



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>

CHARLES D. BAKER
GOVERNOR

GILBERT W. COX JR.
CHAIRMAN

KARYN E. POLITO
LIEUTENANT GOVERNOR

JOSEPH COYNE
RICHARD STARBARD
WILLIAM E. JOHNSON
LYLE M. PARE

Minutes of Meeting of the Board held on January 24, 2017 Approved by the Board at the March 1, 2017, Board Meeting; Motion of Board Member William Johnson and Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 3-0, Chairman Cox and Board Member Pare Abstained, Board Member Pare was Not in Attendance at the Meeting Held on January 24, 2017.

January 24, 2017, Minutes of Board Meeting
Held at 1000 Washington Street, Boston, Massachusetts.

Members Present:

Chairman Cox
Joseph Coyne
William Johnson
Richard Starbard

Attending to the Board:

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

Proceedings recorded by:

Jillian Zywiec of the Alliance of Automotive Service Providers of Massachusetts (AASP) (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photography). Chris Gervais of MAPFRE (Audio/Video). Paul Harden, Hanover Insurance Company.

Call to Order

Chairman Cox called the meeting to order and stated that Board Member Pare was unavailable for the meeting because of illness.

Review of minutes:

A review of the minutes of the Board Meeting held on December 6, 2016, was taken by the Board. Chairman Cox stated he would not vote on the minutes because he did not attend the meeting due to inadvertently placing the meeting in his calendar as taking place in Boston and not at the agreed upon location in Palmer, Massachusetts. Chairman Cox stated by the time he left Boston and arrived in Palmer, Massachusetts the Board meeting concluded. A motion to approve the minutes was made by Board Member Joseph Coyne and seconded by Board Member Richard Starbard, and the motion passed by a vote of: 3-0, with Chairman Cox abstaining.

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

Board Member Richard Starbard reported that the next examination was scheduled for February 1, 2017, in Webster, Massachusetts at the office of Commerce Insurance Company or MAPFRE. Fifty people were scheduled to take the examination, however, Robert Hunter of the Division of Insurance Licensing Unit informed him that additional people had applied but because of the late notification they could not be accommodated, and they would be notified of the following examination date and location. Board Member Starbard thanked Pete Smith of Commerce/MAPFRE Insurance Company for assisting with scheduling the examination and making the facility available for it.

Chairman Cox acknowledged the excellent work performed by Board Member Starbard in scheduling the locations for the examinations and ensuring the examinations are properly conducted.

Presentation by Jake Rodenroth of AsTech Collision Diagnostic Services about the use of manufacturers' diagnostic tools for pre-repair and post-repair scans of original equipment manufacturer ("OEM") parts:

Chairman Cox read the item on the agenda and Board Member Coyne requested to be heard. Board Member Coyne announced that he believed that this was not a proper item for the Board's discussion because the Board did not have jurisdiction over the subject matter and declared that if the Board were to discuss the matter he would recuse himself from the discussion.

Board Member Starbard responded that he requested the item placed on the Board's agenda but not in the specific manner it was written. Board Member Starbard felt that the issue was related to motor vehicle damage appraisals and part of the Board's function was to educate licensees that the Board licensed.

Board Member Coyne fervently disagreed with allowing such a presentation, posing the question: What part of the Board's regulation [212 CMR 2.00 et seq.] does this issue fall under?

Board Member Starbard responded, the issue is included in the cost of repair. He pointed out that, when damaged cars come into auto body shops for appraisal of the damage computer technology is very complicated and has become a part of the appraisal process. These diagnostic tools are mandatory for auto body shops when determining repair work because of the manner in which the software codes are tripped that monitor the functions of a car. Manufacturers have caught on to the fact these diagnostic tools are a necessary item for repairing damaged vehicles.

Board Member Coyne reiterated his question and insisted that the agenda item was not part of the Board's business and insisted that he would recuse himself from participating in any part of the discussion for this agenda item. He felt that the discussion would become an "Info-Commercial." Chairman Cox observed that he had the utmost respect for Board Member Coyne's opinion, and would like to hear the thoughts of the other Board Members.

Board Member Johnson replied, as long as the discussion involves a matter that is part of the repair process then he would agree with the presentation proceeding.

Board Member Starbard responded that he disagreed with the manner in which the item appeared on the agenda and it was not what he had intended, in fact he wrote the item differently and sent it to all of the Board Members and, therefore, he made it clear as to what the discussion would be about. Board Member Starbard opined that the presentation would be informative one for members of the auto body industry and licensees. He concluded that part of the ADALB's function was educational, and this presentation was intended to educate members of the auto body industry.

