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THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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MICHAEL DONOVAN, CHAIRMAN
WILLIAM E. JOHNSON
PETER SMITH
CARL GARCIA
VICKY WEI YE

Minutes of the Meeting of the Board held on March 12, 2024, and approved at the Board Meeting held on May 14, 2024; Motion of Board Member William Johnson, Seconded by Board Member Carl Garcia, with Chairman Michael Donovan Abstaining. The Motion Passed by a Vote of: 4-0, with Chairman Donovan Abstaining.

Minutes of the Board Meeting held on March 12, 2024

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on March 12, 2024, at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Donovan
William Johnson
Peter Smith
Carl Garcia
Vicky Ye

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 with a roll call vote and the other four Board members responded present.

Chairman Donovan asked that those recording the proceedings to identify themselves and state with whom they were affiliated. Those responding to the Chairman's request were: Jim Steere of The Hanover Insurance Company and "Lucky" Papageorg of the Alliance of Automotive Service Providers of Massachusetts (AASP).

In attendance were Lucky Papageorg, AASP/MA Executive Director, Don Dowling, owner of Marblehead Collision. James Bates of Mapfre/Commerce Insurance Company. Gerry Berube from MAPFRE, James Steere from The Hanover Insurance Company, Felix Spinazzola from Travelers, Scott Cambray from Quincy Mutual, Mike Mullarkey from Arbella, Larry Konstant from Metropolitan Appraisal Service, Patrick Murphy, owner of Mass Ave Towing, Pit-Stop Auto Solutions and Half Moon Mods LLC. Also, in attendance was Massachusetts Insurance Federation's Executive Director, Christopher Stark.

Approval of the Board minutes for the Board meeting held January 23, 2024:

Chairman Donovan asked for a motion to approve the draft minutes. Board Member Carl Garcia made a motion to accept the minutes as presented and Board Member Peter Smith seconded the motion. Chairman Donovan called for a roll call vote and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Report by Board Member Peter Smith on the Part-II examination for motor vehicle damage appraiser:

Chairman Donovan requested Board Member Peter Smith to provide a report about the status of the next Part-II portion of the examination for motor vehicle damage appraiser license. Board Member Smith reported that the exam was scheduled for Saturday, March 23, 2024, at the Progressive Insurance facility in Westwood. There were about 42 applicants on the list, but more were expected by the time of the examination. Board Member Garcia asserted that he would assist Mr. Smith during the examination. Board Member Smith stated that he and Mr. Garcia discussed the location of the exam and planned to conduct future exams in different areas of the state to make it easier for applicants to take the exam who lived in other parts of the Commonwealth. Chairman Donovan asked Board Member Smith about applicants who may have failed an exam, and whether they could retake the exam at a later date. Board Member Smith stated that ADALB's Regulation requires a 6-month waiting period before a person who failed could retake the exam. Mr. Smith stated there were applicants who have retaken the Part-II exam several times. Board Member Garcia noted that he found that the failure rate was about 10% and felt it was too high. Mr. Smith noted that those proctoring the exams are available to those who failed, and they direct applicants to a successful second attempt at passing the exam. Board Member Smith also pointed out that the second part of the exam (the practical portion) is more structured to be given about three times per year when the Part-I portion (written) can be requested at any time. Mr. Smith noted that Part-II should be given closer to the applicant's completion of Part-I. Mr. Garcia agreed. Mr. Papageorg, Executive Director of AASP/Mass.) asked whether there was any correlation found between those who failed Part-II and the school that they attended. Board Member Smith responded, no. Board Member Garcia noted that those who fail usually do so because of other issues, not because of poor instruction. Chairman Donovan asked whether a language problem added to the failure rate. Board Member Smith stated he did not believe it did.

Chairman Donovan announced the matter was addressed and stated that the Board would move on to the next agenda item, but before doing so, asked those recording the meeting to identify themselves. Mr. James Steere of The Hanover Insurance Company stated that he was audio recording the meeting and Mr. Lucky Papageorge responded that he was audio and video recording the meeting.

