



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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AGENDA

**For Auto Damage Appraiser Licensing Board Meeting Scheduled for
August 3, 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 June 22, 2016.
- III. Report on the Part-II examination for motor vehicle damage appraiser license held on June 28, 2016 and scheduled for August 5, 2016.
- IV. 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 Presented to the Auto Damage Appraiser Licensing Board at the Board Meeting Held on August 3, 2016 for Adoption

1. Notice to Licensed Appraiser. When a complaint (Complaint) is received by the executive secretary (Executive Secretary) to the Auto Damage Appraiser Licensing Board (ADALB or Board) alleging a licensed motor vehicle damage appraiser (appraiser) has violated the ADALB's enabling act M.G. L. c. 26, § 8G and/or regulation 212 CMR 2.00 et seq. as provided for in the ADALB's "Application for Complaint", it is assigned a serial number in the order received prefixed by the year of the date of the complaint. At least 21 days before the following scheduled Board meeting, the appraiser, named 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 2016-06. Thereafter, a copy of the letter and Complaint is 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. Effect of Appraiser's Failure to Appear. In the event the appraiser fails to appear at the Board meeting, the Board may notify the 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 appraiser, unless the appraiser establishes good reason for his/her failure to appear at the initial scheduled meeting on the Complaint.

3. 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 meeting as requested by the appraiser, to determine whether to dismiss the matter or pursue further action.

4. Dismissal of the Complaint. At any time the Board may determine to dismiss a Complaint with or without prejudice due to lack of jurisdiction, based on frivolous allegations, lack of sufficient evidence, lack of legal merit or factual basis, finding of no violation, withdrawal of a Complaint, subsequent compliance with statutes and/or regulations, or other basis.

5. Mediation. To facilitate the disposition of a Complaint, at any time prior to the commencement of a formal adjudicatory hearing, the Board can offer the appraiser the opportunity to resolve the Complaint by mediation. See Office of the Attorney General's Open Meeting Law Decision of October 20, 2011. When an appraiser accepts an offer to resolve the complaint by mediation, the Board will appoint one of the members of the Board to conduct a mediation and attempt to mediate the Complaint with: the Board member, the appraiser and his representative, if any, the person filing the complaint (complainant), and any other parties related to the complaint necessary to resolve the matter. If the appraiser declines the offer to mediate he/she will not be penalized in any manner for his/her refusal to participate in the informal mediation process and retains his/her right to a formal adjudicatory hearing. If the appraiser assents to have the matter mediated by the Board member, thereafter, the Board member will contact the complainant and offer to mediate the Complaint. If the complainant assents to have the Complaint mediated then the Board member, appointed to conduct the mediation, will inform the appraiser and begin the mediation process. To obtain a final resolution of the matter through the mediation process, all parties must mutually agree on the resolution to the complaint. See "Manual for Conducting Administrative Adjudicatory Proceedings" Chapter 1 "F. Informal Proceedings." (2012 Edition) (Published by the Administrative Law Division of the Government Bureau of the Office of the Attorney General). The Board member shall use his/her discretion in choosing the manner of conducting the mediation which could include but is not limited to: communicating with each party separately, with the approval of all parties, to discuss each party's position and potential settlement offers; a simultaneous telephonic or Skype conference with all

the parties; or a meeting with all the parties at a convenient location. If the parties agree to resolve the Complaint, then the complainant withdraws the Complaint by executing a form approved by the Board and the complainant will be precluded from filing any future Complaint with the Board based on the same facts. Any and all disputes raised in the Complaint alleging the violation of the Board's enabling act M.G.L. c. 26, § 8G and regulation 212 CMR 2.00 et seq. will be considered fully and finally resolved. At the following Board meeting all of the Board members will be notified of the resolution of the Complaint and the Board member will report: whether the mediation occurred or was terminated and whether a settlement was reached, but the Board member may not make a report, assessment, evaluation, recommendation, finding, or other communication to the Board. If the parties to the complaint do not resolve the dispute at mediation, then the Board member who participated during the mediation process will be recused from participating at any further proceedings on the Complaint taken at future Board Meetings.