Board Member Johnson announced that he did not want to hear an "Info-Commercial" about the use of the diagnostic tool by the presenter, but would be interested to hear information on the topic.

Board Member Coyne announced that he was recusing himself from participation as a Board Member and declared that he did not want the presentation made to the Board or any issues arising out of it to be considered by the Board. Thereupon, Board Member Coyne exited the meeting room.

Board Member Starbard stated that he invited Mr. Rodenroth to the meeting after attending a national conference that was held in Las Vegas and the big issue at the conference that was discussed was the use of these diagnostic tools for pre-repair, repair, and post-repair damage. Mr. Rodenroth was simply there to inform the Board and members of the public about the manner in which these diagnostic tools are used off-site of auto body shops.

Chairman Cox then invited Mr. Rodenroth to provide a presentation to the Board relating to repairs of motor vehicles.

Mr. Rodenroth began his presentation by stating one would not understand these diagnostic tools that are used unless you understand the models on which the diagnostic tools are based. Diagnostic tools are designed to determine the damage to a specific part or component of a motor vehicle.

Manufacturers advise auto body repair shops during the repair process to use advanced telecommuting tools which are assisted by mechanics with whom specialize in various different motor vehicles parts or components.

Mr. Redenroth provided the example of motor vehicle passive entry systems, commonly used today, which deny entry to a motor vehicle after the damage has been repaired. He explained that during the repair process an internal computer program will trigger a code that will recode the door entry system denying entry to the "Bob" or passive entry control used to access the motor vehicle. Codes during the repair process trigger indicating that there was damage to the door, and denying entry to the motor vehicle. There is a diagnostic tool that will determine the problem when passive entry is denied to a motor vehicle. During a crash there are various independent factors that happen which are related to the diagnostic tools, such as whether all of the passengers in the motor vehicle were wearing their safety belts, and the number of crash bags in the motor vehicle which were activated as the result of the crash. The diagnostic tools are unaware of such fact patterns that occur during a crash and other acts that occur during post-accident repairs which trigger codes in the motor vehicle.

Pre-scan diagnostics are very important to use for reviewing coded damaged parts before a motor vehicle is disassembled. During disassembly codes are triggered which indicate parts or components of a motor vehicle have problems with them. Every auto body shop is different with different levels of mechanical technicians, their capabilities and expertise. The telecommuting technology allows expert mechanics to review the damaged motor vehicle without an auto body shop having an expert on staff. Today, the technology requires the auto body industry to perform diagnostic scans whether they are done at an auto body shop or remotely.

Board Member Starbard volunteered that one of the leading auto body manufacturers has a system that emails consumers that there is a problem with their vehicles, when in fact the vehicles have been properly repaired by auto body shops. Board Member Starbard noted this same manufacturer also owns auto body repair shops.

When the manufacturer sends emails to his customers about a problem with a part, Board Member Starbard receives complaints from consumers about his lack of proper repair of their motor vehicles. This results in customer relations problems, and he is compelled to satisfy customers that his auto body shop has in fact properly repaired their motor vehicle.

Mr. Rodenroth summed up his presentation by providing key dates in the development of motor vehicle technology beginning with the year 2008 and expansion and wide ranging impact on the use of codes and diagnostic tools to determine damage to a motor vehicle in almost all motor vehicles manufactured today.

Chairman Cox thanked Mr. Rodenroth for his presentation and stated that it was very informative. Board Member Coyne returned to the meeting at the conclusion of the presentation and returned to his seat joining the rest of the Members of the Board.

Report on the ADALB's response to the complaint filed by James Steere of The Hanover Insurance Company with the Office of the Attorney General's Division of Open Government ("DOG") alleging the Board violated the Open Meeting Law at the meeting that was held on October 4, 2016, by contending his attorney was wrongfully precluded from attending the executive session, with his court stenographer, during the Board's quasi-judicial discussions and attorney/client privileged communications about the legal elements of the Order to Show Cause which was file against Mr. Steere arising out of Complaint 2016-4. At the ADALB meeting which was held on September 7, 2016, during the review of Complaint 2016-4 the licensed appraisers and their attorney appeared at the Board meeting and requested that the Board proceed with an Order to Show Cause. See ADALB website "record of meetings."

Michael D. Powers, Legal Counsel to the Board, informed the Board that he filed a response to the complaint that Attorney Gallagher filed against the Board alleging a violation of the Open Meeting Law. Legal Counsel Powers stated that because additional facts and exhibits were added to the complaint on January 23, 2017, he would notify that Attorney General's Office that he needed additional time to respond to the same.

