



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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MICHAEL DONOVAN
CHAIRMAN

RICHARD STARBARD
WILLIAM E. JOHNSON
SAMANTHA L. TRACY
PETER SMITH

Minutes of the Meeting of the Board held on February 16, 2023 and approved at the Board Meeting held on March 16, 2023; Motion of Board Member Richard Starbard and Seconded by Board Member William Johnson, the Motion Passed by a Vote of: 4-0, with Chairman Michael D. Donovan Abstaining.

February 16, 2023, Minutes of Board Meeting

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on Tuesday, February 16, 2023, at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Donovan
Samantha Tracy
William Johnson
Richard Starbard
Peter Smith

Attending to the Board:

Michael D. Powers, Counsel to the Board

Call to Order:

Chairman Michael Donovan called the meeting to order at 10:00AM.

Chairman Donovan asked those recording the proceedings to identify themselves and state with whom they were affiliated. Those responding to the Chairman's request were: Attorney Owen Gallagher for the Hanover Insurance Company, and "Lucky" Papageorg of the Alliance of Automotive Service Providers of Massachusetts.

For approval, the Board minutes for the Board meeting held on January 17, 2022:

Chairman Donovan called for a motion for approval of the Board minutes of the January 17, 2023, Board meeting. Board Member Richard Starbard made a motion to approve the Board minutes of the January 17, 2023, Board meeting, the motion was seconded by Board Member Samantha Tracy, and the motion passed by a vote of: 4-0, with Chairman Donovan abstaining.

Report by Board Member Peter Smith on the Upcoming Part-II examination for motor vehicle damage appraiser at the Progressive Insurance Service Center in Westwood, Massachusetts:

Chairman Donovan asked for a report from Board Member Peter Smith about the Part-II examination.

Board Member Smith reported that the Part-II examination was scheduled for Saturday, March 11, 2023. Board Member Smith reported that, there were 30 candidates registered to take the examination and an additional 10 to 15 applicants were expected by the time the examination would be held.

Chairman Donovan thanked Board Member Smith for his continuing excellent work on behalf of the Board and licensees and those who assisted him in administering the Part-II examination.

Next meeting date:

The Board agreed to meet again on March 16, 2023, at 10:00AM in Boston.

Discussion by the Board of two bills filed in the Massachusetts Legislature that would abolish the current Auto Damage Appraiser Licensing Board as currently constituted. The two bills were the following:

HOUSE DOCKET, NO. 2860

FILED ON: 1/19/2023 HOUSE No. [Pin Slip] [SIMILAR MATTER
FILED IN PREVIOUS SESSION SEE HOUSE, NO. 4242 OF 2021-2022.] The
Commonwealth of Massachusetts _____ In the One Hundred and Ninety-
Third General Court (2023-2024) _____

An Act relative to the licensure of appraisers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows: SECTION 1. Section 8G of chapter 26 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following new paragraph:

Section 8G. There shall be in the division of occupational licensure an auto damage appraiser licensing board, hereinafter called the board, consisting of seven persons. The governor shall appoint two members who shall be affiliated with the auto body repair industry and two members who shall be affiliated with insurance companies writing casualty insurance within the commonwealth. The attorney general shall appoint one representative of their office and shall appoint one additional person, unaffiliated with

their office, an auto body shop or an insurance company, to represent consumers. The commissioner of the division of occupational licensure shall appoint one person who shall not be affiliated with either the auto body industry or the insurance industry and who shall be the chair of the board. No member shall serve for more than 2 consecutive and complete 3-year terms. As the term of the office of a member expires, a successor shall be appointed in like manner for a term of 3 years. A vacancy on the board shall be filled within 60 days from the date of the vacancy.

[SD527 and SD528 create a new board and SD528 places it within the DOL].

HOUSE DOCKET, NO. 3310

FILED ON: 1/20/2023 HOUSE No. The Commonwealth of Massachusetts _____

PRESENTED BY: Michael J. Finn _____ To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled: The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill: An Act relative to the licensure of automobile damage appraisers. _____ PETITION OF: NAME: DISTRICT/ADDRESS: DATE ADDED: Michael J. Finn 6th Hampden 1/20/2023 of HOUSE DOCKET, NO. 3310 FILED ON: 1/20/2023 HOUSE No. [Pin Slip] The Commonwealth of Massachusetts _____ In the One Hundred and Ninety-Third General Court (2023-2024) _____

An Act relative to the licensure of automobile damage appraisers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows: SECTION 1: Chapter 26 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking section 8G in its entirety and inserting in place thereof the following section:

(a) Any person desiring to act within this state as a motor vehicle physical damage appraiser shall make a written application to the commissioner of insurance for a license and pay a fee of one hundred dollars.

