



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

KARYN E. POLITO
LIEUTENANT GOVERNOR

MICHAEL DONOVAN
CHAIRMAN

RICHARD STARBARD
WILLIAM E. JOHNSON
SAMANTHA L. TRACY
PETER SMITH

Minutes of Meeting of the Board held on June 11, 2019, Approved by the Board at the August 20, 2019, Board Meeting; Motion of Board Member William Johnson and Seconded by Board Member Board Member Richard Starbard. The Motion Passed by a Vote of: 5-0,

June 11, 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).

Call to Order:

Chairman Michael Donovan called the meeting to order. Board Legal Counsel Michael D. Powers reported that the Board minutes for the April 30, 2019, were in a preliminary incomplete draft format and would be available for Board approval at the next Board meeting.

Counsel Powers informed the Board that a decision was rendered in the Open Meeting Law complaint filed against the Board with the Office of the Attorney General in the *Matter of the Auto Damage Appraiser Licensing Board* OML 2019-50. The Attorney General's Office dismissed the complaint finding the Board did not violate the law and that a person who files a complaint against a motor vehicle damage appraiser with the Board, is not entitled to attend the

executive session of the Board meeting with his attorney when the Board is conducting its review of the complaint.

Report by Board Member Peter Smith on the next Part-II examination for motor vehicle damage appraiser held on May 8, 2019, at the Progressive Insurance Service Center in Westwood, Massachusetts:

Board Member Smith reported that the Part-II examination was held in May, 49 people took the examination, 37 people passed, and 12 failed. Board Member Smith thanked Eric Landry from Progressive Insurance and Sue Conena from Mapfre Insurance and said the examination went very well.

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,

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

Board Member Johnson stated that, he gave the proposed Advisory Ruling quite a bit of thought and because the proposed Advisory Ruling was written in collaboration with former Board Member Lyle Pare, he would like to gather more input. Board Member Johnson suggested that he and Board Member Samantha Tracy work together and attempt to present an Advisory Ruling on the topic.

Chairman Donovan requested Board Member Johnson provide a brief synopsis on the proposed Advisory Ruling.

Board Member Johnson said that, some motor vehicle damage appraisers will list as many as five different suppliers which will provide a replacement for a damaged motor vehicle part. During the course of the appraisal and repair process, if both parties agree that a part is not usable as a replacement for a damaged part, then the part is returned at the expense of the insurance company. The proposed Advisory Ruling was an attempt to address the situation where a part is unavailable through no fault of the consumer or auto body shop appraiser and the part can be obtained from an alternative supplier.

Board Member Johnson made a motion to postpone any discussion and table the Advisory Ruling so that he and Board Member Tracy may have discussions about a possible Advisory Ruling. The motion was seconded by Board Member Starbard and the motion 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.:

Board Member Starbard said that it was brought to his attention that there is language being inserted into appraisals that the appraisal is subject to approval of staff or an independent review. These people who review the appraisals are not the people who took part in the actual appraisal or review of the damage to the motor vehicle but nonetheless are giving their input into the appraisal and this should not be allowed.

Board Member Johnson asserted that any “approval language” should state, “This appraisal may be reviewed for coverage but not content.”

Board Member Smith opined, the issue is the context of the appraisal and how it was written. If damaged has been paid, then the paid damage is not part of the appraisal.

Mr. Starbard said there is issue when someone is reviewing the appraisal in another state. He has seen language stating, “The appraisal is subject to insurance carrier review and may be revised.” This should not be allowed when someone is in an office changing payment on agreed damage that was negotiated by the appraisers who inspected the damaged motor vehicle.

Board Member Johnson observed that he has been involved when old damage was appraised, with no fraud involved, and the old damage was included in the appraisal.

Mr. Gary Cloutier, of Cloots Auto Body, asked permission to speak to the Board and permission was granted. Mr. Cloutier stated that he previously filed a complaint with the Board and asked permission to speak about the complaint at that time, but he was not allowed the opportunity to speak.

Mr. Starbard replied that he wished the Board had given Mr. Cloutier the opportunity to speak before the Board at the time the complaint was reviewed. He pointed out that the complaint that Mr. Cloutier was involved with was related to another complaint and the process was delayed for a long time because the Board was compelled to review the first complaint which went through the administrative process.

Board Member Johnson asserted that he conducted a mediation of the complaint Mr. Cloutier filed and was compelled to recuse himself under the ADALB’s Complaint Procedures when the complaint was called to a vote.

The Board scheduled the following Board meeting for August 20, 2019 at 9:30AM in Boston.

