

Lower Susquehanna Synod of the
Evangelical Lutheran Church in America

**STATEMENT OF POLICY REGARDING SEXUAL MISCONDUCT
BY MEMBERS OF THE CLERGY AND ROSTERED LAYPERSONS**

June 12, 2003 – Adopted by Synod Council

A. Introduction

The Lower Susquehanna Synod ("synod") of the Evangelical Lutheran Church in America ("ELCA") is committed to preventing sexual misconduct within this church and to responding with justice and compassion when such misconduct occurs. This Statement of Policy describes how this synod intends to fulfill these commitments. This synod recognizes that responding to allegations of sexual misconduct requires determination, sensitivity, flexibility, and respect for all persons affected, including the alleged victim, the rostered person, their families and friends, the congregation, this synod, and the whole church. This policy is intended to provide a framework for guidance in dealing with these cases while preserving this synod's discretion to treat each person and each case in the manner necessitated by differing facts, circumstances, and needs of those affected. This policy cannot be imposed as rigid law, binding this synod and others to its dictates; it must be interpreted and applied compassionately in accordance with the theological and biblical principles of the Gospel.

At the outset, it must be clearly stated that this synod cannot assume exclusive responsibility for addressing all allegations of sexual misconduct, particularly conduct that may violate the criminal law. If a rostered person who is under call to a congregation is accused of sexually abusing a minor (anyone under 18 years of age) or engaging in other criminal sexual misconduct, this synod will refer such an allegation immediately to law enforcement authorities. (Pennsylvania law requires that persons whose profession or occupation brings them into contact with children must report to state and county authorities allegations of abuse of minors, which allegations are reasonably suspected to be true.) In addition, the bishop retains the right at any stage of the procedure described below to report allegations of sexual misconduct to appropriate civil or criminal law enforcement authorities. Moreover, this synod strongly encourages persons who report to this synod allegations of clergy sexual misconduct that may violate the criminal law also to report these allegations to law enforcement officials directly and immediately. The procedures described in this policy are not intended to be the exclusive remedy for victims of sexual misconduct. Victims are also free to pursue whatever remedies are available under the civil or criminal law.

B. Definitions

1. "Sexual Misconduct." Federal and state law make distinctions among various types of sexual misconduct, such as "sexual harassment," "sexual abuse," and "sexual assault." Similarly, the governing documents of the ELCA define what types of sexual misconduct can result in a rostered person being disciplined. This policy is intended to address those types of sexual misconduct that may lead to discipline of a pastor or rostered layperson under Chapter 20 of *Constitution, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*.

These distinctions should not concern a person who is troubled about the sexual conduct of a pastor or rostered layperson. This synod is concerned about all types of sexual misconduct by these persons, regardless of whether or how the misconduct is characterized by the law or by the governing documents of the ELCA. Any sexual misconduct committed by one of these persons should be reported to this synod, including, but not limited to, any sexual contact between the rostered person and a congregant, counselee, employee, or volunteer. It should be noted that this synod may not be able to assume primary responsibility for addressing all allegations of sexual misconduct. For example, if a pastor who is under call to a congregation is accused of sexually harassing another of the congregation's employees, civil law may require that the congregation, as employer, take timely and appropriate action. Nevertheless, this synod should be consulted in all cases.

2. "Complainant." As used in this Statement of Policy, "complainant" means a person who reports sexual misconduct to this synod. This Statement of Policy will assume that the complainant also is the victim of the alleged sexual misconduct, but that may not always be the case.

3. "Pastor," "Clergy," or "Rostered Person." As used in this Statement of Policy, "pastor," "clergy," or "rostered person" refer to ordained ministers and rostered laypersons such as associates in ministry, deaconesses, and diaconal ministers. This Statement of Policy assumes that the rostered person who is accused of sexual misconduct is under call to a congregation, but it applies to all persons rostered in the Lower Susquehanna Synod.

