



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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CHAIRMAN

KARYN E. POLITO
LIEUTENANT GOVERNOR

JOSEPH COYNE
RICHARD STARBARD
WILLIAM E. JOHNSON
LYLE M. PARE

Minutes of Meeting of the Board held on December 6, 2017, Approved by the Board at February 27, 2018, Board Meeting; Motion of Board Member Richard Starbard and Seconded by Board Member William Johnson. The Motion Passed by a Vote of: 4-0, Chairman Cox Abstained.

December 6, 2017, Minutes of Board Meeting
Held at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Cox
Joseph Coyne
William Johnson
Richard Starbard
Lyle Pare

Attending to the Board:

Michael D. Powers, Counsel to the Board
Steven Zavackis, Executive Secretary

Proceedings recorded by:

Jillian Bukhenik of the Alliance of Automotive Service Providers of Massachusetts (AASP) (Audio/Video). Chris Gervais of MAPFRE (Audio/Video). Evangelos Papageorg of EXP Consulting (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photo). Jim Steere, Hanover Insurance Company (Audio).

Call to Order:

Chairman Cox called the meeting to order.

Review of minutes:

The Board reviewed minutes of the Board Meeting held on October 3, 2017 and Chairman Cox called for a motion to approve the minutes. The motion was made by Board Member William Johnson to accept the draft minutes as submitted and seconded by Board Member Joseph Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Report on the next Part-II examination for motor vehicle damage appraiser:

A Motor Vehicle Damage Appraiser Part II examination was held on November 16, 2017, and Board Member Richard Starbard reported that 59 candidates took the examination, 2 candidates were contacted after the Part-II examination, asked for further explanation about particular answers that they provided to the exam, and Mr. Starbard was awaiting their responses. There were 47 people who passed the examination and 12 people who failed the examination out of which the 2 people were marked as “pending call.”

Board Member Starbard thanked Eric Landry and Peter Smith for their great assistance with administering the examination. The next Part-II examination is scheduled on January 24, 2018 at Progressive Insurance Company’s facility.

Board Member Coyne informed the Board that he received a request to increase the number of Part-II examinations that are held during the year. Board Member Coyne acknowledged the fact that the Board has been holding many more examinations than in past years and suggested that the Board could increase the scheduling by adding an additional two dates during the upcoming year for the examinations.

Board Member Johnson responded that there was already an additional examination added which will be held in Springfield at the Springfield Technical Community College (STCC) in February of 2018.

Board Member Starbard observed that it would be advisable to conduct Part-II examinations in the Western part of the state, to make it convenient for those applicants residing in that part of Massachusetts. Mr. Starbard agreed that the Board could probably hold two examinations in the Western part of Massachusetts during the upcoming months.

Board Member Johnson volunteered to contact an authorized representative in SPTCC administration to schedule their facility for a Part-II examination in February of 2018.

Letter from the Office of the Attorney General dated September 28, 2017, notifying the Board of a complaint filed with them about an owner of an auto body shop:

After the Members of the Board reviewed the letter and the complaint attached to it that was filed with the Office of the Attorney General, Board Member Johnson advised that the jurisdiction of auto body shops lays within the Division of Standards for the Commonwealth of Massachusetts. Board Member Johnson asserted that the Division of Standards should be sent a letter from Board Counsel Michael D. Powers notifying them of the complaint filed against the auto body shop with the Office of the Attorney General. Board Member Coyne made a motion that Board Counsel Powers send a letter with a copy of the complaint that was filed with the Office of the Attorney General to the Division of Standards and the motion was seconded by Board Member Starbard. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Letter from Mr. Dwight Seaman, Continuing Education Coordinator and Lead Teacher, in the Collision Repair Department of the Blue Hills Regional Vocational Technical High School of Canton, Massachusetts. Mr. Seaman teaches the Massachusetts Auto Damage

Appraiser licensing course and has submitted several questions to the Board about Massachusetts motor vehicle damage appraising related to standard language found in insurance policy sections:

Board Member Lyle Pare asserted that the questions asked by Mr. Seaman involved the Massachusetts standard Automobile Insurance Policy and were not questions that were within the Board's jurisdiction.

