

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

Meeting Minutes

March 21, 2017

11:00 A.M.

TYPE OF MEETING Commission Meeting

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

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

Chairman Bainbridge asked if there was any discussion regarding the meeting minutes from December 7, 2016 and if not, if a motion could be made to approve the minutes.

MOTION

Commissioner Taylor moved to approve the December 7, 2016 meeting minutes.
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

NEW BUSINESS

2017 Statewide Hearing Officer Meeting – Potential Agenda Topics and Speakers

Genevieve Hoffman stated the draft agenda for the 2017 Statewide Hearing Officer Meeting included two medical speakers and a segment for professional conduct. Ms. Hoffman added there was a list of potential medical topics included in the materials provided for the meeting. Ms. Hoffman stated she also reached out to the Hearing Officers for their input on potential medical topics. Ms. Hoffman indicated she would reach out to Dr. McGrail for suggestions on speakers after the Commission had a chance to review the topics. Ms. Hoffman then opened up the discussion to the Commission Members for their suggestions on the medical topics.

Chairman Bainbridge stated the proposed topics were great and he wanted to proceed with the “Drugs/alcohol topic.” Commissioner Taylor stated there has not been a drug/alcohol discussion in eight or more years and that Dr. Forney appears to have a lot of experience on the subject. Ms. Hoffman added that Dr. Forney is a great candidate because he does not have any connection with the workers’ compensation field. Ms. Hoffman further added that there is an easy correlation between Dr. Forney’s work regarding driving impairment and operating machinery.

Commissioner Taylor stated Dr. Welsh went over nerve blocks a few years ago. Ms. Hoffman responded that she included the potential topic on the list since there were two requests for the topic by the Hearing Officers. Chairman Bainbridge stated that “psychological conditions” was on the agenda for the last Statewide Hearing Officer Meeting to which Commissioner Taylor agreed.

Commissioner Taylor suggested the second medical topic be “When does an acute condition become chronic?” Chairman Bainbridge suggested “Shoulder pathology.” Commissioner Taylor agreed to Chairman Bainbridge’s recommendation but also wanted to be sure to include in the meeting, topics that are coming up in the hearing room. Commissioner Taylor added that “Pulmonary conditions” are difficult because they do not come up as often and “Pain management” was recently discussed. Chairman Bainbridge concluded that the agreed upon topics for the 2017 Statewide Hearing Officer Meeting are “Drugs/alcohol” and “Shoulder pathology.” Commissioner Taylor agreed. Ms. Hoffman asked the Commission Members if they would like Dr. Forney to present the “Drug/alcohol” topic. Commissioner

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Gillmor requested that Dr. Forney cover both drugs and alcohol. Ms. Hoffman stated she agreed with this request especially with the opiate crisis and upcoming changes with medical marijuana.

Chairman Bainbridge suggested Joseph Mileti, M.D. to present the “Shoulder pathology” topic. Commissioner Gillmor also recommended Julie Bishop, M.D. who practices at The Ohio State University Wexner Medical Center and is an orthopedic shoulder surgeon. Chairman Bainbridge also suggested checking with Dr. McGrail on potential speakers for the “Shoulder pathology” topic.

Ms. Hoffman asked the Commission Members whether the “Professionalism” section should be general or a subtopic of workers’ compensation. Ms. Hoffman added that, if the “Professionalism” section was related to workers’ compensation, the session would apply towards certification for workers’ compensation specialists. Ms. Hoffman suggested having a panel that included an employer and injured worker representative and discuss how they work together in the adjudication process. Chairman Bainbridge asked what the Supreme Court of Ohio Continuing Legal Education requirement is for professionalism, and whether the Statewide Hearing Officer Meeting meets those requirements. Ms. Rentas-Black responded the professionalism portion does apply and Mr. Connor added that it is the goal that each Hearing Officer meets the Professionalism requirements with the regional training every two years. Commissioner Taylor added that it would be beneficial to make the Professionalism section specific to workers’ compensation so that it can count towards the specialist certification. Chairman Bainbridge stated Buz Minor and David Barnhart have done similar panels in the past. Commissioner Gillmor added that Paul Goodburn is one of the nicest attorneys to practice before the Industrial Commission and he would need an Employer counterpart. Commissioner Taylor indicated that she would like to have Chris Russell and Paul Goodburn. Commissioner Taylor added it would be difficult for attorneys in different cities to meet up and discuss the presentation prior to the meeting. Chairman Bainbridge stated that, in the event Chris Russell and Paul Goodburn are unavailable, he would like Buz Minor and David Barnhart as alternates.

