

Department of Health Professions

***Virginia's Sanction Reference Point
System: An Empirically Based Approach
to Ensure Fairness***

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2016 NCSBN Disciplinary Case
Management Meeting
June 8, 2016
Norfolk Waterside Marriott
Norfolk, Virginia



SRP Overview

- Background
- Methodology
- Evaluation
- Q & A





Background

- Department of Health Professions (DHP)

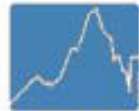
<http://www.dhp.virginia.gov/>

Board of Health Professions & Visual Research, Inc.
Virginia Case Disciplinary Processes

- Why Sanction Reference Points (SRPs)?

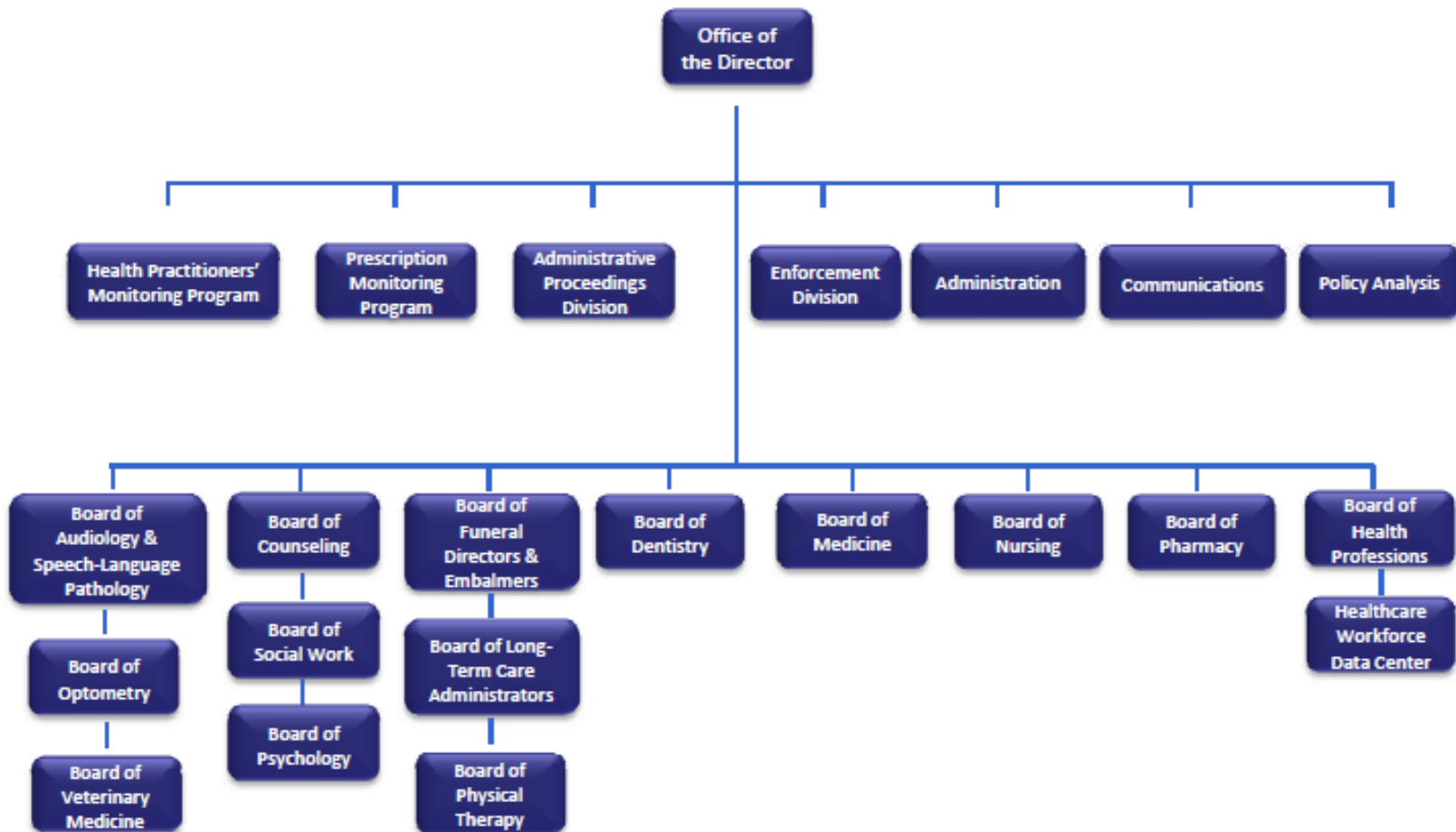
Transparency, neutrality, consistency, and proportionality

