Disciplinary Guidelines Manual

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Notes on Use

The Department of Health's Office of Health Professions Quality Assurance credentials nearly 300,000 health care professionals in 57 professions. Disciplining authorities include boards, commissions, and the Secretary of the Department of Health. Ten governor-appointed boards and 4 governor-appointed commissions regulate 34 professions. Two other boards, one appointed by the governor and one appointed by the Secretary develop rules and credential applicants in 2 professions (denturists and massage therapists), but do not discipline. The Secretary regulates those professions as well as 21 others.

This manual is intended for the use of those involved in disciplinary actions: health law judges, disciplining authority panel members, Department of Health staff, assistant attorneys general, respondents and respondents' representatives. Forms are completed at various steps of the process. *See* HPQA Procedure 254. Audits will confirm the use of the worksheets.

The guidelines set out in this manual are designed to determine what action a disciplining authority should take based upon an investigation and what sanction a disciplining authority should impose upon a finding of unprofessional conduct.

Case disposition and sanction decisions are based upon:

- the action needed to protect the public
- the type of conduct

In addition, sanction decisions take into account:

- the severity of the conduct
- and other factors including:
  - aggravating circumstances
  - prior disciplinary history, and
  - mitigating circumstances

The sanction guidelines are divided into three sections:

A – Severity of Conduct
B – Other Factors
C – Sanctions Worksheet

STATE OF WASHINGTON

DEPARTMENT OF HEALTH

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MESSAGE FROM THE SECRETARY

Our work to ensure that patients are safe and health care providers are qualified is incredibly important. Every day in our state, thousands of people visit and receive care from doctors, nurses, and other providers. The public trusts in us to take action and impose sanctions when patients are harmed or laws are violated. Public protection must be our highest priority.

Thanks to the coordinated efforts of Department of Health staff, boards and commissions, and the Office of the Attorney General, I am adopting these sanctioning guidelines for use in the 23 professions overseen by the Secretary of Health. I have strongly encouraged boards and commissions to adopt these guidelines as well. We must ensure that decision makers in disciplinary matters have the history of past complaints and actions so they can make an informed decision on which sanction will best assure public safety.

These guidelines are a framework for discipline. They take into consideration a range of activity within certain types of conduct rather than assigning particular sanctions to each specific violation. The guidelines include a grid, or worksheet, for seven categories of conduct. These categories account for 75 percent of discipline across all health professions. The principles in the severity grids apply to any violation of the Uniform Disciplinary Act (UDA). Staff should use the sanction worksheet to document sanction selections.

Sanctions must be based upon the following principles:

- **Protecting the public must carry the most weight in every decision.** When a provider's unprofessional conduct requires an evaluation or continuing education for safe practice, the provider's ability to practice should be restricted until the remedial work has been completed, and the disciplinary authority is assured that the provider can practice safely.

- **Sanctions imposed for unprofessional conduct must reflect the severity of that conduct and the risk to the public.** Providers who have engaged in serious misconduct should not be allowed to remain in practice through the use of probation, stayed suspensions, and continuing education requirements.

- **Compliance with the conditions of probation or stayed suspension is essential.** A provider who has violated the conditions of an order – particularly in cases that involve serious physical injury or sexual misconduct – should be removed from practice, at least until compliance is re-established.

- Increased sanctions, including time out of practice, must be used when a practitioner has **failed to comply with a prior order.**

- **Probation must include conditions. Any agreement for probation must focus on the conduct** and steps needed to assure public protection.

- **Agreed orders** must include an acknowledgement of the unprofessional conduct and indicate the respondent accepts personal responsibility for his/her behavior.

- **When conduct results in multiple violations of the UDA, the sanctions must be greater than the minimum identified for each violation.**

Mary C. Selecky, Secretary of Health

5/30/06
Date

IDENTIFYING SANCTIONS:

There are four basic steps to sanction development. At each point, information regarding the specific conduct involved should be kept in mind. At all times, public protection should be first and foremost in selection of a sanction.

In addition, certain types of conduct are given the highest priority. Those are set forth in this manual. When considering case disposition, the disciplining authority will consider what sanction should be pursued for the conduct involved. As a result, a sanctions worksheet [Section C] will be completed at the time a **disposition recommendation** is made.

There are four basic steps to completing the worksheet:

Step One: Briefly summarize the **conduct** that constituted unprofessional conduct meriting action.
Step Two: Identify the **severity** of the conduct on the worksheet grid.
Step Three: Describe other factors on the worksheet. This includes **aggravating or mitigating circumstances** and **prior disciplinary history**.
Step Four: Identify the **recommended sanction and additional conditions**.

