

Implementing a Sanctioning Reference System for the Virginia Board of Nursing

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In response to criticism regarding the objectivity and consistency of disciplinary sanctions, the Virginia Board of Health Professions decided to analyze sanctioning decisions and consider developing sanctioning reference points for boards to use in disciplinary cases. As a result, Virginia's Department of Health Professions and the independent consulting firm VisualResearch, Inc., jointly developed a sanctioning reference point system for and with each of the state's 13 professional boards, including the board of nursing. This article describes the system's development, implementation, and effectiveness.

Keywords: Discipline, nursing regulation, sanctioning, sanctioning reference point system

The Virginia Board of Nursing (BON) is housed within the Department of Health Professions, along with the state's 12 other health professional licensing boards and the advisory Board of Health Professions (BHP). Their collective mission is to ensure safe and competent patient care by licensing competent health professionals, enforcing standards of practice, and providing information to health care practitioners and the public (Code of Virginia §54.1-100 et seq; Virginia Department of Health Professions, n.d.).

The licensing boards accomplish this mission through the licensure, regulation, and discipline of over 370,000 health care practitioners across more than 60 professions. BHP does not license professions. Its role is to research and advise on issues regarding the regulation of health professions and agency operations. BHP conducts periodic reviews of agency and board investigatory, disciplinary, and enforcement processes "to ensure public protection and the fair and equitable treatment of health professionals" (Code of Virginia § 54.1-2510 (11)). Appointed by the governor, members of the licensing board and BHP are volunteers who are practitioners licensed by the board and citizen members.

In April 2001, BHP approved a plan to analyze health regulatory board sanctioning and to consider the appropriateness of developing historically based sanctioning reference points for boards to use in disciplinary cases (VisualResearch, Inc., 2001). Respondents, attorneys, public officials, and the media had suggested that sanctioning was too harsh, too lenient, or inconsistent over time. Some critics indicated that the variability in sanctioning could be attributed to extralegal factors, such as the composition of the boards, the geographic location of the hearing, a respondent's representation by an attorney, a respondent's race or ethnicity, and a respondent's gender. The BHP decided that an analysis should be conducted to determine if these assertions were true and what measures should be taken to rectify them.

Following this decision, Virginia's Department of Health Professions and an independent consulting firm, VisualResearch, Inc., jointly developed, implemented, and launched a sanctioning reference point (SRP) system for the state's professional boards, including the BON, for use in disciplinary proceedings. (See Table 1.)

Goals

Recognizing the complexity of sanction decision making, board and staff members indicated that a successful sanctioning system must be "developed with complete board oversight, be value neutral, be grounded in sound data analysis, and be totally voluntary" (VisualResearch, Inc., 2001). With this in mind, the following purposes and goals were established for the SRP system:

- To make sanctioning decisions more predictable
- To provide an education tool for new board members
- To add an empirical element to an inherently subjective process
- To provide a resource for board staff members and attorneys
- To neutralize sanctioning inconsistencies
- To validate board members' or staff members' recall of past cases
- To constrain undesirable influences
- To help predict future caseloads and the need for probation services.

BHP acknowledged that board members are asked to serve in a quasi-judicial role in determining whether misconduct has occurred and the appropriate sanctioning. Although knowledgeable about their profession's regulation and practice standards, board members lack systematized case histories and sentencing guidelines that are both readily available in the criminal justice system to assist justices.

