



## THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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WILLIAM E. JOHNSON  
SAMANTHA L. TRACY  
PETER SMITH

**Minutes of Meeting of the Board held on September 24, 2019, Approved by the Board at the November 26, 2019, Board Meeting; Motion of Board Member Richard Starbard and Seconded by Board Member William Johnson. The Motion Passed by a Vote of: 4-0 with Chairman Donovan Abstaining.**

September 24, 2019, Minutes of Board Meeting  
Held at 1000 Washington Street, Boston, Massachusetts.

**Members Present:**

Chairman Donovan  
Samantha Tracy  
William Johnson  
Richard Starbard  
Peter Smith

**Attending to the Board:**

Michael D. Powers, Counsel to the Board  
Steven Zavackis, Executive Secretary

**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 (Audio).

**Call to Order:**

Chairman Michael Donovan called the meeting to order, and all of the Board Members were present for the meeting.

**Approval of the Board minutes for the Board meeting held on August 20, 2019:**

Chairman Donovan called for approval of the minutes of the Board meeting that was held on August 20, 2019 and a motion was made by Board Member Richard Starbard and seconded by Board Member William Johnson. The minutes were approved by a vote of: 4-0 with Chairman Donovan abstaining.

**Report by Board Member Peter Smith on the Part-II examination for motor vehicle damage appraiser:**

Board Member Peter Smith reported that the next Part-II examination was scheduled for November 6, 2019 at the Progressive Insurance Service Center in Westwood, Massachusetts. Board Member Smith reported that there were 10 candidates currently on the roster and he fully expected the usual number of 50 people taking the examination.

**Report by Board Member William Johnson on the drafting of an Advisory Ruling with Board Member Samantha Tracy**

Board Member William Johnson reported that he and Board Member Samantha Tracy were working together drafting a proposed Advisory Ruling. Board Member Johnson related that they were very meticulous to stay within the wording of the Code of Massachusetts regulations [212 CMR 2.00 et seq. and 211 CMR 133.00 et seq.]. Board Member Johnson took into account comments that were previously submitted for the Advisory Ruling that he drafted and proposed at the end of last year and the beginning of this year.

Chairman Donovan requested Board Member Johnson to read the proposed Advisory Ruling and Board Member Johnson read the following:

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2019-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. 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 entitled, “Standards for the Repair of Damaged Motor Vehicles.” 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.

Moreover the commissioner of the Division of Insurance has issued a regulation for the “STANDARDS FOR THE REPAIR OF DAMAGED MOTOR VEHICLES” 211 CMR 133.00 et seq. Specifically 211 CMR 133.04(1) and (2) 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 ADALB is authorized to enforce the provisions of 211 CMR 133.00 et seq. against licensed motor vehicle damage appraisers for violations of its provisions pursuant to 211 CMR 133.08 which provides "A violation of any provision of 211 CMR 133.00 shall be considered to be an unfair or deceptive act or practice, in violation of M.G.L. c. 176D. An alleged violation of 211 CMR 133.00 by a licensed auto damage appraiser may be reported to and penalized by the Auto Damage Appraisers Licensing Board in accordance with its governing statute and 212 CMR [sic]...." 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 and 211 CMR 133.00 et seq. to be followed by licensed appraisers.

Pursuant to its authority, the ADALB voted by a majority vote at the Board's meeting held on ---- to adopt this Advisory Ruling.

### **ADVISORY RULING**

Appraisers should continue to follow 211 CMR 133.04(1)(b) and (c), and 212 CMR 2.04, referenced above, on appraisals. If the part(s) that have been specified on the appraisal are unfit for use in the subject repair and must be replaced, as agreed upon by both the repair shop and the insurance company, the parties should attempt to agree on an alternative part and the insurance company shall be responsible for the replacement costs such as freight and handling or shall be responsible for the costs of restoring the parts to usable condition, unless the parties otherwise agree.

Further the appraisers representing the insurance company and the registered repair shop shall attempt to agree on the estimated cost for such repairs. The registered repair shop must prepare an appraisal for the purpose of negotiation.

Nothing herein is intended to create any obligations in addition to those set forth in 212 CMR 2.00 or 211 CMR 133.00. If anything herein is in conflict with these regulations, the regulations control.

The ADALB stresses 211 CMR 133.04(2) must be followed by all appraisers, and a deviation may constitute a violation of 212 CMR 2.02(8)(c) and 212 CMR 2.02(5)(b) which states in relevant part “The prepared appraisal shall be sworn to under the penalties of perjury....”

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 penalties as provided by law.

After Board Member Johnson read the proposed Advisory Ruling Chairman Donovan allowed questions from members of the general public. One member of the public asked, What if a part is unavailable? Board Member Johnson responded, there is cost shifting going on in the industry and the Advisory Ruling is an attempt to stop the cost shifting by reminding appraisers about these provisions in the regulation.

A member of the public stated that he was placed on a “do not sell” list by a major parts supplier because he returned to non-conforming parts in fourteen months.

Board Member Starbard suggested that a motor vehicle damage appraiser should cite the regulation and the provision that provides for when a part is unavailable.

