

SANCTIONING REFERENCE POINTS

INSTRUCTION MANUAL

Board of Physical Therapy

Prepared for

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COMMONWEALTH OF VIRGINIA

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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 this study are consistent with state statutes which specify that the Board of Health Professions periodically review the investigatory and disciplinary processes to ensure the protection of the public and the fair and equitable treatment of health professionals.

Each health regulatory board hears different types of cases, and as a result, considers different factors when determining an appropriate sanction. After interviewing selected Board of Physical Therapy members and staff, a committee of Board members, staff, and research consultants assembled a research agenda involving one of the most exhaustive statistical studies of sanctioned Physical Therapists in the United States. The analysis included collecting over 50 factors on all Board of Physical Therapy sanctioned cases in Virginia over a 10-year period. 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 sanction reference points. Using both the data and collective input from the Board of Physical Therapy and staff, analysts spent several months developing a usable sanction worksheet as a way to implement the reference system.

One of the most important features of this system is its voluntary nature; that is, the Board is encouraged to depart from the reference point recommendation when aggravating or mitigating circumstances exist. The Sanctioning Reference Points system attempts to model the *typical* Board of Physical Therapy case. Some respondents will be handed down sanctions either above or below the SRP recommended sanction. This flexibility accommodates cases that are particularly egregious or less serious in nature.

Equally important to recommending a sanction, the system allows each respondent to be evaluated against a common set of factors—making sanctioning more predictable, providing an educational tool for new Board members, and neutralizing the possible influence of "inappropriate" factors (e.g., race, sex, attorney presence, identity of Board members). As a result, the following reference instrument should greatly benefit Board members, health professionals and the general public.

Sincerely yours,

Handwritten signature of Sandra Whitley Ryals in black ink.

Sandra Whitley Ryals
Director

Cordially,

Handwritten signature of Elizabeth A. Carter in black ink.

Elizabeth A. Carter, Ph.D.
Executive Director
Virginia Board of Health Professions

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General Instructions

Overview The Virginia Board of Health Professions has spent the last 7 years studying sanctioning in disciplinary cases. The study is examining all 13 health regulatory boards, with the greatest focus most recently on the Board of Physical Therapy. The Board of Physical Therapy is now in a position to implement the results of the research by using a set of voluntary *Sanctioning Reference Points*. This manual contains some background on the project, the goals and purposes of the system, and the offense-based sanction worksheet that will be used to help Board members determine how a similarly situated respondent has been treated in the past. This sanctioning system is based on a specific sample of cases, and thus only applies to those persons sanctioned by the Virginia Board of Physical Therapy. Moreover, the worksheet has not been tested or validated on any other groups of persons. Therefore, they should not be used at this point to sanction respondents coming before other health regulatory boards, other states, or other disciplinary bodies.

The Sanctioning Reference system is comprised of a single worksheet which scores case type, offense and respondent factors identified using statistical analysis. These factors have been isolated and tested in order to determine their influence on sanctioning outcomes. Sanctioning thresholds found on the worksheet recommend a range of sanctions from which the Board may select in a particular case.

In addition to this instruction booklet, separate coversheets and worksheets are available to record Board specific information, the recommended sanction, the actual sanction and any reasons for departure (if applicable). The completed coversheets and worksheets will be evaluated as part of an on-going effort to monitor and refine the SRPs. These instructions and the use of the SRP system fall within current Department of Health Professions and Board of Physical Therapy policies and procedures. Furthermore, all sanctioning recommendations are those currently available to and used by the Board and are specified within existing Virginia statutes.

Background

In April of 2001, the Virginia Board of Health Professions (BHP) approved a work plan to conduct an analysis of health regulatory board sanctioning and to consider the appropriateness of developing historically-based SRPs for health regulatory boards, including the Board of Physical Therapy. The Board of Health Professions and project staff recognize the complexity and difficulty in sanction decision-making and have indicated that for any sanction reference system to be successful, it must be *“developed with complete Board oversight, be value-neutral, be grounded in sound data analysis, and be totally voluntary”*—that is, the system is viewed strictly as a Board decision tool.

Goals

The Board of Health Professions and the Board of Physical Therapy 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 to follow. This approach combines information from past practice with policy adjustments, in order to achieve some desired outcome. The Board of Physical Therapy chose a descriptive approach with normative adjustments.

