

OHIO INDUSTRIAL COMMISSION

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AUDIO TRANSCRIPT
October 28, 2020

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Professional Reporter

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APPEARANCES:

Chairman Jim Hughes
Commissioner Jodie M. Taylor
Commissioner Karen L. Gillmor
Executive Director Tim Adams
Director of Adjudication Tom Connor
Chief Legal Counsel Jim Burkart

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P R O C E E D I N G S

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CHAIRMAN HUGHES: This is Chairman Jim Hughes, and a special meeting of the Ohio Industrial Commission is now called to order. This meeting is being conducted telephonically and mainstreamed on the Ohio Industrial Commission's YouTube channel. The link to listen to our meeting is available on our public website.

On June 16, 2020, Governor Mike DeWine signed into law House Bill 81. House Bill 81 made significant changes to several sections of the Ohio Revised Code that affects matters of adjudication before the Ohio Industrial Commission. The topic of this meeting is limited to approval of the 2021 rules scheduled for five-year review and proposed rule amendments for Ohio Administrative Code 4121-3-13, disputed self-insuring employers' claims; proposed amendments to Ohio Administrative Code 4121-3-20, additional awards by reason of violation of specific safety requirements; and proposed amendments to Ohio Administrative Code 4121-3-34, permanent total disability.

During this meeting it is important that prior to speaking each participant introduce

1 themselves by stating their name and title. This is
2 so the record accurately reflects the proceedings
3 and the public is properly informed.

4 At this point in time, I now ask our
5 Executive Director, Mr. Tim Adams, to call the role.

6 MR. ADAMS: This is Tim Adams,
7 Executive Director of the Ohio Industrial
8 Commission. As I call your name, please restate
9 your name and affirm your presence.

10 Commissioner Karen Gillmor.

11 COMMISSIONER GILLMOR: Commissioner
12 Karen Gillmor. Present.

13 MR. ADAMS: Commissioner Jodie Taylor.

14 COMMISSIONER TAYLOR: Commissioner
15 Jodie Taylor. Present.

16 MR. ADAMS: Chairman Jim Hughes.

17 CHAIRMAN HUGHES: Chairman Jim Hughes.
18 Present. This is Chairman Jim Hughes. Let the
19 record show that a quorum is present. And now the
20 floor is open to discuss the 2021 five-year review
21 and any no change votes to these rules and the
22 proposed amendments to Ohio Administrative Code
23 4121-3-13, and a proposed amendment to Ohio
24 Administrative Code 4121-3-20, as well as proposed
25 amendments to Ohio Administrative Code 4121-3-34,

1 permanent total disabilities.

2 At this point the Chair recognizes
3 Chief Counsel Jim Burkart, then we'll go to Director
4 of Adjudication Tom Connor. Mr. Burkart.

5 MR. BURKART: Thank you, Chairman
6 Hughes. Happy almost Halloween to everybody. Just
7 to give some background, the 2021 five-year rule
8 review consists of 13 rules. Legal services has
9 recommended that 12 of the 13 rules be filed as a no
10 change with JCARR. We've recommended that five-year
11 rule review Rule 4021-3-13, disputed self-insuring
12 employers' claims to be modified to conform with
13 HB 81, and additionally we have prepared and
14 recommended changes for the consideration of the
15 Commission for 4121-3-20, the VSSR rule and
16 4121-3-34, the PTD rule to conform to the HB 81's
17 provisions.

18 Additionally Commissioner
19 Dr. Karen Gillmor proposed some technical and
20 grammatical changes for these rules that are
21 recommended for change. Those were well taken and
22 for consideration by the Commission.

23 The timeline for rule filing for any
24 rules that the Commission determines require changes
25 or approved changes, the initial filing would be on

1 November 17, 2020. A public hearing would be
2 conducted between December 18th and December 27th of
3 2020. The final filing date with JCARR would be
4 January 22, 2021.

5 For the rules that were recommended as
6 no change, if those remain no change, then the
7 filing date for those would be February 21st of 2021
8 to preserve our five-year rule review date, and it
9 would be scheduled for a review five years from that
10 date. And with that, that's a summary of the
11 process so far.

12 CHAIRMAN HUGHES: This is Chairman
13 Jim Hughes. Thank you, Mr. Burkart, for that
14 presentation.

15 If it's okay with the fellow
16 Commissioners, I was going to have Mr. Tom Connor,
17 Director of Adjudication, speak and then if either
18 of the Commissioners have any questions, they can
19 ask both of them at that time. Hearing no objection
20 to that, I'm going to call upon Mr. Tom Connor, who
21 is the Director of Adjudication.

22 MR. CONNOR: This is Tom Connor,
23 Director of Adjudication. The staff suggestions for
24 no change rules, and then there -- as Jim outlined,
25 and then there's a few rules that House Bill 81 did

1 have an impact on. One of those rules is among the
2 rule that is up for five-year rule review, and that
3 is 4121-3-13, the self-insured employers' claims.
4 And the change there was tied to the change in the
5 five-year statute. The triggering event in the past
6 was the payment of a medical bill, and then the
7 claim would remain open for five years in the
8 absence of payment of compensation from the payment
9 of a medical bill. That is changing for new claims
10 to be the date of service -- of the medical service,
11 rather than the payment of the bill. So that is the
12 change that was drafted and suggested to match up to
13 the new statutory provision.

14 In addition, as Jim mentioned, there
15 are two rules outside of the five-year rules that
16 were impacted by House Bill 81. 4121-3-20, the VSSR
17 rule, and the change there was the statute of
18 limitations actually for VSSRs. The only place it
19 was found prior to HB 81 was in the opening of the
20 VSSR rule, and it provided a two-year statute.
21 HB 81 put into place statutory provision 4121.471
22 that made it a one-year statute. So you will see
23 the suggested language incorporates that so that it
24 makes clear the claims arising prior to the
25 effective date of HB 81, there's a two-year statute.

