



# THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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CHAIRMAN

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

**Minutes of the Meeting of the Board held on March 15, 2022 and approved at the Board Meeting held on May 17, 2022; Motion of Board Member William Johnson, Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 4-0, with Chairman Michael D. Donovan Abstaining.**

March 15, 2022, Minutes of Board Meeting

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on Tuesday, March 15, 2022, at 1000 Washington Street, Boston, Massachusetts via teleconference.

**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 11:00AM. The Chairman took a roll call of the Board members on the phone call. Each of the Board Members declared present.

Chairman Donovan then 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, Chasidy Rae Sisk of Greco Publishing, and "Lucky" Papageorg of the Alliance of Automotive Service Providers of Massachusetts.

**For approval, the Board minutes for the Board meeting held on January 26, 2022,**

Chairman Donovan called for a motion for approval of the Board minutes of the January 26, 2022, Board meeting. Board Member Richard Starbard made a motion to approve the Board minutes of the January 26, 2022, Board meeting, the motion was seconded by Board Member William Johnson, 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 requested Board Member Peter Smith to provide an update on the Part-II examination. Board Member Smith responded by stating that the last Part-II examination was held on February 26, 2022, with 66 attendees, 61 passed and 5 failed. Mr. Smith noted that there were 7 no-shows. Mr. Smith acknowledged the great assistance provided by the host for the event, Mr. Eric Landry of Progressive Insurance Company as well as Jim Steere of The Hanover Insurance Company, and thanked Sue Conena, Anna Mardirossian, Ed Jankowski of Commerce/MAPFRE Insurance Company for their assistance in conducting and scoring the exams. Board Member Smith stated that, the next Part-II examination would take place on May 21, 2022. Board Member Smith stated that Bob Hunter of the Division of Insurance Producer Licensing Section informed him that there were about 10 to 12 people in the queue with more expected by the time the exam would be held.

**Request of formerly licensed motor vehicle damage appraiser Scott Santucci to reinstate his license upon the payment of all outstanding license fees and fines:**

Chairman Donovan requested a discussion by the Board Members on the item. Board Member Richard Starbard asked how many years since Mr. Santucci's license had lapsed. Board Legal Counsel Michael Powers responded that the license may have lapsed in the year 2008. Mr. Starbard responded that it was a long time since the fellow was licensed and it may be too long to allow reinstatement. Chairman Donovan suggested that Mr. Santucci should retake the examinations. Board Member Starbard agreed and asked what Mr. Santucci has been doing during the period of time that his license lapsed. Board Member Smith asked to be recognized and stated that the letter accompanying the agenda item suggested Mr. Santucci was initially licensed in 1980 and worked for a dealership, his position changed, he allowed the license to lapse, changed his position in 2018, and currently needs the license in his daily work. Mr. Starbard asked whether there were examinations held for motor vehicle damage appraiser licenses in 1980. Mr. Johnson suggested that there may have been about 100 questions on just a written test, stating he took such a test for his license in 1979 and that was the process then.

Board Member Smith noted that at the end of Mr. Santucci's letter that he wrote to the Board, it states that his license lapsed on June 30, 2006. Board Member Mr. Johnson suggested that the Board devise a rule for these lapsed licenses to be uniform in addressing such future requests. He suggested that in this case retaking the classes may not be necessary, the Board could waive that requirement along with the written examination requirement, and allow Mr. Santucci to take the May 21, 2022, exam to get a new license. Chairman Donovan asked whether Mr. Johnson wanted to make a motion to include his comments. Mr. Johnson stated that he didn't want to be punitive and suggested the Board waive the class courses, the written Part-I portion, and allow Mr. Santucci to take the next Part-II exam. Chairman Donovan asked Mr. Powers whether the Board could do such a procedure and Mr. Powers responded that the Board could. Mr. Johnson moved to have the Board waive the classes and Part-I Exam and allow Mr. Santucci to take the Part-II examination and Mr. Starbard seconded the motion. Board Member Smith asked that the motion be amended to state that the applicant should expect to fill out an application and pay the fees and Board Member Johnson agreed. Board Member Smith said that taking the test means, if he passes, he would be given a new license, not reinstate his old

license. Chairman Donovan stated that would be the motion as amended and the motion passed by a vote of: 4-0, with Chairman Donovan abstaining.

Board Member Johnson asked that, before the Board moves on to the next item could the Board decide on the amount of time a person can come to the Board seeking reinstatement of their lapsed license, suggesting 12 months, 18 months or 24 months and Board Member Starbard agreed. Board Member Tracy agreed suggesting 24 months sounded fair. Mr. Johnson made a motion that the Board set a limit for seeking renewals for lapsed licenses at 24 months and Board Member Tracy seconded the motion. Chairman Donovan called for a roll call vote and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

**Discussion about amending the Auto Damage Appraiser Licensing Board's regulation, 212 CMR 2.00 et seq.:**

Chairman Donovan moved to the next item on the Board's agenda, which was a discussion about amending the Auto Damage Appraiser Licensing Board's regulation, 212 CMR 2.00 et seq.

