



**THE COMMONWEALTH OF MASSACHUSETTS  
AUTO DAMAGE APPRAISER LICENSING BOARD**

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CHARLES D. BAKER  
GOVERNOR

GILBERT W. COX JR.  
CHAIRMAN

KARYN E. POLITO  
LIEUTENANT GOVERNOR

JOSEPH COYNE  
RICHARD STARBARD  
WILLIAM E. JOHNSON  
LYLE M. PARE

**Minutes of Meeting of the Board held on December 6, 2016, Approved by the Board at the January 24, 2017, Board Meeting; Motion of Board Member Joseph Coyne and Seconded by Board Member Richard Starbard. The Motion Passed by a Vote of: 3-0, Chairman Cox Abstained and Board Member Pare was Not in Attendance.**

December 6, 2016 Minutes of Board Meeting  
Held at Pathfinder Vocational Technical High School  
240 Sykes Street, Palmer, Massachusetts (Library)

**Members Present:**

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:**

Jillian Zywiem of the Alliance of Automotive Service Providers of Massachusetts (AASP) (Audio/Video). Joel Gausten of GRECO Publishing (Audio/Photography). Chris Gervais of MAPFRE (Audio/Video). Paul Harden, Hanover Insurance Company.

**Call to Order**

Chairman Cox was not in attendance because he reported to 1000 Washington Street, Boston, Massachusetts at the location where the Board meetings are usually held. Chairman Cox telephoned ADALB Legal Counsel Michael D. Powers, and reported that because of an inadvertent mistake Chairman Cox made calendaring the meeting, the Board meeting appeared to be scheduled at 1000 Washington Street, Boston, Massachusetts. Chairman Cox reported to that location, and not to the Pathfinder Vocational Technical High School located in Palmer, Massachusetts which is an hour and half drive from Boston. Consequently, Chairman Cox was unable to participate at the meeting.

A discussion was held among the Board Members as to which Board Member would oversee the meeting and the consensus was that the Board Member with the most seniority by time served on the Board should be designated as the Chairman of the Board in the absence of Chairman Cox. A motion was made by Board Member William Johnson to designate Board Member Joseph Coyne as Chairman for purposes of the meeting, seconded by Board Member Lyle Pare, and the motion passed by a vote of: 3-0, with Board Member Coyne abstaining.

**Review of minutes:**

A review of the minutes of the Board Meeting held on October 4, 2016, was taken by the Board. A motion to approve the minutes was made by Board Member Richard Starbard and seconded by Board Member Lyle Pare, and the motion passed by a vote of: 3-0, with Board Member Johnson abstaining because he was not in attendance at the Board Meeting held on October 4, 2016.

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

Board Member Richard Starbard reported that the examination was held in Quincy, Massachusetts with a total of 50 people taking the examination and 36 people passing the examination. Board Member Starbard thanked James Schlager of Schlager's Auto Body of Quincy for his assistance, the assistance provided by Samantha of Geico Insurance Company, and Pete Smith of Commerce/MAPFRE Insurance Company.

**For Approval by the Board, an Order to Show Cause in Complaint 2016-4 against licensed appraisers James Steere, Paul Horton, and The Hanover Insurance Company as the responsible insurer:**

A proposed Order to Show Cause against licensed appraisers James Steere, Paul Horton, and the Hanover Insurance Company as the responsible insurer was submitted by the Legal Counsel to the Board, Michael D. Powers. (A copy of the proposed Order to Show Cause appears at the end of these minutes but does not include Exhibit #1 which is filed with the minutes).

A motion was made by Board Member William Johnson and seconded by Board Member Richard Starbard to approve the proposed Order to Show Cause and forward it to the to the General Counsel for the Division of Insurance with the request for an assignment of legal counsel to file, docket, and serve the Order of Show Cause on the Respondents, as provided for under the Massachusetts Administrative Procedures Act, M.G.L. c. 30A et seq.

During the discussion of the motion, Attorney Owen Gallagher, representing the respondents named in the Order of Show Cause, The Hanover Insurance Company and licensed appraiser James Steere and Paul Horton, requested permission to speak with the Board and acting Chairman Coyne granted permission. Attorney Gallagher informed the Board that Legal Counsel Michael D. Powers provided to him a draft of the proposed Order to Show Cause before the meeting and, after a review of it, Attorney Gallagher believed that the Board lacked jurisdiction over the subject matter of Direct Payment Plans. Attorney Gallagher provided a letter to the Board dated December 6, 2016, and requested that the Board amend the proposed Order to Show Cause deleting from the Order to Show Cause any allegations asserting the conduct of the licensed appraisers violated the regulation issued by the Commissioner of Insurance regulating Direct Payment Plans, which are approved by the Commissioner. (A copy of Attorney Gallagher's letter is filed with the approved

minutes). Attorney Gallagher opined that the Board lacked jurisdiction over Direct Payment Plans and, therefore, could not consider conduct that may violate such plans.

Board Member Johnson asserted that any issues about jurisdiction could be raised later on in the proceedings and made a request that the motion be approved. A vote was taken on the motion and it passed by a vote of: 4-0.

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

Board Member Johnson raised an issue about the rules that apply when a motor vehicle is insured in another state, and the vehicle is damaged in Massachusetts. Board Member Johnson asserted that when he has a damaged vehicle that is repaired at his auto body shop although the vehicle is registered and insured in New York, he applies the Massachusetts motor vehicle damage appraisal rules and regulations.

