

## **PGV COM Protocol re a Person Seeking Entry or Reinstatement to Pastoral Office after Committing a Sexual Boundary Violation**

### **Preface**

The purpose of this *Protocol* is to guide COM's response to an applicant who seeks entry into membership in the Presbytery or reinstatement to pastoral office after having committed a sexual boundary violation. Due to the typical circumstances, these requests pose a challenge for the COM's decision-making process. Cases of sexual boundary violations which occurred in a faith community will likely involve multi-disciplinary issues (e.g., ethics, theology, legal, clinical) and numerous affected parties (individuals and their families, congregations, programs of mission or ministry). Any combination of these components is likely to entail conflicting points of view which intensify the challenge.

Preserving the integrity of ordered ministry and the safety of our congregations is our collective responsibility as disciples of Jesus Christ. The *Protocol* foundation is scriptural and confessional as identified in our Presbytery's *Policy on Sexual Misconduct*, Attachment A. Ministry as Fiduciary Trust, Fiduciary Power, and Fiduciary Responsibility: Resources for a Conceptual Framework.

In developing a plan to guide COM, the *Protocol* was organized around the two ethical principles of our Presbytery *Policy on Sexual Misconduct*, Truth and Faithfulness. The principle of Truth guides the fact-finding and risk assessment functions to be performed. The principle of Faithfulness provides standards for the outcomes to be achieved. Specific standards and commentary to assist implementation of the *Protocol* are contained in the endnotes.

No protocol will anticipate every circumstance's mitigating factors, which might reduce risk, or aggravating factors, which might increase risk. Accordingly, this document is best understood as a plan with ethical principles and standards to be applied to the particulars of each applicant's request. Implementing the *Protocol* requires careful effort, the fruits of which will increase COM's capacity to discern wisely.

The *Protocol* was adopted 3-3-2020 by COM  
and included in its Handbook as a living document,  
to be revised as experience recommends.  
Revised by COM, 05-05-20.

## 1. Application by COM of the *PGV Policy on Sexual Misconduct, III A., Principle of Truth*<sup>1</sup>

- A. COM appoints a Protocol Team which will gather information and submit its recommendation with an accompanying rationale to inform COM's decision of whether to approve the applicant's request for entry / reinstatement.<sup>2</sup>
  - 1. Protocol Team members shall include, at a minimum, two members of COM and a person who is a recognized authority with experience and competence in addressing the circumstances under review.
- B. Based on what is available to COM, Protocol Team identifies those persons most likely to be able to provide relevant information.
  - 1. Primary parties: the applicant and the survivor(s).
    - a. If the applicant has not submitted a written statement which describes the sexual boundary violation, the applicant is requested to do so.<sup>3</sup>
  - 2. Parties with first-hand knowledge: e.g., people with direct knowledge of the incident(s) of a sexual boundary violation and its consequences for affected persons.
  - 3. Corroborating parties: e.g., people able to verify facts.
  - 4. Parties with expertise: e.g., a mental health clinician.
- C. Protocol Team gathers facts by asking a series of core questions relevant to a risk assessment.<sup>4</sup>
  - 1. Nature of the Sexual Boundary Violation
    - a. What is the description of the sexualized behavior?
    - b. What are the key contextual factors of the sexualized relationship?
    - c. What are the consequences of the sexualized relationship?<sup>5</sup>
      - 1) Legal: civil (including workplace sexual harassment) and/or criminal (felony and misdemeanor)
      - 2) Faith community.
        - E.g., a disciplinary case proceeding by a presbytery per the Rules of Discipline.
        - E.g., the impact on a congregation. (Intensifiers include public awareness, minors, and legal involvement.)
      - 3) Applicant and applicant's family.
      - 4) Survivor(s) and family regarding 8 domains: emotional, psychological, relational, economic, religious, spiritual, vocational, and physical.<sup>6</sup>
      - 5) Others: Individuals and/or entities.
  - 2. Spiritual Acts
    - a. Has the applicant made a confession of sin?<sup>7</sup> If so, how and to whom?
    - b. Has the applicant made acts of repentance?<sup>8</sup> If so, how and to whom?
  - 3. Acts of Rehabilitation

