



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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GILBERT W. COX JR.
CHAIRMAN

CARL GARCIA
DAVID KRUPA, CPCU
JOSEPH COYNE
THOMAS MCCLEMENTS

Minutes of Meeting of the Board on December 3, 2014, Approved by the Board on February 24, 2015; Motion of Board Member Joseph Coyne, Second by Board Member Carl Garcia passed by a Vote of: 4-0, Chairman Cox abstained.

December 3, 2014 Minutes of Board Meeting
**Automobile Damage Appraiser Licensing Board Meeting Held at
Division of Insurance, 1000 Washington Street, Boston, Massachusetts**

Members Present:

Gilbert Cox, Chairman
Carl Garcia
David Krupa, CPCU
Joseph Coyne
Thomas McClements

Attending to the Board:

Michael D. Powers, Counsel to the Board
Steven Zavackis for the Division of Insurance, assigned to the Office of the General Counsel, took the minutes of the Board meeting.

Proceedings recorded by:

Jillian Zwien of the Alliance of Automotive Service Providers of Massachusetts (Audio/Video).

Review of minutes:

Review of the minutes from the meeting held on September 23, 2014 was conducted by the Board.

After a brief discussion among the members of the Board about the contents of the minutes, a motion was made by Board Member Joseph Coyne, seconded by Board Member Carl Garcia to approve the minutes of the Board Meeting held on September 23, 2014. The motion passed by a vote of: 4-0. Chairman Cox abstained.

Report on the Part-II examination for motor vehicle damage appraiser license held on November 4, 2014.

Board Member Carl Garcia reported that the examination was very well attended with 48 people taking the examination. Approximately 36 people passed and 12 people failed the examination. Mr. Garcia reported that the next examination would take place on January 13, 2015.

Discussion of amending the ADALB's regulation, 212 CMR 2.00 et seq.

Discussion of amending the ADALB's regulation, 212 CMR 2.00 et seq. and posting of Special Public Meeting of the Board in February of 2015 to obtain input from interested parties and those who may be affected by any amendments to the Board's regulation.

Board Member Joseph Coyne pointed out that with the recent election of Charles Baker as Governor of the Commonwealth of Massachusetts and the resignation of Commissioner Joseph G. Murphy from his position, it may be prudent to postpone the Special Public Meeting of the Board until after the next Commissioner of the Division of Insurance is appointed by Governor Baker. Board Member Coyne stated that as a matter of courtesy to the incoming Commissioner of Insurance it would be better that the new Commissioner be given an opportunity to be apprised of the Board's deliberations and future plans before the Board takes any action. Board Member Coyne requested that Board Counsel Michael D. Powers provide the Board with an update as to the appointment of a successor Commissioner of Insurance.

Michael D. Powers, Legal Counsel to the Board, informed the Board that Commissioner Murphy had submitted his resignation effective December 10, 2014, to join an insurance company as an executive, and there was no indication as to whom Governor Baker would appoint as the succeeding Commissioner. Mr. Powers offered to arrange for a meeting with the members of the ADALB after Governor Baker appoints a successor Commissioner, so that the Board can meet with and apprise the new Commissioner of the Division of Insurance of the Board's activities and future plans for amending its regulation. There appeared to be a consensus of the Board to meet with the successor Commissioner of Insurance before undertaking any affirmative measures to amend the Board's regulation.

Complaint 2014-4.

Mr. Peter D'Agostino, a lobbyist for the Alliance of Automotive Service Providers of Massachusetts, requested to speak to the Board about its procedures for reviewing complaints filed against licensed auto damage appraisers. He questioned the manner in which the Board considered complaints, which have been filed against licensed appraisers, in their executive sessions. Mr. D'Agostino questioned the manner in which the Board could make a determination to dismiss a complaint during its deliberations in executive session without the licensed auto damage appraiser being present during the deliberations.

Michael D. Powers, Legal Counsel to the Board, informed Mr. D'Agostino that the procedure used by the Board to review questions raised about the character and reputation of applicants for an auto damage appraiser license are the subject matter for an executive session.

This also applies to complaints that have been brought against licensed auto damage appraisers during the preliminary review stage of complaints. Mr. Powers informed Mr. D'Agostino that during the preliminary review of a complaint to determine whether it satisfies the fundamental legal elements for a complaint as required under the Board's regulation and statute (e.g. prima

facie case to begin an enforcement action against a licensed auto damage appraiser), often times during the review various members of the Board have disclosed that they are aware of an individual's character, background, and reputation. Because these types of discussions often arise spontaneously, and independent of reviewing the fundamental elements of a complaint that has been filed with the Board, pre-notice to a licensed auto damage appraiser is impracticable. The executive session allows for honest, frank, and meaningful discussions among the members of the Board. These types of discussions and subject matters are some of the very reasons the law provides for executive sessions of a public board.

