



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

CHAIRMAN

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

Minutes of the Meeting of the Board held on October 5, 2021 Approved by the Board at the November 23, 2021, Board Meeting; Motion of Board Member William Johnson and Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 4-0, with Chairman Michael D. Donovan Abstaining.

October 5, 2021, Minutes of Board Meeting

Held by Teleconference at 1000 Washington Street, Boston, Massachusetts in accordance with Governor Charles D. Baker's "ORDER SUSPENDING CERTAIN PROVISIONS OF THE OPEN MEETING LAW, G.L. c. 30A, § 20" issued on March 12, 2020. On June 16, 2021, Governor Charles Baker Enacted Chapter 20 of the acts of 2021 "An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency." This Act includes an extension, until April 1, 2022, of the "Remote Meeting Provisions" of Governor Baker's March 12, 2020, Executive Order Suspending Certain Provisions of the Open Meeting Law.

Members Present by Teleconference:

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, who was located at 1000 Washington Street, Boston, Massachusetts called the meeting to order precisely at 11:00AM by stating he was at 1000 Washington Street with Michael D. Powers, Counsel to the Board. Chairman Donovan thereupon requested Board Legal Counsel Michael D. Powers read the following statement:

In accordance with Massachusetts General Laws Chapter 30A, §§ 18-25 and Governor Charles D. Baker's "ORDER SUSPENDING CERTAIN PROVISIONS OF THE OPEN MEETING LAW, G.L. c. 30A, § 20" issued on March 12, 2020, the Auto Damage Appraiser Licensing Board (ADALB or Board) is holding this meeting by teleconference

today, October 5, 2021, at 10:00AM from 1000 Washington Street, Boston, Massachusetts. Because of an Order issued by Governor Charles D. Baker on March 16, 2020, gatherings of over 25 people are prohibited and, therefore, members of the public will not be allowed to attend in-person. The public has been invited to join-in the teleconference meeting by dialing the “Participants” telephone number at: 1-877-820-7831 and entering the Passcode 623523#.

At the conclusion of the reading of the statement, Chairman Donovan called for a roll call of the Board Members who were attending by teleconference, and Board Members Samantha Tracy, William Johnson, Richard Starbard, and Peter Smith all acknowledged that they were present by teleconference.

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 newly appointed Managing Editor of Greco Publishing (replacing departing Joel Gausten) and “Lucky” Papageorg” of the Alliance of Automotive Service Providers of Massachusetts.

For approval, the Board minutes for the Board meeting held on August 3, 2021, Chairman Donovan called for a motion for approval of the Board minutes of the August 3, 2021, Board meeting. Board Member Richard Starbard made a motion to approve the Board minutes of the August 3, 2021, 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 then moved on to the next agenda item, which was a report by Board Member Peter Smith on the Part-II portion of the motor vehicle damage appraiser examination and asked Board Member Smith for a report on the upcoming Part-II examination.

Board Member Smith reported on the last Part-II examination which was held on Saturday September 11, 2021. Mr. Smith stated that there were 45 applicants in attendance with only 7 listed applicants as no-shows. Of the 45 people who took the practical part of the examination, 43 passed and 2 failed. Board Member Smith noted that, this was the best passing rate he could recall, and observed that fewer people working for insurance companies took the examination; he believed that it is a good sign for the body shop industry. Mr. Smith thanked those involved both in the preparation of the exam as well as those who assisted in the processing of the results. The people who assisted Board Member Smith with administering the examination were: Eric Landry of Progressive Insurance who arranged for use of Progressive Insurance’s facility, Todd Baranowski of Progressive, Sue Conena and Ana Mardrossian of MAPFRE, Jim Steere of The Hanover Insurance Company, and Mike Malarkey of Arbella Insurance. Board Member Smith reported that

he intended to schedule the next Part-II examination sometime in December which would depend upon the number of people applying to take the exam, generally he has a target goal of 50 people for holding an examination.

Chairman Donovan thanked Mr. Smith for his dedication and commitment to successfully conducting the Part-II examination under such difficult circumstances caused by the COVID-19 pandemic, and he thanked those who helped specifically the people named by Mr. Smith who generously contributed their time and efforts.

