



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

GILBERT W. COX JR.
CHAIRMAN

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

Minutes of Meeting of the Board on April 26, 2016 Approved by the Board at the May 25, 2016 Board Meeting; Motion of Board Member William Johnson, Seconded by Board Member Joseph Coyne. The Motion Passed by a Vote of: 4-0, Chairman Cox Abstained.

April 26, 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 for the Division of Insurance, assigned to the Office of the General Counsel, took the minutes of the Board meeting.

Proceedings recorded by:

Jillian Zywiec 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).

Review of minutes:

The meeting was called to order by Chairman Cox, the minutes of the Board meetings held on January 26, 2016 and February 23, 2016 were not available. The Board was informed by the Legal Counsel to the Board, Michael D. Powers, that the minutes were in draft form and would be prepared for the next meeting of the Board but would be posted on the ADALB website in draft form.

Report on the Part-II examination for motor vehicle damage appraiser license scheduled for March 16, 2016:

Board Member Richard Starbard reported that the Part-II examination for motor vehicle damage appraiser license was held at the Assabet Valley Regional Technical High School and that 59 candidates took the examination and 38 people passed the examination.

Board Member Starbard announced to the Board, and members of the general public, that he informed the candidates who took the examination that anyone who failed the examination was invited to contact him after the examination to discuss the examination with him. Four people who failed the examination called him by telephone and discussed various examination questions with him. Board Member Starbard thanked Pete Smith, Steven Zavackis, Executive Secretary to the Auto Damage Appraiser Licensing Board, and Sue Conena for assisting with the examination. Mr. Starbard announced the next Part-II examination is tentatively scheduled for July 20, 2016.

Chairman Cox thanked Board Member Starbard for his dedication and hard work overseeing the Part-II examination.

Discussion about Licensed Appraisers being present for appraisals conducted by trainee appraisers:

Board Member Starbard reported that he was involved in a recent incident at the auto body shop that he owns, Rick's Auto Body of Revere, whereby a trainee wrote an appraisal of a damaged motor vehicle that was at his shop. Mr. Starbard called the trainee and asked for his license appraiser's number and he provided his supervisor's license number. Mr. Starbard observed the trainee riding around in a marked car with the insurance company's name on it, and he was in fact putting himself out as a licensed appraiser.

Chairman Cox opined that the ADALB Regulation 212 CMR 2.00 et seq. requires that the licensed appraiser personally inspect the damage to a motor vehicle.

Mr. Starbard responded that he had contacted the ADALB Legal Counsel, Michael D. Powers, and inquired as to the procedure for a Board Member of the ADALB to file a complaint against a appraiser, and Mr. Powers informed him that a Board Member may file a complaint against a licensed appraiser but must publicly state at the outset of the public meeting that the Board Member has filed a complaint against a licensed appraiser and that matter is scheduled on the Board's agenda. In addition, the Board Member should request that he be recused from participating in the deliberations of that matter and a motion made by the Board to vote on such a recusal.

Board Member Joseph Coyne agreed that in the past the procedure has been for Board Members to disclose any such involvement in any manner coming before the Board, and in those instances the Board Member requested to recuse himself from any of the Board's deliberations about the matter. Chairman Cox agreed that was the procedure used during past Board meetings.

Letter from Jillian Zywiec, Executive Director of the Alliance of Automotive Service Providers of Massachusetts about legislation filed with the Massachusetts House of Representatives, H778:

The Board Members were provided with copies of a letter dated March 18, 2016, that was sent by Jillian Zywiec, Executive Director for AASP of Massachusetts, to Chairman Cox thanking the Members of the ADALB on behalf of the 200 member auto repairers of the Alliance of Automotive Service Providers for the submission of testimony in opposition to House Bill 778, "An Act Reforming the Process of Appraising Motor Vehicle Damage Covered by Auto Insurance Policies." Ms. Zywiec wrote, in relevant part, that the, "The legislation, which attempted to abolish the ADALB Board and the current law regarding the removal of inspection stickers, was recently placed into a 'study order' by the Joint Committee on Financial Services. As a result of our combined efforts, consumers will continue to be served and protected by the ADALB's work...."

