

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

**March 12, 2020**  
**11:00 A.M.**

**TYPE OF MEETING** Emergency Special Commission Meeting

**ATTENDEES** Chairman Jim Hughes  
Commissioner Jodie M. Taylor  
Commissioner Karen L. Gillmor  
Tim Adams, Executive Director  
Tom Connor, Director of Adjudication  
Jim Burkart, Chief Legal Counsel  
Sara Castle, Deputy Director of Medical Services  
Steven Kramer, Administrative Assistant  
Kim Ferkany, Administrative Assistant  
Debbie Fodey, Administrative Assistant  
Greg Hickman, Assistant Legal Counsel  
Amanda Brown, Assistant Legal Counsel

**CALL TO ORDER**

Chairman Hughes asked Mr. Adams to call the roll.

**ACTION BY**

Mr. Adams called the roll.

**ROLL CALL**

Commissioner Gillmor Present  
Commissioner Taylor Present  
Chairman Hughes Present

**PURPOSE**

Chairman Hughes stated that the purpose of the emergency special meeting is to address adjudicatory management policy and the 2020-01D Governor's Executive Order. Chairman Hughes stated that the purpose is to have a special emergency meeting to discuss how to proceed with hearings and to keep all parties safe.

**DISCUSSION**

Chairman Hughes asked Tom Connor to address what is occurring.

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

Tom Connor stated that in light of Executive Order 2020-01D, which addressed preventing groupings of large numbers of people and encouraged employers to enable employees to work from home, the plan is to put infrastructure in place to address remote working and to reduce the congregation of large groups.

Mr. Connor suggested cancelling all hearings Monday, March 15, 2020, and Tuesday, March 16, 2020, and shifting to telephonic hearings for the following issues starting Wednesday, March 17, 2020: allowance; additional allowance; temporary total disability compensation and termination thereof; wage loss; and permanent total disability compensation and termination thereof.

Commissioner Taylor inquired if someone had been waiting for a hearing for some time on a non-enumerated issue, like treatment, whether they could request a hearing.

Mr. Connor noted that there is no program in place to pull those issues automatically, so they would have to be screened manually.

Ms. Taylor asked whether the Industrial Commission (IC) has the capability to handle telephone hearings, whether there is any additional cost to do so, and whether there are any other issues that staff is aware of.

Mr. Adams stated that the IC is capable of doing telephone hearings, has the technology in place to begin telephone hearings, and that there are not other issues at this time.

Commissioner Taylor asked if the Executive Order gave additional powers, like suspending hearings.

Mr. Burkart stated that there are no additional powers but that the Chairman already has broad authority with regard to everything except adjudication policy.

Mr. Connor stated that he agrees that the IC could suspend hearings when needed.

Commissioner Taylor asked if the state of emergency affects appeal deadlines.

Mr. Burkart stated that nothing in the Executive Order specifically addressed appeal deadlines, but that more guidance has been requested from the Governor's office.

Commissioner Taylor asked if an injured worker could still have an in-person hearing.

Mr. Burkart stated that the IC should liberally grant continuances in order to get an in-person hearing later, but the IC can discuss this issue and make a policy.

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

Commissioner Taylor asked if the IC can limit the number of people who come into the lobby or limit the amount of people attending a hearing.

Mr. Adams stated that on page three of the Governor's Executive Order 2020-01D, it indicates that state agencies shall develop and implement procedures, including suspending or adopting temporary rules within an agency's authority, consistent with recommendations from the Department of Health designed to prevent or alleviate this public health threat.

Mr. Connor added that R.C. 4123.511 states that upon application of a party who resides in an area in which an emergency or disaster is declared, the Industrial Commission and hearing officers of the commission may waive the time frame within which claims and appeals of claims set forth in this section must be filed upon a finding that the applicant was unable to comply with a filing deadline due to an emergency or a disaster. Mr. Connor indicated that the Governor declared an emergency for the entire state, thus, this statute applies statewide.

