



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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CHARLES D. BAKER
GOVERNOR

GILBERT W. COX JR.
CHAIRMAN

KARYN E. POLITO
LIEUTENANT GOVERNOR

Joseph Coyne
Richard Starbard
William Johnson
Lyle Pare

Minutes of Meeting of the Board on July 21, 2015, Approved by the Board on August 25, 2015; Motion of Board Member William Johnson to Approve the Minutes as Submitted, Second by Board Member Richard Starbard. The Motion Passed by a Vote of:4-0, Chairman Cox Abstained.

July 21, 2015 Minutes of Board Meeting
**Automobile Damage Appraiser Licensing Board Meeting Held at
Division of Insurance, 1000 Washington Street, Boston, Massachusetts**

Members Present:

Gilbert Cox, Chairman
Joseph Coyne
Richard Starbard
William Johnson
Lyle Pare

Attending to the Board:

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

Proceedings recorded by:

Jillian Zwien and Peter D'Agostino of the Alliance of Automotive Service Providers of Massachusetts (Audio/Video).

Review of minutes:

Review of the minutes from the meetings held on June 2, 2015 was conducted by the Board.

After a brief discussion among the members of the Board about the contents of the minutes, a motion was made by Board Member William Johnson seconded by Board Member Lyle Pare to approve the minutes of the Board Meeting held on June 2, 2015. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Report on the Part-II examination for motor vehicle damage appraiser license scheduled for September of 2015:

Board Member Richard Starbard had volunteered his services and arranged for a damaged automobile to be provided as the example for applying the practical portions of the Part-II examination that was held in June of 2015. Board Member Starbard reported that at the Part-II examination for motor vehicle appraiser that was held in Taunton, Massachusetts in June of 2015, there were 5 no shows, 4 walk-ins with a total of 22 people passing the test and 16 failing the test.

Board Member William Johnson questioned whether the failure rate was unusually high. Board Member Starbard responded that based on his review of previous Board minutes, the failure rate appeared to be above the average previous rates. Mr. Starbard opined that he felt quite a few of the test takers did not appear to be very well prepared, and those whom have been approved by the Board to offer courses for training motor vehicle damage appraisers need to do a better job.

Advisory Ruling 2014-01:

Board Member Johnson began the discussion by asserting that a proper appraisal of a motor vehicle can't be conducted from a remote location using video technology and photographs, but rather a licensed appraiser should be at the same location as the motor vehicle. Board Member Johnson declared that one of the reasons for his position was that in the event the licensed appraiser makes a determination that the damage to the motor vehicle would impact the safe operation of the motor vehicle or would violate the emissions standards as provided for under the Board's regulation, [212 CMR 2.00 et seq.] the appraiser would not be able to remove the inspection sticker as required by the ADALB enabling act [M.G.L. c. 26, § 8G] and the regulation. Moreover, a licensed appraiser conducting an appraisal from a remote location would be unable to make a proper determination as to damage to the undercarriage of a motor vehicle.

Board Member Pare disagreed by stating that during the course of his appraisal work he looks at digital photographs and videos every day. Board Member Pare elaborated that a competent and experienced appraiser can determine from reviewing the videos and photographs whether there appears to be additional damage to the motor vehicle, and make a determination that there is need for further inspection of the damaged motor vehicle. In such an event, Mr. Pare stated that the licensed appraiser would follow-up by requesting the damaged motor vehicle being placed on a lift and would conduct a full assessment of the damage to the undercarriage of the motor vehicle. Mr. Pare asserted that he disagreed with Mr. Johnson's position that the use of videos in this manner is a bad program, and felt it was a good program.

Mr. Starbard felt that the Board should be discussing holding a special public session of the Board and amending the Board's regulation. He also pointed out that there were a variety of circumstances where the undercarriage of a motor vehicle sustains damage and all such damage cannot be determined by the use of video technology or photography from a remote location.

Board Member Pare responded by posing the question: What is the difference between an appraiser going to a consumer's driveway and appraising a motor vehicle and remotely reviewing the motor vehicle damage?

Chairman Cox introduced Robert Whitney, Deputy Commissioner and General Counsel for the Division of Insurance, and requested his input about the Division of Insurance position about the use of digital photography and videos to appraise damage.

Mr. Whitney replied that when approving direct payment plans filed with the Division, the Commissioner has approved plans which use video technology reviewed by a licensed appraiser located at a different or remote location than where the damaged motor vehicle is located. Under these approved plans, the licensed appraiser situated at the remote location specifically directs the use of the video technology and photography by those people who are at the location of the damaged motor vehicle.

Mr. Johnson proclaimed he agreed with the procedure as described by Mr. Whitney, but disagreed with the procedure when the situation involves consumers taking the pictures or videos and sending them to insurance companies. In this situation, licensed appraisers are not engaged in overseeing the videos or photography.

Chairman Cox suggested that the Board should move forward with either amending the regulation or the Advisory Ruling.

Mr. Whitney replied that the Advisory Ruling was issued a long time, discussed at length, and it was his understanding that the Advisory Ruling was supposed to be consistent with the procedure required by the Division of Insurance for approved direct payment plans. The Advisory Ruling was to be read consistently with the Board's regulation which requires any damage that exceeds \$1,500 must be appraised by a licensed appraiser.

Mr. Starbard asserted that the Board should request the data, and the amount of claims submitted by consumers for motor vehicle damage in excess of \$1,500.

Mr. Peter D'Agostino requested permission to speak to the Board and Chairman Cox approved his request. Mr. D'Agostino then began to read at length from the Board's regulation, 212 CMR 2.00 et seq.