Board Member Lyle Pare responded, based on his past experience at Plymouth Rock Assurance Company, if the policy is written in Massachusetts and the collision repairs are made in the state of New York, then Massachusetts rules would apply. If the policy is written in the state of Connecticut, then his company honors the state of Connecticut's rules and pays their rates for repairs.

Board Member Richard Starbard asserted that Massachusetts provides specific language as to how a motor vehicle may be considered a total loss. If the vehicle is written under a New York policy of insurance then the state of New York's rules will apply.

Acting Chairman Joseph Coyne opined that when the request for an appraisal comes into his company from an out of state insurance company, then his company uses the out of state rates.

Board Member Johnson felt frustrated because he found out of state companies were using Massachusetts rates to their benefit, when an insurance company from New York state was seeking to declare a damaged motor vehicle a total loss, the company would use the New York rates which were more favorable under the New York rules, but when determining the labor rates for parts and material, they would use the lower Massachusetts rates.

Board Member Johnson requested Legal Counsel Powers provide an update as to the status of the review of the proposed amendments to the Board's regulation, 212 CMR 2.00 et seq. Mr. Powers informed the Board that the review was in progress, but did not know the exact stage the review was at. The Governor's Office made it clear that the regulatory review for all state agencies should be completed as soon as possible and the Governor's staff overseeing the review has been expediting the reviews.

Peter D'Agostino, representative of the AASP, asked permission to speak with the Board and permission was granted by acting Chairman Coyne. Mr. D'Agostino noted that there was a current issue regarding signed field notes and whether they were considered the same as a completed appraisal. The rule about signed field notes was placed in the regulation so that a fully completed

original appraisal was not required. Mr. D'Agostino opined that if an appraiser is given signed field notes then there is no need for an original appraisal to be completed.

Board Member Richard Starbard asserted that if an appraiser has the signed field notes then he considered it as the same as having an original appraisal.

Acting Chairman Joseph Coyne observed that the only time one would need to change the signed field notes is when an item is not supported by the regulation or unless the appraiser discovers preexisting damage.

Board Member Starbard stated that the issue is covered in the regulation, and he read from the relevant portion of the regulation.

Peter D'Agostino suggested that if appraisers agree to the signed field notes, then the notes should look exactly like the final appraisals.

Board Member Pare volunteered that when he worked for a different company as an appraiser the owner would periodically change an appraisal and, thereafter, he would get a telephone call from an appraiser informing him that someone changed the appraisal without his knowledge. The procedure used at his prior company is not allowed at Plymouth Rock Assurance Company.

Board Member Starbard suggested that the Board open the meeting to questions from members of the public, and acting Chairman Coyne asked if anyone had any questions for the Board.

A gentleman who identified himself as Alex Haddad stated that he had run into a problem whereby he signed the appraisal notes and an insurance company's appraiser informed him that there was a company policy requiring the appraisal to be reviewed and such a review takes five days. In those instances the auto body shop incurs lost time in which to perform the repairs.

Acting Chairman Coyne asserted that his company has a review process whereby they check the math and calculations to ensure the proper amounts are listed for hourly rates for labor and materials and that the appraisal is properly calculated. His company is basically looking for mistakes made in the calculations.

Board Member Johnson reaffirmed that an appraiser should not be changing the basic original appraisal.

Board Member Starbard declared, based upon the discussion of the issue by the Board it is clear that the Board is against such behavior and the Board invites members of the industry to file complaints and any such complaints will be reviewed accordingly.

Legal Counsel to the Board, Michael D. Powers, reported that Attorney Gallagher filed an Open Meeting Law complaint against the Board with the Office of the Attorney General for allegedly violating the Open Meeting Law at the Board meeting that was held on October 4, 2016, when the Board entered the executive session to discuss legal elements of a proposed Order to Show Cause as part of the Board's quasi-judicial functions, and receive attorney/client privileged advice from

the Legal Counsel. Legal Counsel Powers requested a vote of the Board to represent the Board in the response to the complaint filed by Attorney Gallagher.

A motion was made by Board Member Johnson to approve Legal Counsel Powers as the representative of the Board to file a response to the Open Meeting Law complaint, the motion was seconded by Board Member Coyne, and the motion passed by a vote of: 4-0.

**Next Meeting:**

The Board determined that the next regularly scheduled Board meeting would be held on January 24, 2017, at 9:30 AM at 1000 Washington Street, Boston, Massachusetts.

**Executive session:**

Acting Chairman Joseph Coyne made the following statement:

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 Complaint 2016-10, and Complaint 2016-12 filed against motor vehicle damage appraisers licensed by the Auto Damage Appraiser Licensing Board. Such discussions during the executive session are allowed for 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, and *Department of Public Safety Board of Appeals Matter*, OML 2013-104. 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 these matters be heard in the executive sessions. At the previous Board meeting the licensed appraisers and their attorneys agreed to attempt mediation with the complainant's and report whether mediation was successful.

Acting Chairman Coyne called for a roll-call vote to enter the executive session which included the announcement that the Board would adjourn in the executive session. The motion to enter the executive session and adjourn in the executive session was made by Richard Starbard and seconded by Board Member Johnson, the motion passed by a vote of: 4-0.

**Executive Session:**

An applicant who disclosed a felony conviction on his application to take the examinations for motor vehicle damage appraiser license appeared before the Board. The applicant informed the Board of the circumstances around the conviction, the fact that over eight years had passed since the conviction, he had been gainfully employed for the same employer for fifteen years, and was seeking to improve himself by obtaining the license. After the applicant answered several questions posed by Board Members, a motion was made by Board Member Pare to approve the applicant to take the examination, the motion was seconded by Board Member Starbard, and the motion passed by a vote of: 4-0.

