The Diocese of Buffalo
Adult Sexual Misconduct Policy and Procedures

September 17, 2019
INTRODUCTION:

The Roman Catholic Church, including the Diocese of Buffalo, (“the Diocese”) has been wracked by allegations of clerical misconduct. These horrific charges have shaken the very foundation of the Church and risk alienating millions of parishioners. It is imperative that this behavior be immediately ended and its perpetrators punished.

Most shocking, because of the innocence of its victims, is the sexual abuse of minors by priests and other religious. This issue is being addressed by the Diocese through its “Policy and Procedure for the Protection of Young People and Vulnerable Adults,” which is based upon the Charter developed by the United States Conference of Catholic Bishops.

Receiving less attention, but also reprehensible and far more pervasive, is sexual misconduct directed toward adults. An adult is anyone 18 years of age or older. This abuse of power and authority, in various forms, often victimizes adults when they are most vulnerable and seeking spiritual comfort and counsel.

The role of the clergy is to attend to the needs of all and to act in their best interests. The faith leader is primarily responsible for the boundaries in the ministerial relationship.

This policy and these procedures are specifically directed toward preventing and responding to sexual misconduct involving clerics, lay ecclesial ministers, and adults. It will identify prohibited conduct, establish procedures for addressing complaint, and delineate appropriate consequences for violators. The policy will also emphasize the critical importance of education and training in the Diocese’s ongoing effort to eliminate all forms of sexual misconduct as well as define boundaries, the crossing of which violate the ministerial relationship.

GENERAL POLICY AND DEFINITIONS

A. General Policy:

Sexual misconduct by clergy directed toward adults is contrary to Christian principles and inconsistent with the mission of the Roman Catholic Church. It is a shameful abuse of authority by a cleric taking advantage of an adult. All bishops, priests and deacons (clergy), religious, seminarians, and lay ecclesial ministers must comply with federal, state, and local laws regarding incidents of actual or suspected abuse or misconduct, and with the policies and
procedures included in this document. In addition, they must exercise heightened vigilance to these offenses.

The Diocese strongly urges all victims and families desiring to report allegations of sexual misconduct to the Diocese to contact the Victim Assistance Coordinator (716-895-3010) or utilize EthicsPoint found on the Diocese of Buffalo website. Additionally, the Diocese encourages anyone who believes that they are a victim of a crime to immediately contact law enforcement and file a report. When a complaint is made, it is understood that the rights of all, including the accused, must be protected and that prompt and incisive action is important in responding.

B. Definition of Terms:

**Sexual Misconduct:** Sexual misconduct is a broad term encompassing any unwelcome behavior of a sexual nature that is committed without consent or by force, intimidation, coercion, or manipulation. It includes all manner of sexual abuse, harassment, and other behavior, which is unwelcome regardless of the non-consenting adult’s gender or state of life be that married, single, or by profession of chaste celibacy. Sexual misconduct includes consensual sexual relationships between non-married people bound by vows or promises of chaste celibacy. An adult will never be considered to have consented when the inappropriate activity arises in the course of pastoral or counseling activities.

Specific forms of behavior, which the Diocese considers wrongful, are set forth below. Every conceivable example cannot be delineated here and, therefore, the following should not be interpreted in any way as being all-inclusive.

**Verbal:** Abusive verbal language, including jokes, comments, teasing, or threats relating to an individual’s sex, sexual activity and/or body parts whether or not said in that person’s presence, including, but not limited to:

- Sexual innuendos
- Slurs
- Suggestive, derogatory, or insulting comments or sounds
- Whistling
- Sexual propositions
- Threats
- Comments on a person’s appearance that make the person feel uncomfortable because of his or her gender
- Continuing to ask someone for dates or to meet after the person has made it clear that he or she does not want to go
- Sexually oriented comments about a person's anatomy that are unwelcome or create an intimidating, hostile or offensive environment
- Unwelcome sexual advances or demands for sexual favors
- Sexualizing conversations (including via telephone conversations, text messaging, email or other methods of social media)
- Asking for or transmitting unwanted sexual images or using unwanted sexual language
- Pushing for sexual involvement/interaction
- Jokes or conversations using sexual connotations

**Nonverbal**: Abusive, non-verbal communications, including, but not limited to:

- Written language showing or displaying pornographic or sexually explicit objects or pictures
- Graphic commentaries
- Leering or obscene gestures
- Staring at a person’s body in a sexually suggestive manner
- Sexually related gestures or motions
- Sending sexually graphic material through the Diocese's e-mail system or other electronic communication devices
- Using Diocesan mail or computers to view such material
- Exhibiting hostility when the person being targeted attempts to set boundaries
- Unwelcome invasion of another’s personal space.