Applications for registration as licensed motor vehicle damage appraisers signed and sworn to by the applicants, shall be made upon forms furnished by the commissioner. Each applicant who shall furnish the commissioner with satisfactory proof that they are eighteen years of age or over and of good moral character, that they possess the educational qualifications required for graduation from high school or that they possess relevant work experience deemed satisfactory by the commissioner, shall, upon payment of one hundred dollars, be examined by a written test, and if found qualified by the commissioner, be registered as a licensed appraiser of motor vehicle physical damage and entitled to a numbered certificate in testimony thereof, signed by the commissioner. The commissioner may, at the commissioner's discretion, designate an independent testing service to prepare and administer such examination, provided any examination fees charged by such service shall be paid by the applicant. An applicant failing to pass an examination satisfactory to the commissioner shall be allowed to review the examination.

Each licensed appraiser shall be issued a numbered license by the commissioner. All auto damage reports prepared shall include the license number. No licensed appraiser shall include the appraiser's license number on any motor vehicle damage reports unless the license is in full force and unless the appraiser is the sole author of such motor vehicle damage reports.

No appraiser shall complete an auto damage report unless duly licensed. Auto damage reports require an itemization of parts, labor and services necessary for repairs thereof, and shall be sworn to under the penalties of perjury and shall also include the appraiser's signature, license number, fee charged and date the motor vehicle was examined.

No person licensed under this section shall refuse to prepare and deliver a motor vehicle damage report.

On or about March first of the renewal year, the commissioner shall mail to each licensed appraiser an application for renewal. Such application shall be completed and returned to the commissioner on or before the following first day of June. Each such application shall be accompanied by a renewal fee of one hundred dollars. After verification of the facts stated on the renewal application the commissioner shall issue

a certificate of bi-annual registration dated July first, and which shall expire on June thirtieth of the second year following. Any holder of a certificate of registration who fails to renew the application within sixty days after notification by the commissioner that the license has expired, shall before again engaging in the practice of a licensed appraiser within the commonwealth, be required to re-register, pay a fee of fifty dollars, and may be required by the commissioner to be reexamined.

A new license to replace such license lost, destroyed or mutilated, shall be issued by the commissioner upon payment of a fee of twenty dollars, and such license shall be stamped or marked "duplicate".

A roster showing the names and last known places of business of all licensed appraisers shall be prepared by the commissioner during the month of November of each year. Copies of such roster shall be placed on file with the state secretary and furnished to the public on request.

The appraiser shall provide a legible copy of the appraisal with the repair shop selected to make the repairs, which appraisal shall contain the name of the insurance company ordering it, if any, the insurance file or claim number, the number of the appraiser's license and the proper identification number of the vehicle. All unrelated or old damage should be clearly indicated on the appraisal.

If the appraiser for the insurer and the repair shop fail to agree on a price for repairs, the insurer shall furnish to the insured or claimant a written statement containing the following disclosure:

“Under Massachusetts law, you are always entitled to use the repair shop or facility of your choice. Unfortunately, we have been unable to agree on price with the facility you have chosen. In this situation, our payment for repair cost may be limited to the price available from a recognized and conveniently located repair shop or facility registered by the Division of Standards, that is willing and able to repair the damaged motor vehicle within a reasonable time. You may be responsible for the difference between our payment and the price charged to you by the facility you have chosen. Upon your request, we will furnish the name of a repair shop reasonably convenient to you that is able to repair your vehicle for the price in your appraisal.”

No appraiser or insurer shall request or suggest that repairs be made in a specified repair shop, unless requested by the insured or claimant.

Every appraiser shall reinspect damaged motor vehicles when supplementary allowances are requested by repair shops within five days of a request. When the repair shop and insurance company or employee agree, supplementary allowances requests may be conducted virtually or through the use of photographs, videos, telephone calls, or other electronic measures agreed upon by both parties.

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 facility.

No person licensed under this section shall have any interest in any damage report prejudicial to or in conflict with the professional interest therein.

The commissioner, after due notice and hearing, shall revoke any license issued by it and cancel the registration of any person who pleads guilty to or is convicted of a fraudulent automobile damage report as a result of a court judgment and said license shall not be reinstated or renewed nor shall said person be relicensed or employed by a license holder. The commissioner, after due notice and hearing, shall cancel for a period not exceeding one year, any license issued by it to, and cancel the registration of, any person who has been shown at such hearing to have been guilty of fraud, deceit, gross negligence, or willful misconduct or conflict of interest in the preparation or completion of any motor vehicle damage report. Any such person shall, before again engaging in the practice of licensed appraiser within the commonwealth, be required to re-register and pay a fee of fifty dollars and be re-examined by the board.