When developing the order, past disciplinary history, as well as aggravating and mitigating circumstances, are used to determine whether the sanction falls toward the minimum or maximum of the sanction range. If the minimum sanction is used for something that looks like it required a more severe sanction, mitigating circumstances must be documented in the order. If aggravating circumstances exist, the sanction should approach or exceed the maximum sanction. If the circumstances of the case involve both aggravating and mitigating circumstances, the disciplining authority must balance the two and identify its evaluation process in the order. The following guidance applies to agreed and contested orders and to stipulations to informal disposition [STIDs][1]:

- The findings of fact summarize the **conduct** that constituted unprofessional conduct.
- The findings of fact also summarize any **aggravating or mitigating circumstances.** See Section B. The conclusions of law must indicate that aggravating or mitigating circumstances exist. For example, "based upon Finding of Fact 1.2, for purposes of sanction, aggravating circumstances exist."
- If a factor in establishing the sanction, the findings of fact also describe any **prior disciplinary history**. The conclusions of law must reflect the use of prior disciplinary history as an aggravating or mitigating circumstance. Note – not all cases will have prior disciplinary history included.

Agreed orders shall not include a respondent's denial of unprofessional conduct. Agreed orders must be drafted so they are consistent with RCW 18.130.160. At a minimum, and only in limited circumstances, the order must include a statement that the licensee acknowledges the evidence is sufficient to justify one or more findings of unprofessional conduct.

[1] Although referring to findings of fact, the guidance applies equally to STIDs and stipulated facts.

The grids do not mention surrender of a credential. The guidelines are not intended to imply surrender is not available as a sanction. Surrender of a credential, however, should only be offered as a means of settling a case when circumstances are consistent with the factors outlined in HPQA Procedure 341:

- The practitioner must be at the end of his/her effective practice;
- The practitioner agrees to retire from practice and not to resume practice; and
- Surrender, as the only sanction imposed, is enough to protect the public.

The grids refer to revocation as a sanction. In those instances where the charges involve an applicant, the term "revocation" includes denial of an application for credential.

In matters where a **default order** is entered, "indefinite suspension" is the typical sanction and is considered as within the applicable guidelines.

Where an order determines that a practitioner's conduct falls within more than one table in Section A, the sanctions imposed must be based on all aspects of the conduct, using the range determined from the applicable tables.

For instance, a respondent diverted drugs for his or her own use with no risk of patient harm and apparent plan to distribute. The respondent removed drugs from a cabinet and used them at home. The conduct involves two sanction grids – one related to "diversion" and the other "substance abuse".

Example 1 ~ Under the diversion grid, the removal of the drugs from the cabinet falls into tier A. The disciplinary authority determines a 2-year suspension is appropriate. Under the substance abuse grid, the current use could result in practice conditions. Since both grids are involved, the sanction needs to be the greater of the two -- suspension and not practice conditions.
Example 2 ~ Assume the respondent not only used some of the drug but distributed it to others. The disciplinary authority determines a minimum 2-year suspension is appropriate due to the distribution. The disciplining authority also determines the substance use warrants a 2-year suspension (due to the nature of the drug). Since the sanction from both grids is two years, the sanction would be cumulative, totalling 4 years. If the cumulative approach is not used, the order must explain the mitigating factors that justify the sanctions as concurrent.

Section A: Severity of Conduct

Severity of conduct takes into account the specific nature of the conduct, recognizing that some activities are more egregious than others. Severity is analyzed on a spectrum ranging from the least to the greatest. Severity influences the range of the sanction imposed. In addition, multiple violations may fall within two levels on the grid. There is some overlap, as the severity grid represents a spectrum of conduct, from the least to the greatest.

Section B addresses the variety of aggravating and mitigating circumstances. Those circumstances may also influence how the severity of the conduct is evaluated, however. If substantial aggravating circumstances are present, the conduct may be assessed as greater in severity. For example, the conduct of a practitioner who has had prior discipline for sexual misconduct will be considered as more severe than an isolated incident.