Board Member Johnson agreed, but observed that there were some questions in Mr. Seaman's letter that the Board could answer such as question number nine.

Board Member Coyne disagreed, and declared that the letter involved standard insurance policy language and the Board has no authority to decided questions about insurance policies.

Board Member Starbard disagreed with Board Member Coyne, and pointed out some questions in Mr. Seaman's letter that the Board could provide answers.

Board Member Coyne made a motion that, the Board Legal Counsel Michael Powers send a letter to Matthew Mancini, Director of the State Rating Bureau, with a copy of Mr. Seaman's letter requesting Mr. Mancini respond to Mr. Seaman's letter, and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 3-1 with Board Member Starbard opposed and Chairman Cox abstaining.

Review of Advisory Ruling proposed by Board Member Richard Starbard advising licensed appraisers about partial finishing of a damaged part:

Chairman Cox read his proposed Advisory Ruling which is the following;

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2017-XXX

The Auto Damage Appraiser Licensing Board (ADALB or Board) is authorized to oversee all motor vehicle damage appraisers in the Commonwealth of Massachusetts pursuant to M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq. titled, "The Appraisal and Repair of Damaged Motor Vehicles" as promulgated by the ADALB. In relevant part M.G.L. c. 26, § 8G provides, "The board shall after notice and hearing in the manner provided in chapter thirty A adopt rules and regulations governing licenses under this section in order to promote the public welfare and safety." In addition 212 CMR 2.01(1) provides, "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...." Pursuant to its authority the ADALB is authorized to issue licenses to all motor vehicle damage appraisers in the Commonwealth (licensed appraisers or appraiser) 212 CMR 2.02, regulate the conduct of motor vehicle damage appraisers in the Commonwealth 212 CMR 2.02, regulate the manner of conducting motor vehicle damage appraisals 212 CMR 2.04, and to issue Advisory Rulings pursuant to 212 CMR 2.01(3) and M.G.L. c. 30A, § 8. It is the intention of the ADALB to issue an Advisory Ruling consistent with 212 CMR 2.00 et seq. and M.G.L. c. 26, § 8G to be followed by licensed appraisers.

Pursuant to its authority, the ADALB voted by a majority vote at the Board's meeting held on December 6, 2017, to adopt this Advisory Ruling.

ADVISORY RULING

212 CMR 2.04(1)(e) states in relevant part "[N]o appraiser shall modify any published manual (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties...."

The Auto Damage Appraiser Licensing Board has passed a motion declaring that, partial refinishing of a damaged part is considered to be modification of a published manual and may not be included on an appraisal without prior negotiation.

This Advisory Ruling shall be effective upon posting on the Auto Damage Appraiser Licensing Board public website. Failure to comply with this ruling could result in fines and penalties as provided by law.

At the conclusion of Chairman Cox's reading of the proposed Advisory Ruling, Board Member Richard Starbard made a motion to approve the proposed Advisory Ruling, and the motion was seconded by Board Member Johnson.

Board Member Coyne declared that the proposed Advisory Ruling was outside of the scope of the Board's authority.

Board Member Pare observed that this Advisory Ruling takes the discretion away from an appraiser. He opined that if an appraiser were to violate this proposed Advisory Ruling, then such a violation would affect an appraiser's license.

Board Member Starbard concurred with Member Pare's observation.

Board Member Johnson asserted that the Advisory Ruling was not taking away an appraiser's ability to negotiate the terms of an appraisal, the parties must still engage in negotiations.

Board Member Coyne declared that appraisers appraise motor vehicle damage in this manner all the time. He gave as an example a dent to a fender and explained that auto body shops perform a partial refinish to the damaged area where the dent is located all the time. Such partial refinishing is standard practice in the auto body industry and has been standard practice during almost forty-years that Board Member Coyne has been appraising motor vehicle damage.

Chairman Cox announced that there was a number of letters sent to the Board by interested parties and would like to get input from any interested parties before the Board took any action.

