



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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

May 4, 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:

Rachel Davison, General Counsel of the Division of Insurance
Michael D. Powers, Counsel to the Board
Steven Zavackis for the Division of Insurance, assigned to the Office of the General Counsel, took the minutes of the Board meeting.

Proceedings recorded by:

Jillian Zywiec, Executive Director, 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).

Call to order:

Chairman Cox called the meeting to order and informed the members of the general public that the purpose of the meeting was to hold a Special Public meeting to gather input from the public and interested parties as to any proposed amendments to the ADALB's Regulation 212 CMR 2.00 et seq. Chairman Cox introduced the General Counsel of the Division of Insurance, Rachel Davison, who was participating at the Board meeting, along with the Members of the Board, overseeing the submission of the testimony by the public. Chairman Cox announced that there

was a sign-in sheet, that anyone who was interested in submitting written or oral testimony could do so, and he would take testimony in the order that people's names appeared on the sign-in sheet. Chairman Cox made the following statement:

The Auto Damage Appraiser Licensing Board (Board) is considering changes to 212 CMR 2.00, the Rules and Regulations governing the licensing, registration, and conduct of Massachusetts motor vehicle damage appraisers. More specifically, the Board is considering updating these regulations to reflect changes in the industry since the last regulation update in 2008.

In advance of considering draft changes and implementing the formal regulatory amendment process, the Board welcomes interested members of the public to provide input with regards to topics and possible changes the public would like the Board to consider addressing in the next regulation review. All sections of the regulations are to be considered for revision, thus all comments are welcome. Some of the topics to be considered for amendment which have been discussed at meetings of the Board include, but are not limited to: clarifying the language for conducting appraisals for less than \$1,500 by eliminating the phrase "less the deductible", clarifying language about "tear-downs" of motor vehicles by requiring notice to insurance companies and consumers before a tear-down of a motor vehicle occurs, clarifying language about the use of published manuals and electronic data systems, clarifying language about licensed appraisers removing a vehicle's safety inspection sticker and complying with the requirement of M.G. L. c. 26, § 8G, defining particular costs to be included in appraisals such as shipping and handling costs and delay costs in repair cycling time, when aftermarket parts are used appraisers must notify motor vehicle owners in compliance with M.G.L. c. 90, § 34R, changing the time an appraisal must be sent from within five business days to three business days from the assignment of the appraisal, requiring a personal inspection of the motor vehicle for an appraisal for a total loss, changing the time an insurance company must inspect a motor vehicle when a supplementary appraisal has been made from three business days to two business days and expedited supplemental appraisals from two business day to one business days, and clarifying when a Completed Work Form is utilized the appraiser representing the insurance company and the appraiser representing the repair shop shall negotiate all costs without regard to an insurance company's direct payment plan/referral shop plan. To review the Board's thorough discussions about potential amendments to the Board's regulation, held during past meetings of the Board, interested members of the public can review the Board's minutes posted on the Auto Damage Appraiser Licensing Board's website at: <http://www.mass.gov/ocabr/licensee/license-types/insurance/individual-and-business-entity/licensing/mvda/>.

In addition, the Board welcomes the submission of written comments, which can be provided to the Board the day of the hearing or sent by first-class mail to: Auto Damage Appraiser Licensing Board, 1000 Washington Street, Boston, MA 02118-6200. Submissions by mail should be sent to the Board prior to May 1, 2016. The Board will continue to allow written submissions for 14 days following this meeting. Any Question about submitting written testimony should be directed to the Executive Secretary of the

Board Steven Zavackis who can be reached at (617) 521-7432. Submissions can be emailed to: steven.zavackis@MassMail.State.MA.US.

General Counsel Davison introduced herself and informed the members of the general public that the meeting was a Special Public meeting of the Board held for the purpose of taking written and oral testimony from interested parties and members of the general public. General Counsel Davison advised that, the members of the general public in attendance were not allowed to ask questions of the Board, but would be allowed to submit testimony about the ADALB's regulation and in favor of amendments to the Board's regulation that anyone would like to be considered.