Chairman Cox thanked Executive Director Zywiec for her acknowledgement of the ADALB's work.

Discussion of Board's complaint procedure for complaints filed against a licensed appraisers:

Board Member Starbard began the discussion by handing-out a draft of a new procedure that he suggested could be followed by the Board when a complaint is filed against a licensed appraiser. Part of Mr. Starbard's proposed procedure would provide a minimum of five days notice to a licensed appraiser to appear before the Board from the date of filing of a complaint. Mr. Starbard asserted that it was important for Board Members to review a complaint that is filed against a licensed appraiser as soon as possible.

ADALB Legal Counsel, Michael D. Powers, informed the Board Members that Board Member William Johnson had raised several issues about the current complaint procedure with Mr. Powers. During their discussions about the ADALB's complaint procedure Board Member Johnson directed Mr. Powers' attention to the "Manual for Conducting Administrative Adjudicatory Proceedings" (2012 Edition) which was published by the Division of Administrative Law of the Commonwealth of Massachusetts, the Office of the Attorney General, and the Division of Professional Licensure of the Commonwealth. Mr. Powers reviewed this manual, the complaint procedure used by the Division of Professional Licensure, the relevant portions of the Massachusetts Administrative Procedures Act, M.G.L. c. 30A, and drafted a new procedure for the ADALB to consider and discuss. Mr. Powers informed the Board that he had submitted the draft procedure to the Chief Administrative Hearing Officer of the Division of Insurance and the General Counsel of the Division of Professional Licensure to review and comment. Copies of this draft procedure were provided to the Board Members and the procedure submitted for the Board's consideration was the following:

**ADALB Complaint Procedures
Revised 2016 as Adopted by the Auto Damage Appraiser Licensing
Board at the Board Meeting Held on -----, by a vote of: --**

1. When a Complaint is received by Executive Secretary to the Auto Damage Appraiser Licensing Board it is assigned a complaint number. At least 30 days before the following scheduled Board meeting, the licensed appraiser, complained of in the complaint, is sent a copy of the complaint, and a letter notifying him/her of 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 he/she 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 2011-39. A copy of the letter and complaint is then 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. 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 as requested by the licensed appraiser, to determine whether to dismiss the matter or proceed.

3. Dismissal of the Complaint. The Board may determine to dismiss a complaint with or without prejudice due to lack of jurisdiction, lack of sufficient evidence, finding of no violation, withdrawal of a complaint, subsequent compliance with statutes and/or regulations or other basis.

4. Board's Decision. If the decision is to proceed, then the licensed appraiser is provided with a formal complaint and provided at least 30 days notice to appear at a pre-hearing conference.

5. At the pre-hearing conference the Board may make an informal disposition of the matter by stipulation, agreed settlement or consent order. After the pre-hearing conference, the Board will determine to proceed or dismiss. If the decision is to proceed, then the Board notifies all parties of formal hearing and the format of the complaint is in the form of: ADALB v. Licensed Appraiser. The adjudicatory procedures provided under M.G.L. c. 30A and 801 CMR 1.00 will be followed.

6. After a formal hearing, the Board by a majority vote determines if a violation has occurred and determines 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 licensee which is retained in the licensee'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 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 a licensee 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 a licensee of all rights and privileges of licensure and eliminates his or her license status.

Mr. Starbard disagreed with the provision allowing for 30 days notice to the licensed appraiser, as provided for in section 1. Mr. Starbard felt that the process should be expedited to 5 days notice. Mr. Powers informed the Board that in the draft of the procedure he had originally provided for 21 days notice before the Board meeting, but Board Member Johnson felt that 30 days notice was more appropriate.

Moreover, because of the Office of the Attorney General's decision which was rendered as the result of the complaint filed against the Board by the AASP for violating the Open Meeting law (OML-2016-6) the Board is now required to provide appraisers with a copy of the complaint and notice of the rights to: have the matter heard in the executive session, have an attorney present, to have a transcript made of the executive session at the licensed appraiser's expense. Because of the logistics of a licensed appraiser scheduling a meeting with an attorney to review the complaint and coordinating the appraiser and attorney's schedules with the date of the Board meeting, it would be simply impractical to provide only 5 days notice. Mr. Powers pointed out that since January of this year when the Board was forced to change its past procedure of first conducting a preliminary review without notifying the licensed appraiser, and now having to provide the notice of rights, every appraiser a complaint has been filed against has retained an attorney.

