

Sanctioning Reference Points Instruction Manual

Behavioral Sciences Boards

Adopted December 2008
Revised January 2016

Board of Counseling
Guidance Document 115-1.5
Board of Psychology
Guidance Document 125-5.2
Board of Social Work
Guidance Document 140-8

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January 2016

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 Board of Counseling, Psychology and Social Work members and staff, a committee of board members, staff, and research consultants assembled a research agenda involving the most exhaustive statistical study of sanctioned Behavioral Health professionals ever conducted in the United States. The analysis included collecting over 100 factors on all Behavioral Sciences' sanctioned cases in Virginia over a four 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 sanctioning reference points. Using both the data and collective input from the three boards, analysts developed a usable set of sanction worksheets 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. The outcomes related to the Boards of Counseling, Psychology and Social Work resulted in several changes to the Sanctioning Reference Points worksheet. This manual is the product of those adopted changes.

Sincerely yours,

David E. Brown, D.C.
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 10 years studying sanctioning in disciplinary cases. The study has examined all of the Department of Health Professions' (DHP) 13 health regulatory Boards. Focusing on the Boards of Counseling, Psychology and Social Work (Behavioral Sciences Boards), this manual contains background on the project, the goals and purposes of the Sanctioning Reference Points (SRP) system, a revised offense-based worksheet and sanctioning recommendations used 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 Behavioral Sciences Boards. Moreover, the worksheets and sanctioning recommendations 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 SRP system is comprised of a single worksheet which scores a variety of offense and respondent factors identified using statistical analysis and built upon the Department's effort to maintain standards of practice over time. The factors were 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 boards may select in a particular case.

In addition to this instruction booklet, a coversheet and worksheet are available to record the case category, recommended sanction, imposed 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 Behavioral Sciences Boards' policies and procedures.

Furthermore, all sanctioning recommendations are those currently available to and used by the Boards 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 Behavioral Sciences Boards. This manual is the result of those adopted changes.

Goals

The Board of Health Professions and the Behavioral Sciences Boards cited the following purposes and goals for establishing SRPs:

- 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 boards and those involved in proceedings
- Neutralizing sanctioning inconsistencies
- Validating Board member or staff recall of past cases
- Reducing 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

Combining the Three Boards for Study

Unlike other health regulatory boards that were analyzed as part of the SRP project, this study examined three Boards simultaneously. This approach offered several advantages. First, combining the three Boards allowed enough cases to be collected and analyzed. Any one of these Boards alone does not process enough disciplinary cases to allow for a valid data analysis. Second, the combined approach allowed Boards that handle similar cases to be grouped together, allowing for more efficient data collection and analysis resulting in resource savings. Lastly, this process allowed the board's members to understand and learn from cultural similarities and differences with regard to sanctioning across boards, something that rarely occurs.

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 achieve a more balanced outcome.

The SRP manual adopted in 2008 was based on a descriptive approach with a limited number of normative adjustments. The Effectiveness Study was conducted in a similar manner, drawing from historical data to inform worksheet modification.

Qualitative Analysis

Researchers conducted in-depth personal interviews with members of each of the three boards as well as Board staff. Researchers also had informal conversations with representatives from the Attorney General's office and the Executive Director of the Board of Health Professions. The interview results were used to build consensus regarding the purpose and utility of SRPs and to further guide the Effectiveness Study's analysis. Additionally, interviews helped ensure the factors considered 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 2008, researchers collected detailed information on all BON disciplinary cases ending in a violation between January 2004 and March 2008; approximately 57 sanctioning "events." Over 100 different factors were collected on each case 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 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 significant 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 using similar analytical methods to update the worksheet factors and scores to represent the most current practice.

Offense factors such as financial or material gain and case severity (priority level) were examined, as well as prior history factors such as past substance abuse, and previous Board orders. 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 80% of historical practice. This means that approximately 20% 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 customize on a particular sanction within the broader SRP recommended range.

