

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

Meeting Minutes

July 24, 2018
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
Steven Kramer, Administrative Assistant
Kim Ferkany, Administrative Assistant
Debbie Fodey, Administrative Assistant
Julia Smythe, Administrative Assistant
Greg Hickman, Assistant Legal Counsel
Laura Schank, Hearing Officer Trainer
Dr. John McGrail, Chief Medical Advisor
Wanda Mullins, Deputy Director of Medical Services
Sara Castle, Human Services Program Administrator

CALL TO ORDER

Chairman Bainbridge called the meeting to order.

ACTION BY

Mr. Adams call the roll.

ROLL CALL

| | |
|----------------------|---------|
| Commissioner Gillmor | Present |
| Commissioner Taylor | Present |
| Chairman Bainbridge | Present |

OLD BUSINESS

MOTION

Chairman Bainbridge moved that the August 24, 2017 Commission meeting minutes, as amended on June 13, 2018, be approved.

No second.

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

MOTION

Commissioner Taylor moved that the August 24, 2017 Commission meeting minutes circulated on April 16, 2018, and signed on 05/08/2018 by Commissioner Taylor and signed on 04/19/2018, by Commissioner Gillmor be approved.

Commissioner Gillmor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

| | |
|----------------------|-----|
| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | No |

NEW BUSINESS

Medical Examination Manual – Dr. McGrail, Wanda Mullins, and Sara Castle presented. Dr. McGrail indicated the medical manual is being revised and updated to make it more readable. Ms. Mullins and Ms. Castle are working to get this project finished before Ms. Mullins retires in October.

Commissioner Gillmor suggested Chief Legal Counsel Rachael Rentas-Black look into whether *State ex rel. Penske Truck Leasing Co. v. Indus. Comm.*, Slip Opinion No. 2018-Ohio-2153, requires any change to the questions posed to Commission physicians examining on the issue of permanent total disability. In *Penske*, the Supreme Court found the Commission failed to explain the basis for its allocation of a permanent total award and noted the relied upon medical did not attribute impairment to each claim. Commissioner Gillmor asked whether the decision required additional and/or different questions to be posed to the examining physicians in order to comply with *Penske*. Ms. Rentas-Black indicated she would look into the issue.

Commissioner Taylor inquired when the Members could expect to have all the recommended changes to the Manual, pointing out that the Members are working to complete the Resolution project by the Statewide Hearing Officers Meeting Ms. Mullins responded that she and Ms. Castle were hoping to meet with the Members throughout September. Commissioner Taylor responded that this would not be feasible and that the Medical Section should meet with the Commission Members' assistants and then plan to present a final product at some future date.

Commissioner Taylor also recommended that the Medical Section confer with Chief Legal Counsel Rachael Rentas-Black on the section in the manual that discusses confidential personal information.

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2019 Five-Year Review

Ms. Rentas-Black presented the rules for the 2019 five-year rule review. She indicated many of the recommended changes to the rules under review were to make them gender neutral as required by the Legislative Services Commission's "Rule Drafting Manual." Ms. Rentas-Black noted that she had attached Chapter 5.8.2 of the LSC manual to the Members' materials for their reference.

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the following amended rule of the Ohio Adm.Code: 4121-2-01 "Standards of practice for attorneys, agents and representatives of claimants or employers."

Commissioner Taylor seconded the motion.

Commissioner Gillmor suggested that paragraph (A)(4) be changed from "bureau or the commission" to "bureau and the commission" since representatives need to follow the rules of both agencies. Commissioner Gillmor further suggested that paragraph (B) be amended to include the words "and benefits" after "claim for compensation."

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the following amended rule of the Ohio Adm.Code: 4121-2-01 "Standards of practice for attorneys, agents, and representatives of claimants or employers," as discussed on today's date, July 24, 2018.

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 that, after the review required pursuant to R.C. 106.03, the following rule of the Ohio Adm.Code be continued without amendment: 4121-2-02 "Suspension from practice."

Commissioner Taylor seconded the motion.

John R. Kasich, Governor
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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 |

MOTION

Chairman Bainbridge further motioned that the next five-year rule review date for Ohio Adm.Code 4121-2-02 be February 1, 2024.

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 that, after the review required pursuant to R.C. 106.03, the following rule of the Ohio Adm.Code be continued without amendment: 4123-3-12 "Suspension of the processing of claims."

Commissioner Taylor seconded the motion.

Commissioner Gillmor stated the word "benefits" should be included in the rule because not just compensation is awarded in claims.

MOTION

Commissioner Gillmor moved to amend Ohio Adm.Code 4121-3-12 "Suspension of the processing of claims," to include the words "and benefits."

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

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

ROLL CALL

| | |
|----------------------|-----|
| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, the following rule of the Ohio Adm.Code 4123-3-12 “Suspension of the processing of claims,” be amended as discussed at today’s date, July 24, 2018.

