



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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DAVID KRUPA, CPCU
JOSEPH COYNE
THOMAS MCCLEMENTS

Minutes of Meeting of the Board on February 24, 2015, Approved by the Board on April 28, 2015; Motion of Board Member David Krupa, Second by Board Member Joseph Coyne passed by a Vote of: 4-0. Chairman Cox abstained.

February 24, 2015 Minutes of Board Meeting
**Automobile Damage Appraiser Licensing Board Meeting Held at
Division of Insurance, 1000 Washington Street, Boston, Massachusetts**

Members Present:

Gilbert Cox, Chairman
Carl Garcia
David Krupa, CPCU
Joseph Coyne
Thomas McClements

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 (Audio/Video).

Review of minutes:

Review of the minutes from the meeting held on December 3, 2014 was conducted by the Board.

After a brief discussion among the members of the Board about the contents of the minutes, a motion was made by Board Member Joseph Coyne, seconded by Board Member Carl Garcia to approve the minutes of the Board Meeting held on December 3, 2014. The motion passed by a vote of: 4-0. Chairman Cox abstained.

Report on the Part-II examination for motor vehicle damage appraiser license held on January 13, 2015:

Board Member Carl Garcia reported that the examination was very well attended with 31 people taking the examination, approximately 27 people passed the test, and 4 people failed the

examination. Board Member Garcia reported that these were the best results that the ADALB has had for a Part-II examination for quite some time. He stressed that the training courses that are offered are focusing on the proper methods of conducting an appraisal, specifically concentrating on documenting all of the elements of damage on the appraised motor vehicle and documenting this on the test. Mr. Garcia informed the Board, and members of the public attending the meeting, that when he first was appointed to the Board and participated in the testing process, the process for training and test preparation was quite disorganized. Currently, the preparatory courses and training courses are well organized and directed at properly analyzing and answering the areas covered by the questions on the test.

Date of next examination:

Mr. Garcia reported that the next examination would take place on April 7, 2015.

Board Member Joseph Coyne reported that Blue Hill Regional Technical School was offering a course in motor vehicle damage appraising that was not approved by the ADALB. Mr. Coyne elaborated that he had received complaints from students who had attended the course and that the instructor teaching the course was not the one who had been approved by the ADALB. He offered a motion to remove Blue Hill Regional Technical School from the ADALB website until such time as they come before the Board for approval of the training program that they are offering. A second was made by Board Member Carl Garcia and the motion passed by a vote of: 4-0. Chairman Cox abstained.

The Allstate Insurance Company submitted an internal training program for conducting motor vehicle damage appraisals. The Board reviewed the curriculum for the proposed training program and a motion was made by Board Member Coyne to accept the curriculum that Allstate Insurance Company submitted for teaching for its in-house training program. Board Member Thomas McClements seconded the motion. The motion passed by a vote of: 4-0, with Chairman Cox abstaining.

Discussion of amending the ADALB's regulation, 212 CMR 2.00 et seq.:

Discussion of amending the ADALB's regulation, 212 CMR 2.00 et seq. and posting of Special Public Meeting of the Board to obtain input from interested parties and those who may be affected by any amendments to the Board's regulation.

Michael D. Powers, Legal Counsel to the Board, informed the Board that Gary Anderson is the Acting Commissioner of the Division of Insurance and had been since December 10, 2014. Governor Baker had not appointed Acting Commissioner Anderson as the permanent Commissioner of Insurance, or made a determination of appointing someone else. Mr. Powers suggested that between the current meeting and the next meeting scheduled by the Board, it was almost certain that Governor Baker would choose a Commissioner of Insurance. Once the permanent Commissioner was appointed, Mr. Powers would notify the Board Members and arrange for a meeting. Until that time, it would be premature to go forward with the public meeting process for amending the Board's regulation.

There was a consensus among the Board Members to await Governor Baker's appointment to the position of Commissioner of Insurance before scheduling a Special Meeting of the Board to take public input about amending the Board's regulation.

