



## THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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GOVERNOR

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CHAIRMAN

KARYN E. POLITO  
LIEUTENANT GOVERNOR

RICHARD STARBARD  
WILLIAM E. JOHNSON  
SAMANTHA L. TRACY  
PETER SMITH

**Minutes of the Meeting of the Board held on January 27, 2021, (re-scheduled from January 21, 2021, because of technical difficulty resulting in a delay of 17 minutes to connect the host to the meeting) Approved by the Board at the March 23, 2021, Board Meeting; Motion of Board Member Richard Starbard and Seconded by Board Member William Johnson. The Motion Passed by a Vote of: 4-0, with Chairman Michael D. Donovan Abstaining.**

January 27, 2021 Minutes of Board Meeting

**Held by Teleconference at 1000 Washington Street, Boston, Massachusetts in accordance with Governor Charles D. Baker's "ORDER SUSPENDING CERTAIN PROVISIONS OF THE OPEN MEETING LAW, G.L. c. 30A, § 20" issued on March 12, 2020.**

### **Members Present by Teleconference:**

Chairman Donovan  
Samantha Tracy  
William Johnson  
Richard Starbard  
Peter Smith

### **Attending to the Board:**

Michael D. Powers, Counsel to the Board

### **Call to Order:**

Chairman Michael Donovan, who was located at 1000 Washington Street, Boston, Massachusetts called the meeting to order precisely at the stroke of 11:00AM by stating he was at 1000 Washington Street with Michael D. Powers, Counsel to the Board. The previously scheduled meeting for January 20, 2021, was postponed and rescheduled to January 27, 2021. Chairman Donovan called for a roll call of the Board Members who were attending by teleconference, and Board Members Samantha Tracy, William Johnson, Richard Starbard, and Peter Smith all acknowledged that they were present by teleconference. Chairman Donovan thereupon made the following statement:

In accordance with Massachusetts General Laws Chapter 30A, §§ 18-25 and Governor Charles D. Baker's "ORDER SUSPENDING CERTAIN PROVISIONS OF THE OPEN MEETING LAW, G.L. c. 30A, § 20" issued on March 12, 2020, the Auto Damage Appraiser Licensing Board (ADALB or Board) is holding this meeting by teleconference today, January 27, 2021 at 11:00AM from 1000 Washington Street, Boston, Massachusetts.

Because of an Order issued by Governor Charles D. Baker on March 16, 2020, gatherings of over 25 people are prohibited and, therefore, members of the public will not be allowed to attend in-person. The public has been invited to join-in the teleconference meeting by dialing the “Participants” telephone number at: 1-877-820-7831 and entering the Passcode 623523#.

Chairman Donovan then asked all those recording the proceedings to identify themselves and state with whom they are affiliated. Those responding to the Chairman’s request were: Jim Steere of The Hanover Insurance Company, Lucky Papageorg, Executive Director of AASP/Massachusetts and Joel Gausten of Thomas Greco Publishing.

**For approval, the Board minutes for the Board meeting held on November 18, 2020:**

Chairman Donovan called for a motion for approval of the Board minutes of the November 18, 2020 Board meeting. Board Member William Johnson made a motion to approve the Board minutes of the November 18, 2020, Board meeting, the motion was seconded by Board Member Richard Starbard, and the motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

**Report by Board Member Peter Smith on the Part-II examination for motor vehicle damage appraiser held on December 19, 2020, at the Progressive Insurance Service Center in Westwood, Massachusetts.**

Board Member Peter Smith reported that several people assisted in administering the Part-II portion of the examination: Board Member Richard Starbard, Eric Landry of Progressive Insurance, Sue Conena, and Ryan Sarsfield of Mapfre Insurance Company.

Board Member Smith reported that, there were a total of 50 applicants taking the examination with 2 add-ons. Several applicants who signed-up to take the examination did not attend, with 35 people taking the test. Board Member Smith opined that because of the escalation of infectious COVID-19 cases, the pandemic was probably responsible for the decrease in applicants attending the exam, and 31 people passed the Part-II test. Board Member Smith reported that he was in the process of scheduling the next Part-II examination at the Progressive Insurance Center in Westwood, Massachusetts on February 27, 2021 beginning at around 8:00AM and there would probably be two sessions and he would be working with Bob Hunter, from the Licensing Unit of the Division of Insurance, sending out the notices for the exam.