Update on status of proposed amendments to the ADALB's Regulation, 212 CMR 2.00 et seq.:

Chairman Donovan asked for an update on the proposed amendments to the ADALB's Regulation 212 CMR 2.00 et seq. The consensus was that the process to begin discussions for proposed amendments to the Board's Regulation should be put over until the next scheduled Board meeting.

Review of Complaints 2024-1, 2024-2, 2024-3, 2024-4, 2024-5, 2024-7, 2024-8, 2024-9, 2024-10, 2024-11, 2024-12, and 2024-13:

Chairman Donovan called the next item on the agenda, review of complaints filed against licensed motor vehicle damage appraisers. Board Member Smith cautioned Board Members to refrain from disclosing the names of those involved in the complaints at this stage of the process. Chairman Donovan noted that one of the complaints listed as an agenda item was listed in error and asked whether it was 2024-01 and Board Member Smith stated that the one that was listed in error was Complaint number: 2024-03.

Chairman Donovan called for discussion on Complaint 2024-01 and Board Member Garcia noted that basic information was lacking in the complaint, such as the licensed appraiser's name. The complaint involved an auto body shop refusing to allow the license appraiser to enter onto the premises to make an inspection of an assigned vehicle. Board Member Garcia suggested that a letter be sent to the auto body shop seeking additional information, because the factual allegations in the complaint appear that the auto body shop was delaying the repair process, which would harm the consumer. Board Member Garcia made a motion that a letter be sent to the auto body shop requesting an explanation and reminding the auto body shop that the accusation contained in the complaint is a violation of ADALB's Regulation. Board Member Peter Smith seconded the motion. Chairman Donovan called the roll and Board Member Johnson asked whether the request was for more information and Board Member Garcia stated that was the reason for the motion. Board Members Johnson, Smith, Garcia, and Ye voted in favor of the motion and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Mr. Papageorg asked to be recognized and Chairman Donovan allowed him to address the Board. Mr. Papageorg stated that he thought the review process was to determine whether the complaint would move forward at which point the person who the complaint was issued against would have the option of submitting testimony or coming in person before the Board. Board Member Garcia stated that the Board does not know who the complaint is against, the Board has the name of the facility but not the name of the licensed appraiser.

Chairman Donovan called for a discussion on Complaint 2024-02. Board Member Garcia stated the complaint lacked the required information as well, but this complaint has an estimate which shows the base time was altered [the refinish of the aperture panel] but questioned whether there was a negotiation between the licensed appraisers. Board Member Garcia stated that along with the reduction of the base time, he was concerned that the clear-coat time was also altered, stating that the panel will surely need to be cleared [clear-coated] in its entirety. Board Member Garcia recalled that this same insurance company was cautioned before, during Mr. Garcia's prior tenure on the Board, against this same practice. Board Member Smith noted that the inspection location was listed as the home address and wondered whether this was a sign that there was no auto body shop involved. Board Member Garcia stated that an estimate should show full refinish time and when the vehicle is in for repairs, and a reduction in the time is brought up during the negotiations, the report should reflect the same. Board Member Johnson suggested that Board Member Smith is approving altering of the time in a published manual when an estimate is written without the benefit of a licensed appraiser from an auto body shop to negotiate the estimate and stated that in his opinion such a practice would be a violation of 176D and would be considered an unfair and deceptive act in the insurance business. Board Member Smith

responded by stating he read the complaint which includes reference to an Advisory Ruling by the Board, involved negotiations with the auto body shop's appraiser. The estimate appears to have been written at the home address and negates the impact of the Advisory Ruling. Board Member Johnson made a motion to request a response to the complaint from the licensed appraiser complained against in the complaint and a clarification of the reasoning behind writing a reduced time. Chairman Donovan called for a roll-call vote and Board Members Johnson, Smith, Garcia, and Ye, voted yes. The motion passed by a Vote of 4-0, with Chairman Donovan abstaining.