Board Member Starbard reported that he mediated Complaints 2016-8, 2016-9, and 2016-10 and that they were resolved to the satisfaction of the complainant. Legal Counsel Michael D. Powers would send such a notice to the licensed appraisers and their attorneys. Board Member Starbard observed Complaint 2016-12 was resolved at the previous Board Meeting held on October 4, 2016. A review of the minutes of the Board Meeting that was held on October 4, 2016, revealed that Complaint 2016-12 was resolved to the complainant's satisfaction and no further action was necessary by the Board.

**Motion to adjourn:**

Board Member Johnson made a motion to adjourn which was seconded by Board Member Starbard, the motion passed by a vote of: 4-0.

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 Referred to at the Meeting:**

- 1.) The Proposed Order to Show Cause.

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF INSURANCE  
AUTO DAMAGE APPRAISER LICENSING BOARD

SUFFOLK, ss

Docket No. E2016-

|                            |   |                            |
|----------------------------|---|----------------------------|
| _____                      | ) |                            |
| AUTO DAMAGE APPRAISER      | ) |                            |
| LICENSING BOARD            | ) |                            |
| Petitioner,                | ) |                            |
|                            | ) |                            |
| v.                         | ) | <u>PROPOSED</u>            |
|                            | ) | <u>ORDER TO SHOW CAUSE</u> |
|                            | ) |                            |
| PAUL HORTON, JAMES STEERE, | ) |                            |
| AND THE HANOVER            | ) |                            |
| INSURANCE COMPANY          | ) |                            |
| IN ITS CAPACITY AS THE     | ) |                            |
| RESPONSIBLE INSURER,       | ) |                            |
| Respondents.               | ) |                            |
| _____                      | ) |                            |

Pursuant to the Massachusetts General Laws (“M.G.L.”) 26, § 8G and 801 C.M.R. 1.01(6)(a), the Respondents are hereby ordered to show cause why the Auto Damage Appraiser Licensing Board, an agency in the Division of Insurance, (“ADALB” or “Board”) should not make a determination, after hearing, that the Respondents have violated the provisions of the Commonwealth’s motor vehicle damage appraiser laws, as specified herein, and that the Petitioner’s prayer for relief be allowed.

**JURISDICTION AND PARTIES**

1. The ADALB is a regulatory agency, in the Division of Insurance, as established by the law of the Commonwealth of Massachusetts with jurisdiction to license individuals to appraise damage to all motor vehicles arising out of motor vehicle damage claims which shall include, but not be restricted to, any set of circumstances for which claims made be

made for damage to a motor vehicle, and regulating licensed motor vehicle damage appraisers as provided in M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq., 211 CMR 123.00 et seq., and 211 CMR 133.00 et seq.

2. Pursuant to M.G.L. c. 30A and M.G.L. c. 26 § 8G, the ADALB has authority to conduct adjudicatory hearings and to order the cancellation or suspension of the licenses they issue, as well as to levy administrative costs against such licensee(s), as set forth in M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq.
3. According to ADALB licensing records, Respondent Paul Horton (“Horton”) has a business address of The Hanover Insurance Company 440 Lincoln Street, PO Box 15145, Worcester, Massachusetts 01615. At all times material to the facts asserted in this Order to Show Cause, Horton was employed by The Hanover Insurance Company as a licensed motor vehicle damage appraiser and acted on its behalf during the course of conducting its business of insurance.
4. According to ADALB licensing records, Horton first was licensed by the ADALB under M.G.L. c. 28 § 8G on December 21, 1993 as a Massachusetts motor vehicle damage appraiser. Horton’s license remains active.
5. According to ADALB licensing records, Respondent James Steer (“Steere”) has a business address of The Hanover Insurance Company 440 Lincoln Street, PO Box 15145, Worcester, Massachusetts 01615. At all times material to the facts asserted in this Order to Show Cause, Steere was employed by the Hanover Insurance Company as a licensed motor vehicle damage appraiser and acted on its behalf during the course of conducting its business of insurance.



6. According to ADALB licensing records, Steere first was licensed by the ADALB under M.G.L. c. 28 § 8G on September 27, 1990, as a Massachusetts motor vehicle damage appraiser. Steere's license remains active.
7. According to the Division of Insurance licensing records The Hanover Insurance Company was first licensed to sell property and casualty insurance in the commonwealth on January 1, 1973. According to the Division of Insurance licensing records that license remains active subject to renewal on June 30, 2017.

### **STATEMENT OF FACTS**

8. On or about April 1, 2016, Mr. John Gonet ("Mr. Gonet") of Langonet Auto Body & Frame located at 61 Ramah Circle, South Agawam, Massachusetts submitted an application for complaint with the ADALB against Respondents Horton and Steere (A copy is hereto attached and incorporated as Exhibit "1").
9. In his complaint, Mr. Gonet alleged that on December 10, 2015, Horton, acting on behalf of The Hanover Insurance Company, telephoned him and informed him that a damaged motor vehicle would be coming to his shop for repairs, and that he would only pay \$32.00 per hour for paint and materials to repair the damage to the motor vehicle. At that point in time, the owner of the damaged motor vehicle, Mrs. Paula Struzziero-Katz ("the consumer") had the damage motor vehicle appraised by The Hanover Insurance Company, her insurer, and informed Horton that she would have the damage to her motor vehicle repaired at Langonet Auto Body & Frame. Mr. Gonet disputed accepting \$32.00 per hour as payment for paint and materials to repair the damage to the consumer's motor vehicle, by informing Mr. Horton that he was unable to agree to any figure for the repair of the damaged motor vehicle until personally inspecting the damage. The personal inspection of damage to a motor vehicle is required by 212 CMR 2.04(d) which provides,

“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.”

