



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
<http://www.mass.gov/doi>

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

MICHAEL DONOVAN
CHAIRMAN

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

Minutes of the Meeting of the Board held on May 17, 2022, and approved at the Board Meeting held on July 19, 2022; Motion of Board Member Richard Starbard, Seconded by Board Member William Johnson. The Motion Passed by a Vote of: 4-0, with Chairman Michael D. Donovan Abstaining.

Minutes of the Board Meeting held on May 17, 2022

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on Tuesday, May 17, at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Donovan
Samantha Tracy
William Johnson
Richard Starbard
Peter Smith

Attending to the Board:

Michael D. Powers, Counsel to the Board

Call to Order:

Chairman Michael Donovan Promptly called the meeting to order at 9:30AM. The Chairman took a roll call of the Board members and Board Member Richard Starbard was not present, having notified Chairman Donovan that he would be late for the meeting.

Chairman Donovan then asked those recording the proceedings to identify themselves and state with whom they were affiliated. Those responding to the Chairman's request were: Jim Steere of The Hanover Insurance Company, Chasidy Rae Sisk of Greco Publishing, and "Lucky" Papageorg of the Alliance of Automotive Service Providers of Massachusetts.

For approval, the Board minutes for the Board meeting held on March 15, 2022, Chairman Donovan called for a motion for approval of the Board minutes of the March 15, 2022, Chairman asked for a motion to approve the minutes of the March 15, 2022 Board meeting, and Board Member Peter Smith made the motion which was seconded by Board Member Tracy. The motion passed by a vote of 3-0 with Chairman Donovan abstaining.

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

Pete Smith reported that everyone was in line for the upcoming meeting this Saturday, May 21, 2022.

Discussion about amending the Auto Damage Appraiser Licensing Board's regulation, 212 CMR 2.00 et seq.:

Chairman Donovan moved to the next item on the Board's agenda, which was a discussion about amending the Auto Damage Appraiser Licensing Board's regulation, 212 CMR 2.00 et seq.

Chairman Donovan opened the item for a discussion among the Members of the Board and requested that Board Member William Johnson lead the discussion. As way of background, in February of 2021, Board Member Johnson received a copy of the Office of Administration and Finance's (A&F) letter that A&F approved certain proposed amendments that were adopted by the Board in 2016, but with restrictions as to 4 of the proposed amendments that were questioned as the result of a review conducted by the Division of Insurance. In the letter, A&F expressed concerns about Members of the Board having changed since the amendments were proposed in 2016, and there are 3 different Board Members on the Board since the amendments were approved and felt the need for the new members to conduct a review of the proposed amendments. During several of the previous Board meetings the Members of the Board discussed several proposed amendments and reached an agreement on many of them. The discussion began where it left off at the Board meeting that was held on March 15, 2022. Board Member Richard Starbard arrived during the discussion.

Mr. Johnson suggested that they discuss the proposed amendment for the Temporary Licenses. 212 CMR 2.04(2). Board Member Smith read the proposed amendments that were drafted in conjunction:

New Proposed Changes – 212 CMR 2.04 (2):

(2) Temporary Licensing. The Board may grant at its discretion either an emergency or a temporary license to any qualified individual to alleviate a catastrophic or emergency situation for up to 60 days. In the event that a catastrophic or emergency situation occurs 10 or more business days prior to the next scheduled Board meeting and said event warrants emergency temporary licensure for qualified applicants prior to the next scheduled Board meeting, the Board shall authorize the Chairman of the Board or his/her designee to consider issuance of a temporary license for up to 60 days to any qualified individual to alleviate said catastrophic or emergency situation, provided all the following conditions are met: (1) the applicant submits a request for a temporary license together with supporting information in writing to: the Massachusetts Division of Insurance, attention Producer Licensing, 1000 Washington Street, Suite 810, Boston, MA 02118; (2) a temporary licensure applicant that is a licensed motor vehicle damage appraiser in another state shall provide evidence of such licensure with the written request; (3) a temporary licensure applicant that is employed as a motor vehicle damage appraiser in a state that does not require licensure shall provide a written statement from his or her employer that specifies the length of time that the applicant has been employed as a motor vehicle damage appraiser and said statement shall include a summary of the applicant's current

duties, responsibilities, and qualifications as a motor vehicle damage appraiser; (4) if applicable, the applicant shall affirm that licensure in another state as a motor vehicle appraiser is currently in good standing and applicant provides consent to the Chairman of the Board or his/her designee to verify the applicant's licensing status through the insurance licensing database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; (5) the applicant completes and submits with the written request, an Application for Motor Vehicle Damage Appraiser License; and (6) the applicant pays the applicable license fee of \$100.

