



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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MICHAEL DONOVAN
CHAIRMAN

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

Minutes of Meeting of the Board held on November 26, 2019, Approved by the Board at the October 14, 2020, Board Meeting; Motion of Board Member Peter Smith and Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 4-0 with Chairman Donovan Abstaining.

November 26, 2019, Minutes of Board Meeting
Held at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Donovan
Samantha Tracy
William Johnson
Richard Starbard
Peter Smith

Attending to the Board:

Michael D. Powers, Counsel to the Board
Steven Zavackis, Executive Secretary

Proceedings recorded by:

Chris Gervais of MAPFRE (Audio/Video). Evangelos Papageorg, Executive Director of the Alliance of Auto Service Providers of Massachusetts (AASP), (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photo). Jim Steere of Hanover Insurance (Audio).

Call to Order:

Chairman Michael Donovan called the meeting to order, with all the Board Members present for the meeting.

Approval of the Board minutes for the Board meeting held on September 24, 2019:

Chairman Donovan called for approval of the minutes of the Board meeting that was held on September 24, 2019, a motion was made by Board Member Richard Starbard, and seconded by Board Member William Johnson. The minutes were approved by a vote of: 4-0 with Chairman Donovan abstaining.

Report by Board Member Peter Smith on the Part-II examination for motor vehicle damage appraiser:

Report by Board Member Peter Smith on the Part-II examination for motor vehicle damage appraiser held on November 6, 2019 at the Progressive Insurance Service Center in Westwood, Massachusetts. Board Member Smith reported that the examination process was in place and expected everything to proceed forward as in the past.

Motion by Magnus P. Carlberg, Director of Producer Licensing for the Division of Insurance on a proposed change to the application for Motor Vehicle Damage Appraiser License:

For approval by the Board as submitted by Magnus P. Carlberg, Director of Producer Licensing for the Division of Insurance, a proposed change in the application process for Motor Vehicle Damage Appraiser License. The following are the details the proposed changes:

Prometric is moving to a new mainframe system. The MVDA changes that will be necessary with the new system are minimal. The new MVDA/1660 exam process will mostly be the same as it is today with the exception that the candidates need to create a profile on Prometric's website. After they create the profile, they can call Prometric to schedule their Part-II 1660 exam (like they do today) or they can schedule their exam online.

The following is a list of the information that will be required for the profile on Prometric's website:

First Name
Middle Name
Last Name
Suffix
Address line 1
Address line 2
Address line 3
Address line 4
City
State
Zip code
Primary phone
Secondary phone
Fax
DOB
SSN

****field in red are required**

Listed below is the full candidate/DOI workflow:

**Proposed Process - Licensing Requirements: Motor Vehicle Damage Appraiser –
1660 Exam**

Applicant sends an application along with the following 4 items to the Division of Insurance:

1. A work experience letter from a licensed Massachusetts appraiser with whom you have worked for a period of at least three (3) months. This letter must be signed by the appraiser and his seal affixed.
2. A copy of certification received from a [Board approved damage appraiser course](#). PLEASE NOTE: Two years practical work experience writing appraisals, may be substituted for the required course work.
3. If you have had any felony convictions, a transcript from the courts identifying the offense(s) and a letter of explanation should be included.
4. Submit a check for \$100.00 made payable to the COMMONWEALTH OF MASSACHUSETTS for application processing and examination registration to the Auto Damage Appraiser Licensing Board, 1000 Washington St, Suite 810 Boston, MA 02118-6200.

DOI reviews documents received and if all in order, DOI will enter Claris. Then email or send candidate a letter that instructs them to go to [Prometric.com](#)

1. **Select MAINS, which will direct them to CMS**
2. **If they have not created a profile, they can follow the instructions for creating a profile and account. Once this step is complete, answer the question: “As of today, I have submitted all required documentation and payment to the DOI’ check box,” request approval for the 1660 exam.**
3. **If they have already created a profile, they can log in. On their Dash Board, they will see the 1660 exam and answer the question: “As of today, I have submitted all required documentation and payment to the DOI” check box and then request for approval for the 1660 exam.**

DOI – will receive notification that a candidate has submitted for approval. Approve or Deny.

Once approved, the candidate will receive notification by email that they are approved to test, and they can then schedule the 1660 exam online. If they choose to call into Prometric to schedule, they will just need to provide their Prometric ID which is generated at time of CMS profile creation.