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 that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the amended rule of the Ohio Adm.Code 4121-3-20: “Additional awards by reason of violations of specific safety requirements.”

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 that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the following amended rule of the Ohio Adm.Code: 4121-15-01 “Code of ethics, title and rules covering.”

Commissioner Taylor seconded the motion.

John R. Kasich, Governor
Thomas H. Bainbridge, Chairman
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 |

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, the following rule of the Ohio Adm.Code be continued without amendment: 4121-15-02 "Policy."

Commissioner Taylor seconded the motion.

Commissioner Taylor stated that she would like the title of this rule to be changed to reflect that the policy is an ethics policy to make the title more clear. Commissioner Taylor recommended amending the rule to include the word "Ethics" in the rule's title.

MOTION

Commissioner Taylor moved to amend Ohio Adm.Code 4121-15-02 "Policy" to rename the rule as "Ethics Policy."

Commissioner Gillmor 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 that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the following amended rule of the Ohio Adm.Code 4121-15-02: "Policy," be amended as discussed at today's meeting on July 24, 2018.

ACTION BY

Mr. Adams called the roll.

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

ROLL CALL

| | |
|----------------------|-----|
| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

MOTION

Chairman Bainbridge moved that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the following amended rule of the Ohio Adm.Code: 4121-15-03 "Standards of conduct."

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 that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the following amended rule of the Ohio Adm.Code: 4121-15-04 "Posting, distribution and employee acknowledgement and receipt."

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 that, after the review required pursuant to R.C. 106.03, the following rule of the Ohio Adm.Code be continued without amendment: 4121-15-05 "Purpose: eliminating outside influence; producing impartiality in handling of claims and employer risk accounts and avoiding favoritism."

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

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 further moved that the next five-year rule review date for the Ohio Adm.Code 4121-15-05 be February 1, 2024.

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 that, after the review required pursuant to R.C. 106.03, the following rule of the Ohio Adm.Code be continued without amendment: 4121-15-06 "Furnishing employees' code of ethics and rules on improper influence to representatives."

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 further moved that the next five-year rule review date for the Ohio Adm.Code 4121-15-06 be February 1, 2024.

John R. Kasich, Governor
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Karen L. Gillmor, Ph.D., Member
Tim Adams, Executive Director

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 that, after the review required pursuant to R.C. 106.03, the following rule of the Ohio Adm.Code be continued without amendment: 4121-15-07 “Representatives’ responsibility relative to employees’ code of ethics.”

Commissioner Taylor seconded the motion.

Commissioner Taylor stated the rule should include “for” rather than “of” “Code of Ethics for the Bureau of Workers’ Compensation and the Industrial Commission of Ohio.”

MOTION

Commissioner Taylor moved to amend Ohio Adm.Code 4121-15-07 “Representatives’ responsibility relative to employees’ code of ethics” to delete the word “of” and include the word “for.”

Commissioner Gillmor 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 that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the following amended rule of the Ohio Adm.Code 4121-15-08 “Remedial action against persons exercising improper influence and engaging in favoritism.”

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Tim Adams, *Executive Director*

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 that, after the review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the following amended rule of the Ohio Adm.Code: 4121-15-09 “Prohibition against unnecessary claim file possession.”

Commissioner Taylor seconded the motion.

Commissioner Taylor suggested adding the words “access and” between “file” and “possession” in the title of the rule. Commissioner Taylor further suggested the “Chief Ethics Officer of the Industrial Commission” be added to the second sentence.

Chairman Bainbridge moved that, after review required pursuant to R.C. 106.03, the Industrial Commission approve the original filing of the following amended rule of the Ohio Adm.Code: 4121-15-09 “Prohibition against unnecessary claim file possession” as discussed on today’s date, July 24, 2018.

Commission Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

| | |
|----------------------|-----|
| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

Statewide Meeting – Day 2 Discussion

Mr. Connor stated that day two of the Statewide Hearing Officers’ Meeting is only for Industrial Commission employees. The agenda in the past has included topics of security updates, medical updates, IT updates, and commissioner updates. Day two also includes ethics training which is not for CLE credit. The ethics training is required for government employees.

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Commissioner Taylor indicated that there were complaints from prior statewide meetings about the ethics training not pertaining to legal issues. Commissioner Taylor asked Mr. Connor to ensure there be some type of statement indicating that the ethics training portion is mandated by the Governor’s office.

Commissioner Taylor also suggested that day two allocate 30 minutes for the ombudsman and 30 minutes for Dr. McGrail. Chairman Bainbridge and Commissioner Gillmor agreed.

Memo D8 – Temporary Total Disability Certification for Physical and Psychological Conditions.

Mr. Connor indicated that Memo D8 does not match with the BWC rules and that the recommended changes to the policy would eliminate this inconsistency. This change includes “Doctor of Podiatric Medicine” as a listed medical professional to certify temporary total disability.

