



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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MICHAEL DONOVAN
CHAIRMAN

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

Minutes of the Meeting of the Board held on March 23, 2021 Approved by the Board at the May 25, 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.

March 23, 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. Chairman Donovan thereupon requested Board Legal Counsel Michael D. Powers read 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 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 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, and Joel Gausten of Thomas Greco Publishing.

For approval, the Board minutes for the Board meeting held on January 27, 2021:

Chairman Donovan called for a motion for approval of the Board minutes of the January 27, 2021 Board meeting. Board Member Richard Starbard made a motion to approve the Board minutes of the January 27, 2021, Board meeting, the motion was seconded by Board Member William Johnson, 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 February 27, 2021, at the Progressive Insurance Service Center in Westwood, Massachusetts:

Chairman Donovan then moved on to the next agenda item, which was a report by Board Member Peter Smith on the Part-II portion of the motor vehicle damage appraiser examination and asked Board Member Smith for a summary of the examination session that transpired on February 27, 2021. Mr. Smith reported that there were 35 attendees with 29 passing and 6 failed. He noted that there were several no-show participants, 20 in all. Board Member Smith thanked those who assisted him including their host, Eric Landry of Progressive Insurance, Ryan Sarsfield of Mapfre Insurance Company, and Board Member Starbard. The next scheduled Part-II examination was planned for May 15, 2021 at the Progressive Claims Center in Westwood. Chairman Donovan thanked Board Member Smith for his outstanding efforts on behalf of the Board and license applicants along with those individuals who provided great assistance.

Discussion about rescinding Advisory Ruling 2020-1:

Chairman Donovan then moved on to the next agenda item – discussion about rescinding Advisory Ruling 2020-1 and asked for comments. Mr. Starbard reminded all those in attendance that the time had come to get back to the in-person inspection of claims over \$1,500.00, less a consumer’s deductible, as provided for under the ADALB’s regulation. In support of his position, Mr. Starbard stated that his auto body business has been open without interruption since the beginning of the COVID-19 Pandemic in 2020, and appraisers have shown-up at his auto body shop to view damaged motor vehicles, without any change in prior procedures that existed before COVID-19. Board Member Starbard made a motion to rescind Advisory Ruling 2020-01, and Board Member Johnson seconded the motion. Board Member Starbard elaborated on the reasons for his

motion by stating that, as of Monday, the Commonwealth is in Phase 4 of the Governor's reopening Orders, allowing gatherings of not more than 150 people and he noted, that number of people attending an inspection of a damaged motor vehicle will never be reached. Board Member Starbard pointed out that, when an appraiser goes to inspect a damaged motor vehicle at a residence or workplace she or he are usually alone during the inspection. Chairman Donovan called for further discussion on the motion.

Board Member Smith responded by acknowledging the COVID-19 Pandemic is starting to stabilize but noted that the people in Massachusetts are only 14% vaccinated, with hope that many more will be vaccinated in the coming weeks. Board Member Smith stated that he would offer a compromise to Mr. Starbard's motion which would rescind the Advisory Ruling, on the date of May 15th. Chairman Donovan called for a motion in support of Board Member Smith's compromise, and Board Member Johnson pointed out that there is a motion on the floor which needed to be addressed first. Chairman Donovan asked Board Member Starbard whether he was willing to amend his motion. Board Member Starbard responded that this is a public safety hazard noting vehicles he has seen with photographic estimates have about 10% of the actual damage listed. He also stated that, there are vehicles with suspension damage not addressed or noted, concluding that he would call for a vote on his motion without amendment. Chairman Donovan thereupon called for a vote on the motion and the motion failed with Board Member Johnson voting yes, Board Member Starbard voting yes, Board Member Tracy abstained, Board Member Smith voting no and Chairman Donovan voting no; the motion failed by a vote of: 2-2. Board Member Smith then made a motion to rescind Advisory Ruling 2020-1 on May 15th and Board Member Johnson seconded the motion. Chairman Donovan called for a roll call vote of the Board Members and Board Member Tracy, abstained, Board Member Smith, Board Member Johnson, and Board Member Starbard voted yes. The motion passed by a vote of: 3-0 with Chairman Donovan and Board Member Tracy abstaining.

