



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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LYLE M. PARE

Minutes of Meeting of the Board held on December 5, 2018, Approved by the Board at the January 23, 2019, Board Meeting; Motion of Board Member William Johnson and Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 3-0, with Chairman Cox Abstaining and Board Member Samantha Tracy Abstaining Because She Was Not a Member of the Board on December 5, 2018.

December 5, 2018, Minutes of Board Meeting
Held at the Pathfinder Regional Vocational Technical High School 240 Sykes Street,
Palmer, Massachusetts.

Members Present:

Chairman Cox
Joseph Coyne
William Johnson
Richard Starbard
Lyle Pare

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 Cox called the meeting to order.

Review of minutes:

The Board reviewed the draft minutes of the Board meeting held on October 11, 2018. Chairman Cox called for a motion to approve the minutes, Board Member William Johnson made the motion to approve the minutes as submitted, and Board Member Joseph Coyne seconded the motion. Chairman Cox called for a vote on the motion, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Report on the next Part-II examination for motor vehicle damage appraiser:

Board Member Richard Starbard reported the Motor Vehicle Damage Appraiser Part-II examination was held on November 7, 2018, at Progressive Insurance Company's facility in Westwood. Board Member Starbard reported that, 45 people took the examination and 36 people passed the examination. Mr. Starbard thanked Pete Smith of Mapfre Insurance Company, Board Executive Secretary Steve Zavackis, Eric Landry, and Kara from Progressive Insurance for their outstanding assistance. The next date of the Part-II examination is scheduled for February 6, 2019, with an alternate snow date of February 13, 2019.

Board Member Coyne inquired: Are we going to have a Part-II test in Western part of the state in the near future?

Board Member William Johnson responded that the intention was to schedule a test at the Springfield Technical Community College and explained Board Member Lyle Pare is teaching the motor vehicle damage appraiser course at the school and is preparing for a Part-I test for the students taking the course. After Mr. Pare concludes the course, arrangements will be made to schedule a Part-II test at the Springfield Technical Community College.

Board Member Lyle Pare reported that he just completed preparing students at the Springfield Technical Community College for the Part-I portion of the motor vehicle damage appraiser test and after the students complete the written test, he will be working with the school to schedule the practical aspect of the Part-II portion of the motor vehicle damage appraiser test.

Board Member Johnson queried: When was the last time a review was conducted of the Part-I examination questions? He informed the Board, and members of the public, that he recently was contacted by a person whom challenged some of the answers to questions on the test that the man felt were inaccurate. While Board Member Johnson reviewed some of the questions and answers with the man, whom had worked in the auto body industry for several years, Board Member Johnson agreed that some of the answers listed on the test as correct were in fact incorrect.

Board Member Coyne responded, the Part-I written portion of the test is reviewed sometime in June every year by Board Members with employees from Prometric, the vendor contracted to administer the examination. Because of an opinion by the Division of Open Government (DOG), the Board is restricted in the amount of Board Members who can participate at the review, because DOG opined it would violate the Open Meeting Law if three or more Board Members were to conduct the review of the written questions. Consequently, the Board has decided to comply with the DOG's view, by only having two Members participate at the review and during past reviews Board Member Coyne has thrown out some of the written questions and the answers to them. Board Member Coyne suggested that, anyone who may have concerns about the Part-I test questions could write to Chairman Cox and, thereafter, questions will be brought to the attention of Prometric in a letter from the Chairman.

The consensus of the Board Members was that they would proceed in the manner suggested by Board Member Coyne.

Question for discussion among the Members of Board submitted by Board Member Lyle Pare: Does an insurance company have the right to force a customer and repairer to use a supplier that an insurance company prescribes when doing an appraisal?:

Board Member Pare said that he received a letter from a licensed motor vehicle appraiser named Mr. Michael Boucher raising the question: When an insurance company's appraiser lists a replacement item's source and the vendor refuses to supply the replacement item to the auto body shop because the body shop does not have an agreement with the vendor, what recourse does the appraiser from the auto body shop have? Mr. Pare then read the letter that was sent to him by Mr. Boucher, which is the following:

I would like to propose the following question to the members of the ADLB for clarification:

Recently a dispute arose regarding the replacement of a bumper cover for one of our customers. We replaced the rear bumper cover on a Toyota Venza with a CAPA certified part, from a vendor that we have a long standing business relationship with. Upon reviewing the insurance company appraisal for supplement purposes, we discovered that the rear bumper cover prescribed on the insurance company appraisal was from a different vendor that we do not have a business relationship with and the part itself is not listed as a CAPA certified item. I forwarded a supplement for repair to the insurer which included several items that were not on the original appraisal; it also included a part price difference for the part I used compared to the part on his appraisal, which had a lower price. The appraiser emailed a response to me saying that he could not change the part price or pay the difference of the aftermarket part we used compared to the aftermarket part he used.

