



## THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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WILLIAM E. JOHNSON  
SAMANTHA L. TRACY  
PETER SMITH

### **Minutes of Meeting of the Board held on April 30, 2019, Approved by the Board at the August 20, 2019, Board Meeting; Motion of Board Member William Johnson and Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 5-0.**

April 30, 2019, Minutes of Board Meeting  
Held at 1000 Washington Street, Boston, Massachusetts.

#### **Members Present:**

Chairman Donovan  
Samantha Tracy  
William Johnson  
Richard Starbard  
Peter Smith

#### **Attending to the Board:**

Michael D. Powers, Counsel to the Board  
Steven Zavackis, Executive Secretary

#### **Proceedings recorded by:**

Chris Gervais of MAPFRE (Audio/Video). Evangelos Papageorg, Executive Director of the Alliance of Auto Service Providers of Massachusetts (AASP), (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photo). Jim Steere of Hanover Insurance Company (Audio).

#### **Call to Order:**

Chairman Michael Donovan called the meeting to order. Board Legal Counsel Michael D. Powers introduced Chairman Donovan as an appointee of the Commissioner of the Division of Insurance pursuant to M.G.L. c. 26, § 8G. Mr. Powers provide a brief summary of Chairman Donovan's background beginning with his service in the United States Air Force as a Captain during the Vietnam War, attending the University of Texas in Austin and attaining a Masters Degree, as Chief of Staff for the Mayor of Austin, Texas, Director of Inspectional Services for the City of Boston, and Director of Government Affairs for the Department of Social Services for the Commonwealth of Massachusetts.

New Board Member Peter Smith was also introduced by Mr. Powers. Mr. Powers summarized some salient features of Board Member Smith's background by stating, Board Member Smith is

employed by the MAPFRE Insurance Company, is very well known in the auto body and insurance industry, and over the years was very helpful in administering the Part-II practical component of the motor vehicle damage appraiser examination.

**Review of minutes:**

Chairman Donovan read the first item on the agenda and asked for a motion to approve the minutes of the Board meeting that was held on January 23, 2019. Board Member Starbard pointed out that on page 7 of the draft minutes the insurance company's name should be spelled "A m i c a," and on page 2 the term should be E-Pics and that the wording of the minutes should be changed because the appraisal was not an appraisal made by Mr. Starbard, and paragraph 5, should be changed to refer to 8 people and the proper spelling of the person's name is: "Nastari."

Board Member Johnson made a motion to approve the minutes as amended and the motion was seconded by Board Member Starbard. The motion passed by a vote of: 3-0 with Chairman Donovan and Board Member Smith abstaining because they were not present at the Board meeting for which the motion to approve was submitted.

**Report by Board Member Richard Starbard on the next Part-II examination for motor vehicle damage appraiser held on February 6, 2019, at the Progressive Insurance Service Center in Westwood, Massachusetts:**

Board Member Starbard reported that the Part-II examination was held in February and 49 people passed the examination while 3 people failed. Board Member Starbard reported that the next Part-II examination would be held on Wednesday, May 8, 2019 and it would be overseen by Board Member Peter Smith and Mr. Starbard would be unavailable because of a commitment out of state.

**For discussion by the Board, the following announcement issued by the Office of the Massachusetts Attorney General on April 1, 2019:**

**PRESS RELEASE**

Press Release Auto body Repair Shop Owner Charged in Connection with Stealing More than \$170,000 in Insurance Claims  
**Shrewsbury Man Used Sledgehammers and Mallets to Allegedly Damage Cars in order to get Higher Insurance Payouts**

**FOR IMMEDIATE RELEASE:**

4/01/2019

- Office of Attorney General Maura Healey

**BOSTON** — A Shrewsbury man who owns two automotive repair businesses has been indicted in connection with a complex motor vehicle fraud scheme in which he damaged vehicles and stole \$170,000, Attorney General Maura Healey announced today.

