

Sanctioning Reference Points

Virginia Board of Funeral Directors & Embalmers

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Importance of Sanctions

- **Capstone of discipline**
- **Discipline consumes large portion of resources**
- **Provides guidance for conduct of the profession**

Need for Study

- **Questions were raised relating to consistency, neutrality, and appropriateness of Health Regulatory Board sanctions**
- **Only anecdotal answers were available**
- **Hard data unavailable on factors that relate to sanction decisions – aggravating or mitigating factors, etc.**

Virginia Board of Health Professions, Work plan, Spring 2001

Need for New Approach

- **Make sanctioning more predictable**
- **Education tool for new board members**
- **Add empirical element to a process**
- **A resource for staff and attorneys**
- **“Neutralize” unwarranted disparity**
- **Validate board member recall of past cases**
- **Lack of transparency**

Purpose

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

DHP Internal Committee & Staff, Fall 2001

Guiding principle

“ ... 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

Theoretical Framework

Based on Board Member interviews and various committee meetings---Board develops a “Blueprint”

- Overall sanctioning goals
- Purpose of reference points
- Analytical approach
- Measuring case complexity & factors to collect

Key Features

- **Voluntary - maintain complete discretion**
- **Accommodate full array of mitigating & aggravating factors**
- **Operate within existing statutes and regulations**
- **Not too specific or narrow**
- **Allow multiple sanctioning goals to be considered**

Method - Steps

- **Conduct personal interviews**
- **Review literature/profile states**
- **Build consensus for theoretical framework & methods**
- **Identify sample**
- **Collect data**
- **Merge all information/conduct analysis**
- **Identify “historically relevant factors”**
- **Translate factors into usable reference system**
- **Train, implement, get board feedback**
- **Evaluate and modify as necessary**

A Sample of 51 Cases

- All violations Between Jan 1999 and Dec 2004
- Excludes compliance, reinstatement, mandatory suspension, Actions by Other Boards & Confidential Consent Agreements
- Event based analysis -- “cases” vs. “orders”

Data Collection Sources

- Board Member/Staff Interviews
- Case file presented to board
- Microfilm
- Minutes of hearings
- Notices and orders
- Staff
- Ad hoc data reports

Analytical Approach

Descriptive model: Answers “What has been?”

- **Historical data analysis of relevant factors**

Descriptive model/normative adjustment: Answers “What ought to be?”

- **Data serves as baseline, boards modify to serve goals**

Virginia Department of Health Professions Sanctioning Study

Funeral Instrument

Virginia Department of Health Professions
Sanctioning Reference Points Study
Data Collection Instrument - Funeral

date of collection ____ / ____ / ____
event # ____

License # _____
L2K Case # _____ Number of cases in event _____
L2K Case Category 1) _____ 2) _____ 3) _____
L2K Subcategory 1a) _____ 2a) _____ 3a) _____

Procedural Data

Consent Order signed
___ 0 no
___ 1 yes

Settlement Method
___ 1 Pre-hearing agreement
___ 2 Notice of Informal Conference
___ 3 Informal conference
___ 4 Formal hearing
___ 88 N/A

If formal proceeding, what?
___ 1 informal conference
___ 2 respondent appeal
___ 3 summary suspension
___ 88 N/A

Did an attorney aid the respondent?
___ 0 no
___ 1 yes
___ 88 N/A

Respondent present at proceeding?
___ 0 no
___ 1 yes
___ 88 N/A

Was a representative for the decedent present at the IFC/FH?
___ 0 no
___ 1 yes
___ 88 N/A

Was a representative for the Respondent present at the IFC/FH?
___ 0 no
___ 1 yes
___ 88 N/A

Were there other licensees associated with case/incident?
___ 0 no
___ 1 yes

Claimant/Decedent Data

Source
___ 1 anonymous
___ 2 family member
___ 3 DHP
___ 4 other licensee
___ 5 other, specify _____
___ 88 N/A

Number of bodies involvement
___ 1 none
___ 2 one
___ 3 two - five
___ 4 more than five
___ 5 N/A

