

# SANCTIONING REFERENCE POINTS

## INSTRUCTION MANUAL

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### Board of Optometry

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*Prepared for*

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Guidance Document # 105-28



## 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 current and past Board of Optometry 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 Optometrists in the United States. The analysis included collecting over 100 factors on all Board of Optometry sanctioned cases in Virginia over a 7-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 Optometry 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 Optometry 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, Ph.D. 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 6 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 Optometry. The Board of Optometry 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 Optometry. 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 and offense 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 offense worksheet recommend a range of sanctions from which the Board may select in a particular case as well as corresponding monetary penalty ranges.

In addition to this instruction booklet, separate coversheets and worksheets are available to record the respondent's score, recommended sanction, 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 Optometry 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 workplan 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 Optometry. 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 Optometry 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

**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 Optometry chose a descriptive approach with normative adjustments.

#### ■ Qualitative Analysis

Researchers conducted in-depth personal interviews of some past and all current 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 that 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.

**Methodology, continued****■ Quantitative Analysis**

Researchers analyzed detailed information on Optometry disciplinary cases ending in a violation between January 2000 and December 2006; approximately 81 sanctioning “events.” 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 offense factors that were identified as potentially influencing sanctioning decisions. Using statistical analysis, sanctioning factors along with their relative weights were identified. These factors and weights have been listed on a sanctioning worksheet so a sanction can be derived after scoring the factors in a specific case. A sanction is determined depending on which point threshold is crossed.

Offense factors such as financial 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 Board felt should consistently play a role in a sanction decision were included in the final worksheet. 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 sanctioning range that will encompass the vast majority of cases with similar circumstances. The wide sanctioning ranges reflect the notion that the Board must maintain flexibility in fashioning a sanction in a particular case. However, depending on the specific circumstances of the case, sanctions handed down by the board may also be higher or lower than what the reference points indicate, acknowledging that aggravating and mitigating factors will continue to play a role in sanctioning.

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.

**Offense and Prior History Factors Scored**

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 case type, but certain offense factors and prior record impacted sanction outcomes. To this end, the Optometry SRP system scores a variety of factors in order to arrive at a sanctioning recommendation. The first factor to be determined when completing a worksheet relates to the case type. Once the case type has been decided, several other factors such as act of commission and prior Board history will be decided.

**Sanctioning Thresholds**

The SRP worksheet is split into two different case type tracks; one for Standard of Care and one for Business Practice Issues. Each of these case type tracks has its own corresponding sanctioning recommendation and monetary penalty thresholds.

After all factors are scored, the corresponding points are then added for a total respondent score. The total is used to locate the sanctioning and monetary penalty thresholds found at the bottom of the worksheet. These thresholds correspond to sanctioning and monetary penalty amount ranges. For instance, a respondent having a Standard of Care case type and a total score of 50 would be recommended for Reprimand/Monetary Penalty with a monetary penalty range of \$1,000-\$2,499.

**Voluntary Nature**

The SRP system is a reference tool to be utilized by the Board of Optometry; compliance with the SRP's recommendations is voluntary. The Board may choose to sanction outside the recommendation, and 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 Consent Orders that come before Informal Conference committees. 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.



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**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 Optometry, the Board often attempts to mirror the sanction handed down by the other Board. The Virginia Board of Optometry 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 case type track can be selected and only one cover sheet should be filled out. If a case (or set of cases) has more than one offense type, score the case along the Standard of Care track. If an offense type is not listed, find the most analogous offense type and use the appropriate case type track.

### Sanctioning Reference Points Case Type Table

Case Type	Included Categories
Standard of Care	Failure to Treat Failure to Diagnose Incorrect Treatment Drug Related - Personal Use Verbal Abuse/Indecency/Profanity Violation Drug Control Act Inability to Safely Practice – Impaired/Incapacitated
Business Practice Issues	Practicing in a Mercantile Establishment Practice on Lapsed/Expired License Prescription Blank Violation/Other Printing Advertising/Signage/Posting

### 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, complete 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](http://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.

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/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 below:

#### Departure Example #1

Sanction Threshold Recommendation: Probation/Recommend Formal Hearing and Inspection

Imposed Sanction: Monetary Penalty of \$1,000, Inspection

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

#### Departure Example #2

Sanction Threshold Recommendation: No Sanction/ Reprimand

Imposed Sanction: Reprimand, \$500 Monetary Penalty

*Reason(s) for Departure: Respondent displayed no remorse for his actions.*

## Determining a Specific Sanction

The bottom of the SRP worksheet lists separate sanctioning thresholds for each case category track. Each sanctioning threshold encompasses a variety of specific sanction types. In addition to sanction types, the worksheet recommends monetary penalty ranges: \$500-\$999, \$1,000-\$2,499, and \$2,500 or more. Monetary penalty amounts *do not* include inspection fees or CE costs.