ADALB Legal Counsel Powers informed the Board that the reality is that it's difficult to coordinate scheduling of the licensed appraiser, his attorney, and the Board's schedule. Indeed, notice was sent to three licensed appraisers to appear at the previously scheduled Board meeting which was scheduled for April 19, 2016, and was postponed because of a protest filed by AASP. Mr. Powers pointed out that the date of the April 19, 2016, meeting was posted on the Auto Damage Appraiser website on February 25, 2016, notices were sent on Monday April 11, 2016, to the Office of the State Secretary and the Secretary of Administration and Finance, and the Board's agenda was posted Friday morning April 15, on the Auto Damage Appraiser Licensing Board's website. Thereafter, AASP complained that there was a Suffolk County holiday of Patriots Day on Monday, April 18, 2016, and, therefore, Monday would not count towards the 48 hours notice requirement, and the Board would violate the technical requirements of the law if it held a meeting on Tuesday, April 19, 2016. Because of AASP's protest, the Board postponed the April 19, 2016 meeting, the attorneys representing the licensed appraisers were unable to

make the rescheduled meeting of April 26, 2016, and they requested a postponement of the matters to the next scheduled Board meeting. Mr. Powers asserted that based upon this recent past experience, to shorten the time period to 5 days notice from the date of receiving a complaint filed against a licensed appraiser to appear before the Board would invariably result in a request for postponement of the matter, and the Board would simply be spinning its wheels.

Board Member Joseph Coyne agreed by noting that it didn't seem practical to shorten the time to respond to a complaint especially in light of the notice of rights the Board now provides to licensed appraisers, including the right to have an attorney present at the Board meeting.

Board Member William Johnson asked about the ability to default parties for failure to respond to a complaint and appear at the Board meeting when notified that the Board had scheduled a matter.

ADALB Legal Counsel Powers responded that he would draft a default provision and include it in the proposed complaint procedure for the Board to review.

Discussion of time and manner for setting the Board's agenda so that proper notice can be sent to the Office of the State Secretary, Secretary of Administration and Finance, and posted by IT Services on the ADALB website:

ADALB Legal Counsel Mr. Powers informed the Board that one of the problems that he and Mr. Steven Zavackis, Executive Secretary to the ADALB, had been confronted with just prior to the meeting that was scheduled for April 19, 2016, was that after the notice of the meeting was sent to the Office of the State Secretary and Secretary of Administration and Finance on Monday, April 11, 2016, Board Members began to send emails about additional issues that had not been placed on the agenda. Preparing the final agenda was held until Thursday, April 14, and new items were added to the Board's agenda, resulting in the delay of posting the final agenda on the IT Auto Damage Licensed Appraiser website. To avoid this from happening in the future, Mr. Powers suggested that the deadline for submitting items to the Board's agenda should be no later than the Monday of the week before the scheduled Board meeting. There was a consensus among the Board Members that this would be the procedure followed for future meetings.

Discussion about the number of Board Members conducting the Part-II examinations and Board Members participation at Prometric's review of the Part-I examination, as advised by the Office of the Attorney General:

ADALB Legal Counsel Powers informed the Board Members that at the Board meeting that was held on January 16, 2016, Board Member Johnson raised an issue about posting a notice of a Board meeting when the Part-II examination for licensing motor vehicle damage appraisers was held. At that meeting Mr. Powers informed the Board Members that his understanding of the Open Meeting Law was that it was aimed at preventing secret deliberations of matters that were required to be placed on the Board's agenda and discussed publicly at a Board meeting. Because the ADALB's enabling legislation required the Board administer the examination for motor vehicle damage appraiser licenses, and it would be impossible to conduct a full Board meeting while the Part-II examination was being taken and during such time when Board Members confidentially discuss the correct and incorrect answers when marking the examination as they are completed, and while the examination is underway, it would be impractical to hold a public meeting of the Board. Mr. Powers asserted that the correcting of each examination is not a matter that would be placed on the Board's agenda, deliberated upon publicly, and voted on at a