Board Member Johnson announced that he would support a proposal to keep the Advisory Ruling in tact until it could be rectified to be consistent with the Board's regulation. A further discussion among the Board Members was held about amending Advisory Ruling 2014-01 as the proper manner in which to proceed or whether a vote should be taken to rescind the Advisory Ruling. At the conclusion of the discussion a motion was made by Board Member Johnson to rescind Advisory Ruling 2014-01.

Board Member Starbard felt that if the Board was going to be conducting a listening session to obtain input from concerned parties, he saw no harm in rescinding Advisory Ruling 2014-01, and Mr. Starbard seconded the motion. A roll call vote was taken by Chairman Cox, voting in favor of the motion to rescind were Board Member Johnson, Board Member Starbard, and Board Member Coyne. Voting against the motion were Chairman Cox and Board Member Pare. The motion passed by a vote of: 3-2.

Executive Session:

Board Counsel Powers noted that the meeting agenda called for the Board to enter Executive Session to discuss certain complaints and other issues. First, complaints had been filed against certain licensed appraisers - Complaint #2015-2, 2015-03, and 2015-04 - and the Board needed to conduct an initial review of the complaints with advice from the Board's Legal Counsel, to determine whether the Board had jurisdiction over these matters by reviewing the facts alleged in the complaint and the applicable law. In short, the initial review would involve conferring with Board Legal Counsel and looking at the facts alleged in the complaints in order to determine whether they were legally sufficient for the Board to move forward with respect to a complaint against an appraiser for the violation of the ADALB's enabling act or regulation.

In addition, Board Counsel noted a complaint had been filed with the Attorney General's Office ("AGO") against the Board by the AASP alleging that the Board had violated the Massachusetts Open Meeting Law by going into an executive session of the Board on June 2, 2015. Under the AGO rules, the Board had to review the complaint with the Counsel to the ADALB, Michael D. Powers, and obtain legal advice about the AASP complaint and vote on whether to designate a representative to respond to it. During the executive session the Board would also be provided with an update and legal advice, by ADALB Legal Counsel, about a letter that had been filed with the Board by a previously licensed appraiser who had threatened legal action against the Board.

Based upon the agenda item and Board Counsel's statements, a motion was made by Board Member Coyne for the Board Members to enter the executive session, amended by Board Member Johnson to include the fact that the Board would not return to the public session at the end of the executive session, the motion was seconded by Chairman Cox. A roll-call of the Board Members was taken and the motion passed by a vote of 4-0, Chairman Cox abstained. The Board went into an executive session.

Complaint 2015-02:

At the previous Board Meeting held on June 2, 2015, the Board discussed Complaint 2015-2, and a motion was made by Board Member Coyne to table the complaint, and a second was made by Chairman Cox. A vote was taken and the motion passed by a vote of: 5-0.

A motion was made by Board Member Starbard to take Complaint 2015-02 from the table, seconded by Board Member Coyne, the motion was passed by a vote of 5-0.

Complaint 2015-02 alleged that the appraiser for an insurance company would only approve payment for used or junkyard parts for the damage to the motor vehicle's suspension system. The licensed appraiser for the auto body shop and the consumer disagreed, and insisted that the parts must be new parts because the use of used parts or junkyard parts could create a potential problem due to the wear and tear on them which could result in the impairment of the safe operation of the motor vehicle in violation of the Board's regulation.

A discussion was held about the complaint, and it appeared in from the facts alleged in the complaint that the licensed motor vehicle damage appraiser for the insurance company

conducted further negotiations, agreed to make a higher payment to cover the cost of new parts for the replacement of the damaged parts that affected the motor vehicle's suspension system, and new parts were placed in the motor vehicle. A motion was made by Board Member Starbard and seconded by Board Member Coyne, for Board Counsel to send a letter to the consumer and the auto body shop and inform them that the general issue of the use of used junkyard parts for repair and replacement of a motor vehicle's suspension system would be further reviewed by the Board. Because it was alleged that the insurance company had paid for the cost of new parts and not used parts or junkyard parts for the motor vehicle's suspension system, and as such no violation of the ADALB statute or regulation transpired, the motion was amended by Board Member Coyne to dismiss the complaint against the licensed appraiser which was seconded by Board Member Starbard. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Complaint 2015-03:

After review and discussion of the complaint, the complaint was found to be legally sufficient to move forward, and a motion was made by Board Member Johnson to send a copy of the complaint to the licensed appraiser named in the complaint, notify him that the matter would be on the Board's agenda for the next Board meeting, and request that he appear to answer allegations made in the complaint at the Board's executive session, or to be held in the public session if the licensed appraiser so chooses. The attorney who filed the complaint was to be notified about the Board's action. A second was made by Board Member Starbard and the motion passed by a vote of 4-0, Chairman Cox abstained.

Complaint 2015-04:

A review was conducted of the complaint and a discussion was held among the Board Members about whether the use of used or junkyard parts for the repair of a motor vehicles' suspension system would violate the Board's regulation such that the use of such parts would impair the safe operation of a motor vehicle and may not be considered of "Like Kind and Quality", under the circumstances being alleged. A consensus of the Board Members was that they had insufficient information at that time to make such a determination and decided to place on the Board's agenda for the next meeting a discussion for issuing an Advisory Ruling about the use of junkyard or used parts for the repair of a motor vehicle suspension system and whether such parts were sufficient to be of Like Kind and Quality as required by the regulation. A motion was made to table Complaint 2015-04, by Board Member Coyne and seconded by Board Member Pare. The motion passed by a vote of 4-0, Chairman Cox abstained.

Chairman Cox made a motion to adjourn seconded by Board Member Starbard and the motion passed by a vote of 5-0.

Whereupon, the Board's business was concluded.

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