



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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GILBERT W. COX JR.
CHAIRMAN

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

Minutes of Meeting of the Board held on September 7, 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.

September 7, 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 August 3, 2016 was submitted for approval. A letter had been sent by John P. Murphy, Executive Director of the Massachusetts Insurance Federation, wherein he raised several questions about the Board meetings that were held on June 22, 2016, and August 3, 2016 relative to the accuracy of the reported proposed amendments as they were reported in the minutes of these two dates. At the end of the Letter Mr. Murphy raised a question about the record of the vote that was taken near the end of the August 3, 2016 Board meeting that was reported in the draft minutes. Mr. Murphy wrote that the draft minutes indicated that the Board voted by a vote of 3-2 with Chairman Cox, Board Member Coyne and Board Member Pare voting in favor of adding new language to the Board's regulation under 212 CMR 2.04(k).

Michael D. Powers, Legal Counsel to the Board, informed the Board that the letter from Mr. Murphy arrived the day before the meeting, on September 6, 2016, and he had provided copies to all the Board members to review (A copy of Mr. Murphy's letter appears at the end of these minutes). Legal Counsel Powers said that the letter breaks down into two components. The first component addresses the accuracy of the votes taken for proposed amendments to the Board's regulation as cited in the draft minutes and previous minutes. Mr. Powers said that in May of 2016 the Board agreed to have Board Member Richard Starbard keep track of the proposed amendments. Because over the course of several Board meetings there had been extensive discussions and debates over the language and the proposed amendments, it could be quite possible that there may be some inaccuracies in the submissions that were created by Board Member Starbard. Mr. Powers reflected that under the circumstances Board Member Starbard had done outstanding work in attempting to track everything that had been discussed by the Board by attempting to create a document reflecting the discussions and proposed amendments. The procedure that was followed involved Mr. Starbard forwarding the proposed amendments with comments after each Board meeting to Mr. Powers who, thereafter, would place Mr. Starbard's proposed amendments before the Board at the following meeting for discussion purposes. According to Mr. Murphy, after a review of the minutes of the June 22, 2016, and August 3, 2016 Board minutes, the language that had been provided by Mr. Starbard did not accurately reflect some of the votes that had been taken at these meetings.

The second issue raised by Mr. Murphy was about the reporting of a vote that was taken at the August 3, 2016 Board meeting as reported in the draft minutes for that meeting. Mr. Powers addressed the draft minutes of the Board meeting that had been held on August 3, 2016, responding to Mr. Murphy's challenge to the vote that had been taken relative to adding a new subsection "k" to the regulation. In particular the draft minutes of the August 3, 2016 Board meeting reported the following:

Chairman Cox then submitted these proposed changes adding the red colored words and this 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 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 passed by a vote of: 3-2 with Board Member Johnson and Board Member Starbard voting in favor along with Chairman Cox and Board Members Coyne and Pare opposed.

Executive Director Murphy asserted in his letter that the vote was to reject this language by a vote of 2-3 with Chairman Cox joining with Board Members Coyne and Pare opposing the motion. Legal Counsel Powers stated that he believed that Mr. Murphy's notes of the meeting were probably accurate and elaborated when he was drafting the minutes he had difficulty determining the exact manner of how the vote concluded, and he attempted to access the video tape taken of the meeting by AASP of Massachusetts to no avail. Mr. Powers explained that during the meeting that was held on August 3rd he had a difficult time following all of the discussions and proposed amendments, because there were so many of them and several were presented in an ad hoc manner.

At this juncture in the meeting Board Member Starbard agreed that Mr. Murphy's notes were accurate as to the manner of the vote on this particular item.

Peter D'Agostino of AASP of Massachusetts was allowed to address the Board and responded that there may not be a video of the August 3, 2016, Board meeting because of various technical difficulties that were experienced during the video taping of the meeting. Mr. Powers requested that the videotape of the June 22, 2016, Board meeting be made available to him so that he could check the accuracy of the Board's votes and the proposed language. Mr. D'Agostino agreed to provide Mr. Powers a link to the video of the June 22, 2016, Board meeting and attempt to get a copy of the video of the August 3, 2016, Board meeting.

Mr. Powers suggested that the Board table voting on the current draft minutes until the next meeting of the Board so that he could review the videotapes of the August 3, 2016, meeting and the June 22, 2016 meeting and compare the events to what Mr. Murphy had recounted in his letter. A motion was made by Board Member Coyne to table the vote on the draft minutes until the next Board meeting and it was 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.

