

John R. Kasich, Governor
Thomas H. Bainbridge, *Chairman*
Jodie M. Taylor, *Member*
Karen L. Gillmor, Ph.D., *Member*
Tim Adams, *Executive Director*

Meeting Minutes

May 17, 2017

1:00 P.M.

TYPE OF MEETING

Commission Meeting

ATTENDEES

Chairman Thomas H. Bainbridge
Commissioner Jodie M. Taylor
Commissioner Karen L. Gillmor
Tim Adams, Executive Director
Tom Connor, Director of Hearing Services
Rachael T. Rentas-Black, Chief Legal Counsel
Jacob Bell, Director of Operations/Legislation
Casaundra Johnson, Administrative Assistant
Kim Ferkany, Administrative Assistant
Debbie Fodey, Administrative Assistant
Jennifer Rohrbaugh, Assistant Legal Counsel
Greg Hickman, Assistant Legal Counsel
Genevieve Hoffman, Hearing Officer Trainer

CALL TO ORDER

The meeting was called to order by Chairman Bainbridge.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Present
Commissioner Taylor	Present
Chairman Bainbridge	Present

OLD BUSINESS

Chairman Bainbridge indicated there was no old business to discuss.

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NEW BUSINESS

2017 Statewide Hearing Officer Meeting – Day 1 Agenda

Genevieve Hoffman indicated no decisions were needed regarding the Day 1 Agenda of the Statewide Hearing Officer Meeting, but wanted to provide the Commission an update. Ms. Hoffman stated that Sarah Morrison, Ohio Bureau of Workers' Compensation Administrator/CEO, is unable to speak at the meeting and will be sending Kevin Abrams in her place. Ms. Hoffman stated that the agenda for Day 1 was set and she was waiting on Dr. Mileti to follow up with her regarding the length of his speech. Commissioner Taylor asked how many attendees have signed up thus far, to which Ms. Hoffman answered 147. Commissioner Taylor also asked how much the attendees will pay this year in comparison to last year. Ms. Hoffman responded that the charge this year is \$125, and that last year it was \$100. Ms. Hoffman indicated the increase in price was due to the costs associated with the new location. Chairman Bainbridge asked how many people attended last year. Ms. Hoffman answered there were 300 attendees total and the new location is capable of holding as many attendees. Mr. Connor added there was a problem with not having enough space at the Statewide Hearing Officer Meeting in 2016 and that this should not be a problem with the new venue. Mr. Connor added that the total attendance currently is around 250 attendees including hearing officers and outside attendees. Mr. Connor added that the venue will hold up to approximately 315 people. Chairman Bainbridge asked if the 147 attendees Ms. Hoffman mentioned earlier included the hearing officers to which Ms. Hoffman clarified that that number represented the outside attendees who have signed up thus far. Commissioner Taylor asked Mr. Connor if any of the hearing officers or regional managers already have pre-planned vacations scheduled at the same time of the Statewide Hearing Officer Meeting. Mr. Connor responded that he was only aware of one so far.

Correspondence Standards

Commissioner Taylor stated she requested this topic be put on the agenda as she noticed the topic of the Correspondence Standards coming up in the weekly reports of Ms. Hoffman and Mr. Connor and also at the Labor Management Meeting. Commissioner Taylor indicated she had concerns about whether the Correspondence Standards are being followed, who's enforcing the standards, and if there have been changes made to the Correspondence Standards that were not voted upon by the Commission Members. Commissioner Taylor stated that a few years ago the Administrative Assistants of the Commission Members worked together to create standardized language to use in the orders produced by the Commission at all hearings levels. The Correspondence Standards were presented to the Commission and the Commission voted and adopted the standards. Commissioner Taylor added that she spoke with Mr. Connor, Ms. Hoffman, and Ms. Rentas-Black prior to the Commission meeting on why the topic was on the agenda. Commissioner Taylor further added that she was seeing a lot of contradiction on who is following the standards.

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Mr. Connor stated that he believed it is not an issue of whether employees are following the Correspondence Standards, but rather who is to ensure compliance with the standards. Mr. Connor stated that issue was brought up at the Labor Management Meeting and it was questioned whether the hearing officers or word processors are ultimately responsible for ensuring the standards are met. Mr. Connor added that, if a hearing officer types their own order, then a word processor would never see the order, so it was the decision at the Labor Management Meeting that the hearing officers should ultimately be responsible to ensure the standards are met.

Commissioner Taylor questioned whether there were any changes made to the Correspondence Standards that were not presented to the Commission Members for their vote. Mr. Connor indicated he believed there were changes, but could not think of an example. Ms. Hoffman stated that, on page four of the Correspondence Standards, there was a change in relation to the citation to the new hearing officer manual. Ms. Hoffman indicated since the name of the manual changed it was then reflected in the Correspondence Standards. Ms. Hoffman added she was not aware of any other changes.

