



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

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CHAIRMAN

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LIEUTENANT GOVERNOR

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

Minutes of Meeting of the Board held on July 25, 2017, Approved by the Board at the October 3, 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.

July 25, 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). 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 June 13, 2017, was taken by the Board, and Chairman Cox called for a motion to approve the minutes. The motion was made by Board Member William Johnson and seconded by Board Member Richard Starbard, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

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

Board Member Richard Starbard reported that the next scheduled examination is for August 30, 2017, in Westwood, Massachusetts. Executive Secretary Steven Zavackis reported that there were 40 people who had passed the written portion of the examination and signed-up for the Part-II portion of the 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 domiciled in the state of California and doing business as “Access” in Massachusetts:

Board Member Joseph Coyne submitted the draft of a letter for the Board’s approval, prepared by Board Member Coyne, to be sent to Access which was the following:

July 25, 2017

Ms. Sharon Gibson
Senior Operations Manager
Access General Insurance Adjusters, LLC
3 Ravinia Drive, Suite 400
Atlanta, GA 30346

Dear Ms. Gibson:

It has come to the attention of the Auto Damage Appraiser Licensing Board (ADALB or Board) that your company is conducting physical damage appraisals of motor vehicles in the state of Massachusetts for your policyholders and claimants. The ADALB’s enabling act Mass. Gen. Law c. 26, § 8G requires in relevant part “No appraiser shall complete an auto damage report unless he is duly licensed and unless it is on an approved form, and in a manner consistent with rules and regulations as shall be issued and amended from time to time by the board....” Therefore, any appraisals of damaged motor vehicles in Massachusetts must be conducted by appraisers licensed by the ADALB.

Enclosed find copies of the ADALB’s regulation 212 CMR 2.00 et seq. and a related regulation issued by the Massachusetts Commissioner of Insurance, 211 CMR 133.00 et seq. Please be sure that your company is following the regulations as set forth by the ADALB and the Division of Insurance. We at the ADALB want to ensure that each and every consumer filing a claim with your company is treated in compliance with the motor vehicle damage appraiser laws of Massachusetts.

If you have any questions or if I may be of assistance, please do not hesitate to contact me.

Sincerely,

Joseph C. Coyne, Jr.
Member of the ADALB

Chairman Cox thanked Board Member Coyne for his efforts and asked for the Board Members to review the letter and for any discussion about it.

Board Member Johnson suggested that the letter should be executed by Chairman Cox and the consensus of the Members was that would be the better form of the letter. Chairman Cox called for a motion for the Board to approve the letter and that he execute it as Chairman of the Board. A motion was made by Board Member Richard Starbard and seconded by Board Member Johnson, and 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:

Chairman Cox reported that Chris Goetcheus, Director of Communications of the Office of Consumer Affairs, contacted him and inquired about the Auto Damage Appraiser Licensing Board's regulation requiring personal inspections of motor vehicle damage. Chairman Cox informed Mr. Goetcheus that the regulation required a personal inspection for damage in excess of \$1,500.

Pete Smith from MAPFRE Insurance Company informed the Board that he submitted information to the Producer Licensing Unit for eight applicants for motor vehicle damage appraiser license who are employed by MAPFRE and currently conducting motor vehicle damage appraisals in three states: Connecticut, Ohio, and New York. All of these applicants have experience in motor vehicle damage appraising. Pete Smith provided the Board Members with a list of the names of the applicants along with details about their experience in motor vehicle damage appraising. He requested the Board waive the requirement that the applicants take a course on motor vehicle damage appraising before sitting for the Part-I examination.

Board Member William Johnson made the motion to waive the course requirement for the eight people submitted on the list by Mr. Smith, a second to the motion was made by Board Member Johnson, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Jillian Bukhenik, Executive Director of AASP, requested permission to speak to the Board and permission was granted.

Executive Director Bukhenik said that at a previous Board meeting the Board had stated that it was not proper for an appraiser to write a motor vehicle damage appraisal listing an item for partial payment for paint time of a damaged part.