Whenever a licensed appraiser, whether employed by a registered motor vehicle repair shop, employed by a licensed insurer or acting as an independent appraiser, determines that a motor vehicle is damaged such that (a) it may no longer meet the safety standards established by the registrar of motor vehicles under section seven A of chapter ninety; or (b), it may no longer comply with the motor vehicle emission standards established by the commissioner of the department of environmental protection under section 142M of chapter one hundred and eleven, then the appraiser

shall provide notice, in a format and containing such information as shall be prescribed by the registrar of motor vehicles, to the owner of the motor vehicle that the vehicle no longer meets such safety or emissions standards. The notice shall direct the owner of the motor vehicle to have the vehicle repaired so that it may pass the safety and emissions standards and to obtain a new certificate of inspection. The registrar of motor vehicles shall periodically, but not less frequently than annually issue specific guidelines on the safety or emissions items that require the prescribed notice to and shall publish such guidelines in the Massachusetts Register. The registrar of motor vehicles shall establish rules and regulations promulgated pursuant to chapter 30A for the implementation and enforcement of this paragraph.

The commissioner may issue temporary auto damage appraiser licenses to individuals that hold an equivalent license in another state or have worked as an auto damage appraiser in a state that does not require an equivalent license for a period of 90 days after submission of an application and fee of fifty dollars.

Chairman Donovan requested Board Legal Counsel Michael D. Powers provide an overview of the proposed laws. Legal Counsel Powers provided a summary of the two bills recently filed in the Massachusetts House of Representatives, House Dockets numbers 2860 and 3310. Mr. Powers said that House Docket number 3310 would dissolve the current Auto Damage Appraiser Licensing Board by eliminating it entirely as a Board consisting of five members and placing the responsibilities in the Insurance Commissioner, for licensing motor vehicle damage appraisers as the law existed prior to 1983.

HD 2860 would also dissolve the current Board, create a new Board, and move the Board to the oversight of and within the Division of Occupational Licensure. Under either bill, the current Board would be abolished immediately and the duties of the current members of the Board would abruptly end. Legal Counsel Powers informed the Board that, during the last legislative session there was a great deal of legislative activity related to the ADALB, especially towards the end of the session, on legislation amending the current enabling act of the Auto Damage Appraiser Licensing Board; the Massachusetts Legislature could act at any time on one of these bills and put an end to the current Board's business. Legal Counsel Powers concluded that the Board members should keep a close eye on legislative developments this session, because if such a bill were passed they would be out of business as Board Members.

Board Member Johnson recounted that when he was a member of the Massachusetts Real Estate Board, which was located within the Division of Professional Licensure (currently the Division of Occupational Licensure), the Board was assigned a full-time investigator to investigate complaints filed against real-estate agents. Board Member Johnson stated that the ADALB should be located within the Division of Occupational Licensure because it would make the

ADALB more efficient. Mr. Jack Lamborghini asked permission to speak, and Chairman Donovan acknowledged Mr. Lamborghini who asked whether the Members of the Board will let the audience know their thoughts on the bills.

Board Member Tracy stated that this morning was the first time she saw these bills and wanted to be able to fully understand them before commenting and added that her opinion would be irrelevant. Board Member Starbard commented that he planned to attend any hearings on the bills and will speak in opposition to HD 3310. Board Member Smith asserted that the wording in HD 3310, pertaining to the difference offered for payments of repairs by insurance companies and the amounts demanded by auto body repair shops from consumers is the same language contained in laws of several states including New Hampshire, New York, and Rhode Island, to name a few. Board Member Smith referred to the following language:

If the appraiser for the insurer and the repair shop fail to agree on a price for repairs, the insurer shall furnish to the insured or claimant a written statement containing the following disclosure:

Under Massachusetts law, you are always entitled to use the repair shop or facility of your choice. Unfortunately, we have been unable to agree on price with the facility you have chosen. In this situation, our payment for repair cost may be limited to the price available from a recognized and conveniently located repair shop or facility registered by the Division of Standards, that is willing and able to repair the damaged motor vehicle within a reasonable time. You may be responsible for the difference between our payment and the price charged to you by the facility you have chosen. Upon your request, we will furnish the name of a repair shop reasonably convenient to you that is able to repair your vehicle for the price in your appraisal.

