



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
<http://www.mass.gov/doi>

CHARLES D. BAKER
GOVERNOR

GILBERT W. COX JR.
CHAIRMAN

KARYN E. POLITO
LIEUTENANT GOVERNOR

JOSEPH COYNE
RICHARD STARBAR
WILLIAM E. JOHNSON
LYLE M. PARE

Minutes of Meeting of the Board on April 28, 2015, Approved by the Board on June 2, 2015; Motion of Board Member Joseph Coyne, Second by Chairman Cox, with an Amendment by Board Member William Johnson to Approve the Minutes as Presented, Including the Minutes of the Executive Session. The Motion Passed by a Vote of: 5-0.

April 28, 2015 Minutes of Board Meeting
Automobile Damage Appraiser Licensing Board Meeting Held at
Division of Insurance, 1000 Washington Street, Boston, Massachusetts

Members Present:

Gilbert Cox, Chairman
David Krupa
Joseph Coyne
Carl Garcia
Thomas McClements

Attending to the Board:

Michael D. Powers, Counsel to the Board
Steven Zavackis for the Division of Insurance, assigned to the Office of the General Counsel, took the minutes of the Board meeting.

Proceedings recorded by:

Jillian Zwien of the Alliance of Automotive Service Providers of Massachusetts (Audio/Video).

Review of minutes:

Review of the minutes from the meetings held on February 24, 2015 and March 10, 2015 was conducted by the Board.

After a brief discussion among the members of the Board about the contents of the minutes, a motion was made by Board Member David Krupa, seconded by Board Member Joseph Coyne to approve the minutes of the Board Meeting held on February 24, 2015 and March 10, 2015. The motion passed by a vote of: 4-0. Chairman Cox abstained.

Report on the Part-II examination for motor vehicle damage appraiser license held on April 7, 2015:

Board Member Carl Garcia reported that the examination was attended by about 45 people taking the examination, approximately 18 people failed the examination. Board Member Garcia reported that he was displeased with the results of the examination. He said that he hopes the test results will improve in the future, and felt it was one of the easiest tests that was given in some time. The examinees who failed the test did so because they provided an opinion on the damage and did not follow the manual. Part of the problem that Board Member Garcia saw was that many people who took the examination did not have sufficient time performing an internship with an auto body shop. Many of the examinees simply took the six week preparatory courses that are offered without learning the application by working at an auto body shop. Mr. Garcia held a pre-examination review session, which was open to all of the test takers. Of those individuals who participated at Board Member Garcia's pre-examination review only 2 failed the test, but sixteen people didn't show up for the review. Mr. Garcia said that he will hold another pre-test review at his auto body shop before the June test, and will reaffirm that the test is aimed at the manual and its practical application on the test for writing the appraisals.

Date of next examination:

Mr. Garcia reported that the next examination would take place at the end of June of 2015.

Discussion of amending the ADALB's regulation, 212 CMR 2.00 et seq.:

Discussion of amending the ADALB's regulation, 212 CMR 2.00 et seq. and posting of Special Public Meeting of the Board to obtain input from interested parties and those who may be affected by any amendments to the Board's regulation.

Chairman Cox announced that before we proceed any further, the Board Members should meet with the new Insurance Commissioner and asked the Legal Counsel to the Board Michael D. Powers if a new Commissioner had been appointed. Mr. Powers informed Chairman Cox that Daniel R. Judson had been appointed as the Commissioner for the Division of Insurance, and that his first day was the day before. Chairman Cox asked if Legal Counsel Powers could set-up a meeting with the new Commissioner to meet with the members of the Board. Mr. Powers informed Chairman Cox that he had already spoken with Commissioner Judson and he agreed to meet with the Board Members. Mr. Powers suggested that the best manner to schedule such a meeting was for the Board to set the date of the next Board meeting, and he would contact the Commissioner's office and try to get a scheduled meeting with the Commissioner on the date of the next Board meeting after it concluded.

