



20/20 Vision in 2020

By Lucky Papageorg
 AASP/MA Executive Director



If the changes we have seen in our industry over just these past few years are any indication, 2020 is going to be one heck of a ride. For those who have been keeping current with new technology and the associated equipment and training, the changes will be challenging but not overwhelming. For those of you who have been dragged into the future kicking and screaming, “welcome” and be ready to do a lot more kicking and screaming. Far too many in our industry, however, opted to put blinders on and be singularly focused on just getting to retirement. This last group of non-participants/repairer wannabes see neither the benefit nor the absolute responsibility and liability associated with our profession as collision repairers.

As I mention in my Executive Director’s message in the January 2020 issue of *New England Automotive Report*, the unwritten theme of this year’s SEMA in Las Vegas could have been, “You don’t even know what you don’t know.” We need to stay current with the new technologies coming at us down the line as an industry. At many of the SEMA seminars and exhibitor booths, the newest technology and equipment was discussed and made available for viewing. Along with purchasing what can be very expensive state-of-the-art equipment and discussing the importance of doing proper repairs, there is the key factor of the need to change our industry’s mindset. We can no longer continue to repair today’s vehicles using yesterday’s knowledge and equipment. The fact that you have been repairing collision damage for 30-plus years does NOT make you an expert by default. At one of the many seminars held, it was stated that technicians who have been repairing vehicles for 30 years with no substantial recent training in OEM procedures should “stick to working on 30-year old vehicles!”

This is no joke!!! As a collision repairer, you have taken on an awesome responsibility and liability. A liability which is literally yours from “cradle to grave.” If you have any doubt, just look back at the John Eagle Collision case in Texas. I say look back, but don’t think for a minute the issue is in the rearview mirror. Sadly, this is a very real ticking time bomb. There are, I dare say, thousands of these potential vehicles traveling our roads. Not with any intention or malice intended by collision repairers but we really don’t know what we don’t know. Just as in the John Eagle Collision case, being the “experts” in the collision repair process leaves no one to blame or point a finger at but ourselves.

If you have not already made the commitment to research each and every repair process for the vehicle you are in the process of repairing, it is not too late to start. When the attorney for one of your customers knocks on your business’s door and asks to see your destructive weld test sample, he will mean for the specific vehicle you fixed previously. He will, no doubt, also ask to see the dated print-out of the OEM procedures for the quarter panel you repaired on that same vehicle. They should be in the same file with your photos

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President's Message
by Molly Brodeur

Help Us Help You

It's hard to believe another year has come and gone. As we approach the start of a new year, it's important to reflect on successes and failures, while we carve out a new or changed path for the future. As I look back on 2019 as it relates to AASP/MA, there are two themes that resonate. The first - Labor Rate relief for an industry that is starved of proper compensation. The second - safe and proper repairs.

Both are extremely important to AASP/MA, and we've been working fastidiously through the implementation of our Labor Rate Survey and encouraged participation in BillableGenie, along with continuing to bring education to all things relative to the importance of proper blueprinting, OEM repair procedures, scanning and ADAS calibration.

Looking ahead to 2020, we have a lot of work to do. We need ALL members to engage in the efforts of the ONLY association working on your behalf in Massachusetts. You have the power to help make a difference! Reach out to fellow shop owners and impart the importance of being part of the solution. As the complexity of vehicle repairs continues to explode, proper education, training, equipment and information is paramount as we all work tirelessly to ensure safe repairs. The struggle is real as we are faced with technician shortages, staffing challenges and constant increases in our cost of doing business.

AASP/MA and its Board of Directors, Committee Members and Lucky (our Executive Director) are all committed to YOUR success and will continue to work hard on your behalf. Please mark your calendars for the meetings in your zone, engage in conversation and camaraderie and help us help you. All for one, and one for all!

**Best wishes for a
Happy Holiday season
and a blessed,
successful start to
the New Year!**

**“All for one and
one for all!”**

Dear members,
Would you be willing to host a membership drive at your facility or welcome a legislative visit by your Senator or Representative so they can see firsthand what it means to repair a collision damaged vehicle?

