

VIRGINIA BOARD OF DENTISTRY

Committee to discuss proposed Sanction Reference Points

AGENDA

**Board of Dentistry
Department of Health Professions
Perimeter Center
9960 Mayland Drive, 2nd Floor
Henrico, Virginia
Friday, May 17, 2019**

TIME

11:00 a.m. . Call to Order – Tonya A. Parris-Wilkins, D.D.S, Chair

Evacuation Announcement – Ms. Palmatier

**PURPOSE: To review the proposed Sanction Reference Points (SRP)
Worksheet and make a recommendation to the Board
about adoption of the proposed SRP.**

12:00 p.m. Adjourn

Sanctioning Reference Points Instruction Manual

Board of Dentistry

Guidance Document 60-2
Adopted October 2005
Revised September 2012
Revised December 2015

Prepared for
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Robert A. Nebiker
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COMMONWEALTH of VIRGINIA

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July 22, 2005

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 current and past Board of Dentistry members and staff, a committee of Board members, staff, and research consultants assembled a research agenda involving one of the most exhaustive statistical studies of sanctioned Dentists in the United States. The analysis included collecting over 130 factors on all Board of Dentistry sanctioned cases in Virginia over a 7 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 Dentistry and staff, analysts spent 10 months developing a usable set of sanction worksheets as a way to implement the reference system.


By design, future sanction recommendations will encompass, on average, about 75% of past historical sanctioning decisions; an estimated 25% of future sanctions will fall above or below the sanction point recommendations. This allows considerable flexibility when sanctioning cases that are particularly egregious or less serious in nature. Consequently, 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.

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 instruments should greatly benefit Board members, health professionals and the general public.

Sincerely yours,


Robert A. Nebiker
Director

Cordially,


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

Board of Audiology & Speech-Language Pathology • Board of Dentistry • Board of Funeral Directors & Embalmers • Board of Medicine • Board of Nursing
Board of Nursing Home Administrators • Board of Optometry • Board of Pharmacy • Board of Counseling
Board of Physical Therapy • Board of Psychology • Board of Social Work • Board of Veterinary Medicine
Board of Health Professions

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GENERAL INFORMATION

Overview

The Virginia Board of Health Professions has spent the last three 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 Dentistry. The Board of Dentistry is now in a position to implement the results of the research by using a set of voluntary Sanctioning Reference Points (SRPs). This manual contains some background on the project, the goals and purposes of the system, and the three offense-based sanction worksheets and grids 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 Dentistry. Moreover, the worksheets and grids have 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 series of worksheets which score a number of offense and prior record factors identified using statistical analysis. These factors have been isolated and tested in order to determine their influence on sanctioning outcomes. A sanctioning grid found on each of the offense worksheets uses an offense score and a prior record score to 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 the offense score, prior record score, recommended sanction, 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 Dentistry 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 sanctioning reference points for health regulatory boards, including the Board of Dentistry (BOD). 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 Dentistry 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 BOD 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., overall Board makeup, race or ethnic origin, etc.
- Helping predict future caseloads and need for compliance monitoring

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 prescriptive 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 Dentistry chose a descriptive approach with a limited number of normative adjustments.

Qualitative Analysis

Researchers conducted 11 in-depth personal interviews of past and current BOD members, Board 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 that Board members consider 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 collected detailed information on all BOD disciplinary cases ending in a violation between 1996 and 2004; approximately 198 sanctioning "events" covering 222 cases. Over 130 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 sanctioning worksheets and grids, which are the basis of the SRPs.

Offense factors such as patient harm, patient vulnerability and number of teeth involved were analyzed as well as respondent factors such as substance abuse, impairment at the time of offense, initiation of self-corrective action, and prior disciplinary history of the respondent. Some factors were deemed inappropriate for use in a structured sanctioning

reference system. For example, the presence of the respondent's attorney, the respondent's age or sex, and case processing time, are considered "extra-legal" factors, and were explicitly excluded from the sanction reference points. 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 77% of historical practice. This means that 23% 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 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 supersede any worksheet recommendation.

Two Dimensional Sanctioning Grid Scores Both Offense and Prior Record Factors

The Board indicated early in the study that sanctioning is not only influenced by circumstances associated with the instant offense, but also by the respondent's past history. The empirical analysis supported the notion that both offense and prior record factors impacted sanction outcomes. To this end, the Sanction Reference Points make use of a two-dimensional scoring grid; one dimension assesses factors related to the instant offense, while the other dimension assesses factors related to prior record.

The first dimension assigns points for circumstances related to the violation offense that the Board is currently considering. For example, the respondent may receive points if they were unable to safely practice due to impairment at the time of the offense, or if there were multiple patients involved in the incident(s). The other dimension assigns points for factors that relate to the respondent's prior record. So a respondent before the Board for an unlicensed activity case may also receive points for having had a history of disciplinary violations. This respondent can receive additional points if the prior violation is similar.

Voluntary Nature

The SRP system is a tool to be utilized by the Board of Dentistry. 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. The coversheet and worksheets 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** — Sanction Reference Points 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 license of a practitioner must be suspended. The sanction is defined by law and is therefore excluded from the Sanctioning Reference Point system.
- **Compliance/reinstatements** — The SRPs should not be applied to compliance or reinstatement cases
- **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.

The SRPs are organized into three offense groups. This organization is based on a historical analysis showing that offense and prior record factors and their relative importance vary by type of offense. The reference point factors found within a particular offense group are those which proved important in determining historical sanctions for that offense category.

