

## Capuchin Province of St. Joseph

### Policies and Procedures Regarding Sexual Misconduct with Minors and Vulnerable Adults (Approved: 05/25/17)

#### Introduction

As brothers of Francis of Assisi, the friars of the Province of St. Joseph of the Capuchin Order (hereinafter “province”) respect all creatures, especially children and vulnerable adults who hold a special place in God’s affection. For this reason, we have established these policies and procedures to help prevent and respond to sexual misconduct with justice and compassion.

The province is opposed to, will strive to prevent, and will promptly address all forms of misconduct, especially sexual misconduct involving minors and vulnerable adults. The province is also committed to participating in processes of healing for victims and survivors of misconduct by its members, employees or other partners in ministry.

The policies and procedures described here are to assist the provincial minister (hereinafter “provincial”) in dealing with allegations of misconduct by any member. The province intends that these procedures are in conformity with canonical norms and with the *Charter for the Protection of Children and Young People* and companion *Essential Norms of the United States Conference of Catholic Bishops* (USCCB). The province will fully comply with the civil laws of the jurisdictions in which our ministries take place.

These policies and procedures cover all friars in the province as well as Capuchin ministries (hereinafter “ministry” or “ministries”). All persons who participate in any ministry owned by the province are also subject to this policy. Because the province spans a number of civil and ecclesial jurisdictions, other laws, policies and regulations may also apply to such persons.

#### Definitions

*Accused person*: a minister who is alleged to have engaged in sexual misconduct.

*Actionable allegation*: one that is not manifestly false or frivolous and which compels further investigation because it is at least within the realm of possibility with respect to the persons, dates, places or other relevant information concerned.

*Allegation*: an accusation against someone asserting a violation of a law or policy.

*Child or minor*: a person under the age of 18.

*Child pornography*: any activity which involves the production, distribution, or possession of a graphic depiction of a minor that is sexually explicit. Under federal law (18 U.S.C. §2256), child pornography is defined as any visual depiction, including any photograph, film, video, picture, or computer or computer generated image or picture, whether made of produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- \* the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct; or

- \* the visual depiction is a digital image, computer image, or computer generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
- \* the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

*Child sexual abuse*: any act involving sexual molestation or sexual exploitation, including sex offenses under applicable state and federal criminal codes.

*Child sexual exploitation*: can involve the following: possession, production, and distribution of child pornography; online enticement of children for sexual acts including production and distribution of child pornography; online enticement of children for sexual acts (including “sexting”); child prostitution, child sex tourism and child sexual molestation.

*Complainant*: a person who alleges that misconduct has occurred.

*Director*: the director of the Office of Pastoral Care & Conciliation.

*Ecclesiastical ministry*: any ministry that is under the authority of a diocesan bishop.

*Friar*: a member of the Province of St. Joseph of the Capuchin order, ordained and lay.

*Intimate part*: the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being.

*Ministry*: any religious, charitable or educational institution owned by the province as, as applied to any friar, any place in which that friar works under the sponsorship of the province.

*Minister support person*: a person identified by the accused minister or provided by the province to offer pastoral care to a minister who is accused of misconduct.

*Office of Pastoral Care & Conciliation (OPCC)*: the ministry established by the province to coordinate the province’s response to allegations of sexual and other misconduct, as well as to develop programs, policies and procedures to help prevent such misconduct.

*Partners in ministry*: Any person, other than a friar, authorized to participate in ministry,, including employees, agents and volunteers.

*Preponderance of the evidence*: standard of proof which establishes a fact by evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

*Province*: The Province of St. Joseph of the Capuchin Order, Inc.

*Provincial minister*: the person who holds the office of provincial minister within the province. By virtue of his office, the provincial minister has ultimate authority over — and ultimate responsibility for — the implementation of these policies and procedures.

*Public ministry*: any ministry that is under the authority of a diocesan bishop and/or the sponsorship of a religious institute, and/or with the permission of the major superior.

*Review Board (board)*: a group of at least five persons, the majority of whom shall not be friars, who are appointed by the provincial minister.

*Sexual misconduct with adults*: sexual misconduct is defined as sexual activity, whether consensual or not, regardless of who initiates such an activity, between an adult (i.e., a person 18 years of age or older) of either sex and a member, employee or volunteer of the province

who is providing care or has power of influence over such an adult, either in person or online. It includes any practice that constitutes a breach of professional trust having as its intent sexual contact or activity.

*Sexual harassment*: unwelcome sexual advances, requests for sexual favors and other verbal or physical contact of a sexual nature on the part of a member, employee or volunteer of the province when he/she is in a position of power and influence over such an adult.

*Sexually immoral conduct*: any intentional sexual contact or sexual involvement that occurs in ministry and which violates the moral teachings of the Catholic Church. This includes the abusive, improper and immoral use of any and all internet and social media activity.

*Supervision plan (SP)*: a formal, written and individualized plan to guide the supervision of any restricted member as provided in the policies and procedures.

*Vulnerable adult*: a person of age 18 or older who, because of advanced age, developmental disability, mental illness or physical disability, requires supervision or personal care, or lacks the personal and social skills to live independently.

## **Policies and Procedures Concerning Minors and Vulnerable Adults**

*(NB: Some of the policies pertain only to friars or employees)*

### **Policies**

#### **I. Prevention**

The province will strive to prevent the occurrence of sexual misconduct.

##### *A. Background checks*

The province shall conduct periodic criminal background checks on all friars. In addition, the province shall employ adequate screening and evaluative techniques in deciding the fitness of candidates for profession and ordination. In the selection of candidates, as well as in the selection of other ministers, the province shall use reliable and available means to learn whether the person has a recognizable risk toward sexual or other misconduct.

##### *B. Ongoing education*

All friars shall be required to participate in training and educational sessions that will help them to identify, prevent and promptly respond to sexual misconduct, especially that which involves minors and vulnerable adults.

