



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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MICHAEL DONOVAN
CHAIRMAN

RICHARD STARBARD
WILLIAM E. JOHNSON
SAMANTHA L. TRACY
PETER SMITH

Minutes of the Meeting of the Board held on January 17, 2023, and approved at the Board Meeting held on February 16, 2023; Motion of Board Member Richard Starbard and Seconded by Board Member William, the Motion Passed by a Vote of: 4-0, with Chairman Michael D. Donovan Abstaining.

January 17, 2023, Minutes of Board Meeting

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on Tuesday, January 17, 2023, 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

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.

For approval, the Board minutes for the Board meeting held on October 26, 2022:

Chairman Donovan called for a motion for approval of the Board minutes of the October 26, 2022, Board meeting. Board Member Richard Starbard made a motion to approve the Board minutes of the October 26, 2022, Board meeting, the motion was seconded by Board Member Peter Smith, and the motion passed by a vote of: 4-0, with Chairman Donovan abstaining.

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

Chairman Donovan asked for a report from Board Member Peter Smith about the Part-II examination.

Board Member Smith reported that the Part-II examination was held on December 10, 2022, at Progressive's Westwood campus and consisted of 39 participants. Of the 39, 36 passed the practical portion of the examination and 3 failed. Mr. Smith reported that the make-up of the group was comprised of mostly auto body shop employees with a few applicants employed by insurance companies. Mr. Smith thanked those assisting him in the process including Eric Dearborn of Progressive Insurance, the company hosting the examination and Sue Conena and Ed Jankowski of MAPFRE Insurance, Jim Steere of The Hanover Insurance Company and Board Member Richard Starbard. Mr. Smith concluded by stating that a date for the next examination was not set because he did not receive the count of the number of participants.

Chairman Donovan thanked Board Member Smith for his excellent work and those who assisted him in administering the Part-II examination.

Next meeting date:

The Board agreed to meet again on February 16, 2023, at 10:00AM in Boston.

Submitted by Board Member Richard Starbard for discussion, creating a working group of Members of the Board and other interested parties to review the approved course requirements for the instruction of applicants seeking to obtain a motor vehicle damage appraiser license and to make recommendations for such courses:

Chairman Donovan stated that Board Member Starbard has initiated the item and requested Mr. Starbard to provide an update to the Board. Mr. Starbard stated that he had a discussion with Mr. Steere of The Hanover Insurance Company during the December 10, 2022, Part-II practical portion of the motor vehicle damage appraiser examination. Mr. Starbard and Mr. Steere agreed that a presentation by a scanning and calibration vendor, AsTech would be beneficial and will be requested to make a presentation to a small group, about 25 people, potentially at a future Board Meeting to better understand the scanning and ADAS process and requirements. Mr. Starbard reminded the Board that there was a request at a prior Board meeting to have the Board meet in a Western Massachusetts location and that the vocational school used some years ago by the Board would fit the needs of both the presentation along with the regular Board meeting. Mr. Johnson stated that he no longer is a member of that town's school committee but believed he could work with those at the school to hold such a meeting. Mr. Steere suggested that The Hanover Insurance Company's facility may also be a suitable location. Mr. Starbard noted that Sue Conena, who also attended the Part-II examination said that she would be interested in becoming a member of the working group. Ms. Conena is also an instructor at one of the ADALB's approved 50-hour required motor vehicle damage appraiser courses. Mr. Starbard concluded by stating he would report back at the next meeting. Chairman Donovan asked for Board Member Peter Smith's input. Mr. Smith responded by stating it was a good idea.

Board Member Starbard asked Board Counsel Michael Powers whether a date was set for the annual review of the Board's written Part-I examination questions by the vendor Prometrics and Mr. Powers responded not yet. Mr. Starbard recalled he last attended the annual review with former Board Member Joseph Coyne and requested to be assigned as one of the two Board Members allowed to participate at the review. Mr. Powers stated that he would notify Prometrics, when they scheduled the annual review around May.

Continuing review of 100 complaints filed against motor vehicle damage appraisers licensed by the Auto Damage Appraiser Licensing Board brought by the same licensed appraiser who also owns an auto body shop, most of the complaints have been brought against 2 insurance companies and their authorized appraisers. 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 did not discuss the named appraisers or the named companies the complaints have been filed against. The Board reviewed the following Complaints: Complaint 2022 54, 56, 65, 67, 68, 70, 71, 72, 73, 74, 75, 78, 82, 93, 94, 98, 101, 107, 108, 115.

