

Sanctioning

Reference Points

Instruction Manual

Board of Veterinary Medicine

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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 Board of Veterinary Medicine members and staff, a committee of board members, staff, and research consultants assembled a research agenda involving the most exhaustive statistical study of sanctioned Veterinarians and Veterinary Technicians ever conducted in the United States. The analysis included collecting over 100 factors on all Board of Veterinary Medicine sanctioned cases in Virginia over a seven 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 Board of Veterinary Medicine and staff, analysts developed a usable sanction 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. The outcomes related to the Board of Veterinary Medicine resulted in several changes to the Sanctioning Reference Points worksheet. This manual is the product of those adopted changes.

Sincerely yours,

Handwritten signature of David E. Brown, D.C.

David E. Brown, D.C.
Director
Virginia Department of Health Professions

Cordially,

Handwritten signature of Elizabeth A. Carter, Ph.D.

Elizabeth A. Carter, Ph.D.
Executive Director
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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 Board of Veterinary Medicine (Vet Med), this manual contains background on the project, the goals and purposes of the Sanctioning Reference Points (SRP) system, and a revised offense-based worksheet and sanctioning thresholds 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 Virginia Board of Veterinary Medicine. Moreover, the worksheets and grids 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 offense-based worksheet which scores a number of offense and respondent factors identified using statistical analysis and built upon the Department's effort to maintain standards of practice over time. The original Vet Med SRP Manual was adopted in January 2007, and has been applied to cases closed in violation for a period of 8 years.

These instructions and the use of the SRP system fall within current DHP and Vet Med 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 seeks to examine

whether or not the SRPs were successful, and if not, which areas require improvement.

The Effectiveness Study relied heavily on the completed coversheets and worksheets which record case type, patient injury and offense scores, recommended sanction, actual sanction and any reasons for departure (if applicable). The study resulted in changes to the manual. This manual is the result of those adopted changes.

Goals

In 2001, The Board of Health Professions and the Board of Medicine 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 Board 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

Methodology

The fundamental dilemma 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 2007, 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 Board members and staff, as well as holding 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 frame the Effectiveness 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 2003, researchers collected detailed information on all Vet Med disciplinary cases ending in a violation between 1999 and 2005; approximately 208 sanctioning "events" covering close to 213 cases. 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 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. Those factors and weights were formulated into sanctioning worksheets and grids, which became the SRPs.

During the Effectiveness Study, researchers used the 70 SRP worksheets and coversheets previously completed by Board members to create a database. The worksheets' factors, scores, sanction recommendations, sanctions handed down, and departure reasons (if any) were coded and keyed over the course of several weeks, creating a database. That database was then merged with DHP's data system L2K, adding more unique variables for analysis. The resulting database was analyzed to determine any changes in Board sanctioning that may have had an effect on the worksheet recommendations.

Factors such as patient injury, financial gain and prior history of the respondent were examined, as well as factors previously deemed "extralegal" or inappropriate for the SRP system. For example, respondent's attorney representation, physical location (region), age, gender, and case processing time were considered "extra-legal" factors.

Although, both "legal" and "extra-legal" factors can help explain sanction variation, only those "legal" factors the Board felt should consistently play a role in a sanction decision continued to be included on the worksheets. 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.

Characteristics of the SRP System

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 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 role in sanctioning. The wide sanctioning ranges allow the Board to customize 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 Board of Veterinary Medicine. 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 or Pre-Hearing Consent Orders. The coversheet and worksheets will be referenced by Board members and staff during executive session only after a violation has been determined.

Coversheets and Worksheets

Coversheets are completed to ensure a uniform record of each case and to facilitate recordation of other pertinent information critical for continued system monitoring, evaluation and improvement. If the board feels the sanctioning threshold does not recommend an appropriate sanction, the board should depart either high or low when handing down a sanction and a short explanation should be recorded on the coversheet. The explanation should identify the factors and reasons for

departure. This process ensures worksheets are revised to reflect current board practice and to maintain the dynamic nature of the system. For example, 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

Worksheet Not Used In Certain Cases

The Sanctioning Reference Points will not be applied in any of the following circumstances:

- Action by Another Board – When a case which has already been adjudicated by a board from another state appears before the Virginia Board of Veterinary Medicine, the board often attempts to mirror the sanction handed down by the other board. The Virginia Board of Veterinary Medicine usually requires that all conditions set by the other board are completed or complied with in Virginia. The SRPs do not apply to cases previously heard and adjudicated by another board.
- Compliance/Reinstatement – The SRPs should be applied to new cases only.
- Confidential Consent Agreements (CCA) – SRPs will not be used in cases settled by CCA.
- Formal Hearings — Sanction Reference Points 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) the license of a veterinarian or veterinary technician must be suspended. The sanction is defined by law and is therefore excluded from the Sanctioning Reference Point system.