public meeting of the Board. Consequently, because correcting examinations is not something that the Board would deliberate about and be the subject matter of a Board's vote at a public meeting, then the Board did not have to post a notice of Board meeting and, therefore, conduct a Board meeting during the administration of the Part-II portion of the examination. Because Board Member Johnson had raised the issue and because the Prometric review that was annually conducted of the Part-I examination, or the written multiple choice portion of the examination, was about to be held in May of 2016, Mr. Powers decided to ask for an opinion from the Office of the Attorney General's Division of Open Government (DOG) about these issues. Mr. Powers wrote the following letter:
January 28, 2016

FIRST-CLASS MAIL

Mr. Jonathan Sclarsic
Assistant Attorney General
Division of Open Government
Massachusetts Attorney General's Office
One Ashburton Place
Boston, Massachusetts 02108

Re: Request for Open Meeting Law Opinion of the Auto Damage Appraiser Licensing Board

Dear Mr. Sclarsic:

At the Auto Damage Appraiser Licensing Board (ADALB or Board) meeting that was held on January 26, 2016, Board Members asked the following question: When we administer the Part-II practical portion of the examination for motor vehicle damage appraiser license, do we have to post a notice of public meeting? I responded that, it appeared to me because Board Members are conducting one of their functions under the enabling act, M.G.L. c. 26, § 8G, and are not deliberating about any ADALB business or discussing any business that would be transpired at the public meetings of the Board, then the Board is allowed to administer the practical portion of the examination without posting a public notice of a Board meeting and, therefore, is not required to hold a Board meeting during the examination. I advised that Board Members must refrain from any discussions or deliberations about anything to do with Board business when conducting the Part-II examination. Members of the Board acknowledged that they understood what I was advising them about; all the Members of the Board have been provided with copies of the materials required by the Office of the Attorney General about the Open Meeting Law, at least two members are currently members of other public boards in Massachusetts, and one member is a former member of the Massachusetts Legislature and an attorney. Because of previous complaints filed against the ADALB, I feel it is prudent to get a written Opinion from the Office of the Attorney General.

In relevant part G.L. c. 26, § 8G provides:

The board shall have authority to license individuals to appraise damage to all motor vehicles arising out of motor vehicle damage claims. Such damage claim shall include

but shall not be restricted to any set of circumstances for which claim may be made for damage to a motor vehicle under a motor vehicle policy of liability or physical damage coverage.

...

Applications for registration as licensed motor vehicle damage appraisers signed and sworn to by the applicants shall be made upon forms furnished by the board. Each applicant who shall furnish the board with satisfactory proof that he is eighteen years of age or over and of good moral character, that he possesses the educational qualifications required for graduation from high school or that he possesses relevant work experience deemed satisfactory by the board, shall, upon payment of one hundred dollars, be examined, and if found qualified by the board, be registered as a licensed appraiser of motor vehicle physical damage and entitled to a numbered certificate in testimony thereof, signed by the chairman of the board. An applicant failing to pass an examination satisfactory to the board, shall, after payment of a further fee of fifty dollars, be entitled to a reexamination after the expiration of six months from the date of the last examination. An applicant failing to pass an examination satisfactory to the board shall be allowed to review his examination.

The board shall prepare and make available to applicants a manual or instructions specifying in general terms the subjects which may be covered in any examination for such a license. The board shall give examinations at such times and places within the commonwealth as it deems necessary to serve the convenience of both the board and applicants.

....

The examination for motor vehicle damage appraiser is a two-part examination offered periodically each year. Pursuant to the above-referenced authority the Board has participated in the creation of a written examination which is administered by the nationally known company Prometric as the Part-I portion of the examination. The Part-II portion of the examination is the practical part of the examination, and it is administered by one of the Members of the Board who volunteered for the assignment. The two-part examination is held about four times during the year, and a report is given at each ADALB meeting as to the date and place of the examination, the number of people who took the examination, the number of people who passed the examination, and the number of people who failed the examination.