Copies of all such applications and temporary licenses issued by the Chairman of the Board or his/her designee shall be submitted to the Board at its next scheduled meeting for review by the Board. After review, the Board may revoke or limit the extent of any such emergency authorization if the Board finds such applicant does not conform to the requirements of 212 CMR 2.04 (2), or the Board otherwise determines that a person who was issued a temporary license is not qualified to hold such license. The Board, at its discretion, may limit the extent of all such emergency authorizations that are issued by the Chairman, his/her designee, or by the Board. ~~and in any event, if the situation exceeds 30 days, a fee determined by the Board shall be charged for all emergency or temporary licenses.~~

Board Member Johnson indicated that the manner in which it was written seems to require that the Board must vote every year as to authorizing the Chairman to issue the Temporary Licenses and Mr. Johnson asked Board Counsel Powers whether that was correct, and Mr. Powers agreed with Mr. Johnson's interpretation. Mr. Johnson would rather remove that language and have the proposed regulation change to allow the Chairman to issue the Temporary Licenses subject to review by the Board.

Chairman Donovan then asked for Mr. Johnson and Board Member Tracy to read proposed amendments to 212 CMR 2.04(1)(e) and Board Member Tracy read the following:

212 CMR 2.00: AUTO DAMAGE APPRAISERS LICENSING BOARD THE APPRAISAL AND REPAIR OF DAMAGED MOTOR VEHICLES

Section

2.01: Scope of Regulations

2.02: Licensing Requirements and Standards for Appraisers

2.03: Duties of Insurers and Repairers

212 CMR 2.00: AUTO DAMAGE APPRAISERS LICENSING BOARD

2.04: Procedures for the Conduct of Appraisers and Intensified Appraisals

(e) Determination of Damage and Cost of Repairs.

The appraiser shall specify all damage attributable to the accident, theft, or other incident in question and shall also specify any unrelated damage. If the appraiser determines that preliminary work or repairs would significantly improve the accuracy of the appraisal, he or she shall authorize the preliminary work repair with the approval of the claimant and shall complete the appraisal after that work has been done. The appraisers representing the ~~insurer~~ **insurancee**

company and the **registered** repair shop selected by the insured to do the repair shall attempt to agree on the estimated cost for such repairs. The **registered** repair shop must prepare an appraisal for the purpose of negotiation. No appraiser shall modify any published manual or **electronic data system** (i.e., Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturers **recommended warranty** repair procedures, I-Car, Tec Cor and paint manufacturer procedures ~~shall~~ may also apply. **However, the selection of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00.** Further, no appraiser shall use more than one manual or system for the sole purpose of gaining an advantage in the negotiation process.

If, while in the performance of his or her duties as an **licensed auto damage** appraiser, an appraiser recognizes that a damaged repairable vehicle has incurred damage that would impair the operational safety of the vehicle, the appraiser shall immediately notify the owner of said vehicle that the vehicle may be unsafe to drive.

The **licensed auto damage** appraiser shall also comply with the requirements of M.G.L. c. 26, § 8G, the paragraph that pertains to the removal of a vehicle's safety inspection sticker in certain situations.

The appraiser shall determine which parts are to be used in the repair process. ~~in accordance with 211 CMR 133.00.~~ **Determination of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00. The appraiser shall recognize that certain parts, including but not limited to; used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle.**

When an insurance company specifies the use of used, rebuilt or aftermarket parts, in keeping with the provisions of 211 CMR 133.04 and these parts are later determined by both parties to be unfit for the use in the repair, the insurance company shall be responsible for replacement costs such as freight and handling unless the repair shop is responsible for the part(s) being unfit, or unless the insurer and repairer otherwise agree. The agreed upon costs shall not be considered an overhead expense for the repair shop and may be listed on the appraisal. Nothing in 212 CMR 2.00 shall preclude an insurer from exercising any available rights of recovery against the supplier.