1 Those after have a one-year statute.

2 In addition, House Bill 81 made some
3 changes or made big changes with regard to the
4 voluntary abandonment and essentially nullified
5 all of the case law on that topic going back over a
6 couple of decades. The permanent total rule, which
7 is 4121-3-34, had some language in it that could be
8 impacted by that change. And the idea was to tweak
9 that rule some to make it consistent with the
10 language in the statute that was enacted effective
11 September 15th. So that's essentially what the
12 suggestions were, Chairman. And I'll turn the floor
13 back over.

14 CHAIRMAN HUGHES: This is Chairman
15 Jim Hughes. Thank you gentlemen for those
16 presentations. At this point I'm going to ask my
17 fellow Commissioners if they have any questions of
18 these gentlemen and the presentations they made.

19 COMMISSIONER GILLMOR: This is
20 Commissioner Karen Gillmor. I have no questions.

21 CHAIRMAN HUGHES: This is Jim Hughes,
22 Chairman. Thank you Commissioner Dr. Karen Gillmor.

23 Commissioner Jodie Taylor, do you have
24 any questions of either Chief Counsel Jim Burkart or
25 Director of Adjudication Tom Connor?

1 COMMISSIONER TAYLOR: This is
2 Commissioner Taylor. Yes, I have a question. If we
3 are changing the PTD rule to address House Bill on
4 the voluntary abandonment issue, can you explain
5 to me where we are with the wage loss rules because
6 the wage loss rule also references voluntary
7 abandonment, and that needs to be changed as well.
8 And I'm not sure who wants to address that. I'm not
9 sure if Jim Burkart wants to address that or
10 Tom Connor, but I do think we need to recognize that
11 the wage loss rule does discuss voluntary
12 abandonment as well.

13 CHAIRMAN HUGHES: This is Chairman
14 Jim Hughes. Either of the gentlemen may respond to
15 Commissioner Jodie Taylor's question, or both, if
16 necessary.

17 MR. BURKART: Hi. This is
18 Jim Burkart, Chief Counsel. I'm going to defer to
19 Tom, not to put you on the spot. We did discuss
20 this, but I think he can address it more as how it
21 affects the adjudication than I can. So I would
22 defer to Tom on that one.

23 MR. CONNOR: This is Tom Connor,
24 Director of Adjudication. I was going to actually
25 defer to Jim, but that's okay. I'll go. It --

1 certainly there is an impact on the wage loss rule,
2 Commissioner Taylor. But the wage loss rule is a
3 joint rule. And so I believe we reached out to BWC,
4 and I think there's a recognition at BWC that there
5 will have to be some changes made to the wage loss
6 rule in light of House Bill 81, but they weren't
7 quite ready to embark on that journey right away.
8 But there is a recognition that those changes are
9 going to need to be made once BWC is ready to go.

10 CHAIRMAN HUGHES: This is Chairman
11 Jim Hughes. Commissioner Jodie Taylor, do you have
12 a follow-up, or does that suffice for your answer?

13 COMMISSIONER TAYLOR: This is
14 Commissioner Taylor. Tom, could you maybe give me a
15 timeframe? Are we looking at opening it up next
16 year or sometime pulling it special this year?

17 CHAIRMAN HUGHES: This is Chairman
18 Jim Hughes. You may respond.

19 MR. BURKART: Commissioner Taylor,
20 this is Jim Burkart. We did reach out to BWC on
21 that rule. And I'm sorry to interrupt or deflect
22 your question from Tom. We did reach out to BWC.
23 They are opening the rule in January for review.
24 They have a process and procedure that's longer than
25 ours because of the vetting of the rules with their

1 stakeholders. So I hope that answers your question.
2 We did reach out to them on that rule and they want
3 to wait until January. They're going to open it up
4 then for the -- and begin the process of amending
5 it.

6 CHAIRMAN HUGHES: This is Chairman
7 Jim Hughes. Mr. Tom Connor, Director of
8 Adjudication, do you have anything you'd like to add
9 to Commissioner Jodie Taylor's question?

10 MR. CONNOR: This is Tom Connor,
11 Director of Adjudication. I do not.

12 CHAIRMAN HUGHES: This is Jim Hughes,
13 Chairman. Commissioner Jodie Taylor, do you have
14 follow-up based on those answers received to your
15 question, if any?

16 COMMISSIONER TAYLOR: This is
17 Commissioner Taylor. I don't have follow-up, as
18 long as we're all on the same page that that wage
19 loss rule needs to be addressed, and that we're
20 going to address it with the Bureau in January 2021,
21 that is fine.

22 CHAIRMAN HUGHES: This is Jim Hughes,
23 Chairman. Thank you very much, Commissioner Taylor.

24 Having no further discussion at this
25 point, the Chair -- I'm going to move that the

1 following 2021 five-year review rules be filed with
2 the Joint Committee on Agency Rule Review, JCARR,
3 as no change: 4121-3-17, briefs; 4121-3-18,
4 administrative appeals; 4121-3-19, form reference;
5 4121-3-21, change of address; 4121-3-22, inspection
6 of claim files; 4121-3-24, fee controversy;
7 4121-3-25, application for change of occupation
8 allowance; 4121-3-26, effective of rules; 4121-3-30,
9 emergency meetings; 4121-3-31, waiver for
10 recreational activities; and 4121-15-10, standard
11 for conduct of adjudicators. Do I have a second to
12 my motion?

