

The Province of St. Joseph of the Capuchin Order

Provincial Review Board

Operating Procedures

Background

The United States Conference of Catholic Bishops (USCCB) adopted the Charter for the Protection of Children and Young People (Charter), in June 2002. The Charter was revised and approved in June 2005. The Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons (Essential Norms) were approved by the Apostolic See in December 2002 and a revision was approved January 2006.

Article 2 of the Charter states that each bishop/eparch must establish a review board to function as a confidential, consultative body to him on matters related to the response of the local church to issues surrounding the sexual abuse of minors by clerics, i.e. priests and deacons.

- The majority of review board members are to be lay persons not employed by the diocese/eparchy (see Norm 5 in Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons, 2002).
- This board is to advise the bishop in his assessment of allegations of sexual abuse of minors and in his determination of a cleric's suitability for ministry. It also regularly reviews diocesan/eparchial policies and procedures for dealing with sexual abuse of minors.
- In addition, the board may review these matters both retrospectively and prospectively and give advice on all aspects of responses in connection with these cases.

What is the nature and authority of the Charter and Essential Norms?

Several canonical considerations are fundamental to the establishment and authority of diocesan/eparchial review boards. An awareness and understanding of these considerations can help diocesan/eparchial officials and members of review boards to fulfill their appropriate responsibilities. These considerations include the following:

- The two documents approved by the United States Conference of Catholic Bishops (USCCB), the Charter for the Protection of Children and Young People and Essential Norms work together but are different in nature.
- The Charter contains an extensive declaration of intent on the part of the bishops regarding future policies and provides a framework for the implementation of Essential Norms.

- The Essential Norms, which have received the required recognition from the Holy See, constitute particular law for the dioceses/eparchies that belong to the USCCB. As such, the Essential Norms bind those subject to them.
- While the bishops/eparchs freely agreed to follow the provisions of the Charter, they are legally bound to observe the stipulations of the Essential Norms.

Are members of religious orders subject to the Charter and Essential Norms?

If they are clerics, yes. Note 1 in the Essential Norms states that, “These Norms constitute particular law for the dioceses, eparchies, clerical religious institutes, and societies of apostolic life of the United States with respect to all priests and deacons in the ecclesiastical ministry of the church in the United States. When a major superior of a clerical religious institute or society of apostolic life applies and interprets them for the internal life and governance of the institute or society, he has the obligation to do so according to the universal law of the church and the proper law of the institute or society.” The Charter and Essential Norms also call for communication between bishops and religious superiors regarding a religious cleric’s suitability for ministry, the residence and supervision of religious who are barred from public ministry, etc.

Do religious communities like the Capuchin Province of St. Joseph also use review boards?

Yes. In August 2002 the Assembly of the Conference of Major Superiors of Men (CMSM) instructed the leadership of the Conference:

To research and design further services whereby its member institutes can, either on their own or in union with others, establish an independent review board, the majority of whom will be laypersons not in the employ of those institutes. These boards will assess allegations, review regular institute policies and procedures for dealing with sexual abuse of minors, and advise the major superior on the offender’s fitness for ministry. These boards will act retrospectively and prospectively on these matters and give advice on all aspects of responses required in connection with these cases.

Praesidium Religious Services, Inc., the organization that accredits the Province’s policies, procedures and practices to prevent and respond to the sexual abuse of minors, requires that we have a review board. Praesidium Standard 17 (updated August 1, 2012) states: “The institute will utilize a Review Board for the purpose of providing consultation to the Major Superior on the response to all reports and allegations of sexual abuse of minors.”

The members of CMSM have publicly recognized the need for “more accountability and transparency in how we handle allegations of sexual abuse and follow-up outreach to victims.” Allowing an external, objective body to review the province’s efforts demonstrates transparency

and provides leadership with critical “advice on all aspects of responses required in connection with these cases.” Many organizations that serve children and youth have bodies that function similarly.

What is the authority of the provincial minister in relation to the Provincial Review (PRB)?