When multiple cases have been combined into one "event" (one notice) for disposition by the Board, only one offense group coversheet and worksheet should be completed and it should encompass the entire event. If a case has more than one offense type, one coversheet and worksheet is selected according to the offense group which appears highest on the following table. For example, a dentist found in violation of both advertising and a treatment-related offense would have their case scored on a Standards of Care worksheet, since Standards of Care is above Advertising/Business Practice Issues on the table. The table also assigns the various case categories brought before the Board to one of the three offense groups. If an offense type is not listed, find the most analogous offense type and use the appropriate scoring worksheet.

Table 1: Offense Groups Covered by the Sanctioning Reference Points

<p style="text-align: center;">Inability to Safely Practice</p>	<p>Inability to safely practice – Impairment or Incapacitation Inability to safely practice - Other Drug Related</p> <ul style="list-style-type: none"> • Prescribing without a relationship • Non-dental purposes • Excessive prescribing/dispensing • Personal Use • Security • Other • Obtaining drugs by fraud
<p style="text-align: center;">Standard of Care</p>	<p>Standard of Care – Diagnosis/Treatment Related</p> <ul style="list-style-type: none"> • Failure to diagnose or treat • Incorrect diagnosis or treatment • Failure to respond to needs • Delay in treatment • Unnecessary treatment • Improper performance of procedure • Failure to refer/obtain consult • Failure to offer patient education • Other <p>Standard of Care - Consent related Standard of Care - Equipment/Product related Standard of Care - Prescription related Sexual assault and mistreatment Abuse/Abandonment/Neglect Records release</p>
<p style="text-align: center;">Business Practice Issues/Advertising</p>	<p>Records/Inspections/Audits Business Practices Issues Fraud Criminal activity Unlicensed activity</p> <ul style="list-style-type: none"> • Aiding/Abetting unlicensed activity • DEA registration revoked/expired/invalid • Practicing on lapsed/expired license • Other <p>Advertising</p> <ul style="list-style-type: none"> • Claim of Superiority • Deceptive/Misleading • Improper use of trade name • Fail to disclose full fee when advertising discount • Other • Omission of required wording/advertising elements

Completing the Coversheet & Worksheet

Ultimately, it is the responsibility of the Board to complete the Sanction Reference Point 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 Sanction Reference Point coversheet and worksheet, once completed, are confidential under the Code of Virginia. However, complete copies of the Sanction Reference Point Manual, including blank coversheets and worksheets, can be found on the Department of Health Professions web site: www.dhp.state.va.us (paper copy also available on request).

Offense Group Worksheets

Instructions for scoring each of the 3 offenses are contained adjacent to each worksheet in subsequent sections of this manual. Instructions are provided for each line item of each worksheet and should be referenced to ensure accurate scoring for a specific factor. When scoring an offense group worksheet, the scoring weights 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 grid does not recommend an appropriate sanction, the Board is encouraged to depart either higher or lower when handing down a sanction. If the Board

disagrees with the sanction grid recommendation and imposes a sanction greater or less than the recommended sanction, a short explanation can be recorded on the coversheet. The explanation could identify the factors and the 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:

- Severity of the incident
- Monetary gain
- Dishonesty/Obstruction
- Motivation
- Remorse
- Patient vulnerability
- Restitution/Self-corrective action
- Multiple offenses/Isolated incident
- Age of prior record

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 Grid Result: Recommend Formal.

Imposed Sanction: Probation with terms – practice restriction.

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

Departure Example #2

Sanction Grid Result: No

Sanction/Reprimand/Education.

Imposed Sanction: Treatment – practice monitoring.

Reason(s) for Departure: Respondent may be trending towards future violations, implement oversight now to avoid future problems.

Determining a Specific Sanction

The Sanction Grid has four separate sanctioning outcomes: Recommend formal or accept surrender, Treatment, Monetary Penalty, and No Sanction/Reprimand/Education. The table below lists the most frequently cited sanctions under the four sanctioning outcomes that are part of the sanction grid. After considering the sanction grid recommendation, the Board should fashion a more detailed sanction(s) based on the individual case circumstances.

Table 2: Sanctioning Reference Point Grid Outcomes

<p>Recommend Formal or Accept Surrender</p>	<p>Recommend Formal Accept Surrender Suspension Revocation</p>
<p>Treatment/Monitoring</p>	<p>Stayed Suspension - Immediate Probation Terms</p> <ul style="list-style-type: none"> • Audit/Inspection of practice, clinical exam • Quarterly self-reports • Impairment – HPMP • Practice Restriction - oversight by a supervisor/monitor • Practice Restriction - specific • Practice Restriction - setting • Practice Restriction - chart/record review • Prescribing - restrictions • Quarterly job performance evaluations • Prescribing - log • Written notification to employer/employees/associates • Mental/physical evaluation
<p>Monetary Penalty</p>	<p>Monetary Penalty</p>
<p>No Sanction/Reprimand/Education</p>	<p>No Sanction Reprimand Education Terms</p> <ul style="list-style-type: none"> • Advertising - cease and desist • Cease and Desist • Continuing Education - general or specific • Continuing Education - record keeping • Continuing Education - prescribing • Virginia Dental Law Exam

**Sanctioning Reference Points
Coversheet, Worksheets
and Instructions**

Standard of Care Worksheet Instructions

Offense Score

Step 1: (score all that apply)

Enter "60" if the offense involves multiple patients.

Enter "30" 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.