Chairman Cox then invited the first person who had indicated on the sign-in sheet that he wished to make a statement to the Board, Mr. John Murphy the Executive Director of the Mass Insurance Federation. Mr. Murphy took a seat before the Board and introduced himself and Peter Robertson an attorney for the Mass Insurance Federation who sat beside Mr. Murphy. Mr. Murphy informed the Board the Mass Insurance Federation is the leading advocate for the property/casualty industry in Massachusetts, consisting of twenty eight property and casualty insurance company members - ten of whom are domiciled in the Commonwealth - and four national insurance trade associations which are associate members. He said that the Federation members write over 80% of the state's private passenger automobile insurance premiums.

Mr. Murphy informed the Board that he and his organization applaud the members of the Board for undertaking a comprehensive review of its regulation, in conjunction with the Division of Insurance, pursuant to Governor Baker's Executive Order number 562 issued in March 2015. That executive order contains several important principles and requirements, which he assumed would guide the Board in the process of reviewing it regulation. Mr. Murphy listed the following of those principles and requirements that he felt merited mention and emphasis:

- The costs of the regulation do not exceed the benefits that would result from it.
- Less restrictive and intrusive alternatives have been considered and found less desirable based on a sound evaluation of the alternatives.
- The regulation does not unduly and adversely affect Massachusetts citizens or the competitive environment in Massachusetts.

In addition, Mr. Murphy noted Governor Baker's Executive Order also mandates that each agency prepare in connection with any proposed new regulation a business/competitiveness impact statement that will include a competitive review and assess disruptive economic impacts on all potentially impacted entities, including medium and large for profit enterprises.

Mr. Murphy asserted that these principles and requirements are essential aspects of the regulatory review process that the Board is undertaking. He noted that they are the principles guiding the changes that he was recommending to the ADALB regulation. His proposal contained two major substantive changes and a variety of other ones that are designed to bring greater clarity to the appraisal regulations. The two major substantive changes that Mr. Murphy and his organization proposed were the following:

- Increase the threshold at which an appraiser must be assigned.
- The dollar threshold in 212 CMR 204(1)(a) should be increased from its current level of \$1,500 to \$5,000. A significant increase in this threshold is long overdue and has been discussed by the Board in the past. This proposed increase to the claim value threshold at which an insurer may elect not to assign an appraiser to appraise a damaged motor vehicle is warranted based on the continuing increase in costs associated with the repair of damaged motor vehicles since the threshold was changed from \$500 to \$1,500 in 2008. The practical effect of these increased costs, in the absence of a similarly rising threshold, is that insurers are required to incur additional expense, expend additional resources, and consumers experience a longer time frame for the resolution of claims which licensed appraisers have been assigned to appraise vehicles with relatively minor damage. The increase in this threshold further is supported by the amendment made to Section 57A of Chapter 6C of the General Laws in Outside Section 14 of the FY 2016 Budget, which increased the thresholds for what constitutes a “minor” and “major” at-fault accident claim, excluding deductible, to more than \$1,000 and more than \$5,000 respectively. To the extent the increased value of contemporary motor vehicles and the associated costs to repair such vehicles when they are damaged warrants an increase in these accident designations, it follows that the claim payment threshold at which an insurer may elect not to incur the expense for, and consumers need not wait additional time for, the completion of an appraisal by a licensed auto damage appraiser should similarly be increased. If the threshold in 212 CMR 2.04(1)(a) remains at \$1,500 despite amendments to M.G.L. 6C, § 57A, insurers will be required to assign appraisers to a large percentage of what constitute “minor” accidents.
- Expressly allow the use of video and/or digital images.

