

Sanctioning **Reference Points** **Instruction Manual**

Board of Long-Term Care Administrators

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Guidance Document 95-3

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Dear Interested Parties:

In the spring of 2001, the Virginia Department of Health Professions approved a workplan to study sanctioning in disciplinary cases for Virginia's 13 health regulatory boards. The purpose of the study was to "...provide an empirical, systematic analysis of board sanctions for offenses and, based on this analysis, to derive reference points for board members..." The purposes and goals of the study were consistent with state statutes which specify that the Board of Health Professions (BHP) periodically review the investigatory and disciplinary processes to ensure the protection of the public and the fair and equitable treatment of health professionals.

After interviewing the Board of Long-Term Care Administrators members and staff, a committee of board members, staff, and research consultants assembled a research agenda involving the most exhaustive statistical study of sanctioned Long-Term Care Administrators ever conducted in the United States. The analysis included collecting over 100 factors on all Board of Long-Term Care Administrators sanctioned cases in Virginia between 1999 and 2008. These factors measured case seriousness, respondent characteristics, and prior disciplinary history. After identifying the factors that were consistently associated with sanctioning, it was decided that the results provided a solid foundation for the creation of sanctioning reference points (SRP). Using both the data and collective input from the Board of Long-Term Care Administrators and staff, analysts developed a usable sanctioning worksheet as a way to implement the reference system.

More recently, BHP recommended that the SRPs be evaluated to determine if the program had met the objectives set forth in 2001. After conducting board member and staff interviews and an updated analysis to assess worksheet factors, scores, and sanctioning recommendations, the Board of Long-Term Care Administrators made a number of revisions to its Sanctioning Reference Points worksheet. This manual reflects those adopted revisions and provides the Board with a new SRP worksheet representing the most current sanctioning data available.

Sincerely yours,

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Director
Virginia Department of Health Professions

Cordially,

Elizabeth A. Carter, Ph.D.
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GENERAL INFORMATION

Overview

The Virginia Board of Health Professions has spent the last 16 years studying sanctioning in disciplinary cases. The study is examining all 13 health regulatory boards. Focusing on the Board of Long-Term Care Administrators (LTC), this manual contains background on the project, the goals and purposes of the Sanctioning Reference Points (SRP) system, and a revised worksheet with case type, offense and respondent factors that are scored in order to help Board members determine how similarly situated respondents have been treated in the past.

This SRP system is based on a specific sample of cases, and thus only applies to those persons sanctioned by the Virginia Board of Long-Term Care Administrators. Moreover, the worksheet and sanctioning thresholds have not been tested or validated on any other groups of persons. Therefore, they should not be used to sanction respondents coming before other health regulatory boards, other states, or other disciplinary bodies.

The current SRP system is comprised of a single worksheet which scores a number of offense and respondent factors identified using quantitative and qualitative analyses and built upon the Department's effort to maintain consistency in sanctioning over time. The original LTC SRP Manual was adopted in March 2010, and has been applied to cases closed in violation for the past 8 years.

These instructions and the use of the SRP system fall within current DHP and LTC policies and procedures. Furthermore, all sanctioning recommendations are those currently available to and used by the Board and are specified within existing Virginia statutes. If an SRP worksheet recommendation is more or less severe than a Virginia statute or DHP regulation, the existing laws or policy supersedes the worksheet recommendation.

Background

In 2010, the Board of Health Professions (BHP) recommended that the SRPs be evaluated to determine if the program had met the objectives set forth in 2001. The purpose of this study was to evaluate the SRP system against its own unique set of objectives. The SRPs were designed to aid board members, staff and the public in a variety of ways. This Effectiveness Study sought to examine whether or not the SRPs were successful, and if not, which areas required improvement. The study resulted in changes to the manual for the Board of Long-Term Care Administrators. This manual is the result of those adopted changes.

