



## THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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### **Minutes of Meeting of the Board on September 23, 2014, Approved the Board on December 3, 2014 Motion of Board Member Joseph Coyne Second by Board Member Carl Garcia by a Vote of: 4-0, Chairman Cox abstained.**

September 23, 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 August 6, 2014, was conducted by the Board.

A motion was made by Board Member Joseph Coyne, seconded by Board Member David Krupa to approve the minutes of the Board Meeting held on August 6, 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 August 26, 2014.**

Board Member Carl Garcia reported that the examination was very well attended with 42 people taking the examination. Approximately 23 people passed and 17 people failed the examination. Mr. Garcia reported that the next examination would take place on November 4, 2014, with another test scheduled for 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 to obtain input from interested parties and those who may be affected by any amendments to the Board's regulation. The proposed areas of amendment were presented as the following:

1. Potentially amending 212 CMR 2.04(1)(d). The Board voted at the meeting held on August 6, 2014 to "Take Advisory Ruling 2014-1 and move the matter of the definition of personal inspection to a public hearing to consider a change in the Board's regulation." Advisory Ruling 2014-1 states, "The Auto Damage Appraiser Licensing Board has passed a motion agreeing that an appraisal conducted by a licensed appraiser via review of quality video or digital images with documentation meets the requirements of 212 CMR 2.04(1)(d) 'The appraiser shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making an appraisal...'"

212 CMR 2.04(1)(d) provides, "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."

M.G.L. c. 26, §8G provides in relevant part, "No appraiser shall complete an auto damage report unless he is duly licensed and unless it is on an approved form, and in a manner consistent with rules and regulations as shall be issued and amended from time to time by the board. Such forms shall be prenumbered and require an itemization of parts, labor and services necessary for repairs thereof, and shall be sworn to under the penalties of perjury and shall also include the appraiser's signature, license number, seal, fee charged and date the motor vehicle was examined."

2. Potentially amending 212 CMR 2.04 "Procedure for the Conduct of Appraisals and Intensified Appraisals." By increasing the current amount contained in the regulation from \$1,500 to \$4,000 or less for damage to a motor vehicle. 212 CMR 2.04 provides, "(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 either a staff or an independent appraiser to 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 \$1,500.00."

Related Regulatory Provision is 211 CMR 133.07: "Intensified Appraisals  
An insurer shall have licensed appraisers conduct intensified appraisals of at least 25% of all damaged motor vehicles for which the appraised cost of repair is less than \$4,000.00 and at least 75% of all damaged vehicles for which the appraised cost of repair is more than \$4,000.00 for Collision,

Limited Collision and Comprehensive claims. The appraiser shall determine whether the repairs were made in accordance with the initial appraisal and any supplements. The information compiled during the intensified appraisal shall be set forth on a form acceptable to the Auto Damage Appraiser Licensing Board and the Division of Insurance. A copy of an intensified appraisal shall be given to the insurer, and, upon request, to the person making the repairs or the claimant.

3. Potentially amending 212 CMR 2.04(h) which provides for a supplemental appraisal within **three business days** by changing it to **two business days** and making it consistent with 212 CMR 2.04(i) which provides for an expedited supplemental appraisal within **two business days**. 212 CMR 2.04(h) 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...”

212 CMR 2.04(i) provides in relevant part, “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 a licensed appraiser employed by the repair shop, together with such supporting information and documentation as may be agreed upon between the insurer and the repair shop. The insurer shall then be required to fax or electronically submit to the repair shop within two business days its decision as to whether it accepts the requested supplemental appraisal allowance. Within this same period, a licensed appraiser representing the insurer and a licensed appraiser representing the repair shop may attempt to agree upon any differences...”

Board Member McClements raised an issue about the Advisory Opinion issued by the Board relative to the “personal inspections” of damaged motor vehicles by licensed motor vehicle damage appraisers. He also brought up the use of aftermarket parts in the repair of damaged motor vehicles and whether the Board should consider changing that part of the regulation.

Board Member Krupa raised an issue about the “Conflict of Interest” provision that was contained in the Board’s regulation and whether it was time to consider keeping it in place. Mr. Krupa expressed the opinion that this was an issue for a previous time and may not be applicable to current day business practices that have become commonly accepted throughout the auto damage repair business in Massachusetts. Several things have changed in the industry since this provision was originally made part of the regulation. The motor vehicle insurance industry in

Massachusetts has gone from a fixed and established regulated insurance market, to an open competitive market.

Board Member Carl Garcia asserted that for the time being he would abstain from any discussions of this specific issue.

Board Member Coyne opined that with all of the additional insurance companies coming into Massachusetts to offer motor vehicle insurance, the “Conflict of Interest” provision should be maintained in the regulation to protect consumers.

Board Member Krupa noted that many of the changes in the business of insurance for payment of claims to consumers for damaged motor vehicles have in fact benefitted consumers.

Member Coyne responded that if you take the “Conflict of Interest” provision out of the regulation, then it will lead to “steering” of business by insurance companies which will not benefit consumers.

Board Member Krupa responded that he did not have any strong beliefs about this issue one way or the other, and simply would like to hear from members of the public as to what their position is on this issue.

