



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>

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LIEUTENANT GOVERNOR

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

Minutes of Meeting of the Board held on January 23, 2019, Approved by the Board at the April 30, 2019, Board Meeting; Motion of Board Member William Johnson and Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 3-0, with Recently Appointed Chairman Michael D. Donovan and New Board Member Peter Smith Abstaining.

January 23, 2019, Minutes of Board Meeting
Held at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Cox
Samantha Tracy
William Johnson
Richard Starbard
Lyle Pare

Attending to the Board:

Michael D. Powers, Counsel to the Board

Proceedings recorded by:

Chris Gervais of MAPFRE (Audio/Video). Evangelos Papageorg, Executive Director of the Alliance of Auto Service Providers of Massachusetts (AASP), (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photo). Jim Steere of Hanover Insurance Company (Audio) and Gabriel Hernandez from Empire Auto Parts.

Call to Order:

Chairman Cox called the meeting to order and it was reported that Board Member Joseph Coyne would no longer serve on the Board. Samantha Tracy introduced herself to the Board, and members of the general public, as recently appointed as a Governor's appointment, and informed everyone that she was employed by Arbella Insurance Company. Board Member Tracy was appointed as one of the five members to the Board by the Governor pursuant to M.G.L. c. 26, § 8G as one of four gubernatorial appointees and "[t]wo of whom shall be affiliated with insurance companies writing casualty insurance within the commonwealth..." Board Member Coyne was also originally appointed under this same provision by Governor Deval Patrick in 2007, as a Board member who was affiliated with insurance companies writing casualty insurance within

the commonwealth. Board Member Coyne is President and owner of the highly reputable Home and Auto Appraisal Bureau, Inc. of Dorchester, Massachusetts, one of the biggest independent appraisers in Massachusetts and New England.

Chairman Cox announced that a letter should be sent to Board Member Coyne by the Board acknowledging the fine work he contributed to the ADALB for over 12 years of consistent and reliable service. Board Member Johnson agreed and volunteered to draft a letter for the Board's approval. Chairman Cox thanked Board Member Johnson for volunteering.

Review of minutes:

The Board reviewed the draft minutes of the Board meeting held on December 5, 2018. Chairman Cox called for a motion to approve the minutes, Board Member William Johnson said that the minutes made reference to scheduling a Part-II examination at the Pathfinder Regional Technical High School when in fact the Part-II examination would take place at STCC or Springfield Technical Community College. Board Member Johnson made the motion to approve the minutes as amended by replacing the Pathfinder Regional Technical High School with the Springfield Technical Community College, and Board Member Richard Starbard seconded the motion. Chairman Cox called for a vote on the motion, and the motion passed by a vote of: 3-0 with Chairman Cox abstaining and recently appointed Board Member Samantha Tracy abstaining because she was not a member of the Board on December 5, 2018.

Report on the next Part-II examination for motor vehicle damage appraiser:

Board Member Richard Starbard reported the Motor Vehicle Damage Appraiser Part-II examination was on schedule for February 6, 2019, at Progressive Insurance Company's facility in Westwood, Massachusetts.

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. ?:

Chairman Cox first read the item as it was listed on the agenda and asked Board Member Starbard if he wish to comment.

Board Member Starbard responded that he recently received an appraisal of over \$4,000, the initial appraisal was written in E-Pics, and Mr. Starbard did not have anything to do with the initial appraisal. The Board had discussed at previous Board meetings that such pictures sent to an insurance company could not be used as the basis for a motor vehicle damage appraisal and would violate the Board's enabling act and regulation [M.G.L. c. 26, § 8G and 212 CMR 2.04(1)(d)]. The pictures did not show damage to the underside of the motor vehicle. Mr. Starbard wanted to raise the issue for discussion to ensure that this practice did not become a standard course of practice in the auto appraisal industry.

Board Member Tracy pointed out that she was concerned about the manner in which the Board item appeared on the agenda, it was unclear how the deductible would be applied for mandating a

licensed appraisal based on the minimum damage to a motor vehicle [\$1,500 after reducing the damage by the consumer's deductible 212 CMR 2.04(1)(a)]. She asserted that if the intent is to remind people working in the industry about the restriction, then she would agree.

Board Member Starbard asserted that there should be a personal inspection of the damage anytime the damage exceeds \$1,500 and insurance companies should not be conducting an appraisal of damage from pictures submitted by consumers when it is clear that the damage to a motor vehicle is well above the \$1,500 threshold. He wanted to discuss the issue during the Board meeting to ensure it does not become a standard appraisal practice in the auto repair industry.

Chairman Cox asserted that there was an issue raised by an Advisory Ruling made by the Board in 2014, (a copy of the Advisory Ruling was passed to him by Mr. Pare, Advisory Ruling 2014-01), that videos and photographs meet the requirement of a "personal inspection" of the damage by a motor vehicle damage appraiser.

