



# 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 July 19, 2022, and approved at the Board Meeting held on September 13, 2022; Motion of Board Member --- Motion Passed by a Vote of: --, with Chairman Michael D. Donovan Abstaining.**

July 19, 2022, Minutes of Board Meeting

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on Tuesday, July 19, 2022, 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 called the meeting to order at 10:00AM.

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, and "Lucky" Papageorg of the Alliance of Automotive Service Providers of Massachusetts.

**For approval, the Board minutes for the Board meeting held on May 17, 2022,** Chairman Donovan called for a motion for approval of the Board minutes of the May 17, 2022, Board meeting. Board Member Peter Smith made a motion to approve the Board minutes of the May 17, 2022, Board meeting, the motion was seconded by Board Member William Johnson, and the motion passed by a vote of: 4-0, 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:**

Board Member Peter Smith reported that there were 63 people on the roster for the examination and that 60 applicants attended. 55 people passed the examination and 5 did not pass the exam. Board Member Smith again thanked Eric Landry from Progressive Insurance for his invaluable assistance to the ADALB's practical examination.

Board Member Smith reported that the next exam is scheduled at the same facility for August 13, 2022.

Chairman Donovan thanked Board Member Smith for his excellent work and those who assisted him.

**Submitted by Board Member Johnson, discussion by the Board about the business practices involving the manner in which insurance companies notify consumers about procedures for moving damaged motor vehicles from auto body shops before the insurance companies' appraisers personally inspect the damaged motor vehicle.**

Chairman Donovan asked Board Member Johnson about the agenda item which was placed on the agenda after he sent an email about the practice of insurance companies moving motor vehicles from auto body shops before an appraisal is completed by the auto body shop's appraiser.

Board Member Johnson stated that he is seeing this in his body shops and others in the auto body industry are seeing this: a car is in an accident and the insurance company is refusing to send appraisers to the shop to review the damage. Recently Mr. Johnson was involved with a claim for a damaged moto vehicle on June 23, 2022, the car was in an accident, thereafter he stated that he contacted the insurance company to send an appraiser for a personal inspection, the insurance company did not send anyone, the vehicle owner demanded that the insurance company send someone and on July 7, the vehicle owner was beaten down and released the car. Mr. Johnosn believe that the insurance company mistakenly sent a letter to him meant for the consumer. They requested they move the damaged motor vehicle to stop storage charges and speed up the claim for review of the damage. Board Member Johnson said that he got paid for the storage, it just is an insurance practice that is not favorable to consumers. The vehicle owner feels that they are not offered the proper amount and arbitrate it under the standard Massachusetts Private Passenger Motor Vehicle policy. The insurance company is trying to control the claim from cradle to grave, they get the car out of the shop, and then the insurance company steers the consumer to a referral company doing business with the insurance company.

Mr. Johnson believes that it is not a Board issue, and the question is who has control over this issue. Board Member Johnson tried to file a complaint with the DOI, and DOI informed him that the CSS does not take complaints between company to company, only consumer complaints.

Board Member Starbard stated that the Board does have jurisdiction over the time frame in which an insurance company must assign an appraiser to appraise the damage under the regulation, which requires 5 days. Mr. Starbard agreed to draft a letter to send to the insurance company reminding them that the regulation.

**Approval by the Board of proposed amendments to the ADALB's Regulation 212 CMR 2.00 et seq. consistent with the letter sent by the Office of the Secretary of Administration and Finance (A&F) responding to a letter written by ADALB Chairman Michael Donovan informing him that the ADALB could continue the procedure for amending its regulation but must follow comments made by the Division of insurance in 2016 about the proposed amendments that were submitted that year. The proposed amendments that were approved by the Board as concluded at the Board meeting held on May 17, 2022, are the following:**

The next item was to adopt the proposed amendments as appearing in the agenda and move them to the Office of the General Counsel for the Division of Insurance for their review and, thereafter, to Administration and Finance.

Board Member Tracy submitted the motion to adopt the proposed amendments and the motion was seconded by Board Member Johnson.

Board Member Starbard stated that this has gone on for several years including when Lyle Pare and Joe Coyne were Board Members, there is a lot of compromise here, and the elements that were originally approved were deleted. Mr. Starbard asserted that, the only substantive change is what has been done in increasing the minimum amount for damage of \$2,500. For those reasons he would be voting no.

