



## THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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### **AGENDA**

**For Auto Damage Appraiser Licensing Board (“Board or ADALB”) Meeting Scheduled for Thursday, October 11, 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 August 28, 2018.
- III. Report by Board Member Richard Starbard on the next Part-II examination for motor vehicle damage appraiser scheduled for November 7, 2018 at the Progressive Insurance Service Center in Westwood, Massachusetts.
- IV. Discussion by the Board about defining the term Like Kind and Quality (LKQ) as compared to the language contained in M.G.L. c. 175, § 2 and as a definition of LKQ on an auto appraisal as it relates to used parts.
- V. Discussion by the Board comments and input from insurance companies writing property and casualty motor vehicle insurance in Massachusetts, representatives of the auto body repair industry, and other interested parties on the proposed Advisory Ruling submitted by Board Member William Johnson and amended by Board Member Lyle Pare, requiring manufacturers recommended repair procedures must be followed when a structural part of a motor vehicle has sustained damage affecting the safe operation of the motor vehicle. The proposed Advisory Ruling submitted by Board Members Johnson and Pare is the following:

**TO ALL CONCERNED PARTIES**

**Re: Advisory Ruling 2018-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... .” Furthermore, 212 CMR 2.04(1)(e) in pertinent part reads, “If, while in the performance of his or her duties as a 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.” 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. 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 to be followed by licensed appraisers.

Pursuant to its authority, the ADALB will hold a vote to adopt this Advisory Ruling.

#### ADVISORY RULING

212 CMR 2.04(1)(e) states in relevant part “[T]he 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. The registered repair shop must prepare an appraisal for the purpose of negotiation. No appraiser shall modify any published manual (i.e., Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturer warranty repair procedures, I-Car, Tec Cor and paint manufacturer procedures may also apply.” [ ]. The Insurance Institute for Highway Safety (IIHS) and the Highway Loss Data Institute (HLDI) or other similar recognized industry resource may also be utilized for negotiation purposes.

The Auto Damage Appraiser Licensing Board has passed a motion declaring that for the purposes of reducing traffic accidents and safeguarding users of motor vehicles against unreasonable risks of accident, injury, or death, when structural damage is caused to the structural/frame component of a motor vehicle (the main structure of the vehicle and/or any component designed to provide structural integrity of the vehicle), and if the repair of a damaged part will impair the operational safety/integrity of the motor vehicle requiring the replacement of the part, to ensure the safe and proper repair of a damaged motor vehicle the manufacturer warranty, I-Car, Tec Cor (or similar recognized industry resource) repair procedures shall be followed.

Components that are bolted onto a motor vehicle are not considered part of its structure or frame.

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,

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

- VI. Request by Brian M. Partain, Field Claims Manager of the Northeast Field Group of National General Insurance Company to waive the course requirement for taking the Part-I examination for motor vehicle damage appraiser license for Joseph Duva who is currently a resident of Connecticut and an employee of the National General Insurance Company and has been conducting auto damage appraisals for 30 years.
- VII. Letter from Mr. Gary Cloutier to Gilbert Cox, Chairman Auto Damage Appraiser Licensing Board dated September 25, 2018, about dismissal of Complaint 2016-5 that he filed against a licensed appraiser and complaining that ADALB violated its complaint procedures by allowing an attorney to speak during the executive session, and claiming that he had a right to be heard in the executive session in which the complaint was discussed.
- VIII. Proposed amendment to the Auto Damage Appraiser Licensing Board's Complaint Procedures by adding the following bolded underlined language to Section 1:

**Guidelines for ADALB Complaint Procedures**  
**Amended as Adopted by Unanimous Vote of the Auto Damage Appraiser**  
**Licensing Board at the Board Meeting Held on April 12, 2017.**

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.

**Aside from an individual's right to participate in a discussion about that individual, participation of other people during an executive session is within the Board's discretion.** See the Office of Attorney General's Decisions on the Open Meeting Law **OML2013-141**, OML 2016-06, **and M.G.L. c. 30A, § 20(g)**.

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.

- IX. Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda.
- X. 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, 2018-10, 2018-11, 2018-12, 2018-13, 2018-14, 2018-15, 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.

XI. Motion to adjourn.