The provincial minister is a major superior who exercises his pastoral leadership and powers in a spirit of service (c. 618) and in a manner consistent with the Capuchin Constitutions and the laws of the church as well as civil laws. In exercising his ministry he is assisted by his brothers on the Provincial Council, with whom he is expected and sometimes required to consult or from whom he must obtain consent before taking certain actions. In addition to the Provincial Council, the province also provides a number of other consultative bodies to assist the provincial minister in the exercise of his ministry. These include the finance, investment and other provincial commissions as well as the Provincial Review Board.

What are some examples of how the provincial exercises his authority in relation to the PRB?

There are a number of ways in which the provincial minister exercises authority over the Provincial Review Board, including:

- The establishment of the PRB
- The appointment of PRB members
- The appointment of the PRB chair
- The hiring and appointment of the director of the Office of Pastoral Care and Conciliation (OPCC), who serves as coordinator of the PRB.
- Upon the recommendation of the PRB and consultation with the Provincial Council, approval, amendment and promulgation of the provincial policies and procedures on sexual abuse of minors and vulnerable adults. In the Province of St. Joseph, the PRB also performs similar functions with respect to our policies and procedures on sexual misconduct with other adults.
- The approval and amendment of PRB statutes and/or policies.
- The final determination regarding allegations of sexual abuse of minors or vulnerable adults by friars, upon the findings and recommendations of the PRB and consultation with the Provincial Council.

What are the primary functions and responsibilities of the PRB?

- Relying on their experience and professional competence and the evidence

presented, to determine the probable truth of the allegations and provide recommendations to the provincial minister in his assessment of allegations of sexual abuse of minors and vulnerable adults by friars. It is important to note that the role of the PRB is not investigatory; rather, the board evaluates evidence presented by the (duly appointed) investigator and offers advice to the provincial minister.

- To advise the provincial minister in his determination of suitability for ministry of friars accused of sexual abuse of minors and vulnerable adults.
- To review provincial policies on sexual abuse of minors and vulnerable adults.
- To advise provincial minister as requested, on all aspects of these cases, whether retrospectively or prospectively.
- To regularly review the Supervision and Safety Plans (SSP's) of friars who have been removed from public ministry because of established allegations of sexual abuse.

What other PRB membership issues might be given consideration?

Members of the PRB generally receive formal letter of appointment from the provincial minister setting forth the following:

- Duties and expectations
- Term of office
- Other pertinent information such as orientation materials, meeting schedules, list of review board members, contact information for the OPCC director, etc.

The provincial minister meets with PRB members to acknowledge the importance of their service and the significance of their work in the life of the province. Provincial Council members are also encouraged to attend review board meetings in order to familiarize themselves with issues, processes, and cases.

According to provincial policy the number of members serving on the PRB may range from 6 to 13. Workload and manageability are important considerations in determining the size of a review board. While review boards with fewer members may be more manageable, larger size review boards may be organized into smaller groups (committees) for the handling of complaints. In addition to considerations of workload and manageability, the size of the review board is often determined by the pastoral needs of the province and the availability of resources.

The composition of review boards varies across the country. Generally, review boards include representation from professions such as: law enforcement; judiciary; health care providers; mental health practitioners; clergy; religious; pastoral workers; sex abuse prevention counselors; teachers, workers, parents of victims of sexual abuse and victims. All members of the PRB should be attentive of the necessity and advantage of providing the provincial minister with objective judgments regarding the matters he brings before them.

The PRB is free to carry out its responsibilities within the authority granted it in accordance with the Charter, the Essential Norms, and the province's own policies and procedures. The process for offering advice and determining its recommendations should be free from bias, intimidation or the appearance of such.

What is a preliminary investigation?

Church law, the Charter, the Essential Norms, Praesidium standards, and the province's policies and procedures require that the provincial minister conduct a preliminary investigation to take place whenever an allegation of sexual abuse of a minor has been received that is not manifestly false or frivolous. The friar will be placed on administrative leave for the duration of the investigation. The preliminary investigation should not interfere with any civil investigation that is going on at the same time. Consequently, this canonical process may be delayed to ensure that the civil investigation will not be obstructed. A friar has the right to be assisted by civil and legal counsel of his choosing, and these lawyers are paid by the province. The complainant(s) may also be assisted by counsel, but at his/her (their) own expense.