Practice Region
___ 1 Northern
___ 2 Central
___ 3 Tidewater
___ 4 Southwestern

Was it Urban or Rural?
___ 1 Urban/Suburban
___ 2 Rural

Was respondent acting as Manager in Charge at the time of the incident?
___ 0 no
___ 1 yes
___ 88 N/A

Respondent license type
___ 1 Funeral Director
___ 2 Facility
___ 3 Other _____

Concurrent action by employer
___ 0 no
___ 1 yes
___ 88 N/A

Concurrent action against respondent (check all that apply)
___ 1 civil
___ 2 criminal
___ 3 other specify _____
___ 4 none

Been sanctioned by another state/entity
___ 0 no
___ 1 yes

Has license ever been taken away by any state including VA
___ 0 no
___ 1 yes
___ 88 N/A

Past difficulties or treatment (drugs, alcohol, mental, physical)
___ 0 no
___ 1 yes
___ 88 N/A

Was there abuse of a body?
___ 0 no
___ 1 yes
___ 88 N/A

Was this a facility violation?
___ 0 no
___ 1 yes
___ 88 N/A

___ # of prior board violations

Were any of the previous cases similar to the instant offense

___ 0 no
___ 1 yes
___ 88 N/A

Surrender
___ 0 no
___ 1 yes

Probation/Terms
___ 0 no
___ 1 yes; if yes enter duration in months ____

Term(s) _____

Duration months/hours _____

No sanction
___ 0 no
___ 1 yes

Other sanction
___ 0 no
___ 1 yes; if yes enter explanation _____

Prior history - respondent
of prior cases (any disposition/investigative type) _____ # of prior board violation _____

Were any of the previous cases similar to the instant offense
___ 0 no
___ 1 yes
___ 88 N/A

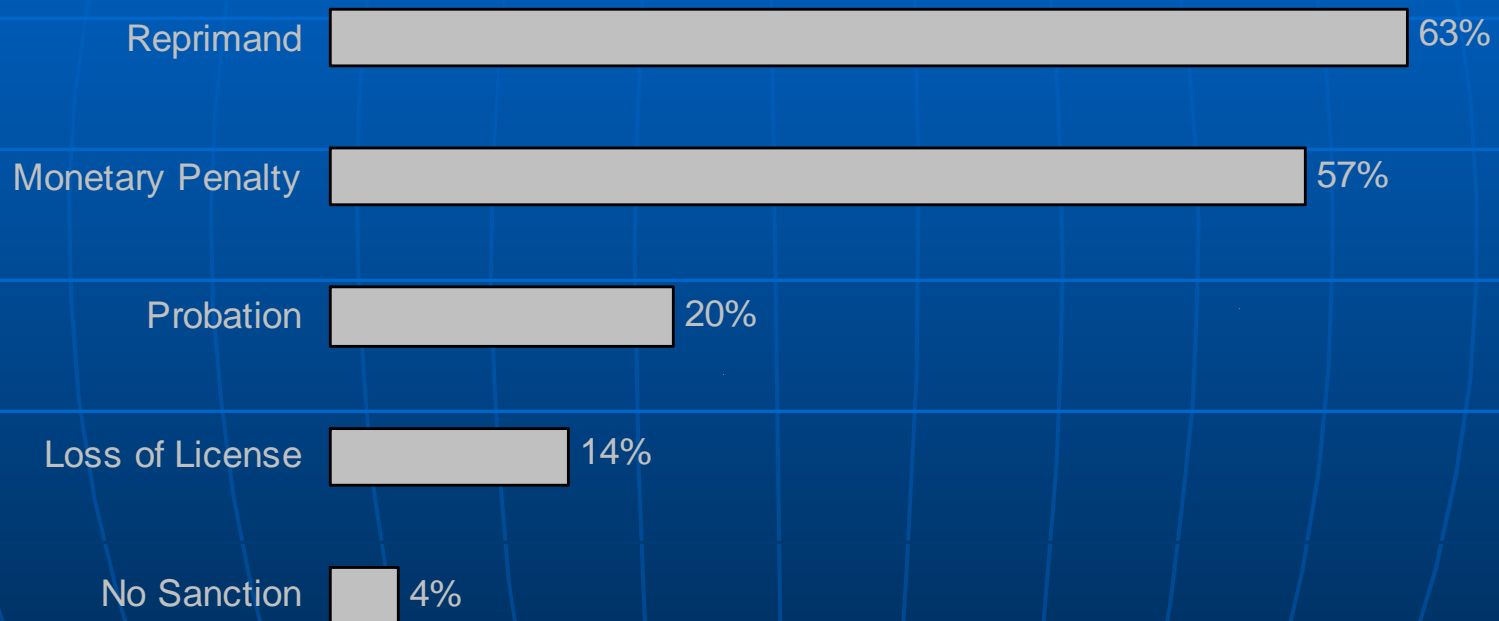
Were any of the previous cases similar to the instant offense
___ 0 no
___ 1 yes
___ 88 N/A

