



## THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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CHAIRMAN

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

### **Minutes of the Meeting of the Board held on October 26, 2022, and approved at the Board Meeting held on January 17, 2023; Motion of Board Member Richard Starbard and Seconded by Board Member Peter Smith, the Motion Passed by a Vote of: 4-0, with Chairman Michael D. Donovan Abstaining.**

October 26, 2022, Minutes of Board Meeting

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on Tuesday, October 26, 2022, at 1000 Washington Street, Boston, Massachusetts.

#### **Members Present:**

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 called the meeting to order at 10:00AM.

Chairman Donovan asked those recording the proceedings to identify themselves and state with whom they were affiliated. Those responding to the Chairman's request were: Jim Steere of The Hanover Insurance Company, and "Lucky" Papageorg" of the Alliance of Automotive Service Providers of Massachusetts.

#### **For approval, the Board minutes for the Board meeting held on September 13, 2022:**

Chairman Donovan called for a motion for approval of the Board minutes of the September 13, 2022, Board meeting. Board Member William Johnson made a motion to approve the Board minutes of the September 13, 2022, 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 Upcoming Part-II examination for motor vehicle damage appraiser at the Progressive Insurance Service Center in Westwood, Massachusetts:**

Chairman Donovan asked for a report from Board Member Peter Smith about the Part-II examination. Board Member Smith reported that the Part-II examination was held October 15, 2022, with an expected 41 participants, but only had 36 applicants appeared for the exam. Mr. Smith reported that, 31 people passed the exam and 5 people failed the exam. Mr. Smith informed the Board that the new licenses of those passing the exam are being processed by Bob Hunter of the Licensing Unit for the Division of Insurance. Mr. Smith thanked those assisting him in the process including Eric Dearborn of Progressive, who hosted the examination, as well as several employees of MAPFRE. Mr. Smith reported that they are hoping to hold the next Part-II exam on December 10, 2022. This will be dependent on the number of participants, with 40 being the minimum and he noted that there were currently 10 people who signed up for the exam.

Chairman Donovan thanked Board Member Smith for his excellent work and those who assisted him in administering the Part-II examination.

**Next meeting date:**

The Board agreed to meet again on November 30, 2022, at 10:00AM in Boston.

**Continuing review of 100 complaints filed against motor vehicle damage appraisers licensed by the Auto Damage Appraiser Licensing Board brought by the same licensed appraiser who also owns an auto body shop, most of the complaints have been brought against 2 insurance companies and their authorized appraisers. The review by the Board was conducted in accordance with the Auto Damage Appraiser Licensing Board's "Complaint Procedures" to determine whether: the Board lacks jurisdiction, the complaints are based on frivolous allegations, lack sufficient evidence, lack legal merit or factual basis, no violation of the regulation is stated, or other basis. During the review, the Board did not discuss the named appraisers or the named companies the complaints have been filed against. The Board reviewed the following Complaints: Complaint 2022-55, 57, 60, 61, 62, 63, 83, 84, 85, 103, 104, 109, 110, 111, 112, 113.**

**Complaint 2022-55:**

Chairman Donovan introduced the agenda item calling for a motion, Board Member Peter Smith confirmed that there should be no mention of the names of the parties involved, and Chairman Donovan confirmed that was the procedure utilized by the Board. Mr. Starbard asked whether these are in Step-II of the process and Chairman Donovan responded that the Board was in the Step-I review of the process. Mr. Starbard made a motion to move forward, noting the complaint involved Paint and Materials and asserted that the appraiser did not use the guide for determining the prices, that the appraisal involved a three-stage paint, and the amount offered by the appraiser was the same as that offered in prior complaints, indicating that the appraiser offered to pay for two-stage paint and concluded that the appraiser offered no supporting documentation. Board

Member William Johnson seconded the motion, Chairman Donovan called for a roll call vote, Mr. Starbard and Johnson voted yes, and Board Members Samantha Tracy and Peter Smith voted no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining and the complaint was dismissed.

