



**THE COMMONWEALTH OF MASSACHUSETTS  
AUTO DAMAGE APPRAISER LICENSING BOARD**

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RICHARD STARBAR  
WILLIAM E. JOHNSON  
LYLE M. PARE

**Minutes of Meeting of the Board held on April 12, 2017, Approved by the Board at the May 17, 2017, Board Meeting; Motion of Board Member Richard Starbard and Seconded by Board Member Lyle Pare. The Motion Passed by a Vote of:4-0, Chairman Cox Abstained.**

April 12, 2017, Minutes of Board Meeting  
Held at 1000 Washington Street, Boston, Massachusetts.

**Members Present:**

Chairman Cox  
Joseph Coyne  
William Johnson  
Richard Starbard  
Lyle Pare

**Attending to the Board:**

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

**Proceedings recorded by:**

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

**Call to Order:**

Chairman Cox called the meeting to order.

**Review of minutes:**

A review of the minutes of the Board Meeting held on March 1, 2017, was taken by the Board, and Chairman Cox called for a motion to approve the minutes. Before the motion, Board Member William Johnson pointed out that at the meeting held on March 1<sup>st</sup> he requested that he be provided with the number of licensed motor vehicle damage appraisers who were actively licensed the previous year, and, for whatever reason, were not actively licensed in the current year. Steven Zavackis, Executive Secretary to the Board, responded to Board Member Johnson's

question by stating that he contacted the Licensing Unit of the Division of Insurance and was informed that the number of individuals who did not renew their licenses was about 200-300 licensees.

Board Member Johnson had an additional question directed to Board Member Coyne: what was the status of Mr. Coyne's review of a company named Access which was allegedly engaged in appraising motor vehicles in Massachusetts without having the proper motor vehicle damage appraiser license? Board Member Coyne pointed out that the matter was placed down on the Board's agenda as item IV and the Board could discuss the matter when it reaches it on the agenda. Board Member Johnson replied he would wait for the item to be discussed in the order it appeared on the agenda. A motion to approve the minutes was made by Board Member Richard Starbard and seconded by Board Member William Johnson, and the motion passed by a vote of: 4-0, with Chairman Cox abstaining.

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

Board Member Richard Starbard reported that an examination was held on April 4, 2017. There were 45 people who took the examination, 19 were given a passing score the day of the examination, and 13 were marked as failing pending a follow-up discussion by the examiners. 10 people followed up to discuss the examination questions and after further explaining their answers to particular examination questions were given a passing score. Board Member Starbard thanked Pete Smith of Commerce/MAPFRE Insurance Company for his continuing assistance with scheduling the examination and John Michael Dillon of Progressive Insurance Company for providing a damaged motor vehicle for the test and making the facility available for the examination.

Board Member Joseph Coyne asked Board Member Starbard to explain the reason for so many people receiving failing scores on the day of the test and, after later discussions with people administering the examination, were given passing scores. Board Member Coyne observed that in the past there were fewer examinees given an overall passing score on the Part-II portion of the examination, after the day the test was taken.

Board Member Johnson queried, who makes the decision to provide a passing score on the Part-II portion of the examination?

Board Member Starbard explained during the day that the Part-II test is administered the people administering the examination also score the examinations that day of the test. When the examiners review the answers the day of the test, it is clear from the answers that many people taking the examination clearly do not grasp the basic concepts of the Part-II examination. There are another subset of people whom based on their answers appear to grasp the basic concepts of the examination, but display some difficulty in expressing the correct answer on a particular question. In those cases, all of the examiners place their initials on such a person's test and, thereafter, Board Member Starbard reaches out to them to discuss an answer that they gave to a question. When Board Member Starbard contacts these people, he is trying to determine whether they understood the concept of the component of the test that he and the examiners found was not accurately answered the day they marked the tests. If during the discussion between Mr. Starbard and an examinee it becomes apparent that the examinee understood the question and the

concept underlying it, and he or she provides a correct response to it, Mr. Starbard concludes that the person answered the question correctly, and approves an overall passing score.

Chairman Cox observed that the number of test-takers seemed to be below average.

Board Member Starbard responded that generally he and the Licensing Unit try to cap the total number of people taking the Part-II test at 50 people. For the April 4<sup>th</sup> test, there was a lower amount of test takers for the examination because of inclement weather, 5 people did not show up.

