



**THE COMMONWEALTH OF MASSACHUSETTS
AUTO DAMAGE APPRAISER LICENSING BOARD**

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May 20, 2021

Office of State Secretary
Regulations Division
State House
Room 117
Boston, MA 02133

Re: Meeting Notice and Agenda Items for the Massachusetts Auto Damage Appraiser Licensing Board Tuesday, May 25, 2021 at 11:00AM

Dear Concerned Parties:

In accordance with Massachusetts General Laws Chapter 30A, §§ 18-25 and Governor Charles D. Baker's "ORDER SUSPENDING CERTAIN PROVISIONS OF THE OPEN MEETING LAW, G.L. c. 30A, § 20" issued on March 12, 2020, the Auto Damage Appraiser Licensing Board (ADALB or Board) will hold a meeting on Tuesday, May 25, 2021, by teleconference at 11:00AM from 1000 Washington Street, Boston, Massachusetts. Because of COVID-19 Order No. 47 issued by Governor Charles D. Baker on August 7, 2020, gatherings of over 25 people are prohibited and, therefore, members of the general public will not be allowed to attend in-person. On Monday, May 17, 2021, Governor Baker announced the State of Emergency will end on June 15, 2021, but local municipal rules will still apply and public openings will follow previously issued guidelines. The public is invited to join-in the teleconference meeting by dialing the "Participants" telephone number at: 1-877-820-7831 and entering the Passcode 623523#. The

topics to be discussed during the meeting of the Auto Damage Appraiser Licensing Board will be the following:

- I. Call to order.
- II. Approval of the Board minutes for the Board meeting held on March 23, 2021.
- III. Report by Board Member Peter Smith on the Part-II examination for motor vehicle damage appraiser held on Saturday May 15, 2021, at the Progressive Insurance Service Center in Westwood, Massachusetts.
- IV. Discussion about amending the Auto Damage Appraiser Licensing Board's regulation, 212 CMR 2.00 et seq. On February 8, 2021, the Office of the Secretary of Administration and Finance (A&F) responded to a letter written by ADALB Chairman Michael Donovan informing him that the ADALB could continue the procedure for amending its regulation, but must follow comments made by the Division of insurance in 2016 about the proposed amendments that were submitted that year. The previous amendments that were approved by the Board on October 4, 2016 are the following:

Additions (as approved 8/3), (Typo's edited 9/7)

Deletions (as approved 8/3) (Typo's edited 9/7)

**212 CMR 2.00: AUTO DAMAGE APPRAISERS LICENSING BOARD
THE APPRAISAL AND REPAIR OF DAMAGED MOTOR VEHICLES**

Section

2.01: Scope of Regulations

2.02: Licensing Requirements and Standards for Appraisers

2.03: Duties of Insurers and Repairers

212 CMR 2:00: AUTO DAMAGE APPRAISERS LICENSING BOARD

2.04: Procedures for the Conduct of Appraisers and Intensified Appraisals

2.05: Penalties

2.06: Severability

2.01: Scope of Regulations

(1) 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*.

(2) Authority. 212 CMR 2.00 is promulgated under the authority granted to the Auto Damage Appraiser Licensing Board by M.G.L. c. 26, § 8G, as added by St. 1981, c. 775, § 1.

(3) The Board may from time to time issue Advisory Rulings and shall do so in compliance with M.G.L. c. 30A, § 8.

(4) Definitions.

Appraisal - means a **written** motor vehicle damage report prepared by an appraiser licensed by the Board, on forms approved by the Board, and conducted as defined in M.G.L. c. 26, 8G and in compliance with the provisions of 212 CMR 2.00, M.G.L. c. 93A, c. 100A, c. 90, § 34R, and c. 26, 8G.

Appraiser - means any person licensed by the Auto Damage Appraiser Licensing Board to evaluate motor vehicle damage and determine the cost of parts and labor required to repair the motor vehicle damage.

