DISCIPLINE AND COMPLAINTS POLICY

"Organization" refers to: Manitoba Diving Association

Definitions

1. The following terms have these meanings in this Policy:

    a. "Athlete" – An individual who is an Athlete Participant in the Organization
    b. "Case Manager" – An individual appointed by the Organization to administer this Discipline and Complaints Policy. The Case Manager does not need to be a member of, or affiliated with, the Organization
    c. "Complainant" – A Participant or observer who makes a report of an incident, or a suspected incident, of Maltreatment or other behaviour that is a violation of the standards described in the Code of Conduct and Ethics
    d. "Days" – Days including weekends and holidays
    e. "Maltreatment" – As defined in the Code of Conduct and Ethics
    f. "Participants" – Refers to all categories of individual members and/or registrants defined in the By-laws of the Organization who are subject to the policies of the Organization, as well as all people employed by, contracted by, or engaged in activities with the Organization including, but not limited to, employees, contractors, Athletes, coaches, instructors, officials, volunteers, managers, administrators, committee members, parents or guardians, spectators, and Directors and Officers
    g. "Power Imbalance" – As defined in the Code of Conduct and Ethics
    h. "Respondent" – The alleged infracting Party

Purpose

2. Participants are expected to fulfill certain responsibilities and obligations including, but not limited to, complying with the Organization's policies, By-laws, rules and regulations, and *Code of Conduct and Ethics*. Non-compliance may result in sanctions pursuant to this Policy.

Application of this Policy

3. his Policy applies to all Participants.
4. This Policy applies to matters that may arise during the course of Organization's business, activities, and events including, but not limited to, competitions, practices, tryouts, training camps, travel associated with Organization activities, and any meetings.
5. This Policy also applies to Participants' conduct outside of the Organization's business, activities, and events when such conduct adversely affects relationships within the Organization (and its work and sport environment) and is detrimental to the image and reputation of the Organization. Such applicability will be determined by the Organization at its sole discretion.
6. This Policy does not prevent immediate discipline or sanction from being applied as reasonably required. Further discipline may be applied according to this Policy. Any infractions or complaints occurring within competition will be dealt with by the procedures specific to the competition, if applicable. In such situations, disciplinary sanctions will be for the duration of the competition, training, activity, or event only.

7. In addition to being subject to disciplinary action pursuant to this *Discipline and Complaints Policy*, an employee of the Organization who is a Respondent to a complaint may also be subject to consequences in accordance with the employee's Employment Agreement or policies for human resources, if applicable.
8. The Organization may in consultation with and upon receiving agreement from the member club, at its discretion, assume jurisdiction of a complaint that was submitted to a Member Club. In such cases, the Organization's Case Manager will determine whether the complaint process should be re-started or resumed pursuant to the applicable section of this Policy.

Reporting a Complaint

9. Any Participant may report any complaint to the Organization. A complaint must be In Writing and must be filed within fourteen (14) days of the alleged incident or within fourteen (14) days of the end of the sport/league/competitive season, at the discretion of the individual filing the complaint.
10. A Complainant wishing to file a complaint outside of the fourteen (14) day period must provide a written statement giving reasons for an exemption to this limitation. The decision to accept, or not accept, the complaint outside of the fourteen (14) day period will be at the sole discretion of the Organization or the Case Manager, as applicable. If a request is made to review the decision within 30 days, a panel of 3 Organization board members will meet to review the request.
11. At the Organization's discretion, the Organization may act as the Complainant and initiate the complaint process under the terms of this Policy. In such cases, the Organization will identify an individual to represent the Organization.
12. Resignation or lapsing of membership after a complaint is filed does not preclude discipline being pursued under this Policy.

Dispute Resolution Option

13. The complaint may first be referred to the Organization's President (or designate) for review, with the option given to the parties to resolve the dispute via Alternate Dispute Resolution and/or mediation. Should the parties unanimously agree to proceed using Alternate Dispute Resolution and/or mediation, the process set out in the *Dispute Resolution Policy* shall be followed from this point. Should the parties not agree, the process contained here shall be followed.