Descriptive Analysis

Descriptive – describes cases in a basic way

- What sanctions do respondents receive (by offense)?
- How many respondents have prior record?
- How many respondents have ongoing substance problems?

Occurrence of selected sanctions



Note: length of probation was most frequently 12 months.

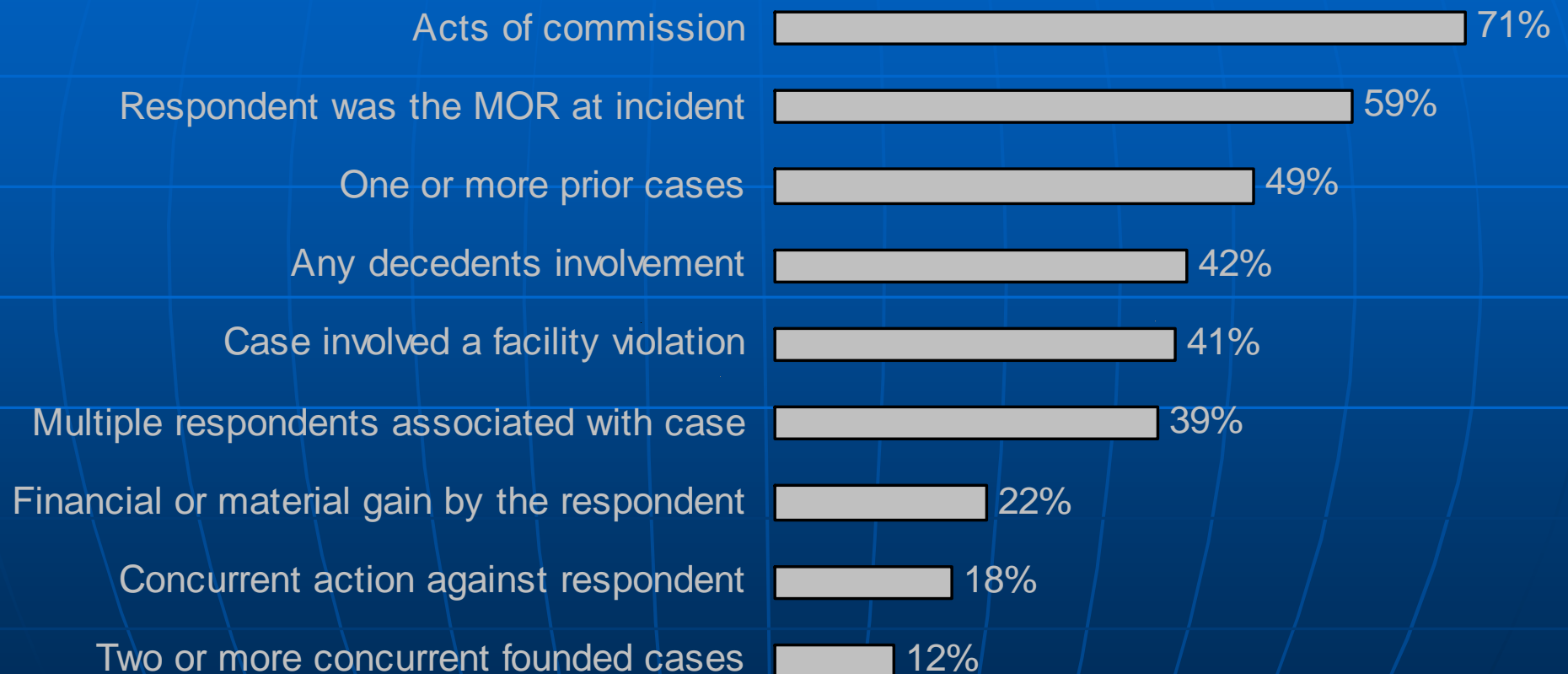
What is the extent of prior record?



