



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 November 23, 2021, and approved at the Board Meeting held on January 26, 2022; Motion of Board Member Richard Starbard and Seconded by Member William Johnson. The Motion Passed by a Vote of: 4-0, with Chairman Michael D. Donovan Abstaining.

November 23, 2021, Minutes of Board Meeting

The Auto Damage Appraiser Licensing Board (ADALB or Board) held a meeting on Tuesday, November 23, 2021, at 11:00AM at the Calabria Ristorante located at 7 S. Main Street, Millbury, 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 precisely at 11:00AM. The Chairman took a roll call of the Board members on the phone call. Each of the Board Members declared present.

For approval, the Board minutes for the Board meeting held on October 5, 2021, Chairman Donovan called for a motion for approval of the Board minutes of the October 5, 2021, Board meeting. Board Member Richard Starbard made a motion to approve the Board minutes of the October 5, 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 Upcoming Part-II examination for motor vehicle damage appraiser at the Progressive Insurance Service Center in Westwood, Massachusetts:

Chairman Donovan requested Board Member Peter Smith to provide an update on the Part-II examination. Board Member Smith responded by stating that the last Part-II examination would be scheduled for some time around Christmas. At that point there were only 24 applicants for the examination and usually they hold an exam when there are at least 50 or more applicants. Mr. Smith said that he would check in with Bob Hunter acting director for Producer Licensing of the Division of Insurance.

Chairman Donovan then 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, Chasidy Rae Sisk of Greco Publishing, and "Lucky" Papageorg of the Alliance of Automotive Service Providers of Massachusetts.

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

Chairman Donovan moved to the next item on the Board's agenda, which was a 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 and requested that Board Member William Johnson lead the discussion. As way of background, in February of 2021, Board Member Johnson received a copy of the Office of Administration and Finance's (A&F) letter that A&F approved certain proposed amendments that were adopted by the Board in 2016, but with restrictions as to 4 of the proposed amendments that were questioned as the result of a review conducted by the Division of Insurance. In the letter, A&F' expressed concerns about Members of the Board having changed since the amendments were proposed in 2016, and there are 3 different Board Members on the Board since the amendments were approved and felt the need for the new members to conduct a review of the proposed amendments.

The following were the proposed amendments that were approved by the Board in October of 2016:

**Additions (as approved
8/3), (Typo's edited 9/7)**

**Deletions (as approved
8/3) (Typo's edited 9/7)**

**212 CMR 2.00: AUTO DAMAGE APPRAISERS LICENSING BOARD
THE APPRAISAL AND REPAIR OF DAMAGED MOTOR VEHICLES**

Section

2.01: Scope of Regulations

2.02: Licensing Requirements and Standards for Appraisers

2.03: Duties of Insurers and Repairers

212 CMR 2:00: AUTO DAMAGE APPRAISERS LICENSING BOARD

2.04: Procedures for the Conduct of Appraisers and Intensified Appraisals
2.05: Penalties
2.06: Severability

2.01: Scope of Regulations

(1) 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. Any licensed appraiser, individual or corporate entity who employs licensed appraisers shall be bound by 212 CMR 2.00.

212 CMR 2.00 is intended to be read in conjunction with 211 CMR 133.00, *Standards for the Repair of Damaged Motor Vehicles*.

(2) Authority. 212 CMR 2.00 is promulgated under the authority granted to the Auto Damage Appraiser Licensing Board by M.G.L. c. 26, § 8G, as added by St. 1981, c. 775, § 1.

(3) The Board may from time-to-time issue Advisory Rulings and shall do so in compliance with M.G.L. c. 30A, § 8.

(4) Definitions.

Appraisal - means a ~~written~~ motor vehicle damage report prepared by an appraiser licensed by the Board, on forms approved by the Board, and conducted as defined in M.G.L. c. 26, 8G and in compliance with the provisions of 212 CMR 2.00, M.G.L. c. 93A, c. 100A, c. 90, § 34R, and c. 26, 8G.

Appraiser - means any person licensed by the Auto Damage Appraiser Licensing Board to evaluate motor vehicle damage and determine the cost of parts and labor required to repair the motor vehicle damage.

Board - means the Auto Damage Appraiser Licensing Board established by M.G.L. c. 26, 8G.

Claimant - means any person making a claim for damage to a motor vehicle for either first or third party damages.

Independent appraiser - means any appraiser other than a staff appraiser who makes appraisals under an assignment by an insurer or repair shop and shall include the owner or employee of a repair shop who makes appraisals under a contract with an insurer.

