



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 Meeting of the Board held on August 20, 2019, Approved by the Board at the September 24, 2019, Board Meeting; Motion of Board Member Richard Starbard and Seconded by Board Member William Johnson. The Motion Passed by a Vote of: 4-0 with Chairman Michael Donovan Abstaining

August 20, 2019, Minutes of Board Meeting
Held 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
Steven Zavackis, Executive Secretary

Proceedings recorded by:

Evangelos Papageorg, Executive Director of the Alliance of Auto Service Providers of Massachusetts (AASP), (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photo). James Steere, Hanover Insurance (Audio). Ryan Sarsfield, MAPFRE (Audio/Video).

Call to Order:

Chairman Michael Donovan called the meeting to order. The Board minutes for the April 30, 2019, and June 11, 2019, Board meetings were presented to the Board for their review and approval. Chairman Donovan called for a motion to approve the Board minutes, Board Member William Johnson made the motion to approve the Board minutes as submitted, and the motion was seconded by Board Member Richard Starbard. The motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Report by Board Member Peter Smith on the Part-II examination for motor vehicle damage appraiser held on August 14, 2019, at the Progressive Insurance Service Center in Westwood, Massachusetts:

Board Member Peter Smith reported that 51 people took the Part-II practical examination and 39 passed while 12 failed the examination. Board Member Smith thanked Eric Landry from Progressive Insurance Company, Sue Conena and Ryan Sarsfield of MAPFRE for assisting with the exam. Board Member Smith reported that the next scheduled Part-II examination would be held at the Progressive Service Center in Westwood, Massachusetts on November 6, 2019.

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 reported that he was assigned to review a draft of a proposed Advisory Ruling with Board Member Samantha Tracy but because of a conflict in their schedules was unable to meet, and he planned on meeting with her before the next Board Meeting.

Board Member Samantha Tracy replied that she intended to meet with Board Member Johnson before the next Board meeting to discuss a draft of the proposed Advisory Ruling.

A member of the audience Mr. Peter Langone, of Langonet Auto Body, asked permission to speak to the Board and permission was granted by Chairman Donovan. Mr. Langone asserted that the issue of drafting a proposed Advisory Opinion on the issue of an appraiser's right to seek an alternative vendor for a part that is listed on an appraisal and when the part is unavailable, has been discussed by the Board for nine months and needs a resolution.

Board Member Johnson responded that he would be working towards completing the proposed Advisory Ruling by the next meeting.

Date of next Board Meeting:

The Board agreed to schedule the next Board meeting on September 24, 2019, at 10:00AM, instead of 9:30AM because of the heavy traffic volume around Boston.

Motion to enter executive session:

Chairman Donovan announced that the Board would be entering the executive session, and he elaborated that the Board will adjourn in the executive session and would not re-convene in the public session. Chairman Donovan then announced that the Board would enter the executive session, to review Complaints filed against licensed motor vehicle damage appraisers and discuss the background of applicants for the motor vehicle damage appraiser test whom have disclosed a criminal conviction on the application.

The purposes of the executive session will review and discuss Complaints: 2019-02A, 2019-02B, 2019-03, 2019-05, 2019-08, 2019-09A, and 2019-09B 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, *Auto Damage Appraisers Licensing Board Matter*, OML 2016-6, and *Auto Damage Appraisers Licensing Board Matter*, OML 2019-50. 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.

The licensed appraisers' attorneys have requested the matters be heard in the executive session.

Chairman Donovan called for a motion to enter the executive session, the motion was made by Board Member Richard Starbard, was seconded by Board Member William Johnson, and a roll call vote was conducted by Chairman Donovan with each Board Member answering in the affirmative. The motion passed by a Vote of: 5-0.

Executive session:

Complaints 2019-02A and 2019-02B

Attorney Samantha Freedman, an expert in insurance laws and motor vehicle damage appraisal laws, represented both of the named licensed appraisers and requested permission to speak to the Board and Chairman Donovan granted permission. Attorney Freedman requested that both complaints be heard simultaneously because the appraisal involved the same consumer, the same damaged motor vehicle, and same fact pattern. The Board agreed to hear both complaints at the same time.

Attorney Freedman elaborated that the motor vehicle appraiser assigned the appraisal, by his insurance company, wrote all of the appraisals and negotiated all of the items with the auto body

shop and, therefore, the motor vehicle damage appraiser named in complaint 2019-02B should not be named and she requested that complaint dismissed on that basis.

Attorney Freedman informed the Board that the consumer who made the complaint was given the opportunity to have the work performed at one of the Direct Payment Plan shops authorized by the insurance company to perform auto body work, but chose to take the motor vehicle to his own shop. After the appraisal was negotiated and repairs were made, the consumer was dissatisfied with the repairs made at the auto body shop he selected and took the motor vehicle to another auto body shop. The insurance company agreed to pay \$500 for the additional repairs performed at the second auto body shop. The consumer continued to be dissatisfied and took the motor vehicle to a third auto body shop, more work was performed, and the insurance company paid \$1,650 for those additional repairs. The consumer took the motor vehicle to a fourth auto body shop and the insurance company agreed to pay for replacement tires.