New Business:

Board Member McClements stated that he had serious concern about licensed appraisers writing motor vehicle damage appraisals from photographs sent to them by consumers. He related that this created two issues: (1) the issue of removing the inspection sticker when the damage to the motor vehicle would affect its safe operation or violate auto emission standards, which under these circumstances cannot be accomplished whenever a consumer takes the photographs of the damage to the motor vehicle, [pursuant to M.G.L. c. 26, § 8G when the damage to the motor vehicle is damaged to such an extent that the motor vehicle would fail to meet the safety standards established by the registrar of motor vehicles or the motor vehicle emission standards established by the commissioner of the department of environment protection the appraiser shall remove the certificate of inspection from the vehicle], and (2) the requirement that a licensed appraiser must write an appraisal of the damage to the motor vehicle for the consumer. When a consumer takes his/her own pictures of the motor vehicle damage, that takes the issue of the use of photographs one step further.

Board Member Coyne informed the Board, and the members of the public, that there is an I-Phone application that can be downloaded called, "Dude my Car." The application allows a person to "photo-shop" motor vehicles by implanting into the photograph of a motor vehicle fabricated damage over various areas of an undamaged motor vehicle. Board Member Coyne asserted by changing the picture of an undamaged motor vehicle and implanting damage into the picture where none existed, this new technology opens up the industry to fraud. Mr. Coyne has observed this technology utilized, with damage implanted on various parts of an undamaged motor vehicle: the windshield, bumper, quarter panel, and he, with all of his years of training and experience, could not determine the difference between the fabricated damage in the photographs and actual damage.

Board Member Garcia opined that the critical issue is holding licensed appraisers accountable for their appraisals. He declared, the ADALB must make it known that ultimately licensed motor vehicle damage appraisers are accountable for reviewing appraisals that they submit for any damage claimed to motor vehicles.

Board Member David Krupa said that these anecdotal stories amount to nothing more than fear mongering. Board Member Krupa pointed out that there was no complaint pending before the Board establishing a violation of the Board's regulation against a licensed appraiser about this issue. Mr. Krupa reminded the Board Members that when the General Counsel for the Division of Insurance Robert Whitney, appeared before the Board to discuss the use of photographs and video technology of damage to motor vehicles which satisfies the requirement of "personal inspection" of the damage, Mr. Whitney alluded to new technology that is developing within the medical profession in the United States. He said that doctors are currently diagnosing patients based on a review of photographs that have been taken of a patient's body, which are being sent to doctors in remote locations different from the location of the patient. Board Member Krupa opined, if this type of technology is good enough for the medical profession and used for

diagnostic purposes, then it is good enough for motor vehicle damage appraisals. Mr. Krupa noted that Governor Baker has publicly announced that the goal is to make Massachusetts regulations streamlined to make them more efficient and easier to conduct business in Massachusetts, and that is what the Board should be focused on.

Mr. Krupa observed that Board Members Garcia and McClements are the two members of the Board who were appointed because they are affiliated with the auto body repair industry in the commonwealth [pursuant to M.G.L. c. 26, § 8G] but state that they are concerned about insurance companies being protected against fraudulent misconduct by consumers. Mr. Krupa [who has been appointed as one of the two members of the Board affiliated with insurance companies writing casualty insurance within the commonwealth pursuant to M.G.L. c. 26, § 8G] asserted that insurance companies in Massachusetts have procedures in place to protect against fraud, are well-versed about fraud, and know how to protect themselves against it. He concluded that Board Members Garcia and McClements should not concern themselves with protecting insurance companies from fraud, because the insurance companies in Massachusetts have systems in affect to prevent fraud and are very capable of protecting their own interests.

Mr. McClements said the he saw no problems with current changes in technology and adapting with them, his problem is the use of the technology going forward.

Chairman Cox pointed out that the standard procedure for the members of the ADALB is to address claims of violations of the Board's enabling statute or regulation by reviewing complaints filed against licensed motor vehicle damage appraisers. As Mr. Krupa said, there is no complaint filed by anyone against a licensed appraiser about this issue. Chairman Cox asserted that the only solution would be by a complaint filed against a licensed appraiser for allowing a consumer to take fraudulent pictures, and for someone to bring such a complaint to the Board.