6. Board's Decision to Proceed. If the decision is to proceed, the appraiser is provided 30 days notice to appear at an informal pre-hearing conference to discuss the issues raised in the Complaint. During the pre-hearing conference the Board shall act as a quasi-judicial board for the sole purpose of determining whether the complaint against the appraiser warrants further proceedings before the Board. The pre-hearing conference shall be considered a meeting of the Board covered under subsection (d) of Section 18, of General Laws Chapter 30A as "a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it." Included with the notice to appear at the pre-hearing conference the appraiser will be notified he/she has the option of filing with the Executive Secretary, within 10 days of receiving the notice of pre-hearing conference from the Board, a written response to the Complaint filed by the complainant including any supporting documentation or materials in support of the appraiser's response that will be forwarded to the complainant for consideration of withdrawing his/her complaint. Upon receipt of an appraiser's response to the Complaint, the Executive Secretary shall forward the response and all supporting materials to the complainant with the advice that the complainant should, upon reviewing the response, advise the Executive Secretary in writing within 10 days whether the complainant wants to proceed further with his/her Complaint or is satisfied with the response and would like the complaint withdrawn. If the complainant advises the Executive Secretary that the complainant does not want to proceed further with the Complaint, the Executive Secretary shall notify the Board at the next scheduled Board meeting, and provide copies of the appraiser's response to the Complaint along with the complainant's written request not to proceed further. No further action need be taken at the next Board meeting on the Complaint other than noting in the minutes of the meeting that the complainant has withdrawn the complaint, and the Complaint is dismissed with prejudice. If the complainant does not notify the Executive Secretary that he/she wishes to withdraw the Complaint, the matter will proceed to a pre-hearing conference as originally scheduled.

7. Pre-hearing Conference. At the pre-hearing conference the Board may make an informal disposition of the matter by stipulation, agreed settlement, consent order or

the issuance of an advisory letter to the appraiser detailing the Board's concerns and any recommendations to the appraiser. An advisory letter does not constitute disciplinary action.

After the pre-hearing conference, the Board will determine to proceed or dismiss. If the decision is to proceed, the Board will appoint one of the members of the Board as the Presiding Officer, notify all parties of a formal hearing, and the format of the matter will be an Order to Show Cause in the form of: Auto Damage Appraiser Licensing Board v. Appraiser. After the Board issues an Order to Show Cause, the Board shall conduct all hearings in accordance with the Standard Adjudicatory Rules of Practice and Procedure set forth in M.G.L. c. 30A and 801 CMR 1.00 et seq.

8. Decisions of the Board. After a formal hearing, the Board by a majority vote determines if a violation has occurred and 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 appraiser which is retained in the appraiser'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 assessed 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 an appraiser 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 an appraiser of all rights and privileges of licensure and eliminates his/her license status.

- V. 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: AUTO DAMAGE APPRAISERS LICENSING BOARD

212 CMR 2.00: THE APPRAISAL AND REPAIR OF DAMAGED MOTOR VEHICLES

Section

- 2.01: Scope of Regulations
- 2.02: Licensing Requirements and Standards for Appraisers
- 2.03: Duties of Insurers and Repairers
- 2.04: Procedures for the Conduct of Appraisers and Intensified Appraisals
- 2.05: Penalties
- 2.06: Severability

Additions (as approved
6/22)

~~Deletions~~ (as approved
6/22)

2.01: Scope of Regulations

- (1) Purpose and Applicability. The purpose of 212 CMR 2.00 is to promote the public welfare and safety by improving the quality and economy of the appraisal and repair of damaged motor vehicles. Any licensed appraiser, individual or corporate entity who employs licensed appraisers shall be bound by 212 CMR 2.00.

212 CMR 2.00 is intended to be read in conjunction with 211 CMR 133.00, *Standards for the Repair of Damaged Motor Vehicles*. **The provisions of 212 CMR 2.00 shall apply to any approved direct payment plan pursuant to 211 CMR 123.00.**

- (2) Authority. 212 CMR 2.00 is promulgated under the authority granted to the Auto Damage Appraiser Licensing Board by M.G.L. c. 26, § 8G, as added by St. 1981, c. 775, § 1.

- (3) The Board may from time to time issue Advisory Rulings and shall do so in compliance with M.G.L. c. 30A, § 8.

- (4) Definitions.

Appraisal – **means a ~~written~~ motor vehicle damage report prepared by an appraiser licensed by the Board, on forms approved by the board and conducted as defined in M.G.L. c. 26, 8G and** in compliance with the provisions of **212 CMR 2.00**, M.G.L. c. 93A, c. 100A, c. 90, § 34R, and c. 26, 8G.