13 COMMISSIONER GILLMOR: This is
14 Commissioner Karen Gillmor. I second.

15 CHAIRMAN HUGHES: This is Chairman Jim
16 Hughes. It has been properly moved and seconded.
17 At this point, it was seconded by Commissioner
18 Dr. Karen Gillmor, I'm now going to ask the
19 Executive Director, Mr. Tim Adams, to call the role
20 on my motion. Mr. Adams.

21 MR. ADAMS: This is Tim Adams,
22 Executive Director of the Ohio Industrial
23 Commission. As I call your name, please restate
24 your name and your vote.

25 Commissioner Karen Gillmor.

1 COMMISSIONER GILLMOR: This is
 2 Commissioner Karen Gillmor. I vote yes.

3 MR. ADAMS: Commissioner Jodie Taylor.

4 COMMISSIONER TAYLOR: This is
 5 Commissioner Taylor. I vote yes.

6 MR. ADAMS: Chairman, Jim Hughes.

7 CHAIRMAN HUGHES: This is Chairman
 8 Jim Hughes. I vote yes.

9 MR. ADAMS: The motion having the
 10 proper number of votes, it does pass. I now open
 11 the floor for another motion. I recognize
 12 Commissioner Dr. Karen Gillmor.

13 COMMISSIONER GILLMOR: This is
 14 Commissioner Karen Gillmor. Thank you,
 15 Mr. Chairman. I move that the following rules be
 16 filed with the proposed changes adopting the
 17 language of amended Substitute House Bill 81 and the
 18 grammatical and non-substantive language changes I
 19 recommended: 4121-3-20, additional awards by reason
 20 of violations of specific safety requirements;
 21 4121-3-34, permanent total disability, and
 22 4121-3-13, disputed self-insuring employers' claims.

23 CHAIRMAN HUGHES: This is Chairman
 24 Jim Hughes, I will second Commissioner
 25 Dr. Karen Gillmor's motion. At this point I will

1 ask our Executive Director, Mr. Tim Adams, to call
2 the role on that motion, please.

3 MR. ADAMS: This is Tim --

4 COMMISSIONER GILLMOR: This is
5 Commissioner Karen Gillmor. I think we need
6 discussion.

7 CHAIRMAN HUGHES: Oh, this is Chairman
8 Jim Hughes. Commissioner Dr. Karen Gillmor, thank
9 you very much for that. I will open up for
10 discussion on Commissioner Dr. Karen Gillmor's
11 amendments -- or on her motion, I'll give the
12 discussion. The Chair now recognizes Commissioner
13 Dr. Karen Gillmor.

14 COMMISSIONER GILLMOR: Thank you very
15 much, Mr. Chairman. This is Commissioner
16 Karen Gillmor. And the suggested changes are
17 non-substantive changes or grammatical and for
18 consistency throughout the rules. I do have though
19 several questions. There are five questions
20 regarding 4121-3-13, and then one question regarding
21 4121-3-34.

22 So to continue, the questions
23 regarding Ohio Administrative Code 4121-3-13 are,
24 first of all, Paragraph D as in David, provides the
25 parties shall file information that includes but is

1 not limited to medical reports from treating and
2 consulting physicians who have seen the injured
3 worker in consultation for the allowed injury or
4 occupational disease. The first question is, should
5 medical reports from examinations or reviews
6 conducted on behalf of the employer and review
7 reports conducted on behalf of the injured worker be
8 included in the list or does, quote, consulting
9 physicians, end quote, encompass employer
10 examination reports and review reports of both
11 parties?

12 CHAIRMAN HUGHES: This is Chairman
13 Jim Hughes. I will look to either Tom Connor, our
14 Director of Adjudication, to answer
15 Dr. Karen Gillmor's question and/or Jim Burkart,
16 Chief Counsel.

17 MR. CONNOR: Karen, this is
18 Tom Connor, Director of Adjudication. I'll give it
19 a try. Paragraph D starts off by referencing
20 4121-3-09, that is commonly referred to as the
21 discovery rule, but it involves -- and -- and it
22 starts in Paragraph A of that rule, involves the
23 exchange of information and points out the parties
24 should provide to each other evidence that they sent
25 to submit a hearing and that the prehearing exchange

1 of information relevant to the claim is -- is
2 encouraged. So that's kind of as a starting point.

3 And I believe what the remainder of
4 Paragraph D -- the reason it kind of mentions the
5 treating physician reports is that oftentimes,
6 especially on the additional allowance of a claim,
7 there is very little to nothing in a claim file --
8 in the State's claim file in a self-insured claim.
9 And it's putting the onus on both parties to say, if
10 you have supporting medical for this injury, you
11 need to submit it to the claim file. And this goes
12 on top of this, the general language in 4121-3-09.

13 So that's kind of why it says what it
14 says. I believe as we've worked on this over the
15 years, there's certainly -- it's the Commissioners'
16 desire if they -- if there's a -- if they don't
17 think it's enough to encourage or to put the burden
18 on the parties to submit the information, then that
19 certainly can be encouraged with different language
20 or (inaudible) to what's there.

21 CHAIRMAN HUGHES: This is Chairman
22 Jim Hughes. To Commissioner Dr. Karen Gillmor, does
23 that answer your question? Do you have any
24 questions you want to follow up with Tom Connor,
25 Director of Adjudication?

1 COMMISSIONER GILLMOR: On that issue I
2 would like to know what the other two Commissioners
3 think. This is Commissioner Gillmor.

4 CHAIRMAN HUGHES: Commissioner
5 Jodie Taylor, do you have a response to Commissioner
6 Dr. Karen Gillmor's question, and add anything what
7 Mr. Tom Connor, Director of Adjudication suggested?

