



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>

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LIEUTENANT GOVERNOR

GILBERT W. COX JR.
CHAIRMAN

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

Minutes of Meeting of the Board held on August 3, 2016, Approved by the Board at the October 4, 2016, Board Meeting; Motion of Board Member Richard Starbard, Seconded by Board Member Joseph Coyne. The Motion Passed by a Vote of: 3-0, Chairman Cox Abstained and Board Member William Johnson was Not Present for the Vote.

August 3, 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, Executive Secretary

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). Paul Harden, Hanover Insurance Company.

Review of minutes:

The meeting was called to order by Chairman Cox, the minutes of the Board meetings held on June 22, 2016 was submitted for approval. A motion was made by Board Member William Johnson to approve the minutes, as submitted, of the Board meeting held on June 22, 2016, but removing any reference to discussion that were held in the executive session about Complaint 2016-4 and Complaint 2016-5 because those matters are still under consideration in the executive session. A second to the motion was made by Board Member Joseph Coyne, and 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 held on June 28 and scheduled for August 5, 2016:

Board Member Richard Starbard reported that the Part-II examination had been scheduled for June 28, 2016, at The Neighborhood Club in Quincy by James Schlager of Schlager's Auto Body and Repair as a result of assistance provided by a representative of Geico Insurance Company. Mr. Schlager made arrangements to hold the examination at The Neighborhood Club in Quincy, Massachusetts with 45 people selected by the Licensing Unit at the Division of Insurance to participate in the examination.

Of the 45 examinees, 20 passed and 25 failed the examination. Board Member Starbard thanked Peter Smith for his continuing assistance with administering the examination. He requested that a letter be drafted to be sent to James Schlager for his outstanding assistance. A second Part-II examination is scheduled for August 5, 2016, at the Assabet Valley Regional Technical High School.

Board Legal Counsel Michael D. Powers suggested that the Board consider hiring some people to provide a pre-examination preparation course. Board Member Starbard responded that several individuals currently offered pre-examination preparation and mentioned specifically an individual who is associated with the Assabet Valley Regional Technical High School.

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 he submitted it at the last regularly scheduled Board meeting. At the May 25, Board meeting he had been provided with a proposed complaint procedure by Attorney Owen Gallagher, a renowned expert in insurance laws of Massachusetts. At that meeting Legal Counsel Powers informed the Board that he would like to review Attorney Gallagher's proposal, and reported that he was still reviewing suggestions that were made, and was conducting a cross review of other related material such as the Division of Professional Licensures regulation for processing complaints in matters filed against Real Estate Appraisers and the "Manual for Conducting Administrative Adjudicatory Proceedings" (2012 Edition) (Published by the Administrative Law Division of the Government Bureau of the Office of the Attorney General). At that time, Legal Counsel Powers informed the Board that he would be reporting back to them at the next Board meeting with a proposal which may incorporate elements of these materials.

Legal Counsel Powers reported that he received further input the day before the meeting from Peter D'Agostino, lobbyist for the AASP, who suggested that violations of 211 CMR 123.00 and 211 CMR 133.00 should be also added as reasons for filing a complaint against a licensed appraiser, because these two regulations both state that a violation of them can be grounds for suspension or revocation of a motor vehicle damage appraiser's license pursuant to 211 CMR 123.08 (2) and 211 CMR 133.08. Mr. Powers informed the Members of the Board that he agreed with Mr. D'Agostino's opinion and would add that provision into the drafted "Complaint Procedure." Mr. Powers also informed the Board that two days before the meeting he received a further response from Attorney Owen Gallagher, and he was reviewing his comments, agreed

with some of them, and would be revising the Complaint Procedure to comport with them in a manner consistent with the Board's previous discussions.

Board Member William Johnson noted that this drafting process has been very time consuming and he would like to adopt a complaint procedures as soon as possible.

Legal Counsel Powers responded that he agreed that this process was lengthy but only because the intensive review the proposed new Complaint Procedure was undergoing, which included comments from representatives of the auto body and insurance industry. He noted that this apparently would be the first Complaint Procedure the ADALB has formally adopted in its 45 year history. After discussions with Board Members he noted that the current Complaint Procedure was not formally voted on and adopted by the ADALB. Legal Counsel Powers informed the Board that he will report back at the next Board meeting.

A motion was made by Board Member Coyne to table the matter and place it on the agenda for the next meeting. Board Member Johnson seconded 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 calling for any potential 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 and those provided by Board Member Richard Starbard at the May 25, 2016, Board meeting, Board Member Richard Starbard provided an additional proposals that were considered at the Board meeting held on June 22, 2016. During that meeting, Board Member Starbard's proposal was thoroughly discussed and members of the Board made recommended changes. Board Member Starbard agreed to re-write his proposal, adding the changes, and present the new proposed amendments at the next scheduled meeting. The Board extensively discussed the language of these proposed amendments, changes were made, and the following proposed amendments were submitted by Board Member Starbard at the August 3, 2016 Board meeting:

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

Additions (as approved
6/22)

~~Deletions~~ (as approved
6/22)

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.

- (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 prepared by an appraiser licensed by the Board, 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.

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.

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 involved with a claim in the Commonwealth.

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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.

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

~~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.~~

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.

(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**

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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. 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.**

(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 any **appraisal 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

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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

(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 its~~ **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.

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 **\$2,500.00**.

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(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment for the purpose of preparing ~~an 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.

(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.~~

(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 determines that preliminary work repair with the approval of the claimant and shall complete the appraisal after that work has been 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. Manufacturers ~~recommended warranty~~ repair procedures, I-Car, Tec Cor and paint manufacturer procedures ~~shall may also~~ apply. ~~However, the selection of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00.~~ Further, no appraiser shall use more than one manual or system for the sole purpose of gaining an advantage in the negotiation process.

If, while in the performance of his or her duties as ~~an 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.~~ ~~Determination of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00, the appraiser shall recognize that certain parts, including but not limited to; used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle. If both parties agree that a specified part is unfit and must be replaced, the insurer is responsible for paying the retail price 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 materials, and necessary procedures

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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 and negotiated.** 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, **then a published manual database 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.

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 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 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.

(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.

