



NSCN

Sexual Misconduct Standard FOR NURSES 2020

**DRAFT FOR
CONSULTATION**



The Nova Scotia College of Nursing (NSCN) is the regulatory body for licensed practical nurses (LPNs), registered nurses (RNs) and nurse practitioners (NPs) in Nova Scotia. Our mandate is to protect the public by promoting the provision of safe, competent, ethical and compassionate nursing services by our registrants.

The term nurse in this document refers to LPNs, RNs and NPs.

Setting the Standards of Practice

As the regulator for nurses in Nova Scotia, we play an important role in setting standards for nursing practice that protects the health and safety of the public.

The *Sexual Misconduct Standard for Nurses* sets out the legal and professional expectations of nurses in the nurse-client relationship.

Nurses are also accountable to the standards of practice and code of ethics of their respective nursing designations.

Introduction

The [therapeutic nurse-client relationship](#) is based on trust, respect and protecting the client's dignity, autonomy and privacy irrespective of the context or duration of the relationship. Within the therapeutic nurse-client relationship, nurses are required to maintain [professional boundaries](#) at all times to ensure the therapeutic nurse-client relationship is safe and respected.

In the nurse-client relationship, nurses hold a position of power by virtue of:

- Having professional knowledge and skills that the client relies on
- Having access to the client's personal health information
- Being in a position of authority

Given the power differential, the duty to maintain professional boundaries always lies with the nurse and not the client. A violation of professional boundaries is a breach of trust. Sexual misconduct by a nurse towards a client violates professional boundaries and constitutes [professional misconduct](#).

The purpose of this standard is to define key concepts and to outline the practice, behavioural and reporting expectations of all nurses regarding sexual misconduct in the [nurse-client relationship](#).

Although this standard deals specifically with the therapeutic nurse-client relationship, inappropriate or non-consensual sexual behaviour by a nurse towards a colleague, another member of the health team or the public may be professional misconduct or [conduct unbecoming](#) if NSCN receives a complaint.

Key Concepts

This section defines key concepts, including the definition of a client, sexual misconduct, sexual abuse and consent.

WHO IS A CLIENT?

The following section outlines who is considered a client in the context of the standard.

In addition to the definitions below, the client also includes a parent, guardian, spouse, partner, child or any substitute decision maker of the individual receiving nursing services, where appropriate.

Current Client

An individual is considered a current client when a nurse-client relationship has been formed and is ongoing. To determine if a nurse-client relationship has been formed, consider the following factors:

- If the nurse has provided a [nursing service](#) for the client
- If the nurse has contributed to a health record or file of the client
- If the client has consented to a nursing service provided by the nurse

A nurse-client relationship may exist where one of the above factors is met or when a combination of factors is met.

A client may no longer be considered a current client if care was provided in an [episodic setting](#), such as a visit to the emergency department for a fracture or for an assessment at a walk-in-clinic.

Nurses must never engage in sexual behaviour with a current client.

Former Client

An individual is considered a former client when the nurse-client relationship has ended.

Engaging in sexual behaviour with a former client may be considered inappropriate and determined to be professional misconduct.

Nurses considering engaging in any sexual behaviour with a former client must consider the following:

- Ongoing risk to the former client
- Risk of a continuing power imbalance
- Length of time that has passed since the last clinical/professional encounter
- Nature of the care provided:
 - type, intensity and duration of the nursing care
 - likelihood of requiring nursing care from the nurse in the future
- Extent of the personal health information accessible by the nurse
- Maturity and vulnerability of the client
- Client's decision-making ability

Nurses must never engage in any sexual behaviour with a former client, regardless of the amount of time that has passed since the last clinical encounter, if the nurse-client relationship was predominately psychotherapeutic care. This includes, but is not limited to: mental health, addictions and chronic care.

Vulnerable Former Client

A client's vulnerability in the nurse-client relationship is based on the power imbalance that exists between the nurse and the client.

A vulnerable former client is an individual who requires particular protection from sexual misconduct given their ongoing vulnerability. For some individuals, their degree of vulnerability is such that they will always be considered vulnerable even when their care has ended. This includes if the nurse-client relationship was predominantly psychotherapeutic care. For other individuals, they may overcome their vulnerability (e.g., homelessness, financially insecure, unemployed).