8 COMMISSIONER TAYLOR: This is
9 Commissioner Taylor. When I looked at this
10 Paragraph D, my concern mostly with Paragraph D was
11 that it says such information shall include but not
12 be limited to. And what is the phrase, "but not to
13 be limited to" referencing and modifying? And in my
14 opinion it's modifying the phrase before it, "such
15 information." I guess my concern was are we
16 limiting the information that has to be provided to
17 the treating physicians, since the physicians have
18 seen the injured worker in consultation, and does
19 the word "physician" mean other people who are not
20 medical physicians who treat injured workers as
21 well? I mean, not every worker sees a licensed
22 physician for treatment. Some people see other
23 practices and fields of medicine. So I guess that
24 was more my concern.

25 I do think that 4121-3-09 addresses

1 some of the concerns of what that information shall
2 be. And, to be honest, having -- you know, it's
3 been a while. I haven't practiced actually, you
4 know, representing clients for 10 or 11 years, but I
5 don't really think -- I think people file the
6 information that they receive on a claim, whether
7 it's from a physical therapist, a social -- a
8 therapist, a psychological therapist. I think most
9 of them -- parties are filing. And I'm not sure
10 they're understanding a lot of the disputes on that.

11 And maybe Tom can address if he has
12 any information from hearing administrators or such
13 disputes, but I'm not really seeing that in the
14 legal reports, and I'm not hearing that as well. So
15 I think maybe 3-13 and 3-09 combined probably
16 address the free flow of the exchange together.

17 You know, my only concern was when I
18 was looking at this, like I said, was whether there
19 could be an argument that a medical provider is not
20 a physician and does not have to comply with D. But
21 I'm not really seeing people make that argument.
22 And I hope they don't because that's not the purpose
23 of the rules and that's certainly not in the spirit
24 of the free exchange of information. Those are my
25 comments and my thoughts on that.

1 CHAIRMAN HUGHES: This is Chairman
2 Jim Hughes. Thank you, Commissioner Jodie Taylor
3 for those thoughts.

4 I don't have anything more to add than
5 what's already been stated. I will ask
6 Mr. Tom Connor, Director of Adjudication, as
7 Commissioner Jodie Taylor suggested, maybe he might
8 want to add anything from any of the hearings, if he
9 has any information, he could enlighten the
10 Commission. This would be an opportunity to do that
11 regarding the point that was made.

12 MR. CONNOR: This is Tom Connor,
13 Director of Adjudication. We have -- I am not aware
14 of this becoming a contentious issue or coming to
15 hearing. And one concern is as these licensures
16 continue to grow and train, the practice of medicine
17 changes. You get into a difficulty where if it
18 turns kind of a laundry list of who could be a
19 treating physician or who could submit medical
20 information, whether that be a different type nurse
21 or a mechanical therapist, for instance, then any
22 change that would occur in that would require a rule
23 change as well. So it's certainly -- if that's the
24 desires of the Commissioners, we can make that work.
25 But I am not aware of this coming to hearing or

1 becoming a contentious issue in a claim.

2 CHAIRMAN HUGHES: This is Chairman
3 Jim Hughes. Thank you, Mr. Tom Connor.

4 I'll go back to Commissioner Dr.
5 Karen Gillmor for anymore discussion she may have on
6 any of these rules.

7 COMMISSIONER GILLMOR: This is
8 Commissioner Karen Gillmor. Thank you,
9 Mr. Chairman.

10 My second question is, should physical
11 therapy and/or psychological counseling reports be
12 included in the list to clarify the documents to be
13 submitted are not limited to documents from doctors?

14 CHAIRMAN HUGHES: This is Chairman
15 Jim Hughes. Thank you.

16 COMMISSIONER GILLMOR: A similar
17 issue.

18 CHAIRMAN HUGHES: This is Chairman
19 Jim Hughes. Thank you Commissioner
20 Dr. Karen Gillmor.

21 I'll once again call upon either
22 Mr. Tom Connor, Director of Adjudication, or Chief
23 Counsel Jim Burkart to share their views they have
24 on that question by Commissioner Dr. Karen Gillmor.

25 MR. CONNOR: This is Tom Connor,

1 Director of Adjudication. Really the comments I
2 made earlier, it applied to both. And Commissioner
3 Gillmor said it, it's a similar issue. Arguments
4 over the meaning of this paragraph, I'm not aware of
5 it ever coming to hearing, but there are -- as the
6 licensure change with regard to medical practice,
7 there has been an expansion of who can submit
8 information regarding certain topics. Some can
9 submit things regarding diagnosis, a treatment plan
10 to not do disability. So if there's a desire today
11 or down the line for that, all those distinctions to
12 be dropped into the rule, that certainly can be
13 done. But I am not aware of that being a
14 contentious issue up until this point.

15 CHAIRMAN HUGHES: This is Chairman
16 Jim Hughes. Thank you, Mr. Tom Connor for that
17 information.

18 Commissioner Taylor, did you have any
19 questions on what Commissioner Dr. Karen Gillmor
20 asked, or do you have any points you want to make?
21 I know you dovetailed on this in your prior answer
22 you gave. I don't want -- I want to make sure you
23 have every opportunity if you have something you
24 have to say regarding this question or anymore
25 that's being said.

1 COMMISSIONER TAYLOR: This is
2 Commissioner Taylor. You know, to be honest, the
3 only -- the only thing that I hear concerns about
4 are obtaining psychological therapy notes. And that
5 seems to be a bit contentious sometimes. And I
6 think Tom Connor would agree with me that that's
7 been an issue over the last decade, but I do think
8 the parties have been able to work it out. And I
9 think the hearing administrators have been pretty
10 good at providing those and addressing those issues
11 as they come up.

