



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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CHARLES D. BAKER
GOVERNOR

GILBERT W. COX JR.
CHAIRMAN

KARYN E. POLITO
LIEUTENANT GOVERNOR

Joseph Coyne
Richard Starbard
William Johnson
Lyle Pare

Minutes of Meeting of the Board on August 25, 2015, Approved by the Board on September 29, 2015; Motion of Board Member William Johnson Second by Board Member Richard Starbard. The Motion Passed by a Vote of: 4-0, Chairman Cox Abstained.

August 25, 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
Joseph Coyne
Richard Starbard
William Johnson
Lyle Pare

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:

The meeting was called to order by Chairman Cox and he requested a motion to approve the minutes of the Board meeting held on July 21, 2015. A motion was made by Board Member William Johnson to approve the minutes of the Board meeting held on July 21, 2015, as submitted and seconded by Board Member Lyle Pare. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Report on the Part-II examination for motor vehicle damage appraiser license scheduled for September of 2015:

Board Member Richard Starbard reported that he had not secured a place to hold the Part-II examination for motor vehicle damage appraiser license scheduled for September 2015. Mr. Starbard reported that he was working in conjunction with Mr. Thomas Ricci and attempting to schedule the examination at a location in the central part of Massachusetts, at Assabet Valley

Regional Technical High School. He will be in contact with Mr. Steven Zavackis, Secretary to the ADALB, once the location has been booked and a firm date is established so that the Division of Insurance licensing section can send out proper notice to the applicants.

Mr. Zavackis informed the Board that there were about 50 people who had taken applications for the Part-II examination, and the earlier that the Division of Insurance Licensing Unit can be provided with the date and location of the examination the better it would be to provide proper notice to applicants.

Advisory Ruling 2015-01:

A discussion among the Board Members was conducted about issuing an Advisory Ruling about the use of junkyard parts or used parts for the repair of the “suspension system” of a damaged motor vehicle, and whether requiring the use of such parts in an appraisal estimate of damage would impair the operational safety of a motor vehicle in violation of 212 CMR 2.04(e) and 211 CMR 133.04(1)(a).

Board member William Johnson had drafted language for a proposed Advisory Ruling and distributed it to the other Board Members. Board Member Starbard stated that the issue arose out of two recent complaints that had been filed against licensed appraisers working for an insurance company. This company’s insurance appraisers were only approving payment for used or junkyard parts for the repair of damaged motor vehicle suspension systems. Board Member Johnson made a motion, which was seconded by Board Member Starbard, for the following proposed language for an Advisory Ruling of the ADALB:

The Auto Damage Appraiser Licensing Board (ADALB) has passed a motion agreeing that an appraisal conducted by a licensed appraiser needs to follow 212 CMR 2.04 (e) which states in part “The appraiser shall determine which parts are to be used in the repair process in accordance with 211 CMR 133.00. 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.” 212 CMR 2.04 (e) also states “The appraisers representing the 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” As such all costs associated with the appraisal shall be negotiated.

One of the items referenced in 212 CMR 2.04 (e) is parts, the ADALB also recognizes the use of used parts is allowed as referenced in 211 133.04 (2). The ADALB wants to stress that the 211 CMR 133.00 and 212 CMR 2.00 need to be read in its entirety. 211 CMR 133.00 (3) (c) states “the repair will not impair the operational safety of the motor vehicle” The ADALB is concerned that the use of used parts that contain wear items may violate 211 CMR 133.00 (3) (c). We want to further note that the insurance company will be responsible and liable for the use of used parts it mandates. Please note 211 CMR 133.04 (2) states “If the repairer uses the source and specified part(s) indicated on the appraisal and these parts are later determined by both parties to be unfit for use in the repair, the insurance company shall be responsible for the costs of restoring the parts to usable condition”

Further, 212 CMR 2.04 (e) mandates all itemized components and all such costs associated with the appraisal shall be negotiated. As such, the use of used parts needs to be negotiated by the appraisers. The ADALB strongly advises that the use of used parts with wear items that could impact the operational safety of the motor vehicle not be used and complete negotiations occur as mandated.

Board Member Joseph Coyne suggested that the proposed language did not go far enough in curtailing abuses by insurance companies who were insisting that they would only approve payment for used or junkyard parts for the repair of a motor vehicle's suspensions system or steering system.

Board Member Johnson stated that there are situations where some consumers may want a used strut for the steering system of a damaged motor vehicle. Mr. Johnson asserted that such a determination is a consumer's choice.

Mr. Coyne reflected that since the Commonwealth deregulated the auto insurance industry's premium rates, new insurance companies came into the Massachusetts auto insurance market and some of these new companies began insisting that used or junkyard parts must be installed in damaged motor vehicle suspension or steering systems. Mr. Coyne asserted that this is a dangerous precedent and he made a motion to amend the proposed Advisory ruling by adding the following language into the second paragraph after the third sentence, "It is the Board's opinion that the use of salvage parts for a motor vehicle suspension or steering system will impair the operational safety of a motor vehicle."