Using the SRP System

Case Types Covered by the SRPs

Veterinarians and Veterinary Technicians are scored on one SRP worksheet for all case types. The case types are grouped into 5 categories: Failure to Obtain CE, Inspections/Records, Drugs or Impairment, Standard of Care, and Unlicensed Activity. This organization is based on the most recent historical analysis of board sanctioning.

When multiple cases have been combined for disposition by the board into one order, only one coversheet and worksheet, which encompasses the

entire event, should be completed. In these instances, the worksheet completed is selected according to the case type group which appears highest on the following table and receives the most points. For example, a respondent found in violation of both aiding and abetting unlicensed activity as well as improper treatment would receive 10 points, since Standard of Care is above Unlicensed Activity on the list and receives the most points. If an offense type is not listed, find the most analogous offense type and use the appropriate score. The case type that has been selected from the list below is the only case type that receives points on the sanctioning worksheet.

Sanctioning Reference Points Case Type Table

Failure to Obtain CE	<ul style="list-style-type: none"> • Failure to Obtain CE 	50
Inspections/Records	<ul style="list-style-type: none"> • Inspection Deficiencies/Facility Violation • Fail to Maintain Complete/Accurate Records • Business Practice Issues • Records Release • Prescription blanks 	50
Drugs or Impairment	<ul style="list-style-type: none"> • Fail to Maintain Security of Controlled Substances • Impairment due to use of alcohol, illegal substances or prescriptions • Incapacitation due to mental, physical or medical conditions • Dispensing in violation of DCA to include: dispensing for non medicinal purposes, excessive prescribing, not in accordance with dosage, filling an invalid prescription, or dispensing without a relationship • Prescription forgery • Drug adulteration • Patient deprivation • Stealing drugs • Personal use • Felony Conviction 	20
Standard of Care	<ul style="list-style-type: none"> • 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 • Improper/unnecessary performance of surgery, improper patient management, and other surgery-related issues. • Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues. • Prescribing, labeling, dispensing, and administration errors • Failure to Obtain Consent • Failure to Offer Patient Education 	10
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 	5

Three Sets of Sanctioning Factors

The board indicated early in the SRP study that sanctioning is not only influenced by circumstances directly associated with the case, but also by the respondent's past history. The empirical analysis supported the notion that case type as well as offense and respondent factors impacted sanction outcomes. Subsequently, the SRP worksheet for Veterinary Medicine makes use of three sets of factors that combine for a sanctioning outcome that lies within one of four thresholds. The first dimension assesses factors related to case type, the second assesses factors related to patient injury level, and the third takes into account offense and respondent factors. So a respondent before

the board for a Standard of Care case may also receive points for injury to the animal and for having a history of disciplinary violations.

Determining a Specific Sanction

The Sanction Grid has four separate sanctioning outcomes: Recommend Formal or Accept Surrender, Treatment/Monitoring, Reprimand and No Sanction. The table below lists specific sanction types under the four SRP grid recommendations. After considering the sanction grid recommendation, the Board should fashion a more detailed sanction(s) based on the individual case circumstances.

Expanded Sanctioning Grid Outcomes

Worksheet Threshold	Available Sanction	Fine Amounts
0 - 49	No Sanction Reprimand Continuing Education Monetary Penalty	up to \$500
50 - 79	Continuing Education Monetary Penalty Inspection	\$250 - \$1,000
80 - 129	Monetary Penalty Inspection Treatment/Monitoring: Stayed Suspension Stayed Monetary Penalty Probation HPMP Species Specific Exam for Companion Animals Shall not be VIC	\$500 - \$2,000
130 and up	Treatment/Monitoring: Stayed Suspension Stayed Monetary Penalty Probation HPMP Species Specific Exam for Companion Animals Shall not be VIC Recommend Formal Accept Surrender Suspension Revocation	\$1,500 and up

Coversheet, Worksheets and Instructions

Sanctioning Reference Points Coversheet

- Complete Case Type Score section.
- Complete Patient Injury section.
- Complete the Offense Factor section.
- Determine the Recommended Sanction and Monetary Penalty Range using the scoring results and the Sanction Thresholds.
- Complete this coversheet.

