



THE COMMONWEALTH OF MASSACHUSETTS

AUTO DAMAGE APPRAISER LICENSING BOARD

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MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

GILBERT W. COX, JR.
CHAIRMAN

BRUCE S. KING
DONALD R. SPINELLI
STEPHEN R. TAGUE
JOSEPH A. VALARIOTI

Minutes of Meeting

**Auto Damage Appraisers Licensing Board – September 18, 2006
Marlboro, MA**

Members Present:

Gilbert W. Cox, Jr., Chairman, Law Offices of Gilbert W. Cox
Bruce S. King, King Collision
Donald R. Spinelli, MetLife
Stephen Tague, Unitrin Direct

Attorney Robert Kelly and Yvonne Torres, Secretary were also present.

Others in Attendance included:

James Bates, Commerce Insurance Company
Jerry Muse, Commerce Insurance Company
Steve Betley, Commerce Insurance Company
John Joyce, Commerce Insurance Company
Dave Castro, Commerce Insurance Company
Frank DeSario, Saftey Insurance Company
Ed Vigliatura, Worcester County Appraiser
Kevin M. McCann, Arbella
Paul Semnkow, Peerless Insurance Company
Bill Tobin, Magri's Auto Body
Jim Magri, Magri's Auto Body
Peter Abdelmacy, AASP
James A. Castleman, Paster, Rice & Castleman
Stephen Regan, Regan Strategies for MABA
Jerry Capazzoli, C&J Auto Body
Bob Virta, Virta's Garage
Bill McDonough, Damage Report
Nicholas Schwab, Smith & Brink
Eric Sakes

Approval of Minutes

Tague made a motion that the minutes be expanded on and redrafted to include a discussion with respect to the proposed changes to the Board's regulation. Spinelli seconded.
Passed 3-0 vote.

Report on licenses

5,138 Active Licenses; **296** Pending Renewal; **245** pending applications

7 New Candidates; **2** Part I retakes ; **16** Awaiting the next Part II

Proceedings recorded by:

John Joyce of Commerce Ins. Co. (Audio/Video)

Thomas Colo (Audio/Video)

Yvonne Torres (Audio)

Discussions

- **Formal Hearings.**

Members of the Board expressed their concern over the pending formal hearings against Commerce and questioned staff as to why they had not been scheduled to move forward as instructed by the Board. Robert Kelly was questioned on the non-issuance of the notices of hearings. At the July 15, 2006 meeting the Board held a discussion and felt that there would be no conflict of interest for Attorney Kelly to simply issue the notices of hearings and the members of the Board would conduct the actual hearing. Attorney Kelly in response stated that it was not just a matter of "sending out notices" but that the Order to Show Cause would have to contain certain levels of specificity in which facts and law would have to be clearly set out. Although facts and violations of law for the two cases were discussed at the July meeting, Attorney Kelly also stated that the General Counsel of the Division of Insurance has questions and concerns on whether these hearings should proceed and that a meeting with the Commissioner and General Counsel is necessary. The Board concluded that they would not schedule another Board meeting until they had the meeting with Commissioner Bowler and Ms. Ditomassi.

- **212 CMR 2.00**

Changes to regulation were also brought up by the Chairman who requested a status of proceeding with a public hearing. Robert Kelly reported that their two proposals had been submitted to the General Counsel and he had not yet heard back. Attorney Kelly repeated the steps necessary for proceeding with a public hearing for changes to their regulations and stated that he would make an inquiry as to the current status and report back.

- **Board's Authority.**

Brief discussion between Tom Colo, Chairman Cox and Stephen Tague on the Board's authority and ability to move forward. The Chairman expressed the Board's frustration and discouragement over the impasse and lack of support to the Board. Both Attorney Castleman and Attorney McCue provided comments on the issue and Cox requested that Bob Kelly research positions by both attorneys on the Board's authority prior to the meeting with the Commissioner. Mr. Valarioti also recommended researching the line in the budget and seek to request an appropriation.

- **Violation of Open Meeting Law and Scheduling of complaints.**
Attorney McCue stated to the Board members that meeting prior to the Board meetings is a violation of the open meeting laws. Chairman Cox admitted to gathering prior to the open meetings but stressed that they were careful not discuss any business on the agenda. They met to discuss dealings with the Commissioner of Insurance and the General Counsel. McCue reiterated that it would be proper for the Board to have these discussions during Executive Session. Spinelli also mentioned that the Board discussed scheduling of an item that was not on the agenda which was an invitation to tour Premier's Concierge Facility. The Board was informed that this must be done in open session and that such a meeting would have to be made public. It was also recommended by Attorney McCue that Board should select and schedule all cases to move forward at the open meetings and provide 30 day written notification to all parties. The Board agreed that its members would discontinue the practice of meeting prior the open meeting and that it would begin scheduling the subject matter for future meetings.
- **Future Meeting.**
Further discussion regarding drafting the notice of hearing for the formal cases. It was decided that the Board would not schedule the formal hearings or hold another meeting until they had the opportunity to meet with the Commissioner.

Informal/Formal Hearings.

2005-14 – Bazinet v. Ricci Tomassetti

Motion by Valarioti to go to formal. King Seconded. Motion failed 2-2.

Spinelli moved to dismiss. Seconded by Tague. 3-2 vote. Chairman voted in the affirmative.

2005-33 – Magri v. McCrillis

King moved to dismiss. Seconded by Tague. Passed 3-0

2005-34 – Magri v. McCrillis

King moved to dismiss. Seconded by Tague. Passed 3-0

Complaints (Step 2)

2006-26 – Capazzoli v. Brenden Manning and Commerce

Motion by King to moved to informal. Seconded by Tague. Passed 4-0

2005-12 – Dennehy v. Wilson and Commerce

Motion by Valarioti to place the complaint on agenda for next meeting.

Seconded by King. Passed 4-0.

Tague moved to postpone the pending paint & material cases below to next meeting.

Seconded by King. Passed 4-0

2005-16 – Vermette v. Lamontagne and Commerce

2005-17 – Greenwood v. Vacca and Commerce

2005-18 – Shepard v. Vacca and Commerce

2005-21 – Lacas v. Diesi and Commerce

2005-22 – Lacas v. King and Commerce

2005-23 – Bazinet v. Diesi

2005-52 – Bazinet v. Diesi and Commerce

Valarioti moved to go to informal. Seconded by Spinelli. Passed 4-0

Other Business

In response to an inquiry sent by Chris Tinkham of St. Paul Travelers re: procedure for obtaining temporary licenses in the event of a catastrophe in Massachusetts, Chairman Cox stated that a special meeting would have to be set up by the Board through the Secretary of States office within 48 hrs.

A letter by Commerce re: Mr. Robert Virta's business practices was read by Chairman Cox. Mr. Cox requested that Attorney Robert Kelly examine Robert Virta's business practice of requiring a licensed appraiser to provide a copy of worker's compensation policy prior to doing business with him/her. Question for research: Does Mr. Virta have the right to refuse to deal with an appraiser who is not covered by workers' compensation and can he deny that person access to his shop?

Future Meetings

No dates will be set for future meetings until the Board has had a meeting with the Commissioner of Insurance.

Executive Session

A roll call was taken to go into Executive session. 4-0