The member of the public responded that he was compelled to go to another parts supplier and paid much more than the insurance company would allow for the replacement part and informed the insurance company that he would balance bill the consumer. The insurance company retorted that if he balanced billed the customer then they would remove his auto body shop from their preferred auto body shop list.

Board Member Starbard observed that the appraiser was reasonable and diligent while attempting to obtain the part. Under these circumstances an appraiser is allowed to obtain a substitute part and the appraiser should file a complaint with the Board. Board Member Johnson agreed by stating this is a common sense thing and if the appraiser cannot buy the part, therefore it is unavailable. Board Member Johnson requested the other members of the Board join into the discussion.

Board Member Samantha Tracy observed that there are three parties to a repair: (1) a consumer; (2) an insurance company; and (3) an auto body shop. The problem of the Board getting involved with the relationship between an auto body shop and a vendor, it is too hard to supervise and outside the scope of the Board’s authority. The Board’s duty is around the licensing function.

The member of the public asked to make one more comment and was allowed to speak by Chairman Donovan. The person related that filing a complaint with the Board against an appraiser would usually be filed against an independent appraiser hired by an insurance company, even though the independent appraiser is instructed by the insurance company.

Board Member Peter Smith opined that, the appraiser may find that the part is fit for replacement on 10 occasions, the regulation provides that the parties must agree.

Mr. Peter Langone owner of Langonet Auto Body shop asserted that, since he had a problem with Empire Parts, he decided that the insurance appraiser had to get the part first, no part no discussion.

Lucky Papageorg was granted permission to speak and he opined that, the agreement has to be a mutual agreement that a part is not fit for use. It is not the case when the issue is ambiguous and no one wants to address the ambiguity. The auto body shop is burdened by expense, time delay, handling costs and credit. The ambiguity has to be removed from this issue. We are not asking to change the regulation, but to clarify it.

Board Member Johnson declared, Board Member Starbard has already said that the issue is one of parts of Like Kind and Quality if the part is available. 212 CMR. 2.03 when parts are not available through no fault of the appraiser, the appraiser must make this known. The proposed Advisory Ruling is only reminding appraiser about the rule.

Board Member Starbard opined, if the part is not of Like Kind and Quality the insurance company's appraiser will leave the shop taking the part with him. Mr. Starbard used the analogy of getting a steak at a restaurant, when one returns the steak and gets a 20% mark-up on the bill, it is time to go to another restaurant.

**Other business:**

Board Member Johnson requested that a letter be drafted and sent to the Secretary of Administration and Finance to inquire into the status of the proposed amendments to the Board's regulation.

A member of the general public queried, Can the ADALB name the substance of each complaint that is filed against a motor vehicle damage appraiser, without stating anyone's name but providing a statement about what each case is about? Board Member Johnson opined that the Board could request an Opinion from the Attorney General.

The executive secretary to the Board Steven Zavackis stated that there were two new matters for the Board's consideration: (1) George Boloski, whose license was temporarily suspended and (2) Daniel Stroschio whose license expired in 2006. Both men requested that their licenses be reinstated.

The Board was informed that Mr. Boloski's license was suspended as the result of action taken by the Department of Revenue (DOR), and he cleared the matter up to DOR's satisfaction.

Board Member Starbard made a motion to reinstate Mr. Boloski's license on payment of all back license fees due, and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Board Member Starbard submitted a motion that Mr. Stroschio be allowed to take the examination for motor vehicle damage appraiser but waive the course requirement, the motion was seconded by Board Member Samantha Tracy. The motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

The next Board meeting was scheduled for November 26, 2019, at 1000 Washington Street to begin at 10:00AM.

**Executive session:**

Chairman Donovan then read the following statement:

The Board will enter an executive session by way of a motion indicating the Board will adjourn in the executive session and will not re-convene in the public session and by a roll-call vote of the Members of the Board, to review a Complaint filed against a licensed motor vehicle damage appraiser 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 Complaint: 2019-08 filed against a motor vehicle damage appraiser 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, *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 appraiser requested the matter be heard in the executive session.

The motion to enter the executive session was made by Board Member Starbard and seconded by Board Member Johnson, and by a roll call vote of the Board Members, each answering in the affirmative to enter an executive session, the total vote was: 5-0.

**Executive Session:**

An applicant who indicated on his application a felony conviction appeared before the Board. The Members of the Board asked several questions about the facts surrounding the conviction and the applicant answered all of the questions. At the conclusion of the question and answer session Board Member Starbard made a motion that the applicant be allowed to take the examination for motor vehicle damage appraiser and the motion was seconded by Board Member Tracy.

**Complaint 2019-08:**

The Members of the Board were informed that the complainant was made whole, full payment was made by the insurance company for the appraised damage to the motor vehicle, but was not completely satisfied.

The Board requested the Legal Counsel send a letter to the complainant notifying him that the Board has considered the complaint and would like any further information that would establish that the licensed appraiser violated the regulation.

**Motion to adjourn:**

Board Member Starbard made a motion to adjourn which was seconded by Board Member Johnson and the motion passed by a vote of: 5-0. 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. Letter from George Boloski to Steven Zavackis dated September 19, 2019.
2. Email from Daniel Strosio to Steven Zavackis date September 19, 2019.