- a. Has the applicant engaged in clinical treatment with a credentialed and qualified provider? <sup>9</sup>
- b. To what degree were issues related to sexual boundary violations addressed in treatment? <sup>10, 11</sup>
  - 1. Ideally, the applicant will provide a waiver for a release of information by the treating clinician to COM.
  - 2. If the information received is protected by the federal Health Insurance Portability and Accountability Act, commonly referred to as HIPAA, the Protocol Team must weigh carefully how the information is retained by PGV and in what form it is utilized in communications and reports, written and oral.
- c. Has the applicant engaged in an aftercare program? <sup>12</sup>
- 4. Rehabilitation Outcomes
  - a. Does the applicant express self-awareness of, and insight into, the offending behaviors, contributing factors, and the consequences of the behaviors?
  - b. Does the applicant express understanding of the imbalance of power (asymmetrical power) in a pastor/congregant and/or pastor/counselee relationship? <sup>13</sup>
  - c. Does the applicant express understanding of a dual role relationship and its hazards for ministry? <sup>14</sup>
  - d. Does the applicant express understanding of the clinical phenomena of transference and countertransference, and how to manage them? <sup>15</sup>
- 5. Risk Mitigation
  - a. Applicant submits a written attestation. <sup>16</sup>
  - b. COM obtains a criminal (felony and misdemeanor) background check conducted by a quality third party, e.g., Praesidium. <sup>17, 18</sup>
  - c. The applicant's references are checked. <sup>19</sup>
- D. Protocol Team decisions
  - 1. The Protocol Teams reviews the facts, determines its findings, and decides whether to recommend that COM approve or not approve the applicant's request. The Team supports its recommendation by providing a rationale which is based on the findings.
  - 2. A confidential, written Comprehensive Report is prepared and submitted, along with the Protocol Team's work products, to the Stated Clerk for archival purposes. The format of the submission, and access to the materials, is determined in consultation with the Stated Clerk and included in the Report.
  - 3. With attention to the sensitivity of the facts gathered, the Protocol Team may submit a Select Report, a redacted variation of the Comprehensive Report, to COM. Concerns regarding the confidentiality of the information submitted to COM shall be communicated in advance of COM's action on the recommendation(s).
  - 4. The Protocol Team report to COM shall recommend whether and how specific parties or entities shall be informed of COM's decision. <sup>20</sup>

5. Based on its discoveries, the Protocol Team may submit recommendations to COM regarding specific entities or parties, e.g., to COM regarding a revision of its procedures, to COM regarding an amendment to the *PGV Policy on Sexual Misconduct*, to COM regarding a Session, to COM regarding the applicant, etc.
- E. Based on its review and analysis of the Protocol Team report, COM decides whether to approve the applicant's request. <sup>21</sup>
1. COM receives and acts upon recommendations submitted by the Protocol Team.
- F. If COM decides to recommend entry / reinstatement:
1. COM initiates a three-party Covenant of Accountability and Support which includes COM, the applicant, and the ministry unit (e.g., a Session). The Covenant is a monitoring system with behavioral checkpoints to which the parties commit. <sup>22</sup>
    - a. Examples of components of the Covenant of Accountability and Support include: training and/or guided education, a mentoring system, spiritual direction, and/or participation in a peer accountability and support group. <sup>23</sup>
  2. COM informs the PGV insurance carrier of its decision.

## **2. Application by COM of the *PGV Policy on Sexual Misconduct*, III B., Principle of Faithfulness <sup>24, 25</sup>**

- A. Standards for intended outcomes which are the basis for COM's recommendation(s) to the faith community (e.g., the Presbytery or a Session):
1. The truth is told.
    - a. Disclosure counters secrets, rumors, and misinformation.
    - b. Truth-telling is a positive way for leadership of the faith community to exercise its designated role.
    - c. Truth-telling permits leadership to be accountable to the faith community.
    - d. Truth-telling mobilizes the spiritual gifts of the faith community, while secrets block utilization of these gifts.
  2. The well-being of the faith community is promoted and unwise risks are avoided or minimized.
  3. The faith community's bonds and relationships of trust are preserved.
  4. People who are vulnerable are protected.
  5. The faith community's leadership is provided a basis for how it can exercise its risk management responsibility and function as a religious corporation under NYS law. <sup>26</sup>
  6. COM is accountable.
  7. COM's methodology for its risk assessment and the basis for its recommendation(s) are transparent.
    - a. Best practices, as identified by the literature and/or recognized authorities with experience and competence, are utilized.

8. COM's process and decisions align with PGV's risk management responsibility and function as a religious corporation under NYS law.