Discussion about amending the Auto Damage Appraiser Licensing Board's regulation, 212 CMR 2.00 et seq.:

Chairman Donovan then read the next item on the Board's agenda, which was discussion about amending the Auto Damage Appraiser Licensing Board's regulation, 212 CMR 2.00 et seq. Chairman Donovan opened the item for a discussion among the Members of the Board. Member Johnson stated he received a copy of the Office of Administration and Finance's (A&F) letter and said that A&F approved the proposed amendments that were adopted by the Board in 2016, but with restrictions as to 4 of the amendments as the result of the review taken by the Division of Insurance. Board Member Johnson stated, that he understood A&F's concerns about the prior Board's Members have changed since the amendments were proposed in 2016, and that there are 3 different Board Members on the Board since the amendments were approved and the new members need to review the amendments. Because A&F approved all but 4 of the proposed amendments, he suggest that instead of re-hashing all of the amendments, the Board should address those 4 items, vote to omit or change them, and re-submit the proposed amendments to the Board's regulation. Board Member Johnson noted that it has taken more than four years to get

where we are today, and any further delay would be a waste of time. Board Member Starbard stated he agreed with Board Member Johnson and felt that he did not want to go back to the start the process all over again, he respected the efforts taken by the previous Board Members and the new Board Members need only address the 4 items referenced by A&F and move forward.

Board Member Peter Smith asked to be recognized and Chairman Donovan gave him the floor. Board Member Smith stated that he appreciated the work performed by the prior Board Members, but believed the Board should strictly adhere to A&F's letter, which stated that the new Board should review all the proposed changes, and pointed out that there could be new items which Board members feel a need to be looked at; Chairman Donovan agreed with Mr. Smith. Board Legal Counsel Michael Powers stated, he appreciated Board Member Starbard's work during the process and understands that it was Mr. Starbard who took on the role of keeper of the records tracking all of the proposed amendments and the reasons for them, and asked that Board Member Starbard continue tracking the proposed amendments. Mr. Starbard asked today? and Mr. Powers responded, not today but maybe the next meeting. Board Member Johnson noted that A&F has approved proposed changes and the Board should listen to A&F and he saw no need to re-hash all the pros and cons of the proposed amendments. Board Member Tracy stated she meant no disrespect and is not seeking to "toss out" all the work already completed by the prior Members of the Board, but noted the new Board needs to address these changes prior to voting because it has been 5 years since the work was concluded and the Board seeks re-consideration of the results.

Chairman Donovan asked whether there needs to be a public hearing first to agree on the undisputed items, then on to those needing more attention. Counsel Powers stated that it can be accomplished at regular meetings of the Board, beginning in late May. Counsel Powers suggested that the next Board agenda will post the proposed amendments as previously prepared by Board Member Starbard, so all are aware of what is being discussed. Mr. Starbard could forward his electronic copies of the proposed amendments as previously voted by the Board, one clean and the other with the revisions noted, to Mr. Powers and the other Board members. Chairman Donovan asked for a motion. Board Johnson moved to review the 4 items in the next scheduled Board meeting. The Chairman asked whether it would take place in one meeting and Board Member Johnson answered yes. Board Member Starbard noted there is a lot to go over in one meeting and Board Member Smith pointed out that there may be new items to address and he suggested two meetings. Board Member Johnson agreed one meeting could review the 4 disputed items and a second meeting could be held to review new items. Chairman Donovan agreed and asked Mr. Johnson if he wished to amend his motion and he responded he did. Board Member Smith asked the amended motion to be re-stated. Mr. Johnson agreed and restated his motion. Chairman called for a second on the motion, Board Member Starbard seconded the motion, and Chairman Donovan called for a roll call vote and the motion passed by a vote of: 4-0, with Chairman Donovan abstaining. A discussion on the proposed amendments as approved by A&F would be placed on the agenda for the next Board meeting.

Submitted by Board Member William Johnson, a proposed Advisory Ruling regarding receipts for appraised parts:

ADALB ADVISORY RULING REGARDING RECEIPT REQUIREMENTS.

This advisory, specifically addresses the practice of requiring receipt(s) as proof of the purchase and/or price of parts prior to an appraisal or supplement being written, under the direct payment plan as outlined in 211 CMR 123. This practice is prohibited under the direct payment plans.

Proposed Advisory Ruling 2021-1

Pursuant to its authority, The ADALB voted by a majority vote at the Board's meeting held on (DATE), to adopt this Advisory Ruling.

