



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

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 May 25, 2016 Approved by the Board at the June 22, 2016 Board Meeting; Motion of Board Member Joseph Coyne, Seconded by Board Member Lyle Pare. The Motion Passed by a Vote of: 4-0, Chairman Cox abstained.

May 25, 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, drafted 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, February 23, 2016, April 26, 2016, and May 4, 2016, were presented by the Chairman for a vote to approve the minutes. A motion was made by Board Member Joseph Coyne to approve the minutes, as submitted, of the Board meeting held on January 26, 2016, and a second to the motion was made by Board Member William Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining. A motion was made by Board Member William Johnson to approve the minutes, as submitted, of the Board meeting held on February 23, 2016, and a second to the motion was made by Board Member Lyle Pare. The motion passed by a vote of: 3-0 with Board Member Coyne abstaining due to his absence from the meeting held on February 23, 2016, and Chairman Cox abstaining. A motion was made by Board Member

Joseph Coyne to approve the minutes, as submitted, of the Board meeting held on April 26, 2016, and a second to the motion was made by Board Member William Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining. A motion was made by Board Member Joseph Coyne to approve the minutes, as submitted, of the Special Public meeting of the Board to solicit input from interested parties for amendments to the Board's regulation that was held on May 4, 2016, and a second to the motion was made by Board Member William Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Report on the Part-II examination for motor vehicle damage appraiser license tentatively scheduled for July 20, 2016:

Board Member Richard Starbard reported that the Part-II examination had been tentatively scheduled for July 20, 2016 but there was difficulty scheduling the test for that date at the Assabet Valley Regional Technical High School. He re-scheduled for another date of August 5, 2016. Mr. Starbard elaborated that although the Assabet Valley Regional Technical High School facility is an excellent facility for the Part-II examination, it has limited capacity for the number of examination takers and the dates for its availability. He suggested conducting the test at another central location used in the past by the ADALB such as the Holiday Inn located in Taunton. He questioned whether the Division would pay for this event out of the licensing fees collected for motor vehicle damage appraiser licenses. In response to Mr. Starbard the Legal Counsel to the Board, Michael D. Powers, confirmed that the Division would reimburse any costs associated with the examination out of the licensing fees because payment for such costs is allowed under the ADALB's enabling legislation for administering the examination. Familiar with the Division of Insurance reimbursement procedure, Mr. Starbard acknowledged that he had been reimbursed for past copying expenses for administering the Part-II examination and stated that he would look into the venue and report back.

Request of AdjusterPro to approve an estimating and evaluation training as an approved training course for motor vehicle damage appraisers:

The Board was provided with a lengthy proposal from AdjusterPro, an online training company, to approve their online training course for motor vehicle damage appraising. The Board took to the material under advisement so they could first review it and, thereafter, at a subsequent Board meeting would vote on the proposal.

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

Legal Counsel to the Board, Michael D. Powers, informed the Board that he had revised the drafted complaint procedure since it was submitted at the last regularly scheduled Board meeting held on April 26, 2016, and added a default procedure to it as requested by Board Members William Johnson and Richard Starbard. The proposed complaint procedure reads as follows:

ADALB Complaint Procedures

Revised 2016 as Adopted by the Auto Damage Appraiser Licensing

1. When a Complaint is received by Executive Secretary to the Auto Damage Appraiser Licensing Board (Board) it is assigned a complaint number. At least 21

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 date of the Board meeting and the rights provided under M.G. L. c. 31, § 21 (a)(1) that he/she has a right: whether to have the discussion of the matter heard during the public session of the Board meeting, or during the executive session of the Board meeting to which the public is not allowed to attend; to speak on his/her own behalf; to have an attorney or representative of his/her choosing attend the Board meeting to advise him/her at own expense but the attorney or representative will not be allowed to participate at the Board meeting; and to create an independent record by audio-recording or transcription of the executive session of the meeting at his/her expense. See the Office of Attorney General's Decisions on the Open Meeting Law OML 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. In the event the licensed appraiser fails to appear at the Board meeting, the Board may notify the licensed appraiser that he/she will be considered in default and that at the next regularly scheduled Board meeting the Board will vote on issuing an Order to Show Cause against the licensed appraiser, unless the licensed appraiser shows good reason for his/her failure to appear at the first scheduled meeting.

3. Preliminary review of the complaint. The Board conducts a preliminary review of the complaint at the Board meeting, either in the executive or public session of the Board as requested by the licensed appraiser, to determine whether to dismiss the matter or proceed.

4. 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.

5. 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.

6. 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.

7. 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.

Board Member William Johnson stated that he reviewed and was satisfied with the proposed complaint procedure. Mr. Powers explained the added provision for default addresses concerns raised by Board Members at a previous Board meeting held in April of 2016 regarding the licensed appraisers who simply ignore complaints filed against them. Board Member Starbard asked if the issuance of the default would be automatic and whether the default provision would preclude the Board from reviewing the substance of a complaint. Legal Counsel Powers informed Mr. Starbard that in those instances where an appraiser did not appear or otherwise respond to the complaint, that the Board would retain the option to review the facts contained in the complaint, because the proposed language allows the Board to use its discretion when an appraiser defaults. Specifically the proposed language states, "In the event the licensed appraiser fails to appear at the Board meeting, the Board may notify the licensed appraiser that he/she will be considered in default and that at the next regularly scheduled Board meeting the Board will vote on issuing an Order to Show Cause against the licensed appraiser, unless the licensed appraiser shows good reason for his/her failure to appear at the first scheduled meeting." The use of the words "may notify the licensed appraiser that he/she will be considered in default" allows the Board the discretionary option to conduct a review of the complaint in the absence of a defaulting licensed appraiser.

Owen Gallagher, the renowned insurance law Attorney, submitted a proposal for the revised complaint procedure in response to proposed amendments to the Board's Regulation 212 CMR 2.00 as requested during the Special Public session held on May 4, 2016. Legal Counsel to the Board, Michael D. Powers, stated that Attorney Gallagher had drafted a proposal for the revised complaint procedure including a recommendation that the Board adopt the proposed complaint procedure as an amendment to the Board's regulation. Legal Counsel Powers pointed out that currently the Board's complaint procedure is not part of the ADALB Regulation. He also informed the Board of Attorney Gallagher's recommendation concerning the complaint procedure be made part of the Board's Regulation was an informal recommendation made by the Chief Presiding Officer of the Division of Insurance, whom Legal Counsel Powers had requested an opinion from.

In addition to recommending that the complaint procedure be made part of the ADALB Regulation, Attorney Gallagher suggested several changes to the complaint procedure which are the following:

The following proposed regulations are intended to provide the Board administrative flexibility in attempting to adjudicate or resolve complaints against appraisers consistent with the Open Meeting Law and the right of the Board to act as a quasi-judicial board as specified in footnote 3, on page 3, of the Attorney General's letter of January 16, OML 2016-6. ("once the Board had been presented with the complaint..., it could potentially have invoked the quasijudicial exception to decide whether or not to move forward with the matter, as this constitutes making a decision required in an adjudicatory proceeding brought before it").

The proposed regulations add two definitions and a new section 2.08, to 212 CMR 2.00 et seq. The proposed changes follow:

CMR 2.04 Definitions:

"Executive Secretary" means the person appointed by the Board pursuant to the provisions of M.G.L. c. 26, § 8G to act as the executive secretary of the Board.

"Application for Complaint" or "complaint" means the Board's Application for Complaint form as may from time to time be approved by the Board for the use of the public, appraisers, auto repair shops or insurers to bring to the Board's attention alleged violations by appraisers of statutes, regulations or matters within the Board's jurisdiction.

Add a new provision to 212 CMR 2.00, as 2.08, entitled:

2.08: Procedures for Reviewing and Resolving Complaints Against Licensed Appraisers

The Board and its Executive Secretary shall apply these rules and procedures to initially process, investigate, evaluate, dismiss or initiate adjudicatory proceedings pursuant to M.G.L. c.30A on complaints against appraisers. The Board may waive the rules and procedures set forth in this section 2.08 and hear particular complaints or initiate adjudicatory proceedings directly against an appraiser as the Board deems appropriate in the circumstances.

(1) Initial processing of complaints.

- a. All complaints filed with the Board against appraisers shall be filed with the Executive Secretary on the Board's Application for Complaint along with any supporting materials reasonably required for the Board to determine the existence of a dispute and nature thereof, regarding an appraiser's conduct within the Board's jurisdiction.
- b. Upon receipt of the Application for Complaint, the Executive Secretary shall assign the complaint a unique sequential number prefixed by the year of the complaint.
- c. After assigning the complaint a complaint number, if the Executive Secretary determines that the complaint contains all reasonably material information required by the Board, the Executive Secretary shall forward the complaint and any supporting materials to the appraiser against whom the complaint has been made.

- d. The appraiser shall have twenty-one (21) days from the receipt of the complaint to file with the Executive Secretary a written response to the complaint including any supporting documentation or materials in support of the appraiser's response.
- e. If the appraiser neglects, fails or refuses to submit to the Executive Secretary any response within twenty-one (21) days from the receipt of the complaint, or within such additional time as the Executive Secretary may allow for good cause, the Executive Secretary shall forward copies of the complaint to the Board members and legal counsel for the Board, and place the complaint on the next meeting agenda identifying the complaint by its complaint number only.

(2) Processing of incomplete complaints.