Report of request of assignment of enforcement to the General Counsel of the Division of Insurance and the status of the Order to Show Cause in the matter of the Auto Damage

Appraiser Licensing Board versus The Hanover Insurance Company, licensed appraisers James Steere, and Paul Horton:

Legal Counsel Powers informed the Board that he forwarded the Proposed Order to Show Cause to the Office of the General Counsel for the Division of Insurance as requested by the Board and expected at the next scheduled meeting of the Board, the counsel assigned to the case would appear and report to the Board.

Discussion about the elements of a curriculum at Springfield Technical Community College (SPCC) for an auto damage appraiser course:

Board Member Johnson reported that he was a member of the Board of the Springfield Technical Community College (SPCC) and that he had prepared a curriculum for a course for the examination for motor vehicle damage appraiser license. He elaborated that he did not intend to teach the course at SPCC but will search for a person to teach the course.

Board Member Coyne made a motion to approve the curriculum submitted by Board Member Johnson and the motion was seconded by Board Member Starbard. The motion passed by a vote of 3-0 with Board Member Johnson abstaining.

Other business – reserved for matters the Chair did not reasonably anticipate at the time of the posting of the meeting and agenda:

Board Member Johnson raised an issue for discussion pertaining to the payment of “sublet” items that are part of a motor vehicle damage appraisal. Board Member Johnson asserted that it is common in the auto body appraisal industry when an appraisal contains a sublet item; and in doing so, insurance companies are declaring that they will not pay the overhead costs. He opined that in these instances such conduct is a failure to negotiate the appraisal. When an insurance company as a matter of standard business practice fails to even acknowledge this type of cost item during the appraisal, such conduct constitutes a failure to negotiate an appraisal.

Board Member Coyne observed that an appraiser is not entitled to a mark-up for a sublet item such as a four wheel alignment. When an auto body shop cannot perform an alignment to the motor vehicle, the cost to align the motor vehicle by a subcontractor it is not a mark-up cost of the auto body shop.

Peter D’Agostino, a representative of the Alliance of Automotive Service Providers of Massachusetts, requested permission to address the Board, and Chairman Cox granted permission.

Mr. D’Agostino asserted that his organization was contacted directly by a consumer who was displeased with the conduct of her insurance company which requested she submit pictures of her damaged motor vehicle for payment of her claim. The consumer took pictures of the damage to her motor vehicle with her cellphone and sent them to her insurance company. The insurance company reviewed the pictures, determined the damage was below \$1,500., therefore, under the Board’s regulation not subject to the requirement of a personal inspection of the damage to the motor vehicle by an appraiser. After attempting to drive the motor vehicle for two days, the consumer determined there was hidden damage, took it to an auto body shop, and the mechanic determined that the front suspension system had to be replaced. The auto body shop submitted a

supplemental appraisal for an additional \$2,500 in damage. The consumer sent pictures of the damage which disclosed that the front fender was severed and the headlight was also damaged. Clearly the insurance company appraiser should have determined from the pictures sent to him by the consumer showing the headlight and fender damage created a safety issue, consequently the inspection sticker should have been removed from the motor vehicle as required by the Auto Damage Appraiser Law, because the motor vehicle was clearly unsafe to operate in that condition. Mr. D'Agostino provided copies of pictures of the damaged motor vehicle and the correspondence sent by the consumer to the Board Members. He said he redacted the names of the parties because that was irrelevant. The reason he raised the issue is because it illustrates the problem in the auto body industry caused by the use of photographs taken by consumers and sent to appraisers. Any licensed appraiser would have found the serious damage to the motor vehicle's suspension system and the safety issue.

Board Member Starbard observed that the broken headlight on the motor vehicle would require that the inspection sticker should have been scraped off the windshield.

Board Member Johnson declared that, we are not a "nanny" state. The consumer knew she had a broken headlight and a severed bumper and, knew the car was not driving properly, and should have been more prudent. Board Member Johnson opined that the ADALB is not responsible for protecting consumers from themselves, consumers have duties to protect themselves in obvious circumstances such as this one.

Board Member Coyne agreed by stating, the consumer should have known better, the owner of the vehicle has the duty to decide which way to go.

Board Member Starbard responded, whoever wrote the appraisal violated a safety issue. The appraiser knew the headlight was broken and the motor vehicle was unsafe to drive. He asserted that he had a similar car in his auto body shop, the damage had been determined to be \$500 and the repairs came to \$5,000.

Board Member Johnson suggested that the Board issue an Advisory Ruling relative to when an appraiser reviews photographs of a damaged motor vehicle and discovers a clear safety issue that is observable in them. Under such circumstances, an appraiser must require that the inspection sticker be removed from the motor vehicle.

Mr. D'Agostino asserted the Attorney General fined an insurance company one million dollars for failing to remove motor vehicles inspection stickers when motor vehicles insured by it were determined unsafe to drive. He opined, common sense should be followed by appraisers in such situations.