**For discussion by the Board, a proposal submitted by Board Legal Counsel, Michael D. Powers, a standard form letter to licensed motor vehicle damage appraisers whom have complaints filed against them requesting their assent to the Board conducting a review of the complaint based solely on the complaint, documents submitted by the complainant, and any response submitted by the licensee. The standard form letter will be in the following format:**

Re: Complaint Filed by XX #xxxx-xx

Dear Mr./Ms. XX:

A complaint has been filed against you by XX (a copy is enclosed). The Auto Damage Appraiser Licensing Board (Board) will conduct a review of the complaint at a future Board meeting. At this time, the Board is conducting a preliminary review of the allegations contained in the complaint filed against you, and the Board has not determined to issue a formal complaint against you. Under Massachusetts General Laws, Chapter 30A, § 21 (a)(1) you have a right: whether to have the discussion of this matter heard during the public session of the Board meeting or during the executive session of the meeting to which the public is not allowed to attend; to speak on your own behalf; to have an attorney or representative of your choosing attend the Board meeting to advise you at your expense but he/she will not be allowed to participate at the Board meeting unless approved by the Board; and to create an independent record by audio-recording or transcription of the executive session of the meeting at your expense. See the Office of Attorney General's Decisions on the Open Meeting Law OML 2016-06 and OML 2019-50.

The Board has determined that the complaint filed against you may be decided through an administrative review with no person-to-person contact and, therefore, you may request to have the review of the complaint filed against you based on a "Statement In Lieu of Appearance." Complaints reviewed by a Statement In Lieu of Appearance can be every bit as effective as reviews held in-person. Although there will not be an in-person review, if you request that the complaint filed against you be decided by a Statement in Lieu of Appearance, the Board can make a decision to dismiss the complaint filed against you on that basis. If you choose to have the complaint decided by a Statement in Lieu of Appearance you must sign and return this letter within 30 days of receiving it to take advantage of this opportunity. If you choose to have the complaint filed against you reviewed administratively (not in-person), sign and date where indicated at the bottom of this letter, return it to the Board along with any sworn written testimony ("signed under the pains and penalties of perjury"), and any evidence that you would like the Board to review when considering your answer to the complaint filed against you. The most important things to remember are to make sure you write your testimony clearly and succinctly and to submit all the evidence that you would provide at an in-person review before the Board. **PLEASE NOTE THAT ALL STATEMENTS AND EVIDENCE ARE SUBMITTED UNDER THE PAINS AND PENALTIES OF PERJURY.**

If you decide to submit a Statement In Lieu of Appearance, this completed letter and supporting material should be submitted **TOGETHER** to the Board by the method listed below. **DO NOT SEND MULTIPLE COPIES – DO NOT SEND MATERIAL SEPARATELY.**

**MAIL TO:**

***Division of Insurance/Auto Damage Appraiser Licensing Board  
1000 Washington Street, Suite 810  
Boston, MA 02118***

The Board will review the complaint, your sworn statement, and any other testimony and evidence, and a decision will be mailed to you by U.S. Mail. There is no obligation to have the review of the complaint filed against you decided via a written statement. If you prefer to have an in-person review, send a written response and notify me whether you want the review conducted in the executive session or public session of the Board, and the Board will schedule the review of the complaint, filed against you, at a regularly scheduled Board meeting as soon as possible.