Case Manager

14. Upon the receipt of a complaint, the Organization will appoint a Case Manager to oversee management and administration of complaints submitted in accordance with this Policy. The Case Manager must not be in a conflict of interest and must have no affiliation or connection with either party.
15. The Case Manager has a responsibility to:
    a. Determine whether the complaint is within the jurisdiction of this Policy
    b. Propose the use of the Organization's Dispute Resolution Policy
    c. Determine if the complaint should be investigated (per Appendix A – Investigation Procedure)
    d. Appoint the Discipline Panel, if necessary
    e. Coordinate all administrative aspects and set timelines

f. Provide administrative assistance and logistical support to the Discipline Panel as required
g. Provide any other service or support that may be necessary to ensure a fair and timely proceeding

Procedures

16. If the Case Manager determines the complaint is:
    a. Outside the jurisdiction of this Policy, the complaint will be dismissed immediately
    b. Not within the jurisdiction of this Policy, the Case Manager will notify the Parties that the complaint is accepted and of the applicable next steps
17. The Case Manager's decision to accept or dismiss the complaint may not be appealed.
18. The Case Manager will establish and adhere to timelines that ensure procedural fairness and that the matter is heard in a timely fashion.
19. After notifying the Parties that the complaint has been accepted, the Case Manager will appoint a Discipline Panel, which shall consist of a single Adjudicator, to hear the complaint. At the discretion of the Case Manager, a Discipline Panel of three persons, may be appointed to hear the complaint. In this event, the Case Manager will appoint one of the Discipline Panel's members to serve as the Chair. The members of the Discipline Panel must be unbiased and not in a conflict of interest.
20. The Case Manager, in cooperation with the Discipline Panel, will then decide the format under which the complaint will be heard. This decision may not be appealed. The format of the hearing, which may involve direct communication with the Parties, an oral in-person hearing, an oral hearing by telephone or other communication medium, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods. The hearing will be governed by the procedures that the Case Manager and the Discipline Panel deem appropriate in the circumstances, provided that:
    a. The Parties will be given appropriate notice of the day, time, and place of the hearing, in the case of an oral in-person hearing or an oral hearing by telephone or other communication medium
    b. Copies of any written documents which the parties wish to have the Discipline Panel consider will be provided to all Parties, through the Case Manager, in advance of the hearing
    c. The Parties may be accompanied by a representative, advisor, or legal counsel at their own expense
    d. The Discipline Panel may request that any other individual participate and give evidence at the hearing
    e. The Discipline Panel may allow as evidence at the hearing any oral evidence and document or thing relevant to the subject matter of the complaint, but may exclude such evidence that is unduly repetitious, and shall place such weight on the evidence as it deems appropriate
    f. The decision will be by a majority vote of the Discipline Panel
21. If the Respondent acknowledges the facts of the incident, the Respondent may waive the hearing, in which case the Discipline Panel will determine the appropriate sanction. The Discipline Panel may still hold a hearing for the purpose of determining an appropriate sanction.
22. The hearing will proceed in any event, even if a Party chooses not to participate in the hearing.

23. If a decision may affect another party to the extent that the other party would have recourse to a complaint or an appeal in its own right, that party will become a Party to the current complaint and will be bound by the decision.
24. In fulfilling its duties, the Discipline Panel may obtain independent advice.

Decision

25. After hearing and/or reviewing the matter, the Discipline Panel will determine whether an infraction has occurred and, if so, the sanctions to be imposed. Within fourteen thirty (14 30) days of the hearing's conclusion, the Discipline Panel's written decision, with reasons, will be distributed to all Parties, the Case Manager, and the Organization. In extraordinary circumstances, the Discipline Panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued before the end of the fourteen thirty (14 30) day period. The decision will be considered a matter of public record unless decided otherwise by the Discipline Panel.