Board Member Smith concluded that this is excellent language and informs a consumer of exactly what the law is and what to expect during the repair of a damaged motor vehicle. Board Member Starbard disagreed with Mr. Smith and noted that auto body repair shops which agree to repair a car for what an insurance company pays them, is working towards the lowest common denominator for payments to repair motor vehicles. He concluded by stating that anyone with a hammer and a spray-gun can become a Registered Repair Shop and stated that the Appraisal Clause found in the standard Massachusetts Private Passenger Motor Vehicle Insurance Policy is the best method of settling these types of disputes between consumers and insurance companies. Board Member Johnson stated that when sees the word “reasonable” it is a code for inserting into the appraisal process a personal opinion of what a particular person may consider “reasonable”. Board Member Johnson agreed that the Board should not take a vote supporting either bill and stated that he is opposed to HD 3310. Chairman Donovan also agreed that the Board should not take a position on either bill and pointed out that filing the two bills merely began the legislative process, bills are often amended and referred to various committees for review, discussion, debate, and further amendments.

Mr. Lamborghini inquired about how the item got on the agenda for the meeting. Chairman Donovan explained that the Board should be mindful of legislation which could affect them as a Board, adding that the bill may go nowhere but could also move forward rapidly with changes. Mr. Starbard explained to Mr. Lamborghini that such legislation would have an effect on not only the Board, but all licensed appraisers. Legal Counsel Powers explained that HD 2860 has the same provisions as a bill which was supported by Governor Charles Baker during his first term of office and came very close to passage. Legislation like this could move quickly in the new legislative session and in his experience the Legislature can move very rapidly when they choose to and has seen them act overnight on important legislation, and, therefore, it is prudent that the Board and public be aware of these bills because if such a bill were enacted, the current Board would go out of business the day the bill is enacted. Chairman Donovan noted that most of the Legislative committees have not been formed and there are new members of the Massachusetts Legislature who will be placed on various committees. Mr. Papageorg asked to be recognized and asked Legal Counsel Powers whether HD 2860 was not a part of the Governor Baker's supplemental budget submitted at the end of the last Legislative session and Mr. Powers agreed that it was not.

Continuing review of 100 complaints filed against motor vehicle damage appraisers licensed by the Auto Damage Appraiser Licensing Board brought by the same licensed appraiser who also owns an auto body shop, most of the complaints have been brought against 2 insurance companies and their authorized appraisers. The review by the Board was conducted in accordance with the Auto Damage Appraiser Licensing Board's "Complaint Procedures" to determine whether: the Board lacks jurisdiction, the complaints are based on frivolous allegations, lack sufficient evidence, lack legal merit or factual basis, no violation of the regulation is stated, or other basis. During the review, the Board did not discuss the named appraisers or the named companies the complaints have been filed against. The Board will discuss the next step to be followed under the ADALB's Complaint Procedures for the following Complaints: 2022-19, 25, 26, 28, 29, 36, 43, 44, 45, 50, 54, 88, 96, 97, 116.

Chairman Donovan introduced the agenda item and requested that Legal Counsel Powers describe the process followed under the ADALB's Complaint Procedures. Mr. Powers stated that the Board had two options. One option provides the accused appraisers an opportunity to waive their right to appear in front of the Board by sending a written notice to the accused giving them the opportunity to provide a written response to the complaint, agreeing to have the matter heard in the executive session, and waiving their right to appear during the executive session. Under the other option the Board could insist that the appraisers appear before the Board to answer the complaints. Board Member Smith questioned, whichever way the Board decided to proceed, can a motion be made with the understanding that all the complaints be covered under the one motion, so there will be no need to take a separate vote on each of the 15 complaints. Mr. Starbard stated that each complaint had a different issue. Board Member Smith acknowledged that each complaint involved separate issues but asserted the manner in which the complaints move forward to the next step can be the same. Board Member Johnson agreed with Mr. Smith but made the point that if a written response does not satisfy the Board, the Board could still mandate a personal appearance before the Board by an accused appraiser. Board Member Johnson agreed that all the complaints can be moved forward based on one motion and voted by

the Board on that basis but would like all the accused appraisers to appear in person before the Board. Mr. Papageorg was allowed to speak and stated that prior complaints filed with the Board were handled differently, with a letter sent at the outset of the process to the accused appraiser with an answer or appearance by an appraiser long before this part of the process was used. Board Member Smith stated that the current complaint process was voted on and adopted by the Board in November of 2020 and the Board is following the current procedure, and not what may be remembered by some in the audience and Board Member Johnson agreed. Mr. Starbard asked whether the new complaint process was drawn up due to COVID-19 and Mr. Johnson responded no. Board Member Tracy asked whether Mr. Johnson's motion to move the 15 complaints on to the next step of the process which included requiring the appearance of the accused appraisers was part of the motion, and Mr. Johnson responded yes. Board Member Starbard seconded the motion. Chairman Donovan called for a roll call vote and the motion failed by a Vote of: 3-2 with Board Members Johnson and Starbard voting yes and Board Members Tracy, Smith, and Chairman Donovan voting no.

