

*****DRAFT - NOT FOR FILING*****

4734-8-06 Board consideration of sanctions.

- (A) Each disciplinary case involves unique facts and circumstances. In striving for fair disciplinary standards, consideration will be given to the specific professional misconduct and to the existence of aggravating or mitigating factors. In determining the appropriate sanction, the board shall consider all relevant factors; which may include precedent established by the board and the following:
- (1) Aggravating factors. The following shall not control the board's discretion, but may be considered in favor of recommending a more severe sanction:
- (a) ~~Prior disciplinary offenses~~ Disciplinary action(s) or admonishments taken by any regulatory agency, including those in Ohio;
 - (b) Failure to implement remedial measures to correct conduct resulting from any discipline or admonishment from any regulatory agency, including those in Ohio;
 - ~~(b)~~ (c) Dishonest or selfish motive;
 - ~~(e)~~ (d) A pattern of misconduct and the cumulative effect of the conduct;
 - ~~(d)~~ (e) Multiple offenses;
 - ~~(e)~~ (f) Lack of cooperation in the disciplinary process;
 - ~~(f)~~ (g) Solicitation or submission of false evidence, false statements, or other obstructive or deceptive conduct during the disciplinary process;
 - ~~(g)~~ (h) Refusal to acknowledge wrongful nature of conduct;
 - ~~(h)~~ (i) Vulnerability of and resulting harm to any victims of the misconduct;
 - ~~(i)~~ (j) Negative public perception of the chiropractic profession;
 - (k) Economic harm to any individual or entity and the severity of such harm;
 - ~~(j)~~ (l) Failure to make restitution or other appropriate amends.
- (2) Mitigating factors. The following shall not control the board's discretion, but may be considered in favor of recommending a less severe sanction:
- (a) Absence of a prior disciplinary record or admonishments, by any regulatory agency, including those in Ohio;
 - (b) Absence of a dishonest or selfish motive;
 - (c) Timely good faith effort to make restitution or to rectify consequences of misconduct;
 - (d) Self-reporting of any violation(s) and full disclosure to the board and/or cooperative attitude toward proceedings;
 - (e) Character, reputation and positive social contributions of the chiropractic physician;
 - (f) Imposition of other penalties, sanctions or liability;

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(g) Evidence of rehabilitation;

(h) Chemical dependency and/or mental illness, where there has been:

(i) A diagnosis of a chemical dependency or mental illness by a qualified health care professional or alcohol/substance abuse counselor;

(ii) A determination that the chemical dependency and/or mental illness contributed to cause the misconduct;

(iii) A certification of successful completion of an approved treatment program or course of treatment; and

(iv) A prognosis from a qualified health care professional or alcohol/substance abuse counselor that the chiropractic physician will be able to return to safe, competent, and ethical professional practice under specified conditions, restrictions or limitations.

(3) Compliance programs. Operation or participation in a bona fide compliance program may be considered by the board as a mitigating factor. Bona fide compliance programs shall contain the following elements:

(a) Auditing and monitoring the practice for deficiencies and violations;

(b) Written compliance standards and procedures for the practice;

(c) A designated compliance officer to monitor compliance and practice standards;

(d) Employee training and education;

(e) Appropriate response to detected violations, including self reporting and correction action plans;

(f) Developing open lines of communication;

(g) Enforcing disciplinary standards through guidelines;

(B) Alternative sanctions. In accordance with its statutory authority, the board may issue letters of admonition, letters of caution, warnings or similar notices to chiropractic physicians in appropriate cases. The board may use the factors listed in this rule in making its determination to issue an alternative sanction in lieu or initiating formal charges through the Revised Code Chapter 119 process.