

COMMONWEALTH OF MASSACHUSETTS

BOARD OF REGISTRATION IN MEDICINE

GUIDELINE

(Adopted June 9, 1993)

PROCEDURES FOR VIOLATION OF PROBATION AGREEMENT

1. Board Counsel receives notice from Physician Health Services (PHS) or some other reliable source that there has been a violation of the Probation Agreement.
2. Board Counsel consults with the Board Designee regarding the appropriate action (e.g., continued monitoring, personal appearance, lifting the stay of suspension) depending on the severity of the offense and the surrounding circumstances.
3. If the Board Designee believes that the probation violation is serious enough to warrant lifting the stay of suspension, he or she instructs Board Counsel to so inform the doctor.
4. Board Counsel writes to the doctor informing him of the evidence of the probation violation and that the Board will consider vacating the stay of suspension either at its next scheduled meeting or, if circumstances warrant, at a specially scheduled meeting. Board Counsel attaches documents which the Board will consider and on which the Board would rely if it voted to vacate the stay (e.g., a letter from PHS documenting violation).
5. At the Board meeting, the Board considers the documentary evidence, Board Counsel may brief the Board *ex parte*, and the Board then hears from the doctor. Board Counsel may answer any questions the Board may have.
6. The Board may order whatever remedy it deems appropriate in light of all the circumstances. With the doctor's agreement, the Board may craft any sanction or remedy it wishes. Without the cooperation of the doctor, the Board may vacate the stay; extend the Probation Agreement; and/or send the case to the Enforcement Unit for prosecution of any additional violations.
7. If the Board votes to vacate the stay of suspension, the Board sends a letter to the doctor informing him of the Board's action and the reasons for the action, including reference to facts on which the Board relied. The letter informs him

that he can request a hearing on the facts found by the Board within seven days. Any request for a hearing should be filed with the Board's Executive Director.

8. If a hearing is requested, the case is referred to the Enforcement Unit for assignment to Complaint Counsel. A hearing on the facts will be held before a single Board member. This is not a full evidentiary hearing: Complaint Counsel may present documentary evidence and affidavits such as those presented to the Board. The physician may present documentary evidence and affidavits and may testify himself. Either party may petition the hearing officer for leave to present witnesses and to confront and cross examine proponents of the evidence relied upon by the opposing party, and the hearing officer has complete discretion to determine whether such a petition should be granted in light of the circumstances apparent to the hearing officer. After the hearing, the hearing officer prepares findings of fact which are forwarded to the Board for appropriate action.