(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

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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) 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, **by the end of the next business day, excluding weekends and holidays**. Within this same period, ~~an licensed~~ **an licensed** appraiser representing the insurer and ~~an licensed~~ **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~~, **by the end of the next business day, excluding weekends and holidays** the **appraiser representing the insurer** and the **appraiser representing 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 ~~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.**

(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 who has been assigned to represent the insurer shall refuse to conduct an appraisal at a repair shop that has custody and control of a customer's vehicle.**

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(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.~~ 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.

2.05: Penalties

(1) 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.

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. Board Member William Johnson requested to make one motion for all of the proposed amendments, as submitted by Board Member Starbard, voting them all up or down at one time and the motion was seconded by Board Member Starbard.

Chairman Cox requested Legal Counsel Powers to explain the procedure after the Board voted on the proposed amendments. Mr. Powers responded that this proposed amendments would be presented to the Office of the General Counsel for the Division of Insurance to be reviewed and passed on up the chain of command all the way to the Office of the Secretary of Administration and Finance if need be.

Board Member Starbard then explained the proposed amendments that were submitted to the Board for their consideration. Mr. Starbard said that the proposed amendments that were presented at the Board meeting were the result of the votes taken at previous Board meetings and this language was the result of these language changes submitted at those meetings.

Chairman Cox responded that the Board had previously agreed to take each proposed amendment for a vote one at a time, item for item, and that should be the method used for the votes. Board Member Johnson agreed to withdraw his motion, and Chairman Cox allowed Mr. Johnson to withdraw the motion.

Chairman Cox then began discussing the first proposed amendment and read the first proposed amendment:

2.01: Scope of Regulations

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.**

Chairman Cox read the proposed amendments as written above in its entirety. Chairman Cox then made a motion to adopt this proposed amendment. He asked for a show of hands for those supporting the motion to amend the regulation by adding in the new words written in red. Board Member Johnson and Board Member Starbard raised their right hands indicating that they would be in favor. Chairman Cox asked those members who would be opposed to adopting this language to raise their right hands, and Board Members Coyne and Pare raised their hands indicating that they would be opposed.

Chairman Cox then stated that before the Chairman would vote to make or break a tie, he wanted a little discussion whether the Board has the right to change the regulation that would affect the Insurance Commissioner and asked Legal Counsel Powers whether he had an opinion.

Legal Counsel Powers responded that this amendment would appear to create a conflict between the Board and the Commissioner of Insurance because it appears to trump the regulatory authority of the Commissioner of Insurance.

Board Member Joseph Coyne stated that he would vote against all of the proposed amendments because they do not comply with Governor Baker's Executive Order requiring regulations to be streamlined, reduce the cost of doing business in the Commonwealth, and not fact increase costs as many of the proposed amendments would do.

Board Member Starbard disagreed by stating the proposed amendments were just cleaning-up language, making things clearer, while providing clarity to existing language, and updating language such as that found in the regulation about the use of written manuals for determining the costs for paint and materials because written manuals are no longer commonly used in the auto body industry.

Board Member Johnson agreed and asserted that many of these changes were addressing issues raised by the insurance industry. The Board spent a lot of time on "tear-down" procedures and now Board Members are changing their positions.

Chairman Cox asserted that the ADALB is a licensing Board and as such is not authorized to tell the Insurance Companies and the Commissioner of Insurance what to do, or for that matter insurance companies how they are to conduct business.

Chairman Cox then addressed the first proposed amendment which would insert the red-colored words into the regulation and said that he was casting his vote against it. Board Member Johnson's motion would fail by a vote of 2-3, with Board Members Johnson and Starbard voting in favor and Board Members Coyne and Pare voting against with Chairman Cox voting against. Chairman Cox said that we need another motion that asserted the proposed amendment would not be inserted into the regulation.

Mr. Starbard felt that all the proposed language did was clarify matters.

Chairman Cox said if we put this into the regulation we are going to war with the Commissioner of Insurance.

Board Member Johnson asserted that the language should be left in and allow the review by the Office of the General Counsel and the powers that be take it out, they take it out.

Chairman Cox called for a vote **to not include** this proposed amendment to the regulation, Board Member Coyne made the motion and Board Member Pare seconded the motion, and the vote passed by a vote of: 3-2, Chairman Cox voting in the affirmative, with Board Member Johnson and Board Member Starbard voting against. This proposed amendment was removed.

The next proposed amendment addressed by the Board was to change the definition of "Appraisal" in the following manner:

(4) Definitions.

Appraisal – means a ~~written~~ motor vehicle damage report prepared by an appraiser licensed by the Board, 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.

Chairman Cox read the proposed amendments as written above in its entirety. A motion was made to approve this proposed amendment by Board Member Johnson which was seconded by Board Member Starbard. The motion was approved by a vote of: 3-2, with Board Member Johnson, Board Member Starbard, and Chairman Cox voting in favor, while Board Member Coyne and Board Member Pare voted in opposition.

The next proposed amendment would add the following new definition to the regulation:

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

Chairman Cox read the proposed amendment as written above in its entirety. Board Member Johnson made a motion to approve this proposed amendment, and the motion was seconded by Board Member Starbard. Chairman Cox called for a vote, and the motion passed by a vote of: 3-2, Board Member Johnson, Board Member Starbard, and Chairman Cox voted in favor with Board Member Coyne and Board Member Pare voting against.

The Chairman then called for a motion on the following new proposed definition to the regulation:

Insurer - means any insurance company involved with a claim in the Commonwealth.

Chairman Cox read the proposed amendment as written above in its entirety. Board Member Starbard made a motion to approve the proposed amendment, and the motion was seconded by Board Member Johnson.

Chairman Cox asked for discussion. Board Member Starbard stated that this was added as a result of an issue raised by Mr. Coyne, to clarify that any insurance company doing business in Massachusetts would be subject to the Board's regulation.

Chairman Cox called for a vote on the motion, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the following new definition to the regulation:

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.

Chairman Cox read the proposed amendment as written above in its entirety. Chairman Cox called for a motion to adopt the proposed new definition to the regulation and Mr. Starbard made the motion which was seconded by Board Member Johnson. The motion passed by a vote of: 3-2 with Board Member Johnson, Board Member Starbard, and Chairman Cox voting in favor while Board Member Coyne and Board Member Pare voted in opposition.

The next proposed amendment would add the following new definition to the regulation:

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

Chairman Cox read the proposed amendment as written above in its entirety. Chairman Cox called for a motion to adopt the proposed new definition to the regulation and Mr. Johnson made the motion which was seconded by Board Member Starbard.