##### *C. Consultation*

The province shall employ the services of persons and organizations outside the province to ensure that its policies, practices and procedures for preventing and addressing misconduct meet or exceed the standards that are applicable to religious and other nonprofit organizations in the United States.

#### *D. Formation*

The province shall review and continue to develop its programs of initial formation to include courses that deal in depth with issues such as mandatory reporting, human sexuality, relationships and boundaries in ministry, commitment to healthy celibate chastity, recognition of the signs of potential abuse or other misconduct, pastoral care to victims of abuse and their families, cyber-sex, inappropriate use of social media, and internet pornography.

## **II. Victim Assistance**

The first obligation of the church is to create an environment that provides a swift, pastoral and compassionate response to anyone who makes an allegation of sexual abuse of a minor or vulnerable adult by a friar. The province recognizes its pastoral responsibility to those who have been affected by sexual abuse of minors by friars, employees and volunteers, the victim and the victim's family, and the community.

#### *A. Office of Pastoral Care & Conciliation*

The province has created and shall maintain the Office of Pastoral Care & Conciliation (OPCC). The function of this office is to assist the provincial minister in carrying out the policies and procedures outlined in this document. The office shall consist of a director who will be a lay professional with a strong background in providing sexual abuse/assault services. The province and OPCC director will also engage and consult with outside persons and groups to help ensure the integrity of the province's policies and practices in preventing sexual and other forms of abuse, and in responding promptly, effectively, and pastorally to reports of abuse.

#### *B. Response and outreach*

The province shall make appropriate assistance available to those who have been harmed by sexual abuse as minors by one of its friars, regardless of when that abuse may have occurred. The province is committed to participating in the healing process for victims of sexual misconduct. The province may take any number of actions, including — but not limited to — the following:

1. Provide support for counseling, spiritual guidance, support groups, and other social services agreed upon by the victim and the province. The director shall make appropriate referrals to help the victim/survivor move forward after making a complaint.
2. The provincial minister will meet with those individuals and their families if they desire such.
3. The director of the OPCC shall provide a compassionate response to those who want to report sexual abuse of a minor or any other misconduct.
4. The director and provincial minister shall inform the complainant of their right to report their allegation directly to civil authorities or another agency, and will assist them in doing so, if desired.

## **III. Reporting**

Allegations of misconduct may come from a variety of sources, including complainants or their family members, diocesan officials, members of the Capuchin community, colleagues in the workplace, or from the perpetrator.

*A. Reporting known or suspected sexual abuse of a minor*

Whenever a friar has reason to believe that a minor has been subjected to sexual misconduct, or is threatened with sexual misconduct, the friar shall immediately inform — by telephone or in person — the appropriate civil authorities in the area, whether or not the civil law requires such reporting. After the report has been completed to civil authorities, the friar shall also inform the provincial minister or the OPCC director, who shall confirm and document that the appropriate civil authorities have been notified.

The foregoing duty to report is suspended when church law relating to sacramental confession requires that the information be kept confidential. However, in instances where canon law requires the information be kept confidential (see Canon 983, 984), the friar should do whatever practically can be done, consistent with the minister's obligation to keep the matter confidential, to avert the likelihood of the minor being subjected to (further) serious injury or harm.

*B. Reporting allegations when the victim as sexually abused as a minor, but is now an adult*

When the director receives an allegation against a friar who is still alive, all such reports will be handed over promptly by the director to the district attorney of the county in which the alleged offense took place. The provincial minister will be immediately informed of any such allegations. If another friar hears such a report, he shall direct the individual to contact the OPCC director, and will encourage him to report any crime committed in the past directly to civil authorities.

*C. Protection of rights and unfounded allegations*

Care shall be taken to protect the rights of all parties involved, particularly those of the person claiming to have been sexually abused and the person against whom an allegation has been made. When an accusation has been proved to be unfounded, every step possible shall be taken to restore the good name of the accused.

#### **IV. Investigations**

*A. Gathering information*

The director will work with the provincial minister or his delegate to investigate all allegations or reports, and gather information that is provided to the extent possible, including information that is provided anonymously. The director will follow the reporting procedures laid out in these policies. If there is a criminal investigation as a result of a report of an allegation, the province shall defer any investigation of its own until it receives confirmation

that the criminal investigation is completed or cannot otherwise proceed. However, if civil authorities cannot proceed with criminal action for any reason, and the case is returned to the province, there will be a thorough investigation of allegations using an established process which includes an independent investigator and the Review Board.

#### *B. Establishment of review process*

Determinations and recommendations regarding the continuation of ministry of any friar who is the subject of an allegation of sexual abuse of a minor shall be made by the provincial minister according to the consultative and advisory process established. The director of the OPCC and the board are established as advisors to the provincial minister. While this process is declared to be consultative and advisory, the safety and well being of the community is of primary concern. The provincial minister is expected to trust the independent judgment and professional competence of the OPCC director and the board.

#### *C. Review Board*

In all circumstances indicated by these policies, the director — after consulting with the provincial minister — shall request that the board be convened to review the facts in the case and/or provide recommendations to the provincial minister on appropriate ministry and community placement, supervision and safety plans, and other situations as the provincial minister sees fit. A review board must be convened in any case involving allegations of sexual misconduct with a minor or vulnerable adult.

### **V. Safety and Supervision**

The province is committed to protecting persons from hard of misconduct, especially sexual misconduct, against minors. To that end the province is also committed to the accountability and rehabilitation of any friar who has been involved in sexual misconduct, and will provide supervision of such friar as is reasonably required by all the circumstances.

#### *A. Supervision*

Whenever a friar has acknowledged that he has engaged in sexual misconduct involving a minor, or whenever the of the board indicates that a friar has engaged in such misconduct, and has made its recommendations to the provincial minister, the provincial minister shall take such actions, as in his judgment, are deemed appropriate, including — but not limited to:

1. Recommending the friar participate in an evaluation (including a risk assessment and/or therapeutic treatment).
2. Placing restrictions on the friar's ministry and other activities.
3. Seeking and/or imposing appropriate canonical measures or penalties, up to including dismissal from the Capuchin Order and, where applicable, the clerical state.