SEXUAL MISCONDUCT OR CONTACT AND BOUNDARY VIOLATIONS				
Severity	*Tier/ Conduct*	*Sanction Range*		*Duration*
		Minimum ***Not subject to stay***	Maximum	
Least	**A** – Nonthreatening, unsolicited conduct or physical contact that serves no diagnostic or treatment purpose	Reprimand or conditions	Probation, conditions or suspension for 5 years.	0-5 years
	B – Any personal relationship that violates professional boundaries	Probation or suspension for 2 years.	Suspension for 7 years or revocation.	2-7 years unless revocation
	C –Any sexualized relationship or contact[1]	Probation or suspension for 2 years.	Suspension for 7 years or revocation.	2-7 years unless revocation
greatest	**D** – Sexual contact involving, but not limited to, force, intimidation, or multiple victims.	Suspension for 5 years.	Indefinite suspension or permanent revocation	Minimum 5 years
***Aggravating Circumstances*:** - Other recent or similar conduct - Multiple victims - Other unprofessional conduct - Particular vulnerability of patient/client/victim - Pattern of conduct - Refusal or failure to acknowledge conduct			***Mitigating Circumstances (A-C only):*** - Self remediation and cause of abusive conduct has been resolved - Admission of the conduct and taking responsibility ***Note – consent is not a mitigating circumstance***	

[1] This includes selling or distributing erotic materials to a minor, prostitution, or other criminal activities.

ABUSE [physical and emotional]				
Severity	*Tier / Conduct*	*Sanction Range*		*Duration*
		Minimum ***Not subject to stay***	Maximum	
least	**A** – Unnecessary or forceful contact or disruptive behavior[2] directed to a client resulting in minimal harm or risk of harm	Reprimand or conditions	Probation, conditions or suspension for 5 years.	0-5 years
	B – Abuse causing mental or physical injury	Probation or suspension for 2 years.	Suspension for 7 years or revocation.	2-7 years unless revocation
greatest	**C** – Physical abuse resulting in life threatening injury, physical or mental	Suspension for 5 years.	Indefinite suspension or permanent revocation	Minimum 5 years
***Aggravating Circumstances*:** - Prior history - Other conduct - Concurrent findings of unprofessional conduct			***Mitigating Circumstances:*** - Self-remediation and proof that cause of abusive conduct has been resolved - Corrective action by employer	

[2] Verbal comments may be considered disruptive behavior.

DIVERSION OF CONTROLLED SUBSTANCES OR LEGEND DRUGS				
Severity	*Tier/Conduct*	*Sanction Range*		*Duration*
		Minimum ***Not subject to stay***	Maximum	
least	**A** – Diversion for self without patient harm	Reprimand or conditions	Probation, conditions or suspension for 5 years.	0-5 years
	B – Diversion creating harm or risk of harm or for distribution	Probation or suspension for 2 years.	Suspension for 7 years or revocation.	2-7 years unless revocation
greatest	**C** – Diversion with patient harm or for substantial distribution to others	Suspension for 5 years.	Indefinite suspension or permanent revocation	Minimum 5 years
***Aggravating Circumstances*:** - Diversion for profit - Patient harm or risk of harm - Prior history of discipline for substance abuse or diversion - Other concurrent findings of unprofessional conduct - Work setting - Extensive diversion for distribution to others, including intent to sell - Concurrent substance abuse			***Mitigating Circumstances:*** - No patient harm or risk of harm - Under influence of legitimate prescription - Legitimate medical condition - Self-remediation effort or corrective action - In treatment and compliant	

PRACTICE BELOW STANDARD AND BOUNDARY VIOLATIONS				
Severity	*Tier / Conduct*	*Sanction Range*		*Duration*
		Minimum ***Not subject to stay***	Maximum	
least	**A** – Practice below standard or non-sexual boundary violation with a low risk of patient harm	Reprimand or conditions	Probation, conditions or suspension for 5 years.	0-5 years
	B – Practice below standard or non-sexual boundary violation with patient harm or risk of patient harm	Probation or suspension for 2 years.	Suspension for 7 years or revocation.	2-7 years unless revocation
greatest	**C** – Practice below standard with serious physical injury or death of a patient or a risk of significant physical injury or death	Suspension for 5 years.	Indefinite suspension or permanent revocation	Minimum 5 years
***Aggravating Circumstances*:** - Number of events - Actual harm - Severity of harm - Prior complaints or discipline for similar conduct			***Mitigating Circumstances:*** - Outcome not a result of care - Participation in established or approved remediation or rehabilitation program and demonstrated competency	

SUBSTANCE ABUSE				
	Tier / Conduct	*Sanction Range*		*Durationr*
Severity		Minimum ***Not subject to stay***	Maximum	
least	**A** – Misuse of drugs or alcohol without patient interaction	Reprimand or conditions	Probation, conditions or suspension for 5 years.	0-5 years
	B – Misuse of drugs or alcohol with a risk of patient harm	Probation or suspension for 2 years.	Suspension for 7 years or revocation.	2-7 years unless revocation
greatest	**C** – Misuse of drugs or alcohol with serious physical injury or death of a patient or a risk of significant physical injury or death	Suspension for 5 years.	Indefinite suspension or permanent revocation	Minimum 5 years
***Aggravating Circumstances*:** - Number of events - Illegal substance - Inappropriate use of prescription drug - Unsuccessful / repeated treatment - Concurrent diversion violations			***Mitigating Circumstances:*** - Self-remediation, including participation in impaired provider program	

