

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

Meeting Minutes

January 14, 2015
10:00 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 Adjudicatory Services
Rachael Rentas-Black, Chief Legal Counsel
Debbie Fodey, Administrative Assistant
Kim Ferkany, Administrative Assistant
Genevieve Hoffman, Administrative Assistant
Greg Hickman, Assistant Legal Counsel
Keith Carpenter, Administrative Assistant

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

Hearing Officer Manual Memos A-G

Chairman Bainbridge suggested setting a timeline to get back to the group with suggestions, thoughts, and comments on HOM Manual Memos A-G. Chairman Bainbridge suggested May 1, 2015 as the deadline.

There was no discussion.

Chairman Bainbridge made a motion to table Memos A-G and to set the deadline for May 1, 2015 for all Members to get back with him with substantive changes to the Manual.

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

DISCUSSION

Chairman Bainbridge stated that Tom Connor gave the Members an e-mail from BWC concerning nurse practitioners (NP) and physician assistants (PA).

Tom Connor noted that the Bureau met with NPs and PAs and internally made suggestions and recommendations for these practitioners to have an enhanced role in our system.

In the 1st & 4th bullet points of the BWC email, the BWC states that PA/NPs can certify disability. Mr. Connor stated that the Commission does not want to adjudicate or litigate whether a supervisor agreement with a PA or NP authorized the PA/NP to sign documents.

The BWC policy is not clear and Ms. Rentas-Black suggested the Commission follow-up with Tina Kielmeyer.

At the 5th bullet point, the Bureau is saying the Commission does not need to update its rule to be consistent with the BWC policy. Ms. Rentas-Black does not necessarily agree with this point.

Chairman Bainbridge stated that Mr. Connor should go back to the Bureau as the Commission agrees with the direction they are going, but needs some clarification of its policy.

Tom Connor said the answer to the Commission's questions would affect the policies in Section M of the Hearing Officer Manual.

Chairman Bainbridge asked how we will proceed with the next item on the agenda, which is the Hearing Officer Manual. Ms. Rentas-Black responded that Greg Hickman will lead the discussion.

Section H: Death Claims

Memo H1 – Death Benefits – Eligibility for Maximum Benefits

Mr. Hickman noted there were no substantive changes to Memo H1, only citation related changes.

Memo H2 – Eligibility for Death Benefits and Accrued Compensation

Mr. Hickman noted there were no substantive changes made.

Memo H3 – Reapportionment of Death Benefits – Remarriage

Mr. Hickman noted there were no substantive changes made.

Memo H4 – Appeal Abated by Death

Mr. Hickman noted in Memo H4, "claimant" was changed to "injured worker."

Commissioner Gillmor noted Memo H4 should read "An appeal filed by the Injured Worker."

Chairman Bainbridge noted citation change in a case being overruled in a case that was not overruled by *Afrates*. Ms. Rentas-Black said she can search for another citation.

Memo H5 – Accrued Compensation Reminder

Mr. Hickman noted there were no substantive changes made.

Chairman Bainbridge noted there were minor grammar, punctuation, and citation changes.

Chairman Bainbridge asked if there was any discussion.

Commissioner Gillmor suggested a change in the 6th paragraph,- 5th sentence to add “or self-insuring employer.” Chairman Bainbridge asked if there were any further suggestions. There were no other suggestions made.

Memo H6 – Rate of Compensation where there are Wholly Dependent Persons

Mr. Hickman noted there were citation changes made to this memo. Chairman Bainbridge noted there were no substantive changes made to the policy.

Section I: Jurisdiction

Memo I1 – Continuing Jurisdiction – 10 Years and 5 Years

Mr. Hickman noted the only change was to the citation in the Note section.

Chairman Bainbridge inquired if there were any suggestions for this memo.

Commissioner Gillmor asked if the policy should address when the date of last payment of compensation and a medical bill is for purposes of R.C. 4123.52 since the Commission has heard this issue at hearing and representatives often make arguments on this issue.

