

Sanctioning

Reference Points

Instruction Manual

Board of Physical Therapy

Guidance Document 112-17
Adopted November 2009
(Revised May 2012)
(Revised November 2017)
(Revised November 2018)

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November 2017

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 Physical Therapy members and staff, a committee of board members, staff, and research consultants assembled a research agenda involving the most exhaustive statistical study of sanctioned Physical Therapists and Physical Therapist Assistants ever conducted in the United States. The analysis included collecting over 100 factors on all Board of Physical Therapy sanctioned cases in Virginia over a ten 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 Physical Therapy and staff, analysts developed a usable sanctioning worksheet as a way to implement the reference system.

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

Sincerely yours,

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Director
Virginia Department of Health Professions

Cordially,

Elizabeth A. Carter, Ph.D.
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GENERAL INFORMATION

Overview

The Virginia Board of Health Professions has spent the last 15 years studying sanctioning in disciplinary cases. The study is examining all 13 health regulatory boards. Focusing on the Board of Physical Therapy (PT), this manual contains background on the project, the goals and purposes of the Sanctioning Reference Points (SRP) system, and a revised worksheet with offense and respondent factors that are scored in order to help Board members determine how similarly situated respondents have been treated in the past.

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

The current SRP system is comprised of a single worksheet which scores a number of offense and respondent factors identified using quantitative and qualitative analyses and built upon the Department's effort to maintain consistency in sanctioning over time. The original PT SRP Manual was adopted in November 2009, and has been applied to cases closed in violation for the past 8 years.

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

Background

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

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. This approach combines information from past practice with policy adjustments, in order to ensure and maintain a system that better reflects current sanctioning practice. The SRP manual adopted in 2009 was based on a descriptive approach with a limited number of normative adjustments. This study was conducted in a similar manner; however, it draws on data covering a more recent historical time period (2012-2016, partial 2017) and relies on the full PT Board's input to inform SRP system modifications.

Qualitative Analysis

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

Quantitative Analysis

In 2009, researchers collected detailed information on all PT disciplinary cases ending in a violation between 1999 and 2009; ten years of sanctioning data. Over 100 different factors were collected on each case in order to describe the case attributes board members identified as potentially impacting sanction decisions. Researchers used data available through the DHP's case management system combined with primary data collected from hard copy files. The hard copy files contained investigative reports, board notices, board orders, and all other documentation that is made available to board members when deciding a case sanction.

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

Offense factors such as financial or material gain were examined along with such factors as prior board or criminal history and past substance abuse. Some factors were deemed inappropriate for use in a structured sanctioning reference system. Although many factors, both "legal" and "extra-legal," can help explain sanction variation, only those "legal" factors the Boards felt should consistently play a role in a sanction decision were included on the final worksheet. By using

this method, the hope is to achieve more neutrality in sanctioning by making sure the same set of "legal" factors are considered in every case.

Wide Sanctioning Ranges

The SRPs consider and weigh the circumstances of an offense and the relevant characteristics of the respondent, providing the Boards with a sanctioning model that encompasses roughly 75% of historical practice. This means that approximately 25% of past cases receive sanctions either higher or lower than what the reference points indicate, recognizing that aggravating and mitigating factors play a legitimate role in sanctioning. The wide sanctioning ranges allow the Board to individualize sanctions within the broader SRP recommended range to fit the circumstances of each case.

Voluntary Nature

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

Worksheets Not Used in Certain Cases

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

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

Mandatory Suspensions – Virginia law requires that under certain circumstances (conviction of a felony, declaration of legal incompetence or incapacitation, license revocation in another jurisdiction) the licensee must be suspended. The sanction is defined by law and is therefore excluded from the 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 (CCAs) – SRPs will not be used in cases settled by CCA.