My question to the licensing board;

Does an insurance company have the right to force a customer and repairer to use a supplier that they prescribe when doing an appraisal?

Aftermarket parts come in a number of ranges of quality, the lowest price is not always the best deal. Getting a part at a lower price, from a vendor that you don't routinely do business with can create many difficulties. If the part doesn't function properly or if you have no contact person to reach at the vendor for any issues, having to do with the part that the insurance company prescribed. Insurance companies locate and list both used and aftermarket parts from a number of different vendors on their appraisals, making it difficult and time consuming for shop owners to locate the necessary parts. In the interest of cycle time and efficient put through in process, repairers should have the right to choose the part and vendor which will give them the best service and quality part at a reasonable price.

Thank you, I await a response to my question from the ADLB.

Sincerely, Michael Boucher Custom Auto Body

Board Member Starbard responded that this type of issue is covered by 211 CMR 133.00 et seq., when an insurance company requires an aftermarket part – and it is a non-Original Equipment Manufacturer part (OEM) – the insurance company must list the source where the part is available. The problem arises when the vendor of the part has a poor record of supplying bad parts to an auto body shop, thereby compelling the auto body shop to return bad parts to the vendor.

Board Member Pare opined, he could not understand why an insurance company's appraiser would not allow payment for a proper part to satisfy the customer and, in the end, the insurance company should want a certified replacement part to repair the damaged motor vehicle. 211 CMR 133.00, § 4 provides if the part is unavailable but can be found in other locations then there is an obligation to repair the damaged motor vehicle by restoring it to pre-accident condition.

Mr. Michael Boucher requested permission to speak to the Board and Chairman Cox granted permission. Mr. Boucher informed the Board that the problem he experienced involved a part failing during the repair process and he attempted to return the part to the supplier, Empire Auto Parts Company (Empire), but they refused to take the part back. The response from the supplier, Empire, was the part should fit the motor vehicle because the part fit in the same type of motor vehicle in the past, and Empire did not care if it did not fit during the current repair. Mr. Boucher concluded by asserting, the requirement may be in the regulation but it does not have a common sense application.

Board Member Johnson responded, auto body shops must be aware that if they buy a part they own it and when auto body shops purchase parts, the burden is on them.

Board Member Starbard stated, at his auto body shops he has on occasion instructed insurance company appraisers leave the shop with parts that did not fit, and they have left his shop with the parts placed in the back seat of their cars.

Mr. Gary Cloutier, of Cloots Auto Body shop of Westfield, asked permission to speak to the Board and Chairman Cox granted permission. Mr. Cloutier reported that recently an insurance company appraiser came to his shop and when he left, he took the non-fitting part with him, but he refused to go after the supplier.

Peter Laughor asked permission to speak to the Board and Chairman Cox granted permission. He announced that since 2014 insurance companies have denied the authorization to change suppliers of auto parts. Since August, Peter has taken the hardline of changing the supplier and the estimate for a part whenever he experiences an inability to gain access to a supplier's website to order a part. He has gone as far as contacting the insurance company appraisers' supervisors. He declared, when an auto body shop gets delayed attempting to obtain a proper part, the recycle time to repair the damaged motor vehicle and the car rental costs spin out of control.

Chairman Cox queried: Should someone file a complaint?

Board Member Johnson observed, insurance companies are shifting the problem to auto body shops.

Board Member Starbard suggested, all correspondence in these types of appraisal matters should include the customer, and auto body shops should get the customers involved with their insurance companies, especially with the competitive insurance market in Massachusetts today.

Matt Regan asked permission to speak to the Board and permission was granted. Mr. Regan asserted, we have the same issue with the same insurer and same vendor, Empire, and his company is precluded by Empire from ordering parts from them.

Chairman Cox explained, the ADALB can only entertain a complaint against a licensed appraiser and not a supplier or vendor.