Chairman Cox called for discussion. Board Member Starbard responded that a lot of this stuff was covered by statements and comments submitted by the insurance industry, involves clarity, and meets the Governor's Executive Order to streamline regulations and making regulations more clear and concise.

The motion passed by a vote of: 3-0 with Board Member Johnson, Board Member Starbard, and Board Member Pare voting in favor and Board Member Coyne and Chairman Cox abstaining.

The next proposed amendment was to delete the following definition contained in the regulation:

~~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.~~

Chairman Cox read the proposed amendment as written in its entirety. Chairman Cox asked for discussion and Board Member Starbard responded that this language was recommended for removal because the training of employees by insurance companies is the responsibility of the employer and has nothing to do with an element of an appraisal and, therefore, this is not needed in our regulation.

Chairman Cox called for a motion to remove this language from the regulation, and Mr. Johnson made the motion which was seconded by Board Member Starbard. The motion passed by a vote of: 3-2 with Board Member Johnson, Board Member Starbard, and Chairman Cox voting in favor while Board Member Coyne and Board Member Pare voted in opposition.

The next proposed amendment was to add the red-colored words and comma, while deleting the following words in the regulation:

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.

Chairman Cox read the proposed amendment as written in its entirety. Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Johnson and seconded by Board Member Starbard. Chairman Cox called for discussion and Board Member Starbard responded by stating that this language was only placed in to clean-up and align the regulation with the other proposed amendments and make it consistent with the new definitions.

The motion passed by a vote of: 3-1 with Board Member Johnson, Board Member Starbard, and Board Member Coyne voting in favor while Board Member Pare voted in opposition with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored word and delete the following word in the regulation:

(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.

Chairman Cox Chairman Cox read the proposed amendment as written in its entirety. Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Johnson to approve the amendment as presented, and the motion was seconded by Board Member Starbard. Chairman Cox called for discussion and Board Member Starbard responded by stating, again Mr. Chairman this is only to clarify and align the language in the regulation.

Chairman Cox called for a vote on the motion and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored word and delete the following words in the regulation:

(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 ~~license~~ 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.

Chairman Cox read the proposed amendment as written in its entirety. Chairman Cox called for discussion and Board Member Johnson responded that this amendment is only made to bring this part of the regulation in-line with the new definitions. Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Johnson and seconded by Board Member Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored words and delete the following words in the regulation:

(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.

Chairman Cox read the proposed amendment as written ending at the word "~~insurer.~~" Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. Chairman Cox called for discussion and Board Member Starbard responded that the amendment was to provide clarity and to align the language with the new definitions.

The motion passed by a vote of: 3-1 with Board Member Johnson, Board Member Starbard, and Board Member Coyne voting in favor while Board Member Pare voted in opposition with Chairman Cox abstaining.

The next proposed amendment was to delete the following words in the regulation:

(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.

Chairman Cox said that he would not read the entire language of section, and he said the amendment only called for deleting the words “auto damage.” Chairman Cox called for a motion on this proposed amendment, the motion was made by Board Member Johnson, and seconded by Board Member Starbard. Chairman Cox called for discussion and Board Member Starbard responded that once again the proposed amendment was to align this section with the proposed new definitions.

The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored words and delete the following words in the regulation:

(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.

Chairman Cox stated that the amendments of this subsection may involve some conflict so he suggested the Board vote on these proposed amendments in parts. He then referenced the above amendments and called for a motion to change the regulation by adding the two new red-colored language changes and delete the two language changes as written because these were probably non-controversial. Chairman Cox then read the additions and deletions.

A motion was made by Board Member Johnson to change the above-portion of the “Conflict of Interest” section of the regulation by inserting the two new language changes and deleting the two proposed deletions to the regulation. The motion was seconded by Board Member Starbard.

Chairman Cox called for discussion. Board Member Starbard responded by stating, again the proposed amendments are to align this with the new proposed definitions.

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

Chairman Cox read the below written language and then said he had left out one reference to the word “licensed” in the following proposed amendment:

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.

Chairman Cox then stated let’s deal with this separately. We will have a motion for the deletion of the word “**licensed**” in front of the word “appraiser.” A motion was made by Board Member Johnson and seconded by Board Member Starbard to delete the word “**licensed**” as provided for in the above-written portion of this part of the regulation and seconded by Board Member Johnson. Chairman Cox called for a vote and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Chairman Cox then read the following:

It shall be a conflict of interest if any 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.

Chairman Cox asked Legal Counsel Powers if he had an opinion about this proposed amendment, before Mr. Powers responded Board Member Johnson volunteered that this language is already contained in the Mass. General Laws. He said this language is already in place and only reiterating what is in the Mass. General Laws.

Chairman Cox called for a motion to approve. The motion to approve the proposed changed language by inserting the red-lettered words into this portion of the regulation was made by Board Member Starbard and seconded by Board Member Johnson.

Chairman Cox called for a discussion on the motion. Chairman Cox queried, does this get rid of drive-in appraisals in some way? Board Member Johnson responded “no”.

Chairman Cox asked Board Member Coyne if he had an issue with this new language. Board Member Coyne responded that he did not have any problem with the “Conflict of Interest” language contained in the old regulation [existing]. Board Member Coyne then read the language contained in the existing language about conflict of interest. “(7) Conflict of Interest. It shall be a conflict of interest for any appraiser who has been assigned to 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 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.

It shall be a conflict of interest if any licensed appraiser operates a Drive-in Appraisal Service for an insurer at a repair shop.”

Board Member Johnson opined that the new proposed language is a lot shorter and mirrors the MGL that is in existence. He concluded, to him it was a win, win.

Chairman Cox asked is this a restatement of chapter 26 of the General Laws and Board Member Johnson responded yes it is. Board Member Starbard agreed by stating it was contained in MGL 26, Section 8G.

Chairman Cox asked Board Member Coyne to spell out why this restatement of the statute was objectionable.

Board Member Pare opined, assuming this is already in the General Laws, and because it is already there, what is the point of repeating this in the regulation.

Board Member Starbard said that there was some anti-competitive behavior at the Drive-in Appraisal Service operations and the Board should highlight this in the law, and he concluded our own regulation has been in conflict with the law. Mr. Starbard received a copy of MGL chapter 26, section 8G from Peter D’Agostino and then read the conflict of interest language contained in the statute. He concluded that making these proposed changes makes it less wordy and brings the regulation in compliance with existing law.