Chairman Donovan opened the item for a discussion among the Members of the Board and requested that Board Member William Johnson lead the discussion. As way of background, in February of 2021, Board Member Johnson received a copy of the Office of Administration and Finance's (A&F) letter that A&F approved certain proposed amendments that were adopted by the Board in 2016, but with restrictions as to 4 of the proposed amendments that were questioned as the result of a review conducted by the Division of Insurance. In the letter, A&F' expressed concerns about Members of the Board having changed since the amendments were proposed in 2016, and there are 3 different Board Members on the Board since the amendments were approved and felt the need for the new members to conduct a review of the proposed amendments.

The following were the proposed amendments that were approved by the Board in October of 2016:

**Additions (as approved  
8/3), (Typo's edited 9/7)**

**Deletions (as approved  
8/3) (Typo's edited 9/7)**

**212 CMR 2.00: AUTO DAMAGE APPRAISERS LICENSING BOARD  
THE APPRAISAL AND REPAIR OF DAMAGED MOTOR VEHICLES**

**Section**

2.01: Scope of Regulations

2.02: Licensing Requirements and Standards for Appraisers

2.03: Duties of Insurers and Repairers

**212 CMR 2:00: AUTO DAMAGE APPRAISERS LICENSING BOARD**

2.04: Procedures for the Conduct of Appraisers and Intensified Appraisals

2.05: Penalties

2.06: Severability

2.01: Scope of Regulations

(1) Purpose and Applicability. The purpose of 212 CMR 2.00 is to promote the public welfare and safety by improving the quality and economy of the appraisal and repair of damaged motor vehicles. Any licensed appraiser, individual or corporate entity who employs licensed appraisers shall be bound by 212 CMR 2.00.

212 CMR 2.00 is intended to be read in conjunction with 211 CMR 133.00, *Standards for the Repair of Damaged Motor Vehicles*.

(2) Authority. 212 CMR 2.00 is promulgated under the authority granted to the Auto Damage Appraiser Licensing Board by M.G.L. c. 26, § 8G, as added by St. 1981, c. 775, § 1.

(3) The Board may from time-to-time issue Advisory Rulings and shall do so in compliance with M.G.L. c. 30A, § 8.

(4) Definitions.

Appraisal - means a ~~written~~ motor vehicle damage report prepared by an appraiser licensed by the Board, on forms approved by the Board, and conducted as defined in M.G.L. c. 26, 8G and in compliance with the provisions of 212 CMR 2.00, M.G.L. c. 93A, c. 100A, c. 90, § 34R, and c. 26, 8G.

Appraiser - means any person licensed by the Auto Damage Appraiser Licensing Board to evaluate motor vehicle damage and determine the cost of parts and labor required to repair the motor vehicle damage.

Board - means the Auto Damage Appraiser Licensing Board established by M.G.L. c. 26, 8G.

Claimant - means any person making a claim for damage to a motor vehicle for either first or third party damages.

Independent appraiser - means any appraiser other than a staff appraiser who makes appraisals under an assignment by an insurer or repair shop and shall include the owner or employee of a repair shop who makes appraisals under a contract with an insurer.

Insurer - means any insurance company involved with a claim in the Commonwealth.

Intensified appraisal - means the combination of the appraisal of a motor vehicle before its repair and the reinspection of the vehicle subsequent to its repair.

Staff Appraiser - means an appraiser who is an employee of an insurer and whose job duties include the making of appraisals for his or her employee.

Repair Shop Appraiser – means an appraiser who is an employee of a repair shop and whose job duties include the making of appraisals for his or her employer.

Repair Shop – means a motor vehicle repair shop registered pursuant to the requirements of M.G.L. c.100A.

~~**Supervisory appraisal** – means an appraisal conducted by an insurance company or appraisal company supervisor solely for the purpose of evaluating the appraisal ability of one of his or her appraiser employees or for the purpose of providing on-the-job training of an appraiser employee.~~

## 2.02: Licensing Requirements and Standards for Appraisers

### (1) Requirement That License Be Obtained and Displayed.

No person in Massachusetts shall appraise, estimate **or determine** damages to motor vehicles or otherwise present himself or herself as an appraiser unless he or she has first obtained a license from the ~~**Auto Damage Appraiser Licensing**~~ Board. This license shall be valid for one year or less and shall be renewed annually on July 1st. Any appraiser, while making an appraisal, shall carry his or her license and shall, upon request, display it to any person involved in the claim or to any representative of the Board.

(2) Qualifications for a License. Any applicant for a license shall be 18 years of age or over and of good moral character. He or she shall furnish satisfactory proof to the Board that he or she possesses the educational qualifications required for graduation from high school or that he or she possesses relevant work experience deemed satisfactory by the Board. No applicant shall be considered competent unless the applicant has assisted in the preparation of appraisals for at least three months under the close supervision of **an licensed** appraiser. He or she shall complete an approved appraisal course or, at the Board's discretion, work experience may be substituted for said schooling.

