

SANCTIONING REFERENCE POINTS

INSTRUCTION MANUAL

Board of Long-Term Care Administrators

Prepared for

Virginia Department of Health Professions

Perimeter Center

9960 Mayland Drive, Suite 300

Richmond, Virginia 23233

(t) 804.367.4400

Prepared by

VisualResearch, Inc.

Post Office Box 1025

Midlothian, Virginia 23113

(t) 804.794.3144

www.vis-res.com

Adopted March 8, 2010

Guidance Document #(95-3)



COMMONWEALTH of VIRGINIA

Sandra Whitley Ryals
Director

Department of Health Professions
6603 West Broad Street, 5th Floor
Richmond, Virginia 23230-1712

www.dhp.virginia.gov
TEL (804) 662 9900
FAX (804) 662 9943
TDD (804) 662 7197

March 2010

Dear Interested Parties:

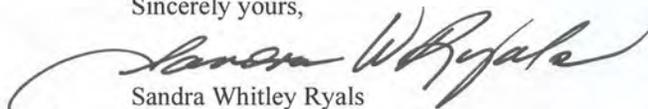
In the spring of 2001, the Virginia Department of Health Professions approved a workplan to study sanctioning in disciplinary cases for Virginia's 13 health regulatory boards. The purpose of the study was to "...provide an empirical, systematic analysis of board sanctions for offenses and, based on this 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 selected Board members and staff, a research agenda was developed involving one of the most exhaustive statistical studies of sanctioned Long-Term Care Administrators in the United States. The analysis included collecting approximately 50 factors on all Board of Long-Term Care Administrators sanctioned cases in Virginia over a 10-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 Long-Term Care Administrators 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 Long-Term Care Administrators 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.

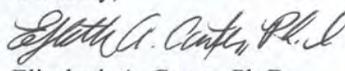
Equally important to recommending a sanction, the system allows each respondent to be evaluated against a common set of factors—making sanctioning more predictable, providing an educational tool for new Board members, and neutralizing the possible influence of "inappropriate" factors (e.g., race, sex, 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,



Sandra Whitley Ryals
Director

Cordially,



Elizabeth A. Carter, Ph.D.
Executive Director
Virginia Board of Health Professions

Table of Contents

General Instructions

Overview	5
Background	6
Goals	6
Methodology	6
Qualitative	7
Quantitative	7
Wide Sanctioning Ranges	8
The Sanctioning Factors	8
Three Sanctioning Thresholds	9
Voluntary Nature	9
Worksheet Not Used in Certain Cases	10
Case Selection When Multiple Cases Exist	11
Sanctioning Reference Points Case Type Table	11
Completing the Coversheet and Worksheet	12
Scoring Factor Instructions	12
Coversheet.....	12
Determining a Specific Sanction.....	14
Sanctioning Reference Points Threshold Table.....	14

Sanctioning Reference Points Forms

Coversheet.....	15
Instructions	16
Worksheet	17

General Instructions

Overview The Virginia Board of Health Professions has spent the last 7 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 Long-Term Care Administrators. The Board of Long-Term Care Administrators 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 Long-Term Care Administrators. 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, offense and respondent 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 worksheet recommend a range of sanctions from which the Board may select in a particular case.

In addition to this instruction booklet, separate coversheets and worksheets are available to record Board specific information, the recommended sanction, the 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 Long-Term Care Administrators 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 work plan 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 Long-Term Care Administrators. 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 Long-Term Care Administrators 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 to follow.

This approach combines information from past practice with policy adjustments, in order to achieve some desired outcome. The Board of Long-Term Care Administrators chose a descriptive approach with normative adjustments.

Qualitative Analysis

Researchers conducted in-depth personal interviews with Board members and staff, as well as 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 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.

Quantitative Analysis

Researchers analyzed detailed information on Long-Term Care Administrators' disciplinary cases ending in a violation between 1999 and 2009; approximately 45 sanctioning "events." Over 50 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 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 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. These factors and weights were formulated into a sanctioning worksheet with three thresholds, which are the basis of the SRPs.

Offense factors such as financial gain and case severity (priority level) were analyzed as well as prior history factors such as substance abuse,

and previous Board orders. Some factors were deemed inappropriate for use in a structured sanctioning reference system. For example, respondent gender was considered an “extra-legal” factor, and was explicitly excluded from the SRPs. 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 product. 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 sanction range that encompasses roughly 74% of historical practice. This means that 26% of past cases had received sanctions either higher or lower than what the reference points indicate, acknowledging that aggravating and mitigating factors play a role in sanctioning. The wide sanctioning ranges recognize that the Board will sometimes reasonably disagree on a particular sanction outcome, but that a broad selection of sanctions falls within the recommended range.

