



# THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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LYLE M. PARE

## **AGENDA**

### **For Auto Damage Appraiser Licensing Board Meeting Scheduled for**

**September 7, 2016, 9:30 AM, 1000 Washington Street, Boston, Massachusetts**

- I. Call to order.
- II. Approval of the Board Minutes for the Board Meeting held on August 3, 2016 (See attached).
- III. Report on the Part-II examination for motor vehicle damage appraiser license held on August 5, 2016 and the scheduling of the next Part-II examination.
- 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:

### **Guidelines for ADALB Complaint Procedures**

**Revised 2016 as Adopted by the Auto Damage Appraiser Licensing Board at the Board Meeting Held on September 7, 2016, by a Vote of: ----.**

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", and/or violates 211 CMR 123.00, 211 CMR 133.00 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 pursuant to G.L. c. 30A 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. or 211 CMR 123.00 or 211 CMR 133.00 will be considered fully and finally resolved. At the following Board meeting 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 and any discussions conducted during the mediation will be held as confidential by the Board member conducting the mediation and will not be disclosed to the other Board members. 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 unless an informal hearing conference is authorized by the Board.

6. Informal Hearing Conference. The Board may convene an informal hearing at which the complainant and the licensee can appear before one Board member, assigned by the Board, to discuss the Complaint and determine whether the matter can be resolved informally. If an attempt to mediate the Complaint was made, the Board member assigned as mediator may also be assigned to preside at the informal hearing. If all parties agree on a resolution, then the informal hearing can conclude the matter, but if all parties do not agree and the matter proceeds forward, then the appraiser retains his right to a formal adjudicatory hearing, unless the right to a formal hearing is expressly waived by the appraiser and approved by the Board. The informal hearing does not require the presentation of evidence, the testimony of witnesses, or the keeping of a record, but it will comply with fundamental due process notions of fairness. The informal hearing will provide notice to all parties, and any statements made at such a hearing will not be relied upon by the Board at any future point in a formal administrative adjudicatory proceeding. Furthermore, since informal hearings are designed to determine whether a mutually agreeable resolution can be reached, attendance at such informal hearings is voluntary, and a refusal by the appraiser to attend is not a basis for any sanction or adverse inference against the appraiser.

At the informal hearing conference the Board member can accept 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.

7. Final Informal Hearing Conference. The Board member who conducted the informal hearing conference will report back to the Board at the next Board meeting following the informal hearing conference. During this portion of the Board meeting, 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 final informal 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.” 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 informal hearing conference 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 and any discussions conducted during the informal hearing conference will be held as confidential by the Board member conducting the conference and will not be disclosed to the other Board members. If the parties to the complaint do not resolve the dispute at the informal hearing conference, then the Board member who participated during the informal hearing conference will be recused from participating at any further proceedings on the Complaint taken at future Board meetings. If an informal disposition of the matter was reached at the informal hearing conference, then the Board will adopt the disposition and the complaint shall be dismissed.

8. Board’s Decision to Proceed. 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. Named 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.

9. 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.

10. Severability. If any section or provision of these Guidelines for Complaint Procedures or application of these sections, are found to be unlawful, the remaining sections, provisions, and the remaining applications of these sections and provisions, will, nonetheless, continue in full force and effect as provided for by law.

- 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 held several meetings discussing proposed preliminary amendments to the ADALB's regulation. The potential amendments include the proposed amendments submitted by Board Member William Johnson and amended by Board Member Richard Starbard as submitted and discussed at the Board meetings held on May 25, 2016, June 22, 2016, and August 3, 2016. See Attached.
- VI. Request of AdjusterPro for the Board to approve an estimating and evaluation training course as an approved training course for motor vehicle damage appraisers. The original request was submitted to the Board at the May 25, 2016, meeting at which time the Board took the matter under advisement.
- 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-2016-4, Complaint 2016-5, Complaint 2016-8, Complaint 2016-10, and Complaint 2016-12 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 several of these matters be heard in the executive sessions. At the previous Board meeting the licensed appraisers and their attorneys agreed to attempt mediation with the complainant’s and report whether mediation was successful.