Board - means the Auto Damage Appraiser Licensing Board established by M.G.L. c. 26, 8G.

Claimant - means any person making a claim for damage to a motor vehicle for either first or third party damages.

Independent appraiser - means any appraiser other than a staff appraiser who makes appraisals under an assignment by an insurer or repair shop and shall include the owner or employee of a repair shop who makes appraisals under a contract with an insurer.

Insurer - means any insurance company involved with a claim in the Commonwealth.

Intensified appraisal - means the combination of the appraisal of a motor vehicle before its repair and the reinspection of the vehicle subsequent to its repair.

Staff Appraiser - means an appraiser who is an employee of an insurer and whose job duties include the making of appraisals for his or her employee.

Repair Shop Appraiser – means an appraiser who is an employee of a repair shop and whose job duties include the making of appraisals for his or her employer.

Repair Shop – means a motor vehicle repair shop registered pursuant to the requirements of M.G.L. c.100A.

Supervisory appraisal - means an appraisal conducted by an insurance company or appraisal company supervisor solely for the purpose of evaluating the appraisal ability of

one of his or her appraiser employees or for the purpose of providing on-the-job training of an appraiser employee.

2.02: Licensing Requirements and Standards for Appraisers

(1) Requirement That License Be Obtained and Displayed.

No person in Massachusetts shall appraise, estimate or determine damages to motor vehicles or otherwise present himself or herself as an appraiser unless he or she has first obtained a license from the **Auto Damage Appraiser Licensing** Board. This license shall be valid for one year or less and shall be renewed annually on July 1st. Any appraiser, while making an appraisal, shall carry his or her license and shall, upon request, display it to any person involved in the claim or to any representative of the Board.

(2) Qualifications for a License. Any applicant for a license shall be 18 years of age or over and of good moral character. He or she shall furnish satisfactory proof to the Board that he or she possesses the educational qualifications required for graduation from high school or that he or she possesses relevant work experience deemed satisfactory by the Board. No applicant shall be considered competent unless the applicant has assisted in the preparation of appraisals for at least three months under the close supervision of **an licensed** appraiser. He or she shall complete an approved appraisal course or, at the Board's discretion, work experience may be substituted for said schooling.

(3) Application and Examination Fee for a License. Any applicant for a license shall complete an application to be prescribed by the Board and shall sign it under the penalties of perjury. He or she shall submit this application and non-refundable fee of \$100 to the Board. After an application is received and approved, the applicant shall be required to pass an examination given under the supervision of the Board. All successful applicants will be issued a numbered license. Any applicant failing to pass an examination, upon the payment of a further non-refundable fee of \$50.00, shall be entitled to a reexamination after the expiration of six months from the date of the last examination. Any applicant failing to pass an examination shall be allowed to review his or her examination.

(4) Renewal of License. The Board shall mail to each **licensed** appraiser an application for renewal. Such application shall be completed and returned to the Board. Each application shall be accompanied by a renewal fee of \$50.00. After verification of the facts stated on the renewal application, the Board shall issue a renewal license dated July first, and this license shall expire on the June thirtieth of the year following. Any **licensed** appraiser who fails to renew his or her license within 60 days after notification by the Board of his or her license expiration date, before again engaging in the practice of **an licensed** appraiser within the Commonwealth, shall be required to re-register, pay a penalty fee determined by the Board and any back license fees, or may be required by the Board to be reexamined and pay applicable fees.

(5) Procedure for **Auto Damage** Appraisals.

(a) All forms used for **auto damage** appraisals must be approved by the Board.

(b) All forms used are required to have an itemization of parts, labor and services necessary, as **required in 212 CMR 2.00**, for repairs thereof. The prepared appraisal shall be sworn to under

the penalties of perjury and shall include the appraiser's name, signature, license number, seal or stamp, employer, **insurer insurance company**, repair shop registration number if applicable, fee charged, the date the vehicle was appraised and the name of the **database manual** used (if any) in preparing the appraisal. The appraisal seal or stamp shall be of a design approved by the Board. All appraisals sent electronically need not include the appraiser's signature and his or her seal or stamp.