Board Member Starbard suggested, the best approach is to manage customer expectations and the auto body shop should alert the customer at the out-set that there is a past problem with the insurer and because of it, the customer should be informed to expect a lack of cooperation from his or her insurance company. By getting the customer engaged at the beginning of the process, you can encourage more cooperation by the insurance company.

Peter Langone, of Langonet Auto Body shop of Agawam, asked permission to speak to the Board and Chairman Cox granted permission. Mr. Langone shared his past experience with Empire Auto Parts and stated in the total purchase of parts from them his auto body shop lost money because of constantly returning parts. In the end, Empire shut him off by refusing to do business with his shop. Mr. Langone said, in 2014 he had the same experience with Keystone parts and somehow they corrected the situation when the insurance company intervened and they no longer have the problem with Keystone.

Board Member Coyne declared, there is a problem when the vendor or supplier refuses to sell the part and, therefore, makes the part unavailable.

Peter Langone asked the Board: If the part does not fit, can the appraiser send the part back?

Mike Boucher volunteered, this is about customer relations and the customer must be told up front what and why it is happening, to take the onus off the auto body shop; when an auto body shop does that, then the customer is properly served. Mr. Boucher suggested, auto body shops should re-involve the customer in the repair process to improve the auto body shop's image.

Board Member Johnson asserted, there is a larger issue when the insurance company is sourcing a part and the vendor is not providing the part. This issue may be something that the Office of the Attorney General should be engaged with or the Division of Insurance, and is not an issue that involves the Auto Damage Appraiser Licensing Board. He suggested, someone from the AASP of Massachusetts should send a letter to the Massachusetts Attorney General or the Division of Insurance complaining about the problem.

Board Member Pare declared, he did not understand why the part was not supplied by the vendor.

Gary Cloutier added that, his auto body shop had a replacement for a truck plate that the insurance company would not approve payment for and directed him to check for salvage parts as a replacement. He checked with 3 salvage yards and the prices were 2-3 times the amount of the used plate he originally offered to replace the part with. Mr. Cloutier noted, the appraiser should take 2-3 minutes to check the source of the part.

Board Member Johnson asserted, we need to get the customer involved and informed. Also, call back the insurance company appraiser and tell him to locate the part; we should not be doing the insurance company appraiser's job.

Evangelos "Lucky" Papageorg, Executive Director of AASP, requested permission to speak to the Board and permission was granted by Chairman Cox. Mr. Papageorg informed the Board, when the item appeared on the agenda, he received several calls about it. The problem is that appraisers are working from different sources, a lot of estimates are driven by the cost of parts, and appraisers are forced to make multiple calls when searching for the lowest cost of parts. Auto body shop appraisers should be mindful of the additional expenses incurred as the result of making multiple calls which increases the cycle time to repair damaged motor vehicles and the car rental time for customers.

Board Member Johnson observed that the Code of Massachusetts Regulations (CMRs) covering motor vehicle damage appraisals is mute about the issue of motor vehicle part suppliers. Much of these issues are driven by the lack of negotiation by the auto body shops' appraisers. Nothing in the CMRs prevents this type of negotiation. Mr. Johnson recounted a recent appraisal that his auto body shop was engaged with wherein the insurance company refused to pay for a replacement panel for a truck and Mr. Johnson countered that he was unable to repair the truck to the pre-accident condition because of the insurance company's refusal to allow payment for the truck panel, he was charging the insurance company for the storage time the damaged motor vehicle was parked in his auto body shop. Because of the drawn-out negotiations, the storage time exceeded the cost to acquire the panel and install it onto the truck. The insurance company paid for the panel, because the storage time exceeded the cost to buy the replacement panel.

Board Member Starbard offered as an example a case whereby he informed a customer that he refused to repair the motor vehicle because the customer's insurance company would not approve payment for the costs of replacing the damaged parts. The customer informed him that he had several policies with the insurance company, he would contact the insurance company, and inform them that if they refused to pay for the replacement parts he was cancelling all of his insurance policies with them.

Lucky Papageorg asked the Board Members: If the supplier refuses to supply the part, does the refusal to supply a part make the part "unavailable" as that term is defined in the regulation [211 CMR 133.00 et seq.], and should the appraiser request a supplementary appraisal? Some Board Members expressed agreement that in such a situation a part could be considered unavailable.