12 But the -- I guess I mean I do
13 recognize what Commissioner Gillmor is saying,
14 especially to be honest on the psychological therapy
15 notes. I'm just not sure that this is where we'd
16 want to -- I guess to address it. And so that's
17 really the only comment I have on that question.

18 CHAIRMAN HUGHES: This is Chairman
19 Jim Hughes. Thank you Commissioner Jodie Taylor for
20 that answer.

21 I'll go back to Commissioner
22 Dr. Karen Gillmor to see if she has anymore follow
23 up on this question or any other discussion she
24 wants to present to the Commission.

25 COMMISSIONER GILLMOR: This is

1 Commissioner Karen Gillmor. My third question is,
2 does contested claims matter include claim
3 allowance? If so, allowed should be removed from
4 the last sentence.

5 CHAIRMAN HUGHES: This is Chairman
6 Jim Hughes. Thank you Commissioner
7 Dr. Karen Gillmor for that question. I'll call upon
8 Mr. Tom Connor, Director of Adjudication, to try to
9 answer Commissioner Dr. Karen Gillmor's question,
10 please.

11 MR. CONNOR: This is Tom Connor,
12 Director of Adjudication. And this is actually a
13 suggestion well taken. Contested claims matters
14 certainly involves when the initial allowance would
15 come to hearing. That would be an example of a
16 contested claims matter. And to the extent that,
17 like I said, I am not aware of any contention over
18 Paragraph D of this rule as it's currently situated,
19 but it does mention allowed injury in a case where
20 the original allowance is the contested claims
21 matter. There is not an allowed injury or
22 occupational disease at that point. And I think the
23 removal of the word "allowed" really doesn't -- it
24 doesn't weaken what the responsibility is, it just
25 doesn't cause any confusion when the initial

1 allowance is the matter that's coming to hearing.

2 CHAIRMAN HUGHES: This is Jim Hughes,
3 Chairman. Thank you, Mr. Tom Connor, for that
4 answer.

5 Does Commissioner Jodie Taylor have
6 any questions of Mr. Tom Connor with that answer or
7 does she have anything she would like to add to
8 Commissioner Dr. Karen Gillmor's question that is
9 (inaudible) right now.

10 COMMISSIONER TAYLOR: This is
11 Commissioner Taylor. No. I agree with Commissioner
12 Gillmor that the word "allowed" in that last
13 sentence of Paragraph D should be removed. It
14 should say injury. And, in fact, it should say
15 injury, occupational disease or death. I think
16 Commissioner Gillmor brought it up later on as well,
17 but if we're going to take out the word allowed, we
18 should throw in the other injury, occupational
19 disease or death.

20 CHAIRMAN HUGHES: This is Chairman
21 Jim Hughes. Are you asking to amend Commissioner
22 Dr. Karen Gillmor's amendment -- or her motion to
23 amend that and change this? Is that what you're --
24 are you making that a motion or are you saying we
25 should do that later or is this the time you would

1 like to do that, Commissioner Jodie Taylor?

2 COMMISSIONER TAYLOR: This is
3 Commissioner Taylor. I believe it's on --
4 Commissioner Gillmor has it in her proposed changes.
5 When I reviewed it, she had marked it -- she had
6 marked out the word allowed and added injury,
7 occupational disease, and then she added the word or
8 death. So I'm not sure if that's really an
9 amendment since that was her change initially.

10 CHAIRMAN HUGHES: This is Chairman
11 Jim Hughes. I want to make sure we're all on the
12 same page. Yes, you are correct in terms of that.
13 I just want to make sure you weren't making another
14 amendment. I just want to clarify and make sure
15 we're on the same page. Thank you for that
16 information, Commissioner Jodie Taylor.

17 At this point I will go back to
18 Commissioner Dr. Karen Gillmor to see if she has any
19 other questions of anybody on the changes, please.

20 COMMISSIONER GILLMOR: This is
21 Commissioner Karen Gillmor. The fourth question is,
22 Paragraph E2 provides the self-insuring employers
23 shall file a statement listing the conditions it
24 originally recognized and any conditions it
25 subsequently recognized. Should the statement also

1 include those conditions allowed by Commission
2 order?

3 CHAIRMAN HUGHES: This is Chairman
4 Jim Hughes. Thank you Commissioner
5 Dr. Karen Gillmor for that question. I'll call upon
6 Mr. Tom Connor, Director of Adjudication, to answer
7 Commissioner Dr. Karen Gillmor's question, please.

8 MR. CONNOR: This is Tom Connor,
9 Director of Adjudication. This part of the rule
10 came to be to ensure that there was at least a
11 minimal necessary amount of information in the claim
12 filed. As a matter of fact, some of the examples
13 were -- there were situations where the
14 Commissioners were actually hearing permanent total
15 claims in self-insured claims, and the parties still
16 weren't on the same page as to what the allowed
17 conditions were that late in the claim.

18 So we could add that, but we really
19 weren't concerned when we did this rule because we
20 always know what Commission orders are out there.
21 And it wasn't really intended to provide what the
22 allowed conditions are in the claim because we had
23 that in our system. It was the idea that the
24 self-insured could make decisions either initially
25 or as the life of the claim goes on without us even

1 knowing if it doesn't go to hearing. And we want
2 them to update us when a contested matter does come
3 to hearing as to what they had recognized as the
4 allowed conditions so that if the other side doesn't
5 agree, then we can get to that issue more quickly.

6 So it's not that it can't be done, but
7 the purpose is to -- really to ask or force the
8 self-insured employer when the contested claims
9 matter is coming to hearing to let us know what they
10 view as the allowed conditions in the claim.

11 CHAIRMAN HUGHES: This is Chairman
12 Jim Hughes. Thank you, Mr. Tom Connor, for
13 addressing that issue.

14 Commissioner Jodie Taylor, do you have
15 any questions or comments regarding this question
16 that was asked by Commissioner Dr. Karen Gillmor?