Complaint 2022-54:

Chairman Donovan introduced the agenda item by calling for a motion, Board Member Peter Smith confirmed that there should be no mention of the names of the parties involved, and Chairman Donovan confirmed that was the procedure utilized by the Board.

Board Member Starbard stated that the complaint involved the request by the shop for reimbursement of fees charged to rent frame clamps for a Chevrolet Silverado that was denied. The insurance company's appraiser stated that the Silverado is a common vehicle which does not require the use of clamps. Mr. Starbard asserted that it states clearly in the ADALB's Regulation that the rental fee is to be listed separately and is not a part of the shop's overhead. Mr. Johnson agreed and stated that there was a bulletin issued by the Board several years ago which specifically addresses clamp rental.

Board Member Johnson made a motion to move the complaint to the next step and Mr. Starbard seconded the motion. Chairman Donovan called for a vote and Board Member Peter Smith stated that he would recuse himself, because the complaint involves his company. Board Member Tracy stated that she was concerned that all these complaints stem from a breakdown in the professional relationship between these appraisers and the shop and that the Board is being placed in the middle. Board Members Tracy, Johnson, and Starbard voted yes, the motion passed by a Vote of: 3-0 with Board Member Smith abstaining and Chairman Donovan not voting because his vote would not have made or broke a tie.

Complaint 2022-56:

Mr. Starbard stated that the complaint involved the checking of a seatbelt. Mr. Johnson made a motion to dismiss the complaint and the motion was seconded by Board Member Starbard. Chairman Donovan called a roll call vote, Board Members Starbard and Johnson voted no and Board Members Tracy and Smith voted yes, Chairman Donovan voted to dismiss with a Vote of: 3-2 to dismiss.

Complaint 2022-65: Chairman Donovan called for a motion and Mr. Starbard noted the complaint involved the denial for single use hardware and Mr. Starbard made a motion to move the complaint to the next step and Board Member Johnson seconded the motion. Chairman Donovan called for a roll call vote and Board Members Johnson and Starbard voted yes, and Board Members Tracy and Smith voted no, the motion failed by a Vote of: 2-2, and the complaint was dismissed. Chairman Donovan not voting to make or break a tie.

Complaint 2022-67:

Chairman Donovan called for a motion and Mr. Starbard stated that the complaint involved a seatbelt check and pointed out the dangerousness of such a situation, Mr. Johnson made a motion to dismiss the complaint and Mr. Starbard seconded the motion. Chairman Donovan called for a roll call vote Board Members Starbard and Johnson voted no, Board Members Tracy and Smith voted yes. A procedural question was raised by Board Member Johnson and questioned whether the Chairman need to cast a vote dismiss the complaint and Mr. Powers advised a vote by the Chairman was needed to break the tie and depose of the issue. The Chairman voted yes, and the Vote was: 3-2 to dismiss, and the complaint was dismissed.

Complaint 2022-68:

Chairman Donovan called for a motion and Mr. Starbard stated the complaint involved payment for a seatbelt weight sensor calibration, and the appraiser denied the request for reimbursement. Mr. Johnson made a motion to move the complaint to the next step and Mr. Starbard seconded the motion. Chairman Donovan called for a roll call vote, Mr. Johnson and Mr. Starbard voted yes and Board Members Tracy voted no, Board Member Smith recused himself because the complaint was brought against the company he is employed by, and Chairman voted no. The motion failed by a Vote of: 2-2, and the complaint was dismissed.

Complaint 2022-70: Chairman Donovan called for a motion and Mr. Starbard stated that the complaint involved a seatbelt check and Board Member Johnson made a motion to dismiss the complaint and Mr. Starbard seconded the motion. Chairman Donovan called for a roll call vote, Board Members Johnson and Starbard voted no and Board Members Tracy and Smith voted yes. Chairman Donovan voted yes, and the motion passed by a Vote of: 3-2, and the complaint was dismissed.

Complaint 2022-71:

Mr. Starbard stated that the complaint involved a parts situation, the auto body shop proved the aftermarket parts were unfit, because the shop is following the manufacturer's guidelines, and not the applicable regulations. Mr. Johnson made a motion to dismiss the complaint and the motion was seconded by Mr. Starbard. Chairman Donovan called for a roll call vote Board Member Smith recused himself because the complaint was filed against his company. Board Members Tracy and Starbard voted yes, and Mr. Johnson voted no. The motion passed by a Vote of: 2-1, and the complaint was dismissed.