The vote passed by a Vote of: 3-1 with Mr. Starbard opposed and Chairman Donovan abstaining. The following are the proposed amendments to 212 CMR 2.00 as adopted by the Board:

**Additions** and **Deletions** as approved through May 17, 2022

**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

2.05: Penalties

2.06: Severability

2.01: Scope of Regulations

(1) Purpose and Applicability. The purpose of 212 CMR 2.00 is to promote the public welfare and safety by improving the quality and economy of the appraisal and repair of damaged motor vehicles. Any licensed appraiser, individual or corporate entity who employs licensed appraisers shall be bound by 212 CMR 2.00.

212 CMR 2.00 is intended to be read in conjunction with 211 CMR 133.00, *Standards for the Repair of Damaged Motor Vehicles*.

(2) Authority. 212 CMR 2.00 is promulgated under the authority granted to the Auto Damage Appraiser Licensing Board by M.G.L. c. 26, § 8G, as added by St. 1981, c. 775, § 1.

(3) The Board may from time to time issue Advisory Rulings and shall do so in compliance with M.G.L. c. 30A, § 8.

(4) Definitions.

Appraisal - means a ~~written~~ motor vehicle damage report prepared by an appraiser licensed by the Board, on forms approved by the Board, and conducted ~~as defined in M.G.L. c. 26, 8G and~~ in compliance with the provisions of 212 CMR 2.00, M.G.L. c. 93A, c. 100A, c. 90, § 34R, and c. 26, 8G.

Appraiser - means any person licensed by the Auto Damage Appraiser Licensing Board to evaluate motor vehicle damage and determine the cost of parts and labor required to repair the motor vehicle damage.

Board - means the Auto Damage Appraiser Licensing Board established by M.G.L. c. 26, 8G.

Claimant - means any person making a claim for damage to a motor vehicle for either first or third party damages.

Independent appraiser - means any appraiser other than a staff appraiser who makes appraisals under an assignment by an insurer or repair shop and shall include the owner or employee of a repair shop who makes appraisals under a contract with an insurer.

Insurer - means any insurance company involved with a claim in the Commonwealth.

Intensified appraisal - means the combination of the appraisal of a motor vehicle before its repair and the reinspection of the vehicle subsequent to its repair.

Staff Appraiser - means an appraiser who is an employee of an insurer and whose job duties include the making of appraisals for his or her employee.

Repair Shop – means a motor vehicle repair shop registered pursuant to the requirements of M.G.L. c.100A.

Supervisory appraisal - means an appraisal conducted by an insurance company or appraisal company supervisor solely for the purpose of evaluating the appraisal ability of one of his or her appraiser employees or for the purpose of providing on-the-job training of an appraiser employee.

2.02: Licensing Requirements and Standards for Appraisers

(1) Requirement That License Be Obtained and Displayed.

No person in Massachusetts shall appraise or estimate damages to motor vehicles or otherwise present himself or herself as an appraiser unless he or she has first obtained a license from the ~~Auto-Damage Appraiser Licensing~~ Board. This license shall be valid for one year or less and shall be renewed annually on July 1st. Any appraiser, while making an appraisal, shall carry his or her license and shall, upon request, display it to any person involved in the claim or to any representative of the Board.

(2) Qualifications for a License. Any applicant for a license shall be 18 years of age or over and of good moral character. He or she shall furnish satisfactory proof to the Board that he or she possesses the educational qualifications required for graduation from high school or that he or she possesses relevant work experience deemed satisfactory by the Board. No applicant shall be considered competent unless the applicant has assisted in the preparation of appraisals for at least three months under the close supervision of ~~an licensed~~ appraiser. He or she shall complete an approved appraisal course or, at the Board's discretion, work experience may be substituted for said schooling.

(3) Application and Examination Fee for a License. Any applicant for a license shall complete an application to be prescribed by the Board and shall sign it under the penalties of perjury. He or she shall submit this application and non-refundable fee of \$100 to the Board. After an application is received and approved, the applicant shall be required to pass an examination given under the supervision of the Board. All successful applicants will be issued a numbered license. Any applicant failing to pass an examination, upon the payment of a further non-refundable fee of \$50.00, shall be entitled to a reexamination after the expiration of six months from the date of the last examination. Any applicant failing to pass an examination shall be allowed to review his or her examination.