## *B. Supervision plans*

The provincial minister or, if duly appointed, the OPCC director, shall have the authority to oversee and, with the assistance of a written and individualized supervision plan (SP), shall supervise the aftercare and placement of any friar who has been the subject of action by the provincial minister for sexual misconduct, and to take appropriate actions.

## **Procedures**

### **I. Prevention**

#### *A. Education*

1. The director shall work in collaboration with other ministry directors to develop ongoing educational programs that meet or exceed Praesidium's standards for accreditation. These programs shall focus on sexual and other forms of misconduct, as well as prevention and reporting such behaviors.
2. The director shall certify that these trainings have occurred.
3. All friars shall receive a copy of these policies. After reading the policies, friars will sign a prepared form indicating that he read the document, noting the location, date and time.

#### *B. Background checks*

1. The OPCC shall conduct background checks on all friars and residents in friaries every five years.
2. The Vocation Office will conduct background checks on all applicants to postulancy and candidates in residence.

#### *C. Formation*

1. Consistent with applicable ethical, canonical and legal principles, and before acceptance into the province's initial formation program, an admissions interview, a psychological profile and criminal background check of each candidate shall be obtained. In addition to general psychological fitness for ministry, if — in the admissions process — traits of pedophilia or ephebophilia are identified, the candidate shall be disqualified from entering the order.
2. The province's initial formation programs shall offer appropriate courses and components that deal in depth with psychological development, including both moral and deviant sexual behavior, with emphasis on the implications of making moral choices in accord with church teaching and chaste living. While commitments to the virtue of chastity and a life of celibacy may be well known, there will be clear and well published provincial standards of ministerial behavior and appropriate boundaries for ministry for persons in positions of trust who have regular contact with children and young people.

#### *D. Consultation*

The director and the provincial minister shall consult, as needed, with victims/survivors, law enforcement, social service providers, and others to develop procedures to implement, review and recommend revisions of the guidelines in this document. This document shall also be submitted to the board to review and make recommendations every three years, or more often when needed.

## **II. Victim assistance**

### *A. Assistance to victim/survivors*

1. The director shall respond, with compassion and care, to any person who reports sexual misconduct of a minor.
2. The director will encourage any adult reporting sexual abuse that occurred when he/she was a minor to report the abuse to civil authorities and will assist in doing so if the person desires such assistance. The director will also inform the person reporting that he/she has an obligation to report all alleged abuse to the district attorney's office where the alleged crime was committed, and/or to verify that a report has been made.
3. The director is primarily responsible to meet with and provide assistance to victims/survivors.
4. The provincial minister is committed to personal and active contact with victims/survivors and their families.
5. The director will work in collaboration with — and be a consultant to — the provincial minister in all matters pertaining to outreach assistance to victims, their families and the wider community.
6. The director shall provide complete information about the province's policies and procedures to those who report sexual abuse.

### *B. Assistance to families of victim/survivors, and the larger community*

1. The director shall respond, with compassion and care, to any person(s) affected by the harm caused by the sexual abuse of a minor by a minister.
2. To the extent possible, the director shall work with victims/survivors, their families, social service providers and others to develop ways to reach out to all who have been harmed, and develop strategies to promote reconciliation and healing.

## **III. Reporting and notifications**

Reports of misconduct may come from a variety of sources, including complainants or their family members, diocesan officials, members of the Capuchin community, a colleague in the workplace, or from the perpetrator. The director, in collaboration with the provincial minister, will maintain a written record of each stage of the reporting process. All reports, particularly those to provincial leaders and civil authorities, will be made in writing or, if initially made

orally, will be followed up with written reports. Each written report will be placed in the specific file for that case.

*A. Reporting known or suspected abuse of a current minor or vulnerable adult*

1. The provincial minister shall verify, with the director, that the required report(s) were made to the appropriate civil authorities, and if the required reports have not been made, he or the director will immediately make the required reports to the appropriate civil authorities.
2. All friars shall inform the director of any and all reports made to civil authorities. Once those reports have been made, the director shall inform the provincial minister.
3. When civil authorities grant permission to proceed with the preliminary internal investigation by the province, such permission should be documented.
4. The provincial minister or director shall notify the accused friar of the allegations against him, once the civil authorities have given permission to do so.
5. The provincial minister or director shall instruct the accused minister to have no contact with the alleged victim, their parents or guardian(s).
6. The director will notify the community, as soon as possible, in which the friar resides, and the wider community as needed.
7. The provincial minister will promptly notify the general minister of the Capuchin Order once the civil authorities have given permission to do so. If the accused friar is a cleric, the general minister is required to notify the Congregation for the Doctrine of the Faith. The general minister will be notified of significant developments and final disposition of the case.
8. The director will also promptly notify the bishop of the diocese in which the alleged abuse occurred (or the person designated in the diocese to handle such matters), as well as the bishop of the diocese in which the friars currently resides (if different), once the civil authorities have given permission to do so. The bishop(s) will be notified of significant developments and final disposition of the matter.
9. The director will promptly notify the employer of the location where the alleged abuse occurred, and where the friar is currently ministering.
10. The director and the provincial minister will notify the faithful and other members of the public, as appropriate.
11. To assist in any investigation of sexual abuse, the director may call upon ministers, lay persons, legal advisors, outside investigators and mental health professions, and others with expertise.
12. The director shall inform all friars of their mandatory reporting responsibilities — and the consequences for not reporting — through ongoing education and sharing of this policy.