How has case type varied over time?



Selected Descriptive Findings



Selected Descriptive Findings

Respondents in rural areas are more likely to be impaired

Impaired respondents are more likely to be the Manager of Record

Respondents from rural areas are more likely to have concurrent actions

Financial gain was more likely in cases involving multiple respondents

Larger numbers of facility violations are more likely acts of commission

Financial gain is more likely to be an act of commission

Concurrent actions are less likely to occur with corrective action

Multivariate Analysis

Multivariate – Tests the influence of factors simultaneously

- **Statistical models help explain how similarly situated cases have been handled in the past**
- **How much weight have boards assigned to factors?**
- **How influential is prior history, past substance abuse, etc.**
- **What factors predict loss of license?**

How were case types grouped

Inspections	17	33.3
Inspection Deficiencies/Facility Violation	17	
Business Practice Issues	15	29.4
Business Practice Issues	10	
Rudeness	1	
Failure to provide general price list	2	
Failure to provide contract/terms	1	
Solicitation	1	
Unlicensed Activity	11	21.6
Aiding/Abetting Unlicensed Activity	5	
No valid license-qualified to practice	2	
Practice Beyond Scope of License	1	
Practice on Lapsed/Expired Lic	1	
Facility Operating without Permit	1	
Licensure Eligibility	1	
Fraud	8	15.7
Mishandling of pre-need funds	3	
Misdemeanor Conviction	2	
Misappropriation of Property	1	
Performing unwarranted/unjust services	1	
Falsification/Alteration of Documents	1	

Grouping Similar Sanctions

	Removal from Practice	Treatment Monitoring	Monetary Penalty	No Sanction/ Reprimand
Revocation	X			
Surrender license or privilege to renew	X			
Suspension	X			
Stayed Suspension - immediate	X			
Monetary Penalty			X	
Stayed Monetary Penalty - immediate			X	
Probation		X		
Reprimand				X
No Sanction				X
<u>Terms</u>				
Future CE required		X		
Additional inspection		X		
Shall not be MOR		X		
All other terms		X		

Board of Funeral Directors & Embalmers SRP Worksheet

Funeral Directors & Embalmers - Sanction Reference Point Worksheet

Case Type (score only one)	Points	Score	
Fraud	40	_____	score only one
Business practice issues	20	_____	
Unlicensed activity	20	_____	
Inspections related	10	_____	
		Case Type Score	<input type="text"/>

Offense Factors (score all that apply)	Points	Score	
Two or more concurrent founded cases	40	_____	score all that apply
Act of commission	40	_____	
Concurrent action against respondent	30	_____	
Respondent was the MOR at the time of the incident	20	_____	
Any decedent involvement	10	_____	
Financial or material gain by the respondent	10	_____	
Multiple respondents associated with case	10	_____	
Case involved a facility violation	10	_____	
		Offense Factor Score	<input type="text"/>

Prior Record (score all that apply)	Points	Score	
One or more prior violations	40	_____	score all that apply
Were any of the previous violations similar to the instant offense ..	10	_____	
		Prior Record Score	<input type="text"/>

Total Worksheet Score (case type + offense + prior record factors) _____

SCORE	Sanctioning Recommendations	Monetary Penalty Recommendations
0-49	No Sanction/Reprimand to Monetary Penalty	Up to \$500
50-99	Monetary Penalty to Treatment/Monitoring	\$250 to \$1000
100-199	Treatment/Monitoring to Recommend Formal or Accept Surrender	\$500 to \$2500
200 or more	Recommend Formal or Accept Surrender	\$2500 or more

Respondent Name: _____ Date: _____

SRP Worksheet Instructions

Case Type

Step 1:
(score only one)

Enter the point value that corresponds to the case type. If a case has multiple aspects, enter the point value for the case type that is highest on the worksheet list.