(4) Renewal of License. The Board shall mail to each ~~licensed~~ appraiser an application for renewal. Such application shall be completed and returned to the Board. Each application shall be accompanied by a renewal fee of \$50.00. After verification of the facts stated on the renewal application, the Board shall issue a renewal license dated July first, and this license shall expire on the June thirtieth of the year following. Any ~~licensed~~ appraiser who fails to renew his or her license within 60 days after notification by the Board of his or her license expiration date, before again engaging in the practice of ~~an licensed~~ appraiser within the Commonwealth, shall be required to re-register, pay a penalty fee determined by the Board and any back license fees, or may be required by the Board to be reexamined and pay applicable fees.

(5) Procedure for ~~Auto-Damage~~ Appraisals.

(a) All forms used for ~~auto-damage~~ appraisals must be approved by the Board.

(b) All forms used are required to have an itemization of parts, labor and services necessary, as ~~required in 212 CMR 2.00~~, for repairs thereof. The prepared appraisal shall be sworn to under the penalties of perjury and shall include the appraiser's name, signature, license number, seal or stamp, employer, ~~insurer insurance company~~, repair shop registration number if applicable, fee charged, the date the vehicle was appraised and the name of the ~~database manual~~ used (if any) in preparing the appraisal. The appraisal seal or stamp shall be of a design approved by the Board.

All appraisals sent electronically need not include the appraiser's signature and his or her seal or stamp.

(6) Schedule of Appraisal Fees.

(a) The Board may consider the appraisal fees charged within the territories where said appraiser operates. Any appraiser shall establish his or her own fee schedule unless limited by the Board. Any appraiser must post his or her appraisal fee schedule in a conspicuous location at his or her work place. The Board may establish a maximum schedule of fees by territory, type of business or complexity of work. Fees charged in excess of maximums approved by the Board shall result in penalties as established by the Board.

(b) Fees paid by a claimant for an appraisal that was requested by the insurer are recoverable from the insurer. Fees for ~~auto damage~~ appraisals not requested by the insurer in first party claims are not recoverable from the insurer.

(7) Conflict of Interest. It shall be a conflict of interest for any appraiser who has been assigned to ~~write an appraisal, appraise a damaged motor vehicle~~ to accept, in connection with that appraisal, anything of value from any source other than the assignor of that appraisal.

Further, it shall be a conflict of interest for any appraiser employed by a repair shop to accept the assignment of an appraisal from an insurer unless that appraiser's employment contract prohibits the repair shop from repairing damaged motor vehicles that have been so appraised. In addition, it shall be a conflict of interest for any appraiser who owns or has an interest in a repair shop to have a vehicle repaired at that shop if that appraiser has appraised that vehicle at the request of an insurer. It shall be a conflict of interest if any licensed appraiser operates a Drive-in Appraisal Service.

(8) Revocation or Suspension of a License. The Board may revoke or suspend any appraiser's license at any time for a period not exceeding one year if the Board finds, after a hearing, that the individual is either not competent or not trustworthy or has committed fraud, deceit, gross negligence, misconduct, or conflict of interest in the preparation of any ~~appraisal motor vehicle damage report~~. The following acts or practices by any appraiser are among those that may be considered as grounds for revocation or suspension of an appraiser's license:

(a) material misrepresentations knowingly or negligently made in an application for a license or for its renewal;

(b) material misrepresentations knowingly or negligently made to an owner of a damaged motor vehicle or to a repair shop regarding the terms or effect of any contract of insurance;

(c) the arrangement of unfair and or unreasonable settlements offered to claimants under collision, limited collision, comprehensive, or property damage liability coverages;

(d) the causation or facilitation of the overpayment by an insurer of a claim made under collision, limited collision, comprehensive, or property damage liability coverage as a result of an inaccurate appraisal;

(e) the refusal by any appraiser, who owns or is employed by a repair shop, to allow an appraiser assigned by an insurer access to that repair shop for the purpose of making an appraisal, supervisory reinspection, or intensified appraisal.

(f) the commission of any criminal act related to appraisals, or any felonious act, which results in final conviction;

- (g) knowingly preparing an appraisal that itemizes damage to a motor vehicle that does not exist; and
- (h) failure to comply with 212 CMR 2.00.

(9) Drive-in Claim and Appraisal Facilities. Drive-in claim and appraisal facilities shall possess the following equipment:

- (a) Operating telephone service.
- (b) A calculator.
- (c) Current collision, paint and body cost estimating guide manuals or an automated system.
- (d) An operating flash light.
- (e) A tape measure of at least 30 feet.
- (f) An operating camera and film.
- (g) A fax machine or other device capable of transmitting data.