*B. Reporting allegations when the victim was sexually abused as a minor, but is now an adult*

1. The provincial minister shall verify with the director that the required reports have been submitted to the appropriate district attorney's office and, if the required reports have not been submitted, he or the director will immediately submit the required reports to the appropriate civil authority.
2. When civil authorities grant permission to proceed with the preliminary internal investigation by the province, such permission should be documented.
3. The provincial minister will promptly notify the general minister of the Capuchin Order once the civil authorities have given permission to do so. If the accused friar is a cleric, the general minister is required to notify the Congregation for the Doctrine of the Faith. The general minister will be notified of significant developments and final disposition of the matter.
4. The director will also promptly notify the bishop of the diocese in which the alleged abuse occurred (or the person designated in the diocese to handle such matters), as well as the bishop of the diocese in which the friar currently resides (if different); once the civil authorities have given permission to do so.
5. In order to assist in any inquiry of sexual abuse, the director may call upon friars, lay persons, legal advisors, outside investigators and mental health professionals chosen for their expertise.
6. The provincial minister or director shall notify the accused friar of the allegations against him, once the civil authorities have given permission to do so.
7. The provincial minister or director shall instruct the accused minister to have no contact with the party or parties making the allegations.

*C. Receiving reports*

1. The director shall inform the board when any allegations of sexual misconduct against a minor has been received, regardless of when the alleged abuse occurred or whether the accused is deceased, and even if the information received may be from an anonymous or other indirect source.
2. The provincial minister and director will be available to any friar who wishes to seek advice, make a self-report, or express concern about other friars.
3. The provincial minister or director shall notify the administrator who is in charge of the ministry where the conduct is alleged to have occurred when civil authorities have given permission to do so.
4. When an actionable allegation of sexual abuse is reported, the provincial minister will immediately place the accused friar on administrative leave, unless otherwise instructed by civil authorities so as not to interfere with a criminal investigation. For the purposes of this policy, an actionable allegation is one that is at least within the realm of possibility with respect to the persons, dates, places, and other relevant information concerned.

5. The director shall inform any person(s) making a report that they are free to give or not give information and/or a written statement.
6. The director shall inform any person(s) reporting abuse of the province's policies on reporting.
7. The provincial minister shall inform the general minister of the Capuchin Order of any actionable allegation involving a friar and shall provide to the general minister reports on the disposition of the case. If that friar is a cleric, the general minister will inform the Congregation for the Doctrine of the Faith.

#### **IV. Investigations**

*A. Due process:* A formal independent investigation of sexual misconduct against an accused person is not done on the basis of unspecified information, although law enforcement authorities will use their own guidelines in the investigation of child sexual abuse. For the province to proceed with a formal independent investigation, the identity of the accuser and the accused are necessary. Fairness in process will include, but not be limited to: the opportunity to be heard; a fair investigation; a concern for the good name, reputation and privacy of all parties; an emotionally safe environment in which the process takes place; and a concern for maintaining the dignity and respect of all parties. The accused is also entitled to a presumption of innocence unless or until otherwise established by the applicable standard of proof.

*B.* During the course of an investigation by civil authorities or by the province, the friar who is the subject of an investigation will be temporarily removed from ministry responsibilities and duties once the civil authorities have reported that doing so shall not interfere with the investigation. The accused friar may be asked to move to a residence that protects both him and the public during any investigation.

*C.* When the director is able to confirm that civil authorities are unable to proceed with a criminal investigation, and that any internal investigation by the province will not impede that criminal investigation, the province will initiate an internal investigation. The investigation is to be conducted in accord with the provisions of church law governing the preliminary investigation process. The preliminary investigation required by canon law, and the particular law of the church in the United States, is intended to assist the provincial minister in reaching a decision as to whether the sexual abuse of a minor by a friar did occur; and, if so, what type of process should be used to resolve the matter.

1. In cases where substantial differences exist in the facts as related by complainant(s), by witness(es) and/or the accused, an investigation shall interview and obtain statements from all parties and witnesses, and will keep the director informed regarding the status of the investigation.
2. The director shall keep all parties informed about the status of any investigation, whether it is through direct communication with the complainant(s) or the accused, or through their respective support person(s).
3. The provincial minister shall inform the accused friar that he has a right to

legal counsel, both civil and canonical, at the expense of the province.

4. As an investigation comes to a close, the complainant(s) and the accused will be notified by the investigator that the report is ready to be sent to the board. Each party shall have 15 days to submit any additional information to the investigator.

## **V. Review Process**

A. Once an allegation has been received against a friar:

1. The provincial minister or director shall inform the accused friar, in writing, of the substance of the allegations against him, unless prohibited by an ongoing criminal investigation.
2. The provincial minister or director shall inform the accused friar, either in person or through his support person, or through counsel of his choice, that he is requested — but not required — to respond, in writing, to the allegations. Any such written response may be submitted to the board and/or civil authorities.
3. A support person shall be made available to the accused friar.

B. Convening the Review Board:

1. The director shall contact the chair of the board with every allegation, and inform him/her of the allegation and the status of any investigation.
2. The director shall notify the chair of the board when the investigation is completed.
3. The chair, with the support of the director, shall convene the Board to review a summary of the case prepared by the OPCC director, as well as the results of any investigation that has been conducted.
4. The board does not meet with the complainant(s), the accused, legal counsel, or any family member(s) or support person(s) of the complainant or accused.
5. The board may direct the investigator(s) to conduct additional interviews to clarify or complete a line of inquiry developed in a particular instance.
6. The complainant(s) and the accused are invited by the director to make written statements directly to the board.
7. Although the board is not an investigative body, it may suggest further investigative steps.
8. The independent investigator must be available to the board when it meets in person to answer any questions that may arise.
9. The recommendations of the board do not extinguish any rights that any party may otherwise have under civil or canon law.

C. Disposition

1. After it is satisfied that it has probably received all available evidence, the board will then discuss and evaluate all the evidence and thereafter determine what the preponderance of evidence suggests most probably happened. After the review of evidence, the board shall make its recommendations to the

provincial minister in a written report prepared by the director. This report shall be approved by the board prior to being sent to the provincial minister by the director.

2. The provincial minister shall receive the board's recommendations and, giving them due deference, shall review them and the available evidence before rendering a judgment in the case and how to proceed.