The appraiser was questioned by Members of the Board and he answered all of the questions asked. The appraiser informed the Board, in addition to the damage that was caused by the initial accident that the consumer was involved with, and payments made by the insurance company for the damage caused as the result of that accident, the consumer was seeking payment to repair damage to the transmission of his motor vehicle that was unrelated to the accident.

At the conclusion of the questions and answers, Attorney Freedman summarized the facts and law and asserted to the Member of the Board that, the ineluctable conclusion that the Board should reach is the motor vehicle damage appraiser performed his duties and responsibilities in accordance with the enabling act and the Board's Regulation 212 CMR 2.00 et seq., and, therefore, the complaint should be dismissed. Attorney Freedman thanked the Board for giving her an opportunity to be heard on behalf of her clients and allowing her clients the chance to fully explain all of the facts and circumstances surrounding the complaint.

Chairman Donovan called for a motion, and a motion was made by Board Member Samantha Tracy to dismiss the complaints, the motion was seconded by Board Member Johnson, and the Board voted to dismiss the complaints by a vote of: 5-0.

Complaint 2019-03

Board Member Peter Smith declared that he would recuse himself because his insurance company was the insurer of the motor vehicle that was the subject matter of the appraisal.

Joseph Coyne, the owner of the highly regarded independent appraisal company that conducted the appraisal on behalf of the insurance company, appeared before the Board, requested permission to speak to the Board, and Chairman Donovan granted permission.

Mr. Coyne explained, the appraiser for the auto body shop was not present when the appraiser who is employed by his company, and named in the complaint, wrote the initial appraisal. The initial appraisal was agreed to by the auto body shop and after the appraisal was agreed upon a different appraiser employed by the auto body shop ordered repairs at a car dealership, which was not approved by Mr. Coyne's employee as part of the initial agreement between himself and the auto body shop's appraiser.

A motion to dismiss was made by Board Member Johnson and seconded by Board Member Samantha Tracy, the motion passed by a vote of: 4-0 with Board Member Smith not present.

Complaint 2015-05

Attorney John R. Callahan, a renowned attorney specializing in insurance law, appeared on behalf of the appraiser, requested permission to speak to the Board, and permission was granted by Chairman Donovan.

Attorney Callahan summarized the facts by relating that the insurance company appraiser met with the auto body shop's appraiser, they agreed to several items on the initial appraisal, and, thereafter, the auto body shop sent the damaged motor vehicle to a car dealership for repairs and the car dealership sent a bill for the work which was submitted to the insurance company. The insurance company's appraiser never agreed to any repairs being made by the car dealership. The appraiser was asked several questions by Members of the Board and he answered all the questions that were asked.

Attorney Callahan concluded, the only issue before the Board was whether the appraiser named in the complaint violated the Board's Regulation 212 CMR 2.00 et seq., which he did not do, and there was no evidence before the Board that established the appraiser negotiated the appraisal.

Board Member Johnson made a motion to dismiss the complaint and the motion was seconded by Board Member Tracy. The motion passed by a vote of: 3-1 with Board Member Starbard voting against and Board Member Smith not present.

Complaint 2015-08

The appraiser appeared and said that the insurance company paid for the damage and the auto body shop was totally paid for all repairs and costs.

Board Member Starbard requested a follow-up to the auto body shop to confirm whether the auto body shop was satisfied, with a report at the following Board meeting.

2019-09A and 2019-09B

The auto body shop owner and the appraiser named in the complaint appeared before the Board and the Members of the Board asked them several questions and they answered all of the questions that were asked.

The owner of the auto body shop summarized the facts by stating, an initial appraisal was conducted by an E-Pic and, thereafter, a desk appraisal review was conducted by the insurance company with an estimated \$658 in damage. When the motor vehicle was appraised but the auto body shop appraiser he discovered a total of \$3,800 in damage.

The auto body shop owner previously worked with the first appraiser assigned to appraise the damaged motor vehicle. The appraiser became difficult to work with and the auto body shop requested a different appraiser to appraise the damage to the motor vehicle. On the supplemental

appraisals the auto body shop worked with another appraiser from the insurance company, the work was completed on the damaged motor vehicle, and in fact the auto body shop performed an additional \$1,000 worth of repairs that were not paid by the insurance company.

Board Member Johnson made a motion to dismiss, the motion was seconded by Board Member Starbard, and the motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Motion to adjourn:

Chairman Donovan called for a motion to adjourn and the motion was made by Board Member Johnson and seconded by Board Member Tracy. The motion passed by a vote of: 5-0.

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