Board Member Krupa responded that the Board has talked about this quite a bit in the past and it is something that should be left for the Special Public Meeting of the Board for amending the Board's regulation wherein input will be provided by interested members of the general public and industry. Before the Board does anything further, it should gather information from the general public and interested parties and hear their viewpoint on the issue.

Mr. Peter D'Agostino a lobbyist for AASP requested to speak with the Board and Chairman Cox approved the request. Mr. D'Agostino repeated what Mr. McClements' said about consumer taking pictures, sending them to insurance companies, and submitting claims to their insurance companies for damage to their motor vehicles. He reiterated what Mr. McClements already said, that consumers submitting such claims to insurance companies violate the ADALB regulation requiring the damage to be appraised by a licensed motor vehicle damage appraiser. He asserted, because of the case that involved Metropolitan Life Insurance Company brought by the Office of the Attorney General, licensed appraisers must remove the inspection certificate from a motor vehicle [Mr. D'Agostino was referring to the case of the *Commonwealth v. Metropolitan Property and Casualty Insurance Company*, Suffolk Superior Court, Civil Action No. 2014-3663-C, whereby on November 21, 2014, the Office of the Attorney General and the Metropolitan Property and Casualty Insurance Company entered into an "Assurance of

Discontinuance” (AOD), a copy of the case was sent to each Board Member on December 3, 2014. In that case the defendant did not admit to liability or wrongdoing and the agreement is binding and enforceable only on the parties to the case and is non-precedent setting because the AOD was “[m]ade without any trial or adjudication of any issues of law or fact.”]. Board member McClements concluded that the Board should discuss an Advisory Opinion about this issue.

Chairman Cox stated that he had heard a problem being discussed but no one was suggesting a solution. He pointed out that Board Member Garcia and Board Member Krupa were in agreement with General Counsel for the Division of Insurance Robert Whitney’s opinion about the use of photographs and video images for conducting appraisals of damage to motor vehicles. Chairman Cox assigned Mr. McClements to draft something that the Board could discuss at the next meeting, and requested that the issue be placed on the Board’s agenda.

Next meeting of the Board:

The Board Members agreed that the next meeting would be held on April 28, 2015, at 9:30 AM at 1000 Washington Street, Boston, Massachusetts.

Emergency motor vehicle damage appraiser licenses:

Liberty Mutual Insurance Company’s representative Peter Chung submitted thirty-eight applications for emergency licenses for motor vehicle damage appraiser. My Chung informed the Board that because of the inordinate amount of claims that were filed as the result of the unprecedented snow that had fallen over New England during the prior five weeks, Liberty Mutual needed these additional appraisers to assist them in processing the damage claims. The individuals who were listed on the applications were licensed in other states. Mr. Coyne made a motion to approve the emergency licenses and Board Member Krupa seconded the motion. During the discussion Board Member Coyne stated that in the past the Board reviewed each application and voted whether to approve the applications by separate votes on each individual’s application. The Board reviewed each and every one of the license applications and voted to approve each of them for a period of 60 days by a vote of 3-0, with Chairman Cox abstaining. The reason for the vote appearing as 3-0, is because at the beginning of taking the votes Board Member Garcia had temporarily exited from the room and upon his return Board Member Krupa exited from the room to contact his office. Upon Board Member Krupa exiting the room, Board Member Coyne made the motion to approve the licenses and Board Member Garcia seconded the motion.

