



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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CHAIRMAN

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

Minutes of Meeting of the Board Held on September 29, 2015, Approved by the Board on December 8, 2015; Motion of Board Member William Johnson Seconded by Board Member Lyle Pare. The Motion Passed by a Vote of: 4-0, Chairman Cox Abstained.

September 29, 2015 Minutes of Board Meeting
Held at the Pathfinder Regional Vocational Technical High School located in the “Tea Room” at 240 Sykes Street, Palmer, Massachusetts.

Members Present:

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

Attending to the Board:

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

Proceedings recorded by:

Jillian Zwien of the Alliance of Automotive Service Providers of Massachusetts (AASP)
(Audio/Video).

Review of minutes:

The meeting was called to order by Chairman Cox, and he requested a motion to approve the minutes of the Board meetings held on August 25, 2015 and August 18, 2015. Two separate motions were made by Board Member William Johnson to approve the minutes as submitted of the Board meetings held on August 25, 2015 and August 18, 2015; the motion was seconded by Board Member Richard Starbard. The motions to approve each of the minutes of the Board meetings held on August 25, 2015 and August 18, 2015, passed by votes of: 4-0 and Chairman Cox abstained on both motions.

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

Board Member Richard Starbard reported that he had arranged for a location for the Part-II examination for motor vehicle damage appraiser license which was scheduled for Wednesday, September 30, 2015. Mr. Starbard reported that the examination would be held at the Assabet Valley Regional Technical High School the day after the Board meeting. Mr. Starbard thanked Molly Brodeur-Nesbitt, President of AASP, for her assistance which included getting two damaged cars for the test and Pete Smith from Commerce Insurance Company for providing data. Mr. Zavackis informed the Board that over 70 people had passed the Part-I written portion of the examination and signed-up to take the Part-II practical portion of the examination.

Request by previously licensed motor vehicle damage appraiser to waive the requirement to take the required course for motor vehicle damage appraiser:

Mr. Sean Limardo, previously licensed motor vehicle damage appraiser whose license lapsed for failure to renew it, requested the Board waive the requirement of attending a motor vehicle damage appraiser course, the Board allow him to take the examination for motor vehicle damage appraiser, and reinstate his MVDA license upon payment of all filing fees and penalties.

Mr. Limardo informed the Board that during the time that he had been licensed, his family suffered a tragedy when his brother was murdered and which necessitated Mr. Limardo moving to Florida to live with his mother; this was the reason that his license was not renewed.

He also said that he has returned to Massachusetts, was employed by the Gentle Giant Moving Company, and periodically worked at an auto body shop.

Chairman Cox asked Mr. Limardo if it was his desire for the Board to waive the requirement of taking the course for motor vehicle damage appraiser, and Mr. Limardo responded yes.

Board Member Joseph Coyne said that in light of the fact that Mr. Limardo had previously taken the course and had worked as an appraiser, Mr. Coyne felt that there was no need to require Mr. Limardo take the course again. Board Member Coyne made a motion that the Board waive the requirement that Mr. Limardo take the course and be allowed to take the examination for motor vehicle appraiser; the motion was seconded by Board Member William Johnson. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Advisory Ruling 2015-01:

A discussion among the Board Members was conducted about issuing an Advisory Ruling about the use of junkyard parts or used parts for the repair of the "suspension system" of a damaged motor vehicle, and whether requiring the use of such parts during an appraisal of the estimate of damage to a motor vehicle would impair the operational safety of a motor vehicle in violation of 212 CMR 2.04 (e) and 211 CMR 133.04 (1)(a).

Board member William Johnson had drafted language for a proposed Advisory Ruling which had been reviewed by the Legal Counsel to the Board, Michael D. Powers, and edited for clarification purposes. Board Member Johnson reported that he had reviewed the changes to his

proposed Advisory Ruling, which he had submitted at the previous meeting, and was satisfied with them. Board Member Johnson asserted that the Board could not issue an Advisory Ruling precluding the use of used parts or junkyard parts in the repair of damaged suspension systems of motor vehicles, because the Board's regulation does not allow for such a ruling. Board Member Johnson opined that, in order to issue such an Advisory Ruling which would preclude the use of used parts or junkyard parts for a suspension system, the Board's regulation [212 CMR 2.00] would have to be changed. He asked the ADALB Legal Counsel, Michael D. Powers, whether that was an accurate statement of the law and Mr. Powers confirmed that it was.