Adam Haddad, age 42, was indicted on Thursday by a Statewide Grand Jury on the charges of Motor Vehicle Insurance Fraud (18 counts), Larceny by False Pretenses Over \$1,200 (15 counts), Attempted Larceny (3 counts), and Malicious Destruction of Property (6 counts).

ADH Collison of Boston Inc., owned by Haddad and located in Everett, was indicted on charges of Motor Vehicle Insurance Fraud (10 counts) and Larceny by False Pretenses Over \$1,200 (8 counts).

Accurate Collision Inc., owned by Haddad and located in Worcester, was indicted on the charges of Motor Vehicle Insurance Fraud (8 counts) and Larceny by False Pretenses Over \$1,200 (7 counts). The defendants will be arraigned in Middlesex County and Worcester County at later dates.

The AG's Office began its investigation in 2017, after a referral from the Insurance Fraud Bureau. These charges are the result of a joint investigation by the Insurance Fraud Bureau of Massachusetts, the Massachusetts State Police assigned to the AG's Office and the Everett Police Department.

The investigation revealed that over the past four years, Haddad regularly enhanced damage, and caused new damage, to customer's vehicles in order to falsely inflate appraisal repair quotes for labor, paint and parts reimbursement requests. Haddad would then make an additional profit by pocketing the insurance company's check and not completing the necessary repairs on the customers' cars.

Surveillance footage from one of Haddad's business locations shows him using mallets, sledge hammers, and pieces of wood to intentionally cause damage to five customers' vehicles.

In total, the AG's Office alleges that he stole more than \$170,000 from 11 different insurance companies.

If any member of the public believes they may have been victimized by this conduct or has any information relating to others who may have been victimized, they are encouraged to contact the Attorney General's Office Insurance Fraud Tip Line at 617-573-5330.

This investigation is ongoing. These charges are allegations and defendants are presumed innocent until proven guilty.

This case is being prosecuted by Assistant Attorney General Jennifer Cotter, Chief of the AG's White Collar and Public Integrity Division, with assistance from Senior Criminal Investigator Phillip Mantyla, Massachusetts State Police, Digital Forensics Laboratory Investigators, and Victim Witness Advocate Amber Anderson, all of the AG's Office. In addition, the AG's Office received assistance from the Everett Police Department and Investigators at the Massachusetts Insurance Fraud Bureau.

Chairman Donovan referred the matter to Board Counsel Michael Powers. Mr. Powers explained that the licensed motor vehicle damage appraiser was recently indicted as the result to complaints brought by the Office of the Attorney General in Middlesex and Worcester County. Before any action can be taken against a licensed motor vehicle damage appraiser the appraiser must be provided with Due Process of Law as provided for within the Auto Damage Appraiser Licensing Board's enabling act, M.G.L. c. 26, Section 8G. Mr. Powers suggested that the matter

be referred to the Division of Insurance's Special Investigations Unit to take whatever action it deems necessary.

Board Member Peter Smith made a motion to refer to the matter to the Special Investigations Unit of the Division of Insurance and the motion was seconded by Board Member Samantha Tracy. Chairman Donovan called for a vote and the motion passed by a vote of: 3-0 with Board Member Starbard and Board Member Johnson abstaining.

**Submitted by Board Member Samantha Tracy, for final approval by the Board of the following letter:**

June 11, 2019

Commonwealth of Massachusetts  
Division of Insurance  
1000 Washington Street, STE 810  
Boston, MA 02118

RE: 212 CMR 2.04 (1)(d)

Dear Responsible Official in the Division of Insurance:

On January 23<sup>rd</sup>, 2019 at the Auto Damage Appraiser Licensing Board ("ADALB" or "Board") meeting, an agenda item was submitted for discussion pertaining to the use of photographs and/or video recordings for the purposes of completing a motor vehicle damage appraisal, pursuant to 212 CMR 2.04 (1)(d) ("CMR"). As the discussion came to a close, it became clear that there remained a lack of clarity around the term "personally inspect" or "personal inspection" as provided in the referenced CMR which provides in pertinent part:

212 CMR 2.04 (1)(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.

In background, the Auto Damage Appraiser Licensing Board issued an Advisory Ruling on May 20, 2014 (2014-01) which stated, as provided below, that an appraisal completed via the use of video or digital images would be sufficient to meet the requirements of a "personal inspection". While this Advisory Ruling was subsequently rescinded on July 21, 2015, the Board's CMR does not provide a definitive definition of "personally inspected" for the purposes of this requirement, potentially leaving it open for interpretation. The ADALB's Advisory Ruling 2014-01 in relevant part provided:

The Auto Damage Appraiser Licensing Board has passed a motion agreeing that an appraisal conducted by a licensed appraiser via review of quality video or digital images with documentation meets the requirements of 212 CMR

2.04(1)(d) “The appraiser shall personally inspect the damaged motor vehicle and shall rely primarily on that personal inspection in making that appraisal....”

At this time the Board respectfully requests that a representative from the Division of Insurance attend an upcoming ADALB meeting, to provide clarity on this issue or if they are unable to attend, provide guidance that may be used by the Board when applying their regulation, 212 CMR 2.00 et seq., and these requirements as intended.

Thank you for your consideration.

Sincerely,

Samantha L Tracy  
Board Member Auto Damage Appraiser Licensing Board

Board Member Johnson said he disagreed with sending such a letter because the agreement between the insured and the insurance company is an independent issue. He added that, the letter is not factually accurate because Advisory Ruling 2014-1 rescinded the Board’s previous Advisory Ruling because the Board knew they were mistaken when they issued the first Advisory Ruling.

Board Member Tracy asserted that if the Board were to interpret something that would go beyond the Board’s regulation, then it would be outside of the Board’s authority.

Board Member Johnson responded that an Advisory Ruling is issued to clear up an ambiguity and he believes that the Board’s regulation [212 CMR 2.00 et seq.] is very clear and the Board would be going beyond the scope of its regulation.

A motion was made by Board Member Samantha Tracy to adopt the letter as written and send it to the Division of Insurance and the motion was seconded by Board Member Peter Smith. Chairman Donovan called for a vote on the motion and the motion passed by a vote of: 3-2, with Board Member Richard Starbard and Board Member William Johnson opposed.

**Submitted for discussion by Board Member William Johnson and former Board Member Lyle Pare the following proposed Advisory Ruling relating to 212 CMR 2.01(1) and 211 CMR 133.00 et seq.:**

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2019-XXXX

The Auto Damage Appraiser Licensing Board (ADALB or Board) is authorized to oversee all motor vehicle damage appraisers in the Commonwealth of Massachusetts

pursuant to M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq. titled, “The Appraisal and Repair of Damaged Motor Vehicles” as promulgated by the ADALB. In relevant part M.G.L. c. 26, § 8G provides, “The board shall after notice and hearing in the manner provided in chapter thirty A adopt rules and regulations governing licenses under this section in order to promote the public welfare and safety.” In addition 212 CMR 2.01(1) provides, “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*. ” Under its authority the ADALB is, *inter alia*, authorized to: issue licenses to all motor vehicle damage appraisers in the Commonwealth (licensed appraisers or appraiser) 212 CMR 2.02, regulate the conduct of motor vehicle damage appraisers in the Commonwealth 212 CMR 2.02, regulate the manner of conducting motor vehicle damage appraisals 212 CMR 2.04, and to issue Advisory Rulings pursuant to 212 CMR 2.01(3) and M.G.L. c. 30A, § 8.

Moreover the commissioner of the Division of Insurance has issued a regulation for the “STANDARDS FOR THE REPAIR OF DAMAGED MOTOR VEHICLES” 211 CMR 133.00 et seq. Specifically 211 CMR 133.04(1) and (2) provide in relevant part:

133.04: Determination of Damage and Cost of Repair

(1) Appraisers shall specify that damaged parts be repaired rather than replaced unless: the part is damaged beyond repair, or the cost of repair exceeds the cost of replacement with a part of like kind and quality, or the operational safety of the vehicle might otherwise be impaired. When it is determined that a part must be replaced, a rebuilt, aftermarket or used part of like kind and quality shall be used in the appraisal unless:

...