Sanctions

26. Prior to determining sanctions, the Discipline Panel will consider factors relevant to determining appropriate sanctions which include:
    a. The nature and duration of the Respondent's relationship with the Complainant, including whether there is a Power Imbalance;
    b. The Respondent's prior history and any pattern of inappropriate behaviour or Maltreatment;
    c. The ages of the individuals involved;
    d. Whether the Respondent poses an ongoing and/or potential threat to the safety of others;
    e. The Respondent's voluntary admission of the offense(s), acceptance of responsibility for the Maltreatment, and/or cooperation in the process of the Organization;
    f. Real or perceived impact of the incident on the Complainant, sport organization or the sporting community;
    g. Circumstances specific to the Respondent being sanctioned (e.g. lack of appropriate knowledge or training regarding the requirements in the Code of Conduct and Ethics; addiction; disability; illness);
    h. Whether, given the facts and circumstances that have been established, continued participation in the sport community is appropriate;
    i. A Respondent who is in a position of trust, intimate contact or high-impact decision-making may face more serious sanctions; and/or
    j. Other mitigating and aggravating circumstances
27. Any sanction imposed must be proportionate and reasonable. However, progressive discipline is not required and a single incident of Maltreatment or other prohibited behaviour may justify elevated or combined sanctions.
28. The Discipline Panel may apply the following disciplinary sanctions, singularly or in combination:
    a. Verbal or Written Warning - A verbal reprimand or an official, written notice and formal admonition that a Participant has violated the Code of Conduct and Ethics and that more severe sanctions will result should the Participant be involved in other violations

b. Education - The requirement that a Participant undertake specified educational or similar remedial measures to address the violation(s) of the Code of Conduct and Ethics
c. Probation - Should any further violations of the Code of Conduct and Ethics occur during the probationary period, will result in additional disciplinary measures, likely including a period of suspension or permanent ineligibility. This sanction can also include loss of privileges or other conditions, restrictions, or requirements for a specified period of time

d. Suspension - Suspension, either for a set time or until further notice, from participation, in any capacity, in any program, practice, activity, event, or competition sponsored by, organized by, or under the auspices of the Organization. A suspended Participant is eligible to return to participation, but reinstatement may be subject to certain restrictions or contingent upon the Participant satisfying specific conditions noted at the time of suspension
e. Eligibility Restrictions - Restrictions or prohibitions from some types of participation but allowing participation in other capacities under strict conditions
f. Permanent Ineligibility - Permanent ineligibility to participate in any capacity, in any program, activity, event, or competition sponsored by, organized by, or under the auspices of the Organization
g. Other Discretionary Sanctions - Other sanctions may be imposed, including, but not limited to, other loss of privileges, no contact directives, a fine or a monetary payment to compensate for direct losses, or other restrictions or conditions as deemed necessary or appropriate

29. The Discipline Panel may apply the following presumptive sanctions which are presumed to be fair and appropriate for the listed Maltreatment:
    a. Sexual Maltreatment involving a Complainant who is a minor shall carry a presumptive sanction of permanent ineligibility;
    b. Sexual Maltreatment, Physical Maltreatment with contact, and Maltreatment related to interference or manipulation of process shall carry a presumptive sanction of either a period of suspension or eligibility restrictions.
    c. While a Respondent has pending charges or dispositions in violation of the criminal law, the presumptive sanction shall be a period of suspension
30. A Participant's conviction for a *Criminal Code* offense shall carry a presumptive sanction of permanent ineligibility from participating with the Organization. *Criminal Code* offences may include, but are not limited to:
    a. Any child pornography offences
    b. Any sexual offences
    c. Any offence of physical violence
    d. Any offence of assault
    e. Any offence involving trafficking of illegal drugs
31. Unless the Discipline Panel decides otherwise, any disciplinary sanctions will begin immediately, notwithstanding an appeal. Failure to comply with a sanction as determined by the Discipline Panel will result in an automatic suspension until such time as compliance occurs.
32. Infractions that result in discipline will be recorded and records will be maintained by the Organization.

Suspension Pending a Hearing

33. The Organization may determine that an alleged incident is of such seriousness as to warrant suspension of a Participant pending completion of a criminal process, the hearing, or a decision of the Discipline Panel.