(Track record of success beginning in 2004)



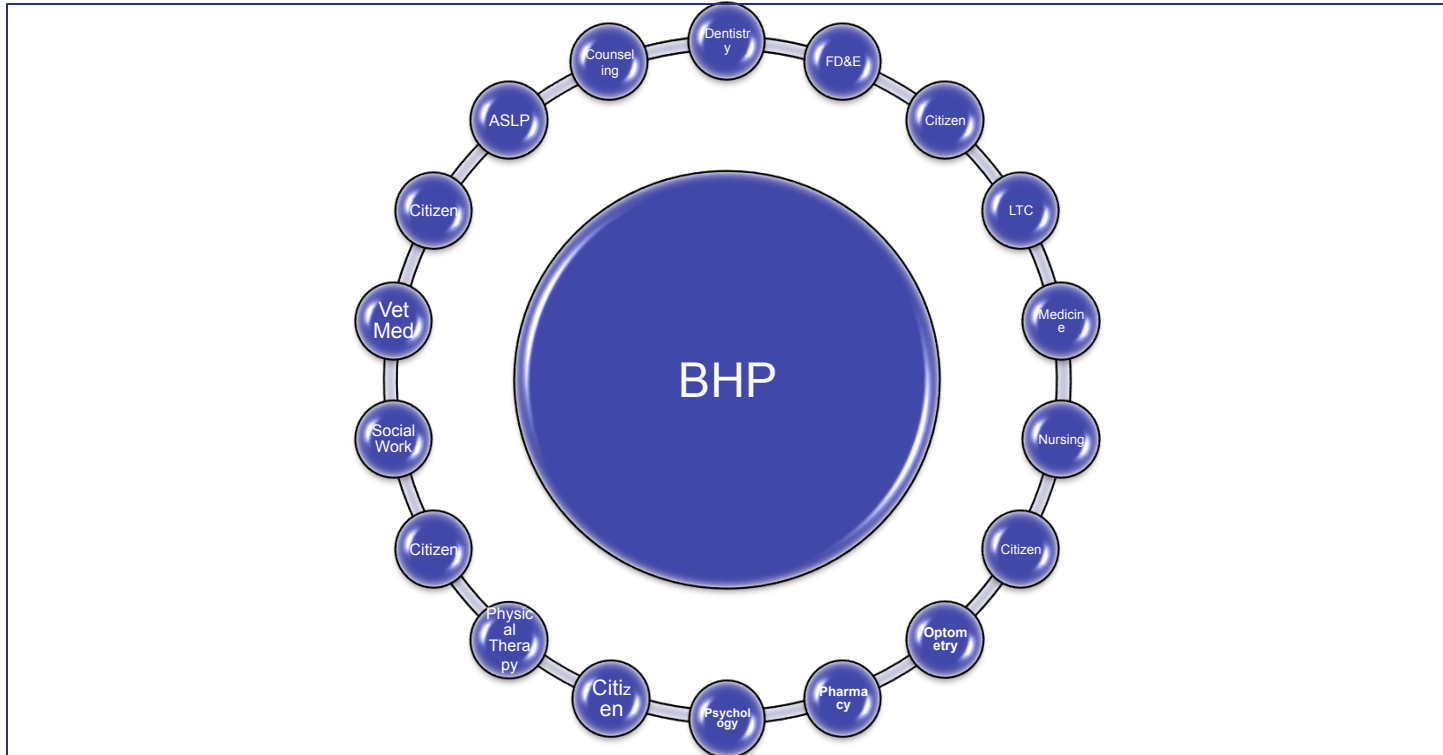
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Department of Health Professions





Department of Health Professions



Several powers and duties, but a primary role is to conduct independent research and make recommendations to the Governor, Secretary, DHP Director and General Assembly on matters pertaining to health professional regulation, agency performance, and. . .



