

Sanctioning
Reference Points
Instruction Manual
Board of Funeral Directors
and Embalmers

Guidance Document 65-14
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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 the Board of Funeral Directors and Embalmers members and staff, a committee of board members, staff, and research consultants assembled a research agenda involving the most exhaustive statistical study of sanctioned Funeral Service Providers and Establishments ever conducted in the United States. The analysis included collecting over 100 factors on all Board of Funeral Directors and Embalmers sanctioned cases in Virginia between 2002 and 2006. 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 (SRP). Using both the data and collective input from the Board of Funeral Directors and Embalmers 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 Funeral Directors and Embalmers 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,

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

Cordially,

Elizabeth A. Carter, Ph.D.
Executive Director
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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 Funeral Directors and Embalmers (Funeral), 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 Funeral. 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 Funeral SRP Manual was adopted in March 2007, and has been applied to cases closed in violation for the past 12 years.

These instructions and the use of the SRP system fall within current DHP and Board of Funeral 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 Funeral. This manual is the result of those adopted changes.

Goals

The Board of Health Professions and the Board of Funeral 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 2007 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 Funeral 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 2007, researchers collected detailed information on all Funeral disciplinary cases ending in a violation between 2002 and 2006; five 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. As mentioned, the revised worksheet reflects the most recent data available; this ensures that worksheet factors, scores, and recommendations continue to reflect current sanctioning 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 Funeral. 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 Funeral, the

Board often attempts to mirror the sanction handed down by the other Board. The Virginia Board of Funeral 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 Funeral has adopted Guidance Documents in the areas of Continuing Education Deficiencies (Guidance document 65-16), Failing to Submit Corrective Action to Deficiencies Noted During Routine Inspections (Guidance document 65-17) as follows:

Continuing Education Deficiencies, Guidance Document, 65-16	Possible Action
If the licensee was truthful in responding to the renewal attestation and the licensee has not previously been found in violation of the CE 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 annual 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 requirements.	Issue a PHCO: 1. Monetary Penalty of \$100 per missing contact hour; 2. Monetary Penalty of \$300 for a fraudulent renewal certification; and 3. 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.

Failing to Submit Corrective Action to Deficiencies Noted During Routine Inspections, Guidance Document: 65-17	Possible Action
If the licensee fails to respond within 14 days of the inspection Board staff will send a certified letter to the Manager of Record's address of record in 2-5 days of the response due date. The letter will include a new due date which will be 10 days after the date of the letter. Board staff will initiate disciplinary action against the funeral home 5 days after second due date if there is no response.	A Pre-hearing Consent Order based on the following guidelines will be sent to the MOR: 1. \$100 monetary penalty for failing to respond in a timely manner plus \$100 additional penalty for each citation of deficiency. 2. FH must submit acceptable corrective action. 3. \$100 penalty will be added for each week after the deadline the PHCO remains unsigned, unless a special conference committee has been requested by the licensee.
If the licensee fails to respond to the pre-hearing consent order or does not agree to it	The matter will be referred to an informal 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 Mishandling of preneed funds and Impairment due to use of alcohol would receive 50 points, since Inability to Safely Practice is above Fraud 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
Inability to Safely Practice	<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 	50
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 	40
Fraud	<ul style="list-style-type: none"> • Improper patient billing, mishandling of pre-need funds, fee splitting, and falsification of licensing/renewal documents 	30
Business Practice Issues	<ul style="list-style-type: none"> • Solicitation, records, inspections, audits, required report not filed, or disclosure • Care and handling of a decedent 	15

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 Funeral 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 - 60	No Sanction Reprimand Monetary Penalty
61 - 130	Monetary Penalty Treatment/Monitoring <ul style="list-style-type: none"> • Stayed Suspension • Probation • Terms <ul style="list-style-type: none"> • HPMP • Inspection • Continuing Education (CE) • Reimburse client • Shall not be MOR (either indefinitely or during probationary period) • Honor previous client contract, repay original amount plus 3% interest • Prohibited from applying for licensure until completion of terms, provide Board with documentation of completion • Take and pass state exam for funeral service providers • Mental health/substance abuse evaluation • Begin/continue in outpatient treatment (mental health/substance abuse, medical) with report from therapist • Shall not use alcohol or mood altering drugs except as prescribed • Unrestricted communication between provider and board • Notify board of change in employment • Shall not write preneed contracts (either indefinitely or during probation period) • MOR shall read chapter 28 of title 54.1 of code and regulations • Provide evidence to board that all deficiencies have been corrected
131 - 220	Treatment/Monitoring <ul style="list-style-type: none"> • Stayed Suspension • Probation • Terms <ul style="list-style-type: none"> • HPMP • Inspection • Continuing Education (CE) • Reimburse client • Shall not be MOR (either indefinitely or during probationary period) • Honor previous client contract, repay original amount plus 3% interest • Prohibited from applying for licensure until completion of terms, provide Board with documentation of completion • Take and pass state exam for funeral service providers • Mental health/substance abuse evaluation • Begin/continue in outpatient treatment (mental health/substance abuse, medical) within report from therapist • Shall not use alcohol or mood altering drugs except as prescribed • Unrestricted communication between provider and board • Notify board of change in employment

