



**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 October 3, 2017, Approved by the Board at the
December 6, 2017, Board Meeting; Motion of Board Member William Johnson and
Seconded by Board Member Joseph Coyne. The Motion Passed by a Vote of: 4-0,
Chairman Cox Abstained.**

October 3, 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). Evangelos Papageorg of EXP Consulting (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photo). Jim Steere, Hanover Insurance Company (Audio).

Call to Order:

Chairman Cox called the meeting to order.

Review of minutes:

There were two sets of minutes for the Board's review and approval. First, a review of the minutes of the Board Meeting held on July 25, 2017 was undertaken by the Board, and Chairman Cox called for a motion to approve the minutes. The motion was made by Board Member Richard Starbard to accept the draft minutes as submitted and seconded by Board Member William Johnson, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Thereafter, a review of the minutes of the Board Meeting held on September 6, 2017 was taken by the Board, and Chairman Cox called for a motion to approve the minutes. There was a brief discussion about some minor corrections to the minutes and a request was made by Board Member Richard Starbard to amend a portion of the minutes containing his statements that were presented in the draft minutes of the meeting. The changes in the draft minutes were duly noted and Mr. Starbard made the motion to accept the minutes as revised, the motion was seconded by Board Member William Johnson, and 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:

A MVDA Part II Exam was held on August, 30, 2017, Board Member Richard Starbard reported that 7 candidates for this motor vehicle damage appraiser license were contacted after the Part-II examination and asked for further explanation about particular answers that they provided to the exam. There were 22 people who passed the examination and 28 people who failed the examination of which 7 were marked as pending call.

Board Member Johnson reported that Springfield Technical Community College (STCC) could be available for a Part-II examination. Board Member Lyle Pare reported that he contacted a representative of STCC and he indicated that Saturday, October 28, 2017, would be a potential date to hold the examination at its facility, but Board Member Pare found the date to be untenable. Board Member Johnson agreed with Mr. Pare, and it was decided not to conduct a Part-II examination at STCC on that date and other dates would be later determined.

Board Member Johnson suggested that a date in January or February of 2018 would be possible. Board Member Starbard responded that there was a need to schedule a Part-II examination in November due to over-capacity. He elaborated that the restriction of only 50 applicants sitting for each examination could be removed, allowing additional applicants to take the examination which would reduce the back-log in applicants for the examination.

Board Member Joseph Coyne suggested the Board enforce the 6 month preclusion provision contained in the Auto Damage Appraiser Licensing Board's enabling Act, M.G.L. c. 26, §8G, which provides in relevant part, "[A]n applicant failing to pass an examination satisfactory to the board, shall, after payment of a further fee of fifty dollars, be entitled to a reexamination after the expiration of six months from the date of the last examination..." Board Member Coyne opined that there may be an issue with applicants taking the Part-II test in that after they complete the test and leave the room, later discussing the test with the examination reviewers who conducted and scored the examination could create an unfavorable appearance.

Board Member Johnson queried: Who made the decision to contact the candidates about their answers to the test after the test was completed?

Board Member Starbard replied, the three people reviewing the test answers after the answers are turned in the day of the test: Mr. Starbard, John Michael Dillon, and Pete Smith. He elaborated, after the examination is reviewed by all three, and it is deemed that explanation is needed by a

candidate on a particular question, then “Pending Call” is written across the first page of the examination.

Board Member Johnson suggested that these examination procedures should be written out.

Chairman Cox declared, the Board is not required to have a separate policy, and it is sufficient to have the procedure described in the Board’s minutes.

Board Member Coyne declared, there is a fine line that the Board must be mindful of: how the test is marked, and whether the test is graded on a pass/fail basis.

Board Member Pare queried: Does everyone reviewing the test participate?

Board Member Starbard answered: One person does not make the decision.

Chairman Cox reiterated, there is no need to have a formal written policy, the Board need only to describe the policy in the minutes.

Board Member Coyne concluded by announcing, we just need transparency.

Attorney Samantha Freedman, an expert in insurance laws and the Legislative Attorney for the Geico Insurance company, requested permission to address the Board and Chairman Cox granted permission. Attorney Freedman asserted that she would like the Board reconsider holding one Part-II tests in the fall and requested the Board schedule two tests.

Board Member Starbard responded that it is difficult preparing for the Part-II examination, getting the test material, scheduling the facility, and the other things that must be prepared for conducting the test. Member Starbard asserted that, Progressive Insurance Company has been of great assistance making their facility available for the examination. The better way to proceed would be, instead of scheduling an additional Part-II examination during the fall, it would be better to increase the cap limiting the test to 50 applicants for each examination.

Review of Advisory Ruling proposed by Board Member Starbard about partial finishing of a damaged part:

Board Member Starbard asked permission to read his proposed Advisory Ruling and then read the following;

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2017-XXX

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. titled, “The Appraisal and Repair of Damaged Motor Vehicles” as promulgated by the ADALB. In relevant part M.G.L. c. 26, § 8G provides, “The board shall after notice and hearing in the manner

provided in chapter thirty A adopt rules and regulations governing licenses under this section in order to promote the public welfare and safety.” In addition 212 CMR 2.01(1) provides, “Purpose and Applicability. The purpose of 212 CMR 2.00 is to promote the public welfare and safety by improving the quality and economy of the appraisal and repair of damaged motor vehicles....” 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 conduct of motor vehicle damage appraisers in the Commonwealth 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 et seq. 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 December 6, 2017, to adopt this Advisory Ruling.