Board Member Starbard responded that there is much misunderstanding about the repair procedure referenced in the proposed Advisory Ruling, and he provided an example of the type of repair the proposed Advisory Ruling was directed. Mr. Starbard provided an overview of the

preparation of a damaged part and the manner an auto body shop would traditionally repair and paint such a part. He concluded that, in such cases providing for a partial refinish of the damaged part would actually exceed the time it would take to properly paint the entire part or fully refinish it, thereby costing more money for the final repair.

Board Member Johnson asserted that the only thing the proposed Advisory Ruling will require is an appraiser following the published manual and passage of the Advisory Ruling was not changing anything that was not already provided for in the Board's regulation [212 CMR 2.00 et seq.].

Board Member Coyne declared, this will increase the costs of repairing damaged parts. The Board members then engaged in a discussion about the number of hours a partial refinish and a full refinish would take to repair a damaged part. Board Member Coyne concluded the discussion by stating he did not believe that the Board should take away the opinion of the appraiser and requested a legal opinion.

Chairman Cox interjected that he was reluctant to do anything that would require an amendment to the Board's regulation.

Board Member Coyne responded that it was unnecessary to adopt an Advisory Ruling when, as other Board Members asserted, the issue was already covered in the Board's regulation.

Board Member Johnson replied that the proposed Advisory Ruling was clarifying language currently contained in the Board's regulation.

Board Member Pare asserted that, assuming the issue is already contained in the Board's regulation, then there was no need to bring this matter before the Board. This will change current procedure if the proposed Advisory Ruling were adopted, because auto body shops will refuse to accept partial refinish of a damaged part and will insist on a full refinish of the part and, therefore, demand full time for the refinish. Mr. Pare concluded, the proposed Advisory Ruling will impair an appraiser's ability to negotiate the repair of a damaged part in these circumstances.

The Members of the Board engaged in further discussions between each other, reiterating their previous stated positions, while asserting their previously stated support or opposition to the proposed Advisory Ruling.

Chairman Cox offered the suggestion of eliminating the word "prior" from the proposed Advisory Ruling as a compromise.

Board Member Coyne responded that he could not see how the Board could order an appraiser not to provide an opinion about repairing this type of damage. He elaborated, the Board has conducted a comprehensive review of the Board's regulation, sent it for review, and the amendments to the regulation are pending. This proposed Advisory Ruling would require an amendment to the Board's regulation and should have been offered when the Board was discussing the amendments to the regulation.

Chairman Cox then offered as a compromise to eliminate the word “not” from the proposed Advisory Ruling.

Board Member Coyne responded, since this Board has been constituted in its current membership, over the past three years there have been two complaints filed with the Board about this very issue: both of those complaints were resolved by the parties. Because the Board has only received two complaints in three years, there was clearly no need for such an Advisory Ruling. Board Member Coyne asked the Board’s Legal Counsel if this would require a legal opinion. Board Counsel Powers directed the Board to the four written position statements that was sent to the Board by representatives of the auto insurance industry and suggested that the Board review those documents and the legal arguments contained in them.

Board Member Starbard countered that the proposed Advisory Ruling would reduce the number of complaints filed with the Board.

Chairman Cox invited interested parties who were members of the public, attending the meeting, to speak.

Licensed motor vehicle appraiser Evangelos “Lucky” Papageorg volunteered to speak and was recognized by Chairman Cox. Mr. Papageorg asserted that he would like to respond to Board Member Coyne’s statements. He informed the Board, and members of the public, when he writes an appraisal he runs into problems with counter-proposals or modifications wherein the appraiser representing an insurance company refuses to negotiate. He declared that, whenever a repair is delayed or not properly made to the damaged part at the auto body shop, more work is created to repair the damaged motor vehicle. He concluded by inviting the Board to come to the auto body shop wherein he appraises damaged vehicles and observe what happens in these circumstances.

