



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>

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

RICHARD STARBARD
WILLIAM E. JOHNSON
LYLE M. PARE
SAMANTHA L. TRACY

AGENDA

For Auto Damage Appraiser Licensing Board (“Board or ADALB”) Meeting Scheduled for Tuesday, February 26, 2019, 9:30 AM at 1000 Washington Street, Boston, Massachusetts

- I. Call to order.
- II. Approval of the Board minutes for the Board meeting held on January 23, 2019.
- III. Report by Board Member Richard Starbard on the next Part-II examination for motor vehicle damage appraiser held on February 6, 2019, at the Progressive Insurance Service Center in Westwood, Massachusetts.
- IV. Submitted by Board Member Samantha Tracy, for final approval by the Board of the following letter:

Date

Commonwealth of Massachusetts
Division of Insurance
1000 Washington Street, STE 810
Boston, MA 02118

RE: 212 CMR 2.04 (1)(d)

Responsible Official in the Division of Insurance:

On January 23rd, 2019 at the Auto Damage Appraiser Licensing Board (“ADALB” or “Board”) meeting, an agenda item was submitted for discussion pertaining to the use of photographs and/or video recordings for the purposes of completing a motor vehicle damage appraisal, pursuant to 212 CMR 2.04 (1)(d). As the discussion came to a close, it became clear that there remained a lack of clarity around the term “personally inspect” or “personal inspection” as provided in the referenced CMR which provides in pertinent part:

212 CMR 2.04 (1)(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.

In background, the Auto Damage Appraiser Licensing Board issued an Advisory Ruling on May 20, 2014 (2014-01) which stated, as provided below, that an appraisal completed via the use of video or digital images would be sufficient to meet the requirements of a “personal inspection”. While this Advisory Ruling was subsequently rescinded on July 21, 2015, the Board’s CMR does not provide a definitive definition of “personally inspected” for the purposes of this requirement, potentially leaving it open for interpretation. The ADALB’s Advisory Ruling 2014-01 in relevant part provided:

The Auto Damage Appraiser Licensing Board has passed a motion agreeing that an appraisal conducted by a licensed appraiser via review of quality video or digital images with documentation meets the requirements of 212 CMR 2.04(1)(d) “The appraiser shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making that appraisal....”

At this time the Board respectfully requests that a representative from the Division of Insurance attend an upcoming ADALB meeting, to provide clarity on this issue or if they are unable to attend, provide guidance that may be used by the Board when applying their regulation, 212 CMR 2.00 et seq., and these requirements as intended.

Thank you for your consideration.

Sincerely,

Samantha L Tracy

- V. Submitted for discussion by Board Members Lyle Pare and William Johnson, the following proposed Advisory Ruling relating to 212 CMR 2.01(1) and 211 CMR 133.00 et seq.:

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2019-XXXX

The Auto Damage Appraiser Licensing Board (ADALB or Board) is authorized to oversee all motor vehicle damage appraisers in the Commonwealth of Massachusetts pursuant to M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq. titled, “The Appraisal and Repair of Damaged Motor Vehicles” as promulgated by the ADALB. In relevant part M.G.L. c. 26, § 8G provides, “The board shall after notice and hearing in the manner

provided in chapter thirty A adopt rules and regulations governing licenses under this section in order to promote the public welfare and safety.” In addition 212 CMR 2.01(1) provides, “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*. ” Under its authority the ADALB is, *inter alia*, authorized to: issue licenses to all motor vehicle damage appraisers in the Commonwealth (licensed appraisers or appraiser) 212 CMR 2.02, regulate the conduct of motor vehicle damage appraisers in the Commonwealth 212 CMR 2.02, regulate the manner of conducting motor vehicle damage appraisals 212 CMR 2.04, and to issue Advisory Rulings pursuant to 212 CMR 2.01(3) and M.G.L. c. 30A, § 8.

Moreover the commissioner of the Division of Insurance has issued a regulation for the “STANDARDS FOR THE REPAIR OF DAMAGED MOTOR VEHICLES” 211 CMR 133.00 et seq. Specifically 211 CMR 133.04(1) and (2) provide in relevant part:

133.04: Determination of Damage and Cost of Repair

(1) Appraisers shall specify that damaged parts be repaired rather than replaced unless: the part is damaged beyond repair, or the cost of repair exceeds the cost of replacement with a part of like kind and quality, or the operational safety of the vehicle might otherwise be impaired. When it is determined that a part must be replaced, a rebuilt, aftermarket or used part of like kind and quality shall be used in the appraisal unless:

...

(c) a new original equipment part of like kind and quality is available and will result in the lowest overall repair cost;

...

(2) When an insurance company specifies the use of used, rebuilt, or aftermarket parts, the source and specific part(s) must be indicated on the appraisal. 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. If both parties agree that a specified part is unfit and must be replaced, the insurer shall be responsible for replacement costs such as freight and handling unless the repair shop is responsible for the part(s) being unfit, or unless the insurer and repairer otherwise agree. As to such costs, nothing in 211 CMR 133.00 shall preclude an insurer from exercising any available rights of recovery against the supplier.

The ADALB is authorized to enforce the provisions of 211 CMR 133.00 et seq. against licensed motor vehicle damage appraisers for violations of its provisions

pursuant to 211 CMR 133.08. “A violation of any provision of 211 CMR 133.00 shall be considered to be an unfair or deceptive act or practice, in violation of M.G.L. c. 176D. An alleged violation of 211 CMR 133.00 by a licensed auto damage appraiser may be reported to and penalized by the Auto Damage Appraisers Licensing Board in accordance with its governing statute and 212 CMR [sic]....” It is the intention of the ADALB to issue an Advisory Ruling consistent with 212 CMR 2.00 et seq. and M.G.L. c. 26, § 8G and 211 CMR 133.00 et seq. to be followed by licensed appraisers.

Pursuant to its authority, the ADALB voted by a majority vote at the Board’s meeting held on ---- to adopt this Advisory Ruling.

ADVISORY RULING

Appraisers should continue to follow 211 CMR 133.04 (1) and (1c) listed above on preliminary appraisals. If the vendor for the insurance company which has been listed as the source for the part(s) on the appraisal, cannot or will not make the part(s) available to a consumer or repair shop due to the fact they have no retail facility in the geographical area or refuse to deliver such part(s) to the consumer or repair shop for any reason beyond the control of the consumer or the repair shop, the consumer or the appraiser for the repair shop shall negotiate a replacement part of the same type of part(s) listed on the appraisal from an alternative vendor or source which will make the part(s) available to the consumer or the repair shop and the insurance company shall be responsible for the costs of the replacement part(s).

This Advisory Ruling shall be effective upon posting on the Auto Damage Appraiser Licensing Board public website. Failure to comply with this ruling could result in fines and penalties as provided by law.

For the ADALB,

Michael D. Powers, Esq.
Legal Counsel to the Board

- VI. Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda.
- VII. Executive session to review and discuss the background of applicants for motor vehicle damage appraiser test whom have disclosed a criminal conviction on the application. Review and discussion of Complaints 2018-07A, 2018-07B, 2018-08A & B, 2018-09A, 2018-09B, and 2018-11, 2018-12, and 2018-13 filed against motor vehicle damage

appraisers licensed by the Auto Damage Appraiser Licensing Board. Such discussions during the executive session are allowed 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, *Department of Public Safety Board of Appeals Matter*, OML 2013-104, and *Auto Damage Appraisers Licensing Board Matter*, OML 2016-6. 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 the matters be heard in the executive session.

VIII. Motion to adjourn.