Insurer - means any insurance company involved with a claim in the Commonwealth.

Intensified appraisal - means the combination of the appraisal of a motor vehicle before its repair and the reinspection of the vehicle subsequent to its repair.

Staff Appraiser - means an appraiser who is an employee of an insurer and whose job duties include the making of appraisals for his or her employee.

Repair Shop Appraiser – means an appraiser who is an employee of a repair shop and whose job duties include the making of appraisals for his or her employer.

Repair Shop – means a motor vehicle repair shop registered pursuant to the requirements of M.G.L. c.100A.

~~**Supervisory appraisal** – means an appraisal conducted by an insurance company or appraisal company supervisor solely for the purpose of evaluating the appraisal ability of one of his or her appraiser employees or for the purpose of providing on-the-job training of an appraiser employee.~~

2.02: Licensing Requirements and Standards for Appraisers

(1) Requirement That License Be Obtained and Displayed.

No person in Massachusetts shall appraise, estimate **or determine** damages to motor vehicles or otherwise present himself or herself as an appraiser unless he or she has first obtained a license from the ~~**Auto Damage Appraiser Licensing**~~ Board. This license shall be valid for one year or less and shall be renewed annually on July 1st. Any appraiser, while making an appraisal, shall carry his or her license and shall, upon request, display it to any person involved in the claim or to any representative of the Board.

(2) Qualifications for a License. Any applicant for a license shall be 18 years of age or over and of good moral character. He or she shall furnish satisfactory proof to the Board that he or she possesses the educational qualifications required for graduation from high school or that he or she possesses relevant work experience deemed satisfactory by the Board. No applicant shall be considered competent unless the applicant has assisted in the preparation of appraisals for at least three months under the close supervision of **an licensed** appraiser. He or she shall complete an approved appraisal course or, at the Board's discretion, work experience may be substituted for said schooling.

(3) Application and Examination Fee for a License. Any applicant for a license shall complete an application to be prescribed by the Board and shall sign it under the penalties of perjury. He or she shall submit this application and non-refundable fee of \$100 to the Board. After an application is received and approved, the applicant shall be required to pass an examination given under the supervision of the Board. All successful applicants will be issued a numbered license. Any applicant failing to pass an examination, upon the payment of a further non-refundable fee of \$50.00, shall be entitled to a reexamination after the expiration of six months from the date of the last examination. Any applicant failing to pass an examination shall be allowed to review his or her examination.

(4) Renewal of License. The Board shall mail to each **licensed** appraiser an application for renewal. Such application shall be completed and returned to the Board. Each application shall be accompanied by a renewal fee of \$50.00. After verification of the facts stated on the renewal application, the Board shall issue a renewal license dated July first, and this license shall expire on the June thirtieth of the year following. Any **licensed** appraiser who fails to renew his or her license within 60 days after notification by the Board of his or her license expiration date, before

again engaging in the practice of **an licensed** appraiser within the Commonwealth, shall be required to re-register, pay a penalty fee determined by the Board and any back license fees, or may be required by the Board to be reexamined and pay applicable fees.

(5) Procedure for **Auto Damage** Appraisals.

(a) All forms used for **auto damage** appraisals must be approved by the Board.

(b) All forms used are required to have an itemization of parts, labor and services necessary, as **required in 212 CMR 2.00**, for repairs thereof. The prepared appraisal shall be sworn to under the penalties of perjury and shall include the appraiser's name, signature, license number, seal or stamp, employer, **insurer insurance company**, repair shop registration number if applicable, fee charged, the date the vehicle was appraised and the name of the **database manual** used (if any) in preparing the appraisal. The appraisal seal or stamp shall be of a design approved by the Board. All appraisals sent electronically need not include the appraiser's signature and his or her seal or stamp.

(6) Schedule of Appraisal Fees.

(a) The Board may consider the appraisal fees charged within the territories where said appraiser operates. Any appraiser shall establish his or her own fee schedule unless limited by the Board. Any appraiser must post his or her appraisal fee schedule in a conspicuous location at his or her work place. The Board may establish a maximum schedule of fees by territory, type of business or complexity of work. Fees charged in excess of maximums approved by the Board shall result in penalties as established by the Board.

(b) Fees paid by a claimant for an appraisal that was requested by the insurer are recoverable from the insurer. Fees for **auto damage** appraisals not requested by the insurer in first party claims are not recoverable from the insurer.

(7) Conflict of Interest. It shall be a conflict of interest for any appraiser who has been assigned to **write an appraisal, appraise a damaged motor vehicle** to accept, in connection with that appraisal, anything of value from any source other than the assignor of that appraisal.