Discussion about the Massachusetts Commission established pursuant to Chapter 24, Section 130 of the Acts of 2021, to review issues about auto body rates and the auto body industry, which is the following:

SECTION 130. (a) There shall be a special commission established pursuant to section 2A of chapter 4 of the General Laws to study auto body labor rates. The commission shall consist of: the chairs of the joint committee on financial services, who shall serve as co-chairs; the commissioner of insurance or a designee; 1 member of the senate appointed by the minority leader of the senate; 1 member of the house of representatives appointed by the minority leader of the house of representatives; the attorney general or a designee; 3 members from the auto insurance industry appointed by the Automobile Insurers Bureau of Massachusetts; 3 members from the auto repairer industry appointed by the Alliance of Automotive Service Providers of Massachusetts, Inc.; 1 member appointed by the governor, who shall represent a vocational-technical school or program; and 1 member who shall be a motor vehicle dealer licensed under section 1 of chapter 93B of the General Laws appointed by the Massachusetts State Automobile Dealers Association, Inc. Members of the commission shall serve without compensation. (b) The study shall include, but not be limited to: (i) an analysis of auto body labor rates in the commonwealth, including a comparison of labor rates in surrounding states; (ii) an analysis of the impact of managed competition in the automobile insurance market on labor rates; (iii) an assessment of whether current labor rates are reasonable and, if not, an evaluation of potential methods for calculating a reasonable labor rate; (iv) the number of auto body shops in the commonwealth each year from 2008 to the present, including the number of shops that have closed during that time period; and (v) an analysis of the impact of labor rates on the auto body labor workforce. (c) The commission shall hold not fewer than 2 public hearings in geographically diverse areas of the commonwealth and file a report of its findings, including any legislative or regulatory recommendations, with the clerks of the senate and house of representatives, the joint committee on financial services and the senate and house committees on ways and means not later than December 31, 2021.

The Chairman informed the Board that Mr. Powers, the Legal Counsel to the ADALB, was selected by the Commissioner of Insurance to represent the DOI as the Commissioner's appointment to the Commission established by the Legislature to study auto body labor rates in Massachusetts, which will hold public hearings to conduct a study of auto body

rates and the auto body industry in Massachusetts. Chairman Donovan asked if any members of the Board had any questions. Board Member Richard Starbard asked whether Mr. Powers will be representing the insurance industry. Legal Counsel Powers responded that, there are no “sides” to this committee and the Senators and House members will select people they feel have backgrounds which can help the process move to a reasonable conclusion. The Attorney General has the same charge to appoint three members, and as well as representation from the Vocational Schools and the Automobile Dealers Association, he stated that under the law no sides are designated, only a specific industry and backgrounds are stated. Mr. Powers added he was selected by the Commissioner due to his knowledge gathered over ten years serving as the Division’s attorney appointed to assist the Auto Damage Appraiser Licensing Board as Legal Counsel to the Board. Board Member William Johnson stated that Mr. Starbard was asking whether Mr. Powers was to represent the Division of Insurance or the Auto Damage Appraiser Licensing Board. Mr. Powers responded by noting the Commissioner appointed someone from the Division of Insurance staff, he could have appointed another staff member or anyone he deemed fit for the job. Chairman Donovan asked Mr. Powers if he was aware of any other appointees. Mr. Powers stated that in the hearing that was held by the Joint Committee on Financial Services two weeks ago, one of the Co-Chairs, House Member Murphy, stated that he would move things along and was in the process of gathering the list of appointments. Mr. Powers stated that he could forward a link to the meeting that was held if anyone was interested. At this time, he knew of only one other person named to serve on the Commission. The Chairman observed that the timeline was narrow with the committee needing to report back by December 31st with two public meetings required to be held in the meantime. The Chairman asked if there were any other questions and Board Member Johnson replied that, the labor rate should be negotiated along with all other aspects of the process. Mr. Powers suggested he could notify the Board Members as the process moves forward.

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 Starbard lead the discussion, because he kept a record of the proposed amendments that were voted as approved by the Board in October of 2106. 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(c) 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 Mr. Starbard to summarize where the Board currently stood. Mr. Starbard responded by stating that, he was in receipt of the email thread dated December 1, 2016, and wondered why it took nearly five years to know of the existence of the proposed changes to the ADALB's regulation. Mr. Starbard pointed out the Board presented their report in late 2016, and according to the email string there was a response within a few months, but the Board was never advised of the response. Mr. Starbard stated that, now we're told to redo the amendment process. Mr. Starbard opined that this procedure was like the Auto Labor Rate Commission, which was a commission formed several years ago, and now the Legislature formed another such commission last month and stated that they were kicking the can down the road year after year. Chairman Donovan stated that Mr. Starbard's objection was noted and said the Board's only choice is to proceed at this point with the changes as reflected by the Office for Administration and Finance. Mr. Starbard stated that the procedure was akin to a slap in the face to those previous Board Members who put so much effort into the process. Board Member Johnson agreed with Mr. Starbard's position, and stated it was Mr. Johnson's efforts through a Freedom of Information Act request which generated the referenced email and felt the current Board should move forward and get something done.

