

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

Meeting Minutes

June 15, 2016

1:00 P.M.

TYPE OF MEETING

Commission Meeting

ATTENDEES

Chairman Thomas H. Bainbridge
Commissioner Jodie M. Taylor
Commissioner Karen L. Gillmor
Tim Adams, Executive Director
Tom Connor, Director of Hearing Services
Rachael T. Rentas-Black, Chief Legal Counsel
Jacob Bell, Director of Operations/Legislation
Genevieve Hoffman, Hearing Officer Trainer
Casaundra Johnson, Administrative Assistant
Kim Ferkany, Administrative Assistant
Debbie Fodey, Administrative Assistant
Greg Hickman, Assistant Legal Counsel
Jennifer Rohrbaugh, Assistant Legal Counsel

CALL TO ORDER

The meeting was called to order by Chairman Bainbridge.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Present
Commissioner Taylor	Present
Chairman Bainbridge	Present

OLD BUSINESS

MOTION

Chairman Bainbridge moved to approve the December 17, 2015 minutes as distributed with the agenda to be approved as indicated.

Commissioner Taylor seconded the motion.

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ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

NEW BUSINESS

DISCUSSION

Final Filing of Amended Rules

Commissioner Taylor stated there was one change she would like to discuss regarding Ohio Adm.Code 4121-3-30 “Emergency Hearings.” Commissioner Taylor stated the proposed rule changes do not reflect what the Commission voted on in the December 17, 2015 Commission Meeting. Ohio Adm.Code 4121-3-30(B)(2) currently reads “[u]pon determining the request valid ,”. Commissioner Taylor provided that at the previous Commission Meeting the Commission voted for the rule to read as “[u]pon determining the request is valid,”. Commissioner Taylor also pointed out there is a problem with the spacing of the comma after the first sentence of Ohio Adm.Code 4121-3-30(B)(2). Rachael Rentas-Black stated the proposed changed rule was already submitted to the Joint Committee on Agency Rule Review (JCARR) and there was a hearing on June 6, 2016. Commissioner Gillmor added that adding the word “is” does not change the meaning, and Ms. Rentas-Black agreed. Commissioner Taylor added there was still the issue with the spacing between the comma. Ms. Rentas-Black provided that it is likely the Legislative Service Commission (LSC) will correct the spacing issue. Chairman Bainbridge asked whether this issue should be tabled or if can be moved forward. Ms. Rentas-Black answered it can be moved forward and if LSC is unable to correct she will advise the Commission.

MOTION

Chairman Bainbridge moved that pursuant to R.C. 119.03 that the Industrial Commission approve the final filing of the following amended rules of the Ohio Administrative Code: 4121-3-16 “Motions”, 4121-3-22 “Inspection of claim files”, and 4121-3-30 “Emergency hearings.” It is further moved that the effective date for the aforementioned amended rules be June 27, 2016. It is further moved that the next five year rule review date for the amended rules be February 1, 2021.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

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ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Statewide Hearing Officer Meeting

Genevieve Hoffman stated the Statewide Hearing Officer Training is scheduled for September 26, 2016. Ms. Hoffman provided a draft agenda to those in attendance. Ms. Hoffman addressed the fact that the speakers were already invited. Ms. Hoffman explained that Dr. McGrail had some confusion regarding his role in reaching out to fellow doctors. Dr. McGrail was asked for ideas on topics; however, Dr. McGrail extended an invite to the doctors on his own accord. Ms. Hoffman added that she was not comfortable rescinding the invite even though this was not the proper procedure. Ms. Hoffman stated that the agenda was tricky because all of the speakers were requesting a morning spot.

Chairman Bainbridge interjected and added that he took some of the responsibility and regrets not having a meeting regarding the speakers. He added since most of the speakers want to present in the morning, if they are unable to change their schedule then the Commission can move forward with different speakers in line with the procedure.

