

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

Meeting Minutes

February 27, 2019
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
 Steven Kramer, Administrative Assistant
 Barb Beasy, Administrative Assistant
 Debbie Fodey, Administrative Assistant
 Julia Smythe, Administrative Assistant
 Dr. John McGrail, Chief Medical Advisor
 Sara Castle, Deputy Director of Medical Services
 Laura Schank, Hearing Officer Trainer

CALL TO ORDER
Chairman Bainbridge called the meeting to order.

ACTION BY
Mr. Adams call the roll.

ROLL CALL
Commissioner Gillmor Present
Commissioner Taylor Present
Chairman Bainbridge Present

OLD BUSINESS
Chairman Bainbridge noted there is old business to be discussed in regard to the January 30, 2018 minutes and the July 24, 2018 minutes.

Commissioner Gillmor indicated that staff do not circulate the draft meeting minutes in a timely manner. In some instances, it has taken months, if not years, for the draft minutes to be provided to the Commission members. The ability to recall elements of the meeting discussion decreases over time. Also, the Commission members often have to rewrite the draft minutes, which is not a good use of the Commissioners’ time. Commissioner Gillmor said she had brought along her heavily edited copies of the 2018 minutes, as examples.

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Commissioner Gillmor noted that the Self-Insuring Employers Evaluation Board, which she chairs, writes its orders by the end of the day on which it meets and that the minutes from the meeting are circulated by the next day.

Commissioner Gillmor suggested that the Commission require its meeting minutes be circulated within two weeks of its meetings.

Commissioner Taylor asked Ms. Rentas-Black why the Commission is discussing the approval of meeting minutes from January 30, 2018, and what the drafting process is for meeting minutes. Ms. Rentas-Black noted that, previously, she would assign Ms. Jennifer Rohrbaugh to take minutes at the meetings and provide a draft of the minutes to her within two weeks of the meeting. After her review, her office would circulate the draft minutes to the Commissioners for their review and edits. After Ms. Rohrbaugh's promotion in February of 2018, the drafting of the meeting minutes was transferred to the Office of the Executive Director.

Commissioner Taylor then stated that the minutes are taking a long time to get to the Commissioners for review and that she reviews all drafts she receives within two weeks of delivery to her office. Commissioner Taylor then inquired who circulates the draft minutes, to which Ms. Rentas-Black answered Kim White.

Tim Adams read a document from Kim White detailing the dates of the circulation of the draft meeting minutes of January 30, 2018:

02/16/2018 – To Tim Adams for Review
03/13/2018 – Tim Adams returned to me
03/13/2018 – Circulated to Commissioners
03/19/2018 – Commissioner Gillmor returned w/o changes
04/12/2018 – Chairman Bainbridge returned w/o changes
11/8/2018 – Emailed minutes to Robin – she cannot find them in Jodie's office
11/29/2018 – Commissioner Taylor returned with no changes

Commissioner Taylor indicated the minutes from January 30, 2018 were never circulated in her corner and there was no follow-up until November 2018.

Commissioner Taylor indicated she would like an improved drafting process.

Chairman Bainbridge concurred that the drafting process needs to be expedited to receive the minutes in a timely manner. Chairman Bainbridge requested that Mr. Adams and Ms. Rentas-Black meet with his assistant to plan the new drafting process and present it to the Commission members at their next meeting.

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MOTION

Chairman Bainbridge moved that the January 30, 2018 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 July 24, 2018 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

NEW BUSINESS

Medical Examination Manual – Fee Schedule.

Dr. McGrail and Sara Castle presented their proposal for the Medical Examination Fee Schedule. Dr. McGrail indicated that Medical Services is proposing an increase in the fees paid to the Commission’s medical examiners. Dr. McGrail noted that the Commission last evaluated its fees in 2017 and that, currently, out of thirteen states evaluated, Ohio is paying the lowest amount for independent medical examinations. Dr. McGrail stated that the Ohio Industrial Commission wants to be competitive with other states. Ms. Castle agreed with Dr. McGrail’s assessment of becoming more competitive in fees compared to the surrounding states in the region. Ms. Castle indicated that negotiating factors and non-established fee schedules in other states are considered while trying to meet standards.

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Ms. Castle stated that Medical Services is proposing that the fee for an examination of one to three body parts or a psychological examination be \$900.00 and the fee for an examination for a catastrophic injury or four or more body parts be \$1100.00. Ms. Castle further explained that the proposed fee of \$900.00 for a psychological examination would be for all psychological conditions allowed in a claim. Ms. Castle indicated that, if a doctor must do additional diagnostic testing on a psychological condition, the fee would be increased for that testing.

Commissioner Taylor then asked why the cancellation fee for in-state examinations is less than the cancellation fee for out-of-state examinations. Ms. Castle responded that Medical Services has not yet researched that discrepancy and does not have a proposal to address those fees. Commissioner Taylor stated it makes no sense that cancellation fees for out-of-state examinations are higher than for in-state examinations.