Further, it shall be a conflict of interest for any **repair shop** appraiser **employed by a repair shop** to accept the assignment of an appraisal from an insurer unless that appraiser's employment contract prohibits the repair shop from repairing damaged motor vehicles that have been so appraised. In addition, it shall be a conflict of interest for any appraiser who owns or has an interest in a repair shop to have a vehicle repaired at that shop if that appraiser has appraised that vehicle at the request of an insurer. It shall be a conflict of interest if any **licensed** appraiser operates a Drive-in Appraisal Service **or Drive-in Claim and Appraisal facility for, or on behalf of, an insurer at a repair shop. Notwithstanding this provision, all drive-in appraisal services or drive-in claim and appraisal facilities must inform consumers of their right to have their vehicle repaired at any repair shop. No insurance company appraiser shall coerce or use any tactics the purpose of which is to prevent insureds or claimants from seeking damage reports on repairs from their own repair shop rather than utilizing a company appraisal drive-in facility.**

(8) Revocation or Suspension of a License. The Board may revoke or suspend any appraiser's license at any time for a period not exceeding one year if the Board finds, after a hearing, that the individual is either not competent or not trustworthy or has committed fraud, deceit, gross negligence, misconduct, or conflict of interest in the preparation of any **appraisal motor vehicle**

damage report. The following acts or practices by any appraiser are among those that may be considered as grounds for revocation or suspension of an appraiser's license:

- (a) material misrepresentations knowingly or negligently made in an application for a license or for its renewal;
- (b) material misrepresentations knowingly or negligently made to an owner of a damaged motor vehicle or to a repair shop regarding the terms or effect of any contract of insurance;
- (c) the arrangement of unfair and or unreasonable settlements offered to claimants under collision, limited collision, comprehensive, or property damage liability coverages;
- (d) the causation or facilitation of the overpayment by an insurer of a claim made under collision, limited collision, comprehensive, or property damage liability coverage as a result of an inaccurate appraisal;
- (e) the refusal by any appraiser, who owns or is employed by a repair shop, to allow an appraiser assigned by an insurer access to that repair shop for the purpose of making an appraisal, **supervisory reinspection**, or intensified appraisal.
- (f) the commission of any criminal act related to appraisals, or any felonious act, which results in final conviction;
- (g) knowingly preparing an appraisal that itemizes damage to a motor vehicle that does not exist; and
- (h) failure to comply with 212 CMR 2.00.

(9) Drive-in Claim and Appraisal Facilities. Drive-in claim and appraisal facilities shall possess the following equipment:

- (a) Operating telephone service.
- (b) A calculator.
- (c) Current collision, paint and body cost estimating guide manuals or an automated system.
- (d) An operating flash light.
- (e) A tape measure of at least 30 feet.
- (f) An operating camera and film.
- (g) A fax machine or other device capable of transmitting data.

2.03: Duties of Insurers and Repairers

- (1) Responsibilities for Actions of Appraisers. An insurer or repair shop shall be responsible for the actions of ~~all of its~~ **the** appraisers **working on their behalf whether staff or independent**, and shall be subject to the applicable penalties under law for any violation of 212 CMR 2.00 by its appraiser.

The Board may assess penalties against either the appraiser, the insurer, the repair shop or all three. In the event of default by the appraiser, the insurer or the repair shop may be responsible for penalties.

- (2) Records and Analysis of Appraisals. Every ~~insurer or repair shop~~ appraiser shall retain for at least two years, copies of all records related to appraisals and inspection. Every insurer shall retain copies of all records including photographs in accordance with state law.

2.04: Procedures for the Conduct of Appraisals and Intensified Appraisals

(1) Conduct of Appraisals.

(a) Assignment of an Appraiser. Upon receipt by an insurer or its agent of an oral or written claim for damage resulting from a motor vehicle accident, theft, or other incident for which an insurer may be liable, the insurer shall assign ~~an either a staff or an independent~~ appraiser to ~~conduct an appraisal~~ **appraise the damage**. Assignment of an appraiser shall be made within two business days of the receipt of such claim. However, the insurer may exclude any claim for which the amount of loss, ~~less any applicable deductible~~, is less than \$1,500.00.

(b) Repair Shop Appraisal. All repair shops shall maintain one or more licensed appraisers in their employment for the purpose of preparing ~~an motor vehicle damage~~ appraisals ~~and conducting negotiations~~. No ~~staff or independent~~ appraiser shall knowingly negotiate a repair figure with an unlicensed individual or an unregistered repair shop.

