

Anyone who has cause to believe that a child's physical or mental welfare has been or is being adversely affected by abuse or neglect by any person has a legal responsibility to report it to the appropriate state or law enforcement agency. In addition, any allegation of child abuse must be reported to the Bishop. Anyone who becomes aware of sexual abuse or molestation involving a minor must also follow the reporting procedures outlined in the Safe Sanctuaries policy of *The Texas Annual Conference*.

Reporting sexual misconduct between adults

Nothing in this policy requires the person alleging sexual misconduct, harassment, or abuse to report the matter to the individual who is the subject of the allegation. Any person who believes that he or she is being subjected to any type of sexual misconduct, harassment or abuse should bring the matter to the attention of the Bishop, a District Superintendent, or the Director of The Center for Clergy Excellence.

Investigations

The Texas Annual Conference is committed to a prompt and thorough investigation of allegations, in compliance with *The Book of Discipline*. It is intended that the privacy of the persons involved be protected, except to the extent necessary to conduct a proper investigation. We will cooperate fully in any criminal investigation.

Non-retaliation

No one who reports sexual misconduct, harassment or abuse will be retaliated against or adversely treated because he or she made an allegation in good faith.

Corrective Action

If the investigation substantiates that the allegation is valid, immediate corrective action designed to stop the sexual misconduct, harassment or abuse and prevent its recurrence will be taken. Such corrective action may include discipline, up to and including discharge or dismissal of the offending person.

This is a policy statement of *The Texas Annual Conference*, approved and updated on May 28, 2013.

POLICY ON BULLYING

The Texas Annual Conference of the United Methodist Church categorically opposes the practices of adult, youth, and child bullying. Bullying is a behavioral expression of aggressiveness that attempts to wield power over another person(s) or people(s). This may be expressed by physical or psychological means. Bullying can result in the death of the victim.

There are several scriptural evidences of bullying. The Book of Esther is about the bullying of one man and the grace God expressed through God's persons. The questioning, beating, and subsequent death on the cross of Jesus the Christ is the ultimate example of expressed abuse of power over a person, even the Son of God. Stephen and a host of Christian martyrs have suffered similar personal attacks that led to death for the cause of Christ. There are persons today who suffer and die because another person(s) seek to overwhelm them by aggressive behavior.

Reporting

Nothing in this policy requires the person alleging bullying to report the matter to the individual who is the subject of the allegation. Any person who believes that he or she is being subjected to any type of bullying should bring the matter to the attention of the Bishop, a District Superintendent, or the Director of The Center for Clergy Excellence.

Investigations

The Texas Annual Conference is committed to a prompt and thorough investigation of allegations, in compliance with *The Book of Discipline*. It is intended that the privacy of the persons involved be protected, except to the extent necessary to conduct a proper investigation.

Non-retaliation

No one who reports bullying will be retaliated against or adversely treated because he or she made an allegation in good faith.

Corrective Action

If the investigation substantiates that the allegation is valid, immediate corrective action designed to stop the bullying and prevent its recurrence will be taken. Such corrective action may include discipline, up to and including discharge or dismissal of the offending person.

This is a policy statement of *The Texas Annual Conference*, approved and updated on May 28, 2013.

Guidelines for Preventing and Reporting Sexual Harassment

The Texas Annual Conference will not tolerate sexual harassment in any form. The following guidelines are intended to assist individuals to understand and maintain appropriate behavior at all times.

A. Definitions:

Sexual harassment includes:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- 2) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual; or
- 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

In addition, clergy persons are subject to the Sexual Ethics Policy of the Texas Annual Conference.

B. Examples of Sexual Harassment

Examples of unwelcome conduct which may constitute sexual harassment include, but are not limited to, the following:

Physical Conduct

- Aggressive physical contact or assault;
- Sexual touching;
- Unwelcome displays of romantic or sexual affection;
- Kissing;
- Casual hugs not intended to be sexual;
- Massaging necks, shoulders, backs.
- Being in someone else's "space;"
- Leering;
- Obscene, or vulgar gestures including gestures simulating sexual acts, "shooting the finger," kissing the air toward someone or licking the lips in a sexually suggestive or provocative manner.

Verbal

- Propositions;
- Sexual innuendo.
- Off-color jokes;

- Sexual language or references;
- Suggestive or insulting sounds;
- References of a sexual nature about any person;
- Gossip or speculation about a person's sexuality, sexual practices, sexual health, pregnancy, or virility;
- Request for dates;
- Remarks about anatomy;
- Bragging about sexual conquest;
- Inquiries about sexual conduct;
- Terms of endearment;
- Use of curse words or vulgarity;

Visual and Non-Verbal

- Posters;
- Photographs;
- Cartoons or drawings, including those that depict nudity, sex acts, provocative poses etc.;
- Email messages or graphics, sexting, inappropriate wallpaper, screensavers, or other electronic displays of a sexual nature;
- Possession of pornography or inappropriate materials of a sexual nature on church or school property or on church or school computers, or its display, duplication, or transmission.