Complaint 2022-72:

Mr. Starbard stated that the complaint involved a vehicle sent to the dealership for sublet repair, but the appraiser would not allow a mark-up on the dealer invoice. Mr. Starbard made a motion

to move the complaint to the next step, and Mr. Johnson seconded the motion. Chairman Donovan called for a roll call vote, Board Members Starbard and Johnson voted yes and Board Member Tracy voting no with Board Member Smith recusing himself because the complaint was filed against Mr. Smith's company and Chairman Donovan voted no. The motion failed by a Vote of: 2-2, and the complaint was dismissed.

Complaint 2022-73:

Chairman Donovan called for a motion and Mr. Johnson described this complaint as one where the shop was not fully reimbursed for scans. Mr. Johnson made a motion to dismiss the complaint and Board Member Starbard seconded the motion. Chairman Donovan called for a roll call vote and Board Members Johnson and Starbard voted against their proposed motion by voting no, and Board Members Tracy and Smith voted yes, and Chairman Donovan voted yes to break the tie. The motion passed by a vote of 2-3. The complaint was dismissed.

Complaint 2022-74:

Chairman Donovan called for a motion and Mr. Starbard stated that this complaint involved the same vehicle as the prior complaint and was focused on the time to receive paperwork from the appraiser. Mr. Starbard made a motion to dismiss the complaint and Board Member Johnson seconded the motion. Chairman Donovan called for a roll call vote, Board Members Johnson and Starbard voted against their motion by voting no, Board Member Tracy voted yes, and Board Member Smith recused himself, because the complaint involved his company. Chairman Donovan voted yes. The motion failed by a Vote of: 2-2, the complaint remains on file with the Board.

Complaint 2022-75:

Chairman Donovan called for a motion and Mr. Starbard stated that the complaint is one where the appraiser held their paperwork for an extended period, sometimes for months, noting that this appraisal company was known for doing such a thing, interrupting the flow of the shops paperwork resulting in the shop paying penalties to the state for delaying sales tax payments. Mr. Starbard made a motion to dismiss the complaint and the motion was seconded by Mr. Johnson. Chairman Donovan called for a roll call vote and Board Members Johnson and Starbard voted no, Board Member Tracy voted yes, stating that nothing in the complaint substantiates the claim noting there is no information of when the appraiser was called for the supplement and Board Member Smith recused himself. Chairman Donovan voted yes, and the motion failed by a vote of: 2-2, and the complaint remains on file.

Complaint 2022-78:

Chairman Donovan called for a motion and Board Member Starbard described the complaint as one where the appraiser held the paperwork for three weeks and Mr. Starbard made a motion to dismiss the complaint. Mr. Johnson seconded the motion. Chairman Donovan called for a roll call vote, although Board Members Johnson and Starbard sponsored the motion they voted no, and Board Members Tracy and Smith voted yes and Chairman Donovan voted yes to break the tie and the motion passed by a Vote of: 3-2, and the complaint was dismissed.

Complaint 2022-82:

Chairman Donovan called for a motion and Mr. Johnson stated that the complaint was one where the shop was not fully reimbursed for scans. Mr. Johnson added that the appraiser did not negotiate and was unable to direct the shop where the scans could be completed at the price he listed and made a motion to dismiss the complaint and Mr. Starbard seconded the motion. Chairman Donovan called for a roll call vote, Board Members Johnson and Starbard voted against the motion they sponsored by voting no, Board Members Tracy and Smith voted yes, and Chairman Donovan voted yes. The motion passed by a Vote of: 3-2, and the complaint was dismissed.

Complaint 2022-93:

Chairman Donovan called for a motion and Mr. Johnson described the complaint as one where there was a delay in the timeline and made a motion to move the complaint forward and Mr. Starbard seconded the motion. Chairman Donovan called for a roll call vote and Board Members Johnson and Starbard voted yes, Board Members Tracy and Smith voted no, the motion failed by a Vote of: 2-2 and the complaint was dismissed.

Complaint 2022-94:

Chairman Donovan called for a motion and Mr. Starbard stated that the complaint was one where the appraiser did not record the paint and materials as described in the ADALB Regulation and just used a “flat fee” without documentation or how he arrived at that figure or what was included. Mr. Starbard made a motion to dismiss the complaint and Mr. Johnson seconded the motion. Chairman Donovan called for a roll call vote, Board Members Johnson and Starbard voted no, Board Members Tracy and Smith voted yes. The motion failed by a Vote of: 2-2, and the complaint was dismissed.

Complaint 2022-98:

Chairman Donovan called for a motion and Mr. Starbard stated that the complaint as one where the appraiser held their paperwork and the insurance company cut off the rental prior to the limits set forth in the policy without submitting their paperwork asked how is that fair? Board Member Starbard made a motion to move the complaint to the next step and Board Member Johnson seconded the motion. Chairman Donovan called for a roll call vote, with Board Members Johnson and Starbard voting yes, Board Members Tracy and Mr. Smith voted no. The motion failed by a Vote of: 2-2 and the complaint was dismissed.

