



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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WILLIAM E. JOHNSON
LYLE M. PARE

Minutes of Meeting of the Board on December 8, 2015, Approved by the Board on January 26, 2016; Motion of Board Member William Johnson, Seconded by Board Member Joseph Coyne. The Motion Passed by a Vote of: 4-0, Chairman Cox Abstained.

December 8, 2015 Minutes of Board Meeting
Held at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Gilbert Cox, Chairman
Joseph Coyne
Richard Starbard
William Johnson
Lyle Pare

Attending to the Board:

Michael D. Powers, Counsel to the Board
Steven Zavackis for the Division of Insurance, assigned to the Office of the General Counsel, took the minutes of the Board meeting.

Proceedings recorded by:

Jillian Zwien of the Alliance of Automotive Service Providers of Massachusetts (AASP) (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photography)

Review of minutes:

The meeting was called to order by Chairman Cox, and he requested a motion to approve the minutes of the Board meetings held on September 29, 2015. A motion was made by Board Member William Johnson to approve the minutes as submitted of the Board meeting held on September 29, 2015, and the motion was seconded by Board Member Lyle Pare. The motion to approve the minutes of the Board meeting held on September 29, 2015, passed by a vote of: 4-0 with Chairman Cox abstaining on the motion.

Report on the Part-II examination for motor vehicle damage appraiser license scheduled for September of 2015:

Board Member Richard Starbard reported that 74 people took the test for the Part-II examination for motor vehicle damage appraiser license which was held on Wednesday, September 30, 2015. Mr. Starbard informed the Members of the Board that the examination was held at the Assabet Valley Regional Technical High School, and that not everyone passed the examination with 26 people failing it. Mr. Starbard thanked Molly Brodeur-Nesbitt, President of AASP, for her invaluable assistance, Mr. Pete Smith from Commerce Insurance Company for his continuing assistance, and Mr. Steven Zavackis. Board Member Starbard reported that the location of the Part-II examination at the Assabet Valley Regional Technical High School is an excellent location because it is a great facility. The next Part-II examination will be held on January 6, 2016 at the same location, in the Assabet Valley Regional Technical High School.

Mr. Zavackis informed the Board that about 30 to 40 people had passed the Part-I written portion of the examination and signed-up to take the Part-II practical portion of the examination scheduled for January of 2016.

Board Member Joseph Coyne asserted that the next Part-II examination will have a very large group of people because of the recent graduation of potential examinees from ADALB approved courses for auto damage appraising. Mr. Coyne felt that there will be at least 85 people taking the next Part-II examination, which is a very high number of people.

Chairman Cox said that such a large group would be an inordinate amount of people to take the test at the same time and suggested that the Part-II examination could be broken into two dates.

Mr. Starbard responded that he felt capable of administering the test to such a large group of people at the same time.

Discussion whether a licensed motor vehicle damage appraiser is allowed to conduct appraisals at more than one auto body shop under the ADALB's enabling legislation, M.G.L. c. 26 § 8G and its regulation 212 CMR 2.00 et seq.:

The next item of the agenda was open to discussion by Chairman Cox.

Board Member Starbard stated that he had discussions with Charlie Carroll (Charles H. Carroll Director of the Massachusetts Board of Standards, which licenses auto body shops in the Commonwealth of Massachusetts), and Mr. Carroll said that he has no problem with having a licensed motor vehicle damage appraiser at more than one auto body shop.

Mr. Starbard suggested that the Auto Damage Appraiser Licensing Board could craft language to their regulation (212 CMR 2.00 et seq.) which would restrict licensed appraisers to conducting appraisals on a fulltime basis to those locations where they are listed on the license for an auto body shop (auto body shops in Massachusetts are licensed by the Board of Standards).

Board Member Joseph Coyne asserted that based on his experience there are appraisers who have their license listed at more than one auto body shop.

Board Member William Johnson opined that an insurance company should not be negotiating with a “ghost appraiser.” He elaborated that if a licensed appraiser is listed as representing an auto body shop then the license appraiser should be negotiating with the insurance company’s appraiser and negotiations should not transpire between the insurance company’s appraiser and someone who is unlicensed working in the shop.

Board Member Johnson asserted that the ADALB regulation states that negotiations should only be conducted between licensed motor vehicle damage appraisers.

Board Member Lyle Pare replied that as a licensed auto damage appraiser he would: go into the auto body shop, observe the damage to the appraised motor vehicle, and would only negotiate with a licensed appraiser. In those instances when the auto body shop’s appraiser feels that a supplementary appraisal is necessary, then the insurance company’s appraiser should go to the auto body shop, observe the damage, and negotiate with the licensed appraiser.