#### 2.03: Duties of Insurers and Repairers

- (1) Responsibilities for Actions of Appraisers. An insurer or repair shop shall be responsible for the actions of ~~all of its~~ **the** appraisers **working on their behalf whether staff or independent**, and shall be subject to the applicable penalties under law for any violation of 212 CMR 2.00 by its appraiser.

The Board may assess penalties against either the appraiser, the insurer, the repair shop or all three. In the event of default by the appraiser, the insurer or the repair shop may be responsible for penalties.

- (2) Records and Analysis of Appraisals. Every ~~insurer or repair shop~~ appraiser shall retain for at least two years, copies of all records related to appraisals and inspection. Every insurer shall retain copies of all records including photographs in accordance with state law.

#### 2.04: Procedures for the Conduct of Appraisals and Intensified Appraisals

- (1) Conduct of Appraisals.

(a) Assignment of an Appraiser. Upon receipt by an insurer or its agent of an oral or written claim for damage resulting from a motor vehicle accident, theft, or other incident for which an insurer may be liable, the insurer shall assign **an** appraiser to **write an appraisal appraise the damage**. Assignment of an appraiser shall be made within two business days of the receipt of such claim. However, the insurer may exclude any claim for which the amount of loss, ~~less any applicable deductible~~, is less than **\$2,500.00**.

(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment for the purpose of preparing **an motor vehicle damage** appraisals **and conducting negotiations**. No ~~staff or independent~~ appraiser shall knowingly negotiate a repair figure with an unlicensed individual or an unregistered repair shop.

(c) Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of ~~an staff or~~ independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific

repair shop or individual. The provisions of 212 CMR 2.04(c) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00.

(d) Requirement of Personal Inspection and Photographs. The appraiser shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making the appraisal. As part of the inspection, the appraiser shall also photograph each of the damaged areas.

(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 insurance 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 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.~~

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.

(f) Determination of Total Loss. Whenever the appraised cost of repair plus the estimated salvage may be reasonably expected to exceed the actual cash value of a vehicle, the insurer may deem that vehicle a total loss. No motor vehicle may be deemed a total loss unless it has been personally inspected ~~or and~~ appraised by an ~~licensed~~ appraiser nor shall any such motor vehicle be moved to a holding area without the consent of the owner. A total loss shall not be determined by the use of any percentage formula.

(g) Preparation and Distribution of Appraisal Form. All appraisers shall set forth the information compiled during the appraisal on a form that has been filed with the Board. Staff and independent appraisers shall, upon completion of the appraisal, give copies of the completed appraisal form to the claimant, the insurer, and the repair shop and shall give related photographs to the insurer.

(h) Supplemental Appraisals. If a ~~registered~~ repair shop or claimant, after commencing repairs, discovers additional damaged parts or damage that could not have been reasonably anticipated at the time of the appraisal, either may request a supplementary appraisal. The ~~registered appraiser~~ representing the repair shop shall complete a supplemental appraisal prior to making the request. The insurer shall assign an appraiser who shall personally inspect the damaged vehicle within ~~two three~~ business days of the receipt of such request. The appraiser representing the insurer shall have the option to leave a completed copy of the supplement appraisal at the registered repair shop authorized by the insured or leave a signed copy of his or her field notes with the

completed supplement to be mailed, faxed, electronically ~~submitted~~ ~~transmitted~~ or hand delivered to the repair shop within one business day. 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 inspections of the vehicle and completion of the supplemental appraisal impossible.

(i) Expedited Supplemental Appraisals. If an insurer, a repair shop and the claimant agree to utilize an expedited supplemental appraisal process, an insurer shall not be required to assign an appraiser to personally inspect the damaged vehicle. In such event, the repair shop shall fax or electronically submit to the insurer a request for a supplemental appraisal allowance in the form of an itemized supplemental appraisal of the additional cost to complete the repair of the damaged vehicle, prepared by ~~an appraiser representing the repair shop~~ ~~licensed appraiser employed by the repair shop~~, together with such supporting information and documentation as may be agreed upon between the ~~appraiser representing the~~ insurer and the ~~appraiser representing the~~ repair shop. The ~~appraiser representing the~~ insurer shall then be required to fax or electronically submit to the repair shop ~~within one two business days~~ its decision as to whether it accepts the requested supplemental appraisal allowance, ~~by the end of the next business day, excluding weekends and holidays~~. Within this same period, ~~an licensed~~ appraiser representing the insurer and ~~an licensed~~ appraiser representing the repair shop may attempt to agree upon any differences. In the event that an insurer does not accept the repair shop's request for the supplemental appraisal allowance, or if the insurer fails to respond to the repair shop ~~within two business days~~, ~~by the end of the next business day, excluding weekends and holidays~~, the ~~appraiser representing the~~ insurer and the ~~appraiser representing the~~ repair shop shall be obligated to proceed in accordance with 212 CMR 2.04(1)(h), and within the time limits set forth in such provision. In such event, the date of the initial request for a supplemental appraisal allowance shall be the starting date for when the insurer must assign an appraiser to personally inspect the damaged vehicle.