(c) Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of ~~an staff or~~ independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific repair shop or individual. ~~The provisions of 212 CMR 2.04(e) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00.~~

(d) Requirement of Personal Inspection and Photographs. The appraiser shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making the appraisal. As part of the inspection, the appraiser shall also photograph each of the damaged areas.

(e) Determination of Damage and Cost of Repairs. The appraiser shall specify all damage attributable to the accident, theft, or other incident in question and shall also specify any unrelated damage. If the appraiser determines that preliminary work or repairs would significantly improve the accuracy of the appraisal, he or she shall authorize the preliminary work repair with the approval of the claimant and shall complete the appraisal after that work has been done. The appraisers representing the ~~insurer insurance company~~ and the ~~registered~~ repair shop selected by the insured to do the repair shall attempt to agree on the estimated cost for such repairs. The ~~registered~~ repair shop must prepare an appraisal for the purpose of negotiation. No appraiser shall modify any published manual ~~or electronic data system~~ (i.e., Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturers ~~recommended warranty~~ repair procedures, I-Car, Tec Cor and paint manufacturer procedures ~~shall may also~~ apply. ~~However, the selection of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00.~~ Further, no appraiser shall use more than one manual or system for the sole purpose of gaining an advantage in the negotiation process.

If, while in the performance of his or her duties as ~~an licensed auto damage~~ appraiser, an appraiser recognizes that a damaged repairable vehicle has incurred damage that would impair the operational safety of the vehicle, the appraiser shall immediately notify the owner of said vehicle that the vehicle may be unsafe to drive.

The ~~licensed auto damage~~ appraiser shall also comply with the requirements of M.G.L. c. 26, § 8G, the paragraph that pertains to the removal of a vehicle's safety inspection sticker in certain situations.

The appraiser shall determine which parts are to be used in the repair process. ~~in accordance with 211 CMR 133.00.~~ ~~Determination of parts shall comply with 211 CMR 133.00 and 212 CMR 2.00.~~ The appraiser shall recognize that certain parts, including but not limited to; used suspension and steering parts that contain wearable components may affect the operational

safety of the vehicle. If both parties agree that a specified part is unfit and must be replaced, the insurer is responsible for paying the retail price for all parts indicated on an appraisal, including but not limited to, parts ordered and subsequently returned based on the criteria set in 211 CMR 133. The insurer is responsible for returning the parts to the supplier and recovering their costs from the supplier. The repair shop may agree to return parts on behalf of the insurer, if the insurer agrees to pay all costs, including but not limited to freight, handling and administrative costs associated with such return. As to such costs, nothing in 212 CMR 2.00 shall preclude and insurer from exercising any available rights of recovery against the supplier. Delays in repair cycle time shall be considered when sourcing parts and materials. 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. The rental cost of frame/unibody fixtures necessary to effectively repair a damaged vehicle shall be shown on the appraisal and shall not be considered overhead costs of the repair shop. Costs associated with the shipping and handling of parts, including cores, shall not be considered overhead costs of the repair shop either and shall be listed on the appraisal and negotiated. With respect to paint, paint materials, body materials and related materials, if the formula of dollars times hours is not accepted by an ~~registered repair shop or licensed~~ appraiser, then a published manual database or other documentation shall be used unless otherwise negotiated between the parties. All appraisals written under 212 CMR 2.00 shall include the cost of replacing broken or damaged glass within the appraisal. When there is glass breakage that is the result of damage to the structural housing of the glass then the cost of replacing the glass must be included in the appraisal in accordance with 212 CMR 2.04. The total cost of repairing the damage shall be computed by adding any applicable sales tax payable on the cost of replacement parts and other materials. The appraiser shall record the cost of repairing any unrelated damage on a separate report or clearly segregated on the appraisal unless the unrelated damage is in the area of repair.

If aftermarket parts are specified in any appraisal, the appraiser shall also comply with the requirements of M.G.L. c. 90, § 34R that pertain to the notice that must be given to the owner of a damaged motor vehicle.

The appraiser ~~representing the insurer~~ shall mail, fax or electronically ~~submit~~ ~~transmit~~ the completed appraisal within five business days of the assignment, or at the discretion of the repair shop, shall leave a signed copy of field notes, with the completed appraisal to be mailed, faxed ~~or electronically submitted~~ within five business days of the assignment. The repair shop may also require a completed appraisal at the time the vehicle is viewed. If the repair shop requires a completed appraisal, then the repair shop shall make available desk space, phone facilities, calculator and necessary manuals. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary ~~work, repairs or partial disassembly repairs~~, severe illness, failure of the parties ~~other than the insurer~~ to communicate or cooperate, or extreme weather conditions make timely inspection of the vehicle and completion of the appraisal impossible.