Board Member Johnson pointed out that there is nothing stated in the regulation that requires negotiations between appraisers must be conducted face to face. The regulation requires that the licensed appraiser must inspect the damage, but states nothing about face to face negotiations among appraisers. Board Member Johnson believes that just creating more laws or rules is not the answer.

A member of the public who identified himself as Adam Haddad asked Chairman Cox if he could be recognized to address the Board, and Chairman Cox approved of his request. Mr. Haddad asserted that the bigger concern was auto body shops obtaining the licensed appraiser reps numbers when the appraisers were not present for negotiations.

Board Member Joseph Coyne declared that this issue had nothing to do with the Auto Damage Appraiser Licensing Board and was an issue within the ambit of the Massachusetts Division of Standards and its licensing requirements for auto body shops.

Board Member Starbard read from the ADALB’s regulation 212 CMR 2.04 (b) “All repair shops shall maintain one or more licensed appraisers for the purpose of preparing motor vehicle damage appraisals. No staff or independent appraiser shall knowingly negotiate a repair figure with an unlicensed individual or an unregistered repair shop.” Mr. Starbard explained that the licensed appraiser who lists his license with an auto body shop as required by the Division of Standards is working for only one auto body shop.

A member of the general public named Evangelos Papageorg requested permission to speak to the Board, and Chairman Cox granted permission.

Mr. Papageorg stated that he was a consultant and when he writes motor vehicle damage appraisals he leaves a worksheet at an auto body shop for the other appraiser to review and Papageorg goes over the field notes of the other licensed appraiser who is not present. He queried the Board, “Is that improper?”

Board Member Coyne replied that you must negotiate with the other licensed appraiser and not some unlicensed employee of the auto body shop.

Mr. Starbard declared that you must have a licensed appraiser present at every auto body shop when conducting appraisals.

A member of the public who identified himself as Mr. Harris from Worcester asked permission to speak to the Board, and Chairman Cox granted permission. Mr. Harris explained that he owned a business which had three different locations and that he could not work fulltime at each place.

Board Member William Johnson elaborated that it is only a violation of the ADALB regulation if an appraiser negotiates with a staff member of an auto body shop and no licensed appraiser is present.

Under these circumstances where a person is a licensed appraiser, Chairman Cox noted that there was not much the ADALB could do.

Mr. Coyne informed the members of the Board and general public that he instructs that licensed appraisers working for him to always begin the appraisal by listing the other appraiser's name and license number and if an auto body shop does not have a licensed appraiser present, then his appraisers are instructed to notify the insurance company of that fact.

Chairman Cox concluded the discussion and opened discussion of the next item on the Board's agenda.

Discussion by the Board about the tear down of a motor vehicle and the impact on enhanced appraisals:

Board Member Lyle Pare reported that on various occasions he has walked into auto body shops and found damaged motor vehicles already torn down. This creates a problem for an insurance company to conduct a proper appraisal of the damage to a motor vehicle for several reasons.

Chairman Cox asked Mr. Pare whether he was referring to the auto body shop owners notifying him before or after the damage motor vehicles were torn down.

Mr. Pare responded that the problem arises when a damaged motor vehicle is already torn down when he, or appraisers working for him, arrive at the auto body shop. On different occasions Mr. Pare has been informed by the person responsible at the auto body shop that he had torn down the vehicle for the convenience of the insurance company, so that the appraiser could get a better look at the damage to the vehicle.

Board Member Johnson announced that when the customer authorizes the auto body shop to tear down the motor vehicle, then the auto body shop is duty bound to inform the customer that the insurance company may not agree to make payment for the costs of tearing down the vehicle or other related costs for repair of the motor vehicle.

Board Member Pare gave an example of the reason an insurance company may not want a damaged motor vehicle torn down before the company's appraiser views the damage. For example, when a car hits a pole and the impact damage supports the fact that the damage was caused by the car hitting a pole, this fact in turn may raise a question of liability in a subsequent court case. Because the auto body shop tore down the motor vehicle before the insurance company's appraiser got the opportunity to photograph the area of the impact of the damage to the motor vehicle, the insurance company lost the ability to examine the damage to the motor vehicle and photograph the impact area. Such a lost opportunity could lead to an adverse result in a court case because of the insurance company's lost opportunity to photograph critical evidence which would allow the company to establish liability against another party.

Board Member Starbard declared that he would not tear down a car unless the insurance company authorizes it and the company informs him that they are willing to pay for the costs to tear it down.