Commissioner Taylor shared her disappointment with how the situation was handled. Commissioner Taylor added that she read the weekly reports provided by Ms. Hoffman that stated the doctors were lined up to speak at the training. Commissioner Taylor noted that Michael Stanton-Hicks, M.D., was asked to present five or six years ago and he canceled three weeks before the training took place. Commissioner Taylor did not have a problem with the topics that will be presented, but only the way obtaining the speakers was handled. Commissioner Taylor added that she did not want to withdraw the invitation to speak; however, in the future, Commissioner Taylor wants it handled as it was in the past. Commissioner Taylor requested that Jacob Bell or Tom Connor speak with Dr. McGrail so that this does not happen again. Commissioner Taylor also asked Ms. Hoffman to clarify what medical degree Wolfgang Sadee, Dr.rer.nat., possessed. Ms. Hoffman answered Dr. Wolfgang Sadee possesses a German equivalent of a Ph.D of physical science. Ms. Hoffman added that Dr. Wolfgang Sadee credentials are listed similarly on the Ohio State University's website. Ms. Hoffman stated that Dr. Stanton-Hicks required a morning presentation so if there were any thoughts on obtaining a different speaker it could be politely addressed with Dr. Stanton-Hicks. Commissioner Taylor stated that the offer was made to Dr. Stanton-Hicks and the Commission should keep it. Ms. Hoffman apologized for not following past practice and stated she was surprised when she discovered Dr. McGrail had extended invitations to the doctors to speak prior to the Commission voting. Ms. Hoffman added going forward she would follow past practice. Chairman Bainbridge added that he would like to schedule a progress meeting in July for the Statewide Hearing Officer Training going forward.

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Ms. Hoffman also discussed that there is a potential issue with the venue for the Statewide Hearing Officer Training and it may need to be moved to the Bureau of Workers' Compensation auditorium rather than using the Greater Columbus Convention Center. Tim Adams added that there is a problem with the caterer that is provided in the contract. The Convention Center will be using a different caterer, but not until after the Statewide Hearing Officer Training. Mr. Connor added that the Commission requested a choice of vendor provision in order to use a different caterer. Ms. Rentas-Black stated she has been working with the Convention Center's legal counsel; however, the Convention Center is unwilling to remove this provision from the contract. Mr. Adams cautioned going forward with the contract with the Convention Center if a choice of vendor provision cannot be agreed upon. All Commission members shared Mr. Adams sentiments. Ms. Rentas-Black added that she has ethical concerns, and that there is not a guarantee that the Convention Center will have a different vendor in time for the training. Chairman Bainbridge suggested continuing the discussion at the next Commission Meeting.

Hearing Officer Manual

- **General Recommendations**

Chairman Bainbridge stated the Commission has spent a year and a half going over the Hearing Officer Manual and making changes. He suggested, with the approval of the Commission, to go through each section page by page and acknowledge the changes and then vote. Commissioner Taylor agreed to this process. Commissioner Gillmor added that she had several general questions prior to going over the manual page by page as was indicated in her memo prior to the law changing. Commissioner Gillmor suggested talking through these general questions prior to going through each section page by page. Chairman Bainbridge stated it was a good point and it would behoove the Commission to address and clarify these general questions prior to going through each section. Commissioner Taylor was agreeable.

Chairman Bainbridge then asked Commissioner Gillmor to present her general questions. Commissioner Gillmor first asked whether there was going to be a "Foreword", and if so what kind of language should be used? Ms. Rentas-Black responded that there is currently a cover letter that can be updated. Ms. Rentas-Black added that the updated version can be ready for the next Commission meeting. Commissioner Taylor added that the manual should provide the Regional Managers some teeth, and that these are not just merely requests. Commissioner Taylor added this would give the Commission something solid to point to if a Hearing Officer consistently violates a policy. Commissioner Taylor stated to keep this in mind while creating the Foreword for the manual. Mr. Adams pointed out that a violation of these policies would fall under the disciplinary guideline of "HR007, 5A Neglect of Duty, Failure to follow a rule not otherwise set forth herein." Commissioner Taylor understood and stated she was giving Ms. Rentas-Black an idea of what she would like to see in the Foreword.

Next, Commissioner Gillmor questioned if the manual should refer to Hearing Officers as adjudicators since the policies are applicable to both Hearing Officers and Deputy Hearing Officers. Mr. Connor stated that the manual deals with adjudication as a whole, and may be beneficial to get away from job titles since it is not just geared towards Hearing Officers. Commissioner Taylor suggested changing the title of "Hearing Officer Manual" to "Adjudication Manual." Commissioner Taylor added that a blanket change

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would not be feasible since some policies are only applicable to District Hearing Officers or Staff Hearing Officers, for example. Commissioner Gillmor added that this should be determined on an individual basis. Mr. Connor and Ms. Rentas-Black stated they would change the title of the manual to “Adjudications before the Industrial Commission.”

Commissioner Gillmor inquired whether the policies established through Industrial Commission Resolutions or other means should be set forth in the manual. Mr. Connor stated this would be up to the Commission to decide, and that this would be monumental given the history. Commissioner Taylor added the Industrial Commission Resolutions are for those that are before the Commission, while the Hearing Officer Manual is for the Hearing Officers of the Industrial Commission. Commissioner Taylor explained the Resolutions and Hearing Officer Manual are very different and separate from each other. Ms. Rentas-Black agreed and stated the Resolutions are drafted towards the external customer. Commissioner Taylor inquired as to how many Resolutions the Commission currently has, and Mr. Connor answered there are an estimated thirty Resolutions. Commissioner Gillmor suggested adding an appendix to the Hearing Officer Manual that included the Resolutions. Chairman Bainbridge responded he would like to keep the manual and Resolutions separate.