~~If both parties agree that a specified part is unfit and must be replaced, the insurer is responsible for paying the retail price for all parts indicated on an appraisal, including but not limited to, parts ordered and subsequently returned based on the criteria set in 211 CMR 133. The insurer is responsible for returning the parts to the supplier and recovering their costs from the supplier. The repair shop may agree to return parts on behalf of the insurer, if the insurer agrees to pay all costs, including but not limited to freight, handling and administrative costs associated with such return. As to such costs, nothing in 212 CMR 2.00 shall preclude an insurer from exercising any available rights of recovery against the supplier. Delays in repair cycle time shall be considered when sourcing parts and materials.~~ The appraiser shall itemize the cost of all parts, labor materials, and necessary procedures required to restore the vehicle to pre-accident condition and shall total such items. **Delays in repair cycle time should be considered when sourcing parts and materials.** The rental cost of frame/unibody fixtures necessary to effectively repair a damaged vehicle shall be shown on the appraisal and shall not be considered overhead costs of the repair shop. With respect to paint, paint materials, body materials and related materials, if the formula of dollars times hours is not accepted by an **registered repair shop or licensed** appraiser, **then a published manual database** or other documentation shall be used unless otherwise negotiated

between the parties. All appraisals written under 212 CMR 2.00 shall include the cost of replacing broken or damaged glass within the appraisal.

When there is glass breakage that is the result of damage to the structural housing of the glass then the cost of replacing the glass must be included in the appraisal in accordance with 212 CMR 2.04. The total cost of repairing the damage shall be computed by adding any applicable sales tax payable on the cost of replacement parts and other materials. The appraiser shall record the cost of repairing any unrelated damage on a separate report or clearly segregated on the appraisal unless the unrelated damage is in the area of repair.

If aftermarket parts are specified in any appraisal, the appraiser shall also comply with the requirements of M.G.L. c. 90, § 34R that pertain to the notice that must be given to the owner of a damaged motor vehicle.

The appraiser **representing the insurer** shall mail, fax or electronically **submit** ~~transmit~~ the completed appraisal within five business days of the assignment, or at the discretion of the repair shop, shall leave a signed copy of field notes, with the completed appraisal to be mailed, faxed **or electronically submitted** within five business days of the assignment. The repair shop may also require a completed appraisal at the time the vehicle is viewed. If the repair shop requires a completed appraisal, then the repair shop shall make available desk space, phone facilities, calculator and necessary manuals. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary **work, repairs or partial disassembly repairs**, severe illness, failure of the parties ~~other than the insurer~~ to communicate or cooperate, or extreme weather conditions make timely inspection of the vehicle and completion of the appraisal impossible.

Board Member Starbard disagreed with the proposed amendments because they did not address all the issues that involved the situation where the motor vehicle has begun to be repaired and the insurance company disagrees about the parts not fitting and who has to be held responsible for the additional expenses.

Board Member Johnson stated that he agreed with Mr. Starbard but said this was the best alternative that they could draft for the Board's consideration. Mr. Johnson stated that all the ADALB Regulation requires that the appraiser negotiate. The auto body shops must negotiate the costs with the insurance companies. Mr. Starbard said that any insurer that refuses to pay for the costs have the auto body shop filed a complaint with the Board.

Board Member Tracy said that the ADALB is a licensing Board and not an arbitrator for all claims that arise between the parties.

Mr. Papageorg requested permission to speak to the Board and Chairman Donovan granted permission. Mr. Papageorg stated that the estimate written for a shop and an insurance company should understand what costs will be included in the repair. Mr. Papageorg added that the Board should include the additional language that Mr. Starbard suggested to clarify the ADALB's Regulation, so all the parties understand exactly what their responsibilities are. Board Member Johnson responded that they did clarify the parties' responsibilities by including the language contained in 211 CMR 311.00.

Chairman Donovan a motion. Board Member Tracy made a motion to adopt the proposed changes as read by Board Member Smith agreed with by Board Member Johnson and read by Board Member Tracy. The motion was seconded by Board Member Johnson and the motion passed by a Vote by: 3-1, with Board Member Starbard voting no and Chairman Donovan abstained.

Chairman Donovan asked Board Counsel Powers where the Board stood in the proposed amendment process and Mr. Powers responded that Board Member Tracy and Johnson should review the proposed amendments as adopted by the Board, send them to Mr. Powers who would post them on the ADALB website and place on the agenda for a final vote at the following meeting.