Board Member Coyne responded that G.L. chapter 26, Section 8G has to do with the insurance company and has nothing to do with the licensed appraiser. Mr. Coyne pointed out that the proposed language would give the Board jurisdiction over insurance agencies or their representatives and the Board has no jurisdiction over them. Board Member Coyne advocated, we should leave the Conflict of Interest language as it stands in the current regulation. Chairman Cox asked Board Member Coyne to re-read the current Conflict of Interest language contained in the current regulation and Mr. Coyne re-read the language by stating:

It shall be a conflict of interest for any appraiser who has been assigned to 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 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.

It shall be a conflict of interest if any licensed appraiser operates a Drive-in Appraisal Service for an insurer at a repair shop.

Board Member Coyne concluded by declaring, this language is cut and dry and the Board has no authority to regulate insurance companies, just insurance appraisers.

Board Member Johnson responded it would be hard to conceive of a situation whereby an insurance appraiser is not a representative of the insurance company, he believed that Mr. Coyne and Mr. Pare were originally in agreement with this proposed language and he added that this language would be helpful to consumers.

Chairman Cox read the proposed language again. Chairman Cox asked Board Member Coyne again, what is your objection?

Board Member Coyne responded, the Board would be overreaching our boundaries.

Chairman Cox asked Legal Counsel Powers to provide an opinion about the new language that was being proposed in the second paragraph. Legal Counsel Powers stated that the language expands the jurisdiction of the Board over insurance companies, agents, or insurance agencies, and, therefore, based on this proposed new language the Board would be hearing complaints against insurance companies, insurance agencies, and insurance producers. He concluded, the Board does not have any jurisdiction over insurance agencies or insurance producers, the Commissioner of Insurance does.

Mr. Powers queried whether any members of the Board could recall an occasion where a licensed insurance producer or an insurance agency had a complaint filed against it and was brought before the Board. Chairman Cox responded that Mr. Powers makes a good point.

Board Member Johnson suggested an amendment to the proposed language by deleting the words, “or employee, agent or insurance agency or representative thereof” and adopting the remaining language.

Chairman Cox responded that Mr. Coyne may be correct, and this may have an unintended consequence.

Board Member Johnson declared, we are only cleaning-up the language of the regulation and it favors consumers.

Board Member Coyne replied that we have no jurisdiction over these any of types of entities, insurance adjusters or insurance appraisers.

Chairman Cox said let’s first vote on the language the way it was proposed. He added, Mr. Johnson could amend the motion and asked Mr. Johnson if he would like to amend it. Mr. Johnson thereupon suggested adding some language and deleted some of the proposed language by stating, or employee, agent or insurance agency or representative and added “no insurance company appraiser.”

Board Member Johnson said that he was only trying to prevent insurance companies or their representatives from telling consumers they could only go to a specific auto body shop.

Board Member Pare asked is the issue one that is against the insurance company, or the appraiser.

Board Member Johnson responded the appraiser is telling the consumer and to him the insurance company appraiser and the insurance company are the same.

Board Member Pare asserted that the Board lacks jurisdiction over insurance companies, and he opined, we are only here to oversee the conduct of the appraiser. Mr. Pare concluded that he was totally against the amendment.

Chairman Cox said we first must deal with the amendment to the motion. He thereupon asked for a motion to amend the proposed language in the manner stated by Board Member Johnson, and the amended language was added to the pending motion by a vote of 3-2 with the Chairman voting in favor and Coyne and Pare voting against.

Chairman Cox said that he had a problem with the proposed language. Mr. Starbard read the language contained in MGL Chapter 26, Section 8G and said that this was only restating the law.

Board Member Coyne disagreed. Board Members Johnson and Pare repeated their original arguments.

Chairman Cox called for a motion on this proposed amendment. The motion was made by Board Member Starbard and seconded by Board Member Johnson, and the motion was defeated by a vote of: 2-3 with Board Members Johnson and Starbard in favor and Board Members Coyne and Pare opposed with Chairman Cox voting against.

Board Member Coyne made a motion to leave section 7, the “Conflict of Interest” section in as written but adding the procedural amendments, housekeeping changes, to make the section conform to the new proposed definitions, and the motion was seconded by Board Member Pare. The motion passed by a vote of: 3-2 with Board Members Coyne and Pare in favor along with Chairman Cox voting in favor and Board Members Johnson and Starbard voting against. The new proposed language to this portion of the “Conflict of Interest” section reads as follows:

It shall be a conflict of interest if any ~~licensed~~ appraiser operates a Drive-in Appraisal Service.

The remainder of the Conflict of Interest section of the regulation remains the same.

Board Member Johnson inquired where are we with the language for the proposed amendment, we should have clarification. Board Member Coyne responded that we have retained the current language with the minor change. Board Member Coyne then read the new proposed language by stating:

It shall be a conflict of interest for any appraiser who has been assigned to 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 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 vehicle[s] 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. It shall be a conflict of interest if any ~~licensed~~ appraiser operates a Drive-in Appraisal Service for an insurer at a repair shop.”

Chairman Cox said we’ll move on the next item. It appears we are cleaning things up by adding the word “appraisal” the red-colored word, and deleting the following words in the regulation:

(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 any-~~appraisal~~ ~~motor vehicle damage report~~. The following acts or practice 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;

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red colored-letters and delete the following section (e) and words in the regulation and, thereby, changing the subsections:

~~(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

Chairman Cox read the language to be deleted and asked Board Member Coyne what his position was and he responded that he was against this change. Board Member Johnson said that they had added some of the language of the proposed amendment in response to Mr. Coyne's concerns.

Board Member Coyne asked Mr. Pare what his opinion was. Board Member Pare said he was not comfortable with the language because it forced the insurance companies to deal with hostile auto body shop appraisers.

Board Member Johnson said this change was good for consumers.

Board Member Coyne asserted that he was against this proposed change because this subsection was in the regulation for a very good reason. Insurance companies have a right to have access to a motor vehicle which has been damaged and that an insurance company will be making payments for. To deny insurance companies access to a damaged motor vehicle is inappropriate and, therefore, Mr. Coyne asserted that this language must be kept in the regulation. Mr. Coyne added that the Board does not have jurisdiction over insurance companies, if an insurance company doesn't want to work with an auto body shop, they don't have to do business with such an auto body shop.