ADVISORY RULING

All licensed appraisers should continue to follow 211 CMR 133 and 212 CMR 2.0 in its entirety as it pertains to the estimating and writing of a complete appraisal or supplement for the repair of a damaged motor vehicle. As stated in 212 CMR 2.04 (e) "The appraiser shall itemize the cost of all parts, labor, materials, and necessary procedures required to restore the vehicle to pre-accident condition and shall total such items". All parts required for repair shall be listed on the appraisal. At no time will the decision to make payment for parts be made based upon the submission of receipts. Unless in the case of a supplement the named insured is utilizing the Completed Work Form (CWF). As stated in 212 CMR 2.04 (e) "No Appraiser shall modify any published manual (i.e. Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties".

In the instance that a parts price is not available at the time of the preparation of the estimate an approximate price shall be agreed upon. If the agreed upon amount is insufficient, a parts price increase supplement may be submitted with documentation attached in the form of a paid receipt. *The cost indicated as paid by the shop/end user on the receipt* will be subject to a reasonable standard industry markup.

Chairman Donovan announced the next agenda item, a proposed Advisory Ruling submitted by Board Member Johnson regarding receipt requirements made by insurance companies for replacement motor vehicle parts installed by auto body shops. The Chairman asked Mr. Johnson to read the proposed Advisory Ruling and he did so, noting that this version includes all the suggested changes that were made by the other Board

Members and made a motion for the Board to adopt the Advisory Ruling. Board Member Smith asked to be recognized, which Chairman Donovan allowed, and Mr. Smith stated he had questions about the wording of the proposed Advisory Ruling. Mr. Starbard stated he would second Mr. Johnson's motion to approve the proposed Advisory Ruling. Board Member Smith noted that out of state carriers do not have a Direct Payment Plan filed with and approved by the Division of Insurance. Mr. Johnson responded by stating he knew that, and it is why the Ruling exempts CWCF payments and only addressed Direct Payment Plans. Mr. Smith stated his concerns about the Board's ability to regulate Direct Payment Plans and the other matters covered by 211 CMR 123.00, concluding that is up to the Division of Insurance. Board Member Johnson replied that, 211 CMR 123 is to read together with 212 CMR 2.00, the Board's regulation. Mr. Smith stated that in his opinion 211 CMR 123 clarifies 212 CMR 2.00 and 211 CMR 133.00 has nothing to do with the issue. Mr. Johnson pointed out that the mention of 211 CMR 133 is in the preamble, not the actual proposed Advisory Ruling. Board Member Smith noted that the proposed Advisory Ruling provides for what happens when there is a shortfall in the replacement part price, but provided no instructions when the dollar amount in the appraisal exceeds the actual cost of the replacement part. Mr. Johnson replied that matters remain as there are currently conducted during the negotiation and nothing changes. Board Member Starbard observed the auto repair shop returns the money to the insurance company. Board Member Tracy stated that, this proposed Advisory Ruling is an elaborate attempt to solve a problem that does not exist in the industry and asked what is the problem we are looking to solve? Board Member Johnson stated that all Advisory Rulings are unnecessary, if appraisers read the CMR's they would not have to have Advisory Rulings, but there are appraisers who will not write a part unless they have a copy of an invoice, and the Advisory Ruling is simply a reminder of the rules. Board Member Tracy observed that, Licensed Appraisers generally follow the Board's and Division of Insurance regulations, otherwise there would be a flood of Advisory Rulings issued by the Board. Mr. Johnson stated that over the 30 years there are fewer than 40 Advisory Rulings and asserted that he made the changes suggested by Board Members Tracy and Smith, and now he is meeting opposition to the changes. Chairman Donovan called for a roll call vote on the motion and the Board Members voted; with Johnson and Mr. Starbard yes and Board Members Smith and Tracy voting no, Chairman Donovan abstained and the motion failed by a vote of 2-2.

Next Meeting:

Chairman Donovan then moved on to the next agenda item – setting the next meeting date, suggesting May 25th at the Washington Street offices, and it was accepted without discussion.

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 moved on to the next agenda item – Adjournment. Mr. Starbard asked to be heard on some matters not listed in the Agenda. Mr. Starbard asked how many

complaints are in the pipeline. Mr. Powers answered about 20, noting that the complaints cannot be heard until the Board meets in-person allowing the appraiser to be present if they wish to appear. Mr. Starbard asked whether the Board members can get copies to review in preparation, and Mr. Powers stated that they need Docket numbers and noted that several appear unsubstantiated

Motion to adjourn:

Chairman Donovan then called for a motion to adjourn which was made by Board Member Smith and seconded by Board Member Starbard, and the Chairman called for a roll call vote with all members voting in the affirmative and the vote was: 4-0 move 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)