



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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CHAIRMAN

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LIEUTENANT GOVERNOR

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RICHARD STARBARD
WILLIAM E. JOHNSON
LYLE M. PARE

Minutes of Meeting of the Board held on October 11, 2018, Approved by the Board at the December 5, 2018, Board Meeting; Motion of Board Member William Johnson and Seconded by Board Member Joseph Coyne. The Motion Passed by a Vote of: 4-0, with Chairman Cox Abstaining.

October 11, 2018, Minutes of Board Meeting
Held at 1000 Washington Street, Boston, 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 August 28, 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 will be held on November 7, 2018, at Progressive Insurance Company's facility in Westwood.

Discussion by the Board about clarifying the term "Like Kind and Quality":

Board Member William Johnson drafted the following item for the Board's consideration:

Defining the term Like Kind and Quality (LKQ) as compared to the language contained in M.G.L. c. 175, § 2 and as a definition of LKQ on an auto appraisal as it relates to used parts. Whether used parts need to be from the same model year or newer and have the same or less miles in compliance with MGL C 175 Sec 2 providing "A contract of insurance is an agreement by which one party for a consideration promises to pay money or its equivalent, or to do an act valuable to the insured, upon the destruction, loss or injury of something in which the other party has an interest." The Board will discuss how the words "pay money or equivalent" relate to 211 CMR 133.05 "Determination of Values" as that provision relates to determine total losses of a damaged motor vehicle and subsection (d) which provides that such vehicles must be LKQ. Two axioms for "Deterring Values" are: (1) when pricing the value of a vehicle the prior year cannot be used and (2) vehicles with higher mileage cannot be used unless there is an adjustment for the mileage overage. Assuming the LKQ automobile for comparison purposes must be of the same year and the mileage must be the same or lower than the damaged motor vehicle, *a fortiori* the only conclusion that can be reached, is that under 211 CMR 133.04 the threshold would be the same as it relates to used parts or replacement parts for a damaged motor vehicle.

Chairman Cox read the agenda item and then opened the matter for discussion. Board Member Johnson, who submitted the item for discussion on the Board's agenda, said that he would like to table the item for the Board meeting that will be held in January of 2019 because he did not have sufficient time to research and review the standards.

Board Member Johnson made the motion to table the item for the first Board meeting in January of 2019 and the motion was seconded by Board Member Starbard. The motion passed by a vote of: 4-0, with Chairman Cox abstaining.

Discussion by the Board, comments and input provided by insurance companies writing property and casualty motor vehicle insurance in Massachusetts, representatives of the auto body repair industry, and other interested parties on the proposed Advisory Ruling submitted by Board Member William Johnson and amended by Board Member Lyle Pare, requiring manufacturers recommended repair procedures must be followed when a structural part of a motor vehicle has sustained damage affecting the safe operation of the motor vehicle:

The proposed Advisory Ruling submitted by Board Members Johnson and Pare is the following:

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2018-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... ." Furthermore, 212 CMR 2.04(1)(e) in pertinent part reads, "If, while in the performance of his or her duties as a licensed auto damage appraiser, an appraiser recognizes that a damaged repairable vehicle has incurred damage that would impair the operational safety of the vehicle, the appraiser shall immediately notify the owner of said vehicle that the vehicle may be unsafe to drive. The licensed auto damage appraiser shall also comply with the requirements of M.G.L. c. 26, § 8G the paragraph that pertains to the removal of a vehicle's safety inspection sticker in certain situations." 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. 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 to be followed by licensed appraisers.

Pursuant to its authority, the ADALB will hold a vote to adopt this Advisory Ruling:

ADVISORY RULING

212 CMR 2.04(1)(e) states in relevant part "[T]he 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. The registered repair shop must prepare an appraisal for the purpose of negotiation. No appraiser shall modify any published manual (i.e., Motors, Mitchell or any automated appraisal system) without prior negotiation between the parties. Manufacturer warranty repair procedures, I-Car, Tec Cor and paint manufacturer procedures may also apply." []. The Insurance Institute for Highway Safety (IIHS) and the Highway Loss Data Institute (HLDI) or other similar recognized industry resource may also be utilized for negotiation purposes.