CRIMINAL CONVICTIONS EXCLUDING SEXUAL MISCONDUCT				
Severity	*Tier / Conviction*	*Sanction Range*		*Duration*
		Minimum ***Not subject to stay***	Maximum	
least	**A** – Conviction of a Gross Misdemeanor or a Class C Felony, except sexual offenses in RCW 9.94A.030[3]	Reprimand or conditions	Probation, conditions or suspension for 5 years.	0-5 years
	B – Conviction of a Gross Misdemeanor or a Class C Felony, except sexual offenses in RCW 9.94A.030 where the conduct occurred in the respondent's practice	Suspension for 2 years.	Suspension for 7 years or revocation.	2-7 years unless revocation
	C – Conviction of a Class B Felony, except sexual offenses in RCW 9.94A.030	Suspension for 2 years.	Suspension for 7 years or revocation.	Min 2-7 years unless revocation
greatest	**D** – Conviction of a Class A Felony, except sexual offenses in RCW 9.94A.030	Suspension for 5 years.	Indefinite suspension or permanent revocation	Minimum 5 years
***Aggravating Circumstances*:** - Conviction within 0-5 years - Violence - Use of force - Use of weapon - Criminal history			***Mitigating Circumstances:*** - Self remediation focused upon the conduct that led to the conviction - Time since conviction (more than 5-10 years ago)	

[3] Conduct related to sex offenses is evaluated under the severity standards for sexual misconduct and contact.

NONCOMPLIANCE			
Severity	*Tier / Conduct*	*Outcome*	*Duration*
least	**A** – Failure to comply with a technical, non-remedial requirement in a prior order or STID, such as failure to pay cost recovery or a fine	Refer to collections	N/A
	B – Failure to comply with a substantive requirement in a prior order or STID	Motion to suspend	Indefinite until compliance
greatest	**C** – Failure to comply with a substantive requirement in a prior order or STID with serious physical injury or death of a patient or a risk of significant physical injury or death or with additional unprofessional conduct	Statement of charges with possible summary suspension	Indefinite until compliance or revocation with minimum of 5 years
***Aggravating Circumstances*:** - Continued failure to register for available classes - Recurring failure to provide information required by order - Failure to cooperate with compliance officer		***Mitigating Circumstances:*** - Unforeseen financial or health issues	

Section B: Other factors

Other factors impact the sanction to be imposed. The appropriate sanction takes into consideration aggravating and mitigating circumstances, as well as a respondent's prior disciplinary history.

If minimum sanction is used, mitigating circumstances must be documented in the order. If aggravating circumstances exist, the sanction should approach the maximum sanction. If the circumstances of the case involve both aggravating and mitigating circumstances, the disciplining authority must balance the two and identify its evaluation process in the order.

The listed aggravating and mitigating factors are not an exclusive list. The disciplining authority may consider other factors if relevant.

AGGRAVATING AND MITIGATING CIRCUMSTANCES:

Mitigating

- Timely and good faith efforts to rectify consequences of misconduct
- Interim rehabilitation
- Remoteness of prior offenses
- Self-reported and voluntary admission of violation
- Implementation of remedial measures to mitigate harm or risk of harm
- Rehabilitation potential
- Absence of prior discipline
- Absence of dishonesty or selfish motive
- Isolated incident, not likely to recur
- Remorse
- Absence of adverse impact
- Remoteness of misconduct

Aggravating

- Prior discipline in any jurisdiction
- Dishonesty or selfish motive
- Pattern of misconduct or variety of offenses
- Bad faith, obstruction
- Refusal to acknowledge nature of conduct
- Vulnerability of victim
- Harm to one or more patients
- Severity of patient harm
- One or more violations involving more than one patient
- Economic harm to any individual or entity and severity of such harm
- Increased potential for public harm
- Attempted concealment of violation
- Intentional, premeditated, knowing or grossly negligent act constituting a violation
- Prior similar violation
- Violation of prior disciplinary order
- Willful or reckless misconduct

Section C: Sanctions Worksheet

The sanctions worksheet is designed for use by the disciplining authority. The responsible staff person should complete the worksheet to reflect the factors used by the disciplining authority in identifying the recommended sanction. Reviewing board/commission members should use the worksheet as a guide for preparing comments when presenting a matter for charging determinations. The health law judges should use the worksheet as a guide when completing deliberations with panel members to confirm factors incorporated into the sanction decision. When making final decisions, the health law judge should use the worksheet to guide his or her decision-making.