

Guidance: Penalty Determination Associated with Discipline-Related Matters

Purpose

The purpose of this document is to provide guidance to the Discipline Committee, Discipline Panel and College Council as the case may be on the determination of penalties associated with discipline-related matters.

Scope

The ultimate purpose of the College of Applied Biology taking disciplinary action against a member is to maintain discipline, professional integrity and professional standards in a way that meets the needs of the profession while upholding and protecting the public interest. Therefore, this guidance applies to penalties associated with:

- Conditional admissions
- Discipline Panel decisions
- College Council Review on the Record decisions.

Penalty Determination

In determining the nature of a penalty associated with a particular discipline related matter, the following considerations should be applied:

1. Given the facts of the particular case, how serious are the infractions?
2. Given the seriousness of the infractions, what is the appropriate range of sanctions or remedies the College might reasonably and fairly apply in order to meet its public interest duties under the *Act*?
3. Is the severity of the penalty commensurate with the relative degree of harm caused to:
 - the profession
 - the public
 - the subject member's client
 - the biological resources within aquatic or terrestrial ecosystems?
4. Does the penalty remove the economic benefit, if any, the subject member may have gained as a result of the alleged activities?
5. Is the penalty sufficient to provide a specific deterrent to the subject member and a general deterrent to other members?
6. Will the penalty assist in the rehabilitation of the member?
7. Does the penalty contribute towards maintaining the public confidence in the integrity of the biology profession?

Factors

To assist in structuring the penalty details to meet the considerations as set out above, the following factors may be taken into consideration:

- the nature and gravity of the proven allegations
- the age and experience of the subject member

- the previous character of the subject member and in particular the presence or absence of any prior complaints or findings
- the number of times the offence was proven to have occurred
- the role of the subject member in acknowledging what had occurred
- the impact of the incident on the offended client/individual and/or ecosystem integrity
- whether the subject member has suffered serious financial impact or other penalties as a result of the allegations having been made
- the presence or absence of any mitigating circumstances
- the need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of applied biology
- the need to maintain the public confidence in the integrity of the biology profession
- the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct
- the range of penalty in other similar cases.

¹ Adapted from *Camgoz v College of Physicians and Surgeons of Sask* (1993), 114 Sask R 161 (QB), and *Jaswal v Newfoundland Medical Board* (1996), 138 Nfld & PEIR 181, 42 Admin L.R. (2d) 233 (Nfld SC)