Mark Molloy a lobbyist for AASP asked to speak to the Board, and Chairman Cox granted permission. Mr. Molloy advised that any meeting with the new Insurance Commissioner and the members of the Board to discuss an issue that the Board would be voting on would violate the Open Meeting Law.

Board Legal Counsel Michael D. Powers explained that the Board could meet with the Commissioner at a social meeting and that the Open Meeting Law precludes public boards from meeting privately to discuss matters that they are deliberating upon. Because the intent of the meeting with recently appointed Commissioner Judson is purely a social one, the Open Meeting Law would not be implicated.

Executive Session:

Chairman Cox called for a Roll-Call of the Board Members to go into the executive session to discuss potential litigation. The Board also had before it several complaints that had been filed against licensed motor vehicle damage appraisers and needed to discuss whether the allegations in the complaints supported a prima facie case against the licensees before the complaints could proceed to the stage of notification to the licensed motor vehicle damage appraiser that the Board's regulation may have been violated, with the subsequent scheduling of a hearing.

Chairman Cox requested a consensus of the Board for the next meeting and it was agreed that the next scheduled meeting would be held on June 2, 2015, at 9:30 AM. Chairman Cox called for a vote to go into the executive session, Board Member Coyne made the motion and seconded by Board Member Krupa. The vote passed by a vote of: 4-0, Chairman Cox abstained.

I. Complaints filed against licensees:

Complaint 2015-1:

A discussion was held among the Board Members about the sufficiency of the facts to support a prima facie violation of the Board's regulation. After the complaint was thoroughly reviewed and discussed among the Board Members a consensus was that the complainant had failed to establish that the Board's regulation had been violated. This is so because the documentation submitted with the complaint established that the parties were in dispute over various costs for repairing the damaged motor vehicle. After a series of discussions and communications between the parties, a final price for the repair of the motor vehicle was accepted by the auto body shop and was paid by the insurance company.

Board Member Joseph Coyne asserted that as long as the appraiser negotiated with the other party then he met the requirements of the regulation.

Board Member McClements noted that this complaint was a tough call. The appraiser representing the insurance company is precluded from using a formula to determine the cost of the damage, while at the same time the other appraiser cannot refuse to negotiate on the cost of the appraised damage.

Board Member David Krupa exclaimed that the documentation that was submitted in support of the complaint indicated that the appraiser complained against had indeed negotiated with the other party, and that the standard Massachusetts private passenger automobile insurance policy provides for a dispute resolution process under these circumstances. [Board Member Krupa was referring to the General Provisions and Exclusions section of the policy, Part 26 of the Massachusetts standard private passenger automobile insurance policy which provides in relevant part, "Sometimes there may be a disagreement as to the amount of money we owe for losses or damage to an auto. If so, Massachusetts law provides for a method of settling the disagreement. Either you or we can, within 60 days after you file your proof of loss, demand in writing that appraisers be selected. The appraisers must then follow a procedure set by law to establish the amount of damage. Their decision will be binding on you and us. You and we must share the cost of the appraisal."]. Mr. Krupa sagaciously opined that under these circumstances the ADALB's regulations had been complied with, and the parties to the dispute would be well

advised to resolve their disagreement in the proper forum provided for under the standard private passenger auto insurance policy.

Based upon the facts asserted in the complaint, the Board determined that the applicable provisions of its regulation, 212 CMR 2.00 et seq., were not violated. A motion was made by Board Member Krupa to dismiss the complaint and it was seconded by Board Member Coyne. The motion passed by a vote of: 4-0, with Chairman Cox abstaining.

Complaints filed by the Alliance of Automotive Service Providers dated July 28, 2014:

- a) Complaint 2014-9;
- b) Complaint 2014-10;
- c) Complaint 2014-11;
- d) Complaint 2014-12;
- e) Complaint 2014-13.

