



**THE COMMONWEALTH OF MASSACHUSETTS
AUTO DAMAGE APPRAISER LICENSING BOARD**

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GOVERNOR

GILBERT W. COX, JR.
CHAIRMAN

CARL GARCIA
DAVID KRUPA, CPCU
JOSEPH COYNE
THOMAS MCCLEMENTS

**Minutes of Meeting of the Board on April 29, 2014, Approved the Board on May 20, 2014
by a Vote of 4-0**

April 29, 2014 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
Carl Garcia
David Krupa, CPCU
Joseph Coyne
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 meeting held on February 25, 2014, was conducted by the Board.

During the discussion of the approval of the minutes, Board Member McClements stated that based on transparency he wished to elaborate on the position he took at the February 25, 2014, Board meeting about setting licensing fees for motor vehicle damage appraisals. Board Member McClements stated that he intended to raise the issue as to discuss setting a ceiling on the fees that licensed motor vehicle damage appraisers could charge.

An item on the Board's agenda for the meeting read, "Discussion of setting fees for Appraisals conducted by Motor Vehicle Damage Appraisers licensed by the Board."

A motion was made by Chairman Gilbert Cox Jr. and seconded by Board Member Carl Garcia to approve the minutes of the Board Meeting held on February 25, 2014. The motion passed by a vote of: 5-0.

Report on License Examination:

Board Member Garcia reported the results of the April 1, 2014, Part II examination for Motor Vehicle Damage Appraisers License were: 44 people took the examination; 25 passed the test; 19 failed. Mr. Garcia explained that the day before the test he provides a review of the examination for any examinee and Jillian Zwien, Executive Director, of the Alliance of Automobile Service Providers of Massachusetts also provides a review for any examinee who wishes to take advantage of the opportunity. Mr. Garcia expressed his displeasure in these results, in particular he felt displeased because so many individuals failed the test and felt that the test was relatively easy.

Mr. Garcia reported that the next Part II examination is scheduled for June 17, 2014, and the day before the test he will provide a review for any interested applicants at his auto-body repair shop.

Chairman Cox asked Mr. Garcia if there was any specific reason for the high failure rate on the April 1, 2014, examination.

Mr. Garcia stated that he was unaware of any reason and expected to receive telephone calls from several of the unsuccessful applicants, as he has in the past, and will inquire about the potential difficulties they may have experienced when taking the test.

Chairman Cox stated that the most recent list of licensed motor vehicle damage appraisers, he reviewed, indicated that there were about 5,200 licensed motor vehicle damage appraisers in Massachusetts.

Mr. Garcia responded that he and Mr. Robert Hunter, Supervisor of Producer Licensing for the Division of Insurance, have been reviewing the list to determine whether there are individuals who are inactive and have been reducing the list because of such inactivity. The inactivity can be attributed to a variety of reasons. For example, several individuals on the list have not paid to renew their licenses, may have retired, or are deceased. The review is on-going.

Next Part II Exam:

Board Member Garcia reported that the next Part II examination will be held on June 17, 2014, in Taunton. As in the past, there will be a review provided by Jillian Zwien and Board Member Garcia before the examination is held, and examinees will be offered the opportunity to participate at it.

Discussion of Amending the ADALB's Regulation:

At the Board meeting that was held on February 25, 2014, there was a lengthy discussion about potentially amending the Auto Damage Appraiser Licensing Board's regulation 212 CMR 2.00 et seq., and Chairman Cox set several items on Board's agenda about amending the regulation for the April 29, 2014, meeting including the following one:

Potentially amending 212CMR 2.00 to make it consistent with 211 CMR 123.04 "Procedure for Approval of Direct Payment Plans."

Board Member David Krupa informed Chairman Cox that he was the one who raised this issue at the last Board meeting and after reviewing the law and reading the regulation he felt satisfied with the regulation as currently written.

Board Member McClements stated that he had a concern whether under the Direct Payment Plans' regulation [211 CMR 123.00] the Auto Damage Appraisers Licensing Board would have jurisdiction over a licensed motor vehicle damage appraiser who committed misconduct in violation of the ADALB's regulation [212 CMR 2.00 et seq.]. Mr. McClements asserted that he would support eliminating the last sentence contained in 212 CMR 2.04(1)(c), "[T]he provisions of 212 CMR 2.04[1](c) shall not apply to any approved direct payment plan pursuant to 211 CMR 123.00."

Board Member Krupa elaborated that the last sentence was inserted several years ago to allow licensed motor vehicle damage appraisers who work for insurance companies to have a discussion with claimants. Without the cited language, an insurance company's appraisers would not be able to have a discussion with claimants and, thereby, expeditiously resolve consumers' claims.

