



# THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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## AGENDA

### **Auto Damage Appraiser Licensing Board Meeting**

**May 25, 2016, 9:30 AM, 1000 Washington Street, Boston, Massachusetts**

- I. Call to order.
- II. Approval of the Board Minutes for the Board Meetings held on January 26, 2016, February 23, 2016, April 26, 2016, and May 4, 2016.
- III. Report on the Part-II examination for motor vehicle damage appraiser license tentatively scheduled for July 27, 2016.
- IV. Request of AdjusterPro to approve an estimating and evaluation training as an approved training course for motor vehicle damage appraisers.
- V. Discussion of changing the Board's Complaint Procedure when a complaint is filed against a licensed appraiser. The proposed new procedure is the following:

### **ADALB Complaint Procedures**

**Revised 2016 as Adopted by the Auto Damage Appraiser Licensing Board at the Board Meeting Held on -----, by a vote of: --**

1. When a Complaint is received by Executive Secretary to the Auto Damage Appraiser Licensing Board (Board) it is assigned a complaint number. At least 21 days before the following scheduled Board meeting, the licensed appraiser, complained of in the complaint, is sent a copy of the complaint, and a letter notifying him/her of the date of the Board meeting and the rights provided under M.G. L. c. 31, § 21 (a)(1) that he/she has a right: whether to have the discussion of the matter heard during the public session of the Board meeting, or during the executive session of the Board meeting to which the public is not allowed to attend; to speak on his/her own behalf; to have an attorney or representative of his/her choosing attend the Board meeting to advise him/her at own expense but the attorney or representative will not be allowed to participate at the Board meeting; and to create an independent record by

audio-recording or transcription of the executive session of the meeting at his/her expense. See the Office of Attorney General's Decisions on the Open Meeting Law OML 2011-39. A copy of the letter and complaint is then forwarded to the Members of the Board and placed on the agenda for the next Board meeting. A copy of the letter is also sent to the complainant.

2. In the event the licensed appraiser fails to appear at the Board meeting, the Board may notify the licensed appraiser that he/she will be considered in default and that at the next regularly scheduled Board meeting the Board will vote on issuing an Order to Show Cause against the licensed appraiser, unless the licensed appraiser shows good reason for his/her failure to appear at the first scheduled meeting.

2. Preliminary review of the complaint. The Board conducts a preliminary review of the complaint at the Board meeting, either in the executive or public session of the Board as requested by the licensed appraiser, to determine whether to dismiss the matter or proceed.

3. Dismissal of the Complaint. The Board may determine to dismiss a complaint with or without prejudice due to lack of jurisdiction, lack of sufficient evidence, finding of no violation, withdrawal of a complaint, subsequent compliance with statutes and/or regulations or other basis.

4. Board's Decision. If the decision is to proceed, then the licensed appraiser is provided with a formal complaint and provided at least 30 days notice to appear at a pre-hearing conference.

5. At the pre-hearing conference the Board may make an informal disposition of the matter by stipulation, agreed settlement or consent order. After the pre-hearing conference, the Board will determine to proceed or dismiss. If the decision is to proceed, then the Board notifies all parties of formal hearing and the format of the complaint is in the form of: ADALB v. Licensed Appraiser. The adjudicatory procedures provided under M.G.L. c. 30A and 801 CMR 1.00 will be followed.

6. After a formal hearing, the Board by a majority vote determines if a violation has occurred and determines the appropriate action which could include the following:

(a) Formal Reprimand. A formal reprimand is an official written rebuke expressing strong disapproval of actions of the licensee which is retained in the licensee's Board files and constitutes formal disciplinary action.

(b) Administrative Penalties. The Board may impose 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 as provided for under M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq.

(c) Suspension. A Suspension of a license deprives a licensee of all rights and privileges of licensure for a specified period of time or until certain conditions are met which have been imposed by consent agreement or by formal decision following an adjudicatory hearing.

(d) Revocation. Revocation of a license permanently deprives a licensee of all rights and privileges of licensure and eliminates his or her license status.

- VI. Discussion about amending the ADALB regulation 212 CMR 2.00 et seq. After having held a Special Public meeting of the Board on Wednesday, May 4, 2016, which welcomed interested members of the public to provide input regarding topics raised by the Board in its public notice of the meeting and about any possible changes the public would like the Board to consider addressed during the regulation review, the Board will propose preliminary amendments to the ADALB's regulation. The potential amendments include, but are not limited to, the proposed amendments submitted by Board Member William Johnson at the February 23, 2016, which are the following:

212 CMR 2.04 ~~RED TO BE REMEOVED~~ **BOLD BLACK TO BE ADDED**

[For purposes of clarity where Board Member William Johnson submitted his proposal at the Board meeting held on February 23, 2016, indicating removing language by coloring words red, those words are underlined below and, therefore, mean the underlined words are the ones that Board Member Johnson proposes removing from the current regulation].