10. Thereafter, on the same day, Horton sent an email to Mr. Gonet with an appraisal of the damage to the motor vehicle attached and sent a copy of the appraisal to his supervisor Steere. At the time Mr. Gonet received the email from Horton he had not inspected the damage to the motor vehicle and, therefore, had not written an appraisal for the same.
11. On the same day that Horton sent the email with the appraisal to Mr. Gonet, Horton sent an email to the consumer asserting that he was unable to come to an agreement with Mr. Gonet on the appraisal and, therefore, repairs could not commence on the damage to her motor vehicle. Mr. Horton, in relevant part, wrote the consumer the following message:

Hi

Here's the Appraisal [sic] of damage to your vehicle.

I called Langonet Auto Body and spoke with John. I was unable to get an agreement with Him on some standard Items we write for on appraisals [sic]

I emailed him a copy of the appraisal.

Before he starts any repairs to your vehicle he'll need to call me so get an agreement on the repairs [sic]

I also attached a letter from us explaining our repair process and two shop [sic] list that cover Hampshire county and Hampden county [sic]

If you have any questions please call me [sic]

Thank you

Paul Horton

*Auto Damage Appraiser*

The Hanover Insurance Group

440 Lincoln St

Worcester, MA 01653

Cell (774) 224-2173

Fax (508) 926-1719

The communication was deceitful in that it creates the false impression that Mr. Gonet had personally appraised the damage to the motor vehicle, begun negotiating with Mr. Horton, but Mr. Gonet had refused to negotiate the damage on, “[s]ome standard Items....” In fact Mr. Gonet had not seen the damaged motor vehicle, had not written a counter estimate for the damage, and had not begun any meaningful negotiations with Horton. The consumer’s damaged motor vehicle did not arrive at Langonet Auto Body & Frame until December 15, 2015, five days after Horton sent his emails to the consumer and Mr. Gonet. On December 23, 2015, Mr. Gonet prepared a supplemental appraisal for the damage to the motor vehicle and emailed it to Horton. Later that day Mr. Gonet emailed Mr. Horton to remind him to make a personal inspection of the damaged motor vehicle. Horton’s supervisor Steere intervened by emailing Mr. Gonet and questioning the requirement for a personal inspection of the damage. See Exhibit 1, and Exhibit C attached thereto. Neither Horton nor his supervisor Steere ever conducted a personal inspection of the motor vehicle in response to the supplemental appraisal [in violation of 212 CMR 2.04(1)(h)]. See Exhibit 1 and exhibits D and F attached thereto.

12. Because the consumer had notified Horton and Steere, licensed motor vehicle appraisers of The Hanover Insurance Company, that she had selected Langonet Auto Body & Frame (“Langonet”) to perform the appraisal and repair of the damage to the motor vehicle, sending the consumer two lists of auto body shops which were based on the “Direct Payment Plan” The Hanover Insurance Company had filed with the Division of Insurance, was an attempt to steer the consumer to The Hanover Insurance Company’s preferred auto body shops and away from Langonet from performing the repair work. Such conduct violates the ADALB enabling statute M.G.L. c. 26, § 8G, the ADALB regulation [212 CMR 2.04(c)], and is deceitful. M.G.L. c. 26, § 8G provides, in relevant part, “No appraiser or insurer shall request or suggest that repairs be made in a specified repair shop.” The ADALB regulation provides under 212 CMR 2.04(c), “Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of an independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific

repair shop or individual. The provisions of 212 CMR 2.04(c) shall not apply to any direct payment plan pursuant to 211 CMR 123.00.” This last sentence only applies to circumstances wherein the Direct Payment Plan regulation is properly complied with.

13. By Horton and Steere sending the consumer two lists of referral auto repair shops they violated the spirit and intent of the “Direct Payment Plan Regulation” issued by the Commissioner of the Division of Insurance 211 CMR 123.00 et seq. and M.G.L. c. 176D, § 2 in that Horton and Steere engaged in an unfair method of competition or an unfair and deceptive act or practice in the business of insurance. Such misconduct is grounds for the revocation of The Hanover Insurance Company’s Direct Payment Plan under 211 CMR 123.04(9). In addition, by sending the two lists of referral auto repair shops, Steere and Horton violated the Direct Payment Plan filed by The Hanover Insurance Company which allows for sending only one list to a consumer under Section 4.
14. During the course of repairing the damage to the motor vehicle the quarter glass shattered, a predictable happenstance referenced in standard automotive repair manuals generally utilized in the motor vehicle damage repair industry. See Mr. Gonet’s complaint Exhibit 1, page 2, “[D]uring the repair of the motor vehicle, the quarter glass, which is reflected in the P-Pages as being prone to breaking during removal, did in fact break....”
15. Initially, Horton and Steere refused to provide for any payment for the repair of the shattered quarter glass. In relevant part, Horton first wrote to Gonet, “We don’t agree that the glass needed replacement. Your shop broke it and I was trying to work with you by negotiating. If you refuse to call me and try to come to an agreement then I will not be making any additional allowances.” Thereafter, Steere wrote to Gonet, “You’re going

to have to work this out with Paul [Steere]. If you're telling me you can't come to an agreement then I will step in as the appraiser, but I can tell you I completely disagree with making any allowance for the quarter glass. You hired a subcontractor to remove the glass and he broke it. How is that the responsibility of Hanover." See Exhibit F attached to Exhibit 1. Without having any knowledge that Gonet or Langonet's subcontractor negligently caused the quarter glass to break, Horton and Steere asserted this reason for denying payment for the quarter glass. This conduct by Horton and Steere was in bad faith, deceitful, unfair, and deceptive.