No insurer or repair shop shall be obligated to utilize an expedited supplemental appraisal process and the determination of whether to utilize such process shall be made separately by an insurer or by a repair shop only on an individual claim basis. Utilization of an expedited supplemental appraisal process shall not be used as a criterion by an insurer in determining the insurer's choice of shops for a referral repair shop program under an insurer's direct payment plan; and being a referral shop shall not be a criterion in determining whether to utilize an expedited supplemental appraisal process.

(j) Completed Work Claim Form. If the ~~insurer~~ ~~insurance company~~ does not have a direct payment plan or if the owner of the vehicle chooses not to accept payment under a direct payment plan, then a representative of the insurer shall provide the insured with a completed work claim form and instructions for its completion and submission to the insurer.

(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 Chairman of the Board or his/her designee is authorized 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.~~

#### 2.05: Penalties

~~(4)~~ Violations of M.G.L. c. 26, § 8G, and 212 CMR 2.00 may result in penalties including administrative costs, revocation or suspension of license or both. All administrative costs are subject to the discretion of the Board. The administrative costs may be assessed against the appraiser, the appraiser's employer, the insurer, or the repair shop. An alleged violation of 212 CMR 2.00 by **an licensed** appraiser at the direction of an insurer may be reported to the Division of Insurance, which may impose applicable penalties against such an insurer.

#### 2.06: Severability

If any provision of 212 CMR 2.00 or its application to any person or circumstances is held invalid, such invalidity shall not affect the validity of other provisions or applications of 212 CMR 2.00.

#### REGULATORY AUTHORITY

212 CMR 2.00: M.G.L. c. 26, § 8G.

### **Other Business:**

Board Member Starbard stated that the minutes of the May 17, 2022, meeting indicate that the Attorney spoke for the appraisers. Mr. Starbard stated that the appraisers' attorneys have been appearing at the Board meetings and have been allowed to appear and speak before the Board, even though the notice in the Board statement stated that the attorney will not be allowed to speak. Mr. Powers replied that the Board has the right to run the review in the manner the Board sees fit and the Chairman can allow anyone that he chooses to speak at a meeting. In 2020, the Board received a decision from the Office of the Attorney General which denied a consumer's complaint who contended that he had the right to appear before the Board during the executive session and the Office of the Attorney General decided against the consumer. In the decision, the Office of the Attorney General stated that the Chairperson has the right to conduct meetings and specifically the executive session in the manner he sees fit, including allowing any people to speak during the executive session. Mr. Powers stated that the Board amended the "ADALB's Complaint Procedures" in November of 2020 and inserted additional language to clarify the procedure and in conformance to the decision of the Office of the Attorney General. "[A]side from an individual's right to participate in a discussion about that individual, participation of other people during an executive session is within the Board's discretion. See the Office of Attorney General's Decisions on the Open Meeting Law OML2013-141, OML 2016-06, OML 2019-159, and M.G.L. c. 30A, § 20(g)..."]].

### **Next Board Meeting:**

September 13, 2022, at Boston at 10:00AM at 1000 Washington Street, Boston, Mass.

**Review of 100 complaints filed against motor vehicle damage appraisers licensed by the Auto Damage Appraiser Licensing Board brought by the same licensed appraiser who also owns an auto body shop, the majority of the complaints have been brought against 2 insurance companies and their authorized appraisers. The review by the Board will be conducted in accordance with the Auto Damage Appraiser Licensing Board's "Complaint Procedures" to determine whether: the Board lacks jurisdiction, the complaints are based on frivolous allegations, lack sufficient evidence, lack legal merit or factual basis, no violation of the regulation is stated, or other basis. During the review, the Board will not discuss the named appraisers or the named companies the complaints have been filed against. The Board will review the following Complaints:**

Complaint 2022-16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116.