***PLEASE REVIEW THE COMPLAINT FILED AGAINST ME BY STATEMENT IN LIEU OF APPEARANCE DURING AN EXECUTIVE SESSION OF THE BOARD. I UNDERSTAND THAT ANY DECISION BY THE BOARD ON THE COMPLAINT FILED AGAINST ME CONDUCTED BY STATEMENT IN LIEU OF APPEARANCE MAY NOT BE A FINAL DECISION AND THE BOARD CAN NOTIFY ME TO APPEAR BEFORE IT FOR AN IN-PERSON REVIEW.***

***SIGNED:*** \_\_\_\_\_

***DATE:*** \_\_\_\_\_

Please provide me with a written response as to whether you would like to have this matter reviewed by the Board by a Statement In Lieu of Appearance (by signing and returning this letter with supporting documents) or reviewed in-person during either an executive session or a public session of a Board meeting (sending a separate letter stating you request the matter be reviewed with you present during a regularly scheduled Board meeting during the executive session or public session of the Board meeting).

Sincerely yours,

Michael D. Powers  
Counsel to the Auto Damage Appraiser Licensing Board

CC: Complaint  
Enclosures

Chairman Donovan requested Board Legal Counsel to explain the item, and Board Legal Counsel Powers explained that at the last meeting on November 18, 2020, he submitted draft amendments to the ADALB's Guidelines for Complaint Procedures, which were adopted by the Board. The amendments provide that the Board can conduct reviews of complaints by video conference or by an administrative procedure by reviewing the documents filed with the complaint, any response filed by the licensed motor vehicle damage appraiser, and making a decision whether to dismiss the complaint on the basis of the documents without the need for the licensed appraiser's attendance. The new procedure allows a licensed appraiser to have the option of waiving his appearance before the Board and allowing the Board to review the complaint in either the executive or public session. The letter that was drafted provides the license appraiser can exercise that option, is written in simply understood terms, and part of it has been adopted from a standard form letter that

was developed last year by the Commonwealth's Board of Appeal in use for consumers whom appeal At-fault accident surcharges assessed by their insurance companies based on a determination they were At-fault in a motor vehicle accident. This is an effort to streamline the complaint process, developed because of restrictions caused by the COVID-19 pandemic. This letter would be sent to the licensed appraiser named in a complaint with the Board seeking a waiver of the in-person hearing allowing the Board to conduct an Administrative Review of the complaint. Once the signed waiver is received, the Board can then commence their Administrative Review based on all the documents before it. Should the waiver be denied or no response to the letter received, an in-person hearing would be scheduled. Mr. Johnson asked whether this procedure would be a temporary process, and once the COVID-19 pandemic passed would the process then revert to the former process. Mr. Powers commented that this would be permanent procedure, but its use would be at the discretion of the Board.

Chairman Donovan asked whether a second vote would be needed to initiate the new procedure. Mr. Powers replied no, the Board can opt in or out without taking a vote every time that wished to utilize the procedure. Mr. Johnson asked, if the results of the Administrative Review go in favor of the appraiser, would the complainant have an opportunity to re-file the complaint, seeking an in-person hearing, likening it to a "second bite of the apple." Mr. Powers responded that if the Administrative Review concluded in favor of the appraiser, that would put an end to the Board's review of the complaint, but if the Board decided during their review that further action would be needed, an in-person hearing would be scheduled. Mr. Johnson asked about "double jeopardy" and a complainant filing a second complaint after the Board conducted an Administrative Review and dismissed the complaint. Mr. Powers answered, once the Board determined to dismiss the complaint there would not be another review based upon the same facts contained in the complaint, he added that the process is inherently simple, noting that the same letter is currently sent to approximately 25,000 licensed motor vehicle drivers in Massachusetts who annually appeal surcharges. The Board of Appeal has found no issues with it and he asserted that a sophisticated licensed motor vehicle damage appraiser would surely understand what is simply stated in the letter.

Board Member Tracy, suggested that Board Member Johnson was looking at the matter from the perspective of the person filing the complaint, and not the appraiser whom the complaint is filed against and she attempted to clarify by suggesting that, should a complainant disagree with the Board's findings after an Administrative Review, he or she can file another complaint but alleging a different set of facts and circumstances. Mr. Starbard supported Board Member Tracy's opinion, by stating that the complainant is not involved in the current in-person process and pointing out that the Board currently reviews the documents submitted in support of the complaint. Mr. Powers pointed out that, the Board owes the licensed appraiser, who the complaint is filed against, the right of Due Process and that the person filing the complaint is not the one having their livelihoods threatened by the suspension or revocation of a license. Mr. Powers noted, the complainant has nothing to lose by filing a complaint against a licensed appraiser, while the appraiser has everything to lose. Mr. Johnson responded there is money involved and the complainant does have skin in the game. Chairman Donovan called for a motion, Board

Member Starbard moved for approval of the standard form letter and Board Member Johnson seconded the motion; by a unanimous roll call vote the motion passed with Chairman Donovan abstaining.