16. Thereafter, Gonet demanded full payment for the repair of the quarter glass and Horton and Steere offered to make a partial payment of for the replacement of the quarter glass. Based on the standard and common practice in the motor vehicle damage repair industry, the ordinary and prudent motor vehicle damage appraiser would have found that the quarter glass shattering during the repair process was a predictable and foreseeable occurrence and would have allowed for payment of the same. Under the totality of the circumstances, the failure of Horton and/or Steere to allow for proper payment for the damage for the quarter glass fell below the professional standards for appraising motor vehicle damage customarily followed in the auto damage repair and licensed appraiser industry in Massachusetts and, therefore, was deceitful and/or grossly negligent and/or incompetent.
17. The conduct of Horton and Steere while acting individually and/or jointly of: sending the email to the consumer which deceitfully would mislead an ordinary and prudent person to believe that Mr. Gonet refused to reasonably negotiate the damage to the motor vehicle, attempting to steer the consumer to The Hanover Insurance Company's preferred auto

body shops by providing the names and addresses of two lists of auto body shops to select to perform the work, and the refusal by Horton and/or Steere to conduct good faith negotiations for the quarter glass item that was submitted by Mr. Gonet in his supplemental appraisal, was deceitful and/or grossly negligent, and/or incompetent, and/or unfair methods of competition or unfair and deceptive acts or practices in the business of insurance, and violated M.G.L. c. 26, § 8G, 212 CMR 2.02(8), 212 CMR 2.04(1)(c) and (1)(h), violated the spirit and intent of 212 CMR 123.00 et seq., and M.G.L. c. 176D § 2.

### **FIRST CLAIM**

18. Petitioner repeats and reincorporates paragraphs 1 through 17 as if set forth fully again herein.
19. Because the damage to the quarter glass was not contained in the original appraisal submitted by Horton and could not have been reasonably anticipated at the time of the appraisal which was written by him, Horton was required to conduct a personal inspection of the motor vehicle after the supplemental appraisal was submitted by Mr. Gonet.
20. By Horton's conduct of refusing to conduct a personal inspection of the damaged motor vehicle after a supplemental appraisal had been submitted by Mr. Gonet, Horton violated M.G.L. c. 26, § 8G 212 CMR 2.04(h) which provides in relevant part "(h) Supplemental Appraisals. If a registered repair shop or claimant, after commencing repairs, discovers additional damaged parts or damage that could not have been reasonably anticipated at the time of the appraisal, either may request a supplementary appraisal. The registered repair shop shall complete a supplemental appraisal prior to making the request. The insurer shall assign an appraiser who shall personally inspect the damaged vehicle within three business

days of the receipt of such request....” In addition, Horton also violated M.G.L. c. 26, § 8G which provides in relevant part “Every appraiser shall reinspect damaged motor vehicles when supplementary allowances are requested by repair shops within two days of a request.”

### **SECOND CLAIM**

21. Petitioner repeats and reincorporates paragraphs 1 through 20 as if set forth fully again herein.
22. Horton’s conduct of sending the email to the consumer providing the names and addresses of two lists of auto body shops which would perform the work and attempting to steer the consumer to The Hanover Insurance Company’s preferred auto body repair shops, while knowing the consumer had selected Langonet Auto Body & Frame as her auto body shop, violated M.G.L. c. 26, § 8G “No appraiser or insurer shall request or suggest that repairs be made in a specified repair shop” and 212 CMR 2.04(1)(c) “Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of an independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific repair shop or individual....” This conduct also violated M.G.L. c. 176D, § 2 by engaging in an unfair method of competition or engaging in an unfair or deceptive act or practice in the business of insurance and violated the spirit and intent of 211 CMR 123.04(9) and 211 CMR 123.08.

### **THIRD CLAIM**

23. Petitioner repeats and reincorporates paragraphs 1 through 22 as if set forth fully again herein.

24. By the misconduct of groundlessly claiming that Gonet and/or Langonet's subcontractor negligently caused the damage to the quarter glass and initially refusing to make payment for it, Horton violated M.G.L. c. 26, § 8G and 212 CMR 2.02(8) during his preparation or completion of a motor vehicle damage report. This conduct also violated M.G.L. c. 176D, § 2 by engaging in an unfair method of competition or engaging in an unfair or deceptive act or practice in the business of insurance.

#### **FOURTH CLAIM**

25. Petitioner repeats and reincorporates paragraphs 1 through 24 as if set forth fully again herein.
26. By sending the email to the consumer which deceitfully intimated that Mr. Gonet unreasonably negotiated the damage to the motor vehicle, wrongfully providing the names and addresses of two lists of auto body shops which would perform the work, and attempting to steer the consumer to The Hanover Insurance Company's preferred auto body repair shops while knowing that the consumer had selected Langonet Auto Body & Frame as her auto body shop in violation of 212 CMR 2.04(1)(c), refusing to conduct a personal inspection of the motor vehicle after receiving the supplemental appraisal from Gonet in violation of 212 CMR 2.04(1)(h), and the refusal by Horton to conduct good faith negotiations for the quarter glass item that was submitted by Mr. Gonet, Horton's conduct was deceitful and violated M.G.L. c. 26, § 8G "[T]he board, after due notice and hearing, shall cancel for a period not exceeding one year, any license issued by it to, and cancel the registration of, any person who has been shown at such hearing to be guilty of ... deceit... in the preparation or completion of any motor vehicle damage report...." This misconduct also violated 212 CMR 2.02(8).