- a. If the Executive Secretary determines that the complaint does not have all the material information required by the Application for Complaint, the Executive Secretary shall request the complainant to submit the omitted information or to advise the Executive Secretary as to the reasons the requested information cannot be obtained and submitted without undue burden or expense to the complainant within thirty (30) days.
- b. If the Executive Secretary receives the additional information or explanation from the complainant as to why the requested information cannot be produced within thirty (30) days from the request for additional information, the complaint shall proceed as specified in § 2.08 (1), (c), (d), and (e).
- c. If the Executive Secretary does not receive the additional information or explanation from the complainant as to why the requested information cannot be produced within thirty (30) days from the request for additional information, the Executive Secretary shall take no further action on the complaint unless the Board shall direct otherwise.

(3) Board furnishing appraiser's response to complainant before further proceeding.

- a. Upon receipt of the appraiser's response to the complaint, the Executive Secretary shall forward the response and all supporting materials to the complainant with the advice that the complainant should, upon reviewing the response, advise the Executive Secretary whether the complainant wishes to proceed further with his or her complaint.
- b. If the complainant advises the Executive Secretary in writing that the complainant does not wish to proceed further with the complaint or if the complainant fails to advise the Executive Secretary within thirty (30) days that the complainant wishes to proceed, the Executive Secretary shall take no further action and close the complaint.

(4) Initial adjudicatory proceedings on complaint by the Board pursuant to M.G.L. c. 30A, § 18.

- a. If the complainant advises the Executive Secretary that the complainant still wishes the Board to hear the complaint, in writing or orally, the Executive Secretary shall forward copies of the complaint and the appraiser's response with their supporting materials to the Board's members.
- b. The Board members in reviewing the complaint and response, shall act as a quasijudicial board for the sole purpose of deciding whether the complaint against the appraiser should proceed to a hearing before the Board. The quasi-judicial meeting to

solely decide whether a particular complaint shall be heard by the Board shall be held subject to M.G.L. c. 30A, § 18(d).

c. If three or more members of the Board vote to continue the adjudicatory proceeding against the appraiser as alleged in the complaint to a hearing before the Board, the Executive Secretary shall place the complaint on the next meeting agenda identifying the complaint by its complaint number only and notify the appraiser of the Board's decision and the appraiser's rights under M.G.L. c. 30A, § 21(a)(1).

d. If less than three members of the Board vote to continue the adjudicatory proceeding against the appraiser, the Executive Secretary shall notify the license appraiser and the complainant that the Board has voted to take no further action on the complaint.

(5) Further adjudicatory proceedings on hearing on complaints the Board votes to hear.

a. All further proceedings on complaints the Board votes to hear under 2.08(4)(c) shall be heard under the Open Meeting Law, M.G.L. c. 30A, sections 18, et seq. and, if required, under the adjudicatory proceeding provisions of M.G.L. c. 30A, section 12, et seq.

Attorney Gallagher requested permission to speak to the Board and permission was granted by Chairman Cox. Attorney Gallagher began by providing an Aristotelian argument in support of his proposed changes to the complaint procedure. At the conclusion of his declamation he was asked questions by Members of the Board. Attorney Gallagher was questioned by Board Member Starbard as to, what the procedure would provide for when a licensed appraiser failed to respond to a complaint? Attorney Gallagher responded by asserting the licensed appraiser would in the first instance be given the opportunity to file a written response to the complaint which would be forwarded to the complainant. He elaborated, if the complainant was satisfied with the response, the documents would be filed with the Board and the matter could be disposed of without further review by the Board. The current complaint procedure and the proposed procedure by Legal Counsel Powers does not have any provision allowing for the licensed appraiser to file a response to the complaint at the initial stage.

Attorney Gallagher proclaimed that the Office of the Attorney General's decision in the Open Meeting Law case brought against the Auto Damage Appraiser Licensing Board, the case of OML- 2016-6, allows for a quasi-judicial review of complaints by the Board as stated in footnote 3 of the decision. [Footnote 3 states, "In its October 27, 2015 letter, the Board argues that this discussion also fell under the Open Meeting Law's quasi-judicial exception. This exception states that when quasi-judicial public bodies meet for the sole purpose of making a decision required in an adjudicatory proceeding, they do not need to comply with the requirements of the Open Meeting Law. G.L. c. 30A, § 18; OML 2013-104. All other parts of the adjudicatory proceeding must still follow the requirements of the Open Meeting Law. Here, the Board's Legal Counsel's presentation of the complaint to the Board and recommendation were part of the adjudicatory proceeding, and thus subject to the requirements of the Open Meeting Law. Therefore, to discuss this in private, the Board was required to properly invoke one of the ten executive session purposes, as discussed above. See G.L. c. 30A, § 21(a) (1). However, once the Board had been presented with the complaint and counsel's recommendation, it could potentially have invoked the quasi-judicial exception to decide whether or not to move forward with the matter, as this constitutes 'making a decision required in an adjudicatory proceeding brought before it.' See G.L. c. 30A, § 18; OML 2013-104"]. Attorney Gallagher opined that under this quasi-

judicial review exemption the Board is authorized to review the complaint and responses to a complaint in the executive session.

Legal Counsel Powers responded that in that case decided by Office of the Attorney General against the ADALB, the primary issue pertained to the Board conducting preliminary reviews of complaints in the executive session, and, as the ADALB argued, that the Board was not required to notify the licensed appraiser during that type of a review. Notwithstanding the language of footnote 3, the Attorney General directly ruled against the ADALB, finding that the Board must send notice of a licensed appraiser's rights with the complaint and allow a licensed appraiser to exercise the right as to whether he/she chooses to have the matter heard in the executive session. Because of the finding made by the Office of the Attorney General against the ADALB for violating the Open Meeting Law on the basis that the Chairman did not invoke the specific "magic words" contained in the Open Meeting Law statute about entering the executive session to discuss threatened litigation against the Board, in the future it would better to proceed with an abundance of caution. Legal Counsel Powers stated that he disagreed with the Attorney General's decision, informed the Board of its right to appeal, and the Board declined to appeal the decision. Legal Counsel Powers asserted that the more recent opinion issued by the Office of the Attorney General that the Board had to conduct public meetings, whenever a quorum of the Board was present, when administering the Part-II examination for motor vehicle damage appraiser and when reviewing the answer key to the Part-I written portion of the examination, was flawed in its legal reasoning. Because of these two recent decisions, one could not predict what the Office of the Attorney General would conclude violates the Open Meeting Law.

Board Member William Johnson stated that he was satisfied with the complaint procedure as drafted by Legal Counsel Powers, and that the proposed procedure submitted by Attorney Gallagher would generate further delay in the time-frame for processing complaints. In addition, Board Member Johnson did not see the need for adding the complaint procedure as an amendment to the regulation.

Legal Counsel Powers observed that Attorney Gallagher had obviously dedicated a serious amount of thought and time drafting his proposal, several provisions contained in it may enhance the drafted proposal presented to the Board and, therefore, Attorney Gallagher's proposals were worthy of review and further study. Board Member Johnson responded that the Board should expedite adopting a new complaint procedure and he was opposed to further delay. Board Member Joseph Coyne agreed and said that to expedite this issue he would submit a motion that the Legal Counsel to the Board, Mr. Powers, conduct a further review, amend the proposed complaint procedure adding the provisions that he felt were necessary from Attorney Gallagher's proposal, and that the Board vote on the proposed complaint procedure as presented at the next Board meeting without further discussion. Chairman Cox called for a vote on the motion, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

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

After holding a Special Public meeting of the Board on Wednesday, May 4, 2016, which welcomed interested members of the public to provide input regarding topics raised by the Board in its public notice of the meeting which called for any possible changes the public would like the Board to consider addressed during the regulation review which included, but were not limited to, the proposed

amendments submitted by Board Member William Johnson at the February 23, 2016, the Board set the matter down on the agenda. Board Member Johnson's proposed amendments were the following:

212 CMR 2.04 ~~RED TO BE REMOVED~~ **BOLD BLACK TO BE ADDED**

[For purposes of clarity where Board Member William Johnson submitted his proposal at the Board meeting held on February 23, 2016, indicating removing language by coloring words red, those words are underlined below and, therefore, mean the underlined words are the ones that Board Member Johnson proposes removing from the current regulation].

CODE OF MASSACHUSETTS REGULATIONS

TITLE 212: AUTO DAMAGE APPRAISERS LICENSING BOARD

CHAPTER 2.00: THE APPRAISAL AND REPAIR OF DAMAGED MOTOR VEHICLES

2.04: Procedures for the Conduct of Appraisals and Intensified Appraisals

(1) Conduct of Appraisals.

(a) Assignment of an Appraiser. Upon receipt by an insurer or its agent of an oral or written claim for damage resulting from a motor vehicle accident, theft, or other incident for which an insurer may be liable, the insurer shall assign either a staff or an independent appraiser to appraise the damage. Assignment of an appraiser shall be made within two business days of the receipt of such claim. However, the insurer may exclude any claim for which the amount of loss, ~~less any applicable deductible~~, is less than \$1,500.

(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment for the purpose of preparing motor vehicle damage appraisals. No staff or independent appraiser shall knowingly negotiate a repair figure with an unlicensed individual or an unregistered repair shop.

(c) Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of an independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific repair shop or individual. ~~The provisions of 212 CMR 2.04(c) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00.~~

(d) Requirement of Personal Inspection and Photographs. An appraiser **whether representing the insurance company or repair shop** shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making the appraisal. As part of the inspection, the appraiser shall also photograph each of the damaged areas.