3. Finding of misconduct (confirmed allegation):

a. Whenever it has been established by a friar's own admission, or by judicial proceedings that the friar has engaged in sexual misconduct with a minor, that friar shall thereafter be prohibited from engaging in ecclesial ministry. This prohibition shall apply equally to lay and cleric friars.

b. Regarding the placement of friars in ministry, the province shall comply with the applicable provisions of the most recently promulgated version of the *Charter for the Protection of Children and Young People* approved by the United States Conference of Catholic Bishops (USCCB) and the *Essential Norms for Diocesan/Eparchial Policies*, and promulgated by the USCCB and approved for promulgation by the Holy See.

4. Finding of no misconduct:

a. Wherever a board's determination of the facts clearly demonstrates that the friar has not committed an act of sexual abuse of a minor or vulnerable adult, the provincial minister shall:

I. Take whatever actions he deems appropriate to clear the name of the accused friar;

ii. Offer to meet with the complainant(s) and his/her family and/or support person.

b. In assigning the friar to a new ministry, or returning the friar to his current ministry, the provincial minister may consider:

I. the preferences of the accused friar;

ii. the best interests of the ministry;

iii. the spiritual well being of the people served in that ministry;

iv. the well being of the province; and

v. the recommendations of the board.

5. Generally:

a. a wrongfully accused friar may be returned to any ministry otherwise appropriate for the friar;

b. the director shall:

I. suggest resources to help the wrongfully accused

- friar deal with the emotional effects of being accused;
- ii. suggest resources to help the complainant(s) deal with his/her emotional responses to the board and the provincial minister's decisions;
- iii. offer to meet with the complainant(s) and his/her family and/or support person;
- iv. offer to meet with and find support for those affected within the ministry.

c. Unable to confirm: There are times when the board may not have sufficient evidence to establish that sexual misconduct occurred, but cannot equally rule it out, and may therefore conclude that it is "unable to establish" the required facts. In these cases, the provincial minister shall, upon consulting with the board, the director, and the Provincial Council, make a determination of fitness for ministry.

## **VI. Review Board**

### **A. Establishment and purpose:**

1. The province has established a review board for the purpose of providing advice to the provincial minister on the implementation and administration of these policies and procedures.
2. Persons selected to be on the review board shall be individuals who have not formed any opinion regarding the merits of the claims or issues that they will consider, who have no biases toward the parties involved, and who promise to fairly evaluate all of the information presented to them.
3. A liaison from the Provincial Council will attend meetings; however will not be a voting member of the board.
4. The review board's functions include:
  - a. advising the provincial minister in his assessment of allegations of sexual abuse of minors and vulnerable adults and in his determination of suitability of an accused friar for ministry. The board may also be asked to advise the provincial minister on any other allegation of misconduct about which the provincial minister seeks advice;
  - b. periodically reviewing provincial policies for dealing with sexual abuse of minors and adults;
  - c. offering advice on all appropriate aspects of cases of sexual abuse of minors and vulnerable adults;
  - d. reviewing and assessing the province's response to allegations and the process following, and making recommendations for

- improvements;
- e. reviewing each safety and supervision plan at least annually, and offering recommendations to the provincial minister regarding appropriate adjustments;
- f. recommending review board appointments to the provincial minister.

#### B. Membership

1. The board shall consist of five to thirteen members, including no more than one member of the province.
2. The review board shall include representation from the following groups or professions:
  - a. professionals from the social sciences (psychologists, counselors, victim's advocates, and/or social workers);
  - b. representatives from the legal or law enforcement profession or state protective services;
  - c. laity, preferably parents;
  - d. religious men or women;
  - e. survivor of sexual abuse by clergy or religious, or the parent of a survivor.
3. The provincial minister shall consider the recommendations of the board, and will appoint all members of the board.
4. The board will elect a chair from the membership of the board.
5. Board members shall serve a term of three years. Board members may be appointed for additional three-year terms.
6. Vacancies created by the departure of board members during their term shall be filled by appointment by the provincial minister, with consideration given to the recommendation of the board.
7. The director shall staff the board and work closely with the chair of the board to carry out all the duties and responsibilities outlined within this policy.

#### **VII. Friars on a supervision plan**

Any friar who has a confirmed allegation of sexual abuse of a minor shall live under an individualized supervision plan (SP) to ensure proper monitoring, treatment, support and accountability.

A. The SP will be developed by the OPCC director. As part of the initial development of the SP, the friar will be asked to participate in an independent risk assessment provided by an appropriate professional who is skilled in conducting such assessments for sex offenders.

B. The goals of the SP are:

1. hold the friar accountable for his misconduct;
2. assist the friar in his rehabilitation;
3. protect the community from the risk of any future harm by the friar.

- C. The SP will be reviewed and approved annually by the board for recommendations.
- D. The SP will be reviewed and approved annually by the provincial minister upon prior review and recommendations from the board and consultation with the Provincial Council and OPCC director.
- E. The director shall review the plan annually with the friar.

### **VIII. Records and communications of allegations of abuse**

- A. The province will maintain adequate records of all reports of sexual abuse or other misconduct involving minors and their disposition.
- B. When a friar is reassigned or transitions to a new community, the provincial minister should communicate to the new supervisor and/or local minister verbally, and in writing, reports of sexual abuse or other misconduct involving minors and their disposition.
- C. The provincial minister will disclose reports of friars' sexual abuse or other misconduct involving minors and their disposition to a bishop or other ministry director external to the province, to assist in an assessment of a friar's character and fitness for a new assignment, ministry or relocation.
- D. The outgoing provincial minister will thoroughly brief the incoming provincial minister about reports of friars' sexual abuse or other misconduct involving minors and their disposition to ensure continuity of supervision, monitoring, intervention and care.