The tables below list the sanctions and monetary penalties most often used by the Board that fall under each threshold. After considering the sanction and monetary penalty recommendation, the Board should fashion a more detailed sanction(s) based on the individual case circumstances.

### Sanctioning Reference Points Threshold Table

Case Type	Worksheet Score	Available Sanctions
Standard of Care	0-50	Reprimand Monetary Penalty Continuing Education Pay Renewal Fees CE Audit
	51 or more	Probation Recommend Formal Hearing
Business Practice Issues	0	No Sanction Reprimand
	10 or more	Reprimand Monetary Penalty Continuing Education Pay Renewal Fees CE Audit

### Sanctioning Reference Points Monetary Penalty Recommendation Table

Case Type	Worksheet Score	Monetary Penalty Recommendation
Standard of Care	0-49	\$500 - \$999
	50	\$1,000 - \$2,499
	51 or more	\$2,500 +
Business Practice Issues	10	\$500 - \$999
	20	\$1,000 - \$2,499
	21 or more	\$2,500 +

## 🦋 Sanctioning Reference Points - Coversheet for Board of Optometry

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

<b>Case Number(s)</b>	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr> </table>							<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr> </table>							
<b>Respondent Name</b>	_____		_____												
	Last		First												
<b>License Number</b>	_____														
<b>Case Type</b>	<input type="checkbox"/> Standard of Care	<input type="checkbox"/> Business Practice Issues													
<b>Sanction Threshold Result</b>	Standard of Care <input type="checkbox"/> 0 - 50 <input type="checkbox"/> 51 or more	Business Practice Issues <input type="checkbox"/> 0 <input type="checkbox"/> 10 or more													
<b>Monetary Penalty Threshold Result</b>	Standard of Care <input type="checkbox"/> 0 - 49 <input type="checkbox"/> 50 <input type="checkbox"/> 51 or more	Business Practice Issues <input type="checkbox"/> 0 <input type="checkbox"/> 20 <input type="checkbox"/> 21 or more													
<b>Imposed Sanction</b>	<input type="checkbox"/> No Sanction <input type="checkbox"/> Reprimand <input type="checkbox"/> Monetary Penalty - enter amount \$ _____ <input type="checkbox"/> Stayed Monetary Penalty - enter amount \$ _____ <input type="checkbox"/> Inspection and associated fees <input type="checkbox"/> Probation <input type="checkbox"/> CE _____ hours <input type="checkbox"/> CE audit for 3 years <input type="checkbox"/> Pay renewal fees \$ _____ <input type="checkbox"/> Stayed Suspension <input type="checkbox"/> Suspension <input type="checkbox"/> Revocation <input type="checkbox"/> Surrender <input type="checkbox"/> Recommend Formal <input type="checkbox"/> Terms: _____ _____														
<b>Reasons for Departure from Sanction Threshold Result</b>	_____ _____ _____ _____														
<b>Worksheet prepared by:</b>	_____		<b>Date completed:</b> _____												

## Board of Optometry - Sanctioning Reference Points Worksheet Instructions

### Case Type

#### Step 1: Determine the Appropriate Case Type

*The worksheet has two tracks, Standard of Care and Business Practice Issues. A case is chosen from the list below to determine which track on the worksheet to follow. If a case has aspects from both, follow the Standard of Care case type track.*

#### Standard of Care

- Failure to Treat
- Failure to Diagnose
- Incorrect Treatment
- Drug Related - Personal Use
- Verbal Abuse/Indecency/Profanity
- Violation Drug Control Act
- Inability to Safely Practice – Impaired/Incapacitated

#### Business Practice Issues

- Practicing in a Mercantile Establishment
- Practice on Lapsed/Expired License
- Prescription Blank Violation/Other Printing
- Advertising/Signage/Posting

### Standard of Care

#### Step 2A: Score the Standard of Care Factors (score all that apply)

Enter “10” if there are one or more patients involved.

Enter “25” if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter “25” if there was a concurrent civil or criminal action, or if the employer took any punitive action related to this case.

Enter “25” if the respondent has had any past difficulties in the following areas: drugs, alcohol, mental 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” in cases where an individual may have committed an act or is highly likely to commit an act that constitutes significant and substantial danger to the health and safety of any person (Priority A), in cases where an individual may have committed a harmful act to another person but does not pose an imminent threat to public safety (Priority B), or in cases where an individual may have committed an act that could be harmful or is considered substandard (Priority C).

Enter “25” if this was a violation of the Federal Drug Control Act.

Enter “25” if the respondent was impaired at the time of the offense due to substance abuse (alcohol or drugs) or mental/physical incapacitation. If this factor is scored, the respondent is automatically recommended for an inspection.

Enter “10” if the respondent has any prior violations decided by the Virginia Board of Optometry. If this factor is scored, the respondent is automatically recommended for an inspection.