Board Member Johnson suggested that the Board start with the four items listed in the email by the Division of Insurance which are of concern to the Division. Board Member Samantha Tracey concurred with Mr. Johnson's view and requested the Board start with

the four items and then move on to the other items and, thereafter, posting any written comments made today for discussion at a future meeting. Chairman Donovan asked Mr. Johnson to take the items in order from the email. The first item involved the deletion of the term “Published Manual” from the current regulation. Board Member Johnson stated that he agreed with the recommendation that all references to a “Published Manual” be removed, and noted that in his auto body shop, often a manual isn’t used, the appraiser’s knowledge of the repair is relied upon. Mr. Starbard asked where in the ADALB’s Regulation is this referenced, and Mr. Johnson responded that he did not know, but is cited in the Regulation most likely multiple times. Mr. Starbard sought a clarification of Board Member Johnson’s position by asking whether the deletion would involve the terms, “No manuals of Databases.” Mr. Johnson replied that they should remove both words, “manual and database”. Mr. Starbard responded that he did not know how that is going to work, as it’s referenced in other areas of the Regulation. Board Member Johnson stated that, he felt it would be OK to remove both words. Board Member Starbard suggested the Board find out what the concern was from the Division of Insurance. Mr. Starbard noted that, at his auto body shop they rely on the database and have recourse with the database providers should an error be found. Board Member Johnson suggested there appeared to be a consensus that the Board leave the word “database” and remove the word “manual” due to electronics that are in current use in the industry.

Chairman Donovan asked whether there was any objection to the removal of the word “manual”. Board Member Johnson stated that, heavy equipment doesn’t have manuals or databases”, and suggested that the word “manual” be removed from the Regulation and the Board keep the word “database”. Board Member Tracey asked to know what the Division of Insurance’s objection to the deletion of the word “manual” was, so the Board may understand if the objection may include removing the word “database”. The Chairman requested the Board move on to the next item which the Division of Insurance objected to, removing the term, “Supervisory Inspection” from the ADALB’s Regulation. Board Member Johnson agreed with the objection and suggested that the term remain in the Regulation stating that, an appraiser is an appraiser, and added, once an appraisal is locked-in the appraisal can’t change. Board Member Johnson stated that it is a waste of time to have the term mentioned in the Regulation and he felt the term should be a generic one, noting that an employer has the right to oversee an employee. Mr. Starbard added, let them do the appraisal in-house. Board Member Tracey stated that, it’s fine for an auto body shop to oversee their employees, but an insurance carrier needs access to the vehicle to properly assess the accuracy of their appraiser’s work. Board Member Starbard opined, a Supervisory Inspection could overrule an appraiser’s work. Board Member Tracey responded by advising the language is clear in the Regulation. Board Member Starbard asked, why does the regulation state the word “appraisal”, can a supervisor say his appraisal is the one to go by? Board Member Johnson observed that he never had a supervisor try to change an appraisal, noting he saw this only as on-the-job training and asked whether all agree that you can’t change an original appraisal and that Supervisory Appraisals are for training purposes only. Mr. Johnson concluded that, the purpose of the Regulation is to ensure access to the vehicle and to perform the review of the original appraisal. Board Member Peter Smith agreed

with Mr. Johnson. Board Member Johnson moved to add language pertaining to accessing the vehicle, and that the purpose of the Supervisory Appraisal is training only, Board Member Starbard seconded the motion, and Chairman Donovan called for a roll call vote, the motion passed by a vote of: 4-0, with Chairman Donovan abstaining.

Board Member Johnson returned to the first item and request a vote on whether the Regulation would remove the words, “manual” and “database”. Mr. Starbard stated that the reference to “database” is found in 212 CMR 2.02(4)(e) stating that, “published database” should be the term used in the Regulation. The Chairman requested discussion by Members of the Board. Mr. Starbard asked that the Division of Insurance be contacted to see what their objection was so the Board can best understand their concerns. Chairman Donovan requested that this item be “put aside” and moved on to item three. Board Member Johnson noted that item number three pertains to “part prices”. Board Member Starbard stated that this change is to state the obvious in answer to appraisers who misinterpret 211 CMR 133.00 wherein it provides for an insurance carrier to be held responsible for the costs incurred should both the auto body shop and insurance company appraiser agree that the part in question does not fit or meet the criteria for the repair to the motor vehicle. Board Member Starbard stated that some insurance carriers are not paying all the auto body shop’s costs and shops end up purchasing two parts, only use one, and are handed a “pink slip” for the wrong part. Mr. Starbard restated, if common sense was used by auto body shops, they would receive full reimbursement for all parts ordered.