17 COMMISSIONER TAYLOR: This is
18 Commissioner Taylor. I think a lot of it as well,
19 like Tom said, had to do with, you know, getting to
20 TPD hearings, but it also had to do with the fact
21 that when the Commission obtained our medical
22 examinations on the issues of PTD, people
23 subsequently would come in -- our parties would come
24 in and argue that we didn't examine for all of the
25 allowed conditions. And so then our medical reports

1 would be insufficient -- legally insufficient and
2 could not be relied upon.

3 So I agree with Tom. I think the
4 purpose of this was to put the burden on the
5 parties, the employer -- on the self-insured
6 employer specifically to notify the Commission and
7 the parties what has been allowed in the claim
8 because a lot of times, like Tom said, you know,
9 they might allow it for failed low back syndrome or
10 something like that subsequently and we don't know
11 that. And then they file a PT application, and we
12 were not examining for all allowed conditions. And
13 it was becoming costly because we pay for those
14 exams as well.

15 I mean, I know self-insured employers
16 end up paying them, the bill, but still, we don't
17 want to have to do things two or three times to get
18 it right. So I think the purpose was to notify when
19 self-insured employers allowed claims for conditions
20 after that were not orders. And so that's pretty
21 much the only comment I have on that. Thank you.

22 CHAIRMAN HUGHES: This is Chairman
23 Jim Hughes. Thank you Commissioner Jodie Taylor for
24 those points.

25 I'll go back to Commissioner

1 Dr. Karen Gillmor to see if she has any other
2 questions or comments regarding any of this.

3 COMMISSIONER GILLMOR: This is
4 Commissioner Karen Gillmor. Thank you,
5 Mr. Chairman. Question 5 is, should the language in
6 blue in Paragraph F be removed since Paragraph D
7 addresses information to be submitted by both
8 parties?

9 CHAIRMAN HUGHES: This is Chairman
10 Jim Hughes. Thank you Commissioner
11 Dr. Karen Gillmor for that question.

12 I'll ask Mr. Tom Connor, Director of
13 Adjudication to issue -- answer that question,
14 please.

15 MR. CONNOR: This is Tom Connor,
16 Director of Adjudication. I actually think this is
17 a good suggestion, that it cuts some of the
18 wordiness out of Paragraph F. And Commissioner
19 Gillmor can certainly correct me if I'm wrong, but
20 the way I read this suggestion is Paragraph F is the
21 please don't submit duplicate information paragraph
22 that was inserted -- we made a couple of different
23 runs at this rule awhile ago. And I think the idea is the
24 preceding paragraph set forth the duty of the
25 representatives to submit information and to whom

1 that information should be submitted. And
2 Commissioner Gillmor's suggestion is when we tell
3 them in Paragraph F, if you've already submitted the
4 information, you don't need to do it again. We
5 don't need to tell them who they don't have to
6 submit the information too, we just need to tell
7 them you don't need to submit the information a
8 second time. So I think it actually does make the
9 Paragraph F more concise, and keeps all the meaning
10 within the rule.

11 CHAIRMAN HUGHES: This is Chairman
12 Jim Hughes. Thank you, Mr. Tom Connor, Director of
13 Adjudication, for that answer.

14 I'll ask Commissioner Jodie Taylor if
15 she has any questions or comments on this issue?

16 COMMISSIONER TAYLOR: This is
17 Commissioner Taylor. On Paragraph F, I agree with
18 the change suggested by Commissioner Gillmor. I
19 think taking out and -- and makes it -- it's much
20 more concise and clear. And it's -- I think it gets
21 across the message of not filing duplicate
22 information. And so I do like the suggested draft,
23 and I support it.

24 CHAIRMAN HUGHES: This is Chairman
25 Jim Hughes. Thank you, Commissioner Jodie Taylor,

1 for those comments.

2 I'll go back to Commissioner
3 Dr. Karen Gillmor to see if she has any comments or
4 any other questions.

5 COMMISSIONER GILLMOR: This is
6 Commissioner Karen Gillmor. The final question is
7 regarding Ohio Administrative Code 4121-3-34, which
8 is permanent total disability. Paragraph C6 A2
9 provides if a party makes written notification of an
10 objection to a tentative order, the application is
11 to be set for hearing and adjudicated on the merits.
12 However, our Memo G3 provides if a party files an
13 objection to a tentative order, the hearing is
14 scheduled on the issue of the appropriateness of the
15 tentative order. If the staff hearing officer finds
16 the granting of permanent total disability was
17 inappropriate due to a legal issue or
18 relevant evidence was not considered, the matter is
19 referred for continued processing, but otherwise the
20 tentative order shall be affirmed.

21 Should the paragraph be amended to
22 provide for a hearing on the appropriateness of the
23 objection followed by either continued processing or
24 an order affirming the tentative order set forth in
25 Memo G3?

1 CHAIRMAN HUGHES: This is Chairman
2 Jim Hughes. Thank you Commissioner
3 Dr. Karen Gillmor.

4 I'm going to ask Mr. Tom Connor,
5 Director of Adjudication, to answer the question,
6 please.

7 MR. CONNOR: This is Tom Connor,
8 Director of Adjudication. Actually the purpose of
9 the policy was to flush out what was provided in the
10 rule. And it was felt at that time that because the
11 rule didn't say that shall be for hearing
12 immediately on the merits, because it will end up
13 with a merit hearing, but here is the difficulty we
14 had. If a claim gets a tentative order issued,
15 that's a situation where it is viewed that all the
16 medical evidence supports the idea that the injured
17 worker is medically unable to engage in any
18 sustained or remunerative employment.