Chairman Bainbridge asked Mr. Connor about the history on this issue. Mr. Connor noted it may be a good thing to add language to the policy to address the issue. Mr. Connor suggested combining Memo I3 into Memo I1. Chairman Bainbridge asked Mr. Connor if it would be best to combine the two memos and Mr. Connor indicated yes.

Memo I2 – Two Year Limit and R.C. 41232.52, Application for Compensation Construed and Additional Conditions

Mr. Hickman noted there were no substantive changes made to the memo other than changing “FROI” to “First Report of Injury.”

Commissioner Gillmor requested that Staff add “Occupational Disease or Death” after “First Report of Injury.” Chairman Bainbridge asked if there were any other thoughts on Memo I2. There were none.

Memo I4 – Computation of Time Limitations

Mr. Hickman noted there were no substantive changes made to the policy. There was no discussion.

Memo I5 – Processing Compensation and Medical Benefits Issues in Claims When an Original Allowance or Additional Allowance Issue is in Court

Mr. Hickman noted that revisions were made to the style of the graph. He reported that Communications is willing to redesign the whole graph in terms of aesthetics and usability. Mr. Hickman stated that Communications has offered to take the finished product and add graphics enhancements and user enhancements. Chairman Bainbridge asked Mr. Connor in terms of Memo I5, is the graph consistent with changes in the law? Mr. Connor answered yes. Chairman Bainbridge asked if there was any discussion. There was none.

Memo I6 – Professional Sports Claims

Mr. Hickman stated this is a new policy that was formerly addressed in Section C. Commissioner Gillmor noted that there are two court cases that affect the policy, Commissioner Gillmor recalled one is *City of Cleveland*. Commissioner Gillmor inquired from where the idea for the policy came. Ms. Rentas-Black responded that the idea was hers as she recalled the issue arises so infrequently that she thought hearing officers would like some guidance on the matter.

Memo I7 – Processing of Claims where the Same Injury Results in an Ohio Claim and a Foreign Claim

Ms. Rentas-Black stated that this memo is very helpful to hearing officers. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Section J: Appeals

Memo J1 – Signing of Notice of Appeals

Mr. Hickman stated that Staff has recommended the deletion of the first sentence of the policy as unnecessary. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Memo J2 – Remanding of Claims

Mr. Hickman noted there were no substantive changes made to the policy. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Memo J3 – Handling Subrogation Motions

Mr. Hickman noted no substantive changes were made to the policy. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Section K: Order Writing

Memo K1 – Allowance – Dismissal Order v. Merits

Commissioner Gillmor suggested re-wording paragraph B of the policy. Commissioner Gillmor also suggested removal of the second sentence of the paragraph. Mr. Connor noted the Commission only allows dismissal of an appeal prior to a SHO hearing. A party cannot dismiss an underlying motion that has been adjudicated by a DHO before the SHO. Mr. Connor indicated that is the reason for the language the way it is.

Memo K2 – Precise Order Writing

Mr. Hickman stated that only minor grammar changes were made to this policy.

Commissioner Gillmor recommended that Staff replace the word “will” in the first sentence of the second paragraph with the word “shall.”

Chairman Bainbridge noted that this change is consistent with the suggested change in the second sentence of the same paragraph.

Mr. Hickman noted that the last paragraph reiterates the second paragraph but provides more specific guidance.

Memo K3 – Orders on Coverage – No Jurisdiction to Address Risk Matters

Mr. Hickman noted there were no substantive changes made to the policy.

Commissioner Gillmor stated that she has some suggestions for changes, but is having trouble discerning when a change is a grammar change or a substantive change.

Chairman Bainbridge responded that, if the edit does not change the meaning of the policy, just provide the suggestions to Mr. Hickman. Commissioner Gillmor responded that she understood.

Memo K4 – Overpayments, Reimbursement from the Surplus Fund and Recoupment Pursuant to R.C. 4123.511(K)

Mr. Hickman stated that the changes in the Note section of the policy were to use the proper citations for the cases listed in the note. Staff did not use different cases.