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

Enter "20" 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.

Enter "10" if the offense involves one or more teeth.

Enter "10" 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. *

Enter "10" if the patient required subsequent treatment from a licensed third party healthcare practitioner, not necessarily a dentist.

Enter "10" if multiple respondents were involved.

Enter "10" if the offense involves self-prescribing or prescribing beyond the scope.

Step 2: Combine all for Total Offense Score

Prior Record Score

Step 3: (score all that apply)

Enter "60" if the respondent's license was previously lost due to Revocation, Suspension, or Summary Suspension.

Enter "20" if the respondent has had a previous finding of a violation.

Enter "20" if the respondent has had a previous violation with a sanction imposed.

Enter "10" if the respondent has had any "similar" violations prior to this case. Similar violations include any cases that are also classified as "Standard of Care" (see cases that are eligible for scoring listed under "Case Categories" in the table on Page 6).

Enter "10" if the respondent has a criminal activity conviction related to the current case.

Step 4: Combine all for Total Prior Record Score

Sanction Grid

Step 5:

Locate the Offense and Prior Record scores within the correct ranges on the top and left sides of the grid. The cell where both scores intersect is the sanction recommendation.

Example: If the Offense Score is 60 and the Prior Record Score is 10, the recommended sanction is shown in the center grid cell – "Monetary Penalty/Treatment".

Step 6: Coversheet

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

* Original text revised in September 2012. Injury was previously defined as, "Physical injury includes any injury requiring medical care ranging from first aid treatment to hospitalization."

Advertising Worksheet Instructions

Offense Score

Step 1: (score all that apply)

Enter "60" if the offense involves multiple patients.

Enter "40" 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.

Enter "30" if the offense involves one or more teeth.

Enter "20" if multiple respondents were involved.

Enter "20" if the offense involves self-prescribing or prescribing beyond the scope.

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 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.

Enter "10" 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.*

Enter "10" if the patient required subsequent treatment from a licensed third party healthcare practitioner, not necessarily a dentist.

Step 2: Combine all for Total Offense Score

Prior Record Score

Step 3: (score all that apply)

Enter "60" if the respondent's license was previously lost due to Revocation, Suspension, or Summary Suspension.

Enter "40" if the respondent has a criminal activity conviction related to the current case.

Enter "30" if the respondent has had a previous violation with a sanction imposed.

Enter "20" if the respondent has had a previous finding of a violation.

Enter "10" if the respondent has had any "similar" violations prior to this case. Similar violations include any cases that are also classified as "Advertising/Business Practice Issues" (see cases that are eligible for scoring listed under "Case Categories" in the table on Page 6).

Step 4: Combine all for Total Prior Record Score

Sanction Grid

Step 5:

Locate the Offense and Prior Record scores within the correct ranges on the top and left sides of the grid. The cell where both scores intersect is the sanction recommendation.

Example: If the Offense Score is 30 and the Prior Record Score is 10, the recommended sanction is shown in the center grid cell – "Monetary Penalty".

Step 6: Coversheet Complete the coversheet including the grid sanction, the imposed sanction and the reasons for departure if applicable.

Inability to Safely Practice Worksheet Instructions

Offense Score

Step 1: (score all that apply)

Enter "60" if the respondent was unable to safely practice at the time of the offense due to illness related to substance abuse impairment, or mental/physical incapacitation.

Enter "40" 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.*

Enter "30" if the offense involves multiple patients.

Enter "20" if the offense involves one or more teeth.

Enter "20" if the patient required subsequent treatment from a licensed third party healthcare practitioner, not necessarily a dentist.

Enter "20" if the offense involves self-prescribing or prescribing beyond the scope.

Enter "20" 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.

Enter "15" 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.

Enter "10" if multiple respondents were involved.

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

Step 2: Combine all for Total Offense Score

Prior Record Score

Step 3: (score all that apply)

Enter "60" if the respondent's license was previously lost due to Revocation, Suspension, or Summary Suspension.

Enter "20" if the respondent has a criminal activity conviction related to the current case.

Enter "20" if the respondent has had a previous finding of a violation.

Enter "20" if the respondent has had a previous violation with a sanction imposed.

Enter "10" if the respondent has had any "similar" violations prior to this case. Similar violations include any cases that are also classified as "Inability to Safely Practice" (see cases that are eligible for scoring listed under "Case Categories" in the table on Page 6).

Step 4: Combine all for Total Prior Record Score

Sanction Grid

Step 5:

Locate the Offense and Prior Record scores within the correct ranges on the top and left sides of the grid. The cell where both scores intersect is the sanction recommendation. Example: If the Offense Score is 60 and the Prior Record Score is 10, the recommended sanction is shown in the center grid cell – "Treatment".

Step 6: Coversheet

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

* Original text revised in September 2012. Injury was previously defined as, "Physical injury includes any injury requiring medical care ranging from first aid treatment to hospitalization."

Sanctioning Reference Points Coversheet

- Complete Offense Score section.
- Complete Prior Record Score section.
- Determine the Recommended Sanction using the scoring results and the Sanction Grid.
- Complete this coversheet.

Case Number(s):

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--	--	--	--	--	--

Respondent Name: _____
 License Number: _____
 (Last) (First) (Title)

Worksheet Used: _____
 _____ Inability to Safely Practice
 _____ Standard of Care
 _____ Advertising/Business Practice Issues

Sanction Grid Result: _____
 _____ No Sanction/Reprimand/Education
 _____ No Sanction/Reprimand/Education - Monetary Penalty
 _____ Monetary Penalty - Treatment/Monitoring
 _____ Treatment/Monitoring
 _____ Treatment - Recommend Formal/Accept Surrender

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

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

Worksheet Preparer's Name: _____ Date Worksheet Completed: _____

Confidential pursuant to § 541-2400.2 of the Code of Virginia.