(c) a new original equipment part of like kind and quality is available and will result in the lowest overall repair cost;

...

(2) When an insurance company specifies the use of used, rebuilt, or aftermarket parts, the source and specific part(s) must be indicated on the appraisal. 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. If both parties agree that a specified part is unfit and must be replaced, the insurer shall be responsible for replacement costs such as freight and handling unless the repair shop is responsible for the part(s) being unfit, or unless the insurer and repairer otherwise agree. As to such costs, nothing in 211 CMR 133.00 shall preclude an insurer from exercising any available rights of recovery against the supplier.

The ADALB is authorized to enforce the provisions of 211 CMR 133.00 et seq. against licensed motor vehicle damage appraisers for violations of its provisions pursuant to 211 CMR 133.08. “A violation of any provision of 211 CMR 133.00 shall be considered to be an unfair or deceptive act or practice, in violation of M.G.L. c. 176D. An alleged violation of 211 CMR 133.00 by a licensed auto damage appraiser may be reported to and penalized by the Auto Damage Appraisers Licensing Board in accordance with its governing statute and 212 CMR [sic]....” It is the intention of the ADALB to issue an Advisory Ruling consistent with 212 CMR 2.00 et seq. and M.G.L. c. 26, § 8G and 211 CMR 133.00 et seq. to be followed by licensed appraisers.

Pursuant to its authority, the ADALB voted by a majority vote at the Board’s meeting held on ---- to adopt this Advisory Ruling.

### **ADVISORY RULING**

Appraisers should continue to follow 211 CMR 13.04 (1) and (1c) listed above on preliminary appraisals. If the vendor for the insurance company which has been listed as the source for the part(s) on the appraisal, cannot or will not make the part(s) available to a consumer or repair shop due to the fact they have no retail facility in the geographical area or refuse to deliver such part(s) to the consumer or repair shop for any reason beyond the control of the consumer or the repair shop, the consumer or the appraiser for the repair shop shall negotiate a replacement part of the same type of part(s) listed on the appraisal from an alternative vendor or source which will make the part(s) available to the consumer or the repair shop and the insurance company shall be responsible for the costs of the replacement part(s).

This Advisory Ruling shall be effective upon posting on the Auto Damage Appraiser Licensing Board public website. Failure to comply with this ruling could result in fines and penalties as provided by law.

For the ADALB,

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Michael D. Powers, Esq.  
Legal Counsel to the Board

Board Member Johnson made a motion to table the item and the motion was seconded by Board Member Starbard. The motion was passed by a vote of: 5-0.

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

The Executive Secretary for the Board, Steven Zavackis, stated that there were two people who were appraisers in other states and were requesting the Board waive the requirement to take the motor vehicle damage appraiser course before taking the examination. The two people are: Peter

Sampalis employed by Progressive Insurance Company and Dawn Barden, employed by Property Damage Appraisals.

A motion was made by Board Member Starbard to waive the course requirement for Dawn Barden and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 5-0.

A motion was made by Board Member Johnson to waive the course requirement for Peter Sampalis and the motion was seconded by Board Member Starbard. The motion passed by a vote of: 5-0.

Board Member Johnson made a motion that a letter thanking former Board Chairman Gilbert Cox and Board Members Pare and Coyne be sent and the motion was seconded by Board Member Starbard. The motion passed by a vote of: 5-0.

**Motion to adjourn:**

A motion to adjourn was made by Board Member Peter Smith and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 5-0.

Whereupon, the Board's business was concluded.

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

**List of Documents provided at the Board meeting:**

1. A letter from Dawn Barden describing her background and experience in appraising motor vehicle damage.
2. A letter from Peter Sampalis describing his background and experience in appraising motor vehicle damage.
3. A letter dated April 26, 2019, from Attorney Harry T. Eliopoulos about the ADALB's agenda regarding his client Adam Haddad.
4. A letter dated April 29, 2019, from LKQ about concerns regarding ADALB's agenda item number VI pertains to a proposed Advisory Ruling for parts that are deemed unavailable.