If there is yes to a background question, DOI will send all documents to ADALB Legal Counsel for review.

If documents not in order or if some are missing, DOI will document the same in Claris and then DOI will send all documentation back to the applicant with a letter explaining what they need to do to reapply successfully.

Mr. Carlberg appeared before the Board and Chairman Donovan asked if Mr. Carlberg foresaw any problems with instituting the proposed changes and Mr. Carlberg assured Chairman Donovan there would be none. Chairman Donovan called for a motion to approve the proposed changes and Board Member Peter Smith made the motion, which was seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Motion by Board Member William Johnson and Board Member Samantha Tracy for approval of a proposed Advisory Ruling:

Board Member William Johnson reported that he and Board Member Samantha Tracy were working together drafting a proposed Advisory Ruling. Board Member Johnson related that they were working towards meticulously staying within the wording of the relevant Code of Massachusetts regulations [212 CMR 2.00 et seq. and 211 CMR 133.00 et seq.]. Board Member Johnson informed the Board that he considered comments that were previously submitted about the initial Advisory Ruling that he had drafted and proposed at the end of last year and the beginning of this year.

Chairman Donovan requested Board Member Johnson to read the proposed Advisory Ruling and Board Member Johnson read the following:

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2019-XXXX

The Auto Damage Appraiser Licensing Board (ADALB or Board) is authorized to oversee all motor vehicle damage appraisers in the Commonwealth of Massachusetts pursuant to M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq. titled, “The Appraisal and Repair of Damaged Motor Vehicles” as promulgated by the ADALB. In relevant part M.G.L. c. 26, § 8G provides, “The board shall after notice and hearing in the manner provided in chapter thirty A adopt rules and regulations governing licenses under this section in order to promote the public welfare and safety.” In addition, 212 CMR 2.01(1) provides, “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 entitled, “Standards for the Repair of Damaged Motor Vehicles.” Under its authority the ADALB is, *inter alia*, authorized to: issue licenses to all motor vehicle damage appraisers in the Commonwealth (licensed appraisers or appraiser) 212 CMR 2.02, regulate the conduct of motor vehicle damage appraisers in the Commonwealth 212 CMR 2.02, regulate the manner of conducting motor vehicle damage appraisals 212 CMR 2.04, and to issue Advisory Rulings pursuant to 212 CMR 2.01(3) and M.G.L. c. 30A, § 8.

Moreover, the commissioner of the Division of Insurance has issued a regulation for the “STANDARDS FOR THE REPAIR OF DAMAGED MOTOR VEHICLES” 211 CMR 133.00 et seq. Specifically 211 CMR 133.04(1) and (2) provide in relevant part:

133.04: Determination of Damage and Cost of Repair

(1) Appraisers shall specify that damaged parts be repaired rather than replaced unless: the part is damaged beyond repair, or the cost of repair exceeds the cost of replacement with a part of like kind and quality, or the operational safety of the vehicle might otherwise be impaired. When it is determined that a part must be replaced, a rebuilt, aftermarket or used part of like kind and quality shall be used in the appraisal unless:

...

(c) a new original equipment part of like kind and quality is available and will result in the lowest overall repair cost;

....

(2) When an insurance company specifies the use of used, rebuilt, or aftermarket parts, the source and specific part(s) must be indicated on the appraisal. If the repairer uses the source and specified part(s) indicated on the appraisal and these parts are later determined by both parties to be unfit for use in the repair, the insurance company shall be responsible for the costs of restoring the parts to usable condition. If both parties agree that a specified part is unfit and must be replaced, the insurer shall be responsible for replacement costs such as freight and handling unless the repair shop is responsible for the part(s) being unfit, or unless the insurer and repairer otherwise agree. As to such costs, nothing in 211 CMR 133.00 shall preclude an insurer from exercising any available rights of recovery against the supplier.

The ADALB is authorized to enforce the provisions of 211 CMR 133.00 et seq. against licensed motor vehicle damage appraisers for violations of its provisions pursuant to 211 CMR 133.08 which provides “A violation of any provision of 211 CMR 133.00 shall be considered to be an unfair or deceptive act or practice, in violation of M.G.L. c. 176D. An alleged violation of 211 CMR 133.00 by a licensed auto damage appraiser may be reported to and penalized by the Auto Damage Appraisers Licensing Board in accordance with its governing statute and 212 CMR [sic]...” It is the intention of the ADALB to issue an Advisory Ruling consistent with 212 CMR 2.00 et seq. and M.G.L. c. 26, § 8G and 211 CMR 133.00 et seq. to be followed by licensed appraisers.