(6) Schedule of Appraisal Fees.

(a) The Board may consider the appraisal fees charged within the territories where said appraiser operates. Any appraiser shall establish his or her own fee schedule unless limited by the Board. Any appraiser must post his or her appraisal fee schedule in a conspicuous location at his or her work place. The Board may establish a maximum schedule of fees by territory, type of business or complexity of work. Fees charged in excess of maximums approved by the Board shall result in penalties as established by the Board.

(b) Fees paid by a claimant for an appraisal that was requested by the insurer are recoverable from the insurer. Fees for **auto damage** appraisals not requested by the insurer in first party claims are not recoverable from the insurer.

(7) Conflict of Interest. It shall be a conflict of interest for any appraiser who has been assigned to **write an appraisal, appraise a damaged motor vehicle** to accept, in connection with that appraisal, anything of value from any source other than the assignor of that appraisal. Further, it shall be a conflict of interest for any **repair shop** appraiser **employed by a repair shop** to accept the assignment of an appraisal from an insurer unless that appraiser's employment contract prohibits the repair shop from repairing damaged motor vehicles that have been so appraised. In addition, it shall be a conflict of interest for any appraiser who owns or has an interest in a repair shop to have a vehicle repaired at that shop if that appraiser has appraised that vehicle at the request of an insurer. It shall be a conflict of interest if any **licensed** appraiser operates a Drive-in Appraisal Service **or Drive-in Claim and Appraisal facility** for, **or on behalf of, an insurer at a repair shop. Notwithstanding this provision, all drive-in appraisal services or drive-in claim and appraisal facilities must inform consumers of their right to have their vehicle repaired at any repair shop. No insurance company appraiser shall coerce or use any tactics the purpose of which is to prevent insureds or claimants from seeking damage reports on repairs from their own repair shop rather than utilizing a company appraisal drive-in facility.**

(8) Revocation or Suspension of a License. The Board may revoke or suspend any appraiser's license at any time for a period not exceeding one year if the Board finds, after a hearing, that the individual is either not competent or not trustworthy or has committed fraud, deceit, gross negligence, misconduct, or conflict of interest in the preparation of any **appraisal motor vehicle damage report**. The following acts or practices by any appraiser are among those that may be considered as grounds for revocation or suspension of an appraiser's license:

(a) material misrepresentations knowingly or negligently made in an application for a license or for its renewal;

(b) material misrepresentations knowingly or negligently made to an owner of a damaged motor vehicle or to a repair shop regarding the terms or effect of any contract of insurance;

(c) the arrangement of unfair and or unreasonable settlements offered to claimants under collision, limited collision, comprehensive, or property damage liability coverages;

- (d) the causation or facilitation of the overpayment by an insurer of a claim made under collision, limited collision, comprehensive, or property damage liability coverage as a result of an inaccurate appraisal;
- (e) the refusal by any appraiser, who owns or is employed by a repair shop, to allow an appraiser assigned by an insurer access to that repair shop for the purpose of making an appraisal, **supervisory reinspection**, or intensified appraisal.
- (f) the commission of any criminal act related to appraisals, or any felonious act, which results in final conviction;
- (g) knowingly preparing an appraisal that itemizes damage to a motor vehicle that does not exist: and
- (h) failure to comply with 212 CMR 2.00.

(9) Drive-in Claim and Appraisal Facilities. Drive-in claim and appraisal facilities shall possess the following equipment:

- (a) Operating telephone service.
- (b) A calculator.
- (c) Current collision, paint and body cost estimating guide manuals or an automated system.
- (d) An operating flash light.
- (e) A tape measure of at least 30 feet.
- (f) An operating camera and film.
- (g) A fax machine or other device capable of transmitting data.

