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THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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MICHAEL DONOVAN, CHAIRMAN
WILLIAM E. JOHNSON
PETER SMITH
CARL GARCIA
VICKY WEI YE

Minutes of the Meeting of the Board held on December 5, 2023, and approved at the Board Meeting held on January 23, 2024; Motion of Board Member Peter Smith, Seconded by Board Member Carl Garcia with Chairman Michael Donovan Abstaining. The Motion Passed by a Vote of: 4-0.

Minutes of the Board Meeting held on December 5, 2023

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on December 5, 2023, at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Donovan
William Johnson
Peter Smith
Carl Garcia
Vicky Ye

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 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 (AASP).

Also in attendance were representatives from auto body shops and auto insurance companies. Lucky Papageorg, AASP/MA Executive Director, Dana Snowdale, AASP/MA Treasurer, and Mike Pacheco, the owner of Mike's Auto Body in Fall River and the host of the very popular "Everything Auto" aired on WSAR 1480AM and 95.9FM Mondays from 2-3PM, which is filling the void left by "Car Talk." Michael Mullarkey and an associate from Arbella Insurance, Felix Spinazzola from Travelers Insurance, Jim Steere from The Hanover Insurance Company, David Borba of Allstate Insurance. Former Legal Counsel of the Division of Insurance and the Auto Damage Appraiser Licensing Board Mr. Victor Fanikos was also in attendance.

Approval of the Board minutes for the Board meeting held on October 23, 2023:

Chairman Donovan called for a motion to approve the Board minutes of the Board meeting held on October 23, 2023, Board Member William Johnson made the motion to approve, and Board Member Carl Garcia seconded the motion. The motion passed by a Vote of: 4-0, with Board Members William Johnson, Peter Smith, Carl Garcia, and Vicky Ye voting in favor and Chairman Donovan abstaining.

Report by Board Member Peter Smith on the Part-II examination for motor vehicle damage appraiser:

Chairman Donovan requested Board Member Peter Smith provide an update as to the Part-II examination for motor vehicle damage appraiser license and Board Member Smith reported that the exam was scheduled for December 16, 2023, at the Progressive Insurance campus in Westwood. Board Member Smith stated that he expected a good group, with 45 applicants on the list and he anticipated that 50 people would take the examination. Board Member Smith lauded new Board Member Carl Garcia for his prior assistance on the previous examination and stated that Mr. Garcia will collaborate with Mr. Smith in overseeing the upcoming examination along with the other generous volunteers from the auto insurance industry.

Status on Board's review of proposed amendments to the ADALB's Regulation, 212 CMR 2.00 et seq:

Legal Counsel to the Board Michael D. Powers reported he had inquired on the status of the process to amend the Board's Regulation with the General Counsel for the Division of Insurance, Christopher M. Joyce, who responded that the Board should conduct a review by the newly constituted Board (Carl Garcia and Vicky Yee were appointed in August and September 2023 by Governor Haley replacing Board Members Richard Starbard and Samantha Tracy) and propose amendments for final review by the Office of Administration and Finance. Legal Counsel Powers observed, because of the extensive review conducted by the prior Board, the review by the newly appointed Board Members should be less extensive and, therefore, expedited. Mr. Powers stated that the prior Board's proposed amendments will be placed on the agenda for the next meeting and that the proposed amendments will be provided to the two new Board Members Mr. Garcia and Ms. Ye with copies of the minutes of the previous discussions that were held during the prior review.

Next Board meeting date:

Chairman Donovan invited the Board Members to propose dates for the next meeting and Board Member Ye proposed a date of January 23, 2024, the consensus was to hold the next meeting on January 23 at 10AM at 1000 Washington Street, Boston.