Certain Pre-Defined Sanctions – The Sanctioning Reference Points system does not apply to certain cases that have already been assigned pre-determined actions as set by the health regulatory board. The Board of Physical Therapy has adopted Guidance Documents in the areas of Practicing on an Expired License (Guidance document 112-18) and Continuing Education Deficiencies (Guidance document 112-21) as follows:

Practicing on an Expired License, Guidance document 112-18	Possible Action
First offense; 90 days or less	Confidential Consent Agreement
First offense; 91 days to 6 months	Consent Order; Monetary Penalty of \$1000
First offense; 6 months to one year	Consent Order; Monetary Penalty of \$1500
First offense; over 1 year	Consent Order; Monetary Penalty of \$2500
Second offense	Consent Order; Monetary Penalty of \$2500

Continuing Education Deficiencies, Guidance document 112-21	Possible Action
If the licensee was truthful in responding to the renewal attestation and the licensee has not previously been found in violation of CE or active practice requirements. Issue a CCA for those licensees who fail to meet the CE requirements.	The CCA may require the licensee to submit proof of completion of the missing contact hours(s) within 90 days of the effective date of the CCA. Such contact hours cannot be used toward fulfillment of the next biennial CE requirement for renewal
If the licensee was not truthful in responding to the renewal attestation or if the licensee has previously been found in violation of CE or active practice requirements. The corresponding sanctions may be applied by issuance of a PHCO	(i) Monetary Penalty of \$100 per missing contact hour, up to a maximum of \$1,000; (ii) Monetary Penalty of \$300 for a fraudulent renewal certification; and (iii) For those licensees who fail to meet the CE requirements, submission of proof of completion of the missing contact hour(s) within 90 days of Order entry. These contact hours cannot be used toward the next biennial requirement for renewal.
If the licensee fails to respond to the audit or does not wish to sign the CCA or PHCO that is offered or has previously been disciplined pursuant to a Board Order for not meeting the CE requirements.	The case will be referred to an informal fact-finding conference.

Case Selection When Multiple Cases Exist

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

Sanctioning Reference Points Case Type Table

Case Type Group	Included Case Categories	Applicable Points
Abuse/Inappropriate Relationship	<ul style="list-style-type: none"> Any sexual assault or mistreatment of a patient Dual relationship, sexual relationship or other boundary issue Includes inappropriate touching and written or oral communications 	70
Inability to Safely Practice/ Drug Related-Patient Care	<ul style="list-style-type: none"> Impairment due to use of alcohol, illegal substances, or prescription drugs Incapacitation due to mental, physical or medical conditions. Prescription forgery, drug adulteration, patient deprivation, stealing drugs from patients, or personal use 	50
Neglect	<ul style="list-style-type: none"> 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 	45
Business Practice Issues/ Continuing Education	<ul style="list-style-type: none"> Advertising, solicitation, records, audits, self-referral of patients, required report not filed, or disclosure Failure to obtain or document CE requirements. 	40
Fraud/Standard of Care/ Unlicensed Activity	<ul style="list-style-type: none"> Performing unwarranted/unjust services or the falsification/alteration of patient records Improper patient billing, falsification of licensing/renewal documents. Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues Practicing outside the permitted functions of license granted Other patient care cases that cannot adequately fit into any other standard of care case type 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 	30

Completing the Coversheet and Worksheet

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

Scoring Factor Instructions

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

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

Using Sanctioning Thresholds to Determine a Specific Sanction

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

Sanctioning Reference Points Threshold Table

Worksheet Score	Available Sanctions
0 - 49	<ul style="list-style-type: none"> • No Sanction • Reprimand
50 - 129	<ul style="list-style-type: none"> • Reprimand • Monetary Penalty • Continuing Education (CE)
130 - 239	<ul style="list-style-type: none"> • Monetary Penalty • Stayed Suspension • Corrective Action includes the following: <ul style="list-style-type: none"> • Probation • HPMP • Begin/continue treatment for alcohol/substance abuse • Begin/continue therapy/counseling • Quarterly self reports • Quarterly reports from employer • Quarterly reports from therapist, counselor, doctor, etc. • Inform all current and future employers of license status • Provide a copy of order to all current and future employers • Unrestricted communication between the board and employer • Complete FSBPT/oPTion assessment tool • Shall not work in home health setting • <i>Either</i> take CE/oPTion <i>or</i> place license on inactive status • Restriction on patient type
240 or more	<ul style="list-style-type: none"> • Revocation • Suspension • Surrender • Refer to Formal Hearing

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

Case Number(s):

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Respondent Name: _____
First Last