Inability to Safely Practice Worksheet

Board of Dentistry
Revised Dec 2015

Offense Score	Points	Score
Inability to safely practice - Impaired/Incapacitated	60	_____
Patient Injury	40	_____
More than one patient involved	30	_____
One or more teeth involved	20	_____
Patient required subsequent treatment	20	_____
Self-prescribing or prescribing beyond scope	20	_____
Financial or material gain	20	_____
Patient vulnerable	15	_____
Multiple respondents involved	10	_____
Act of commission	10	_____
Total Offense Score		<input style="width: 50px; height: 30px;" type="text"/>

Respondent Score	Points	Score
License previously lost	60	_____
Concurrent criminal activity conviction	20	_____
Previous finding of a violation	20	_____
Previous violation with a sanction imposed	20	_____
Previous violation similar to current	10	_____
Total Respondent Score		<input style="width: 50px; height: 30px;" type="text"/>

		Offense Score		
		0-30	31-60	61 and over
Prior Record Score	0	No Sanction/Reprimand/ Education Monetary Penalty	Monetary Penalty Treatment/Monitoring	Treatment/Monitoring
	1-30	Treatment/Monitoring	Treatment/Monitoring	Treatment/Monitoring
	31 and over	Treatment/Monitoring	Treatment/ Monitoring Recommend Formal/ Accept Surrender	Treatment/ Monitoring Recommend Formal/ Accept Surrender

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Standard of Care

Board of Dentistry
Revised Dec 2015

Offense Score	Points	Score
More than one patient Involved	60	_____
Patient vulnerable	30	_____
Act of commission	25	_____
Financial or material gain	20	_____
One or more teeth involved	10	_____
Patient injury	10	_____
Patient required subsequent treatment	10	_____
Multiple respondents involved	10	_____
Self-prescribing or prescribing beyond scope	10	_____
Total Offense Score		<input type="text"/>

Respondent Score	Points	Score
License previously lost	60	_____
Previous finding of a violation	20	_____
Previous violation with a sanction imposed	20	_____
Previous violation similar to current	10	_____
Criminal activity conviction	10	_____
Total Respondent Score		<input type="text"/>

		Offense Score		
		0-40	41-65	66 and over
Prior Record Score	0	No Sanction/ Reprimand/Education	No Sanction/Reprimand/ Education Monetary Penalty	Monetary Penalty Treatment/Monitoring
	1-20	No Sanction/Reprimand/ Education Monetary Penalty	Monetary Penalty Treatment/Monitoring	Treatment/Monitoring Recommend Formal/ Accept Surrender
	21 and over	Monetary Penalty Treatment/Monitoring	Monetary Penalty Treatment/Monitoring	Treatment/Monitoring Recommend Formal/ Accept Surrender

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

Offense Score	Points	Score
More than one patient involved	60	_____
Patient vulnerable	40	_____
One or more teeth involved	30	_____
Multiple respondents involved	20	_____
Self prescribing or prescribing beyond scope	20	_____
Act of commission	20	_____
Financial or material gain	20	_____
Patient Injury	10	_____
Patient required subsequent treatment	10	_____
Total Offense Score		<input style="width: 50px; height: 30px;" type="text"/>

Respondent Score	Points	Score
License previously lost	60	_____
Criminal activity conviction	40	_____
Previous violation with a sanction imposed	30	_____
Previous finding of a violation	20	_____
Previous violation similar to current	10	_____
Total Respondent Score		<input style="width: 50px; height: 30px;" type="text"/>

		Offense Score		
		0-10	11-39	40 and over
Prior Record Score	0	No Sanction/Reprimand/ Education Monetary Penalty	No Sanction/Reprimand/ Education Monetary Penalty	Monetary Penalty Treatment/Monitoring
	1-40	No Sanction/Reprimand/ Education Monetary Penalty	Monetary Penalty	Treatment/Monitoring
	41 and over	Monetary Penalty Treatment/Monitoring	Treatment/Monitoring	Treatment/ Monitoring Recommend Formal/ Accept Surrender

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

Revised Sanctioning Reference Points

March 15, 2019

Prepared for:
Board of Health Professions
Board of Dentistry

Neal Kauder

Kim Small

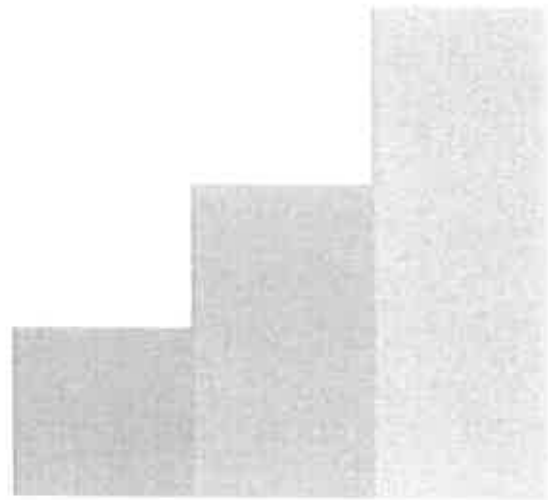
804.794.3144

vis-res.com

VisualResearch inc
Data Analytics & Information Design

Current Research Task

Analyze the most recently available cases to make Dentistry SRP worksheets reflect the most recent sanctioning culture; bring sanctioning recommendations based on older data up-to-date.