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Board of Health Professions

. . . to periodically review the investigatory, disciplinary, and enforcement processes of DHP and the individual boards to ensure public protection and *the fair and equitable treatment of health professionals.*



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Virginia Case Disciplinary Processes

Details “The Disciplinary Process for Licensed Health Professionals”

Available at http://www.dhp.virginia.gov/Enforcement/enf_Discipline_Process.htm

- *Administrative Process Act*
- Case-by-case and complaint driven
- Investigations conducted by DHP Enforcement Division
- Probable cause and further case dispositions determinations are handled by the licensing Boards.
- Additional legal support from Administrative Proceedings Division and Office of the Attorney General



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Why Sanction Reference Points?

- “Too lenient,” “too harsh,” “inconsistent!” (worst) – DEFENSELESS
- Statistical data are available on “what,” “how many,” “how long” but insight into the “**WHY**” behind sanctioning decisions was elusive.
- Quasi-judicial role but no systematized case history.
- Anecdotally, staff were often asked “**What have we done in the past?**” Inherently biasing: Memories are subjective and provide no proof the sanctions imposed relate to the type or severity of misconduct. Further, such *ex parte communication* in closed session may jeopardizes due process.



Methodology

- Purpose & Guiding Principal
- Methodology:
 - Criminal Justice System Approach
 - Sanction Reference Points (Development and Ongoing Monitoring)



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Purpose

“...to provide an empirical, systematic analysis of board sanctions for offenses, and to derive reference points for board members and an educational tool for respondents and the public”

Virginia Board of Health Professions,
Workplan, Spring 2001

Guiding Principle – Voluntary Nature

“... for any sanction reference system to be successful, it must be developed with complete board oversight, be value-neutral and grounded in sound data analysis, and be totally voluntary...”

DHP Internal Committee & Staff, Fall 2001



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Methodology

Va. Criminal Sentencing Guidelines

1. Multivariate statistical models to determine the relative influence of offender and offense factors in past cases (since 1980s)
2. Statistically significant factors reviewed and “extra-legal” (unwarranted) factors **removed** from the model
3. Resulting approved factors are assigned scored point values
4. Points totaled for comparisons against thresholds in tables scaled for different sentencing severity levels
5. System is continually monitored and updated as needed



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Methodology

Sanction Reference Points

“What has the board done in the past?” and “Why?”

Descriptive analysis first:

- What information needed to describe the complex factors potentially involved in the board’s own sanctioning past?
- Over 100 factors recommended from interviews
- Several years’ data drawn from case files, notices, and orders (multivariate analysis N size ; cases recent enough to be relevant)
- Largest volume boards, first : Medicine (2001 to 2004) and Nursing (2004 to 2006); 11 more, with ASLP (2010).



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Methodology

Sanction Reference Points

“Which factors should be considered in the future?”

Normative adjustments

- Board review of factorial analyses (significance/weights)
- Opportunity to remove “extra-legal” factors from the model
- Modeling designed to predict typical cases sanctions (70-75%) within broad ranges of sanctions
- One or more Worksheets (scoring sheets) reviewed and approved by the board



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Methodology

Sanction Reference Points

How?

SRP Manual and Training

- Board-specific manuals provide background, instructions, factor definitions and scaling, worksheets, and cover sheet (for monitoring).*
- Points on respondent and offense scales are totaled and compared with thresholds to determine recommended range of sanctions
- Model anticipates approximately 70% agreement rates
- Training provided to members and staff, attorneys, and general public.

*Board of Nursing's manual is available online as Guidance Document 90-7,

[Sanctioning Reference Points Manual, revised June 2013](#) or

<http://www.dhp.virginia.gov/nursing/guidelines/90-7%20Sanction%20Reference%20Manual.pdf>



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From BON SRP Manual (2013)

Expanded Sanctioning Grid Outcomes

SRP Sanction Outcome	Eligible Sanction Types
Recommend Formal/ Suspension or Revocation	Recommend Formal Suspension or Revocation Suspend or Revoke Right to Renew Stayed Suspension
Treatment/Monitoring	Probation Take No Action Terms: Drug administration - restrictions HPMP Impairment/incapacitation - evaluation Inform Board of beginning or changing employment (10 days) oversight by physician/LPN/RN Practice restriction - specific Probation officer send progress report to Board Provide Board with final order placed on record by court Provide current/future treating practitioners with copy of order Quarterly job performance evaluations Quarterly self reports Return license to receive stamped probation Shall abstain from the use of alcohol and drugs Shall be active in AA/NA/Caduceus/other Supervised unannounced drug screens Therapy with progress reports Written notification to employer/employees/associates
Reprimand/CE/Monetary Penalty	Monetary Penalty Reprimand Continuing Education (CE)
No Sanction	No Sanction



