



NSCN

Sexual Misconduct Standard of Practice

FOR NURSES

2020



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.

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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 of Practice for Nurses* sets out the legal and professional expectations of nurses irrespective of the nurse's role or practice setting.

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](#).

Sexual misconduct by a nurse towards a colleague constitutes professional misconduct. Sexual misconduct by a nurse towards others may constitute [conduct unbecoming the profession](#).

Nurses in Nova Scotia have a legal duty to report when a health care provider has engaged in professional misconduct or conduct unbecoming the profession.

The purpose of this standard is to outline the practice, behavioural and reporting expectations of all nurses regarding sexual misconduct.

Sexual Misconduct Standard

This section describes the practice, behavioural and reporting expectations of all nurses in relation to sexual misconduct. Refer to page 8 for the definition of sexual misconduct.

STANDARD 1

Nurses must not engage in sexual misconduct.

INDICATORS

The nurse must:

- 1.1 maintain the therapeutic and professional boundary with a current, former or vulnerable former client.
- 1.2 always obtain informed consent prior to performing an intervention that requires physical contact or requires discussions of sexual or intimate matters, when clinically relevant.
- 1.3 not engage in any sexual behaviours with a current client or any individual with whom a current client has an interdependent relationship (e.g. parent, guardian, child, spouse, partner or the client's substitute decision maker where appropriate).
- 1.4 not communicate with and solicit a current or vulnerable former client in person or through written or electronic means for the purpose of entering into a dating, sexual or romantic relationship.
- 1.5 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 current, former client or vulnerable former client.
- 1.6 not engage in any form of sexual behaviour, or behaviour that could reasonably be perceived as sexual in nature with a current or vulnerable former client.
- 1.7 not engage in any sexual behaviours with a former client until an appropriate amount of time has passed and the nurse has determined after review of the former client's circumstances that it is appropriate.
- 1.8 not engage in conduct or behavior with a sexual connotation, character or quality with any person, which the nurse knows or ought reasonably to know would be objectionable, unwelcome, cause offence or humiliation to the person, or adversely affect the person's health and well-being.

STANDARD 2

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

Key Concepts

There are key concepts included in the standard that need to be further defined. This section defines key concepts, including the definition of a client, sexual misconduct and consent.

WHO IS A CLIENT?

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

For the purposes of this standard, the client refers to current, former, and former vulnerable clients and also includes a parent, guardian, spouse, partner, child or any substitute decision maker of the individual receiving nursing services, unless stated otherwise.

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
- Other factors relevant to the circumstances of the individual and 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.

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

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.

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
- Vulnerability of the client
- Maturity of the client
- Client's decision-making ability

A client's vulnerability in the nurse-client relationship is based on the power imbalance that exists between the nurse and the client. Given the power imbalance in the nurse-client relationship there will always be a degree of vulnerability that exists for the former client. A period of time must pass to lessen the vulnerability. The exact length of time has not been defined as it may vary based on factors relevant to each former client's circumstances.

Nurses considering engaging in any sexual behaviour with a former client must consider all of the former client's circumstances. Failure to appropriately do so may result in a finding of professional misconduct or conduct unbecoming the profession.

Vulnerable Former Client

A vulnerable former client is an individual who is no longer a current client, and 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.

If the nurse-client relationship was predominantly psychotherapeutic care, the client will always be considered a vulnerable former client. This includes

but is not limited to mental health, addictions and chronic care. For other individuals, their circumstances may change such that they are no longer considered a vulnerable former client (e.g., homelessness, financially insecure, unemployed).

Nurses must never engage in any form of sexual behaviour with a vulnerable former client.

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

- Nature of the care provided:
 - type, intensity and duration of the nursing care
 - likelihood of requiring nursing 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

SEXUAL MISCONDUCT

The following section outlines what is considered 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 current client, former client, vulnerable former client or towards a colleague who does not consent.

Sexual misconduct includes, but is not limited to the following behaviours:

- a. Failing to provide privacy to a current client to dress or undress, except as may be necessary in emergency situations
- b. Failing to provide a current client with a gown or draping, except as may be necessary in emergency situations
- c. Removing the current client's clothing, gown or draping without consent or emergent medical necessity
- d. Rubbing against a current or vulnerable former client for sexual gratification
- e. Hugging, touching, fondling or caressing a current or vulnerable former client in a sexual manner
- f. Dressing or undressing in the presence of the current client
- g. Suggesting or discussing the possibility of a dating, a romantic or sexual relationship with a current or vulnerable former 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 current or vulnerable former client either in person or through written or electronic means
- j. Discussing the nurse's sexual history, preferences or fantasies with the current or vulnerable former client
- k. Any behaviour, communication, gestures or expressions that may reasonably be interpreted by the current or vulnerable former client as seductive or sexual
- l. Making statements regarding the current 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 current or vulnerable former client
- n. Posing, photographing or filming the body or any body part of a current or vulnerable former client for the purposes of sexual gratification
- o. Showing a current or vulnerable former client sexually-explicit materials other than for legitimate clinical purposes
- p. Sexual abuse includes, but is not limited to :
 - i. Sexual intercourse between the nurse and the current or vulnerable former client
 - ii. Genital to genital, genital to anal, oral to genital, or oral to anal contact between the nurse and a current or vulnerable former client
 - iii. Masturbation of a current or vulnerable former client by a nurse
 - iv. Masturbation of the nurse by, or in the presence of, a current or vulnerable former client
 - v. Encouraging a current or vulnerable former client to masturbate in the presence of the nurse
 - vi. Touching of the current or vulnerable former client's genitals, anus, breasts, or buttocks in a sexual nature by the nurse
- q. Any conduct or behavior with a sexual connotation, character or quality with any person, which the nurse knows or ought reasonably to know would be objectionable, unwelcome, cause offence or humiliation to the person, or adversely affect the person's health and well-being.

What is not Considered Sexual Misconduct?

In the nurse-client relationship, conduct, behaviour and comments that are clinically appropriate to the nursing services provided does not constitute sexual misconduct. This includes 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 clinically indicated physical assessment.

Nurses must ensure clients understand why certain actions are performed as well as when and how they are about to be performed. Nurses must ensure clients understand the importance and relevance of questions that may be sexual but clinically relevant 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 current or vulnerable former clients are never in a position to consent to sexual touching or sexual relations.

A current or vulnerable former client's consent is not a defence to an allegation of sexual misconduct.

Glossary

Colleague: any individual that works in the nurse's workplace. This includes but not limited to other nurses, health care providers, students and support staff.

Conduct Unbecoming the Profession: 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.

Sexual Behaviour: any physical, verbal or non-verbal conduct, behavior or words with a sexual connotation, character or quality.

Sexual Orientation: an individual's pattern of emotional, romantic or sexual attraction. Sexual orientation may include attraction to the same gender (homosexuality), a gender different than your own (heterosexuality), both men and women (bisexuality), all genders (pansexual), or neither (asexuality).

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: boundary violations occur when a nurse's actions exploit the professional relationship to meet their own personal need, at the expense of the client.

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.

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