(f) Determination of Total Loss. Whenever the appraised cost of repair plus the estimated salvage may be reasonably expected to exceed the actual cash value of a vehicle, the insurer may deem that vehicle a total loss. No motor vehicle may be deemed a total loss unless it has been ~~personally~~ inspected ~~or and~~ appraised by an ~~licensed~~ appraiser nor shall any such motor vehicle be moved to a holding area without the consent of the owner. A total loss shall not be determined by the use of any percentage formula.

(g) Preparation and Distribution of Appraisal Form. All appraisers shall set forth the information

compiled during the appraisal on a form that has been filed with the Board. Staff and independent appraisers shall, upon completion of the appraisal, give copies of the completed appraisal form to the claimant, the insurer, and the repair shop and shall give related photographs to the insurer.

(h) Supplemental Appraisals. If a ~~registered~~ repair shop or claimant, after commencing repairs, discovers additional damaged parts or damage that could not have been reasonably anticipated at the time of the appraisal, either may request a supplementary appraisal. The ~~registered appraiser representing the~~ repair shop shall complete a supplemental appraisal prior to making the request. The insurer shall assign an appraiser who shall personally inspect the damaged vehicle within ~~two~~ **three** business days of the receipt of such request. The appraiser ~~representing the insurer~~ shall have the option to leave a completed copy of the supplement appraisal at the registered repair shop authorized by the insured or leave a signed copy of his or her field notes with the completed supplement to be mailed, faxed, electronically ~~submitted transmitted~~ or hand delivered to the repair shop within one business day. A reasonable extension of time is permissible when intervening circumstances such as the need for preliminary ~~work, repairs or partial disassembly repairs~~, severe illness, failure of the parties ~~other than the insurer~~ to communicate or cooperate, or extreme weather conditions make timely inspections of the vehicle and completion of the supplemental appraisal impossible.

(i) Expedited Supplemental Appraisals. If an insurer, a repair shop and the claimant agree to utilize an expedited supplemental appraisal process, an insurer shall not be required to assign an appraiser to personally inspect the damaged vehicle. In such event, the repair shop shall fax or electronically submit to the insurer a request for a supplemental appraisal allowance in the form of an itemized supplemental appraisal of the additional cost to complete the repair of the damaged vehicle, prepared by ~~an appraiser representing the repair shop licensed appraiser employed by the repair shop~~, together with such supporting information and documentation as may be agreed upon between the ~~appraiser representing the~~ insurer and the ~~appraiser representing the~~ repair shop. The ~~appraiser representing the~~ insurer shall then be required to fax or electronically submit to the repair shop ~~within one two business days~~ its decision as to whether it accepts the requested supplemental appraisal allowance, ~~by the end of the next business day, excluding weekends and holidays~~. Within this same period, ~~an licensed~~ appraiser representing the insurer and ~~an licensed~~ appraiser representing the repair shop may attempt to agree upon any differences. In the event that an insurer does not accept the repair shop's request for the supplemental appraisal allowance, or if the insurer fails to respond to the repair shop ~~within two business days~~, ~~by the end of the next business day, excluding weekends and holidays~~, the ~~appraiser representing the~~ insurer and the ~~appraiser representing the~~ repair shop shall be obligated to proceed in accordance with 212 CMR 2.04(1)(h), and within the time limits set forth in such provision. In such event, the date of the initial request for a supplemental appraisal allowance shall be the starting date for when the insurer must assign an appraiser to personally inspect the damaged vehicle.

No insurer or repair shop shall be obligated to utilize an expedited supplemental appraisal process and the determination of whether to utilize such process shall be made separately by an insurer or by a repair shop only on an individual claim basis. Utilization of an expedited supplemental appraisal process shall not be used as a criterion by an insurer in determining the insurer's choice of shops for a referral repair shop program under an insurer's direct payment plan; and being a referral shop shall not be a criterion in determining whether to utilize an expedited supplemental appraisal process.