Commissioner Taylor questioned who is enforcing the use of the Correspondence Standards. Mr. Connor stated there is currently not a process to review every order that is produced by the Commission at all hearing levels. Mr. Connor added that Scott Greene does pull random orders to review for compliance. Ms. Hoffman added that the word processors' supervisors conduct a quality control process. Commissioner Taylor stated she is concerned that a word processor will receive a negative comment on their performance review if an order they type does not comply with the Correspondence Standards; yet, they are required to type only what is dictated to them. Therefore, if the hearing officer's dictation does not comply with the Correspondence Standards, it falls on the word processors. Commissioner Taylor added that there needs to be consistency among the offices regarding the enforcement of the Correspondence Standards. Commissioner Taylor commented that there is not consistency if the Columbus Regional Manager randomly pulls orders to review to ensure compliance with the Correspondence Standards, and the Cleveland Regional Manager does not make the same effort. Commissioner Taylor additionally stated that, ultimately, she wants quality control and consistency among all of the offices. Commissioner Taylor further added that she wanted more quality control performed than just Scott Greene randomly sampling orders, especially since he does not have authority to enforce the Correspondence Standards.

Ms. Hoffman indicated that, during the Spring Regional Training, she discussed the Correspondence Standards and reiterated that it is the hearing officers' responsibility to follow the standards. Ms. Rentas-Black added that there is some inconsistency among the offices. Ms. Rentas-Black stated that some offices have a rule that the hearing officers must state, at the beginning of their dictation, that the word processor is to follow the Correspondence Standards, while other offices do not have this rule. Ms. Rentas-Black further stated some of the hearing officers expressed their frustration over this topic. Commissioner Taylor stated that the word processors are not trained to properly follow the Correspondence Standards and that the Hearing Officers are abdicating their responsibility in complying with the standards by relying on the word processors. Commissioner Taylor stated that it should be a part

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of the performance evaluation for the Hearing Officers that their orders are pulled and checked for compliance with the Correspondence Standards.

Chairman Bainbridge indicated he agreed with Commissioner Taylor and stated that having better orders makes the agency look better. Ms. Rentas-Black agreed that better orders are necessary for consistency and stated that there needs to be accountability. Mr. Connor stated he would talk with Scott Greene and discuss how to make this a goal. Ms. Hoffman stated she did not have a problem communicating this generally to the hearing officers, but stated that any direct follow up with individual hearing officers should come from their Regional Manager or Mr. Connor.

Chairman Bainbridge indicated that no motion was needed regarding the topic “Correspondence Standards” and that the issue was resolved to everyone’s satisfaction.

4121-3-18 Administrative Appeals

Ms. Rentas-Black indicated the proposed changes to Ohio Adm.Code 4121-3-18 are due to a conflict with Ohio Adm.Code 4121-3-09 that was brought to her attention by the Rules Advisory Group. Ms. Rentas-Black indicated the changes made to Ohio Adm.Code 4121-3-18(B)(4) were in order to mirror the language of Ohio Adm.Code 4121-3-09, which creates a rebuttable presumption that the order that is the subject of an appeal was received three days after the date of mailing of the order. Commissioner Taylor questioned whether Ohio Adm.Code 4121-3-18 was part of the current five-year rule review. Ms. Rentas-Black responded that Ohio Adm.Code 4121-3-18 was not part of the current five-year rule review, but that the agency can review a rule for needed changes at any time.

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-3-18 “Administrative appeals,” be originally filed for amendment.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

4121-15-03 Standards of conduct

Ms. Rentas-Black stated that Ohio Adm.Code 4121-15-03 was discussed in the previous year and it was suggested that the definition of “value” be modified to make the rule consistent with the Ohio Ethics law. Ms. Rentas-Black stated that despite performing research on the issue, she was unable to find a specific amount to assign to the definition of “value” and instead, proposes to mirror the definition of “value” found in the Bureau of Workers’ Compensation companion rule. Ms. Rentas-Black indicated that the Bureau of Workers’ Compensation’s rule also provides a definition for the term “compensation” and that

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having a policy of insurance with the Bureau of Workers’ Compensation is “not doing business” for the purposes of its ethics rule. Ms. Rentas-Black indicated that she included this language in the proposal before the Commission.

Commissioner Taylor questioned why the Bureau of Workers’ Compensation included the language regarding having “a policy of insurance” in its rule. Mr. Connor stated the purpose for this language in the Bureau of Workers’ Compensation rule was so business owners can serve as board members. Mr. Connor indicated that the Commission’s inclusion of this language in its rule would have a different effect. Mr. Connor explained that, under the Commission’s rule, a hearing officer could not accept anything of value from a claimant who was before him or her, but could accept things of value from employers who merely had a policy of insurance with the Bureau of Workers’ Compensation. Ms. Rentas-Black added she was very concerned with this portion of the rule and suggested that the Commission’s rule not mirror the Bureau of Workers’ Compensation rule in this respect. Both Mr. Connor and Ms. Rentas-Black recommended removing the draft language from 4121-15-03(B)(2)(b). Commissioner Taylor agreed.