The Part-II portion of the examination is held at different locations around Massachusetts and consists of applicants examining a damaged motor vehicle and, immediately thereafter, writing appraisals as to the damage to the motor vehicle. When appraisals are completed, applicants hand them to a Board Member who reviews the examination and scores it. Various Members of the Board from time to time assist at the Part-II examination, but are not required to do so. At any given Part-II examination there could be from one, two, three, four or all five Board Members who volunteer assisting in administering the examination. Although I am not required to attend the Part-II examinations, on various occasions I have attended the Part-II examination, and I participate at an annual review of the written examination questions that are administered by Prometric.

The annual review by Prometric of the Part-I written portion of the examination is generally held in May at a conference room in a hotel in Boston. Members of the Board attend the annual review of the written questions, and this can include one, two, three, four or all five members. Prometric also administers written examinations for the Division of Insurance. Staff members of the Division of Insurance also attend this annual review, and they review the written questions for various licenses issued by the Division of Insurance such as the written questions for an insurance producer license. The review is conducted in a large conference room and each review team is assigned a table and laptop computer to review the applicable examination questions and correct answers. During the times that I have participated at the examinations or written test reviews the only matters that are discussed are about the questions on the test. Moreover, Prometric requires the test reviewers to execute forms asserting that the reviewers will not disclose the test answers to outside parties. The “NON-DISCLOSURE” clause reads as follows:

I hereby swear and affirm that I shall not disclose or provide to any person or entity, directly or indirectly, any information or documents pertaining to Prometric’s examination questions, examination materials, examination specifications, preparation, testing and or grading services, or any other information or documents received from Prometric.

If affiliated with an educational institution, I hereby certify that I will not use any information and or knowledge I gain from reviewing the examination to compromise the validity of the examination, including but not limited to changing current courses to reflect specific exam content or discuss specific exam content with anyone affiliated with my school or any other. I further certify that the information contained in this document is true and accurate and that my signature shall have the same legal effect as if made under oath.

CERTIFICATION

I have read this document and understand and agree to abide by the above stated terms.

(Emphasis in original).

The Attorney General’s “Open Meeting Law Guide” lists the following exceptions to the Open Meeting Law:

What are the exceptions to the definition of a meeting?

There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and

5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

Conducting or reviewing an examination is not listed as reasons for exceptions to the Open Meeting Law.

The next Part-II examination is scheduled for March 16, 2016, at the Assabet Valley Regional Technical High School, we anticipate about 50 or 70 applicants attending the examination, and the next Prometric annual review is tentatively scheduled for May of 2016. The next scheduled ADALB meeting is for February 23, 2016. Consequently, I request a written opinion from the Division of Open Government whether the Board must post a notice of Board meeting and, therefore, conduct a Board meeting when administering the Part-II examination or participating at Prometric's annual review of the Part-I written examination. I request the opinion before the next scheduled Part-II examination is held and Prometric's annual review is held.

Sincerely,

Michael D. Powers
Counsel to the Auto Damage Appraiser Licensing Board

On April 12, 2016, Hanna Rush, Assistant Attorney General from DOG, responded to the letter by writing the following response:

Michael D. Powers, Esq.
Auto Damage Appraiser Licensing Board
1000 Washington Street, Suite 810
Boston, MA 02118

Re: Your January 28, 2016 Letter

Dear Attorney Powers:

This letter serves as a response to your January 28, 2016, request for a written opinion from the Division of Open Government (the Division) of the Attorney General's Office (AGO). While we decline to provide a formal Advisory Opinion at this time, we will provide the following informal guidance.

In your letter you ask the Division to determine whether certain functions of the Auto Damage Appraiser Licensing Board (the Board) are considered "meetings" under the Open Meeting Law. A "meeting" is defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction[.]" G.L.c. 30A, § 18.