Ms. Hoffman concluded by adding there are a few other memos in the “Adjudications Before the Ohio Industrial Commission” that will require amendments; in the meantime she will reach out to Dr. McGrail for suggestions of potential speakers and present those at the next Commission meeting.

Amendment of Memo C1 – Firefighters’ and Police Officers’ Occupational Disease (Due to passage of SB27 – Firefighters’ Cancer Presumption)

Chairman Bainbridge asked if there was any discussion regarding the proposed amendment of Memo C1 “Firefighters’ and Police Officers’ Occupational Disease.” Ms. Rentas-Black indicated that she and Mr. Connor reviewed and approved the amendment prior to presentation to the Commission.

Commissioner Gillmor questioned why the word “induced” is used in the first paragraph of the section titled, “Cardiovascular, Pulmonary, or Respiratory Diseases” in Memo C1. Commissioner Gillmor stated that the legislation did not include this language in the statute. Mr. Adams asked Jacob Bell if he remembered if this was discussed, to which Mr. Bell stated he wanted to review the legislation. Ms.

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Rentas-Black obtained and distributed R.C. 4123.68 to the attendees. Commissioner Taylor stated the language in R.C. 4123.68(W) is “Any cardiovascular, pulmonary, or respiratory disease of a firefighter or police officer caused or induced” and believed that the word “induced” in Memo C1 came from this statutory language. Mr. Adams questioned whether the word “induced” was used in the original Memo C1. Ms. Rentas-Black responded in the affirmative. Chairman Bainbridge suggested changing the word “induced” to “incurred.” Ms. Rentas-Black pointed out that 4123.68(W) uses the word “induced” while 4123.68(X) uses the word “incurred.” Thereafter, Chairman Bainbridge stated that the word “induced” in the first paragraph of Memo C1 was okay as is.

Turning to the new proposed language under the section titled, “Cancer,” Commissioner Taylor stated that the word “incurred” should replace the word “induced” in the first paragraph under that section. Commissioner Taylor then read the sentence as it would read in Memo C1 “it shall be presumed the cancer he or she suffers from was contracted or incurred in the course of and arising out of employment and, therefore, is compensable.” Commissioner Taylor stated the sentence did not sound right. Mr. Adams then asked Ms. Rentas-Black her opinion on the language. Ms. Rentas-Black noted that, while the word “incurred” is used in the rebuttable presumption provided in R.C. 4123.68(X)(2), it was a wordy sentence. Ms. Rentas-Black then suggested the removal of the phrase “or induced/incurred” from the first paragraph of the section titled, “Cancer” in the proposed draft of Memo C1. Ms. Rentas-Black further suggested that, since this provision specifically uses the word “incurred,” it would be appropriate to leave the reference to “incurred” in the second paragraph of the section titled, “Cancer” in the proposed draft of Memo C1.

Commissioner Gillmor asked whether the language “pursuant to R.C. 4123.68(X)” should remain in the text of the memo, or if it should be moved to the note section. Ms. Rentas-Black recommended leaving the language “pursuant to R.C. 4123.68(X)” in the body of the memo as it clarifies to which statutory provision the effective date applies. Ms. Rentas-Black also suggested that this language should be added to the beginning of the first paragraph in the section “Cancer” in order to distinguish it from the section titled, “Cardiovascular, Pulmonary, or Respiratory Diseases,” which refers to R.C. 4123.68(W). Ms. Rentas-Black added that the effective date of Memo C1 would actually be April 6, 2017. Commissioner Gillmor questioned whether the reference to 5 C.F.R. 550.902 should be in the note or in the body of the memo. Ms. Rentas-Black responded that since “hazardous duty” is defined in the memo, the reference should be moved to the body of the memo at the end of the definition.

Chairman Bainbridge asked if there were any further changes to the draft Memo C1. Commissioner Gillmor stated that SB27 is compensation for cancer payable only through permanent total disability, temporary total disability, and death benefits. Commissioner Gillmor questioned whether there should be a policy setting the limits on the compensation. Mr. Connor responded there is not a similar policy for the other recognized occupational diseases. Mr. Connor added that this could be something for the Commission to consider and work on in upcoming meetings.