#### *Addendum*

#### Capuchin Province of St. Joseph Code of Professional Responsibility

##### Preamble

We, members of the Capuchin Province of St. Joseph (province) and those associated with us in our ministries, issue the following Code of Professional Responsibility. In this document we hope to define the professional standards that should be observed by our members and those associated with us in our ministries. As leaders in the church founded by Christ, we must always seek to uphold Christian values and conduct.

In addition to following the Gospel and its mandates, we want to act properly at all times in the light of contemporary society and its needs. This code does not presume to address all of our responsibilities in the face of the great diversity of our ministries and in the variety of cultural contexts in which we operate. Instead, it establishes a set of minimal professional standards. These will help to delineate the boundaries within which behavior can be evaluated. This code is not intended to supersede canon or civil law or the Province of St. Joseph's misconduct policy. It is intended as a supplement, particularly as a means to help prevent misconduct.

##### General Principles

Responsibility—The public and private conduct of friars, employees and volunteers can inspire and motivate people and draw them into deeper relationship with God. It can also scandalize

and undermine their faith. Friars, employees and volunteers must, at all times, be aware of the responsibilities that accompany their work and trust that God's goodness and grace supports them in their ministry.

Responsibility for adherence to the Code of Professional Responsibility rests with the individual. Friars, employees, and volunteers who disregard this Code of Professional Responsibility will be subject to disciplinary action by the province. Corrective action may take various forms—from a verbal warning to removal from the ministry. The Province of St. Joseph will provide programs to assist our ministers in understanding and living these standards, when such programs are deemed useful and necessary.

**Integrity**—As friars, employees and volunteers, we are expected to be persons of integrity and must conduct ourselves in an honest and open manner, free from deception and manipulation. We shall handle the responsibilities of our ministries in a conscientious fashion. As leaders in a church that expects high moral standards of its members, we have a responsibility to lead by example.

**Competence**—We shall strive to maintain the highest levels of professional competence in our particular ministries. Training, education and experience all contribute to make us competent and credible in our areas of expertise. We shall not provide services in those areas in which we lack competence, for competence also means knowing our limitations. Continuing formation and education are essential for us; time must be made for both. It is critical that we also ensure that our own faith lives are strong, so we shall seek spiritual guidance through reading, reflection, and prayer.

**Commitment to the Spirit of the Gospel**—We embrace the teachings of Jesus and work to promote the Gospel. We shall cultivate a growing knowledge of the Gospels and be able to relate them to daily situations encountered in our ministry. We shall show a special care and concern for the needs of the poor and oppressed of society. We will address community social concerns by active reflection on Catholic social teachings. We will share a spirit of ecumenism and inter-religious dialogue in our relations with people of other faiths.

**Respect for Others**—We shall respect the rights, dignity and worth of each person we serve. We honor all individuals as creations of God without regard to their economic or social status. We will strive to be sensitive to cultural differences among people and to appreciate the opportunities that diversity brings. We will take time to understand the individual and collective journeys of the people we serve.

**Sexual Conduct**—As our provincial policy states: "The Province of St. Joseph of the Capuchin Order is opposed to, will diligently strive to prevent, and will act promptly to eradicate all forms of sexual misconduct." Sexual misconduct includes sexual abuse of minors, sexual

exploitation of adults, and sexually immoral conduct in violation of the moral teachings of the Catholic Church.

1. We will not exploit another person for the purpose of sexual gratification.
2. Those of us who have made a commitment to a celibate lifestyle are called to witness this in all our relationships.
3. We will familiarize ourselves with the province's policies on sexual misconduct and abide by its directives.

## Pastoral Standards

### Standard 1—Conduct for pastoral counselors and spiritual directors

For the purposes of this code, “pastoral counselors and spiritual directors” are defined as friars, staff, and volunteers who provide pastoral, spiritual, and/or therapeutic counseling services to individuals, families, or other groups. Pastoral counselors and spiritual directors must respect the rights and advance the welfare of each person.

1.1 Pastoral counselors and spiritual directors shall not step beyond their competence in counseling situations and shall refer clients to other professionals when appropriate.

1.2 Pastoral counselors and spiritual directors should carefully consider the possible consequences before entering into a counseling relationship with someone with whom they have a pre-existing relationship (i.e., employee, professional colleague, friend, or other preexisting relationship).

1.3 Pastoral counselors and spiritual directors should not, absent compelling circumstances, audiotape or videotape sessions.

1.4 Pastoral counselors and spiritual directors must never engage in sexual intimacies with the persons they counsel. This includes consensual and non-consensual contact, forced physical contact, and inappropriate sexual comments.

1.5 Pastoral counselors and spiritual directors shall not engage in sexual intimacies with individuals who are close to the client—such as relatives or friends of the client—when there is a risk of exploitation or potential harm to the client. Pastoral counselors and spiritual directors should presume that the potential for exploitation or harm exists in such intimate relationships.

1.6 Pastoral counselors and spiritual directors assume the full burden of responsibility for establishing and maintaining clear, appropriate boundaries in all counseling and counseling-related-relationships.

1.7 Physical contact of any kind (i.e., touching, hugging, holding) between pastoral counselors or spiritual directors and the persons they counsel can be misconstrued and should be avoided.

1.8 Sessions should be conducted in appropriate settings at appropriate times.

1.8.1 No sessions should be conducted in private living quarters.

1.8.2 Sessions should not be held at places or times that would tend to cause confusion about the nature of the relationship for the person being counseled.

1.9 Pastoral counselors and spiritual directors shall maintain a record of the times and locations of sessions with each person being counseled.

## Standard 2—Confidentiality

Information disclosed to a pastoral counselor or spiritual director during the course of counseling, advising, or spiritual direction shall be held in the strictest confidence possible. 2.1 Information obtained in the course of sessions shall be confidential, except for compelling professional reasons or as required by law.

2.1.1 If there is clear and imminent danger to the client or to others, the pastoral counselor or spiritual director may disclose only the information necessary to protect the parties affected and to prevent harm.

