

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

Meeting Minutes

August 24, 2017

11:00 A.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
Genevieve Hoffman, Hearing Officer Trainer
April Davis, Administrative Assistant
Kim Ferkany, Administrative Assistant
Debbie Fodey, Administrative Assistant
Greg Hickman, Assistant Legal Counsel
Jennifer Rohrbaugh, Assistant Legal Counsel

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

MOTION

Chairman Bainbridge moved that the March 21, 2017 Commission Meeting Minutes be approved.
Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

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ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge moved that the May 17, 2017 Commission Meeting Minutes be approved.
Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge moved that the June 8, 2017 Commission Meeting Minutes be approved.
Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Commissioner Taylor questioned why the agenda was changed and Memo G3 “Guidelines for PTD Tentative Grant Orders” was removed. Commissioner Taylor questioned if the change in the agenda followed the requirement that a 48-hour notice be provided to the public regarding the agenda. Ms. Rentas-Black stated Commissioner Taylor was correct and suggested discussing Memo G3 after the last agenda item.

NEW BUSINESS

4121-3-18 “Administrative appeals” and 4121-15-03 “Standards of conduct” – Final File

Ms. Rentas-Black stated that Ohio Adm.Code 4121-3-18 “Administrative appeals” and 4121-15-03 “Standards of conduct” were ready for final filing. Ms. Rentas-Black indicated that both rules were filed with the Joint Committee on Agency Rule Review (JCARR); a public hearing was held and no comment was provided. Ms. Rentas-Black explained that the changes in 4121-3-18 were made in order to remain

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consistent with Ohio Adm.Code 4121-3-09 and that those persons using the electronic system would receive the benefit of the three day rule. Commissioner Taylor asked if only 4121-3-18(B)(4) was changed in this amendment. Ms. Rentas-Black responded in the affirmative.

MOTION

Chairman Bainbridge moved that, after review required pursuant to R.C. 106.03, the Industrial Commission approve the final filing of the amended rule of Ohio Adm.Code 4121-3-18 “Administrative appeals.”

Commissioner Taylor seconded the motion.

After the motion, Commissioner Gillmor asked Ms. Rentas-Black if there were any comments at the public hearing to which Ms. Rentas-Black responded there were no comments at the JCARR hearing and the Office of Chief Legal Counsel did not receive any public comment as well.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge moved that the effective date of Ohio Adm.Code 4121-3-18 be September 7, 2017. Commissioner Taylor seconded the motion.

After the motion, Commissioner Taylor asked why the effective date of September 7, 2017 was chosen. Ms. Rentas-Black responded that the rule becomes effective 10 days after filing and that the filing would take place on August 28, 2017, thus making for a September 7, 2017 effective date.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

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MOTION

Chairman Bainbridge further moved that the next five-year rule review date for Ohio Adm.Code 4121-3-18 be February 1, 2021.

After the motion, Commissioner Taylor questioned whether the five-year rule review date was correct. Ms. Rentas-Black confirmed it was the correct date.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the final filing of the following amended rule of the Ohio Administrative Code 4121-15-03 “Standards of conduct.”

Commissioner Taylor questioned whether the only changes made to the rule were located at Ohio Adm.Code 4121-15-03(B)(2). Ms. Rentas-Black responded that was correct and that (B)(2)(a) was changed to incorporate a definition for “value” and (B)(2)(c) was added in order to stay consistent with the companion rule of the Bureau of Workers’ Compensation. Commissioner Taylor stated that the rule does not define “de minimis” or “nominal.” Ms. Rentas-Black responded that was correct; however, the Ohio Ethics Commission does provide guidance on these terms. Ms. Rentas-Black also explained that the Hearing Officers would receive training at the upcoming Statewide Hearing Officers’ Training in September regarding the changes to Ohio Adm.Code 4121-15-03.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

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MOTION

Chairman Bainbridge further moved that the effective date of Ohio Adm.Code 4121-15-03 “Standards of conduct” be September 7, 2017.

Commissioner Taylor seconded the motion.