Commissioner Taylor indicated that she did not want to vote on any fee changes until the Commission addresses the disparity between the fees for in-state and out-of-state no-shows and cancellations. Commissioner Taylor indicated the Commission should treat all doctors equally, regardless of whether the doctors are in-state or out-of-state.

Both Dr. McGrail and Ms. Castle said they will do the research and compare all statistics to provide a fair fee for cancellations and no-shows for both in-state and out-of-state examinations.

Ms. Castle stated there were 1538 in-state examinations and 73 out-of-state examinations, with 130 no-shows and cancellations for examinations and diagnostic testing in calendar year 2018.

Commissioner Gillmor asked if all the Commissioners felt comfortable with increasing the fees for its medical examinations. Both Chairman Bainbridge and Commissioner Taylor responded that they felt comfortable with an increase of fees.

Mr. Connor indicated that it would be wise to create a resolution for the medical examination fees to avoid the process of reviewing the entire Medical Examination Manual when the Commission desires to change its fees. The Members all agreed with Mr. Connor's recommendation.

Chairman Bainbridge stated that the matter of the Medical Examination Manual would be tabled until Medical Services has a proposal for increases in all the fees associated with medical examinations.

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NEW BUSINESS

Topics/Speakers for 2019 Statewide Hearing Officer Meeting

Ms. Schank began by stating that she has been searching for female doctors to speak at the meeting. Ms. Schank indicated that Dr. McGrail provided her the names of several female physicians; however, she noted that most of the identified female physicians are trauma physicians who work in emergency rooms. She further said that Dr. McGrail offered to reach out to the physicians to see if they would be interested in speaking. Ms. Schank stated that, if the Commission is interested in the topic of emergency trauma care, she would reach out to the female physicians.

Chairman Bainbridge recommended that the Commission seek out a physician who specializes in reflex sympathetic dystrophy (RSD)/complex regional pain syndrome (CRPS) to speak on the causes of the condition and appropriate treatment. Ms. Schank reminded the Commission that the Commission had such a speaker a few years ago.

Commissioner Taylor pointed out that past speakers did not address the issues on which the Commission needed them to speak. She would like a speaker to address the causes of RSD, alternative treatments, and the treatment for long-term RSD. In addition, Commissioner Taylor would like a speaker to address whether a Fentanyl patch is appropriate long-term treatment for RSD.

Mr. Connor voiced concern with having a speaker address specific prescriptions because the Bureau of Workers' Compensation (BWC) updates its formulary frequently. Mr. Connor indicated that he would not want to encourage orders that appear not to follow the BWC's formulary.

Commissioner Taylor stated that the BWC does not follow its own formulary and that the BWC is unable to provide the Commission answers at hearing as to the reasons why the BWC pays for certain prescriptions and denies others that are not on its formulary. Commissioner Taylor further noted that there are exceptions to the formulary, such as compassionate care.

Mr. Connor indicated he would like to talk to Dr. Welsh on the issue.

Ms. Schank stated that Dr. McGrail spoke with Dr. Welsh on this issue and that Dr. Welsh indicated that the BWC adheres to its formulary, but that it considers requests from providers for authorization for alternate prescriptions. For instance, if a medication on the formulary does not work for an injured worker, the provider can request a different prescription that has worked for the injured worker in the past. Ms. Schank further pointed out that the BWC changes its formulary annually.

Chairman Bainbridge requested that Ms. Schank return to the discussion of speakers for the meeting, noting that the discussion was getting far afield from the suggestions for speakers.

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Chairman Bainbridge asked if anyone had other suggestions about speakers or categories.

Ms. Schank stated she had a suggestion. She then said that the Ohio Association for Justice had Dr. Richetta speak on post traumatic stress disorder in the world of *Armstrong*, which was informative.

Commissioner Taylor said that she would be hesitant to have Dr. Richetta speak because she wants to avoid complaints that the Commission is presenting a specific viewpoint only. Commissioner Taylor then inquired whether Dr. Richetta is a psych doctor to which Ms. Schank responded yes. Commissioner Gillmor stated that the Commission sees his reports a lot in its hearings.

Ms. Schank indicated that last year there was one topic presented with a lot of different viewpoints and that some attendees appreciated hearing different viewpoints on the same topics.

Ms. Schank then asked if the Commissioners wanted to repeat that format or return to variable topics. Commissioner Taylor responded that variety is good and that she did not think the Commission needed to have a theme each year.

Chairman Bainbridge and Commissioner Gillmor agreed with Commissioner Taylor.

Commissioner Taylor recommended a training issue for the Statewide Meeting. Commissioner Taylor inquired whether Commission and/or Deputy Orders are provided to all the hearing officers involved. Ms. Schank indicated that because of confidential personal information concerns, the orders are not e-mailed to the regional managers and hearing officers. Instead, she provides the claim number and a synopsis of the decision, and the regional manager and hearing officer can access the claim file to review the order.

NEW BUSINESS

Memo D5 – Voluntary Abandonment

Mr. Connor indicated that he added the idea of having waiver language to the voluntary abandonment policy.