Board Member Peter Smith stated that all these complaints involved monetary disputes and the Board is not in the business of deciding monetary disputes between the auto body shop and the insurance company's appraisers. Board Member Smith made a motion to dismiss the 100 complaints and the motion did not receive a second and, therefore failed.

Board Member Starbard stated that he wanted to review each individual complaint and have a motion to move the complaints to the next step. Board Member Johnson agreed.

Board Member Peter Smith stated that he felt the filing of all of these complaints was only harassment of the insurance companies and licensed motor vehicle damage appraisers named in the complaints, and only about money. Chairman Donovan asked legal Counsel Powers what the law required. Mr. Powers stated that the enabling act required serious misconduct by an appraiser before an appraiser's license can be suspended or revoked and the enabling statute provides for criminal misconduct such as fraud in making an appraisal, conviction of a crime or other serious misconduct. [In relevant part G.L. c. 26, Section 8G provides:

...  
The board, after due notice and hearing, shall revoke any license issued by it and cancel the registration of any person who pleads guilty to or is convicted of a fraudulent automobile damage report as a result of a court judgment and said license shall not be reinstated or renewed nor shall said person be relicensed. The board, after due notice and hearing, shall cancel for a period not exceeding one year, any license issued by it to, and cancel the registration of, any person **who has been shown at such hearing to have been guilty of fraud, deceit, gross negligence, incompetence or misconduct or conflict of interest in the preparation or completion of any motor vehicle damage report, or that the holder of such license has permitted or suffered his official seal to be affixed to any auto damage report not prepared by him.** Any such person shall, before again engaging in the practice of licensed appraiser within the commonwealth, be required to re-register and pay a fee of fifty dollars and be re-examined by the board...]  
(Emphasis added)

The Board Members engaged in a debate as to whether the Board should be reviewing complaints over money as part of the Board's authority under the Board's enabling act. Board Member Peter Smith pointed out that the enabling statute requires serious misconduct and specifically refers to criminal misconduct such as criminal convictions for fraud, deceit. Mr. Starbard disagreed and stated that these services named in the complaint should be paid for by insurance companies. Thereafter, the Board began a review of the 100 complaints filed by the owner of the auto body shop against mostly the same 2 appraisers and insurance companies.

A motion was made to move to the next step on Complaint 2022-16, by Rick Starbard and seconded by William Johnson. The motion failed by a vote of: 2-2 with Board Members Johnson and Starbard voting together and voting: Yes. Board Members Tracy and Smith Voting: No. Chairman Donovan abstained because there was no need to make or break a tie.

A motion to move to the next step on Complaint 2022-17, was made by Richard Starbard and seconded by Board Member Johnson, the motion failed by a Vote of: 2-2, Board Members Starbard and Johnson voted together by Voting: Yes and Board Member Samantha Tracy voted

to abstain. Peter Smith voted no, Chairman Donovan was compelled to vote to make or break a tie, and voted: No.

Motion to move to the next step on Complaint 2022-18. Board Member Starbard made the motion to move to the next step, seconded by Board Member Johnson. Board Members Johnson and Starbard, yes, and Samantha Tracy and Peter Smith voted no. The motion failed by a Vote of: 2-2, and Chairman Donovan abstained because his vote was not needed to make or break a tie.

Motion to move to the next step on Complaint 2022-19. Mr. Johnson stated that the fellow would not pay to transfer the vehicle paid to subcontract and that this money should be paid by the insurance company. Board Member Johnson made a motion to move to the next step and it was seconded by Mr. Starbard. Board Members Johnson, Starbard, and Samantha Tracy voted together voting: Yes. Board Member Peter Smith voted by himself and Voted: No. The motion passed by a Vote of: 3-1 and Chairman Donovan abstained because there was no need to make or break a tie.

Complaint number 2022-20. Mr. Johnson made a motion to move to the next step and the motion was seconded by Mr. Starbard. Mr. Starbard and Mr. Johnson voted; Yes, Samantha Tracy and Peter Smith voted: No. The motion failed.

Complaint number 2022-21. Mr. Johnson made a motion to move to the next step and the motion was seconded by Board Member Johnson. The Vote was; Mr. Johnson and Starbard voting together and Voted: Yes, Board Member Tracy and Smith Voted: No. Chairman Donovan abstained. The motion failed.

