



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>

Maura Healey
GOVERNOR

Kim Driscoll
LIEUTENANT GOVERNOR

MICHAEL DONOVAN
CHAIRMAN

RICHARD STARBARD
WILLIAM E. JOHNSON
SAMANTHA L. TRACY
PETER SMITH

May 18, 2023,

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 23, 2023, 10:00AM at 1000 Washington Street, Boston, Massachusetts

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, Chapter 20 of the acts of 2021 "An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency", the Auto Damage Appraiser Licensing Board (ADALB or Board) will hold a public meeting on Tuesday, May 23, 2023, at 10:00AM at 1000 Washington Street, Boston, Massachusetts Room

1E. The topics to be discussed during the meeting of the Board will be the following:

- I. Call to order.
- II. Approval of the Board minutes for the Board meeting held on March 16, 2023.
- III. Report by Board Member Peter Smith on the Part-II examination for motor vehicle damage appraiser.
- IV. Hearing by the Board to review the potential revocation of the motor vehicle damage appraiser license of Justin Forkuo based on the findings that were made against Mr.

Forkuo as the owner of defendant 290 Auto Body Inc. (“290”) in the case of Preferred Mutual Insurance Company v. 290 Auto Body Inc. Civil Action 18-01813, (Worcester Superior Court). The records on file with the Worcester Superior Court disclose that the “Order for Judgement” and findings were entered on September 15, 2022, a final judgment was entered on February 21, 2023, and no appeal was filed by the defendant. Pursuant to Massachusetts law, an appeal must be filed within 30 days of the entry of final judgment.

The hearing will focus on the following final findings made by Massachusetts Associate Superior Court Justice A. Gavin Reardon Jr. in which Associate Justice Reardon entered a final judgment and found that Mr. Forkuo created a fraudulent auto damage invoice and engaged in fraud and deceit in the appraisal of damage of a motor vehicle:

...

In short, I find that Forkuo was unable to provide any paperwork or explanation justifying the invoices he sent in this matter and that the invoices were excessive. I also find that he created the billing and email system he used in this matter for the express purpose of frustrating insurance carriers like the plaintiff, with the intent of forcing them to pay excessive and unwarranted fees in order to avoid accrual of storage charges.

...

RULINGS OF LAW

1. Fraud and Deceit.

...

Finally, the invoices and demands 290 sent to Preferred did not accurately reflect work performed or charges incurred by 290. 290’s “Direction to Pay” to Preferred indicated that 290 was due payment for, among other things, work dismantling the Honda, a gate fee, a hazardous waste fee, a blueprint fee, an administration fee, and a collision access fee. However, Forkuo was unable to specifically relate the itemized costs in the “Direction to Pay” to the Honda. As Forkuo failed to maintain accurate records of what work was actually performed on the Honda, and as I credit McKeen’s testimony that the reasonable cost to

appraise the Honda was less than \$100, 290 grossly overstated the amounts due from Preferred, seeking payment for at least some work not actually performed by 290 and not actually due from Preferred. Further, 290's repeated demands for reimbursement of attorney's fees by Preferred were fraudulent as 290 failed to demonstrate that it actually incurred those attorney's fees for which it sought reimbursement from Preferred.

Taking these findings together, 290 knowingly made multiple false representations of material fact to Preferred for the purpose of inducing Preferred to pay more to 290 than was actually due...

...

Such conduct violates M.G.L. c. 26 § 8G which provides in relevant part:

...

The board, after due notice and hearing, **shall revoke any license issued by it and cancel the registration of any person who pleads guilty to or is convicted of a fraudulent automobile damage report as a result of a court judgment and said license shall not be reinstated or renewed nor shall said person be relicensed.**

....

(Emphasis added).

The Board will also review whether such conduct violated the Board's Regulation 212 CMR 2.08 which provides:

(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 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.

- V. Submitted for discussion by Board Member Johnson: The rights of members of the general public to have their vehicles inspected by a Massachusetts licensed motor vehicle damage appraiser of their choice and at the location of the damaged motor vehicle, before an insurance company makes an offer to the owner of the motor vehicle declaring the motor vehicle a total loss, and orders the motor vehicle moved to a different location.
- VI. Next meeting date.
- 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 complaints filed against licensed motor vehicle damage appraisers. The Board will review several complaints that the Board voted to move to the next step of the Board’s Complaint Procedures out of over 100 complaints filed against motor vehicle damage appraisers brought by the same licensed appraiser who also owns an auto body shop, most of the complaints have been brought against 2 insurance companies and their authorized appraisers. The review by the Board will be conducted in accordance with the Auto Damage Appraiser Licensing Board’s “Complaint Procedures” to determine whether: the Board lacks jurisdiction, the complaints are based on frivolous allegations, lack sufficient evidence, lack legal merit or factual basis, no violation of the regulation is stated, or other basis. During the review, the Board will review and discuss whether the complaints shall be dismissed or whether complaints will proceed to the next step of the ADALB’s Complaint Procedures for the following Complaints: 2022-19, 2022-25, 2022-26, 2022-28, 2022-

29, 2022-36, 2022-88, 2022-96, 2022-97, and 2022-116, 2022-44, 2022-50, and 2022-54.

Such discussion during the executive session is 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 and *Auto Damage Appraisers Licensing Board Matter*, OML 2019-50. 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 have requested the matter be heard in the executive session.

IX. Motion to adjourn.

Auto Damage Appraiser Licensing Board,
By its Attorney,

Michael D. Powers

I certify that, this Notice was sent by email 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

Reasonable accommodations for people with disabilities are available upon request. You can make a request by sending an email to Michael D. Powers at:

Michael.d.powers@mass.gov. Please include your name and contact information, and the type of accommodation you will need, including as much detail as you can. Please be advised that while we will try our best to grant requests received after the Friday before the meeting, they may not be possible to fulfill, so please make your request as soon as you know you will need it.