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ADALB Approves Controversial Advisory Ruling

By Joel Gausten

It finally happened.

On November 26, the Auto Damage Appraiser Licensing Board (ADALB) ended a year-long debate over a proposed Advisory Ruling (originally written by Board member Bill Johnson and former member Lyle Pare and later revised by Johnson and current Board member Samantha Tracy) by voting to approve it as currently written. The official text, as read by Johnson at the start of the meeting, is as follows:

ADVISORY RULING

Appraisers should continue to follow 211 CMR 133.04(1)(b) and (c), and 212 CMR 2.04 [...] on appraisals. If the part(s) that have been specified on the appraisal are unfit for use in the subject repair and must be replaced, as agreed upon by both the repair shop and the insurance company, the parties should attempt to agree on an alternative part, and the insurance company shall be responsible for the replacement costs such as freight and handling or shall be responsible for the costs of restoring the parts to usable condition, unless the parties otherwise agree.

Further, the appraisers representing the insurance company and the registered repair shop shall attempt to agree on the estimated cost for such repairs. The registered repair shop must prepare an appraisal for the purpose of negotiation.

Nothing herein is intended to create any obligations in addition to those set forth in 212 CMR 2.00 or 211 CMR 133.00. If anything herein is in conflict with these regulations, the regulations control.

The ADALB stresses 211 CMR 133.04(2) must be followed by all appraisers, and a deviation may constitute a violation of 212 CMR 2.02(8)(c) and 212 CMR 2.02(5)(b), which states in relevant part, “The prepared appraisal shall be sworn to under the penalties of perjury...”

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 penalties as provided by law.

After Johnson read the proposed text, ADALB Chairman Michael Donovan noted, at the advisement of Board Legal Counsel Michael Powers, that the vote would be had “probably at the next meeting.” This statement was met with protests from meeting attendees on the floor. Powers explained that delaying the vote once again would allow for additional public comments to be heard, expressing concerns that the Board could be the target of lawsuits by parties who felt they were not given an opportunity to state their positions. He cited previous lawsuits that resulted in the ADALB’s decisions being reversed by the Massachusetts Superior Court when it was determined that the Board did not “follow this type of contemplative fashion of reviewing their decision before they imposed it.”

Johnson was unrelenting in his stance.

“[Samantha] and I spent a lot of time to be careful that we did not stray from the CMRs,” he said, later adding, “Massachusetts General Law Chapter 30 states very clearly that, as a Board, we do not have to seek public comment. We have gone over and above on this – way above what the law mandates.”

Board member and collision industry representative Rick Starbard

(Rick’s Auto Collision; Revere) stressed that the proposed Advisory Ruling would simply serve to remind appraisers of regulations already in place.

“It’s nothing earth-shattering; all it’s doing is reiterating the existing [regulations] and kind of pointing people back in that direction. At the end of the day, to those who kind of suffer under this issue, nothing really changes [with this Advisory Ruling] other than the regulations currently exist today the same way they existed two months ago [or] two years ago.”

Shop owner Jack Lamborghini (Total Care Accident Repair Service; Raynham), who previously addressed the Board at their September 24 meeting, again expressed his frustration over the Board’s slow progress in addressing the problems (particularly with Commerce Insurance) that prompted the proposed Advisory Ruling. Additionally, he requested a one-on-one call with Board member Peter Smith, who works for Commerce/MAPFRE, to discuss the matter further.

“It’s crazy that we’re putting the customer in this insane position... This has been bantered around for a year, and we’re going to table it on some procedural thing because we’ve got some legal beagles that can come and sue somebody later on. Meanwhile, I’ve got to try to collect \$400-something from a customer who doesn’t have \$400 or I can take the loss or I can file a complaint – which I will. But I’d like you to get involved, Peter, because if I’m going to file a complaint, I might as well file one against you!”

Smith responded by reiterating Donovan and Powers’ position that the vote be delayed until more public comments could be received and discussed.

AASP/MA Executive Director Evangelos “Lucky” Papageorg asked the Board to clarify whether “handling” as defined by the Advisory Ruling would include all handling, not just that which may be assessed by the vendor. Johnson responded by calling the question a “situational” matter.