Chairman Cox read the proposed language again.

Board Member Pare asserted that because of the increased hostility that he found at certain auto body repair shops, he would be against deleting this language and believed that insurance companies should be provided reasonable access to damaged motor vehicles to determine the cause of the damage and approve payments for legitimate work.

The Board Members engaged in a discussion, repeating their previous positions in favor and against the proposed language. For instance, Board Member Coyne reiterated his position that the existing language should stay as is.

Chairman Cox called for a motion in favor of this proposed amendment, the motion was made by Board Member Starbard, and seconded by Board Member Johnson. The motion was defeated by a vote of: 2-3 Board Members Starbard and Johnson voting in favor with Board Members Coyne, Pare, and Chairman Cox voting against. Consequently, the current subsection (e) remains in the regulation and there is no need to re-order the other subsections.

The next proposed amendment was to add the red-colored words and delete the following words from the regulation:

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 ~~whether staff or independent~~ **working on their behalf**, and shall be subject to the applicable penalties under law for any violation of 212 CMR 2.00 by its appraiser.

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.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored number “1” the words, and delete the following words from this section of the regulation:

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 \$~~2,500.00~~.

Chairman Cox said that he did not know if the Board could vote this as a single vote and separate the vote to adopt the procedural changes and deal separately with the change to “~~less any applicable deductible,~~” and the increased threshold of \$~~2,500.00~~.

Chairman Cox called for a motion for language clean-up, and Board Member Starbard made the motion seconded by Board Member Johnson to change the current regulation by adding the following red-colored words and deleting the following black stricken words:

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,

The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Chairman Cox stated that the next motion would address the remaining proposed language of: ~~less any applicable deductible~~, is less than \$2,500.00.

Board Member Johnson opined that he had second thoughts about increasing the amount of the deductible from the current level of \$1,500.00 and felt that the amount of \$2,500.00 was not consumer friendly, and he would decrease the threshold amount to \$1,000.00.

Mr. Johnson motion would also accept the deletion of the language of “Less any applicable deductible” while decreasing the threshold amount to \$1,000.

Board Member Starbard asserted that he had originally agreed to the \$2,500.00 as a compromise and felt that reducing the amount to \$1,000.00 would aid the consumer.

Chairman Cox stated that we should break this into two votes first the removing the language about “less any deductible” then the deductible amount of reducing the \$2,500.00 to \$1,000.00

Mr. Starbard made a motion to remove the current language stating “less any deductible” and the motion was seconded by Board Member Johnson. The motion passed by a vote of 3-2 with Chairman Cox and Board Members Johnson and Starbard voting to remove the language, and Board Member Coyne and Board Member Pare voting against.

Chairman Cox then went on to the second issue of reducing the amount of the threshold for conducting appraisals of motor vehicle damage from \$2,500.00 to \$1,000.00

Board member Starbard asserted that \$2,500.00 was too high because it was very close to the average claim of damage to a motor vehicle and this higher number would harm consumers.

A Motion was made by Board Member Starbard to reduce the threshold amount from the current \$1,500.00 down to \$1,000.00 requiring an appraisal to the damage to a motor vehicle and accept the deletion of the current language of “less any applicable deductible”. The motion was seconded by Board Member Johnson.

Board Member Pare felt that the minimum amount of damage requiring an appraisal should be set at \$2,500.00.

The motion was call to a vote to change the proposal from \$2,500.00 to \$1,000.00 and the motion was defeated by a vote of: 2-3 with Chairman Cox, Board Member Coyne and Board Member Pare voting against while Board Member Johnson and Board Member Starbard voted for the motion.

The Chairman then called for a motion to leave the threshold amount at \$1,500.00 and asked if someone wanted to make that motion. Board Member Starbard made the motion to leave the amount at \$1,500.00 and it was seconded by Board Member Johnson, the motion passed by a vote

of: 3-2 with Chairman Cox, Board Member Johnson and Board Member Starbard voting in favor and Board Member Coyne and Board Member Pare voting against.

Board Member Coyne asked Chairman Cox whether the vote just taken would maintain the current language. Chairman Cox asked what have we done? We've kept the \$1,500.00 threshold but deleted the language "less any applicable deductible". The consensus of the Board was that was the upshot of the votes.

The next proposed amendment was to add the red-colored words, and delete the following words from this section of the regulation:

(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment for the purpose of preparing an ~~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.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Johnson and seconded by Board Member Starbard. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed amendment was to add the red-colored words, and delete the following words from this section of the regulation:

(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.~~

Chairman Cox said that this change also looked like it was an administrative change. Chairman Cox asked Board Member Coyne whether the deletion of the words, "~~The provisions of 212 CMR 2.04(c) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00.~~" was bothersome. Chairman Cox questioned whether this language challenged the Insurance Commissioner and whether he would approve of it.

Board Member Johnson opined that he didn't think that there wasn't anything in 211 CMR 133 that allowed insurance companies to ignore 212 CMR 2.00.

Chairman Cox called for a motion on this proposed amendment and the motion was made by Board Member Starbard and seconded by Board Member Johnson. The motion passed by a vote of: 3-2 with Board Member Johnson, Board Member Starbard, and Chairman Cox voting in favor, while Board Members Coyne and Pare voted against.

The next proposed amendment was to add the red-colored words, and deleting the words from the following section of the regulation:

(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 determines that preliminary work repair with the approval of the claimant and shall complete that appraisal after that works has been [done]. 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. Manufacturers ~~recommended warranty~~ repair procedures, I-Car, Tec Cor and paint manufacturer procedures shall ~~may also~~ apply. ~~However, the selection of parts shall comply with 211 CMR 133. and 212 CMR 2.00.~~ Further, no appraiser shall use more than one manual or system for the sole purpose of gaining an advantage in the negotiation process.

If, while in the performance of his or her duties as ~~an~~ 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.~~ ~~Determination of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00, the appraiser shall recognize that certain parts, including but not limited to; used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle. If both parties agree that a specified part is unfit and must be replaced, the insurer is responsible for paying the retail price 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 and 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 and negotiated.~~

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~~, **then a published manual database 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.

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 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 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.