(3) Application and Examination Fee for a License. Any applicant for a license shall complete an application to be prescribed by the Board and shall sign it under the penalties of perjury. He or she shall submit this application and non-refundable fee of \$100 to the Board. After an application is received and approved, the applicant shall be required to pass an examination given under the supervision of the Board. All successful applicants will be issued a numbered license. Any applicant failing to pass an examination, upon the payment of a further non-refundable fee of \$50.00, shall be entitled to a reexamination after the expiration of six months from the date of the last examination. Any applicant failing to pass an examination shall be allowed to review his or her examination.

(4) Renewal of License. The Board shall mail to each **licensed** appraiser an application for renewal. Such application shall be completed and returned to the Board. Each application shall be accompanied by a renewal fee of \$50.00. After verification of the facts stated on the renewal application, the Board shall issue a renewal license dated July first, and this license shall expire on the June thirtieth of the year following. Any **licensed** appraiser who fails to renew his or her license within 60 days after notification by the Board of his or her license expiration date, before

again engaging in the practice of **an licensed** appraiser within the Commonwealth, shall be required to re-register, pay a penalty fee determined by the Board and any back license fees, or may be required by the Board to be reexamined and pay applicable fees.

(5) Procedure for **Auto Damage** Appraisals.

(a) All forms used for **auto damage** appraisals must be approved by the Board.

(b) All forms used are required to have an itemization of parts, labor and services necessary, as **required in 212 CMR 2.00**, for repairs thereof. The prepared appraisal shall be sworn to under the penalties of perjury and shall include the appraiser's name, signature, license number, seal or stamp, employer, **insurer insurance company**, repair shop registration number if applicable, fee charged, the date the vehicle was appraised and the name of the **database manual** used (if any) in preparing the appraisal. The appraisal seal or stamp shall be of a design approved by the Board. All appraisals sent electronically need not include the appraiser's signature and his or her seal or stamp.

(6) Schedule of Appraisal Fees.

(a) The Board may consider the appraisal fees charged within the territories where said appraiser operates. Any appraiser shall establish his or her own fee schedule unless limited by the Board. Any appraiser must post his or her appraisal fee schedule in a conspicuous location at his or her work place. The Board may establish a maximum schedule of fees by territory, type of business or complexity of work. Fees charged in excess of maximums approved by the Board shall result in penalties as established by the Board.

(b) Fees paid by a claimant for an appraisal that was requested by the insurer are recoverable from the insurer. Fees for **auto damage** appraisals not requested by the insurer in first party claims are not recoverable from the insurer.

(7) Conflict of Interest. It shall be a conflict of interest for any appraiser who has been assigned to **write an appraisal, appraise a damaged motor vehicle** to accept, in connection with that appraisal, anything of value from any source other than the assignor of that appraisal.

Further, it shall be a conflict of interest for any **repair shop** appraiser **employed by a repair shop** to accept the assignment of an appraisal from an insurer unless that appraiser's employment contract prohibits the repair shop from repairing damaged motor vehicles that have been so appraised. In addition, it shall be a conflict of interest for any appraiser who owns or has an interest in a repair shop to have a vehicle repaired at that shop if that appraiser has appraised that vehicle at the request of an insurer. It shall be a conflict of interest if any **licensed** appraiser operates a Drive-in Appraisal Service **or Drive-in Claim and Appraisal facility for, or on behalf of, an insurer at a repair shop.** Notwithstanding this provision, all drive-in appraisal services or drive-in claim and appraisal facilities must inform consumers of their right to have their vehicle repaired at any repair shop. No insurance company appraiser shall coerce or use any tactics the purpose of which is to prevent insureds or claimants from seeking damage reports on repairs from their own repair shop rather than utilizing a company appraisal drive-in facility.

(8) Revocation or Suspension of a License. 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:

- (a) material misrepresentations knowingly or negligently made in an application for a license or for its renewal;
- (b) material misrepresentations knowingly or negligently made to an owner of a damaged motor vehicle or to a repair shop regarding the terms or effect of any contract of insurance;
- (c) the arrangement of unfair and or unreasonable settlements offered to claimants under collision, limited collision, comprehensive, or property damage liability coverages;
- (d) the causation or facilitation of the overpayment by an insurer of a claim made under collision, limited collision, comprehensive, or property damage liability coverage as a result of an inaccurate appraisal;
- (e) the refusal by any appraiser, who owns or is employed by a repair shop, to allow an appraiser assigned by an insurer access to that repair shop for the purpose of making an appraisal, **supervisory reinspection**, or intensified appraisal.
- (f) the commission of any criminal act related to appraisals, or any felonious act, which results in final conviction;
- (g) knowingly preparing an appraisal that itemizes damage to a motor vehicle that does not exist; and
- (h) failure to comply with 212 CMR 2.00.

(9) Drive-in Claim and Appraisal Facilities. Drive-in claim and appraisal facilities shall possess the following equipment:

- (a) Operating telephone service.
- (b) A calculator.
- (c) Current collision, paint and body cost estimating guide manuals or an automated system.
- (d) An operating flash light.
- (e) A tape measure of at least 30 feet.
- (f) An operating camera and film.
- (g) A fax machine or other device capable of transmitting data.