### **Protocol Endnotes**

- <sup>1</sup> See pp. 4-5: *PGV Policy on Sexual Misconduct* at [Resources > Sexual Misconduct Policies and Resources](#) on the [pbygenval.org](http://pbygenval.org) website. See also p. 14, "VI. Intervention Procedures, H. Disclosure." Disclosure of the truth is especially significant in matters involving children and youth. Note attachments related to this section. [Accessed 02/08/20.]
- <sup>2</sup> The "whys" of a decision, its rationale, must accompany communication of the contents of the decision. The decision alone is not enough in this circumstance. The ethical principle undergirds the framework for the rationale.
- <sup>3</sup> COM may select standard topics to be addressed, and also tailor specific topics to the particular individual and situation. An example of a standard topic could be why the individual is qualified or fit to be granted entry / reinstatement. Another example would be the applicant's motivation for making the request. In the case of a minister who was temporarily excluded as a result of Permanent Judicial Commission decision, written application for reinstatement is required, per D-12.0104h, Rules of Discipline, [Book of Order \(2019-2021\)](#) [Accessed 02/08/20.]
- <sup>4</sup> This research may also be understood as performing *due diligence* – the reasonable process of care and caution a person would be expected to exercise before deciding to commit to a business transaction or legal agreement. It seeks to prevent or mitigate foreseeable adverse impacts. Even if the adverse impact may be analyzed as of low probability, due diligence considers the possibility of adverse impact. In a clinical relationship, the ethical principle of informed consent requires consideration of both the benefits and risks of an intervention (e.g., a procedure or a medication). Note: In Matthew 10:16, Jesus' first instruction to the disciples was to "be wise as serpents," which was followed by "and innocent as doves."
- <sup>5</sup> The necessity to identify the *consequences* cannot be emphasized enough. In addition to its practical value, this section counter-balances those who would minimize the offender's behavior, or invoke Christian faith to reframe the issues (E.g., "Shouldn't we offer forgiveness?" Forgiving one for past behavior does not equal one's being fit for future service in a role of religious leadership.) This section counter-balances what amounts to an avoidance of responsibility (E.g., "Judge not..." COM is mandated to discern whether any applicant is fit to serve in a role of religious leadership).
- <sup>6</sup> Another way to understand a survivor's experience is to utilize the "Elements of Justice-Making," seven ethical components identified by Marie M. Fortune, founder and senior analyst, FaithTrust Institute, Seattle, WA: Truth-telling; Acknowledging the

violation; Compassion; Protecting the vulnerable; Accountability; Restitution; Vindication. “Elements” has been disseminated widely. The PC(U.S.A.) web site displays an abbreviated description at [Creating Safe Ministries > Rebuild Trust](#) on the [Presbyterianmission.org](#) website. [Accessed 02/08/20.]

- <sup>7</sup> A *confession of sin* is a religious act, rooted in faith, made to God and to those who were harmed by the consequences. See the confession of the Prodigal Son in Jesus’ parable, Luke 15: 18 and 21. A *confession of sin* is a spiritual act which goes beyond an *admission of wrongdoing* which does not acknowledge harmful consequences to others or a sense of remorse. *Confession* goes beyond an *apology* which does not commit the disciple of Jesus Christ to acts of *repentance*, the process of ceasing the sinful behavior and beginning new behaviors of discipleship.
- <sup>8</sup> A New Testament narrative as to what constitutes *repentance* is the witness of Zacchaeus in Luke 19:1-10. His public acknowledgment of having sinned focuses how he had related to others and their money. His immediate promise is to make restitution to those whom he exploited – a concrete, exteriorized, behavioral expression of his spiritual state which helps repair his harms to others. See also the description of acts of repentance in D-12.0104c., Rules of Discipline, [Book of Order \(2019-2021\)](#) [Accessed 04/18/20.]
- <sup>9</sup> The preferred professional standard is a provider with a NYS mental health license (licenses are not required to be a counselor in NYS) and who performs diagnoses, per the American Psychiatric Association (APA) *Diagnostic and Statistical Manual of Mental Disorders* – the most current edition is the 5<sup>th</sup>. (Examples of diagnostic disorders include: personality, addiction and substance use, anxiety, depression, and sexual behavior or paraphilia. The diagnosis would identify symptom severity and duration.) Note: The APA does not recognize “sexual addiction” as a valid psychiatric disorder.
- <sup>10</sup> The applicant provides a waiver for a release of information by the treating clinician to COM. COM may have to bear the cost of meeting with the clinician. The types of information to be disclosed include: assessment, diagnosis, psychosocial evaluation, psychological evaluation, psychiatric evaluation, treatment plan, medication management information, individual’s participation in treatment, psychoeducation, progress in treatment, discharge or transfer summary, aftercare or continuing care plan. (Source: National Association of Social Workers.)
- <sup>11</sup> If a release is denied, or is insufficient to give relevant information by which COM may make its decision regarding risk and fitness for pastoral office, COM may require the individual to participate in an assessment by a qualified third party of COM’s choosing. In this circumstance, COM is the client and shall receive the assessor’s written or oral report. The cost of the assessment is the responsibility of the applicant.
- <sup>12</sup> An *aftercare program* is a structured, post-treatment plan to prevent relapse and maintain the person’s rehabilitation. Examples include: joining a 12-step recovery group,