(j) Completed Work Claim Form. If the ~~insurer~~ **insurance company** does not have a direct payment plan or if the owner of the vehicle chooses not to accept payment under a direct payment plan, then a representative of the insurer shall provide the insured with a completed work claim form and instructions for its completion and submission to the insurer. **When a completed work claim form is utilized, the appraiser representing the insurer and the appraiser representing the repair shop shall negotiate all costs without regard to the direct payment plan/referral shop program.**

(2) Temporary Licensing. ~~The Board may grant at its discretion either an emergency or a temporary license to any qualified individual to alleviate a catastrophic or emergency situation for up to 90 days. The Board may limit the extent of such emergency authorization and in any event, if the situation exceeds 30 days, a fee determined by the Board shall be charged for all emergency or temporary licenses.~~ **The Board shall vote to authorize the Chairman of the Board or his/her designee to grant a temporary license up to 60 days to any qualified individual to alleviate a catastrophic or emergency situation as long as the following conditions are met: (1) the applicant is licensed as a motor vehicle damage appraiser in another state and provides a copy of that license to the Chairman of the Board or his/her designee; (2) is in good standing in the other state and the applicant provides consent to the Chairman of the Board or his/her designee to verify the applicant's licensing status through the insurance licensing database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; (3) the applicant has not been found guilty of fraud, deceit, gross negligence, incompetence, misconduct or conflict of interest in the preparation or completion of any motor vehicle damage report; (4) the applicant does not have criminal felony charges pending against him/her in any state; (5) the applicant properly fills out the application; and (6) pays the applicable license fee.**

Copies of all such applications and temporary licenses issued by the Chairman of the Board or his/her designee shall be submitted to the Board at its next scheduled meeting for review by the Board. After review, the Board may revoke any such temporary license that was issued if the Board finds such applicant does not conform to the six listed conditions, or the Board finds that a person who was issued a temporary license is not qualified to hold such license.

2.05: Penalties

~~(4)~~ Violations of M.G.L. c. 26, § 8G, and 212 CMR 2.00 may result in penalties including administrative costs, revocation or suspension of license or both. All administrative costs are subject to the discretion of the Board. The administrative costs may be assessed against the appraiser, the appraiser's employer, the insurer, or the repair shop.

An alleged violation of 212 CMR 2.00 by ~~an~~ **licensed** appraiser at the direction of an insurer may be reported to the Division of Insurance, which may impose applicable penalties against such an insurer.

2.06: Severability

If any provision of 212 CMR 2.00 or its application to any person or circumstances is held invalid, such invalidity shall not affect the validity of other provisions or applications of 212 CMR 2.00.

REGULATORY AUTHORITY

212 CMR 2.00: M.G.L. c. 26, § 8G.

Board Member Johnson suggested that the Board start with the four items listed in the email by the Division of Insurance which are of concern to the Division. The four items involved: (1) the Board's vote to eliminate the term "published manuals" or reference to them in the Board's Regulation; (2) the Board's vote to remove the term "Supervisory Inspection" from the Regulation; (3) the Board adopting language making insurance companies responsible for paying the retail price for all parts returned indicated on an appraisal and all costs for returning a non-conforming part to a supplier; and (4) removal of the "safe harbor language" from the Regulation relative to insurance company sponsored "Direct Payment Plans" which are not a conflict of interest under the Regulation. Board Member Johnson asserted that he had no problem with the 4 recommendations made by the Division of Insurance to A&F in 2016. Board Member Johnson said that prior to 1989, consumers who had damaged motor vehicles repaired were required to have a certified work claim form filled out, which certified that the repairs were in fact made a damaged motor vehicle, if the form was not filled out then the damaged motor vehicle was decreased in the value of the appraisal by the insurance company. In 1989 Direct Payment Plans came into effect under law, and insurance companies were allowed to establish contracts with auto body repairs shops that they could refer their customers to who would repair motor vehicles with direct payment for the cost of the repairs being made by insurance companies to these "referral shops." Board Member Starbard stated that the consumer still has the right to opt out of any Direct Payment program offered by insurance companies.

Board Member Johnson stated that at the Regulation uses the term "manuals" and that there is no such thing used anymore in the auto body repair industry. When they proposed the change to the Regulation that did so because the better term to be used is "database" as opposed to "manual."

Board Member Starbard asked Board Legal Counsel Michael Powers what was the response by the Division of Insurance to the Board's request that was made during the last Board meeting to explain the reasons the Division of Insurance objected to various proposed amendments. Mr. Powers responded that the General Counsel for the Division of Insurance, Christopher M. Joyce, replies that the reasons for the Division of Insurance objections are contained in the documents that were sent to A&F in 2016. Mr. Powers informed the Board if they reviewed the documents that were provided to all of the Members of the Board as the result of Board Member Johnson's public documents request in February 2021, the Division of Insurance explanation is fully contained therein. The following is the Division of Insurance Objections and reasons that were submitted to A&F in December of 2021:

...