Voluntary Nature

The SRP system should be viewed as a decision-aid to be used by the Boards of Counseling, Psychology and Social Work. Sanctioning within the SRP ranges is "totally voluntary," meaning that the system is viewed strictly as a tool and the Boards may choose any sanction outside the recommendation. The Boards maintains complete discretion in determining the sanction handed down. However, a structured sanctioning system is of little value if the Boards are 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 Conference or Pre-Hearing Consent Order. This includes cases resolved at an informal conference by conference committees or by prehearing consent order offers delegated to and authorized by board staff. The coversheet and worksheets will be used only 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 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 Behavioral Sciences Boards, the Boards often attempt to mirror the sanction handed down by the other Board. The Behavioral Sciences Boards usually require 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.
- Certain Instances of Continuing Education (CE) Deficiency – 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. Each Behavioral Science Board has its own Guidance Document pertaining to sanctioning at various levels of CE deficiency. The degree of deficiency and their respective actions are listed below:

Continuing Education Violations and Board Policies on Actions

Psychology	Short due to unacceptable hours Short 1 - 7 hours Short 8 - 14 hours Did not respond to audit request False attestation of CE completion	Confidential Consent Agreement; 30 day make up Confidential Consent Agreement; 30 day make up Consent Order; \$300 penalty; 30 day make up Informal Fact-Finding Conference Informal Fact-Finding Conference
Counseling	Short due to unacceptable hours Short 1 - 10 hours Short 11 - 15 hours Short 16 - 20 hours Did not respond to audit request	Confidential Consent Agreement; 30 day make up Confidential Consent Agreement; 30 day make up Consent Order; Monetary penalty of \$300; 30 day make up Consent Order; Monetary penalty of \$500; 30 day make up Informal Fact-Finding Conference
Social Work	Short due to unacceptable hours Short 1-9 hours Short 10-14 hours Short 15 or more hours Did not respond to audit request	Confidential Consent Agreement: 30 day make up Confidential Consent Agreement: 30 day make up Consent Order: \$500, 30 day make up Informal Conference Informal Conference

NOTE: In all cases the licensee will be audited during the following renewal cycle.

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 and receives the highest point value. For example, a respondent found in violation for a confidentiality breach and an inappropriate relationship would receive twenty points, since Inappropriate Relationship is above Standard of Care on the list and receives more points. If an offense type is not listed, find the most analogous offense type and use the assigned amount point value.

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/Incapacitation: Impairment due to use of alcohol, illegal substances, or prescription drugs or incapacitation due to mental, physical or medical conditions • Criminal Activity: Felony or misdemeanor arrest, charges pending, or conviction 	30
Inappropriate Relationship	<ul style="list-style-type: none"> • Dual, sexual or other boundary issue. Includes inappropriate touching and written or oral communications 	20
Continuing Education	<ul style="list-style-type: none"> • Failure to obtain or document CE requirements 	20
Standard of Care	<ul style="list-style-type: none"> • Standard of Care – Diagnosis/Treatment: Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues. • Standard of Care – Consent Related • Abuse/Abandonment/Neglect: 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 • Confidentiality Breach: disclosing unauthorized client information without permission or necessity 	10
Business Practice Issues	<ul style="list-style-type: none"> • Unlicensed Activity: 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: Advertising, default on guaranteed student loan, solicitation, records, inspections, audits, self-referral of patients, required report not filed, or disclosure • Fraud: Performing unwarranted/unjust services or the falsification/alteration of patient records, improper patient billing, fee splitting, and falsification of licensing/renewal documents 	5

Completing the Coversheet and Worksheet

Ultimately, it is the responsibility of the individual Boards 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 boards 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, 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 Behavioral Sciences worksheet has four 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 Boards should fashion a more detailed sanction(s) based on the individual case circumstances.

Sanctioning Reference Points Threshold Table

Worksheet Score	Available Sanction
0-19	No Sanction Reprimand
20-69	Corrective Action: Monetary Penalty Stayed suspension Probation Additional CE to obtain Board approved practice supervisor Participation in therapy Shall not supervise Quarterly self-reports Psychological evaluation Graduate level research paper(s)
70-104	Corrective Action: Monetary Penalty Stayed suspension Probation Additional CE to obtain Board approved practice supervisor Participation in therapy Shall not supervise Quarterly self-reports Psychological evaluation Graduate level research paper(s) Recommend Formal Hearing Suspension Revocation Accept surrender
105 or more	Recommend Formal Hearing Suspension Revocation Accept surrender

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



SRP Coversheet for the Behavioral Sciences Boards

- Choose a Case Type.
- Select the appropriate Boundary Issue and Patient Harm scores.
- Complete the Offense and Prior History section.
- Determine the Recommended Sanction Range using the Total Worksheet Score.
- Complete this coversheet.