Board	Implementation & Revision Dates
Medicine	Adopted July 2004 Revised August 2011
Dentistry	Adopted October 2005 Revised September 2012 – expanded a definition Revised December 2015 – definition adjustments Revised March 2019
Nursing	Adopted March 2006 Revised March 2011 Revised June 2013 Revised January 2017
Veterinary Medicine	Adopted January 2007 Revised November 2008 Revised February 2010 Revised June 2014
Funeral	Adopted March 2007 Revised April 2010 Revised January 2018
Pharmacy	Adopted September 2007 Revised June 2013
Optometry	Adopted December 2007 Revised July 2010 Revised July 2011
Behavioral Sciences	Adopted December 2008 Revised January 2016
Physical Therapy	November 2009 Revised May 2012 Revised November 2017
Long-Term Care	Adopted March 2010 Revised June 2018
Audiology/SL Pathology	Adopted June 2010 Revised November 2011

Revising SRPs Includes:

Conducting board member & staff interviews

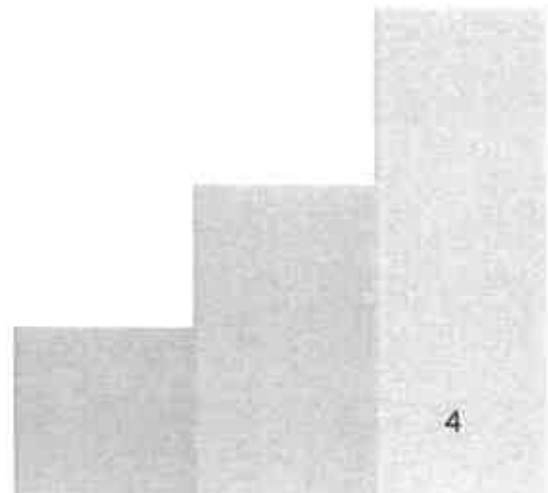
Identifying a sample & collecting data from 2017-2018

Identifying relevant factors, both new and historic

Translate factors into new SRP worksheet – new factors and point values

Account for CCAs, Advisory Letter and Pre-defined sanctions

Maintaining SRP training opportunities



Current BOD SRP Worksheets

Offense Score

Offense Score	Points	Score
Ability to gather evidence - inspection/interrogation	60	_____
Police safety	40	_____
Must know one offense involved	20	_____
Use evidence to help	20	_____
Police safety/interrogation/lockdown	20	_____
Self preservation of yourself/other people	20	_____
Workforce control plan	20	_____
Report evidence	20	_____
Multiple requirements involved	20	_____
All of above	20	_____

Response Score

Response Score	Points	Score
Monitor performance	20	_____
Communicate with quality supervisor	20	_____
Perform testing of evidence	20	_____
Perform self check with quality supervisor	20	_____
Perform self check similar to event	20	_____

Offense Score

Offense Score	Points	Score
0-30	0-30	_____
31-60	31-60	_____
61 and over	61 and over	_____

Offense Score

Offense Score	Points	Score
Know that one person involved	20	_____
Police safety	20	_____
Must know one offense involved	20	_____
Use evidence to help	20	_____
Police safety/interrogation/lockdown	20	_____
Self preservation of yourself/other people	20	_____
Workforce control plan	20	_____
Report evidence	20	_____
Multiple requirements involved	20	_____
Self preservation of yourself/other people	20	_____

Response Score

Response Score	Points	Score
Monitor performance	20	_____
Communicate with quality supervisor	20	_____
Perform testing of evidence	20	_____
Perform self check with quality supervisor	20	_____
Perform self check similar to event	20	_____

Offense Score

Offense Score	Points	Score
0-30	0-30	_____
31-60	31-60	_____
61 and over	61 and over	_____

Offense Score

Offense Score	Points	Score
Know that one person involved	20	_____
Police safety	20	_____
Must know one offense involved	20	_____
Use evidence to help	20	_____
Police safety/interrogation/lockdown	20	_____
Self preservation of yourself/other people	20	_____
Workforce control plan	20	_____
Report evidence	20	_____
Multiple requirements involved	20	_____
Self preservation of yourself/other people	20	_____

Response Score

Response Score	Points	Score
Monitor performance	20	_____
Communicate with quality supervisor	20	_____
Perform testing of evidence	20	_____
Perform self check with quality supervisor	20	_____
Perform self check similar to event	20	_____

Offense Score

Offense Score	Points	Score
0-30	0-30	_____
31-60	31-60	_____
61 and over	61 and over	_____

Offense Score

Offense Score	Points	Score
0-30	0-30	_____
31-60	31-60	_____
61 and over	61 and over	_____

Response Score

Response Score	Points	Score
0-30	0-30	_____
31-60	31-60	_____
61 and over	61 and over	_____

