



NSCN

# Sexual Misconduct Standard of Practice

FOR REGISTRANTS

2024



Registrant refers to any individual registered with the Nova Scotia College of Nursing (NSCN) whether they hold current licensure or not.

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# Setting the Standards of Practice

The Sexual Misconduct Standard of Practice for Registrants sets out the legal and professional expectations of registrants irrespective of the registrant's role or practice setting.

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

## Introduction

The [therapeutic registrant-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 registrant-client relationship, registrants are required to maintain [professional boundaries](#) at all times to ensure the therapeutic registrant-client relationship is safe and respected.

In the registrant-client relationship, registrants 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 registrant and not the client. A [violation of professional boundaries](#) is a breach of trust. Sexual misconduct by a registrant towards a client violates professional boundaries and constitutes [professional misconduct](#).

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

Registrants 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 registrants regarding sexual misconduct.

# Sexual Misconduct Standard

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

## STANDARD 1

Registrants must not engage in sexual misconduct.

### INDICATORS

The registrant must:

- 1.1 maintain the therapeutic and professional boundary with a client<sup>1</sup> or 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 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 registrant-client relationship to pursue a dating, sexual or romantic relationship with a client or 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 client.
- 1.7 not engage in any sexual behaviours with a former client until an appropriate amount of time has passed and the registrant 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 registrant 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.

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<sup>1</sup> The term client includes a vulnerable former client and, where the context requires, includes a substitute decision maker. See definition of client below.

## **STANDARD 2**

Registrants are required to report sexual misconduct if they have reasonable grounds to believe that the conduct of a regulated health care professional or an unregulated care provider constitutes sexual misconduct and cooperate with any regulatory body or committee of a regulatory body with respect to any regulatory processes related to sexual misconduct.

### **INDICATORS**

A registrant must:

- 2.1 report to NSCN and their employer when they have reasonable grounds to believe that the conduct of a registrant constitutes sexual misconduct.
- 2.2 report to the employer and the appropriate regulatory body when they have reasonable grounds to believe that the conduct of another regulated health professional constitutes sexual misconduct.
- 2.3 report to the employer when they have reasonable grounds to believe that the conduct of an unregulated care provider constitutes sexual misconduct.
- 2.4 cooperate with any regulatory body or committee of the regulatory body's regulatory process regarding 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 means the individual who is the recipient or intended recipient of health care services from a registrant, and where the context requires, includes a substitute decision-maker for the recipient or intended recipient of health care services, and includes a vulnerable former client.

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

#### Current Client

An individual is considered a current client when a registrant-client relationship has been, or is intended to be, formed and is ongoing. Consider the following factors:

- If the registrant has provided, or is intended to provide, a professional service for the client
- If the registrant has contributed to, or is intended to contribute to, a health record or file of the client
- If the client has consented to, or will be asked to consent for, a professional service being provided by the registrant
- Other factors relevant to the circumstances of the individual and the registrant

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

**Registrants must never engage in sexual behaviour with a current client.**

## Former Client

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

Registrants 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 care
  - likelihood of requiring care from the registrant in the future
- Extent of the personal health information accessible by the registrant
- Vulnerability of the client
- Maturity of the client
- Client's decision-making ability

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

**Registrants 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 registrant-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).

### **Registrants must never engage in any form of sexual behaviour with a vulnerable former client.**

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

- Nature of the care provided:
  - type, intensity and duration of the care
  - likelihood of requiring care from the registrant 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 in Relation to a Client**

Sexual misconduct is any actual, threatened, or attempted sexualized behavior or remarks by a registrant towards a client or in a client's presence, including but not limited to, the following acts or omissions by the registrant:

- a. Making sexually suggestive, flirtatious, or demeaning comments about a client's body, clothing, or sexual history, orientation or preferences.
- b. Discussing the registrant's sexual history, sexual preferences, or sexual fantasies with a client.
- c. Any behaviour, communication, gestures, or expressions that could be reasonably interpreted by the client as sexual.
- d. Rubbing against a client for sexual gratification.
- e. Removing the client's clothing, gown, or draping without consent or emergent medical necessity.
- f. Failing to provide privacy while the client is undressing or dressing, except as may be necessary in emergency situations.
- g. Dressing or undressing in the presence of a client.
- h. Posing, photographing, or filming the body or any body part of a client for the purpose of sexual gratification.



- i. Showing a client sexually explicit materials.
- j. Requesting or making advances to date or have a sexual relationship with a client, whether in person, through written or electronic means.
- k. Hugging, touching or kissing a client in a sexual manner.
- l. Fondling or caressing a client.
- m. Terminating the professional-client relationship for the purpose of dating or pursuing a romantic or sexual relationship.
- n. Sexual abuse. Sexual abuse is a form of sexual misconduct. The following acts between a registrant and a client constitute sexual abuse:
  - i. Sexual intercourse
  - ii. Genital to genital, genital to anal, oral to genital, or oral to anal contact
  - iii. Masturbation of a registrant by a client or in the client's presence
  - iv. Masturbation of a client by a registrant
  - v. Encouraging the client to masturbate in the registrant's presence
  - vi. Sexualized touching of a client's genitals, anus, breasts, or buttocks

### Sexual Misconduct in Relation to a Colleague

Sexual misconduct is any actual, threatened, or attempted sexualized behavior or remarks by a registrant towards a colleague without the colleague's consent. Sexual misconduct in relation to a colleague includes but is not limited to the acts or omissions outlined above in relation to a client, modified as necessary to apply to a colleague.

### Additional Acts or Omissions

Sexual misconduct also includes the following acts or omissions by the registrant:

- a. Failing to provide a client with a gown or draping, except as may be necessary in emergency situations.
- b. Suggesting or discussing the possibility of a dating, a romantic or sexual relationship with a client.
- c. 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 or a colleague who does not consent.
- d. Any conduct or behavior with a sexual connotation, character or quality with any person, which the registrant 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.

Sexual misconduct may be an act or an omission. It may be physical, verbal or non-verbal, made in-person or through written or electronic means.

### What is not Considered Sexual Misconduct?

In the registrant-client relationship, conduct, behaviour and comments that are clinically appropriate to the professional services provided by the registrant 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.

Registrants must ensure clients understand why certain actions are performed as well as when and how they are about to be performed. Registrants 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 professional service. The client's inherent vulnerability and the power differential between the registrant and client means that current or vulnerable former clients are never in a position to consent to sexual touching or sexual relations.

**A client's consent is not a defence to an allegation of sexual misconduct.**

# Glossary

**Colleague:** any individual that works in the registrant's workplace. This includes but not limited to other registrants, 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 profession.

**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.

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

**Professional Boundaries:** defining lines which separate the professional, therapeutic behaviour of a registrant from any behaviour which, well intentioned or not, could harm or could reduce the benefit of 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 Registrant-Client Relationship:** purposeful, goal directed relationships between a registrant 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 registrant's actions exploit the professional relationship to meet their own personal need, at the expense of the client.

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