We recount the pertinent facts from the information presented in your letter. The Board is a five-member Board tasked with the authority to license individuals to appraise damage to

motor vehicles arising out of damage claims. See G.L.c. 26, § 8G. To that end, the Board “shall give examinations at such times and places within the commonwealth as it deems necessary to serve the convenience of both the board and applicants.” Id. The licensing examination, which the Board offers periodically each year, consists of two parts. Part I is the written examination administered by a third-party vendor, Prometric.¹ Part II is the practical examination during which a license applicant examines a damaged motor vehicles and writes an appraisal of the damage. The Board is involved in the administration and review of both parts of the examination. For Part I, the Board attends an annual review of the written examinations hosted by Prometric. The Board sits together to evaluate and score the examinations. For Part II, as few as one Board member or as many as five members volunteer to attend the administration and evaluation of the practical examination of applicants. The practical examination is conducted for all applicants on one day in one location. The Board member(s) administering the examination sit together at a table in the front of the examination room and receive written appraisals, at which point they evaluate and score them.

Based on the information provided in your letter, we believe that both parts of the examination would be considered “meetings” subject to the Open Meeting Law, unless fewer than three members of the Board (a quorum) attend any particular examination. Additionally, the scenarios you describe would not fall within the “on-site inspection” exception to the definition of “meeting.” See G.L. c. 30A, § 18(a “meeting” shall not include: (a) an on-site inspection of a project or program, *so long as the members do not deliberate* [.])” (emphasis added). According to your letter, the Board evaluates and scores individual examinations together, which constitutes deliberation between or among the Board. A “deliberation” is defined as “an oral or written communication through any medium ...between or among a quorum of a public body on any public business within it jurisdiction[.]” Id. Because the Board’s current practice is to deliberate during the examinations, it would not fall within the on-site inspection exception. As a result of the Board’s deliberations during these sessions, it issues or denies licenses to auto damage appraiser applicants. Accordingly, when a quorum of the Board administers and evaluates examinations, under either Part I or Part II, it should consider it a “meeting” of the Board pursuant to the Open Meeting Law.

Sincerely yours,

Hannah Rush
Assistant Attorney General
Division of Open Government

Mr. Powers informed the Board that he disagreed with this interpretation of the Open Meeting Law. In his opinion, a “deliberation” is a matter that the Board would be compelled to consider at a public Board Meeting and may be publicly discussed and voted on by the Board. The fundamental idea of the Open Meeting Law is to prevent public Board’s from making decisions in private or behind closed doors when the public and interested parties have a right to hear such

¹ As a condition of the contract, Prometric requires all Board members to sign non-disclosure forms, affirming that they will not disclose the examination materials to any person.

matters. By the very nature of administering, reviewing, and marking examination questions, such a thing is in essence a private transaction. To follow DOG's decision to its logical conclusion, whenever a quorum of the Board attends an examination the Board would be compelled to announce a public Board meeting before the examinations, allow members of the public to attend the examinations, Board Members would publically discuss each Part-II examination in an open room when examinations are under way, and while informing the applicants of what is the incorrect answer and what the correct answer is to a given question. As far as the Prometric review of the written portion of the examination, whenever a quorum of the Board attends and examination, the Board would be compelled to hold a public meeting with members of the general public attending, while going through the answer key of the written questions, and announcing to the public which answers are the correct answers to each question along with publicly posting them in the minutes of the Board meetings. Mr. Powers stated that the answer key to the written questions of the Part-I portion of the examination has never been placed on the Board's agenda and will never be placed on the Board's agenda to be publicly deliberated. To do so, would be to publicly provide the answer key to the written portion of the examination to any person attending the Board meeting or who wishes to look them up on the Board's website. To comply with the Attorney General's interpretation of the Open Meeting Law, going forward no more than two Board Members should participate at the Part-I or Part-II portions of the examinations as advised over the telephone by Assistant Attorney General Rush from DOG.

Board Members Joseph Coyne and Richard Starbard agreed to attend the Prometric written examination review on May 9, 2016.

Discussion about Special Public meeting scheduled for May 4, 2016, at 1000 Washington Street, Boston, Massachusetts for amending the ADALB regulation 212 CMR 2.00 et seq.:

The Board will discuss proposed amendments to the ADALB's regulation and an upcoming Special Public meeting of the Board. The Special Public session of the Board will be held in advance of considering draft changes and implementing the formal regulatory amendment process, and the Board will welcome interested members of the public to attend the Special Public meeting scheduled for Wednesday May 4, 2016, at 1000 Washington Street, Boston, Massachusetts, to provide input with regards to topics and any possible changes the public would like the Board to consider addressing in the next regulation review.