Chairman Donovan asked for discussion on Complaint 2024-04. Board Member Garcia questioned whether the complaint revolved around the difference over \$63. Board Member Garcia recalled a complaint from his previous years on the Board when he sought to write an Advisory Ruling for the Board, stating once a repair was written after a negotiation between two licensed appraiser agreed upon the appraisal, the appraisal could not be changed. Board Member Garcia agreed with the premise, yet saw it was offered to shelter a carrier when dealing with an out of state carrier seeking to reduce their subrogation responsibilities. That Advisor Ruling was not adopted by the Board because there were complications caused by the way it was written. Board Member Johnson made a motion to move the complaint forward. Board Member Garcia asked whether a letter seeking additional information might be a better resolution and Board Member Johnson agreed and the motion was amended. Chairman Donovan called for a roll-call vote. Board Members Johnson and Garcia voted yes, and Board Member Ye voted no. Chairman Donovan asked whether the motion was to solicit more information from the appraiser and Board Member Johnson responded yes, to find out why he wrote a reverse supplement. Chairman Donovan voted yes and the motion passed by a Vote of: 3-1 with Board Member Smith abstaining.

Chairman Donovan requested a discussion on Complaint 2024-05. Board Member Smith began the discussion stating that he had a difficult time navigating the paperwork. Board Member Smith noted that the estimate was a preliminary estimate, negating the Board's ability to compare the supplements to the estimate. Board Member Garcia stated that he could not see where there is a negative supplement as contended by the person filing the complaint. Chairman Donovan asked for a motion and Board Member Smith moved to dismiss the complaint, and Board Member Garcia seconded the motion. Chairman Donovan called for a roll-call vote and Board Members Johnson, Smith, Garcia, and Ye, voted yes and the motion passed by a Vote of: 4-0, with Chairman Donovan abstaining.

Chairman Donovan asked for discussion on Complaint 2024-07 (Complaint 2024-06 was not heard). Board Member Smith made a motion to solicit a written response from the appraiser whom the complaint was filed against and Board Member Johnson seconded the motion. Chairman Donovan called for a roll-call vote. Board Members Johnson, Smith, Garcia, and Ye voted yes, and the motion passed by a Vote of: 4-0 with Chairman Donovan abstaining as he did on the previous unanimous votes.

Chairman Donovan requested discussion on Complaint 2024-08. Board Member Johnson stated that this complaint involved the cost to repair, noting that the appraiser did not negotiate the labor rate or respond to the shop with documentation as to the method he used to counter the

shop's P&M sheet. Board Member Johnson made a motion to move the complaint forward to the next step and Board Member Garcia seconded the motion. Board Member Ye asked whether there was an opportunity to have arbitration resolve the dispute and Board Member Garcia stated that he supported arbitration for dispute resolution under the standard Massachusetts Private Passenger Automobile Insurance policy. Board Member Johnson agreed, but stated people have a right to file a complaint with the Board at the same time as the arbitration is being conducted. Mr. Powers added that in the complaint there was negotiation between the parties, which is the crux of the Board's Regulation. Board Member Ye reaffirmed her position that the parties should take the matter to arbitration. Mr. Garcia explained the arbitration process and stated that he served as an arbitrator. Board Member Johnson states that arbitration was an insurance industry solution. A complaint filed with the Board is an auto body shop industry solution. Board Member Johnson pointed out that the "new insurance contract" does not allow for an assignment of rights of the owner of a motor vehicle to allow an auto body shop to take a vehicle owner's position within the insurance contract. Chairman Donovan asked for a motion and Board Member Johnson moved to have the complaint move forward to the next step and Board Member Garcia seconded the motion. Chairman Donovan called for a roll-call vote and Board Members Johnson and Garcia voted, yes, Board Member Smith abstained, and Board Member Ye voted no. Chairman Donovan voted no to make a tie and the complaint was dismissed.

Chairman Donovan requested discussion on Complaint 2024-09. Board Member Garcia stated that this complaint involved a consumer who is dissatisfied with the actual cash value allotted to pay for the total loss of the damaged vehicle. Board Member Ye suggested that this complaint should be brought to the Division of Insurance [under their regulation, 211 CMR 133.00 et seq.] and not with the ADALB. Chairman Donovan requested a motion and Board Member Garcia moved to dismiss the complaint and the motion was seconded by Board Member Johnson. Chairman Donovan called for a roll-call vote and Board Members Johnson, Garcia, and Ye voted yes, and Board Member Smith abstained. The motion passed by a Vote of: 3-0 with Board Member Smith and Chairman Donovan abstaining.