Mr. Krupa asserted that, if there were cases wherein there was flagrant abuse of a claimant by a licensed motor vehicle damage appraiser, the Board would have jurisdiction over such misconduct.

Board Member Garcia said that the enabling legislation is M.G.L. c. 26, §8G and no plan can be in conflict with the governing law. He emphasized that, 211 CMR 123.00 is not a get out of jail free card. The licensed motor vehicle damage appraiser must still follow the rules and regulations. Mr. Garcia expounded that Chapter 26, §8G is the law and not a regulation, and pointed out that the statute is always superior to a regulation.

Mr. McClements said he still had some concern.

Chairman Cox opined that, instead of deleting the sentence would it may be more efficacious to amend the sentence by adding language that would clarify it. He suggested that the sentence could potentially be clarified by adding words to the effect that appraisers must follow the rules and regulations, and the ADALB has jurisdiction to determine whether all the rules and regulations are complied with.

Board Member Krupa said that part of the problem with this discussion is that the Board should work backward by first determining the question: What is the conduct of appraisers that is problematic?

Board Member Coyne informed the Board that the last sentence, of that section of the regulation, was inserted in the 1990s for consumers and was placed there to provide consumers with an option. Mr. Coyne felt that the discussion was confusing the Direct Payment Plan with Direct Repair Plan.

Mr. Coyne pointed out to the Board that consumers are provided with a list, from insurance companies, of auto body repair shops within a geographical area that consumers may go to for repairing their motor vehicles, the geographical areas are broken up into Massachusetts counties.

Board Member Garcia said that when consumers call insurance companies often times they don't have an auto body repair shop that they do business with. Very often they inform the insurance companies' representatives that they don't know where to get their cars fixed. The insurance company will then direct the consumer to a Drive-in Claims Center. Today when a consumer calls an insurance company they are calling a 1-800 number and they are talking on the telephone to a customer service representative, and not a licensed motor vehicle damage appraiser.

Board Member Coyne asserted that, whatever else the insurance company provides to a consumer, such as a county list of auto body repair shops located within the geographical area wherein the consumer lives, the list also includes referral repair shops for insurance companies. As part of his business, conducting licensed appraisals, he does not refer a consumer to anyone to get his car repaired.

Mr. Garcia informed the Board that some insurance companies will still send a list of auto body repair shops to a customer after the customer has selected Mr. Garcia's auto body shop to do the repair. Because of changing times, today consumers call the insurance company's 1-800 number to report the accident and obtain information from insurance companies.

Mr. McClements stated that based on Mr. Garcia's comments and Mr. Krupa's comments, he was satisfied that the ADALB has authority over appraisers who commit misconduct under Direct Payment Plans.

Mr. Coyne reaffirmed the authority of the Board to regulate all licensed motor vehicle damage appraisers.

Chairman Cox addressed the next item on the Board's agenda, which was the following:

Potentially amending 212 CMR 2.04 "Procedure for the Conduct of Appraisals and Intensified Appraisals." Increasing the current amount from \$1,500 to \$4,000 or less for damage to a motor vehicle.

Board Member McClements asked how this item came to be placed on the Board's agenda and questioned whether the Division of Insurance had placed the item on the Board's agenda.

Legal Counsel to the Board, Michael D. Powers, explained that the item was placed on the agenda because Board Member Garcia had raised the issue at the previous Board meeting that was held in February, and Chairman Cox had assigned it as an agenda item.

Board Member Garcia responded that he had requested the item for the agenda and the reason he suggested the increase in the amount from \$1,500 to \$4,000, was because of changing times and the increase in the costs for repairing motor vehicles and believes the threshold amount should be raised to expedite the process of repairing a motor vehicle. Mr. Garcia elaborated that he had chosen the higher \$4,000 figure based on the cost of inflation of parts and other costs to repair a motor vehicle. He asserted that, the figure could have been set higher, based on his experience, but he chose the \$4,000 figure as a starting point.

Board Member Coyne agreed with Board Member Garcia that the costs of repairing a motor vehicle had increased. Mr. Coyne asserted that the average auto repair is in the \$2,500 to \$3,000 range. He pointed out that the cost of repairing a windshield could range from a low of \$200 to as high as \$800.

Chairman Cox asked if the next item listed on the Board's agenda was related to this item.

Board Member Krupa responded it was not.

Chairman Cox then addressed the next item on the Board's agenda which was the following:

Clarifying the use and manner of conducting appraisals through the use of video technology, photography, or other media consistent with the requirement that "The appraiser shall personally inspect the damaged motor vehicle...." 212 CMR 2.04(1)(d).