**Physical**: Unwelcome physical conduct, including, but not limited to:

- Petting
- Pinching
- Grabbing
- Holding
- Massaging
- Displaying private body parts
- Assault
- Unnecessary touching and flashing or other unwelcome physical contact
- Persistent brushing up against a person’s body
- Touching or hugging people who do not want to be touched without their knowledge or consent
- Tickling or playful aggression that seems or can be perceived as uncomfortable
- Kissing on the lips
- Pressing or rubbing against a person, even subtly
- Oral or genital sexual interaction
- Masturbation in the presence of another person
- Coerced sexual intercourse
- Rape
**Absence of Meaningful Consent:** Meaningful consent to sexual activity requires equality that makes real choice possible. Meaningful consent assumes the absence of any constraint, subtle coercion, or manipulation. The imbalance of power/resources in the ministerial relationship precludes this equality, even when the two persons see themselves as consenting adults. If they are not peers, then there is no meaningful consent.

**Abuse of Power and Authority:** The role of the clergy, religious, seminarians, lay ecclesial ministers, and those in a faith leadership role carries with it authority and power, and the responsibility to utilize these resources to the benefit of all those who call upon them for assistance. This role can be misused (intentionally or unintentionally) to initiate or pursue sexual/emotional encounters, which violate established boundaries. Even if the parishioner, seminarian, employee, staff, counselee, etc. initiate the boundary violation, it is still the responsibility of clergy and those in authority to maintain clear boundaries for the sake of everyone involved. Specific examples of such abuse may include:

- Overcoming a person’s will using guilt or manipulation
- Using spiritual language to shame a person into compliance
- Exploiting a person’s desire for attention or approval
- Making claims of ‘special knowledge’ of God’s will and desires
- Shunning or withholding spiritual blessings in response to a lack of compliance
- Misinterpreting doctrine or sacred texts to distort meaning

**Vulnerability:** One is vulnerable to another person when one has less power/fewer resources than that person. Parishioners, employees, volunteers, seminarians, and students are by definition vulnerable to the clergy and the faith leaders. This does not mean they are powerless, but it does compromise their moral agency. Due to multiple circumstances, they may be manipulated and deceived, and taken advantage of by a clergy or faith leader who seeks out those who are vulnerable.

**Procedures:**

**For Victims of Sexual Misconduct** (including but not limited to clergy, religious, seminarians, lay ecclesial ministers and candidates, employees, and volunteers):

Anyone desiring to report an incident of sexual misconduct to the Diocese should contact the Diocesan Victim Assistance Coordinator: (716-895-3010), or visit the Diocese Of Buffalo website, www.buffalodiocese.org, and click on the EthicsPoint/Misconduct Tab which will direct you to Navex Global, an independent company, that will allow you to file a complaint or speak directly with a team specialist anonymously if so desired, 24 hours per day.

Accusations of misconduct by a Bishop will be reported to the Metropolitan Archbishop of the New York Province in accord with the instructions of the Holy See.
For All Personnel:

All personnel who learn that an allegation of sexual misconduct has occurred or is occurring, shall follow the same protocol as described above (the only exception to this requirement is if to do so would violate the Seal of Confession between the priest/penitent.)

If a written report has not already been prepared, the Victim Assistance Coordinator will prepare a written report within 72 hours and within 24 hours or sooner if the potential harm is imminent or ongoing. Additionally, immediate action may be required to protect the victim if the potential harm is imminent or ongoing. The Victim Assistance Coordinator will provide the report to the Auxiliary Bishop, the Vicar General, the Office of Professional Responsibility, the Chancellor and the Diocesan Attorney within 72 hours or as soon as possible. The Chancery will notify the diocesan insurance administrator. **The forgoing reporting requirements are not intended to supplant reporting obligations that may be imposed by federal, state, and local laws.**

Response Team:

**The Victim Assistance Coordinator**: The Diocese shall contract with an independent Mental Health Counselor who shall act as the Victim Assistance Coordinator and will possess training in counseling victims of sexual misconduct or obtain such training through an accredited program financed by the Diocese. Upon receipt of a complaint the Victim Assistance Coordinator and/or designee will reach out to the complainant within 48 hours and be responsible to complete a written complaint as noted above. The Victim Assistance Coordinator will distribute copies of the written complaint as noted above. The Victim Assistance Coordinator will offer immediate pastoral care to any person who claims to have been the victim of sexual misconduct and within the discretion of the Chancery, to anyone else needing similar assistance of care. Complainants will be informed by the Victim Assistance Coordinator that:

- The Diocese will provide and/or refer counseling, spiritual assistance, support groups, and other social services as agreed by the Diocese and the victim.
- The Diocese will reach out to all victims of sexual misconduct, to promote their spiritual and emotional well-being, their healing and their reconciliation.
- The Diocesan Bishop, Auxiliary Bishop, or his designee will offer to meet with victims of sexual misconduct to listen with patience and compassion to their experiences and concerns if so desired by the victim.