C. The Role of Congregations

According to the provision of the *Model Constitution for Congregations of the ELCA*, each congregation has the authority to call a pastor (C9.01.), and each congregation council has the duty to maintain supportive relationships with the pastor and staff and help them annually to evaluate the fulfillment of their call. (C12.04.d.) The call of a congregation, when accepted by a pastor, constitutes a continuing mutual relationship and commitment which may be terminated only according to specific procedures and for specific causes specified in the constitution (C9.05). This synod has neither the authority nor the ability to make decisions specifically reserved by the constitution for the congregation. Our common safety will be enhanced when each of this synod's congregations shares its commitment to preventing sexual misconduct by rostered persons.

This Statement of Policy is this synod's, and therefore it says little about the important role played by congregations in preventing and responding to reports of sexual misconduct by rostered persons. This should not obscure the fact that congregations also have a vital role to play. This synod strongly urges its member congregations to develop their own sexual misconduct policies. The publication, *Safe Connections: What Parishioners Can Do To Understand and Prevent Clergy Sexual Abuse* is available from the ELCA Division for Ministry and from Augsburg Fortress, Publishers, Order Code 6000058152. This synod recommends this publication as a useful resource for congregations addressing this issue.

D. Role of This Synod

This synod's role essentially is twofold. First, the bishop is responsible for providing pastoral care and leadership to this synod's congregations and rostered persons. Reports of sexual misconduct by rostered persons invariably create an acute need for such care and leadership. Second, rostered persons who commit sexual misconduct may be disciplined, leading to possible removal from the roster of the ELCA. The bishop is primarily responsible for overseeing the preliminary investigation of allegations of clergy sexual misconduct and for initiating the formal hearing in the disciplinary process. When the bishop provides pastoral care and leadership in the wake of clergy sexual misconduct, he or she is truly engaged in this synod's ministry.

Every report of sexual misconduct by rostered persons involves unique people and unique circumstances. This Statement of Policy describes the general approach that this synod will follow in responding to reports of such sexual misconduct. It will not be appropriate or even possible for this synod to follow this approach in every case. This synod reserves the right to depart from this Statement of Policy at any time and for any reasons.

In every case in which sexual misconduct is found, the bishop and his or her staff will attempt to provide pastoral care to the victim of the misconduct, the victim's family, the rostered person who committed the misconduct, the rostered person's family, members of the rostered person's present and/or former congregation(s), the rostered person's colleagues, and others. However, the bishop and the bishop's staff do not themselves function as a pastor, counselor, advocate, attorney, or other caregiver to any of these individuals. The ultimate responsibility of the bishop and his or her staff is to this synod, and not to any individual within this synod. If a conflict arises between what is in this synod's interests and what is in the interests of someone else, the bishop and the bishop's staff are obligated to act on this synod's behalf.

The freedom of this synod to decide for itself how God has called it to minister to those harmed by sexual misconduct is a precious one that is constitutionally protected from governmental interference. The same is true of this synod's freedom to decide who will be on its clergy roster, and of the freedom of each congregation decide who will preach and teach from its pulpit. Nothing in this Statement of Policy is intended to diminish these freedoms in any respect or to create any rights or responsibilities under civil law.

E. Synod Policy

An ELCA Strategy for Responding to Sexual Abuse in the Church (Nov. 1992) recommended that nine elements be included in any synodical policy regarding sexual misconduct by rostered persons. This synod has decided to incorporate those nine elements as follows:

1. Adequate Prevention

This synod is committed to preventing sexual misconduct by rostered persons in the following ways:

First, this synod will not tolerate sexual misconduct by rostered persons. This synod will make that clear in educational opportunities that it provides, in the manner in which it responds to reports of sexual misconduct by rostered persons, in discussions that it has with seminarians and others who seek to join its roster, and in its public and private statements regarding this issue.

Second, this synod intends to provide educational opportunities regarding clergy sexual misconduct for rostered persons, congregations, and others. Those efforts will focus on such subjects as the dynamics of clergy sexual misconduct and the impact of such misconduct on its victims. This synod strongly urges its rostered persons and congregations to take advantage of these educational opportunities, as well as appropriate educational programs offered by others.