The Auto Damage Appraiser Licensing Board has passed a motion declaring that for the purposes of reducing traffic accidents and safeguarding users of motor vehicles against unreasonable risks of accident, injury, or death, when structural damage is caused to the structural/frame component of a motor vehicle (the main structure of the vehicle and/or any component designed to provide structural integrity of the vehicle), and if the repair of a damaged part will impair the operational safety/integrity of the motor vehicle requiring the replacement of the part, to ensure the safe and proper repair of a damaged motor vehicle the manufacturer warranty, I-Car, Tec Cor (or similar recognized industry resource) repair procedures shall be followed. Components that are bolted onto a motor vehicle are not considered part of its structure or frame. 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

The proposed Advisory Ruling was posted on the ADALB's website and requested comments from interested members of the general public. Several written statements were sent to the Board by various interested parties and the Members of the Board were provided with copies of the statements prior to the August 28, 2018, Board meeting. At the Board meeting held on August 28, 2018, the Board voted to allow an additional 14 days for interested parties to submit comments. Some additional comments were submitted by interested parties and those comments were provided to the Members of the Board for their review and consideration.

Chairman Cox called for a discussion on this item.

Board Member Johnson announced that he reviewed all of the comments submitted by interested parties, and none of the comments addressed the fundamental issue pertaining to public safety and protecting members of the motoring public that he raised in the proposed Advisory Ruling. Board Member Johnson asserted that, by generating discussion about the public safety issue involved with the proper repair of a motor vehicle's structural system he accomplished his goal of bringing the issue to the forefront.

Board Member Johnson elaborated by declaring, none of the statements that were submitted by interested parties took the position that manufacturers recommended repair procedures should not be followed when repairing damage to the structural components of a motor vehicle. Board Member Johnson pointedly disagreed with the comments made by the representative of AASP Massachusetts claiming the ADALB cannot invite public comments when contemplating issuing an Advisory Ruling and, Board Member Johnson noted, in AASP's letter they did not address the issue about public safety. Mr. Johnson disagreed with the positions taken by AASP and asserted the Board acted well within its authority for issuing Advisory Rulings, as provided for by law, and could request comments from interested parties.

Board Member Johnson also noted the comments submitted by AIB (Auto Insurers Bureau of Massachusetts) indicated they were more concerned about containing the costs of auto damage repair than about protecting consumers. He opined, an attorney for an accident victim could submit AIB's letter to a jury in civil cases wherein a person suffers a catastrophic injury resulting from the improper repair of a motor vehicle's structural systems.

Board Member Johnson made a motion to withdraw the proposed Advisory Ruling and the motion was seconded by Board Member Coyne. Chairman Cox called for a discussion on the motion.

Board Member Starbard stated, although he disagreed with Board Member Johnson about the language of the proposed Advisory Ruling, he did not disagree with Board Member Johnson about the public safety issue raised in the proposed Advisory Ruling. Board Member Starbard asserted that, insurance companies try to save money and auto repairers try to save lives and the issue is not going away, changes are made daily to manufacturers repair procedures, different brands of cars all have different manufacturers repair procedures. Board Member Starbard pointed out that at his auto body shop he employs a man whose job is tracking manufacturers repair procedures and just because the Board takes this proposed Advisory Ruling off the agenda today the problem is not going away.

A member of the general public named Dave Markowski requested permission to speak and Chairman Cox granted permission. Mr. Markowski asked the Board Members, what was AASP's position?

Board Member Johnson responded, AASP contended that the Board cannot entertain comments from interested parties when proposing an Advisory Ruling. AASP also complained that no "interested person" requested the Board issue the proposed Advisory Ruling as required by the Administrative Procedures Act [M.G.L. c. 30A, § 8 "On request of any interested person, an agency may make an advisory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by that agency. In issuing the advisory ruling, the agency need not comply with the requirements of this chapter with respect to regulations."]. Mr. Johnson explained, the fact is that the issue was raised at a Board meeting last year by a member of the general public and he was responding to the issue raised at that Board meeting. Board Member Johnson added, none of the 9 written comments submitted by interested parties asserted that manufacturers recommended repair procedures should not be followed when repairs are made to the structural components of a motor vehicle.

With the discussion having concluded, Chairman Cox called for a vote on the motion, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Request by Brian M. Partain, Field Claims Manager of the Northeast Field Group of National General Insurance Company to waive the motor vehicle damage appraiser course requirement as a condition of taking the Part-I examination for motor vehicle damage appraiser license for Joseph Duva, who is currently a resident of Connecticut and an employee of the National General Insurance Company and has been conducting auto damage appraisals for 30 years:

The item was presented by Chairman Cox and a motion was made by Board Member Joseph Coyne to waive the requirement of the motor vehicle appraiser course for Joseph Duva and a second to the motion was made by Board Member Richard Starbard. The motion was passed by a vote of: 4-0 with Chairman Cox abstaining. Reference to the letter submitted by Mr. Partain is at the end of these minutes.

