



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

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CHAIRMAN

KARYN E. POLITO
LIEUTENANT GOVERNOR

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

Minutes of Meeting of the Board held on June 13, 2017, Approved by the Board at the July 25, 2017, Board Meeting; Motion of Board Member William Johnson and Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 4-0, Chairman Cox Abstained.

June 13, 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:

Peter D'Agostino 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). Jim Steere, Hanover Insurance Company (Audio).

Call to Order:

Chairman Cox called the meeting to order.

Review of minutes:

A review of the minutes of the Board Meeting held on May 17, 2017, was taken by the Board, and Chairman Cox called for a motion to approve the minutes. The motion 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.

Amendment to Board Minutes of October 4, 2016:

Board Counsel Michael Powers reported to the Board that he had prepared an amendment to the minutes of the Board meeting that was held on October 4, 2016 as the result of the decision by the Division of Open Government of the Office of the Attorney General. Mr. Powers provided the Board Members with a draft copy of the amended minutes and prepared a motion for the Board which included waiving the Attorney/Client Privilege doctrine to preserve the Board's right in any future matter. Mr. Powers then read the following motion that he proposed for the Board to approve for publishing an amendment to the Board's executive session minutes held on October 4, 2016:

Motion to waive the Attorney/Client Privilege doctrine as enunciated by the Massachusetts Supreme Judicial Court in the case of *Suffolk Construction Co. Inc. v. Division of Capital Asset Management*, 494 Mass. 444 (2007) for that portion of the minutes of the executive session of the October 4, 2016, Board meeting that involved legal advice and the discussion between Board Legal Counsel and the Members of the Board about the legal elements of a proposed Order to Show Cause and to approve and publish the minutes of that part of the executive session during which time these discussions were held. Such publication was ordered by the Division of Open Government in case OML 2017-72 and the Board voted on May 17, 2017, not to appeal the decision rendered in that case for the reasons stated in the minutes of the May 17, 2017, Board meeting.

Chairman Cox called for a Board member to make the motion and Board Member Richard Starbard made the motion as read by Legal Counsel Powers, and the motion was seconded by Board Member William Johnson. The motion passed by a vote of: 3-0 with Board Member Pare recusing himself and not voting because he did not participate at the portion of the executive session, and Chairman Cox abstaining.

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

Board Member Richard Starbard reported that an examination will be held on June 14, 2017, in Westwood, Massachusetts at Progressive Insurance Company's facility. Board Member Starbard reported that 50-55 people are on the list to take this exam. Board Member Starbard also thanked John-Michael Dillon for his help in setting up a venue for the Part II exam as well as Pete Smith for his continued help with the Part II exam. The next exam date has yet to be scheduled but Board Member Starbard will explore dates towards the end of August to the middle of September.

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 Joseph Coyne stated that he has been working on a letter with Legal Counsel Michael Powers to be sent out. Board Member Coyne believes to have a valid address to send this letter and that it would be fully drafted by the next ADALB meeting.

Proposal submitted by Board Member William Johnson to change the renewal license for motor vehicle damage appraiser to include a requirement that the appraiser include an email address on the application:

Board Member William Johnson stated that the changed renewal application has already been seen by the Board as it was emailed to them previously before the meeting. Board Member Joseph Coyne made a motion to accept the renewal form with the addition of the email address, seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Draft Letter by Board Member William Johnson responding to House Bill 2964:

At a previous Board meeting Board Member William Johnson agreed to draft a letter responding to the following proposed bill filed in the Massachusetts Legislature:

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 Johnson reported that he drafted a letter that was reviewed by Board Legal Counsel Michael Powers and the final draft of the letter is the following:

June 13, 2017

The Honorable James B Eldridge, Chairman
Joint Committee on Financial Services
Massachusetts Senate, Room 320
State House
Boston, Massachusetts 02133

RE: The Auto Damage Appraiser Licensing Board's Opposition to HB. 2964

Dear Chairman Eldridge:

HB 2964, amends G.L. c. 26, Section 8G, the enabling act for the Auto Damage Appraiser Licensing Board (ADALB or Board), by removing from the Board the authority to issue temporary or emergency motor vehicle damage appraiser licenses and placing the authority with the commissioner of the division of insurance. HB 2964 has been discussed at the last several meetings of the Board, and the Board feels that it has been mindful of the insurance industries' needs. In the past the ADALB has responded rapidly to the insurance industries' requests for temporary or emergency licenses and, therefore, believes that this legislation is unnecessary.