Nurses considering engaging in any sexual behaviour with a former client must fully assess the individual's vulnerability.

Factors that may increase the likelihood of a former client being vulnerable include:

- Type, intensity and duration of the care provided
- Client's likelihood of needing professional care from the nurse in the future
- Client's impaired decision-making ability
- Age and maturity of the client
- Other factors relevant to the client's circumstances

Providing Care to a Spouse or Intimate Partner

Nurses must not provide nursing services to their spouse or partner or to an individual with whom they are in a sexual relationship unless:

- Nursing service provided by the nurse is due to an emergency, such as a life-threatening cardiac event; and,
- The nurse has taken reasonable steps to transfer the individual's care to an appropriate care provider if ongoing care is needed or likely needed.

The nurse's spouse or intimate partner is not considered a client for the purposes of this standard.

SEXUAL MISCONDUCT AND SEXUAL ABUSE

The following section outlines what is considered sexual misconduct and sexual abuse in the context of the nurse-client relationship.

Sexual Misconduct

Sexual misconduct is sexual, sexually demeaning, or seductive behaviour that is physical, verbal or non-verbal, made in-person or through written or electronic means, by a nurse towards a client.

Sexual misconduct includes, but is not limited to:

- a. Rubbing against a client for sexual gratification
- b. Hugging, touching, fondling or caressing a client in a sexual manner
- c. Failing to provide privacy to a client to dress or undress, except as may be necessary in emergency situations
- d. Failing to provide a client with a gown or draping, except as may be necessary in emergency situations
- e. Removing the client's clothing, gown or draping without consent or emergent medical necessity

- f. Dressing or undressing in the presence of the client
- g. Suggesting or discussing the possibility of a dating, a romantic or sexual relationship with a client
- h. Terminating the nurse-client relationship for the purpose of dating or pursuing a romantic or sexual relationship
- i. Soliciting a date with a client either in person or through written or electronic means
- j. Discussing the nurse's sexual history, preferences or fantasies with the client
- k. Any behaviour, communication, gestures or expressions that may reasonably be interpreted by the client as seductive or sexual
- l. Making statements regarding the client's body, appearance, sexual history or sexual orientation other than for legitimate clinical purposes
- m. Sexually demeaning behaviour, including but not limited to: any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harmful to a client
- n. Posing, photographing or filming the body or any body part of a client for the purposes of sexual gratification
- o. Showing a client sexually-explicit materials other than for legitimate clinical purposes

Sexual Abuse

Sexual abuse involves all acts in which the nurse engages in physical sexual behaviours with a client. Sexual abuse is a form of sexual misconduct.

Sexual abuse includes, but is not limited to:

- a. Sexual intercourse between the nurse and the client
- b. Genital to genital, genital to anal, oral to genital, or oral to anal contact between the nurse and a client
- c. Masturbation of a client by a nurse
- d. Masturbation of the nurse by, or in the presence of, a client
- e. Encouraging a client to masturbate in the presence of the nurse
- f. Touching of the client's genitals, anus, breasts, or buttocks in a sexual nature by the nurse

What is not Considered Sexual Misconduct or Sexual Abuse?

In the nurse-client relationship, the following does not constitute sexual misconduct or sexual abuse:

- Conduct, behaviour and comments that are clinically appropriate to the nursing services provided
- Touching of the client's genitals, anus, breasts or buttocks in the context of clinical care that is required and provided, such as for a physical assessment

Nurses must ensure clients understand why certain actions are performed as well as when and how they are about to be performed to prevent misunderstanding. Nurses must ensure clients understand the importance and relevance of questions that may be sexual in nature, as well as how the client's answers to those questions inform the care plan.

CONSENT

A client's [informed consent](#) is always required prior to performing any nursing service. The client's inherent vulnerability and the power differential between the nurse and client means that clients are never in a position to consent to sexual touching or sexual relations.

Client consent is not a defence to an allegation of sexual misconduct.

Sexual Misconduct Standard

This section describes the practice, behavioural and reporting expectations of all nurses in relation to sexual misconduct between a nurse and a client. The indicators are interpreted in the context of the nurse-client relationship.

STANDARD 1

Sexual Misconduct in the Therapeutic Nurse-Client Relationship

Nurses must not engage in sexual misconduct in the best interest of the client.