ADALB Legal Counsel Mr. Powers informed the Board that the notice of the public meeting was posted in the Boston Globe, with the Office of the State Secretary, the Secretary of Administration and Finance, on the Auto Damage Appraiser Licensing Board website, and sent to AASP to notify its membership.

Next scheduled regular meeting of the Board:

The Board agreed to hold the next regularly scheduled meeting for May 25, 2016, at 1000 Washington Street, Boston, Massachusetts at 9:30 AM.

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:

Originally the agenda listed that the Board would review and hold discussions on: Complaint-2016-1, Complaint 2016-2, and Complaint 2016-3 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.

On March 28, 2016, all of the Licensed Appraisers named in the complaints were provided with notice of the complaints, their rights, and the scheduled meeting for April 19, 2016. All responded through their attorneys that they requested the matter to be heard in the executive session. The April 19, 2016, meeting was cancelled on April 15, 2016, because of a protest filed by AASP of Massachusetts that the agenda was not posted until Friday, April 15, 2016 on the ADALB website, and because of the Patriots Day Holiday on April 18, 2016, the posting of the agenda would not be sufficient to satisfy the 48 hour requirement of the Open Meeting Law. The Board agreed to reschedule the meeting to April 26, 2016. The licensed appraisers' attorneys were notified and the attorney representing the licensed appraisers in Complaints 2016-1, 2016-2, and 2016-3 requested the matter be postponed until the following Board meeting.

A motion was made by Board member Joseph Coyne to postpone considering these three complaints filed against the licensed appraisers until May 25, 2016, and Board Member Pare

seconded the motion. The motion passed by a vote of: 3 to 1 with Board Member Starbard opposed and Chairman Cox abstained.

Executive session:

Chairman Cox announced that the Board would be entertaining a motion to enter the executive session and stated that Under Massachusetts law, Chapter 30A, §§ 18-25, the Open Meeting Law requires specific reasons that allow a public body to enter an Executive Session. Chairman Cox announced that today we have several matters on our agenda that are allowed by law to be heard in the executive session. Some of the reasons covered in G.L. c. 30A, § 21(a) are to “discuss the reputation, character, physical condition or mental health, rather than the professional competence, of an individual or to discuss the discipline or dismissal of complaints or charges brought against, a public officer, employee, staff member or individual.” One matter on the agenda today would be covered by this portion of the statute which allows the Board to enter the executive session. An individual who indicated on his application to take the test for motor vehicle damage appraiser indicated that he was convicted of a felony offense, and asked that he appear before the Board to inform the Board about the circumstances surrounding the conviction and about himself, so that the Board could determine whether it would allow the person to take the Part-I portion of the test. He requested that his matter be heard in the executive session.

The other matter on the agenda involved three individuals who had complaints brought against them and who are represented by attorneys. Because they requested a postponement to the following Board meeting, the opportunity to respond to the complaints, and hold the matters in the executive session at that meeting the matters were postponed.

Motion to Enter the Executive Session

Because the law requires a roll call vote by the Chairman before the Board can enter an executive session, Chairman Cox called for a motion to enter the executive session, indicating the Board would not return to the public session and a second to the motion.

Roll Call on Vote to Enter the Executive Session

Chairman Cox called for a roll call vote of each member of the Board present, Yea or Nay: Mr. Coyne, Mr. Starbard, Mr. Johnson, and Mr. Pare answered yea and by a vote of 4-0 the Board voted to enter the executive, with Chairman Cox abstaining.

The individual who had indicated that he had been convicted of a felony offense on his application to take the examination for motor vehicle damage appraiser appeared before the Board. The person informed the Board of the circumstances surrounding his conviction and asserted that he had been working for several years in the auto body industry. He stated that his current employer, who he’s been employed with for 9 years, needed a person with a motor vehicle damage appraiser license, and he would use the license to assist his employer in conducting appraisals.

Board Member Joseph Coyne made a motion to allow the individual to take the examination for motor vehicle damage appraiser and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Adjournment of the Board:

Chairman Cox called for a motion to adjourn which was made by Board Member Starbard and the motion was seconded by Board Member Coyne. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Whereupon, the Board's business was concluded.

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