2.03: Duties of Insurers and Repairers

(1) Responsibilities for Actions of Appraisers. An insurer or repair shop shall be responsible for the actions of **all of it's the** appraisers **working on their behalf whether staff or independent**, and shall be subject to the applicable penalties under law for any violation of 212 CMR 2.00 by its appraiser. The Board may assess penalties against either the appraiser, the insurer, the repair shop or all three. In the event of default by the appraiser, the insurer or the repair shop may be responsible for penalties.

(2) Records and Analysis of Appraisals. Every **insurer or repair shop** appraiser shall retain for at least two years, copies of all records related to appraisals and inspection. Every insurer shall retain copies of all records including photographs in accordance with state law.

2.04: Procedures for the Conduct of Appraisals and Intensified Appraisals

(1) Conduct of Appraisals.

(a) Assignment of an Appraiser. Upon receipt by an insurer or its agent of an oral or written claim for damage resulting from a motor vehicle accident, theft, or other incident for which an insurer may be liable, the insurer shall assign **an either a staff or an independent** appraiser to **conduct an appraisal appraise the damage**. Assignment of an appraiser shall be made within two business days of the receipt of such claim. However, the insurer may exclude any claim for which the amount of loss, **less any applicable deductible**, is less than **\$1,500.00**.

(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment for the purpose of preparing **an motor vehicle damage appraisals and conducting negotiations**. No **staff or independent** appraiser shall knowingly negotiate a repair figure with an unlicensed individual or an unregistered repair shop.

(c) Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of an **staff or independent** appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific repair shop or individual. **The provisions of 212 CMR 2.04(c) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00.**

(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.

(e) Determination of Damage and Cost of Repairs. 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 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 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. If, while in the performance of his or her duties as an 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. 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 a 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 breakage that is the result of damage to the structural housing of the glass then the cost of replacing the glass must be included in the appraisal in accordance with 212 CMR 2.04. The total cost of repairing the damage shall be computed by adding any applicable sales tax payable on the cost of replacement parts and other materials. The appraiser shall record the cost of repairing any**

unrelated damage on a separate report or clearly segregated on the appraisal unless the unrelated damage is in the area of repair.

If aftermarket parts are specified in any appraisal, the appraiser shall also comply with the requirements of M.G.L. c. 90, § 34R that pertain to the notice that must be given to the owner of a damaged motor vehicle. 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.

(f) Determination of Total Loss. Whenever the appraised cost of repair plus the estimated salvage may be reasonably expected to exceed the actual cash value of a vehicle, the insurer may deem that vehicle a total loss. No motor vehicle may be deemed a total loss unless it has been **personally inspected or and** appraised by **an licensed** appraiser nor shall any such motor vehicle be moved to a holding area without the consent of the owner. A total loss shall not be determined by the use of any percentage formula.

(g) Preparation and Distribution of Appraisal Form. All appraisers shall set forth the information compiled during the appraisal on a form that has been filed with the Board. Staff and independent appraisers shall, upon completion of the appraisal, give copies of the completed appraisal form to the claimant, the insurer, and the repair shop and shall give related photographs to the insurer.

(h) Supplemental Appraisals. If a **registered** repair shop or claimant, after commencing repairs, discovers additional damaged parts or damage that could not have been reasonably anticipated at the time of the appraisal, either may request a supplementary appraisal. The **registered appraiser representing the** repair shop shall complete a supplemental appraisal prior to making the request. The insurer shall assign an appraiser who shall personally inspect the damaged vehicle within **two three** business days of the receipt of such request. The appraiser **representing the insurer** shall have the option to leave a completed copy of the supplement appraisal at the registered repair shop authorized by the insured or leave a signed copy of his or her field notes with the completed supplement to be mailed, faxed, electronically **submitted transmitted** or hand delivered to the repair shop within one business day. 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 inspections of the vehicle and completion of the supplemental appraisal impossible.