Complaint number 2022-22. Mr. Johnson made a motion to move to the next step and Mr. Starbard seconded. The Vote was: Mr. Johnson and Mr. Starbard voting together and Voting: Yes, Board Members Tracy and Smith Voted: No. The motion failed.

Complaint 2022-23. Mr. Johnson made a motion to move to the next step and Mr. Starbard seconded. The Vote was: Mr. Johnson and Mr. Starbard Yes, Board Members Tracy and Smith voted No. The motion failed.

Complaint 2022-24. Mr. Starbard stated that this was dealt with at the last Board Meeting and was probably broomed by the Board.

Legal Counsel Powers stated the complainant filed a lawsuit against the Board that is now pending against the Board naming the Board as defendants in Suffolk Superior Court and that Mr. Powers was working with the Office of the Attorney General defending the lawsuit.

Complaint 2022-25. Mr. Starbard made a motion to move to the next step and the motion was seconded by Mr. Johnson. Board Members Johnson, Starbard, and Tracy voted together and Voted: Yes. Board Member Peter Smith was left by himself and Voted: No. The Motion passed by a Vote: of 3-1. Chairman Donovan not voting because there was no need to make or break a tie.

Complaint 2022-26. Mr. Starbard made a motion to move to the next step and the motion was second by Mr. Johnson. Board Members Johnson, Starbard, and Tracy voted together and Voted: Yes. Board Member Peter Smith was left to vote by himself and Voted: No. The Motion passed by a Vote: of 3-1. Chairman Donovan not voting because there was no need to make or break a tie.

Complaint 2022-27. Mr. Johnson made motion to move to the next step and Mr. Starbard seconded. The Vote was: Mr. Johnson and Mr. Starbard Voted: Yes and Board Members Tracy and Smith Voted: No. The motion failed.

Complaint 2022-28. Mr. Starbard made a motion to move to the next step and the motion was second by Mr. Johnson. Board Members Johnson, Starbard, and Tracy voted together and Voted: Yes. Board Member Peter Smith was left to vote by himself and Voted: No. The Motion passed by a Vote: of 3-1. Chairman Donovan not voting because there was no need to make or break a tie.

Complaint 2022-29. Mr. Starbard made a motion to move to the next step and the motion was second by Mr. Johnson. Board Members Johnson, Starbard, and Tracy voted together and Voted: Yes. Board Member Peter Smith was left to by himself and Voted: No. The Motion passed by a Vote: of 3-1. Chairman Donovan not voting because there was no need to make or break a tie.

Complaint 2022-30. Board Member Johnson made motion to move to the next step and Mr. Starbard seconded. Board Members Johnson and Starbard Voted: Yes, Board Members Tracy and Smith Voted: No. The motion failed by a Vote of: 2-2.

Complaint 2022-31. Board Member Johnson made motion to move to the next step and Mr. Starbard seconded. Board Members Johnson and Starbard Voted: Yes, Board Members Tracy and Smith Voted: No. The motion failed by a Vote of: 2-2.

.

Complaint 2022-32. Board Member Starbard made motion to move to the next step and Mr. Johnson seconded. Board Members Johnson and Starbard Voted: Yes, Board Members Tracy and Smith Voted: No. The motion failed by a Vote of: 2-2.

Complaint 2022-33. Board Member Johnson made motion to move to the next step and Mr. Starbard seconded. Board Members Johnson and Starbard Voted: Yes, Board Members Tracy and Smith Voted: No. The motion failed by a Vote of: 2-2.

Complaint 2022-34. Board Member Johnson made motion to move to the next step and Mr. Starbard seconded. Board Members Johnson and Starbard Voted: Yes, Board Members Tracy and Smith Voted: No. The motion failed by a Vote of: 2-2.

Complaint 2022-35. Board Member Starbard made motion to move to the next step and Mr. Johnson seconded. Board Members Johnson and Starbard Voted: Yes, Board Members Tracy and Smith Voted: No. The motion failed by a Vote of: 2-2.

Complaint 2022-36. Mr. Starbard motion to move the next step, seconded by Johnson. Board Members Johnson, Starbard, and Tracy voted together and Voted: Yes, Board Member Peter Smith was left to vote by himself and Voted: No.. The motion passed by a Vote of 3-1. Chairman Donovan not voting because there was no need to make or break a tie.

Complaint 2022-37. Board Member Johnson made motion to move to the next step and Mr. Starbard seconded. Board Members Johnson and Starbard Voted: Yes, Board Members Tracy and Smith Voted: No. The motion failed by a Vote of: 2-2.