(e) Determination of Damage and Cost of Repairs. The appraiser shall specify all damage attributable to the accident, theft, or other incident in question and shall also specify any unrelated damage. If the **insurance** 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 **by a registered shop of the claimant's choice. If the appraiser representing a registered repair shop determines that preliminary work, repairs or partial disassembly would significantly improve the accuracy of the appraisal, then, with the approval of the claimant, he or she shall authorize such preliminary work, repairs, or partial disassembly; provided however, that, if there has been a written insurance claim made, then the repair shop appraiser shall first obtain the approval of the insurer before giving such authorization, unless the claimant directs that such work, repair, or partial disassembly be made without obtaining the insurer's approval, the claimant being first informed that they may be held personally responsible for the costs of same and that it may affect the insurer's obligation to pay the cost of repairs. In all instances, the appraiser shall photograph the damaged areas before authorizing preliminary work, repair, or partial disassembly. An insurer shall not unreasonably withhold its approval of preliminary work, repair, or partial disassembly.**

The appraisers representing the 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, if utilized** (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturer warranty repair procedures, I-Car, Tec Cor and paint manufacturer procedures may **shall** also apply. Further, no appraiser shall use more than one manual or **electronic data system if utilized** for the sole purpose of gaining an advantage in the negotiation process.

If, while in the performance of his or her duties as a licensed auto damage appraiser, an appraiser recognizes that a damaged repairable vehicle has incurred damage that would impair the operational safety of the vehicle, the appraiser shall immediately notify the owner of said vehicle that the vehicle may be unsafe to drive.

The licensed auto damage appraiser shall also comply with the requirements of [M.G.L. c. 26, § 8G](#) the paragraph that pertains to the removal of a vehicle's safety inspection sticker in certain situations.

The appraiser shall determine which parts are to be used in the repair process in accordance with 211 CMR 133.00. The appraiser shall itemize the cost of all parts **including shipping and handling, core charges shipping and handling, labor times, hourly rate**, materials, and necessary procedures required to restore the vehicle to pre-accident condition and shall total such items. **Delays in repair cycle time shall be considered when sourcing parts and materials.** 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. With respect to paint, paint materials, body materials and related materials, if the formula of dollars times hours is not accepted by a registered repair shop or licensed appraiser, then a published manual,

electronic data system or retail receipts for paint and material other documentation shall be used unless otherwise negotiated between the parties. All appraisals written under 212 CMR 2.00 shall include the cost of replacing broken or damaged glass within the appraisal. When there is glass breakage that is the result of damage to the structural housing of the glass then the cost of replacing the glass must be included in the appraisal in accordance with 212 CMR 2.04. The total cost of repairing the damage shall be computed by adding any applicable sales tax payable on the cost of replacement parts and other materials. The appraiser shall record the cost of repairing any unrelated damage on a separate report or clearly segregated on the appraisal unless the unrelated damage is in the area of repair.

If aftermarket parts are specified in any appraisal the appraiser shall also comply with the requirements of M.G.L. c. 90, § 34R that pertain to the notice that must be given to the owner of a damaged motor vehicle.

The appraiser shall mail, fax or electronically transmit the completed appraisal within five three 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 or faxed or electronically transmitted within five three 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 repairs, severe illness, failure of the parties other than the insurer to communicate or cooperate, or extreme weather conditions make timely inspection of the vehicle and completion of the appraisal impossible.

(f) Determination of Total Loss. Whenever the appraised cost of repair plus the estimated salvage may be reasonably expected to exceed the actual cash value of a vehicle, the insurer may deem that vehicle a total loss. No motor vehicle may be deemed a total loss unless it has been **personally** inspected or and appraised by a licensed appraiser nor shall any such motor vehicle be moved to a holding area without the consent of the owner. A total loss shall not be determined by the use of any percentage formula.

(g) Preparation and Distribution of Appraisal Form. All appraisers shall set forth the information compiled during the appraisal on a form that has been filed with the Board. Staff and independent appraisers shall, upon completion of the appraisal, give copies of the completed appraisal form to the claimant, the insurer, and the repair shop and shall give related photographs to the insurer.

(h) Supplemental Appraisals. If a registered repair shop or claimant, after commencing repairs, discovers additional damaged parts or damage that could not have been reasonably anticipated at the time of the appraisal, either may request a supplementary appraisal. The registered repair shop shall complete a supplemental appraisal prior to making the request. The insurer shall assign an appraiser who shall personally inspect the damaged vehicle within three two business days of the receipt of such request. The

appraiser shall have the option to leave a completed copy of the supplemental appraisal at the registered repair shop authorized by the insured or leave a signed copy of his or her field notes with the completed supplement to be **mailed**, faxed **or** electronically transmitted or hand delivered to the registered repair shop within one business day. The appraiser shall also give a copy of the completed supplement to the insurance company in a similar manner. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary repairs, severe illness, failure of the parties other than the insurer to communicate or cooperate, or extreme weather conditions make timely inspections of the vehicle and completion of the supplemental appraisal impossible.

(i) Expedited Supplemental Appraisals.

If an insurer, a repair shop, and the claimant agree to utilize an expedited supplemental appraisal process, an insurer shall not be required to assign an appraiser to personally inspect the damaged vehicle. In such event, the repair shop shall fax or electronically submit to the insurer a request for a supplemental appraisal allowance in the form of an itemized supplemental appraisal of the additional cost to complete the repair of the damaged vehicle, prepared by a licensed appraiser employed by the repair shop, together with such supporting information and documentation as may be agreed upon between the insurer and the repair shop. The insurer shall then be required to fax or electronically submit to the repair shop within **two one** business days its decision as to whether it accepts the requested supplemental appraisal allowance. Within this same period, a licensed appraiser representing the insurer and a licensed appraiser representing the repair shop may attempt to agree upon any differences. In the event that an insurer does not accept the repair shop's request for the supplemental appraisal allowance, or if the insurer fails to respond to the repair shop within **two one** business days, the insurer and the repair shop shall be obligated to proceed in accordance with 212 CMR 2.04(1)(h), and within the time limits set forth in such provision. In such event, the date of the initial request for a supplemental appraisal allowance shall be the starting date for when the insurer must assign an appraiser to personally inspect the damaged vehicle.

No insurer or repair shop shall be obligated to utilize an expedited supplemental appraisal process and the determination of whether to utilize such process shall be made separately by an insurer or by a repair shop only on an individual claim basis. Utilization of an expedited supplemental appraisal process shall not be used as a criterion by an insurer in determining the insurer's choice of shops for a referral repair shop program under an insurer's direct payment plan; and being a referral shop shall not be a criterion in determining whether to utilize an expedited supplemental appraisal process.

(j) Completed Work Claim Form. If the insurance company does not have a direct payment plan or if the owner of the vehicle chooses not to accept **the provisions and** payment under a direct payment plan then a representative of the insurer shall provide the insured with a completed work claim form and instructions for its completion and submission to the insurer.

(K) When a Completed Work Form is utilized the appraiser representing the insurance company and registered repair shop shall negotiate all costs without regard to the direct payment plan/ referral shop program.

(2) Temporary Licensing. The Board may grant at its discretion either an emergency or a temporary license to any qualified individual to alleviate a catastrophic or emergency situation for up to 90 days. The Board may limit the extent of such emergency authorization and in any event, if the situation exceeds 30 days, a fee determined by the Board shall be charged for all emergency or temporary licenses.

In addition to Board Member Johnson's proposed amendments, the ADALB Legal Counsel, Michael D. Powers, submitted a proposed amendment with a recommendation by Board Member Richard Starbard which was the following:

212 CMR 2.04 (2) Temporary Licensing. The Board may grant at its discretion either an emergency or a temporary license to any qualified individual to alleviate a catastrophic or emergency situation for up to 90 days. The Board may limit the extent of such emergency authorization and in any event, if the situation exceeds 30 days, a fee determined by the Board shall be charged for all emergency or temporary licenses. Legal Counsel Powers' proposed amendment would add the following section:

(a) Issuance of Temporary License by Supervisor of Producer Licensing of the Division of Insurance. The Auto Damage Appraiser Licensing Board (Board) authorizes the Chairperson of the Board or his/her designee, which may include the Supervisor of Producer Licensing within the Division of Insurance who is the person traditionally assigned to process the applications and renewals for motor vehicle damage appraiser licenses for the ADALB, to grant a temporary license up to 60 days to any qualified individual to alleviate a catastrophic or emergency situation as long as the following conditions are met: (1) the applicant is licensed as a motor vehicle damage appraiser in another state and provides a copy of that license to the Division of Insurance Licensing Unit; (2) is in good standing in the other state and the applicant provides consent to the Supervisor of Producer Licensing to verify the applicant's licensing status through the insurance licensing database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; (3) the applicant has not been found guilty of fraud, deceit, gross negligence, incompetence, misconduct or conflict of interest in the preparation or completion of any motor vehicle damage report; (4) the applicant does not have criminal felony charges pending against him/her in any state; (5) the applicant properly fills out the application; and (6) pays the applicable license fee.

Copies of all such applications and temporary licenses issued by the Supervisor of Producer Licensing shall be submitted to the Board at its next scheduled meeting for review by the Board. After review, the Board may revoke any such temporary license that was issued if the Board finds such applicant does not conform to the six listed conditions, or the Board finds that a person who was issued a temporary license is not qualified to hold such license.