The amended Advisory Ruling would read as follows:

The Auto Damage Appraiser Licensing Board (ADALB) has passed a motion agreeing that an appraisal conducted by a licensed appraiser needs to follow 212 CMR 2.04 (e) which states in part "The appraiser shall determine which parts are to be used in the repair process in accordance with 211 CMR 133.00. 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." 212 CMR 2.04 (e) also states "The appraisers representing the 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" As such all costs associated with the appraisal shall be negotiated.

One of the items referenced in 212 CMR 2.04 (e) is parts, the ADALB also recognizes the use of used parts is allowed as referenced in 211 133.04 (2). The ADALB wants to stress that the 211 CMR 133.00 and 212 CMR 2.00 need to be read in its entirety. 211 CMR 133.00 (3) (c) states "the repair will not impair the operational safety of the motor vehicle" **[Motion by Board Member Joseph Coyne to amend this language by inserting the following language, "It is the ADALB's opinion that the use of salvage parts for the suspension system or steering parts of a motor vehicle will impair the operational safety of a motor vehicle."]** The ADALB is concerned that the use of used parts that contain wear items may violate 211 CMR 133.00 (3) (c). We want to further note that the insurance company will be responsible and liable for the use of used parts it

mandates. Please note 211 CMR 133.04 (2) states “If the repairer uses the source and specified part(s) indicated on the appraisal and these parts are later determined by both parties to be unfit for use in the repair, the insurance company shall be responsible for the costs of restoring the parts to usable condition”

Further, 212 CMR 2.04 (e) mandates all itemized components and all such costs associated with the appraisal shall be negotiated. As such, the use of used parts needs to be negotiated by the appraisers. The ADALB strongly advises that the use of used parts with wear items that could impact the operational safety of the motor vehicle not be used and complete negotiations occur as mandated.

The Board began to discuss the amendment and a member of the public requested to address the Board, Mr. Darrel Weston whose company sold “like kind and quality” motor vehicle parts. Chairman Cox agreed to allow Mr. Weston to address the Board.

Mr. Weston informed the Board that his company maintains an inventory of any part that they sell that is a used part. Among other things, the inventory provides details about the motor vehicle the particular used part came from. Those parts that are used for the repair of a motor vehicle suspension system are tested by engineers employed by his company and are also cleaned. The test that his company conducts on used parts ensures that the parts are safe to use in the repair of motor vehicles.

Board Member Coyne asked Mr. Weston, “Before de-regulation of auto insurance, how many used suspension parts were sold in Massachusetts?” Mr. Coyne further elaborated that previous to de-regulation of the auto insurance industry in Massachusetts, insurance companies did not require used parts as part of an estimate of a motor vehicle suspension system. Mr. Weston agreed with Mr. Coyne, and said that before the de-regulation of auto insurance in Massachusetts used parts were not used to repair a motor vehicle suspensions system. Mr. Weston informed the Board that the procedures utilized by his company now ensure a used part is safe for the repair of a damaged motor vehicle suspension system.

Mr. Weston said that the key word required by the ADALB regulation is that there is a negotiation among the parties and, therefore, the Board should not change the practice to make the use of new parts mandatory by adding the requirement that an appraiser, in an estimate, “shall” use new parts.

Board Member Johnson opined that most auto body shop owners are like sheep, in that they will not push back against an insurance company, and will back down when an insurance company insists that used parts are included in an appraisal. He noted that on August 17, 2015, the Office of the Attorney General wrote a letter to the Division of Insurance which held a public hearing on 211 CMR 133.04 and Mr. Johnson stated that the Office of the Attorney General wrote that it routinely receives complaints from consumers about the quality of the repair of motor vehicles and insurers are required to regularly inspect the work to ensure that substandard parts are not used during repairs.

Chairman Cox asked for a legal review of the proposed Advisory Ruling by ADALB Legal Counsel, Michael D. Powers, before the Board took a vote on the Advisory Ruling. Mr. Powers said that he would draft the Advisory Ruling with the proposed amendment that had been made by Board Member Coyne, conduct a legal review, and distribute the proposed Advisory Ruling to all of the Board Members before the next Board meeting.

Board Member Coyne made a motion to table the matter, seconded by Board Member Starbard, and the matter was tabled by a vote of: 4-0, Chairman Cox abstaining.