Board Member Richard Starbard declared that he still had a big problem with appraisers approving the use of a used or junkyard part in a damaged motor vehicle suspension system. Mr. Starbard reported that his auto body shop recently received a used part from the same company which reported at the Board's previous meeting that their used parts were cleaned and tested before being sent to auto body shops. Mr. Starbard asserted that the parts that his auto body shop received from that same company were rusted, unusable, and were sent back to the company.

Board Member Johnson responded that the Board must follow their CMR [Code of Massachusetts Regulation, 212 CMR 2.00] and elaborated that one can't legislate common sense, and auto-body shops have to negotiate. He pointed out to Board Member Starbard that the end result was that he did not use the part, sent it back, and that negotiation transpired between his auto body shop and the appraiser for the insurance company.

Mr. Ray Collis, who identified himself as a representative from the company LKQ, asked permission to speak to the Board, and permission was granted by Chairman Cox. Mr. Collis asserted that the regulation requires that appraisers shall only determine the cost of the part for damaged motor vehicles, unless the part affects the safety of the motor vehicle. He pointed out that car manufacturing companies have a long history of recalls for defective parts installed in new cars that have been involved with causing deaths.

Board Member Lyle Pare replied that he understood the point that was being made, but at the end of the day the insurance companies will pay for the cost of the failure of a motor vehicle's suspension system. Mr. Pare declared that when a person goes before a jury it doesn't matter who installed the part or where the part came from, insurance companies pay in the end.

At this point Board Member Johnson read proposed Advisory Ruling 2015-1:

The Auto Damage Appraiser Licensing Board has passed a motion agreeing that an appraisal conducted by a licensed appraiser needs to follow 212 CMR 2.04 (e) which states in part "The appraiser shall determine which parts are to be used in the repair process in accordance with 211 CMR 133.00. The appraiser shall itemize the cost of all parts, labor, materials, and necessary procedures required to restore the vehicle to pre-accident condition and shall total such items." 212 CMR 2.04 (e) also states "The appraisers representing the insurance company and the registered repair shop selected by the insured to do the repair shall attempt to agree on the estimated cost for such repairs" As such all costs associated with the appraisal shall be negotiated.

One of the items referenced in 212 CMR 2.04 (e) is parts, the ADALB also recognizes the use of used parts is allowed as referenced in 211 CMR 133.04 (2). The ADALB wants to stress that the 211 CMR 133.00 and 212 CMR 2.00 need to be read in its entirety. 211 CMR 133.04 (3)(c) states “the repair will not impair the operational safety of the motor vehicle” The ADALB is concerned that the use of used parts that contain wear items, in certain circumstances, may violate 211 CMR 133.04 (3)(c). We want to further note that the insurance company will be responsible and liable for the use of used parts it mandates. Please note 211 CMR 133.04 (2) states: “If the repairer uses the source and specified part(s) indicated on the appraisal and these parts are later determined by both parties to be unfit for use in the repair, the insurance company shall be responsible for the costs of restoring the parts to usable condition.”

Further, 212 CMR 2.04 (e) mandates all itemized components and all such costs associated with the appraisal shall be negotiated. As such, the use of used parts needs to be negotiated by the appraisers. The ADALB strongly advises that used parts that would impact the operational safety of the motor vehicle should not be used and complete negotiations should occur as mandated.

A motion was made by Board Member Johnson for the ADALB to adopt this proposed Advisory Ruling 2015-1, and a second to that motion was made by Board Member Joseph Coyne. Chairman Cox called for discussion on the motion.

Mr. Paul Folino, Director of Industry Relations of LKQ Company, requested to speak to the Board and Chairman Cox approved of the request. Mr. Folino stated that his company LKQ has skin in the game because it offers complete indemnification if an LKQ part fails. He elaborated by addressing the issue that was raised by Mr. Starbard about an LKQ part, and said that, just because a part came into the shop rusty, it did not affect the safety of the part.

