



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
<http://www.mass.gov/doi>

CHARLES D. BAKER
GOVERNOR

GILBERT W. COX JR.
CHAIRMAN

KARYN E. POLITO
LIEUTENANT GOVERNOR

JOSEPH COYNE
RICHARD STARBARD
WILLIAM E. JOHNSON
LYLE M. PARE

AGENDA

For Auto Damage Appraiser Licensing Board Meeting Scheduled for

October 4, 2016, 9:30 AM, 1000 Washington Street, Boston, Massachusetts

- I. Call to order.
- II. Approval of the Board Minutes for the Board Meetings held on August 3, 2016, and September 7, 2016.
- III. Report on the next Part-II examination for motor vehicle damage appraiser.
- IV. 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, August 3, 2016, and September 7, 2016. The discussion will include a letter sent on September 6, 2016, by John P. Murphy, Executive Director of the Massachusetts Insurance Federation, to Charman Gilber W. Cox, Jr. about votes taken at previous reflecting the proper language for the proposed amendments (Mr. Murphy's letter is copied at the end of this agenda).
- V. Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda.
- VI. 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 the draft of an Order to Show Cause in Complaints 2016-4, and Complaint 2016-5, along with a discussion of potentially assigning a Board Member as Presiding Officer for the administrative hearing. 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.

In addition, a portion of the executive session is also exempt because it is 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."

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.

VII. Motion to adjourn.



Mass Insurance Federation

Two Center Plaza, 8th Floor • Boston, MA 02108 • 617.557.5538

September 6, 2016

Gilbert W. Cox, Jr., Esq,
Chairman
Auto Damage Appraiser Licensing Board
1000 Washington Street, Suite 810
Boston, MA 02118-6200

Re: Minutes of the August 3, 2016 Meeting—Discussion of Changes to 212 CMR 2.0

Dear Chairman Cox:

In reviewing the draft minutes of the August 3, 2016 meeting, we noted several errors or discrepancies that ought to be corrected in the minutes to ensure that the proposed changes to 212 CMR 2.0 accurately reflect the actions taken by the Board. We also encourage the Board to publish both a clean and redlined version of its proposed changes to 212 CMR 2.0. There have been many discussions of the changes and things can be easily confused so having a final clean and red-lined version will ensure that we are all working off the same document. Here are the issues we identified:

Section 2.04 (e)- Paragraph 1. During the July 22, 2016 meeting the Board voted to remove the proposed language related to partial disassembly (see page 5 of August 3, 2016 agenda attachment). Thus, the 4-0 vote in the August 3, 2016 meeting was supposed to be on the definitional changes to insurer, repair shop, and the manufacturer's recommended repair procedures. However, the language in the minutes incorrectly incorporates the language that had previously been removed in June (see page 15). Additionally, the section printed in the agenda on August 3, 2016 had typos (bold below), but the language as voted on in the August 3, 2016 meeting should read:

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 or repairs** would significantly improve the accuracy of the appraisal, he or she shall authorize the preliminary work or repair with the approval of the claimant and shall complete the appraisal after that work has been **done**. 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



Mass Insurance Federation

Two Center Plaza, 8th Floor • Boston, MA 02108 • 617.557.5538

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.

Section 2.04 (e)- Paragraph 4. In the fourth paragraph of section 2.04(e), the Board voted in the June 22, 2016 to move the proposed first sentence relating to used suspension and steering (see page 5 of the August 3, 2016 agenda attachment). Yet, the language is included in the motion voted on by the Board (see page 16). Additionally, the agenda on August 3, 2016 only listed price in the sixth sentence (bolded below), whereas the version in the minutes states “price cost.” The minutes printed on page 16 include that language. After the August 3rd meeting, that section should read:

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 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.**

Section 2.04 (e)- Paragraph 4. In the June 22, 2016 meeting, the Board voted to remove the proposed language “labor times, hourly rate” from the section on itemizing in the fourth paragraph of section 2.04(e), which changes the section to the original language (see page 6 of the August 3, 2016 agenda). Yet, this language is incorrectly included on page 17 of the minutes. Thus after the August 3, 2016 vote, the section should read:

The appraiser shall itemize the cost of all parts, **labor, 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.



Mass Insurance Federation

Two Center Plaza, 8th Floor • Boston, MA 02108 • 617.557.5538

Section 2.04 (e)- Paragraph 6. In the agenda for the August 3, 2016 meeting, the sixth paragraph of section 2.04(e) regarding submission of the appraisal, maintained the five business day time period (see page 6 of the August 3, 2016 agenda). The minutes for the discussion during the August 3, 2016 have three days proposed and voted on (see page 17). As a three day time period was not discussed or voted on, this section should read:

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.

Section 2.04 (f). The minutes do not include section f, which was amended to include the term “personally.”

Section 2.04 (i). In section 2.04(i), the minutes of the August 3, 2016 meeting incorrectly include the phrase “within one two business days” (see page 19) . This phrase was removed at the June 22, 2016 meeting (see page 7 of the August 3, 2016 agenda). Section 2.04(i) should read:

(i) 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



Mass Insurance Federation

Two Center Plaza, 8th Floor • Boston, MA 02108 • 617.557.5538

then be required to fax or electronically submit ~~within two business days~~ to the repair shop its decision as to whether it accepts the requested supplemental appraisal allowance, **by the end of the next business day, excluding holidays and weekends**. 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 by the end of the next business day, excluding weekends and holidays ~~within two business days~~, the **appraiser representing** 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.

Section 2.04 (k). The minutes reflect that proposed section 2.04(k) regarding access for the purpose of appraisal was approved by a vote of 3-2. My notes of the meeting reflect that this language was rejected, with the Chairman joining Board Members Coyne and Pare opposed.

Sincerely yours,

John P. Murphy
Executive Director

cc: ADALB Members
Michael Powers, Esq., Counsel to the ADALB