## 2.03: Duties of Insurers and Repairers

- (1) Responsibilities for Actions of Appraisers. An insurer or repair shop shall be responsible for the actions of ~~all of its~~ **the** appraisers **working on their behalf whether staff or independent**, and shall be subject to the applicable penalties under law for any violation of 212 CMR 2.00 by its appraiser.

The Board may assess penalties against either the appraiser, the insurer, the repair shop or all three. In the event of default by the appraiser, the insurer or the repair shop may be responsible for penalties.

- (2) Records and Analysis of Appraisals. Every ~~insurer or repair shop~~ appraiser shall retain for at least two years, copies of all records related to appraisals and inspection. Every insurer shall retain copies of all records including photographs in accordance with state law.

## 2.04: Procedures for the Conduct of Appraisals and Intensified Appraisals



(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 ~~an either a staff or an independent~~ appraiser to ~~conduct an appraisal~~ **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**.

(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment for the purpose of preparing ~~an motor vehicle damage~~ appraisals **and conducting negotiations**. No ~~staff or independent~~ appraiser shall knowingly negotiate a repair figure with an unlicensed individual or an unregistered repair shop.

(c) Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of ~~an staff or~~ independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific repair shop or individual. ~~The provisions of 212 CMR 2.04(e) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00.~~

(d) 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.

(e) Determination of Damage and Cost of Repairs. The appraiser shall specify all damage attributable to the accident, theft, or other incident in question and shall also specify any unrelated damage. If the appraiser determines that preliminary work or repairs would significantly improve the accuracy of the appraisal, he or she shall authorize the preliminary work repair with the approval of the claimant and shall complete the appraisal after that work has been done. The appraisers representing the ~~insurer insurance company~~ and the ~~registered~~ repair shop selected by the insured to do the repair shall attempt to agree on the estimated cost for such repairs. The ~~registered~~ repair shop must prepare an appraisal for the purpose of negotiation. No appraiser shall modify any published manual **or electronic data system** (i.e., Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturers ~~recommended warranty~~ repair procedures, I-Car, Tec Cor and paint manufacturer procedures **shall may also** apply. **However, the selection of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00.** Further, no appraiser shall use more than one manual or system for the sole purpose of gaining an advantage in the negotiation process.

If, while in the performance of his or her duties as ~~an licensed auto damage~~ appraiser, an appraiser recognizes that a damaged repairable vehicle has incurred damage that would impair the operational safety of the vehicle, the appraiser shall immediately notify the owner of said vehicle that the vehicle may be unsafe to drive.

The ~~licensed auto damage~~ appraiser shall also comply with the requirements of M.G.L. c. 26, § 8G, the paragraph that pertains to the removal of a vehicle's safety inspection sticker in certain situations.

The appraiser shall determine which parts are to be used in the repair process. ~~in accordance with 211 CMR 133.00.~~ **Determination of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00. The appraiser shall recognize that certain parts, including but not limited to; used suspension and steering parts that contain wearable components may affect the operational**



safety of the vehicle. If both parties agree that a specified part is unfit and must be replaced, the insurer is responsible for paying the retail price for all parts indicated on an appraisal, including but not limited to, parts ordered and subsequently returned based on the criteria set in 211 CMR 133. The insurer is responsible for returning the parts to the supplier and recovering their costs from the supplier. The repair shop may agree to return parts on behalf of the insurer, if the insurer agrees to pay all costs, including but not limited to freight, handling and administrative costs associated with such return. As to such costs, nothing in 212 CMR 2.00 shall preclude and insurer from exercising any available rights of recovery against the supplier. Delays in repair cycle time shall be considered when sourcing parts and materials. The appraiser shall itemize the cost of all parts, labor materials, and necessary procedures required to restore the vehicle to pre-accident condition and shall total such items. The rental cost of frame/unibody fixtures necessary to effectively repair a damaged vehicle shall be shown on the appraisal and shall not be considered overhead costs of the repair shop. Costs associated with the shipping and handling of parts, including cores, shall not be considered overhead costs of the repair shop either and shall be listed on the appraisal and negotiated. With respect to paint, paint materials, body materials and related materials, if the formula of dollars times hours is not accepted by an ~~registered repair shop or licensed~~ appraiser, then a published manual database or other documentation shall be used unless otherwise negotiated between the parties. All appraisals written under 212 CMR 2.00 shall include the cost of replacing broken or damaged glass within the appraisal. When there is glass breakage that is the result of damage to the structural housing of the glass then the cost of replacing the glass must be included in the appraisal in accordance with 212 CMR 2.04. The total cost of repairing the damage shall be computed by adding any applicable sales tax payable on the cost of replacement parts and other materials. The appraiser shall record the cost of repairing any unrelated damage on a separate report or clearly segregated on the appraisal unless the unrelated damage is in the area of repair.

If aftermarket parts are specified in any appraisal, the appraiser shall also comply with the requirements of M.G.L. c. 90, § 34R that pertain to the notice that must be given to the owner of a damaged motor vehicle.