Next Meeting:

The Board determined that the next regularly scheduled Board meeting would be held in October. The consensus of the Members of the Board was to hold the next meeting on October 4, 2016, at 9:30AM at 1000 Washington Street, Boston, Massachusetts.

Report on the Part-II examination for motor vehicle damage appraiser license held on August 5, 2016:

Board Member Richard Starbard reported that the Part-II examination had been held on August 5, 2016, at the Assabet Valley Regional Technical High School and 100 people took the test for motor vehicle damage appraiser. 68 people had been given a passing score at the conclusion of the test and another 13 were informed to contact Board Member Starbard to discuss questionable answers that had been provided on parts of the test. Mr. Starbard reported that 12 out of the 13 people contacted him and discussed the questionable responses that they had been given to discreet questions on the test and the 12 people were provided with passing scores, and the other person did not reach out to Board Member Starbard to discuss the questionable response that had been provided on a question to the test. Consequently, 80 people were given a passing score, 19 failed the test and because Board Member Starbard had not heard anything further from the other person, he too would be given a failing score.

Mr. Starbard acknowledged the hard work by Pete Smith who provided two damaged motor vehicles for the appraisal of damage by the test takers which allowed the accommodation of such a large group of examinees. Board Member Starbard also thanked Ray of Ray's Auto Body in Grafton for his assistance and Paul Baisette. He also reported that there was no firm date set for the next Part-II examination and that Tom Ricci had been working diligently facilitating the arrangements with Assabet Valley Regional Technical High School.

Chairman Cox questioned Board Member Starbard whether he had been considering other locations than Assabet Valley Regional High School as a facility to conduct the Part-II examination at. Board Member Starbard responded that the Assabet Valley Regional High School was a great location because of its conference room for the examination and an in-door facility that can be used to place the damaged motor vehicles in the event of inclement weather. He informed the Board that he was attempting to get an October date for the next examination.

Steven Zavackis, Executive Secretary for the Board, announced that there were 30 applicants to take the Part-II examination.

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

During the April Board meeting 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 previous Board meeting and added a default procedure as requested by Board Members William Johnson and Richard Starbard. 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). 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. At the August 3, 2016, Board meeting 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.

Mr. Powers reported that the day before the Board meeting, scheduled for September 7, 2016, he had received a letter from an insurance law specialist Attorney John R. Callahan, of the law firm Finnegan, Underwood, Ryan & Tierney who represents MAFPRE Insurance Company, containing several recommendations about the proposed new “Guidelines for Complaint Procedures” that had been discussed during the August 3, 2016, Board meeting. Mr. Powers informed the Board that he had read Attorney Callahan’s letter and found some of his recommendations interesting, specifically a recommendation to consider using a separate group of mediators who were not members of the Board to act as mediators in those matters that the Board determined would be a subject for mediation.

Board Member Johnson noted that this drafting process had been very time consuming and expressed his fervent desire to adopt complaint procedures as soon as possible. It seemed to him that just as the Board was about to adopt the complaint procedure another party interjected to give input. Several months previous to MAFPRE sending their recent letter to provide input, the Board had received a letter from the Hanover Insurance Company making recommendations. Board Member Johnson opined that it appeared that MAFPRE and Hanover Insurance Company were working together. Owen Gallagher the Attorney for the Hanover Insurance Company asked to address the Board and Chairman Cox granted permission. Attorney Gallagher informed the Board that he didn’t have any conversations or communications with the Attorney from MAFPRE about the proposed complaint procedures. Attorney Callahan, representative of MAFPRE, asked permission to speak and Chairman Cox granted permission. Attorney Callahan informed the Board that he had no contact with Attorney Gallagher or anyone else about his proposals for the complaint procedures.

Board Member Johnson opined that Attorney Callahan’s recommendation to have a group of licensed motor vehicle damage appraisers act as mediators was impractical. In Board Member Johnson’s opinion it would be impossible to find 8-10 licensed appraisers who would volunteer their time and service to conducting mediations for complaints filed against licensed appraisers. Board Member Johnson concluded, because these are “Guidelines for Complaint Procedures” and not an amendment to the Board’s regulation, they could be modified at any future Board meeting. If, indeed, in the future there was a need to use mediators, other than Board Members, the Board could add such a process into the adopted “Guidelines for Complaint Procedures.”