Board Member Smith asked to be recognized, Chairman Donovan agreed, and Board Member Smith said that the Board must be mindful of making changes to 212 CMR 2.00 as they must conform to 211 CMR 133.00 by their terms are mandated to be read together and work in conjunction with each other. Board Member Starbard asked where the conflict is. Board Member Smith responded that, he didn’t want to litigate it, but stated that any ambiguity could lead to legal trouble for the Board. Mr. Starbard stated that, the basis of finding that the part cannot be used is rooted in both the insurance appraiser and shop appraiser agreeing to the same. Mr. Starbard stated that 211 CMR 133.00 specifically provides for an insurance carrier to be able to seek reimbursement from the supplier, and it does not provide the same for the auto body shop. Mr. Starbard also noted that insurance carriers often list suppliers not customarily used by auto body shops and asserted that these are not changes to 212 CMR 2.00, but clarifications of 211 CMR 133.00 (a regulation issued by the Commissioner of Insurance) being made within 212 CMR 2.00 (the ADALB’s regulation) because of the lack of common sense by some in their reading of 211 CMR 133.00. Mr. Starbard stated that, the cost to an auto body shop due to insurance carriers not reading 211 CMR 133.00 properly can add up to as much as \$1,000.00 with no way to get the money back from the insurance company’s supplier”. Board Member Smith stated that, his understanding is 211CMR 133.00 and 212 CMR 2.00 are designed to work together, and should any changes proposed by the Board cause a hint of conflict, it can result in a legal problem for the Board. Board Member Starbard disagreed stating, the language in 211 CMR 133.00 is clear, but is misinterpreted by some appraisers and he is not suggesting changing 211 CMR 133.00, just clarifying it. Board Member Smith replied, it is up to the Division of Insurance to

clarify 211 CMR 133.00 and not the Board. Chairman Donovan requested any additional comments.

Mr. Starbard moved to have the Division of Insurance clarify the reason that they objected to the proposed amendment. Board Member Johnson attempted to provide a reason for the Division of Insurance's objection to item # 1 removing the words, "Published Manual" by stating on page 8 three-quarters of the way down shows an added line that the Division of Insurance may have misread. Mr. Starbard suggested the entry was found in 212 CMR 2.04(5)(b) under forms.

Board Member Johnson addressed item # 4. Board Counsel Powers requested that Board Member Starbard clarify what specific items needed clarification by the Division of Insurance and Mr. Starbard stated that he was referring to both item 1 and item 3, needing more clarification as to their concerns. Counsel Powers requested Mr. Johnson to explain what it was that he was seeking clarification from the Division of Insurance on. Mr. Johnson responded that his comments were specific to item #1 "Published Manual". Mr. Starbard interjected that his question pertains to both item # 1 and item # 3 and he is requesting a clarification from the Division of Insurance on both items. Board Member Johnson made a second, and Chairman Donovan called for a roll call vote, the Vote was: 4-0, with Chairman Donovan abstaining.

Chairman Donovan requested a discussion on item # 4. Board Member Johnson believed the item involved claims which are not covered by a "Direction to Pay" (DTP) or an insurance carrier that does not have a system in place to make payments based on a DTP. Chairman Donovan asked whether there is anything in the email which would shed light on the Division of Insurance's concerns. Board Member Tracey asked why the reference to a DTP would be a part of the Regulation, suggesting the reference should be removed. Mr. Starbard agreed with Board Member Tracey. Mr. Johnson saw no objection to removing the language, Chairman Donovan asked whether this item should be set aside, and Mr. Johnson moves to remove the language, and Mr. Starbard seconded the motion. Chairman Donovan called for a roll and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Next Meeting:

Board Member Starbard stated the lack of face-to-face meetings is hampering the Board's ability to conduct business as intended and as the members were sworn to carry out. Mr. Starbard when the Board can meet, they will need to meet regularly. Chairman asked how many complaints are in the system and Mr. Powers responded quite a few. Board Member Johnson suggested an off-site meeting in Ludlow, which doesn't have a mask mandate. Mr. Powers asks about the Western Massachusetts area vocational educational school the Board has used in the past. Mr. Johnson suggested the school may not be the best solution suggesting he will seek out a location in Ludlow and pay for it himself. Board Counsel Powers asked that Mr. Johnson seek a location for mid-December and get back to the Board.

Mr. Johnson reminded the Board Members that the discussion only involved the four items and that the Board had not addressed any of the other substantive items. Board Member Tracey stated that, she had items of concern, and reminded Mr. Johnson that those concerns would be sent in a written format to the Board Members and brought up at a future meeting. The Chairman suggested holding a meeting in December. Mr. Johnson asked that the Board members put their concerns in writing prior to that date. Mr. Johnson moved to have written concerns addressed at the December meeting and Board Member Starbard seconded the motion, the Chairman called for a roll call vote and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Board Member Starbard asks to hold the meeting in November and Board Member Tracey agreed. It was determined that the next meeting would be held in November, and not in December, on November 23rd. at 11:00 AM and a motion was made by Board Member Johnson and seconded by Board Member Starbard, the motion passed 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 Johnson, 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)