## IX. Motion to adjourn.



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### **Minutes of Meeting of the Board held on August 3, 2016, Approved by the Board at the September 7, 2016, Board Meeting; Motion of Board Member ----, Seconded by Board Member ----. The Motion Passed by a Vote of: --, Chairman Cox ---.**

August 3, 2016 Minutes of Board Meeting  
Held at 1000 Washington Street, Boston, Massachusetts.

#### **Members Present:**

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

#### **Attending to the Board:**

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

#### **Proceedings recorded by:**

Jillian Zywiwien of the Alliance of Automotive Service Providers of Massachusetts (AASP) (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photography). Chris Gervais of MAPFRE (Audio/Video). Paul Harden, Hanover Insurance Company.

#### **Review of minutes:**

The meeting was called to order by Chairman Cox, the minutes of the Board meetings held on June 22, 2016 was submitted for approval. A motion was made by Board Member William Johnson to approve the minutes, as submitted of the Board meeting held on June 22, 2016, but removing any reference to discussion that were held in the executive session about Complaint 2016-4 and Complaint 2016-5 because those matters are still under consideration in the executive session, and a second to the motion was made by Board Member Joseph Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

#### **Report on the Part-II examination for motor vehicle damage appraiser license held on June 28 and scheduled for August 5, 2016:**

Board Member Richard Starbard reported that the Part-II examination had been scheduled for June 28, 2016, at The Neighborhood Club in Quincy by James Schlager of Schlager's Auto Body and

Repair as a result of assistance provided by a representative of Geico Insurance Company. Mr. Schlager made arrangements to hold the examination at The Neighborhood Club in Quincy, Massachusetts with 45 people selected by the Licensing Unit at the Division of Insurance to participate in the examination.

Of the 45 examinees, 20 passed and 25 failed the examination. Board Member Starbard thanked Peter Smith for his continuing assistance with administering the examination. He requested that a letter be drafted to be sent to James Schlager for his outstanding assistance. A second Part-II examination is scheduled for August 5, 2016, at the Assabet Valley Regional Technical High School.

**Discussion of changing the Board's Complaint Procedure when a complaint is filed against a licensed appraiser. The proposed new procedure is the following:**

Legal Counsel to the Board, Michael D. Powers, informed the Board that he had revised the drafted complaint procedure since he submitted it at the last regularly scheduled Board meeting held on April 26, 2016, and added a default procedure as requested by Board Members William Johnson and Richard Starbard. At the May 25, Board meeting he had been provided with a proposed complaint procedure by Attorney Owen Gallagher, a renowned expert in insurance laws of Massachusetts. At that meeting Legal Counsel Powers informed the Board that he would like to review Attorney Gallagher's proposal, and reported that he was still reviewing suggestions that were made, and was conducting a cross review of other related material such as the Division of Professional Licensures regulation for processing complaints in matters filed against Real Estate Appraisers and the "Manual for Conducting Administrative Adjudicatory Proceedings" (2012 Edition) (Published by the Administrative Law Division of the Government Bureau of the Office of the Attorney General). Legal Counsel Powers informed the Board that he would be reporting back to them at the next Board meeting with a proposal which may incorporate elements of these materials.

Legal Counsel Powers reported that he received further input the day before the meeting from Peter D'Agostino, lobbyist for the AASP, who suggested that violations of 211 CMR 123.00 and 211 CMR 133.00 should be also added as reasons for filing a complaint against a licensed appraiser, because these two regulations both state that a violation of them can be grounds for suspension or revocation of a motor vehicle damage appraiser's license pursuant to 211 CMR 123.08 (2) and 211 CMR 133.08. Mr. Powers informed the Members of the Board that he agreed with Mr. D'Agostino's opinion and would add that provision into the drafted "Complaint Procedure." Mr. Powers also informed the Board that two days before the meeting he received a further response from Attorney Owen Gallagher, and he was reviewing his comments, agreed with some of them, and would be revising the Complaint Procedure to comport with them in a manner consistent with the Board's previous discussions.