The appraiser ~~representing the insurer~~ shall mail, fax or electronically ~~submit~~ ~~transmit~~ the completed appraisal within five business days of the assignment, or at the discretion of the repair shop, shall leave a signed copy of field notes, with the completed appraisal to be mailed, faxed ~~or electronically submitted~~ within five business days of the assignment. The repair shop may also require a completed appraisal at the time the vehicle is viewed. If the repair shop requires a completed appraisal, then the repair shop shall make available desk space, phone facilities, calculator and necessary manuals. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary ~~work, repairs or partial disassembly repairs~~, severe illness, failure of the parties ~~other than the insurer~~ to communicate or cooperate, or extreme weather conditions make timely inspection of the vehicle and completion of the appraisal impossible.

(f) Determination of Total Loss. Whenever the appraised cost of repair plus the estimated salvage may be reasonably expected to exceed the actual cash value of a vehicle, the insurer may deem that vehicle a total loss. No motor vehicle may be deemed a total loss unless it has been ~~personally~~ inspected ~~or and~~ appraised by an ~~licensed~~ appraiser nor shall any such motor vehicle be moved to a holding area without the consent of the owner. A total loss shall not be determined by the use of any percentage formula.

(g) Preparation and Distribution of Appraisal Form. All appraisers shall set forth the information

compiled during the appraisal on a form that has been filed with the Board. Staff and independent appraisers shall, upon completion of the appraisal, give copies of the completed appraisal form to the claimant, the insurer, and the repair shop and shall give related photographs to the insurer.

(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 appraiser representing the~~ 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 ~~two~~ **three** business days of the receipt of such request. The appraiser ~~representing the insurer~~ shall have the option to leave a completed copy of the supplement appraisal at the registered repair shop authorized by the insured or leave a signed copy of his or her field notes with the completed supplement to be mailed, faxed, electronically ~~submitted transmitted~~ or hand delivered to the repair shop within one business day. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary ~~work, repairs or partial disassembly repairs~~, severe illness, failure of the parties ~~other than the insurer~~ to communicate or cooperate, or extreme weather conditions make timely inspections of the vehicle and completion of the supplemental appraisal impossible.

(i) 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 ~~an appraiser representing the repair shop licensed appraiser employed by the repair shop~~, together with such supporting information and documentation as may be agreed upon between the ~~appraiser representing the~~ insurer and the ~~appraiser representing the~~ repair shop. The ~~appraiser representing the~~ insurer shall then be required to fax or electronically submit to the repair shop ~~within one two business days~~ its decision as to whether it accepts the requested supplemental appraisal allowance, ~~by the end of the next business day, excluding weekends and holidays~~. Within this same period, ~~an licensed~~ appraiser representing the insurer and ~~an licensed~~ appraiser representing the repair shop may attempt to agree upon any differences. In the event that an insurer does not accept the repair shop's request for the supplemental appraisal allowance, or if the insurer fails to respond to the repair shop ~~within two business days~~, ~~by the end of the next business day, excluding weekends and holidays~~, the ~~appraiser representing the~~ insurer and the ~~appraiser representing the~~ repair shop shall be obligated to proceed in accordance with 212 CMR 2.04(1)(h), and within the time limits set forth in such provision. In such event, the date of the initial request for a supplemental appraisal allowance shall be the starting date for when the insurer must assign an appraiser to personally inspect the damaged vehicle.

No insurer or repair shop shall be obligated to utilize an expedited supplemental appraisal process and the determination of whether to utilize such process shall be made separately by an insurer or by a repair shop only on an individual claim basis. Utilization of an expedited supplemental appraisal process shall not be used as a criterion by an insurer in determining the insurer's choice of shops for a referral repair shop program under an insurer's direct payment plan; and being a referral shop shall not be a criterion in determining whether to utilize an expedited supplemental appraisal process.

(j) Completed Work Claim Form. If the ~~insurer~~ **insurance company** does not have a direct payment plan or if the owner of the vehicle chooses not to accept payment under a direct payment plan, then a representative of the insurer shall provide the insured with a completed work claim form and instructions for its completion and submission to the insurer. **When a completed work claim form is utilized, the appraiser representing the insurer and the appraiser representing the repair shop shall negotiate all costs without regard to the direct payment plan/referral shop program.**

(2) Temporary Licensing. ~~The Board may grant at its discretion either an emergency or a temporary license to any qualified individual to alleviate a catastrophic or emergency situation for up to 90 days. The Board may limit the extent of such emergency authorization and in any event, if the situation exceeds 30 days, a fee determined by the Board shall be charged for all emergency or temporary licenses.~~ **The Board shall vote to authorize the Chairman of the Board or his/her designee to grant a temporary license up to 60 days to any qualified individual to alleviate a catastrophic or emergency situation as long as the following conditions are met: (1) the applicant is licensed as a motor vehicle damage appraiser in another state and provides a copy of that license to the Chairman of the Board or his/her designee; (2) is in good standing in the other state and the applicant provides consent to the Chairman of the Board or his/her designee to verify the applicant's licensing status through the insurance licensing database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; (3) the applicant has not been found guilty of fraud, deceit, gross negligence, incompetence, misconduct or conflict of interest in the preparation or completion of any motor vehicle damage report; (4) the applicant does not have criminal felony charges pending against him/her in any state; (5) the applicant properly fills out the application; and (6) pays the applicable license fee.**

**Copies of all such applications and temporary licenses issued by the Chairman of the Board or his/her designee shall be submitted to the Board at its next scheduled meeting for review by the Board. After review, the Board may revoke any such temporary license that was issued if the Board finds such applicant does not conform to the six listed conditions, or the Board finds that a person who was issued a temporary license is not qualified to hold such license.**

## 2.05: Penalties

~~(4)~~ Violations of M.G.L. c. 26, § 8G, and 212 CMR 2.00 may result in penalties including administrative costs, revocation or suspension of license or both. All administrative costs are subject to the discretion of the Board. The administrative costs may be assessed against the appraiser, the appraiser's employer, the insurer, or the repair shop.