Commissioner Gillmor then presented the question of whether the word “should” should be changed to “shall” throughout the manual. Commissioner Gillmor indicated her revision of the manual incorporated this change. Chairman Bainbridge stated he was not comfortable with a blanket change, and that he struggled with the arbitrariness of the word “shall.” Chairman Bainbridge shared his concern that the use of the word “shall” takes away the attorney Hearing Officer’s discretion. Chairman Bainbridge added that he was not ready to vote no on the subject, but is ready for more discussion. Commissioner Taylor stated this proposed change should be looked at on an individual policy basis, and overall she agreed with Commissioner Gillmor on the need for the proposed change. Commissioner Gillmor supported the proposed change by stating most of the policies are based upon case law or a codified rule(s). Chairman Bainbridge stated he understood the purpose behind the proposed change, but again stated in some instances it may not be appropriate.

Commissioner Gillmor then proposed that all abbreviations be replaced, with the reasoning that the manual is an official document. Commissioner Gillmor’s edits already reflected this change. Chairman Bainbridge and Commissioner Taylor both agreed to this change.

Commissioner Gillmor then questioned whether any reference to “physician” should be changed to “doctor.” Mr. Connor stated this would be problematic because most policies try to delineate. The BWC uses “provider,” but this could be problematic as well if used because it may not encompass all. Commissioner Gillmor suggested determining this issue on a page by page basis. Chairman Bainbridge added that he tends to lean towards the use of “physician.”

Ms. Rentas-Black confirmed with the Commission Members that the title of the manual would be changed to “Adjudications before the Industrial Commission.” Ms. Rentas-Black also confirmed that the issue of the use of “shall” rather than “should,” and the use of “doctor” rather than “physician” would be

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determined on a page by page basis. Ms. Rentas-Black also confirmed that all abbreviations would be replaced. All Commission Members agreed.

- **Section A: Employee and Employer**

Memo A1: Exposure to Blood or Body Fluid

Chairman Bainbridge started the discussion regarding Memo A1 “Exposure to Blood or Body Fluids.” Commissioner Taylor added that she was agreeable to including the “note” at the end of the memo that listed the statutes and case law that was referenced in the policy. Ms. Fodey stated there was an additional change that needed to be added to Memo A1. Ms. Fodey noted that the reference to Memo M7 in the note should be Memo M3.

MOTION

Chairman Bainbridge moved the proposed changes to Memo A1 “Exposure to Blood or Body Fluids” previously circulated and presented at the meeting be accepted. Chairman Bainbridge further moved to repeal “Foster Grandparent Volunteers Are Not Employees” that was previously Memo A1.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo A2: Professional Employer Organization

Commissioner Gillmor stated the proposed changes to Memo A2 “Professional Employer Organizations” were merely stylistic and not substantive. Commissioner Taylor requested to change the last sentence of the memo to read as “[i]t is not necessary to investigate or determine at the hearing which risk will be affected by the order.”

MOTION

Commissioner Taylor moved to accept the proposed changes to Memo A2 “Professional Employer Organizations” with the additional change of inserting “at hearing” in the last sentence of the policy. Commissioner Taylor further moved to repeal the previous Memo A2 “Handicap Relief vs. Additional Allowance.”

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Commissioner Gillmor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo A3: Contract for Coverage – Special Services

Chairman Bainbridge suggested removing the “note” section that referenced R.C. 4123.01 and R.C. 4123.03. Chairman Bainbridge stated that since the statutes were mentioned in the body of the memo it is redundant to also have a note listing the statutes. Commissioner Gillmor added that the other memos in the manual contained the note section and that this particular note section was added in order to stay consistent. Mr. Connor clarified that the “note” section was not being removed from all memos in the manual, only from the memos that referenced the statute or case law in the body of the memo. Chairman Bainbridge questioned whether the memo needed to cite to the full chapter of R.C. 4127. Mr. Connor replied that Hearing Officers may have trouble distinguishing between R.C. 4127 and R.C. 4123.03. Chairman Bainbridge then stated it would be best to leave the citation to the full chapter of R.C. 4127 in Memo A3.

