Sanctioning Reference Points Instruction Manual

Board of Dentistry

Guidance Document 60-2
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General information

Overview & Background

The Virginia Board of Health Professions has spent the last 15 years studying sanctioning in disciplinary cases. This ongoing effort examines all 13 health regulatory boards. Focusing on the Board of Dentistry (BOD), 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 Dentistry. Moreover, the worksheet 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 case type and 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. Although the original Dentistry SRP Manual was adopted in October 2005, the information and guidance in this manual is based on a more recent set of disciplinary cases, those sanctioned from 2017-2018. The ability to reanalyze more recent disciplinary violations keeps the SRP system more accurate and reflective of current board sanctioning practices.

Goals

The Board of Health Professions and the Board of Dentistry 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 2005 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 (2017-2018) and relies on the full Board's input to inform SRP system modifications. For example, after viewing available data and options, the board integrated ranges for monetary penalties into the sanctioning recommendation thresholds on the SRP worksheet.

Qualitative Analysis

Whenever SRP worksheet changes are considered, researchers conduct in-depth personal interviews with board members and staff. Researchers also consult with representatives from the Attorney General's office, DHP's enforcement staff, and the Executive Director of BHP as needed. The interview results help to build consensus regarding the purpose and utility of SRPs and help to further guide the SRP data analysis. Additionally, interviews help ensure that factors board members consider when sanctioning are included during the quantitative phase of the study. In addition, factors scored on previous worksheets are always examined for their continued relevance and degree of sanctioning influence. The dynamic nature and basic framework of the SRP system infers that some factors will be excluded, changed, or replaced with new factors or scores that are more relevant to the current sanctioning practices of the board.

Quantitative Analysis

In 2005, researchers collected detailed information on all BOD disciplinary cases ending in a violation between 1996 and 2004; nine 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 case files. The case 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 sanctioning practice.

Offense and respondent factors such as respondent impairment at the time of the incident, patient injury, financial or material gain, prior board violations, and past substance abuse are scored. Although many factors, both "legal" and "extra-legal," may explain sanction variation, only those "legal" factors the Board felt should consistently play a role in a sanctioning decision are included on the final worksheet. By using this system, 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 71% of historical practice. This means that approximately 29% of past cases receive sanctions either higher or lower than what the reference points indicate. This is an important feature of the system, as it recognizes 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 unique case.

Voluntary Nature

The SRP system should be viewed as a decision-aid to be used by the Board of Dentistry. 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.

It should be noted that the instructions and the use of the SRP system fall within current DHP and BOD 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 regulations supersede any worksheet 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 are to be completed in cases resolved by Informal Conferences and may be completed for 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 Dentistry, the Board often attempts to mirror the sanction handed down by the other Board. The Virginia Board of Dentistry 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) – CCAs may be entered into only in cases involving minor misconduct where there is little or no injury to a patient or the public and little likelihood of repetition by the practitioner, §54.1-2400 (14). 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 Dentistry has adopted Guidance Documents in the areas of:

- Auditing Continuing Education and Sanctioning for Failure to Meet the Requirements (Guidance document 60-5)
- Sanctioning for Practicing with an Expired License (Guidance document 60-6)
- Sanctioning for Failure to Comply with Advertising Guidelines (Guidance document 60-10)
- Sanctioning for Failure to report to the Prescription Monitoring Program (Guidance document 60-21)
- Sanctioning for Failure to Comply with Insurance and Billing Practices (Guidance document 60-22)

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 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 Improper Treatment would receive 30 points, since Standard of Care is above Business Practice Issues 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	• Impairment due to use of alcohol, illegal substances, or prescription drugs or incapacitation due to mental, physical or medical conditions	50
Standard of Care	• Improper/unnecessary performance of surgery, improper patient management, and other surgery-related issues • Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues • Violations of the DCA (excessive prescribing, not in accordance with dosage, or dispensing without a relationship)	30
Business Practice Issues	• Improper management of patient regimen and failure to provide counseling as well as other medication/prescription related issues • 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 • Advertising, records, inspections, audits, self-referral of patients, required report not filed, prescription blanks, or disclosure	20

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 the blank coversheet and worksheet, 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 Board of Dentistry 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 - 40	• No Sanction
41 - 99	• Monetary Penalty • Continuing Education (CE)
100 - 150	• Reprimand
151 or more	• Probation • The following terms: ◦ cease and desist ◦ quarterly self-reports ◦ HPMP ◦ oversight by supervisor/monitor ◦ chart/record review ◦ prescribing restrictions ◦ practice restriction ◦ mental/physical evaluation ◦ prescribing log ◦ audit/inspection of practice ◦ quarterly job performance evaluations • Stayed Suspension • Revocation • Suspension • Surrender • Refer to Formal Hearing