At the beginning of the meeting, Board Member Richard Starbard provided an additional proposal different than the one that had been submitted by Board Member Johnson at the February 2016 Board Meeting. Mr. Starbard submitted the following proposed amendments to the Board's Regulation with his explanation for them contained in the text boxes:

Additions
Deletions

212 CMR: AUTO DAMAGE APPRAISERS LICENSING BOARD

212 CMR 2.00: THE APPRAISAL AND REPAIR OF DAMAGED MOTOR VEHICLES

Section

2.01: Scope of Regulations

2.02: Licensing Requirements and Standards for Appraisers

2.03: Duties of Insurers and Repairers

2.04: Procedures for the Conduct of Appraisers and Intensified Appraisals

2.05: Penalties

2.06: Severability

2.01: Scope of Regulations

- (1) Purpose and Applicability. The purpose of 212 CMR 2.00 is to promote the public welfare and safety by improving the quality and economy of the appraisal and repair of damaged motor vehicles. Any licensed appraiser, individual or corporate entity who employs licensed appraisers shall be bound by 212 CMR 2.00. 212 CMR 2.00 is intended to be read in conjunction with 211 CMR 133.00, *Standards for the Repair of Damaged Motor Vehicles*. **The provisions of 212 CMR 2.00 shall apply to any approved direct payment plan pursuant to 211 CMR 123.00.**

I amended this language based on a concern raised by the Insurance Federation. The ADALB is the licensing authority for appraisers. The ADALB sets the minimum standards for appraisers AT ALL TIMES regardless of the circumstances. Therefore, an insurance company cannot submit a plan that would require their appraiser to violate the regulation governing their license. Additionally, I left the 211 CMR 133 language as is, since the same language appears in 211 CMR 133 and additionally 211 CMR 133.08 states: "An alleged violation of 211 CMR 133.00 by a licensed auto damage appraiser may be reported to and penalized by the Auto Damage Appraisers Licensing Board in accordance with its governing statute and 212 CMR." Since the Board retains, under its authority, interpretation of both regulations relative to the actions of the appraiser, there should not be a conflict established by the regulations being read "in conjunction" with each other.

- (2) Authority. 212 CMR 2.00 is promulgated under the authority granted to the Auto Damage Appraiser Licensing Board by M.G.L. c. 26, § 8G, as added by St. 1981, c. 775, § 1.
- (3) The Board may from time to time issue Advisory Rulings and shall do so in compliance with M.G.L. c. 30A, § 8.
- (4) Definitions.

Appraisal – means a ~~written~~ motor vehicle damage report **written on forms approved by the board and conducted as defined in M.G.L. c. 26, 8G and** in compliance with the provisions of **212 CMR 2.00**, M.G.L. c. 93A, c. 100A, c. 90, § 34R, and c. 26, 8G.

I amended this definition to address an issue raised by the Insurance Federation. As a note, form approval is required under MGL 26 8G.

Appraiser - means any person licensed by the Auto Damage Appraiser Licensing Board to evaluate motor vehicle damage and determine the cost of parts and labor required to repair the motor vehicle damage.

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

I added this definition to address an issue raised by the Insurance Federation.

Claimant - means any person making a claim for damage to a motor vehicle for either first or third party damages.

Independent appraiser - means any appraiser other than a staff appraiser who makes appraisals under an assignment by an insurer or repair shop and shall include the owner or employee of a repair shop who makes appraisals under a contract with an insurer.

Insurer - means any insurance company authorized to write motor vehicle insurance in the Commonwealth.

I added this definition to address an issue raised by the Insurance Federation and to standardize terminology between regulations. 211 CMR 123 uses the same definition.

Intensified appraisal - means the combination of the appraisal of a motor vehicle before its repair and the reinspection of the vehicle subsequent to its repair.

Staff appraiser - means an appraiser who is an employee of an insurer and whose job duties include the making of appraisals for his or her employer.

Repair Shop Appraiser – means an appraiser who is an employee of a repair shop and whose job duties include the making of appraisals for his or her employer.

I added this definition to address an issue raised by the Insurance Federation. I felt it was a good addition in order to define roles, recognizing that the same rules apply to all appraisers, in certain circumstances appraisers have different roles based on who their employer may be.

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

I added this definition to address an issue raised by the Insurance Federation.

~~**Supervisory appraisal – means an appraisal conducted by an insurance company or appraisal company supervisor solely for the purpose of evaluating the appraisal ability of one of his or her appraiser employees or for the purpose of providing on-the-job training of an appraiser employee.**~~

I removed this definition because training and evaluation of an employee is not an element of conducting an appraisal and is the responsibility of the insurance company.

2.02: Licensing Requirements and Standards for Appraisers

- (1) Requirement That License Be Obtained and Displayed. No person in Massachusetts shall appraise, estimate or **determine** damages to motor vehicles or otherwise present himself or herself as an appraiser unless he or she has first obtained a license from the **Auto Damage Appraiser Licensing** Board. This license shall be valid for one year or less and shall be renewed annually on July 1st. Any appraiser, while making an appraisal, shall

carry his or her license and shall, upon request, display it to any person involved in the claim or to any representative of the Board.

I amended this language to align with the new definitions.

- (2) Qualifications for a License. Any applicant for a license shall be 18 years of age or over and of good moral character. He or she shall furnish satisfactory proof to the Board that he or she possesses the educational qualifications required for graduation from high school or that he or she possesses relevant work experience deemed satisfactory by the Board. No applicant shall be considered competent unless the applicant has assisted in the preparation of appraisals for at least three months under the close supervision of **an licensed** appraiser. He or she shall complete an approved appraisal course or at the Board's discretion work experience may be substituted for said schooling.
- (3) Application and Examination Fee for a License. Any applicant for a license shall complete an application to be prescribed by the Board and shall sign it under the penalties of perjury. He or she shall submit this application and non-refundable fee of \$100 to the Board. After an application is received and approved, the applicant shall be required to pass an examination given under the supervision of the Board. All successful applicants will be issued a numbered license. Any applicant failing to pass an examination, upon the payment of a further non- refundable fee of \$50.00, shall be entitled to a reexamination after the expiration of six months from the date of the last examination. Any applicant failing to pass an examination shall be allowed to review his or her examination.
- (4) Renewal of License. The Board shall mail to each **licensed** appraiser an application for renewal. Such application shall be completed and returned to the Board. Each application shall be accompanied by a renewal fee of \$50.00. After verification of the facts stated on the renewal application, the Board shall issue a renewal license dated July first, and this license shall expire on the June thirtieth of the year following. Any **licensed** appraiser who fails to renew his or her license within 60 days after notification by the Board of his or her license expiration date, before again engaging in the practice of **an licensed** appraiser within the Commonwealth, shall be required to re-register, pay a penalty fee determined by the Board and any back license fees, or may be required by the Board to be reexamined and pay applicable fees.
- (5) Procedure for **Auto-Damage** Appraisals.
- (a) All forms used for **auto-damage** appraisals must be approved by the Board.
- (b) All forms used are required to have an itemization of parts, labor and services necessary, as **required in 212 CMR 2.00**, for repairs thereof. The prepared appraisal shall be sworn to under the penalties of perjury and shall include the appraiser's name, signature, license number, seal or stamp, employer, **insurer insurance company**, repair shop registration number if applicable, fee charged, the date the vehicle was appraised and the name of the manual used (if any) in preparing the appraisal. The appraisal seal or stamp shall be of a design approved by the Board. All appraisals sent electronically need not include the appraiser's signature and his or her seal or stamp.
- (6) Schedule of Appraisal Fees.
- (a) The Board may consider the appraisal fees charged within the territories where said appraiser operates. Any appraiser shall establish his or her own fee schedule unless limited

by the Board. Any appraiser must post his or her appraisal fee schedule in a conspicuous location at his or her work place. The Board may establish a maximum schedule of fees by territory, type of business or complexity of work. Fees charged in excess of maximums approved by the Board shall result in penalties as established by the Board.

(b) Fees paid by a claimant for an appraisal that was requested by the insurer are recoverable from the insurer. Fees for **auto damage** appraisals not requested by the insurer in first party claims are not recoverable from the insurer.

(7) Conflict of Interest. It shall be a conflict of interest for any appraiser who has been assigned to **write an appraisal, appraise a damaged motor vehicle** to accept, in connection with that appraisal, anything of value from any source other than the assignor of that appraisal. Further, it shall be a conflict of interest for any **repair shop** appraiser **employed by a repair shop** to accept the assignment of an appraisal from an insurer unless that appraiser's employment contract prohibits the repair shop from repairing damaged motor vehicles that have been so appraised. In addition, it shall be a conflict of interest for any appraiser who owns or has an interest in a repair shop to have a vehicle repaired at that shop if that appraiser has appraised that vehicle at the request of an insurer.

I amended this language to align with the new definitions.

It shall be a conflict of interest if any **licensed** appraiser operates a Drive-in Appraisal Service **or Drive-in Claim and Appraisal facility for, or on behalf of, an insurer at a repair shop. Notwithstanding this provision, all drive-in appraisal services or drive-in claim and appraisal facilities must inform consumers of their right to have their vehicle repaired at any repair shop. No insurance company or employee, agent or insurance agency or representative thereof shall coerce or use any tactics the purpose of which is to prevent insureds or claimants from seeking damage reports on repairs from their own repair shop rather than utilizing a company appraisal drive-in facility.**

I added this language to address anti-competitive actions being taken by certain insurance companies. Additionally, this language, in part, is from MGL 26 8G, I moved it into our regulations to allow the Board direct oversight of the compliance with this language.