The regulatory requirement that an appraiser “personally inspect” a damaged motor vehicle in order to conduct an appraisal of that vehicle dates back at least to 1996. Given the significant technological advances since that time in photography and videography, and an appraiser’s review of and reliance on video or digital images of a damaged motor vehicle as recorded or taken by another person, along with appropriate documentation of that video or those digital images, is a reasonable substitute for that appraiser being physically present for a review of the damaged vehicle. Moreover, these improved technologies are increasingly more available and affordable. In updating the requirement that an appraiser physically appear to view a damaged motor vehicle, appraisals will be completed more quickly, which will translate to the more expeditious resolution of claims. Moreover, the wide availability of quality video and photographic technology means that these more expeditious claim resolutions will not come at the cost of lower quality appraisals. This is not only a benefit to insurers in the form of reduced costs, but of significant benefit to consumers, who will have their claims resolved more quickly, without sacrificing quality service. This change also makes the regulation consistent with what the Division of Insurance has permitted for a number of companies’ Direct Payment Plans that incorporate that technology. Mr. Murphy noted that the Board previously recognized the appropriateness of the use of such digital or video images with documentation in Advisory Ruling 2014-0. While that ruling was rescinded in 2015, the

rescission will not affect the continued use of video or digital imaging by the insurers that have received approval of amended Direct Payment Plans that incorporate that technology. Mr. Murphy urged the Board resume recognition of this necessary technological advance.

Mr. Murphy thanked the Board for taking the time to listen to his testimony and provided copies of a statement which appears at the end of these minutes.

The next person to speak was Robert Susi, owner of Susi Auto Body in Dorchester, Massachusetts. Mr. Susi said that motor vehicle damage repairers focus on cycle times. Increasing the amount of the estimated damage of a motor vehicle requiring that a licensed appraiser appraise the damage from the current level of \$1,500 to \$5,000 was an issue that he also wished to discuss. Mr. Susi said that it was very easy to have the damage to a motor vehicle exceed \$1,500 because of the inflationary costs which increase the costs of auto parts over time. Mr. Susi also agreed to the use of video technology for appraising damage, because of the high quality of the new technology.

Mr. Susi noted that he has seen a blatant disregard for certain items on appraisals and one example was the use of field notes. There has been a growing trend of supplemental appraisal being changed by office managers basing the changes on clerical errors and not by licensed appraisers.

He had also read that there would be a cap placed on the cost of storage, and asserted that he had a large facility that he pays about \$50,000 in real-estate taxes and any cap on the costs of storage would be unfair.

Board Member Richard Starbard asserted that video photography can show a lot less damage than the actual damage to a motor vehicle. He recently was involved with a damaged motor vehicle claim which was well underestimated and, in fact, when personally inspected showed \$6,000 of damage and should not have been allowed to be driven on the public roadways.

Mr. Sussi responded that he believed that a system of using video photography can be developed that will be reliable.

Board Member Johnson volunteered that the cap on storage that Mr. Sussi spoke about is not within the jurisdiction of the Auto Damage Appraiser Licensing Board. That issue is covered in the Automobile Insurers Bureau's standard private passenger "Massachusetts Automobile insurance Policy" 8th Edition.

While addressing the issue of the use of video images and digital photography, Mr. Johnson provided the example of a mother with small children calling to tell her insurance company that she just hit a pothole and asking if she should just take photographs, send them in, and keep driving the car. Board Member Johnson concluded, clearly such a scenario raises public safety issues.

The next person to address the Board was Jillian Zywiec, Executive Director, of the Alliance of Auto Service Providers of Massachusetts (AASP-MA). Executive Director Zywiec informed the Board that AASP-MA has three hundred members representing over five hundred auto body shops. Executive Director Zywiec declared, as the ADALB reviews its regulations to further protect consumers and ensure quality standards for licensed appraisers she would appreciate consideration of the following items:

A. 212 CMR 202(7) Licensing Requirements and Standards for Appraisers.

Conflict of Interest. Paragraph 3, first sentence, after the word “for” insert the following: “or on behalf of at a repair shop. Notwithstanding this provision, all drive-in appraisal services must inform consumers of their rights to have their vehicle repaired at any licensed repair shop of their choice.”