An alleged violation of 212 CMR 2.00 by ~~an~~ **licensed** appraiser at the direction of an insurer may be reported to the Division of Insurance, which may impose applicable penalties against such an insurer.

## 2.06: Severability

If any provision of 212 CMR 2.00 or its application to any person or circumstances is held invalid, such invalidity shall not affect the validity of other provisions or applications of 212 CMR 2.00.

## REGULATORY AUTHORITY

212 CMR 2.00: M.G.L. c. 26, § 8G.

Chairman Donovan asked Legal Counsel Powers to bring things us up to date. Mr. Powers stated that Mr. Johnson was to propose amendments to the language in 212 CMR 2.04(1)(e) and Mr. Smith working with Mr. Starbard was to propose amendments to the language covering Temporary Licenses. Mr. Johnson stated that he and Ms. Tracy ran out of time in their attempt to resolve the proposed language, but believes they've reached an agreement in principle. The intent was to match 211 CMR 133.04(2) in their description of responsibility for the costs to address an agreed upon non-usable alternative part stating that 211 CMR 133.04(2) states clearly that the insurance company is responsible for the costs for non-fitting parts. Chairman Donovan asked for Board Member Tracy's input. Board Member Tracy stated that language would be needed when it is determined that the shop is responsible for the non-conforming part. Board Member Johnson responded the first part of the language refers to both parties agreeing that the part is not usable. Board Member Tracy pointed out that the regulation provided unless the shop is responsible. Mr. Smith suggested that in order to make the two regulations match, insert the pertinent language contained in 211 CMR 133.04 into 212 CMR 2.04(1) and Mr. Johnson stated he had no problem with doing that. Mr. Starbard asserted that the changes in the 212 CMR 2.04(1) language as described by Mr. Johnson should remain as written because the 211 CMR 133.04(2) language is not interpreted correctly, leading to problems shops experience daily. Mr. Johnson agreed with Mr. Starbard as well as Mr. Smith, and stated that his version of the 212 CMR 2.04(1) language is the same as what's found in 211 CMR 133.04(2). Mr. Starbard stated that shops currently need to purchase two parts and insurance carriers interpret 211 CMR 133.04(2) in a manner which causes shops to bear the time and effort the costs to straighten out what is deemed as problems with parts listed by insurance carriers.

Chairman Donovan asked for Board Member Smith's input. Mr. Johnson read 211 CMR 133.04(2) again. Mr. Smith deferred to Ms. Tracy stating that, she is better informed of the wording. Ms. Tracy did not respond because it is determined she temporarily lost her connection to the meeting. Legal Counsel Powers suggested the Board move on to the section that Mr. Smith and Mr. Starbard worked on, the section regarding Temporary Licensure. Mr. Starbard deferred to Mr. Smith. Mr. Smith reads the section in question in its entirety. Ms. Tracy announced her return to the meeting and Chairman Donovan welcomes her back. Mr. Johnson made a motion that the Board approve both sections as read by Mr. Johnson and Mr. Starbard and Mr. Starbard seconded Mr. Johnson's motion to have both sections approved. Legal Counsel Powers requested the reading of the motion and in particular the language that Mr. Johnson and Board Member Tracy worked on, and Board Member Johnson read the proposed amendment. Legal Counsel Powers requested an explanation about the proposed amendment and Board Member Tracy attempts to clarify the situation, stating that the DOI and A&F rejected the initial version because of the language just read by Mr. Johnson and suggests that it may get rejected again. Mr. Johnson stated that the language is the same as 211 CMR 133 and read the pertinent section. Ms. Tracy explained the difference between what Mr. Johnson suggested and the applicable language contained in 212 CMR 2.04(1)(e) and what's in 211 CMR 133.04(2) noting the new language states the insurance companies would be responsible for returning parts and 211 CMR 133 states the insurance companies are responsible for the costs of the return

process. Mr. Starbard stated that, if the Board votes and adopts the new language it would be helpful because for needed clarification because 211 CMR 133.04(2) is interpreted wrongly. Mr. Starbard continued by stating auto body shops don't get money in returns, but get credits, and the shops incur administrative costs, concluding that, this is the most important clarification in the regulations. Mr. Johnson reiterated that the 211 CMR 133.04 is very clear and that insurance companies are responsible for the costs of returning parts stating both parties need to agree. Mr. Starbard asked if Members on the Board disagree, let them describe their interpretation.