MOTION

Chairman Bainbridge moved to approve the proposed changes as presented for Memo A3 “Contract for Coverage – Special Services” with the exception of the addition of the “note” section.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

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Memo A4: Public Works Relief Compensation Contract for Coverage – Special Services

Chairman Bainbridge suggested removing the specific citation to R.C. 4127.14 as the citation to the full chapter R.C. 4127 is deemed sufficient. Commissioner Taylor agreed but wanted to ensure that the citation of *State ex rel. Patterson v. Indus. Comm.*, 77 Ohio St.3d 201, 672 N.E.2d 1008 (1996) would remain. Commissioner Taylor also pointed out that the citation had an incorrect spacing that needed to be corrected.

MOTION

Chairman Bainbridge moved to adopt the proposed changes to Memo A4 “Public Works Relief Compensation Contract for Coverage – Special Services” with the exception of the citation of R.C. 4127.14 located in the “note” section and to repeal the previous Memo A4 “Where the Same Injury Results in Both an Ohio and a Foreign Claim.”

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo A5: “Substantial Aggravation”

Ms. Rentas-Black stated Memo A5 as currently in existence will be moved to the “Injury” section of the new manual. Therefore, the Commission Members would need to vote on whether to repeal Memo A5.

MOTION

Commissioner Taylor moved to repeal Memo A5 “Substantial Aggravation” as it is going to be moved elsewhere.

Chairman Bainbridge seconded the motion.

ACTION BY

Mr. Adams called the roll.

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ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Section B: Injury

Memo B1: Handicap Relief vs. Additional Allowance

MOTION

Commissioner Taylor moved to repeal Memo B1 “Firefighters’ and Police Officers’ Occupational Disease” as it currently exists and to replace with “Handicap Relief vs. Additional Allowance” with the noted changes.

Chairman Bainbridge seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo B2: Substantial Aggravation

Commissioner Gillmor pointed out that that Memo B2 is a good example of when “should” should be replaced with “shall.” Commissioner Taylor agreed.

MOTION

Commissioner Taylor moved to repeal “Baker’s Asthma” from Memo B2 and replace it with “Substantial Aggravation” with the changes as indicated by Commissioner Gillmor.
Commissioner Gillmor seconded the motion.

ACTION BY

Mr. Adams called the roll.

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ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo B3: Injuries Caused by Idiopathic Causes

Commissioner Taylor pointed out that Commissioner Gillmor changed “injured worker” to “claimant” and in order to stay consistent the reference to “injured worker” in the second paragraph should be changed to “claimant” as well. Chairman Bainbridge added that for consistency it should remain “injured worker.” Chairman Bainbridge stated he understood the reasoning behind the proposed change; however, he felt it would be a better policy to remain consistent and use “injured worker” throughout the manual. Commissioner Gillmor stated she felt it is prejudicial to call a claimant an injured worker before it is determined he or she is actually an injured worker. Ms. Rentas-Black was asked to provide her opinion to which she stated the memo with the proposed changes is appropriate. However, Ms. Rentas-Black added there may be instances in other memos where the reference to “claimant” could be confusing. Commissioner Taylor stated the Hearing Officers were directed to write “claimant” in their orders if the Hearing Officer was disallowing the claim or “injured worker” if allowing the claim. In an effort to stay consistent, Commissioner Taylor suggested the manual, and specifically Memo B3, should reflect the same. Mr. Hickman noted there was a spacing issue with the citation in the “note” section that would need to be corrected.

MOTION

Commissioner Taylor moved to repeal “ORC 4123.85” and “White v. Mayfield” from Memo B3 and replace it with “Injuries Caused by Idiopathic Causes” with the addition of replacing “injured worker” with “claimant” in the second paragraph and correcting the citation.

Chairman Bainbridge seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	No
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

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Section C: Occupational Disease

Memo C1: Firefighters' and Police Officers' Occupational Disease.

Commissioner Gillmor pointed out that “exposure” should be singular throughout the policy.

MOTION

Commissioner Taylor motioned to repeal “Vacation Pay Not Offset” as currently in Memo C1 and replace with “Firefighters’ and Police Officers’ Occupational Disease with the changes indicated by Commissioner Gillmor.

Chairman Bainbridge seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	No
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo C2: Processing of Claims for Mesothelioma

Commissioner Taylor pointed out the spacing in the citation needs corrected. Mr. Connor suggested rescinding the policy because Resolution 03-01-02 states the same process for claims for mesothelioma. In the alternative, Mr. Connor suggested to shorten the policy to read as “[p]ursuant to *State ex rel. Hubbard v. Industrial Commission*, claims for mesothelioma are to be processed as any other occupational disease claim and are not subject to the requirement of Resolution R03-1-02.” Commissioner Taylor noted the original Resolution did not mention mesothelioma and liked Mr. Connor’s suggestion. Ms. Rentas-Black pointed out that the suggested change by Mr. Connor should also include a reference to Resolution 15-1-01.