Chairman Cox then invited any interested party who was a representative of the auto insurance industry or in opposition to the proposed Advisory Ruling to speak. Although there were several members of the auto insurance industry in attendance, some of whom had submitted written position statements in opposition to the proposed Advisory Ruling, not one person in the audience responded to Chairman Cox’s invitation to express an opinion or take a position in opposition to the proposed Advisory Ruling.

Chairman Cox then called for a vote by the Members of the Board on the proposed Advisory Ruling. The motion to adopt the Advisory Ruling passed by a vote of: 3-2, with Board Member Coyne and Board Member Pare opposed.

Review and vote on proposed Advisory Ruling submitted by Board Member William Johnson requiring Manufacturers recommended repair procedures must be followed when a structural part of a motor vehicle has sustained damage affecting the safe operation of the motor vehicle.

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2017-XXXX

The Auto Damage Appraiser Licensing Board (ADALB or Board) is authorized to oversee all motor vehicle damage appraisers in the Commonwealth of Massachusetts pursuant to M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq. titled, “The Appraisal and Repair of Damaged Motor Vehicles” as promulgated by the ADALB. In relevant part M.G.L. c. 26, § 8G provides, “The board shall after notice and hearing in the manner provided in chapter thirty A adopt rules and regulations governing licenses under this section in order to promote the public welfare and safety.” In addition 212 CMR 2.01(1) provides, “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....” Furthermore, 212 CMR 2.04(1)(e) in pertinent part reads, “If, while in the performance of his or her duties as a 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.” Under its authority the ADALB is, *inter alia*, authorized to: issue licenses to all motor vehicle damage appraisers in the Commonwealth (licensed appraisers or appraiser) 212 CMR 2.02, regulate the conduct of motor vehicle damage appraisers in the Commonwealth 212 CMR 2.02, regulate the manner of conducting motor vehicle damage appraisals 212 CMR 2.04, and to issue Advisory Rulings pursuant to 212 CMR 2.01(3) and M.G.L. c. 30A, § 8. It is the intention of the ADALB to issue an Advisory Ruling consistent with 212 CMR 2.00 et seq. and M.G.L. c. 26, § 8G to be followed by licensed appraisers.

Pursuant to its authority, the ADALB voted by a majority vote at the Board’s meeting held on December 6, 2017, to adopt this Advisory Ruling.

ADVISORY RULING

212 CMR 2.04(1)(e) states in relevant part “[T]he appraisers representing the 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 (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturer warranty repair procedures, I-Car, Tec Cor and paint manufacturer procedures may also apply....”

The Auto Damage Appraiser Licensing Board has passed a motion declaring that for the purposes of reducing traffic accidents and safeguarding users of motor vehicles against unreasonable risks of accident, injury, or death, when structural damage is caused to the structural/frame component of a motor vehicle (the main structure of the vehicle and/or any component designed to provide structural integrity of the vehicle), and if the repair of a damaged part will impair the operational safety of the motor

vehicle requiring the replacement of the part,¹ to ensure the safe and proper repair of a damaged motor vehicle the Manufacturer warranty repair procedures shall be followed. Components that are bolted onto a motor vehicle are not considered part of its structure or frame.

This Advisory Ruling shall be effective upon posting on the Auto Damage Appraiser Licensing Board public website. Failure to comply with this ruling could result in fines and penalties as provided by law.

For the ADALB,

Michael D. Powers, Esq.
Legal Counsel to the Board

Board Member William Johnson read the proposed Advisory Ruling. Board Member Johnson then explained that he drafted the proposed Advisory Ruling because of a lawsuit that was reported out of Texas in which an auto body shop was found liable by a jury in a multi-million dollar verdict based on the auto body shop's failure to repair a motor vehicle pursuant to the manufacturer's recommended repair procedures.

Board Member Johnson asserted that the federal National Highway Traffic Safety Administration requires that manufacturers recommended repair procedures should be followed when the repair involves the structure of a motor vehicle. They interpret the repair of structures of a motor vehicle to be a safety issue. Board Member Johnson read from the regulation, The National Highway Traffic Safety Administration (NHTSA) Title 49 of the United States Code, Chapter 301, §30122.