At the Board meeting that was held on December 3, 2014, the Board was provided with correspondence from Geico Insurance Company (Geico) sent to Robert A. Whitney, Deputy Commissioner and General Counsel for the Division of Insurance, providing additional details regarding the role of Geico employees who are licensed motor vehicle damage appraisers who perform appraisals at auto body repair shops that are part of Geico's ARX program.

The Legal Counsel to the Board, Michael D. Powers, had informed the Board that representatives of Geico responded to the issue about assigning motor vehicle damage appraisers to auto body shops on a full-time basis to conduct appraisals of damaged motor vehicles as alleged in the above-referenced complaints. In a letter dated September 22, 2014, which was sent to the Mr. Whitney, Geico responded to the complaints and elaborated on the manner in which its licensed auto damage appraisers conducted appraisals and asserted that its employees are not operating, "a Drive-in Appraisal Service for an insurer' within the meaning of 212 CMR 2.02(7)."

At the December 3, 2014, meeting a motion had been made by Board Member Krupa to:

Send a letter to Geico's representative accepting Geico's letter as satisfying the requirements of 212 CMR 2.00 et seq., and requesting that Geico communicate to the appraisers named in the complaints about the agreement between Geico and the Division of Insurance. Also, notifying Geico that at this time the Board is still considering the complaints and requesting Geico confirm that it had notified the named appraisers of the agreement, and to bring the matter to a conclusion at the next Board meeting.

At that meeting, Board Member Coyne seconded that motion and the motion passed by a vote of: 3-0, with Board Member Garcia abstaining from the deliberations and vote, and Chairman Cox abstained.

By a letter dated February 13, 2015, Michael D. Powers, Legal Counsel to the ADALB, wrote to John A. Taylor, Senior Counsel for Geico Insurance Company, informing him of the Board's vote taken at the December 3, 2014, meeting. By letter dated February 20, 2015, Samantha R. Freedman, Legislative Attorney for Geico Insurance Company, wrote to Michael D. Powers informing him that the motor vehicle insurance appraisers had been so notified about the proper manner of conducting appraisals of damage motor vehicles, as instructed by the Board. In relevant part Attorney Freedman wrote, "This letter confirms that the content of the letter written to Robert A. Whitney, General Counsel for the Division of Insurance, has been communicated to the following licensed appraisers: Joseph Gatchell; Corey Plummer; Patrick Derov; Kevin O'Brien and Don C. Gracie. The letter reflects the role of all GEICO employees who perform appraisals at repair shops that are part of GEICO's ARX program in Massachusetts. Thus, the listed appraisers have complied and will continue to comply with the appraisal process as explained in the letter."

Copies of these two letters had been provided to all the Board Members.

A motion had been made at the February 24th meeting to table the matter by Board Member Coyne, seconded by Chairman Cox the vote passed by a vote of: 3-0, Board Member Garcia did not participate in any of the discussions about the matter and he and Chairman Cox abstained.

Board Member David Krupa reflected that in light of the letters sent to Geico Insurance Company and the responses that were received from them, the matter should be dismissed. Mr. Krupa made a motion to dismiss the complaints, the motion was seconded by Board Member Coyne and the vote passed by a vote of: 3-0, Chairman Cox abstained. Board Member Garcia did not participate in any of the discussions about the matter and he also abstained.

Legal Counsel to the Board, Michael D. Powers, provided copies of a letter that had been sent to him by a formerly licensed motor vehicle damage appraiser seeking to meet with the Board at its executive session. The Board Members decided to take time to review the matter, and discuss it a subsequent executive session of the Board.

Adjournment:

A motion to adjourn the meeting was made by Board Member Coyne, a second was provided by Board Member Krupa and the motion carried by a vote of: 4-0, Chairman Cox abstained. Whereupon, the Board's business was concluded.

The form of these minutes comport with the requirements of M.G.L. c. 30A, §22(a).