



**THE COMMONWEALTH OF MASSACHUSETTS
AUTO DAMAGE APPRAISER LICENSING BOARD**

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CHARLES D. BAKER
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KARYN E. POLITO
LIEUTENANT GOVERNOR

RICHARD STARBARD
WILLIAM E. JOHNSON
SAMANTHA L. TRACY
PETER SMITH

Minutes of Meeting of the Board held on January 21, 2020, Approved by the Board at the October 14, 2020, Board Meeting; Motion of Board Member Peter Smith and Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 4-0, with Chairman Michael D. Donovan Abstaining.

January 21, 2020, Minutes of Board Meeting
Held by Teleconference at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Michael Donovan
Samantha Tracy
William Johnson
Richard Starbard
Peter Smith

Attending to the Board:

Michael D. Powers, Counsel to the Board

Call to Order:

Chairman Donovan, called the meeting to order.

Approval of the Board minutes for the Board meeting held on November 26, 2019:

A Board Member informed the Chairman that he did not have enough time to review the drafted minutes. Chairman Donovan tabled the matter until the next Board meeting to provide the Members of the Board with enough time to review the minutes.

Report by Board Member Peter Smith on the Part-II examination for motor vehicle damage appraiser scheduled for February 5, 2020, at the Progressive Insurance Service Center in Westwood, Massachusetts:

Board Member Smith reported that everything was on schedule for the upcoming Part-II examination scheduled for February 5, 2020, at the Progressive Insurance Service Center in Westwood, Massachusetts.

A request to the Director of Producer Licensing to include in the next Request For Proposals to qualified vendors to conduct the Part-I written examination for a motor vehicle damage

appraiser license, to include within such a request a review of the Part-II practical portion of the examination:

Board Member William Johnson made a motion to instruct the Director of Producer Licensing for the Division of Insurance to include in the Request For Proposals submitted by the vendors for the motor vehicle damage appraiser license test to include, in addition to creating and conducting the Part-I written portion to the test, an item stating the proposal by vendors will contain a proposal for reviewing and making recommendations to the Board for the Part-II portion of the test. The motion was seconded by Board Member Richard Starbard and passed by a vote of: 5-0.

Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda.

Report by Board Legal Counsel Michael. D. Powers on decision in Open Meeting Law Complaint OML 2019-159:

Board Legal Counsel, Michael D. Powers, informed the Board that the Office of the Attorney General's Division of Open Government rendered a decision in the case of OML-159 that was brought against the Board by a complainant who was dissatisfied that the Board did not allow him to appear during an executive session to argue his complaint that he filed against a licensed motor vehicle damage appraiser. Legal Counsel Powers reported that, the Office of the Attorney General ruled in relevant part, "Following our review, we resolve these complaints by informal action in accordance with 940 CMR 29.07(2)(a) and find that the Board did not violate the Open Meeting Law." Legal Counsel Powers informed the Board that in his response to the complaint that was filed with the Office of the Attorney General, he pointed out that a previous complaint filed against the ADALB in OML 2019-50 was dispositive of the rights of any complainants to appear and be heard by a Board, and the Office of the Attorney General agreed by referencing OML-2019-50 in its decision.

Altering subcontract repair invoices by motor vehicle appraisers:

Board Member William Johnson raised an issue about motor vehicle damage appraisers altering subcontract repair invoices. He informed the Board that he was recently involved with a case whereby the subcontracted shop was not listed, the appraiser took it upon himself to alter the labor rate paid, and this was not a true and accurate portrayal of the necessary procedures required to repair the vehicle as contained in 212 CMR 2.04 (e) and also MGL C 26 S 8G , which states in part "services necessary for repairs thereof and shall be sworn to under the penalties of perjury." Board Member Johnson stated that the Board should issue an Advisory Opinion about this type of wrongful practice.

Board Member Tracy asserted that she did not believe that the Board needed to issue an opinion, because the regulation and statute were clear.

Board Member Richard Starbard observed that the better way to present such an item in an appraisal is to clarify it in the notes. These types of items, subcontract repairs, are the most confusing items to read and the better practice is to simply list one line in the notes.