It was suggested that the first section of these proposed amendments to the regulation could be taken up for a vote because it involved procedural changes to the regulation, was not substantive, and it was not controversial. The Board agreed to vote on adopting the new proposed language of the following section by deleting the word “insurance company”, the word “registered”, and the word “warranty” and adding the red-colored words:

(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 determines that preliminary work repair with the approval of the claimant and shall complete that appraisal after that works has been [done]. 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 date system** (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturers **recommended** ~~warranty~~ repair procedures, I-Car, Tec Cor and paint

manufacturer procedures ~~shall may also~~ apply. **However, the selection of parts shall comply with 211 CMR 133. and 212 CMR 2.00.**

Further, no appraiser shall use more than one manual or system for the sole purpose of gaining an advantage in the negotiation process.

Chairman Cox requested a motion to approve the above proposed language as submitted and the motion was made by Board Member Johnson and seconded by Board Member Starbard. The motion passed by a vote of: 3-1 Board Member Coyne voting against with Chairman Cox abstaining.

Chairman Cox then addressed the following proposed language.

If, while in the performance of his or her duties as ~~an licensed auto-damage~~ 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.

Chairman Cox called for a motion and a motion was made by Board Member Johnson seconded by Board Member Starbard. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed language that Chairman Cox read was the following:

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.

Chairman Cox called for a motion and a motion was made by Board Member Johnson seconded by Board Member Starbard. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The next proposed change that Chairman Cox read was for the following:

The appraiser shall determine which parts are to be used in the repair process. ~~in accordance with 211 CMR 133.00.~~ **Determination of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00, the appraiser shall recognize that certain parts, including but not limited to; used suspension and steering parts that contain wearable components may affect the operational safety of the vehicle. If both parties agree that a specified part is unfit and must be replaced, the insurer is responsible for paying the retail price 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 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 and negotiated.**

Board Member Johnson made a motion to approve this proposed language and the motion was seconded by Board Member Starbard.

Chairman Cox called for discussion and asked is this increasing cost to consumers? The consensus of the Board was that all parties had to agree about the use of the parts before they were returned. The motion passed by a vote of: 3-2 with Chairman Cox voting in the affirmative and Board Members Coyne and Pare voting against.

Before taking up the next proposed changes Chairman Cox stated that he recognized that this new proposed language would create additional costs. Chairman Cox asked are we going to have a problem with a published manual. He said that right now the Board has not approved or disapproved the use of any published manual. Board Member Starbard stated that right now the Board approved the Mitchell Guide and the Board is supposed to approve all manuals or guides. Chairman Cox said that by adopting this language the Board we be approving all manuals and databases. He opined that the Board does not have the expertise of wherewithal to approve all databases.

Board Member asked about the opinion of Board Member Pare and Board Member Pare stated that we are now talking paint and materials.

There was a debate over whether this portion could be separated from the other costs items referenced in this section. Chairman Cox said he would be only be talking about the first paragraph. Chairman Cox did not see how we are going to deal with a database list and queried, whether by adopting this new language the Board would be increasing costs of repairing damaged motor vehicles. After reading the letter from the Massachusetts Insurance Federation about the Governor's Executive Order [number 562], governing the amendment of regulations, Chairman Cox declared that he was aware that the Governor's Executive Order required boards to reduce costs. The proposed language was the following:

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 and negotiated.**

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, **then a published manual database 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.

Chairman Cox asked if there was a case brought against the Board for establishing databases that had to be used when setting rates for paint and paint materials and Board Member Pare agreed, citing a case brought by the Commerce Insurance Company vs. the Auto Damage Appraiser Licensing Board. Chairman Cox recalled that the Attorney General's Office refused to represent the Board in the case brought by Commerce Insurance Company. Board Member Pare elaborated that the Auto Damage Appraiser Licensing Board was the subject of two lawsuits because of attempting to regulate prices paid to auto body shops for labor rates for paint and materials. Board Member Coyne agreed by stating that it would be considered price fixing.

Board Member Starbard suggested that an insurer is allowed to pay anything that they want to the auto body shops.

Board Member Johnson suggested that if the auto body shops don't use manuals for paint and materials then the auto body shops do not have to use manuals for any of the other repairs.

The Board debated their previous vote about setting costs within the same proposed language as being within the same section, and whether these votes should be all tied in together.

Board Member Johnson made a motion to reconsider the previous vote taken, seconded by Mr. Starbard. A vote was then taken on the motion to reconsider and passed by a vote of: 4-0 with Chairman Cox abstaining.

Discussion was begun and Board Member Coyne felt that these costs were part of the overhead costs of auto body shops and the costs of doing business, and he felt that the regulation was fine as written.

Board Member Johnson disagreed by stating that the overhead costs are fixed costs of operating auto body shops and are those types of costs are the ones you incur by turning the key when you open the shop. Costs incurred by an unanticipated return of a part are not overhead costs caused by a part that does not fit.

Chairman Cox declared that the letter from the Massachusetts Insurance Federation talks about the Governor's Executive Order, that costs cannot exceed the benefits of the results and stated, there is no doubt in my mind that this is going to involve additional costs but must be fair play.

Chairman Cox then clarified the vote is now clear that it will include the whole previous paragraph but exclude the paragraph beginning with the word “negotiated”. He then elaborated, because there was a court case that involved paint and materials he would vote against this proposed language.

Board Member Starbard suggested that the Chairman should consider changing the language of the regulation so that a future court case would be resolved favorably.

Chairman Cox asked Board Member Coyne to read the current language. Board Member Coyne read the current language beginning at “with respect to paint and materials” to the end of the paragraph.

Chairman Cox said let’s first vote on the proposed language. Board Member Starbard made a motion that the Board adopt the language as submitted and the motion was seconded by Board Member Johnson. The motion was defeated by a vote of: 2-3 with Chairman Cox voting against along with Board Member Coyne and Board Member Pare.

Board Member Coyne made a motion that the current language in the regulation remain the same with the exception of changing the word “manual” to “database” and the motion was seconded by Board Member Pare. The motion passed by a vote of: 3-1 with Board Member Johnson voting against and Chairman Cox abstaining.

Chairman Cox then stated the Board would move on to the next proposed language change in the regulation beginning with the words “The appraiser” and adding the words “representing the insurer” shall mail fax or electronically submit replacing the word “transmit” the completed appraisal...” Chairman Cox said that these appeared to be just clean-up and asked for a motion.

Board Member Johnson made a motion to approve the deletions and additions as noted in the following section seconded by Board Member Starbard and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

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 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 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.

The Board then addressed the following proposed changes to this section of the regulation:

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.