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 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.

Under what circumstances is a friar initially removed from public ministry pending an investigation?

Following the norms of church law, a friar is placed on administrative leave when the province receives an allegation of sexual abuse of a minor or vulnerable adult which, after an initial evaluation of the facts and circumstances, is determined to be not manifestly false or frivolous. This does not mean the allegation is fully provable at this stage but rather that it merits further investigation. The accused friar is still presumed innocent. However, he will typically be placed on administrative leave out of an abundance of caution. This also allows the ministry to continue without the distraction of an investigation and the accused friar to focus on his defense without also having to maintain his ministerial responsibilities. An investigation can take a number of months.

Who conducts the preliminary investigation?

The preliminary investigation may be conducted by the provincial minister or by a person he

appoints to carry out this responsibility. Generally, the provincial minister should not conduct this investigation himself. The province generally uses retired police officers or detectives who have experience investigating sensitive crimes to conduct investigations. Although the province pays for this service, the investigator is expected to exercise his/her independent and professional judgment in conducting the investigation and providing reports to the provincial minister and PRB.

The preliminary investigation focuses on the facts and circumstances of the allegation and the culpability of the accused. The length of the investigation may vary according to the evidence sought, the number, location and availability of witnesses, and other factors. The report of the investigator is shared with the review board. At that time, the investigator may be invited to present the report in person to the PRB and to be available to answer questions, etc.

What happens after the PRB meets and reviews the investigator's report?

The Provincial Review Board will determine the semblance of truth of the allegations and present recommendations to the provincial minister regarding the allegations and the disposition of the case. Respecting the PRB's independence, competence, and expertise, the provincial minister will make a decision in light of those findings and recommendations. The PRB and provincial minister are expected to examine the facts and circumstances discovered during the course of the investigation and base their findings on the preponderance of the evidence submitted. An allegation is considered established if there is objective (though not absolute) certainty that it occurred. It has been the practice in the province for the provincial minister to defer to the judgments of the board, particularly when there is unanimity or strong consensus.

Do the accused or complainant meet with the PRB about their case?

No. This is an investigation and an administrative process, not a trial. There is no examination/cross examination of witnesses. The board will make their recommendations based on the information that has been submitted to the province (via the OPCC director, the PRB coordinator) by the investigator, the complainant(s) and the accused friar.

Do the accused or complainant receive the investigator's report or other evidence presented to the PRB?

No. Again, this is an investigation and an administrative process that is similar though not identical to the practices of the state licensing boards that oversee various professions. Unlike a trial, there is no discovery process and the parties do not have a right to receive or review the investigator's report or information provided to the PRB by parties or witnesses other than their own. This is to prevent arguments over the evidence, efforts by the parties to edit or revise testimony recorded the investigator's report, etc. Whether the accused friar is afforded the right to a canonical trial is a decision of the Congregation for the Doctrine of the Faith in light of the recommendations of the general minister.

What happens when the provincial minister makes his decision?

If there is a finding that the friar has not engaged in sexual abuse or exploitation he may be returned to ministry. Depending on the circumstances, his own needs or desires, and especially the good of the people served, it may or may not be the same ministry to which he was assigned at the time he was placed on administrative leave. The provincial minister will do what he can to restore the friar's good name.

If there is a finding that the friar has engaged in sexual abuse or exploitation, then the friar shall be barred from public ministry as required under the USCCB Charter and Norms and provincial policy. He will be assigned to a suitable friary and subject to a supervision and safety plan based on a professional risk assessment and the recommendations of the PRB.

The PRB may in some instances be unable to establish that sexual misconduct has occurred but may be equally unable to rule it out. In these cases, after consulting with the PRB, the OPCC director, and the Provincial Council, the provincial minister will make a determination of fitness for ministry.

Regardless of the outcome the provincial minister will notify the general minister of the Capuchin Order of the disposition of the case and provide an appropriate report. In cases where it is established that a cleric friar has engaged in the sexual abuse of a minor, the general minister will also notify the Congregation for the Doctrine of the Faith (CDF), who will provide further direction.