Board Member Johnson declared, the NHTSA requires safe repairs of structural parts and we can argue about repairing different parts of damaged motor vehicles but when it comes to the structural parts of motor vehicles we should not argue over the manner of repair because the repair affects the safe operation of the motor vehicle.

Board Member Starbard responded by stating, his concern about the proposed Advisory Ruling was that the roof of a motor vehicle is not included within the definition of a structural part and pointed out that a quarter panel of a motor vehicle is not considered a structural part either, but manufacturers have recommended repair procedures for these parts too.

Board Member Johnson replied, he had no argument about those matters, but that his proposed Advisory Ruling was intended as a starting point.

¹ This requirement is also contained in the Automobile Insurers Bureau of Massachusetts 2016 Massachusetts Automobile Insurance Policy, Part-7 (Collision) and Part-8 (Comprehensive).

Board Member Coyne declared, the Board is bound by the language in the current regulation and questioned why the Board would change this language. Board Member Coyne challenged whether the Board had the legal authority to issue the proposed Advisory Ruling and suggested that before the Board proceed any further that the Board should have the proposed Advisory Ruling reviewed by the General Counsel of the Division of Insurance.

Peter D'Agostino, lobbyist of the Alliance of Automotive Service Suppliers of Massachusetts, was given permission to speak, and opined that a court has ruled that the failure to follow a manufacturer's recommended repair procedures for these types of parts is a violation of repair procedures. Mr. D'Agostino observed, manufacturers only set their procedures for safety reasons and the Advisory Ruling only involves an interpretation of the Board's regulation.

Board Member Johnson agreed stating, we are tasked with complying with a safety issue and the Board should be proactive not reactive. Board Member Johnson suggested that the Board table the matter and discussions should be held with interested parties in the insurance industry and, thereupon, made a motion to table the item.

Board Member Coyne opined that the manufacturers recommended repair procedures are taken into consideration by appraisers and made a motion to send the proposed Advisory Ruling to the General Counsel for the Division of Insurance to review. There was no second to the motion submitted by Mr. Coyne.

Board Member Starbard seconded the motion made by Board Member Johnson. Board Member Starbard asserted the item should be placed on the agenda for the next Board meeting. The Chairman called for a vote on the motion to table and the motion passed by a vote of: 3-2 with Board Members Coyne and Pare voting against.

Board Member Coyne then made a motion that the proposed Advisory Ruling be forwarded to the General Counsel for the Division of Insurance for review and the motion was seconded by Board Member Pare. Chairman Cox called for a vote and the motion failed by a vote of: 2-3 with Board Member Johnson opposed, Board Member Starbard opposed, and Chairman Cox opposed.

Board Member Starbard suggested that the Board hold discussions about the exact language of the proposed Advisory Ruling that the Board could agree upon, and after the Board agrees upon the precise language, the Board could send the final version of the proposed Advisory Ruling to the General Counsel for the Division of Insurance to review.

New Business:

Board Executive Secretary Steve Zavackis informed the Board that a representative from Amica Mutual Insurance Company was present for the meeting with a request that the Board waive the requirement that three of its motor vehicle damage appraisers, licensed in other states, attend an ADALB approved course for motor damage appraisers required for taking the tests for motor vehicle damage appraiser license. Based on the three Amica appraisers' background, training, and experience as licensed appraisers, Amica's representative asserted these appraisers qualified to sit for the Part-I and Part-II examinations without need to attend the required appraisal course.

The representative of Amica provided the Board with a copy of each appraiser's background on letters dated November 27, 2017. The three Amica Mutual Insurance Company appraisers' names are the following:

Robert R. Chase, Jr.
James J. Daly
Mark G. Dailey

Board Member Joseph Coyne made a motion to waive the course requirement for Mr. Robert R. Chase, Jr. and the motion was seconded by Board Member Johnson, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Board Member Joseph Coyne made a motion to waive the course requirement for Mr. James J. Daly and the motion was seconded by Board Member Johnson, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Board Member Joseph Coyne made a motion to waive the course requirement for Mr. Mark G. Dailey and the motion was seconded by Board Member Johnson, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Next scheduled meeting:

Chairman Cox asked for a date for the next Board meeting. The Board determined that the next regularly scheduled Board meeting would be held on January 17, 2018 at 9:30 AM at 1000 Washington Street, Boston, Massachusetts.