Chairman Cox thanked Mr. Starbard for his outstanding effort in overseeing the Part-II examination.

**Report by Board Member Joseph Coyne as to the status of potential violations of the ADALB regulation, 212 CMR 2.00 et seq., and enabling act M.G.L. c. 26 § 8G by Access General Insurance Adjusters, LLC a company apparently domiciled in the state of Georgia and doing business as “Access” in Massachusetts:**

Board Member Coyne reported that the company known as Access is actually domiciled in California and it was very difficult to contact someone in the company or find out any information about the company. He related, although it is very difficult to find out information about the company he determined that the company was definitely representing Occidental Insurance Company.

Chairman Cox queried, what should we do?

Board Member Coyne opined that it was not fair to consumers who have a loss to be subject to tactics that allows a company to conduct appraisals by different rules than those required by Massachusetts motor vehicle damage appraiser laws.

Board Member Johnson asked Mr. Coyne, can you locate a CEO for the company?

Board Member Coyne replied that he had been trying to get in contact with someone from the company and when he called a listed number for the company he was left on hold for ½ hour.

Board Member Pare asserted, you mentioned that other independent appraisers were working for this company too.

Board Member Coyne responded that there was an independent appraiser working for the company in Massachusetts.

Board Member Pare suggested, if you obtain a bill or invoice from the company then there will be contact information contained on it.

Board Member Coyne said there are invoices available, he would get them, and follow-up.

Board Member Starbard asked if the company was working original appraisals.

Board Member Coyne answered, there was one original appraisal written in Massachusetts.

Board Member Starbard asked whether the appraisal was for damage under \$1,500 less any deductible.

Board Member Coyne replied that he didn't know the answer to that question.

Chairman Cox declared that the Board needed to work with the Commissioner of Insurance in an attempt to resolve the issue.

Board Member Coyne asserted that what appears to be happening is not fair to consumers and he would like additional time to investigate the matter.

Chairman Cox concluded the discussion by stating we should set the matter on the agenda for the next meeting and requested Board Member Coyne to work with Executive Secretary Zavackis and the Division of Insurance in obtaining further information.

**Review and vote on an amendment to the ADALB's complaint procedure by clarifying the manner of conducting an administrative hearing before the full Board of the ADALB, after an order to show cause is issued by the Board:**

Board Legal Counsel Michael D. Powers informed the Board that he drafted amended language to the Board's Guidelines for ADALB Complaint Procedures (ADALB's Complaint Procedures) which were adopted by the Board on September 7, 2016. Mr. Powers reported that after researching the applicable law, it was advisable to clarify the options the Board had for conducting an administrative hearing under the Massachusetts Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.00 et seq., and the Massachusetts Administrative Procedure Act, M.G.L. c. 30A. Under the law, the Board had the option of conducting an administrative hearing as an entire Board or appointing a Presiding Officer to hear the case. Also, in the event the Board were to determine to conduct an administrative hearing as the entire Board, it was advisable that one of the Board Members oversee the formalities of the administration of the hearing, such as swearing in witnesses, declaring the final decision on evidentiary rulings, and maintaining the decorum of the hearing. In addition, at the previous Board meeting there were questions about the role of the enforcement counsel and the role of Board Legal Counsel: it was best to clarify the roles played by both. Mr. Powers explained that enforcement counsel assigned by the General Counsel of the Division of Insurance would act as the prosecutor and Board Legal Counsel would assist the Board in drafting legal rulings and acting as clerk during the hearing, but all filings would still be made with the docket clerk for Division of Insurance. Mr. Powers suggested that the Chairman of the Board should oversee the procedures for conducting the hearing, while all the Board Members will participate as judges of the hearing and would vote on any final decision after hearing all of the evidence. Lastly, Mr. Powers provided an additional section which provided for an appeal of any final decision. Mr. Powers concluded, all of these amendments mirrored provisions contained in the Massachusetts Standard Adjudicatory Rules of Practice and Procedure and the Massachusetts State Administrative Procedure Act.