Case Number(s):

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

Respondent Name: _____

License Number: _____

Case Type:
 Failure to Obtain CE
 Inspections/Records
 Drugs or Impairment
 Standard of Care
 Unlicensed Activity

Sanction Threshold Level:
 0-49
 50-79
 80 - 129
 130 and up

Imposed Sanction(s):
 No Sanction
 Reprimand
 Continuing Education
 Inspection
 Monetary Penalty
 Stayed Monetary Penalty: _____ amount stayed
 Stayed Suspension: _____ duration in months
 Probation: _____ duration in months
 Revocation
 Suspension
 Recommend Formal
 Other Sanction: _____
 Other Terms: _____

Was imposed sanction a departure from the recommendation? No Yes, give reason below

Reasons for Departure from Sanction Grid Result: _____

Worksheet Preparer's Name: _____ Date Worksheet Completed: _____



Case Type (score only one)	<u>Points</u>	<u>Score</u>
Failure to Obtain CE	50	_____
Inspections/Records	50	_____
Drugs or Impairment	20	_____
Standard of Care	10	_____
Unlicensed Activity	5	_____
Patient Injury (score only one)		
Death of the patient resulted	35	_____
Physical injury to the patient resulted	15	_____
Offense Factors (score all that apply)		
Act of commission	40	_____
Respondent took no corrective action	30	_____
Past difficulties (substances, mental/physical)	30	_____
Financial or material gain by the respondent	20	_____
Prior similar violation	20	_____
Any prior violations	15	_____

Total Worksheet Score

Score	Sanctioning Recommendations	Fine Amounts
0 - 49	No Sanction/Reprimand/Monetary Penalty/CE	up to \$500
50 - 79	Monetary Penalty/CE/Inspection	\$250 - \$1,000
80 - 129	Monetary Penalty/Inspection/Treatment/Monitoring	\$500 - \$2,000
130 and up	Treatment/Monitoring/Recommend Formal or Accept Surrender	\$1,500 and up

Respondent Name: _____

Date: _____



Case Type Score

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 case type that is highest on the worksheet list. (See page 7 for an expanded list.)

Failure to Obtain CE	50
Inspections/Records	50
Drugs or Impairment	20
Standard of Care	10
Unlicensed Activity	5

Enter “20” if the respondent has had any prior similar Virginia Board of Veterinary Medicine violations. Similar violations are those which fall into the same case category. For instance, a respondent before the board for a drug adulteration case would be scored if he/she had a prior violation for prescription forgery. (See pg.7 for a complete list)

Enter “15” if the respondent has any prior Virginia Board of Veterinary Medicine violations.

Step 4: Combine all for a Total Worksheet Score

Patient Injury Score

Step 2: (score only one)

Enter the point value that corresponds to the patient’s level of injury. If there were multiple patients involved, score only the injury level for the patient that was most harmed. For instance, if one patient died and another was injured, enter 35 points. If no patient was injured, leave blank.

Enter “35” if the death of a patient resulted from the respondent’s actions.

Enter “15” if physical injury to the patient resulted from the respondent’s actions.

Sanctioning Thresholds

Step 5: Locate the Total Worksheet Score with the Sanction Thresholds table at the bottom of the worksheet. The scores correspond to one of the four SRP recommendation categories.

Example: If the Total Worksheet Score is 130, the recommended sanction is found in the last range, 130 and up "Treatment/Monitoring/Recommend Formal or Accept Surrender."

Step 6: Coversheet

Complete the coversheet, including the case type, sanction threshold, imposed sanction, and the reason for departure if applicable

Offense and Respondent Score

Step 3: (score all that apply)

Enter “40” if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter “30” if the respondent took no corrective action prior to the case being heard.

Enter “30” if the respondent has had any past difficulties (substances, mental/physical). This includes: 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 properly.

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