Chairman Cox stated that last year the Commissioner of the Division of Insurance approved two Direct Payment Plans and the General Counsel for the Division of Insurance, Robert Whitney, wrote to the Board that the Direct Payment Plans conformed to the law.

Mr. Garcia questioned whether General Counsel Whitney's letter to the Board would require a change to the Board's regulation to make it consistent with the letter. Mr. Garcia said that if there are any questions about an estimate of motor vehicle damage that is sent to an insurance company, the insurance company's appraiser should go out and personally examine the motor vehicle.

Mr. McClements stated that the Division of Insurance has given its position about these plans, and that estimates are being provided and not appraisals. Mr. McClements stated that the Board should define what an estimate is.

Board Member Krupa asserted that part of the Metropolitan Property and Casualty Insurance Company's (MetLife) Direct Payment Plan allows for licensed motor vehicle damage appraisers in the back-office to conduct appraisals based on a video review of the damage. The Division of Insurance has said that such a review satisfies the requirement of a personal inspection by the appraiser.

Chairman Cox suggested an advisory ruling should be issued clarifying the regulation, and requested the Board's Legal Counsel, Michael Powers, to draft an advisory ruling on the topic. Mr. Powers responded that he would begin drafting one for the Board's approval.

Board Member McClements elaborated that his concern is whether a video of the motor vehicle damage satisfied the requirement contained in M.G.L. c. 26, §8G. Mr. McClements referenced the fourth paragraph from the end of the statute which reads "The board shall promulgate regulations for all drive-in claim and appraisal facilities to ensure that they all possess equipment to properly and effectively appraise motor vehicle damage losses or claims. No insurance company or employee, agent or insurance agency or representative thereof shall coerce or use any tactics the purpose of which is to prevent insureds or claimants from seeking damage reports or repairs from their own repair shop rather than utilizing a company appraisal drive-in facility."

Board Member Coyne stated that there is an issue between the use of video equipment and still-photography. He asserted that he has been in this business since 1978 and the standard rule was the number one sin in the appraisal business is to do an appraisal only from photographs. Mr. Coyne said that, he truthfully feels that a live video stream and a person observing the damage, is different from an appraiser looking at still-photographs which is not a personal inspection.

Mr. McClements stated that an appraisal is clearly required by the regulation, going around a car physically inspecting from bumper to bumper.

Mr. Coyne concluded that an estimate is the same as an appraisal; both are an opinion of damage.

Chairman Cox asked Mr. Garcia and Mr. Krupa work to work together to draft something that will address this issue. Mr. Garcia and Mr. Krupa agreed that they would.

Chairman Cox stated item D on the agenda was redundant and appear to be the same as the first item which had already been discussed. Chairman Cox then addressed the following item that was on the Board's agenda:

Providing for a specific time period from which an assignment is made by an insurance company to a motor vehicle repair shop and the time in which an appraiser must arrive at the motor vehicle repair shop to conduct an appraisal of a damaged motor vehicle.

Board Member McClements said that the time frames in the current regulation for conducting appraisals are inadequate. Mr. McClements gave an example of a claim arising on a Saturday, and, under the regulation, the assignment of a licensed appraiser calls for two business days from the receipt of the claim and does not have to occur until the following Tuesday. After the appraiser is assigned by an insurance company, the company has an additional five business days, from the day of assignment, to make the appraisal, which could lead up to the following Wednesday of the next week. Such a long delay would affect the rental period that a consumer has, which is generally 30 days from the accident.

Board Member Coyne said that in his experience, as an independent appraiser, he contacts the claimant the same day he is notified of the claim. He does not delay processing the appraisal because time is money, and the quicker that his company moves claims, the faster the company receives payments. Mr. Coyne also said that CAR [Commonwealth Automobile Reinsurers] regulates how quickly an insurance company must pay a claim to an insured.

Board Member McClements replied that, added to the initial times for an appraisal are the times to conduct supplemental appraisals. He has no problem with the initial requirement of two business days to assign an appraiser, but the five days on top of that.

After further discussion, Chairman Cox stated that there appeared to be a consensus of the Board Members that there is no need to change the language of the regulation providing for a completed appraisal within five business days of the assignment of the appraisal.

Board Member Garcia said that most customers come to his auto body repair shop and he writes the appraisal for the customer, not the insurance company. Mr. Garcia said that 212 CMR 2.02 (7) states, "Further, it shall be a conflict of interest for any 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..." Mr. Garcia referred to MetLife's Direct Payment Plan, and posited the hypothetical question: The man who works for the repair shop under the plan, does he work for the consumer or the insurance company? Mr. Garcia answered the question by stating, the man who works for the repair shop should be working for the consumer and not the insurance company.