Letter from Mr. Gary Cloutier to Gilbert Cox, Chairman Auto Damage Appraiser Licensing Board, dated September 25, 2018, about dismissal of Complaint 2016-5 that he filed against a licensed appraiser and complaining that ADALB violated its complaint procedures by allowing an attorney to speak during the executive session, and claiming that he had a right to be heard in the executive session proceedings in which the complaint was reviewed by the Board and discussed:

Chairman Cox read the item and requested an explanation from the Legal Counsel to the Board, Michael D. Powers.

Board Legal Counsel Powers informed the Board Members that he received the letter from Mr. Cloutier and disagreed with the allegations he made in the letter. Legal Counsel Powers elaborated that Mr. Cloutier filed a complaint against a licensed appraiser and the Board reviewed the complaint in the executive session with the licensed appraiser and his attorney, Owen Gallagher, who was allowed to address the Board and provide a summary of the facts and

law. After several meetings to review the complaint, the Board voted to dismiss the complaint. Mr. Cloutier claims that he has a right to attend the executive session proceedings with his attorney any time he files a complaint against a license appraiser, and that the Board cannot allow an attorney who is representing a licensed appraiser during the executive session an opportunity to speak during the session.

Mr. Powers informed the Board that the law allows the Chairman of a Board the discretion to allow an attorney for a licensed appraiser to speak during the executive session and the law also empowers the Chairman to decide when members of the general public can speak during the public session.

Mr. Powers explained the Open Meeting Law provides a person who is licensed and has a complaint filed against him or her with the public licensing authority, the right to have the matter heard in an executive or public session of the public body and he quoted from the law “[A] public body may meet in executive session only for the following purposes: i. 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...” Mr. Powers cited M.G.L. c. 30A, § 21(a)(1).

Legal Counsel Powers informed the Members of the Board that the Office of the Attorney General has interpreted this law in various decisions and in a case that was brought against the Town of Carver, which held an executive session to discuss discipline against a police sergeant, the Division of Open Government of the Office of the Attorney General (DOG) explained the reason for this right, “[B]ecause the Board planned to enter the executive session ...it did not have to provide the name of the individual to be discussed if it believed that doing so would compromise the purpose of the executive session, namely protecting the privacy of that individual...” Mr. Powers cited to the Office of the Attorney General’s decisions on the Open Meeting Law, OML 2013-20 at page 2.

Legal Counsel Powers asserted that this area of the law has also been interpreted in the “The Massachusetts Practice Series,” a recognized legal treatise that interprets Massachusetts laws, and explains this portion of the law in the following manner:

M.G.L. c. 30A, § 21(a)(1) provides that a public body may meet in executive session to discuss the reputation, character, physical condition, or mental health, rather than the 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 an executive session must be notified in writing by the public body at least 48 hours prior to the proposed executive session, although that notification may be waived by written agreement of the parties. A public body must hold an open session if the individual involved requests that the session be open.

The notification requirement obviously acts as a restriction upon the authority of public bodies to discuss in executive session the reputation, character, physical condition, or

mental health, rather than the professional competence, of individuals, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member, or individual, involved in one way or another with the various public bodies. Moreover, it does not prevent or restrict discussion of all of these matters—reputation, character, physical condition, mental health, discipline, dismissal, or complaints or charges brought against a public officer, employee, staff member, or individual—in open session where the individual involved requests that the meeting be open or the public body exercises its discretion to hold an open session.

The notification requirement is designed to enable the individual to be discussed to know in advance that he or she will be discussed in executive session and to take whatever action, if any, he or she may deem necessary or appropriate to protect his or her interests. By way of such protection, the statute provides that if the individual involved, the individual who has been duly notified that he or she will be discussed in executive session, requests that the meeting be open, the public body ‘shall hold an open session.’ The individual to be discussed is thus afforded by the statute the opportunity to open up the meeting, or at least that portion of the meeting in which he or she is to be discussed. Merely by requesting that the meeting be open, and not closed, as intended by the public body, the individual may force the public body into an open session for purposes of discussing the individual's reputation, character, physical condition, mental health, or discipline, dismissal, or complaints or charges brought against the individual.