Commissioner Taylor questioned whether the effective date of Ohio Adm.Code 4121-15-03 would take place before or after the Statewide Hearing Officer Training. Ms. Rentas-Black responded that the effective date would be before the training.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge further moved that the next five-year rule review date for Ohio Adm.Code 4121-15-03 would be February 1, 2019.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

2018 Five-Year Rule Review

Ms. Rentas-Black explained that the amount of time it takes to complete a rule review has been lengthened by the additional review conducted by the Common Sense Initiative Office and that, therefore, she was presenting the rules for the 2018 five-year rule review early to the Commission to ensure the timely completion of this review.

Ms. Rentas-Black recommended retaining Ohio Adm.Code 4121-1-01 “Notice procedure for the adoption, amendment or rescission of rules” as is. Ms. Rentas-Black added that Ohio Adm.Code 4121-1-01 mirrors the companion rule of the Bureau of Workers’ Compensation. Commissioner Taylor asked if JCARR made any changes to the rule, to which Ms. Rentas-Black responded no.

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MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-1-01 “Notice procedure for the adoption, amendment or rescission of rules” be continued without amendment.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge further motioned that the next five-year rule review date for Ohio Adm.Code 4121-1-01 be February 1, 2023.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Ms. Rentas-Black stated Ohio Adm.Code 4121-1-02 “Notice of public meetings” required amendment in order to update the contact information. Commissioner Taylor stated that it is not the current practice to post notices of public hearings on the bulletin board and suggested changing (B)(1) to remove the reference to the bulletin board and instead include language that the notice would be posted to the digital signage located at each office of the Industrial Commission. Commissioner Taylor also stated she thought a mass email was sent to individuals on an email list. Ms. Rentas-Black stated that the notice is emailed to the stakeholders and the CSI office. Commissioner Taylor also recommended listing the website and questioned if there was anywhere else the notice should be placed. Ms. Rentas-Black stated she could not think of any additional places for the notice. Ms. Rentas-Black reiterated the changes to (B)(1) should eliminate everything after “bulletin board” and state instead “the digital signage located at all Industrial Commission offices and the Ohio Industrial website www.ic.ohio.gov.” Ms. Rentas-Black asked if

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Commissioner Gillmor was ok with the proposed changes discussed, to which Commissioner Gillmor responded yes.

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the Ohio Adm.Code 4121-1-02 “Notice of public meetings” as discussed and amended.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Ms. Rentas-Black recommended retaining Ohio Adm.Code 4121-1-03 “Non-adjudicatory meetings of the industrial commission” as is and filing the rule without change. Commissioner Taylor recommended adding to 4121-1-03(H) that the minutes are located on the public website. Commissioner Taylor also recommended adding the contact information for the Office of Chief Legal Counsel to the rule as another means to access the meeting minutes. Ms. Rentas-Black affirmed that the additional sentence in paragraph (H) would read as: “The minutes of the meetings of the industrial commission can be accessed through the Office of Chief Legal Counsel or the website www.ic.ohio.gov.”

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-1-03 “Non-adjudicatory meetings of the industrial commission” be approved as amended today after further discussion.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

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Ms. Rentas-Black indicated Ohio Adm.Code 4121-3-01 “Office locations, office hours, and scope of rules” was last reviewed in 2013 and recommended no changes were needed at this time.

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-3-01 “Office locations, office hours, and scope of rules” be continued without amendment.

Commissioner Taylor questioned why paragraph (C) was needed in the rule. Ms. Rentas-Black stated that the language in paragraph (C) was previously located in Ohio Adm.Code 4121-3-27, which the Commission rescinded in 2011. At the time of the rescission, the Commission voted to retain the language in paragraph (C) and move it into Ohio Adm.Code 4121-3-01.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge moved that the next five-year rule review date for the Ohio Adm.Code 4121-3-01 “Office locations, office hours, and scope of rules” be February 1, 2023.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Ms. Rentas-Black recommended Ohio Adm.Code 4121-17-07 “Filing bills” be continued without amendment.