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MOTION

Chairman Bainbridge moved to approve Memo C1 “Firefighters’ and Police Officers’ Occupational Disease” as presented with the corrections mentioned during the discussion of the draft.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Commissioner Taylor questioned whether there needs to be a motion for the effective date of the policy. Ms. Rentas-Black responded in the affirmative and added the effective date would be April 6, 2017.

MOTION

Chairman Bainbridge further moved that the effective date of Memo C1 “Firefighters’ and Police Officers’ Occupational Disease” be April 6, 2017.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Amendment of Memo G3 – Guidelines for PTD Tentative Grant Orders

Mr. Connor explained that the idea behind the tentative order process was to create a uniform, streamlined process. Mr. Connor further stated that, unfortunately, the regional offices are not applying the policy uniformly when a party files an objection to a tentative order. Therefore, Mr. Connor is proposing amending the policy to address what procedure hearing officers are to follow when a party files an objection to a tentative order. Mr. Connor explained that a hearing would be scheduled to determine whether there is an issue that precludes the issuing of a tentative order. At that hearing, if the hearing officer determines that there is not a real issue, the SHO can affirm the tentative order. If there is a medical or legal issue, then the SHO would vacate the tentative order and refer the IC-2 back for processing in accordance with the PTD rule. Mr. Connor stated the goal is to make the process uniform so there is no delay if there is no real legal or medical question applicable to the permanent total disability application.

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Chairman Bainbridge asked Mr. Connor whether the Rules Advisory Group discussed this issue. Mr. Connor answered in the negative and added that the uniform process is to protect everyone. Chairman Bainbridge stated he thought the proposed amendment to Memo G3 was fine.

Commissioner Taylor questioned what would happen if a Hearing Officer finds an Employer's defense of voluntary abandonment not valid. Mr. Connor responded that, if permanent total disability is not obvious, then a tentative order should not be issued. Commissioner Taylor stated she has concerns that hearing officers will not comply with the memo or that, in the event a hearing officer finds that an employer has not submitted proof of a legal defense to an award of PTD but the Employer does, in fact, have a legitimate legal argument, what would prevent a tentative order being issued? Ms. Hoffman responded that stock language has been drafted on a worksheet where the Hearing Officer can select whether there is language of a legal argument or contrary medical and the issue can be referred back for hearing. Commissioner Taylor reiterated that she is troubled by a legal argument not being heard on the merits if a tentative order is issued. Ms. Rentas-Black suggested changing the language and making it a directive so that, if there is a legal issue, it shall be referred to hearing. Ms. Rentas-Black explained that the way the proposed amendment is written it could be construed that a SHO could still issue a tentative order based solely on the lack of supportive evidence. Commissioner Taylor stated that, a lot of the times, evidence is buried in the file, and could be from years ago. Commission Taylor added the employer is not going to have just one piece of evidence to submit to the hearing officer and is not going to rely on the hearing officer to look through the file to piece together its argument. Mr. Connor stated that a voluntary abandonment issue should not be an issue in a tentative order, and if so, it should be set for hearing. Chairman Bainbridge added he was concerned an employer would argue there is a legal issue in order to avoid a tentative order. Commissioner Taylor questioned if the party would have to state why it is objecting to the tentative order, and if so, the employer would be reluctant to disclose the reason for the objection. Mr. Connor stated the idea is that if there is some evidence in the file that would not support a tentative order, then a tentative order would not be issued and the issue would go through the hearing process. Commissioner Taylor responded that she would be more comfortable if this was thought about some more and discussed with the Rules Advisory Group. Ms. Rentas-Black stated the tentative order memo would be tabled for discussion and she and Mr. Connor would schedule a meeting with the Rules Advisory Group for further discussion. Mr. Connor stated that Mr. Charlie Smith would need to be added to the Rules Advisory Group list, and a labor and employment representative would need to be selected.

ADJOURNMENT

Chairman Bainbridge moved to adjourn.
Commissioner Taylor seconded the motion.

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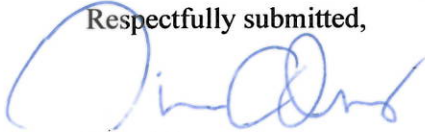
ACTION BY

Mr. Adams called the roll.

ROLL CALL

Commissioner Gillmor	Yes
Commissioner Taylor	Yes
Chairman Bainbridge	Yes

Respectfully submitted,



Tim Adams
Executive Director