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

Board Member Johnson stated that at the previous Board meeting the Board voted to revoke the license of an appraiser (Justin Forkuo) based on findings made by a superior court judge in a court case (the findings were for fraud, misrepresentation, and deceit, the vote was 3-2 with Chairman Donovan and Board Members Smith and Ye in favor and Board Members Johnson and Garcia

voting against). In Mr. Johnson's opinion, the decision of the court was not based on Mr. Forkuo's duties as an "appraiser", there was no actual appraisal conducted by the appraiser which generated the monetary charges found to be excessive by the court (Associate Superior Court Justice A. Gavin Reardon found that Mr. Forkuo deceitfully made misrepresentations and fraudulently demanded and received from the plaintiff Preferred Mutual Insurance Company, among other things, \$9,250 for repair and custody of the damaged motor vehicle, when he was only entitled to \$1,050). Board Member Johnson insisted the Board take action against the licensed appraiser who testified in the case (as an expert witness) in favor of the plaintiff. Board Member Johnson identified the license appraiser as Mr. Paul McKeen and stated that Mr. McKeen did not conduct a personal inspection of the damaged motor vehicle that the defendant Justin Forkuo was found by the court to have overcharged the plaintiff. Mr. Johnson concluded that, because Mr. McKeen did not conduct a personal inspection of the damage to the vehicle, he violated the ADALB's Regulation. Mr. Garcia stated he wanted to see a copy of the appraisal. Chairman Donovan questioned whether the defendant challenged the appraisal during the court process. Mr. Johnson stated that it didn't matter and made a motion to contact Paul McKeen from Viking Auto Appraisal and ask him to explain why he wrote a total loss appraisal from photos and Mr. Garcia seconded the motion. Chairman Donovan asked Mr. Johnson to restate his motion and Board Member Johnson responded, the motion is to send a letter to Mr. Paul McKeen asking him, according to the court records, why he wrote an appraisal from photos to total a vehicle. Board Member Jonson asserted that Mr. McKeen provided a written appraisal of the damaged Honda and provided an opinion that it was a total loss after reviewing the photos. Mr. Johnson concluded that Mr. McKeen has been an appraiser since 1970 and he had a problem with it. Board Member Smith pointed out that Mr. McKeen testified as an expert witness and did not conduct an appraisal for purposes of negotiation. Chairman Donovan conducted a roll call vote, and the motion failed by a Vote of 3-2 with Chairman Donovan and Board Members Smith and Ye voting no. Board Members Johnson and Garcia voted yes.

Mr. Papageorg asked permission to speak to the Board and Chairman Donovan granted permission. Mr. Papageorg asked about the status of a case where an appraiser applied for a renewal, with false information as described by a consumer some months ago. Chairman Donovan requested Board Counsel Powers to respond to Mr. Papageorg. Mr. Powers stated that when Mr. Papageorg came before the Board with the original complaint it was stated that the local police department and the Assistant District Attorney were involved in the matter. At that time, the Board asked Mr. Papageorg to report back to them with the results of any investigation or criminal action taken. Mr. Papageorg disputed the request to report back about the criminal matter, and he claimed to have no knowledge of what transpired in that matter. Mr. Powers asked that Mr. Papageorg report back to the Board as to what happened in the criminal investigation and that a judgement from a court would make it easier for the Board to make a decision on the appraiser. A further discussion was conducted between Board Counsel Powers and Mr. Papageorg that did not assist the Board in any way.

Board Member Smith asked to be recognized stating that the matter is something for the Board's executive session and recommended that the Board did not discuss the matter further in the public session. Chairman Donovan asked Mr. Papageorg whether he had any additional information from the local police or the individual involved. Mr. Papageorg stated he did not. Chairman Donovan pointed out that the primary issue was the criminal investigation, not what

action the Board would take. Legal Counsel Powers concluded that the matter was in the Board's executive session and by law could not be discussed in the public session of the Board.