Thereafter, Legal Counsel Powers read the existing language of the ADALB's Complaint Procedures Section 8:

Board's Decision to Proceed. If the decision is to proceed, the Board will appoint one of the members of the Board as the Presiding Officer, notify all parties of a formal hearing, and the format of the matter will be an Order to Show Cause in the form of: Auto Damage Appraiser Licensing Board v. Named Appraiser. After the Board **issues** an Order to Show Cause the Board shall conduct all hearings in accordance with the Standard Adjudicatory Rules of Practice and Procedure set forth in M.G.L. c. 30A and 801 CMR 1.00 et seq.

Legal Counsel Powers then read the proposed following amendment as a substitution for the current ADALB's Complaint Procedures, Section 8:

Board's Decision to Proceed. If the decision is to proceed, the Board will notify all parties that there will be a formal hearing, and the format of the matter will be an Order to Show Cause why the action should not be taken against the appraiser in the form of: Auto Damage Appraiser Licensing Board v. Named Appraiser. After the Board approves an Order to Show Cause the Board will forward it to the Office of the General Counsel for the Division of Insurance for assignment of an enforcement counsel who will prosecute the matter. The Board shall conduct the hearing in accordance with the State Administrative Procedures Act and the Standard Adjudicatory Rules of Practice and Procedure set forth in M.G.L. c. 30A and 801 CMR 1.00 et seq. The Board may hear the matter as a full body or appoint one member of the Board as Presiding Officer in accordance with the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00. If the full Board chooses to hear the case, the Chair of the Board, or in his/her absence the Board member with most seniority based on length of service as a member of the Board, will oversee the conduct of the hearing, administer oaths or affirmations to witnesses, declare final decisions about objections to evidence, resolve issues about procedure, and maintain the decorum of the hearing. Legal Counsel to the Board shall act as clerk of the administrative hearing, maintain exhibits and other documents filed during the hearing, and provide counsel to the Board on any legal issues that arise during the course of the hearing, draft legal rulings and the final decision for the Board's approval.

Legal Counsel Powers then read the following proposed amendment replacing the existing section 10 with the following section 10 and renumbering the existing section 10 as section 11:

10. Appeal of the Board's Final Decision. A final decision rendered by the Board at the conclusion of an adjudicatory hearing may be appealed in accordance with M.G.L. c. 30A, § 14.

Chairman Cox called for a vote on the proposed amendments. Board Member William Johnson made a motion to approve the amendments to the ADALB's Complaint Procedures as presented by Board Legal Counsel Powers. The motion was seconded by Board Member Joseph Coyne and the vote passed by a vote of: 4-0 with Chairman Cox abstaining.

**Review and vote on the amended Order to Show Cause submitted by Scott Peary, Chief Enforcement Counsel for the Division of Insurance, enforcement counsel in the matter of: the Auto Damage Appraiser Licensing Board versus The Hanover Insurance Company, licensed appraisers James Steere, and Paul Horton:**

Board Legal Counsel Powers reported that he prepared binders for each of the Board Members containing material relating to the manner of conducting an administrative hearing in the Commonwealth. Included in the binders were: (1) the “Manual for Conducting Administrative Adjudicatory Proceedings” (2012 edition, published by the Administrative Law Division Government Bureau of the Office of the Attorney General); (2) the Standard Adjudicatory Rules of Practice and Procedure set forth in 801 CMR 1.00 et seq.; and (3) a copy of a case decided by the Board of Registration of Real Estate Appraisers in the Matter of Robert Hadge, Docket No. RA-10-130. Legal Counsel Powers explained that the material that was provided to each Board Member would be helpful during the course of the administrative hearing and suggested the Board Members familiarize themselves with the material, especially the “Manual for Conducting Administrative Adjudicatory Proceedings” published by the Office of the Attorney General. As the administrative hearing progressed, Mr. Powers said he anticipated that reference would be made to the material for the edification of Members of the Board.

Legal Counsel Powers informed the Board that in addition to Mr. Peary filing a proposed Order to Show Cause, a Notice of Action would be served with it which, among other things, would set a date for a prehearing conference. Mr. Powers informed the Board he conferred with Attorney Gallagher and the date of May 24, 2017, was a convenient date for the pre-hearing conference for the administrative hearing, which would begin after the regularly scheduled Board meeting concluded. Attorney Scott Peary pointed out that he would be unavailable on that date because of a schedule conflict. Attorney Gallagher informed the Board that he would not agree to any date for the beginning of the administrative hearing, and he had not filed an appearance. The Board agreed to the date of May 17, 2017, at 11:00 AM for the pre-hearing conference, which would follow the regular Board Meeting. Legal Counsel Powers read the proposed Notice of Action which is the following:

_____ )	
<b>Auto Damage Appraiser Licensing Board,</b> )	
<b>Petitioner</b> )	<b>NOTICE OF ACTION</b>
<b>v.</b> )	<b>Docket No.</b>
<b>Paul Horton, James Steere, and</b> )	
<b>The Hanover Insurance Company,</b> )	
<b>Respondents.</b> )	
_____ )	

To the above-named Respondents:  
Paul Horton, James Steere, and The Hanover Insurance Company

You are hereby required to file an answer to the Order to Show Cause, which is herewith served upon you, with the Docket Clerk of the Division of Insurance, whose address is

1000 Washington Street, Suite 810, Boston, Massachusetts 02118-6200. Your answer must be served within 21 days after the date on which the Order to Show Cause and this notice are served on you. You are also required, at the same time, to serve a copy of your answer on counsel for the Division of Insurance, Scott Peary, and Gilbert W. Cox Jr. Chairman of the Auto Damage Appraiser Licensing Board, attention Michael D. Powers, Legal Counsel to the Auto Damage Appraiser Licensing Board at the same address. All filings shall include the docket number assigned to this case. A certificate of service must accompany each filing. If you fail to answer the Order to Show Cause, the Petitioner may move for an order of default, summary decision and/or decision on the pleadings granting the relief requested in the Order to Show Cause.

You are entitled to a hearing on this matter. Pursuant to 801 CMR 1.01 11(a) the full board of the Auto Damage Appraiser Licensing Board will hear this matter, and pursuant to 801 CMR 1.01 10(a) a prehearing conference is scheduling for May 17, 2017, at 11:00AM at 1000 Washington Street, Boston, Massachusetts. The purpose of the conference is to clarify the issues contained in the case, to consider the possibility of obtaining agreement as to facts and documents, to identify and schedule witnesses, and to address any other matter which may aid in the disposition of this proceeding.

All *proceedings* in this matter will be conducted pursuant to Massachusetts General Laws Chapter 30A and the Formal Rules of the Standard Rules of Adjudicatory Practice and Procedure , 801 CMR 1.01, *et seq.* A copy of those rules may be found at [www.mass.gov/anf/hearings-and-appeals/admin.../801-cmr-1-00/](http://www.mass.gov/anf/hearings-and-appeals/admin.../801-cmr-1-00/).

Chairman Cox called for a vote on the proposed amended Order to Show Cause as submitted by Attorney Peary and to approve the Notice of Action as read by Legal Counsel Powers. Board Member Richard Starbard moved to approve the proposed Order to Show Cause and the Notice of Action with the scheduling of the pre-hearing conference after the Board meeting of May 17, 2017, at 11:00AM. The motion was seconded by Board Member Johnson and passed by a vote of 3-0 with Chairman Cox and Board Member Lyle Pare abstaining.

It was pointed out that Board Member Pare attempted to mediate a settlement of the underlying complaint filed against Paul Horton and James Steere. Board Legal Counsel Powers declared that Board Member Pare would recuse himself from any participation at the administrative hearing for the Order to Show Cause.

Legal Counsel Powers asked whether the Board would hear the matter as the entire Board or appoint a Presiding Officer to hear the matter. Chairman Cox called for a motion that the full Board hear the administrative hearing on the Order to Show Cause, Board Member Johnson moved that the full Board hear the administrative hearing and the motion was seconded by Board Member Starbard. The motion passed by a vote of: 3-0 with Board Member Pare recusing himself, and Chairman Cox abstained.

**Review and vote on proposed Advisory Ruling 2017-1 submitted by Board Member William Johnson requiring licensed motor vehicle damage appraisers to personally inspect damaged motor vehicles after reviewing photographic or videography depictions of damaged motor vehicles displaying apparent damage for a claim submitted by a consumer that falls below the \$1,500 damage threshold, and when the damage may affect the safe operation of the vehicle or violate emission standards:**

Chairman Cox called for a discussion on the proposed Advisory Ruling 2017-1. Board Member William Johnson read the following proposed Advisory Ruling:

**ADVISORY RULING**

The Auto Damage Appraiser Licensing Board has passed a motion declaring, if during the review of photographs or video submitted by a consumer for a claim that falls below the \$1,500 damage threshold, (212 CMR 2.04 (1)(a) mandates a written appraisal of motor vehicle damage in excess of \$1,500 less any deductible) the appraiser determines that a motor vehicle is or may be damaged such that: (a) it may no longer meet the safety standards established by the registrar of motor vehicles under section seven A of chapter ninety; or (b) it may no longer comply with the motor vehicle emission standards established by the commissioner of the department of environmental protection under section 142M of chapter one hundred and eleven, the appraiser may not conclude the appraisal based on the photographs or video, but shall continue the appraisal by conducting a personal inspection of the damaged motor vehicle. If upon personally inspecting the damage to the motor vehicle or the vehicle cannot comply with the motor vehicle emission standards, the vehicle's safety inspection sticker shall then be removed in accordance with M.G.L. c. 26, § 8G and 212 CMR 2.00 et. seq. Furthermore, the appraiser shall immediately notify the owner of said vehicle that the vehicle may be unsafe to drive and/or in violation of the emission standards.

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 fines and penalties as provided for by law.

Upon completing the reading of proposed Advisory Ruling 2017-1, Board Member Johnson referred to a letter Attorney John R. Callahan, representative of MAPFRE Insurance Company, had written in opposition to the Advisory Ruling. In support of his opposition, Attorney Callahan sent a copy of a letter that had been written in January of 2013 to Chairman Cox, by Robert Whitney, former General Counsel for the Division of Insurance, relative to an "Investigation by the Division of Insurance of the Complaint Brought by the Alliance of Automotive Service Providers of Massachusetts Inc. Concerning the Metropolitan Property and Casualty Insurance Company's Direct Payment Plan". Mr. Whitney's letter addressed the issue of "personal inspection of motor vehicle damage," under an approved Direct Payment Plan which allowed the review of photographic or videography depictions of the damage under Direct Payment Plans [211 CMR 123.00] approved by the Commissioner of Insurance to satisfy the requirement of an appraiser's "personal inspection" of motor vehicle damage. Board Member Johnson asserted that the subject matter of Attorney Whitney's letter involved licensed appraisers interacting with other



licensed appraisers. He distinguished the Advisory Ruling that he was proposing as an attempt to address a very different scenario, one in which licensed appraisers were interacting with consumers and not like the issue that was addressed in Mr. Whitney's letter, which involved the manner of appraisals by licensed appraisers interacting with other licensed appraisers.

Board Member Starbard reported that he received a telephone call from a national television network which was investigating the impact on consumers who were allowed by insurance companies to drive dangerously damaged motor vehicles and the resulting harm caused to consumers by such conduct. Board Member Starbard observed the proposed Advisory Ruling attempts to address this type of conduct.

Board Member Johnson made a motion to approve the Advisory Ruling as submitted with a second by Board Member Starbard, and Chairman Cox called for a vote. The motion failed on a 2-2 tie vote Board Members Johnson and Starbard voting in favor and Board Members Coyne and Pare voting against, with Chairman Cox abstaining. Chairman Cox suggested that the Board reflect further on the proposal, try amending it, and submit a proposal on the agenda for the next Board meeting.

Peter D'Agostino, a representative of AASP Massachusetts, requested permission to speak and Chairman Cox granted permission. Mr. D'Agostino declared that the issue was clearly set-out in the Motor Vehicle Damage Appraiser law which mandates that a licensed appraiser shall remove an inspection sticker whenever damage apparently affects the safe operation of a motor vehicle. He also reminded that Board about the Office of the Attorney General's lawsuit against the Metropolitan Insurance Company, which had been filed in the superior court, because of that company's failure to remove inspection stickers from motor vehicles where damage appeared to affect the safe operation of consumers' motor vehicles.

Board Member Johnson agreed, reaffirming that the removal of an inspection sticker from a motor vehicle when the damage appears to affect its safe operation is part of the law, and the issue is squarely about protecting the safety of consumers.