Board Member William Johnson noted that this drafting process has been very time consuming and he would like to adopt a complaint procedures as soon as possible.

Legal Counsel Powers responded that he agreed that this process was lengthy but only because the intensive review the proposed new Complaint Procedure was undergoing, which included



comments from representatives of the auto body and insurance industry. He noted that this would be the first Complaint Procedure the ADALB has adopted in its 45 year history and the current Complaint Procedure was not adopted by the ADALB. Legal Counsel Powers informed the Board that he will report back at the next Board meeting.

**Discussion about amending the ADALB regulation 212 CMR 2.00 et seq.:**

After holding 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 calling for any potential changes the public would like the Board to consider addressed during the regulation review which included, but were not limited to, the proposed amendments submitted by Board Member William Johnson at the February 23, 2016. At the May 25, 2016, Board meeting, Board Member Richard Starbard provided an additional proposal different than the one that had been submitted by Board Member Johnson at the February, 2016 Board Meeting. During that meeting, Board Member Starbard's proposal was thoroughly discussed and members of the Board made recommended changes. Board Member Starbard agreed to re-write his proposal, adding the changes, and present the new proposed amendments at the next scheduled meeting. At the June 22, 2016 Board meeting Board Member Starbard submitted the changed proposed amendments for further discussion by the Board. The Board extensively discussed the language of these proposed amendments, changes were made and the following proposed amendments were submitted at the August 3, 2016 Board meeting:

## 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~~ appraiser representing the insurer and 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.~~



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(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.

### **Discussion among the Board about the proposed amendments:**

A discussion was held about these proposed amendments submitted by Board Member Starbard. Board Member William Johnson requested to make one motion for all of the proposed amendments, as submitted by Board Member Starbard, voting them all up or down at one time and the motion was seconded by Board Member Starbard. Chairman Cox responded that the Board had previously agreed to take each proposed amendment for a vote one at a time, and that should be the method used for the votes.

Board Member Joseph Coyne stated that if the Board was to move forward in the manner proposed by Board Member Johnson, then he would vote against all of the proposed amendments because they do not comply with Governor Baker's Executive Order requiring regulations to be streamlined and reduce the cost of doing business in the Commonwealth and not increase such costs as many of the proposed amendments would do. Chairman Cox asserted that the ADALB is a licensing Board and as such is not authorized to tell the Insurance Commissioner what to do or for that matter insurance companies how they are to conduct business.

The vote was taken on the motion which failed by a vote of: 2-3, with Board Member Johnson and Board Member Starbard voting in favor and Board Member Coyne and Board Member Pare voting against joined in by Chairman Cox.

Chairman Cox then addressed the first proposed amendment which would add the red-colored words to the regulation:

#### **2.01: Scope of Regulations**

**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.**

Chairman Cox stated that this amendment appears to have the ADALB cross over from a licensing Board to a Board telling insurance companies and the Commissioner of Insurance what to do. Chairman Cox pointed out that the business of the Board is to license motor vehicle damage appraisers and, therefore, the ADALB is a licensing Board.

Chairman Cox asked Legal Counsel Powers to provide an opinion about the impact of the proposed amendment on the Division of Insurance. Mr. Powers stated that the amendment appeared to have the effect of superseding the regulation issued by the Commissioner of the Division of Insurance 211 CMR 123.00 which specifically governs all Direct Payment Plans issued by insurance companies in Massachusetts. Indubitably, this proposed amendment could create a conflict between the Commissioner of Insurance and the ADALB, in that the Division of Insurance regulates insurance companies and the ADALB licenses motor vehicle damage appraisers, therefore, the Commissioner's office would have serious questions with this amendment.

Chairman Cox called for a vote **to not include** this proposed amendment to the regulation, and the vote passed by a vote of: 3-2, with Board Member Johnson and Board Member Starbard voting against. This proposed amendment was removed.