	<ul style="list-style-type: none"> • Shall not write preneed contracts (either indefinitely or during probation period) • MOR shall read chapter 28 of title 54.1 of code and regulations • Provide evidence to board that all deficiencies have been corrected <p>Recommend Formal Hearing</p> <ul style="list-style-type: none"> • Loss of License • Revocation • Suspension • Surrender
221 or more	<p>Recommend Formal Hearing</p> <ul style="list-style-type: none"> • Loss of License • Revocation • Suspension • Surrender

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



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)

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

Unlicensed Activity – 40 Points

- 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

Fraud – 30 Points

- Improper patient billing, mishandling of pre-need funds, fee splitting, and falsification of licensing/renewal documents

Business Practice Issues – 15 Points

- Solicitation, records, inspections, audits, required report not filed, or disclosure
- Care and handling of a decedent

Step 2: Offense and Prior Record Factors – Score all factors relative to the totality of the case presented. (score all that apply)

Enter "50" if the offense involved two or more decedents or a third party acting on behalf of one or more decedent. There must be a minimum total of two decedents to score this factor. Third party involvement includes, but is not limited to, family members acting on behalf of the decedent. Third party involvement is not limited to family.

Enter "45" if the respondent took no corrective action regarding the incident. Corrective action could include reimbursement of preneed funds (with or without interest), make up continuing education deficiencies. Corrective action must take place prior to Informal Conference or Pre-Hearing Consent Order.

Enter "25" if the respondent was the Manager of Record (MOR) at the time of the incident. This includes "acting" MOR.

Enter "25" if there was financial or material gain by the respondent.

Enter "20" if the case involved Care and handling of Decedent. Care and handling may include such cases as: improper refrigeration, improper embalming, improper cremation services, unprofessional burial services, unprofessional dressing, unprofessional casketing or cosmetology, unprofessional removal/transport services, and/or bodily desecration/abuse.

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

Enter "20" if there was any action against the respondent. Actions against the respondent can include: civil or criminal action as well as sanctioning by an employer. A sanction from an employer may include: suspension, review, or termination. The action must be related to the case.

Enter "10" if multiple respondents were associated with the case. When multiple respondents are involved there will be a separate case number for a different respondent's license number with facts from the same incident.

Enter "10" if the case involved a facility violation. These points may be scored regardless of the case type assigned points in Step 1.

Enter "10" if the respondent was impaired in any way at the time of the offense due to substance abuse (alcohol or drugs) or mental/physical incapacitation.

Enter "10" if the respondent has any prior violations decided by the Virginia Board of Funeral Directors and Embalmers.

Enter "10" if the respondent has any prior similar Virginia Board of Funeral Directors and Embalmers violations. Similar violations would be those that are contained under the same major case type heading listed in Step 1. For example, if the case being heard concerns a "Facility Operating Without a Permit" and the respondent has a prior violation for "Aiding/Abetting Unlicensed Activity" enter 10 points.

Step 3: Add Case Type and Offense and Prior Record for a Total Worksheet Score

Step 4: Determining the Sanction Recommendation

The Total Worksheet Score corresponds to the Sanctioning Reference Points recommended sanction located at the bottom of the worksheet. To determine the appropriate recommended sanction, find the range on the left that contains the Total Worksheet Score for the current worksheet. That range has a corresponding range of recommended sanctions. For instance, a Total Worksheet Score of 80 is recommended for "Monetary Penalty to Treatment/Monitoring."

Step 5: Coversheet

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



Case Type (score only one)

- Inability to Safely Practice
- Unlicensed Activity
- Fraud
- Business Practice Issues

Points

Score

50	_____
40	_____
30	_____
15	_____

} Score Only One

Offense and Prior Record Factors (score all that apply)

- Two or more decedents involved
- Respondent took no corrective action
- Respondent was the MOR at the time of the incident
- Financial or material gain by the respondent
- Care and Handling of Decedent involved
- Act of commission
- Any action against the respondent
- Multiple respondents associated with case
- Case involved a facility violation
- Respondent impaired in any way
- One or more prior violations
- Were any of the previous violations similar to the instant offense?

50	_____
45	_____
25	_____
25	_____
20	_____
20	_____
20	_____
10	_____
10	_____
10	_____
10	_____
10	_____

} Score All That Apply

Total Worksheet Score

Score	Sanctioning Recommendations	Monetary Penalty Recommendations
0-60	No Sanction/Reprimand to Monetary Penalty	Up to \$1,000
61-130	Monetary Penalty to Treatment/Monitoring	\$500 to \$2,000
131-220	Treatment/Monitoring to Recommend Formal or Accept Surrender	\$1,000 to \$5,000
221 or more	Recommend Formal Hearing or Loss of License	\$5,000 or more

Respondent Name: _____

Date: _____

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