

# SANCTIONING REFERENCE POINTS

## INSTRUCTION MANUAL

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### Board of Audiology & Speech-Language Pathology

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*Prepared for*

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# COMMONWEALTH of VIRGINIA

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Director

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June 2010

Dear Interested Parties:

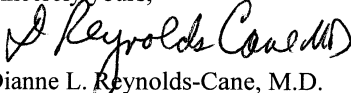
In the spring of 2001, the Virginia Department of Health Professions approved a workplan to study sanctioning in disciplinary cases for Virginia's 13 health regulatory boards. The purpose of the study was to "...provide an empirical, systematic analysis of board sanctions for offenses and, based on this 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 a data analysis of sanctioned Audiologists and Speech-Language Pathologists (ASLP) in Virginia. This analysis included collecting approximately 50 factors on all ASLP cases sanctioned in Virginia over a 10-year period. The factors measured case seriousness, respondent characteristics, and prior disciplinary history. These factors, in addition to factors identified by previously implemented Boards, were used to create a sanctioning reference point (SRP) worksheet.


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 SRP system attempts to model the *typical* ASLP disciplinary 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,

  
Dianne L. Reynolds-Cane, M.D.  
Director

Cordially,

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

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## General Instructions

**Overview** The Virginia Board of Health Professions (BHP) 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 Audiology Speech-Language Pathology. The Board of Audiology Speech-Language Pathology 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 Audiology Speech-Language Pathology. Moreover, the worksheet has not been tested or validated on any other groups of persons. Therefore, they should not be used at this point to sanction respondents coming before other health regulatory boards, other states, or other disciplinary bodies.

The Sanctioning Reference system is comprised of a single worksheet which scores case type and offense and respondent factors that were identified using data analyses from both this Board and from previously implemented Boards. 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 case 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 Audiology Speech-Language Pathology policies and procedures. Furthermore, all sanctioning recommendations are those currently available to the Board and are specified within existing Virginia statutes.

**Background** In April of 2001, 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 Audiology Speech-Language Pathology. BHP 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** BHP and the Board of Audiology Speech-Language Pathology cite the following purposes and goals for establishing SRPs:

- 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 Audiology Speech-Language Pathology chose a descriptive approach with normative adjustments. The normative adjustments were largely based on data gathered through the ongoing monitoring of previously

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**Methodology, continued**

implemented Boards. It was necessary, in part, to consider the experience of previous boards due to the relatively small Audiology Speech-Language Pathology disciplinary caseload.

**Qualitative Analysis**

Researchers conducted personal interviews with select Board members, staff, and representatives from the Attorney General's office. The interview results were used to build consensus regarding the purpose and utility of SRPs and to further frame the analysis. Additionally, interviews helped ensure 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 earlier.

**Quantitative Analysis**

Researchers analyzed detailed information on Audiology Speech-Language Pathology disciplinary cases ending in a violation between 1999 and 2010; approximately 9 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 database was created to analyze the offense and respondent factors which were identified as potentially influencing sanctioning decisions. The Board reviewed these factors and those considered important by other Boards in order to determine which factors would ultimately be used in the SRP development process. Weights (point values) were assigned to the selected factors based on their relative influence in the sanctioning process. Totaling the points on a worksheet resulted in a score that was translated into three sanctioning thresholds with recommended sanctions. These scoring factors and thresholds are the basis of the SRPs.

**Methodology, continued**

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 collected factors were deemed inappropriate for use in a structured sanctioning reference system. Though 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. The SRPs attempt to provide sanctioning guidance on typical Board cases. Acknowledging that aggravating and mitigating factors play a legitimate role in sanctioning, researchers anticipate certain cases will receive a sanction not within the range recommended by the worksheet. The wide sanctioning ranges recognize that the Board will sometimes reasonably disagree on a particular sanction outcome, so a broad selection of sanctions fall 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 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 Audiology Speech-Language Pathology 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.



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Therefore, a respondent before the Board for a standard of care 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/CE/Monetary Penalty.

**Voluntary Nature**

The SRP system is a tool to be utilized by the Board of Audiology and Speech-Language Pathology. 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 and Pre-Hearing Consent Orders. 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 Audiology and Speech-Language Pathology, the Board often attempts to mirror the sanction handed down by the other Board. The Virginia Board of Audiology and Speech-Language Pathology 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 offense type, one case type is selected for scoring according to the offense group that appears highest on the following table and receives the highest point value. For example, a respondent found in violation for Fraud and Inability to Safely Practice would receive forty points, since Inability to Safely Practice is above Standard of Care/Fraud 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"> <li>• Impairment due to use of alcohol, illegal substances, or prescription drugs</li> <li>• Incapacitation due to mental, physical or medical conditions</li> </ul>	<b>40</b>
Standard of Care / Fraud	<ul style="list-style-type: none"> <li>• Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat &amp; other diagnosis/treatment issues.</li> <li>• Performing unwarranted/unjust services</li> <li>• Falsification/alteration of patient records</li> <li>• Improper patient billing</li> <li>• Falsification of licensing/renewal documents</li> </ul>	<b>30</b>
Unlicensed Activity more than 2 years 2 years or less	<ul style="list-style-type: none"> <li>• Practicing a profession or occupation without holding a valid license as required by statute or regulation to include: practicing on a revoked, suspended, lapsed, or expired license, as well as aiding and abetting the practice of unlicensed activity</li> </ul>	<b>30</b> <b>20</b>
Continuing Education	<ul style="list-style-type: none"> <li>• Failure to obtain or document CE requirements</li> </ul>	<b>10</b>