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From BON SRP Manual (2013)

Case Types Covered within Worksheets

Inability to Safely Practice Worksheet		Standard of Care Worksheet		Unlicensed Activity/Fraud Worksheet	
Drug Related	<ul style="list-style-type: none"> Personal Use - On Duty Stealing Controlled Substances Patient Deprivation Drug Adulteration Drug Control Act Violation Prescription Forgery 	Abuse, Abandonment or Neglect	<ul style="list-style-type: none"> Any sexual assault, mistreatment of a patient, inappropriate termination of provider/patient relationship, leaving a patient unattended in a health-care environment, failure to do what a reasonable person would do in a similar situation. 	Fraud	<ul style="list-style-type: none"> Falsification/alteration of patient records Falsification of licensing/renewal documents
Impairment	<ul style="list-style-type: none"> Due to use of alcohol, illegal substances, or prescription drugs 	Breach of Confidentiality	<ul style="list-style-type: none"> Disclosing unauthorized client information without permission or necessity Social Media Violations 	Unlicensed Activity	<ul style="list-style-type: none"> Aiding/abetting unlicensed activity No valid license - not qualified to practice No valid license - qualified to practice Practicing beyond the scope of license Practicing on a revoked, suspended, or expired license
Incapacitation	<ul style="list-style-type: none"> Due to mental, physical or medical conditions 	Inappropriate Relationship	<ul style="list-style-type: none"> Dual, sexual or other boundary issue Inappropriate Touching Inappropriate written or oral communications 		
Misdemeanor Conviction		Standard of Care - Alternative Treatment	<ul style="list-style-type: none"> Delayed or Unsatisfactory Diagnosis/Treatment Failure to Diagnose/Treat Improper Diagnosis/Treatment Other Diagnosis/Treatment Issues 		
		Standard of Care - Failure to provide counseling			
		Prescription Related	<ul style="list-style-type: none"> Improper management of patient regimen Administration/Dispensing Errors Improper Patient Management 		
		Standard of Care - Medical Record Keeping			
		Other			



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From BON SRP Manual (2013)

Inability to Safely Practice Worksheet

Board of Nursing
Adopted 3/22/11

Offense Score	Points	Score
a. Two or more concurrent founded cases	20	_____
b. Concurrent sanction by employer	20	_____
c. Impaired at the time of the incident	20	_____
d. Patient injury	20	_____
e. Patient especially vulnerable	20	_____
f. Any patient involvement	15	_____
g. Injury to self	10	_____
h. Act of commission	10	_____
Total Offense Score		<input style="width: 40px; height: 20px;" type="text"/>

Respondent Score	Points	Score
a. Concurrent criminal conviction	30	_____
b. Any prior Board violations	20	_____
c. License ever taken away	20	_____
d. Been sanctioned by another state/entity	20	_____
e. Past difficulties (substances, mental/physical)	10	_____
f. Three or more employers in past 5 years	5	_____
Total Respondent Score		<input style="width: 40px; height: 20px;" type="text"/>

		Offense Score		
		0-25	26-45	46 or more
Respondent Score	0-5	No Sanction ... to > Reprimand/CE/ Monetary Penalty	Reprimand/CE/ Monetary Penalty ... to > Treatment/Monitoring	Treatment/Monitoring ... to > Recommend Formal/ Suspension or Revocation
	6-40	Reprimand/CE/ Monetary Penalty ... to > Treatment/Monitoring	Treatment/Monitoring ... to > Recommend Formal/ Suspension or Revocation	Treatment/Monitoring ... to > Recommend Formal/ Suspension or Revocation
	41 or more	Treatment/Monitoring	Treatment/Monitoring ... to > Recommend Formal/ Suspension or Revocation	Recommend Formal/ Suspension or Revocation

Grid cells give a single recommendation or a range of recommendations for imposing sanctions.