For incidents of sexual misconduct by a member, male or female, of a religious order it will be necessary for the Victim Assistance Coordinator to contact their counterpart in the particular religious order (society/congregation) of the accused perpetrator. The Auxiliary Bishop will contact the major superior (Provincial, Regional Leader, etc.). Incidences may be reported directly to the religious order as well by the victim or their representative. Depending on the
adult sexual misconduct policy of the religious order, a simultaneous independent investigation may also take place.

**Office of Professional Responsibility:** The Diocese shall employ a Director of Professional Responsibility whose duties shall include investigating complaints of sexual misconduct. Sexual misconduct complaints received under the umbrella of the Diocese shall be immediately reported to the Office of Professional Responsibility. Within 72 hours of receiving a complaint, the Office of Professional Responsibility, the Auxiliary Bishop or Vicar General, and the diocesan attorneys will conduct an initial inquiry to determine if the accused is a person covered by this policy and if so, the accused will be notified of the particulars of the allegations and advised of the right to be represented by civil and/or canonical counsel.

Should the initial inquiry indicate that the complaint is neither manifestly false nor frivolous, the initial inquiry will proceed to a preliminary investigation and the accused shall be relieved of responsibilities and placed on administrative leave pending the outcome of the investigation. The accused will be informed of the investigation and given every opportunity to respond to the complaint. The Bishop or Vicar General shall decide whether such leave is with or without pay or benefits.

This relief from administrative responsibilities is for investigation purposes only and is not intended to, nor shall it imply any determination as to the truth or falsity of the complaint or the innocence or guilt of the individual involved.

If at any time during the initial inquiry or preliminary investigation, it appears that a criminal offense has occurred, the Office of Professional Responsibility will immediately contact the appropriate law enforcement agency to file a report.

The preliminary investigation will cover the circumstances of the complaint, the people directly involved, and anyone who may have first-hand knowledge of these circumstances or other relevant information. The investigator is looking for information that will confirm or deny the allegations of the complaint.

The investigator will determine if there have been any previous complaints involving the accused within the Diocese or any past assignments the accused may have held.

The investigator will be required to complete the investigation within 60 days and provide a written report to the chancery, unless the circumstances dictate a longer or shorter period, but in no event shall the investigation exceed 120 days. The investigator will obtain legal advice, both civil and canonical, as necessary. Upon completion of the preliminary investigation, the Office of Professional Responsibility will present the case to the Independent Review Board which functions as a confidential consultative body to the Bishop in discharging his responsibilities.

**Independent Review Board:** It shall be the responsibility of the Independent Review Board:
• To assess allegations of sexual misconduct by clergy, religious, seminarians, and lay ecclesial ministers in order to advise the Bishop whether a violation of this policy has occurred.

• To make recommendations to the Bishop concerning an individual’s fitness to continue in ministry or employment. Options might include recommendations for complete removal from ministry or employment, limited ministry or employment, or continuing in ministry or employment.

The Independent Review Board will receive a report of the allegations made, which will include a detailed description of the interviews with the accuser and the response of the accused to the accusation made, as well as any other interviews conducted relating to the claim and any information pertinent to the allegation from the accused’s personnel file. The accused will be provided the opportunity to submit a response in writing to the allegations. The Independent Review Board will assess the credibility of the allegations and whether the accusation conforms to the definition of adult sexual misconduct as outlined in this policy.

The Independent Review Board will present the results of its findings and recommendations to the Bishop.

The Independent Review Board will review and, if appropriate, revise this policy annually.

**Disciplinary Process:**

Should the Independent Review Board, following a thorough investigation, find the alleged policy violation to be substantiated, the perpetrator must be appropriately disciplined. Although psychological assessment and treatment may be an important component of a remedial plan, the “therapeutic model” should not be the first and only instinct of the Bishop in dealing with a cleric who has violated the Diocesan Policy regarding sexual misconduct.