Sanctioning Reference Points

Coversheet, Worksheet, & Instructions

SRP Coversheet for the Board of Dentistry

Adopted September 2019

Case Number(s): | | | | | | | | | | | | | | | | | | |

Respondent Name: _____ _____
First Last

License Number: _____

Case Type:
___ Inability to Safely Practice
___ Standard of Care
___ Business Practice Issues

Sanctioning Recommendation:
___ No Sanction
___ Monetary Penalty/Continuing Education
___ Reprimand
___ Probation/Loss of License/Refer to Formal

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

SRP Worksheet for the Board of Dentistry

Adopted September 2019

Case Type (score only one)	**Points**	**Score**
a. Inability to Safely Practice	50	_____
b. Standard of Care	30	_____
c. Business Practice Issues	20	_____

Offense and Respondent Factors (score all that apply)

a. Impaired at the time of the incident	60	_____
b. License ever taken away	40	_____
c. Case involved prescription issues	35	_____
d. Patient injury	30	_____
e. Act of commission	25	_____
f. Patient required subsequent treatment	25	_____
g. Past difficulties (substances, mental/physical)	20	_____
h. Financial or material gain	15	_____
i. Any action against the respondent	15	_____
j. More than one patient involved	5	_____
k. Two or more teeth involved	5	_____
l. Patient especially vulnerable	5	_____
m. Previous finding of a violation	5	_____
n. Previous violation similar to current	5	_____

Total Worksheet Score ☐

Score	Sanctioning Recommendations	Monetary Penalty Recommendations
0 - 40	No Sanction	N/A
41 - 99	Monetary Penalty/Continuing Education	$0 - $2,000
100 - 150	Reprimand	$2,000 - $3,000
151 or more	Probation/Loss of License/Refer to Formal	$3,000 or more

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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 most serious case type that is highest on the list. (score only one)

Inability to Safely Practice – 50 Points
- Impairment due to use of alcohol, illegal substances, or prescription drugs or incapacitation due to mental, physical or medical conditions

Standard of Care – 30 Points
- Improper/unnecessary performance of surgery, improper patient management, and other surgery-related issues
- Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat & other diagnosis/treatment issues
- Violations of the DCA (excessive prescribing, not in accordance with dosage, or dispensing without a relationship)

Business Practice Issues – 20 Points
- Improper management of patient regimen and failure to provide counseling as well as other medication/prescription related issues
- 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
- Advertising, records, inspections, audits, self-referral of patients, required report not filed, prescription blanks, or disclosure

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

a. Enter "60" if the respondent was unable to safely practice at the time of the offense due to substance abuse (alcohol or drugs) or mental/physical incapacitation.

b. Enter "40" if the respondent's license was previously lost due to Revocation, Suspension, or Summary Suspension.

c. Enter "35" if the case involved certain prescription issues. These include: excessive/over prescribing, self-prescribing, prescribing without a dentist/patient relationship, and prescribing beyond the scope or for non-dental purposes.

d. Enter "30" if physical injury occurred. Physical injury includes any injury requiring medical care ranging from first aid treatment to hospitalization. Patient death would also be included here.

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

f. Enter "25" if the patient required subsequent treatment from a licensed third party healthcare practitioner, not necessarily a dentist.

g. Enter "20" 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 his/her abilities to function safely or properly.

h. Enter "15" if there was financial or material gain. Examples of cases involving financial or material gain include, but are not limited to, completing unnecessary treatment to increase fees, failure to comply with provider contracts with insurance companies and billing patient portion of fees, unbundling of services or aiding and abetting the unlicensed practice of dentistry or dental hygiene.

i. Enter "15" if there was any action against the respondent. Actions against the respondent can include: malpractice claims, civil cases, criminal convictions, and sanctioning by an employer. A sanction from an employer may include: suspension, review, or termination. The action must be related to the case.

j. Enter "5" if the offense involves multiple patients.

k. Enter "5" if the offense involves two or more teeth.

l. Enter "5" if the patient is especially vulnerable. Patients in this category must be one of the following: under age 18, over age 65, or mentally/physically handicapped.

m. Enter "5" if the respondent has had a previous finding of a violation.

n. Enter "5" if the respondent has had any prior similar violations. Similar violations are those which fall into the same case type group (see pg. 7).

Step 4: 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 middle column and the recommended monetary penalty in the right column. For instance, a Total Worksheet Score of 70 is recommended for "Monetary Penalty/Continuing Education."

Step 5: Coversheet – Complete the coversheet including the SRP sanction threshold result, the imposed sanction, and the reasons for departure if applicable.