**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](http://www.dhp.virginia.gov) (paper copy also available on request).

**Scoring Factor Instructions**

To ensure accurate scoring, instructions are provided for scoring each factor on the SRP worksheet. When scoring a worksheet, the numeric values assigned to a factor on the worksheet *cannot be adjusted*. The scoring weights can only be applied as ‘yes or no’- with all or none of the points applied. In instances where a scoring factor is difficult to interpret, the Board has final say in how a case is scored.

**Coversheet**

The coversheet is completed to ensure a uniform record of each case and to facilitate recordation of other pertinent information critical for system monitoring and evaluation.

If the Board feels the sanctioning threshold does not recommend an appropriate sanction, the Board is encouraged to depart either high or low when handing down a sanction. If the Board disagrees with the sanction recommendation and imposes a sanction greater or less than the recommended sanction, a short explanation should be recorded on the coversheet to explain the factors or reasons for departure. This process will ensure worksheets are revised appropriately to reflect current Board practice. If a particular reason is continually cited, the Board can examine the issue more closely to determine if the worksheets should be modified to better reflect Board practice.

Aggravating and mitigating circumstances that may influence Board decisions can include, but should not be limited to, such things as:

- Prior record
- Dishonesty/Obstruction
- Motivation
- Remorse
- Restitution/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: Probation /Recommend  
Formal Hearing  
Imposed Sanction: CE

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

**Departure Example #2**

Sanction Threshold Recommendation: Reprimand / CE /  
Monetary Penalty  
Imposed Sanction: Probation with Terms

*Reason(s) for Departure: Respondent has multiple prior violations for the same case type.*

**Determining the Sanction Recommendations**

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	Monetary Penalty Ranges
0-50	Reprimand Continuing Education (CE) Monetary Penalty	<b>Up to \$1500</b>
51-100	Continuing Education (CE) Monetary Penalty Probation Terms: <ul style="list-style-type: none"> <li>• CE audit</li> <li>• Inform employer of probation and provide him/her with a copy of order</li> <li>• Quarterly self reports</li> <li>• On site visits</li> <li>• Written statement to the Board reflecting documentation practices</li> <li>• Submit annual performance evaluation</li> </ul>	<b>\$500 to \$2500</b>
101 or more	Probation Terms: <ul style="list-style-type: none"> <li>• CE audit</li> <li>• Inform employer of probation and provide him/her with a copy of order</li> <li>• Quarterly self reports</li> <li>• On site visits</li> <li>• Written statement to the Board reflecting documentation practices</li> <li>• Submit annual performance evaluation</li> </ul> Suspension Revocation Surrender Recommend Formal	<b>\$2500 or more</b>

## Audiology and Speech-Language Pathology 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)	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr> </table> <table border="1" style="display: inline-table; border-collapse: collapse; margin-left: 10px;"> <tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr> </table> <table border="1" style="display: inline-table; border-collapse: collapse; margin-left: 10px;"> <tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr> </table>																						
Respondent Name	<hr style="border: 0; border-top: 1px solid black; margin: 0;"/> <div style="display: flex; justify-content: space-around; width: 100%;"> <span>Last</span> <span>First</span> </div>																						
License Number	<hr style="border: 0; border-top: 1px solid black; margin: 0;"/>																						
Case Category	<input type="checkbox"/> Inability to Safely Practice <input type="checkbox"/> Standard of Care /Fraud <input type="checkbox"/> Unlicensed Activity <input type="checkbox"/> Continuing Education																						
Sanction Threshold Result	<input type="checkbox"/> 0-50 <input type="checkbox"/> 51-100 <input type="checkbox"/> 101 or more																						
Imposed Sanction	<input type="checkbox"/> Reprimand <input type="checkbox"/> Monetary Penalty \$ _____ <input type="checkbox"/> Probation _____ months <input type="checkbox"/> CE _____ hours <input type="checkbox"/> CE Audit <input type="checkbox"/> Suspension <input type="checkbox"/> Revocation <input type="checkbox"/> Surrender <input type="checkbox"/> Recommend Formal <input type="checkbox"/> Other sanction _____ _____ <input type="checkbox"/> Terms _____ _____																						
Reasons for Departure from Sanction Threshold Result	<hr style="border: 0; border-top: 1px solid black; margin: 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 0;"/>																						
Worksheet Preparer(name)	<hr style="border: 0; border-top: 1px solid black; margin: 0;"/>																						
	Date completed: _____																						

