



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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LYLE M. PARE

AGENDA

For Auto Damage Appraiser Licensing Board (“Board or ADALB”) Meeting Scheduled for Wednesday, January 23, 2018, 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 December 5, 2018.
- III. Report by Board Member Richard Starbard on the next Part-II examination for motor vehicle damage appraiser scheduled for February 6, 2019, at the Progressive Insurance Service Center in Westwood, Massachusetts.
- IV. Submitted for discussion by Board Member Richard Starbard, under what circumstances do insurance companies’ violate the ADALB’s regulation when they use photographs taken by consumers or insureds and sent to insurance companies to write appraisals, when the damages exceed \$1,500 less the insureds’ deductible amount contained in the insureds’ private passenger motor vehicle insurance policies, as provided for in 212 CMR 2.00 et seq.
- V. Submitted for discussion by Board Member Richard Starbard, the refusal of insurance companies to pay for parts that are subsequently damaged during the repair procedure in the course of being removed from the motor vehicle.
- VI. Submitted for discussion by Board Members Lyle Pare and William Johnson, a proposed Advisory Ruling relating to 212 CMR 2.01(1) and 211 CMR 133.00 et seq. “STANDARDS FOR THE REPAIR OF DAMAGED MOTOR VEHICLES”, specifically 211 CMR 133.04(1) and (2) which 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 proposed Advisory Ruling states:

Appraisers should continue to follow 211 CMR 13.04 (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 the consumer's 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's repair shop for any reason beyond the control of the consumer's appraiser, the consumer's appraiser 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's repair shop and the insurance company shall be responsible for the costs of the replacement part(s).

- VII. Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda.
- VIII. 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 2018-09C, and 2018-11, 2018-12, 2018-13 and 2018-16 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.

IX. Motion to adjourn.