Board Member Pare disagreed, he asserted that his appraisers are not allowed to enter a motor vehicle and are specifically instructed not to open the trunk or go inside the car, let alone enter the motor vehicle to scrape-off an inspection sticker. Mr. Pare informed the Board Members that in the past one of his appraisers was accused by a consumer of stealing a package of cigarettes from the inside of the car. Mr. Pare observed that local police departments will not scrape off motor vehicle inspection stickers. Mr. Pare queried, if local police departments can't scrape-off motor vehicle inspection stickers, why should motor vehicle damage appraisers be compelled to scrape of a damaged motor vehicles' inspection stickers? Board Member Coyne agreed with Mr. Pare's observation about the reluctance of police departments to remove inspections stickers from motor vehicles. He observed, if police departments can't or won't remove motor vehicle inspection stickers, why should motor vehicle appraisers be compelled to remove inspection stickers?

Board Member Starbard responded, it is the law, and just because police departments can't remove inspection stickers, police procedures do not dictate that licensed appraisers can't remove

inspection stickers. Board Member Starbard elaborated that his appraisers go into consumers' motor vehicles all of the time to appraise and repair damage.

Board Member Pare reaffirmed that appraisers who conduct damage appraisals for his company are precluded from entering cars, appraisals are conducted from the outside of the damaged cars.

Board Member Johnson suggested a compromise. He would offer a compromise to remove the language about scraping off an inspection sticker from a damaged motor vehicle, because the purpose of the proposed Advisory Ruling is about safety of consumers. Board Member Johnson suggested that the proposed Advisory Ruling be amended by deleting the language, "If upon personally inspecting the damage to the motor vehicle the appraiser determines the damage impairs the operational safety of the motor vehicle or the vehicle cannot comply with the motor vehicle emission standards, the vehicle's safety inspection sticker shall then be removed in accordance with M.G.L. c. 26, § 8G and 212 CMR 2.00 et. seq." The amendment to the proposed Advisory Ruling would read as follows:

April 12, 2017

## TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2017-1

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., "The Appraisal and Repair of Damaged Motor Vehicles", as promulgated by the ADALB. Pursuant to its authority the ADALB is authorized to issue licenses to all motor vehicle damage appraisers in the Commonwealth (licensed appraisers or appraiser) 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. It is the intention of the ADALB to issue an Advisory Ruling consistent with 212 CMR 2.00 and M.G.L. c. 26, § 8G to be followed by licensed appraisers.

Pursuant to its authority, the ADALB voted by a majority vote at the Board's meeting held on April 12, 2017, to adopt this Advisory Ruling.

### **ADVISORY RULING**

The Auto Damage Appraiser Licensing Board has passed a motion declaring, if during the review of photographs or video submitted by a consumer for a claim that falls below the \$1,500 damage threshold, (212 CMR 2.04 (1)(a) mandates a written appraisal of motor vehicle damage in excess of \$1,500 less any deductible) the appraiser determines that a motor vehicle is or may be damaged such that: (a) it may no longer meet the safety standards established by the registrar of motor vehicles under section seven A of chapter ninety; or (b) it may no longer comply with the motor vehicle emission standards established by the commissioner of the department of environmental protection under section 142M of chapter one hundred and eleven, the appraiser may not conclude the

appraisal based on the photographs or video, but shall continue the appraisal by conducting a personal inspection of the damaged motor vehicle. Furthermore, the appraiser shall immediately notify the owner of the damaged motor vehicle that the vehicle may be unsafe to drive and/or in violation of the emission standards.

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 fines and penalties as provided for by law.

Chairman Cox entertained a motion to reconsider the previous vote. The motion was made by Board Member Johnson, seconded by Board Member Starbard, and the motion passed by a vote of: 3-2 with Board Members Coyne and Pare voting against.

The Board Members engaged in further discussion by reasserting their previous stated positions.

Chairman Cox called for a motion to adopt Advisory Ruling 2017-1 as amended, the motion was made by Board Member Johnson and seconded by Board Member Starbard. The motion passed by a vote of: 3-2 with Board Members Johnson and Starbard along with Chairman Cox voting in favor, and Board Members Coyne and Pare voting against.

