

## 540 CMR: REGISTRY OF MOTOR VEHICLES

### 540 CMR 9.00: CONDUCT OF HEARINGS WITHIN THE REGISTRY OF MOTOR VEHICLES

#### Section

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#### 9.01: Purpose, Scope and Applicability

540 CMR 9.00 is adopted by the Registrar of Motor Vehicles pursuant to M.G.L. c. 90, § 31, c. 6C, § 56 and c. 30A, § 9 to establish standards and procedures to be followed by the Registrar in discretionary hearings involving the suspension, revocation or reinstatement of any license, registration, certificate, or privilege issued or allowed under M.G.L. c. 90 or c. 90D. Nothing in 540 CMR 9.00 should be construed to vary, change or abrogate the existing statutory law governing the action of the Registrar of Motor Vehicles or his or her duly authorized agents.

#### 9.02: Definitions

In addition to the definitions in M.G.L. c. 90, § 1, the following special definitions shall also apply:

Adverse Action. The denial, suspension or revocation of any license, registration certificate or privilege issued or allowed by the Registrar or Registry of Motor Vehicles.

Applicant. An applicant for or a holder of a license or registration.

Lacks Legal Qualifications. Is not legally qualified to hold a license or registration.

License. Any license, certificate or privilege issued or allowed under the provisions of M.G.L. c. 90 or c. 90D including, but not limited to, a license to operate motor vehicles issued by the Registrar of Motor Vehicles or a right to operate such motor vehicles recognized by existing statutory law.

Registrar. The Registrar of Motor Vehicles or any deputy, hearings officer or other agent exercising the authority of the Registrar in conducting a hearing or taking adverse action with respect to an applicant.

Registration. A certificate of registration of a motor vehicle.

Unfit or Unfit to Drive a Motor Vehicle. Applies to all of the following circumstances:

- (a) when an individual has a serious mental or physical functional incapacity regardless of cause, which would interfere with the proper operation of a motor vehicle including, but not limited to, addiction to alcohol or any controlled substance scheduled in M.G.L. c. 94C;
- (b) when a records, reports or other documentation received or maintained by the Registrar indicate a recent history of unskilled or unsafe operation of a motor vehicle;
- (c) an individual's history of criminal conduct in which there is demonstrable correlation between the criminal conduct and the operation of a motor vehicle;
- (d) when an individual's record shows that the sentencing judge, as part of the sentence, recommended consideration of adverse action by the Registrar; or there is evidence of the commission of criminal conduct that indicates to the Registrar a lack of responsibility necessary to operate motor vehicles with due regard for public safety or the rights of other motorists or pedestrians.

#### 9.03: Standards for Adverse Action

The Registrar shall not take adverse action in any discretionary matter under M.G.L. c. 90 or c. 90D unless he or she finds that such action is supported by substantial evidence.

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### 9.04: Opportunity for Hearing before Adverse Action

Except when acting pursuant to M.G.L. c. 90, § 22(a) or when acting pursuant to a mandatory statute, the Registrar shall not take adverse action without first affording the applicant notice and an opportunity for a hearing. When the Registrar takes adverse action without a hearing under M.G.L. c. 90, § 22(a) he or she shall thereafter give notice and an opportunity for a hearing according to the provisions of such section.

### 9.05: Hearing Requirements

The following procedures shall apply to hearings under 540 CMR 9.00:

- (1) Notice. The Registrar shall send the applicant notice, which shall include the reason or reasons for the action, the person's opportunity for hearing, the date and time if a hearing time has been designated, and any obligations imposed on the applicant.
- (2) Representation. The applicant shall have the right to be represented by counsel or by any other responsible adult if he or she so chooses, but the applicant must accompany the representative to the hearing unless the Registrar waives this requirement for good cause.
- (3) Recording. The applicant may record the hearing at his or her own expense by any means he or she chooses that will not substantially interfere with the proceedings. Upon request, the Registrar shall be entitled to a copy of the recording at the Registrar's expense. If the copy is in the form of a transcription, the cost per page shall be no greater than the cost per page mandated in the Secretary of State's regulations for the copying of public records.
- (4) Documentary Evidence. The applicant shall be entitled to examine all documentary evidence to be used against the applicant in the Registry's possession during normal business hours or at the hearing, and to copy such documents at the applicant's expense. The cost per page shall be no greater than the cost mandated in the Secretary of State's regulations for the copying of public records.
- (6) Testimonial Evidence. The applicant shall have the right to present his or her own evidence and witnesses and to cross-examine those testifying against him or her. The Registrar may rely solely on official documents, reports, court records, transcripts or abstracts, or other documentary evidence. The applicant may, at least two business days prior to the hearing, contact the appropriate Registry official to ascertain the identities of any witnesses the Registry plans to call to testify. Subpoenas may be issued pursuant to the provisions of the Administrative Procedures Act.
- (7) Decision. Unless the Registrar determines that further investigation is necessary he or she shall make a final decision within ten business days of the conclusion of the hearing. For purposes of 540 CMR 9.05(7), business days shall be Monday through Friday, exclusive of legal holidays on which the main office of the Registry of Motor Vehicles is closed. The decision of the Registrar shall be based on the preponderance of the credible evidence presented at the hearing.

The Registrar shall commit the decision to writing, with a short and concise statement of reasons for the decision, and furnish a copy to the applicant.

## REGULATORY AUTHORITY

540 CMR 9.00: M.G.L. c. 90, § 31, M.G.L. c. 6C, § 56 and M.G.L. c. 30A, § 9.