participating in a peer accountability and support group, and completing a training course on a relevant topic.

<sup>13</sup> The *PGV Policy on Sexual Misconduct* is very explicit regarding the *imbalance of power* in the relationship of a pastor to a congregant or counselee. The standard in Section II. Conceptual Framework: Biblical and Confessional, pg. 3, 2<sup>nd</sup> paragraph, states: “Sexual misconduct in the Church is an abuse of power and trust, and is therefore unjust and sinful. Power in ministerial relationships is inevitably unbalanced because of the inherent authority associated with the offices and roles of ministry, both historically and culturally.” Our pastors exercise the power to teach the scriptures and Confessions of our Church, to proclaim the Good News of Jesus Christ during worship, to administer the sacraments, and to enter into the lives of vulnerable lay people in times of their duress through the intimacy of prayer. Pastors are called upon to supervise the work of a congregation’s staff and volunteers, and to moderate the church’s session. In the name of Jesus Christ, pastors are entrusted by a congregation to exercise the power of their resources, their talents, knowledge, spiritual gifts, and expertise to benefit the church’s programs of mission and ministry, and the people who participate.

<sup>14</sup> The term *dual role* refers to a relationship which begins when a pastor who is functioning in the ministerial role with a person who is a congregant of the church and/or a counselee enters into a personal relationship, i.e., sexualized behaviors. This erases the boundary between one’s professional, religious behavior, intended to meet the spiritual needs of the congregant / counselee, and one’s personal behavior, intended to meet one’s personal needs. This dual role relationship creates a conflict of interest, which is resolved by choosing the personal over the pastoral. Sexual intercourse is not part of the ministerial, professional role.

The potential hazards of a pastor’s dual role relationships may be readily inferred from the [American Association of Christian Counselors Code of Ethics \(2014\)](#). See the prohibitions, examples, and discussion at Ethical Standard 1-140 a. through g., “Dual and Multiple Role Relationships,” pp. 17-18. Equally applicable to the pastoral role as the primary role and to be preserved is the Ethical Standard 1-130 a. through c., “Sexual Misconduct Forbidden,” which includes the analysis of an “inherent power imbalance” in the “helping relationship,” pp. 16-17. From the perspective of the profession of social work, see the [National Association of Social Workers Code of Ethics \(rev. 2017\)](#), Standard 1.06, especially (b) and (c), “Conflicts of Interest,” and Standard 1.09, (a) through (d), “Sexual Relationships.”

The importance of the risks of dual role relationships has been addressed by PGV training events. For example, at the 10/26/20 “Clergy and Spiritual Leader Training Event,” a handout was distributed, *Eleven Guidelines for Preserving Boundaries: Individual and Professional Health*, a reprint from a training manual of the FaithTrust Institute, Seattle, WA. Of the 11, the guideline described in the greatest length is dual relationships.

15 The term *transference* is used to describe the complex phenomenon in psychotherapy of a client's projection of strong personal emotions onto the therapist. Positive ones may include romantic or sexualized feelings. *Countertransference* refers to the therapist's projection of strong personal feelings onto the client. The professional's lack of ability to recognize one's intense feelings and/or not know how to manage those feelings increases the risk factor of the professional violating the fiduciary nature of the relationship. The fiduciary relationship, which exists solely for the benefit of the client, is violated when the professional acts on the *countertransference* by sexualizing the relationship, i.e., uses the client for personal gratification. Because of the power imbalance in the fiduciary relationship, it is irrelevant whether the person seeking help is the one who seeks to initiate a sexualized relationship. The person is not in a position to exercise free and informed consent. It is always the ethical and clinical responsibility of the professional, including a pastor in a role relationship to a congregant or counselee, to enforce the role boundaries and refuse sexualization. For a brief discussion of sexualized *transference* and *countertransference*, see an academic, open-access journal article [Recognizing and Managing Erotic and Eroticized Transferences](#) accessed through the website of the [National Library of Medicine](#).