Executive Director Zywiec went on to state that as the Board was well aware, Mass. General Laws Chapter 26, § 8G provides that, “[n]o appraiser or insurer shall request or suggest that repairs be made in a specified repair shop.” Commonly known as the anti-steering law, this provision of law prevents insurers or appraisers from directing business to a specific repair shop. Given the formation of new marketing techniques including, but not limited to, the co-location of insurers and repairs shops, it is more important than ever that consumers know their rights to choose a repair shop of their choice. Unfortunately, the anti-steering law is not well known by consumers, something these new marketing techniques make more confusing. In an effort to better protect consumers, this simple amendment will protect consumers by further educating them as to their rights during the repair process.

Executive Director Zywiec informed the Board that some additional issues that she would like them to address are found in the following:

B. 212 CMR 2.04 Procedure for the Conduct of Appraisals and Intensified Appraisals.

(1) Conduct of Appraisals, under sections (c), strike the last sentence “The provision of 212 CMR 2.04(c) shall not apply to any direct payment plan pursuant to 211 CMR 123.00.”

Executive Director Zywiec went on to say that as previously mentioned strengthening anti-steering requirements best serves the Commonwealth’s consumers. Consumers are often not aware of their right to use any repair shop of their choosing during the repair process and that all repair shops must guarantee their work regardless of their relationship to an insurer.

Under (e) Determination of Damage and Cost Repairs. In the second to last sentence in the first paragraph, she asked the Board to amend the language to read “Manufacturers recommended repair procedures, I-Car, Tec Cor and paint manufacturer procedures shall also apply.”

Executive Director Zywiec explained that the current regulation states that the aforementioned procedures may apply in determining the damage and costs. To better protect consumers, the determination of repair procedures for purposes of computing the repairs necessary and cost therein, should be as uniform as possible. Striking the word “may” protects consumers by

eliminating countervailing interpretations by appraisers for both insurers and repair shops that often leaves consumers without an ability to know what is appropriate and what is not.

As an additional amendment under (e) paragraph 4, she asked the Board to insert at the beginning of the first sentence the following, “The use of used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle.” In addition, in paragraph 4 insert after the third sentence the following, “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.” Ms. Zywień explained that according to the regulation, insurers must recommend the use of aftermarket parts. Often times a part simply does not fit the vehicle. If after determining a request and a part does not fit, the onus to return the part is on the shop owner. Since the requirement of the part was suggested by the insurer, the costs to return said part should be paid by the insurer and listed on the appraisal. There are also many instances when a new part purchased will have a separate core charge associated with it, that the repairer must pay for up front and separately process pickups of the core and supplier credit.

Executive Director Zywień directed the Board’s attention to section (e) paragraph 4 the fourth sentence and requested that sentence be amended as follows: “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 database shall be used.” Ms. Zywień elaborated that when this regulation was written appraisers used a paper manual. With advances in technology, a printed, paper copy of the manual is no longer made or in use by the industry. Instead, it is an electronic manual which is incorporated into the various appraisal software. Additionally, this amendment further protects consumers by creating easily understood and simple process for computing costs. By striking the phrase “unless otherwise negotiated between the parties”, the ADALB will further create a simpler, more transparent transaction for consumers and licensed appraisers.

Executive Director Zywień also requested that the Board amend section (e) paragraph 6 first sentence with, “The appraiser shall fax or electronically transmit the completed appraisal within three business days of the assignment, or at the discretion of the repair shop, shall leave a signed copy of the field notes, with the completed appraisal to be electronically submitted or faxed within three business days of the assignment.”