The next proposed amendment addressed by the Board was to change the definition of “Appraisal” in the following manner:

(4) Definitions.

Appraisal – **means** a ~~written~~ motor vehicle damage report ~~written~~ **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.**

A motion was made to approve this proposed amendment by Board Member Johnson which was seconded by Board Member Starbard. The motion was approved by a vote of: 3-2, with Board Member Johnson, Board Member Starbard, and Chairman Cox voting in favor while Board Member Coyne and Board Member Pare voted in opposition.

The next proposed amendment would add the following new definition to the regulation:

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

Board Member Johnson made a motion to approve this proposed amendment and the motion was seconded by Board Member Starbard. Chairman Cox called for a vote and the motion passed by a vote of: 3-2, Board Member Johnson, Board Member Starbard, and Chairman Cox voted in favor with Board Member Coyne and Board Member Pare voting against.

The Chairman then called for a motion on the following new proposed definition to the regulation:

**Insurer - means any insurance company ~~authorized to write motor vehicle insurance~~ involved with a claim in the Commonwealth.**

Board Member Starbard made a motion to approve the proposed amendment and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the following new definition to the regulation:

**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.**

Chairman Cox called for a motion to adopt the proposed new definition to the regulation and Mr. Johnson made the motion which was seconded by Board Member Starbard. The motion passed by a vote of: 3-2 with Board Member Johnson, Board Member Starbard, and Chairman Cox voting in favor while Board Member Coyne and Board Member Pare voted in opposition.

The next proposed amendment would add the following new definition to the regulation:

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

Chairman Cox called for a motion to adopt the proposed new definition to the regulation and Mr. Johnson made the motion which was seconded by Board Member Starbard. The motion passed by a vote of: 3-2 with Board Member Johnson, Board Member Starbard, and Chairman Cox voting in favor while Board Member Coyne and Board Member Pare voted in opposition.

The next proposed amendment was to delete the following definition contained in the regulation:

**~~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.~~**

Chairman Cox called for a motion to remove this language from the regulation and Mr. Johnson made the motion which was seconded by Board Member Starbard. The motion passed by a vote of: 3-2 with Board Member Johnson, Board Member Starbard, and Chairman Cox voting in favor while Board Member Coyne and Board Member Pare voted in opposition.

The next proposed amendment was to add the red-colored words and comma while deleting the following words in the regulation:

#### 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.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 3-1 with Board Member Johnson, Board Member Starbard, and Board Member Coyne voting in favor while Board Member Pare voted in opposition with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored word and delete the following word in the regulation:

(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.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored word and delete the following words in the regulation:

(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 **license** 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.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Johnson and seconded by Board Member Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored words and delete the following words in the regulation:

(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.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 3-1 with Board Member Johnson, Board Member Starbard, and Board Member Coyne voting in favor while Board Member Pare voted in opposition with Chairman Cox abstaining.

The next proposed amendment was to delete the following words in the regulation:

(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.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored words and delete the following words in the regulation:

(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.

Board Member Coyne submitted that the Board has no jurisdiction over an insurance company or an insurance agency. He asserted that this new proposed language oversteps the bounds of the Board's jurisdiction as contained in the enabling act, Chapter 26, § 8G.

Chairman Cox asked Legal Counsel Powers to provide an opinion about the new language that was being proposed in the second paragraph. Legal Counsel Powers stated that the language expands the jurisdiction of the Board over insurance companies, agents, or insurance agencies, and, therefore, based on this proposed new language the Board would be hearing complaints against insurance companies, insurance agencies, and insurance producers. The Board's primary responsibility is to license motor vehicle damage appraisers. He opined that this type of jurisdiction over insurance companies, insurance agencies or insurance producers is vested in the Commissioner of the Division of Insurance under Chapter 175 starting with section 162R governing the regulation over the conduct of insurance producers. Mr. Powers queried whether any members of the Board could recall an occasion where a licensed insurance producer or an insurance agency had a complaint filed against it and was brought before the Board. Chairman Cox responded that during the time he has been on the Board, over 20 years, there had never been a complaint against a licensed insurance producer, insurance agency or insurance company heard by the Board.