Appraiser - means any person licensed by the Auto Damage Appraiser Licensing Board to evaluate motor vehicle damage and determine the cost of parts and labor required to repair the motor vehicle damage.

Board – means the Auto Damage Appraiser Licensing Board established by M.G.L. c. 26, 8G.

Claimant - means any person making a claim for damage to a motor vehicle for either first or third party damages.

Independent appraiser - means any appraiser other than a staff appraiser who makes appraisals under an assignment by an insurer or repair shop and shall include the owner or employee of a repair shop who makes appraisals under a contract with an insurer.

Insurer - means any insurance company involved with a claim in the Commonwealth.

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Intensified appraisal - means the combination of the appraisal of a motor vehicle before its repair and the reinspection of the vehicle subsequent to its repair.

Staff appraiser - means an appraiser who is an employee of an insurer and whose job duties include the making of appraisals for his or her employer.

Repair Shop Appraiser – means an appraiser who is an employee of a repair shop and whose job duties include the making of appraisals for his or her employer.

Repair Shop – means a motor vehicle repair shop registered pursuant to the requirements of M.G.L. c. 100A.

~~Supervisory appraisal – means an appraisal conducted by an insurance company or appraisal company supervisor solely for the purpose of evaluating the appraisal ability of one of his or her appraiser employees or for the purpose of providing on-the-job training of an appraiser employee.~~

2.02: Licensing Requirements and Standards for Appraisers

(1) Requirement That License Be Obtained and Displayed. No person in Massachusetts shall appraise, estimate **or determine** damages to motor vehicles or otherwise present himself or herself as an appraiser unless he or she has first obtained a license from the **Auto Damage Appraiser Licensing** Board. This license shall be valid for one year or less and shall be renewed annually on July 1st. Any appraiser, while making an appraisal, shall carry his or her license and shall, upon request, display it to any person involved in the claim or to any representative of the Board.

(2) Qualifications for a License. Any applicant for a license shall be 18 years of age or over and of good moral character. He or she shall furnish satisfactory proof to the Board that he or she possesses the educational qualifications required for graduation from high school or that he or she possesses relevant work experience deemed satisfactory by the Board. No applicant shall be considered competent unless the applicant has assisted in the preparation of appraisals for at least three months under the close supervision of **an licensed** appraiser. He or she shall complete an approved appraisal course or at the Board's discretion work experience may be substituted for said schooling.

(3) Application and Examination Fee for a License. Any applicant for a license shall complete an application to be prescribed by the Board and shall sign it under the penalties of perjury. He or she shall submit this application and non-refundable fee of \$100 to the Board. After an application is received and approved, the applicant shall be required to pass an examination given under the supervision of the Board. All successful applicants will be issued a numbered license. Any applicant failing to pass an examination, upon the payment of a further non-refundable fee of \$50.00, shall be entitled to a reexamination after the expiration of six months from the date of the last examination. Any applicant failing to pass an examination shall be allowed to review his or her examination.

(4) Renewal of License. The Board shall mail to each **licensed** appraiser an application for renewal. Such application shall be completed and returned to the Board. Each application shall be accompanied by a renewal fee of \$50.00. After verification of the facts stated on the renewal application, the Board shall issue a renewal license dated July first, and this license shall expire on the June thirtieth of the year following. Any **licensed**

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appraiser who fails to renew his or her license within 60 days after notification by the Board of his or her

license expiration date, before again engaging in the practice of **an licensed** appraiser within the Commonwealth, shall be required to re-register, pay a penalty fee determined by the Board and any back license fees, or may be required by the Board to be reexamined and pay applicable fees.

(5) Procedure for **Auto-Damage** Appraisals.

(a) All forms used for **auto-damage** appraisals must be approved by the Board.

(b) All forms used are required to have an itemization of parts, labor and services necessary, as **required in 212 CMR 2.00**, for repairs thereof. The prepared appraisal shall be sworn to under the penalties of perjury and shall include the appraiser's name, signature, license number, seal or stamp, employer, **insurer insurance company**, repair shop registration number if applicable, fee charged, the date the vehicle was appraised and the name of the manual used (if any) in preparing the appraisal. The appraisal seal or stamp shall be of a design approved by the Board. All appraisals sent electronically need not include the appraiser's signature and his or her seal or stamp.

(6) Schedule of Appraisal Fees.