Goals

The Board of Health Professions and the Board of Long-Term Care Administrators cite the following purposes and goals for establishing Sanctioning Reference Points:

- Making sanctioning decisions more predictable
- Providing an education tool for new Board members
- Adding an empirical element to a process/system that is inherently subjective
- Providing a resource for the Board and those involved in proceedings.
- “Neutralizing” sanctioning inconsistencies
- Validating Board member or staff recall of past cases
- Constraining the influence of undesirable factors— e.g., Board member ID, overall Board makeup, race or ethnic origin, etc.
- Helping predict future caseloads and need for probation services and terms

Methodology

The fundamental question when developing a sanctioning reference system is deciding whether the supporting analysis should be grounded in historical data (a descriptive approach) or whether it should be developed normatively (a prescriptive approach). A normative approach reflects what policymakers feel sanction recommendations should be, as opposed to what they have been. SRPs can also be developed using historical data analysis with normative adjustments. This approach combines information from past practice with policy adjustments, in order to ensure and maintain a system that better reflects current sanctioning practice. The SRP manual adopted in 2010 was based on a descriptive approach with a limited number of normative adjustments. This study was conducted in a similar manner; however, it draws on data covering a more recent historical time period (January 2013-May 2018) and relies on the full LTC Board's input to inform SRP system modifications.

Qualitative Analysis

Researchers conducted in-depth personal interviews with board members and staff. Researchers also had informal conversations with representatives from the Attorney General's office and the Executive Director of BHP. The interview results were used to build consensus regarding the purpose and utility of SRPs and to further guide this study's analysis. Additionally, interviews helped ensure the factors that board members consider when sanctioning continued to be included during the quantitative phase of the study. Previous scoring factors were examined for their continued relevance and sanctioning influence.

Quantitative Analysis

In 2010, researchers collected detailed information on all LTC disciplinary cases ending in a violation between 1999 and 2008; ten years of sanctioning data. Over 100 different factors were collected on each case in order to describe the case attributes board members identified as potentially impacting sanction decisions. Researchers used data available through the DHP's case management system combined with primary data collected from hard copy files. The hard copy files contained investigative reports, board notices, board orders, and all other documentation that is made available to board members when deciding a case sanction.

A comprehensive database was created to analyze the factors that were identified as potentially influencing sanctioning decisions. Using statistical analysis to construct a "historical portrait" of past sanctioning decisions, the relevant factors along with their relative weights were derived. Those factors and weights were formulated into a sanctioning worksheet, which became the SRPs. The current worksheet represents a revised analysis to update the worksheet factors and scores in order to represent the most current practice.

Offense factors such as financial or material gain were examined along with such factors as prior board or criminal history and past substance abuse. Some factors were deemed inappropriate for use in a structured sanctioning reference system. Although many factors, both "legal" and "extra-legal," can help explain sanction variation, only those "legal" factors the Boards felt should consistently play a role in a sanction decision were included on the final worksheet. By using this method, the hope is to achieve more neutrality in sanctioning by making sure the same set of "legal" factors are considered in every case.

Wide Sanctioning Ranges

The SRPs consider and weigh the circumstances of an offense and the relevant characteristics of the respondent, providing the Boards with a sanctioning model that encompasses roughly 83% of historical practice. This means that approximately 17% of past cases receive sanctions either higher or lower than what the reference points indicate, recognizing that aggravating and mitigating factors play a legitimate role in sanctioning. The wide sanctioning ranges allow the Board to individualize sanctions within the broader SRP recommended range to fit the circumstances of each case.

Voluntary Nature

The SRP system should be viewed as a decision-aid to be used by the Board of Long-Term Care Administrators. Sanctioning within the SRP ranges is totally voluntary, meaning that the system is viewed strictly as a tool and the Board may choose any sanction outside the recommendation. The Board maintains complete discretion in determining the sanction handed down. However, a structured sanctioning system is of little value if the Board is not provided with the appropriate coversheet and worksheet in every case eligible for scoring. A coversheet and worksheet should be completed in cases resolved by Informal Conferences and Pre-Hearing Consent Orders. The coversheet and worksheet will be referenced by Board members during Closed Session after a violation has been determined.

Worksheets Not Used in Certain Cases

The SRPs will not be applied in any of the following circumstances:

Formal Hearings — SRPs will not be used in cases that reach a Formal Hearing level.

Mandatory Suspensions – Virginia law requires that under certain circumstances (conviction of a felony, declaration of legal incompetence or incapacitation, license revocation in another jurisdiction) the licensee must be suspended. The sanction is defined by law and is therefore excluded from the SRP system.

Compliance/Reinstatements – The SRPs should be applied to new cases only.