**Complaint 2022-57:** Chairman Donovan called for a motion and Board Member Johnson asked why the next complaint did not follow along in numerical order inquiring why are we skipping complaint number 56. Chairman Donovan explained that these complaints all pertain to the same company and/or appraisers. Board Member Starbard made a motion to move forward with the complaint noting that the appraiser only wrote half of the cost for the scans with no direction to whom may be able to complete the task for the lower amount of money allowed. Board Member Johnson seconded the motion, Chairman Donovan called for a roll-call vote and Board Members Smith and Tracy voted no, Board Members Starbard and Johnson voted yes, the motion failed by a Vote of: 2-2, with Chairman Donovan abstaining and the complaint was dismissed. The Board Members and members of the public engaged in a spirited discussion about the examination and testing process and what was being taught to licensed motor vehicle damage appraisers.

**Complaint 2022-60:** Chairman Donovan called for a motion and Board Member Johnson moved to have the complaint set down for the next step in the process, asserting that, the complaint centered around pre and post scans, listed an arbitrary cost of \$45.00, and is not sourced, stating that it is like a \$100.00 fender being written for a lower dollar amount but the appraiser for the insurance company did not let the auto body shop know where to locate the fender at that lower price. Mr. Starbard seconded the motion, Chairman Donovan called for a roll call vote, Board Members Peter Smith and Samantha Tracy voted no, and Board Members Richard Starbard and William Johnson vote yes, the motion failed by a Vote of: 2-2, with Chairman Donovan abstaining and the complaint was dismissed.

Board Member Starbard asserted that, if this is how the Board reacts to these complaints there could be 400 more in a month and the Board will not be able to handle them. Board Member Johnson observed industry wide, auto body shops can't find help. Mr. Johnson asserted that he prepares a repair deficiency sheet on each auto body job and spells out what a customer will need to pay and concluded that his auto body shop turns away 12 to 14 jobs, sending them down the road, and asserted that his company was make more money for storage of motor vehicles.

**Complaint 2022-61:** Chairman Donovan called for a motion and Mr. Starbard moved to place the complaint in the next step of the complaint process, and Mr. Johnson seconded the motion. Chairman Donovan called for a roll call vote, Board Members Peter Smith and Samantha Tracy answered no, Board Members Starbard and Johnson answer yes, the motion failed by a Vote of: 2-2, with Chairman Donovan abstaining and the complaint was dismissed.

**Complaint 2022-62:** Chairman Donovan called for a motion and Mr. Starbard moved to have the complaint proceed to the next step in the complaint procedure and Mr. Johnson seconded the motion. Chairman Donovan called for a roll call vote, Board Members Peter Smith and Samantha Tracy answered, no Board Members Starbard and Johnson answered yes. The motion failed by a vote of 2-2, with Chairman Donovan abstaining and the complaint was dismissed.

**Complaint 2022-83:** Chairman Donovan called for a motion, Mr. Johnson moved to have the complaint move to the next step, and Mr. Starbard seconded the motion. Chairman Donovan called for a roll-call vote, and Board Members Peter Smith and Samantha Tracy vote voted, no and Board Members William Johnson and Richard Starbard voted yes. The motion failed by a vote of: 2-2, with Chairman Donovan abstaining and the complaint was dismissed.

**Complaint 2022-84:** Chairman Donovan called for a motion, Board Member Richard Starbard moved to have complaint to the next step and Mr. Johnson seconded the motion. Chairman Donovan calls for a roll-call vote, Board Members Smith and Starbard voted yes and Board Members Peter Smith and Tracy voted no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining.

**Complaint 2022-85:** Chairman Donovan called for a motion, Board Member Richard Starbard moved to have the complaint to the next step and Mr. Johnson seconded the motion. Chairman Donovan called for a roll-call vote, Board Members Smith and Starbard voted yes and Board Members Peter Smith and Tracy voted no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining and the case was dismissed.