Proposed BOD SRP Worksheet

71%
Accurate

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Case Type (score only one)	Points	Score
a. Inability to Safely Practice	50	<input type="text"/>
b. Standard of Care	30	<input type="text"/>
c. Business Practice Issues	20	<input type="text"/>
Offense and Respondent Factors (score all that apply)		
a. Impaired at the time of the incident	60	<input type="text"/>
b. License ever taken away	40	<input type="text"/>
c. Case involved prescription issues	35	<input type="text"/>
d. Patient injury	30	<input type="text"/>
e. Act of commission	25	<input type="text"/>
f. Patient required subsequent treatment	25	<input type="text"/>
g. Past difficulties (substances, mental/physical)	20	<input type="text"/>
h. Financial or material gain	15	<input type="text"/>
i. Any action against the respondent	15	<input type="text"/>
j. More than one patient involved	5	<input type="text"/>
k. Two or more teeth involved	5	<input type="text"/>
l. Patient especially vulnerable	5	<input type="text"/>
m. Previous finding of a violation	5	<input type="text"/>
n. Previous violation similar to current	5	<input type="text"/>
Total Worksheet Score		<input type="text"/>
Score	Sanctioning Recommendations	Monetary Penalty Recommendations
0 - 40	No Sanction	N/A
41 - 99	Monetary Penalty/Continuing Education	
100 - 150	Reprimand	
<u>151 or more</u>	<u>Probation/Loss of License/Refer to Form:</u>	

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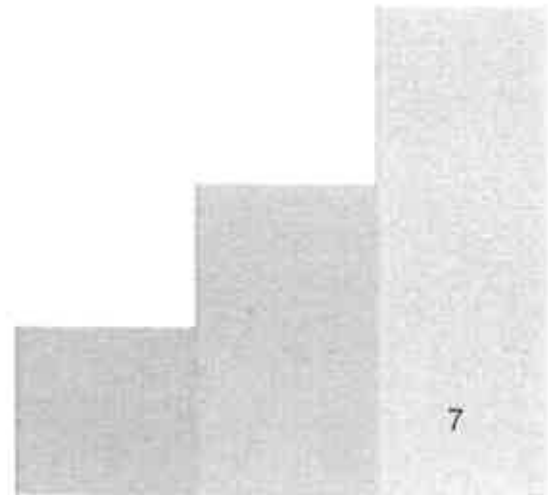
Revised Dentistry Worksheet

Case Type Scoring (score only one)

One worksheet
for all case types



Inability to Safely Practice	50
Standard of Care	30
Business Practice Issues	20

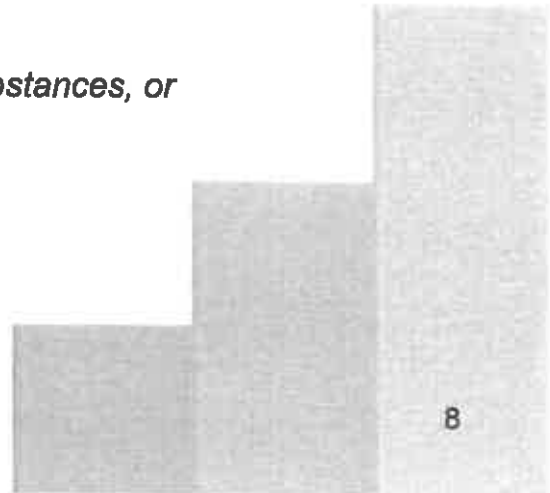


Revised Dentistry Worksheet

Case Type Scoring (score only one)

Inability to Safely Practice	50
Standard of Care	30
Business Practice Issues	20

"Impairment due to use of alcohol, illegal substances, or prescription drugs..."



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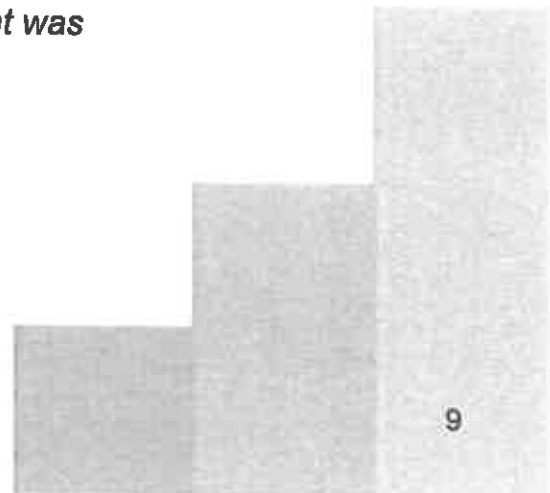
Revised Dentistry Worksheet

Case Type Scoring (score only one)

Inability to Safely Practice	50
Standard of Care	30
Business Practice Issues	20

"Instances in which the diagnosis/treatment was improper, delayed, or unsatisfactory..."

"Violations of the DCA..."



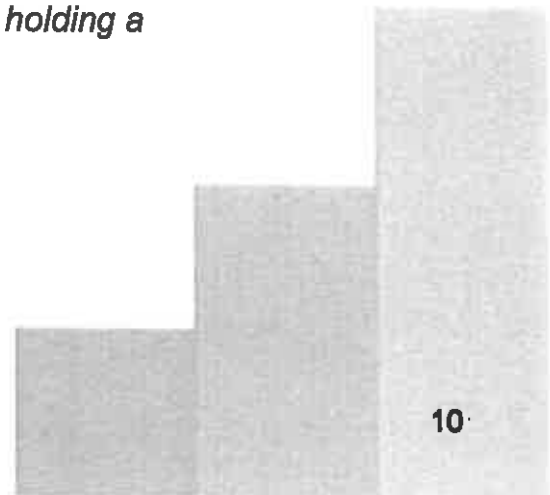
Revised Dentistry Worksheet

Case Type Scoring (score only one)

Inability to Safely Practice	50
Standard of Care	30
Business Practice Issues	20

"Practicing a profession or occupation without holding a valid license..."