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MOTION

Chairman Bainbridge moved that after the review required pursuant to R.C. 106.03, Ohio Adm.Code 4121-17-07 “Filing of bills” be continued without amendment.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Inter-Office Communication to Regional Managers, Hearing Administrators, Staff and District Hearing Officers – Changes to the Law in Light of House Bill 27

Mr. Connor explained the purpose of the memo was to provide a heads up to the hearing officers of the changes following the passage of House Bill 27, particularly the changes that are related to hearings at the Commission. Mr. Connor added that the changes are effective September 29, 2017, which would take place after the Statewide Hearing Officer Training. Commissioner Gillmor stated there were several changes that were not mentioned in the memo and suggested to err on the side of providing too much information to the hearing officers by including the additional changes not mentioned. Mr. Connor responded that the intent was to provide information on the changes that would come before the hearing officers in the hearing room, but was amenable to include the other changes as well. Commissioner Taylor stated the changes should be discussed at the Statewide Hearing Officer Training. Mr. Connor agreed and reiterated that the memo was just to provide highlights of the changes. Commissioner Taylor stated she received multiple phone calls regarding the changes. Commissioner Gillmor then requested that the Commission reinstate the past practice of having Chief Legal Counsel provide a weekly update of pending and passed legislation that affects the Commission. Commissioner Gillmor apologized for creating more work for the Chief Legal Counsel. Commissioner Taylor agreed and noted there were many changes in House Bill 27 and there was no notice of these changes provided to the Commission Members by the Legislative Liaison. Commissioner Gillmor added that she would like to be informed when a controversial issue like House Bill 27 is pending before the legislature and whether the Commission is taking a position regarding the legislation. Chairman Bainbridge stated that, to his knowledge, the Commission did not take a position regarding House Bill 27. Commissioner Gillmor asked what was relayed to legislators who had questions regarding House Bill 27. Mr. Bell responded that he and Chairman Bainbridge attended meetings with various legislators to discuss the Commission’s budget bill only. Mr. Bell added that House Bill 27 is the BWC’s budget bill, and, therefore, he did not recall receiving any questions from legislators about this proposed legislation. Commissioner Gillmor asked if there were any calls from members of the legislature and added that she received calls from constituents and wanted to know what was said to the legislators. Chairman Bainbridge did not recall any inquiries

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from the legislature either to himself or staff. Chairman Bainbridge added that the statutory changes were the result of the BWC budget bill, not the Commission's budget bill. Commissioner Gillmor pointed out that whether legislative changes are contained in an Industrial Commission budget bill or Bureau of Workers' Compensation budget bill, we are all part of the workers' compensation system and it is imperative that the Commissioners are kept informed. Chairman Bainbridge agreed that a memorandum detailing the statutory changes was necessary to educate the Commission Members and hearing officers. Commissioner Taylor stated she remembered a previous Chief Legal Counsel would send a memorandum to the Commission when there were statutory changes like those in House Bill 27 and stated this practice would be helpful to have once again. Commissioner Gillmor reiterated that any statutory changes that affect the BWC or Commission should be communicated to the Commission so that the Commission Members are able to address inquiries they receive from constituents. Mr. Connor recommended waiting to circulate the memorandum until the Commission Members are briefed on the statutory changes. Commissioner Taylor stated the changes should be discussed at the Statewide Hearing Officer Training and the memo could be circulated afterwards. Mr. Bell added that going forward he would provide information regarding pertinent legislation if the Commission Member made a request for the information. Commissioner Taylor indicated that was Commissioner Gillmor's point – the Commissioners should not have to request the Legislative Liaison tell the Commissioners of these legislative changes that affect workers' compensation, as staff should tell the Commissioners as part of their jobs. Commissioner Gillmor questioned how she could ask for information from Mr. Bell when he refuses to speak to her. There were incidents just that week where Mr. Bell refused to speak to her. Mr. Bell has refused to speak with her for years. Commissioner Gillmor also questioned how the Commission members could ask for legislation if they are not informed of its existence. Mr. Bell stated he wished to respond but Commissioner Taylor interjected, asking that the Commission return to the agenda. Ms. Rentas-Black stated she would provide a memo to the Commission Members summarizing the changes made effective by House Bill 27. Chairman Bainbridge concluded that the hearing officers would be educated on the changes at the Statewide Hearing Officer Training and a memo would be provided shortly thereafter for their reference.