Specifically, the Board proposes to make the following substantive changes to 212 CMR 2.00. 1) Require the use of private published repair manuals in regard to the appraisal and repair of damaged motor vehicles in Massachusetts. 2) Remove the definition of supervisory appraisal and the term supervisory reinspection from the regulation. 3) Make insurance companies responsible for paying the retail price for all parts indicated on an

appraisal and for returning any return parts to the supplier. 4) Remove the "safe harbor" language relative to direct payment plans approved by the Division pursuant to 211 CMR 123.00 from the regulation's provisions regarding referral of claimants to certain repair shops. 5) Reducing the timeframe for insurers to agree to certain supplemental appraisals. 6) Streamline the process for granting temporary appraiser licenses during emergencies. Upon receipt of the Board's proposed changes, the Division solicited comments from insurers to assure that the insurance industry had an opportunity to express its views in regard to the proposed changes prior to a recommendation being made to A&F. Comments were submitted to the Division by the Automobile Insurers Bureau of Massachusetts and the Mass Insurance Federation on November 4, 2016 and November 16, 2016 respectively. The Division has considered these comments in making its recommendation in regard to the proposed changes. Copies of the comments submitted are attached to this recommendation. The Division recommends approval of amended 212 CMR 2.00 without the following proposed changes being made: 1) requiring the use of privately published manuals; 2) removal of the term "supervisory reinspection"; 3) amendments relative to the payment of retail prices for parts and returning parts to suppliers; and 4) removing the "safe harbor" language relative to approved direct payment plans. The Division's objection to these proposed revisions is based primarily in the belief that the proposed changes go beyond the ADALB's statutory purview since the changes would primarily regulate activities of insurance companies rather than automobile damage appraisers. In addition, the Division also believes that some of the proposed changes would directly conflict with the Division's own regulations in regard to direct payment plans. If A&F is comfortable with our recommendation, the Division plans to advise the Board that amended 212 CMR 2.00 may be promulgated if the aforementioned changes are made...

Board Member Smith stated that the objection by the Division of Insurance has nothing to do with changing the word from "manual" to "database" and that manufacturers do not have "Warranty Repair Procedures". The objections made by the Division of Insurance is that the proposed changes would also delete the word "may" and states the appraiser "shall" use manufacturers warranty repair procedures and databases which is the reason for the objection by the Division of Insurance.

Board Member Johnson offered to remove the words "shall apply" and return to "may apply" as provided for in the current Regulation. Board Member Samantha Tracy stated that each shop has their own procedures. Board Member Starbard stated that he had a problem with removing the word "shall." Board Member Johnson stated that when an insurance company does not want to pay for the repair it behooves the parties to find compromise and move on from there and that there is no such thing as a "warranty repair."

Chairman Donovan invited input from members of the public and Christopher Stark, Executive Director of the Massachusetts Insurance Federation, stated that his organization was opposed to the use of the word "shall" for any recommend repair procedures" and that there should not be any mandate as to the manner of repairing a damaged motor vehicle.

Lucky Papageorg asserted that when an auto body shop does not follow a manufacturer's recommended repair procedures when repairing motor vehicles, then they face substantial liability issues. He stated that no one wants the costs to repair damaged motor vehicles to go through the roof, the Board governs the licensing of appraisers, and consumers are protected when their cars are repaired properly.

Board Member Johnson asserted that at the end of the day whether one uses the word “shall” or “may” the repair is up to the auto body shop and the shops are on the hook for liability. Board Member Johnson made a motion to have the Regulation maintain the word “may” and not use the word “shall” in the proposed amendment to the Regulation, the motion was seconded by Board Member Smith, and the motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Board Member Smith inquired whether the motion covered just item number 1 or all 4 items that objections were made by the Division of Insurance. Chairman Donovan stated that he would accept a motion to accept all four recommendations made by the Division of Insurance to the proposed amendments made by the Board in 2016.

Board Member Peter Smith made a motion to accept the recommendations made to items 2, 3, and 4, by the Division of Insurance to the proposed amendments made by the Board in 2016 and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Board Member Samantha Tracy raised issues about some amendments that she would like a discussion by the Board, specifically Section 2.02 Licensing Requirements and Standards for Appraisers (1) Requirement that License Be Obtained and Displayed. Board Member Tracy Question the purpose of the addition of the word “determine” to this section. Specifically, “No person in Massachusetts shall appraise, estimate or determine damages to motor vehicles... “. She felt that the word “determine” is a broader word, which may include an implication of compensability or liability, which is outside the purview of the appraiser. Ultimately, the agreement/contract and the process between the insurer and the insured would dictate the outcome.