MOTION

Chairman Bainbridge moved to repeal “Sports Team Set Offs” as it currently exists in Memo C2 and replace with “Processing of Claims for Mesothelioma.” Chairman Bainbridge further moved to delete the prior proposal by the Commission and replace with “[p]ursuant to *State ex rel. Hubbard v. Industrial Commission*, claims for mesothelioma are to be processed as any other occupational disease claim and are not subject to the requirement of Resolution R03-1-02” with the added reference to Resolution 15-1-01.

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Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo C3: R.C. 4123.85 and White v. Mayfield

Chairman Bainbridge stated the minor changes proposed by Commissioner Gillmor were acceptable. Commissioner Taylor agreed. Commissioner Gillmor stated there was no need for discussion on this particular policy.

MOTION

Chairman Bainbridge moved to repeal Memo C3 “Jurisdiction over the Issue of Maximum Medical Improvement” in its current state and further moved to replace with “R.C. 4123.85 and White v. Mayfield with the proposed changes by Commissioner Gillmor be accepted.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	No
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo C4: Temporary Total Disability Requests and Certification for Physical and Psychological Conditions.

MOTION

Commissioner Taylor moved to repeal Memo C4 “Temporary Total Disability Requests and Certification for Physical and Psychological Conditions” as it has been moved to Section D, Memo D8.

Chairman Bainbridge seconded the motion.

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ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo C5: Temporary Total Disability/Treatment Due to Psychological Conditions

MOTION

Commissioner Taylor moved to repeal Memo C5 “Temporary Total Disability/Treatment Due to Psychological Conditions” as it has been moved to another section.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Section D: Temporary Total Disability, Wage Loss, and Salary Continuation

Commissioner Gillmor suggested adding “and salary continuation” to the title page.

MOTION

Chairman Bainbridge moved to approve the title page of Section D with the changes indicated by Commissioner Gillmor.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

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ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo D1: Vacation, Holiday, and Hostage Pay not Offset

MOTION

Chairman Bainbridge moved for Memo D1 “Vacation, Holiday, and Hostage Pay not Offset” to be approved with the changes as indicated and to repeal “Impairment of Earning Capacity (Temporary Partial) Payment for Back Period.”

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo D2: Jurisdiction over the Issue of Maximum Medical Improvement

Commissioner Taylor stated she did not have any problems with the proposed changes since the changes were simply removing the abbreviations and the use of “shall” is supported by *State ex rel. Russell v. Indus. Comm.*, 82 Ohio St.3d 516, 696 N.E.2d 1069 (1998). Chairman Bainbridge questioned why the proposed changes eliminated “(2) when the injured worker is on TTD compensation, or is requesting TTD compensation.” Mr. Connor responded the language is repetitive since it is stated in the previous sentence.

MOTION

Chairman Bainbridge moved to accept the changes in Memo D2 “Jurisdiction over the Issue of Maximum Medical Improvement” with the changes as proposed by Commissioner Gillmor.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

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ROLL CALL

Commissioner Gillmor Yes
Commissioner Taylor Yes
Chairman Bainbridge Yes

Memo D3: Salary Continuation

Chairman Bainbridge agreed with the overall changes proposed by Commissioner Gillmor. However, Chairman Bainbridge shared his concern regarding the use of “contraction” in the “Waiting Period for Permanent Partial Disability” section. Chairman Bainbridge suggested some occupational diseases are different in nature from schedule losses such as carpal tunnel. Chairman Bainbridge questioned if schedule losses should be delineated from Memo D3. Mr. Connor added that there is a concern with the use of “contraction” because in theory an injured worker can get an occupational disease and not miss work. Commissioner Taylor added that if the injured worker has the date of diagnosis, then the permanent partial disability application can be filed and that there is no case law that prevents an injured worker from filing a FROI-1 and a C-92 application simultaneously. Ms. Rentas-Black agreed that there is no current case law preventing the simultaneous filing. Commissioner Taylor added that she had an experience while working as an employer representative where an injured worker filed a FROI-1 and then a C-92 application one week later. Commissioner Taylor also discussed her discontent with the language in “Finding of Temporary Total Disability and Rate of Payment.” Commissioner Taylor shared her concern with the length of the sentence in the paragraph and the confusion it may cause. Chairman Bainbridge suggested tabling the discussion on Memo D3 for additional research by Ms. Rentas-Black and Mr. Connor.