Virginia Sanction Reference Points Instructions & Scoring Sheet Example

<http://www.dhp.virginia.gov/nursing/guidelines/90-7%20Sanction%20Reference%20Manual.pdf>

Inability to Safely Practice Worksheet Instructions

Offense Score

Step 1: Case Circumstances (score all that apply)

- Enter "20" if there are two or more concurrent founded violations during the same proceeding. This includes two or more cases against a respondent heard at the same time, with violations for each case.
- Enter "20" if the respondent received a sanction from his/her employer in response to the current incident. A sanction from an employer may include, but is not limited to: suspension, termination, or disciplinary counseling notice.
- Enter "20" 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 "20" if a patient was intentionally or unintentionally injured. Injury includes any physical injury, physical or sexual abuse, and death.
- Enter "20" if the patient is especially vulnerable. Patients in this category must be at least one of the following: under age 18, over age 65, or mentally/physically handicapped.
- Enter "15" if the offense involves a patient. Patient involvement is direct contact with a patient, patient neglect, boundary issues, or drug diversion with patient deprivation.
- Enter "10" if the respondent intentionally overdosed on drugs or inflicted injury with the intent to commit suicide.
- 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

Respondent Score

Step 3: (score all that apply)

- Enter "30" if the respondent received a criminal conviction related to this offense. This factor includes respondents pleading guilty with first offender status.
- Enter "20" if the respondent has any prior order(s) issued by the Virginia Board of Nursing finding them in violation.
- Enter "20" if the Virginia Board of Nursing previously revoked, suspended, or summarily suspended the respondent's license.
- Enter "20" if the respondent has previously been sanctioned by any other state or jurisdiction. Sanctioning by an employer is not scored here.
- Enter "10" 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.
- Enter "5" if the respondent has had three or more employers in the past five years.

Step 4: Combine all for Total Respondent Score

Sanctioning Grid

Step 5: Identify SRP Recommendation
Locate the Offense and Respondent scores within the correct ranges on the top and left sides of the grid. The cell where row and column scores intersect displays the sanctioning recommendation.

Example: If the Offense Score is 30 and the Respondent Score is 45, the recommended sanction is shown on the bottom center grid cell – "Treatment/Monitoring to Recommend Formal/Suspension or Revocation."

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
Board of Nursing
Adopted 3/22/11

	Points	Score
a. Two or more concurrent founded cases	20	_____
b. Concurrent sanction by employer	20	_____
c. Impaired at the time of the incident	20	_____
d. Patient injury	20	_____
e. Patient especially vulnerable	20	_____
f. Any patient involvement	15	_____
g. Injury to self	10	_____
h. Act of commission	10	_____
Total Offense Score		_____
Respondent Score		
a. Concurrent criminal conviction	30	_____
b. Any prior Board violations	20	_____
c. License ever taken away	20	_____
d. Been sanctioned by another state/entity	20	_____
e. Past difficulties (substances, mental/physical)	10	_____
f. Three or more employers in past 5 years	5	_____
Total Respondent Score		_____

	Offense Score		
	0-25	26-45	46 or more
0-5	No Sanction ... to > Reprimand/CE/ Monetary Penalty	Reprimand/CE/ Monetary Penalty ... to > Treatment/Monitoring	Treatment/Monitoring ... to > Recommend Formal/ Suspension or Revocation
6-40	Reprimand/CE/ Monetary Penalty ... to > Treatment/Monitoring	Treatment/Monitoring ... to > Recommend Formal/ Suspension or Revocation	Treatment/Monitoring ... to > Recommend Formal/ Suspension or Revocation
41 or more	Treatment/Monitoring	Treatment/Monitoring ... to > Recommend Formal/ Suspension or Revocation	Recommend Formal/ Suspension or Revocation

Grid cells give a single recommendation or a range of recommendations for imposing sanctions.