Board Member Johnson suggested an amendment to the proposed language by deleting the words, "or employee, agent or insurance agency or representative thereof " and adopting the remaining language.

Board Member Pare asserted that the Board lacks jurisdiction over insurance companies and the section should be left as currently written.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion was defeated by a vote of: 2-3 with Board Members Johnson and Starbard in favor and Board Members Coyne and Pare opposed and Chairman Cox voting against.

Board Member Coyne made a motion to leave section seven in as written but adding the procedural amendments to make the section conform to the new proposed definitions, and the motion was seconded by Board Member Pare. The motion passed by a vote of: 3-2 with Board Members Coyne and Pare in favor along with Chairman Cox voting in favor and Board Members Johnson and Starbard voting against.

The next proposed amendment was to add the red-colored word and delete the following words in the regulation:

(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 an appraisal y motor vehicle damage report. The following acts or practice 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 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;

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red colored-letters and delete the following section (e) and words in the regulation and, thereby, changing the subsections:

- ~~(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

Board Member Coyne asserted that he was against this proposed change because this subsection was in the regulation for a very good reason. Insurance companies have a right to have access to the motor vehicle that has been damaged and that they will be making payments for. To deny insurance companies access to a damaged motor vehicle is inappropriate and, therefore, Mr. Coyne asserted that this language must be kept in the regulation.

Board Member Pare declared because of the increased hostility that he found at certain auto body repair shops he would be against deleting this language and believed that insurance companies should be provided reasonable access to damaged motor vehicles to determine the cause of the damage and approve payments for work.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion was defeated by a vote of: 2-3 Board Members Starbard and Johnson voting in favor with Board Members Coyne, Pare



and Chairman Cox voting against. Consequently, the current subsection (e) remains in the regulation and there is no need to re-order the other subsections.

The next proposed amendment was to add the red-colored words and delete the following words from the regulation:

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 it's~~ **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.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored and blue-colored words and delete the following words from this section of the regulation:

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**.

Board Member Pare felt that because of the increase in the costs of labor and material since the last time the Board amended the regulation it would be appropriate to increase the minimum amount of damage requiring an appraisal to \$2,500.

Board member Starbard asserted that \$2,500 was too high because it was very close to the average claim of damage to a motor vehicle and this higher number would harm consumers.

Board Member Johnson opined it would be better to reduce the minimum amount to \$1,000 to protect consumers and this reduced amount would be more consumer friendly. Board Member Johnson made a motion to reduce the amount to \$1,000 and remove the language of “less any applicable deductible” and adopt the other proposed language as submitted. The motion was seconded by Board Member Starbard. The motion failed by a vote of: 2-3 with Board Members Johnson and Starbard voting in favor and Board Members Coyne, Pare along with Chairman Cox voting against.

Board member Johnson made a second motion to keep the \$1,500, remove the language of “less any applicable deductible”, and adopt the other proposed language as submitted, and Board Member Starbard seconded the motion.

Chairman Cox called for a vote and the motion passed by a vote of: 3-2 with Chairman Cox, Board Member Johnson, and Board Member Starbard voting in favor and Board Members Coyne and Pare opposed.

The next proposed amendment was to add the red-colored words, the blue-colored words, and delete the following words from this section of the regulation:

(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.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored words, and delete the following words from this section of the regulation:

(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.~~

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 3-2 with Board Members Johnson and Starbard and Chairman Cox voting in favor while Board Members Coyne and Pare voted against.