Because of the extensive variety of misconduct, which may constitute a violation of the Diocesan policy, ranging from lapses of judgment to egregious physical abuse, it is necessary to articulate a corresponding range of possible disciplinary actions to be considered by the Bishop. Depending on circumstances, an initial moral lapse could be met with a lesser punishment, such as enhanced suspension and restricted ministry. Those who repeatedly offend would be subjected to increasingly punitive measures, which may include a request to the Vatican to remove the priest or deacon from the clerical state.

Possible disciplinary measures, which may be imposed separately or in combination, may include:

• Counseling: Evaluation and appropriate counseling should constitute part of every remedy in which an allegation has a semblance of truth.
• **Reprimand:** A written reproach for a complaint alleging poor judgment or an isolated instance of relatively minor sexual harassment which the violator acknowledges and for which he or she is apologetic.

• **Administrative Leave:** As noted above, a priest, deacon or other violator will immediately be placed on administrative leave when a credible allegation is received. This is a precautionary measure to be imposed at the outset of a preliminary investigation into an allegation. While on administrative leave, the priest or deacon may not perform clerical duties or administer the sacraments. Administrative leave may also be extended following the preliminary investigation.

• **Leave of Absence:** This is usually initiated by a cleric or mutually agreed upon when a cleric is in dialogue with his bishop. It allows the cleric to leave his parish or other assignment for either a determined or undetermined period of time in order to seek professional help or to allow for a time of discernment. The violator must acknowledge responsibility and be receptive to any remedial counseling or therapy which may be deemed appropriate. A Leave of Absence can also be applied to lay ecclesial ministers.

• **Partial Restriction of Ministry:** The priest, deacon, or other religious is prohibited from administering or performing one or more priestly/religious functions. For example, a priest may be prohibited from administering the Sacrament of Reconciliation or from counseling a parishioner.

• **Suspension from Ministry:** The violator would not be permitted to function in public ministry and, depending on the offense, might be prohibited from wearing clerical attire. Such a suspension can be temporary or permanent.

• **Dismissal from the Clerical State:** This is the most severe discipline under canon law. Dismissal is requested by the cleric himself or by the Bishop, but can be granted only by the Vatican.

As noted above, an extremely broad and varied range of misconduct may constitute a violation of the Diocesan policy. The multiple possible consequences available under the policy provide the Independent Review Board and the Bishop the ability to fashion an appropriate discipline. These disciplinary measures can be imposed in any combination depending on the circumstances of the policy violation.

The most critical factor is the egregiousness of the substantive offense. Sexual misconduct involving force clearly warrants discipline more severe than non-verbal sexual harassment. Discipline for the former may be dismissal from the clerical state, while that for the latter, counseling and a reprimand.

**Exoneration:** When a complaint has been determined to be unfounded, the Diocese will take every reasonable step to restore the good name of the person falsely accused. In the event the accused was placed on administrative leave and/or the accusations against the accused were made public, the Diocese, through the communications department, will notify the media,
parish, and any other outlet where the claim was made public, of the findings while ensuring that every reasonable step is taken to protect the rights of all parties involved.

**Substantiated:** When a complaint has been substantiated, the Diocese, through the communications department, will notify the media, parish, and any other outlet where the claim was made public, of the findings as well as disciplinary measures taken, to provide transparency as well as support to those affected. Every reasonable step will be taken to protect the rights of all involved.

**Response to the Congregation:** In instances where a priest assigned to a parish has been placed on administrative leave, the Diocese will reach out to the staff and parishioners by coordinating listening sessions to be held at the parish. These sessions will be for the purpose of:

- Providing education on the topic of misconduct along with as much information as can be disclosed about the allegations without violating the rights of others.
- Explaining the investigative process.
- Promoting healing and allowing parishioners and staff to express their emotions and support one another in a safe place.

Depending on the needs expressed by the parish, the listening sessions may include the Bishop or his designee, a therapist, lay leaders, as well as priests or deacons from the congregation.

**Education:** The Diocese will address the problem of adult sexual misconduct by providing:

- Mandatory training re: definitions of adult sexual misconduct for all clergy, religious, seminarians, lay ecclesial ministers, employees, and volunteers. Upon completion of training attendees must sign that they have attended training and understand that a violation of the policy could result in disciplinary measures up to and including dismissal or removal from ministry.
- Educational forums in all parishes and educational institutions of the Diocese regarding definitions of adult sexual misconduct and the actions that the Diocese has instituted including mandatory reporting responsibilities.
- Sexuality Education for all existing and future clergy, religious, seminarians, faith leaders, and diocesan personnel.
- Mandatory ongoing in-service training for all clergy, religious, seminarians, lay ecclesial ministers, and diocesan personnel every 12 to 18 months.
- Support groups, education, and individual counseling opportunities for all of those accused whether or not substantiated.