Board Member Richard Starbard reported that some appraisers are engaging in this practice and it violates the ADALB's regulation. He elaborated, motor vehicles that have damage to a part should include in the appraisal total time to finish painting the entire part. For instance, an appraisal of a

motor vehicle with damage to a fender should not provide for partial painting of the area of damage such as the dented portion of the fender, but must provide for total time it would take to paint the entire fender.

In sum, Mr. Starbard declared that when an appraiser is using a manual or database for calculating the estimate for an appraisal, an appraiser is not allowed to override the manual or database to change the costs for paint and material to only calculate partial time for paint and material to repair a portion of the damaged area of a particular part. Board Legal Counsel Powers informed Mr. Starbard that he had difficulty in writing down everything he said about the issue and to ensure that the minutes captured precisely what was said by him Mr. Powers suggested that he place his statement in writing and the statement could be added to the minutes.

Mr. Starbard said so that his position could be clearly understood, he would submit a written statement to be inserted in the minutes and would forward it to Legal Counsel Powers. After the Board meeting, Mr. Starbard submitted the following:

Partial Refinish.

This was brought up in new business by Jillian Bukhenik the executive director of AASP-MA.

The discussion surrounding partial refinish was related to an appraiser changing the published database refinish times on some damaged panels. I also stated that if a test candidate were to allow for partial refinish of a damaged panel as part of their test, it would count against them when grading the test. Changing published refinish labor times without prior negotiation is a violation of 212CMR 2.04 (e) which states: "**No appraiser shall modify any published manual (i.e., Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties.**" The refinish time for any part which has sustained any damage shall be considered as full paint time unless otherwise negotiated. "Partial Refinish" or "Blend" labor should not be used on a panel which has sustained damage as a result of the loss.

We also had discussion regarding whether or not that this discussion would be just a discussion for the minutes or if it would become an advisory ruling. It was agreed that the discussion would be entered into the minutes and we would discuss the following meeting as to whether or not we feel the need to create an advisory ruling.

We also had discussion regarding using vehicle manufacturer's repair recommendations when writing an appraisal. I brought this up as a major law suit was filed against a repair shop in Texas for not following Honda's repair recommendations on a repair because the insurer would not pay to follow them. I suggested that we issue an advisory ruling to follow what we had agreed to in the proposed reg. change as it relates to manufacturers recommendations. Currently the existing language in 212CMR 2.04(e) states: "**Manufacturer warranty repair procedures, I-Car, Tec Cor and paint manufacturer procedures may also apply**". The proposed reg. change that I would like to see issued as an advisory ruling states: "**Manufacturers recommended repair**

procedures, I-Car, Tec Cor and paint manufacturer procedures shall apply. However, the selection of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00.”

Mr. Douglas Haddad requested permission to speak to the Board and permission was granted. Mr. Haddad demanded that a complaint that was listed on the Board’s agenda against a licensed appraiser scheduled for the executive session should be held in the public session.

Mr. Jeffrey Sbrogna requested permission to speak to the Board and permission was granted. Mr. Sbrogna informed the Board that he had filed a complaint against the licensed appraiser referred to by Mr. Haddad, and he wanted the Board to have the matter heard during the public session and objected to the matter being heard in the executive session.

Legal Counsel Powers informed Mr. Haddad and Mr. Sbrogna that the law provides the accused appraiser with the right to have the matter heard in either the executive session or the public session. Mr. Powers then read the following relevant portion of the law:

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.

Legal Counsel Powers concluded by stating the licensed appraiser’s attorney notified the Board that the appraiser chose to have the matter heard in the executive session, and the matter would be

heard in the executive session. Under the law, the option to have the matter heard in the public session or the executive session was a legal right of the accused appraiser.

Mr. Adam Haddad, asserted that he was the owner of Action Auto Rental Company in Massachusetts, requested permission to speak to the Board and permission was granted. Mr. Haddad informed the Board that he was having difficulty with the Commerce Insurance Company because the company refused to assign an appraiser in accordance with the Board's regulation, 212 CMR 204(1)(a). Mr. Haddad asserted that such conduct by an insurance company is unfair to the consumer, which he is and he pays \$39,000 a year in premiums and Commerce will not look at his vehicles.