**Submitted by Board Member Richard Starbard, for discussion by the Board, House Bill 2964:**

Chairman Cox read the item which was the following:

Section 8G of chapter 26 of the General Laws is hereby amended by adding at the end thereof the following paragraph:

Upon a declaration of an emergency in any area of the commonwealth by the governor or upon the declaration by the commissioner of insurance that severe weather conditions or other circumstances have resulted in a claims emergency, and notwithstanding any other provision of this section, an insurer may appoint temporary qualified appraisers to facilitate the prompt resolution of claims arising out of the emergency by notifying the Board either in writing, electronically or by facsimile. An appraiser already licensed in another state or an appraiser who works for an insurer that does business in Massachusetts and who regularly appraises motor vehicles in a state where an appraiser license is not required shall be considered a qualified appraiser. A qualified appraiser so appointed shall be considered licensed for all purposes of this section, that status shall terminate upon a determination by the commissioner of insurance that temporary appraisers are no longer required to facilitate the resolution of claims.

Board Member Starbard began the discussion by stating he was opposed to the legislation because the Board was fully cooperating with the insurance industry by issuing temporary licenses in emergency situations and, therefore, there was no need for this legislation. Mr. Starbard suggested that the Board Legal Counsel draft a letter to the State Representative who sponsored the

legislation stating that the Auto Damage Appraiser Licensing Board was opposed to the legislation. Board Member Johnson volunteered to work on drafting the letter with Board Legal Counsel Powers.

Chairman Cox called for a motion, and the motion was made by Board Member Starbard that a letter be drafted from the Members of the ADALB to the State Representative sponsoring the legislation declaring that the ADALB is opposed to the legislation. The motion was seconded by Board Member Johnson and the motion passed by a vote of: 3-1, with Board Members Johnson, Starbard, and Coyne in favor, and Board Member Pare opposed with Chairman Cox abstaining.

**Review of letter submitted by the American Road Services Company of Dearborn, Michigan about the requirement that an applicant for a motor vehicle damage appraiser license must fulfill three months of work experience with a licensed Massachusetts motor vehicle damage appraiser prior to taking the examinations for the motor vehicle damage appraiser license:**

Board Member Starbard opined that the ADALB regulation, 212 CMR 2.00 et seq., very clearly establishes that the Board creates licensing standards for motor vehicle damage appraisers.

Board Member Coyne asserted that the Board has repeatedly waived the training requirement in the past based on the proper work experience of an out-of-state appraiser.

Chairman Cox suggested that the Board draft a letter responding to this letter, referred the assignment to Board Member Johnson, and declared that it would be placed on the agenda for the next Board meeting. Board Member Johnson agreed to draft a response with the collaboration of Board Counsel Powers.

**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 informed the Board that he received an email from an auto body shop owner complaining that an insurance company's appraiser refused to go to his auto body shop. Mr. Johnson put the issue for a discussion among the Members of the Board by asking, in this type of situation what does an auto body shop owner do?

Board Member Pare responded that his company has experienced difficulty with particular auto body shops where he has sent up to five different appraisers to attempt negotiations and has reached the point whereby his company retains independent appraisers to negotiate with such recalcitrant auto body shops.

Board Member Starbard reflected that this type of issue strains consumers' resources and whenever an appraiser refuses to appear at an auto body shop to negotiate a consumer's damage claim the auto body shop should file a complaint with the Board.

Board Member Johnson observed that these types of situations must be reviewed on a case by case basis.

Board Member Starbard reaffirmed his position that the proper avenue to proceed is by filing a complaint with the Board.

Chairman Cox asked, “What would the Board like to do?”

Board Member Coyne suggested that Board Member Johnson write a letter to the attorney representing the auto body shop and invite the attorney to file a complaint with the Board.

Board Member Pare volunteered that this was probably not an isolated incident at the particular auto body shop.

Board Member Johnson concluded the discussion by announcing he would contact the attorney for the auto body shop and instruct the attorney to file a complaint with the Board.

**Request of Stephen Hagerty to renew his motor vehicle damage appraiser license:**

Board Member Coyne reported that a licensee named Stephen Hagerty had allowed his license to lapse in 2015, and requested he be allowed to renew the license upon payment of the required fines and renewal fees. Board Member Coyne informed the Board that he was familiar with the matter and Mr. Hagerty. During the lapse period, Mr. Hagerty was working for a company focusing on homeowner insurance claims and now he is employed by another company, Quincy Mutual Insurance Company, as a Senior Loss Specialist and is currently overseeing auto damage claims.