Mr. Starbard asserted that the Board rescinded that Advisory Ruling and stated that videos and photographs do not meet the requirement of a "personal inspection" of the damage.

Michael Nastari of Mapfre Insurance Company requested permission to speak to the Board and the Chairman granted permission. He suggested that the Board should take into consideration communications by the Division of Insurance about this issue. He elaborated, the Division of Insurance has approved Direct Payment Plans which allow the use of video and photographs by appraisers and this satisfies the requirement of a "personal inspection."

Board Member Starbard responded that Direct Payment Plans used by insurance companies are distinguishable because they are based on a contract between an insurer and a consumer as a contract for repair.

Mr. Papageorg, Executive Director of AASP of Massachusetts, requested permission to speak to the Board and Chairman Cox granted permission. Mr. Papageorg opined that technology has changed and no one thought that a person would be taking photographs of damage to his or her own vehicle.

Mr. Nastari agreed, asserting that the new technology is very slick, previously people used cameras, and today even auto body repair shops are using cellphones, to photograph damage, which produce a very high quality picture.

Mr. Gary Cloutier requested permission to speak to the Board and the Chairman granted permission. Mr. Cloutier pointed out that at times he experienced difficulty in properly photographing damage on inaccessible parts of motor vehicles and he doubted consumers' ability to take comprehensive pictures of motor vehicle damage.

Board Member Johnson interjected, we are not saying that appraiser can't do it, only it must be done when an appraiser concludes the damage is going to exceed a certain amount [in excess of \$1,500 after the consumer's deductible is taken out of the total damage].

Board Member Samantha Tracy declared, we can't answer the question at this time, if the Division of Insurance has done something that has created an ambiguity then they should clear it up.

Chairman Cox observed that if the Division of Insurance approved that an appraiser could rely on photographs when reviewing damage to a motor vehicle, that ruling may conflict with the ADALB's regulation. He suggested the Board send a letter to the Division of Insurance and request that they explain their ruling and how it comports with the ADALB's regulation. He asked Board Member Tracy to draft such a letter and she agreed to draft it and send it to Board Legal Counsel Michael D. Powers for review. Mr. Powers said that after he reviewed the draft letter and discussed it with Board Member Tracy, he would place it on the agenda for the next Board meeting.

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:

Board Member Richard Starbard moved to table this item and the motion was seconded by Board Member Johnson; the motion carried by a vote of: 3-0 with Chairman Cox and Board Member Tracy abstaining.

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).

Board Member Tracy queried, is this a specific issue that the Board is providing an Advisory Ruling on? Board Member Tracy declared, many times in her experience the appraisers worked out the issue between the auto body repair shop and the insurance company's appraiser. This would be akin to putting a wall down in someone's house during a family dispute, you stay on your side and I'll stay on my side of the wall. These are disputes where the auto body shops and appraisers do not get along with each other.

Board Member Starbard asserted that is the problem, the parts suppliers will refuse to do business with auto body shops that return too many parts.

Board Member Tracy queried, is it appropriate for the Board to tell auto body shops and suppliers how to do business?

Board Member Starbard responded, last month the Board discussed these issues and we are talking about when a part is deemed unavailable.

Board Member Tracy replied, she was not sure that the insurance company should tell the parts company to do business with auto body shops. This would be like saying you have to sit next to Aunt Sally.

Board Member Johnson asserted, the insurance company should call when the supplier marks a part as unavailable.

Board Member Tracy stated, she could not see why the parties cannot work these types of things out.

Board Member Pare interjected, this issue was raised when an appraiser wrote a letter to the Board about an insurance company's refusal to pay for the part.

Mr. Papageorg requested permission to speak to the Board and Chairman Cox granted permission. Mr. Papageorg stated that AASP has determined that this is an issue going on across

the state. Auto body shops are being punished because vendors will not follow the ADALB's regulation.

Mr. Nastari was allowed to respond and he questioned, why should the Board get involved in a relationship between an auto body shop and a vendor? If there is a violation of the Board's regulation then an appraiser should file a complaint.

Board Member Starbard elaborated, if a repairer cannot get a part from a supplier then the part is deemed unavailable.

Peter Langone of Langonet Auto Body Shop asked permission to speak to the Board and permission was granted. Mr. Langone asserted that he had a problem with Empire and contended he has an A-1 credit rating. Although he requested a \$600 part, they will not ship the part and he is unable to access the website for the part.

Board Member Tracy replied that, her family is in the auto body industry and she works for an insurance company, she found that the parties worked out their problems.

Mr. Langone added, until a few months ago things worked out. Every part he returns he shows to the insurance company's appraiser and returning parts is not cost effective for running an auto body shop.

Mr. Hernandez from Empire Parts requested permission to speak to the Board and permission was granted. He stated that, his company just doesn't stop shipping parts for no reason. High return rates for parts that are in good condition is a reason that his company will refuse to do business with an auto body shop.