She was concerned with the use of “determine” added to the Regulation and felt to use that word in the Regulation would create an issue about liability and it is not the role of an appraiser to determine the liability of anyone. She would be satisfied is the word was not used in the part of the Regulation.

Board Member Johnson stated that in his prior experience he was called upon to make a determination as to what was “old damage” and “new damage” as a motor vehicle damage appraiser, something that is called for in the Regulation and the use of the word “determine” is used throughout the Regulation.

In addition to that language, Board Member Tracy asserted that an appraiser should not be having an affirmative conversation about “conflict of interest” and felt that the added language was not appropriate, and it is not within the Board’s authority to insert that type of language in

the Regulation. Board Member Samantha Tracy specifically referred to the new language inserted at the bottom portion of 2.02 (7) relative to “conflict of interest.” The imposition of an affirmative obligation for the appraiser to advise a customer of their “right to have their vehicle repaired at any repair shop”. This duty steps outside the appraiser’s role in appraising the damage to a vehicle and is more aptly an obligation/duty placed upon the insurer/adjuster. Board Member Tracy questioned the need of this language and the authority of the board to include it. The board’s authority pertains to the licensing and performance of appraisers, and does not extend unencumbered to insurance carriers

Board Member Peter Smith asserted that we need to finally understand where the Board stands regarding this new proposed language.

Board Member Johnson made a motion to strike the word “determine” from 2.02(1) of the proposed amendments to the Regulation and removing the language about reminding consumers that they have a right to have repairs made at any repair shop. The motion was seconded by Board Member Peter Smith and passed by a vote of: 3-0 with Board Member Starbard and Chairman Donovan abstaining.

Board Member Samantha Tracy raised an issue of the proposed change for the threshold for the amount of damage that would require a licensed appraiser to appraise damage to a motor vehicle. The relevant part of the Regulation is 2.04 “Procedures for the Conduct of Appraisals” and Intensified Appraisals (1) Conduct of Appraisals (a) Assignment of an Appraiser.

Board Member Tracy asserted that, the proposed changes constitute a substantive reduction in the threshold by which an insurer is required to assign an appraiser, from \$1,500 net of deductible to \$1,500 gross physical damage. The threshold was changed from \$500 to \$1,500 in 2008, we are now 14 years beyond that adjustment, and given the rising cost to repair a vehicle, it would appear rather than reducing this threshold, that an increase would be appropriate. This would be consistent with changes made in Section 57A of Chapter 6C of MGL, wherein the monetary thresholds for “minor” and “major” at-fault accidents were increased. As a point of clarity, this section pertains solely to the obligation of the insurer to assign an appraiser and should not be comingled or confused this with the relevant language pertaining to “personal inspection.”

Board Member Johnson made a motion to amend the proposed language by deleting the current proposed amendment and replacing it with “\$2,000 gross damage” for the assignment of an appraiser. The motion was seconded by Board Member Peter Smith and the motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Board Member Peter Smith stated that he had two additional issues starting with 212 CMR 2.01 subsection 4, the definitions repair shop appraiser. A repair shop appraiser is already defined under Independent Appraiser. This new definition creates ambiguity around appraisers who are employed at repair shops, who would now defined twice in the regulation, with several references in the regulation to the role of “independent appraiser”, which causes further confusion.

Board Member Johnson stated that he had no problem with removing the term “repair shop appraiser” from the definitions section in the proposed amendments. Board Member Johnson made a motion to remove the definition “repair shop appraiser” from the definition section of the proposed amendments to the Regulation, the motion was seconded by Board Member Richard Starbard and the motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Board Member Smith stated that there was a minor typo in the proposed amendments and would like to correct the minor typo in the proposed “Staff Appraiser” definition: “Staff Appraiser – means an appraiser who is an employee of an insurer and whose job duties include the making of appraisals for his or her ~~employee~~, strike the word employee and add the word “employer.”

A motion was made by Board Member Peter Smith to strike the word “employee” and add the word “employer to the definition of “Staff Appraiser” of the proposed amendments to the Regulation and the motion was seconded by Board Member Johnson, the motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Next Meeting:

Board Member Starbard made a motion for the next meeting to be held in Boston at 1000 Washinton Street, the motion was seconded by Board Member Smith and was adopted by a vote of: 4-0 with Chairman Donovan abstaining.

Motion to adjourn:

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