**Complaint 2022-103:** Mr. Starbard noted the next complaint centered around a parts issue where the quality of the part is in question. Mr. Starbard stated that the Original Equipment manufacturer does not recommend the use of these aftermarket parts, but the governing regulations provides otherwise. Mr. Johnson asked what miles the applicable regulation mandated for the installation of O&E parts. Mr. Starbard responded twenty thousand miles, and noted the damaged vehicle had twenty-four thousand miles. Mr. Starbard moved to dismiss the complaint and Mr. Johnson seconded the motion. Chairman Donovan called for a roll-call vote and Board Members Starbard, Johnson, Smith, and Tracy voted yes. The motion passed by a Vote of: 4-0, with Chairman Donovan abstaining, and the complaint was dismissed.

**Complaint 2022-104:** Chairman Donovan called for a motion, Board Member Richard Starbard moved to have the complaint proceed to the next and Mr. Johnson seconded the motion. Chairman Donovan called for a roll-call vote, Board Members Smith and Starbard voted yes and Board Members Peter Smith and Tracy voted, no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining and the complaint was dismissed.

**Complaint 2022-109:** Mr. Starbard noted the next complaint centered around an invoice for an A//C recharge where the customer left to pay \$1,000.00 in excess. Mr. Starbard stated that this is short pay and asserted that the appraiser didn't pay the invoice amount of \$399.00. Mr. Starbard noted this also involved scans, they are not a part of this complaint, but will be addressed in a complaint coming up next. Board Member Johnson moved to have the complaint go forward, Mr. Starbard seconded the motion. Chairman Donovan called for a roll-call vote and Board Members Starbard and Johnson voted yes, and Board Members Tracy and Smith voted, no. The motion failed by a Vote of: 2-2, with Chairman Donovan abstaining and the complaint was dismissed.

**Complaint 2022-110:** Mr. Starbard noted the next complaint centered around the same vehicle and same invoice only this time involved calibration and scanning. Mr. Starbard also noted there was a time factor noting the date of the supplement request is dated February 2<sup>nd</sup> and the resulting supplement is dated March 12<sup>th</sup>, clearly over the ADALB's Regulation time-line. Chairman Donovan asked Mr. Starbard if calibrations are a part of this complaint. Mr. Starbard conceded that the comment about calibrations was used as an example. Board Member Tracy read a portion of the complaint and asked Mr. Johnson whether two different factors were in play. Mr. Steere, of Hanover Insurance was allowed to speak and he noted the need for clarification suggesting that he could answer Board Member Tracy's question, noting that the customer did pay the difference, but they were reimbursed after they received the documents requested of the shop – which also explained the delay. Mr. Starbard asked whether Mr. Steere's company has a subscription to "ADAS Think", the program the shop used to generate their documents. Mr. Steere answered that they are not always right. Mr. Smith stated that within the text of the complaint it stated that the complaint states that the "lane departure" system needed to be calibrated at a cost of \$395.00 but the report stated that the windshield camera was in compliance adding that the lane departure and windshield camera work hand-in-hand and the report doesn't specify lane departure. Mr. Steere stated that this is why they ended up paying the customer after they finally received the additional documents clarifying what was done compared to what was billed. Chairman Donovan asked for a motion. No Board member offers a motion and Chairman Donovan noted no motion was made and the complaint will be set aside.

**Complaint 2022-111:** Mr. Smith noted the next complaint centered around the same claim but a different issue. Mr. Starbard added that there was no vendor identified and added the location of the shop was an issue. Mr. Smith stated that complaints 2022-11, 2022-12 and 2022-13 all involved the same vehicle but address different issues. Mr. Starbard noted that was the best way to do it. Chairman Donovan requested a motion and Board Member Tracy stated that there is a line-item question and Mr. Smith stated that the line item makes up for the difference. Mr. Starbard stated that it is still short by \$10.00 noting the shop was seeking \$190.00, and the concession allows for what amounts to \$180.00. Mr. Starbard declined to make a motion. After no other member moves, Chairman Donovan moved on to the next item on the agenda.