MOTION

Chairman Bainbridge moved to send Memo D3 “Salary Continuation” to Ms. Rentas-Black and Mr. Connor for further research and review.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor Yes
Commissioner Taylor Yes
Chairman Bainbridge Yes

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Memo D4: State and Federal Unemployment Funds

Commissioner Taylor noted in the first sentence of Memo D4 “State and Federal Unemployment Funds,” the word “compensation” should be moved after “temporary total disability” in order to stay consistent with the language in the memo.

MOTION

Chairman Bainbridge moved to accept the changes in Memo D4 “State and Federal Unemployment Funds” as proposed and with the changes noted by Commissioner Taylor and Commissioner Gillmor.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo D5: Voluntary Abandonment

Commissioner Taylor expressed concern with the bullet points listed in section 3 “Abandonment of the Workforce.” Commissioner Taylor explained Hearing Officers may view these bullet-points as an exhaustive list when it is only some of the factors for consideration. Commissioner Taylor was also concerned parties would argue all bullet points would need to be met in order to find voluntary abandonment of the workforce. Commissioner Taylor suggested there should be some language that states the bullet points are only some of the factors of when considering the issue of voluntary abandonment and not an exhaustive list. Commissioner Taylor added based upon the current language in Memo D5, a Hearing Officer reading the list would not be clear on whether all points need to be considered or just some. Ms. Rentas-Black indicated additional language could be added to the memo stating that the bullet points in section three are only some factors to consider and not an exhaustive list.

MOTION

Chairman Bainbridge moved to send Memo D5 “Voluntary Abandonment” to Ms. Rentas-Black and Mr. Connor for further research and review.

Commissioner Taylor seconded the motion.

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ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo D6: Eligibility for Temporary Total Disability Compensation After a Refusal of a Job Offer of Suitable Employment.

Commissioner Gillmor presented two alternative drafts of Memo D6 “Eligibility for Temporary Total Disability Compensation After a Refusal of a Job Offer of Suitable Employment.” Chairman Bainbridge stated he took issue with the language of Memo D6 as it was previously proposed and would like to take some time to review the alternative drafts presented at the meeting.

MOTION

Chairman Bainbridge moved to take Memo D6 “Eligibility for Temporary Total Disability Compensation After a Refusal of a Job Offer of Suitable Employment” under advisement for further review.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo D7: Application of the Wage Loss Rule

MOTION

Chairman Bainbridge moved to approve Memo D7 “Application of the Wage Loss Rule” as presented.

Commissioner Taylor seconded the motion.

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Karen L. Gillmor, Ph.D., *Member*
Tim Adams, *Executive Director*

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo D8: Temporary Total Disability Certification for Physical and Psychological Conditions

Chairman Bainbridge questioned whether Memo D8 “Temporary Total Disability Certification for Physical and Psychological Conditions should be placed in the Medical Section of the manual. Commissioner Taylor agreed with Commissioner Gillmor that Memo D8 discusses both treatment and temporary total disability but should only address temporary total in Section D of the Manual. Ms. Rentas-Black clarified that the medical language in Memo D8 will be moved to Memo M7. Commissioner Gillmor added that the reference to Doctor of Osteopathy and Doctor of Ophthalmology is redundant and should be removed. Commissioner Gillmor also pointed out the reference to Memo M4 should be changed to Memo M5. Commissioner Taylor agreed with the changes noted by Commissioner Gillmor, including limiting Memo D8 to only discussion of temporary total disability and not treatment.

MOTION

Commissioner Taylor moved to approve Memo D8 “Temporary Total Disability Certification for Physical and Psychological Conditions” with the changes noted by Commissioner Gillmor and the exclusion of the treatment language which will be moved to Memo M7.

Chairman Bainbridge 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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Jodie M. Taylor, *Member*
Karen L. Gillmor, Ph.D., *Member*
Tim Adams, *Executive Director*

Section E: Permanent Partial Disability

MOTION

Chairman Bainbridge moved to approve the title page of Section E “Permanent Partial Disability” as presented.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo E1: Award Based Only upon Allowed Conditions

MOTION

Commissioner Taylor moved to approve Memo E1 “Award Based Only upon Allowed Conditions” as presented.

Commissioner Gillmor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo E2: Permanent Partial Disability – Hearing Officer Discretion

Chairman Bainbridge stated he would like to keep the reference to “physicians” instead of changing it to “doctors.” Commissioner Gillmor questioned if a chiropractor is a physician and added that this is a very volatile topic in the legislature. Mr. Connor agreed there is a concern with using “physicians” because it

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does not encompass chiropractors. Ms. Rentas-Black stated she preferred the use of “physician” but added Commissioner Gillmor presented valid points.