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-15-03 “Standards of conduct” be originally filed for amendment as presented with the exception of the draft language in Ohio Adm.Code 4121-15-03(B)(2)(b) as discussed.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo D5 – Voluntary Abandonment

Chairman Bainbridge asked if there was any discussion regarding Memo D5 “Voluntary Abandonment.” Commissioner Gillmor questioned why an amendment to the memo was needed since the Supreme Court decision stands on its own. Ms. Rentas-Black responded that there are times when it is necessary to provide the hearing officers guidance on case law. Commissioner Taylor questioned if the memo was needed. Mr. Connor responded that the voluntary abandonment doctrine is case law driven and that it is up to the Commission to decide whether they would like to provide a policy for the hearing officers that reflects the case law. Mr. Connor added that a policy on voluntary abandonment is not necessarily needed since there is authority through the case law. Chairman Bainbridge indicated that he would rather have a written policy.

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MOTION

Chairman Bainbridge moved to approve amended Memo D5, “Voluntary Abandonment” as presented in the draft circulated with the agenda.

Commissioner Taylor seconded the motion and stated that her vote reflects that she is following the law established by the Supreme Court of Ohio in the *Cordell* decision.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Abstain
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Ms. Rentas-Black stated there needed to be an effective date for Memo D5 “Voluntary Abandonment.”

MOTION

Chairman Bainbridge moved that the effective date of Memo D5 “Voluntary Abandonment” be May 18, 2017.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Abstain
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo D8 – Temporary Total Disability Certification for Physical and Psychological Conditions

Mr. Connor stated that the recommended changes in Memo D8 “Temporary Total Disability Certification for Physical and Psychological Conditions” are a result of changes to the Bureau of Workers’ Compensation’s rule, Ohio Adm.Code 4123-5-18. Mr. Connor added that the proposed draft of Memo D8 reflects what is provided in Ohio Adm.Code 4123-5-18. Mr. Connor also suggested adding “psychologists” to the first paragraph. Commissioner Taylor suggested inserting “After six weeks from date of injury” at the beginning of the third paragraph. Chairman Bainbridge questioned whether the policy was clear to which Mr. Connor responded that it mirrors the statute. Ms. Rentas-Black added that the effective date for the Bureau of Workers’ Compensation rule is June 1, 2017.

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MOTION

Chairman Bainbridge moved that Memo D8, “Temporary Total Disability Certification for Physical and Psychological Conditions” be approved as presented in the draft circulated with the agenda with the exception that “psychologist” be added to the first paragraph and the phrase “After six weeks from date of injury” be added to the third paragraph. Chairman Bainbridge further moved that the effective date for Memo D8 “Temporary Total Disability Certification for Physical and Psychological Conditions” be June 1, 2017.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo E2 – Permanent Partial Disability – Hearing Officer Discretion

Mr. Connor explained that the hearing officers are not bound by the American Medical Association (AMA) Guidelines when making a determination of permanent partial disability. Mr. Connor indicated that the Bureau of Workers’ Compensation recently made a change to allow its nurses to perform combined effects reviews. Ms. Hoffman stated a few hearing officers brought this to her attention and added that an injured worker’s attorney was arguing the combined effects reviews performed by nurses are not evidence upon which hearing officers can rely. Ms. Hoffman stated she indicated to the hearing officers that it is ok to rely upon a combined effects review prepared by a Bureau of Workers’ Compensation’s nurse; however, it is not mandatory. Ms. Hoffman added that she is a member of the Ohio Association for Justice and stated that this issue is a hot topic on its listserve. Ms. Hoffman stated that the nurses preparing the combined effects reviews are not examining injured workers; therefore, the draft memo is not inconsistent with Memo M5.

Commissioner Taylor stated she wanted to make clear that the hearing officers are not required to rely upon the combined effects reviews and worried that the memo was giving hearing officers the impression that the reviews have more value than they actually do. Ms. Rentas-Black responded that the memo can be tabled and she could bring it back to the Members for further review after a re-write. Commissioner Taylor responded that any needed changes could be done at the meeting. Commissioner Taylor questioned whether “reliable” should be included in the language because the review may not be reliable for other reasons. Ms. Rentas-Black suggested removing the word “reliable” to which Commissioner Taylor agreed. Mr. Greg Hickman stated the word “that” should be changed to “which” in order to remain consistent with the other memos in the Adjudications Before the Ohio Industrial Commission manual.

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MOTION

Chairman Bainbridge moved that Memo E2 “Permanent Partial Disability – Hearing Officer Discretion” be approved as presented with the changes noted at the meeting. Chairman Bainbridge further moved that the effective date for Memo E2 “Permanent Partial Disability – Hearing Officer Discretion” be May 17, 2017.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

ADJOURNMENT

Chairman Bainbridge moved to adjourn.
Commissioner Taylor seconded the motion.

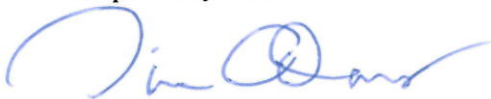
ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Respectfully submitted,



Tim Adams
Executive Director