**Complaint 2022-112:** Mr. Smith noted that the next complaint centered around the same claim but P&M this time. Mr. Starbard declared what was behind this magic number, it's always the same. Board Member Starbard observed that there are always variables when mixing paint or taping off a vehicle. There was no motion offered. Chairman Donovan moved on to the next item on the agenda

**Complaint 2022-113:** Chairman Donovan called for a motion. Mr. Smith commented that this complaint centers around the time line of the completion of the supplement. Mr. Johnson noted that this is the supplement that was requested on February 2<sup>nd</sup> and not closed until March 12<sup>th</sup> stating that in his opinion it's a clear violation. Mr. Starbard seconded Mr. Johnson's motion to move to the next step. Mr. Smith commented that there was an explanation given earlier in the meeting which satisfied him. Chairman Donovan called for a roll-call, Board Members Smith and Tracy voted no, Board Members Starbard and Johnson voted yes, and Chairman Donovan abstained the Vote failed by a Vote of: 2-2, and the complaint was dismissed.

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

Chairman Donovan asked if there was any other business that a Board Member wished to discuss. Board Member Johnson asked whether there has been any response on the proposed amendments to 212 CMR 2.00. et seq. Legal Counsel Powers responded that he did not receive a response and would make further inquiry.

Board Member Starbard asked that the Board contact the Motor Vehicle Damage Appraiser Course instructors approved by the Board to conduct training classes in preparation for licensure as a motor vehicle damage appraiser and request that they submit their curriculum. He also suggested that the Board create a working group to discuss the training needs to assist appraisers in keeping up with what's required for standard repairs to damaged motor vehicles and provided I-CAR Platinum Certification as an example. Board Member Tracy agreed that a review should be conducted but not whether I-Car Platinum Certification should be made part of the course instruction. Mr. Starbard stated that members of the working group should not be limited to Board members but include others as well. Mr. Starbard noted that there may be training facilities in the area that could be used for such training in new technologies. Board Member Smith agreed and said it is worth exploring and that a good first step would be to use resources like the current instructors and involve them in the discussion on proposed classroom materials. Mr. Smith also asked whether there should be a request to see which current appraiser classes are conducted virtually and which have gone back to in-class instruction. Chairman Donovan asked Mr. Powers to summarize what the Board Members had requested, and Mr. Powers provided a summary. Mr. Starbard noted that the summary emphasized the I-CAR training and withdrew his support of that training and said the Board could review additional training but not include the I-CAR training. Chairman Donovan asked that the Board finalize the steps at the next meeting and asked that this be put on the agenda for the next meeting.

Chairman Donovan called the final agenda item, the Board entering the Executive Session wherein Complaint 2019-11 would be discussed. Mr. Powers asked the chairman to specify that the Board will adjourn after the Executive session. Chairman Donovan did so and asked Mr. Powers to read the agenda item in its entirety. Mr. Powers read the following from the agenda:

- I. Executive session to review complaint 2019-11. Such discussion during the executive session is allowed 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, *Department of Public Safety Board of Appeals Matter*, OML 2013-104, and *Auto Damage Appraisers Licensing Board Matter*, OML 2016-6. 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.

The licensed appraiser has previously requested the matter be heard in the executive session.

Chairman Donovan called a roll call motion to go into Executive Session. Mr. Starbard moved, and Board Member Johnson seconded the motion which included the fact Vote of: 4-0.

**Executive Session:**

Legal Counsel Powers informed the Board that the licensed appraiser asked for a postponement because he needed to have an attorney review the complaint and that he did not receive a copy of the complaint. Board Counsel Powers pointed out that the licensed appraiser was sent a copy of the complaint, appeared at the following Board Meeting, and requested a continuance. Nevertheless, he sent another copy to the licensed appraiser. The Board agreed to the postponement and to have the matter set down for the following Board meeting.

**Motion to Adjourn:**

Chairman Donovan called for a motion to adjourn, Board Member Smith made the motion which was seconded by Board Member Starbard and the Board voted to adjourn with Board Members Smith, Starbard, Tracy, and Johnson voting in favor and 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)