C. Training

All clergy at whatever stage, and all supervisors of employees and volunteers, must complete the Texas Annual Conference's Training for the Prevention of Sexual Misconduct every four years and return the acknowledgement form for their personnel file.

Employees and designated volunteers must receive a copy of the Preventing Sexual Harassment Policy and return the acknowledgement form for their personnel file.

D. Reporting

Anyone who believes he or she has been a victim of any form of sexual harassment should report it promptly to one or more of the following:

- 1) A supervisor; or anyone in the supervisory chain;
- 2) The head of the congregation, or institution;
- 3) The chair of P/SPRC;
- 4) The Director of the Center for Clergy Excellence: Rev. Gail Ford Smith, 5215 Main St., Houston, TX 77002; 713.521.9383;
- 5) Bishop's Office, The Assistant to the Bishop: Rev. B.T Williamson, 5215 Main St., Houston, TX 77002; 713.521.9383

An individual may, but is not required, to speak to the person whose conduct is objectionable in an effort to resolve the situation. However, no one is ever required to complain to the person who is accused of the offensive conduct, and should only approach the person engaging in the unwelcome conduct if he or she is comfortable doing so.

Reports of sexual harassment may be made in any of the following ways:

- 1) A telephone call;
- 2) A letter;
- 3) An email;
- 4) A fax;
- 5) An in-person meeting; and/or
- 6) By filing a Confidential Notice of Concern (located at the end of this document)

E. Investigation

Anyone who receives a report of sexual harassment is required to report it immediately to:
The Director of the Center for Clergy Excellence, Rev. Gail Ford Smith, 5215 Main St, Houston, TX 77002; 713.521.9383, or
The Assistant to the Bishop, Rev. B.T. Williamson, 5215 Main St, Houston, TX 77002; 713.521.9383.

All reports of sexual harassment will be promptly investigated and kept confidential, except to the extent necessary to conduct a proper investigation and to provide appropriate disclosure to affected parties.

If the allegation is substantiated, immediate corrective action designed to stop the harassment and prevent its reoccurrence, up to and including termination of employment, will be taken.

F. Retaliation

Any person who in good faith reports sexual harassment or provides information related to an allegation will not be retaliated against or adversely treated with respect to terms and conditions of employment as a result of making a report or providing information. Anyone who believes that he or she has been subjected to retaliation should report it immediately, following the process outlined above. Persons who are found to have engaged in retaliation will be subject to discipline, up to and including termination.

Guidelines for Preventing and Reporting Sexual Misconduct Involving Adults

The Texas Annual Conference has policies prohibiting sexual misconduct in any form. The following guidelines are intended to assist individuals who have Pastoral Relationships and those who monitor and supervise them to understand and maintain appropriate boundaries at all times. The guidelines identify, through examples, conduct that is appropriate and shows positive affection in ministry while keeping safe boundaries with others.

A. Pastoral Relationship

A Pastoral Relationship, is a relationship between a clergy person and any person who:

- Attends the same congregation or other ministry setting in which the clergy person serves;
- Seeks ministry from the clergy person; or
- Is a duly-appointed lay minister, whether employee, or volunteer.

B. Others with Pastoral Relationships

In addition to clergy, other persons with Pastoral Relationships may include the following:

- Members of Conference, and Bishop's Committees
- Members of District Committees
- Stephen ministers
- Lay Servant Ministers
- Hospital visitors (authorized by your church)
- Leaders/facilitators of:
 - a. Bible studies
 - b. United Methodist Youth Fellowship
 - c. Sunday School Teachers
 - d. Small group/ministries (e.g. New Member Ministry, prayer ministry)
 - e. Deacons
 - f. Lay pastoral leaders
 - g. Interns
 - h. Persons who do mission work

C. Expectations of Persons with Pastoral Relationships

Persons who have Pastoral Relationships must:

- Understand that the Church will not tolerate the sexual exploitation of any person;
- Agree to never sexually exploit any person they serve or work with on behalf of the church;
- Agree to immediately end any sexual or inappropriate relationship with a person in a Pastoral Relationship
- Immediately seek advice if there are any questions or concerns about any of these policies or their expectations from The Director of Clergy Excellence: Rev. Gail Ford Smith, 5215 Main St,

Houston, TX, 77002; 713.521.9383 or The Assistant to the Bishop: Rev. BT Williamson, 5215 Main St, Houston, TX, 77002; 713.521.9383.