ADVISORY RULING

212 CMR 2.04(1)(e) states in relevant part “[N]o appraiser shall modify any published manual (*i.e.*, Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties....”

The Auto Damage Appraiser Licensing Board has passed a motion declaring that, partial refinishing of a damaged part is considered to be modification of a published manual and may not be included on an appraisal without prior negotiation.

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 by law.

Chairman Cox recognized John Murphy, Executive Director, of the Massachusetts Insurance Federation (MIF) and informed the Board that he received a request from Mr. Murphy to speak about the proposed Advisory Ruling. Mr. Murphy addressed the Board and informed them that his organization only recently became aware of the Advisory Ruling and requested the Board delay voting on it until the MIF could review it and make comments on it.

Board Member Johnson replied, the issue is not controversial, it is akin to telling motor vehicle damage appraisers, “Don’t eat cookies before dinner.”

Board Member Coyne replied, there is no need for the Advisory Ruling if the law already provides for the same thing.

Board Member Johnson made a motion to accept the proposed Advisory Ruling as submitted by Board Member Starbard and the motion was seconded by Board Member Starbard. Chairman Cox offered an amendment to the motion, that deferred the motion to the next Board meeting and Board Member Coyne seconded the motion. Chairman Cox asserted that it would be helpful to have the full form of the proposed Advisory Ruling in the agenda of the next Board meeting.

Chairman Cox elaborated that it would be helpful to have input from concerned parties before determining the manner of voting on the issue. He proposed the amendment to the original motion not just for deference to Mr. Murphy but because it is always beneficial to get input on these issues and he suggested the Board table the original motion.

Board Member Johnson declared that he would withdraw the motion, and the original motion was withdrawn. Chairman Cox instructed that the matter would be set-down on the agenda for the next Board meeting to give time for comments from interested parties.

Member Starbard observed, years ago when the ADALB amended its regulation, Manufacturers recommended repair procedures applied. Since the time those amendments were enacted to the Board's regulation [212 CMR 2.00 et seq.] things changed in the motor vehicle repair industry and because of technological developments it is more important to follow Manufacturers recommended repair procedures. During the Board's discussion about changing the Board's regulation in 2016, the Board discussed changing this language in the regulation from stating that Manufacturers recommended repair procedures may apply to amending the regulation to the mandatory language asserting the Manufacturers repair procedures shall apply.

Board Member Coyne interjected, the proposed Advisory Ruling is directly related to a proposal to amend the Board's regulation, from the current language contained in the Board's regulation, and the Board should not adopt an Advisory Ruling when the Board has a proposed amendment under review. Board Member Coyne pointed out that when you make a Manufacturers recommended repair procedures mandatory the costs to repair damaged motor vehicles will skyrocket.

Board Member Pare suggested the Board should take some time to review the proposed Advisory Ruling and, thereafter, place it on the Board's agenda for discussion.

Board Member Johnson volunteered that the Board is focused on consumers and an Advisory Ruling should be written focusing on structural repairs to damaged motor vehicles and Manufacturers recommended repair procedures need to be followed when repairing damage to the structure of a motor vehicle.

Chairman Cox opined that the focus should be on a better repair to the damaged motor vehicle.

Board Member Starbard declared that program shops [referral shops selected for insurance companies Direct Payment Plans], will follow an insurance company's procedures.

Board Member Johnson joined in by asserting, an insurance company's supervisor has the last say as to the type of repair.

Board Member Starbard observed, when a Manufacturers repair procedures are not followed it opens up auto body shop operators to a potential lawsuit.

Board Member Pare disagreed, asserting that Manufacturers will have a monopoly over the

repairs, and said that he had a case whereby the Manufacturer did not approve LKQ [Like Kind and Quality parts].

Board Member Coyne declared, I don't believe the Board has the right to tell a person how to fix a damaged motor vehicle.

Chairman Cox provided an anecdote about his motor vehicle damaged in excess of \$2,000 of damage, his insurance company refused to pay the entire \$2,000, would only pay \$1,500 to repair the damage and he decided to pay the additional amount of money to repair his car at the pre-accident condition. He concluded that the issue is one of communication between a consumer and repair shop, not just the insurance company.

Board Member Johnson explained that he focuses on the consumer in his auto body shop component of his business and if the Board is going to focus on something that focus should be on the manner of structural repairs.

Board Member Starbard asserted that the manner in which he proposed the Advisory Ruling favors consumers. Mr. Coyne and Mr. Starbard engaged in a short debate, reiterating positions that they took during the meeting.

Chairman Cox concluded that Mr. Starbard's proposed Advisory Ruling would be placed on the agenda for the following Board meeting. The Board agreed to schedule the next meeting for December 6, 2017.

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

Motion to adjourn:

Board Member Coyne 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 Advisory Ruling 2017-2.**
- 2. Draft Letter Written by Robert Hunter, Supervisor Producer Licensing Citing M.G.L. c. 26 §8G to Applicants Failing the Part-II Examination.**
- 3. Email from John Murphy, Executive Director Massachusetts Insurance Federation, to Chairman Cox Requesting the Board Postpone any Vote on a Proposed Advisory Ruling.**