“You would hope that two reasonable people would come to an understanding. Those types of items are not going to be settled until complaints start coming in.”

Ultimately, the Board agreed to vote on the proposed Advisory Ruling as written. The document passed 3-0, with Donovan and Smith abstaining.

Later in the meeting, Papageorg voiced concerns – and registered objections on behalf of AASP/MA – in regard to how the Board addresses complaints in executive session.

Specifically, he asked for the Board to clarify language in the Attorney General’s preamble, read publicly before every session, that states that such sessions exist to “discuss the reputation, character, physical condition or mental health **rather than** professional competency” of an appraiser subjected to a submitted complaint. (Emphasis added.)

“If a complaint comes in that specifically says that [it] is challenging that person’s professional competency, the Board still goes into executive session. Why?”

“If the complaint as it’s filed were viewed in a public forum, it could be detrimental to the appraiser’s reputation and character – and we would have absolutely no control over that,” offered Tracy in response. “So, to protect the individual appraiser’s reputation, it is conducted in the executive session.”

The next ADALB meeting is scheduled for January 21 at the Division of Insurance in Boston. Complete video of the November 26 meeting is available in the Members Only section of aaspm.org.

Executive Director's Message

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of the vehicle in various stages of repair (next to the destructive weld test) with all your other documentation. Saying you had just done the very same repair on the very same model vehicle the week before or even a couple of days before WILL NOT CUT IT!!! It has been documented that OEM repair procedures have been updated on a daily basis at times. You will only be protected if your print-out is dated once you began the repair, even if subsequently, the OEM makes any changes.

It is impossible for me to stress this enough to you. The responsibility and the liability is fully upon your shoulders once you have touched the vehicle and begun repairs.

If you intend to stay in this industry and have the ability to thrive by performing quality OEM repair procedures, the time is now. It saddens me that there are so many shops that do not realize the resources they have available to document what procedures they MUST perform to properly repair not only "today's" vehicles, but any vehicle today. Far too many shops continue to operate under "what the insurance company says." If you are afraid of losing a customer because they will either not assist you in getting paid properly for doing the proper OEM repair procedures or will not pay you to do the repairs themselves, you need to know that is the very same customer whose lawyer was knocking on your door earlier. It is not an easy decision to make, but it is truly the ONLY decision you can and must make. If you continue to do what you have always done, you are not only taking the chance of destroying your business, you ARE helping to systematically destroy this great industry. If you either do not make a proper OEM repair because you are not getting paid for it or do it for free, you are most certainly part of the problem. Make the decision to be part of the solution.

I do not want to sound like the proverbial broken record, but if you do not believe that your decision on how to repair a vehicle does not have the potential for dire, unintended consequences, just go to our website (aaspm.org/collision-industry-conference-cic-seebachan-interview/) and view the photos and interview with the couple involved in the John Eagle Collision lawsuit. As you will read in my January 2020 *New England Automotive Report* Executive Director's message, you do not have the right to "roll the dice" on the repair of one of your customer's vehicles, nor should you be forced into such a decision by any insurer or person.

I want us ALL to succeed. I want us ALL to have clear 20/20 vision as we work together in 2020 to make this industry respected for its knowledge, expertise and for the awesome responsibility it undertakes in the vehicle repair process. Just like it is not too late to follow a new OEM procedure, it is NOT too late to join together and successfully create a new "standard operating procedure" when dealing with insurers who insist on sidestepping their responsibilities to the policyholders who are YOUR customers.

Yes, there are some, maybe even many, of you who are saying, "it will never work." It is to those people I say, you had better get your vision checked or step aside as the industry passes you by and stop holding everyone else back!!!! I realize I am speaking to members of AASP/MA in this newsletter who are trying very hard, for the most part, to stay involved and current. As AASP/MA members you must help to spread this message. In doing so, you will ONLY be helping yourself in the long run!!!

I am hoping that the new year brings us ALL the possible happiness, health and prosperity working in the industry we love.

Wishing us all the gift of 20/20 vision in the New Year!!!