The next proposed amendment was to add the red-colored words, the blue-colored words, and delete the words from the following section of the regulation:

(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 **representing the insurer** determines that preliminary **work, repairs or partial disassembly** would significantly improve the accuracy of the appraisal, he or she shall authorize the preliminary work, repair **or partial disassembly** with the approval of the claimant and shall complete the appraisal after that work has been **done by a repair shop of the claimant's choice, if the repair shop so agrees**. If the appraiser representing the 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, such preliminary work, repairs, or partial disassembly shall be conducted; 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, unless the claimant directs that such preliminary work, repair, or partial disassembly be made without obtaining the insurer's approval, the claimant being first informed, **in writing, by the repair shop**, 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 or video the damaged areas before conducting 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 **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 **writing an appraisal 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 use of used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle.** 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 cost 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 times, hourly rate, materials, and necessary procedures 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 **representing the repair shop or by an appraiser representing the insurer**, then a published database ~~manual 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 ~~three 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 ~~three 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.

It was suggested that the first section of these proposed amendments to the regulation could be taken up for a vote because it involved procedural changes to the regulation, was not substantive, and it was not controversial. The Board agreed to vote on adopting the new proposed language of the following section:

(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 **representing the insurer** determines that preliminary **work, repairs or partial disassembly** would significantly improve the accuracy of the appraisal, he or she shall authorize the preliminary work, repair **or partial disassembly** with the approval of the claimant and shall complete the appraisal after that work has been **done by a repair shop of the claimant's choice, if the repair shop so agrees. If the appraiser representing the 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, such preliminary work, repairs, or partial disassembly shall be conducted; 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, unless the claimant directs that such preliminary work, repair, or partial disassembly be made without obtaining the insurer's approval, the claimant being first informed, in writing, by the repair shop, 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 or video the damaged areas before conducting 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 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 **writing an appraisal 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.

Chairman Cox called for a motion and a motion was made by Board Member Johnson seconded by Board Member Starbard. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Before taking up the next proposed changes Chairman Cox stated that he recognized that this new proposed language would create additional costs and by adopting this new language the Board would be increasing costs of repairing damaged motor vehicles. After reading the letter from the Massachusetts Insurance Federation about the Governor's Executive Order [number 562], governing the amendment of regulations, Chairman Cox declared that he was aware that the Governor's Executive Order required Boards to reduce costs.

Board Member Coyne opined by adopting this proposed language the Board will be setting hourly labor rates, something that is not within the Board's jurisdiction.

Board Member Johnson responded that an appraiser is allowed to appraise several items when writing an appraisal for damage to a motor vehicle and an appraiser should be allowed to itemize the costs to repair for the rates of labor.

Board Member Coyne advised that the labor rates are set by insurance companies based upon geographical boundaries. Board Member Coyne added that hourly rates should not be included in the proposed amendment to the regulation. He informed the Board that several years ago the ADALB attempted to set hourly rates that insurance companies were mandated to pay for repairing damaged motor vehicles and Commerce Insurance Company brought suit which was ultimately successfully and the Board had to back-track from that position.

Board Member Pare said that he didn't agree with any of the proposed language.

Board Member Starbard interjected that the existing language refers to labor rates.

Board Member Coyne replied that by adopting this proposed language the Board is not simplifying anything, which is another directive of the Governor's Executive Order.

Chairman Cox called for a vote on the following proposed changes to the regulation:

**The use of used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle.** 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 cost 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 times, hourly rate, materials, and necessary procedures 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.

A motion was made by Board Member Starbard to adopt the proposed language and it was seconded by Board Member Johnson. The motion passed by a vote of 3-2 with Board Members Starbard and Johnson voting in favor along with Chairman Cox, and Board Members Coyne and Pare voting against.

Chairman Cox then addressed the following proposed new language of this section:

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 **representing the repair shop or by an appraiser representing the insurer**, then a published database ~~manual 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.

Board Member Coyne pointed out that the Board is not in the business of setting costs and labor rates for insurance companies to pay. Chairman Cox called for a motion adopting this proposed language and Board Member Starbard made the motion seconded by Board Member Johnson. The motion was defeated by a vote of: 2-3 with Board Members Starbard and Johnson voting in favor and Board Members Coyne and Pare voting against with Chairman Cox voting against.