#### **FIFTH CLAIM**



27. Petitioner repeats and reincorporates paragraphs 1 through 26 as if set forth fully again herein.
28. By Horton sending the email to the consumer which deceitfully intimated that Mr. Gonet refused to reasonably negotiate the damage to the motor vehicle, providing the names and addresses of two lists of auto body shops which would perform the work, and attempting to steer the consumer to The Hanover Insurance Company's preferred auto body repair shops while knowing that the consumer had selected Langonet Auto Body & Frame as her auto body shop in violation of 212 CMR 2.04(1)(c), refusing to conduct a personal inspection of the motor vehicle after receiving the supplemental appraisal from Gonet in violation of 212 CMR 2.04(1)(h), and the refusal by Horton to conduct good faith negotiations for the quarter glass item that was submitted by Mr. Gonet, Horton's conduct was grossly negligent. This conduct violated M.G.L. c. 26, § 8G which provides, in relevant part, "[T]he board, after due notice and hearing, shall cancel for a period not exceeding one year, any license issued by it to, and cancel the registration of, any person who has been shown at such hearing to be guilty of ... gross negligence...in the preparation of completion of any motor vehicle damage report...." This conduct also violated 212 CMR 2.02(8).

#### **SIXTH CLAIM**

29. Petitioner repeats and reincorporates paragraphs 1 through 28 as if set forth fully again herein.
30. By sending the email to the consumer which deceitfully intimated that Mr. Gonet refused to reasonably negotiate the damage to the motor vehicle, providing the names and addresses of two lists of auto body shops which would perform the work, and attempting to steer the consumer to The Hanover Insurance Company's preferred auto body repair

shops while knowing that the consumer had selected Langonet Auto Body & Frame as her auto body shop in violation of 212 CMR 2.04(1)(c), refusing to conduct a personal inspection of the motor vehicle after receiving the supplemental appraisal from Gonet in violation of 212 CMR 2.04(1)(h), and the refusal by Horton to conduct good faith negotiations for the quarter glass item that was submitted by Mr. Gonet, Horton's conduct was incompetent. This conduct violated M.G.L. c. 26, § 8G which provides in relevant part "[T]he board, after due notice and hearing, shall cancel for a period not exceeding one year, any license issued by it to, and cancel the registration of, any person who has been shown at such hearing to be guilty of ... incompetence...in the preparation of completion of any motor vehicle damage report...." This conduct also violated 212 CMR 2.02(8).

#### **SEVENTH CLAIM**

31. Petitioner repeats and reincorporates paragraphs 1 through 30 as if set forth fully again herein.
32. Because the damage to the quarter glass was not contained in the original appraisal submitted by Horton and could not have been reasonably anticipated at the time of the appraisal was written by him, Steere was bound to conduct a personal inspection of the motor vehicle.
33. Based on the allegations set forth above, when Respondent Steere refused to conduct a personal inspection of the damage motor vehicle after a supplemental appraisal had been submitted by Mr. Gonet, Steere violated M.G.L. c. 26, § 8G 212 CMR 2.04(h) which provides, in relevant part, "(h) Supplemental Appraisals. If a registered repair shop or claimant, after commencing repairs, discovers additional damaged parts or damage that could not have been reasonably anticipated at the time of the appraisal, either may request a

supplementary appraisal. The registered repair shop shall complete a supplemental appraisal prior to making the request. The insurer shall assign an appraiser who shall personally inspect the damaged vehicle within three business days of the receipt of such request....” Because the quarter glass was not contained in the original appraisal submitted by Horton and could not have been reasonably anticipated at the time of the appraisal Mr. Steere also was bound to conduct a personal inspection. In addition, Steere violated M.G.L. c. 26, § 8G which provides in relevant part, “Every appraiser shall reinspect damaged motor vehicles when supplementary allowances are requested by repair shops within two days of a request.”

#### **EIGHTH CLAIM**

34. Petitioner repeats and reincorporates paragraphs 1 through 33 as if set forth fully again herein.
35. By Steere’s conduct of joining in with Horton in sending the email to the consumer providing the names and addresses of two lists of auto body shops which would perform the work, and attempting to steer the consumer to The Hanover Insurance Company’s preferred auto body repair shops while knowing that the consumer had selected Langonet Auto Body & Frame as her auto body shop violated M.G.L. c. 26, § 8G “No appraiser or insurer shall request or suggest that repairs be made in a specified repair shop” and 212 CMR 2.04(1)(c) “Contact with Claimant and Selection of Repair Shop. No staff or independent appraiser, insurer, representative of insurer, or employer of an independent appraiser shall refer the claimant to or away from any specific repair shop or require that repairs be made by a specific repair shop or individual....” This conduct also violated M.G.L. c. 176D, § 2 by engaging in an unfair method of competition or engaging in an

unfair or deceptive act or practice in the business of insurance and violated the spirit and intent of 211 CMR 123.04(9) and 211 CMR 123.08.

**NINTH CLAIM**

36. Petitioner repeats and reincorporates paragraphs 1 through 35 as if set forth fully again herein.
37. By Steere's misconduct of joining in with Horton groundlessly claiming that Langonet's subcontractor negligently caused the damage to the quarter glass and initially refusing to make payment for it, Horton violated M.G.L. c. 26, § 8G and 212 CMR 2.02(8) during his preparation or completion of a motor vehicle damage report. This conduct also violated M.G.L. c. 176D, § 2 by engaging in an unfair method of competition or engaging in an unfair or deceptive act or practice in the business of insurance.

