

## NSCN Position on Disposition for Sexual Misconduct Matters

NSCN recognizes the authority of the professional conduct committee to make findings and resolve matters as authorized by the Nursing Act.

As a party to a proceeding before the professional conduct committee, NSCN will take the following positions regarding the disposition of matters where allegations of sexual misconduct are before the committee:

1. Sexual misconduct, as defined in the Sexual Misconduct Standard for Nurses, involving a current client or a vulnerable former client constitutes professional misconduct within the meaning of the Nursing Act.
2. Sexual misconduct with a former client may be professional misconduct. In forming its position, NSCN will consider all of the relevant circumstances.
3. Conduct in a registrant's personal or private capacity may constitute conduct unbecoming as defined in the Nursing Act if the conduct tends to bring discredit upon registrants or the nursing profession.
4. Inappropriate and/or non-consensual sexual behaviour by a nurse towards a colleague or another member of the health care team may be considered professional misconduct or conduct unbecoming.
5. Where the professional conduct committee finds that a registrant has committed professional misconduct by reason of sexual misconduct, in addition to any other terms the committee may order pursuant to the Nursing Act, NSCN will seek a licensing sanction including the following:
  - a. reprimand of the registrant;
  - b. if the sexual misconduct does not consist of or include the conduct listed in sub paragraph (c), NSCN will seek a licensing sanction that is proportionate to the circumstances, which may include one or more of the following: terms and conditions on the registrant's licence, a period of suspension, or revocation of the registrant's licence and registration;
  - c. if the sexual misconduct consists of or includes sexual abuse as defined in the Sexual Misconduct Standard, NSCN will seek revocation of the registrant's licence and registration. Sexual abuse consists of and includes the following:
    - i. Sexual intercourse between the nurse and the client;
    - ii. Genital to genital, genital to anal, oral to genital, or oral to anal contact between the nurse and a client;
    - iii. Masturbation of the nurse's client by the nurse;
    - iv. Masturbation of the nurse by, or in the presence of, a client;
    - v. Encouraging the nurse's client to masturbate in the presence of the nurse; or,
    - vi. Touching of the client's genitals, anus, breasts, or buttocks in a sexual nature by the nurse.
6. Where a registrant is found guilty of any of the following offences under the Criminal Code of Canada, whether in the context of the nurse client relationship or otherwise, NSCN will seek revocation of the registrant's licence and registration:
  - a. sexual interference;
  - b. invitation to sexual touching;
  - c. sexual exploitation;
  - d. sexual exploitation of a person with a disability;
  - e. bestiality in the presence of or by a child
  - f. voyeurism;
  - g. publication etc. of an intimate image without consent;
  - h. child pornography;
  - i. parent or guardian procuring sexual activity;

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- j. making sexually explicit material available to a child
  - k. luring a child
  - l. agreement or arrange – sexual offence against a child
  - m. sexual assault
  - n. sexual assault with a weapon, threats to a third party or causing bodily harm; and
  - o. aggravated sexual assault
7. Where intimate care is provided that is clinically indicated, but is performed contrary to acceptable standards in a manner that does not constitute sexual misconduct, NSCN may address the registrant’s actions as incompetence as defined by the Nursing Act, or as a matter that should lead to a non-disciplinary outcome such as advice, remedial education, or a caution.
8. Where there is any other finding of a breach of the LPN, RN, or NP standards, NSCN will seek a disposition that is proportionate with the circumstances.

DRAFT FOR CONSULTATION