The next section of the proposed new language was the following:

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 ~~three 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 ~~three~~ **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.

Chairman Cox called for a motion and Board Member Johnston made a motion to adopt this proposed language which was seconded by Board Member Starbard. The motion passed by a vote of: 3-1 with Board Member Pare voting against and Chairman Cox abstaining.

The Board then addressed the following proposed changes to this section of the regulation:

(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 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.

Board Member Johnson began the discussion by stating that the 2 day requirement conforms to the Massachusetts General Laws.

Board Member Coyne responded that the insurance company has the right to see the damage to a motor vehicle and requiring it be done within two days or the insurance company will lose out, it cannot be consistent with the law.

Chairman Cox queried, are we adding to costs and placing additional costs on insurance companies?

Board Member Coyne reiterated his previous statement but added, how can an insurance company be forced to accept a supplemental appraisal? Concluding that adding this type of



language to the regulation will result in additional costs to consumers and will only lead to an arbitration.

Board Member Starbard interjected stating that the way the proposed change to the regulation is written is perfectly fine. Mr. Starbard made a motion to adopt the proposed language as an amendment to the regulation as submitted which was seconded by Board Member Johnson. The motion was defeated by a vote of: 2-3 with Board Members Johnson and Starbard voting in favor and Board Members Coyne and Pare voted against joined in by Chairman Cox.

Board Member Johnson made another motion for this proposed language by deleting the words, “**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**” and adopting the remaining language as submitted, and Board Member Starbard seconded the motion. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Chairman Cox then addressed section (i) as submitted with the following proposed changes:

(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 **by the end of the next business day, excluding weekends and holidays within one two 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.

Board Member Coyne disagreed with the proposed changes because insurance companies are very busy on Fridays and Mondays and this change would reduce the time in which an insurance company has to review the matter.

Chairman Cox called for a motion and Board Member Starbard made a motion to approve the proposed changes as submitted and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 3-2 Board Members Johnson and Starbard voting in the affirmative along with Chairman Cox, and Board Members Coyne and Pare voting against.

Chairman Cox then submitted these proposed changes adding the red colored words and deleting the following words in this subsection of the regulation:

(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.**

Chairman Cox called for a motion to approve these proposed changes as submitted. Board Member Starbard made the motion which was seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Chairman Cox then submitted these proposed changes adding the red colored words and this subsection to the regulation:

**(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.**

Board Member Pare disagreed with this proposed language because it was unfair requiring an insurance companies' appraisers to appear at repair shops where the people running the repair shops are unreasonable. Board Member Coyne agreed with Mr. Pare.

Chairman Cox called for a motion to approve the language as submitted which was made by Board Member Johnson and seconded by Board Member Starbard. The motion passed by a vote of: 3-2 with Board Member Johnson and Board Member Starbard voting in favor along with Chairman Cox and Board Members Coyne and Pare opposed.

Chairman Cox then submitted these proposed changes adding the red colored words and deleting the following words to this subsection of the regulation:

(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.

Chairman Cox called for a motion and a motion was made by Board Member Coyne to adopt this proposed amendment as submitted and a second was made by Board Member Starbard. The motion passed by a vote of 4-0 with Chairman Cox abstaining.

The last proposed amendment to the regulation was the following:

#### 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 maybe reported to the Division of Insurance which may impose applicable penalties against such an insurer.

Chairman Cox called for a motion and a motion was made by Board Member Coyne to adopt this proposed amendment as submitted and a second was made by Board Member Starbard. The motion passed by a vote of 4-0 with Chairman Cox abstaining.

**Next Meeting:**

The consensus of the Board Members was to hold the next meeting on September 7, 2016, at 9:30AM at 1000 Washington Street, Boston, Massachusetts.

Chairman Cox then informed the Board and members of the general public that the Board was about to enter an executive session and would not be returning to the public session at the conclusion of the executive session. Chairman Cox then made the following statement:

The Board will enter the Executive to review and discuss: 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.