(8) Revocation or Suspension of a License. The Board may revoke or suspend any appraiser's license at any time for a period not exceeding one year if the Board finds, after a hearing, that the individual is either not competent or not trustworthy or has committed fraud, deceit, gross negligence, misconduct, or conflict of interest in the preparation of an **appraisal y motor vehicle damage report**. The following acts or practices by any appraiser are among those that may be considered as grounds for revocation or suspension of an appraiser's license:

(a) material misrepresentations knowingly or negligently made in an application for a license or for its renewal;

(b) material misrepresentations knowingly or negligently made to an owner of a damaged motor vehicle or to a repair shop regarding the terms or effect of any contract of insurance;

- (c) the arrangement of unfair and or unreasonable settlements offered to claimants under collision, limited collision, comprehensive, or property damage liability coverages;
- (d) the causation or facilitation of the overpayment by an insurer of a claim made under collision, limited collision, comprehensive, or property damage liability coverage as a result of an inaccurate appraisal;
- ~~(e) the refusal by any appraiser who owns or is employed by a repair shop to allow an appraiser assigned by an insurer access to that repair shop for the purpose of making an appraisal, supervisory reinspection, or intensified appraisal.~~
- (f) ~~(e)~~ the commission of any criminal act related to appraisals, or any felonious act, which results in final conviction;
- (g) ~~(f)~~ knowingly preparing an appraisal that itemizes damage to a motor vehicle that does not exist: and
- (h) ~~(g)~~ failure to comply with 212 CMR 2.00

I removed his language to address an issue raised by the Insurance Federation. Additionally, I added a new section, as recommended by the Insurance Federation.

- (9) Drive-in Claim and Appraisal Facilities. Drive-in claim and appraisal facilities shall possess the following equipment:
 - (a) Operating telephone service.
 - (b) A calculator.
 - (c) Current collision, paint and body cost estimating guide manuals or an automated system.
 - (d) An operating flash light.
 - (e) A tape measure of at least 30 feet.
 - (f) An operating camera and film.
 - (g) A fax machine or other device capable of transmitting data.

2.03: Duties of Insurers and Repairers

(1) Responsibilities for Actions of Appraisers. An insurer or repair shop shall be responsible for the actions of ~~all of it's~~ **the** appraisers **working on their behalf whether staff or independent,** and shall be subject to the applicable penalties under law for any violation of 212 CMR 2.00 by its appraiser.

I amended this language to align with the new definitions.

The Board may assess penalties against either the appraiser, the insurer, the repair shop or all three. In the event of default by the appraiser, the insurer or the repair shop may be responsible for penalties.

(2) Records and Analysis of Appraisals. Every ~~insurer or repair shop~~ appraiser shall retain for at least two years, copies of all records related to appraisals and inspection. Every insurer shall retain copies of all records including photographs in accordance with state law.

2.04: Procedures for the Conduct of Appraisals and Intensified Appraisals

(1) Conduct of Appraisals.

(a) Assignment of an Appraiser. Upon receipt by an insurer or its agent of an oral or written claim for damage resulting from a motor vehicle accident, theft, or other incident for which an insurer may be liable, the insurer shall assign ~~an either a staff or an independent~~ appraiser to ~~conduct an appraisal~~ **appraise the damage**. Assignment of an appraiser shall be made within two business days of the receipt of such claim. However, the insurer may exclude any claim for which the amount of loss, ~~less any applicable deductible~~, is less than \$1,500.00.

I amended this language to align with the new definitions. Also, I removed “less any applicable deductible”. The amount should be set based on the amount of damage, without further consideration.

(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment for the purpose of preparing motor vehicle damage appraisals ~~and conducting negotiations~~. No ~~staff or independent~~ appraiser shall knowingly negotiate a repair figure with an unlicensed individual or an unregistered repair shop.

I added this language to ensure that negotiations are being conducted between appraisers and to ensure customers are not waiting for their vehicle to be repaired because an appraiser was not present to conduct the negotiations.

(c) Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of ~~an staff or~~ independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific repair shop or individual. ~~The provisions of 212 CMR 2.04(c) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00.~~

I added this language, I believe it was a previous oversight. Additionally, I removed the last sentence because MGL 26 8G states: “No appraiser or insurer shall request or suggest that repairs be made in a specified repair shop.” So this language would apply to everyone, all the time, even under a plan approved under 211 CMR 123. It is the law.

(d) Requirement of Personal Inspection and Photographs. The appraiser shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making the appraisal. As part of the inspection, the appraiser shall also photograph each of the damaged areas.

(e) Determination of Damage and Cost of Repairs. The appraiser shall specify all damage attributable to the accident, theft, or other incident in question and shall also specify any unrelated damage. If the appraiser **representing the insurer** determines that preliminary **work, repairs or partial disassembly** would significantly improve the accuracy of the appraisal, he or she shall authorize the preliminary work, repair **or partial disassembly** with the approval of the

claimant and shall complete the appraisal after that work has been **done by a repair shop of the claimant's choice**, if the repair shop so agrees. If the appraiser representing the repair shop determines that preliminary work, repairs or partial disassembly would significantly improve the accuracy of the appraisal, then, with the approval of the claimant, such preliminary work, repairs, or partial disassembly shall be conducted; provided however, that, if there has been a written insurance claim made, then the repair shop appraiser shall first obtain the approval of the insurer, unless the claimant directs that such preliminary work, repair, or partial disassembly be made without obtaining the insurer's approval, the claimant being first informed that they may be held personally responsible for the costs of same and that it may affect the insurer's obligation to pay the cost of repairs. In all instances, the appraiser shall photograph or video the damaged areas before conducting preliminary work, repair, or partial disassembly. An insurer shall not unreasonably withhold its approval of preliminary work, repair, or partial disassembly.

I added Bill's language here. It addresses the concerns related to tear downs as submitted by several insurance companies and 2 body shops.

The appraisers representing the **insurer** ~~insurance company~~ and the ~~registered~~ repair shop selected by the insured to do the repair shall attempt to agree on the estimated cost for such repairs. The ~~registered~~ repair shop must prepare an appraisal for the purpose of negotiation. No appraiser shall modify any published manual **or electronic data system** (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties.

I added this language to align with the new definitions and administrative changes.

Manufacturers **recommended warranty** repair procedures, I-Car, Tec Cor and paint manufacturer procedures **shall** ~~may~~ also apply. Further, no appraiser shall use more than one manual or system for the sole purpose of gaining an advantage in the negotiation process.

I added this language to ensure the proper repair of a vehicle. Given today's complex cars, it is more important than ever to ensure that the recommended repair procedures are followed. This change is necessary in order to ensure the safety of the public, after a car repair.

If, while **writing an appraisal** ~~in the performance of his or her duties as a licensed auto damage appraiser~~, an appraiser recognizes that a damaged repairable vehicle has incurred damage that would impair the operational safety of the vehicle, the appraiser shall immediately notify the owner of said vehicle that the vehicle may be unsafe to drive.

I amended the language to align with the new definitions.

The ~~licensed auto damage~~ appraiser shall also comply with the requirements of M.G.L. c. 26, § 8G, the paragraph that pertains to the removal of a vehicle's safety inspection sticker in certain situations.

I amended this language to align with the new definitions

The use of used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle. The appraiser shall determine which parts are to be used in the repair process in accordance with 211 CMR 133.00. ~~The insurer is responsible for paying the retail cost for all parts indicated on an appraisal, including but not limited to, parts ordered and subsequently returned based on the criteria set in 211 CMR 133. The insurer is responsible for returning the parts to the supplier and recovering their costs from the supplier. The repair shop may agree to return parts on behalf of the insurer, if the insurer agrees to pay all costs, including but not limited to freight, handling and administrative costs, associated with such return. As to such costs, nothing in 212 CMR 2.00 shall preclude an insurer from exercising any available rights of recovery against the supplier. Delays in repair cycle time shall be considered when sourcing parts and materials.~~ The appraiser shall itemize the cost of all parts, labor times, hourly rate, materials, and necessary procedures required to restore the vehicle to pre-accident condition and shall total such items. The rental cost of frame/unibody fixtures necessary to effectively repair a damaged vehicle shall be shown on the appraisal and shall not be considered overhead costs of the repair shop. ~~Costs associated with the shipping and handling of parts including cores, shall not be considered overhead costs of the repair shop either and shall be listed on the appraisal.~~ With respect specifically to paint, paint materials, body materials and related materials, if the formula of dollars times hours is not accepted by ~~an registered repair shop or licensed~~ appraiser ~~representing the repair shop or by an appraiser representing the insurer, then a published database manual or other documentation from a list approved by the Board and selected by the repair shop shall be used unless otherwise negotiated between the parties.~~ All appraisals written under 212 CMR 2.00 shall include the cost of replacing broken or damaged glass within the appraisal. When there is glass breakage that is the result of damage to the structural housing of the glass then the cost of replacing the glass must be included in the appraisal in accordance with 212 CMR 2.04. The total cost of repairing the damage shall be computed by adding any applicable sales tax payable on the cost of replacement parts and other materials. The appraiser shall record the cost of repairing any unrelated damage on a separate report or clearly segregated on the appraisal unless the unrelated damage is in the area of repair.

These changes reflect the conversations that we have had at prior public meetings, as well as some of Bill's changes. In general, these changes are necessary to address several issues. Including but not limited to, anti-competitive actions taken by certain companies, as well as, addressing misinterpretation of regulations that have plagued the industry. These misinterpretations result in inconsistent treatment of the insured, leaving some without the proper repairs or coverage.

If aftermarket parts are specified in any appraisal the appraiser shall also comply with the requirements of M.G.L. c. 90, § 34R that pertain to the notice that must be given to the owner of a damaged motor vehicle.

The appraiser **representing the insurer** shall mail, fax or electronically **submit** ~~transmit~~ the completed appraisal within **three five** business days of the assignment, or at the discretion of the repair shop, shall leave a signed copy of field notes, with the completed appraisal to be mailed, faxed **or electronically submitted** within **three five** business days of the assignment. The repair shop may also require a completed appraisal at the time the vehicle is viewed. If the repair shop requires a completed appraisal, then the repair shop shall make available desk space, phone facilities, calculator and necessary manuals. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary **work, repairs or partial disassembly repairs**, severe illness, failure of the parties ~~other than the insurer~~ to communicate or cooperate, or extreme weather conditions make timely inspection of the vehicle and completion of the appraisal impossible

I made mostly administrative changes, as well as the reduction of time, as previously discussed at prior public meetings. While here we are providing 3 days, MGL 26 8G states: “The appraiser shall leave a legible copy of his appraisal with the repair shop selected to make the repairs at the time he inspects the vehicle.” Under the law there is no allowance for additional days. While we have provided 3 days, the repair facility retains the rights to require it be provided on the day of the appraisal. Additionally, as a note, there are no requirements under the law for repair shops to provide anything in order to have the appraisal completed that day.