Chairman Cox inquired about the status of the proposed amendments to the regulation. Legal Counsel Powers stated that the review was pending at the Secretary of Administration and Finance level. Chairman Cox suggested that he would like to send a letter to the General Counsel for the Division of Insurance asking for the status and requested Legal Counsel Powers draft the letter for his signature.

Board Member Johnson returned to the issue about the Board issuing an Advisory Opinion about the duty of an appraiser to remove an inspection sticker when a motor vehicle sustains damage that clearly affects the safe operation of the vehicle. He agreed to draft the Advisory Opinion and submit it to Legal Counsel Powers for review and placed in final form for the Board's review. The motion was made by Board Member Johnson and seconded by Board Member Starbard, the motion passed by a vote of: 3-1 with Board Member Coyne voting against.

Next Meeting:

The Board determined that the next regularly scheduled Board meeting would be held on March 1, 2017, at 9:30 AM at 1000 Washington Street, Boston, Massachusetts.

Executive session:

Chairman Cox made the following statement:

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 2016-11, Complaint 2017-1, and Complaint 2017-2 filed against motor vehicle damage appraisers licensed by the Auto Damage Appraiser Licensing Board. Such discussions during the executive session are allowed for 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, and *Department of Public Safety Board of Appeals Matter*, OML 2013-104. 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 these matters be heard in the executive sessions. At the previous Board meeting the licensed appraisers and their attorneys agreed to attempt mediation with the complainant's and report whether mediation was successful.

Chairman Cox called for a roll-call vote to enter the executive session which included the announcement that the Board would adjourn in the executive session. The motion to enter the executive session and adjourn in the executive session was made by Board Member Coyne and seconded by Board Member Johnson, the motion passed by a vote of: 3-0 with Chairman Cox abstaining.

Executive Session:

Steven Zavackis informed the Board that there were no applicants present for the Board meeting who disclosed a conviction on the application to take the examinations for motor vehicle damage appraiser license.

Complaint 2016-11, 2017-1, and 2017-2:

Board Member Richard Starbard recused himself from the matter because he became involved with the complaint when the complainant contacted him about the issue while the motor vehicle was at the complainant's auto body shop. Board Member Starbard left the meeting room while the matter was pending.

Attorney Samantha Friedman, representing the licensed appraiser and Geico Insurance Company, appeared before the Board. Attorney Friedman requested the Board assign a Board Member as a mediator for the matter.

After a discussion by the Board, the consensus was that Board Member Joseph Coyne would act as mediator. A motion was made by Board Member Johnson to approve Board Member Coyne as mediator and the motion was seconded by Chairman Cox, the motion passed by a vote of: 3-0. Board Member Coyne informed Attorney Friedman that he would contact the complainant to discuss the complaint and, thereafter, contact Attorney Friedman and her client. Attorney Friedman agreed with the procedure and provided her contact information to Board Member Coyne.

On Complaint 2017-1, the Board requested the licensed appraiser and his attorney attend the executive session and they entered the room. Board Member Starbard returned to the Board meeting. Attorney Peter Bosse, a highly regarded expert in insurance law, represented the licensed appraiser. The Board reviewed the complaint and posed several questions to the licensed appraiser and the appraiser responded to each question that was asked.

After the review of the facts contained in the complaint and the responses from the licensed appraiser, the Board determined that the complaint contained insufficient facts to support a violation of the motor vehicle damage appraiser laws. Based upon the facts presented, the licensed appraiser fulfilled his duty to negotiate the terms of the appraisal, and the motor vehicle was in fact repaired.

Board Member Coyne made a motion to dismiss the complaint and the motion was seconded by Board Member Johnson, the motion passed by a vote of: 3-0, Chairman Cox abstained.

Complaint 2017-2 was reviewed by the Board. During discussion about the complaint the consensus was that the complaint accepted full payment from the insurance company which declared the motor vehicle a total loss, and the complainant purchased the motor vehicle from the insurance company for a salvage value of \$50. A review of the documents filed by the complainant indicated that the proper jurisdiction for the complainant's complaint would be under the arbitration provision in the complainant's standard private passenger motor vehicle insurance policy and not before the Board.

A motion was made by Board Member Starbard to dismiss the complaint and it was seconded by Board Member Coyne, the motion passed by a vote of: 3-0 with Chairman Cox abstaining.

Motion to adjourn:

Board Member Johnson made a motion to adjourn which was seconded by Board Member Starbard, the motion passed by a vote of: 3-0, 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 Meeting:

- 1.) Copies of photographs of damaged motor vehicle submitted to the Board by Peter D'Agostino.**