Where's Lucky?

AASP/MA Chapter Meeting Schedule

In the first full week of January, Lucky will be visiting shops in the Boston/Southeast region and hosting a chapter meeting on January 8 at VAP Gold Member Quirk Auto Parts in Quincy.

During the second week of January, he will be in the Midstate region.

In the third week of January, he will be visiting the Western region and hosting a chapter meeting on the 22nd. (Location TBD.)

He will be visiting shops in the Boston/Northeast region in the fourth week of January.

In the first week of February, Lucky will be visiting shops in the Boston/Southeast region.

During the second week of February, he will be in the Midstate region and will be hosting a chapter meeting on February 12. (Location TBD)

In the third week of February, he will be visiting the Western region.

He will be visiting shops in the Boston/Northeast region in the fourth week of February and will be hosting a chapter meeting on the 26th. (Location TBD.)

****Subject to change. Everyone should keep an eye out for meeting notices in their area.***

Lucky can be reached at (617) 574-0741 or lucky@aaspm.org.



JANUARY 2020						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8 M	9	10	11
Visiting Boston/Southeast						
12	13	14	15	16	17	18
Visiting Midstate						
19	20	21	22 M	23	24	25
Visiting Western						
26	27	28	29	30	31	
Visiting Boston/Northeast						

FEBRUARY 2020						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
Visiting Boston/Southeast						
9	10	11	12 M	13	14	15
Visiting Midstate						
16	17	18	19	20	21	22
Visiting Western						
23	24	25	26 M	27	28	29
Visiting Boston/Northeast						

Connecting the A/M Parts Advisory Ruling Dots

At the November 26 meeting of the ADALB, the much discussed and battered around A/M parts Advisory Ruling was ratified by the Board on a three-to-zero vote with two abstentions. As with any rule, regulation or law, it will only be as good as the enforcement. A great deal of effort and time went into this Advisory Ruling. The responsibility is now **YOURS** to ensure that all the time and energy is not to have been wasted by pointing out when the *governing regulations* are violated. It is **YOUR** responsibility to bring forward complaints, which will be reviewed based on the ratified language of the Advisory Ruling and the interpretation which has been decided upon. No doubt, there will still be insurers who have continued with business as usual, ignoring the newly ratified Advisory Ruling; in the process, probably telling you that **YOU** are wrong. Take the time to view the ADALB meetings as they have been posted and notated with highlights on the AASP/MA website. Doing so will give you the confidence to do what is right for your customer and **YOUR** business.

YOU MUST read the governing regulations in their entirety and strictly adhere to 211 CMR 133 and 212 CMR 2.0, in **ALL** regards. This is of the utmost importance! Failure to do so, on your part, is not an option!!! If you do not, you will have **NO** foundation for an ADALB complaint. Nor will you have the opportunity to recoup the expenses you incurred, additional repair costs you **ARE** entitled to, for attempting to procure and use a specified part from a specified vendor. These would include parts you were able to obtain and mutually agreed with the insurance appraiser are “unfit for use,” as well as, the instance you have been unable to order the specified part(s) through no fault of your own.

By means of connecting the “DOTS,” please read this through to the end. First and foremost, there has been **NO CHANGE** to the regulations governing this issue. Only a clarification of the process of procuring parts and who is responsible for what. It should be a simple as following the process of: **IF** this happens.... **DO** this

IF you, upon ordering a specified part from a specified vendor, are told the part is unavailable or the vendor refuses to make the part available to you (sell to you).

DO: Immediately contact the appraiser of record or follow the specific instructions of the insurance company you are dealing with for requesting a **SUPPLEMENT** (just as you would with any unavailable part).

IF a mutual agreement has been reached with the insurance appraiser that the specified part purchased from the specified vendor is “unfit for use.”

DO: Determine the most cost-effective and expeditious resolution to the issue. Consider the expenses you have incurred in attempting to utilize the specified part and any additional expenditures involved. Items such as: Stall tie up, repackaging, storing of the part and additional administrative costs you have incurred for attempting to use the specified part from the specified vendor, could possibly be for your consideration. Calculate these **ADDITIONAL REPAIR COSTS** and prepare an estimate/supplement from which you will use to inform the appraiser of the additional financial responsibility the insurer now has.