2.1.2 Before disclosure is made, if feasible, the pastoral counselor or spiritual director should inform the person being counseled about the disclosure and the potential consequences.

2.2 Pastoral counselors and spiritual directors should discuss the nature of confidentiality and its limitations with each person in counseling. Pastoral counselors and spiritual directors are encouraged to use the applicable provisions of this code for clarification in such discussions. 2.3 If pastoral counselors and spiritual directors maintain records of sessions with counselees and directees, those records should be the minimum necessary.

2.4 Knowledge that arises from professional contact may be used in teaching, writing, homilies, or other public presentations only when effective measures are taken to absolutely safeguard both the individual's identity and the confidentiality of the disclosures.

2.5 While counseling a minor, if a pastoral counselor or spiritual director discovers that there is a serious threat to the welfare of the minor and that communication of confidential information to a parent or legal guardian is essential to the child's health and well-being, the counselor or spiritual director should:

- Attempt to secure written consent from the minor for the specific disclosure.
- If consent is not given, disclose only the information necessary to protect the health and well-being of the minor.

- When possible, the appropriate supervisory personnel should be consulted before disclosure.
- If the minor is being abused or is at risk of being abused, that information must be reported to appropriate civil authorities as well as the province.

2.6 These obligations are independent of the confidentiality of the confessional. Under no circumstances whatsoever can there be any disclosure—even indirect disclosure—of information received through the confessional.

### Standard 3—Conduct with youth

Friars, employees, and volunteers working with youth shall maintain an open and trustworthy relationship between youth and adult supervisors. For the purposes of this section, “minor” is defined as any person under 18 years of age.

3.1 Friars, employees, and volunteers must be aware of their own and others’ special responsibilities when working alone with minors. A team approach is strongly recommended for all youth activities.

3.2 Physical contact with minors can be misconstrued and should occur (a) only when completely nonsexual and otherwise appropriate, and (b) never in private.

3.3 Friars, employees, and volunteers should never possess or use illegal drugs. Due to the dangers of second-hand smoke, they should not use tobacco products in the presence of minors. Friars, employees and volunteers should never offer alcohol, tobacco or other drugs to minors; nor should they knowingly permit minors to possess or use those substances.

3.4 Friars should not allow individual minors to stay overnight in their private accommodations or residence.

3.5 Friars, employees and volunteers should not provide shared, private, overnight accommodations for individual minors including, but not limited to, accommodations in any church-owned facility, private residence, hotel room, or any other place where there is no other adult supervision present.

3.5.1 In rare, emergency situations, when accommodation is necessary for the health and well-being of the minor, the friar, employee, or volunteer should take extraordinary care to protect all parties from the appearance of impropriety and from all risk of harm. Using a team approach to managing emergency situations, the friar, employee or volunteer must consult with other responsible parties to manage emergency situations.

3.6 Friars, employees, and volunteers shall not engage in sexually inappropriate vocabulary, recordings, films or games with minors.

3.7 Friars, employees, and volunteers shall not take photographs of minors while they are unclothed or dressing.

3.8 Friars, employees, and volunteers shall not take an overnight trip alone with a minor who is not a relative.

3.9 When counseling a minor, friars, employees, and volunteers must not meet in isolated environments. They should meet at appropriate times (not late at night) and use locations that are visible to others, e.g., rooms with windows or glass doors. If such rooms are not available, then the entry door should be left open.

3.10 When friars, employees, and volunteers must transport a minor in a car, another adult should accompany them; if possible, permission of the parent should be obtained first. 3.11 Friars, employees, and volunteers shall not speak to minors in a way that could be construed by an observer as harsh, threatening, shaming, or humiliating.

3.12 Friars, employees, and volunteers are prohibited from using physical discipline in any way for behavior management of minors. This includes spanking, slapping, hitting, or any other physical force as retaliation or correction for inappropriate behavior by minors. If necessary, physical restraint may be used to prevent harm to the minor, to the friar, employee or volunteer, or to others.

3.13 There can be appropriate forms of affection between friars, employees, and volunteers and minors. The following forms of affection are regarded as appropriate:

- hugs
- pats on the shoulder or back
- hand-shakes
- verbal praise
- touching hands, faces, shoulders, arms
- arms around shoulders
- holding hands while walking with small children
- kneeling or bending down for hugs with small children

The following are examples of forms of affection that are not to be used by friars, staff, and volunteers with minors:

- inappropriate or lengthy hugs/embraces
- kissing on the mouth
- touching buttocks, chests, thighs, or genital areas

- being in bed with a minor
- wrestling with minors
- tickling minors
- any type of massage with a minor
- any type of unwanted affection

#### Standard 4—Sexual conduct

4.1 Friars, employees, and volunteers must not, for sexual gain or intimacy, exploit the trust placed in them by the faith community.

4.2 No friar, employee, or volunteer may exploit another person for sexual purposes.

4.3 Allegations of sexual misconduct should be taken seriously and reported to the provincial minister and the director if the situation involves a minor. The misconduct policy of the Province of St. Joseph of the Capuchin Order will be followed to protect the rights of all involved.

4.4 Friars, employees, and volunteers should be familiar with the contents of the child abuse regulations and reporting requirements for the states in which they minister and should follow those mandates.

#### Standard 5—Harassment

Friars, employees, and volunteers must not engage in physical, psychological, written, or verbal

harassment of employees, volunteers, or those we serve and must not tolerate such harassment by other church employees or volunteers.

5.1 Friars, employees, and volunteers shall provide a professional work environment that is free from physical, psychological, written, or verbal intimidation or harassment.

5.2 Harassment encompasses a broad range of physical, written, or verbal behavior, including without limitation the following:

- Physical or mental abuse
- Racial insults
- Derogatory ethnic slurs
- Unwelcome sexual advances or touching
- Sexual comments or sexual jokes
- Requests for sexual favors used as: a condition of employment, or to affect other personnel decisions, such as promotion or compensation
- Display of offensive materials

5.3 Harassment can be a single severe incident or a persistent pattern of behavior where the purpose or the effect is to create a hostile, offensive, or intimidating work environment. 5.4 Allegations of harassment should be taken seriously and reported immediately to the province—either the provincial minister or the Office of Pastoral Care and Conciliation. The misconduct policy of the Province of St. Joseph of the Capuchin Order will be followed to protect the rights of all involved.