Board Legal Counsel Powers agreed and informed the Board since the agenda had been completed and posted he had made changes to the proposed Guidelines for Complaint Procedures which were minor stylistic changes, but not substantive changes to the document. Mr. Powers informed the Board the minor changes and the following document was submitted to the Board Members:

Guidelines for ADALB Complaint Procedures
Revised as Adopted by Vote of the Auto Damage Appraiser Licensing Board
at the Board Meeting Held on September 7, 2016.

1. Notice to Licensed Appraiser. When a complaint (Complaint) is received by the executive secretary (Executive Secretary) to the Auto Damage Appraiser Licensing Board (ADALB or Board) alleging a licensed motor vehicle damage appraiser (appraiser) has violated the

ADALB's enabling act M.G. L. c. 26, § 8G and/or regulation 212 CMR 2.00 et seq. as provided for in the ADALB's "Application for Complaint", and/or violates 211 CMR 123.00, 211 CMR 133.00 it is assigned a serial number in the order received prefixed by the year of the date of the complaint. At least 21 days before the following scheduled Board meeting, the appraiser, named in the Complaint, is sent a copy of the Complaint, and a letter notifying him/her of the date of the Board meeting and the rights provided under M.G. L. c. 31, § 21 (a)(1) that he/she has a right: whether to have the discussion of the matter heard during the public session of the Board meeting, or during the executive session of the Board meeting to which the public is not allowed to attend; to speak on his/her own behalf; to have an attorney or representative of his/her choosing attend the Board meeting to advise him/her at own expense but the attorney or representative will not be allowed to participate at the Board meeting; and to create an independent record by audio-recording or transcription of the executive session of the meeting at his/her expense. See the Office of Attorney General's Decisions on the Open Meeting Law OML 2016-06. Thereafter, a copy of the letter and Complaint is forwarded to the members of the Board and placed on the agenda for the next Board meeting. A copy of the letter is also sent to the complainant.

2. Effect of Appraiser's Failure to Appear. In the event the appraiser fails to appear at the Board meeting, the Board may notify the appraiser that he/she will be considered in default and that at the next regularly scheduled Board meeting the Board will vote on issuing an Order to Show Cause pursuant to G.L. c. 30A against the appraiser, unless the appraiser establishes good reason for his/her failure to appear at the initial scheduled meeting on the Complaint.

3. Preliminary Review of the Complaint. The Board conducts a preliminary review of the Complaint at the Board meeting, either in the executive or public session of the Board meeting as requested by the appraiser, to determine whether to dismiss the matter or pursue further action.

4. Dismissal of the Complaint. At any time the Board may determine to dismiss a Complaint with or without prejudice due to lack of jurisdiction, based on frivolous allegations, lack of sufficient evidence, lack of legal merit or factual basis, finding of no violation, withdrawal of a Complaint, subsequent compliance with statutes and/or regulations, or other basis.

5. Mediation. To facilitate the disposition of a Complaint, at any time prior to the commencement of a formal adjudicatory hearing, the Board can offer the appraiser the opportunity to resolve the Complaint by mediation. See Office of the Attorney General's Open Meeting Law Decision of October 20, 2011. When an appraiser accepts an offer to resolve the complaint by mediation, the Board will appoint one of the members of the Board to conduct a mediation and attempt to mediate the Complaint with: the Board member, the appraiser and his representative, if any, the person filing the complaint (complainant), and any other parties related to the complaint necessary to resolve the matter. If the appraiser declines the offer to mediate he/she will not be penalized in any manner for his/her refusal to participate in the informal mediation process and retains his/her right to a formal adjudicatory hearing. If the appraiser assents to have the matter mediated by the Board member, thereafter, the Board member will contact the complainant and offer to mediate the Complaint. If the complainant assents to have the Complaint mediated then the Board member, appointed to conduct the mediation, will inform the appraiser and begin the mediation process. To obtain a final resolution of the matter through the mediation process, all parties must mutually agree on the resolution to the complaint. See