- Agree to report immediately any inappropriate behavior, boundary violations, or policy violations they observe;
- Acknowledge their obligation and responsibility to prevent sexual exploitation of adults.

D. Prohibited Conduct

Under the Conference's Sexual Ethics Policy, persons who have Pastoral Relationships are prohibited from dating or becoming romantically involved or engaging in sexual contact with anyone with whom they have a Pastoral Relationship.

This prohibition specifically includes having sexual contact with any person in the Pastoral Relationship. Persons who have Pastoral Relationships are required to maintain clear and appropriate boundaries and to avoid even the appearance of impropriety.

Whenever possible, persons who have pastoral relationships should have no more than three individual (one-on-one) meetings with adults. These meetings should occur only during regularly scheduled hours and by appointment and on church premises or in other appropriate professional settings when others are present in the building.

E. Examples of Inappropriate Conduct

The following are examples of inappropriate conduct for those who are in a Pastoral Relationship:

- Any form of unwanted affection;
- Surprise or sudden touching;
- Full frontal hugs or "bear hugs";
- Touching bottoms, chests, or genital areas;
- Lying down or sleeping beside another;
- Massages;
- Patting others on their thigh, knee or leg;
- Tickling or wrestling;
- Touching or hugging from behind;
- Inappropriate or lengthy embraces;
- Kisses on the mouth;
- Showing affection while in isolated areas;
- Comments or compliments, whether verbal or written, that relate to a person's body or appearance or could be viewed as sexually suggestive;
- Giving gifts or money to favored individuals;
- Repeated or private meetings after hours or away from church property;
- Frequent e-mails or texts, especially those that contain personal disclosures or solicitations of an intimate relationship;
- Seeking excessive private time;

- Providing personal access, such as a personal e-mail address or cell phone number, if that is not generally available, to others;
- Possessing, using or referring to any sexually oriented materials, such as magazines or videos;
- Sharing sexually oriented materials, sexting, or using the internet to view or download such material, whether on or off church property;
- Discussing sexual activities, including dreams and fantasies, or discussing the use of sexual oriented or explicit material, such as pornography, videos, or materials.

F. Examples of Appropriate Physical Contact

Some forms of physical contact may be appropriate between those in Pastoral relationships, provided they are welcomed by the recipient. These include the following:

- Brief hugs;
- Kisses on the cheek;
- Handshakes;
- Holding hands during prayer;
- Pats on the shoulder or back;
- Touching hands;
- Touching shoulders;
- Touching arms;
- Holding hands when a person is upset.

If a person in a Pastoral Relationship is ever unsure about whether one of these types of touching is appropriate, he or she should ask permission and wait for a response before making physical contact.

G. Reporting

Anyone who believes that he or she or someone else has been subjected to sexual exploitation must promptly report it to one of the following:

- 1) The Pastor
- 2) Chair of the SPRC
- 3) The Director for the Center of Clergy Excellence: Rev. Gail Ford Smith, 5215 Main St, Houston, TX, 77002; 713.521.9383
- 4) The Assistant to the Bishop: Rev. BT Williamson, 5215 Main St, Houston, TX, 77002; 713.521.9383

Clergy and other church personnel are required to report exploitation immediately to The Director of Clergy Excellence: Rev. Gail Ford Smith, 5215 Main St, Houston, TX, 77002; 713.521.9383 or The Assistant to the Bishop: Rev. BT Williamson, 5215 Main St, Houston, TX, 77002; 713.521.9383.

Reports of sexual misconduct may be made in any of the following ways:

- 1) Telephone call
- 2) A letter

- 3) An email
- 4) A fax
- 5) An in-person meeting
- 6) By filing a Confidential Notice of Concern (located at the end of this document)

H. Screening and Selection

All persons who have Pastoral Relationships shall be pre-screened and selected as follows:

1. All applicants must complete an application form that includes an authorization for the release of information to conduct background screening and reference checks.
2. A sexual offender registry check must be completed for all applicants in any state in which an applicant has resided for the past seven years.
3. A criminal records check must be performed for persons who will be working with vulnerable adults in their homes. At a minimum, the criminal records check must cover any state where the applicant has resided for the past seven years.
4. References provided by an applicant, including at least one person outside the congregation, must be checked.
5. An individual interview with the applicant must be conducted.

I. Repeat Background Checks

Criminal record checks and sexual offender registry checks must be repeated every five years for persons who have Pastoral Relationships.