5.5 No retaliation is permitted against any person who in good faith brings forward a complaint of harassment. Any friar, employee or volunteer who knowingly makes or communicates a claim that is not made in good faith may be subject to appropriate disciplinary action.

5.6 All ministry sites shall display the province's written policy on sexual harassment and procedures for reporting such harassment. These will be displayed in the area customarily provided for other employee and volunteer announcements.

Standard 6—Province and ministry records and information confidentiality will be maintained in creating, storing, accessing, transferring, and disposing of provincial and ministerial records in a manner consistent with provincial policies and civil and canon law.

6.1 While sacramental records are documents of public events, their content should be guarded with care. When providing access to these records or compiling and publishing statistical information from them caution must be taken to protect the privacy of individuals. 6.2 Most sacramental records older than 70 years are open to the public.

6.2.1 Information regarding adoption and legitimacy remains confidential, regardless of age.

6.2.2 Only those who are duly authorized to access the records and supervise their use shall handle requests for more recent records.

6.3 Provincial or ministry records, including employee and friar personnel records, are confidential unless review is required by the province, a diocese or an appropriate government agency. The provincialate and/or The Office of Human Resources should be consulted upon receipt of any request for release of financial records to decide whether or not a requested release is appropriate. In some instances, a signed release executed by the affected friar or employee may be necessary.

6.4 Individual contribution records of the province or its ministries shall be regarded as private and shall be maintained in strictest confidence. This provision, however, shall not prohibit the province from sharing its donor lists with other parties where such sharing is governed by an appropriate contract and protections.

## Standard 7—Conflicts of Interest

Friars, employees and volunteers shall avoid situations that might present a conflict of interest. Even the appearance of a conflict of interest can call integrity and professional conduct into question.

7.1 Friars, employees and volunteers shall disclose all relevant factors that potentially could create a conflict of interest.

7.2 Friars, employees and volunteers shall inform all parties when a real or potential conflict of interest arises. Resolution of the issues must protect the person receiving ministry services.

7.2.1 No friar, employee, or volunteer shall take advantage of anyone to whom they are providing services in order to further their personal, religious, political, or business interests.

7.2.2 Pastoral counselors and spiritual directors should not provide counseling or spiritual direction services to anyone with whom they have a business, professional, or social relationship. When this is unavoidable, the client must be protected. The counselor shall establish and maintain clear, appropriate boundaries.

7.2.3 When pastoral counseling or spiritual direction services are provided to two or more people who have a relationship with each other, the pastoral counselor or spiritual director must:

- Clarify with all parties the nature of each relationship;
- Anticipate any conflict of interest;
- Take appropriate actions to eliminate the conflict; and
- Obtain from all parties written consent to continue services.

7.3 Conflicts of interest may also arise when a pastoral counselor's or spiritual director's

- Prior dealings;
- Becoming personally involved; or
- Becoming an advocate for one (person) against another.

In these circumstances, the pastoral counselor or spiritual director shall advise the parties that he or she can no longer provide services and refer them to another pastoral counselor or spiritual director.

## Standard 8—Reporting ethical or professional misconduct

Friars, employees, and volunteers have a duty to report their own ethical or professional misconduct and the misconduct of others.

8.1 Friars, employees, and volunteers must hold each other accountable for maintaining the highest ethical and professional standards. When there is an indication of illegal actions by any

friar, employee, or volunteers, the proper civil, provincial and other ecclesial authorities should be notified immediately.

8.2 When an uncertainty exists about whether a situation or course of conduct violates this Code of Professional Responsibility or other religious, moral, or ethical principles, consult with:

- The local ministry supervisor;
- The Office of Human Resources director;
- Others knowledgeable about ethical issues, or
- The Office of Pastoral Care and Conciliation.

8.3 When it appears that a friar, employee, or volunteer has violated this Code of Professional Responsibility or other religious, moral, or ethical principles:

- Report the issue to a supervisor or next higher authority, or
- Refer the matter directly to the Office of Pastoral Care and Conciliation and/or the Office of Human Resources, as appropriate.

8.4 The obligation of pastoral counselors and spiritual directors to report client misconduct is subject to the duty of confidentiality. However, any agreement or duty to maintain confidentiality must yield to the need to report misconduct that threatens the safety, health, or well-being of any of the persons involved except as provided for in Section 2.5.

#### Standard 9—Administration

Employers and supervisors shall treat friars, employees, and volunteers justly in the day-to-day administrative operations of their ministries.

9.1 Personnel and other administrative decisions made by friars, employees, and volunteers shall meet civil and canon law obligations and also reflect Catholic social teachings and this Code of Professional Responsibility.

9.2 No friar, employee, or volunteer shall use his or her position to exercise unreasonable or inappropriate power and authority.

9.3 Each volunteer providing service to children and youth must read and sign the Volunteer Code of Conduct before providing services.

#### Standard 10—Friar, employee and volunteer well-being

Friars, employees, and volunteers have the duty to be responsible for their own spiritual, physical, mental, and emotional health.

10.1 Friars, employees, and volunteers shall be aware of warning signs that indicate potential problems with one's spiritual, physical, mental, and/or emotional health.

10.2 Friars, employees, and volunteers shall seek help immediately whenever they notice behavioral or emotional warning signs in their own professional and/or personal lives. In addition, they should develop the ability to directly but discretely and sensitively communicate concerns when they find that a fellow minister shows signs of such problems.

10.3 Friars, employees, and volunteers must address their own spiritual needs. Support from a Spiritual Director is highly recommended.

10.4 Inappropriate or illegal use of alcohol and drugs is prohibited.