Memo K5 – Timely Completion of Orders

Mr. Hickman noted no substantive changes were made to the policy. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Memo K6 – Corrected Orders

Mr. Hickman noted no substantive changes were made to the policy. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Section L: Hearing Officer Duties

Memo L1 – Hearing Room Demeanor

Mr. Hickman noted no substantive changes were made to the policy. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Memo L2 – Determination of Correct Employer in Claims Involving Temporary or Employee Leasing Agencies

Mr. Hickman noted that current Memo L2, titled “District Hearings-Hand Carrying Claims” is recommended for rescission and replacement with current Memo L8, titled “Determination of Correct Employer in Claims involving Temporary or Employee Leasing Agencies.” Ms. Rentas-Black stated that the current policy is obsolete.

Memo L3 – Signing of Orders

Mr. Hickman noted that the term “designated signer” was removed from the policy and replaced with “regional managers.”

Chairman Bainbridge asked Ms. Rentas-Black if she approved of the change and she noted she approves.

Memo L4 – Ex-Parte Discussions

Mr. Hickman noted that current Memo L4, titled “Review of District Hearings” is recommended for rescission and replacement with current Memo L7, titled “Ex-Parte Discussions.” Mr. Hickman reported that Staff is recommending the addition of a sentence addressing the appearance of an *ex parte* discussion. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Memo L5 – Informing Injured Workers about Payment

Mr. Hickman noted that “claimant” was changed to “injured worker” in the title of the memo.

Chairman Bainbridge asked whether the policy should address the issue of electronic funds transfer (EFT). Mr. Connor recommended that the policy address EFT and electronic benefits transfer (EBT) and suggested Staff mirror the language from Memo I3.

Memo L6 – Hearing Officer Schedule Sheets Not Public

Mr. Hickman noted there were no substantive changes made to the policy. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Memo L7 – Moved

Memo L8 – Moved

Section M: Medical Issues

Commissioner Gillmor suggested changing the title to “Medical and Psychological Issues.”

Memo M1 – Psychiatric Consultation Fee – No Psychiatric Condition Allowed

Mr. Hickman stated that he added “psychological” to the title of M1 in order to accurately reflect the policy. Mr. Hickman stated that no other changes were made.

Memo M2 – No Communication with Physician Examining for Industrial Commission

Mr. Hickman noted there were no substantive changes made to the policy. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Memo M3 – Adjudication of Claims with the Issue of Exposure to Blood or Other Bodily Fluids as Delineated by R.C. Section 4123.026

Mr. Hickman noted that current Memo M3, titled “Failure to Appear – Rehabilitation Plan” is recommended for rescission and replacement with current Memo M7, titled “Adjudication of Claims with the Issue of Exposure to Blood or Other Bodily Fluids as Delineated by R.C. Section 4123.026.” Mr. Hickman stated that Staff is recommending the rescission of the current memo because the language is contained in R.C. 4121.63.

Mr. Hickman noted there were no substantive changes made to the policy. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Memo M4 – Status of Mechanotherapists

Mr. Hickman noted there were no substantive changes made to the policy. Chairman Bainbridge asked if there was any discussion.

Mr. Connor recommended that the policy remain in the manual, at this time. He noted there is only one doctor still working as a mechanotherapist. Mr. Connor further stated that the state has not issued a license to a mechanotherapist since 1973.

Mr. Hickman asked what are mechanotherapists? Mr. Connor responded that mechanotherapists are similar to chiropractors.

Memo M5 – Documentation Submitted by Physician Assistants, Advanced Practice Nurses, Certified Nurse Practitioners, and Clinical Nurse Specialists

Mr. Hickman noted there were no substantive changes made to the policy, but there may be changes after discussions with the Bureau. Chairman Bainbridge asked if there was any discussion. There was no discussion.

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

Memo M6 – Documentation Submitted by Licensed Professional Clinical Counselors and Independent Social Workers

Mr. Hickman noted there were no substantive changes made to the policy. Chairman Bainbridge asked if there was any discussion. There was no discussion.

Memo M7 was moved.

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