Action by another Board – When a case which has already been adjudicated by a Board from another state appears before the Virginia Board of Long-Term Care Administrators, the Board often attempts to mirror the sanction handed down by the other Board. The

Virginia Board of Long-Term Care Administrators usually requires that all conditions set by the other Board are completed or complied with in Virginia. The SRPs do not apply as the case has already been heard and adjudicated by another Board.

Confidential Consent Agreements (CCAs) – SRPs will not be used in cases settled by CCA.

Certain Pre-Defined Sanctions – The Sanctioning Reference Points system does not apply to certain cases that have already been assigned pre-determined actions as set by the health regulatory board. The Board of Long-Term Care Administrators has adopted Guidance Documents in the areas of Practicing on an Expired License (Guidance document 95-11) and Continuing Education Deficiencies (Guidance document 95-2) as follows:

Practicing on an Expired License, Guidance document 95-11	Possible Action
First offense; 90 days or less	Confidential Consent Agreement
First offense; 91 days to one year	Consent Order; Monetary Penalty of \$500
First offense; one to two years	Consent Order; Monetary Penalty of \$1000

Continuing Education Deficiencies, Guidance document 95-2	Possible Action
If the licensee: a) was truthful in responding to the CE attestation on renewal; b) has not previously been found in violation of CE requirements; and c) is missing 10 hours or less of the 20 hours required for renewal.	Issue a CCA that may require the licensee to submit proof of completion of the missing contact hours(s) within 90 days of the effective date of the CCA. Such contact hours cannot be used toward fulfillment of the next annual CE requirement for renewal.
If the licensee: a) was not truthful in responding to the CE attestation on renewal b) has previously been found in violation of CE requirements; or c) is missing more than 10 hours of the 20 hours required for renewal.	Issue a pre-hearing consent order (“PHCO”) The following sanctions may apply: (a) Monetary penalty of \$100 per missing contact hour, up to a maximum of \$1,000. (b) Monetary penalty of \$300 for a fraudulent renewal attestation. The PHCO may require submission of proof of completion of the missing contact hours within 90 days of entry of the order. Such contact hours cannot be used toward fulfillment of the next annual CE requirement for renewal.
If the licensee: 1. Fails to respond to the audit or does not sign the CCA or PHCO that is offered; or 2. Has previously been disciplined pursuant to a Board Order for not meeting the CE requirements.	The case will be referred to an informal fact-finding conference (SRP worksheet is used in these cases).

Case Selection When Multiple Cases Exist

When multiple cases have been combined into one “event” (one order) for disposition by the Board, only one coversheet and worksheet should be completed and it should encompass the entire event. If a case (or set of cases) has more than one offense type, one case type is selected for scoring according to the offense group which appears highest on the following table. For example, a respondent found in violation for Practicing Beyond the Scope and Impairment Due to Alcohol would receive 50 points, since Inability to Safely Practice is above Unlicensed Activity in the Case Type Group column and receives more points. If an offense type is not listed, the most analogous offense type is used.

Sanctioning Reference Points Case Type Table

Case Type Group	Included Case Categories	Applicable Points
Inability to Safely Practice	<ul style="list-style-type: none"> • Impairment due to use of alcohol, illegal substances, or prescription drugs • Incapacitation due to mental, physical or medical conditions 	50
Fraud - Non-Patient Care	<ul style="list-style-type: none"> • Improper patient billing, mishandling of facility funds, and falsification of licensing/renewal documents 	40
Abuse/Neglect	<ul style="list-style-type: none"> • Any sexual assault, mistreatment of a patient, inappropriate termination of provider/patient relationship, leaving a patient unattended in a health-care environment, failure to do what a reasonable person would do in a similar situation • Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues. 	30
Unlicensed Activity	<ul style="list-style-type: none"> • Practicing a profession or occupation without holding a valid license as required by statute or regulation to include: practicing on a revoked, suspended, lapsed, non-existent or expired license, as well as aiding and abetting the practice of unlicensed activity 	20
Business Practice Issues	<ul style="list-style-type: none"> • Records, inspections, audits, required report not filed, or disclosure 	10

Completing the Coversheet and Worksheet

Ultimately, it is the responsibility of the Board to complete the SRP coversheet and worksheet in all applicable cases. The information relied upon to complete a coversheet and worksheet is derived from the case packet provided to the board and the respondent. It is also possible that information discovered at the time of the informal conference may impact worksheet scoring. The SRP coversheet and worksheet, once completed, are confidential under the Code of Virginia. Additionally, the manual, including blank coversheets and worksheets, can be found on the Department of Health Professions web site: www.dhp.virginia.gov (paper copy also available on request).