The Chairman called for a motion to adopt the proposed changes specifically pointing to the word of “personally” inspecting the damage. Board Member Johnson made the motion seconded by Board Member Starbard and the motion passed by a vote of: 3-2 with Board Member Pare and Board Member Coyne voting against.

Board Member Pare said that we often have cars that are over 8 years old and may be involved in a roll over and there really is no need to personally inspect cars in these situations.

Board Member Johnson said that there are often times when a car may be totaled and the insurance company appraiser takes his time and determining the total loss but the auto body company is stuck with storage charges this just helps consumers.

The Chairman then addressed the next item for the proposed language change with the following additions and deletions:

(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.

Board Members Johnson and Starbard began the discussion by stating that the 2 day requirement conforms to the Massachusetts General Laws. Board Member Johnson said the CMR was wrong and these changes are just following the law.

Board Member Pare said that personally speaking he could not say this change is not a problem for his company but he could not speak as to how it would affect other companies.

Chairman Cox called for a motion to approve the changes and a motion was made by Board Member Starbard seconded by Board Member Johnson.

Chairman Cox called for a discussion on the motion.

Board Member Coyne first asked if the Board was approving the whole change in the motion before the Board including the language that states, “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.” Board Member Johnson responded that the motion included all the language.

Board Member Coyne replied that he had a problem with accepting this language. The insurer has the right to approve any work or costs for repairing the car. If the insurer is not out there in two days then they lose the right to review the work and damage. The insurance company has the right to see the damage to a motor vehicle and requiring it be done within two days or the insurance company will lose out, it cannot be consistent with the law.

Chairman Cox asked Board Member whether there would be a problem deleting the language about using the supplemental.

Board Member Starbard asserted that the language allows for “otherwise agreed upon” by the parties. The problem that the auto body shop when the insurer delays appearing at the shop the consumer suffers because the delay could result a delay in repair and the consumer losses time for a rental vehicle which will only be allowed for limited time by the insurance company.

Board Member Coyne reiterated his previous statement but added, how can an insurance company be forced to accept a supplemental appraisal? Concluding that adding this type of language to the regulation will result in additional costs to consumers and will only lead to an arbitration.

The Board Members debated back and forth between the insurance companies’ views and auto body shop industries’ views about the issue.

Chairman Cox queried, are we adding to consumer costs and placing additional costs on insurance companies?

Board Member Johnson said that conversely you could argue that by not approving the proposed changes the damaged motor vehicle could be allowed to sit in the shop for several days and

additional costs will be had for storage costs and additional costs for a rental vehicle by the consumer.

Board Member Coyne asserted that the insurance company has the right to review the damage.

Chairman Cox asked whether Board Member Johnson could come up with compromise language and the Board Members continued to debate the issue whether the proposed language should be approved.

Board Member Starbard concluded the debate by stating that the way the proposed change to the regulation is written is perfectly fine and the Board continued to debate the topic.

Mr. Starbard made a motion to adopt the proposed language as an amendment to the regulation, as submitted which was seconded by Board Member Johnson. The motion was defeated by a vote of: 2-3 with Board Members Johnson and Starbard voting in favor and Board Members Coyne and Pare voted against joined in by Chairman Cox.

Board Member Johnson made another motion for this proposed language by deleting the words, “**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**” and adopting the remaining language as submitted that bring the paragraph in compliance with the other administrative changes up to subsection (i), and Board Member Starbard seconded the motion. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Chairman Cox then addressed subsection (i) as submitted with the following proposed changes:

(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 its decision as to whether it accepts the requested supplemental appraisal allowance, **by the end of the next business day, excluding weekends and holidays**. 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~~ **by the end of the next business day, excluding weekends and holidays** the **appraiser representing the** insurer and the **appraiser representing** 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.

Board Member Johnson to accept the proposed language as submitted and seconded by Board Member Starbard. For clarification Board Member Coyne asked if he were to call for an expedited supplemental appraisal on Friday does the insurer have Tuesday to get back to you. Board Member Johnson said that it would be until the close of business on Monday, excluding Saturday, Sundays and holidays.

Board Member Pare pointed out that the expedited supplemental appraisal must be by agreement with the insurance company's appraiser.

Chairman Cox called for a vote and the motion was opposed by Board Member Coyne and Pare while Board Members Johnson and Starbard indicated that they would vote in favor. Chairman Cox stated that he would vote in the affirmative unless someone could give him a reason not to and further discussion ensued.

Board Member Coyne disagreed with the proposed changes because insurance companies are very busy on Fridays and Mondays and this change would reduce the time in which an insurance company has to review the matter. The bulk of the claims are taken on Fridays and Mondays and this change would not give the insurance companies enough time to process these types of claims.

Board Member Starbard opined that under the current regulation the insurance company appraisers must be out in a shortened period of time.

Chairman Cox called for a recess and stated that when he returned he would decide how to vote.

Chairman Cox returned from the recess and said he would vote in favor of the motion and Board Member Starbard made a motion to approve the proposed changes as submitted and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 3-2 Board Members Johnson and Starbard voting in the affirmative along with Chairman Cox, and Board Members Coyne and Pare voting against.

Chairman Cox then submitted these proposed changes adding the red colored words and deleting the following words in this subsection of the regulation:

(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.**

Board Member Johnson said that the proposed language is only language that is found in the standard insurance contract.

Board Member Pare said the proposed change, changes nothing. He repeated his assertion that proposed language changes nothing and Board Member Johnson agreed.

Chairman Cox called for a motion to approve these proposed changes as submitted. Board Member Johnson made the motion which was seconded by Board Member Starbard. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Chairman Cox then submitted these proposed changes adding the red-colored words and this new subsection to the regulation:

(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 who has been assigned to represent the insurer shall refuse to conduct an appraisal at a repair shop that has custody and control of a customer's vehicle.

Board Member Johnson stated that he found that it would be unfair to allow the insurance company's appraiser to refuse to appear at a shop, the insurance company's appraiser should be held to the same standard as the auto body shop.

Board Member Pare disagreed with this proposed language because it was unfair requiring an insurance companies' appraisers to appear at repair shops where the people running the repair shops are unreasonable. Board Member Coyne agreed with Mr. Pare.