“Manual for Conducting Administrative Adjudicatory Proceedings” Chapter 1 “F. Informal Proceedings.” (2012 Edition) (Published by the Administrative Law Division of the Government Bureau of the Office of the Attorney General). The Board member shall use his/her discretion in choosing the manner of conducting the mediation which could include but is not limited to: communicating with each party separately, with the approval of all parties, to discuss each party’s position and potential settlement offers; a simultaneous telephonic or Skype conference with all the parties; or a meeting with all the parties at a convenient location. If the parties agree to resolve the Complaint, then the complainant withdraws the Complaint by executing a form approved by the Board and the complainant will be precluded from filing any future Complaint with the Board based on the same facts. Any and all disputes raised in the Complaint alleging the violation of the Board’s enabling act M.G.L. c. 26, § 8G and regulation 212 CMR 2.00 et seq. or 211 CMR 123.00 or 211 CMR 133.00 will be considered fully and finally resolved. At the following Board meeting the Board members will be notified of the resolution of the Complaint and the Board member will report: whether the mediation occurred or was terminated and whether a settlement was reached, but the Board member may not make a report, assessment, evaluation, recommendation, finding, or other communication to the Board and any discussions conducted during the mediation will be held as confidential by the Board member conducting the mediation and will not be disclosed to the other Board members. If the parties to the complaint do not resolve the dispute at mediation, then the Board member who participated during the mediation process will be recused from participating at any further proceedings on the Complaint taken at future Board meetings unless an informal hearing conference is authorized by the Board.

6. Informal Hearing Conference. The Board may convene an informal hearing conference at which the complainant and the licensee can appear before one Board member, assigned by the Board, to discuss the Complaint and determine whether the matter can be resolved informally. If an attempt to mediate the Complaint was made, the Board member assigned as mediator may also be assigned to preside at the informal hearing. If all parties agree on a resolution, then the informal hearing can conclude the matter, but if all parties do not agree and the matter proceeds forward, then the appraiser retains his right to a formal adjudicatory hearing, unless the right to a formal hearing is expressly waived by the appraiser and approved by the Board. The informal hearing does not require the presentation of evidence, the testimony of witnesses, or the keeping of a record, but it will comply with fundamental due process notions of fairness. The informal hearing will provide notice to all parties, and any statements made at such a hearing will not be relied upon by the Board at any future formal administrative adjudicatory proceeding. Furthermore, since informal hearings are designed to determine whether a mutually agreeable resolution can be reached, attendance at such informal hearings is voluntary, and a refusal by the appraiser to attend is not a basis for any sanction or adverse inference against the appraiser.

At the informal hearing conference the Board member can accept an informal disposition of the matter by stipulation, agreed settlement, consent order or the issuance of an advisory letter to the appraiser detailing the Board’s concerns and any recommendations to the appraiser. An advisory letter does not constitute disciplinary action.

7. Final Informal Hearing Conference. The Board member who conducted the informal hearing conference will report back to the Board at the next Board meeting following the informal

hearing conference. During this portion of the Board meeting, the Board shall act as a quasi-judicial board for the sole purpose of determining whether the complaint against the appraiser warrants further proceedings before the Board. The final informal hearing conference shall be considered a meeting of the Board covered under subsection (d) of Section 18, of General Laws Chapter 30A as “a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it.” At the Board meeting all of the Board members will be notified of the resolution of the Complaint and the Board member will report: whether the informal hearing conference occurred or was terminated and whether a settlement was reached, but the Board member may not make a report, assessment, evaluation, recommendation, finding, or other communication to the Board and any discussions conducted during the informal hearing conference will be held as confidential by the Board member conducting the conference and will not be disclosed to the other Board members. If the parties to the complaint do not resolve the dispute at the informal hearing conference, then the Board member who participated during the informal hearing conference will be recused from participating at any further proceedings on the Complaint taken at future Board meetings. If an informal disposition of the matter was reached at the informal hearing conference, then the Board will adopt the disposition and the complaint shall be dismissed.

8. Board’s Decision to Proceed. If the decision is to proceed, the Board will appoint one of the members of the Board as the Presiding Officer, notify all parties of a formal hearing, and the format of the matter will be an Order to Show Cause in the form of: Auto Damage Appraiser Licensing Board v. Named Appraiser. After the Board issues an Order to Show Cause, the Board shall conduct all hearings in accordance with the Standard Adjudicatory Rules of Practice and Procedure set forth in M.G.L. c. 30A and 801 CMR 1.00 et seq.

9. Decisions of the Board. After a formal hearing, the Board by a majority vote determines if a violation has occurred and the appropriate action which could include the following:

- (a) Formal Reprimand. A formal reprimand is an official written rebuke expressing strong disapproval of actions of the appraiser which is retained in the appraiser’s Board files and constitutes formal disciplinary action.
- (b) Administrative Penalties. The Board may impose penalties including administrative costs, revocation or suspension of license or both. All administrative costs assessed are subject to the discretion of the Board but may not be excessive. The administrative costs may be assessed against the appraiser, the appraiser's employer, the insurer, or the repair shop as provided for under M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq.
- (c) Suspension. A Suspension of a license deprives an appraiser of all rights and privileges of licensure for a specified period of time or until certain conditions are met which have been imposed by consent agreement or by formal decision following an adjudicatory hearing.
- (d) Revocation. Revocation of a license permanently deprives an appraiser of all rights and privileges of licensure and eliminates his/her license status.