Executive Director Zywień made reference to section (h) Supplemental Appraisals. She asked the Board to strike the third and fourth sentences and replace them with the following, “The insurer shall assign an appraiser who shall personally inspect the damaged motor vehicle within one business day of the receipt such request. If the personal inspection does not occur in one business day, the repair shop has the right to use the supplement, unless otherwise agreed upon. The appraiser 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 faxed, electronically submitted or hand delivered to the registered repair shop within one business day.”

Executive Director Zywień provided the Board with copies of a statement from AASP-MA written by her and addressed to Chairman Cox and the Board which contains these comments

and additional recommendations from the AASP-MA. The letter appears at the end of these minutes.

Executive Director Zywiec said one final note was that she agreed with the Board Members comments about the use of video photography.

Board Member Starbard said that the proposed amendment about the costs of shipping and handling is in line with the language of the regulation.

Board Member Johnson stated that he had a problem with reducing the time to one day, he announced that we've had this conversation before and the question arises as to when does the one day begin?

Peter D'Agostino, Lobbyist for AASP-MA said that there have been problems with the use of assigned field notes.

Board Member Johnson asserted that the insurance company has the right to investigate a claim and just because something is written, that does not make it so.

Adjournment of the Board:

Chairman Cox asked if there were any other people who wished to testify. Hearing none he called for a motion to adjourn the meeting and the motion was made by Board Member William Johnson with a second by Board Member Coyne. The motion passed by a vote of: 4-0 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).



Mass Insurance Federation

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**STATEMENT OF
THE MASSACHUSETTS INSURANCE FEDERATION
TO THE AUTO DAMAGE APPRAISER LICENSING BOARD
IN CONNECTION WITH THE REVIEW OF
REGULATIONS 212 CMR 2.00**

May 4, 2016

The Massachusetts Insurance Federation (the “Federation”) submits this statement and accompanying documents to the Auto Damage Appraiser Licensing Board (the “ADALB” or the “Board”) in connection with the comprehensive review of the ADALB regulations, 212 CMR 2.00, being undertaken by the Board.

First, we want to introduce the Federation. The Federation is the leading advocate for the property/casualty industry in Massachusetts, consisting of 28 property and casualty insurance company members –10 of whom are domiciled in the Commonwealth – and four national insurance trade associations who are associate members. Federation members write over 80% of the state’s private passenger automobile insurance premiums.

Secondly, we applaud the Board members for undertaking this comprehensive review of its regulations in conjunction with the Division of Insurance (the “Division”), pursuant to Governor Baker’s Executive Order No. 562 issued in March 2015. That Executive Order contains several important principles and requirements, which we assume will guide the Board in the process of reviewing its regulations. Several of those principles and requirements merit mention and emphasis:

- The costs of the regulation do not exceed the benefits that would result from it.
- Less restrictive and intrusive alternatives have been considered and found less desirable based on a sound evaluation of the alternatives.
- The regulation “does not unduly and adversely affect Massachusetts citizens . . . , or the competitive environment in Massachusetts.”

In addition, we note that the Executive Order also mandates that each agency “prepare in connection with any proposed, new regulation a business/competitiveness impact statement that will include a competitiveness review and assess disruptive economic impacts on . . . all potentially impacted entities, including . . . medium and large for profit enterprises.”

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These principles and requirements are essential aspects of the regulatory review process that the Board is undertaking. We also note that they been the principles guiding the changes we are recommending in the ADALB regulations.

Enclosed with this statement is a proposed revision of those regulations. Our proposal contains two major, substantive changes and a variety of other ones that are designed to bring greater clarity to the appraisal regulations. The two major substantive changes we are proposing are the following:

- **Increase in the Threshold at Which an Appraiser Must be Assigned.** The dollar threshold in 212 CMR 204(1)(a) should be increased from its current level of \$1,500.00 to \$5,000.00. A significant increase in this threshold is long overdue and has been discussed by the Board in the past. This proposed increase to the claim value threshold at which an insurer may elect not to assign an appraiser to appraise the damaged motor vehicle is warranted based on the continuing increase in costs associated with the repair of damaged motor vehicles since the threshold was changed from \$500 to \$1,500 in 2008. The practical effect of these increased costs, in the absence of a similarly rising threshold, is that insurers are required to incur additional expense, expend additional resources and consumers experience a longer timeframe for the resolution of claims for which licensed appraisers have been assigned to appraise vehicles with relatively minor damage. The increase in this threshold further is supported by the amendment made to Section 57A of Chapter 6C of the General Laws in OUTSIDE SECTION 14 of the of the FY 2016 Budget, which increased the thresholds for what constitutes a “minor” and “major” at-fault accident claim (excluding deductible) to more than \$1,000 and more than \$5,000 respectively. To the extent the increased value of contemporary motor vehicles and the associated costs to repair such vehicles when they are damaged warrants an increase in these accident designations, it follows that the claim payment threshold at which an insurer may elect not to incur the expense for, and consumers need not wait additional time for, the completion of an appraisal by a licensed auto damage appraiser should similarly be increased. If the threshold in 212 CMR 2.04(1)(a) remains \$1,500 despite the amendment to M.G.L. 6C, § 57A, insurers will be required to assign appraisers to a large percentage of what now constitute “minor” accidents.

- **Expressly Allow the Use Video and/or Digital Images.** The regulatory requirement that an appraiser “personally inspect” a damaged motor vehicle in order to conduct an appraisal of that vehicle dates back at least to 1996. Given the significant technological advances since that time in photography and videography, an appraiser’s review of and reliance on video or digital images of a damaged motor vehicle, as recorded or taken by another person, along with appropriate documentation of that video or those digital images, is a reasonable substitute for that appraiser being

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physically present for the review of the damaged vehicle. Moreover, these improved technologies are increasingly more available and affordable. In updating the requirement that an appraiser physically appear to view a damaged motor vehicle, appraisals will be completed more quickly, which will translate to the more expeditious resolution of claims. Moreover, the wide availability of quality video and photographic technology means that these more expeditious claim resolutions will not come at the cost of lower quality appraisals. This is not only a benefit to insurers in the form of reduced costs, but of significant benefit to consumers, who will have their claims resolved more quickly, without sacrificing quality service. This change also makes the regulations consistent with what the Division of Insurance (the "Division") has permitted for a number of companies' Direct Payment Plans. We note that the Board has previously recognized the appropriateness of the use of such digital or video images with documentation in Advisory Ruling 2014-01. While that ruling was rescinded in 2015, the rescission will not affect the continued use of video or digital imaging by the insurers that have received approval of amended Direct Payment Plans that incorporate that technology. We urge the Board to resume recognition of this necessary technological advance.

In all, the two principal changes we are proposing, along with the others contained in our revision of the regulations, will improve efficiency of the appraisal process. Moreover, they will, consistent with Executive Order No. 562, benefit Massachusetts drivers and improve the auto insurance competitive environment (including the appraisal and repair process) in Massachusetts.

The Federation looks forward to working with the Board to developing revisions to its regulations that will be beneficial to all the affected parties -- drivers, insurers, repair shops, as well as appraisers.

Respectfully submitted,

John P. Murphy
Executive Director



May 4, 2016

Mr. Gil Cox, Esq., Chairman
Massachusetts Auto Damage Appraisers Licensing Board
1000 Washington Street, Suite 810
Boston, Massachusetts 02118

Dear Chairman Cox and Members of the Board:

On behalf of the 300 members, representing over 500 auto body repairers, of the Alliance of Automotive Services Providers of Massachusetts ("AASP/MA"), I am writing to provide comments to the Massachusetts Auto Damage Appraisers Licensing Board ("ADALB") relative to proposed changes to 212 CMR 2.00. As the ADALB reviews its regulations to further protect consumers and ensure quality standards for licensed appraisers, we appreciate your consideration of the following items.

