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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 January 21, 2025 and approved at the Board Meeting held on March 25, 2025; Motion of Board Member Carl Garcia, Seconded by Board Member William Johnson with Chairman Michael Donovan Abstaining. The Motion Passed by a Vote of: 4-0, with Chairman Donovan Abstaining. By Vote of the Board on March 4, 2026, Amending the Minutes to Correct Typographical Errors by Changing in the Bolded Underlined Heading the Date March 25, 2005 to March 25, 2025, and Adding Additional Dispositions of Complaints 2024-25, 2026, and 2027 Listed Below.

Minutes of the Board Meeting held on January 21, 2025

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on January 21, 2025, at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Donovan
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 1:00PM with a roll call vote and four Board members responded present, except Board Member Peter Smith who notified the Chairman prior to the meeting that he would be arriving late for the meeting. There were two sets of Board minutes for adoption by the Board, the Board minutes of the meetings held on September 19, 2024, and October 22, 2024.

Approval of the Board minutes for the Board meeting held September 19, 2024 and October 22, 2024:

Chairman Donovan called for a motion to approve the minutes of the Board meeting of September 19, 2024, with Board Member William Johnson making the motion and Board Member Carl Garcia seconded. The motion passed by a Vote of: 3-0, with Chairman Donovan abstaining and Board Member Peter Smith not in attendance for the vote.

Chairman Donovan called for a vote to adopt the minutes of the Board meeting held on October 22, 2024, Board Member Carl Garcia made the motion to approve the minutes and Board Member Vicky Ye seconded the motion. The motion passed by a Vote of: 3-0 with Board Member Johnson abstaining, because he was unable to attend the October 22, 2024, meeting due to an unavoidable scheduling conflict.

Chairman Donovan asked that 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 Evangelous "Lucky" Papageorg of the Alliance of Automotive Service Providers of Massachusetts (AASP/MA).

In attendance were: Lucky Papageorg, AASP/MA Executive Director along with Don Dowling, owner of Marblehead Collision, Mr. James Steere of The Hanover Insurance Company, and Massachusetts Insurance Federation's Executive Director, Christopher Stark. Several other members of the auto body and insurance industry were in attendance.

Report by Board Members Carl Garcia and Peter Smith on the Part-II examination for motor vehicle damage appraiser:

Chairman Donovan requested Board Member Carl Garcia provide a report about the Part-II portion of the examination for motor vehicle damage appraiser license (practical portion of the two-part examination) that was held in December of 2024. Board Member Garcia reported that the Part-II examination was held at Progressive Insurance Company's Westwood facility. Board Member Garcia stated the examination was very well attended with 77 applicants passing the exam and 7 people failed. Board Member Garcia reported that although the test was well attended, he felt the failure rate should be a little lower.

Board Member William Johnson asked whether the applicants failing the exam were from the same insurance company or group and Jim Steere replied that he attended the Part-II exam, assisted with administering the exam, and he did not believe that the failures were from the same company or group. Lucky Papageorg, Executive Director AASP/MA, questioned whether there was a common thread that leads to such a high failure rate. Peter Smith arrived at the meeting, took his seat, and he answered the question. Board Member Smith stated that the applicants who failed the exam were having difficulty understanding the basic requirements of the appraisal process and should utilize some of the programs that are available to assist an applicant in obtaining knowledge of the subject matter, such as Mitchell has a program for teaching their estimating system.

Christ Stark, Executive Director of the Massachusetts Insurance Federation, asked how many people come back again to take the examination after they failed the test and take the test a second time. Board Member Johnson responded that the question that should be asked is, how many people remain employed in the industry after they pass the exam, there is one carrier who seems to switch people every 6 months. Lucky Papageorg observed that there was a correlation with people who took the exam and passed the exam and took the course on-line or in-person. Those taking the course material in-person have a better passing rate.