New business

The issue of the transfer of license applications and renewals from the Division of Insurance processing them through the Licensing Unit and transferring the function to the National Association of Insurance Commissioners' sponsored State Based Systems performing that function (SBS) was raised for discussion. Board Member Samantha Tracy stated that licensees should be able to use their originally issued license number (Legacy Number which appears in the SBS) on the licensee's seal and stationery for the next 36 months and made a motion. The motion was seconded by Board Member Johnson and the motion carried by a Vote of: 4-0, with Chairman Donovan abstaining.

Eric Doyle, of Amica Insurance asked Bob Hunter of the Division of Insurance Licensing Unit to waive the course requirements for Amica appraisers and provided the background information for 2 people, Robert Furtado, and Peter Vorro. Mr. Johnson made a motion to waive the course requirement for these two people, the motion was seconded by Rick Starbard and the motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Mr. C. Motion to allow Mr. Capano to proceed to take the MVDA examination. Motion by Board Member Smith, Second by Board Member Starbard. Motion passed by a Vote of: 3-1, Johnson voted no, and Chairman Donovan abstained.

Next Board Meeting:

A discussion was held by the Board Members and a date of June 22, 2022, was selected at that time.

Executive session:

Chairman Donovan stated that the Board would adjourn in the executive session and will not reconvene in the public session and by a roll-call vote of the Members of the Board, to review Complaints filed against a licensed motor vehicle damage appraiser. Review and discussion of Complaint: 2022-02 A, B, C, D, 03, 06, 07, 08, 09, 10, 11, 12, 13, 14A, 14B, 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, *Department of Public Safety Board of Appeals Matter*, OML 2013-104, *Auto Damage Appraisers Licensing Board Matter*, OML 2016-6, and *Auto Damage Appraisers Licensing Board Matter*, OML 2019-50. Section 21(a) states "A public body may meet in executive session only for the following purposes:

- (1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:
 - if. to be present at such executive session during deliberations which involve that individual;
 - ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session.
 - iii. to speak on his own behalf; and
 - iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

The appraisers requested the matter be heard in the executive session.

Upon a roll call vote of the Board, each Board Member voted to enter the executive session as announced by the Chairman and the motion passed by a Vote of: 4-0 with Chairman Donovan abstaining.

Complaint No. 2022-07 and 08:

The appraiser's supervisor appeared on behalf of himself and the appraiser he supervised, for the appraiser in complaint 2022-07. The supervisor and the appraiser he supervised both filed written statements responding to the complaints. The supervisor informed the Board that the other appraiser contracted Covid-19, and the company's Attorney contracted Covid-19 and, therefore they were unable to appear. The supervisor elaborated that the part came damaged and there was nothing to do with the part not fitting. In this case they agreed to work with the auto body appraiser, the auto body appraiser adamantly refused to provide any information about

further costs, and that he did not want an inch he wanted the mile. After questioning by Board Members, the supervisor reaffirmed his direct statement and read from it.

Board Member Smith stated that he did not see any violation of the statute such as fraud or criminal misconduct. Board Member Smith made a motion dismiss 2022-07, 08, and the motion passed by a Vote of: 3-2. Board Members Johnson and Starbard voted no.

Complaints 2022-06 and Complaint 2022-13:

The Attorney for the company, Samantha Freedman, who specializes in insurance laws, responded to the complaints, appeared before the Board and answered all of the questions asked by the Board. Board Member Smith stated that he reviewed the written responses filed to the complaints and found nothing that would amount to serious misconduct such as a crime that would lead to the Board disciplining the appraisers by suspending or revoking the appraisers licenses and made a motion to dismiss the complaints. The motion was seconded by Board Member Tracy, Board Members Richard Starbard and Mr. Johnson voted no and the complaint was dismissed by a Vote of: 3-2 Chairman Donovan voting to dismiss.

Complaint 2022-06:

The Attorney for the company, Samantha Freedman, appeared and informed the Board that the appraiser was no longer employed by the company and the issue was the shop requested a supplement and a negotiation was accepted by the repair shop. The email stated that the auto body shop could do the additional labor time and but not a mark-up and that was accepted.

A motion to dismiss was made by Board Member Smith he asserted that there was no aspect of fraud or the other serious elements for disciplining the appraiser as provided for in the enabling act, clearly the appraiser negotiated, and agreed on a possible repair. The Motion to dismiss was second by Board Member Tracy, the motion to dismiss passed by a Vote of 3-2 with Board Members Johnson and Starbard voting no.