Fraud

Mishandling of pre-need funds
Misappropriation of property
Performing unwarranted/unjust services
Falsification/alteration of documents
Misdemeanor conviction

Business Practice Issues

Business practice issues
Rudeness
Failure to provide general price list
Failure to provide contract/terms of contract
Solicitation

Unlicensed Activity

Aiding/abetting unlicensed activity
No valid license – qualified to practice
Practice beyond scope of license
Practicing on lapsed/expired license
Facility operating without a permit
Licensure eligibility

Inspections/Records

Inspection Deficiencies/Facility Violation

Step 2:

Enter Case Type Score

Enter the point value that corresponds to the case type. If a case has multiple aspects, enter the point value for the case type that is highest on the worksheet's list.

Offense Factors Score

Step 3:
(score all that apply)

Enter "40" if there are two or more violations being found by the Board on the present day.

Enter "40" if this was an act of commission. An act of commission is interpreted as purposeful or with knowledge.

Enter "30" if there is a criminal or civil action related to this offense.

Enter "20" if the respondent was the Manager of Record (MOR) at the time of the incident.

Enter "10" if the offense involves a decedent or a third party acting on behalf of the decedent. Third party involvement includes, but is not limited to, family members who have dealt business with the respondent for services. Third party involvement is not limited to family members.

Enter "10" if there was financial or material gain by the respondent.

Enter "10" if multiple respondents were associated with the case. When multiple respondents are involved there will be a "companion case" with another respondent's name and case number found in the investigation report.

Enter "10" if the case involved a facility violation. These points may be scored regardless of the case type assigned points in Step 1.

Step 4:

Enter Offense Factor Score

Prior Record Score

Step 5:
(score all that apply)

Enter "40" if the respondent has one or more prior Virginia Board of Funeral Directors violations.

Enter "10" if the respondent has any prior similar Virginia Board of Funeral Directors violations. Similar violations would be those that are contained under the same major case type heading listed in Step 1. For example, if the case being heard concerns a "Facility Operating without a Permit" and the respondent has a prior violation for "Aiding/Abetting Unlicensed Activity" enter 10 points.

Step 6:

Enter Prior Record Score

Total Worksheet Score

Step 7:

Add Step 2, Step 4, and Step 6 for a Total Worksheet Score

Step 8: Determining the Sanction Recommendations

Locate the Total Worksheet Score in the correct threshold range on the left of the Sanctioning Recommendation Thresholds. This score corresponds to the Sanction Reference Point sanction and monetary penalty recommendations.

Example: If the Case Type Score is 10, the Offense Score is 20, and the Prior Record score is 0, the total worksheet score is 30 and the recommended sanction is found in the first range, 0-49 "No Sanction/Reprimand to Monetary Penalty" and a monetary penalty of Up to \$500.

Step 9: Coversheet

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

Virginia Department of Health Professions Sanctioning Study

SRP Recommended Sanctioning Outcomes

Sanctioning Reference Points Threshold Table

Worksheet Score	Available Sanctions	Monetary Penalty Recommendation
0-49	No Sanction Reprimand Monetary Penalty Stayed Monetary Penalty	Up to \$500
50-99	Monetary Penalty Stayed Monetary Penalty Treatment/Monitoring: Probation Continuing Education Inspection Shall not be Manager of Record	\$250 to \$1000
100-199	Treatment/Monitoring: Probation Continuing Education Inspection Shall not be Manager of Record Stayed Suspension C.O. for the Suspension C.O. for Revocation Recommend Formal Accept Surrender	\$500 to \$2500
200 or more	Stayed Suspension C.O. for the Suspension C.O. for Revocation Recommend Formal Accept Surrender	\$2500 or more

Board of Funeral Status

As of January 1, 2008, the VA Board of Funeral has completed three SRP worksheets and the agreement rate is 100%.