Board Member Coyne noted that the goal of an auto body shop and the appraisal that is submitted by a licensed appraiser is to put the damaged vehicle back to its prior condition before the motor vehicle was damaged. In order to properly determine that condition, an appraiser has to observe the damage caused to the vehicle directly as the result of the accident.

Mr. Adam Haddad stated that discussion has been about the cost that is being charged the insurance company. He gave the example of a car involved in an accident with resulting damage to the bumper and headlights, the headlights must be taken off before the damage can be repaired and the auto body shop will only charge the insurance company that specific consequential cost of removing the headlights to repair the damage to the bumper of the car.

Mr. Haddad pointed out that the regulations issued by the Office of the Attorney General require that an auto body shop must provide to a customer or consumer an accurate appraisal or estimate of the damage to the motor vehicle before any repairs are made (940 CMR 5.05 (3)).

Chairman Cox asked Mr. Haddad, "Are you saying that if you tear down the car for something that is reasonable, then the insurance company is not responsible for payment of the cost to tear down the car?"

Mr. Haddad replied that the insurance company must pay for the costs of the damage to a car for something that is necessary to repair the damage, and an accurate appraisal will reflect all the repairs that must be done to repair the damage.

Board Member Pare volunteered the example of the case where an insurance company is notified by a customer of damage to the motor vehicle caused by a low-impact collision and, thereafter, an auto body shop tears down the vehicle before the insurance company's adjuster gets the opportunity to view the damage in its original state. Because of the auto body work already performed, the insurance company lost the ability to determine the damage that would have been related to the low-impact collision.

A member of the general public who introduced himself as David from Plymouth Rock Assurance Company requested permission to speak to the Board, and Chairman Cox granted permission. David then showed the Board and members of the general public a photograph of a damaged motor vehicle that had been torn down. Because the vehicle depicted in the photograph had been torn down, the vehicle was unrecognizable as a motor vehicle. David pointed out that when an auto body shop tears

down a vehicle without approval from an insurance company, it may not be a good thing for consumers because the insurance company has the ability under the standard insurance contract to refuse to pay for the tear down costs or other costs.

Board Member Johnson stated that he would never tear a car down without first obtaining the insurance company's approval. But if an auto body shop's licensed appraiser allows the car to be torn down, that may violate the consumer's insurance contract with his insurance company and, thereby, make the consumer responsible for the costs. This is not an issue for the ADALB to determine, it is one for the insurance company to come down hard on the customer.

Board Member Lyle Pare retorted that the insurance company cannot as a practical matter throw this issue back onto the customer and make the customer pay such costs; it simply would not be good for a company's business.

Chairman Cox opined that tearing down a car before the insurance company's appraiser can view the car in a total loss situation appeared to promote fraud. The problem seemed to be coming up with a workable solution.

Board Member Coyne pointed out that in the situation where an auto body shop arbitrarily takes apart a vehicle as a total loss, the consumer and the insurance company both lose in that they both sustain losses because the consumer gets less for the claim, and the insurance company pays more to the auto body shop for the tear down of the vehicle.

A member of the public who introduced himself as Mr. Jacques requested permission to speak to the Board, and Chairman Cox granted permission. Mr. Jacques informed the Board that his shop generally has ten cars being worked on at any given time. His company does not tear down cars unless an insurance company approves of it in advance. The problem that he's confronted with is that many cars are sitting around awaiting the insurance company's approval for the work, which is often delayed.

David from Plymouth Rock was granted permission to speak by Chairman Cox. David said that the answer to the question about the intent of the ADALB's regulation in these circumstances is provided for in the time frames required for the completion of an appraisal.

Chairman Cox noted that it appeared from the discussion that neither Mr. Starbard's auto body shop nor Mr. Johnson's auto body shop will tear down a car without first obtaining approval from the insurance company. Board Members Starbard and Johnson agreed with Chairman Cox's statement. Chairman Cox concluded that the best practice is the auto body shop getting pre-approval from an insurance company before a tear down, with some exceptions.

Mr. Papageorg asked to speak to the Board and Chairman Cox granted permission. He said that the photograph that was displayed during the Board meeting was an example of excessive conduct by an auto body shop. The major point is that: everyone agrees that there has to be a conversation between the auto body shop and the customer about the repair of the damage to the motor vehicle. For repairing motor vehicles auto body shops have a cycle time that they are working towards. Mr. Papageorg concluded that you can't make a broad rule that will cover this type of situation.

Board Member Johnson informed the Board, and members of the public, that the policy of his company in these circumstances is to tell the customer there is a tear down issue, and that the

customer may have to pay the costs under the insurance policy because the insurance company has the right to see the damage and conduct an investigation of the damage to the motor vehicle before any work is performed.