Date for Next Meeting:

That part of the Board meeting having concluded, thereupon, the Board Members agreed to set the date of the next meeting for January 27 at 9:30AM.

Chairman Cox announced that he would entertain a Roll-call vote to enter the executive session and to discuss the reputation and character of an applicant for a motor vehicle damage appraiser license and a series of complaints filed against licensed motor vehicle damage appraisers. Board Member McClements made a motion for the Board to enter the executive session and Board Member Coyne seconded the motion. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Executive Session:

Mr. Zavackis informed the Board that an applicant seeking a motor vehicle appraiser license indicated on his application that he had been convicted of a criminal felony offense and would like the opportunity to be heard by the Board. The Board allowed the person to appear before the executive session and questioned him about the circumstances of the conviction and his employment history.

At the conclusion of the discussion, the Board approved the applicant's request to take the Part-II examination for auto damage appraiser license. A motion to allow the applicant to take the Part-II examination for auto damage appraiser license was made by Board Member Garcia, seconded by Chairman Cox. The motion was passed by a vote of: 3-1, Board Member Coyne opposed and Chairman Cox abstained.

I. Complaints filed against licensees:

Complaints filed on behalf of Commerce Insurance Company Dated July 22, 2014:

- a) Complaint 2014-5;
- b) Complaint 2014-6;
- c) Complaint 2014-7;
- d) Complaint 2014-8.

The Board received a letter from counsel for the Commerce Insurance Company notifying the Board that it was withdrawing the above-referenced complaints. A motion was made by Board Member David Krupa accepting the withdrawal of these complaints against the named licensed

appraisers, seconded by Board Member Coyne. The motion passed by a vote of 3-1, Board Member McClements voting against and Board Member Garcia abstained from the vote or the deliberations on the matter.

Complaint 2014-15 was reviewed by the Board. The Board's members discussed the complaint and determined that the complainant failed to provide sufficient factual information to establish a violation of the Board's regulation 212 CMR 2.00 et seq. A motion was made by Board Member Garcia to dismiss the complaint, and the motion was seconded by Board Member Joseph Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Complaints filed by the Alliance of Automotive Service Providers dated July 28, 2014:

- e) Complaint 2014-9;
- f) Complaint 2014-10;
- g) Complaint 2014-11;
- h) Complaint 2014-12;
- i) Complaint 2014-13.

The Board was provided with correspondence from Geico Insurance Company (Geico) sent to Robert A. Whitney, Deputy Commissioner and General Counsel for the Division of Insurance, providing additional details regarding the role of Geico employees who are licensed motor vehicle damage appraisers who perform appraisals at auto body repair shops that are part of Geico's ARX program.

The Legal Counsel to the Board, Michael D. Powers, informed the Board that representatives of Geico responded to the issue about assigning motor vehicle damage appraisers to auto body shops on a full-time basis to conduct appraisals of damaged motor vehicles as alleged in the above-referenced complaints. In the letter dated September 22, 2014, which was sent to the Mr. Whitney, Geico elaborated on the manner in which its licensed auto damage appraisers conducted appraisals and asserted that its employees are not operating, "a Drive-in Appraisal Service for an insurer' within the meaning of 212 CMR 2.02(7)."

A motion was made by Board Member Krupa to:

Send a letter to Geico's representative accepting Geico's letter as satisfying the requirements of 212 CMR 2.00 et seq., and requesting that Geico communicate to the appraisers named in the complaints about the agreement between Geico and the Division of Insurance. Also, notifying Geico that at this time the Board is still considering the complaints and requesting Geico confirm that it has notified the named appraisers of the agreement to bring the matter to a conclusion at the next Board meeting.

Board Member Coyne seconded the motion and the motion passed by a vote of: 3-0, with Board Member Garcia abstaining from the deliberations and vote, and Chairman Cox abstained.

Adjournment:

A motion to adjourn the meeting was made by Board Member Coyne, a second was provided by Board Member Krupa and the motion carried by a vote of: 4-0. Board Member Garcia was not present for the vote to adjourn the meeting of the Board, having exited during the executive session. Whereupon, the Board's business was concluded.

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