J. Education and Training Requirements

Persons who have Pastoral Relationships as defined in this policy are required to complete the Conference training on the Preventing and Reporting Sexual Misconduct Involving Adults. The required education and training must be completed within three months of the start of the Pastoral Relationship. Training must be repeated every four years.

K. Transfers within the Conference

An individual with Pastoral Relationship seeking a transfer must complete a new application form, be interviewed, and update his or her references to include information about his or her Pastoral Relationships.

L. Monitoring and Supervising Pastoral Relationships

In addition to the other steps outlined above, monitoring and supervising persons who have Pastoral Relationships should include the following:

1. Maintaining an up-to-date list of persons who have Pastoral Relationships in the church records;
2. Requiring that all new activities that involve Pastoral Relationships be approved by the pastor and the chair of the P/SPRC before the activity is to begin. Requests to develop new activities or programs should be submitted in writing.

M. Spiritual Counseling

There are laws that prohibit sexual exploitation between mental healthcare providers and those to whom they are providing those services. A copy of the Texas Statute, Chapter 81 of the Texas Civil Practice and Remedies Code is provided in the appendix. Clergy are included within the definition of “mental health provider” unless the services they provide cover only spiritual counseling. For this reason, it is important to follow these guidelines:

- Clergy and others in Pastoral Relationships should not go outside their area of expertise and training, but instead should make a referral to a physician, psychologist or other mental health professional for issues that involved those specialties.
- Even clergy who are licensed or credentialed as mental healthcare professionals, such as psychologists, marriage or family therapists, and substance abuse counselors, must draw distinctions when they are functioning on behalf of the church and make it clear to those they are serving that they are not functioning in the role of a mental healthcare provider when working on behalf of the church, but only as a spiritual advisor.
- Clergy who are licensed and do provide services as mental healthcare providers while also serving as spiritual advisors on behalf of the church should clearly separate those roles by maintaining separate offices or locations and clearly communicate to all concerned when they are acting as a mental healthcare provider, as opposed to a spiritual advisor or spiritual counselor.
- Clergy who are separately licensed or credentialed as mental healthcare providers must maintain in full force separate professional insurance coverage at all times for any work they do outside their church role as spiritual advisors and provide proof of insurance to the church on an annual basis. The insurance must have per occurrence limits of at least \$1,000,000 and aggregate limits of at least \$3,000,000, including coverage for sexual misconduct, however defined in the policies, with limits of at least \$50,000. The insurance policy must name the church employer or church as an additional insured.

N. Settings Where Pastoral Relationships Take Place:

Locations where Pastoral Relationships occur should, whenever possible, be in open, visible spaces (or in closed spaces with windows, unobstructed by blinds or other barriers) where casual monitoring by others is convenient; for example, in areas where other church personnel are visible or work nearby.

O. Suggestions for Office Décor

The following are suggestions that will help create an appropriate for Pastoral Relationships that is private but allows for appropriate monitoring and supervision.

- Comfortable chairs positioned at a 45 degree angle from each other create a good area for conversation. Couches and love seats are discouraged. If they are used, persons who have Pastoral Relationships should sit in a chair separate from visitors or parishioners.
- Windows in walls or doors should be unobstructed by blinds, furniture, curtains, or posters so that the space is always subject to casual monitoring.
- A sense of privacy can be maintained by arranging the furniture so that persons who provide pastoral care are always visible, but the parishioner or visitor does not feel exposed.

APPENDIX

1. Texas Civil Practices and Remedies Code
2. Acknowledgement of Policy

CIVIL PRACTICE AND REMEDIES CODE CHAPTER 81. SEXUAL EXPLOITATION BY MENTAL HEALTH SERVICES PROVIDER

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 the sexual exploitation of the 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 the sexual exploitation by the mental health services provider of the 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.

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)

(a) the defendant requests a hearing before trial and makes an offer of proof of the relevancy of the history or reputation; and

(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.

Confidential Notice of Concern

Who is the complaint about? _____

Their position: _____

Date incident occurred: _____

Church/school/institution _____

City where church/school/institution is located _____

Nature of concern: _____

Describe the situation: (i.e. - what happened?)

Where did it happen? _____

Who else was present? _____

Has it ever happened before? _____

Was it reported? ___yes ___no ___don't know

If reported, to whom: _____

What action was taken: _____

Follow-up: Does anyone else need to be notified?

Would you like someone to call to discuss the situation? ____yes ____no

Name _____ Phone _____

Address _____

Signature _____ Date _____

Once completed, please fax or mail to one of the contacts below at **713-523-9173**:

Texas Annual Conference
5215 Main Street
Houston, TX 77002-9752
Attention: The Center for Clergy Excellence: Rev. Gail Ford Smith or
Attention: The Assistant to the Bishop: Rev. BT Williamson