(a) The Board may consider the appraisal fees charged within the territories where said appraiser operates. Any appraiser shall establish his or her own fee schedule unless limited by the Board. Any appraiser must post his or her appraisal fee schedule in a conspicuous location at his or her work place. The Board may establish a maximum schedule of fees by territory, type of business or complexity of work. Fees charged in excess of maximums approved by the Board shall result in penalties as established by the Board.

(b) Fees paid by a claimant for an appraisal that was requested by the insurer are recoverable from the insurer. Fees for **auto-damage** appraisals not requested by the insurer in first party claims are not recoverable from the insurer.

(7) Conflict of Interest. It shall be a conflict of interest for any appraiser who has been assigned to **write an appraisal, appraise a damaged motor vehicle** to accept, in connection with that appraisal, anything of value from any source other than the assignor of that appraisal.

Further, it shall be a conflict of interest for any **repair shop** appraiser **employed by a repair shop** to accept the assignment of an appraisal from an insurer unless that appraiser's employment contract prohibits the repair shop from repairing damaged motor vehicles that have been so appraised. In addition, it shall be a conflict of interest for any appraiser who owns or has an interest in a repair shop to have a vehicle repaired at that shop if that appraiser has appraised that vehicle at the request of an insurer. It shall be a conflict of interest if any **licensed** appraiser operates a Drive-in Appraisal Service **or Drive-in Claim and Appraisal facility for, or on behalf of, an insurer at a repair shop. Notwithstanding this provision, all drive-in appraisal services or drive-in claim and appraisal facilities must inform consumers of their right to have their vehicle repaired at any repair shop. No insurance company or employee, agent or insurance agency or representative thereof shall coerce or use any tactics the purpose of which is to prevent insureds or claimants from seeking damage reports on repairs from their own repair shop rather than utilizing a company appraisal drive-in facility.**

(8) Revocation or Suspension of a License. The Board may revoke or suspend any appraiser's license at any time for a period not exceeding one year if the Board finds, after a hearing, that the individual is either not competent or not trustworthy or has committed fraud, deceit, gross negligence, misconduct, or conflict of interest in the preparation of any **appraisal motor vehicle damage report**. The following acts or practices by any appraiser are among those that may be considered as grounds for revocation or suspension of an appraiser's license:

(a) material misrepresentations knowingly or negligently made in an application for a

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license or for its renewal;

- (b) material misrepresentations knowingly or negligently made to an owner of a damaged motor vehicle or to a repair shop regarding the terms or effect of any contract of insurance;
- (c) the arrangement of unfair and or unreasonable settlements offered to claimants under collision, limited collision, comprehensive, or property damage liability coverages;
- (d) the causation or facilitation of the overpayment by an insurer of a claim made under collision, limited collision, comprehensive, or property damage liability coverage as a result of an inaccurate appraisal;
- ~~(e) the refusal by any appraiser who owns or is employed by a repair shop to allow an appraiser assigned by an insurer access to that repair shop for the purpose of making an appraisal, supervisory reinspection, or intensified appraisal.~~
- ~~(f)~~ (e) the commission of any criminal act related to appraisals, or any felonious act, which results in final conviction;
- ~~(g)~~ (f) knowingly preparing an appraisal that itemizes damage to a motor vehicle that does not exist; and
- ~~(h)~~ (g) failure to comply with 212 CMR 2.00

(9) Drive-in Claim and Appraisal Facilities. Drive-in claim and appraisal facilities shall possess the following equipment:

- (a) Operating telephone service.
- (b) A calculator.
- (c) Current collision, paint and body cost estimating guide manuals or an automated system.
- (d) An operating flash light.
- (e) A tape measure of at least 30 feet.
- (f) An operating camera and film.
- (g) A fax machine or other device capable of transmitting data.

2.03: Duties of Insurers and Repairers

(1) Responsibilities for Actions of Appraisers. An insurer or repair shop shall be responsible for the actions of ~~all of its~~ the appraisers **working on their behalf whether staff or independent**, and shall be subject to the applicable penalties under law for any violation of 212 CMR 2.00 by its appraiser.

The Board may assess penalties against either the appraiser, the insurer, the repair shop or all three. In the event of default by the appraiser, the insurer or the repair shop may be responsible for penalties.