Commissioner Taylor asked if the IC could limit the number of people who come into the lobby, conduct in-person hearings, or limit the people in the IC offices for the hearings.

Chairman Hughes stated that it is more of a legal issue and that some people might just be interested and, like the courts, hearings should be open to all.

Mr. Adams stated he would defer to Legal and any supplemental guidance from the Director of Health.

Commissioner Taylor asked if the IC could limit the public's attendance at hearings?

Mr. Burkart stated that there is a colorable argument under the Executive Order.

Commissioner Taylor asked how the telephone hearings would work.

Mr. Connor stated hearing officers would take six hours of hearings and hear two claims per hour, but that it will be reevaluated after Wednesday. Mr. Connor indicated that the hearing officer must initiate the call in order to avoid confidential personal information (CPI) issues.

Commissioner Taylor asked if the IC is cancelling hearings on Monday and Tuesday.

Mr. Connor stated that he is proposing cancelling hearings on Monday and Tuesday in order to prepare for telephonic hearings.

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

Commissioner Taylor asked how long telephone hearings would be necessary.

Mr. Connor answered that he did not know, but that the IC would do telephone hearings for as long as necessary.

Commissioner Taylor asked whether anyone asked for the Union's input.

Mr. Connor stated that he has not.

Commissioner Gillmor asked whether anyone had spoken to the stakeholders. Commissioner Gillmor stated that around 1994, while the BWC was making some changes, hearings were suspended for several weeks. Commissioner Gillmor stated that stakeholders and the Union should get a chance to weigh in on this decision.

Chairman Hughes stated that the emergency order was less than 48 hours old and that it is a quickly evolving situation. Therefore, out of concern for employees, injured workers, and employers, the IC must find a solution. Chairman Hughes stated that it is important to continue to hear claims in order to ensure that injured workers are paid when necessary as well as to avoid issues with businesses who are a claim away from going out of business.

Commissioner Gillmor reiterated that she would like to know whether the defense or claimants' bar were consulted.

Chairman Hughes stated that he would defer to Tom Connor and Tim Adams on this matter.

Mr. Connor stated that he spoke to Phil Fulton and they discussed the issues that occurred with video hearings 12 years ago and that telephone hearings seemed more feasible.

Commissioner Taylor asked if he had spoken to any interest groups, like the Ohio Association for Justice (OAJ).

Mr. Adams stated that the guidance provided by the Director of Health and the Governor's Executive Order is an aggressive approach to protect Ohioans and that the actions taken today will hopefully save lives. Mr. Adams noted that the directive instructs Ohioans to limit social interaction, which may limit the spread of this disease.

Commissioner Gillmor asked if the recommendation is to suspend all hearing or just take them by telephone. Commissioner Gillmor asked Mr. Adams what he thought and how he planned to lead.

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

Mr. Adams stated that he would defer to the Chairman, as it is his purview.

Commissioner Taylor inquired about hearing spikes and backlogs.

Mr. Connor answered that the term “spike” is no longer in the law, but that whether the IC takes hearings or not, there will be a backlog, which will impact 107 compliance. Further, Mr. Connor stated that whether the IC suspends hearings entirely, or makes a policy to take the discussed hearings over the telephone, there will be a backlog. Nonetheless, the IC will continue to tweak the system in order to take as many hearings as possible over the telephone to reduce the potential backlog.

Commissioner Taylor asked if two hearings an hour would cause a backlog.

Mr. Connor said two hearings an hour would cause a backlog.

Commissioner Taylor asked whether regional managers could be used to take hearings.

Mr. Connor stated that they normally do, but they could take more because there may be some leeway with regard to the Executive Order and the Contract so that supervisors can perform bargaining unit work.

Commissioner Taylor asked whether there was any conversation with the Director of Health as to how we conduct business, especially because there are individuals coming to hearing that have underlying medical problems that may be more susceptible to the symptoms of Covid-19.