Motion to Enter Executive Session:

Chairman Cox announced that the Board was about to enter an executive session, would not return to the public session, and would adjourn in the executive session. Chairman Cox then read the following statement:

The Board is about to enter the Executive session to review and discuss the background of applicants for motor vehicle damage appraiser test who have disclosed a criminal conviction on the application. The Board would also meet to review and discuss Complaints 2017-6, 2017-11, 2017-12, 2017-13, 2017-14, 2017-15, 2017-16, 2017-17, 2017-18, 2017-19, 2017-20, 2017-21, 2017-22, 2017-23, 2017-24, 2017-25, 2017-26, 2017-27, 2017-28, and 2017-29 filed against motor vehicle damage appraisers 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, and *Auto Damage Appraisers Licensing Board Matter*, OML 2016-6.

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:

- i. 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.

Chairman Cox concluded the statement by announcing, the licensed appraisers’ attorneys have requested the matters be heard in the executive session.

Chairman Cox called for a motion to enter into the executive session which included adjourning in the executive session and Board Member Johnson made the motion and the motion was seconded by Board Member Coyne. Chairman Cox then called for a roll-call vote on the motion, and the motion passed by a roll-call vote of: 4-0 with each Board Member answering “yes” as each name was called by Chairman Cox and Chairman Cox announced that he abstained.

Executive Session:

The first matter heard by the Board during the executive session was an applicant for the test for motor vehicle damage appraiser license who had indicated on his application that he had been convicted of a felony.

The applicant appeared before the Board and informed the Board that he went through some difficult times over twenty years before when he was convicted of the crime, since that time he changed his behavior, he was gainfully employed, was looking to improve himself by becoming a licensed appraiser, and answered each and every single question asked by Members of the Board.

Board Member Coyne made a motion to allow the applicant to take the examinations and the motion was seconded by Board Member Starbard, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

A second applicant appeared before the Board who admitted that he was convicted of a felony offense several years before. He informed the Board that he reformed his ways and was living a clean life. The applicant answered all the questions asked by Members of the Board.

Board Member Pare made a motion to allow the applicant to take the examinations and the motion was seconded by Board Member Johnson, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Complaint 2017-12:

The licensed appraiser the complaint was filed against is a Member of the Board and he recused himself from the Board meeting. The licensed appraiser's representative filed a written response to the complaint which was reviewed by the Board. After reviewing the complaint and the written response to it, the Board determined that the licensed appraiser was never assigned by the insurance company to appraise the motor vehicle which was the subject matter of the complaint. Board Member Johnson made a motion to dismiss the complaint and Board Member Pare seconded the motion, the motion passed by a vote of: 3-0 with Chairman Cox abstaining and the Board Member not present during this portion of the meeting.

Complaint 2017-21:

The Board reviewed the allegations made in the complaint. The licensed appraiser is a member of the ADALB and recused himself from participating during the Board's review of the complaint filed against him, he left the executive session of the Board meeting before the Board reviewed the complaint and was not present for the review.

The Board conducted a review of the allegations contained in the complaint and the written response to it submitted on behalf of the licensed appraiser. During the course of the review the Board determined that the licensed appraiser was not assigned by the insurance company to conduct the supplementary appraisal complained about in the complaint. In fact, the Board determined that the licensed appraiser properly performed his duties and responsibilities as a licensed motor vehicle damage appraiser in accordance with M.G.L. c. 26, §8G and 212 CMR 2.04(h), which reads in relevant part:

(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 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 three business days of the receipt of such request....**

(Emphasis added).