(2) Records and Analysis of Appraisals. Every ~~insurer or repair shop~~ appraiser shall retain for at least two years, copies of all records related to appraisals and inspection. Every insurer shall retain copies of all records including photographs in accordance with state law.

2.04: Procedures for the Conduct of Appraisals and Intensified Appraisals

(1) Conduct of Appraisals.

(a) Assignment of an Appraiser. Upon receipt by an insurer or its agent of an oral or written claim for damage resulting from a motor vehicle accident, theft, or other incident for which an insurer may be liable, the insurer shall assign **an either a staff or an independent** appraiser to **conduct an appraisal appraise the damage**. Assignment of an appraiser shall be made within two business days of the receipt of such claim. However, the insurer may exclude any claim for which the amount of loss, **less any applicable deductible**, is less than \$**2,500.00**.

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(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment for the purpose of preparing ~~an motor vehicle damage~~ appraisals ~~and conducting negotiations~~. No ~~staff or independent~~ appraiser shall knowingly negotiate a repair figure with an unlicensed individual or an unregistered repair shop.

(c) Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of ~~an staff or~~ independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific repair shop or individual. ~~The provisions of 212 CMR 2.04(c) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00.~~

(d) Requirement of Personal Inspection and Photographs. The appraiser shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making the appraisal. As part of the inspection, the appraiser shall also photograph each of the damaged areas.

(e) Determination of Damage and Cost of Repairs. The appraiser shall specify all damage attributable to the accident, theft, or other incident in question and shall also specify any unrelated damage. If the appraiser determines that preliminary work repair with the approval of the claimant and shall complete the appraisal after that work has been The appraisers representing the ~~insurer insurance company~~ and the ~~registered~~ repair shop selected by the insured to do the repair shall attempt to agree on the estimated cost for such repairs. The ~~registered~~ repair shop must prepare an appraisal for the purpose of negotiation. No appraiser shall modify any published manual ~~or electronic data system~~ (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturers ~~recommended warranty~~ repair procedures, I-Car, Tec Cor and paint manufacturer procedures ~~shall may also~~ apply. ~~However, the selection of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00.~~ Further, no appraiser shall use more than one manual or system for the sole purpose of gaining an advantage in the negotiation process.

If, while in the performance of his or her duties as ~~an licensed auto damage~~ appraiser, an appraiser recognizes that a damaged repairable vehicle has incurred damage that would impair the operational safety of the vehicle, the appraiser shall immediately notify the owner of said vehicle that the vehicle may be unsafe to drive.

The ~~licensed auto damage~~ appraiser shall also comply with the requirements of M.G.L. c. 26, § 8G, the paragraph that pertains to the removal of a vehicle's safety inspection sticker in certain situations.

The appraiser shall determine which parts are to be used in the repair process. ~~in accordance with 211 CMR 133.00.~~ ~~Determination of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00, the appraiser shall recognize that certain parts, including but not limited to; used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle. If both parties agree that a specified part is unfit and must be replaced, the insurer is responsible for paying the retail price for all parts indicated on an appraisal, including but not limited to, parts ordered and subsequently returned based on the criteria set in 211 CMR 133. The insurer is responsible for returning the parts to the supplier and recovering their costs from the supplier. The repair shop may agree to return parts on behalf of the insurer, if the insurer agrees to pay all costs, including but not limited to freight, handling and administrative costs, associated with such return. As to such costs, nothing in 212 CMR 2.00 shall preclude an insurer from exercising any available rights of recovery against the supplier. Delays in repair cycle time shall be considered when sourcing parts and materials.~~ The appraiser shall itemize the cost of all parts, labor materials, and necessary procedures

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required to restore the vehicle to pre-accident condition and shall total such items. The rental cost of frame/unibody fixtures necessary to effectively repair a damaged vehicle shall be shown on the appraisal and shall not be considered overhead costs of the repair shop. **Costs associated with the shipping and handling of parts including cores, shall not be considered overhead costs of the repair shop either and shall be listed on the appraisal and negotiated.** With respect specifically to paint, paint materials, body materials and related materials, if the formula of dollars times hours is not accepted by ~~an registered repair shop or licensed~~ appraiser, **then a published manual database or other documentation from a list approved by the Board and selected by the repair shop, shall be used. unless otherwise negotiated between the parties.** All appraisals written under 212 CMR 2.00 shall include the cost of replacing broken or damaged glass within the appraisal. When there is glass breakage that is the result of damage to the structural housing of the glass then the cost of replacing the glass must be included in the appraisal in accordance with 212 CMR 2.04. The total cost of repairing the damage shall be computed by adding any applicable sales tax payable on the cost of replacement parts and other materials. The appraiser shall record the cost of repairing any unrelated damage on a separate report or clearly segregated on the appraisal unless the unrelated damage is in the area of repair.