A motion was made by Board Member Joseph Coyne and a second by Board Member David Krupa for temporary licenses for the following named individuals; all were approved by a vote of: 3-0 Chairman Cox abstaining and Board Member Carl Garcia absent because he had temporarily left the Board room:

1. Cameron Pooler
2. Brian Van Hoosier
3. Arthur Reid
4. Thomas Kernan
5. Patrick Depaepe

6. Kanika Williamson
7. Ronald Iverson
8. Cheryl Bradley
9. Douglas Muresan
10. Marion Myles
11. Brent Busby

Board Member Coyne made a motion to approve the following license applications with a second by Board Member Carl Garcia, at the time Board Member Krupa was temporarily absent from the Board room, and each one passed by a vote of: 3-0 with Chairman Cox abstaining:

12. Margaret Krischel
13. Kenneth Sullivan
14. Alexander Nemeth
15. Michael Benedetti
16. Christopher Stanley
17. Donald Griswold
18. Christine Kastner
19. Scott Hoacharevich
20. William Lee
21. Christopher Corso
22. Jacob Vlakancic
23. Brandy Cole
24. Tammy Davis
25. Luigi Monteleone
26. Carlton Nedd
27. Gary Harper
28. Kimberly Gordon
29. Todd Gilbert
30. Ryan Kurtzeborn
31. Jonathan McLean
32. Jason McLean
33. James Hadfield
34. Steven Harris
35. Jason Beveridge
36. Ramel Miller
37. Madison Cotton
38. Robert Potter

There were two applications that were submitted by Geico Insurance Company which were incomplete and, therefore, not voted on by the Board.

Executive Session:

Chairman Cox called for a Roll-Call of the Board Members to go into the executive session to discuss the application of an individual who had indicated that he had been convicted of a felony, the individual was present to discuss his background and circumstances of his conviction with the Board. The Board also had before it several complaints that had been filed against licensed motor vehicle damage appraisers and needed to discuss whether the allegations in the complaints supported a prima facie case against the licensees before the complaints could proceed to the stage of notification to the licensed motor vehicle damage appraiser that the Board's regulation may have been violated, with the subsequent scheduling of a hearing.

After returning to the room, Board Member Krupa made the motion to go into an executive session and a second was made by Board Member Coyne. The motion was passed by a vote of: 4-0, with Chairman Cox abstaining.

Mr. Zavackis informed the Board that an applicant seeking a motor vehicle damage appraiser license indicated on his application that he had been convicted of a criminal felony offense and would like the opportunity to be heard by the Board. The Board allowed the person to appear before the executive session and questioned him about the circumstances of the conviction and his employment history.

At the conclusion of the discussion, the Board approved the applicant's request to take the Part-II examination for motor vehicle damage appraiser license. A motion to allow the applicant to take the Part-II examination for motor vehicle damage appraiser license was made by Board Member Garcia, seconded by Chairman Cox. The motion was passed by a vote of: 3-1, Board Member Coyne opposed the motion and Chairman Cox abstained.

I. Complaints filed against licensees:

Complaint 2014-14:

A discussion was held among the Board Members about the sufficiency of the facts to support a prima facie violation of the Board's regulation. After the complaint was thoroughly reviewed and discussed among the Board Members a consensus was that the complainant had failed to establish that the Board's regulation had been violated. This is so because the documentation submitted with the complaint established that the parties were in dispute over various costs for repairing the damaged motor vehicle. After a series of discussions and communications between the parties, a final price for the repair of the motor vehicle was accepted by the auto body shop and was paid by the insurance company. Based upon these facts the Board determined that the applicable provisions of its regulation, 212 CMR 2.00 et seq., were not violated. A motion was made by Board Member Krupa to dismiss the complaint and it was seconded by Board Member Coyne. The motion passed by a vote of: 4-0, with Chairman Cox abstaining.

Complaint 2014-17:

A discussion was held by the Board as to whether a prima facie case was established against the licensed motor vehicle damage appraiser for failing to disclose a criminal conviction when renewing his license in 2012. The complaint reported that on December 7, 2011, the licensed motor vehicle damage appraiser had a criminal finding rendered against him in the Worcester District Court whereby he admitted to sufficient facts to support the charge of assault and battery that had been brought against him. The criminal case was dismissed against him on the payment of a \$100 fine. Based on the documents file with the Board, the criminal case arose out of an altercation between a motor vehicle owner and the licensed appraiser, wherein the license appraiser, “slapped his [victim’s] hand in an attempt to retrieve a piece of paper.” The complaint alleged that the licensed appraiser had not reported the criminal case in his 2012 license renewal application. Mr. Zavackis reported that a review of the files of the Division of Insurance did not establish that the licensed appraiser failed to disclose this criminal conviction. The licensed appraiser’s renewal application for 2012 could not be located in the motor vehicle damage appraisers’ files and, therefore, Mr. Zavackis was unable to determine if that criminal conviction had in fact been disclosed on the renewal application. Because of this lack of evidence to support the complaint, Chairman Cox made a motion to dismiss the complaint, which was seconded by Board Member McClements. The motion passed by a vote of: 4-0, with Chairman Cox abstaining on the vote.