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

Chairman Donovan then stated the next item on the agenda was listed as “Other business – reserved for matters the Chair did not reasonably anticipate.”

Mr. Starbard stated that he would like the Board to rescind Advisory Ruling 2020-1 increasing the minimum dollar amount requiring a personal inspection of motor vehicle damage to \$3,000 back to the original amount of \$1,500. Board Member Starbard asserted that the Pandemic is not what it was predicted to be and noted that there are vehicles with suspension damage allowed to be driven over the roads of the Commonwealth due to the lack of in-person personal inspections of the damage by licensed appraisers, and he asserted that photographs submitted by consumers are making a mockery of the system. Chairman Donovan called for a discussion on the matter.

Board Member Peter Smith began the discussion by stating while he appreciated Mr. Starbard’s concerns, but he had not seen examples of the appraisal estimates which would cause the concerns expressed. Board Member Smith reminded the Board that the vaccinations for COVID-19 are just now being distributed with new strains of the virus being discovered, adding that we are still under Phase 2 of Governor Baker’s COVID-19 Emergency Order, and the public remains on pins and needles and with no concrete evidence available to suggest otherwise, recommended that the Board not rescind the Emergency Advisory Ruling. Board Member Starbard responded and pointed out that the Governor lifted the “Stay at Home” Emergency Order and that most photographs for estimates are made on the initial inspection. With the implementation of no contact inspection orders, there are no customers around when the appraisers make their inspection of a damaged motor vehicle. In-person inspections of damage allows for “eyes on the vehicle” which can determine if the vehicle is safe to drive. Board Member Starbard noted, that at his shop it has been business as usual throughout the COVID-19 Pandemic. Mr. Johnson asked if Mr. Starbard’s comments are meant to lead to a motion and Mr. Starbard responded yes.

Chairman Donovan joined the discussion by stating he acknowledged that the risks of COVID-19 are abating, but the Governor still has precautions in affect and asked that the motion be left open until the next Board meeting allowing for additional information from the Governor’s office. Board Member Starbard agreed to rescind his motion and requested the item place on the agenda for the next scheduled Board meeting, while commenting that the quality of claims is impairing business and reaffirmed that it is a safety issue. Chairman Donovan asks that the item be put on the agenda for the next meeting.

Chairman Donovan asked whether any Board Member had other new business. Board Johnson stated he is aware of an auto body shop owner and his employee seeking permission from the Board for two temporary licenses for 90 days, Mr. Arthur

Kulpanowski and Dereck Weaver and said Lucky Papageorg of AASP/Massachusetts would like to present the information to the Board. Chairman Donovan recognized Mr. Papageorg who presented the situation of Balise Chevrolet of Springfield, Massachusetts and stated that the auto body shop has been adversely affected by the COVID-19 Pandemic, does not have a Massachusetts licensed appraiser, and needs an appraiser on-site to appraise motor vehicle damage or insurance companies will not do business with them. The company has an employee who is licensed in the state of Connecticut for the last thirteen years and another employee who has been an appraiser in Texas and California. Mr. Papageorg stated that both have applied to take the Part-I examination, they are seeking a 90 Day Temporary License, and given Board Member Smith's schedule for the next Part-II examination, that should be enough time for them to pass the tests and obtain their licenses.