Confidentiality

34. The discipline and complaints process is confidential and involves only the Parties, the Case Manager, the Discipline Panel, and any independent advisors to the Discipline Panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information relating to the discipline or complaint to any person not involved in the proceedings.

Timelines

35. If the circumstances of the complaint are such that adhering to the timelines outlined by this Policy will not allow a timely resolution to the complaint, the Discipline Panel may direct that these timelines be revised.

Records and Distribution of Decisions

36. Other individuals or organizations, including but not limited to, national sport organizations, provincial sport organizations, sport clubs, etc., may be advised of any decisions rendered in accordance with this Policy.

Appeals Procedure

37. The decision of the Discipline Panel may be appealed in accordance with the Organization's *Appeal Policy*.

Appendix A – Investigation Procedure

Determination

1. When a complaint is submitted pursuant to the *Discipline and Complaints Policy*, the Case Manager will determine if the incident should be investigated.

Investigation

2. The Case Manager will appoint an Investigator. The Investigator must be an independent third-party skilled in investigating. The Investigator must not be in a conflict of interest situation and should have no connection to either party.

3. Federal and/or Provincial/Territorial legislation related to Workplace Harassment may apply to the investigation if Harassment was directed toward a worker in a Workplace. The Investigator should review workplace safety legislation, the organization's policies for human resources, and/or consult independent experts to determine whether legislation applies to the complaint.

4. The investigation may take any form as decided by the Investigator, guided by any applicable Federal and/or Provincial legislation. The investigation may include:
   a. Interviews with the Complainant
   b. Witness interviews
   c. Statement of facts (Complainant's perspective) prepared by Investigator, acknowledged by the Complainant and provided to the Respondent
   d. Interviews with the Respondent
   e. Statement of facts (Respondent's perspective) prepared by Investigator, acknowledged by the Respondent and provided to the Complainant

Investigator's Report

5. Upon completion of their investigation, the Investigator shall prepare a report that should include a summary of evidence from the parties (including both statements of facts, if applicable) and recommendations from the Investigator of whether, on a balance of probabilities, a breach of the *Code of Conduct and Ethics* occurred.
6. The Investigator must be aware that sport-specific differences exist with respect to such aspects as acceptable levels of touch, physical contact, and aggression during training or competition and will consider such differences during the investigative process.
7. The Investigator's Report will be provided to the Case Manager who will disclose it, at their discretion, to the Organization and the relevant club (if applicable).
8. Should the Investigator find that there are possible instances of offence under the *Criminal Code*, particularly related to Criminal Harassment (or Stalking), Uttering Threats, Assault, Sexual Interference, or Sexual Exploitation, the Investigator shall advise the Complainant and the Organization to refer the matter to police.
9. The Investigator must also inform the Organization of any findings of criminal activity. The Organization may decide whether to report such findings to police but is required to inform police if there are findings related to the trafficking of prohibited substances or methods (as indicated in the version of the World Anti-Doping Agency's Prohibited List currently in force), any sexual crime involving Minors, fraud against the Organization, or other offences where the lack of reporting would bring the Organization into disrepute.

Reprisal and Retaliation

10. A Participant who submits a complaint to the Organization or who gives evidence in an investigation may not be subject to reprisal or retaliation. Any such conduct may constitute Maltreatment and will be subject to disciplinary proceedings pursuant to the *Discipline and Complaints Policy*.

False Allegations

11. A Participant who submits allegations that the Investigator determines to be malicious, false, or for the purpose of retribution, retaliation or vengeance (or that otherwise fall within the definition of Maltreatment) may be subject to a complaint under the terms of the *Discipline and Complaints Policy* and may be required to pay for the costs of any investigation that comes to this conclusion. The Organization or the Participant against whom the allegations were submitted, may act as the Complainant.

Confidentiality

12. The Investigator will make reasonable efforts to preserve the anonymity of the complainant, respondent, and any other party. However, the Organization recognizes that maintaining full anonymity during an investigation may not be feasible.