Complaints filed by the Alliance of Automotive Service Providers dated July 28, 2014:

- a) Complaint 2014-9;
- b) Complaint 2014-10;
- c) Complaint 2014-11;
- d) Complaint 2014-12;
- e) Complaint 2014-13.

At the Board meeting that was held on December 3, 2014, the Board was provided with correspondence from Geico Insurance Company (Geico) sent to Robert A. Whitney, Deputy Commissioner and General Counsel for the Division of Insurance, providing additional details regarding the role of Geico employees who are licensed motor vehicle damage appraisers who perform appraisals at auto body repair shops that are part of Geico’s ARX program.

The Legal Counsel to the Board, Michael D. Powers, had informed the Board that representatives of Geico responded to the issue about assigning motor vehicle damage appraisers to auto body shops on a full-time basis to conduct appraisals of damaged motor vehicles as alleged in the above-referenced complaints. In a letter dated September 22, 2014, which was sent to the Mr. Whitney, Geico responded to the complaints and elaborated on the manner in which its licensed auto damage appraisers conducted appraisals and asserted that its employees are not operating, ““a Drive-in Appraisal Service for an insurer’ within the meaning of 212 CMR 2.02(7).”

At the December 3, 2014, meeting a motion had been made by Board Member Krupa to:

Send a letter to Geico's representative accepting Geico's letter as satisfying the requirements of 212 CMR 2.00 et seq., and requesting that Geico communicate to the appraisers named in the complaints about the agreement between Geico and the Division of Insurance. Also, notifying Geico that at this time the Board is still considering the complaints and requesting Geico confirm that it had notified the named appraisers of the agreement, and to bring the matter to a conclusion at the next Board meeting.

At that meeting, Board Member Coyne seconded that motion and the motion passed by a vote of: 3-0, with Board Member Garcia abstaining from the deliberations and vote, and Chairman Cox abstained.

By a letter dated February 13, 2015, Michael D. Powers, Legal Counsel to the ADALB, wrote to John A. Taylor, Senior Counsel for Geico Insurance Company, informing him of the Board's vote taken at the December 3, 2014, meeting. By letter dated February 20, 2015, Samantha R. Freedman, Legislative Attorney for Geico Insurance Company, wrote to Michael D. Powers informing him that the motor vehicle insurance appraisers had been so notified about the proper manner of conducting appraisals of damage motor vehicles, as instructed by the Board. In relevant part Attorney Freedman wrote, "This letter confirms that the content of the letter written to Robert A. Whitney, General Counsel for the Division of Insurance, has been communicated to the following licensed appraisers: Joseph Gatchell; Corey Plummer; Patrick Derov; Kevin O'Brien and Don C. Gracie. The letter reflects the role of all GEICO employees who perform appraisals at repair shops that are part of GEICO's ARX program in Massachusetts. Thus, the listed appraisers have complied and will continue to comply with the appraisal process as explained in the letter."

Copies of these two letters were provided to all the Board Members.

A motion was made to table the matter by Board Member Coyne, seconded by Chairman Cox the vote passed by a vote of: 3-0, Board Member Garcia did not participate in any of the discussions about the matter and he and Chairman Cox abstained.

Adjournment:

A motion to adjourn the meeting was made by Board Member Coyne, a second was provided by Board Member Krupa and the motion carried by a vote of: 4-0, Chairman Cox abstained. Whereupon, the Board's business was concluded.

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