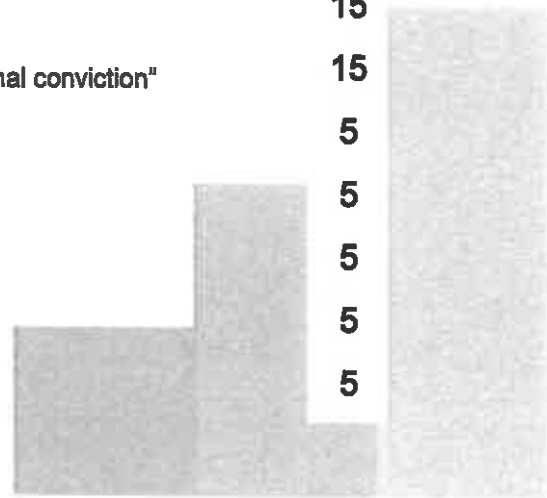
"Advertising, records, inspections, audits..."



Revised Dentistry Worksheet


Offense and Respondent Factor Scoring

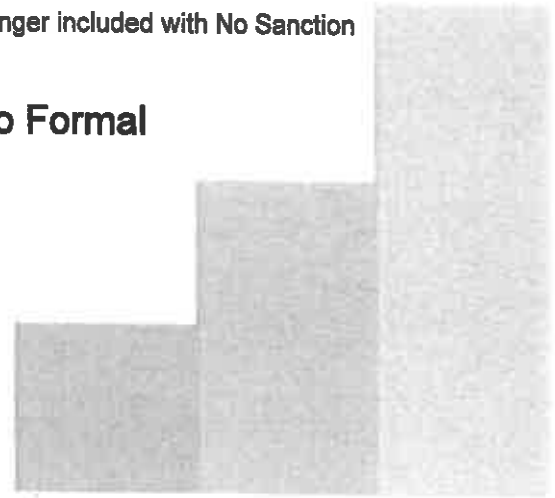
- a. Impaired at the time of the incident ← New factor 60
- b. License ever taken away 40
- c. Case involved prescription issues ← Was "Self Prescribing/Beyond Scope" 35
- d. Patient injury 30
- e. Act of commission 25
- f. Patient required subsequent treatment 25
- g. Past difficulties (substances,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



Revised Dentistry Worksheet

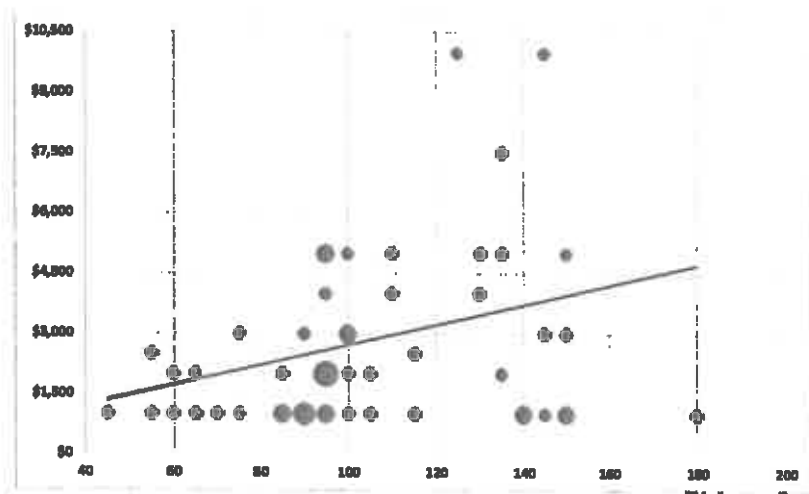
Recommended Sanctions

<u>Score</u>	<u>Sanctioning Recommendations</u>
0 - 40	No Sanction
41 - 99	Monetary Penalty/Continuing Education
100 - 150	Reprimand  Reprimand no longer included with No Sanction
151 or more	Probation/Loss of License/Refer to Formal

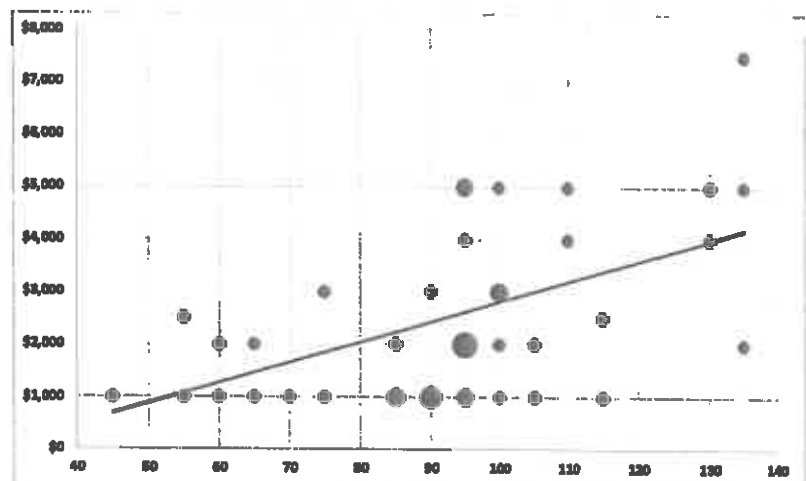


Analysis of Monetary Penalties

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Monetary Penalty v. Predicted SRP Point Total - OUTLIERS REMOVED



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Monetary Penalty Recommendation Options

