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Auto Damage Appraisers Licensing Board
Division of Insurance - Suite 810
1000 Washington Street
Boston, MA 02118-6200

Re: Submission of The Hanover Insurance Company proposed regulations on complaints filed with the Auto Damage Appraisers Licensing Board seeking adjudicatory proceedings against appraisers

Gentlemen:

Please find attached proposed regulations that The Hanover Insurance Company submits for the Auto Damage Appraisers Licensing Board's consideration regarding adjudicatory proceedings against appraisers.

The proposed regulations seek to formalize the process so as to conserve the resources of the Board consistent with due process, the Open Meeting Law and the Board's statutory right under M.G.L. c. 30A, § 18(d), to conduct a quasi-judicial meeting to solely decide whether a particular complaint shall be heard by the Board.

Sincerely,



Owen Gallagher

Enc. (1)

cc: Rachel Davidson, Esq.
General Counsel, Division of Insurance

Michael D. Powers, Esq.
Counsel to the Commissioner

The following proposed regulations are intended to provide the Board administrative flexibility in attempting to adjudicate or resolve complaints against appraisers consistent with the Open Meeting Law and the right of the Board to act as a quasi-judicial board as specified in footnote 3, on page 3, of the Attorney General's letter of January 16, OML 2016-6. ("once the Board had been presented with the complaint..., it could potentially have invoked the quasi-judicial exception to decide whether or not to move forward with the matter, as this constitutes making a decision required in an adjudicatory proceeding brought before it").

The proposed regulations add two definitions and a new section 2.08, to 212 CMR 2.00 et seq. The proposed changes follow:

CMR 2.04 Definitions:

"Executive Secretary" means the person appointed by the Board pursuant to the provisions of M.G.L. c. 26, § 8G to act as the executive secretary of the Board.

"Application for Complaint" or "complaint" means the Board's Application for Complaint form as may from time to time be approved by the Board for the use of the public, appraisers, auto repair shops or insurers to bring to the Board's attention alleged violations by appraisers of statutes, regulations or matters within the Board's jurisdiction.

Add a new provision to 212 CMR 2.00, as 2.08, entitled:

2.08: Procedures for Reviewing and Resolving Complaints Against Licensed Appraisers

The Board and its Executive Secretary shall apply these rules and procedures to initially process, investigate, evaluate, dismiss or initiate adjudicatory proceedings pursuant to M.G.L. c. 30A on complaints against appraisers. The Board may waive the rules and procedures set forth in this section 2.08 and hear particular complaints or initiate adjudicatory proceedings directly against an appraiser as the Board deems appropriate in the circumstances.

(1) Initial processing of complaints.

- a. All complaints filed with the Board against appraisers shall be filed with the Executive Secretary on the Board's Application for Complaint along with any supporting materials reasonably required for the Board to determine the existence of a dispute and nature thereof, regarding an appraiser's conduct within the Board's jurisdiction.
- b. Upon receipt of the Application for Complaint, the Executive Secretary shall assign the complaint a unique sequential number prefixed by the year of the complaint.
- c. After assigning the complaint a complaint number, if the Executive Secretary determines that the complaint contains all reasonably material information required by the Board, the Executive Secretary shall forward the complaint and any supporting materials to the appraiser against whom the complaint has been made.

- d. The appraiser shall have twenty-one (21) days from the receipt of the complaint to file with the Executive Secretary a written response to the complaint including any supporting documentation or materials in support of the appraiser's response.
- e. If the appraiser neglects, fails or refuses to submit to the Executive Secretary any response within twenty-one (21) days from the receipt of the complaint, or within such additional time as the Executive Secretary may allow for good cause, the Executive Secretary shall forward copies of the complaint to the Board members and legal counsel for the Board, and place the complaint on the next meeting agenda identifying the complaint by its complaint number only.

(2) Processing of incomplete complaints.

- a. If the Executive Secretary determines that the complaint does not have all the material information required by the Application for Complaint, the Executive Secretary shall request the complainant to submit the omitted information or to advise the Executive Secretary as to the reasons the requested information cannot be obtained and submitted without undue burden or expense to the complainant within thirty (30) days.
- b. If the Executive Secretary receives the additional information or explanation from the complainant as to why the requested information cannot be produced within thirty (30) days from the request for additional information, the complaint shall proceed as specified in § 2.08 (1), (c), (d), and (e).
- c. If the Executive Secretary does not receive the additional information or explanation from the complainant as to why the requested information cannot be produced within thirty (30) days from the request for additional information, the Executive Secretary shall take no further action on the complaint unless the Board shall direct otherwise.

(3) Board furnishing appraiser's response to complainant before further proceeding.

- a. Upon receipt of the appraiser's response to the complaint, the Executive Secretary shall forward the response and all supporting materials to the complainant with the advice that the complainant should, upon reviewing the response, advise the Executive Secretary whether the complainant wishes to proceed further with his or her complaint.
- b. If the complainant advises the Executive Secretary in writing that the complainant does not wish to proceed further with the complaint or if the complainant fails to advise the Executive Secretary within thirty (30) days that the complainant wishes to proceed, the Executive Secretary shall take no further action and close the complaint.

(4) Initial adjudicatory proceedings on complaint by the Board pursuant to M.G.L. c. 30A, § 18.

- a. If the complainant advises the Executive Secretary that the complainant still wishes the Board to hear the complaint, in writing or orally, the Executive Secretary shall forward copies of the complaint and the appraiser's response with their supporting materials to the Board's members.
- b. The Board members in reviewing the complaint and response, shall act as a quasi-judicial board for the sole purpose of deciding whether the complaint against the

appraiser should proceed to a hearing before the Board. The quasi-judicial meeting to solely decide whether a particular complaint shall be heard by the Board shall be held subject to M.G.L. c. 30A, § 18(d).

- c. If three or more members of the Board vote to continue the adjudicatory proceeding against the appraiser as alleged in the complaint to a hearing before the Board, the Executive Secretary shall place the complaint on the next meeting agenda identifying the complaint by its complaint number only and notify the appraiser of the Board's decision and the appraiser's rights under M.G.L. c. 30A, § 21(a)(1).
- d. If less than three members of the Board vote to continue the adjudicatory proceeding against the appraiser, the Executive Secretary shall notify the license appraiser and the complainant that the Board has voted to take no further action on the complaint.

(5) Further adjudicatory proceedings on hearing on complaints the Board votes to hear.

- a. All further proceedings on complaints the Board votes to hear under 2.08(4)(c) shall be heard under the Open Meeting Law, M.G.L. c. 30A, sections 18, et seq. and, if required, under the adjudicatory proceeding provisions of M.G.L. c. 30A, section 12, et seq.