Finally, the bishop and the bishop's staff will continue to take advantage of educational opportunities that are available to them. This synod recognizes that society generally and churches particularly have much to learn about clergy sexual misconduct. As this synod's understanding of this problem changes, its Statement of Policy and educational efforts may change as well.

These preventative efforts are intended to complement similar efforts that have been or will be made by this synod's member congregations, by the churchwide organization, by ELCA seminaries, and by other entities affiliated with the ELCA.

2. Initial Contact -- First Response

Even the best preventative measures cannot completely eliminate sexual misconduct by rostered persons. This synod must always be prepared to respond to reports of misconduct. The more open it is to receiving such reports, the more often clergy sexual misconduct will be reported, and - it is to be hoped - prevented.

Anyone who knows or suspects that a pastor or other rostered person may have been involved in sexual misconduct should report that knowledge or suspicion to the bishop or an assistant to the bishop. The names, addresses, and telephone numbers of the bishop and his or her assistants are attached to this Statement of Policy. If a complainant is uncomfortable about contacting the bishop or an assistant to the bishop, then the complainant should contact one of the other people listed in the attachment. These people -- who may include men and women, clergy and laypersons, Lutherans and non-Lutherans -- have agreed to be available to receive reports of sexual misconduct from complainants who are uncomfortable contacting the bishop directly. However, it must be stressed that these people are acting on behalf of this synod, and any information that they are given will be shared with the bishop (unless it is the bishop who is being accused of sexual misconduct, in which case the presiding bishop of the ELCA will be contacted).

A contact may be made with the bishop or other authorized person by mail, by telephone, or in person. The complainant need not identify herself or himself when she or he first contacts this synod. The complainant may ask questions anonymously about how this synod would respond to a particular complaint of misconduct. However, this synod can do little about a report of sexual misconduct until the complainant identifies herself or himself and the pastor or other rostered person involved in the misconduct.

The bishop or other person contacted by the complainant will (1) assure the complainant that this synod does not tolerate sexual misconduct and takes seriously all reports of such misconduct; (2) explain this synod's process for responding to reports of sexual misconduct and offer to provide a copy of this Statement of Policy; (3) answer the complainant's questions about the policies and procedures of this synod; (4) express care and concern for the complainant; (5) when the complainant is anonymous, encourage the complainant to identify herself or himself and the pastor or other rostered person involved in the misconduct.

In all meetings with synod personnel, the complainant may be accompanied by a friend, family member, support person, or advocate of her or his choice. The bishop or other person contacted by the complainant also may offer to provide the complainant with a list of advocates who are available to provide support and to help interpret this synod's policies and procedures. This list may include advocates who are affiliated with the ELCA and advocates who are not. The complainant will be invited to contact an advocate and to be accompanied by that advocate through the reporting, investigative, and, if necessary, disciplinary processes. If the complainant requests, this synod will contact an advocate for her or him. The complainant is welcome to use an advocate who does not appear on the list -- such as a friend or family member -- or decline to use an advocate.

After a report of sexual misconduct by rostered persons has been received from an identified complainant, the bishop and/or bishop's designee will interview the complainant in person or, if that is not possible, by telephone. This interview may occur through a combination of meetings, calls, and correspondence. The bishop or bishop's designee will ask the complainant to provide as much information about the sexual misconduct as the complainant is comfortable sharing. The complainant will be asked to reduce the information to writing or to sign a written statement prepared by this synod. The bishop or bishop's designee also will ask the complainant what she or he is seeking in coming forward and whether the complainant is prepared to participate in the disciplinary process if necessary. The complainant should be given a copy of this Statement of Policy if she or he has not already received it.

The bishop or bishop's designee will discuss with the complainant how she or he feels about the possibility that her or his identity may become known to the accused or others. Insofar as possible, this synod will respect the wishes of the complainant regarding confidentiality. However, at some point, this synod may be required by civil law or by the governing documents of the ELCA to disclose the identity of the complainant. Finally, the identity of the complainant may become known despite the best efforts of this synod to protect it. This synod cannot guarantee confidentiality to a complainant.