(f) Determination of Total Loss. Whenever the appraised cost of repair plus the estimated salvage may be reasonably expected to exceed the actual cash value of a vehicle, the insurer may deem that vehicle a total loss. No motor vehicle may be deemed a total loss unless it has been **personally** inspected **or and** appraised by **an licensed** appraiser nor shall any such motor vehicle be moved to a holding area without the consent of the owner. A total loss shall not be determined by the use of any percentage formula.

I added Bill’s language here and administrative changes.

(g) Preparation and Distribution of Appraisal Form. All appraisers shall set forth the information compiled during the appraisal on a form that has been filed with the Board. Staff and independent appraisers shall, upon completion of the appraisal, give copies of the completed appraisal form to the claimant, the insurer, and the repair shop and shall give related photographs to the insurer.

(h) Supplemental Appraisals. If a **registered** repair shop or claimant, after commencing repairs, discovers additional damaged parts or damage that could not have been reasonably anticipated at the time of the appraisal, either may request a supplementary appraisal. The **registered appraiser representing the** repair shop shall complete a supplemental appraisal prior to

making the request. The insurer shall assign an appraiser who shall personally inspect the damaged vehicle within ~~two~~ **three** business days of the receipt of such request. **If the personal inspection does not occur in two business days, the repair shop has the right to use the supplement written by the appraiser representing the repair shop, unless otherwise agreed upon.** The appraiser **representing the insurer** shall have the option to leave a completed copy of the supplement appraisal at the registered repair shop authorized by the insured or leave a signed copy of his or her field notes with the completed supplement to be mailed, faxed, electronically **submitted** ~~transmitted~~ or hand delivered to the repair shop within one business day. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary **work, repairs or partial disassembly repairs**, severe illness, failure of the parties **other than the insurer** to communicate or cooperate, or extreme weather conditions make timely inspections of the vehicle and completion of the supplemental appraisal impossible.

I made mostly administrative changes, as well as the reduction of time, as previously discussed at prior public meetings. MGL states: "Every appraiser shall reinspect damaged motor vehicles when supplementary allowances are requested by repair shops within two days of a request." I aligned the language with the law.

(i) Expedited Supplemental Appraisals. If an insurer, a repair shop and the claimant agree to utilize an expedited supplemental appraisal process, an insurer shall not be required to assign an appraiser to personally inspect the damaged vehicle. In such event, the repair shop shall fax or electronically submit to the insurer a request for a supplemental appraisal allowance in the form of an itemized supplemental appraisal of the additional cost to complete the repair of the damaged vehicle, prepared by **an appraiser representing the repair shop** ~~licensed appraiser employed by the repair shop~~, together with such supporting information and documentation as may be agreed upon between the **appraiser representing the insurer** and the **appraiser representing the repair shop**. The **appraiser representing the insurer** shall then be required to fax or electronically submit to the repair shop within ~~one~~ **two** business days its decision as to whether it accepts the requested supplemental appraisal allowance. Within this same period, **an** ~~licensed~~ appraiser representing the insurer and **an** ~~licensed~~ appraiser representing the repair shop may attempt to agree upon any differences. In the event that an insurer does not accept the repair shop's request for the supplemental appraisal allowance, or if the insurer fails to respond to the repair shop within ~~one~~ **two** business days, the insurer and the repair shop shall be obligated to proceed in accordance with 212 CMR 2.04(1)(h), and within the time limits set forth in such provision. In such event, the date of the initial request for a supplemental appraisal allowance shall be the starting date for when the insurer must assign an appraiser to personally inspect the damaged vehicle.

I amended this language to align with the new definitions.

No insurer or repair shop shall be obligated to utilize an expedited supplemental appraisal process and the determination of whether to utilize such process shall be made separately by an insurer or by a repair shop only on an individual claim basis. Utilization of an expedited supplemental appraisal process shall not be used as a criterion by an insurer in determining the

insurer's choice of shops for a referral repair shop program under an insurer's direct payment plan; and being a referral shop shall not be a criterion in determining whether to utilize an expedited supplemental appraisal process.

(j) Completed Work Claim Form. If the ~~insurer insurance company~~ does not have a direct payment plan or if the owner of the vehicle chooses not to accept payment under a direct payment plan, then a representative of the insurer shall provide the insured with a completed work claim form and instructions for its completion and submission to the insurer. ~~When a completed work claim form is utilized, the appraiser representing the insurer and the appraiser representing the repair shop shall negotiate all costs without regard to the direct payment plan/referral shop program.~~

I added Bill's language here, which also complies with MGL 90 34O.

~~(k) Access for Purpose of Appraisal. Repair shops who have custody and control of a customer's vehicle shall allow and shall not refuse to allow an appraiser representing the insurer, access by appointment, to the damaged vehicle, so that the appraiser representing the insurer may make an appraisal. No appraiser representing the insurer shall refuse to conduct an appraisal at a repair shop that has custody and control of a customer's vehicle.~~

I added this language to address an issue raised by the Insurance Federation. I amended their submittal to make the language apply to both the insurer and repair shop, in order to eliminate any anti-competitive language.

~~(2) Temporary Licensing. The Board shall vote to authorize the Chairman of the Board or his/her designee to grant a temporary license up to 60 days to any qualified individual to alleviate a catastrophic or emergency situation as long as the following conditions are met: (1) the applicant is licensed as a motor vehicle damage appraiser in another state and provides a copy of that license to the Chairman of the Board or his/her designee; (2) is in good standing in the other state and the applicant provides consent to the Chairman of the Board or his/her designee to verify the applicant's licensing status through the insurance licensing database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; (3) the applicant has not been found guilty of fraud, deceit, gross negligence, incompetence, misconduct or conflict of interest in the preparation or completion of any motor vehicle damage report; (4) the applicant does not have criminal felony charges pending against him/her in any state; (5) the applicant properly fills out the application; and (6) pays the applicable license fee.~~

~~Copies of all such applications and temporary licenses issued by the Chairman of the Board or his/her designee shall be submitted to the Board at its next scheduled meeting for review by the Board. After review, the Board may revoke any such temporary license that was issued if the Board finds such applicant does not conform to the six listed conditions, or the Board finds that a person who was issued a temporary license is not qualified to hold such license.~~

I added Board Counsel’s language here, with one change. It addresses the concerns submitted by several insurance companies. My only change was to leave the authority with the Board while allowing the chair to designate someone of their choosing.

2.05: Penalties

(4) Violations of M.G.L. c. 26, § 8G, and 212 CMR 2.00 may result in penalties including administrative costs, revocation or suspension of license or both. All administrative costs are subject to the discretion of the Board. The administrative costs may be assessed against the appraiser, the appraiser's employer, the insurer, or the repair shop. An alleged violation of 212 CMR 2.00 by an ~~licensed~~ appraiser at the direction of an insurer may be reported to the Division of Insurance which may impose applicable penalties against such an insurer.

I amended the language to align with the new definitions.

2.06: Severability

If any provision of 212 CMR 2.00 or its application to any person or circumstances is held invalid, such invalidity shall not affect the validity of other provisions or applications of 212 CMR 2.00

REGULATORY AUTHORITY

212 CMR 2.00: M.G.L. c. 26, § 8G.

Discussion among the Board about the proposed amendments:

A discussion was held about these proposed amendments submitted by Board Member Starbard who explained that he adopted the amendments suggested by Board Member Coyne, the suggested amendment by Legal Counsel Powers about temporary or emergency licenses and added an additional part to this section, he also drafted suggested amendments that had been submitted by interested parties such as the Massachusetts Insurance Federation, added some additional substantive ones, and cleaned-up the regulation to make it consistent with the “Definitions” section of the regulation. Legal Counsel Powers suggested that in light of the fact that Board Member Starbard recently submitted his proposed amendments to the regulation, it would be better to proceed by taking each one of the recommendations, discussing each among the Members of the Board, and the Board could attempt to agree to various changes. Changes that the Board could agree upon would be approved with the modifications added to the document created by Board Member Starbard. The agreed upon revisions would become the final draft document the Board would review at a future Board meeting. Thereafter, the Board would conduct a vote on each proposed amendment to the Board’s Regulation. The Members of the Board agreed with proceeding with this approach.

Board Member Coyne began by stating the “Supervisory appraisal” definition should not be struck from the current regulation, as proposed by Board Member Starbard, because it was important that

companies' appraisers should be held responsible for the conduct of appraisers performing work for them.

Board Member William Johnson pointed out that because of the proposed new definition of "Insurer" and a later proposed change in the document contained in 212 CMR 2.04 (e) further defining the roles of an "appraiser representing an insurer", the definition of a "Supervisory appraisal" would no longer be necessary.

Board Member Coyne disagreed and requested that the current definition of "Supervisory appraisal" remain in the regulation.

The next issue raised by the Members of the Board was the change in the language contained in 212 CMR 2.04 (1) Conduct of Appraisals. The consensus of the Board was to delete the language of "less any applicable deductible" because this language was believed to be impractical during day to day operations of appraising motor vehicle damage. As a matter of course, appraisers do not ascertain what, if any, deductible a claimant has with his/her insurance company; appraisers simply appraise the damage to a motor vehicle. The consensus of the Board was to delete this language from the regulation.