## Audiology and Speech-Language Pathology 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 based on 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

#### Standard of Care / Fraud – 30 Points

- Diagnosis/treatment was improper, delayed, or unsatisfactory. Also includes failure to diagnose/treat, & other diagnosis/treatment issues.
- Performing unwarranted/unjust services
- Falsification/alteration of patient records
- Fraudulent patient billing
- Falsification of licensing/renewal documents

#### Unlicensed Activity – 30 Points, more than 2 years 20 Points, 2 years or less

- Practicing a profession or occupation without holding a valid license as required by statute or regulation to include: practicing on a revoked, suspended, lapsed, or expired license, as well as aiding and abetting the practice of unlicensed activity.

#### 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 related to the circumstances of the case or event 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 "40" if a patient was injured and/or required subsequent treatment from a licensed healthcare practitioner. Patient injury is indicated when a minimum of first aid is administered. This factor is scored without regard to a respondent's intent to harm (i.e. neglect or accidental injury).

Enter "35" if this was an act of commission. An act of commission is defined as purposeful or with knowledge.

Enter "30" if the respondent's license has been previously revoked, suspended, or summarily suspended by any state including Virginia.

Enter "30" if the patient is especially vulnerable. Patients in this category fulfill at least one of the following descriptions: under age 18, over age 65, or mentally/physically handicapped.

Enter "25" if the offense involves multiple patients. Patient involvement does not require direct contact with a patient (i.e. fraudulently billing multiple patients).

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

Enter "20" if the respondent has had any past difficulties in the following areas: drugs, alcohol, mental capabilities 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 "10" if there was a sanction imposed by an employer, another state or another entity due to the incident. Actions taken by the employer could include termination, suspension or probation.

Enter "10" if the respondent has any prior violations decided by the Virginia Board of Audiology & Speech-Language Pathology or the Virginia Department of Professional and Occupational Regulation as a Hearing Aide Specialist.

Enter "10" if the respondent has any prior similar Virginia Board of Audiology & Speech-Language Pathology or Virginia Department of Professional and Occupational Regulation Hearing Aide Specialist violations. Similar violations would be those listed under the same case type heading in Step 1.

### Step 3: Total Worksheet Score

Add all Case Type and Offense and Respondent Factor Scores for a Total Worksheet Score.

### Step 4: Recommendations for Sanctioning

The Total Worksheet Score corresponds to the Sanctioning Reference Points recommendations at the bottom of the worksheet. To determine the appropriate recommended sanction, find the score range on the left that corresponds to the Total Worksheet Score that was calculated. That range then corresponds to a "Sanction Recommendation." For instance, a Total Worksheet Score of 60 is recommended for "CE/Monetary Penalty/Probation."

"Monetary Penalty Ranges" in the last column correspond to the point ranges in the first column. However, in order for a sanction to be considered in agreement with the worksheet recommendation, it only has to correspond with the Sanction Recommendation column (agreement or disagreement with the Monetary Penalty Ranges column is not used when tracking compliance with the SRP worksheets).

### Step 5: Coversheet

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



## Audiology and Speech-Language Pathology SRP - Worksheet

**Case Type (score only one)**

	Points	Score
Inability to Safely Practice .....	40	_____
Standard of Care / Fraud .....	30	_____
Unlicensed Activity - More than 2 years .....	30	_____
Unlicensed Activity - 2 years or less .....	20	_____
Continuing Education .....	10	_____

**score only one**

**Case Type**

**Offense and Respondent Factors (score all that apply)**

Respondent impaired during the incident (drugs, alcohol, mental, physical) ..	40	_____
Patient injury .....	40	_____
Act of commission .....	35	_____
License ever taken away .....	30	_____
Patient especially vulnerable .....	30	_____
Multiple patients involved .....	25	_____
Financial or material motivation .....	25	_____
Past difficulties (drugs, alcohol, mental, physical) .....	20	_____
Sanctioned by the employer, another state or entity due to the incident ..	10	_____
One or more prior Board violations .....	10	_____
Previous violation similar to current offense .....	10	_____

**score all that apply**

**Offense and Respondent Factors**

**Total Worksheet Score**

**Recommendations for Sanctioning**

Score	Sanction Recommendation	Monetary Penalty Ranges
0 - 50	Reprimand/CE/Monetary Penalty	Up to \$1500
51-100	CE/Monetary Penalty/Probation	\$500-\$2500
101 or more	Probation/Recommend Formal Hearing	\$2500 or more

Respondent Name: \_\_\_\_\_ Date: \_\_\_\_\_