If an executive session is held, the individual has the following rights:

- (1) to be present at the executive session during deliberations which involve that individual;
- (2) to have counsel or a representative of his or her own choosing present and attending for the purpose of advising the individual but not for the purpose of active participation in the executive session;
- (3) to speak on his or her own behalf; and
- (4) to cause an independent record to be created of the executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in M.G.L. c. 30A, § 21(a)(1) are in addition to the rights that he or she may have from any other source, including, but not limited to, rights under any law or collective bargaining agreement, and the exercise or non-exercise of the individual rights cannot be construed as a waiver of any rights of the individual.

While the statute provides important measures of protection for the individual to be discussed who, after appropriate notification, elects not to compel an open meeting, but to permit the closed or executive session to go forward as intended by the governmental body, it is essential to recognize the practical and reasonable limitations which impliedly exist in the exercise by the individual involved of his or her statutory rights in the closed or executive session. First, the right to be present applies only to those discussions or considerations which involve that individual. Second, while the statute gives the individual the right to have legal counsel, or a non-legal representative of his or her own

choosing, present and attending the executive session, the purpose for which such a right is granted is expressly limited to advising the individual involved. The counsel or representative who is there for the sole purpose of offering the individual appropriate advice, legal or otherwise, has no right to speak or otherwise actively participate in the closed or executive session. Third, while the individual involved has a statutory right to speak in his or her own behalf during the discussions or considerations in which the individual is involved during the executive session, the individual does not have the right to speak whenever he or she wishes or for as long as he or she wishes during the executive session.

While the counsel or representative has no right to participate actively, there is nothing in the statute to prohibit the public body from acting on its own to permit broader participation for the counsel or representative than merely advising the individual involved. Indeed, there may well be circumstances, especially where the individual to be discussed is laboring under a disability, where the interests of the governmental body in the expeditious conduct of a closed or executive session would best be served by permitting and encouraging a broader measure of active participation by the counsel or representative. In any event, it is clear that the statute does not require the governmental body to permit the counsel or representative of the individual to do anything more than unobtrusively offer the individual advice during the course of the executive session.

After reading this portion of the Legal Treatise, Legal Counsel Powers provided the citation to the quoted material as, 39 Mass. Prac. Administrative Law & Practice § 18:16.

Upon concluding his reading of the passage, Legal Counsel Powers said, the first part of the Open Meeting Law spells out the authority of the chair of a Board to allow members of the public to speak or remain silent at public meetings, in relevant part M.G.L.A. 30A § 20 provides:

....
(g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

Mr. Powers elaborated, consistent with the interpretation of these laws, in a complaint filed against the Minuteman Regional Vocational Technical School Committee alleging violations of the Open Meeting Law for holding an executive session to discuss complaints brought against the school's superintendent and allowing others to speak during the executive session held for that purpose, DOG found, "[A]side from an individual's right to participate in a discussion about that individual ... public attendance during an executive session is entirely within the chair's discretion....", Mr. Powers cited, OML 2013-141 page 4.

Legal Counsel Powers concluded, based on the law and these interpretations of it, Mr. Cloutier did not have any right to appear before the executive session of the ADALB with his attorney simply because he filed a complaint against a licensed appraiser and the Chairman is authorized

to control the Board's meetings by determining who will be allowed to speak to the Board. Legal Counsel Powers concluded that he submitted the next item on the Board's agenda to amend the "Guidelines for ADALB Complaint Procedures" to clarify that the Chairman and the Board have the authority to control who speaks at Board meetings and including the executive session.

Mr. Powers asked whether the Board wanted him to write a response to Mr. Cloutier's letter and the consensus of the Board was that they approved Legal Counsel Powers sending a reply to the letter.

Legal Counsel Michael D. Powers' proposed amendment to the Auto Damage Appraiser Licensing Board's Complaint Procedures by adding the following bolded underlined language to Section 1:

**Guidelines for ADALB Complaint Procedures
Amended as Adopted by Unanimous Vote of the Auto Damage Appraiser
Licensing Board at the Board Meeting Held on April 12, 2017.**