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Methodology Monitoring

Sanctioning Reference Points Coversheet for Nurses & CMTs Only

Case Number(s):

Respondent Name: _____

License/Certificate/MFP Number: _____

Case: JFC-Agency Subordinate
 Resolution: JFC-Special Conference Committee
 Method: Pre-Hearing Consent Order

Worksheet Used: Liability to Satisfy Practice
 Standard of Care
 Undisclosed Activity/Fraud

Sanction Goal Result: No Sanction to Reprimand/CE/Moistery Penalty
 Reprimand/CE/Moistery Penalty
 Reprimand/CE/Moistery Penalty to Treatment/Moistoring
 Treatment/Moistoring
 Treatment/Moistoring - Reconnection/Partial/Suspension or Revocation
 Reconnection/Partial/Suspension or Revocation

Imposed Sanction(s): No Sanction
 Reprimand
 Moistery Penalty: \$ _____ enter amount
 Probation: _____ duration in months
 Stayed Suspension: _____ duration in months
 Reconnection/Partial
 Agency Suspend
 Revocation
 Suspension
 Other sanction: _____
 Terms: _____

Was imposed sanction a departure from the recommendation? No Yes, give reason below

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

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

Board Member or Agency Subordinate Name: _____

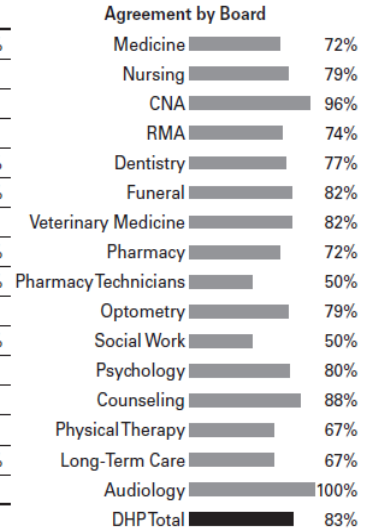
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Sanctioning Reference Points Agreement Analysis

Virginia Department of Health Professions. Data through December 31, 2015. David E. Brown, D.C. Director

Board	Start Date	Completed Worksheets	Agreement		Departures			
			#	%	Aggravating #	Aggravating %	Mitigating #	Mitigating %
Medicine	Aug-04	230	165	72%	10	4%	55	24%
Nursing	Jul-05	1554	1220	79%	283	18%	51	3%
CNA	Jul-05	907	873	96%	19	2%	15	2%
RMA	Jun-13	43	32	74%	10	23%	1	2%
Dentistry	Jun-06	214	165	77%	20	9%	29	14%
Funeral	May-07	38	31	82%	1	3%	6	16%
Veterinary Medicine	May-07	96	79	82%	13	14%	4	4%
Pharmacy	Nov-07	107	77	72%	5	5%	25	23%
Pharmacy Technicians	Jun-13	4	2	50%			2	50%
Optometry	Dec-08	14	11	79%	2	14%	1	7%
Social Work	Jun-09	14	7	50%	2	14%	5	36%
Psychology	Jun-09	10	8	80%	2	20%		
Counseling	Jun-09	17	15	88%	1	6%	1	6%
Physical Therapy	Nov-09	6	4	67%	2	33%		
Long-Term Care	Mar-10	12	8	67%			4	33%
Audiology	Jun-10	2	2	100%				
DHP Total		3268	2699	83%	368	11%	201	6%



Note. CNA = certified nurse aide; RMA = registered medication aide; DHP = Department of Health Professions. Prepared by VisualResearch, Inc.



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Evaluation

Consistency, proportionality and neutrality achieved?

Examining whether or not SRP training has been adequately provided

Examining board agreement with SRPs; also feedback on departures

Re-examining/modifying SRP worksheet factors and scoring weights

Re-examining/modifying sanction recommendation thresholds

Identifying unintended consequences

Determining how board polices fit within SRPs (CCA's, PHCOs, Formal Hearings)



Evaluation Results to Date

- Since adoption, all boards combined have maintained approximately 80% agreement rates
- Additional training needed, especially with board and staff turnover – provided
- Dissemination of worksheets to respondents/attorneys had been inconsistent – agency policy now ensures
- New disposition alternatives (CCAs and Advisory letters) became available
- Speculation about increase in appeals due to SRPs did not come to pass—NO APPEALS



Evaluation Results to Date

- Respondent attorneys like SRPs compared with previous unstructured sanctioning. Negotiated settlements rose and attorney involvement at proceedings dropped by half
- Agency Subordinates trained on SRPs
- Proportionality held
- Neutrality – examination of departures favored male



Questions?

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