Because the licensed appraiser was not assigned by the insurance company to conduct a supplementary appraisal of the damage to the motor vehicle referenced in the complaint, he could not have possibly violated the regulation. Indeed, based on the records reviewed by the Board, on August 17, 2017, the complainant sent an email requesting that the licensed appraiser conduct a supplementary appraisal of the damage motor vehicle and the licensed appraiser rapidly and diligently responded on the very same day by informing the complainant that he was not given the assignment by the insurance company and advised the complainant to contact the insurance company directly.

An email attached to the complaint filed by the complainant against the licensed appraiser corroborated the licensed appraiser's version of events and irrefutably established that the complainant proceeded in the manner that the licensed appraiser advised and, thereafter, was in direct contact with an authorized agent of the insurance company requesting a supplementary appraisal by them.

At the conclusion of the review, the Board voted unanimously to dismiss the complaint filed against the licensed appraiser.

Complaint 2017-6:

Attorney John R. Callahan and the licensed appraiser appeared before the Board. Attorney Callahan, an expert in Massachusetts insurance laws, presented a succinct summary of the facts and law to the Board. During the course of the executive session the licensed appraiser answered each and every question asked by Members of the Board. Board Members queried whether the disputed appraisal reached a final settlement which resolved the costs for repairing all of the damage to the motor vehicle, and the appraiser informed the Board that it did: a full and final payment was made to the auto body company for repairing the damage to the motor vehicle.

At the conclusion of Attorney Callahan's summation of the facts and the applicable legal standards, the Board voted: 3-0 to dismiss the complaint filed against the licensed appraiser. Board Member Johnson was recused from hearing the matter because he previously participated in an attempted mediation between the licensed appraiser and the complainant pursuant to the ADALB's Complaint Procedures, which required him to be recused from any further action pending before the Board that involved the complaint.

Complaint 2017-11:

A written response to the complaint on behalf of the licensed appraiser was filed with the Board with a request that the Board waive the appearance of the licensed appraiser and review the written response to the allegations made in the complaint at the Board meeting.

The Board reviewed the allegations made in the complaint and the licensed appraiser's response to them. The Board determined that the licensed appraiser performed his duties and responsibilities as a licensed motor vehicle damage appraiser by timely submitting a supplementary appraisal to the Occidental/Wilshire insurance company. Apparently, after he submitted the supplementary appraisal, the Occidental/Wilshire insurance company was purchased by Access General Insurance Adjusters, Inc. and that company did not honor the payment due under the supplementary appraisal to the complainant. The Board voted to dismiss

the complaint by a vote of: 4-0, with Chairman Cox abstaining, and directed Board Legal Counsel Michael D. Powers to send a letter to Access General Adjusters, Inc. (Access General) notifying them of the action taken by the Board and informing Access General of the duty of appraisers employed by them to comply with the Board's enabling act and regulation.

Complaint 2017-13:

The complainant and licensed appraiser reported to the Board that the complaint was resolved to the satisfaction of the parties and that the complaint was withdrawn.

Complaint 2017-15:

The licensed appeared before the Board with Attorney John R. Callahan, a renowned authority on motor vehicle damage appraisal laws and other subject matters, who informed the Board that the motor vehicle that was the subject matter of the complaint was appraised by a licensed appraiser employed by the insurance company and, thereafter, the complainant was given the choice of different locations to conduct the supplementary appraisal and the complainant refused. Attorney Callahan also informed the Board that the licensed appraiser is employed as a Director of the Material Damage Department for the insurance company, oversees a large staff, does not conduct appraisals of damage to motor vehicles, and in fact did not conduct the appraisal in the instant case. When questioned by the Board, the licensed appraiser confirmed Attorney Callahan's assertions.

At the conclusion of the case, Attorney Callahan adeptly summarized the facts and law, and he requested the Board dismiss the complaint. The Board voted: 4-0 to dismiss the complaint with Chairman Cox abstaining.