Board Member Joseph Coyne elaborated that often times when there is a single car accident and the liability is cut and dry the insurance company will contact the auto body shop and ask them to do the tear down as a favor to the insurance company.

Board Member Pare suggested that the Board have a motion to change the regulation to insert in the appropriate section the words “all parties involved.” Board Member Coyne suggested that a motion be made for the ADALB Legal Counsel to review this portion of the regulation to provide an opinion as to how the applicable language could be changed in accordance with the Board’s concerns that were raised during the Board’s discussion about the issue. The motion was so made by Board Member Coyne and seconded by Board Member Lyle Pare, the motion passed by a vote of: 3-1, with Board Member Johnson voting against and Chairman Cox abstaining.

Date of next Board meeting:

The Board agreed to schedule the next meeting on January 26, 2016, at 1000 Washington Street, Boston, Massachusetts at 9:30AM.

Discussion by the Board about the new language in the standard Massachusetts private passenger motor vehicle insurance policy issued by the Auto Insurance Bureau providing that the insurance company will pay no more to repair damage to a motor vehicle than what the insurance company pays to a referral auto body shop:

Board Member Coyne spoke first on this issue and stated that the matter was not something that is within the Board’s jurisdiction, specifically referring to the insurance policies that are issued by insurance companies in Massachusetts.

Board Member Starbard disagreed and felt that the language of the Automobile Insurance Bureau’s standard Massachusetts private passenger motor vehicle insurance policy had recently been changed to reflect the position that insurance companies will not pay more for labor and materials and other costs to repair damage to a motor vehicle than the prices for labor and materials and other costs charged by their referral auto body shops that insurance companies use for their Direct Payment Plans. Mr. Starbard asserted that this newly inserted language is in direct contravention of the ADALB’s regulation [212 CMR 2.00 et seq.] which requires negotiations over these costs between the licensed appraiser representing the consumer and the licensed appraiser representing the insurance company.

Board Member William Johnson agreed, and Mr. Starbard made a motion that the Legal Counsel to the Board draft a letter to the appropriate person at the Division of Insurance notifying the Division about these recent changes to the standard Massachusetts private passenger motor vehicle insurance policy and the confliction with the ADALB’s regulation. The motion was seconded by Board Member Johnson and the motion passed by a vote of 3-1, with Board Member Coyne voting against and Chairman Cox abstained.

Mr. Starbard brought up the fact that at a recent public hearing before the Massachusetts legislative committee on financial services, testimony was taken about amending the ADALB

enabling act G.L. c. 28, Section 8G by abolishing the Board. The testimony in support of the bill was that during past emergencies such as the hailstorm last August and the snowstorms of last winter, the ADALB did not act expeditiously on requests from the auto insurance industry to issue emergency temporary motor vehicle damage appraiser licenses. Consequently, the testimony went, the ADALB should be abolished. Board Member Coyne pointed out that the testimony is erroneous, and the fact is that the Board did expeditiously approve the requests for temporary emergency licenses that had been submitted in August and in the past winter.

Mr. Starbard made a motion to have a letter sent by Chairman Cox to the Chairman of the Financial Services Committee informing them that the ADALB approved many requests for temporary emergency licenses during the emergencies which were mentioned during the Legislative hearing. The motion requested the ADALB Legal Counsel draft the letter. The motion was seconded by Board Member Johnson and passed by a vote of: 4-0 with Chairman Cox abstaining.

Board Legal Counsel, Michael D. Powers, informed the Board Members that at the next meeting the Board should hold discussions about potential amendments to the Board's regulation in compliance with Governor Charles Baker's initiative, Executive Order 562, for all agencies and Boards in Massachusetts to review their regulations and recommend whether to rescind, revise or simplify such regulations, after conducting such a review in accordance with the Governor's Executive Order. Mr. Powers had provided the Board Members with copies of Executive Order 562, and informed the Members of the procedure for amending the Board's regulation. The Board Members were to provide any proposed changes to Mr. Zavackis before the next Board meeting so that they could be placed on the Board's agenda for discussion purposes. At that meeting the Board would need to schedule a date for a public meeting for a listening session, whereby interested members of the general public could appear and provide oral statements about the ADALB regulation. At the public meeting, members of the general public would also be able to provide written statements. The meeting would be conducted by the General Counsel for the Division of Insurance. At the following Board meeting, the Board would vote on proposed amendments to the ADALB regulation, and, thereafter, the proposed amendments would be sent to: the Secretary of Housing and Economic Development, to the Governor's Chief Legal Counsel, and from there to the Secretary of Administration and Finance for their review. After that review is finalized, the proposed amendments which were vetted and approved would be sent back to the ADALB. When the ADALB receives the proposed amendments, which were reviewed and approved, the Board would hold another special meeting of the Board, published in newspapers, and vote on the proposed amendments. The amendments would be sent to the Secretary of A&F approved by her and, thereafter, to the Office of the State Secretary to be placed on file.