Board Member Johnson made a motion that the Board issue an opinion clarifying the practice and the motion was seconded by Board Member Starbard. Chairman Donovan called for a vote and

the vote failed by a vote of: 2-2, with Board Members Johnson and Starbard voting yes and Board Members Smith and Tracy voting no.

The Board agreed to schedule the next meeting on March 24, 2020.

Executive Session:

Chairman Donovan stated that the Board would be entering the executive session, by motion indicating the Board will adjourn in the executive session and will not re-convene in the public session and the vote to enter the executive session would be by a roll-call vote of the Members of the Board. Chairman Donovan announced that, the reason for the executive session was to review complaints filed against licensed motor vehicle damage appraisers. Specifically, the review and discussion of Complaints: 2019-11, 2019-12, and 2019-13 filed against a motor vehicle damage appraiser licensed by the Auto Damage Appraiser Licensing Board. Such discussions during the executive session are allowed under M.G.L. c. 30A, §21(a)(1) and in accordance with the Office of the Attorney General's Open Meeting Law (OML) decisions such as *Board of Registration in Pharmacy Matter*, OML 2013-58. The licensed appraisers have exercised their rights to have the matter heard in the executive session. Board Member Smith informed the Board that there was a matter involving his company and he would recuse himself from participating in the matter during the executive session.

Thereupon the Chairman called for a roll-call vote and each member of the Board, when called upon by Chairman Donovan, voted to enter the executive session by a vote of: 4-0 with Chairman Donovan abstaining.

Complaint 2019-12:

Board Member Peter Smith recused himself and left the Board meeting.

The appraiser and the owner of the appraisal company Joseph Coyne, the largest appraising company in New England, appeared before the Board to advise the appraiser. Board Member Starbard reviewed the complaint and asked the appraiser, did the exhaust pipe on the motor vehicle get repaired?

Mr. Coyne was given permission to speak to the Board and he answered that it was repaired, and he stated that when the motor vehicle arrived at the auto body shop there was a piece of wood holding the exhaust pipe in place and it was questionable whether the damage was related to the claimed accident. The appraiser for the auto body shop determined that the damage was related to the accident, a supplemental appraisal was written, and the claim for the damage was paid.

Board Member Samantha Tracy made a motion to dismiss, the motion was seconded by Board Member Johnson and the complaint was dismissed by a vote of: 3-0 with Board Member Peter Smith not present because of recusal and Chairman Donovan abstained.

Complaint 2019-11:

Board Member Peter Smith returned to the Board meeting.

The licensed motor vehicle damage appraiser requested a continuance of the hearing because his attorney was unable to attend.

Board Member Johnson made a motion to continue, the motion was seconded by Board Member Richard Starbard and the motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Complaint 2019-13:

The licensed appraiser appeared before the Board and was represented by Attorney Samantha Freedman, an expert in insurance laws. Attorney Freedman requested permission to speak to the Board and Chairman Donovan granted permission.

Attorney Freedman informed the Board that there were very active negotiations between the insurance company and the repair shop, with two supplemental appraisals written. There was a problem with the auto parts supplier and ultimately the appraiser approved the replacement of some parts by Original Equipment Manufacturer parts. The appraiser reached out to the customer and left a message to determine whether there were any issues and the customer never called back and the motor vehicle was repaired.

Board Member Smith observe red that there were on-going negotiations and whether appraiser can reach an agreement on the price of a part is not the issue, just that the appraisers negotiated.

Peter Smith made a motion to dismiss, seconded by Board Member Tracy, a motion to table was made by Board Member Johnson who wanted the auto body shop's appraiser to appear before the Board, and the motion was seconded by Board Member Starbard, the motion to table failed by a 2-2 vote. Chairman Donovan then called for a vote on the original motion to dismiss and the motion to dismiss passed by a vote of: 3-2 with Board Members Johnson and Starbard voting against and Board Members Smith and Tracy and Chairman Donovan voting in favor.

Motion to adjourn:

Chairman Donovan called for a motion to adjourn the meeting and Board Member Johnson made the motion and the motion was seconded by Board Member Tracy and the Chairman called for a roll call vote with the motion passing by a vote of: 5-0 with Chairman Donovan in favor.