Discussion about the Auto Body Labor Rate Advisory Board created under Governor Healey’s “Mass Leads Act” Section 292 of Chapter 238 of the acts of 2024, which provides: SECTION 292:

Chairman Donovan requested Board Legal Counsel Michael D. Powers provide a report about the recently enacted law. Legal Counsel Powers reported that the Legislature enacted a new law at the end of 2024 as part of the Governor’s “Mass. Leads Act” and read the law:

There is hereby established an auto body labor rate advisory board to address any issues related to auto body labor rates. The advisory board shall consist of: 1 person appointed by the commissioner of insurance, who shall serve as co-chair; 1 person appointed by the attorney general, who shall serve as co-chair; 1 person appointed by the director of standards; 3 persons selected from the auto insurance industry by the Automobile Insurers Bureau of Massachusetts; 3 persons selected from the auto repair industry from different geographic regions of the commonwealth by the Alliance of Automotive Service Providers of Massachusetts, Inc.; 1 person selected by the Massachusetts State Automobile Dealers Association, Inc; 1 person selected by the Massachusetts Association of Insurance Agents, Inc.; and 3 persons to be appointed by the co-chairs, 1 of whom shall be from a consumer advocacy group, 1 of whom shall be from a group representing the business community and 1 of whom shall be an economist with expertise on the insurance industry.

The advisory board shall be responsible for creating, implementing and overseeing a survey given to relevant auto body shops. The advisory board shall collect industry data including, but not limited to: (i) labor rates in neighboring states; (ii) auto body shop costs; (iii) total labor costs; (iv) inflation data; (v) work force data; (vi) vocational-technical school trends; (vii) insurance premiums; and (viii) any additional information as requested by the advisory board. The results of the survey and the data collected shall be reviewed and analyzed by the advisory board.

Not later than December 31, 2025, the advisory board shall make recommendations to the division of insurance for a fair and equitable labor rate and file a report of its findings, conclusions and recommendations with the clerks of the senate and house of representatives, the joint committee on financial services, the senate and house committees on ways and means and the division of insurance.

Board Legal Counsel Powers stated that he was appointed as a Co-chair of the newly created Auto Body Labor Rate Advisory Board (Advisory Board) by the Commissioner of Insurance and was waiting to hear from the other appointees to the Board, starting with the other Co-chair who is appointed by the Attorney General. In the meantime, Legal Counsel Powers was developing a website for the Advisory Board with the assistance of staff from the Division of Insurance. Mr. Papageorg asked Legal Counsel Powers who is responsible for receiving notification about the appointments to the Advisory Board, AASP/MA can appoint 3 members to the Advisory Board, and Mr. Papageorg wanted to know who the notice should be sent to. Legal Counsel Powers responded that the question was a good one, because the new law did not address that issue and

suggested that Mr. Papageorg contact the sponsor of the legislation for an insight into that part of the process.

Board Member Johnson did not see the need for the Advisory Board, because the ADALB's Regulation 212 CMR 2.00 et seq. requires negotiation must occur between the appraisers and if an established auto body labor rate was recommended and adopted, that would directly conflict with the ADALB's Regulation. Board Member Johnson opined that an established auto body labor rate was not a good idea, because it would take away the auto body shop's ability to negotiate a higher rate than the established rate, and that may sound like a good idea for the first year or so but can become something that auto body repair shops get stuck with as the years progress. Board Member Carl Garcia agreed and said it reminded him when they changed the requirement for the completed work payment form, which opened the door to all kinds of abuses in the industry; his father warned about the elimination of the form creating abuse of the motor vehicle damage repair process when the idea was first suggested and his father proved to be right.

Update on status of proposed amendments to the ADALB's Regulation, 212 CMR 2.00 et seq. The newly constituted Board, with new Board Members Carl Garcia and Vicky Ye and Peter Smith (reappointed) appointed by Governor Maura Healey, will consider proposed amendments to the Board's Regulations 212 CMR 2.00 et seq. The process began by the Board reviewing the proposed amendments that were approved by the previously constituted Board that concluded at the Board meeting held on July 19, 2022:

Chairman Donovan requested an update on the progress of the proposed amendments from the Members of the Board. Peter Smith submitted a proposed amendment to the Conflict of Interest section in 212 CMR 2.00 et seq. The proposed amendment is stated in the following underlined language:

b) Pursuant to 212 CMR 2.01(2), 212 CMR 2.00 is promulgated under the authority granted by the legislature to the Auto Damage Appraiser Licensing Board by M.G.L. c. 26, § 8G, as added by St. 1981, c. 775, § 1. M.G.L. c. 26 § 8G states in relevant part, "There shall be in the division of insurance an auto damage appraiser licensing board, hereinafter called the board, consisting of four persons to be appointed by the governor, two of whom shall be affiliated with the auto body repair industry, and two of whom shall be affiliated with insurance companies writing casualty insurance within the commonwealth, and one person to be appointed by the commissioner of insurance who shall not be affiliated with either the auto body industry or the insurance industry and who shall be the chairman of the board..." **By mandating that 4 out of the 5 board members be affiliated with the auto body industry and automobile insurance industry and the 5th member not being so affiliated, the legislature acknowledged that there was an inherent conflict of interest in such a legally constituted board: that the 4 affiliated board members would represent the interests of their respective industries. Therefore, board members shall be able to participate and vote on matters that could involve the industry they are affiliated with so long as they or their immediate family members do not have a direct financial interest in the outcome of the matter. However, if a board member finds they or an immediate family member have a prohibited financial interest in a particular matter that comes before them as a board member (for example, a dispute directly**

concerning the company a board member is employed by or has an ownership interest in) that board member must abstain from that matter. See Massachusetts State Ethics Commission decision EC-COI-94-1.

(8) Revocation or Suspension of a License. The Board, after due notice and hearing, shall revoke any appraiser's license issued by it and cancel the registration of any person who either pleads guilty to or is convicted of a fraudulent appraisal as a result of a court judgement. In accordance with M.G.L. c. 26, § 8G, said license shall not be reinstated or renewed nor shall said person be relicensed. The Board may ~~revoke or~~ suspend any appraiser's license at any time for a period not exceeding one year if the Board finds, after a hearing, that the individual is either not competent or not trustworthy or has committed fraud, deceit, gross negligence, misconduct, or conflict of interest in the preparation of any appraisal **motor vehicle damage report**. The following acts or practices by any appraiser are among those that may be considered as grounds for revocation or suspension of an appraiser's license:

...

(h) conducting an audio recording without the consent of the person or party being recorded.

~~(h) failure to comply with 212 CMR 2.00.~~

Board Member Carl Garcia pointed out that there were inconsistent terms “prohibited” and “direct financial interest” Legal Counsel Powers agreed and suggested that to be consistent the same term should be used. Board Member Peter Smith said that he would amend the language and use one term to be consistent.

Board Member Johnson asked about the proposal of new subsection (h) needed to be amended to reflect Massachusetts Law whereby Massachusetts Law allows one to audio or video tape when the premises are publicly posted notifying consumers that the premises are being audio and/or videotaped.

Peter Smith stated that he amended the existing subsection “(h)” because he felt that was obvious. Board Member Johnson asserted that the language should remain in the Regulation. Board Member Smith responded that it was obvious that an appraiser can be disciplined for violating the Regulation and felt it did not need to be in there. Board Member Johnson disagreed and said he felt it should remain because you should place appraisers on notice that they can be disciplined for any violation of the Board’s Regulation.

Board Member Smith asserted that at the next Board meeting the Board would be reviewing the “Conflict of Interest” language contained in the Board’s Regulation and Board Member Carl Garcia suggested that there would be some substantive changes to that section. Board Legal Counsel Michael D. Powers agreed and stated that it would be prudent to revise the definition to include an expanded definition defining what the Board believed would constitute a Conflict of Interest among its members. Chairman Donovan opined that it might be prudent to contact the Massachusetts State Ethics Commission and request their input. Legal Counsel Powers felt that the better way to proceed would be for the Board defining its understanding, while applying the law, and thereafter the Board could request a review from the State Ethics Commission. Legal

Counsel Powers asserted that, a principle of legal review followed by the courts is that courts will generally defer to an agency's interpretation of matters within the scope of an agency's authority.

Board Member Peter Smith said he had the proposed amendments and would give them to Mr. Johnson and he would look at the proposed amendments, discuss them with Mr. Johnson, and they would submit a new proposed amendment

Next meeting date:

The consensus of the Board was that the next meeting would be held at 1000 Washington Street, Boston on March 25, 2025.