Chairman Donovan asked input from Mr. Smith. Mr. Smith responded by stating he had no additional comments. Chairman Donovan reminded the Board that they have a consensus on the Temporary Licensing wording and suggests a vote on that and set aside the other proposed amendments for further review. Mr. Johnson stated that this has been set aside for 6 years, there's the insured's side and the shop's side. Board Member Tracy asserted that, it as a material difference, that the DOI objected to the language and that the re-write puts 212 CMR 2.04(1)(e) in conflict with 211 CMR 133.04. Mr. Johnson stated that the Board remove the words "retail price" and add "all parts listed on appraisal" and Board Member Starbard seconded the motion. Mr. Donovan restated the gist of the motion and suggested the Board approve both items, changes to 212 CMR 2.04(1)(e) and the language covering the Temporary Licensure. Mr. Johnson answered yes, and Chairman Donovan called for a roll call vote and the Vote was: 2-2 with Chairman Donovan abstaining. Mr. Smith moved to table the subject until the next meeting; there was no second to the motion and Board Member Tracy pointed out that Mr. Starbard's actions tabled the subject matter, so no vote was needed to table the matter.

### **Executive Session Matters:**

Board Legal Counsel Powers explained that there are 2 items on this part of the agenda, 2 applicants indicating criminal convictions on their applications for motor vehicle damage appraiser license and complaints filed against licensed appraisers. To protect the privacy of the people involved they will not be identified during the meeting and will be referred to as "Applicant C" and "Applicant D." The question before the Board about the 2 applicants would only be whether the Board approved the applicants to take the examinations.

In addition, all the licensed appraisers who have complaints filed against them that were listed on the agenda agreed to a review of the complaints based on their answers to the complaints. During the review, the Board will not identify any of the licensed appraisers by name and will only vote on the action to be taken.

Mr. Powers began with the applicants and the review of **Applicant # 1 "Mr. C"** was brought forward. Mr. Smith began the discussion by noting the applicant's court records are missing a majority of the pages. Mr. Starbard noted the document is more than a year old suggesting that the Board should seek a complete copy of the court records, one which is up to date. Mr. Starbard moved to seek all thirteen pages and updated records, and Mr. Starbard suggested the applicant can email them to Mr. Hunter of Producer Licensing to expedite the process and Chairman Donovan requests a second, and Board Member Smith seconded the motion. Chairman Donovan called for a roll call vote and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

The review of **Applicant # 2, “Mr. D”** is presented to the Board. Mr. Smith recused himself as a relative of the applicant is known to him. Chairman Donovan asked whether he is correct in assuming the nature of his interactions with the courts was due to substance abuse. Mr. Powers answered, yes. Mr. Starbard expresses his understanding that the applicant has admirably turned himself around and moves to allow “Mr. D” to participate in the upcoming Part-II exam and Board Member Tracy seconded the motion. Chairman Donovan called for a roll call vote and the motion passes by a Vote of: 3-0, with Chairman Donovan abstaining.

Chairman Donovan announced the Board would move on to the Complaints filed against licensed motor vehicle damage appraisers and called for discussion on **Complaints 2022-01A, B, C, and D**. Mr. Starbard moved to have the four complaints move on to the next step. A Roll Call vote was taken Board Members Starbard and Johnson voted yes, Board Member Tracy voted no, and Mr. Smith abstained and Chairman Donovan voted in the affirmative. The motion passed by a Vote of 3-1.

Mr. Starbard asked Legal Counsel Powers whether an overview of the complaint can be made. Mr. Powers answered, no, because it would be reflected in the Executive Session minutes of the Board and the goal is to protect the confidential identity of the licensees.

**Complaints 2022-02A and B.** Mr. Starbard noted that there was a lot going on with this complaint, but it seemed to him that it was based on a family dispute which in his opinion does not fall within the Board’s purview. Chairman Donovan asked whether Mr. Starbard will move to dismiss. Mr. Starbard answered unless others feel otherwise, and Board Member Mr. Smith agreed with Mr. Starbard. Mr. Starbard moved to dismiss the complaints and Board Mr. Smith seconded the motion, Chairman Donovan called for a roll call vote, and the motion passes by a Vote of: 4-0, with Chairman Donovan abstaining.

**Complaint 2022-03.** Mr. Johnson asked whether he is correct in understanding that the negotiation in this complaint occurred in a different state, and Mr. Powers answered yes. Chairman Donovan asked Mr. Johnson whether he would like to make a motion to dismiss. Mr. Johnson answered, no, he needed clarification. Mr. Starbard repeated Mr. Johnson’s acknowledgement, by stating the negotiations took place in another state. Chairman Donovan asked Mr. Johnson if he would move to dismiss. Mr. Johnson suggested that the Board needed a ruling. Chairman Donovan suggested that a motion should be made to postpone the complaint until the next meeting when Mr. Powers can obtain a ruling and Mr. Starbard made that motion. Chairman Donovan called for a roll call vote and the vote was Board Members Starbard, Johnson, and Tracy voted yes, and Mr. Smith abstained.