A. 212 CMR 2.02(7): Licensing Requirements and Standards for Appraisers.

(7) Conflict of Interest. Paragraph 3, 1st sentence, after the word "for", please insert the following: - "or on behalf of at a repair shop. Notwithstanding this provision, all drive-in appraisal services must inform consumers of their right to have their vehicle repaired at any licensed repair shop of their choice."

As you are well aware, Mass. Gen. Laws ch. 26, §8G provides that "[n]o appraiser or insurer shall request or suggest that repairs be made in a specified repair shop." Commonly known as the anti-steering law, this provision of law prevents insurers or appraisers from directing business to a specific repair shop. Given the formation of new "marketing" techniques including, but not limited to the co-location of insurers and repair shops, it is more important than ever that consumers know their rights to choose a repair shop of their choice. Unfortunately, the anti-steering law is not well known by consumers – something these new "marketing" techniques make more confusing. In an effort to better protect consumers, this simple amendment will protect consumers by further educating them as to their rights during the repair process.

B. 212 CMR 2.04: Procedures for the Conduct of Appraisals and Intensified Appraisals.

(1) Conduct of Appraisals.

(c) Contact with the Claimant and Selection of Repair Shop. Please strike the last sentence: - "The provision of 212 CMR 2.04(c) shall not apply to any direct payment plan pursuant to 211 CMR 123.00."

As previously mentioned, strengthening anti-steering requirements best serves the Commonwealth's consumers. Consumers are often not aware of their right to use any repair shop of their choosing during the repair process and that all repair shops must guarantee their work regardless of their relationship to an insurer.

(e) Determination of Damage and Cost Repairs. 2nd to last sentence, 1st paragraph, please amend the language to read: - "Manufacturers recommended repair procedures, I-Car, Tec Cor and paint manufacturer procedures shall also apply."

The current regulation states that the aforementioned procedures "may" apply in determining the damage and costs of repairs. The fact remains that the procedures listed do apply when determining damages and costs. To better protect consumers, the determination of repair procedures, for purposes of computing the repairs necessary and cost therein, should be as uniform as possible. Striking the word "may" protects consumers by eliminating countervailing interpretations by appraisers for both insurers and repair shops that often leaves consumers without an ability to know what is appropriate and what is not.

(e) Determination of Damage and Cost Repairs. Paragraph 4, Please insert at the beginning of the 1st sentence, the following: "The use of used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle."

(e) Determination of Damage and Cost Repairs. Paragraph 4, please insert after the 3rd sentence, the following: - "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."

According to the regulations, insurers must recommend the use of an aftermarket part. Often times that part simply does not fit the vehicle. If, after determining a requested part does not fit, the onus to return the bad part is on the shop owner. Since the requirement of the part was suggested by the insurer, the costs to return said part should be paid by the insurer and listed on the appraisal. There are also many instances when a new part purchased will have a separate core charge associated with it that the repairer must pay for up front and separately process pickups of the core and supplier credit.

(e) Determination of Damage and Cost Repairs. Paragraph 4, 4th sentence, please amend the sentence as follows: - "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

database shall to used.”

When this regulation was written, appraisers used a paper manual. With advances in technology, a printed, paper copy of the manual is no longer made or in use by the industry. Instead, it is an electronic manual which is incorporated into the various appraisal software. Additionally, this amendment further protects consumers by creating an easily understood and simple process for computing costs. By striking the phrase “unless otherwise negotiated between the parties”, the ADALB will further create a simpler, more transparent transaction for consumers and licensed appraisers.

(e) Determination of Damage and Cost Repairs. Paragraph 6, please amend the 1st sentence to state- “The appraiser shall fax or electronically transmit the completed appraisal within 3 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 electronically submitted or faxed within 3 business days of the assignment.”