Scoring Factor Instructions

To ensure accurate scoring, instructions are provided for scoring each factor on the SRP worksheet. When scoring a worksheet, the numeric values assigned to a

factor on the worksheet *cannot be adjusted*. The scores can only be applied as ‘yes or no’- with all or none of the points applied. In instances where a scoring factor is difficult to interpret, the Board members have final say in how a case is scored.

Using Sanctioning Thresholds to Determine a Specific Sanction

The Physical Therapy worksheet has four scoring thresholds with increasing point values and respectively increasing sanction severities. The table here shows the historically used sanctions for each threshold. The column to the left, “Worksheet Score,” contains the threshold scores located at the bottom of the worksheet. The column to the right, “Available Sanctions,” shows the specific sanction types that each threshold level covers. After considering the sanction recommendation, the Board may fashion a more detailed sanction(s) based on individual case circumstances.

Sanctioning Reference Points Threshold Table

Worksheet Score	Available Sanctions
0 - 49	<ul style="list-style-type: none"> • No Sanction • Reprimand • Monetary Penalty
50 - 100	<ul style="list-style-type: none"> • Continuing Education (CE) • Corrective Action includes the following: <ul style="list-style-type: none"> • Administrator in training with preceptor • Board approved management consultant • Inform current and future employers of license status • Inform the board of any changes in employment • May only be an assistant administrator • May not be administrator of record • Probation • Quarterly self reports • Shall complete an Administrator in Training program • Shall not personally provide any staff training required by DSS • Shall read regulations regarding ALFAs and DSS standards • Stayed Suspension • Submit copies of survey/inspections to board • Submit copy of order to employer • Submit copy of order to any licensing board in any state in which a license is held • Submit verification of employment • UAI Training, ISP Training, DSS ALFA Training CE • Place license on inactive status
101 or more	<ul style="list-style-type: none"> • Revocation • Suspension • Surrender • Refer to Formal Hearing

**Sanctioning Reference Points
Coversheet, Instructions, & Worksheet**



Case Number(s):

--	--	--	--	--	--	--	--

--	--	--	--	--	--	--	--

--	--	--	--	--	--	--	--

Respondent Name: _____
 First Last

License Number(s): _____

Case Type: ___ Inability to Safely Practice
 ___ Fraud - Non-Patient Care
 ___ Abuse/Neglect
 ___ Unlicensed Activity
 ___ Business Practice Issues

Sanctioning Recommendation: ___ Reprimand/Monetary Penalty (0 - 49)
 ___ Corrective Action/CE (50-100)
 ___ Recommend Formal or Accept Surrender (101 or more)

Imposed Sanction(s): ___ No Sanction
 ___ Reprimand
 ___ Monetary Penalty: \$_____ enter amount
 ___ Probation: _____ duration in months
 ___ Stayed Suspension: _____ duration in months
 ___ Refer to Formal
 ___ Accept Surrender
 ___ Revocation
 ___ Suspension
 ___ Other sanction: _____
 ___ Terms: _____

Was imposed sanction a departure from the recommendation? ___No ___Yes, give reason below

Reasons for Departure from Sanction Grid Result (if applicable): _____

Worksheet Preparer's Name: _____

Date Worksheet Completed: _____



Step 1: Case Type – Select the case type from the list and score accordingly. If a case has multiple aspects, enter the point value for the one most serious case type that is highest on the list. (score only one)

Inability to Safely Practice – 50 Points

- Impairment due to use of alcohol, illegal substances, or prescription drugs
- Incapacitation due to mental, physical or medical conditions

Fraud - Non-Patient Care – 40 Points

- Improper patient billing, mishandling of facility funds, and falsification of licensing/renewal documents

Abuse/Neglect– 30 Points

- Any sexual assault, mistreatment of a patient, inappropriate termination of provider/patient relationship, leaving a patient unattended in a health-care environment, failure to do what a reasonable person would do in a similar situation
- Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues

Unlicensed Activity – 20 Points

- Practicing a profession or occupation without holding a valid license as required by statute or regulation to include: practicing on a revoked, suspended, lapsed, non-existent or expired license, as well as aiding and abetting the practice of unlicensed activity

Business Practice Issues – 10 Points

- Records, inspections, audits, required report not filed, or disclosure

Step 2: Offense and Respondent Factors – Score all factors relative to the totality of the case presented. (score all that apply)

Enter “50” if there was financial or material gain by the respondent. This factor includes but is not limited to stealing of money or property (from a patient, coworker or employer), medication mismanagement for personal use/gain, falsifying time sheets, maintaining residents for monetary purposes when they would be better served elsewhere.