Mr. McClements stated that, because the Division of Insurance has provided a decision about Direct Payment Plans and asserted that an estimate is not an appraisal, the Board needs to determine what an estimate is.

Board Member Krupa read from part of the letter that General Counsel Robert Whitney wrote to Chairman Cox about the Direct Payment Plans on January 21, 2013, and concluded by saying he agreed with General Counsel Whitney's interpretation of the regulation, and felt that there was no need to change the regulation.

Mr. Coyne directed the Board to 212 CMR 2.00 and stated that the regulation only addresses an appraisal, and the regulation says nothing about an estimate.

Mr. McClements said that his biggest concern is that all appraisers are aware of the difference between an estimate and an appraisal.

Mr. Coyne elaborated that no where in the “Conflict of Interest” language, contained in the regulation, does it state an auto body repair shop prepares an appraisal. If an insurance company assigns an auto body shop, the auto body shop cannot represent the insurance company and the consumer at the same time; that is a conflict of interest. The auto body repair shop owner can appraise a vehicle whenever the consumer drives into the auto body shop.

Chairman Cox posed the question: Do we resolve anything by changing the language from estimate to appraisal?

Board Member Krupa pointed out that the industry uses auto repair manuals called “Estimating Guides” and does not entitle them “Appraisal Guides.”

Mr. Garcia asserted that no auto body repair shop repairing a consumer’s auto, should ever write an appraisal for an insurance company; that would be a conflict of interest.

Chairman Cox asked Board Member McClements to draft something that would clarify his position about estimates.

Chairman Cox asked Legal Counsel, Michael Powers, about the process of amending the Board’s regulation. Mr. Powers summarized the procedure by explaining that, before a Board amends its regulation a special public hearing must be posted in the newspaper and all stakeholders must be notified. The hearing is required by law and it is intended to solicit information from those who would be impacted by an amendment to a regulation. It is also required to determine whether any proposed amendments may have an adverse affect on small businesses in Massachusetts. At that meeting interested members of the general public can testify and provide written positions but are not allowed to ask questions of any Board members who might attend.

After this initial public meeting is held, draft amendments are written, if any, and submitted for review through the Division of Insurance, Office of Consumer Affairs and Business Regulation, the Secretary of Housing and Economic Development, the governor’s chief legal counsel, and pursuant to an executive order of the governor, final review must be made by the Secretary of Administration and Finance. This process is required by an Executive Order of the governor [Executive Order 485]. Once final approval is given, the amended regulation is sent back to the Board and a special meeting is called to vote of the amendments, with an additional comment period and time frames that must be met before the regulation is filed with the Office of the State Secretary.

A member of the executive team for the Alliance of Auto Service Providers of Massachusetts (AASP), Peter D’Agostino, requested to speak with the Board. Chairman Cox allowed the person to speak. Mr. D’Agostino said that he would like to submit appropriate comments to the Board and had a question about the Board’s authority to oversee the conduct of employees working for insurance companies.

Board Member Krupa spoke about a memorandum from former Legal Counsel to the Board, Robert Kelly, which advised that there was no regulatory or statutory authority that allows the ADALB to exercise jurisdiction of a complaint brought against a person working for an insurance company who is not a licensed motor vehicle damage appraiser.

Chairman Cox informed the representative of AASP that the Board only has jurisdiction to oversee the conduct of licensed motor vehicle damage appraisers, and did not have jurisdiction over other people who were employed by insurance companies.

Mr. Garcia stated that if a complaint comes to the Board that passes legal muster, after being reviewed by the Division of Insurance's legal office, the Board will act on it.

Date for Next Meeting:

The Board Members agreed to set the date of the next meeting for May 20, 2014 at 9:30AM.

Executive Session:

A motion was made by Mr. Garcia to enter an executive session to discuss the reputation and character of pending applicants for the part II examination for Motor Vehicle Damage Appraisers, the motion was seconded by Board Member Coyne. Roll Call vote: 5-0 in favor.

There was one applicant who indicated that he had a criminal conviction on his record and spoke with the Board. After the applicant answered several questions about his conviction and his background the Board was satisfied with the applicant's response to the questions and approved him to take the Part II examination.

After the conclusion of the discussion, Chairman Cox called for votes on the motion. Mr. Garcia moved that the applicant be allowed to take the Part II examination. The motion was seconded by Mr. McClements and voted: 5-0.

There were two applicants who had indicated that they had criminal convictions on their records but did not appear at the Board meeting. Chairman Cox moved that the applications be denied without prejudice. The motion was seconded by Mr. Garcia and voted: 5-0.

Adjournment:

Chairman Cox moved to adjourn the meeting. The motion was seconded by Mr. Garcia and passed by a vote of: 5-0, whereupon the Board's business was concluded.

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