Methodology, continued**■ Qualitative Analysis**

Researchers conducted in-depth personal interviews with past and present Board members, Board staff, and representatives from the Attorney General's office. The interview results were used to build consensus regarding the purpose and utility of SRPs and to further frame the analysis. Additionally, interviews helped ensure the factors considered when sanctioning were included during the quantitative phase of the study. A literature review of sanctioning practice across the United States was also conducted.

■ Quantitative Analysis

Researchers analyzed detailed information on Physical Therapy disciplinary cases ending in a violation between 1999 and 2009; approximately 21 sanctioning "events." Over 50 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 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 offense and respondent factors which were identified as potentially influencing sanctioning decisions. Using statistical analysis to construct a "historical portrait" of past sanctioning decisions, the significant factors along with their relative weights were derived. These factors and weights were formulated into a sanctioning worksheet with four thresholds, which are the basis of the SRPs.

Offense factors such as financial gain and case severity (priority level) were analyzed as well as prior history factors such as substance abuse, and previous Board orders. Some factors were deemed inappropriate for use in a structured sanctioning reference system. For example, respondent gender was considered an "extra-legal" factor, and was explicitly excluded from the SRPs. Although many factors, both "legal" and "extra-legal" can help explain sanction variation, only those "legal" factors the Board felt should consistently play a role in a sanction decision were included in the final product. By using this method, the hope is to achieve more neutrality in sanctioning, by making sure the Board considers the same set of "legal" factors 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 Board with a sanction range that encompasses roughly 85% of historical practice. This means that 15% of past cases had received sanctions either higher or lower than what the reference points indicate, acknowledging that aggravating and mitigating factors play a role in sanctioning. The wide sanctioning ranges recognize that the Board will sometimes reasonably disagree on a particular sanction outcome, but that a broad selection of sanctions falls within the recommended range.

Any sanction recommendation the Board derives from the SRP worksheets must fall within Virginia law and regulations. If a Sanctioning Reference Point worksheet recommendation is more or less severe than a Virginia statute or DHP regulation, the existing laws or policies supercede any worksheet recommendation.

The Sanctioning Factors

The Board indicated early in the study that sanctioning is influenced by a variety of circumstances. The empirical analysis supported the notion that not only do case types affect sanctioning outcomes, but certain offense, respondent and prior record factors do as well. To this end, the Physical Therapy SRP system scores two groups of factors in order to arrive at a sanctioning recommendation. The first set of factors relates to the case type. The second group relates to elements of the offense, the respondent, and his or her prior record.

Therefore, a respondent before the Board for a fraud case will receive points for the type of case and can potentially receive points for act of commission, multiple patient involvement, and/or for having a history of disciplinary violations.

Four Sanctioning Thresholds

The SRP worksheet uses four thresholds for recommending a sanction. Once all factors are scored, the corresponding points are then added for a total worksheet score. The total is used to locate the sanctioning threshold recommendation found at the bottom of the worksheet. For instance, a respondent having a total worksheet score of 40 would be recommended for a Reprimand/Monetary Penalty.

Voluntary Nature

The SRP system is a tool to be utilized by the Board of Physical Therapy. Compliance with the SRPs is voluntary. The Board will use the system as a reference tool and may choose to 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 SRPs can also be referenced and used by agency subordinates where the Board deems appropriate. The coversheet and worksheet will be referenced by Board members during Closed Session.

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 SRPs 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 Physical Therapy, the Board often attempts to mirror the sanction handed down by the other Board. The Virginia Board of Physical Therapy 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 (CCA) – SRPs will not be used in cases settled by CCA.

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 case type only one is selected for scoring according to the case type that appears highest on the following table and receives the highest point value. For example, a respondent found in violation for an inspection deficiency and falsification/alteration of patient records would receive twenty points, since Fraud is above Business Practice Issues/Other on the list and receives the most points. If a case type is not listed, find the most analogous one and use the appropriate score.

Sanctioning Reference Points Case Type Table

Case Type	Included Case Categories	Applicable Points
Abuse/Impairment/ Inappropriate Relationship	<ul style="list-style-type: none"> • Any sexual assault or mistreatment of a patient • Impairment due to use of alcohol, illegal substances, or prescription drugs • Incapacitation due to mental, physical or medical conditions • Dual, sexual, or other boundary issue. Includes inappropriate touching and written or oral communications 	40
Fraud	<ul style="list-style-type: none"> • Performing unwarranted/unjust services • Falsification/alteration of patient records • Improper patient billing • Falsification of licensing/renewal documents 	20
Standard of Care	<ul style="list-style-type: none"> • Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues. • 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 • Failure to obtain or document CE requirements 	15
Business Practice Issues/Other	<ul style="list-style-type: none"> • Records, inspections, audits • Required report not filed 	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 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. However, copies of the SRP 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 scoring weights 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 has final say in how a case is scored.