Chairman Donovan called for a motion, and Board Member Tracy stated she was not comfortable with knowing only the subjects' names and the proper spelling of their names, as was provided by Board Member Johnson, and she would like to see some sort of supporting information prior to being asked to allow for any type of licensure, adding that it would be irresponsible to go forward without any additional information. Board Member Johnson asserted that, that the Board has allowed for temporary licenses with as much information in the past but agreed to amend the motion to allow only the Connecticut licensed appraiser, Mr. Arthur Kulpanowski, the 90 Day Temporary License. Chairman Donovan requested a second to the motion and Board Member Tracy seconded the motion. Chairman Donovan called a roll call vote with Board Members Johnson, Tracy, and Starbard voting in the affirmative and Board Member Smith abstaining. The motion passed by a vote of: 3-0, with Board Member Smith abstaining and Chairman Donovan abstaining.

Chairman Donovan requested dates for the next Board meeting, suggested early April, and the dates of April 6, 7, or 8. Mr. Johnson stated that, earlier in the meeting it was understood that the next meeting would be in one month, not three. Chairman Donovan noted that an April meeting would be in two months, not three months away and Mr. Johnson agreed. Mr. Starbard asserted that he did not realize the Board had changed their meeting schedule to quarterly instead of monthly meetings. Chairman Donovan noted that by April the Board would have a better understanding of the Pandemic situation, which would assist the Board members in their deliberation regarding Board Member Starbard's suggestion to rescind the Advisory Ruling and decreasing the dollar amount requiring a personal inspection of motor vehicle damage by licensed appraisers. Mr. Starbard reiterated his position that looking at damaged vehicles with no one around is not a problem, waiting until April only delays the inevitable. Chairman Donovan suggested dates in March – the 23<sup>rd</sup> or 24<sup>th</sup>. Board Member Tracy that given that, the 23<sup>rd</sup> works for her and moves to select March 23<sup>rd</sup> as the next meeting date and Board Member Starbard seconded the motion. Chairman Donovan called for a roll call vote and the vote was: Board Member Johnson abstaining, and Board Members Tracy, Starbard and Smith voting Yes. The motion passes by a vote of: 3-0 with Board Member Johnson and Chairman Donovan abstaining.

Chairman Donovan asked for a motion to adjourn the meeting, but Mr. Johnson stated that there was no agenda item for Old Business of which he has items in need to be addressed. Chairman Donovan calls for Old Business. Mr. Johnson asked what the status of the proposed changes in the Board's Regulation 212 CMR 2.00 which was sent in three years ago, has there been any answer given. Chairman Donovan deferred to Mr. Powers who responded that nothing has been heard back from the Office of the Secretary of A&F. Mr. Johnson asked if the position left vacant by Mr. Zavackis is to be filled soon. Counsel Powers responded that the Division of Insurance is down to about 114 fulltime employees with about 135 for the allotted staffing positions and only relatively recently began posting for positions with 4 postings made the week before, and now that we are getting closer to full vaccination the Division will pick-up on its hiring. Board Member Johnson inquired about the disposition of the Haddad matter and Legal Counsel Powers reported that, although Mr. Haddad plead guilty in the United States District Court, he has yet to be sentenced and expects to hear from Haddad's attorney after sentencing, which is scheduled for around February 23<sup>rd</sup>. Mr. Johnson then stated that he re-wrote the Advisory Ruling regarding the use of receipts to support an estimate and wishes to read the new version into the record. Chairman Donovan agreed and allowed Mr. Johnson to read the proposed Advisory Ruling. Mr. Johnson did so, after which Board Member Smith stated for the record that what was read was in fact an amendment to Advisory Ruling 2020-2 but is now referred to as 2021-1, adding that he has discussion topics but will wait for the next meeting to bring them up. Mr. Starbard asked what happened to the Advisory Ruling regarding suppliers who refused to conduct business with some shops. Mr. Powers asked if Mr. Starbard remembered which Board member was working on that. Mr., Starbard suggested that information may be found on a past agenda but does not remember a vote. Mr. Powers asked that Mr. Starbard find the answer and send it to him so he can put it on the agenda for the next meeting. Ms. Tracy recalled it was included in Mr. Johnson's work.

**Motion to adjourn:**

Chairman Donovan called for a motion to adjourn the meeting, Mr. Starbard so moved, Board Member Tracy seconded the motion and the Chairman called for a roll call vote with the motion passing by a vote of: 4-0 with Chairman Donovan 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)