Discussion of establishing standards for the re-licensing of previously licensed motor vehicle damage appraisers whom have allowed their licenses to lapse for failure to pay the annual license renewal fee:

Mr. Zavackis reported that in the past the ADALB had established a standard for the time in which licensed appraisers were allowed to have their licenses lapse without taking the examination for motor vehicle damage appraiser license. The standard that was utilized was that when a license lapsed from one to three years, the licensee was allowed to renew the license after filing out the renewal application, paying the annual fee for each year of \$50, and paying the penalty of \$50 for each year. When renewing the license, the licensee still had to fill out the renewal application and disclose any criminal arrests that occurred in the previous year. When a licensed lapsed over three years, the licensee was instructed by the Division of Insurance Licensing Unit to make a new application and retake the examination.

After discussion the Board agreed to approve the procedure described by Mr. Zavackis but with one change, a licensee who allowed the license to lapse over three years could come before the ADALB and request the ADALB waive the requirement to take the examination over again. If the request was approved by the Board, the licensee would still have to pay the license fee and penalty fee for each year the licensee allowed his license to lapse and fill out the renewal application. A motion was made by Board Member Starbard to approve this procedure which was seconded by Board Member Johnson, the motion passed by a vote of: 4-0, Chairman Cox abstained.

During the discussion Mr. Zavackis informed the Board that the renewal application for motor vehicle damage appraiser license only required the licensee to disclose criminal misconduct for the previous year from the date of applying for a renewal of the license. In the case of a licensee who allowed the licensee to lapse for three years, the licensee could omit the first two years of criminal history.

Chairman Cox asked ADALB Legal Counsel, Michael D. Powers, to review the application, draft a change to it requesting disclosure for criminal misconduct for the period of time a licensed had lapsed, and place the drafted change on the Board's agenda for the next Board meeting. Mr. Powers agreed.

Requests by two non-resident licensed motor vehicle damage appraisers David Draghi and Kris Lebel for a waiver of completing a course in motor vehicle damage appraising:

Mr. David Draghi and Mr. Kris Lebel informed the Board Members that they are currently licensed motor vehicle damage appraisers in other states and have been appraising motor vehicles for many years in the other states they are licensed in.

Board Member Richard Starbard made a motion to waive the requirement that Mr. Draghi and Mr. Lebel attend an approved course for motor vehicle damage appraising and that they be allowed to take the test for motor vehicle damage appraiser, the motion was seconded by Board Member Johnson. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Review and approval of applications of temporary auto damage appraiser licenses issued pursuant to 212 CMR 2.04(2). This section of the ADALB regulation reads in relevant part, “**Temporary Licensing.** The Board may grant at its discretion either an emergency or 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.”

Representatives from Geico Insurance Company and Liberty Mutual Insurance Company were present to submit applications for temporary motor vehicle damage appraisers licenses because of the inordinate amount of motor vehicle damage claims that had been filed due to a sudden hailstorm that had occurred over various locations in Massachusetts on or about August 4, 2015. A representative from Geico Insurance Company submitted one application for a temporary license for Billie Whitfield.

GEICO:

After a discussion where it appeared that the license application submitted by Geico was incomplete, a motion was made by Board Member Starbard to deny a temporary license for 90 days to Billie Whitfield. The motion was seconded by Board Member Pare and the motion passed by a vote of: 4-0, Chairman Cox abstained.

Liberty Mutual Insurance Company submitted several applications for temporary motor vehicle damage appraiser licenses. Board Member Richard Starbard reviewed each of the applications and at the conclusion of his review of each application a motion was made by Mr. Starbard and seconded by Board Member Pare to approve the temporary license. The following named individuals were granted a temporary license for 90 days and required to pay a fee of \$100. Each motion passed by a vote of: 4-0, Chairman Cox abstained.

Liberty Mutual:

Guillermo Delgado
Jonathan Rehkugler
Lee Adams
Brian Collins
John Walsh
Mark Smith
Madison Cotton
Kenneth Neuberger

Anthony Marimberga
John Borkes

The date for the next Board Meeting was agreed to for September 29, 2015, at 9:30 AM at the Pathfinder Regional Vocational Technical High School located in Palmer, Massachusetts. Board Member Johnson agreed to make the arrangements to reserve the meeting location.

Executive session:

The Board was informed by Legal Counsel to the Board, Michael D. Powers, that there were several matters for the executive session. These matters were the following: legal advice from Legal Counsel to the ADALB about the Board's response to a complaint filed by the Alliance of Automotive Service Providers of Massachusetts against the ADALB for allegedly violating the Massachusetts Open Meeting Law; the discussion of a complaint filed against a licensee, Complaint 2015-3, who was notified to appear before the Board; and discussion of criminal conviction records with applicants for the examination of motor vehicle damage appraiser license who disclosed a criminal conviction for a felony offense on the application and who requested to appear before at the Board's executive session to discuss their background and the criminal convictions.

Chairman Cox entertained a motion to enter the executive session which included the announcement that the Board would not meet in the open session after the executive session's business was completed. A motion was so made by Board Member Johnson and seconded by Board Member Coyne the motion was passed by a roll-call vote of 4-0, Chairman Cox abstained.