**TENTH CLAIM**

38. Petitioner repeats and reincorporates paragraphs 1 through 37 as if set forth fully again herein.
39. By allowing Horton to send the email to the consumer which deceitfully stated that Mr. Gonet refused to negotiate the damage to the motor vehicle, providing the names and addresses of two lists of auto body shops which would perform the work while attempting to steer the consumer to The Hanover Insurance Company's preferred auto body repair shops knowing that the consumer had selected Langonet Auto Body & Frame as her auto body shop in violation of 212 CMR 2.04(1)(c), refusing to conduct a personal inspection of the motor vehicle after receiving the supplemental appraisal from Gonet in violation of 212 CMR 2.04(1)(h), and the refusal by Steere to conduct good faith negotiations for the quarter glass item that was submitted by Mr. Gonet, Steere's conduct

was deceitful. This conduct violated M.G.L. c. 26, § 8G part “[T]he board, after due notice and hearing, shall cancel for a period not exceeding one year, any license issued by it to, and cancel the registration of, any person who has been shown at such hearing to be guilty of ... deceit...in the preparation of completion of any motor vehicle damage report....” This misconduct also violated 212 CMR 2.02(8).

#### **ELEVENTH CLAIM**

40. Petitioner repeats and reincorporates paragraphs 1 through 39 as if set forth fully again herein.
41. By Steere joining in with Horton to send the email to the consumer which deceitfully stated that Mr. Gonet refused to reasonably negotiate the damage to the motor vehicle, providing the names and addresses of two lists of auto body shops which would perform the work while attempting to steer the consumer to The Hanover Insurance Company’s preferred auto body repair shops knowing that the consumer had selected Langonet Auto Body & Frame as her auto body shop in violation of 212 CMR 2.04(1)(c), refusing to conduct a personal inspection of the motor vehicle after receiving the supplemental appraisal from Gonet in violation of 212 CMR 2.04(1)(h), and the refusal by Steere to conduct good faith negotiations for the quarter glass item that was submitted by Mr. Gonet, Steere’s conduct was grossly negligent. This conduct violated M.G.L. c. 26, § 8G part “[T]he board, after due notice and hearing, shall cancel for a period not exceeding one year, any license issued by it to, and cancel the registration of, any person who has been shown at such hearing to be guilty of ... gross negligence...in the preparation of completion of any motor vehicle damage report....” This conduct also violated 212 CMR 2.02(8).

#### **TWELFTH CLAIM**

42. Petitioner repeats and reincorporates paragraphs 1 through 41 as if set forth fully again herein.
43. By allowing Horton to send the email to the consumer which deceitfully stated that Mr. Gonet refused to negotiate the damage to the motor vehicle, providing the names and addresses of two lists of auto body shops which would perform the work while attempting to steer the consumer to The Hanover Insurance Company's preferred auto body repair shops knowing that the consumer had selected Langonet Auto Body & Frame as her auto body shop in violation of 212 CMR 2.04(1)(c), refusing to conduct a personal inspection of the motor vehicle after receiving the supplemental appraisal from Gonet in violation of 212 CMR 2.04(1)(h), and the refusal by Steere to conduct good faith negotiations for the quarter glass item that was submitted by Mr. Gonet, Steere's conduct was incompetent. This conduct violated M.G.L. c. 26, § 8G part "[T]he board, after due notice and hearing, shall cancel for a period not exceeding one year, any license issued by it to, and cancel the registration of, any person who has been shown at such hearing to be guilty of ... incompetence...in the preparation of completion of any motor vehicle damage report...." This misconduct also violated 212 CMR 2.02(8).

### **RELIEF**

WHEREFORE, the Petitioner respectfully requests the Board make the following findings and enter the following orders:

1. Find as fact the allegations set out in this Order to Show Cause.
2. Find that Horton, by his conduct as set forth in paragraphs 7-17, including, but not limited to, his failure to personally inspect the damaged motor vehicle after a

supplemental appraisal was sent to him violated M.G.L. c. 26, § 8G and 212 CMR 2.04(1)(h).

3. Find that Horton, by his conduct as set forth in paragraphs 7-17, including but not limited to, his sending the lists of two auto repair shops to the consumer after she had selected Langonet as her auto repair shop violated M.G.L. c. 26, § 8G and 212 CMR 2.04(1)(c).
4. Find that Horton, by his conduct as set forth in paragraphs 7-17, including but not limited to, sending the consumer two referral repair shops lists after the consumer notified Horton that Langonet was her auto body shop and groundlessly claiming that Gonet and/or Langonet had caused the damage to the quarter glass and refusing to pay for the same, engaged in an unfair method of competition or engaged in an unfair or deceptive act or practice in the business of insurance violated G.L. c. 176D, § 2, violated the spirit and intent of 211 CMR 123.00 et seq. and that The Hanover Insurance Company is also responsible for these actions committed by its licensed motor vehicle damage appraisers under 212 CMR 2.03(1).
5. Find that Horton, by his conduct set forth in paragraphs 7-17, including his groundless refusal to pay for the damage to the quarter glass violated M.G.L. c. 26, § 8G and 212 CMR 2.02(8).
6. Find that Horton, by his conduct as set forth in paragraphs 7-17, violated M.G.L. c. 26, § 8G and 212 CMR 2.02(8) and that his conduct was deceitful during the course of the preparation or completion of a motor vehicle damage report.
7. Find that Horton, by his conduct as set forth in paragraphs 7-16, violated M.G.L. c. 26, § 8G and 212 CMR 2.02(8) and that his conduct was grossly negligent during the course of the preparation or completion of a motor vehicle damage report.