Peter Smith from Commerce/Mapfre Insurance Company asked permission to speak to the Board and permission was granted. Mr. Smith asserted that, if you are talking about 211 CMR 133.00 et seq., then you are talking about a regulation implemented by the Division of Insurance.

Mr. Cloutier responded, when he returns a part he does not get his money back, he gets a credit from the supplier.

Mr. Papageorg rejoined, this is not an issue about non-payment of a bill, he knows many auto body shop owners and he was informed the payment of the bill was not an issue.

Board Member Tracy agreed by stating we are not concerned with an auto body shop's finances.

Mr. Papageorg responded, at the Board meeting held last month, there was a mutual agreement that the parts that were returned did not fit and the lynchpin of the agreement was that a part deemed unavailable would be the subject matter of the proposed Advisory Ruling.

Chairman Cox queried, do you agree that the proposed Advisory Ruling is written properly? Mr. Papageorg responded, no.

Chairman Cox asked Board Member Johnson if he believed that the proposed Advisory Ruling should be adjusted.

Board Member Johnson responded, we could forget about the Advisory Ruling.

Board Member Starbard opined, when a part is listed as unfit for use the insurance company's appraiser should review it and if found unfit for use the auto body shop should be paid in full for the part and a replacement part should be sent. The insurance company's appraiser should return the part, auto body shops should not be paying for the costs of returning parts that are unfit for use.

Chairman Cox queried Board Member Pare, do you believe the proposed Advisory Ruling is acceptable because it addresses Mr. Papageorg's comments?

Board Member Pare replied, he would be willing to sit down with Board Member Starbard or Board Member Tracy and discuss revisions to it.

Board Member Johnson interjected that, he agreed in a perfect world we need to make the proposed Advisory Ruling stronger.

Mr. Doyle from Amica Insurance Company requested permission to speak to the Board and permission was granted by Chairman Cox. Mr. Doyle recommended against the proposed Advisory Ruling and asserted, common sense should prevail.

Board Member Johnson rejoined that he experienced times when consumers could not get parts from suppliers and concluded, consumer should be allowed to fix the cars they own.

Mr. Hernandez queried, what if the auto body shop's appraiser is the problem?

Board Member Pare responded, the Board would look at the complaint and in that case the complaint would be dismissed.

Board Member Johnson made a motion to table the item to the next meeting and the motion was seconded by Board Member Starbard. The motion carried by a vote of: 3-0 with Chairman Cox and Board Member Tracy abstaining.

Date of next Board Meeting:

The Board Members agreed to hold the next Board meeting on February 26, 2019, at 9:30AM at 1000 Washington Street, Boston, Massachusetts.

Motion to enter the Executive Session:

Chairman Cox announced that the Board was about to enter the executive session and would conclude the Board meeting in the executive session without returning to the public session. Chairman Cox then read the following announcement:

The Board is about to enter the Executive session to review and discuss the background of applicants for motor vehicle damage appraiser test who have disclosed a criminal conviction on the application. Review and discussion of Complaint, 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.

After reading the item, Chairman Cox called for a motion to enter the executive session, the motion was made by Board Member Johnson, and seconded by Board Member Richard Starbard. A roll-call of the Board Members was taken by Chairman Cox with each Board Member

separately voting in the affirmative, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Executive Session:

Complaint 2016-16

The licensed appraiser appeared with Attorney Owen Gallagher, who represented the licensed appraiser. The licensed appraiser was asked questions by the Board and he answered all of them.

Board Member Starbard commented that he was dissatisfied with the way in which the negotiations were conducted by the licensed appraiser and did not want to see this happen again.

Attorney Gallagher asked permission to speak to the Board and Chairman Cox granted permission. Attorney Gallagher informed the Board that there was a mistake made in disallowing an item on the appraisal, the appraiser admitted to making the mistake, and the supervisor for the insurance company instructed all of his appraisers working for the insurance company that, all damaged parts including those parts that are damaged during the course of an auto body shop's repair process are to be included as part of the appraised damage. Attorney Gallagher informed the Board that a supplemental appraisal was submitted to the auto body shop including the part that was damaged during the course of the repair procedure and the insurance company agreed to pay for the part.

Board Member Johnson made a motion to dismiss the complaint and the motion was seconded by Board Member Pare. The motion passed by a vote of: 3-0 with Chairman Cox and Board Member Tracy abstaining.

Motion to adjourn:

Board Member Johnson moved to adjourn the meeting, seconded by Board Member Pare and the motion passed by a vote of: 4-0, with Chairman Cox abstaining.

Whereupon, the Board's business was concluded.

The form of these minutes comports with the requirements of M.G.L. c. 30A, §22(a).

List of Documents provided at the Board meeting:

- 1. Letters from LKQ, dated January 22, 2019, to Michael D. Powers, Counsel to the Auto Damage Appraiser Licensing Board.**