Board Member Tracy made a motion that the 15 complaints be moved to the next step in the process, with the option to receive written responses from the accused and waiving their appearance at the executive session. Mr. Starbard seconded the motion and Chairman Donovan called for a roll call vote and Board Members Johnson and Starbard voted no and Board Members Tracy, Smith and Chairman Donovan voted yes. The motion passed by a Vote of: 3-2.

Mr. Lamborghini asked Chairman Donovan to explain what the impact of the motion was, and Chairman Donovan asked Legal Counsel Powers to explain. Legal Counsel Powers stated that the accused appraisers would be sent letters with copies of the complaints informing them that they could respond with a written statement and waive their right to appear during the executive session of the Board, the Board would review the written statement and complaints and notify the appraisers whether the matter was dismissed or whether the accused would be required to appear at a future Board meeting. Mr. Powers added that he would be sending out notices to the accused and the complainants the following week and noted that there needed to be a 20-day window allowed for a response and, given that the next meeting will be held in fewer than 30 days, the timeline was very close.

Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda.

Mr. Johnson read correspondence that he received to the Board. The issue raised in the correspondence was raised by an auto body repair shop inquiring whether their process of having appraisers sign in when they arrive at the shop violated the ADALB's Regulation 212 CMR 2.00. Board Member Starbard noted that there was a letter sent out by the Board's secretary at the time, Stephen Vega on October 18, 1994, which answered a similar question, stating that this practice was not a violation of the ADALB's Regulations. Mr. Starbard stated that a sign in sheet is essential to an auto body repair shop as there are always appraisers coming in to the shop and to keep it all straight, they refer them to the sign in sheet.

Mr. Johnson added that prior to the renovations at 1000 Washington Street, Boston we had to sign in to enter the building for the Board meetings. Mr. Starbard then asked whether MAPFRE had a sign in sheet, and Mapfre's representative who was in the audience Mr. James Bates, a

Senior Manager overseeing Mapfre's Material Damage Division, responded that Mapfre Insurance Company identifies those entering the buildings but does not require a sign in sheet, the receptionist notes the visitor's name as well as the name of the employee they are meeting with. Mr. Papageorg noted that there was an entry in the ADALB Meeting Minutes dated November 17, 1994, mentioning the letter sent out by Stephen Vega on October 18, 1994. Mr. Johnson asked whether a letter can formally be sent to the person who wrote to Mr. Johnson. Chairman Donovan answered the Board could and it was agreed that Board Member Johnson would draft the letter, send it to Mr. Powers for his review and he would send the letter.

Executive session to review a complaint filed against a licensed motor vehicle damage appraiser. Such discussion during the executive session is allowed under M.G.L. c. 30A, § 21(a)(5).

Chairman Donovan requested Mr. Powers to read the item. Mr. Powers read the item and stated that the Board would review allegations concerning criminal misconduct that was made to the Board about a licensed motor vehicle damage appraiser.

Chairman Donovan called a roll call motion to vote to go into Executive Session which included that the Board would adjourn in the executive session. Mr. Johnson made the motion and Board Member Starbard seconded the motion which included the fact that the Board would adjourn in the Executive Session and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Executive Session:

Mr. Powers informed the Board that he received allegations against a licensed motor vehicle damage appraiser alleging that the appraiser was convicted of several crimes many years ago, after he served his prison sentence he applied for a motor vehicle damage appraiser license, and he did not disclose on the application the crimes he was convicted for. After a discussion by the Board, Board Member Johnson made a motion to refer the matter to the Division of Insurance's Special Investigations Unit to review the matter and report back to the Board, the motion was seconded by Board Member Peter Smith, Chairman Donovan called for a roll call vote, and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Motion to Adjourn:

Board Member Smith made a motion to adjourn, the motion was seconded by Board Member Johnson, Chairman Donovan called for a roll call vote, and the motion passed by a Vote of: 4-0, with Chairman Donovan 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)