Review of Complaint 2023-2 through 85. The review was conducted on the written complaints that were submitted by the complainant to determine whether the Board would move to the next step in the Board's Complaint Procedures and the licensed appraisers complained against would not be named during the Board's discussion about the complaints. The complaints were filed by the same licensed appraiser who also owns an auto body shop, most of the complaints were brought against 2 insurance companies and their authorized appraisers. The same complainant filed over 100 complaints which were reviewed and dismissed by the Board during the previous 12 months. The review by the Board was 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 reviewed and discussed whether the complaints should be dismissed or whether the complaints proceeded to the next step of the ADALB's Complaint Procedures:

Chairman Donovan announced the item on the agenda and Board Member Smith asked to be recognized and stated that he reviewed all of the complaints, Complaints 2023-2 through 2023-85, and asked to make two motions. Mr. Garcia questioned Mr. Smith's assertion that all of the complaints could be heard based on one motion. Chairman Donovan pointed out that there was no motion made and asked whether the complaints were all made by the same person. Board Member Smith answered that they were indeed and elaborated that they seemed to be retaliatory in nature, because over 70 complaints involved the same respondent. Mr. Garcia inquired as to Mr. Smith's reason to support his belief that the complaints were retaliatory, and Board Member Smith informed Board Member Garcia that the 84 complaints were made by the same person who filed over 100 complaints the previous year. Board Member Smith made a motion to dismiss complaints 2023-2 through 85 except for complaint 2023-9. Chairman Donovan asked for a second, Board Member Ye seconded the motion, and Chairman Donovan asked for a discussion on the motion.

Board Member Garcia asserted that, the substance of the complaints is the failure of insurance carriers to pay for repairs to the motor vehicles identified in the complaints and this in turn causes consumers to be charged back for what is known to be the responsibility of the insurance carrier, this is an abuse of the people in the industry by insurance carriers. Mr. Garcia stated the real issues which needs to be discussed is the timeliness of paperwork causing extended replacement car rentals. Board Member Ye stated that her insurance agency does not hear about such issues. Mr. Garcia described the standard delays in paperwork that he was confronted with, explaining such conduct had a knock-on effect of delaying the repair process, and observed that Enterprise car rental will tell you every rental is 30 days plus right now. Mr. Garcia concluded by stating 24 hours, with some appraisers, we're lucky to get it in 30 days. Chairman Donovan suggested that several of the complaints revolve around the cost of scanning. Board Member Smith stated that these scans were being completed with equipment not in keeping with the manufacturer's requirement, that their scanning tool should be used to scan the vehicle. Mr. Garcia agreed and stated these needed to be discussed. Chairman Donovan observed, the Board just went through that exercise with the earlier 100 plus complaints from this same complainant,

and he did not see the need to do that a second time. Board Member Ye stated that the complaints appeared to be a copy & paste job, which was a minimal effort by the complainant. Mr. Garcia agreed that there could have been a better method used in preparing these complaints, and the number of them should have been limited. Chairman Donovan stated the Board went through this process a year ago and he did not want to duplicate it, stating there were very few of the 100 plus complaints which were found to need further attention. Chairman Donovan recognized Board Member Smith, who stated that Board Members Garcia and Johnson's discussions are over-reaching the motion he made and reminded Chairman Donovan that his motion was on the floor. Mr. Garcia responded that the motion seeks to lump all of the complaints together which, in his opinion, did not serve the process. Mr. Smith responded that his motion was to simply dismiss the complaints specified, just as had been done in the past. Chairman Donovan clarified the motion stating the vote will dismiss all of the 83 complaints except for 2023-9. Chairman Donovan called for a roll call vote and Board Members Smith, Ye, and Chairman Donovan voted yes, Board Members Garcia, and Johnson voted no. The motion to dismiss Complaints 2023-2 through 2023-85 was passed by a Vote of: 3-2.

Prior to the vote, Board Member Johnson asked for clarification whether there were any insurance companies involved in the complaints whereby Mr., Smith or Ms. Ye would need to recuse themselves, stating he was unable to review the complaints before the Board meeting so he did not have personal knowledge whether the two Board Members would have direct involvement. Board Member Smith stated that none of the complaints involved the company he was employed with and, as on every case in the past, he would not have participated if one did and he did not need Mr. Johnson to remind him about his duty to avoid a conflict of interest. Board Member Johnson stated he wanted the question asked and answered, on the record and not to suggest Mr. Smith might have an ulterior motive. Legal Counsel Powers asked Mr. Smith if he obtained an Advisory Ruling from the Massachusetts Ethics Commission and Board Member Smith responded that he did indeed have an Advisory Opinion from the Massachusetts State Ethics Commission. Board Member Ye asserted that she does not work for any insurance company so didn't see any conflict of interest. Board Member Johnson stated that he did not work for insurance companies, that he worked for consumers. Board Member Ye stated that the insurance companies were not her customers and that the consumers were her customers, she was first and foremost concerned about providing the best service to her customers who are consumers.