Pursuant to its authority, the ADALB voted by a majority vote at the Board’s meeting held on ---- to adopt this Advisory Ruling.

ADVISORY RULING

Appraisers should continue to follow 211 CMR 133.04(1)(b) and (c), and 212 CMR 2.04, referenced above, on appraisals. If the part(s) that have been specified on the appraisal are unfit for use in the subject repair and must be replaced, as agreed upon by both the repair shop and the insurance company, the parties should attempt to agree on an alternative part and the insurance company shall be responsible for the

replacement costs such as freight and handling or shall be responsible for the costs of restoring the parts to usable condition, unless the parties otherwise agree.

Further the appraisers representing the insurance company and the registered repair shop shall attempt to agree on the estimated cost for such repairs. The registered repair shop must prepare an appraisal for the purpose of negotiation.

Nothing herein is intended to create any obligations in addition to those set forth in 212 CMR 2.00 or 211 CMR 133.00. If anything herein is in conflict with these regulations, the regulations control.

The ADALB stresses 211 CMR 133.04(2) must be followed by all appraisers, and a deviation may constitute a violation of 212 CMR 2.02(8)(c) and 212 CMR 2.02(5)(b) which states in relevant part “The prepared appraisal shall be sworn to under the penalties of perjury....”

This Advisory Ruling shall be effective upon posting on the Auto Damage Appraiser Licensing Board public website. Failure to comply with this ruling could result in penalties as provided by law.

After Board Member Johnson read the proposed Advisory Ruling Chairman Donovan allowed questions from members of the general public. One member of the public asked, what if a part is unavailable? Board Member Johnson responded, there is cost shifting going on in the industry and the Advisory Ruling is an attempt to stop the cost shifting by reminding appraisers about these provisions in the regulation.

A member of the public stated that he was placed on a “do not sell” list by a major parts supplier, because he returned two non-conforming parts in fourteen months.

Board Member Starbard suggested that a motor vehicle damage appraiser should cite the regulation and the provision that provides for when a part is unavailable.

The member of the public responded that he was compelled to go to another parts supplier and paid much more than the insurance company would allow for the replacement part and he informed the insurance company that he would balance bill the customer. The insurance company responded, that if he balanced billed the customer then they would remove his auto body shop from their preferred auto body shop list.

Board Member Starbard observed that the appraiser was reasonable and diligent while attempting to obtain the part. Under these circumstances an appraiser is allowed to obtain a substitute part and the appraiser should file a complaint with the Board. Board Member Johnson agreed, by stating this is a commonsense thing and if the appraiser cannot buy the part, therefore, it is unavailable.

Board Member Samantha Tracy observed that there are three parties to a repair: (1) a consumer; (2) an insurance company; and (3) an auto body shop. The problem of the Board getting involved with the relationship between an auto body shop and a vendor, is that it becomes too hard to

supervise and outside the scope of the Board's authority. The Board's duty is authorized around the licensing function.

Board Member Peter Smith observed that the proposed Advisory Ruling appeared to mirror the language of the regulation, saw no need to adopt the proposed Advisory Ruling, and suggested that the licensed motor vehicle damage appraisers need only follow what is currently written in the regulation.

Board Member Johnson requested that the Board move forward on his proposed Advisory Ruling, and Chairman Donovan called for a motion to adopt the proposed Advisory Ruling. Board Member Johnson made the motion to adopt the Advisory Ruling and the motion was seconded by Board Member Tracy. The motion passed by a vote of: 3-2 with Board Members Johnson, Starbard, and Tracy voting in the affirmative, and Board Member Smith and Chairman Donovan voting nay.

Motion to adjourn:

Board Member Starbard made a motion to adjourn which was seconded by Board Member Johnson and the motion passed by a vote of: 5-0.

Whereupon the Board's business was concluded.

The form of these minutes comports with the requirements of M.G.L. c. 30A, §22(a).

List of Documents provided at the Board meeting:

1. Proposed changes to motor vehicle damage appraiser application.