Board Member Johnson made the motion to allow Mr. Hagerty to renew his license upon paying all fines and renewal fees. The motion was seconded by Board Member Coyne, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Peter D’Agostino requested permission to speak to the Board, and Chairman Cox granted permission. Mr. D’Agostino informed the Board that his organization AASP of Massachusetts has two cases that were brought to its attention that involve an insurance company directing cars, which were damaged in Massachusetts, out of state for motor vehicle damage appraisals. One car had 1,400 miles on it, and the out of state appraiser wrote the damage for aftermarket parts, in violation of the regulation [211 CMR 133.04(e)]. He elaborated, the appraiser in Connecticut, where the car was appraised, did not have a Massachusetts motor vehicle damage appraiser license. Mr. D’Agostino informed the Board that he and representatives of AASP met with members of the Office of the Attorney General for Massachusetts to discuss the issue and lodge a complaint. Mr. D’Agostino also said he spoke with Board Legal Counsel Powers who suggested that Mr. D’Agostino report the matter to the Board.

Board Member Starbard asked, “Was the owner of the vehicle a Massachusetts resident?” Mr. D’Agostino replied the owner was a resident who chose a Massachusetts auto body shop for repair work, but was instructed by the insurance company to drive the car to Connecticut, passing by one of the company’s auto body shops in Massachusetts, to an auto body shop located in Connecticut.

Board Member Starbard queried, did the insurance company’s appraiser correspond to the vehicle owner on the insurance company’s letterhead? Mr. D’Agostino responded he would look into the matter further.

Chairman Cox asked Mr. D'Agostino whether or not he contacted the Division of Insurance, and Mr. D'Agostino replied, he contacted the General Counsel for the Division of Insurance and requested a meeting. He concluded by informing the Board that the owner of the vehicle drove to the auto body shop in Connecticut with the bumper taped with duct tape and the damage was appraised at \$8,500.

**Next scheduled meeting:**

The Board determined that the next regularly scheduled Board meeting would be held on May 17, 2017, at 9:30 AM at 1000 Washington Street, Boston, Massachusetts.

**Executive session:**

Before entering the 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 and not return to the public 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 roll call vote of: 4-0 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:**

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, an expert in insurance laws, representing the licensed appraiser and Geico Insurance Company appeared before the Board. Attorney Friedman reported that the mediation session between the complainant, Board Member Coyne, and Geico Insurance Company was successful. Attorney Friedman said that she would prepare a letter consistent with the mediation discussions and send it to the Board.

Board Member Coyne informed the Board that he mediated the matter, spoke with the complainant who was satisfied with the mediation, concluding with the licensed appraiser sending a letter to the Board. The complainant felt that the appraiser was a young man who did not have a lot of experience and made a mistake, but the mistake did not harm the customer, because full payment for the damage to the vehicle was made, and the complainant was satisfied with the Board's response and action agreed to by the licensed appraiser.

**Complaint 2017-4:**

Board Member Starbard returned to the meeting. Board Legal Counsel Powers informed the Board that the attorney for the licensed appraiser, John A. Donovan III, requested the matter be

heard in the executive session and because Attorney Donovan was engaged in a trial and could not attend the Board meeting, he requested a continuance to the next meeting.

The Board agreed to continue the matter and set it down on the agenda for the next meeting of the Board.

**Motion to adjourn:**

Board Member Pare made a motion to adjourn which was seconded by Board Member Johnson, 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.) **Proposed amended Guidelines for ADALB Complaint Procedures**
- 2.) **Proposed Order to Show Cause**
- 3.) **Proposed Advisory Ruling 2017-1**
- 4.) **Correspondence from Attorney John R. Callahan, representative of MAPFRE Insurance Company dated Monday April 10, 2017, with an attached letter to Gilbert Cox Jr. Chair Auto Damage Appraiser Licensing Board dated January 21, 2013, from Robert Whitney, General Counsel of the Division of Insurance**
- 5.) **Letter from American Road Services Company of Dearborn, Michigan dated January 11, 2017, addressed to Robert Hunter, Supervisor of Producer Licensing**
- 6.) **Correspondence from Attorney Patrick T. Matthews dated April 11, 2017, sent to Board Member William Johnson**
- 7.) **Letter from Stephen Hegarty to Robert Hunter dated March 6, 2017, requesting approval to pay fines and fees for renewing his license which lapsed in 2015**
- 8.) **Letter from Attorney John A. Donovan III to Michael Powers dated April 11, 2017, requesting a continuance of Complaint 2017-4.**