10. Severability. If any section or provision of these Guidelines for Complaint Procedures or application of these sections or provisions, are found to be contrary to law, the remaining sections, provisions, and the remaining applications of these sections and provisions will, nonetheless, continue in full force and effect as provided for by law.

A motion was made by Board Member Coyne for the Board to adopt these proposed Guidelines for Complaint Procedures as submitted to the Board, and a second was made by Board Member Johnson. 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. At the May 25, 2016, Board meeting, Board Member Richard Starbard provided an additional proposal different than the one that had been submitted by Board Member Johnson at the February, 2016 Board Meeting. 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. At the June 22, 2016 Board meeting Board Member Starbard submitted the changed proposed amendments for further discussion by the Board. The Board extensively discussed the language of these proposed amendments, On August 3, 2016, the proposed amendments were submitted and discussions were held. Because of the letter from John Murphy, Executive Director of the Massachusetts Insurance Federation, it was determined to hold-off any discussion until a review of videotapes of the June 22 and August 3, 2016 meetings were reviewed.

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

Board Member Starbard informed the Board that he had reviewed the proposal and found it to be mostly canned language with some reference to the Board's regulation thrown in. He found it problematic because there was no classroom interaction between an instructor and a student.

Board Member Coyne agreed with Mr. Starbard and thought it was critical to have a student provided with the ability to interact and learn from an instructor, he opined that this was the best manner of learning the motor vehicle damage appraisal process.

Board Member Johnson queried whether there was any value for a person to take this on-line course and, thereafter, report to the Board for the examination process.

Steven Zavackis reported that a person could take this course on-line but it would not be helpful in completing the requirements for the examination process.

Board Member Pare volunteered that when he was employed by Hanover Insurance Company, they used an automobile training center which was not available to the public but was useful in training people for appraising motor vehicle damage. He suggested that there may be some usefulness for the AdjusterPro training course for an internal training tool.

Mr. Zavackis informed the Board that AdjusterPro offered internet course for other licenses including public adjuster.

Board Member Coyne made a motion to reject AdjusterPro request for approval by the Board of their estimating and evaluation training course for motor vehicle damage appraiser. The motion was seconded by Board Member Coyne, and the vote passed by a vote of: 4-0 with Chairman Cox abstaining.

Chairman Cox announced that he was about to entertain a motion for the Board entering the executive session, and the Board would not return to the public session.

Peter D'Agostino requested permission to address the Board and Chairman Cox granted permission. Mr. D'Agostino said that he would like Complaint 2016-4 and Complaint 2016-5 moved through the complaint process. He elaborated that he knew that there was some attempt at mediation of the complaints but did not want the complaints to languish and opined that they should now proceed to a formal hearing.

Chairman Cox informed Mr. D'Agostino that the Board had the matter under review and would determine in due course the proper manner of disposing of these complaints.

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, 2016-10, and 2016-12 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 had been advised by Legal Counsel to the Board, Michael Powers, that he should not participate in any further deliberations on this matter. Board Member Pare agreed to not participate any further and exited the executive session.

Attorney Gallagher asked permission to address the Board and Chairman Cox granted permission. Attorney Gallagher said that his client's felt that they did not violate the Board's regulation and, therefore, if the Board wanted to proceed forward with formal complaints against his clients they would have to do so.

Chairman Cox asked for a motion to approve initiating a formal hearing against the licensed appraisers in Complaint 2016-4 and Board Member Johnson made the motion seconded by Board Member Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Complaint 2016-5

Attorney Gallagher asked permission to address the Board and Chairman Cox granted permission. Attorney Gallagher said that his client felt that he did not violate the Board's regulation and, therefore, if the Board wanted to proceed forward with formal complaints against his client the Board would have to do so.

Chairman Cox asked for a motion to approve initiating a formal hearing against the licensed appraiser in Complaint 2016-5 and Board Member Johnson made the motion seconded by Board Member Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Complaint 2016-8

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.

At the August 3, 2016, Board meeting it was reported that 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. At that meeting 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.

Board Member Starbard volunteered to mediate the matter and Attorney Callahan agreed to attempt mediation.

Board Member Starbard and Attorney Callahan reported that attempts to mediate were ongoing, and they would report back at the following Board meeting.