MOTION

Chairman Bainbridge moved to approve Memo E2 “Permanent Partial Disability” with corrections made by Commissioner Gillmor to the previous drafted language.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo E3: Injured Worker Must File an Application

MOTION

Chairman Bainbridge moved to approve Memo E3 “Injured Worker Must File an Application” as presented with the additional correction of inserting an “an” before “application” in the second sentence, and removing the reference to R.C. 4123.57(B). Chairman Bainbridge further moved to repeal the previous Memo E3 “Percentage Awards in Whole Numbers.”

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo E4: Processing C-92 Applications for Determination of Percentage of Permanent Partial Disability or Increase of Permanent Partial Disability in Claims in which Permanent Total Disability Compensation has been Previously Granted

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Chairman Bainbridge asked Commissioner Gillmor if she wished to discuss Memo E4 “Processing C-92 Applications for Determination of Percentage of Permanent Partial Disability or Increase of Permanent Partial Disability in Claims in which Permanent Total Disability Compensation has been Previously Granted.” Commissioner Gillmor responded she no longer needed to discuss Memo E4.

MOTION

Chairman Bainbridge moved to approve Memo E4 “Processing C-92 Applications for Determination of Percentage of Permanent Partial Disability or Increase of Permanent Partial Disability in Claims in which Permanent Total Disability has been Previously Granted” as presented with the additional change of removing the reference to R.C. 4123.57 in the “note” section. Chairman Bainbridge further moved to repeal the previous Memo E4 “100% Limitation – Cause of Action Before or After 10-01-63.”

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	No
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo E5: Permanent Partial Disability – Payment over Omitted Periods

Commissioner Gillmor had suggested removing existing Memo E5 from the Manual for the reason the Bureau of Workers’ Compensation or the self-insuring employer determined the period over which the award is paid, not the Hearing Officer. Chairman Bainbridge indicated that he did not have any problems with Memo E5 “Permanent Partial Disability – Payment over Omitted Periods” as it was presented. Mr. Connor stated Memo E5 has no significance and can be removed if the Commission wishes. Commissioner Taylor added she recently had this issue come up at hearing and suggested the language needed to be changed. Commissioner Taylor stated it is not within the purview of the Hearing Officer to determine whether permanent partial disability is actually payable as this is a bookkeeping function of the Bureau of Workers’ Compensation. Commissioner Taylor added this may be a training issue that Ms. Hoffman could address with the Hearing Officers as this is an issue that comes up at least once a year. Ms. Rentas-Black agreed the language should be changed. Commissioner Taylor suggested Ms. Rentas-Black and Mr. Connor review Memo E5 for additional language.

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MOTION

Chairman Bainbridge moved to send Memo E5 “Permanent Partial Disability – Payment over Omitted Periods” to Ms. Rentas-Black and Mr. Connor for research and review.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo E6: Processing C-92 Applications for Determination of Percentage of Permanent Partial Disability or Increase of Permanent Partial Disability while Temporarily and Totally Disabled in Another Claim

MOTION

Chairman Bainbridge moved to approve Memo E6 “Processing C-92 Applications for Determination of Percentage of Permanent Partial Disability or Increase of Permanent Partial Disability while Temporarily and Totally Disabled in Another Claim” as presented.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo E7: Processing Applications for Compensation Pursuant to R.C. 4123.57(A) when Allowance Question is in Court

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Jodie M. Taylor, *Member*
Karen L. Gillmor, Ph.D., *Member*
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MOTION

Chairman Bainbridge moved to approve Memo E7 “Processing Applications for Compensation Pursuant to R.C. 4123.57(A)” as presented.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Section F: Scheduled Loss

MOTION

Chairman Bainbridge moved to approve the title of Section F “Scheduled Loss” as presented.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo F1: Loss of Vision

MOTION

Chairman Bainbridge moved to approve Memo F1 “Loss of Vision” as presented, with the removal of the reference to R.C. 4123.57 in the “note” section.

Commissioner Taylor seconded the motion.

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Karen L. Gillmor, Ph.D., *Member*
Tim Adams, *Executive Director*

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo F2: Loss of Vision – Corneal Transplants and Corneal Implants

MOTION

Chairman Bainbridge moved to approve Memo F2 “Loss of Vision – Corneal Transplants and Corneal Implants” as presented, with the removal of the reference to R.C. 4123.57 in the “note” section.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo F3: Ankylosis of Finger Joints

MOTION

Chairman Bainbridge moved to approve Memo F3 “Ankylosis of Finger Joints” as presented.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes

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Jodie M. Taylor, *Member*
Karen L. Gillmor, Ph.D., *Member*
Tim Adams, *Executive Director*

Chairman Bainbridge Yes

Memo F4: Loss of Use of Vision and/or Hearing Secondary to a Traumatic Brain Injury

MOTION

Chairman Bainbridge moved to approve Memo F4 “Loss of Use of Vision and/or Hearing Secondary to a Traumatic Brain Injury” as presented, with the removal of the reference to R.C. 4123.57(B) in the “note” section.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor Yes
Commissioner Taylor Yes
Chairman Bainbridge Yes

Memo F5: Loss of Use Need Not be Absolute

Commissioner Taylor inquired the reasoning behind the change from “body part” to “bodily member.”
Commissioner Gillmor indicated the use of “bodily member” follows the statute.