If aftermarket parts are specified in any appraisal the appraiser shall also comply with the requirements of M.G.L. c. 90, § 34R that pertain to the notice that must be given to the owner of a damaged motor vehicle.

The appraiser **representing the insurer** shall mail, fax or electronically **submit** ~~transmit~~ the completed appraisal within five business days of the assignment, or at the discretion of the repair shop, shall leave a signed copy of field notes, with the completed appraisal to be mailed, faxed **or electronically submitted** within five business days of the assignment. The repair shop may also require a completed appraisal at the time the vehicle is viewed. If the repair shop requires a completed appraisal, then the repair shop shall make available desk space, phone facilities, calculator and necessary manuals. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary **work, repairs or partial disassembly repairs**, severe illness, failure of the parties ~~other than the insurer~~ to communicate or cooperate, or extreme weather conditions make timely inspection of the vehicle and completion of the appraisal impossible.

(f) Determination of Total Loss. Whenever the appraised cost of repair plus the estimated salvage may be reasonably expected to exceed the actual cash value of a vehicle, the insurer may deem that vehicle a total loss. No motor vehicle may be deemed a total loss unless it has been **personally** inspected ~~or~~ **and** appraised by **an licensed** appraiser nor shall any such motor vehicle be moved to a holding area without the consent of the owner. A total loss shall not be determined by the use of any percentage formula.

(g) Preparation and Distribution of Appraisal Form. All appraisers shall set forth the information compiled during the appraisal on a form that has been filed with the Board. Staff and independent appraisers shall, upon completion of the appraisal, give copies of the completed appraisal form to the claimant, the insurer, and the repair shop and shall give related photographs to the insurer.

(h) Supplemental Appraisals. If a **registered** repair shop or claimant, after commencing repairs, discovers additional damaged parts or damage that could not have been reasonably anticipated at the time of the appraisal, either may request a supplementary appraisal. The **registered appraiser representing the** repair shop shall complete a supplemental appraisal prior to making the request. The insurer shall assign an appraiser who shall personally inspect the damaged vehicle within **two** ~~three~~ business days of the receipt of such request. **If the personal inspection does not occur in two business days, the repair shop has the right to use the supplement written by the appraiser representing the repair shop, unless otherwise agreed upon.** The appraiser **representing the insurer** shall have the option to leave

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a completed copy of the supplement appraisal at the registered repair shop authorized by the insured or leave a signed copy of his or her field notes with the completed supplement to be mailed, faxed, electronically ~~submitted~~ **transmitted** or hand delivered to the repair shop within one business day. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary **work, repairs or partial disassembly repairs**, severe illness, failure of the parties ~~other than the insurer~~ to communicate or cooperate, or extreme weather conditions make timely inspections of the vehicle and completion of the supplemental appraisal impossible.

(i) Expedited Supplemental Appraisals. If an insurer, a repair shop and the claimant agree to utilize an expedited supplemental appraisal process, an insurer shall not be required to assign an appraiser to personally inspect the damaged vehicle. In such event, the repair shop shall fax or electronically submit to the insurer a request for a supplemental appraisal allowance in the form of an itemized supplemental appraisal of the additional cost to complete the repair of the damaged vehicle, prepared by an **appraiser representing the repair shop** ~~licensed appraiser employed by the repair shop~~, together with such supporting information and documentation as may be agreed upon between the **appraiser representing the insurer** and the **appraiser representing the repair shop**. The **appraiser representing the insurer** shall then be required to fax or electronically submit to the repair shop ~~within one two business days~~ its decision as to whether it accepts the requested supplemental appraisal allowance, **by the end of the next business day, excluding weekends and holidays**. Within this same period, ~~an licensed~~ **an licensed** appraiser representing the insurer and ~~an licensed~~ **an licensed** appraiser representing the repair shop may attempt to agree upon any differences. In the event that an insurer does not accept the repair shop's request for the supplemental appraisal allowance, or if the insurer fails to respond to the repair shop ~~within one two business days~~, **by the end of the next business day, excluding weekends and holidays** the **appraiser representing the insurer** and the **appraiser representing the repair shop** shall be obligated to proceed in accordance with 212 CMR 2.04(1)(h), and within the time limits set forth in such provision. In such event, the date of the initial request for a supplemental appraisal allowance shall be the starting date for when the insurer must assign an appraiser to personally inspect the damaged vehicle.