Coversheet

The coversheet is completed to ensure a uniform record of each case and to facilitate recordation of other pertinent information critical for system monitoring and evaluation.

If the Board feels the sanctioning threshold does not recommend an appropriate sanction, the Board is encouraged to depart either high or low when handing down a sanction. If the Board disagrees with the sanction recommendation and imposes a sanction greater or less than the recommended sanction, a short explanation should be recorded on the coversheet to explain the factors or reasons for departure. This process will ensure worksheets are revised appropriately to reflect current Board practice. If a particular reason is continually cited, the Board can examine the issue more closely to determine if the worksheets should be modified to better reflect Board practice.

Coversheet, continued

Aggravating and mitigating circumstances that may influence Board decisions can include, but should not be limited to, such things as:

- Prior record
- Dishonesty/Obstruction
- Motivation
- Remorse
- Restitution/Self-corrective action
- Multiple offenses/Isolated incident

A space is provided on the coversheet to record the reason(s) for departure. Due to the uniqueness of each case, the reason(s) for departure may be wide-ranging. Sample scenarios are provided on the adjacent page:

Departure Example #1

Sanction Threshold Recommendation: Recommend Formal or Accept Surrender
Imposed Sanction: Probation

Reason(s) for Departure: Respondent was particularly remorseful and had already begun corrective action.

Departure Example #2

Sanction Threshold Recommendation: Reprimand/ Monetary Penalty
Imposed Sanction: Probation, Terms – CE, Audit

Reason(s) for Departure: Respondent displayed a lack of knowledge that could be corrected with further education.

Determining a Specific Sanction

The bottom of the SRP worksheet lists four sanction thresholds that encompass a variety of specific sanction types. The table below lists the sanctions most often used by the Board that fall under each threshold. After considering the sanction recommendation, the Board should fashion a more detailed sanction(s) based on the individual case circumstances.

Sanctioning Reference Points Threshold Table

Worksheet Score	Available Sanctions
0-40	Reprimand Monetary Penalty Stayed Monetary Penalty
45-60	Reprimand Monetary Penalty Stayed Monetary Penalty Corrective Action Stayed Suspension Probation Terms: Continuing Education (CE) CE Audit Continue in therapy Employer quarterly reports HPIP Psychological evaluation Supervision Shall not seek/accept employment allowing contact with patients Shall not supervise
65-110	Corrective Action Stayed Suspension Probation Terms: Continuing Education (CE) CE Audit Continue in therapy Employer quarterly reports HPIP Psychological evaluation Supervision Shall not seek/accept employment allowing contact with patients Shall not supervise
115 or more	Suspension Revocation Accept Surrender Recommend Formal

📄 Sanctioning Reference Points - Coversheet for Board of Physical Therapy

- Choose a *Case Type*.
- Complete the *Offense and Respondent Factor* section.
- Determine the *Recommended Sanction* using the scoring results and the *Sanction Thresholds*.
- Complete this Coversheet.

Case Number(s)	<table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 10%;"></td><td style="width: 10%;"></td> </tr> </table> <table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 10%;"></td><td style="width: 10%;"></td> </tr> </table> <table border="1" style="width: 100%; height: 20px;"> <tr> <td style="width: 10%;"></td><td style="width: 10%;"></td> </tr> </table>																															
Respondent Name	_____	_____																														
	Last	First																														
License Number	_____																															
Case Type	<input type="checkbox"/> Abuse/Impairment/Inappropriate Relationship <input type="checkbox"/> Fraud <input type="checkbox"/> Standard of Care <input type="checkbox"/> Business Practice Issues/Other																															
Sanction Threshold Result	<input type="checkbox"/> 0 - 40 <input type="checkbox"/> 45-60 <input type="checkbox"/> 65-110 <input type="checkbox"/> 115 or more																															
Imposed Sanction	<input type="checkbox"/> Reprimand <input type="checkbox"/> Monetary Penalty - enter amount \$ _____ <input type="checkbox"/> Stayed Monetary Penalty - enter amount \$ _____ <input type="checkbox"/> Probation _____ months <input type="checkbox"/> CE _____ hours <input type="checkbox"/> CE Audit <input type="checkbox"/> HPIP <input type="checkbox"/> Stayed Suspension <input type="checkbox"/> Suspension <input type="checkbox"/> Revocation <input type="checkbox"/> Accept Surrender <input type="checkbox"/> Recommend Formal <input type="checkbox"/> Other Sanction: _____ _____ <input type="checkbox"/> Terms: _____ _____																															
Reasons for Departure from Sanction Threshold Result	_____ _____ _____ _____																															
Worksheet prepared by:	_____	Date completed: _____																														