MOTION

Chairman Bainbridge moved to approve Memo F5 “Loss of Use Need Not be Absolute” as presented.

Commissioner Gillmor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor Yes
Commissioner Taylor Yes
Chairman Bainbridge Yes

Section G: Permanent Total Disability

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Jodie M. Taylor, *Member*
Karen L. Gillmor, Ph.D., *Member*
Tim Adams, *Executive Director*

MOTION

Chairman Bainbridge moved to approve the title of Section G “Permanent Total Disability” as presented.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo G1: Request for Readjustment of Starting Date and/or Request for Relocation of Permanent Total Disability Award

MOTION

Chairman Bainbridge moved to approve Memo G1 “Request for Readjustment of Starting Date and/or Request for Relocation of Permanent Total Disability Award” as presented.

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 to repeal the previous Memo G1 “Memo G1 Rescinded 11/27/01.”

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor Yes
Commissioner Taylor Yes
Chairman Bainbridge Yes

Memo G2: Submission of Medical Evidence or Vocational Evidence for Permanent Total Disability That is Not Timely Filed per Ohio Adm. Code 4121-3-34

Chairman Bainbridge inquired as to the reason for the change of the use of “reports” to “evidence.” Ms. Fodey indicated the change was to stay consistent. Commissioner Taylor stated she preferred “evidence.” Chairman Bainbridge stated he had no strong feeling either way.

MOTION

Chairman Bainbridge moved to approve Memo G2 “Submission of Medical Evidence or Vocational Evidence for Permanent Total Disability That is Not Timely Filed per Ohio Adm.Code 4121-3-34” as presented, with the removal of the reference to Ohio Adm.Code 4121-3-34 in the “note” section.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor Yes
Commissioner Taylor Yes
Chairman Bainbridge Yes

Memo G3: Guidelines for Permanent Total Disability Tentative Grant Orders

MOTION

Commissioner Taylor moved to repeal Memo G3 “Request for Readjustment of Starting Date and/or Reallocation of Permanent and Total Disability Award” as it currently exists and to adopt Memo G3 “Guidelines for Permanent Total Disability Tentative Grant Orders” with the changes noted.

Chairman Bainbridge seconded the motion.

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Jodie M. Taylor, *Member*
Karen L. Gillmor, Ph.D., *Member*
Tim Adams, *Executive Director*

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Memo G4: Permanent Total Disability Based Solely upon Medical or Psychological Impairment

MOTION

Chairman Bainbridge moved to approve Memo G4 “Permanent Total Disability Based Solely upon Medical or Psychological Impairment” as presented.

Commissioner Gillmor seconded the motion.

WITHDRAWAL OF MOTION

Chairman Bainbridge withdrew the motion.

Commissioner Gillmor withdrew her second of the motion.

MOTION

Commissioner Taylor moved to repeal Memo G4 “Submission of Medical Evidence or Vocational Reports for Permanent Total Disability Which Were Not Timely Filed per O.A.C. 4121-3-34” and to adopt Memo G4 “Permanent Total Disability Based Solely upon Medical or Psychological Impairment” as presented.

Commissioner Gillmor 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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Karen L. Gillmor, Ph.D., *Member*
Tim Adams, *Executive Director*

Memo G5: Guidelines for Permanent Total Disability Tentative Grant Orders

MOTION

Chairman Bainbridge moved to repeal Memo G5 “Guidelines for Permanent Total Disability Tentative Grant Orders” as it is now currently Memo G3.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Prior to the conclusion of the Commission Meeting, Commissioner Taylor distributed a draft policy for section M “Adjudication of Treatment Issues.” Commissioner Taylor requested the Commission Members review the proposed policy and consider it at the next Commission Meeting.

Chairman Bainbridge expressed his appreciation for the hard work and patience of all those involved with the Hearing Officer Manual. The next Commission Meeting was tentatively scheduled for June 29 at 1:00 p.m., pending verification of Commissioner Gillmor’s schedule.

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

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Jodie M. Taylor, *Member*
Karen L. Gillmor, Ph.D., *Member*
Tim Adams, *Executive Director*

Respectfully submitted,



Tim Adams
Executive Director