Mr. Peter D'Agostino, lobbyist for the Alliance of Automotive Service Providers of Massachusetts, requested to speak to the Board and Chairman Cox gave him permission. Mr. D'Agostino requested that the Board's listening session be opened to include any potential amendments to the regulation, and not just those the Board would like considered. Mr. Powers agreed, and said that interested parties would be invited to recommend any amendments to the regulation, and pointed out that any amendments to regulation would need to be vetted up

through the bureaucratic chain as previously stated. Mr. D'Agostino said he understood and appreciated the fact that any amendments could be talked about during the listening session.

Chairman Cox informed the public that the Board was about to enter the executive session and a roll call of the membership was required and a statement for the reasons for entering the executive session. The Legal Counsel to the ADALB, Michel D. Powers, informed the Board and the public that there were several reasons for the Board to enter the executive session. The Board was to review complaint #2015-5 to determine if the facts that were alleged in the complaint were sufficient to implicate a violation of the ADALB's regulation and enabling statute. The review would not involve a discussion of the licensed appraiser's character or reputation and would be limited to whether the facts alleged in the complaint were sufficient to establish a violation of the ADALB regulation or enabling statute with any legal advice that the Board requested. In addition, the Board had received additional information in November of 2015 from the complainant in complaint #2015-3 which was originally brought to the Board's attention in June of 2015 and after a review of it by the Board, they determined that the licensed appraiser would be sent a copy of the complaint and the complainant would be notified that the Board needed additional information about the complaint. In November the Complainant sent the additional information to the Board and during the executive session the Board would review this information, to determine whether the allegations were sufficient to implicate the Board's regulation. Lastly, the Board would be provided legal advice and an update on a pending complaint that was filed against the Board by AASP of Massachusetts in June of 2015, alleging the Board violated the Open Meeting Law. The Legal Counsel to the ADALB, Michael D. Powers, had responded to the complaint on the Board's behalf, most recently on October 27, 2015. Mr. Powers informed the Board that listed on the agenda were applicants for the examination for motor vehicle damage appraiser license whom indicated on their applications that they had been convicted of a felony, and they would be meeting with the Board in the executive session to explain the circumstances surrounding their conviction and provide reasons to the Board that they would be a suitable persons to be licensed as a motor vehicle damage appraisers. After consulting with Mr. Zavackis, Mr. Powers informed the Board that no applicants appeared today at the Board meeting, consequently the Board would not be meeting with such applicants.

Executive session:

Chairman Cox entertained a motion to enter the executive session which included the announcement that the Board would not meet in the open session after the executive session's business was completed. A motion was so made by Board Member Johnson and seconded by Board Member Coyne, the motion was passed by a roll-call vote of 4-0, Chairman Cox abstained.

Complaint 2015-5:

The Board Members were provided with copies of Complaint #2015-5 and the Board Members took time to read it. Board Member Coyne said that the complaint was not signed and there was insufficient information that was provided in the complaint. After reviewing the matter Mr. Coyne was unable to determine whether this involved a straight preliminary appraisal, whether it was a supplemental appraiser, whether there was any negotiations that took place, or whether a

negotiated settlement was entered between the appraiser for the insurance company and the appraiser at the auto body shop.

Mr. Coyne made a motion that the complainant be sent a letter, written by the Legal Counsel to the ADALB, informing him that after a review by the Board there was insufficient information provided in the complaint to determine whether the ADALB regulation was violated and that the complaint must provide additional information within thirty days of the date of the letter or the complaint will be dismissed.

Complaint 2015-3:

Legal Counsel Michael Powers informed the Board that there was additional information provided to him on November 18, 2015, by the complainant's attorney. The new information provided more detailed information specifically alleging the manner in which the Board's regulation was allegedly violated. Mr. Powers provided copies to each Board member who took time to review the information.

After discussion by the Board it was determined that the licensed appraiser would be sent the additional information that had been provided by the complainant's attorney and given the opportunity to appear at the next Board meeting to respond to the allegations that were made in the complaint. Board Member Coyne made the motion to send the licensed appraiser the letter and the motion was seconded by Board Member Lyle Pare. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Adjournment of the Board:

Chairman Cox called for a motion to adjourn which was made by Board Member Coyne and seconded by Board Member Starbard. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Whereupon, the Board's business was concluded.

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