Memo B2 – Substantial aggravation

Tom Connor stated the recent Supreme Court case of *State ex rel. Clendenin v. Girl Scouts of W. Ohio*, Slip Opinion No. 2017-Ohio-2830 provides that, when a preexisting condition that was substantially aggravated by an industrial injury returns to baseline, the issue is considered an extent of disability matter. Mr. Connor added the addition to Memo B2 reflects the ruling in *Clendenin* and provides guidance on abated claims for substantially aggravated conditions. Commissioner Taylor questioned whether the last sentence to the added language requires new and changed circumstances for conditions that flare up. Mr. Connor responded that there is currently no case law to provide guidance on whether new and changed circumstances would be required. Mr. Connor went on to add that *Clendenin* only held that the issue would be considered an "extent of disability" issue. Mr. Connor further stated this is an area of law that is developing. Commissioner Taylor stated she did not have a problem with the additional language of Memo B2 but was trying to clarify. Commissioner Gillmor asked if the changes to Memo B2 were provided to the Rules Advisory Group for their input. Mr. Connor responded that the case came out after

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the Rules Advisory Group meeting and Ms. Rentas-Black added that changes to other memos were not presented to the Rules Advisory Group. Commissioner Gillmor suggested that the Commission present Memo B2 to the Rules Advisory Group since there is a potential for controversy. Commissioner Taylor stated she was comfortable with Memo B2, but *Clendenin* just did not touch on all of the potential issues in this area. Chairman Bainbridge stated at this time the Commission can only provide guidance on the current law.

MOTION

Chairman Bainbridge moved that Memo B2 “Substantial aggravation” be approved as presented in the draft circulated with the agenda.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge moved that the effective date of Memo B2 “Substantial aggravation” be September 29, 2017.

Commissioner Taylor stated the effective date of Memo B2 was incorrect. Mr. Connor added that the effective changes in Memo B2 were not part of House Bill 27 and, therefore, could be effective the following day.

MOTION

Chairman Bainbridge moved that the effective date of Memo B2 “Substantial aggravation” be August 25, 2017.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

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Memo C1 – Firefighters’ and Police Officers’ Occupational Disease

Mr. Connor explained the changes in Memo C1 “Firefighters’ and Police Officers’ Occupational Disease” reflect the changes set forth in House Bill 27. Mr. Connor added that the effective date for Memo C1 should be September 29, 2017.

MOTION

Chairman Bainbridge moved that Memo C1 “Firefighters’ and Police Officers’ Occupational Disease” be approved as presented in the draft circulated with the agenda.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge further moved that the effective date of Memo C1 “Firefighters’ and Police Officers’ Occupational Disease” be August 25, 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 M7 – Treatment Requests

Mr. Connor explained that the BWC has a rule that allows for physical therapists, occupational therapists, optometrists, audiologists, licensed independent social workers, and licensed professional clinical counselors to submit medical treatment reimbursement requests. Mr. Connor added that R.C. 4123-6-16.2 conflicts with Memo M7 and, therefore, executive staff is recommending the policy be changed in order to stay in line with the BWC rule. Mr. Connor stated that Memo M7 now allows for treatment requests from physical therapists, occupational therapist, optometrist, and audiologists. Additionally, licensed

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professional clinical counselors or licensed independent social workers can submit treatment requests for psychological conditions.

MOTION

Chairman Bainbridge moved that Memo M7 “Treatment Requests” be approved as presented in the draft circulated with the agenda.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

MOTION

Chairman Bainbridge further moved that the effective date of Memo M7 “Treatment Requests” be August 25, 2017.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Review of Resolutions

Commissioner Taylor stated she asked for this topic to be added to the agenda. Commissioner Taylor stated the Commission has done a good job updating its policies; however, the Resolutions have remained untouched. Commissioner Taylor indicated she wanted Greg Hickman to spearhead the project of reviewing all of the Commission Resolutions. Commissioner Taylor added that the Resolutions need to be in a centralized location as some are addressed in the Adjudications Before the Industrial Commission Manual while others may need to be rescinded. The Commission agreed with Commissioner Taylor’s request that a review of resolutions be conducted.

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Memo G3 – Guidelines for PTD Tentative Grant Orders

Mr. Connor indicated that Memo G3 “Guideline for PTD Tentative Grant Orders” was originally on the agenda as a follow-up from previous meetings. Mr. Connor stated that the Rules Advisory Group had reached a consensus; however, he requested that the policy be removed from the agenda after he received a phone call from a member asking that the policy be re-presented to the group. Mr. Connor added he received another phone call asking why the policy wasn’t being followed prior to the updated policy being voted on by the Commission and published. Mr. Connor explained that Memo G3 will be presented at a later time once there is consensus within the Rules Advisory Group.

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