Board Member Lyle Pare asserted that because of the increase to the costs of parts, labor, and materials since the last time the Board changed the minimum amount of damage that required an appraisal, the current amount of \$1,500 should be increased to \$2,500. Board Member Joseph Coyne agreed but said that \$2,500 should be the maximum amount of the increase. The consensus of the Board was to increase the amount to \$2,500.

The next section of the proposed amendments discussed by the Board is contained in 212 CMR 2.04 (e) Determination of Damage and Cost of Repairs. The Board reviewed the following proposed language:

If the appraiser representing the repair shop determines that preliminary work, repairs or partial disassembly would significantly improve the accuracy of the appraisal, then, with the approval of the claimant, such preliminary work, repairs, or partial disassembly shall be conducted; provided however, that, if there has been a written insurance claim made, then the repair shop appraiser shall first obtain the approval of the insurer, unless the claimant directs that such preliminary work, repair, or partial disassembly be made without obtaining the insurer's approval, the claimant being first informed that they may be held personally responsible for the costs of same and that it may affect the insurer's obligation to pay the cost of repairs.

The consensus of the Board was to require an appraiser to get the written consent of a claimant who agrees to have his/her motor vehicle disassembled without first receiving approval from his/her insurance. Legal Counsel Powers suggested that a provision should be added requiring an appraiser provide a written disclosure to the claimant/consumer that under these circumstances whereby the insurance company is not first notified that the claimant/consumer could be held personally responsible for paying costs and repairs of the motor vehicle. Board Member Starbard agreed to add language requiring such consent must be in writing and clearly disclose that the

claimant could be held responsible these cost and repairs by his/her insurance company under these circumstances.

The next proposed amendment discussed by the Board was the recommendation to delete the word “warranty” from this section of the regulation. Board Member Joseph Coyne disagreed with this recommendation and stated that manufactures warranties still maintain a major part in appraisals and felt that the term warranty must remain in this section of the regulation. The consensus of the Board was to retain this term and Board Member Starbard agreed to keep the word “warranty” in this section of the regulation by strengthening it by adding “manufactures warranty where applicable”. The new language would read, “Manufacturers **recommended warranty** repair procedures, “or manufactures warranties where applicable” I-Car, Tec Cor and paint manufacturer procedures **shall may** also apply. Mr. Starbard assured Board Member Coyne that he would add the new language to the proposed amendment.

The Board then addressed the following proposed amendment to 212 CMR 2.04 (e):

The use of used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle. The appraiser shall determine which parts are to be used in the repair process in accordance with 211 CMR 133.00. **The insurer is responsible for paying the retail cost for all parts indicated on an appraisal, including but not limited to, parts ordered and subsequently returned based on the criteria set in 211 CMR 133. The insurer is responsible for returning the parts to the supplier and recovering their costs from the supplier. The repair shop may agree to return parts on behalf of the insurer, if the insurer agrees to pay all costs, including but not limited to freight, handling and administrative costs, associated with such return. As to such costs, nothing in 212 CMR 2.00 shall preclude an insurer from exercising any available rights of recovery against the supplier. Delays in repair cycle time shall be considered when sourcing parts and materials.** The appraiser shall itemize the cost of all parts, labor times, hourly rate, materials, and necessary procedures required to restore the vehicle to pre-accident condition and shall total such items. The rental cost of frame/unibody fixtures necessary to effectively repair a damaged vehicle shall be shown on the appraisal and shall not be considered overhead costs of the repair shop.

Board Member Starbard asserted that this proposed language comes in line with the Division of Insurance regulation 211 CMR 133.00 about the use of various parts in an appraisal.

Board Member Pare questioned the need for this proposed language on the basis it mirrors the existing language of 211 CMR 133 by asking, if the same language is already part of 211 CMR 133.00 then this isn't this redundant?

Board Member Johnson observed that the first sentence does not seem to fit with this proposed section specifically, **“The use of used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle.”**

Board Member Joseph Coyne asserted that based upon his thirty years of business experience in the motor vehicle appraisal business he has not seen a problem with insurance companies

requiring the use of used suspension parts for damage to a motor vehicle. At the conclusion of the discussion, the consensus of the Board was that Board Member Starbard would move the sentence and place the proposed language in another section.

The next sentence of this section that was addressed by the Board was, “**The insurer is responsible for paying the retail cost for all parts indicated on an appraisal, including but not limited to, parts ordered and subsequently returned based on the criteria set in 211 CMR 133.**”

Board Member Coyne felt that this proposal should be amended by adding an additional clause at the beginning of the next sentence reading, “If in fact the part listed on the appraisal does not fit and both parties agree that it does not fit then” [t]**he insurer is responsible for paying the retail cost for all parts indicated on an appraisal, including but not limited to, parts ordered and subsequently returned based on the criteria set in 211 CMR 133.**

The consensus of the Board was that this clause would be added to the proposed amendment and inserted in the draft document created by Board Member Starbard.

The Board then addressed the proposed amending sentence of, “**Costs associated with the shipping and handling of parts including cores, shall not be considered overhead costs of the repair shop either and shall be listed on the appraisal.**”

Board Member Pare and Board Member Coyne stated that they could not agree to this new language because traditionally these costs were not broken down in this manner.

In addition, Board Member Pare disagreed with the proposed language of “With respect **specifically** to paint, paint materials, body materials and related materials, if the formula of dollars times hours is not accepted by ~~an registered repair shop or licensed~~ appraiser **representing the repair shop or by an appraiser representing the insurer, then a published database manual or other documentation from a list approved by the Board and selected by the repair shop shall be used unless otherwise negotiated between the parties.**” Board Member Pare volunteered that he would draft some language addressing this issue and send it to Board Member Starbard to insert it into the final draft document.

The Board then discussed the issue of changing the time frame for completing appraisals. The proposed language reduces the time for initial appraisals, where applicable in the regulation, from the current time of five business days to three business days, for supplemental appraisals from three business days to two business days, and for expedited supplemental appraisals from two business days to one business day.

Board Member William Johnson acknowledged Attorney Peter Robertson a renowned expert on insurance law, a representative of the Massachusetts Insurance Federation (MIF), who was seated in the audience and invited Attorney Robertson to address the issue. Attorney Robertson said that he understood changing these time frames was an issue with his membership and he would appreciate the opportunity to discuss this issue, and other issues raised as the meeting, with the membership and the MIF auto body expert. After discussing the proposed amendments with them, he would report back to the Board.

Board Member Johnson suggested that the proposed amended language be left as is until Attorney Robertson reported back. He also noted his objection to reducing the time for supplemental appraisals from two days to one day. Board Member Johnson gave as an example a person contacting the other party at 2:00PM and the close of the business day is 5:00PM. In this scenario the other appraiser doesn't get a full business day to respond. Legal Counsel Powers suggested that the Board could make the language clearer by stating, "before the close of business the following day." Board Member Starbard said that he would insert this proposed language in his draft document where appropriate.

The Board concluded this portion of the agenda and agreed to hold the next Board meeting on June 22, 2016, at 9:30 AM.

The next item on the agenda was the Executive session for review and discussion of: Complaint-2016-1, Complaint 2016-2, and Complaint 2016-3, 2016-4, 2016-5, and 2016-7 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.

Chairman Cox announced that the Board would enter the executive session by stating the following:

Under Massachusetts law, Chapter 30A, §§ 18-25, the Open Meeting Law, requires specific reasons that allow a public body to enter an Executive Session.

Today we have several matters on our agenda that are allowed by law to be heard in the executive session. Some of the reasons are 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.” We have several complaints filed against licensed appraisers, Complaints 2016-1, 2016-2, Complaint 2016-3, Complaint 2016-4, Complaint 2016-5, Complaint 2016-6, and Complaint 2016-7. All have requested that the matters be heard in the executive session. The attorney for two of these appraisers, Attorney Owen Gallagher, has requested a continuance.

Attorney Gallagher was allowed to speak to the Board and explained that in Complaints 2016-4 and 2016-5 the appraiser was undergoing medical treatment and was unavailable. Because the appraiser undergoing the medical treatment was inextricably part of the other complaint he needed a postponement of the matters until the next scheduled Board meeting. In addition, Attorney Gallagher had been notified that day that he was representing the licensed appraiser in Complaint 2016-7 and requested a postponement of that matter. A motion was made by Board Member Coyne to postpone the matter and was seconded by Board Member Pare. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Motion to enter the executive session:

Chairman Cox announced that 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. Board Member Joseph Coyne made the motion and it was seconded by Board Member Lyle Pare.

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. Chairman Cox abstained and the vote passed by a vote of: 4-0 with Chairman Cox abstaining.

Before the Board entered the executive session Legal Powers Counsel informed the Board of a complaint filed by Board Member Richard Starbard against a licensed appraiser which was Complaint 2016-6. Furthermore, Mr. Starbard would not be participating in that particular matter when discussed in the executive session, and a motion would be made to recuse him from deliberating on that matter. Board Member Johnson informed the Board that he too would ask for a motion to recuse himself from two complaints that involved Allstate Insurance Company, Complaint 2016-1 and Complaint 2016-3 due to his pending litigation against the same insurance company. Chairman Cox called for a motion to recuse Board Member Johnson and the motion was made by Board Member Coyne and seconded by Board Member Pare. The motion passed by a vote of: 3-0, with Board Member Johnson not participating and Chairman Cox abstaining. Board Member Johnson exited the meeting before the executive session began.