19 If that determination is found to have
20 been in error, there was actually medical evidence
21 that said that the injured worker did retain the
22 ability to do some work, the normal PP process would
23 then kick into the vocational portion and the
24 parties would have the ability to have vocational
25 evidence submitted with regard to that medical

1 evidence that said some workability was retained.

2 If it immediately went to hearing on
3 the merits of the PTD application upon the objection
4 to the tentative order, the parties would be robbed
5 of the ability to submit vocational information
6 without any real basis. So that was the purpose of
7 the memo. Now, going to whether you want to load
8 everything from the policy memo into the rule or,
9 for instance, just say it's going to be set for
10 hearing, and by removing, adjudicated on its merits,
11 that would remove any argument that there's an
12 inconsistency. But that certainly -- that is a
13 decision for the Commissioners to make which
14 direction, if any, to go.

15 CHAIRMAN HUGHES: This is Chairman
16 Jim Hughes. Thank you, Mr. Tom Connor, for that
17 answer.

18 I'll call upon Commissioner
19 Jodie Taylor for any comments regarding the
20 question, please.

21 COMMISSIONER TAYLOR: This is
22 Commissioner Taylor. Looking at 334-B6 A2, this --
23 we were actually looking at changing this rule about
24 a year and a half, two years ago. I don't remember
25 how long ago. And for some reason I got

1 sidetracked. But I think Tom Connor would agree
2 with me, and I know Commissioner Gillmor said it as
3 well, the rule is not -- well, I guess our policy is
4 different from the rule, and that's the reason why
5 we were going to change it. And I do think that we
6 should change A2 and -- but I think we can make a
7 very simple change. And so I would just get rid of
8 the, and adjudicated on its merits. I would just
9 end it after, shall be set for hearing, period. And
10 I will make a motion for that in a second, but I
11 want to explain why.

12 By putting a period after hearing we
13 then -- it doesn't really matter what issues we set
14 for hearing. By saying for hearing and adjudicated
15 on its merits we are basically telling the parties
16 we are going to have a hearing on your permanent and
17 total disability merits of your application. And
18 that's not what's happening in some cases. Some
19 cases we are -- in all the cases we are adjudicating
20 on the merits at that time.

21 So I would just end it, shall be set
22 for hearing. That would allow if things need to be
23 changed later on in our policy to not have this
24 bifurcated hearing process on the PTDs, then we can
25 change the policy and not have to worry about

1 changing the rule. And I think it gives the
2 Commission a lot of flexibility in addressing the
3 concerns with tentative orders and how they're
4 processed and -- but still staying compliant.

5 So I am going to make a motion -- an
6 amended -- a motion to amend 4121-3-34 C6 A2 to
7 basically provide as the following, in the event a
8 party makes written notifications to the Industrial
9 Commission of an objection within 14 days of the day
10 of the receipt of the notice of findings of a
11 tentative order, the application for compensation
12 from permanent total disability shall be set for
13 hearing, period.

14 CHAIRMAN HUGHES: This is Chairman
15 Jim Hughes. Is the moved -- the amendment as being
16 moved to the original motion by Commissioner
17 Jodie Taylor.

18 Commissioner Dr. Karen Gillmor, do you
19 have any questions of what Commissioner Jodie Taylor
20 is asking to be done?

21 COMMISSIONER GILLMOR: This is
22 Commissioner Gillmor. I agree with Commissioner
23 Taylor. At the end of our discussion, I was going
24 to make a general amended motion to amend my
25 original motion, which would -- my amended motion

1 would encompass all the changes agreed to at today's
2 meeting. So my question is procedural, which is, do
3 we want to envelope Commissioner Taylor's amendment
4 that she just proposed in that sweeping final --
5 probably final amended motion, or do we want her
6 amendment to stand alone?

7 CHAIRMAN HUGHES: This is Chairman
8 Jim Hughes. It would be up to Commissioner Taylor
9 if she wanted to include that in your sweeping
10 motion. It would be cleaner to have it in one
11 sweeping motion. The only other thing that I'm
12 quickly looking for is because I do know sometimes
13 when you amend one section you can't amend it again
14 in certain -- certain meetings. So that's the only
15 concern I have.

16 I think, Commissioner
17 Dr. Karen Gillmor, you understand what I'm talking
18 about from a time you and I were together at a
19 different place in our life.

20 COMMISSIONER GILLMOR: Yes, yes.

21 CHAIRMAN HUGHES: So I think that
22 would be -- if we would accept Commissioner
23 Jodie Taylor's amendment to your motion, I fear that
24 anything of your sweeping motion dealing with the
25 section we're talking about here in terms of that

1 might not be allowed, if you understand what I'm
2 saying. So it would be up to the lady, meaning
3 Commissioner Jodie Taylor, whether she wanted to
4 withdraw her motion or if she wanted to go forward
5 because your encompassing amendment at the end here,
6 does that encompass what Commissioner Jodie Taylor
7 is trying to do by putting the period after the word
8 of hearing on that A2?

9 COMMISSIONER GILLMOR: This is
10 Commissioner Gillmor. Yes, it would.

11 CHAIRMAN HUGHES: Okay.
12 Commissioner -- this is Chairman Jim Hughes.
13 Commissioner Jodie Taylor, do you have any questions
14 of what either -- what we're trying to accomplish
15 here? Do you want to go forward with your motion,
16 or do you want to withdraw your motion under the
17 auspice that Commissioner Dr. Karen Gillmor is
18 saying that your motion would encompass in her
19 sweeping motion? What is your preference?

20 COMMISSIONER TAYLOR: This is
21 Commissioner Taylor. I will withdraw my motion with
22 the understanding that Commissioner Gillmor will
23 include the change with my -- with her leading
24 motion. Thank you.