8. Find that Horton, by his conduct as set forth in paragraphs 7-17 , violated M.G.L. c. 26, § 8G and 212 CMR 2.02(8) and that his conduct was incompetent during the course of the preparation or completion of a motor vehicle damage report.
9. Find that Steere, by his conduct as set forth in paragraphs 7-17, including, but not limited to, his failure to personally inspect the damaged motor vehicle after a supplemental appraisal was sent to him violated M.G.L. c. 26, § 8G and 212 CMR 2.04(1)(h).
10. Find that Steere, by his conduct as set forth in paragraphs 7-17, including but not limited to, his approval of sending the names of two auto repair shops to the consumer after she had selected Langonet as her auto repair shop violated M.G.L. c. 26, § 8G and 212 CMR 2.04(1)(c).
11. Find that Steere, by his conduct as set forth in paragraphs 7-17, including but not limited to, sending the consumer two referral repair shops lists after the consumer notified Horton that Langonet was her auto body shop and groundlessly claiming that Gonet and/or Langonet had caused the damage to the quarter glass and refusing to pay for the same, engaged in an unfair method of competition or engaged in an unfair or deceptive act or practice in the business of insurance, violated G.L. c. 176D, § 2, violated the spirit and intent of 211 CMR 123.00 et seq. and that that The Hanover Insurance Company is also responsible for these actions committed by its licensed motor vehicle damage appraisers under 212 CMR 2.03(1).
12. Find that Steere, by his conduct set forth in paragraphs 7-17, including his misconduct of groundlessly refusing to pay for the damage to the quarter glass violated M.G.L. c. 26, § 8G and 212 CMR 212 CMR 2.02(8).



13. Find that Steere, by his conduct as set forth in paragraphs 7-17, violated M.G.L. c. 26, § 8G and 212 CMR 2.02(8) and that his conduct was deceitful during the course of the preparation or completion of a motor vehicle damage report.
14. Find that Steere, by his conduct as set forth in paragraphs 7-17, violated M.G.L. c. 26, § 8G in that his conduct was grossly negligent during the course of the preparation or completion of a motor vehicle damage report.
15. Find that Steere, by his conduct as set forth in paragraphs 7-17, violated M.G.L. c. 26, § 8G and 212 CMR 2.02(8) in that his conduct was incompetent during the course of the preparation or completion of a motor vehicle damage report.
16. Order Horton to cease and desist from the conduct alleged in the Order to Show Cause.
17. Order the maximum time for the cancellation or suspension of Horton's motor vehicle damage appraiser license for each and every violation that Horton committed under M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq. as provided for under M.G.L. c. 26, § 8G and 212 CMR 2.02(8), and that Horton serve each cancellation or suspension of his motor vehicle damage appraiser for a separate period of time on and after each cancellation or suspension.
18. Order Horton to submit any and all Massachusetts insurance licenses in his possession to the ADALB.
19. Prohibit Horton from directly or indirectly transacting any motor vehicle damage appraisals in the Commonwealth of Massachusetts in any capacity until properly licensed by the Board.
20. Assess administrative costs against Horton for each and any every violation of M.G.L. c. 26, § 8G pursuant to 212 CMR 2.05.

21. Order that any administrative costs assessed against Horton be paid within 30 days from the date ordered.
22. Order that at the conclusion of the cancellation or suspension of Horton's motor vehicle damage appraiser license that he be re-examined by the Board and be required to register and pay a fee of fifty dollars.
23. Order Steere to cease and desist from the conduct alleged in the Order to Show Cause.
24. Order the maximum time for the cancellation or suspension of Steere's motor vehicle damage appraiser license for each and every violation that Steere committed under M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq. as provided for under M.G.L. c. 26, § 8G and 212 CMR 2.02(8), and that Steere serve each cancellation or suspension of his motor vehicle damage appraiser for a separate period of time on and after each cancellation or suspension.
25. Order Steere to submit any and all Massachusetts appraiser licenses in his possession to the ADALB.
26. Prohibit Steere from directly or indirectly transacting any motor vehicle damage appraisals in the Commonwealth of Massachusetts in any capacity until properly licensed by the Board.
27. Assess administrative costs against Steere for each and every violation of M.G.L. c. 26, § 8G pursuant to 212 CMR 2.05.
28. Order that any administrative costs assessed against Steere be paid within 30 days from the date ordered.

29. Order that at the conclusion of the cancellation or suspension of Steere's motor vehicle damage appraiser license that he be re-examined by the Board and be required to register and pay a fee of fifty dollars.
30. Notify the Commissioner of the Division of Insurance that Horton and Steere while acting on behalf of The Hanover Insurance Company engaged in unfair methods of competition or engaged in unfair or deceptive acts or practices in the business of insurance violated M.G.L. c. 176D, § 2, violated the spirit and intent of 211 CMR 123.00 et seq., and request the Commissioner revoke the approval of The Hanover Insurance Company's Direct Payment Plan filed under 211 CMR 123.09 et seq. and/or assess the maximum fines against Horton, Steere, and The Hanover Insurance Company for each and every violation as provided for in M.G.L. c. 176D.
31. Enter any further orders as are deemed just and fair.

Respectfully submitted,  
Auto Damage Appraiser Licensing Board  
By its Attorney,

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Counsel to the Commissioner  
Massachusetts Division of Insurance  
1000 Washington Street, Suite 810  
Boston, MA 02118-6200

Dated: December \_\_, 2016

- 2.) Exhibit #1 to the Complaint filed against the respondents.
- 3.) Letter from Attorney Owen Gallagher dated December 6, 2016.