IF the insurance appraiser refuses to adhere to all aspects of both 211 CMR 133 and 212 CMR 2.0 (whether it is a refusal to write a supplement within the permitted time frames in 212 CMR 2.0 or refuses to cover your additional “REPAIR COSTS”).

DO: Inform your customer of what is transpiring (which you should have already done) and attempt to resolve the matter as quickly as possible explaining the responsibilities of **THEIR** insurer and **THEIR** failure to follow the governing REGULATIONS (clarified by the A/M parts Advisory Ruling). Having strictly followed the regulations and having documentation to show your actions assists the vehicle owner to resolve the matter. Possible additional remedies available to yourself and your customer are: Complaints to the ADALB and possible small claims filing. The small claims filing could possibly result in “treble” damages if the court finds the insurer’s actions as unfair and deceptive claims handling as described in MGL 93 A and Chapter 176 D.

It really is as simple as this. Simple does not mean it will be easy or not take effort on your part with assistance and understanding of the vehicle owner. **IF** you have adhered to the regulations and have the documentation (emails, photos, your estimate, etc.) you and your customer will be in a position of strength. The ADALB has made it clear that each complaint will be heard on “a case by case basis.” **DO** your part and in the end, it will be worth it to your customer and your shop.

Specific areas of the regulations to pay attention to regarding this issue are:

211 CMR 133.04 (1) note the word “SHALL.” 133.04 (b) “no fault of your own,” 133.04 (c) regarding overall cost i.e. OEM may be cheaper 133.04 (2) insurer responsible for costs incurred due to parts sourced by them. In conjunction with 211 CMR 133, 212 CMR 2.04 both prohibit the steering of a customer **AWAY** from a shop. Further, language in 211 CMR 2.02 (8) (c) discusses the potential of the insurer’s actions being considered as the arrangement of unfair claims and unreasonable settlement. This could be considered the case, if an insurer, after having been duly notified, continues to specify a vendor on the insurance estimate who will **NOT** sell to you, through no fault of your own.

Finally, and most important to **ALL** appraisers licensed in Massachusetts: 212 CMR 2.02 (5) (b) states “the appraisal shall be sworn to under the penalties of perjury.” **ALL** appraisers should conduct themselves accordingly.

The rest is up to **YOU**. As always, AASP/MA is here to assist in any way possible. Please contact us at anytime should you have a question or concern.

The true test will be a well-documented and presented complaint on this subject for consideration and review by the ADALB.

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November 27, 2019

TO ALL CONCERNED PARTIES

Re: Advisory Ruling 2019-1

Pursuant to its authority, the ADALB voted by a majority vote at the Board's meeting held on November 26, 2019, to adopt this Advisory Ruling.

ADVISORY RULING

Appraisers should continue to follow 211 CMR 133.04(1)(b) and (c), and 212 CMR 2.04, referenced above, on appraisals. If the part(s) that have been specified on the appraisal are unfit for use in the subject repair and must be replaced, as agreed upon by both the repair shop and the insurance company, the parties should attempt to agree on an alternative part and the insurance company shall be responsible for the replacement costs such as freight and handling or shall be responsible for the costs of restoring the parts to usable condition, unless the parties otherwise agree.

Further the appraisers representing the insurance company and the registered repair shop shall attempt to agree on the estimated cost for such repairs. The registered repair shop must prepare an appraisal for the purpose of negotiation.

Nothing herein is intended to create any obligations in addition to those set forth in 212 CMR 2.00 or 211 CMR 133.00. If anything herein is in conflict with these regulations, the regulations control.

The ADALB stresses 211 CMR 133.04(2) must be followed by all appraisers, and a deviation may constitute a violation of 212 CMR 2.02(8)(c) and 212 CMR 2.02(5)(b) which states in relevant part "The prepared appraisal shall be sworn to under the penalties of perjury...."

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 penalties as provided by law.

For the ADALB,

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

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