If the bishop or bishop's designee learns that a child or vulnerable adult may have been neglected or physically or sexually abused, the bishop or bishop's designee may be legally

required to report that information to law enforcement authorities. If possible, the complainant will be notified before such a report is made.

The bishop or bishop's designee will discuss with the complainant her or his needs for pastoral care or professional counseling. If the complainant requests, the bishop or bishop's designee will help to put the complainant in touch with persons who can provide such care or counseling. Under no circumstances will any employee of this synod function as the complainant's advocate, pastor, or counselor.

The bishop or bishop's designee will appoint a contact person within this synod. That contact person (who may be the bishop or bishop's designee) will keep in regular contact with the complainant and will inform the complainant of significant developments. That contact person also will be available to respond to the complainant's questions and concerns about the process.

3. Preliminary Investigation of the Complaint

After interviewing the complainant, the bishop and/or bishop's designee will carefully review the information provided by the complainant. If the report appears credible and involves sexual misconduct for which the rostered person might be disciplined, the bishop or bishop's designee may conduct a preliminary investigation to determine whether information either supporting or contradicting the report exists. This preliminary investigation may include (1) further discussions with the complainant; (2) persons identified by the complainant, or friends, family members, pastors, or counselors of the complainant; or (3) a review of the records of this synod, another ELCA synod, the ELCA, or an entity affiliated with the ELCA; or (4) interviews of former bishops of the rostered person, those who served as assistants to former bishops of the pastor, rostered persons who succeeded the rostered persons at congregations that he or she served, rostered persons who served on the same staff with the rostered person at congregations that he or she served, rostered persons who presently serve on the same staff with the rostered person, respected members of congregations that the rostered person served, respected members of the congregation that the pastor now serves.

This preliminary investigation will be conducted as quickly and as discreetly as is possible under the circumstances. All of those contacted will be asked to keep the contact in strictest confidence. If this synod or a discipline hearing committee later determines that the pastor did not commit sexual misconduct, that conclusion will be communicated to those who were contacted by this synod in the course of its preliminary investigation.

4. Conversation with the Rostered Person

The bishop will usually meet with the rostered person either during or after the preliminary investigation is concluded. The bishop should be accompanied by the bishop's designee or another person. In some cases -- such as when the rostered person is aware of the complainant's report or when the rostered person may pose an immediate danger to members of his or her congregation -- the bishop or bishop's designee may meet with the rostered person immediately after or perhaps even before meeting with the complainant. The bishop or the bishop's designee will inform the rostered person that the meeting is not confidential, and that

the bishop or the bishop's designee may disclose anything that he or she is told. The rostered person may be accompanied to this meeting by an advocate, including an attorney.

At their meeting, the bishop will provide the rostered person with information regarding the complaint and ask the rostered person to respond. The bishop may ask the rostered person to reduce his or her response to writing. The bishop also will (1) assure the rostered person that, while this synod does not tolerate sexual misconduct, this synod will give any rostered person who denies an allegation of sexual misconduct a full and fair opportunity to contest it; (2) explain this synod's process for responding to reports of sexual misconduct and provide a copy of this Statement of Policy; (3) answer the rostered person's questions about the policies and procedures of this synod; (4) express care and concern for the rostered person, his or her pastor's family, and the affected congregation; (5) strongly discourage the rostered person from having any contact with the complainant, either directly or indirectly; and (6) invite the rostered person, if she or he has not already done so, to contact an advocate and to be accompanied by that advocate through the investigation, and, if necessary, disciplinary processes. If the rostered person requests, this synod will assist the rostered person in finding an advocate. The rostered person may decline to use an advocate.

Depending upon the circumstances, the bishop may ask the rostered person to agree voluntarily to certain restrictions upon his or her ministry -- such as agreeing not to have contact with children -- until the investigation and/or disciplinary proceedings are concluded. If the rostered person refuses, the bishop may ask the congregation to impose the restrictions upon the rostered person. The bishop also may ask the rostered person to take a leave of absence -- either with or without pay -- until the investigation and/or disciplinary proceedings are concluded. If the rostered person refuses, the bishop may ask the congregation to place the rostered person on involuntary leave of absence, or, in extreme circumstances, the bishop may temporarily suspend the rostered person without prejudice. Finally, the bishop may ask the rostered person to resign his or her call or from the roster of the ELCA. The bishop cannot force the rostered person to resign. Only a discipline hearing committee can remove the rostered person from the roster.