**Complaint 2022-04.** Board Member Tracy noted that this complaint has been withdrawn. Chairman Donovan agreed and announced no vote is necessary.

**Complaint 2022-06.** Mr. Starbard moved to move this complaint on to the next step and Mr. Johnson seconded the motion. A roll call vote passed by a Vote of: 3-1 with Mr. Starbard, Mr. Johnson and Mr. Smith voting yes and Board Member Tracy voting no and Chairman Donovan abstaining.

**Complaint 2022-07.** Mr. Starbard noted this complaint is based on mark up on a sublet repair and noted the response stated that the appraiser is no longer with the carrier. Mr. Starbard moves that he would like the appraiser notified to appear at the next meeting and Mr. Johnson seconded the motion. Chairman Donovan called for a roll call vote, and the motion passes by a Vote of 3-1 with Board Members Starbard, Johnson and Tracy voting yes and Mr. Smith voting no and Chairman Donovan abstaining.

**Complaint 2022-08.** Mr. Starbard noted this may have been 2022-01 as it's the same situation as 2022-01 A-D and 2022 A&B. With that, he moves that this complaint move forward to the next meeting and Board Member Johnson seconds the motion. The Chairman called for a roll call vote and the motion passes with a Vote of: 3-2 with Mr. Starbard and Mr. Johnson voting yes, Ms. Tracy and Mr. Smith voting no and Chairman Donovan voting yes to break the tie.

**Complaint 2022-09.** Mr. Starbard noted this complaint is based on ADAS calibration, noting the timeliness of the subject wants to take this up and moves to have this complaint moved to the next step. Mr. Johnson seconds and a roll call vote passes the motion 2-1 with Mr. Starbard, Mr. Johnson voting yes and Board Member Tracy Ms. Tracy voting no and Chairman Donovan voting yes and Mr. Smith abstaining.

**Complaint 2022-10.** Mr. Starbard noted this is the same situation and moves to have this complaint heard at the next meeting. Mr. Johnson seconds and a roll call vote passes 3-1 vote with Mr. Starbard and Mr. Johnson voting yes, and Chairman Donovan voting yes with Board Member Tracy voting no and Mr. Smith abstaining. Chairman Donovan votes yes.

**Complaint 2022-11.** Mr. Starbard moved to have it move on to the next step. Mr. Johnson seconded, and a roll call vote passes by a Vote of: 3-0, with Mr. Starbard, Mr. Johnson and Chairman Donovan voting yes and Board Member Tracy and Mr. Smith abstaining.

**Complaint 2022-12.** Mr. Starbard moved to have this complaint heard at the next meeting. Mr. Johnson seconds and a roll call vote passes by a Vote of: 3-1 vote with Mr. Starbard and Mr. Johnson and Board Member Tracy voting and Mr. Smith abstaining. Chairman Donovan votes yes.

**Complaint 2022-13.** Mr. Starbard noted this complaint centers on paint & material and moves to have this complaint heard at the next meeting. Mr. Johnson seconds and a roll call vote passes 5-0 vote with Mr. Starbard, Mr. Johnson, Ms. Tracy and Mr. Smith voting yes, and Chairman Donovan voting yes.

**Complaint 2022-14A.** Mr. Starbard moved to have this complaint moved to the next meeting. Mr. Johnson seconds a roll call vote passes 4-0 with Mr. Starbard, Mr. Johnson Ms. Tracy and Mr. Smith all voting yes.

**Complaint 2022-14B.** Mr. Starbard moved to have this complaint moved to the next meeting. Mr. Johnson seconds a roll call vote passes 5-0 with Mr. Starbard, Mr. Johnson Ms. Tracy and Mr. Smith voting yes and Chairman Donovan voting yes.



**Complaint 2022-15.** Mr. Starbard made a motion to move this one on the next meeting. Chairman Donovan asked for a roll call vote. Mr. Starbard and Mr. Johnson vote yes, Ms. Tracy and Mr. Smith vote no. Chairman Donovan voted no. The motion failed, and the complaint did not move forward.

**Complaint 2022-24.** Mr. Starbard asked Mr. Powers about the gap in the complaint number. Mr. Starbard noted that this complaint centers on the complainant being upset with the policy limits on the at-fault party's policy. He states there is a question about the amount of damage listed on the appraisal but still, the policy coverage is "tapped out". Board Member Tracy suggested that a portion of the complaint covers poor repairs but stated that's not in our purview. Mr. Johnson stated that he was unable to open the zip file so will yielded to Mr. Starbard and Ms. Tracy's understanding of the situation. Mr. Starbard moved to dismiss the complaint. Mr. Smith seconded the motion and the motion passed by a Vote of: 5-0.

**Next Meeting:**

Board Member Starbard made a motion for the next meeting to be held in Boston at 1000 Washinton Street, on May 17, 2022, the motion was seconded by Board Member Smith and was adopted by a vote of: 4-0 with Chairman Donovan abstaining.

**Motion to adjourn:**

Chairman Donovan then called for a motion to adjourn, which was made by Board Member Starbard, and seconded by Board Member Tracy; the Chairman called for a roll call vote with all members voting in the affirmative and the Vote was: 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)