25 CHAIRMAN HUGHES: This is Chairman

1 Jim Hughes. Thank you Commissioner Jodie Taylor for
2 withdrawing that.

3 At this point I'll go back to see if
4 Commissioner Dr. Karen Gillmor has any other
5 questions or comments regarding this.

6 COMMISSIONER GILLMOR: This is
7 Commissioner Gillmor. No further questions at this
8 time. Thank you.

9 CHAIRMAN HUGHES: Before -- this is
10 Chairman Jim Hughes. Before I call upon
11 Commissioner Dr. Karen Gillmor who has a sweeping
12 motion she'd like to make, I want to give
13 Commissioner Jodie Taylor an opportunity if she has
14 any questions or comments that have not already been
15 arisen during this hearing if she has anything else
16 she would like to present to the Commission
17 regarding what we're doing here today.

18 COMMISSIONER TAYLOR: This is
19 Commissioner Taylor. No, I have no further
20 comments.

21 CHAIRMAN HUGHES: This is Chairman
22 Jim Hughes. Thank you Commissioner Jodie Taylor for
23 that.

24 I'll now call upon Commissioner
25 Dr. Karen Gillmor for a motion.

1 COMMISSIONER GILLMOR: Mr. Chairman, I
2 move to amend. My amended motion states, I move
3 that the following rules be filed with the proposed
4 changes adopting the language of amended substitute
5 House Bill 81, the grammatical and non-substantive
6 language changes I recommended and the changes
7 agreed to at today's meeting, which this is not part
8 of my motion but for our purposes, would include
9 Commissioner Taylor's amendment to Paragraph C6 A2
10 of OAC 4121-3-34. And so these following rules that
11 we are amending include: 4121-3-30, additional
12 awards by reason of violations of specific safety
13 requirements; 4121-3-34, permanent and total
14 disability; and 4121-3-13, the disputed
15 self-insuring employers' claims.

16 CHAIRMAN HUGHES: This is Chairman
17 Jim Hughes.

18 COMMISSIONER GILLMOR: So I'm looking
19 for a second.

20 CHAIRMAN HUGHES: This is Chairman
21 Jim Hughes -- Chairman Jim Hughes. Thank you,
22 Commissioner Dr. Karen Gillmor, for making that
23 motion.

24 Do we have a second to Commissioner
25 Dr. Karen Gillmor's amendment she just made?

1 Commissioner Taylor, do you want to
 2 second that?

3 COMMISSIONER TAYLOR: Yes. This is
 4 Commissioner Taylor. I will second Commissioner
 5 Gillmor's motion.

6 CHAIRMAN HUGHES: This is Chairman
 7 Jim Hughes.

8 Thank you, Commissioner Jodie Taylor.

9 It's been properly moved by
 10 Commissioner Dr. Karen Gillmor and seconded by
 11 Commissioner Jodie Taylor. I will now call -- is
 12 there any other further discussion on the amended
 13 motions? Hearing none, I'll call on the Executive
 14 Director, Mr. Tim Adams, to call the role.

15 MR. ADAMS: This is Tim Adams,
 16 Executive Director of the Ohio Industrial
 17 Commission. As I call your name, please restate
 18 your name and state your vote.

19 Commissioner Karen Gillmor.

20 COMMISSIONER GILLMOR: Commissioner
 21 Karen Gillmor. Yes.

22 MR. ADAMS: Commissioner Jodie Taylor.

23 COMMISSIONER TAYLOR: Commissioner
 24 Taylor. Yes.

25 MR. ADAMS: Commissioner Jim Hughes.

1 CHAIRMAN HUGHES: Commissioner and
2 Chairman Jim Hughes. I vote yes.

3 The -- this is Chairman Jim Hughes.
4 The amendment does become part of the rules. We
5 have now concluded our agenda for the special
6 meeting. I will now ask for a motion to adjourn.

7 COMMISSIONER GILLMOR: This is
8 Commissioner Gillmor. I move to adjourn.

9 CHAIRMAN HUGHES: This is Chairman
10 Jim Hughes. I will second. All in favor -- I'll
11 call upon Executive Director Tim Adams to call the
12 role.

13 MR. ADAMS: This is Tim Adams,
14 Executive Director of the Ohio Industrial
15 Commission. As I call your name, please restate
16 your name and state your vote.

17 Commissioner Karen Gillmor.

18 COMMISSIONER GILLMOR: Commissioner
19 Karen Gillmor. Yes.

20 MR. ADAMS: Commissioner Jodie Taylor.

21 COMMISSIONER TAYLOR: Commissioner
22 Jodie Taylor. Yes.

23 MR. ADAMS: Chairman Jim Hughes.

24 CHAIRMAN HUGHES: Chairman Jim Hughes.
25 Yes.

1 We do have the proper things. We will
2 be adjourned. Thank you all.

3 - - -

4 (End of recording.)

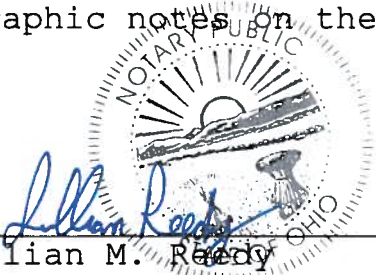
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C-E-R-T-I-F-I-C-A-T-E

I do hereby certify that the foregoing is a true, correct and complete written transcript of the audiotaped proceedings in this matter, reduced by me into stenotypy, to the best of my ability, and transcribed from my stenographic notes on the 21st day of June, 2021.



Jillian M. Reedy
Professional Reporter and
Notary Public in and for
the State of Ohio

My commission expires February 13, 2026.