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.

The Sanctioning Factors

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 do case types affect sanctioning outcomes, but certain offense, respondent and prior record factors do as well. To this end, the Long-Term Care Administrators SRP system scores two groups of factors in order to arrive at a sanctioning recommendation. The first set of factors relates to the case type. The second group relates to elements of the offense, the respondent, and his or her prior record.

Therefore, a respondent before the Board for a fraud case will receive points for the type of case and can potentially receive points for act of commission, multiple patient involvement, and/or for having a history of disciplinary violations.

**Three Sanctioning
Thresholds**

The SRP worksheet uses three thresholds for recommending a sanction. Once all factors are scored, the corresponding points are then added for a total worksheet score. The total is used to locate the sanctioning threshold recommendation found at the bottom of the worksheet. For instance, a respondent having a total worksheet score of 40 would be recommended for a Reprimand/Monetary Penalty.

Voluntary Nature

The SRP system is a tool to be utilized by the Board of Long-Term Care Administrators. Compliance with the SRPs is voluntary. The Board will use the system as a reference tool and may choose to 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, Consent Orders, or Pre-Hearing Consent Orders. 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.

**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 Long-Term Care Administrators, the Board often attempts to mirror the sanction handed down by the other Board. The Virginia Board of Long-Term Care Administrators 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 coversheet and worksheet should be completed and it should encompass the entire event. If a case (or set of cases) has more than one case type only one is selected for scoring according to the case type that appears highest on the following table and receives the highest point value. For example, a respondent found in violation for an inspection deficiency and misappropriation of property would receive thirty points, since Fraud is above Business Practice Issues 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.

Sanctioning Reference Points Case Type Table

Case Type	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 • 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"> • Misappropriation of property 	30
Business Practice Issues	<ul style="list-style-type: none"> • Records, inspections, audits • Required report not filed 	20
Continuing Education	<ul style="list-style-type: none"> • Failure to obtain or document continuing education requirements 	10

Completing the Coversheet & 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, 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 (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/Self-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: Recommend Formal
or Accept Surrender
Imposed Sanction: Probation

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

Departure Example #2

Sanction Threshold Recommendation: Reprimand/ Monetary Penalty
Imposed Sanction: Probation, Terms – Administrator in training
with preceptor

Reason(s) for Departure: Respondent displayed a lack of knowledge that could be corrected with further training.

Determining a Specific Sanction

The bottom of the SRP worksheet lists three sanction thresholds that encompass a variety of specific sanction types. The table below lists the sanctions most often used by the Board that fall under each threshold. After considering the sanction recommendation, the Board should fashion a more detailed sanction(s) based on the individual case circumstances.

Sanctioning Reference Points Threshold Table

Worksheet Score	Available Sanctions
0-50	Reprimand Monetary Penalty Stayed Monetary Penalty
51-90	Corrective Action Stayed Suspension Probation Terms: Continuing Education (CE) HPMP Submit all surveys Board approved management consultant May only be an assistant administrator Administrator in training with preceptor Submit verification of employment
91 or more	Suspension Revocation Accept Surrender Recommend Formal

Long-Term Care Administrators - SRP Coversheet

- Complete *Case Type* section.
- Complete the *Offense and Respondent Factors* section
- Determine the *Sanctioning Recommendation* using the scoring results and the *Sanction Thresholds*.
- Complete this coversheet.