Peter Langone asked: Are the Members of the Board in agreement with the answer to Mr. Papageorg's question, that if the supplier refuses to send the part, the auto body shop can consider

the part as “unavailable.” Mr. Langone declared, I don’t want to file a complaint against an appraiser based on these facts, the complaint gets assigned to the Board’s executive session and nothing happens.

Board Member Johnson responded, if you can’t get the part, then the part is deemed “unavailable.”

Gary Cloutier asked: If the supplier refuses to respond and the auto body shop appraiser cannot get a letter from the supplier confirming the refusal, how do we prove it?

Board Member Johnson queried: What about the appraiser who knows that the vendor is not supplying the parts?

Board Member Pare answered: You bring a complaint against the appraiser.

Peter Langone suggested, the Board should issue an Advisory Ruling which could possibly avoid delay in these circumstances and encourage insurance companies to respond.

Chairman Cox asked Board Member Johnson if he were willing to draft an Advisory Ruling addressing this issue and Board Member Johnson said he would prepare a draft for the next Board meeting.

Date of next Board Meeting:

The Board Members agreed to hold the next Board meeting on January 23, 2019, at 9:30AM at 1000 Washington Street, Boston, Massachusetts.

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

Board Executive Director Steve Zavackis reported that he received a request after the agenda was posted from Dawn Barden, an out of state insurance company appraiser, requesting that the Board waive the course requirement for taking the Part-I written component of the motor vehicle damage appraiser examination, because she had been appraising motor vehicle damage for several years.

The motion to waive taking the motor vehicle damage appraiser course for Dawn Barden was made by Board Member Richard Starbard and seconded by Board Member Joseph Coyne. The motion passed by a vote of: 4-0 with Chairman Gilbert Cox Jr. abstaining.

Motion to enter the Executive Session:

Chairman Cox announced that the Board was about to enter the executive session and would conclude the Board meeting in the executive session without returning to the public session. Chairman Cox then read the following announcement:

The Board is about to enter the Executive session to review and discuss the background of applicants for motor vehicle damage appraiser test who have disclosed a criminal conviction on the application. Review and discussion of Complaints 2018-7A&B, 2018-8A&B, 2018-9A, B &C, and 2018-11, 2018-12, 2018-13, 2018-14, 2018-15, and 2018-16

filed against motor vehicle damage appraisers licensed by the Auto Damage Appraiser Licensing Board. Such discussions during the executive session are allowed under M.G.L. c. 30A, §21(a)(1) and in accordance with the Office of the Attorney General's Open Meeting Law (OML) decisions such as *Board of Registration in Pharmacy Matter*, OML 2013-58, *Department of Public Safety Board of Appeals Matter*, OML 2013-104, and *Auto Damage Appraisers Licensing Board Matter*, OML 2016-6. Section 21(a) states "A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

The licensed appraisers' attorneys have requested the matters be heard in the executive session.

After reading the item, Chairman Cox called for a motion to enter the executive session, the motion was made by Board Member Johnson, and seconded by Board Member Lyle Pare. A roll-call of the Board Members was taken by Chairman Cox with each Board Member separately voting in the affirmative, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Executive Session:
Complaint 2016-16

Board Legal Counsel Michael D. Powers reported that this complaint was placed on to be heard at the Board meeting scheduled for January 23, 2019 as agreed by the licensed appraiser and Attorney Gallagher at the October 11, 2018 Board meeting. The matter would be scheduled on the agenda for the next Board meeting.

Complaint 2018-7A & B, Complaint 2018-8A & B, and Complaint 2018-9A & B new Complaint docket numbers are: 2018-7A, 2018-8A, 2018-9A, and 2018-7B, 2018-8B, and 2018-9B.

Board Legal Counsel Powers they were awaiting the resolution of an issue involving a court case wherein a preliminary injunction with a restraining order was entered against one of the licensed appraiser before the Board could proceed to the next step in the proceedings.

Complaint 2018-11, Complaint 2018-12, and Complaint 2018-13

Board Legal Counsel Powers reported that no action was being taken on these matters and the Board was awaiting follow-up information.

Motion to adjourn:

Board Member Pare moved to adjourn the meeting, seconded by Board Member Coyne and the motion passed by a vote of: 4-0 with Chairman Cox 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).

List of Documents provided at the Board meeting:

- 1. Letter from Michael Boucher**