Mr. Gary Cloutier requested permission to speak to the Board, and Chairman Cox granted permission. Mr. Cloutier stated that he knew of a particular auto body shop repairer who was negligent while installing a part and is being taken to court and charged with murder. He queried, what happens when you have a consumer who insists on having a used part installed in the motor vehicle?

Board Member Johnson responded that a motor vehicle damage appraiser can’t force a consumer into doing anything; an appraiser’s job is to tell the consumer what is going on.

Board Member Joseph Coyne added, we never had this problem before with insurance companies insisting that used parts be used for a damaged motor vehicle suspension system. He informed the Board and, members of the public, that the original seventeen companies that were doing auto insurance business in Massachusetts before the state de-regulated auto insurance rates, never required appraisers to write used or junkyard parts for a motor vehicle suspension system. Some new companies which have entered the Massachusetts auto insurance market began to write appraisals with used and junkyard parts for motor vehicle suspension systems.

Mr. Adam Haddad requested permission to speak to the Board, and Chairman Cox granted permission. Mr. Haddad stated that he recently had a problem with a national used parts supplier, and the part came from LKQ, where the part was so far destroyed it could not be used in the repair of the motor vehicle. After he rejected the part, the insurance company insisted that he install a used part, and when that part came in he had the same problem with low quality of that part. Mr. Haddad said that this causes a liability problem for everyone, and he believes that you can't require the installation of a used suspension part from a junkyard.

Board Member Johnson responded to Mr. Haddad stating, at the end of the day you did not install the used part, and Mr. Haddad agreed that he did not use the part. Mr. Johnson declared that it's not up to the Board to legislate this issue.

Mr. Haddad replied that he only wants to make it clear that the companies are not testing parts before being delivered.

Mr. Ray Collis responded that part of the process is that LKQ makes the consumer satisfied and if the consumer is not satisfied with the condition of the used part, LKQ will substitute it with a replacement. The overall picture is that LKQ sells parts across the world and there is a bias against used parts or alternative parts.

Mr. Alex Haddad requested permission to speak to the Board, and Chairman Cox granted permission. Mr. Alex Haddad elaborated on the repair process by stating there is a good deal of time involved with ordering and returning parts, it takes several days and time is lost that you can't get back. The time involved with the use of rental cars for consumers is running [under the time allowed in insurance policies], and the time the damaged car is sitting idly on the lift sometimes runs for two to three days. This is lost time that auto body shops can't recover.

Peter Langone requested permission to speak to the Board, and Chairman Cox granted permission. Mr. Langone asserted that he had recently had a case where the insurance company insisted that he install a used damaged car frame for a motor vehicle he was repairing. Mr. Langone held up a picture of the car frame so all in attendance could see it, and passed it around to the audience.

Mr. Peter D'Agostino a lobbyist for AASP requested permission to speak to the Board, and Chairman Cox granted permission. He asserted that the Board's proposed Advisory Ruling would only require negotiations over the appraisal for used parts. He queried whether the Board believed a used part affects the operational safety of a motor vehicle.

Board Member Johnson explained that the auto body shop negotiates and a betterment adjustment can be made. Mr. Johnson then read the last sentence from the proposed Advisory Ruling 2015-1, "The ADALB strongly advises that used parts that would impact the operational safety of the motor vehicle should not be used and complete negotiations should occur as mandated." Mr. Johnson concluded that there is no cookie-cutter approach to this issue and asked the ADALB Legal Counsel Mr. Powers whether the Board could declare [issue an Advisory Ruling] that installing used parts for a motor vehicle suspension system affects the safe

operation of a motor vehicle without re-writing the Board's CMR [212 CMR 2.00] and Mr. Powers confirmed that the regulation would need changes.

Chairman Cox closed the discussion and called for a vote on the motion to adopt Advisory Ruling 2015-1, the motion passed by a vote of: 4-0, with Chairman Cox abstaining.