Chairman Bainbridge indicated that he believes *Klein* pertains to the former position of employment rather than to the abandonment of the workforce. He proposed a policy that hinges on the injured worker's intentions prior to leaving the former position of employment.

Commissioner Taylor indicated that she is not in favor of a policy that contains language about prior intentions.

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Chairman Bainbridge indicated that he is trying to distinguish *Klein* and provide direction for the hearing officers.

Mr. Connor indicated that the “prior intentions” language may be confusing and directs the focus of the inquiry to timing.

Mr. Connor indicated that the concurring opinion in *Klein* states that the majority opinion can be read to state that an injured worker cannot change jobs but that the majority stated that is not the case.

Commissioner Gillmor indicated that she would like the policy to state what *Klein* exactly says. An injured worker abandons his former position of employment if he removes himself from his former position of employment for reasons unrelated to the workplace injury, even if the injured worker remains disabled at the time of the separation of employment.

Commissioner Gillmor indicated her proposal is just a restatement of the holding in *Klein*.

Chairman Bainbridge responded that his proposal was also a restatement of *Klein*. Commissioner Gillmor disagreed.

Commissioner Taylor asked what is wrong with Mr. Connor’s proposal.

Chairman Bainbridge indicated the difference between his proposal and Mr. Connor’s proposal is removing the employment and former position of employment.

Mr. Connor interjected that his proposal is also different due to the other sentence that is included.

Mr. Connor indicated that putting timing language in the policy would limit *Klein*. He further stated that Commissioner Gillmor’s proposal comes straight from *Klein*.

Mr. Connor stated that, if *Klein* applies to voluntarily leaving the former position of employment, it is an odd reading of *Baker* and *Dunbar*.

Commissioner Gillmor indicated she reads *Klein* as not voluntary abandonment of workforce, but as voluntary abandonment of former position of employment.

Commissioner Gillmor indicated she did not agree with the waiver language in the proposed policy. Tom Connor noted that the BWC requested that the Commission address waiver in its policy. Commissioner Gillmor indicated that the BWC only requested the Commission provide guidance if the Commission plans to apply waiver in voluntary abandonment hearings.

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Mr. Connor indicated that the BWC wants to know if it needs to raise voluntary abandonment as an affirmative defense at each compensation hearing.

Chairman Bainbridge stated that, since the Commission is unable to resolve this issue today, he would like to table the discussion on voluntary abandonment and come back to it in the not too distant future for more discussion.

NEW BUSINESS

Permanent Total Disability – Objection to Tentative Order, Appropriateness of Permanent Total Disability Tentative Order

Chairman Bainbridge indicated that once someone objects to a tentative order, he would like to have parties provide a reason why they are objecting. Then, the claim would be sent to the Staff Hearing Officer for a hearing on the merits, but not sent to the Hearing Administrator.

Mr. Connor indicated that suggestion could certainly work and is the simplest solution, but is not the most efficient.

Ms. Fodey asked if a party could waive time frames.

Commissioner Taylor indicated a party can waive time frames.

Mr. Connor indicated that you cannot assume waiver.

Commissioner Gillmor indicated she wants to be sure we are not violating Ohio Adm.Code 4121-3-34.

Commissioner Taylor indicated the current permanent total disability rule does not require a reason for an objection. This proposed policy would require that the rule be changed.

Commissioner Gillmor indicated that she does not want extra steps to extend the permanent total disability process.

Commissioner Taylor indicated changes today would mean that there would be a need to change the administrative rule. Commissioner Taylor stated that the Commission cannot fix the problem without changing the rule.

Chairman Bainbridge indicated the existing rule is not working and is the problem that the Commission is trying to fix.

Commissioner Taylor questioned whether there is a notice issue.

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Ms. Schank indicated the problem in some regions is there are objections to tentative orders based on voluntary abandonment without further reasoning provided. She further indicated that most objections are BWC objections.

Commissioner Gillmor indicated a hearing on the appropriateness of the objection is an extra step that delays the process, which she could not support.

Chairman Bainbridge stated the confusion arises from what the issue at hearing is after an objection.

Commissioner Taylor stated the confusion is caused by the rule because the process for handling objections is not spelled out in the rule. Commissioner Taylor noted the rule does not reflect any of the steps. Commissioner Taylor asked if the rule can be pulled for review to provide multiple options. Commissioner Taylor stated that the parties do not know what is happening.

Commissioner Taylor asked if Ms. Rentas-Black and Mr. Connor could put the proposals together.

Ms. Rentas-Black recommended pulling the rule for review and getting a draft with proposed changes back to the Commissioners.

Commissioner Taylor stated there is a claim currently pending on this issue and that the Commission should apply the current rule. Commissioner Taylor stated the Members should not wait for a new rule when the claim was heard under the current policy.

Ms. Rentas-Black asked the Commissioners when they would like the next meeting.

Chairman Bainbridge stated three to four weeks. Ms. Rentas-Black stated she would schedule the next meeting in four weeks.

MOTION

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

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Respectfully submitted,



Tim Adams
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