Methodology

The SRP system borrows heavily from Virginia's criminal justice sentencing guidelines research methods because of a lack of any

TABLE 1

Sanctioning Reference Point System Timeline for Virginia

Timeline

2001	Board of Health Professions work order/directive
2002–2004	Board of Medicine (pilot board) sanctioning reference point (SRP) system kick-off, development, implementation, adoption
2004	Board of nursing (BON) SRP system kick-off
2005	BON SRP development
2006	BON SRP implementation and adoption
2004–2009	Boards of Dentistry, Pharmacy, Optometry, Veterinary Medicine, Social Work, Psychology, Funeral Directors, Counseling, and Physical Therapy SRP development, implementation, adoption
2011	Effectiveness study, including revising worksheets with new data
2013	Revised nursing SRP worksheets adopted

comparable research in the regulatory realm. Virginia's criminal sentencing guidelines were developed in the late 1980s as an empirically based, systematic reference tool to help ensure neutrality, proportionality, and consistency. Essentially, the sentencing system uses multivariate statistical models to determine the relative influence of the offender and the offense factors that judges consider when sentencing convicted offenders. Significant factors are reviewed for their appropriateness, and any "extralegal" factors, such as race and gender, are eliminated from the models.

Following this analytic process, factors are selected and given a score using weights derived from a revised set of statistical models and matrix-based algorithms. Scores are then totaled and used in tables that contain thresholds for different sentencing severity levels—ranging from probation to terms of incarceration. The system is continually monitored, and staff update the sentencing guidelines as needed.

Virginia's regulatory SRP system was developed using similar analytical methods as used in the state's criminal justice sentencing guidelines, but it also uses normative adjustments; this approach combines information from past practice with policy adjustments to achieve the most up-to-date, consistent, and practical sanctioning outcomes (Carter & Kauder, 2004).

For each of the regulatory boards, following the SRP program timeline, researchers conducted in-depth personal interviews with board and staff members to gain insight into the factors that contribute to sanctioning decisions. The purposes of the interviews were to ensure that the factors members consider would be included in the SRP system worksheets and to identify any other factors that may come into play.

From 2004 to 2006, researchers collected detailed information on all BON disciplinary cases ending in a violation. The sample size for nursing licensees was approximately 350 cases, a statisti-

cally significant sample. Researchers used data available through the Department of Health Professions case management system and primary data collected from hard copy files. The hard copy files contained investigative reports, board notices, board orders, and all other documentation made available to board members when deciding a case sanction.

More than 100 different factors were collected on each case to describe the attributes that board members identified as potentially influencing sanction decisions. Among the factors that could influence sanctioning decisions were board history, substance abuse, patient injury, and corrective action taken. A comprehensive database was created to analyze the offense and respondent factors that were identified as potentially influencing sanctioning decisions. As was done with the criminal sentencing guidelines, staff used statistical analysis to construct a historic portrait of sanctioning decisions; the factors deemed to be consistently important were identified, and their relative weights (translated into worksheet scores) were then derived to create the SRP system. Over the course of the 15-year project, various multivariate and other statistical methods have been used to test the influence of case and respondent factors on sanctioning decisions for all 13 licensing boards. The details go beyond the scope of the current article, but can be found in Carter and Kauder (2004).

According to SRP system manual instructions (Virginia Department of Health Professions, 2013), the worksheets are completed regardless of whether the board's sanctioning agrees with the SRP in the case. The worksheets are collected to enable BHP's ongoing quarterly monitoring of agreement rates and examination of stated reasons for mitigating or aggravating departure. (See Figure 1.) To keep SRPs current in the face of new laws and regulations, professions, and evolving disciplinary issues, BHP consults the respective licensing boards to evaluate the need for updates.

Implementation Steps

The SRP system was implemented for each of the state's 13 boards following these 10 steps:

1. Conduct interviews with current and past board members, counsel, staff and members of the attorney general's office to glean information about the boards' past sanctioning, future goals, and expectations regarding uses for the SRP system.
2. Analyze the results of the interviews and obtain board feedback and approval on factors to be collected and the approach for scoring subjective factors.
3. Finalize data from the collection instrument for obtaining sanctioning information from case files, minutes, and notices. Collect data and enter the data into a database.
4. Compile, merge, and clean the database.
5. Determine statistically significant factors through multivariate analyses, report the results of the analysis showing the relative importance of each factor, and determine which factors the board wishes to retain as appropriate and exclude as inappropriate.

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