Review of Complaints:

Complaint 2024-22. Board Member Johnson read an advisory ruling from 1995 about steering a customer to or away from an auto body repair shop. Board Member Johnson made a motion that the complaint move to the next step in the process and Board Member Carl Garcia seconded the motion and the motion passed by a Vote of: 4-0 with Chairman Donovan abstaining.

Complaint 2024-23

Board Member Johnson said that there was one item in the appraisal that was changed without prior negotiation. Legal Counsel Powers pointed out that the item was for pre and post repair scans and the auto body shop was in fact paid for the pre-repair scan and post repair scans in the amount of \$140 per scan, just not the amount the repair shop demanded from the insurance company, the auto body shop balanced billed the customer, and the customer was forced to pay the difference, therefore, the auto body shop was paid the entire amount it demanded to conduct the pre-repair scan of \$140 and the post repair scan for another \$140 or \$280 for the scans, and the total paid to repair the motor vehicle was \$9,544.91. The entire appraisal was negotiated and the fellow filing the complaint was paid the entire amount for the item he is complaining about. Based on these facts, Legal Counsel Powers failed to see the grounds for a complaint under the Board's enabling act, M.G.L. c 26, Section 8G.

Board Member Johnson asserted that the fact the appraiser refused to provide a counter offer for the pre and post repair scans was a violation of the Regulation and Board Member Garcia agreed. Chairman Donovan called for a motion and Board Member Johnson made a motion to move the complaint to the next step, Board Member Garcia seconded the motion and Chairman Donovan called for a vote, the motion failed by a vote of: 2-3 with Board Members Johnson and Garcia voting in favor and Board Members Smith and Ye against and Chairman Donovan voted against to break the tie and the complaint was dismissed.

Complaint 2024-24

Board Member Johnson stated that the appraiser did not comply with the Board's Regulation and made a motion to move the complaint to the next step, Board Member Garcia seconded the motion and Chairman Donovan called for a vote, the motion passed by a Vote of: 4-0 with Chairman Donovan abstaining.

Complaint 2024-25

Board Member Johnson stated, based on Legal Counsel Powers statements about Complaint 2024-23, that the shop was made whole by being paid everything the auto body shop owner demanded from the insurance company and consumer, there would be no violation found in the complaint under review and requested Legal Counsel Powers' opinion of the complaint. Legal Counsel Powers asked Board Member Johnson to identify the procedures or parts in question that were *not* paid for *at all* by the insurance company versus those which may have been paid partially, but at a different number of labor hours or a different dollar amount than was demanded by the owner of the auto body shop. Board Member Johnson responded to Legal Counsel Powers that it was difficult to determine. Board Member Garcia noted he needed a closer review of the appraisals and payments demanded by the auto body shop owner and paid by the auto insurance carrier. Board Member Garcia suggested the Board table the item and the item was tabled by consensus of the Board members without an official vote taken.

Complaint 2024-26

The application for a complaint was filed by the same auto body shop owner who filed over 200 complaints with the Board since 2022, including Complaint 2024-23. Board Member Garcia described the complaint as one where the auto body repair shop owner was requesting refinish time based on findings determined by the "CCC Intelligent Solutions" company's auto damage appraisal program. The amount of the appraisal was \$5,366 and the auto body shop owner wrote that he was entitled to payment for more labor hours to paint the damaged motor vehicle than the number of hours that were allowed by the insurance company's appraiser. Board Member Johnson concluded that there was a violation of the Board's regulation as there was no negotiation. Chairman Donovan reminded Board Member Johnson that if a request is made by one party and the other party responds to that request with a "no", that is, in fact, a negotiation. Board Member Garcia stated that the customer can/should be charged the difference between the money paid by the insurance company and whatever the auto body repair shop charges for labor, the customer/consumer should be balanced billed the difference and Board Member Johnson fully agreed. Board Member Ye stated the matter is one not for the Board but for arbitration by the motor vehicle owner with their insurance company under the arbitration provision that a consumer can bring when an insurance company and the owner of the car, who is a Massachusetts auto insurance policy holder, have a dispute over the cost to repair a damaged motor vehicle as provided for in the Massachusetts Standard Private Passenger Motor Vehicle Insurance Policy [2106 Version, General Provisions and Exclusions, Section 11 "[S]ometimes there may be a disagreement as to the amount of money we owe for losses or damage to an auto. If so, Massachusetts law sets forth a method of settling the disagreement. Either you or we can, within 60 days after you file your proof of loss, demand in writing that appraisers be selected. The appraisers must then follow a procedure set by law to establish the amount of damage. Their decision will be binding on you and us. You and we must share the cost of the appraisal."]. Board Member Smith agreed and said the auto body shop charges the customer and the customer has the right to take it up with their automobile insurance company through the Standard Massachusetts Insurance Policy's arbitration provision. The dispute for payment from an insurance company is between the owner of the motor vehicle and their insurance company, an auto body shop owner is not a party to the insurance policy. Notwithstanding that fundamental fact of insurance, Board Member Johnson made a motion to move the complaint to the next step and Board Member Garcia seconded the motion. Chairman Donovan called for a roll call vote