Chairman Cox called for a motion to approve the language as submitted which was made by Board Member Johnson and seconded by Board Member Starbard. The motion failed by a vote of: 2-3 with Board Member Johnson and Board Member Starbard voting in favor and Chairman Cox along with Board Members Coyne and Pare opposed.

Chairman Cox then submitted these proposed changes adding the red-colored words and deleting the following words to this subsection of the regulation:

(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.~~ 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.

Chairman Cox called for a motion and a motion was made by Board Member Coyne to adopt this proposed amendment as submitted and a second was made by Board Member Starbard. The motion passed by a vote of 4-0 with Chairman Cox abstaining.

The last proposed amendment to the regulation was for striking the word "licensed" in the following section:

2.05: Penalties

- (1) 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 maybe reported to the Division of Insurance which may impose applicable penalties against such an insurer.

Chairman Cox called for a motion to accept the minor clean-up position. A motion was made by Board Member Coyne to adopt this proposed amendment as submitted and a second was made by Board Member Pare. The motion passed by a vote of 4-0 with Chairman Cox abstaining.

Chairman Cox stated that he needed a vote to approve the whole thing, meaning all the proposed changes that were discussed and voted at the Board meeting. The motion was made by Board Member Coyne approved as voted on and seconded by Board Member Pare and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Legal Counsel Powers pointed out that Board Member Starbard had been maintaining the master document of the proposed amendments, and asked that Mr. Starbard make the amendments as approved by the Board and send them to him.

Board Member Johnson informed the Chairman that he was in receipt of a letter from Commerce Insurance Company requesting that he recuse himself from participating in a matter that involved Commerce Insurance Company which was scheduled in the executive session. Mr. Johnson said that the Attorney for Commerce wrote that Mr. Johnson was a party to a case brought against Commerce Insurance Company and, therefore, there was a conflict of interest. Board Member Johnson said that the case had been dismissed and there was no pending litigation between Mr. Johnson and Commerce Insurance Company. Therefore, Board Member Johnson saw no good reason why he should be recused from deliberating on the matter and stated that he would participate during the executive session. Chairman Cox responded that it was Mr. Johnson decision whether to participate or refrain from deliberating on the matter.

Next Meeting:

The consensus of the Board Members was to hold the next meeting on September 7, 2016, at 9:30AM at 1000 Washington Street, Boston, Massachusetts.

Chairman Cox then informed the Board and members of the general public that the Board was about to enter an executive session and would not be returning to the public session at the conclusion of the executive session. Chairman Cox then made the following statement:

The Board will enter the Executive to review and discuss: Complaint 2016-4, 2016-5, 2016-8, and 2016-10 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.

The licensed appraisers' attorneys have requested that these matters be heard in the executive sessions. At the previous meeting of the Board, the licensed appraisers and their attorneys agreed to attempt to resolve these complaints through mediation with the complainants and will inform the Board the outcome of the attempted mediation.

Motion to enter the executive session and roll-call vote:

Chairman Cox then declared before the Board can enter an executive session there must be a Roll-call vote of the Members of the Board. He asked for a motion to enter the executive session and Board Member Coyne made the motion which was seconded by Board Member Starbard. The roll-call was taken with Board Members Coyne, Starbard, Johnson, and Pare answering in the affirmative with Chairman Cox abstaining, and the motion passed by a vote of: 4-0.

Executive session:

Complaint 2016-4

The highly regarded insurance law attorney and noted author on topical insurance issues Owen Gallagher appeared with his clients, who are licensed appraisers, along with a court stenographer to record the session at their expense. Because this complaint was the subject of an attempted mediation by Board Member Lyle Pare which was unsuccessful, Mr. Pare was advised by Legal Counsel to the Board, Michael Powers, that he should not participate in any further deliberations on this matter. Mr. Powers informed Mr. Pare, and the other Board Members, as part of his legal research for the proposed new Complaint Procedure he reviewed the "Manual for Conducting Administrative Adjudicatory Proceedings" published by the Administrative Law Division of the Government Bureau of the Office of the Attorney General, and the manual advises that Board Members who participate in the mediation of a dispute should not, thereafter, deliberate on future matters that involve that dispute. Board Member Pare agreed to not participate any further and exited the executive session.

Attorney Gallagher agreed to work with the Legal Counsel Powers to attempt to reach a resolution that would be satisfactory to his clients. Mr. Powers informed the Board that he would work with Attorney Gallagher to attempt to reach a mutually agreeable resolution.

Complaint 2016-5

Attorney Gallagher also represented the licensed appraiser in this matter. Attorney Gallagher agreed to work with the Legal Counsel Powers to attempt to reach a resolution that would be satisfactory to his clients. Mr. Powers informed the Board that he would work with Attorney Gallagher to attempt to reach a mutually agreeable resolution.

Chairman Cox asked for a motion to table Complaint 2016-5 and Board Member Pare made the motion seconded by Board Member Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Complaint 2016-8

Highly regarded insurance law Attorney John Callahan of the law firm Finnegan, Underwood, Ryan & Tierney represented the licensed appraiser in this matter. Attorney Callahan was given permission to address the Board by Chairman Cox and informed the Board that two out of three issues that were alleged in the complaint had been resolved and there only remained one issue. Attorney Callahan had written a letter to the Legal Counsel to the Board, Michael D. Powers, dated August 1, 2016, outlining his client's response to the complaint. In addition, in the letter Attorney Callahan requested, on behalf of the licensed appraiser, that Board Member William Johnson recuse himself from any deliberations regarding this complaint because of lawsuits that Mr. Johnson's auto body shop, Pleasant Auto Body Shop, had filed against the insurance company that the licensed appraiser was employed with. Board Member Johnson responded by stating after reviewing the letter he determined that the lawsuits that were referred to were all resolved and that there was no litigation pending between himself and the insurance company that employed the licensed appraiser. Mr. Johnson declared that he could be impartial in reviewing the current complaint filed against the licensed appraiser and saw no need to recuse himself from deliberating on the matter.

Attorney Callahan continued by stating his client was not allowed to negotiate that final item and the complainant never responded to the last attempt to negotiate.

Board Member Starbard asserted that at the outset of this matter the appraiser felt that his auto body repair shop had the capability to repair the motor vehicle at his shop, but the auto body repair shop sent the motor vehicle to a sublet shop. Board Member Starbard volunteered to mediate the matter and Attorney Callahan agreed to attempt mediation.

Board Member Starbard would report back to the Board at the next Board meeting.

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 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).