Mr. Adams said that he had not spoken directly with Dr. Acton.

Commissioner Gillmor asked if anyone had discussed these plans with the Union.

Mr. Burkart stated that staff will discuss any plans to abridge the Contract with the Union.

Commissioner Gillmor inquired whether the IC could suspend hearings if the Union and Administration agreed.

Mr. Burkart stated that the IC could do so.

Commissioner Taylor inquired whether, for example, Matt Tyack, Columbus Regional Office District Hearing Officer, should attend his scheduled hearings in Portsmouth, Ohio next week. Commissioner Taylor stated that she has received emails regarding not speaking at continuing

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

legal education seminars and discouraging public appearances and engagements and that the IC should not expect employees to travel as well.

Mr. Connor stated that Mr. Tyack will not travel. He will take telephone hearings.

Commissioner Taylor stated that outside attorneys have had questions about plans and how to handle law firms that may have hearings but have been self-quarantined.

Mr. Connor noted that continuances should be liberally granted.

Chairman Hughes stated that he has had occasion to speak to local judges who are also granting liberal continuances for illness and that he spoke with the common pleas court.

Commissioner Taylor asked if anyone has heard from any other state agency or the Franklin County Court of Common Pleas.

Chairman Hughes stated that there are inquiries with the Bureau of Workers' Compensation (BWC) and Ohio Department of Job and Family Services (ODJFS) to see what they are planning to do. Chairman Hughes stated that the Franklin County Court of Common Pleas is still formulating a plan.

Commissioner Taylor asked Mr. Burkart and Mr. Connor what they recommend.

Mr. Burkart stated that he recommends moving forward with telephonic hearings and postponing the recommended hearings that Mr. Connor proposes postponing. Mr. Burkart further recommended that the IC determine a policy at this meeting.

Mr. Connor stated that he recommends suspending hearings Monday and Tuesday and beginning telephone hearings Wednesday.

Commissioner Taylor asked if new notices are necessary.

Mr. Connor stated that all hearings on Monday and Tuesday would be continued. Beginning Wednesday, however, the enumerated hearings will go forward telephonically.

Commissioner Taylor asked about contact with the Rules Advisory Group.

Mr. Connor stated that he has spoken with Kevin Abrams at the BWC and they are trying to identify issues and work out details.

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

Commissioner Taylor asked whether the categories that will go forward allowed for someone to schedule a hearing for treatment if their hearings have already been continued several times.

Mr. Connor noted that it can be done manually and asked for patience in the meantime.

Commissioner Gillmor asked Mr. Connor how the people will be notified.

Mr. Connor stated that the public website will provide notice and staff will communicate with the stakeholders.

Commissioner Taylor asked how staff will notify those who have hearings on Wednesday. Commissioner Taylor noted that it is imperative to get the word out as broadly as possible.

Mr. Connor stated that they will be notified as soon as he leaves the room.

Commissioner Gillmor asked Mr. Connor if he believes the participants will have enough lead time for the hearings on Wednesday and for the hearings for the following Monday and whether telephone hearings are being considered for a limited period of time?

Mr. Connor stated that he is looking at as short of a period of time as possible. Mr. Connor also noted that continuances will be liberally granted.

Chairman Hughes asked Commissioner Gillmor and Commissioner Taylor if they have any other questions.

#### **MOTION**

Commissioner Taylor moved to suspend all Commission hearings on March 16, 2020 and March 17, 2020, and conduct telephone hearings for the following issues beginning March 18, 2020: permanent total disability, temporary total disability or the termination of temporary total disability, wage loss, allowance, and additional allowance. All other issues are to be suspended unless a party requests their issue to be heard.

Chairman Hughes seconded the motion.

Chairman Hughes asked Mr. Adams to call the roll.

#### **ACTION BY**

Mr. Adams called the roll.



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

**ROLL CALL**

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Hughes	Yes

Respectfully submitted,



Tim Adams  
Executive Director