CODE OF MASSACHUSETTS REGULATIONS  
TITLE 212: AUTO DAMAGE APPRAISERS LICENSING BOARD  
CHAPTER 2.00: THE APPRAISAL AND REPAIR OF DAMAGED MOTOR  
VEHICLES

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 either a staff or an independent appraiser to 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.

(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment 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.

(c) Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of an 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. An appraiser **whether representing the insurance company or repair shop** 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 **insurance** appraiser determines that preliminary work or repairs would significantly improve the accuracy of the appraisal, he or she shall authorize the preliminary work or repair with the approval of the claimant and shall complete the appraisal after that work has been done **by a registered shop of the claimant's choice. If the appraiser representing a registered repair shop determines that preliminary work, repairs or partial disassembly would significantly improve the accuracy of the appraisal, then, with the approval of the claimant, he or she shall authorize such preliminary work, repairs, or partial disassembly; provided however, that, if there has been a written insurance claim made, then the repair shop appraiser shall first obtain the approval of the insurer before giving such authorization, unless the claimant directs that such work, repair, or partial disassembly be made without obtaining the insurer's approval, the claimant being first informed that they may be held personally responsible for the costs of same and that it may affect the insurer's obligation to pay the cost of repairs. In all instances, the appraiser shall photograph the damaged areas before authorizing preliminary work, repair, or partial disassembly. An insurer shall not unreasonably withhold its approval of preliminary work, repair, or partial disassembly.**

The appraisers representing the 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, if utilized** (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturer warranty repair procedures, I-Car, Tec Cor and paint manufacturer procedures may **shall** also apply. Further, no appraiser shall use more than one manual or **electronic data system if utilized** for the sole purpose of gaining an advantage in the negotiation process.

If, while in the performance of his or her duties as a 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. The appraiser shall itemize the cost of all parts **including shipping and handling, core charges shipping and handling, labor times, hourly rate**, materials, and necessary procedures required to restore the vehicle to pre-accident condition and shall total such items. **Delays in repair cycle time shall be considered when sourcing parts and materials.** 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. With respect to paint, paint materials, body materials and related materials, if the formula of dollars times hours is not accepted by a registered repair shop or licensed appraiser, then a published manual, **electronic data system or retail receipts for paint and material** 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 shall mail, fax or electronically transmit the completed appraisal within five **three** 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 or faxed **or electronically transmitted** within five **three** 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 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 a 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 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 three **two** business days of the receipt of such request. The appraiser shall have the option to leave a completed copy of the supplemental 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 **or** electronically transmitted or hand delivered to the registered repair shop within one business day. The appraiser shall also give a copy of the completed supplement to the insurance company in a similar manner. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary 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 a licensed appraiser employed by the repair shop, together with such supporting information and documentation as may be agreed upon between the insurer and the repair shop. The insurer shall then be required to fax or electronically submit to the repair shop within two **one** business days its decision as to whether it accepts the requested supplemental appraisal allowance. Within this same period, a licensed appraiser representing the insurer and a 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 **one** business days, the insurer and 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 insurance company does not have a direct payment plan or if the owner of the vehicle chooses not to accept **the provisions and** 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.

**(K) When a Completed Work Form is utilized the appraiser representing the insurance company and registered 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.

In addition to Board Member Johnson's proposed amendments, the ADALB Legal Counsel, Michael D. Powers has submitted a proposed amendment with a recommendation by Board Member Richard Starbard to 212 CMR 2.04 (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. Legal Counsel Powers' proposed amendment would add the following section:

(a) Issuance of Temporary License by Supervisor of Producer Licensing of the Division of Insurance. The Auto Damage Appraiser Licensing Board (Board) authorizes the Chairperson of the Board or his/her designee, which may include the Supervisor of

Producer Licensing within the Division of Insurance who is the person traditionally assigned to process the applications and renewals for motor vehicle damage appraiser licenses for the ADALB, 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 Division of Insurance Licensing Unit; (2) is in good standing in the other state and the applicant provides consent to the Supervisor of Producer Licensing 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 Supervisor of Producer Licensing 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.

- VII. Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda.
- VIII. Executive session to review and discuss the background of applicants for motor vehicle damage appraiser test who have disclosed a criminal conviction on the application. Review and discussion of: Complaint-2016-1, Complaint 2016-2, and Complaint 2016-3, 2016-4, 2016-5, and 2016-7 filed against motor vehicle damage appraisers licensed by the Auto Damage Appraiser Licensing Board. Such discussions during the executive session are allowed for under M.G.L. c. 30A, §21 (a)(1) and in accordance with the Office of the Attorney General's Open Meeting Law (OML) decisions such as *Board of Registration in Pharmacy Matter*, OML 2013-58, and *Department of Public Safety Board of Appeals Matter*, OML 2013-104. Section 21 (a) states "A public body may meet in executive session only for the following purposes:
  - (1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed



executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

The licensed appraisers' attorneys by the time of posting the agenda in complaints 2016-1, 2016-2, and 2016-3 have requested that these matters be heard in the executive sessions.

**IX. Motion to adjourn.**