Case Number(s):

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

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

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

Respondent Name: _____

License Number: _____

Board:
 Counseling
 Psychology
 Social Work

Case Type:
 Inability to Safely Practice
 Inappropriate Relationship
 Continuing Education
 Standard of Care
 Business Practice Issues

Sanctioning Recommendation:
 No Sanction/Reprimand
 Corrective Action
 Corrective Action to Recommend Formal or Accept Surrender
 Recommend Formal or Accept Surrender

Imposed Sanction(s):
 No Sanction
 Reprimand
 Monetary Penalty: \$_____ enter amount
 Probation: _____ duration in months
 Stayed Suspension: _____ duration in months
 Recommend 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: _____

SRP Worksheet for the Behavioral Sciences Boards

Case Type (score only one)	Points	Score	
Inability to Safely Practice	30	_____	} Score Only One
Inappropriate Relationship	20	_____	
Continuing Education	20	_____	
Standard of Care	10	_____	
Business Practice Issues	5	_____	
 Boundary Issue Part of Case (if yes, score only one)			
Intimate Relations/Dating	40	_____	} Score Only One, if Applicable
Inappropriate Communications	20	_____	
Social/Business	10	_____	
 Patient Harm (if yes, score only one)			
Patient harmed with impaired functioning	20	_____	} Score Only One, if Applicable
Patient harmed without impaired functioning	10	_____	
 Offense and Prior Record Factors (score all that apply)			
Respondent impaired during incident	40	_____	} Score All That
Financial or material gain by the respondent	30	_____	
Multiple patients involved	30	_____	
One or more prior violations	20	_____	
Any past problems	20	_____	
Concurrent action against respondent	10	_____	

Total Worksheet Score (add all scores)

SCORE	Sanctioning Recommendations
0-19	No Sanction/Reprimand
20-69	Corrective Action
70-104	Corrective Action to Recommend Formal or Accept Surrender
105 or more	Recommend Formal or Accept Surrender

Respondent Name: _____

Date: _____

Confidential pursuant to § 54.1-2400.2 of the Code of Virginia



SRP Worksheet Instructions for the Behavioral Sciences Boards

Case Type

Step 1: (score only one)

Enter the point value that corresponds to the case type. If a case has multiple aspects, enter the point value for the one most serious case type that is highest on the list. (See page 7 for an expanded list.)

Inability to Safely Practice	30
Inappropriate Relationship	20
Continuing Education	20
Standard of Care	10
Business Practice Issues	5

Boundary Issues

Step 2: (if yes, score only one)

If a boundary violation occurred in this case, regardless of case type scoring, indicate that nature of the violation.

Enter “40” if the respondent has engaged in a sexual or dating relationship with a client.

Enter “20” if the respondent participated in inappropriate communications with a client. Examples of inappropriate communications include, but are not limited to: telephone calls, answering machine messages, emails, letters and text messages.

Enter “10” if the respondent engaged in a business or social relationship with a client. Examples of a business relationship include, but are not limited to hiring a client for: child care, home or car repair, investment services, etc. Examples of social relationships include, but are not limited to: participating in social engagements or parties with clients.

Patient Harm

Step 3: (if yes, score only one)

Enter “20” if there was harm to the client which resulted in impaired functioning. Impaired functioning is indicated when the client or client’s subsequent provider reports symptoms of PTSD, suicidal feelings, or difficulty functioning due to the incident.

Enter “10” if there was harm to the client which did not result in impaired functioning. In cases involving Inappropriate Relationships, harm is always present therefore a minimum of “without impaired functioning” must be checked.

Offense Factors Score

Step 4: (score all that apply)

Enter “40” if the respondent was impaired at the time of the offense due to substance abuse (alcohol or drugs) or mental incapacitation.

Enter “30” if there was financial or material gain by the respondent.

Enter “30” if the case involves more than one patient.

Enter “20” if the respondent has any prior violations handed down by the Virginia Board of Counseling, Psychology or Social Work.

Enter “20” if the respondent has had any past difficulties in the following areas: drugs, alcohol, mental capacity, or boundaries issues. 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 there was a concurrent action against the respondent related to this case. Concurrent actions include civil and criminal actions as well as any action taken by an employer such as termination or probation.

Step 5: Total Worksheet Score

Add all individual scores for a total worksheet score.

Step 6: Determining the Sanctioning Recommendations

Locate the Total Worksheet Score in the correct threshold range on the left side of the Sanctioning Recommendation Points table; to the right of the point thresholds are the recommended sanctions.

Step 7: Completing the Coversheet

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