Complaint 2016-12

Chairman Cox requested the status of this matter. Legal Counsel Powers reported that he sent a letter to the licensed appraiser on August 16, 2016, but had not been contacted by the appraiser or his attorney. Mr. Powers said that in the past there had been delays in responses from licensed appraisers for a variety of reasons and suggested that he reach out to the licensed appraiser and determine what his status was regarding responding to the complaint. Mr. Powers

said that he would report back to the Board at the following meeting. The Chairman agreed that would be the best avenue to proceed.

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).



Mass Insurance Federation

Two Center Plaza, 8th Floor • Boston, MA 02108 • 617.557.5538

September 6, 2016

Gilbert W. Cox, Jr., Esq,
Chairman
Auto Damage Appraiser Licensing Board
1000 Washington Street, Suite 810
Boston, MA 02118-6200

Re: Minutes of the August 3, 2016 Meeting—Discussion of Changes to 212 CMR 2.0

Dear Chairman Cox:

In reviewing the draft minutes of the August 3, 2016 meeting, we noted several errors or discrepancies that ought to be corrected in the minutes to ensure that the proposed changes to 212 CMR 2.0 accurately reflect the actions taken by the Board. We also encourage the Board to publish both a clean and redlined version of its proposed changes to 212 CMR 2.0. There have been many discussions of the changes and things can be easily confused so having a final clean and red-lined version will ensure that we are all working off the same document. Here are the issues we identified:

Section 2.04 (e)- Paragraph 1. During the July 22, 2016 meeting the Board voted to remove the proposed language related to partial disassembly (see page 5 of August 3, 2016 agenda attachment). Thus, the 4-0 vote in the August 3, 2016 meeting was supposed to be on the definitional changes to insurer, repair shop, and the manufacturer's recommended repair procedures. However, the language in the minutes incorrectly incorporates the language that had previously been removed in June (see page 15). Additionally, the section printed in the agenda on August 3, 2016 had typos (bold below), but the language as voted on in the August 3, 2016 meeting should read:

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 or repairs** would significantly improve the accuracy of the appraisal, he or she shall authorize the preliminary work or repair with the approval of the claimant and shall complete the appraisal after that work has been **done**. 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



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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.

Section 2.04 (e)- Paragraph 4. In the fourth paragraph of section 2.04(e), the Board voted in the June 22, 2016 to move the proposed first sentence relating to used suspension and steering (see page 5 of the August 3, 2016 agenda attachment). Yet, the language is included in the motion voted on by the Board (see page 16). Additionally, the agenda on August 3, 2016 only listed price in the sixth sentence (bolded below), whereas the version in the minutes states “price cost.” The minutes printed on page 16 include that language. After the August 3rd meeting, that section should read:

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 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.**

Section 2.04 (e)- Paragraph 4. In the June 22, 2016 meeting, the Board voted to remove the proposed language “labor times, hourly rate” from the section on itemizing in the fourth paragraph of section 2.04(e), which changes the section to the original language (see page 6 of the August 3, 2016 agenda). Yet, this language is incorrectly included on page 17 of the minutes. Thus after the August 3, 2016 vote, the section should read:

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.



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Section 2.04 (e)- Paragraph 6. In the agenda for the August 3, 2016 meeting, the sixth paragraph of section 2.04(e) regarding submission of the appraisal, maintained the five business day time period (see page 6 of the August 3, 2016 agenda). The minutes for the discussion during the August 3, 2016 have three days proposed and voted on (see page 17). As a three day time period was not discussed or voted on, this section should read:

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.

Section 2.04 (f). The minutes do not include section f, which was amended to include the term “personally.”

Section 2.04 (i). In section 2.04(i), the minutes of the August 3, 2016 meeting incorrectly include the phrase “within one two business days” (see page 19) . This phrase was removed at the June 22, 2016 meeting (see page 7 of the August 3, 2016 agenda). Section 2.04(i) should read:

(i) 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



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then be required to fax or electronically submit ~~within two business days~~ 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 holidays and weekends**. 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 by the end of the next business day, excluding weekends and holidays ~~within two business days~~, the **appraiser representing** 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.

Section 2.04 (k). The minutes reflect that proposed section 2.04(k) regarding access for the purpose of appraisal was approved by a vote of 3-2. My notes of the meeting reflect that this language was rejected, with the Chairman joining Board Members Coyne and Pare opposed.

Sincerely yours,

John P. Murphy
Executive Director

cc: ADALB Members
Michael Powers, Esq., Counsel to the ADALB