Enter “40” if there was a concurrent civil or criminal action related to this case. Criminal action can include arrests that have not been resolved in court or by plea at the time of the hearing, active investigations and convictions (including guilty with first time offender status). Criminal action scoring excludes dismissals, exonerations and not guilty verdicts. If the Commonwealth’s Attorney declines to prosecute for any reason, this factor is not scored.

Enter “30” if there were violations at multiple locations. This factor is scored if the respondent has committed violations at more than one physical location and those violations are being considered on the same day.

Enter “30” if the respondent has had any past difficulties in the following areas: drugs, alcohol, mental or physical capabilities. Examples include: prior convictions for DUI/DWI, inpatient/outpatient treatment, and bona fide mental health care for a condition affecting his/her abilities to function safely or properly.

Enter “25” if the respondent was impaired at the time of the offense due to substance abuse (alcohol or drugs) or mental/physical incapacitation.

Enter “25” if the respondent has any prior violations. Prior violations may have been decided by any board under the Virginia Department of Health Professions or another state Board. DOH/DSS Survey/Inspection violations are not scored here.

Enter “20” if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter “10” if the offense involves three or more patients. Patient involvement does not require direct contact with a patient. Examples of situations that would be eligible for scoring include but are not limited to: untreated/poorly treated, insect infestation, no heat/hot water for a period of time, improper/inadequate medication supply or improper/inadequate food supply.

Enter “10” if a patient suffered any mental or physical injury. Injury can include deprivation, neglect, or when a minimum of first aid was administered. Mental injury is indicated when the resident, relative, or subsequent provider reports symptoms of depression, PTSD, or difficulty functioning due to the incident. This factor can be scored regardless of a respondent’s lack of intent to harm (i.e. neglect or accidental injury).

Enter “10” if there are more than 10 founded survey/inspection violations.

Enter “10” if the case involved a Department of Health or Department of Social Services survey/inspection violation.

Enter "10" if the respondent received a sanction from his/her employer in response to the current violation. A sanction from an employer may include: suspension, review, or termination.

Enter "10" if the respondent failed to take corrective action prior to the time at which the SRP worksheet is being considered.

Step 3: Add Case Type and Offense and Respondent Factor Scores for a Total Worksheet Score

Step 4: Determining the Sanction Recommendation

The Total Worksheet Score corresponds to the sanctioning recommendations located at the bottom of the worksheet. To determine the appropriate recommended sanction, find the range on the left that contains the Total Worksheet Score. These points correspond to the recommended sanction in the right column. For instance, a Total Worksheet Score of 40 is recommended for "Reprimand/Monetary Penalty."

Step 5: Coversheet

Complete the coversheet including the SRP sanction result, the imposed sanction, and the reasons for departure if applicable.



Case Type (score only one)	Points	Score
Inability to Safely Practice	50	_____
Fraud - Non-Patient Care	40	_____
Abuse/Neglect	30	_____
Unlicensed Activity	20	_____
Business Practice Issues	10	_____

Offense and Respondent Factors (score all that apply)

Financial/Material gain by the respondent	50	_____
Concurrent criminal or civil action	40	_____
Violations at multiple locations	30	_____
Past difficulties (drugs, alcohol, mental, physical)	30	_____
Respondent impaired during the incident (drugs, alcohol, mental, physical)	25	_____
Any prior violation	25	_____
Act of commission	20	_____
Three or more patients involved	10	_____
Any patient injury	10	_____
More than 10 survey/inspection violations cited	10	_____
Case involved a Dept. of Health/DSS survey/inspection	10	_____
Sanctioned by employer due to incident	10	_____
Respondent failed to take corrective action	10	_____

Total Respondent Score

<u>Score</u>	<u>Sanctioning Recommendations</u>
0 - 49	Reprimand/Monetary Penalty
50 -100	Corrective Action/CE
101 or more	Recommend Formal or Accept Surrender

Respondent Name: _____

Date: _____