## The Development of Sanctioning Reference Points for Use in Board Disciplinary Decisions

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The Virginia Department of Health Professions (DHP), an umbrella agency for 13 health regulatory boards, started a comprehensive sanctioning reference study in 2001. The Board of Medicine and Board of Nursing were the first boards to go through the process. All sorts of data were examined. DHP found, for instance, that an older woman physician was more likely to have her license suspended as compared to younger males. This was true when controlling for a variety of other factors including prior board history and seriousness of the offense. It was important to pull those biases out of the data.

The DHP wanted solid recommendations in the form of sanctioning reference points, so researchers created a model based on the sentencing guidelines system used by Virginia's felony level judges. The judicial guidelines system was successful because it was developed with complete judicial oversight, with data analysis assistance from social science researchers. Because board members change often, it was important to have consistent guidelines that stress accountability and transparency in what we do. We try to make sure that our boards have relatively predictable and valid case sanctions over a period of time.

The Virginia Board of Physical Therapy was formed in 2000 because physical therapists were the largest licensed medical providers in the state without a board. We were always under the Board of Medicine as an advisory committee, and the Board of Medicine was simply not able to address our issues. Our board now addresses our issues in a much more appropriate manner.

It's important to provide an educational tool for new board members. When board members are actually faced with a violation, and don't have any frame of reference or any past history, they may come up short. Virginia has a relatively stable board with respect to assignments, but we have had three new board members since 2006. Every one of them has the same questions when dealing with sanctions: "What should I do? How do I handle this?" That's why it's important to provide educational tools for board members.

The sanction reference points developed by the Board of Physical Therapy, which cost about $20,000, relied on data covering 10 years of sanctioned cases. We read and coded every violation and looked at all factors important in making sanctioning decisions. Case categories were developed for abuse, fraud,

standard of care and business practice, and each category was assigned points. If a case contained both abuse and standard of care issues, the one with a higher point value was scored. Other case and licensee factors, such as patient injury, were assigned points, and the total number of points was then used to determine a total worksheet score, which became translated into a sanction recommendation.

The Sanction Reference Point Threshold Table contains more detailed sanctions that fit within the broader sanctioning recommendations assigned to the point values found on a completed worksheet. For instance, the available sanctions for 45 to 60 points are reprimand, monetary penalty or corrective action and there are even more specific sanctions that fall within that range of points:

### Sanctioning Reference Points Threshold Table

| Worksheet score | Available Sanctions |
|---|---|
| 0-40 | • Reprimand<br>• Stayed $ penalty<br>• Monetary penalty |
| 45-60 | • Reprimand<br>• Monetary penalty<br>• Stayed $ penalty<br>• Stayed suspension<br>• Probation (Terms)<br>    *CE<br>    * CE Audit<br>    *Continuing in therapy<br>    *Employer reports<br>    *HPIP (Health Care Practitioner Intervention Program)<br>    *Psych evaluation<br>    *Supervision<br>    *Shall not seek/accept employment allowing contact with patients |
| 65- 110 | • Corrective Action<br>• Stayed suspension<br>• Probation (Terms same as above) |
| 115 – or more | • Suspension<br>• Revocation/ accept surrender<br>• Recommend formal hearing |

The board turns in a Reference Point Cover Sheet, which contains the case number and type, the respondent's name, the licensing number and the imposed sanction. Because this is a voluntary tool to guide and help the board, it does not have to abide by what is recommended if it feels there are mitigating or aggravating circumstances. If the board wants to deviate from the threshold table,

however, it is asked to record a reason for departure. This information goes back to researchers in order for the worksheets to be updated to reflect current board sanctioning culture.

The Sanctioned Reference Points includes all case types and provides continued assistance to the boards during the difficult process of assigning sanctions to case violations. Additional circumstances that may influence the Boards decision include:

• Prior history

• Dishonesty

• Motivation

• Remorse

• Restitution

• Multiple offenses

• Was it an isolated incident?

The system also provides more exact definitions of cases that come before the board:

**Sanctioned Reference Point Cast Type Table**

| Case Type | Included Case Categories | Applicable Points |
|---|---|---|
| Abuse/ Impairment/ Inappropriate Relationship | • Any sexual mistreat of a patient.<br>• Impairment (alcohol, illegal substance, prescription drugs)<br>• Physical/mental/medical incapacitation<br>• Boundary issues | 40 |
| Fraud | • Unwarranted/unjust services<br>• Falsification of records<br>• Improper patient billing<br>• Falsifying license/renewal | 20 |
| Standard of Care | • Improper diagnosis/rx.<br>• Rx. with no license<br>• Failure to obtain/document CE | 15 |
| Business Practice Issues/Other | • Records, inspection, audit<br>• Required report not filed | 10 |

We also want to make certain the sanction reference points don't take into account factors such as race or ethnicity. Because only those factors deemed to be consistently important in sanctioning are included on the worksheet, it is hoped that any unwarranted biases that may influence sanctioning will be neutralized. Using the system also helps to predict future case loads and the need for probation services.

With respect to methodologies, the fundamental question when developing the Sanction Reference Point System is deciding whether supporting analysis should be descriptive in nature (based on quantitative analysis of historical sanctioning practice) or whether it should be more prescriptive in nature

(qualitatively based - on what sanctions should be in the future). The Virginia Board of Physical Therapy decided to merge both, so we used both qualitative and quantity of methods.

The qualitative analysis primarily involved interviews with all past and present board members; past and current chairs and Assistant Attorney Generals who've been involved in cases over the last 10 years.The quantitative analysis was based on reviewing disciplinary cases, forming the sanction worksheet, identifying some offense factors and attempting to exclude factors which should not come into play when making these decisions.

Sanction Reference Points weigh all the circumstances associated with a disciplinary violation. In order to validate our analysis, researchers were able to use the reference points to correctly predict 85% of all past case sanctions handed down. In essence, 15% of the sanctions over the past 10 years fell above or below what the worksheets recommended. In those instances, the board gave sanctions that were either more harsh or more lenient. Those cases could have had justifiable extenuating circumstances, for example very serious patient harm, or could have been due to other disparities that are not as easily explained.

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