Motion to Enter the Executive Session:

Chairman Donovan then read the following statement:

Executive session to review Complaints filed against licensed motor vehicle damage appraisers and discuss the background of applicants for motor vehicle damage appraiser test whom have disclosed a criminal conviction on the application. Review and discussion of Complaints: 2019-01, 2019-03, 2019-04, 2019-05, 2019-06, and 2019-07 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, *Auto Damage Appraisers Licensing Board Matter*, OML 2016-6, and *Auto Damage Appraisers Licensing Board Matter*, OML 2019-50. 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.

Chairman Donovan called for motion to enter the executive session and stated that the Board would adjourn in the executive session. Board Member Johnson made the motion which was seconded by Board Member Tracy. Chairman Donovan called for a roll call vote of the Members of the Board and each Member voted yes to the motion and the motion passed by a vote of: 5-0.

Executive Session:

Complaint 2019-03

The owner of the company appeared before the Board. The owner informed the Board that the appraiser who was complained against was not available for the Board meeting and requested that the matter be tabled until the next meeting of the Board. The motion was made by Board Member Johnson to table the review of the complaint until the next Board meeting, a second was made by Board Member Tracy, and the motion was passed by a vote of: 4-0, with Chairman Donovan abstaining.

Complaint 2019-05

Renowned Insurance Attorney John R. Callahan appeared on behalf of the appraiser and after a short discussion the Board decided to table the complaint until the next Board meeting. Board Member Starbard made a motion to table the review of the complaint until the next Board meeting and Board Member Johnson seconded the motion. The motion passed by a vote of: 3-0 with Board Member Smith and Chairman Donovan abstaining.

Complaint 2019-01

Board Member Johnson asked the appraiser if he had inquired of the suppliers whether the replacement parts were available and the appraiser responded he did. Board Member Starbard asked the appraiser if he wrote the appraisal off of “E-Pics” and the appraiser responded that he lent his car to a relative and left his camera in his car so he reviewed the damage from pictures which were given to him and he went by the consumer’s house to do the supplement.

Board Member Smith asked how long the appraiser was in business and he responded 19 years writing appraisals and over a total of 40 years, repairing damage in his auto body shop that he owned until 1998.

Board Member Smith asked the appraiser when he inspected the vehicle did he get the mileage from the vehicle and he responded that he did.

Board Member Starbard asked the appraiser why the original appraisal allowed for a windshield replacement and the supplement didn’t. The appraiser responded that the damage to the windshield was paid for so he took the damage off the supplement.

Board Member Starbard asked, in the end was the vehicle repaired and the appraiser responded it was.

The appraiser said that he believed that the consumer was satisfied until he received a copy of the complaint.

Board Member Johnson made a motion to dismiss and the motion was seconded by Board Member Starbard. Chairman Donovan called for a vote and the motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Complaint 2019-04

The appraiser was represented by Attorney Alan Brown.

The appraiser stated she negotiated in good faith with the auto body shop’s appraiser and the shop appeared satisfied.

Board Member Johnson made a motion to dismiss the complaint with a notation in the letter stating the auto body shop was satisfied and the motion was seconded by Board Member Samantha Tracy. The motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Complaint 2019-06

The owner of the appraisal company appeared and informed the Board that his company did not conduct the appraisal of the damaged motor vehicle.

Board Member Starbard made a motion to dismiss which was seconded by Board Member Smith. The motion was passed by a vote of: 4-0, with Chairman Donovan abstaining.

Complaint 2019-07

Board Members asked several questions of the appraisers including whether the appraiser had copies of the original pictures of the damage to the motor vehicle. The appraiser informed the Board that he lost the pictures because his computer seized-up. The original appraisal on August 3, 2017, estimated the damage at \$767.48 with pictures and the supplemental appraisal on August 16, 2017, estimated the damage to be \$13,989.06. The appraiser said he did not do the first appraisal.

Board Member Starbard made a motion to send a letter of reprimand to the appraiser for his failure to properly inspect the first appraisal and damage indicated in the pictures and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Applicant for License with Criminal Felony Convictions

The applicant appeared before the Board and informed them he was previously licensed as a motor vehicle damage appraiser but let his license lapse years ago and now would like to pay the late filing fees and get his license reinstated.

The Board asked the applicant the circumstances surrounding his felony convictions for illegal possession of firearms and the illegal sale of firearms.

The applicant stated that he sold antique firearms for years as a hobby and got caught-up in a change in the law, was arrested, convicted, and served time and was now employed at an auto body shop where the owner wants him to have his license to appraise motor vehicle damage.

Board Member Tracy made a motion to waive the course requirement but the applicant had to take the test over. The motion was seconded by Board Member Johnson and the motion passed by a vote of: 4-0 with Chairman Donovan abstaining.

Motion to adjourn.

A motion to adjourn was made by Board Member Johnson and the motion was seconded by Board Member Tracy. The motion passed by a vote of: 4-0, with Chairman Donovan 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. 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.