Board Member Richard Starbard made a motion that the Board issue an opinion that the use of used parts in a motor vehicle suspension system would affect the safe operation of a motor vehicle. In my Starbard's opinion, installing used parts for the damage to the suspension system of a motor vehicle would affect the safe operation of the motor vehicle.

Board Member Johnson asserted that the Board had already discussed the issue and voted on Advisory Ruling 2015-1.

Mr. Coyne asserted that he would be in favor of an amendment to the motion that Mr. Starbard's opinion be reflected in the minutes of the Board meeting. The motion was amended by a motion of Mr. Starbard and seconded by Board Member Coyne and the motion passed by a vote of: 4-0, Chairman Cox abstained. The minutes so reflect Mr. Starbard's opinion as stated at the Board meeting held on September 29, 2015.

Date of next Board meeting:

The Board agreed to schedule the next meeting on December 8, 2015, at 1000 Washington Street, Boston, Massachusetts at 9:30AM.

Chairman Cox informed the public that the Board was about to enter the executive session and a roll call of the membership was required and a statement for the reason for entering the executive session.

Legal Counsel to the ADALB stated that the Board had received a response to the Board's rebuttal that had been filed to the complaint by the AASP alleging the Board violated the Open Meeting Law at the June 2, 2015 meeting which was filed with the Office of the Attorney General. Mr. Powers stated that he had to discuss and consult with the Board about the response filed by AASP and provide legal advice to the Board as to the response filed by the AASP. Mr. Powers also informed the Board that there were applicants for the examination for motor vehicle damage appraiser license whom indicated on their applications that they had been convicted of a felony, requested to meet with the Board in the executive session to explain the circumstances surrounding their conviction, and proved reasons to the Board that they would be suitable persons to be licensed as a motor vehicle damage appraisers.

Chairman Cox entertained a motion to enter the executive session which included the announcement that the Board would not meet in the open session after the executive session's business was completed. A motion was so made by Board Member Johnson and seconded by Board Member Coyne the motion was passed by a roll-call vote of 4-0, Chairman Cox abstained.

Executive session:

Board Member Johnson informed the Board that there was an applicant to take the examination for motor vehicle appraiser license who was employed by him and made a motion to recuse himself from voting on the matter. Mr. Johnson made the motion to recuse himself and it was seconded by Board Member Pare, the motion passed by a vote of: 4-0, Chairman Cox abstained.

The applicant for a license for motor vehicle damage appraiser license, who was convicted of a felony fifteen years before when he at that time he was 17 years of age, was allowed to address the Board and informed them about his background. He answered all of the questions asked by the Board Members specifically questions about the circumstances of his conviction, and the reasons as to why he would be a suitable person to hold a motor vehicle damage appraiser license. In sum, the man stated that he had made a mistake when he was a youth and regretted it, worked in the auto body industry for several years as a supervisor, and was well aware of all aspects of the industry. After a discussion among the Board Members, a motion was made by Richard Starbard to allow the person to take the examination, waive the requirement that the person take the course for motor vehicle damage appraiser, and a second was made by Board Member Pare. The motion passed by a vote of: 3-0, Chairman Cox abstained and Board Member Johnson did not participate in the vote.

At this point in the executive session, Board Member Johnson then returned to his seat at the Board table. Another applicant for a license for motor vehicle damage appraiser license, who was convicted of a felony in 2004, was allowed to address the Board, and she informed them about her background and answered the Board Members' questions about the circumstances of her conviction. The person informed the Board about the circumstances of her conviction, that she had made a one-time mistake that she greatly regretted, at that time she voluntarily reported her mistake to the authorities, had been working in the auto body industry for several years as an office manager for an auto body shop, knew all aspects of the auto body industry, and requested to be allowed to take the examination with a waiver of the course. After a discussion among the Board Members a motion was made by Board Member Joseph Coyne to allow the person to take the examination and waive the required course. A second to the motion was made by Board Member Johnson, and the motion passed by a vote of: 4-0, Chairman Cox abstained.

Complaint 2015-3:

During the public session Legal Counsel Michael Powers informed the Board that there was action that needed to be taken on the matter at this time and the matter was not discussed during the executive session.

Adjournment of the Board:

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

Whereupon, the Board's business was concluded.

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