Mr. Steven Mazolla was allowed to address the Board during the executive session. His request to allow Mr. Evangelos Papageorg as his representative during the executive session was also allowed. Mr. Mazolla also requested to record the executive session with a tape recorder, and the Board allowed the request.

Prior to Mr. Mazolla addressing the Board, Board Member Joseph Coyne made a motion to recuse him of any involvement with the matter because he had been involved in a previous vote of the Board about Mr. Mazolla in the year 2008, and he said that this matter involving Mr. Mazolla could create a conflict of interest. The motion was seconded by Board Member Lyle Pare and the motion passed by a vote of: 5-0. Immediately, thereafter, Board Member Coyne exited the meeting.

Mr. Mazolla informed the Board that he sent a letter to the Board in April of 2015 and requested to speak with the Board. Mr. Mazolla complained that he was not given the opportunity to speak to the Board at a meeting that was held in June of 2015. Mr. Mazolla said that according to the ADALB minutes posted on its website it appeared that his letter was discussed by the Board at its executive session of the Board meeting that was held in June, and such a discussion without him present was a violation of the Massachusetts Open Meeting Law.

ADALB Legal Counsel, Michael D. Powers, responded to Mr. Mazolla's assertion. Mr. Powers said that the discussion of the letter that Mr. Mazolla sent to the Board in April of 2015, at the June meeting during the executive session was in fact well within the allowable legal reasons

under Massachusetts law for the Board to discuss during its executive session. This is so because Mr. Mazolla alleged in his letter that action taken by the ADALB in 2008 had violated his legal rights to “Due Process under the Fourteenth Amendment to the United States Constitution” and threatened legal action against the ADALB. Consequently, under such circumstances the Board is entitled to discuss with ADALB Legal Counsel legal advice about such potential litigation.

Mr. Mazolla then informed the Board as to why he should be given an opportunity to apply for re-licensing as a motor vehicle damage appraiser without re-taking the examination. After the conclusion of Mr. Mazolla’s presentation, the Board requested he leave the room. After a discussion between the Board Members about Mr. Mazolla’s presentation, a motion was made by Board Member Richard Starbard to allow Mr. Mazolla to apply for renewal of his motor vehicle damage appraiser license upon the payment of all the outstanding licensing fees and penalties and filling out the renewal application. A second was made by Board Member Johnson and the motion passed by a vote of: 3-0, Chairman Cox abstained. Mr. Mazolla was called back into the Board meeting and informed of the Board’s decision.

At this time Board Member Coyne rejoined the meeting. An applicant for a license for motor vehicle damage appraiser license, who was convicted of a felony in 2013, was allowed to address the Board and informed them about his background, and answered questions about the circumstances of his conviction. The Board requested the person to leave the room so they could discuss the matter. After a discussion among the Board Members, a motion was made by Richard Starbard to allow the person to take the examination, a second was made by Board Member Pare and the motion passed by a vote of: 4-0, Chairman Cox abstained. The person was called back into the Board meeting and informed of its decision.

Another applicant for a license for motor vehicle damage appraiser license, who was convicted of a felony in 2014, was allowed to address the Board, and he informed them about his background and answered questions about the circumstances of his conviction. The Board requested the person leave the room so they could discuss the matter. After a discussion among the Board Members a motion was made by Board Member Joseph Coyne to deny the person to take the examination, but allowing him to reapply the following year and that the Division of Insurance Licensing Unit was to so notify the person by letter. A second to the motion was made by Board Member Johnson and the motion passed by a vote of: 4-0, Chairman Cox abstained. The person was called back into the Board meeting and he was informed of the Board’s decision.

Complaint 2015-3:

At the previous Board meeting the Board determined that the licensed motor vehicle damage appraiser complained against in Complaint 2015-3, should be sent a copy of the complaint and requested to appear before the Board to answer questions about the complaint. The Board also determined that the complainant’s attorney should be notified that the Board needed additional information in support of the complaint. The Board was informed by ADALB Legal Counsel, Michael D. Powers, that the complainant’s attorney was contacted and informed of the Board’s request, and the attorney responded that additional information would be provided to the Board. In addition, Mr. Powers informed the Board that the licensed appraiser complained against

responded by sending a letter indicating because of his schedule he would be unable to attend the Board meeting.

After discussion by the Board Members, it was determined to await the additional response from the complainant and his attorney and a motion was made by Board Member Johnson to table the matter, and a second was made by Board Member Starbard. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Adjournment of the Board:

Chairman Cox called for a motion to adjourn which was made by Board Member Johnson and seconded by Board Member Coyne. The motion passed by a vote of: 4-0, Chairman Cox abstained.

Whereupon, the Board's business was concluded.

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