The importance of the risks of transference has been addressed by PGV training events. For example, at the 10/26/20 "Clergy and Spiritual Leader Training Event," the agenda lists the topic as included in the handouts which were distributed.

16 The current standard for an *attestation* is the language found in "Attachment F. Minister / Employee / Staff Certification," *PGV Policy on Sexual Misconduct* at [Resources > Sexual Misconduct Policies and Resources](#) on the [pbygenval.org](#) website, Sexual Misconduct Policies and Resources. Note that there is a section in which the applicant is to provide descriptive information if the applicant is unable to provide an affirmative certification. PGV's use of an attestation is consistent with the practice of the PC(U.S.A.). See the last two pages of the PCUSA [Personal Information Form](#) (revised 03/2016).

17 This is a due diligence responsibility and function.

18 Praesidium is an example of a quality provider of background checks. It is a private company whose clients have included religious denominations. Its services have been used by units of the Presbyterian Church (U.S.A.) and of the Synod of the Northeast. Select: [Industries > Church and Faith-Based > Background Checks](#) on the [Praesidium website](#) [Accessed 02/08/20.]

19 This is a due diligence responsibility and function.

20 For example, in the case of an affected congregation, informing the Session not only honors the principle of truthfulness, it also honors our Presbyterian polity and the Reformed church tradition by respecting the role of the Session, per G-3.0201, *Book of Order*. In this case, information would go to all the Elders. The circumstances present a significant *teachable moment* for affected parties and entities. (Significant information

which is retained only in a personnel committee, or within a kitchen cabinet of select individuals, is contrary to the principle of truth and to our Presbyterian policy and Reformed tradition.)

- 21 Anticipate that those making the decision will hold multiple points of view and rationales which often will be grounded in people’s personal experiences. The emotions can be expected to run deep. Achieving consensus may be unrealistic. Under these conditions, an honest discussion which furthers the group’s capacity to analyze complex and sensitive factors will be undermined by the use of *Robert’s Rules of Order*. The preferred best practice is a tested and proven instrument which guides the group through a structured, educational, and inductive way of making a closed-end decision – either to approve or not approve. While created for a different, but related, context, the tool is easily adaptable to the circumstances addressed by this *Protocol*. See “Appendix A. Deciding Whether to Disclose: An Exercise in Session Discernment,” pp. 43-45, in the *PGV Disclosure Manual* at [Resources > Sexual Misconduct Policies and Resources](#) on the [pbygenval.org](#) website. [Accessed 02/10/20.]
- 22 A behavior is verifiable, and an assertion is not. It is the responsibility of the offender who claims remorse or asserts repentance, for example, to cite verifiable, behavioral expressions of those states. In the Sermon on the Mount, Matthew 17:16, provides a measure for discerning false prophets: “You will know them by their fruits.” Two resources regarding a Covenant of Accountability and Support are posted on the PGV website. While they are specific to a Session and a person who is a registered sex offender, or one who is subject to legal proceedings for a sex-related offense, the model is adaptable and relevant to the circumstances addressed in this *Protocol*. See “Covenant of Accountability and Support in PGV (rev)” and “Registered Sex Offenders” at [Resources > Sexual Misconduct Policies and Resources](#) on the [pbygenval.org](#) website. [Accessed 02/09/20.]
- 23 For an example of a nationally-recognized training program, see the ones on healthy boundaries offered through [FaithTrust Institute](#), Seattle, WA: [Accessed 02/08/20.] An example of a document which could be assigned for guided study is [Standards of Ethical Conduct](#), approved by the 210<sup>th</sup> General Assembly [Accessed 02/08/20.] Guided study could also be designed using selections from the extensive literature on the topics of: clergy and congregations regarding boundaries, including sexual boundaries: clergy self-care and wellness; clergy sexual misconduct and abuse.
- 24 The “whys” of a decision, its rationale, must accompany communication of the contents of the decision. The decision alone is not enough in this circumstance. The faithfulness principle undergirds the framework for the outcomes to be achieved.
- 25 See pg. 5 of the *PGV Policy on Sexual Misconduct* at [Resources > Sexual Misconduct Policies and Resources](#) on the [pbygenval.org](#) website. [Accessed 02/08/20.]

<sup>26</sup> For example, knowledge of the facts of the offense and its consequences would allow a Session to explore if retaining the pastor who had offended would jeopardize the church's standing with its insurance carrier's policy.