Case Number(s)	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
Respondent Name	<hr style="border: 0; border-top: 1px solid black;"/> <div style="display: flex; justify-content: space-around; width: 100%;"> Last First </div>		
License Number	<hr style="border: 0; border-top: 1px solid black;"/>		
Case Category	<input type="checkbox"/> Inability to Safely Practice <input type="checkbox"/> Fraud <input type="checkbox"/> Business Practice Issues <input type="checkbox"/> Continuing Education		
Sanction Threshold Result	<input type="checkbox"/> 0-50 <input type="checkbox"/> 51-90 <input type="checkbox"/> 91 or more		
Imposed Sanction	<input type="checkbox"/> Reprimand <input type="checkbox"/> Monetary Penalty - enter amount \$ _____ <input type="checkbox"/> Stayed Monetary Penalty - enter amount \$ _____ <input type="checkbox"/> Probation _____ months <input type="checkbox"/> CE _____ hours <input type="checkbox"/> HPMP <input type="checkbox"/> Stayed Suspension <input type="checkbox"/> Suspension <input type="checkbox"/> Revocation <input type="checkbox"/> Accept Surrender <input type="checkbox"/> Recommend Formal <input type="checkbox"/> Other sanction _____ <hr style="border: 0; border-top: 1px solid black;"/> <input type="checkbox"/> Terms _____ <hr style="border: 0; border-top: 1px solid black;"/>		
Reasons for Departure from Sanction Threshold Result	<hr style="border: 0; border-top: 1px solid black;"/> <hr style="border: 0; border-top: 1px solid black;"/> <hr style="border: 0; border-top: 1px solid black;"/>		
Worksheet Preparer(name)	<hr style="border: 0; border-top: 1px solid black;"/>		Date completed:

Long-Term Care Administrators - SRP Worksheet Instructions

Step 1: Case Type *(score only one)*

Select the case type from the list and score accordingly.

When multiple cases have been combined into one “event” (one order) for disposition by the Board, only one case type can be selected. 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 that receives the highest point value.

Inability to Safely Practice – 40 Points

- Impairment due to use of alcohol, illegal substances, or prescription drugs
- Incapacitation due to mental, physical or medical conditions
- 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

- Misappropriation of property

Business Practice Issues – 20 Points

- Records, inspections, audits
- Required report not filed

Continuing Education – 10 Points

- Failure to obtain or document continuing education requirements

Step 2: Offense and Respondent Factors

(score all that apply)

Score all factors relative to the totality of the case presented.

Enter “40” 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 has had any past difficulties in the following areas: drugs, alcohol, mental or physical capabilities. Examples include: 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 “30” if there was financial or material gain by the respondent.

Enter “30” if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter “20” if the respondent was employed for more than three years with the facility associated with the current case.

Enter “20” if the respondent has any prior violations. Prior violations may have been decided by the Virginia Board of Long-Term Care Administrators, another state Board or another entity. DOH/DSS survey violations are not scored here.

Enter “20” if a patient was injured. Patient injury is deprivation, neglect, or when a minimum of first aid was administered. This factor can be scored regardless of a respondent’s lack of intent to harm (i.e. neglect or accidental injury).

Enter “10” if the offense involves two or more patients. Patient involvement does not require direct contact with a patient (i.e. fraudulently billing multiple patients).

Enter “10” if there were violations at multiple locations. Score this factor if the respondent has committed violations at more than one physical location and those violations are being considered as a part of the current case.

Enter “10” if the case involved a Department of Health or Department of Social Services Survey.

Enter “10” if there are more than 12 founded survey violations.

Enter “10” if there were survey violations upon re-inspection.

Step 3: Add Case Type and Offense and Respondent Factor Scores for a Total Worksheet Score

Step 4: Determining the Sanction Recommendation

The Total Worksheet Score corresponds to the sanctioning recommendations 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. These points correspond to the recommended sanction in the right column. For instance, a Total Worksheet Score of 40 is recommended for “Reprimand/Monetary Penalty.”

Step 5: Coversheet

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

Long-Term Care Administrators - Sanctioning Reference Points Worksheet

Case Type (score only one)	Points	Score	
Inability to Safely Practice	40	_____	score only one
Fraud	30	_____	
Business Practice Issues	20	_____	
Continuing Education	10	_____	

Offense and Respondent Factors (score all that apply)

Respondent impaired during the incident (drugs, alcohol, mental, physical)	40	_____	score all that apply
Past difficulties (drugs, alcohol, mental, physical)	30	_____	
Financial/Material gain by the respondent	30	_____	
Act of commission	30	_____	
More than three years in current position	20	_____	
Any prior violation (by Va. Board, other state or entity)	20	_____	
Patient injury	20	_____	
Two or more patients involved	10	_____	
Violations at multiple locations	10	_____	
Case involved a Department of Health/DSS Survey	10	_____	
More than 12 survey violations cited	10	_____	
Survey violations resulting from re-inspection	10	_____	

Total Worksheet Score

Score	Sanctioning Recommendations
0 - 50	Reprimand/Monetary Penalty
51 - 90	Corrective Action/CE
91 or more	Recommend Formal or Accept Surrender

Respondent Name: _____

Date: _____