No insurer or repair shop shall be obligated to utilize an expedited supplemental appraisal process and the determination of whether to utilize such process shall be made separately by an insurer or by a repair shop only on an individual claim basis. Utilization of an expedited supplemental appraisal process shall not be used as a criterion by an insurer in determining the insurer's choice of shops for a referral repair shop program under an insurer's direct payment plan; and being a referral shop shall not be a criterion in determining whether to utilize an expedited supplemental appraisal process.

(j) Completed Work Claim Form. If the ~~insurer insurance company~~ does not have a direct payment plan or if the owner of the vehicle chooses not to accept payment under a direct payment plan, then a representative of the insurer shall provide the insured with a completed work claim form and instructions for its completion and submission to the insurer. **When a completed work claim form is utilized, the appraiser representing the insurer and the appraiser representing the repair shop shall negotiate all costs without regard to the direct payment plan/referral shop program.**

(k) Access for Purpose of Appraisal. **Repair shops who have custody and control of a customer's vehicle shall allow and shall not refuse to allow an appraiser representing the insurer, access by appointment, to the damaged vehicle, so that the appraiser representing the insurer may make an appraisal. No appraiser who has been assigned to represent the insurer shall refuse to conduct an appraisal at a repair shop that has custody and control of a customer's vehicle.**

212 CMR: AUTO DAMAGE APPRAISERS LICENSING BOARD

(2) Temporary Licensing. ~~The Board may grant at its discretion either an emergency or a temporary license to any qualified individual to alleviate a catastrophic or emergency situation for up to 90 days. The Board may limit the extent of such emergency authorization and in any event, if the situation exceeds 30 days, a fee determined by the Board shall be charged for all emergency or temporary licenses.~~ The Board shall vote to authorize the Chairman of the Board or his/her designee to grant a temporary license up to 60 days to any qualified individual to alleviate a catastrophic or emergency situation as long as the following conditions are met: (1) the applicant is licensed as a motor vehicle damage appraiser in another state and provides a copy of that license to the Chairman of the Board or his/her designee; (2) is in good standing in the other state and the applicant provides consent to the Chairman of the Board or his/her designee to verify the applicant's licensing status through the insurance licensing database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; (3) the applicant has not been found guilty of fraud, deceit, gross negligence, incompetence, misconduct or conflict of interest in the preparation or completion of any motor vehicle damage report; (4) the applicant does not have criminal felony charges pending against him/her in any state; (5) the applicant properly fills out the application; and (6) pays the applicable license fee.

Copies of all such applications and temporary licenses issued by the Chairman of the Board or his/her designee shall be submitted to the Board at its next scheduled meeting for review by the Board. After review, the Board may revoke any such temporary license that was issued if the Board finds such applicant does not conform to the six listed conditions, or the Board finds that a person who was issued a temporary license is not qualified to hold such license.

2.05: Penalties

(1) Violations of M.G.L. c. 26, § 8G, and 212 CMR 2.00 may result in penalties including administrative costs, revocation or suspension of license or both. All administrative costs are subject to the discretion of the Board. The administrative costs may be assessed against the appraiser, the appraiser's employer, the insurer, or the repair shop.

An alleged violation of 212 CMR 2.00 by an **licensed** appraiser at the direction of an insurer may be reported to the Division of Insurance which may impose applicable penalties against such an insurer.

2.06: Severability

If any provision of 212 CMR 2.00 or its application to any person or circumstances is held invalid, such invalidity shall not affect the validity of other provisions or applications of 212 CMR 2.00

REGULATORY AUTHORITY

212 CMR 2.00: M.G.L. c. 26, § 8G.

- VI. Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda.
- VII. 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 2016-4, 2016-5, 2016-8, and 2016-10 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 have requested that these matters be heard in the executive sessions. At the previous meeting of the Board, the licensed appraisers and

their attorneys agreed to attempt to resolve these complaints through mediation with the complainants and will inform the Board the outcome of the attempted mediation.

VIII. Motion to adjourn.