With the advances in technology, the use of mailing forms is antiquated. Communication between appraisers often comes in the form of email or fax. As such, the required five (5) days to return an appraisal simply delays the transaction – resulting in greater costs to consumers (i.e. time without vehicle; etc.); insurers (i.e. costs related to rental vehicles, etc.) and repairers (i.e. time vehicle is on property, etc.). With today’s technology, three (3) business days for transmitting a completed appraisal will improve cycle time and consumer experience.

(h) Supplemental Appraisals. Please strike the 3rd and 4th sentences and replace them with the following: - “The insurer shall assign an appraiser who shall personally inspect the damaged motor vehicle within one business day of the receipt of the such request. If the personal inspection does not occur in one business day, the repair shop has the right to use their supplement, unless otherwise agreed upon. “The appraiser 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 faxed, electronically submitted or hand delivered to the registered repair shop within one business day.”

As previously mentioned, with advances in technologies, expedited supplements can be completed in one (1) business day. Expediting this process will benefit all parties, most importantly the consumer, by reducing cycle time and costs.

On a final note, AASP would like to highlight that both consumers, insurers and auto repair businesses will be better served through increased enforcement by the ADALB of the current regulations. As currently written, the regulations, for the most part, provide necessary clarification for both insurers and auto repair shops. In our experience, the areas that can cause confusion and various interpretations of the regulations are limited.

As the ADALB considers the regulations of 212 CMR 2.00 *et. seq.* in light of Governor Baker’s Executive Order 562, it is imperative that consumer safety and high standards of practice are of foremost consideration. The recommendations outlined above will ensure that the Commonwealth’s repair shops operate at the highest standards and, protect the interests of consumers.

database shall to used.”

When this regulation was written, appraisers used a paper manual. With advances in technology, a printed, paper copy of the manual is no longer made or in use by the industry. Instead, it is an electronic manual which is incorporated into the various appraisal software. Additionally, this amendment further protects consumers by creating an easily understood and simple process for computing costs. By striking the phrase “unless otherwise negotiated between the parties”, the ADALB will further create a simpler, more transparent transaction for consumers and licensed appraisers.

(e) Determination of Damage and Cost Repairs. Paragraph 6, please amend the 1st sentence to state- “The appraiser shall fax or electronically transmit the completed appraisal within 3 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 electronically submitted or faxed within 3 business days of the assignment.”

With the advances in technology, the use of mailing forms is antiquated. Communication between appraisers often comes in the form of email or fax. As such, the required five (5) days to return an appraisal simply delays the transaction – resulting in greater costs to consumers (i.e. time without vehicle; etc.); insurers (i.e. costs related to rental vehicles, etc.) and repairers (i.e. time vehicle is on property, etc.). With today’s technology, three (3) business days for transmitting a completed appraisal will improve cycle time and consumer experience.

(h) Supplemental Appraisals. Please strike the 3rd and 4th sentences and replace them with the following: - “The insurer shall assign an appraiser who shall personally inspect the damaged motor vehicle within one business day of the receipt of the such request. If the personal inspection does not occur in one business day, the repair shop has the right to use their supplement, unless otherwise agreed upon. “The appraiser 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 faxed, electronically submitted or hand delivered to the registered repair shop within one business day.”

As previously mentioned, with advances in technologies, expedited supplements can be completed in one (1) business day. Expediting this process will benefit all parties, most importantly the consumer, by reducing cycle time and costs.

On a final note, AASP would like to highlight that both consumers, insurers and auto repair businesses will be better served through increased enforcement by the ADALB of the current regulations. As currently written, the regulations, for the most part, provide necessary clarification for both insurers and auto repair shops. In our experience, the areas that can cause confusion and various interpretations of the regulations are limited.

As the ADALB considers the regulations of 212 CMR 2.00 *et. seq.* in light of Governor Baker’s Executive Order 562, it is imperative that consumer safety and high standards of practice are of foremost consideration. The recommendations outlined above will ensure that the Commonwealth’s repair shops operate at the highest standards and, protect the interests of consumers.