Enter “10” if the respondent has any prior similar Virginia Board of Optometry violations. Similar violations would be those listed under the Standard of Care case type heading in Step 1. If this factor is scored, the respondent is automatically recommended for an inspection.

Enter “10” if there was financial or material gain by the respondent. If this factor is scored, the respondent is automatically recommended for an inspection.

## Board of Optometry - Sanctioning Reference Points Worksheet Instructions

### Standard of Care, continued

#### Step 3A:

##### Total Score

Add all the factors for a total respondent score.

#### Step 4A:

##### Determining the Sanctioning Recommendations for Standard of Care

Locate the Total Respondent Score in the correct threshold range on the left of the Sanctioning Recommendation Box and the corresponding sanction recommendation. Using the same total respondent score, locate the monetary penalty recommendation. The four bottom factors, if scored, automatically recommend an inspection in addition to any other sanction recommendation.

##### *Example:*

*A total respondent score of 30 would fall into the "0-50" points range and be recommended for a "Reprimand/Monetary Penalty" and a \$500-\$999 Monetary Penalty. If this respondent's factors included "One or more prior Board violations" they would also be recommended for an inspection.*

### Business Practice Issues

#### Step 2B:

##### Score the Business Practice Issues Factors

*(score all that apply)*

Enter "10" if multiple respondents were associated with the case. When multiple respondents are involved there will be a "companion case" with another respondent's name and case number found in the investigation report.

Enter "10" in cases where an individual may have committed an act or is highly likely to commit an act that constitutes significant and substantial danger to the health and safety of any person (Priority A), in cases where an individual may have committed a harmful act to another person but does not pose an imminent threat to public safety (Priority B), or in cases where an individual may have committed an act that could be harmful or is considered substandard (Priority C).

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

Enter "20" if the respondent has any prior violations decided by the Virginia Board of Optometry.

Enter "20" if the respondent has any prior similar Virginia Board of Optometry violations. Similar violations would be those listed under the Business Practice Issues case type heading in Step 1.

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

#### Step 3B:

##### Total Score

Add all the factors for a total respondent score.

#### Step 4B:

##### Determining the Sanctioning Recommendations for Business Practice Issues

Locate the Total Respondent Score in the correct threshold range on the left of the Sanctioning Recommendation Box and the corresponding sanction recommendation. Using the same total respondent score, locate the monetary penalty recommendation.

Using the same total respondent score, locate the monetary penalty recommendation.

##### *Example:*

*A total respondent score of 10 would fall into the "10 or more" points range and be recommended for a "Reprimand/Monetary Penalty" and a \$500-\$999 Monetary Penalty.*

**Board of Optometry - Sanctioning Reference Points WORKSHEET**

**CASE TYPE**

**Standard of Care**

Factors	Points	Score
One or more patients involved . . . . .	10	_____
Act of commission . . . . .	25	_____
Concurrent action against respondent . . . . .	25	_____
Past difficulties (drugs, alcohol, mental, or physical) . . . . .	25	_____
Priority A, B, or C . . . . .	10	_____
Violation of the Drug Control Act . . . . .	25	_____
Respondent impaired during incident . . . . .	25*	_____
One or more prior Board violations . . . . .	10*	_____
Previous violations similar to instant offense . . . . .	10*	_____
Financial/material gain by the respondent . . . . .	10*	_____
<b>Total Score</b>		<input style="width: 80px; height: 25px;" type="text"/>

**Business Practice Issues**

Factors	Points	Score
Multiple respondents associated with incident . . . . .	10	_____
Priority A, B, or C . . . . .	10	_____
Financial/material gain by the respondent . . . . .	20	_____
One or more prior Board violations . . . . .	20	_____
Previous violations similar to instant offense . . . . .	20	_____
Act of commission . . . . .	20	_____
<b>Total Score</b>		<input style="width: 80px; height: 25px;" type="text"/>

**SANCTION RECOMMENDATIONS**

**Sanctioning Recommendations**

Points	Sanction
0-50	Reprimand/Monetary Penalty
51 or more	Probation/Recommend Formal Hearing

**Monetary Penalty Schedule**

Points	Monetary Penalty
0 to 49	\$500-\$999
50	\$1,000-\$2,499
51 or more	\$2,500 and up

\* Note: If one of the last four factors is scored, the respondent is also recommended for an inspection.

**Sanctioning Recommendations**

Points	Sanction
0	No Sanction/Reprimand
10 or more	Reprimand/Monetary Penalty

**Monetary Penalty Schedule**

Points	Monetary Penalty
10	\$500-\$999
20	\$1,000-\$2,499
21 or more	\$2,500 and up

This worksheet is to be used at Informal Conferences and with Pre-hearing Consent Orders and is Confidential pursuant to § 54.1-2400.2 of the Code of Virginia.