The bishop or bishop's designee will discuss with the rostered person his or her needs for pastoral care or professional counseling, as well as the care of the rostered person's family. If the rostered person requests, the bishop or bishop's designee will help to put the rostered person in touch with persons who can provide such care or counseling. Under no circumstances will any employee of this synod function as advocate, pastor, or counselor to the rostered person or the rostered person's family.

The bishop or bishop's designee will appoint a contact person within this synod. That contact person (who may be the bishop or bishop's designee) will keep in regular contact with the pastor and will inform the pastor of significant developments. That contact person also will be available to respond to the pastor's questions and concerns about the process.

5. Assess the Information

After meeting with the rostered person, the bishop will carefully review the information provided by the complainant, discovered during the preliminary investigation, and provided by the pastor. The bishop will then decide upon a course of action. Among options available to the bishop are the following: no further action; further investigation; requesting the rostered person to undergo a psychodiagnostic evaluation; requesting the rostered person's congregation to take some action; convening a consultation or advisory panel; or initiating the formal disciplinary process. Depending upon the circumstances, additional options may be considered as well.

6. Consultation or Advisory Panel

Reports of sexual misconduct always present a bishop with difficult decisions. To assist him or her in making these decisions, a bishop may, at his or her sole discretion, appoint a consultation or advisory panel. The function of a consultation or advisory panel is described at length in Sections 20.21.04 to 20.21.06 of the *Constitution and Bylaws of the ELCA* and Section D of *Rules Governing Disciplinary Proceedings Against an Ordained Minister, a Rostered Layperson, or a Congregation of the Evangelical Lutheran Church in America* (Nov. 20, 1995). Both of these documents are available from this synod.

Essentially, a consultation or advisory panel is a small group of clergy and laypersons who are asked to recommend a course of action to the bishop. Before making that recommendation, the panel may interview the complainant, the rostered person, the bishop, the bishop's designee, and/or others. If possible, the panel will seek to resolve the controversy through recommendations that are pastoral and therapeutic and that will eliminate the need for disciplinary proceedings if they are accepted by all concerned. If such a resolution does not appear possible, the panel will advise the bishop whether it believes that the disciplinary process should be initiated.

Whether to employ the advisory or consultation process is always discretionary with the bishop. Use of such panels may be beneficial in a variety of circumstances. For example, a bishop may be confronted with "one person's word against another's" -- that is, a situation in which both the complainant's report and the rostered person's denial of the report appear credible, and there is no corroborating evidence supporting either version. Numerous other reasons may also cause the bishop to call for a consultation or advisory panel.

7. Formal Hearing

Disciplinary proceedings are the process by which the ELCA determines if a rostered person is guilty of the charges and, if so, what the penalty should be. The process is governed by Chapter 20 of the *Constitution and Bylaws of the ELCA* and by the *Rules Governing Disciplinary Proceedings*. A rostered person may be disciplined for committing "conduct incompatible with the character of the ministerial office ... [or] with the standards for the rostered ministries of this church," which is defined in *Definitions and Guidelines for Discipline of Ordained Ministers, for Associates in Ministry, Members of the Deaconess Community, and Diaconal Ministers*, (Dec. 5, 1993) to include "[a]dultery, promiscuity, the sexual abuse of another, or the misuse of

counseling relationships for sexual favors." *Definitions and Guidelines* is available from this synod.