Board Member Starbard informed Mr. Haddad that the Board's regulation has assignment time frames and quoted 212 CMR 2.00 and that Commerce failed to assign an appraiser after a loss asserting that the language is contained in the ADALB's regulation.

Board member Johnson suggested that Mr. Haddad may wish to pursue the matter by contacting the Office of the Attorney General with a possible complaint for unfair or deceptive trade practices.

Board Member Johnson responded that the ADALB in such instances cannot hear a complaint against an insurance company. Board Member Johnson suggested that Mr. Haddad could name in a complaint the managing claims officer for the insurance company who oversees the appraisers assigned to the region wherein Mr. Haddad's company is located.

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 September 6, 2017 at 9:30 AM at 1000 Washington Street, Boston, Massachusetts.

Executive session:

Before entering the executive session Chairman Cox informed the public that the Board was about to vote to enter the executive session and would not be returning to the public session and then 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. Chairman Cox asserted that attorneys for licensed appraisers had notified the Board that they wanted their matters heard in the executive session. The motion to enter the executive session and adjourn in the executive session was made by Board Member Johnson and seconded by Board Member Coyne, 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 two applicants present for the Board meeting who disclosed a conviction on the application to take the written examination for motor vehicle damage appraiser license.

The first applicant was called into the executive session and asked questions by Members of the Board about the circumstances of his arrest and conviction. The applicant answered the Board Members' questions to their satisfaction including the reason that he wanted to take the examination and become a motor vehicle damage appraiser. The applicant explained that he was employed at a motor vehicle mechanical repair shop and the owner wanted to get into the auto body repair side of the business and pursuing the license would be an advancement with his employment.

Board Member Coyne made the motion that the applicant be allowed to take the Part-I examination and the motion was seconded by Board Member Pare, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

The second applicant for motor vehicle damage appraiser license entered the executive session and the Board Members asked several questions about the circumstances of his arrest and conviction. The applicant answered all of the questions including informing the Board of his current employment status which required top level security clearance as a contractor to the United States Navy.

Board Member Johnson made a motion to approve the applicant to take the Part-I examination and the motion was seconded by Board Member Pare, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Complaint 2017-5:

Attorney Peter Bosse, a highly regarded expert in insurance laws, represented the appraiser. The appraiser was asked a series of questions about the appraisal by Members of the Board.

The appraiser asserted that he began to negotiate with the appraiser from the auto body shop and left the shop to get something from his car and when he returned the appraiser from the auto body shop refused to speak with him and demanded that he leave the shop. Three weeks later his manager informed him that he had to complete the appraisal and he returned to the auto body shop and reviewed the damaged motor vehicle. When he inspected the bumper he found additional damage to it that was not on it when he originally inspected it and he left the auto body shop. Thereafter, he did not hear again from anyone in the auto body shop.

Board Member Johnson made the motion to dismiss the complaint and it was seconded by Board Member Lyle Pare, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Complaint 2017-6:

The Attorney for the licensed appraiser, John Callahan, appeared with the licensed appraiser. Board Member Richard Starbard asserted that he was engaged in a matter against the insurance company for whom the licensed appraiser worked and recused himself from participation in the matter and left the executive session.

The licensed appraiser informed the Members of the Board that he had inadvertently listed an item on the appraisal and later the mistake was discovered by the appraiser at the auto body shop. When the mistake was pointed out to him, he immediately changed the appraisal to reflect the proper part. The appraiser also stated that the appraisal was fully paid and the work completed.

Board Member Johnson voted to take the matter to the next step of the ADALB's Complaint Procedures and the motion was seconded by Board Member Pare, the motion passed by a vote of 2-1, with Board Member Coyne opposed and Chairman Cox abstaining.

Motion to adjourn:

Board Member Coyne made a motion to adjourn which was seconded by Board Member Pare, and the motion passed by a vote of: 3-0, with Chairman Cox abstaining and Board Member Starbard not present for the vote.

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 Access**
- 2. List of Appraisers for MAPFRE**