(i) Expedited Supplemental Appraisals. 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 then be required to fax or electronically submit to the repair shop within one two business days its decision as to whether it accepts the requested supplemental appraisal allowance, **by the end of the next business day, excluding weekends and holidays**. 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 **within one two business days, by the end of the next business day, excluding weekends and holidays**, the **appraiser representing the 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.

No insurer or repair shop shall be obligated to utilize an expedited supplemental appraisal process and the determination of whether to utilize such process shall be made separately by an insurer or by a repair shop only on an individual claim basis. Utilization of an expedited supplemental appraisal process shall not be used as a criterion by an insurer in determining the insurer's choice of shops for a referral repair shop program under an insurer's direct payment plan; and being a referral shop shall not be a criterion in determining whether to utilize an expedited supplemental appraisal process.

(j) Completed Work Claim Form. If the **insurer insurance company** does not have a direct payment plan or if the owner of the vehicle chooses not to accept payment under a direct payment plan, then a representative of the insurer shall provide the insured with a completed work claim form and instructions for its completion and submission to the insurer. **When a completed work claim form is utilized, the appraiser representing the insurer and the appraiser representing the repair shop shall negotiate all costs without regard to the direct payment plan/referral shop program.**

(2) Temporary Licensing. The Board may grant at its discretion either an emergency or a temporary license to any qualified individual to alleviate a catastrophic or emergency situation for up to 90 days. The Board may limit the extent of such emergency authorization and in any event, if the situation exceeds 30 days, a fee determined by the Board shall be charged for all emergency or temporary licenses. **The Board shall vote to authorize the Chairman of the Board or his/her designee to grant a temporary license up to 60 days to any qualified individual to alleviate a catastrophic or emergency situation as long as the following conditions are met: (1) the applicant is licensed as a motor vehicle damage appraiser in another state and provides a copy of that license to the Chairman of the Board or his/her designee; (2) is in good standing in the other state and the applicant provides consent to the Chairman of the Board or his/her designee to verify the applicant's licensing status through the insurance licensing database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; (3) the applicant has not been found guilty of fraud, deceit, gross negligence, incompetence, misconduct or conflict of interest in the preparation or completion of any motor vehicle damage report; (4) the applicant does not have criminal felony charges pending against him/her in any state; (5) the applicant properly fills out the application; and (6) pays the**

applicable license fee. Copies of all such applications and temporary licenses issued by the Chairman of the Board or his/her designee shall be submitted to the Board at its next scheduled meeting for review by the Board. After review, the Board may revoke any such temporary license that was issued if the Board finds such applicant does not conform to the six listed conditions, or the Board finds that a person who was issued a temporary license is not qualified to hold such license.

2.05: Penalties

(1) Violations of M.G.L. c. 26, § 8G, and 212 CMR 2.00 may result in penalties including administrative costs, revocation or suspension of license or both. All administrative costs are subject to the discretion of the Board. The administrative costs may be assessed against the appraiser, the appraiser's employer, the insurer, or the repair shop.

An alleged violation of 212 CMR 2.00 by an **licensed** appraiser at the direction of an insurer may be reported to the Division of Insurance, which may impose applicable penalties against such an insurer.

2.06: Severability

If any provision of 212 CMR 2.00 or its application to any person or circumstances is held invalid, such invalidity shall not affect the validity of other provisions or applications of 212 CMR 2.00.

REGULATORY AUTHORITY

212 CMR 2.00: M.G.L. c. 26, § 8G.

- V. Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda.
- VI. Motion to adjourn.

Auto Damage Appraiser Licensing Board,
By its Attorney,

Michael D. Powers

I certify that, this Notice was sent by U.S. Mail postage prepaid to the Massachusetts Office of Administration and Finance, to the Office of the Secretary for the Commonwealth and forwarded by e-mail to the IT Services for the Commonwealth.

Michael D. Powers
Counsel to the ADALB

Date