Mr. Coyne believes that motor vehicle damage appraisers deliver a great service to the general public, and because of appraisers insurance companies pay claims within 5 days of the appraisal of the claim.

David Krupa made a motion that the “Conflict of Interest” provision be placed on the agenda for the Board’s Special Public Meeting seconded by Chairman Cox. Board Member Coyne asserted that he was unalterably opposed. A vote was taken by the Board and was approved by a vote of 2-1, Board Members Krupa and McClements voting in favor, Board Member Coyne voting against with Board Member Carl Garcia and Chairman Cox abstaining.

The Board agreed to set a date for a Special Meeting of the Board on February 24, 2015, and to notify any interested parties and members of the general public to attend the special meeting to provide input with regards to topics and possible changes the public would like the Board to consider addressing in the next regulation review. All sections of the regulations are to be considered for revision, and all comments would be welcome including written comments.

#### **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 this complaint. 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 how the Board could make a determination to dismiss a complaint without first conducting a public hearing on the complaint.

Michael D. Powers, Legal Counsel to the Board, informed Mr. D’Agostino that the procedure used by the Board to determine whether the fundamental elements of the violation of 212 CMR 2.00 were contained in a complaint before proceeding to a public hearing against a licensed motor vehicle damage appraiser, was a common procedure found in other areas of law. Within a criminal context, when a person files an application for a criminal complaint accusing another

person, a Clerk Magistrate first determines whether each of the elements of a crime have been established. If each of the essential elements of a crime is not established in the application for the complaint, a Clerk Magistrate will not issue a complaint and the accused does not have to appear in Court for a criminal hearing or trial. Under this common standard, each and every element of crime must first be established before a criminal complaint will issue. Mr. Powers gave the example of the crime of criminal stalking. Under Massachusetts law the Supreme Court has established that there must be at least three separate dates upon which the victim was allegedly criminally stalked. If a person were to apply for a criminal complaint against an accused and asserts that the events only happened on two dates, a criminal complaint will not be issued against an accused person because the law requires three separate dates. A similar standard is found in civil procedure. For example, if a person files a lawsuit and is unable to set-out a prima facie case for the violation of a contract, the case can be dismissed short of trial or discovery. Under these circumstances defendants commonly file motions to dismiss the complaint. For instance, if a plaintiff is unable to establish in his complaint and pleadings all of the essential elements of a contract which generally are: an offer; acceptance; and consideration the case is dismissed without a trial or discovery under the Massachusetts Rules of Civil Procedure, Rule 12(b).

**Date for Next Meeting:**

Thereupon, the Board Members agreed to set the date of the next meeting for December 3, 2014 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: 5-0.

**Executive Session:**

Mr. Zavackis informed the Board that an applicant seeking a motor vehicle appraiser license had contacted the Division of Insurance to report that he had taken and passed the Part-I portion of the motor vehicle damage appraiser examination and took the Part-II portion of the examination and wanted his license. A check with the Division of Insurance's examination vendor Prometric, which administers the written test for the Part-I auto damage appraiser license examination, revealed the applicant had no record of passing the Part-I examination. In fact there records only indicated that the applicant had taken the written Part-I examination four times and failed the test each time. Based on this report by Mr. Zavackis, the Board determined that no action was necessary.

At the conclusion of the discussion, Board Member Garcia left the meeting and did not return to the meeting of the Board.

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;

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 Legal Counsel to the Board, Michael D. Powers, informed the Board that Geico Insurance Company representatives responded to the issue about assigning motor vehicle damage appraisers to auto body shops to conduct appraisals of damaged motor vehicles as alleged in the above-referenced complaints.

The General Counsel of the Division of Insurance, Robert Whitney, addressed the Board. The complaint filed by AASP was sent to Mr. Whitney and Mr. Whitney informed the Board that he had reviewed the complaints and reaffirmed that all of them questioned the Direct Payment Plan that had been submitted by Geico Insurance Company which had been approved by the Division of Insurance. He again informed the Board that the conduct of licensed motor vehicle damage appraisers was the sole issue for the Board's determination. He asserted that, whether or not the Board agreed with elements of Geico's Direct Payment Plan, the issue was one for the Commissioner of Insurance to review. With this background, Mr. Whitney then informed the Board that he had been in contact with Geico's representatives and they agreed that Geico would refrain from sending consumers to auto body shops **solely** for purposes of conducting appraisals of damage to motor vehicles. Nevertheless, Geico like all insurance companies doing business in Massachusetts had the ability to implement a Direct Payment Plan approved by the Commissioner of Insurance. Geico agreed to notify the Division of this procedure that comports with the Direct Payment Plan regulation. Mr. Whitney said that he would return and follow-up on this matter at the Board's next meeting.

A motion to table the discussion of the Complaints was made by Board Member Coyne and seconded by Board Member McClements. The motion carried by a vote of: 3-0. Chairman Cox abstained and Board Member Garcia was not present for this part of the discussion having exited the meeting before the discussion began because he recused himself from any involvement with these complaints as stated during the public session at the Board Meeting held on August 6, 2014.

**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).