Complaints 2022-14A and 14B:

Attorney Gallagher, a highly regarded expert in insurance law in Massachusetts, and the supervising appraiser appeared before the Board. A letter by the appraiser in Complaint 14A was submitted waiving her appearance and allowed Attorney Gallagher and her supervisor to represent her interest in 14A.

The appraiser offered \$45 to the auto body shop for a diagnostic test, the auto body shop demanded \$95 and appraiser counter offered \$55. Board Member Starbard asked what the basis was for the going rate, and Attorney Gallagher stated that this auto body shop had accepted \$45 from others, and he refused to negotiate even though the appraiser for the consumer increased the offer and the fellow continued to refuse to negotiate. Attorney Gallagher asserted that appraisers negotiated as required by the Board's Regulation.

Board Member Smith stated that the complainant refused to negotiate and asked if the complainant wrote up a sheet that he demanded \$1 million is the auto insurance appraiser supposed to say yes.

Board Member Smith agreed with Board Member Johnson that they negotiated and made a motion to dismiss, seconded by Board Member Samantha Tracy, and the motion passed by a Vote of: 3-1 with Board Member Richard Starbard voting no and Chairman Donovan abstaining.

2022-01A, 2022-01B, 2022-01C, and 2022-01D:

Board Member Peter Smith announced that he determined that he would not participate in this matter because it involved the company that he is employed by.

Attorney John Callahan, a distinguished and highly respected expert in insurance laws in Massachusetts, appeared on behalf of the appraisers. The 4 Complaints arose from the same appraisal of the same damaged motor vehicle.

The appraisers wrote the appraisal, the part was not unfit, the auto body shop could not get the part from Empire Parts. The insurance company's appraisers are not responsible for an auto body shops inability to do business with a parts supplier and the appraisers did nothing wrong that would be considered a violation of the regulation. Attorney Callahan answered all the questions asked by the Board Members.

A Motion to file a formal complaint was made by Board Member Starbard and second by Board Member Johnson. The motion failed by 2-2 and the complaint is dismissed.

2022-03:

Board Member Peter Smith announced that he determined that he would not participate in this matter because it involved the company that he is employed by.

The complaint was filed by an out of state auto body shop, Providence Auto Body, and the auto body shop disagreed that the motor vehicle was a total loss. The motor vehicle was declared a total loss by the insurance company, the motor vehicle was a leased vehicle, and the owner agreed that the vehicle was a total loss.

Board Member Johnson made motion to dismiss, and the motion was seconded by Board Member Tracy and the complaint was dismissed by a Vote of 3-0 with Board Member Smith not participating and Chairman Donovan abstaining.

2022-09:

Board Member Peter Smith announced that he determined that he would not participate in this matter because it involved the company that he is employed with.

Attorney Callhan provided a detailed written response and asserted that the insurance company appraiser allowed for a calibration. They allowed for a procedure, but not the one the shop wanted, the undisputed fact was that the insurance company appraiser did allow for a calibration. Motion to dismiss by Board Member Johnson seconded by Board Member Tracy the Vote was: 2-1 with Board Member Starbard voting no, Chairman Donovan and Board Member Smith not participating.

Complaint 2022-11:

Attorney Callahan submitted that the case is in small claims court. Case is scheduled for June 19, 2022. The insurance company did pay for the dealership.

Motion by Board Member Johnson to table, seconded by Board Member Starbard, the motion to table was passed by a Vote of: 3-0 with Chairman Donovan abstaining and Board Member Smith not participating.

Complaint 2022-12:

Attorney Callhan asserted that the insurance company's appraiser allowed by the insurance company and allowed for time for tow.

Board Member Starbard made a motion to table, and it was seconded by Mr. Johnson. The Motion passed by a Vote of: 2-2, with Board Member Smith not participating and Board Member Tracy and Chairman Donovan opposed.

Motion to adjourn:

Chairman Donovan then called for a motion to adjourn, which was made by Board Member Starbard, and seconded by Board Member Tracy the Chairman called for a roll call vote with all members voting in the affirmative and the Vote was: 4-0, with Chairman Donovan abstaining.

Whereupon the Board's business was concluded.

The form of these minutes comports with the requirements of M.G.L. c. 30A, §22(a)