1. Notice to Licensed Appraiser. When a complaint (Complaint) is received by the executive secretary (Executive Secretary) to the Auto Damage Appraiser Licensing Board (ADALB or Board) alleging a licensed motor vehicle damage appraiser (appraiser) has violated the ADALB's enabling act M.G. L. c. 26, § 8G and/or regulation 212 CMR 2.00 et seq. as provided for in the ADALB's "Application for Complaint", and/or violates 211 CMR 123.00, 211 CMR 133.00 it is assigned a serial number in the order received prefixed by the year of the date of the complaint. At least 21 days before the following scheduled Board meeting, the appraiser, named in the Complaint, is sent a copy of the Complaint, and a letter notifying him/her of the date of the Board meeting and the rights provided under M.G. L. c. 31, § 21 (a)(1) that he/she has a right: whether to have the discussion of the matter heard during the public session of the Board meeting, or during the executive session of the Board meeting to which the public is not allowed to attend; to speak on his/her own behalf; to have an attorney or representative of his/her choosing attend the Board meeting to advise him/her at own expense but the attorney or representative will not be allowed to participate at the Board meeting; and to create an independent record by audio-recording or transcription of the executive session of the meeting at his/her expense. **Aside from an individual's right to participate in a discussion about that individual, participation of other people during an executive session is within the Board's discretion.** See the Office of Attorney General's Decisions on the Open Meeting Law **OML2013-141**, OML 2016-06, **and M.G.L. c. 30A, § 20(g)**. Thereafter, a copy of the letter and Complaint is forwarded to the members of the Board and placed on the agenda for the next Board meeting. A copy of the letter is also sent to the complainant.

Chairman Cox read the item and called for a motion to approve the item as written, Board Member Coyne made a motion to adopt the proposed amendment to the ADALB's Guidelines for

Complaint Procedures, and the motion was seconded by Board Member Johnson. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

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

Steve Zavackis, Board Executive Secretary, informed the Board that he received a request to reinstate a license from Mr. Michael Jordan who was previously licensed as a motor vehicle damage appraiser but allowed his license to lapse. Mr. Zavackis informed the Board that Mr. Jordan made his request after the agenda was posted and he felt it best to submit Mr. Jordan's request under the "other business" portion of the agenda.

Board Member Joseph Coyne made a motion to waive the requirement of taking the examination for motor vehicle damage appraiser provided all fees are paid by Mr. Jordan for the period the license lapsed until the reinstatement and the motion was seconded by Board Member Pare. The motion passed by a vote of: 3-1 with Board Member Johnson opposed and Chairman Cox abstaining.

Mr. Zavackis informed the Board that Mapfre/Commerce Insurance Company requested the Board waive the requirement for taking the motor vehicle appraiser course for two of their employees whom have extensive motor vehicle damage appraisal experience in other states. The individuals employed by Mapfre/Commerce are Penny Seligh and Richard Morris.

Board Member Johnson made the motion to waive the course requirement for Richard Morris and the motion was seconded by Board Member Coyne. The motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Board Member Johnson made the motion to waive the course requirement for taking the motor vehicle damage appraiser course for Penny Seligh and the motion was seconded by Board Member Coyne, the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

Date of next Board Meeting:

The Board Members agreed to hold the next Board meeting on December 5, 2018, at 9:30AM at Pathfinder Regional Vocational Technical High School 240 Sykes Street, Palmer, Massachusetts.

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:

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 Starbard. 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

Attorney Owen Gallagher appeared during the executive session with the licensed appraiser. The licensed appraiser was asked several questions by Board Members and answered the questions. Members of the Board raised an issue about proper approval of payment for a specific

damaged item to the subject matter motor vehicle. Board Member Starbard questioned an item that was not allowed for payment in the appraisal. The licensed appraiser stated that the item was damaged during the repair and, therefore, he did not allow for full payment of the item. Mr. Member Starbard asserted that any item damaged during the course of a repair is one that should qualify as a damaged item on an appraisal. Attorney Gallagher was granted permission to address the Board and he indicated that the insurance company may be willing to offer a supplemental appraisal for the damaged item to resolve the complaint.

It was agreed that the licensed appraiser and Attorney Gallagher would report back to the Board at the Board meeting in January of 2019.

Complaint 2018-7A & B, Complaint 2018-8A & B, and Complaint 2018-9A & B

One of the licensed appraisers appeared with his representative Mr. Papageorg and requested the Board severe the complaints from the other licensed appraiser jointly named in each complaint. Mr. Papageorg requested permission to speak to the Board and Chairman Cox granted permission. Mr. Papageorg informed the Board that the licensed appraiser was an employee of the auto body shop where the damage to motor vehicles were appraised and he did not conduct the appraisal of the damaged motor vehicle, the owner of the auto body shop wrote the appraisal because he was the only one authorized to write motor vehicle damage appraisals at the auto body shop at the time of the appraisals. Anything that the licensed appraiser did that involve these complaints, he did at the direction of the owner of the auto body shop. The licensed appraiser agreed with Mr. Papageorg's summary of the facts and requested to severe his case from that of the owner of the auto body shop.