Moreover, the ADALB is undertaking proposed amendments to its regulation 212 CMR 2.00 et seq. One of the proposed amendments that has been approved by the Board is the following:

~~(2) Temporary Licensing. The Board may grant at its discretion either an emergency or a temporary license to any qualified individual to alleviate a catastrophic or emergency situation for up to 90 days. The Board may limit the extent of such emergency authorization and in any event, if the situation exceeds 30 days, a fee determined by the Board shall be charged for all emergency or temporary licenses.~~ The Board shall vote to authorize the Chairman of the Board or his/her designee to grant a temporary license up to 60 days to any qualified individual to alleviate a catastrophic or emergency situation as long as the following conditions are met: (1) the applicant is licensed as a motor vehicle damage appraiser in another state and provides a copy of that license to the Chairman of the Board or his/her designee; (2) is in good standing in the other state and the applicant provides consent to the Chairman of the Board or his/her designee to verify the applicant's licensing status through the insurance licensing database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; (3) the applicant has not been found guilty of fraud, deceit, gross negligence, incompetence, misconduct or conflict of interest in the preparation or completion of any motor vehicle damage report; (4) the applicant does not have criminal felony charges pending against him/her in any state; (5) the applicant properly fills out the application; and (6) pays the applicable license fee.

Copies of all such applications and temporary licenses issued by the Chairman of the Board or his/her designee shall be submitted to the Board at its next scheduled meeting for review by the Board. After review, the Board may revoke any such temporary license that was issued if the Board finds such applicant does not conform to the six listed conditions, or the Board finds that a person who was issued a temporary license is not qualified to hold such license.

For these reasons the Board does not feel this legislation is needed. Amendments to the Board's regulation are currently under review with the Secretary of Administration and Finance, as required by law, and the Board anticipates final approval of the above-referenced amendment.

In closing, I would like to add that the ADALB is comprised of five members, and I as the Chairman cannot be affiliated with the insurance industry or the auto body industry. The enabling statute also requires the Board be comprised of two representatives from the insurance industry and two representatives from the auto body industry. A majority of the Members of the Board have agreed that HB 2964 is not warranted.

Respectfully submitted

Gilbert W. Cox Jr.
Chairman

The Members of the Board reviewed the letter and Chairman Cox called for a vote to approve the letter as written. The vote for approval was: 4-0 with Chairman Cox abstaining.

Draft letter by Board Member William Johnson responding to a 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:

At a previous Board meeting Board Member William Johnson agreed to draft a letter responding to a letter from the American Road Services Company of Dearborn, Michigan. Board Member Johnson reported that he drafted the letter and forwarded the draft to Board Legal Counsel Powers for his review. The final draft of the letter is the following:

June 13 2017

Mr. Michael Parente
North East Regional Claims Manager
American Road Service Company
PO Box 6069-Mail Drop 7795
Dearborn, MI 48121-9934

Dear Mr. Parente:

This letter is in response to your correspondence dated January 11, 2017, in which you raised two questions for the Auto Damage Appraiser Licensing Board (ADALB or Board) to answer. The first question regards the requirement for licensure as a motor vehicle damage appraiser of a three month work experience letter provided from a licensed Massachusetts appraiser as it relates to a trainee or applicant for appraiser license. The answer to the first questions is that the work performed by an applicant does not need to be performed within the borders of Massachusetts. Nevertheless, the Board stresses that a trainee/applicant will need to know the applicable Code of Massachusetts

Regulations (CMR) and Massachusetts General Laws that pertain to Massachusetts motor vehicle damage appraisals to pass the test.

The second question you asked regards the issuance of temporary emergency appraiser licensees because of an unusual increase in the volume of claims due to extraordinary events such as extreme weather. The Board has granted, and will grant, temporary emergency licensees without a formal declaration of an emergency. Moreover, the Board has voted to change the current language of its regulation 212 CMR 2.04(2), which will expedite the issuance of temporary or emergency licenses. The Board is awaiting approval of this amendment, as required by law, from the Massachusetts Secretary of Administration and Finance before it can implement this change.

I want to thank you for your patience as it relates to the delay in our response.

On behalf of the ADALB,

Gilbert W Cox Jr.
Chairman

The Members of the Board reviewed the letter. Chairman Cox called for a vote for approval of the letter as written and the Board voted for approval on a vote of: 4-0 with Chairman Cox abstaining.

Draft Letter by Board Legal Counsel Michael Powers for Chairman Cox responding to the decision rendered by the Division of Open Government:

At the previous Board meeting, Board Member Johnson made a motion to send a letter to the Office of the Attorney General about the decision rendered by the Division of Open Government against the Board (in the matter of Auto Damage Appraiser Licensing Board, OML2017-72) to the editor of the “Manual for Conducting Administrative Adjudicatory Proceedings” (2012 Edition) (Published by the Administrative Law Division of the Government Bureau of the Office of the Attorney General) (Manual) informing him of the decision. Mr. Powers informed the Board that he drafted a letter to the editor of the Manual, Assistant Attorney General Quinan, who had written in the Preamble that comments or suggestions for the Manual are invited. Legal Counsel Powers asserted that the letter would be helpful for any future revisions of the Manual in light of the fact that the Board had followed the Manual and the Manual is published to guide all boards, commissions, or agencies in the Commonwealth. Based on his review of the cases on file with the Division of Open Government there was no other case where a board, commission, or agency was found to have violated the Open Meeting Law when a board consulted with legal counsel during an executive session to discuss the legal elements of an order to show cause that a board was preparing. Legal Counsel Powers submitted the following letter to the Board for its approval:

June 13, 2017

Robert L. Quinan Jr.
Assistant Attorney General

Administrative Law Division/Government Bureau
One Ashburton Place
Boston, MA 02108

Dear Assistant Attorney General Quinan:

On behalf of the Auto Damage Appraiser Licensing Board (ADALB or Board), as voted by the Board at the meeting held on May 17, 2017, I am writing you about a recent decision of the Division of Open Government rendered against the ADALB (OML 2017-72) as it relates to a suggested change in the MANUAL FOR CONDUCTING ADMINISTRATIVE ADJUDICATORY PROCEEDINGS (2012 Edition) (Manual). The Board has heavily relied on the excellent Manual while conducting the first formal adjudicatory proceeding in the history of the ADALB. The Members of the Board were surprised by this decision, and, rather than appeal the decision to the superior court, believed that it should be brought to your attention for consideration in any future revisions to the Manual in accordance with your invitation in the Preface, "Your ongoing comments and contributions are encouraged and welcomed." So that you may fully understand the Board's request, a recitation of the salient facts are in order.

The ADALB is, *inter alia*, empowered by G.L. c. 26, § 8G to oversee the licensing and conduct of motor vehicle damage appraisers. On September 7, 2016, after conducting three executive session meetings at three previous Board meetings in accordance with G.L. c. 30A, § 21(a)(1), with a licensed appraiser whom a complaint had been filed against, the Board voted to initiate a formal administrative hearing against him. With the investigatory stage concluded, at the following Board meeting held on October 4, 2016, the Board met in the executive session to discuss with Board Legal Counsel certain legal elements of an order to show cause that would be submitted to the Board at a future meeting. The October 4, 2016, Board meeting was properly posted, included this discussion which was scheduled for the executive session, and properly cited the exemption to the Open Meeting Law, G.L. c. 30A, § 18(d). The licensed appraiser appeared at the meeting with his attorney, they had read the posted agenda prior to the meeting, and insisted on attending the executive session to participate in the discussion between Board Legal Counsel and the Board. The request was denied. Thereafter, in December of 2016, the appraiser and his attorney filed a complaint with the Division of Open Government insisting they had a right to participate in the discussion, and on May 5, 2017, the decision in the case of *Auto Damage Appraiser Licensing Board*, OML-2017-72 was rendered against the Board. This decision holds that the appraiser and his attorney had a right to participate in these legal discussions between a board and its legal counsel.

Prior to the October 4, 2016, meeting the decisions of the Open Meeting Law were researched and no decisions could be found for violations of the Open Meeting Law when an attorney and board members met to discuss the legal elements of an order to show cause. The only two cases that make any reference to an "order to show cause," which are not on point, are *Board of Registration in Medicine*, OML 2014-99 and *Board of Registration in Pharmacy*, OML 2013-58. Both cases involved the investigatory stage

of a complaint and do not address the specific issue of a board and its legal counsel discussing the legal elements of an order to show cause, and cite a portion of G.L. c. 112, § 65C, "[m]eetings of the [Board] held for the purpose of conducting investigative conferences prior to the issuance of an order to show cause or for purposes of discussing terms of a negotiated settlement of a complaint against a licensee shall not be considered open meetings within the meaning of [the Open Meeting Law]." Also closely reviewed was the Manual, focused on Chapter II section B, Chapter VII section G and it was concluded that the discussion would be an exception to the Open Meeting Law.

At the Board meeting held on May 17, 2017, the Board voted to not appeal the decision rendered against it by the Division of Open Government. The Board passed a motion that I prepare a letter to you as editor of the Manual advising of the decision made in the matter of *Auto Damage Appraiser Licensing Board*, OML 2017-72 and request that any future changes to the Manual reflect the requirement ordered by this decision. Therefore, because of this precedent setting decision, the Board respectfully requests that any future revisions of the Manual should include specific guidance pertaining to this requirement.

The entire Board is hearing the administrative hearing, with one member abstaining because of his participation in an attempted mediation. A copy of the outstanding Manual has been provided to each one of the Board Members as guidance during the hearing. The Board will continue to rely on the Manual for guidance during the course of these types of proceedings.

Sincerely yours,

Gilbert W. Cox Jr.
Chairman of the ADALB

A motion to approve the letter was made by Board Member Joseph Coyne and seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

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

There was no other business brought before the Board.

Next scheduled meeting:

Chairman Cox asked for a date for the next Board meeting. The Board determined that the next regularly scheduled Board meeting would be held on July, 25, 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. 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.

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 Johnson and seconded by Board Pare, 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.

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. Letter to Chairman Eldridge**
- 2. Letter to Mr. Michael Parente**
- 3. Letter to Assistant Attorney General Robert Quinan Jr.**