Complaint 2022-101:

Chairman Donovan called for a motion and Mr. Johnson described the complaint as one where parts were found not to be suitable and there was no reimbursement to the shop for their handling of the parts and made a motion to dismiss the complaint and Mr. Starbard seconded the motion. Chairman Donovan called for a roll call vote and Board Members Johnson and Starbard voted against their motion by voting no, Board Members Tracy and Smith voted yes. The motion failed by a Vote of: 2-2 and the complaint remains on file.

Complaint 2022-107:

Chairman Donovan called for a motion and Mr. Starbard stated the statement from Subaru differs from the applicable regulation and noted that the aftermarket parts were not ordered and

proven to be insufficient and made a motion to dismiss the complaint and Board Member Tracy seconded the motion. Chairman Donovan called for a roll call vote Board Member Johnson voted no, Board Members Mr. Starbard, Tracy, and Smith voted yes. The motion passed by a Vote of: 3-1, and the complaint was dismissed.

Complaint 2022-108:

Chairman Donovan called for a motion and Board Member stated that the complaint was one where the appraiser did not negotiate the labor rate as described in the ADALB's Regulation and made a motion to move the complaint to the next step. Chairman Donovan called for a roll call vote and Board Members Johnson and Starbard voted yes, Board Members Tracy and Smith voted no. The motion failed by a Vote of: 2-2, and the complaint is dismissed.

Complaint 2022-115:

Chairman Donovan called for a motion and Mr. Starbard stated that the complaint was one where the aftermarket parts were not available, but the complaint did not reference that in the complaint. Board Member Tracy stated that the appraiser attempted to make a \$125.00 concession. Board Member Starbard made a motion to move the complaint to the next step and Board Member Johnson seconded the motion. Chairman Donovan called for a roll call vote and Board Members Johnson and Starbard voted yes, and Board Members Tracy and Smith voted no. The motion failed by a Vote of: 2-2, and the complaint was dismissed.

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

Chairman Donovan asked Mr. Powers for an update on the Special Commission on auto body shop labor rates Mr. Powers stated that there was no action taken by the Legislature on the recommendations put forth by the Commission. Chairman Donovan asked whether the Commission died once this last Legislative Session concluded unless it is reactivated by a new session. Mr. Powers stated that the Commission concluded its task on April 12th when it sent its recommendation forward.

Executive session:

Chairman Donovan asked Mr. Powers to read the agenda item in its entirety. Mr. Powers read the following from the agenda:

Executive session to review complaint 2019-11. Such discussion during the executive session is 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.

The licensed appraiser previously requested the matter be heard in the executive session.

Chairman Donovan called a roll call motion to vote to go into Executive Session. Mr. Starbard made the motion and Board Member Johnson seconded the motion which included the fact that the Board would adjourn in the Executive Session and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Executive Session:

The licensed appraiser was represented by the well known expert in auto body insurance law Attorney James Castleman who requested permission to speak with the Board and Chairman Donovan granted permission.

Attorney Castleman stated that the licensed appraiser had members of the Insurance Fraud Bureau appear at his business to discuss the repair work on the motor vehicle that is the subject matter of the complaint, which involved allegations that the insurance company paid for over \$7,000 in repairs which were later discovered to not have been made. After discussing the matter with the licensed appraiser, who also owned the auto body shop, the members of the Insurance Fraud Bureau informed the licensed appraiser that they did not find any violations of Massachusetts laws. Attorney Castleman submitted an affidavit from the licensed appraiser which in sum stated the salient facts that Attorney Castleman presented to the Board.

Attorney Castleman also pointed out that the consumer who owned the motor vehicle did not file the complaint, the complaint was filed by the insurance company and he requested that the Board dismiss the complaint.

Board Member Johnson made a motion to dismiss the complaint and the motion was seconded by Board Member Starbard, the motion passed by a Vote of: 3-1 with Board Members Tracy, Johnson, and Starbard voting in favor of dismissing the complaint and Board Member Smith voting against. The motion passed by a Vote of: 3-1, with Chairman Donovan abstaining because there was no need to make or break a tie.

Motion to Adjourn:

Chairman Donovan called for a motion to adjourn, Board Member Smith made the motion which was seconded by Board Member Starbard and the Board voted to adjourn with Board Members Smith, Starbard, Tracy, and Johnson voting in favor and 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)

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