55% accuracy

Score	Sanctioning Recommendations	Monetary Penalty Recommendations	Accuracy
0 - 40	No Sanction	N/A	100%
41 - 99	Monetary Penalty/ Continuing Education	\$0 - \$1,000	50%
100 - 150	Reprimand	\$1,000 - \$3,000	62%
151 or more	Probation/Loss of License/ Refer to Formal	\$3,000 or more	0%

68% accuracy

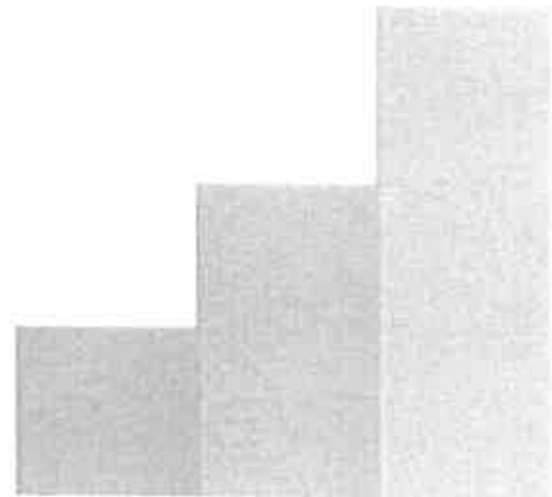
Score	Sanctioning Recommendations	Monetary Penalty Recommendations	Accuracy
0 - 40	No Sanction	N/A	100%
41 - 99	Monetary Penalty/ Continuing Education	\$0 - \$2,000	77%
100 - 150	Reprimand	\$1,000 - \$3,000	62%
151 or more	Probation/Loss of License/ Refer to Formal	\$3,000 or more	0%

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Monetary Penalty Recommendation Options

66% accuracy

Score	Sanctioning Recommendations	Monetary Penalty Recommendations	Accuracy
0 - 40	No Sanction	N/A	100%
41 - 99	Monetary Penalty/ Continuing Education	\$0 - \$2,000	77%
100 - 150	Reprimand	\$2,000 - \$5,000	58%
151 or more	Probation/Loss of License/ Refer to Formal	\$5,000 or more	0%

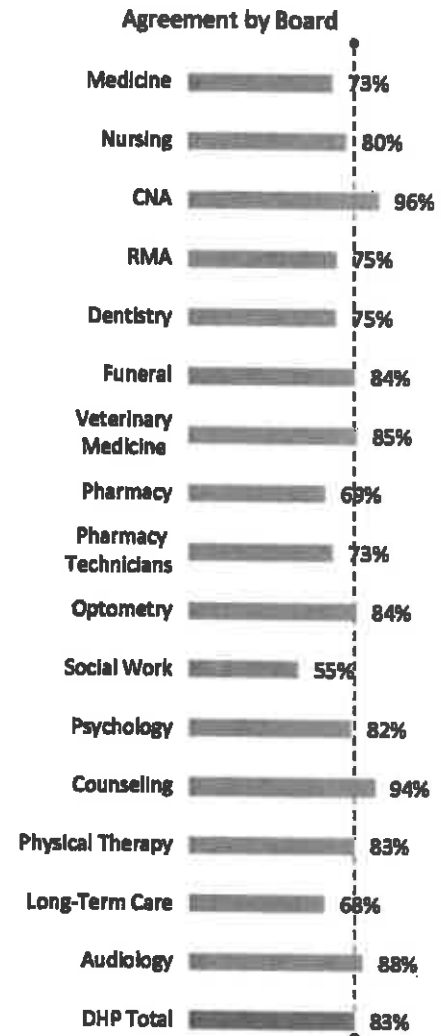


SRP Agreement Monitoring

The department overall maintains an agreement rate of about 83% (4,000+ SRP worksheets since the program began)

Dentistry's current agreement rate is 75%

Monetary Penalty amounts are not used to compute agreement



Sandra Reen

From: Neal Kauder
Sent: Thursday, February 28, 2019 10:41 AM
To: Reen Sandra; Kelley.Palmatier@DHP.VIRGINIA.GOV; Georgen Sarah (DHP); Carter Elizabeth A.; Small Kim
Subject: BOD Revised SRP WS and Instructions
Attachments: BOD Revised SRP Worksheet and Instructions.pdf; Untitled attachment 00309.htm

Sandy/Kalley

Please find attached the proposed BOD SRP worksheet and instructions. There are a number of changes, the most notable being only one worksheet and no more sanctioning grid(s).

We would like you to review these factors and the instructions and provide feedback/edits to us. Paying attention to the wording we use and any typos as well. Regarding the worksheet, Monetary Penalty ranges have not yet been applied because we intend to present a couple options for those separately and graphically (which we will talk to you about before the meeting as well).

Please keep in mind that this is not the final product and has not been laid out as such. The look of the document will change once approved.

If you have any edits please copy Kim, I'm at the doctor for a couple hours today.

Thank you for your time.

Thanks! Neal

DRAFT

SRP Worksheet - Board of Dentistry

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

Offenses 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	
41 - 99	Monetary Penalty/Continuing Education	
100 - 150	Reprimand	
151 or more	Probation/Loss of License/Refer to Forum	

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SRP Worksheet Instructions - Board of Dentistry

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

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

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)**

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.**

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

- 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.**
- Enter “40” if the respondent’s license was previously lost due to Revocation, Suspension, or Summary Suspension.**
- 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.**
- 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 category.**