Complaint 2016-1

The licensed appraiser appeared before the Board with Attorney Peter Bosse. Board Member Coyne mentioned that when reviewing the material contained in the complaint it appeared that the appraiser met with an employee from the auto body shop to negotiate the supplemental appraisal, and in the substance of the complaint there was no mention of the owner of the auto body shop being present. Board Member Coyne noted that the complaint may be insufficient because the complainant, who is the owner of the auto body shop, was not present.

The licensed appraiser confirmed the fact that the complainant was not present when he met with the employee of the auto body shop. The licensed appraiser stated that he had negotiated part of the appraisal and provided some increases but when he met to discuss the supplemental appraisal it was very clear that the appraiser representing the auto body shop was not willing to negotiate any further.

Board Member Richard Starbard pointed out that the documents attached to the complaint indicate the auto body shop's customer was contacted by the licensed appraiser in writing. After Board Member Starbard reviewed what the appraiser had written to the customer, it made it appear that the auto body shop was overcharging the customer.

The licensed appraiser responded that when a customer requests the records of the negotiations, he never attempts to insinuate the auto body shop overcharges the customer.

Board Member Starbard responded that he has a problem when a licensed appraiser sends an appraisal to a customer stating that certain costs were not covered.

Board Member Coyne questioned whether the auto body shop appraiser refused to negotiate when the appraisers met to discuss the supplement, and the licensed appraiser responded that the auto body shop appraiser refused to negotiate.

Board Member Richard Starbard said that he believed when a licensed appraiser sends a written notice to a customer informing a customer that the auto body shop was overcharging the customer, such conduct would be a violation of the Board's Regulation.

Board Member Pare opined that he does not allow appraisers working for him to send opinions about the appraisals to customers.

Board Member Coyne asserted that in the matter before the Board the appraiser negotiated and, therefore, this is not a violation of the regulation. What the complaint alleges is something that may be grounds for a civil suit, but is not a violation of the regulation.

Attorney Bosse was allowed to address the Board and advocated that his client's conduct complied with the regulation by providing his opinion about the damage to the motor vehicle and by negotiating the damage with the auto body shop.

Chairman Cox called for a motion. Board Member Joseph Coyne made a motion to dismiss the complaint which was seconded by Board Member Pare. The motion passed by a vote of: 2-1 with Board Member Richard Starbard voting against and Chairman Cox abstaining.

Complaint 2016-3

This complaint also involved an appraiser employed by Allstate Insurance Company and Board Member Johnson was not present to deliberate on this matter. Attorney Bosse also capably represented the licensed appraiser in this matter and attended the executive session with him.

Board Member Joseph Coyne asked the licensed appraiser if he attempted to negotiate the costs of the damage to the motor vehicle with the appraisers working for the auto body shop. The licensed appraiser confirmed that he did negotiate, offered to settle, and left a copy of the appraisal at the auto body shop.

Board Member Pare asked the licensed appraiser if a supervisor at Allstate Insurance Company requested that he send a letter to the customer about the appraisal submitted by the auto body shop and the licensed appraiser responded yes. The appraiser informed the Board that a supervisor at Allstate requested that he send the letter to the customer to establish that Allstate Insurance Company was in disagreement with the auto body shop appraisal and the letter provided to him was pre-written. The appraiser also informed the Board that he appeared at the auto body shop and while attempting to negotiate the appraisal with the auto body shop appraiser the owner of the auto body shop came out and stated he disagreed with the last appraisal. The owner of the auto body shop made it clear that there would be no further negotiations.

Board Member Richard Starbard queried the appraiser, whether he used a Mitchell sheet and the appraiser answered no. Board Member Starbard asked *if the appraiser would have used a Mitchell sheet* and the appraiser responded yes, but the auto body shop refused to negotiate.

Board Member Coyne asked the appraiser, whether the negotiation ended at the auto body shop. The appraiser responded yes.

Chairman Cox asked if there were any supplemental appraisals and the appraiser responded yes.

Board Member Coyne instructed the appraiser that in the future whenever you send a letter to a customer you should disclose that there was a dispute between you and the appraiser representing the auto body shop.

Board Member Starbard questioned the appraiser whether he had sent a letter like the one that is attached to the complaint to a customer before, and the appraiser responded no. Board Member Starbard concluded that the company appears to have established a policy of sending these types of misleading letters to customers.

Board Member Coyne noted that, regardless of the letter that was sent to the customer, the licensed appraiser negotiated the costs of the damage to the motor vehicle and, therefore, he did not violate the Board's Regulation. Board Member Coyne concluded, the letter that was sent to

the customer may be grounds for a civil case against the company, but does not violate the regulation.

Chairman Cox called for a motion and Board Member Coyne made a motion to dismiss the complaint with a second by Board Member Pare. The motion passed by a vote of: 2-1 with Board Member Starbard voting against and Chairman Cox abstaining.

Complaint 2016-2

Attorney Owen Gallagher entered the executive session with his client to discuss this matter before the Board. Board Member William Johnson informed the Board that he had a matter in litigation against Hanover Insurance Company and requested a motion to recuse himself from deliberating on this particular matter. Chairman Cox called for a motion to recuse Board Member Johnson from the matter, the motion was made by Board Member Coyne, and seconded by Board Member Pare. The motion passed by a vote of: 3-0 with Board Member Johnson not participating and Chairman Cox abstaining. Board Member Johnson left the executive session.

Board Member Coyne asked the licensed appraiser if the complainant was directed to go to Muzi Motors by the insurance company and the appraiser answered no. The appraiser explained that he was notified that the damaged motor vehicle was at Muzi Motors, and he went there to appraise the damage. When the appraiser arrived he was provided with pictures that were taken by employees of Muzi motors, which indicated an epoxy like substance around the broken radiator. He was also directed to the damaged motor vehicle where he observed the same epoxy like substance around the cracked area of the radiator. Based upon the photographs, his personal observations, background, training and experience, the appraiser assumed there was pre-existing damage to the radiator before the accident.

Attorney Gallagher handed out pictures of the damaged radiator to the Board and he insisted that the pictures supported the licensed appraiser determination that the radiator had pre-accident damage. Attorney Gallagher also provided an initial report filed by the complainant about the damage to the motor vehicle, with no mention of the radiator being damaged in the accident.

Board Member Coyne opined that with such substantial damage to the motor vehicle's radiator, it must have made the motor vehicle un-drivable and, therefore, had to be related to the accident. In his opinion, even if there had been previous partial damage to the radiator, the complainant should have been given a betterment and a "Like Kind and Quality" part should have been made part of the appraisal.

Attorney Gallagher adeptly directed the Board's attention to the fact that the affidavit submitted with the complaint was not executed by the complainant, but rather by a friend of the complainant who lacked first-hand knowledge of the material events. Attorney Gallagher skillfully directed the Board's attention to the fact that the documents attached to the complaint by the complainant establish that there was no mention of the radiator damage on November 27, 2015, when his client first observed the damaged motor vehicle at Muzi Motors or, thereafter, on November 28, 2015. The first time there is any mention of damage to the radiator is on December 8, 2015. The lack of any mention of damage to the radiator by the complainant during this time-frame calls into question whether the damage was caused by the initial accident.

Attorney Gallagher declared that if this case were brought in a court of law he would adroitly use these facts to discredit the complainant's case before a jury. Attorney Gallagher persuasively concluded his summation by insisting the Board could reach only one decision: the case against his client must be dismissed.

Board Member Starbard opined that if Hanover Insurance Company had handled this from the beginning of the accident instead of Muzi Motors this matter would have concluded with a much different result.

Board Member Joseph Coyne made a motion to dismiss, and the motion was seconded by Board Member Pare. The motion passed by a vote of: 3-0 with Chairman Cox abstaining.

Complaint 2016-6

Board Member Richard Starbard informed the Board that he filed the complaint against the licensed appraiser and he requested a motion to recuse himself from participating in this particular matter. A motion was made by Board Member Johnson to recuse Board Member Starbard and seconded by Board Member Coyne. The motion passed by a vote of 3-0 with Board Member Starbard not participating in the vote and Chairman Cox abstaining. Board Member Starbard exited the executive session.

Attorney Peter Rice, a renowned specialist in insurance law, represented the licensed appraiser in the matter. Attorney Rice informed the Board that the matter involved a trainee under the supervision of the licensed appraiser. The insurance company was attempting to develop an apprenticeship training program and the trainee was the first member of that program. When the licensed appraiser received the complaint he immediately stopped the training program and the insurance company agreed to refrain from such training in the future.

The licensed appraiser informed the Board that this was the first time that he had been assigned a trainee by his company and was training the person on the proper manner for conducting appraisals. All of the appraisals that were drafted by the trainee were personally reviewed by the licensed appraiser. In addition, the trainee was enrolled in an appraisal course. The licensed appraiser informed the Board that he had been licensed for fifteen years, never had a complaint filed against him, and would never jeopardize his license.

Board Member Coyne informed the appraiser that this type of conduct violates the enabling statute which requires individuals writing a motor vehicle damage report to be first licensed by the Auto Damage Appraiser Licensing Board. Mr. Coyne asked Attorney Rice if he would provide a letter from the insurance company to the Board stating it would refrain from such conduct in the future. Attorney Rice agreed to provide such a letter to the Board.

Chairman Cox called for a motion, and a motion was made by Board Member Coyne to dismiss the complaint and a second was made by Board Member Pare. The motion passed by a vote of: 3-0 with Board Member Starbard not participating and Chairman Cox abstaining.

Motion to adjourn the business of the Board:

Chairman Cox called for a motion to adjourn the meeting and Board Member Johnson made a motion to adjourn which was seconded by Board Member Pare. The motion passed by a vote of: 3-0 with Chairman Cox abstaining.

Whereupon, the Board's business was concluded.

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