Chairman Donovan requested a discussion on complaint 2024-10. Board Member Garcia noted this complaint did not state against whom it is brought. Board Member Johnson stated that this complaint is over the actual cash value of a total loss of the consumer's motor vehicle as well. Board Member Garcia made a motion to dismiss, and Board Member Ye seconded the motion. Chairman Donovan called for a roll-call vote and Board Members Johnson, Garcia, and Ye voted yes, Board Member Smith, abstained and the motion passed by a vote of 3-0 with Board Member Smith and Chairman Donovan abstaining.

Chairman Donovan requested a discussion on complaint 2024-11. Board Member Johnson stated that this complaint centered around the timeliness of a supplement. Board Member Garcia noted that the supplement was requested to be written at the auto body shop, but there is no evidence that the vehicle was at a shop, rather it appears to have been at a used car lot. Mr. Garcia there was no appraisal written by the used car dealer. Board Member Johnson noted that there is no R.S. Number on the heading of the used car dealership's letterhead as evidence that they are not an auto body shop. Board Member Garcia moved to dismiss the complaint and Board Member Ye seconded the motion. Chairman Donovan called for a roll-call vote and Board

Member Johnson voted, no. Board Member Smith abstained and Board Members Garcia and Ye voted yes along with Chairman Donovan. The motion passed by a Vote of: 3-0.

Chairman Donovan requested a discussion on complaint 2024-12. Board Member Ye stated that this complaint was another which involved the actual cash value of the motor vehicle during a total loss settlement stating it was the same as complaint 2024-10. Board Member Ye moved to dismiss the complaint and Board Member Smith seconded the motion. Chairman Donovan called for a roll-call vote and Board Members Johnson, Smith, Garcia, and Ye voted yes, with Chairman Donovan abstaining. The motion passed by a Vote of: 4-0.

Chairman Donovan requested a discussion on complaint 2024-13. Board Member Smith noted that the complaint centers around a towing bill and does not have anything to do with the appraisal or estimate of the claim. Board Member Johnson made a motion to dismiss the complaint and Board Member Smith seconded the motion. Chairman Donovan called for a roll-call vote and Board Members Johnson, Smith, Garcia, and Ye voted yes, and Chairman Donovan abstained. The motion passed by a Vote of: 4-0.

Board Member Garcia stated that he was impressed with the way the discussion over the complaints went smoothly and collegially and Board Member Johnson agreed.

Next meeting date:

Chairman Donovan suggests a date of May 14, 2024, and the suggested date was agreed for 10AM at 1000 Washington Street, Boston.

Executive Session:

Chairman Donovan requested Mr. Powers to read the agenda item and Legal Counsel Power read the following part of the agenda:

In accordance with M.G.L. Chapter 30, Section 5, the Board will discuss an investigation of charges of criminal misconduct that could lead to the filing of criminal complaints.

Mr. Garcia made a Motion, with the understanding that the Board will adjourn after the Executive Session concluded and the motion was seconded by Board Member Smith. Chairman Donovan called for a roll-call vote and the motion passed by a Vote of: 4-0 with Chairman Donovan abstaining.

During the executive session Legal Counsel Powers informed the Members of the Board that after an extensive investigation by the Middlesex District Attorney's Office indicted several people who were committing insurance fraud while operating an auto body shop in Everett and he was attempting to determine whether any licensed motor vehicle damage appraisers were involved in the fraudulent scheme. Mr. Powers stated that whenever the public hears reports about this type of misconduct, it reflects badly on the auto body industry and has a knock-on

impact on the vast majority of the good honest auto body shop owners who are doing the right thing for their customers.

Motion to Adjourn:

Chairman Donovan called for a motion to adjourn, and Board Member Johnson made the motion to adjourn, the motion was seconded by Board Member Smith, 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).