To summarize briefly the disciplinary process, generally, the bishop will initiate the proceedings against a rostered person by filing written charges setting forth the offense that the rostered person is accused of committing -- e.g., "the sexual abuse of another" -- and the alleged facts supporting the charge -- e.g., the name of the person whom the rostered person is alleged to have abused and the date, place, time, and other circumstances of the alleged abuse. A committee of twelve persons is appointed to hold a hearing on the charges. The hearing resembles a court trial. The bishop presents testimony and other evidence in support of the charges, and then the rostered person presents testimony and other evidence in opposition to the charges. A bishop generally will not initiate formal disciplinary proceedings unless the complainant agrees to testify against the rostered person although the bishop may do so in circumstances deemed appropriate by the bishop. The governing documents of the ELCA provide for certain rights for the accuser, the accused, and the complaining witnesses.

The hearing described in the preceding paragraph is the usual process for hearing the written charges. There is an alternative process described in *ELCA Bylaws* 20.23.01. through 20.23.09. that is invoked when the written charges specify that the accuser will not seek removal or suspension for a period exceeding three months. In such cases, the proceedings are conducted before a hearing committee of six members with less formality and without all of the procedural requirements of the full hearing process.

Under either process, the discipline hearing committee decides whether the charges are true, and, if so, what discipline should be imposed. The options available (except under the alternative process described in the preceding paragraph) are private censure and admonition, suspension from the clergy roster of the ELCA for a designated period of time or until the rostered person complies with specified conditions, or removal from the roster. The discipline hearing committee's decision is generally made about four months after charges are filed.

8. Disclosure

Except in unusual circumstances, this synod, acting through the bishop or the bishop's designee, will disclose all serious allegations of sexual misconduct by rostered persons. However, when disclosure occurs, the content of the disclosure and the persons to whom the disclosure is made will vary from case to case, depending upon the circumstances.

(a) When will the disclosure occur? The following events may trigger disclosure: (1) the rostered person admits to committing sexual misconduct; (2) the rostered person resigns his or her call from the roster of the ELCA after being accused of sexual misconduct; (3) the rostered person is placed on a leave of absence or temporarily suspended in response to an allegation of sexual misconduct; (4) the rostered person is suspended or removed from the roster as a result of formal disciplinary proceedings; (5) the rostered person is involved in secular criminal or civil legal proceedings concerning the alleged sexual misconduct; or (6) at other times deemed appropriate by the bishop or the bishop's designee.

(b) What will be disclosed? The content of the disclosure may include: (1) the fact that

the rostered person has been accused of, admitted to, resigned after being accused of, or been found guilty of committing sexual misconduct; (2) the gender of the complainant; (3) whether the complainant was an adult or a minor at the time of the alleged misconduct; (4) whether the complainant was a member of the rostered person's congregation or a person to whom the rostered person was providing pastoral care; (5) if the rostered person has denied the allegations, that fact also will be disclosed; and (6) an invitation to those who believe that they have been harmed (directly or indirectly) by the rostered person to contact the leaders of the congregation, this synod, or others who have agreed to be available. Disclosure should never include the name of the complainant or facts from which he or she could readily be identified. However, during an investigation of the allegations of sexual misconduct, the identity of the complainant will be disclosed when necessary to conduct an effective and fair investigation. For example, the identity of the complainant will be disclosed to the person accused of sexual misconduct and may also be disclosed to persons who have material information to assist the investigation.

(c) To whom will disclosure be made? Depending upon the circumstances, disclosure of allegations of sexual misconduct against a rostered person, may be made to the leadership of the rostered person's congregation, to the members of the rostered person's present congregation, to the synods where the rostered person was previously rostered, and to other rostered persons within the conference or the entire synod. In some situations, wider disclosure to previous congregations, to the entire synod, or even to the news media may be made as well. This synod intends to work closely with the congregational leaders regarding appropriate disclosure to the members of the congregation. Disclosure to the members will be made usually by one or more of the leaders or by the bishop.

9. Follow-up

This synod will work with congregations and others to help ensure that care and support are available to those harmed by clergy sexual misconduct. As noted above, this synod cannot provide this care itself, but it will assist the primary and secondary victims of sexual misconduct to find resource persons and materials that might help them on their journey to healing. This synod will assist the congregation in dealing with the pain and disruption caused by the pastor's or other rostered person's misconduct and will help the congregation continue in its mission and ministry for the sake of the Gospel.

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Report Misconduct

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