Board Member Johnson informed the licensed appraiser that he wanted a written statement signed under the penalties of perjury stating his involvement with the complaint that was filed against him, confirming the assertions made before the Board, and the licensed appraiser agreed to send the letter. The licensed appraiser was informed that, the Board would review the letter and the complaint and make a determination as to the next step the Board would proceed.

A motion to severe the complaints and assign a separate Complaint Number to them was made by Board Member Johnson and seconded by Board Member Richard Starbard, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining. The new Complaint docket numbers are: 2018-7A, 2018-8A, 2018-9A, and 2018-7B, 2018-8B, and 2018-9B.

Complaint 2018-10

The Board voted to dismiss this complaint because the license appraiser submitted a statement indicating that he submitted a preliminary appraisal and the final appraisal was changed by his supervisors and was different than the appraisal he submitted. Board Member Johnson made a motion to dismiss, which was seconded by Board Member Coyne, and the motion passed by a vote of: 4-0 with Chairman Cox abstaining.

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

The licensed appraiser is the same appraiser complained against in each complaint and each complaint was filed by the same insurance company. The licensed appraiser appeared with his attorney, T. Harry Eliopoulos. The licensed appraiser asserted that the complaints failed to state

a violation of the Board's enabling act or regulation. The licensed appraiser made a technical point about the filing of the complaints, that some of them did not contain signed appraisals as required by the Board's regulation.

The attorney asked permission to speak with the Board and permission was granted. The attorney asserted that the complaint's failed to adequately set-out a violation of the Board's regulation.

Board Member Coyne requested that the attorney file a letter with the Board setting forth the grounds for dismissal. The matter was rescheduled for the next Board meeting on October 11, 2018.

The attorney requested a continuance and Board Member Richard Starbard made a motion to continue the matters and Board Member Lyle Pare seconded the motion and the motion passed by a vote of: 4-0, with Chairman Cox abstaining and the matters were continued.

Complaint 2018-14

The Complaint was brought against an employee of Board Member Joseph Coyne who recused himself from voting or participating as a Board Member and exited the meeting room. When the case was called Mr. Coyne returned as a representative to the licensed appraiser. Mr. Coyne informed the Board that the license appraiser was a subcontractor employed by his company to conduct motor vehicle damage appraisals.

Members of the Board asked the licensed appraiser several questions which were answered. A motion was made by Board Member Lyle Pare to dismiss the complaint and the motion was seconded by Board Member Johnson, the motion passed by a vote of: 3-0 with Chairman Cox abstaining.

Complaint 2018-15

The Complaint was brought against the same licensed appraiser as in Complaint 2018-14, who is a subcontractor of Board Member Joseph Coyne's appraisal company, and Mr. Coyne recused himself from voting or participating as a Board Member and exited the meeting room. When the case was called Mr. Coyne returned to the meeting as a representative of the licensed appraiser.

Board Members asked the licensed appraiser several questions which were answered. Based on the documents submitted in the complaint the license appraiser may have not completed a supplementary appraisal within the time required by 212 CMR 2.00 et seq. and it appeared that the supplementary appraisal was not provided within 3 business days. The licensed appraiser informed the Board that she had previous business with the employees of the auto body shop, during her appraisal of the motor vehicle she conducted business in the same manner as in the past, but on this occasion the employees of the auto body shop failed to completely cooperate with her during the appraisal process. Based upon her previous business practice for negotiating appraisals with the employees of the auto body shop, she believed that she complied with the ADALB's regulation for completing supplemental appraisals and did not intentionally delay completing the supplemental appraisal within the time required by the ADALB's regulation. Board Member Starbard wanted any dismissal letter to contain reference to the fact that the

supplemental appraisal was not provided within 3 business days as required by the Board's regulation.

Board Member Johnson made a motion to dismiss and Board Member Pare second the motion, the motion passed by a vote of: 3-0 with Chairman Cox abstaining.

Motion to adjourn:

Board Member Johnson moved to adjourn the meeting, seconded by Board Member Starbard 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 Gary Cloutier to Chairman Gilbert Cox dated September 25, 2018.**
- 2. Letter from Brian M. Partain, Field Claim Manager Northeast Field Group, of National General Insurance Company.**
- 3. Letter from Michael Jordan, dated October 4, 2018, requesting to renew his lapsed motor vehicle damage appraiser license.**