Complaint 2017-17:

During the review by the Board the licensed appraiser was represented by Attorney John R. Callahan who adroitly presented the facts and legal arguments in support of dismissing the complaint. Attorney Callahan asserted, *inter alia*, that the complaint that was filed against the licensed appraiser was groundless, and based on the undisputed facts a violation of the ADALB's regulation could not be established. Attorney Callahan informed the Board that, the licensed appraiser **was not assigned to conduct an appraisal** of the damaged motor vehicle which was the subject matter of the complaint, and the licensed appraiser confirmed Attorney Callahan's statement when questioned by the Board. Attorney Callahan concluded the licensed appraiser could not possibly have violated the ADALB's regulation 212 CMR 2.04(h) which provides in relevant part:

(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 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 three business days of the receipt of such request....**

(Emphasis added).

Because a violation of the ADALB's regulation could not be established, (the licensed appraiser was never **assigned as the appraiser to appraise the damage to the motor vehicle**) the Board voted to dismiss the complaint by a vote of: 4-0 with Chairman Cox abstaining.

Complaint 2017-18A, B, and C:

Attorney John R. Callahan represented the licensed appraiser during the review of the complaints. Members of the Board asked the licensed appraiser several questions and he answered each and every one of the questions asked to their satisfaction. At the conclusion of the review, Attorney Callahan provided an eloquent summary of the salient facts, the applicable law, and requested the Board dismiss the complaints. Each complaint was dismissed by the Board by a vote of 4-0, with Chairman Cox abstaining.

Complaint 2017-29:

During the review the licensed appraiser was represented by distinguished insurance law expert and well known insurance author Attorney Owen Gallagher who provided an overview to the Board of the salient facts and law. Members of the Board asked several questions of the licensed appraiser, and he answered each and every question to the Board's satisfaction. The licensed appraiser's responses to the questions established that he properly and diligently performed his duties and responsibilities as a licensed motor vehicle damage appraiser when he appraised the damage to the motor vehicle which is the subject of the complaint. In relevant part 212 CMR 2.04 provides:

(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....

During the course of writing the appraisal the licensed appraiser properly determined that a portion of the damage to the motor vehicle was unrelated to the reported accident and dutifully noted such in his appraisal of the vehicle. Members of the Board reviewed photographs of the damage that was part of the appraisal and, unanimously agreed indeed with the licensed appraiser's determination that the damage he noted was in fact unrelated to the reported accident.

At the conclusion of the Board's review, Attorney Gallagher provided an excellent summary of the facts and law and requested that the Board dismiss the complaint. The Board voted to dismiss the complaint by a vote of: 4-0 with Chairman Cox abstaining.

Complaint 2017-22:

A representative of the appraiser's company appeared before the Board and informed the Board that the matter involved a straight appraisal of the damaged motor vehicle at the consumer's home and the damaged motor vehicle was located in the driveway. After the appraisal was completed, the licensed appraiser informed the consumer that the motor vehicle could not be driven and the car must be towed to an auto body shop for repairs. Based upon these undisputed facts the Board determined that the licensed appraiser complied with the ADALB's enabling act M.G.L. c. 26, §8G and the Board's regulation 212 CMR 2.00 et seq., and voted to dismiss the complaint by a vote of: 4-0, with Chairman Cox abstaining.

Motion to adjourn:

Board Member Coyne made a motion to adjourn which was seconded by Board Member Johnson, and the motion passed by a vote of: 4-0, with Chairman Cox 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).

List of Documents provided at the Board meeting:

- 1. Letters from Property Casualty Insurers dated December 1, 2017.**
- 2. Letter from the Massachusetts Insurance Federation dated November 29, 2017.**
- 3. Letter from the Automobile Insurers Bureau dated November 27, 2017.**
- 4. Letter from Dwight Seaman dated October 30, 2017.**
- 5. Letter from the Office of the Attorney General dated September 28, 2017, with complaint attached.**
- 6. Letters dated November 27, 2017, from Amica Mutual Insurance Company appraisers: Charles R. Chase, Jr., James J. Daly, and Mark G. Dailey.**
- 7. Letter from, Taft Appraisal Services, Inc. written by Office Manager Amanda Warren dated November 28, 2017.**