Complaint 2022-38. Board Member Starbard made motion to move to the next step and Mr. Johnson seconded. Board Members Johnson and Starbard Voted: Yes, Board Members Tracy and Smith Voted: No. The motion failed.

Complaint 2022-39. Mr. Starbard motion to move to the next step, seconded by Mr. Johnson. Johnson, Starbard Voted: Yes, Board Member Tracy abstained and Mr. Smith Voted: No and Chairman No. The motion failed.

Complaint 2022-40. Johnson motion to move forward, Starbard seconded. Johnson, Starbard Yes, Tracy and Smith No. Motion failed.

Chairman Donovan asked Legal Counsel Powers if there was another case wherein someone filed 100 complaints with the Board. Mr. Powers answered no, based on the Board's records of the Board's minutes of the meetings, this has never happened in the history of the Board.

Board Member Starbard responded that the person filing all of the complaints was his hero, considering the amount of time he spent writing these complaints.

Complaint 2022-41. Board Member Starbard made a motion to move to the next step, seconded by Mr. Johnson. Board Members Johnson and Starbard Voted: Yes, Board Member Tracy abstained and Board Member Peter Smith Voted: No and Chairman Donovan Voted: No. Chairman Donovan was forced to make or break a tie. The motion failed by a Vote of: 2-2.

Complaint 2022-42. Mr. Starbard made a motion to move to the next step, seconded by Mr. Johnson. Mr. Johnson and Mr. Starbard Voted: Yes, Board Members Tracy and Smith Voted: No. The motion failed by a Vote of: 2-2.

Complaint 2022-43. Board Member Johnson made motion to move to the next step and Mr. Starbard seconded. Board Members Johnson, Starbard, and Tracy voted together and Voted: Yes, Board Member Peter Smith was left to vote by himself and Voted: No. The motion passed by a Vote of 3-1. Chairman Donovan not voting because there was no need to make or break a tie.



Complaint 2022-44. Johnson motion to move to the next step Mr. Starbard seconded. Board Members Johnson, Starbard, and Tracy voted together Voting: Yes. Board Member Peter Smith left by himself to Vote: No. The motion passed by a Vote of 3-1. Chairman Donovan not voting because there was no need to make or break a tie.

Complaint 2022-45. Mr. Starbard made a motion to move to the next step and the motion was seconded by Mr. Johnson. Board Members Johnson, Starbard, and Tracy voting together: Yes. Peter Smith Voting: No by himself. The motion passed by a Vote of 3-1. Chairman Donovan not voting because there was no need to make or break a tie.

Complaint 2022-46. Board Member Starbard made a motion to move to the next step, the motion was seconded by Mr. Johnson. Board Members Johnson and Starbard voted together and Voted: Yes, Board Members Tracy and Smith Voted: No. The motion failed by a Vote of: 2-2.

Complaint 2022-47. Starbard motion to move forward, seconded by Johnson. Johnson, Starbard Yes, Tracy and Smith No. Motion failed by a Vote of: 2-2.

Chairman Donovan asked about this repairer, is it is unusual is having this difficulty with insurance companies. Mr. Johnson said that all companies have these problems with insurance companies.

Complaint 2022-48. Johnson motion to move forward, Starbard seconded. Johnson, Starbard Yes, Tracy and Smith Voted: No. The motion failed by a Vote of: 2-2.

Complaint 2022-49. Johnson motion to move forward, Starbard seconded. Johnson, Starbard Yes, Tracy and Smith No. Motion failed by a Vote of: 2-2.

Complaint 2022-50. Starbard motion to move to the next step, seconded by Mr. Johnson. Board Members Johnson, Starbard, and Tracy voting together by Voting: Yes. Board Member Peter Smith was left to vote by himself and Voted: No. The motion passed by a Vote of 3-1. Chairman Donovan not voting because there was no need to make or break a tie.

Complaint 2022-51. Starbard motion to move forward, seconded by Johnson. Board Members Johnson and Starbard voted together by Voting: Yes, and Board Member Tracy abstained. Board Member Peter Smith Voted: No and Chairman Donovan was forced to make or break a tie and Voted: No. The motion failed by a Vote of: 2-2.

### **Motion to adjourn:**

Motion to Adjourn and do further review at the next meeting made by Peter Smith the motion was seconded by Samantha Tracy. The motion passed by a vote of: 3-2 Board Members Starbard and Johnson were opposed.