License Number: _____

Case Type:
 Abuse/Inappropriate Relationship
 Inability to Safely Practice/Drug Related-Patient Care
 Neglect
 Business Practice Issues/Continuing Education
 Fraud/Standard of Care/Unlicensed Activity

Sanctioning Recommendation:
 No Sanction/Reprimand (0 - 49)
 Reprimand/Monetary Penalty/Continuing Education (50 - 129)
 Monetary Penalty/Stayed Suspension/Corrective Action (130 - 239)
 Loss of License/Refer to Formal (240 or more)

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

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

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

Worksheet Preparer's Name: _____

Date Worksheet Completed: _____

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



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

Abuse/Inappropriate Relationship – 70 Points

- Any sexual assault, mistreatment of a patient
- Dual relationship, sexual relationship or other boundary issue. Includes inappropriate touching and written or oral communications

Inability to Safely Practice/Drug Related-Patient Care – 50 Points

- Impairment due to use of alcohol, illegal substances, or prescription drugs
- Incapacitation due to mental, physical or medical conditions
- Drug adulteration, patient deprivation, stealing drugs from patients, or personal use

Neglect – 45 Points

- 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

Business Practice Issues/CE – 40 Points

- Records, inspections, audits
- Required report not filed
- Failure to obtain or document CE requirements

Fraud/Standard of Care/Unlicensed Activity – 30 Points

- Performing unwarranted/unjust services
- Falsification/alteration of patient records
- Improper patient billing
- Falsification of licensing/renewal documents
- Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues.
- Practicing outside the permitted functions of license granted
- 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.

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

Enter "50" if a patient was intentionally or unintentionally injured. This includes any injury requiring medical care ranging from first-aid treatment to hospitalization.

Enter "50" 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/Inappropriate Relationship."

Enter "50" 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 respondent failed to take corrective action prior to the time at which the SRP worksheet is being considered.

Enter "30" 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 "30" if there was a concurrent civil or criminal action related to this case.

Enter "30" 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 the ability to function safely or properly.

Enter "30" if the respondent has previously been sanctioned by any other state or entity. Sanctioning by an employer is not scored here.

Enter "10" if the patient is especially vulnerable. Patients in this category must be at least one of the following: under age 18, over age 65, or mentally/physically handicapped.

Enter "10" if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter "10" if the case involved falsification/alteration of patient records. This would include cases in which the respondent did not stay with the patient for as long as records show, or the respondent did not visit the patient at all. This would also include the falsification of medical records such as vital signs.

Enter "10" if the respondent has any prior violations decided by the Virginia Board of Physical Therapy.

Step 3: Add Case Type and Offense and Respondent Factor scores to arrive at 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 case with a Total Worksheet Score of 100 is recommended for “Reprimand/Monetary Penalty/CE.”

Step 5: Coversheet

Complete the coversheet including the SRP sanction result, the imposed sanction and the reasons for departure if applicable. Both a coversheet and worksheet must be completed for applicable cases.

Case Type (score only one)	Points	Score
Abuse/Inappropriate Relationship	70	_____
Inability to Safely Practice/Drug Related-Patient Care	50	_____
Neglect	45	_____
Business Practice Issues/Continuing Education	40	_____
Fraud/Standard of Care/Unlicensed Activity	30	_____

Offense and Respondent Factors (score all that apply)

Patient Injury	50	_____
Inappropriate physical contact	50	_____
Respondent impaired during incident	50	_____
Respondent failed to take corrective action	30	_____
Sanctioned by employer due to incident	30	_____
Concurrent civil or criminal action	30	_____
Past difficulties (drugs, alcohol, mental/cognitive, physical)	30	_____
Sanctioned by another state or entity	30	_____
Patient particularly vulnerable	10	_____
Act of commission	10	_____
Case involved falsification/alteration of patient records	10	_____
Any prior VA Board of Physical Therapy violations	10	_____

Total Worksheet Score

<u>Score</u>	<u>Sanctioning Recommendations</u>
0 - 49	No Sanction/Reprimand
50 - 129	Reprimand/Monetary Penalty/Continuing Education
130 - 239	Monetary Penalty/Stayed Suspension/Corrective Action
240 or more	Loss of License/Refer to Formal