MOTION

Chairman Bainbridge moved that Memo D8, “Temporary Total Disability Certification for Physical and Psychological Conditions,” be approved as represented in the draft circulated with the agenda, effective July 30, 2018.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

| | |
|----------------------|-----|
| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

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

Mr. Connor stated that the Supreme Court of Ohio in *State ex rel. Smith v. Indus. Comm.*, 138 Ohio St.3d 312, 2014-Ohio-513, 6 N.E.3d 1142, does not require an actual injury to the eyes or ears for loss of vision and hearing, but rather requires a loss of function.

MOTION

Chairman Bainbridge moved that Memo F4, “Loss of Use of Vision and/or Hearing Secondary to a Traumatic Brain Injury,” be approved as presented in the draft circulated with the agenda, effective July 30, 2018.

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

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

| | |
|----------------------|-----|
| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

Memo F6 – Orders Awarding Scheduled Losses

Mr. Connor stated this memo would eliminate the confusion of hearing officers including start dates awarding scheduled losses and some that do not include starting dates. This memo would now direct the hearing officers to provide a start date.

Commissioner Taylor indicated that *State ex rel. Estate of Sziraki v. Admr., Bur. Of Workers' Comp.*, 137 Ohio St.3d 201, 2013-Ohio-4007, should be footnoted as support in regards to the two-year limit portion of Memo F6. In addition, the word “must” should be deleted and replaced with “shall,” as it is common practice for the Industrial Commission memos.

MOTION

Chairman Bainbridge moved that Memo F6, “Orders Awarding Scheduled Losses,” be approved as presented in the draft circulated with the agenda as discussed today, effective July 30, 2018.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

| | |
|----------------------|-----|
| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

Memo S11 – Request for Allowance of a Condition by Either Direct Causation or by Aggravation/Substantial Aggravation and Jurisdiction to Rule at Hearing

Mr. Connor stated this amendment would provide for intent and evidence for theories of causation.

Commissioner Taylor asked how this would pertain to proper notice.

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Jodie M. Taylor, *Member*
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Tim Adams, *Executive Director*

Mr. Connor responded that this change is a clarification of theory of causation.

Ms. Schank indicated that there is some confusion throughout the adjudication process about theories of causation. The hearing officers could grant additional time, but sometimes the parties list all theories of causation. Generally, causation is determined from the medical.

Commissioner Taylor stated when the claims reach the commissioners there is no record of what theory of causation was pursued throughout the adjudication process.

Mr. Connor explained that this amendment would clarify the theory of causation.

MOTION

Chairman Bainbridge moved that Memo S11, “Request for Allowance of a Condition by Either Direct Causation or by Aggravation/Substantial Aggravation and Jurisdiction to Rule at Hearing,” be approved as presented in the draft circulated with the agenda, effective July 30, 2018.

Commissioner Taylor seconded the motion.

ACTION BY

Mr. Adams called the roll.

ROLL CALL

| | |
|----------------------|-----|
| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

Resolution Project

Mr. Hickman provided an update regarding the resolution project that he has been working on. He asked the commissioners if they would like to continue to discuss resolutions rescinded, amended, or no changes to be voted on as they are discovered, or to resolve all the resolutions at once. Mr. Hickman stated there are still exemptions for employers in regards to violations of specific safety requirements (VSSR). In addition, Mr. Hickman indicated that he would have to get together with the BWC to discuss joint resolutions and what should be done with them. Furthermore, Mr. Hickman stated that he would circulate a rescind list, and there will be an update at the next Commission meeting.

Commissioner Taylor indicated that she would like separated piles of the rescinded resolutions, amended resolutions, no change resolutions, and joint resolutions. Commissioner Taylor would like the resolution project completed before the Statewide Hearing Officers’ Meeting and suggested that two Commission meetings be scheduled.

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Tim Adams, *Executive Director*

All the commissioners would like to vote on the resolution project all at once.

Ms. Rentas-Black recommended these next Commission meetings be scheduled between August 20, 2018 and September 10, 2018 to have the resolution project voted on before the Statewide Hearing Officers' Meeting.

Discussion of *Bevan & Assoc. v. DeWine*, Case No. 18-3262.

Ms. Rentas-Black indicated that she circulated the proposed settlement terms for the upcoming mediation that is scheduled for July 27, 2018.

Commissioner Taylor and Commissioner Gillmor indicated that the proposed settlement terms are not acceptable to them. Chairman Bainbridge indicated that he concurred with his fellow Commissioners.

ADJOURNMENT

Chairman Bainbridge moved to adjourn.

Commissioner Taylor seconded the motion.

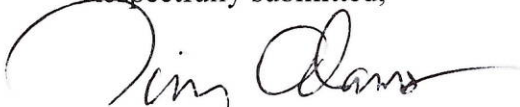
ACTION BY

Mr. Adams called the roll.

ROLL CALL

| | |
|----------------------|-----|
| Commissioner Gillmor | Yes |
| Commissioner Taylor | Yes |
| Chairman Bainbridge | Yes |

Respectfully submitted,



Tim Adams
Executive Director