Mr. Johnson stated that payments made directly from insurance carriers to his businesses are made through a direction to pay and it is a courtesy that he offers to his customers. Mr. Smith stated that because Mr. Johnson continues to raise these ethics issues about conflict-of-interest that the matter should be referred to Attorney Powers to seek an Advisory Ruling from the State Ethics Commission for the Board Members on what matters they can be involved in and which ones they can't and Mr. Garcia agreed. Mr. Powers asked Mr. Johnson for clarity on his body shop's dealings with insurance carriers on behalf of his customers. Mr. Johnson responded that he did not work for any insurance companies. Mr. Powers asked if he got checks directly paid to him from insurance companies and Mr. Johnson responded only as a courtesy for his consumers. Legal Counsel Powers asked Board Member Johnson who were the parties he negotiated an appraisal with, and Mr. Johnson responded the licensed appraisers from insurance companies. Mr. Powers summarized, you are negotiating with insurance companies, and they are paying you

based on that negotiation, and asked if that was correct. Board Member Johnson responded he received payments from insurance companies as a courtesy to consumers through a direction to pay him and stated that he did not work for insurance companies. Legal Counsel Powers pointed out that because he raised these conflict-of-interest issues and a request will be made to the State Ethics Commission, he needed to ask these types of questions to get a clear picture for the Massachusetts State Ethics Commission to review and he concluded stating that he would draft a request for each Board Member's review including Board Members Garcia and Ye. Chairman Donovan stated that he did not see the difference between what Ms. Ye did and what the auto body shops did and asked Mr. Johnson, why would she have a conflict of interest when you believe you do not. Legal Counsel Powers pointed out that we'll let the State Ethic Commission answer those questions. Chairman Donovan agreed that the Ethics Commission would hear and decide the Board's inquiry.

Chairman asked for a motion to adjourn, Mr. Johnson reminded the Chairman that there was still the matter of 2023-9 to be brought up. Board Member Garcia began a discussion on the complaint, stating the accusation is that it took 23 days to receive the paperwork. Board Member Smith suggested that there was no supporting documentation, and pointed out there was a call for a supplement beyond the statement from the complainant. Board Member Smith asserted that there is a copy of the appraisal, when it was sent out, that the date of the written appraisal means nothing, and has no bearing on when a supplement was requested or how it was requested. Board Member Smith stated that the Board relies on the complainant to spell out each violation with exact information and supporting documents to make their case and allow the Board to decide; the Board does not have investigators or staff to follow up seeking the documents or additional information. Board Member Johnson informed the Board that the complainant is seeking the Board to remind the carrier that there is a timeline they are mandated to follow. Mr. Johnson made a motion that the Board send out an Advisory Ruling reminding appraisers of the timelines for the paperwork and Mr. Garcia seconded the motion. Chairman Donovan called for a vote on the motion, Board Members Johnson, Garcia, and Chairman Donovan voted yes, Board Member Ye abstained, and Board Member Smith voted no. The motion passed by a Vote of 3-1. Mr. Powers reminded Chairman Donovan that it isn't a letter to be sent out, but an Advisory Ruling which will entail writing a draft of the Ruling to be reviewed by and voted on by the Board at a future meeting. Mr. Powers suggested that Mr. Johnson draft the Advisory Ruling and Mr. Johnson agreed.

Board Member Johnson reminded the Chairman that 2023-9 was not resolved. Board Member Garcia suggested the matter be tabled until a vote could be taken on the Advisory Ruling. It was agreed to table the matter until the next meeting.

Motion to Adjourn:

Chairman Donovan called for a motion to adjourn, and Board Member Garcia made the motion to adjourn, the motion was seconded by Board Member Smith, Chairman Donovan called for a roll call vote, and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Whereupon the Board's business was concluded.

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