Board of Physical Therapy - Sanctioning Reference Points Worksheet Instructions

Case Type

Step 1: Case Type (score only one)

Select the case type from the list and score accordingly. When multiple cases have been combined into one "event" (one order) for disposition by the Board, only one case type can be selected. If a case (or set of cases) has more than one case type only one is selected for scoring according to the case type that receives the highest point value.

Abuse/Impairment/Inappropriate Relationship – 40 Points

- Any sexual assault or mistreatment of a patient
- Impairment due to use of alcohol, illegal substances, or prescription drugs
- Incapacitation due to mental, physical or medical conditions
- Dual, sexual or other boundary issue. Includes inappropriate touching and written or oral communications.

Fraud – 20 Points

- Performing unwarranted/unjust services
- Falsification/alteration of patient records
- Improper patient billing
- Falsification of licensing/renewal documents

Standard of Care – 15 Points

- Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues.
- 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.
- Failure to obtain or document CE requirements.

Business Practice Issues/Other – 10 Points

- Records, inspections, audits
- Required report not filed

Offense & Respondent Factors

Step 2: Offense and Respondent Factors (score all that apply)

Score all factors relative to the totality of the case presented.

Enter "30" if a patient was intentionally or unintentionally injured.

Enter "30" if the respondent was impaired at the time of the offense due to substance abuse (alcohol or drugs) or mental/physical incapacitation.

Enter "30" if the case involved inappropriate physical contact. Inappropriate contact is indicated by the unwanted/unsolicited physical contact of a patient by the respondent. If this factor is scored, case category should be "Abuse/Impairment/Inappropriate Relationship."

Enter "30" if the respondent's license has been previously revoked, suspended, or summarily suspended by any state including Virginia. Sanctions other than those resulting in loss of license are not scored here.

Enter "20" if there was financial or material gain by the respondent.

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

Enter "20" if there was a concurrent civil or criminal action related to this case.

Enter "20" if the respondent has previously been sanctioned by any *other* state or entity. Sanctioning by an employer is not scored here. Sanctions resulting in loss of license are not scored here.

Enter "20" if the respondent has had any past difficulties in the following areas: drugs, alcohol, mental capabilities or physical capabilities. Scored here would be: 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 "10" if the offense involves two or more patients. Patient involvement does not require direct contact with a patient. For instance, Fraud can occur with multiple patients.

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 has any prior violations decided by the Virginia Board of Physical Therapy.

Enter "10" the respondent has any prior similar Virginia Board of Physical Therapy violations. Similar violations would be those listed under the same case type heading in Step 1.

Step 3: Total Worksheet Score

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 Reference Points recommended sanction 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 for the current worksheet. That range has a corresponding range of recommended sanctions. 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.

Board of Physical Therapy - Sanctioning Reference Points Worksheet

Case Type (score only one)	Points	Score	
Abuse/Impairment/Inappropriate Relationship	40	_____	score only one
Fraud	20	_____	
Standard of Care	15	_____	
Business Practice Issues/Other	10	_____	
Subtotal		_____	

Offense and Respondent Factors (score all that apply)			
Patient injury	30	_____	score all that apply
Respondent impaired during incident	30	_____	
Inappropriate physical contact	30	_____	
License taken away by any state	30	_____	
Financial gain or motivation.	20	_____	
Act of commission	20	_____	
Concurrent civil or criminal action.	20	_____	
Sanctioned by another state or entity	20	_____	
Past difficulties (drugs, alcohol, mental/cognitive, physical)	20	_____	
Two or more patients involved	10	_____	
Sanctioned by employer due to incident.	10	_____	
One or more prior VA Board of Physical Therapy violation	10	_____	
Previous violation similar to current offense	10	_____	
Subtotal		_____	

Total Worksheet Score (add all subtotals) _____

SCORE	Sanctioning Recommendations
0-40	Reprimand/Monetary Penalty
45-60	Reprimand/Monetary Penalty to Corrective Action
65-110	Corrective Action
115 or more	Recommend Formal or Accept Surrender

Respondent Name: _____ Date: _____