**Motion to enter the executive session and roll-call vote:**

Chairman Cox then declared before the Board can enter an executive session there must be a Roll-call vote of the Members of the Board. He asked for a motion to enter the executive session and Board Member Coyne made the motion which was seconded by Board Member Starbard. The roll-call was taken with Board Members Coyne, Starbard, Johnson, and Pare answering in the affirmative with Chairman Cox abstaining, and the motion passed by a vote of: 4-0.

**Executive session:**

**Complaint 2016-4**

The highly regarded insurance law attorney and noted author on topical insurance issues Owen Gallagher appeared with his clients, who are licensed appraisers, along with a court stenographer to record the session at their expense. Because this complaint was the subject of an attempted mediation by Board Member Lyle Pare which was unsuccessful, Mr. Pare was advised by Legal Counsel to the Board, Michael Powers, that he should not participate in any further deliberations on this matter. Mr. Powers informed Mr. Pare, and the other Board Members, as part of his legal research for the proposed new Complaint Procedure he reviewed the "Manual for Conducting Administrative Adjudicatory Proceedings" published by the Administrative Law Division of the Government Bureau of the Office of the Attorney General, and the manual advises that Board Members who participate in the mediation of a dispute should not, thereafter, deliberate on future matters that involve that dispute. Board Member Pare agreed to not participate any further and exited the executive session.

Attorney Gallagher agreed to work with the Legal Counsel Powers to attempt to reach a resolution that would be satisfactory to his clients. Mr. Powers informed the Board that he would work with Attorney Gallagher to attempt to reach a mutually agreeable resolution.

**Complaint 2016-5**

Attorney Gallagher also represented the licensed appraiser in this matter. Attorney Gallagher agreed to work with the Legal Counsel Powers to attempt to reach a resolution that would be satisfactory to his clients. Mr. Powers informed the Board that he would work with Attorney Gallagher to attempt to reach a mutually agreeable resolution.

Chairman Cox asked for a motion to table Complaint 2016-5 and Board Member Pare made the motion seconded by Board Member Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

**Complaint 2016-8**

Highly regarded insurance law Attorney John Callahan of the law firm Finnegan, Underwood, Ryan & Tierney represented the licensed appraiser in this matter. Attorney Callahan was given

permission to address the Board by Chairman Cox and informed the Board that two out of three issues that were alleged in the complaint had been resolved and there only remained one issue. Attorney Callahan had written a letter to the Legal Counsel to the Board, Michael D. Powers, dated August 1, 2016, outlining his client's response to the complaint. In addition, in the letter Attorney Callahan requested, on behalf of the licensed appraiser, that Board Member William Johnson recuse himself from any deliberations regarding this complaint because of lawsuits that Mr. Johnson's auto body shop, Pleasant Auto Body Shop, had filed against the insurance company that the licensed appraiser was employed with. Board Member Johnson responded by stating after reviewing the letter he determined that the lawsuits that were referred to were all resolved and that there was no litigation pending between himself and the insurance company that employed the licensed appraiser. Mr. Johnson declared that he could be impartial in reviewing the current complaint filed against the licensed appraiser and saw no need to recuse himself from deliberating on the matter.

Attorney Callahan continued by stating his client was not allowed to negotiate that final item and the complainant never responded to the last attempt to negotiate.

Board Member Starbard asserted that at the outset of this matter the appraiser felt that his auto body repair shop had the capability to repair the motor vehicle at his shop, but the auto body repair shop sent the motor vehicle to a sublet shop. Board Member Starbard volunteered to mediate the matter and Attorney Callahan agreed to attempt mediation.

Board Member Starbard would report back to the Board at the next Board meeting.

**Motion to adjourn the business of the Board:**

Chairman Cox called for a motion to adjourn the meeting and Board Member Johnson made a motion to adjourn which was seconded by Board Member Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Whereupon, the Board's business was concluded.

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