and Board Members Johnson and Garcia voted yes, and Board Members Smith and Ye voted no, the Vote was: 2-2, with Chairman Donovan abstaining, the motion failed on a tie vote and based on long standing practice of the Board, the complaint was dismissed.

Complaint 2024-27 The application for complaint was filed by the same auto body shop owner who filed over 200 complaints with the Board starting in 2022. The appraisal was for \$6,644.60 and the application for complaint was filed over the amount the auto body shop owner demanded for a sixty second computer pre-scan of the damaged motor vehicle of \$140, a sixty second computer post scan of \$140, and an interim computer scan of \$70. The auto body shop owner balanced billed the customer for the difference between what the insurance company paid the auto body shop owner and the amount the auto body shop demands for the computer scans. The auto body shop owner wrote in the application for complaint “The customer was forced to pay the additional cost the insurance company would not allow.” [the auto body shop owner is the one who forced the customer to pay the additional amount, because Massachusetts law allows an auto body shop owner to lien an automobile for unpaid cost to repair a damaged motor vehicle]. Board Member Smith stated that the auto body shop owner involved with these computer scans, was paid by the insurance company on an hourly rate versus his claim for a sublet charge, resulting in a different dollar amount. Chairman Donovan confirmed this was another scan issue filed by the same auto body shop owner who filed dozens of such complaints since 2022, continues to file these complaints over money demanded for payment of computer scans from insurance companies, despite the fact the Board repeatedly dismisses them, because they are not a subject for a complaint against a licensed appraiser. Board Member Johnson justified the complaint as a failure to pay the higher amount of money for a sublet of the scans. Board Member Smith made a motion to dismiss the complaint, Board Member Ye seconded the motion, and Chairman Donovan called for a vote on the motion. Board Members Johnson and Garcia voted no, and Board Members Smith and Ye voted yes. The Vote was: 2-2, with Chairman Donovan abstaining, and a tie vote resulted in the application for a complaint being dismissed.

Motion to enter the Executive Session:

Board Counsel Powers read the Executive Session agenda item in its entirety and at the conclusion of reading the item, Board Member Garcia made a motion to enter the executive which included adjourning in the executive session. Chairman Donovan requested a discussion on the motion, and Mr. Papageorg asked whether the Board would give some description of the people involved with the complaint. Board Member Smith suggested it would be inappropriate to any of the parties involved to divulge any aspect of the complaint, because the licensed appraiser requested review in the executive session. Board Member Garcia suggested one could have deduced the information from the discussion held among the members of the Board. Chairman Donovan called for a roll call vote and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Board Counsel Powers read the Massachusetts law for entering an Executive Session in and stated such a review was allowed under the following provision of the law:

Review of complaint in the executive session filed against a licensed appraiser. 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 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.

Complaint 2024-2:

The Board reviewed the complaint, the response filed to it, and after discussion a motion was made by Board Member Peter Smith to dismiss the complaint, the motion was seconded by Board Member Garcia and the complaint was dismissed by a Vote of: 4-0 with Chairman Donovan abstaining.

Motion to Adjourn:

Chairman Donovan called for a motion to adjourn, and Board Member Smith made the motion to adjourn, the motion was seconded by Board Member Garcia, 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).