INDICATORS

The nurse must:

- 1.1 take responsibility for maintaining the therapeutic and professional boundary with a client.
- 1.2 always obtain informed consent prior to performing an intervention that requires physical contact.
- 1.3 not engage in any sexual behaviours with a current client or any individual with whom a client has an interdependent relationship (e.g. parent, guardian, child, spouse, partner or the client's substitute decision maker where appropriate).
- 1.4 not engage in any sexual behaviours at any time with any client when the nurse-client relationship was psychotherapeutic.
- 1.5 not communicate with or solicit a client in person or through written or electronic means for the purpose of entering into a dating, sexual or romantic relationship.
- 1.6 not use any personal or health information obtained in the context of the nurse-client relationship to pursue a dating, sexual or romantic relationship with a client.
- 1.7 not engage in any physical contact with a client that is sexual in nature.
- 1.8 not engage in any behaviour, either physical, verbal or non-verbal, with a client that could reasonably be perceived as sexual in nature.
- 1.9 assess whether it is appropriate to engage in any sexual behaviours with a former client.

STANDARD 2

Mandatory Duty to Report Sexual Misconduct

Nurses are required to report if they have reasonable grounds to suspect that the conduct of a regulated health care professional or an unregulated care provider towards a client constitutes sexual misconduct.

INDICATORS

A nurse must report:

- 2.1 to NSCN and their employer when they have reasonable grounds to suspect that the conduct of a nurse constitutes sexual misconduct.
- 2.2 to the employer and the appropriate regulatory body when they have reasonable grounds to suspect that the conduct of another regulated health professional constitutes sexual misconduct.
- 2.3 to the employer when they have reasonable grounds to suspect that the conduct of an unregulated care provider constitutes sexual misconduct.
- 2.4 to NSCN all charges of any crime against themselves under the criminal code.
- 2.5 to NSCN all convictions of any crime against themselves under the criminal code.

Acknowledgement

NSCN acknowledges the College & Association of Registered Nurses of Alberta's *Protection of Patients from Sexual Abuse and Sexual Misconduct Standards* (2019) and the College of Physicians & Surgeons of Nova Scotia's *Draft Professional Standards and Guidelines Regarding Sexual Misconduct* (2019) that were used to inform the development of this document.

Glossary

Conduct Unbecoming: conduct in a registrant's personal or private capacity that tends to bring discredit upon registrants or the nursing profession.

Episodic Setting: settings where nurses provide a single clinical encounter with the client for a defined health-care need, where neither the nurse nor the client have the expectation of continuing the care or the nurse-client relationship.

Informed Consent: process of giving permission or making choices about care. It is based on both a legal doctrine and an ethical principle of respect for an individual's right to sufficient information to make decisions about care, treatment and involvement in research.

Nurse: licensed practical nurse (LPN), registered nurse (RN) or nurse practitioner (NP) as authorized by the Nursing Act.

Nurse-Client Relationship: relationship that is established and maintained by the nurse using professional knowledge, skills and attitudes in order to provide nursing care that is expected to contribute to the client's well-being. It is central to all nursing practice.

Nursing Services: the application of specialized and evidence-based knowledge of nursing theory, health and biological, physical, behavioural, psychosocial or sociological sciences inclusive of principles of primary health care, in a variety of roles including clinical services to clients, research, education, consultation, management, administration, regulation, policy or system development relevant to such application, and such other services, roles, functions, competencies and activities for each nursing designation that are related to and consistent with the foregoing, including those outlined in the Nursing Act.

Professional Boundaries: defining lines which separate the professional, therapeutic behaviour of a nurse from any behaviour which, well intentioned or not, could harm or could reduce the benefit of nursing care.

Professional Misconduct: conduct or acts relevant to the profession that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonorable or unprofessional.

Psychotherapeutic: planned and structured psychological, psychosocial, and/or interpersonal interventions influencing a behaviour, mood and/or emotional reactions to different stimuli.

Therapeutic Nurse-Client Relationship: purposeful, goal directed relationships between a nurse and a client based on trust and respect and ultimately, protect the client's best interests.

Violation of Professional Boundaries: an act of abuse in the nurse-client relationship. Boundary violations occur when a nurse's actions exploit the professional relationship to meet their own personal need, at the expense of the client.

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