
MIDWIFERY REGULATORY COUNCIL OF NOVA SCOTIA (MRCNS)

STANDARD: PREVENTION OF SEXUAL MISCONDUCT

Introduction

The therapeutic relationship between a midwife and a client is based on trust, respect and protecting the client's dignity, autonomy and privacy. Within this relationship, midwives hold a position of power because they:

- possess professional knowledge and skill relied upon by the client;
- have access to the client's personal health information; and
- are in a position of authority.

Midwives have a duty to maintain professional boundaries at all times to ensure the therapeutic relationship is safe and respected. Sexual misconduct by a midwife towards a client violates professional boundaries and constitutes professional misconduct.

The purpose of this Standard is to outline the practice, behavioural and reporting expectations of all midwives with respect to sexual misconduct.

Midwives, clients, or any members of the public who have questions regarding the interpretation or application of this Standard are encouraged to contact MRCNS.

Definitions

For the purposes of this Standard:

“Sexual misconduct” means any actual, threatened, or attempted sexualized behaviour or remarks by a midwife towards a client or in a client's presence, including but not limited to, the following acts or omissions by the midwife:

- a. making sexually suggestive, flirtatious, or demeaning comments about a client's body, clothing, or sexual history, orientation or preferences;
- b. discussing the midwife'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; and/or
- n. Sexual abuse;

but does not include:

- conduct that is clinically appropriate to the health care services being provided by the midwife; or
- conduct between a midwife and an individual who is the midwife's spouse or intimate partner at the time of that conduct.

“Sexual abuse” is a form of sexual misconduct. The following acts between a midwife and a client constitute sexual abuse:

- a. sexual intercourse;
- b. genital to genital, genital to anal, oral to genital, or oral to anal contact;
- c. masturbation of a midwife by a client or in the client's presence;
- d. masturbation of a client by a midwife;
- e. encouraging the client to masturbate in the midwife's presence; and/or
- f. sexualized touching of a client's genitals, anus, breasts, or buttocks.

“Client” means the individual who is the recipient or intended recipient of health care services from a midwife, 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:

- a. An individual becomes a client at the earliest occurrence of any of the following events:
 - i. The midwife has contributed to a health record or file for that individual.
 - ii. The individual has consented to the health care service recommended by the midwife.
 - iii. The midwife prescribed a drug for which a prescription is needed by the individual.
 - iv. The midwife has, in respect of a health care service provided by the midwife to the individual, charged or received payment from the individual or a third party on behalf of the individual.
- b. Where a midwife provides health care services to a newborn or infant up to the age of twelve (12) months, “client” includes both the newborn or infant and the mother.
- c. An individual, except for a “vulnerable former client”, remains a client for twelve (12) months following the date of the last occurrence of any of the events in paragraph (a).

“Vulnerable former client” means an individual who, although no longer actively receiving health services from the midwife, necessitates specific protection from potential sexual misconduct due to 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. When determining whether a former client is considered vulnerable, factors which should be considered include, but are not limited to:

- The duration and intensity of the former professional relationship.
- The nature of the former client’s clinical condition.
- The type of clinical care provided by the midwife.
- The extent to which the former client confided personal or private information to the midwife.
- Mental health status.
- Social support network.
- Physical health (e.g., disability, age).
- History of abuse or trauma.
- History of dependency.
- Emotional attachment.
- Seeking continued contact with the midwife.
- Age and/or maturity.

Even if factors suggest a minimal level of vulnerability for a former client, they may still be regarded as vulnerable for a period of time.

“Spouse” means either of two persons who:

- are married to each other, or
- have cohabitated in a conjugal relationship with each other continuously for at least two years.

“Intimate partner” means either of two persons who have been in a conjugal relationship for at least six (6) months, regardless of whether or not they cohabitate.

STANDARDS:

1. The midwife does not engage in sexual misconduct. Sexual misconduct constitutes professional misconduct.
2. The midwife must fully assess whether an individual is a “vulnerable former client” prior to engaging in any sexualized conduct with that individual and must never engage in any form of sexualized conduct with a vulnerable former client.
3. A client’s consent is not a defence to an allegation of sexual misconduct.
4. The midwife complies with a mandatory duty to report as follows:
 - a. To the Registrar if the midwife has reasonable grounds to believe that another midwife has engaged in sexual misconduct;
 - b. To the regulatory body of another health profession if the midwife has reasonable grounds to believe that a member of that profession has engaged in sexual misconduct; and
 - c. To an employer if the midwife has reasonable grounds to believe that a regulated or unregulated employee has engaged in sexual misconduct.
5. The midwife cooperates with any regulatory body or committee of a regulatory body with respect to any regulatory process related to this Standard.

Adopted by the MRCNS on [DATE]