MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Telephonic Meeting  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Tuesday, April 21, 2020 – 1:00 p.m.

Present:  
Dale L. Schultz  Chairman (Telephonic)  
Joseph M. Hennelly, Jr.  Vice Chair (Telephonic)  
Scott P. LeMarr  Commissioner (Telephonic)  
Steven J. Krenzel  Commissioner (Telephonic)  
James Ashley  Director (Telephonic)  
Gaetano Testini  Chief Legal Counsel (Telephonic)  
Jason Porter  Deputy Director (Telephonic)  
Trevor Laky  Legislative Affairs Chief/Public Information Officer (Telephonic)  
Renee Pastor  Self Insurance (Telephonic)  
Jessie Atencio  ADOSH Director (Telephonic)  
Kara Dimas  Commission Secretary (Telephonic)

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance on the telephone, confirmed by roll call was David Selden (representing Community Bridges, Inc.).

Approval of Minutes of April 9, 2020 Regular Meeting Minutes.

Commission Krenzel moved to approve the Minutes of the April 9, 2020 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2CC19/20-0078 Alan's Air LLC - $1,000  
2. 2CLP19/20-0144 Outside Solutions LLC - $1,000  
3. 2CLP19/20-0154 Joel Herrera Garcia dba Noel's Landscaping - $5,000

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. The City of Chandler  
2. Empire Southwest, LLC
Vice Chair Hennelly moved to approve the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission’s consideration of ADOSH citations and proposed penalties.

Community Bridges, Inc.
675 E Cottonwood Ln.
Casa Grande, AZ 85122

Complaint

Site Location: 675 E Cottonwood Ln.
Casa Grande, AZ 85122

Years in Business: 37

Inspection No: R3180 -1439179
Empl. Covered by Inspection: 24

Inspection Date: 10/21/2019

SERIOUS – Citation 1 - Item 1a –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: A copy of the Exposure Control Plan was not accessible to employees with occupational exposure. 29 CFR 1910.1030(c)(1)(iii)
Div. Proposal - $5,000.00
Formula Amt. - $5,000.00

SERIOUS – Citation 1 - Item 1b –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: The Exposure Control Plan was last reviewed and updated in 2015. 29 CFR 1910.1030(c)(1)(v)
Div. Proposal - $0.00
Formula Amt. - $5,000.00

SERIOUS – Citation 1 - Item 2 –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: Employees with occupational exposure did not have the Hepatitis B vaccine made available to them within 10 days of their initial assignment.

b) 675 E Cottonwood Lane, Casa Grande, Arizona: Employees with occupational exposure did not have the Hepatitis B vaccine made available to them within 10 days of their initial assignment. 29 CFR 1910.1030(f)(2)(i)
Div. Proposal - $5,000.00
Formula Amt. - $5,000.00

SERIOUS – Citation 1 - Item 3a –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: A confidential medical evaluation was not made immediately available to an employee after an exposure incident that occurred on October 4, 2019.

b) 675 E Cottonwood Lane, Casa Grande, Arizona: A confidential medical evaluation was not made immediately available to an employee after an exposure incident that occurred on October 6, 2019. 29 CFR 1910.1030(f)(3)
Div. Proposal - $1,500.00
Formula Amt. - $1,500.00
SERIOUS – Citation 1 - Item 3b –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: A post-exposure evaluation was not performed on a patient following an incident.

b) 675 E Cottonwood Lane, Casa Grande, Arizona: A post-exposure evaluation was not performed on a patient following an incident. 29 CFR 1910.1030(f)(3)(ii)(A)
   Div. Proposal - $0.00  Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 3c –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: The collection of an employee’s blood was not completed following an exposure incident.

b) 675 E Cottonwood Lane, Casa Grande, Arizona: The collection of an employee’s blood was not completed following an exposure incident. 29 CFR 1910.1030(f)(3)(iii)(A)
   Div. Proposal - $0.00  Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 3d –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: The healthcare professional evaluating an employee after an October 4, 2019, incident was not provided a copy of the regulation.

b) 675 E Cottonwood Lane, Casa Grande, Arizona: The healthcare professional evaluating an employee after an October 6, 2019, incident was not provided a copy of the regulation. 29 CFR 1910.1030(f)(4)(ii)(A)
   Div. Proposal - $0.00  Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 3e –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: The healthcare professional evaluating an employee after an October 4, 2019, was not provided with a description of the employee’s duties.

b) 675 E Cottonwood Lane, Casa Grande, Arizona: The healthcare professional evaluating an employee after an October 6, 2019, was not provided with a description of the employee’s duties. 29 CFR 1910.1030(f)(4)(ii)(B)
   Div. Proposal - $0.00  Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 3f –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: The healthcare professional evaluating an employee after an October 4, 2019, was not provided with a route of exposure for which the exposure occurred.

b) 675 E Cottonwood Lane, Casa Grande, Arizona: The healthcare professional evaluating an employee after an October 6, 2019, was not provided with a route of exposure for which the exposure occurred. 29 CFR 1910.1030(f)(4)(ii)(C)
   Div. Proposal - $0.00  Formula Amt. - $1,500.00
SERIOUS – Citation 1 - Item 3g –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: The healthcare professional evaluating an employee after an October 4, 2019, was not provided with the employee’s medical records.

b) 675 E Cottonwood Lane, Casa Grande, Arizona: The healthcare professional evaluating an employee after an October 6, 2019, was not provided with the employee’s medical records. 29 CFR 1910.1030(f)(4)(ii)(E) Div. Proposal - $0.00 Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 4a –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: Employees were not provided with information on the company exposure control plan or how to obtain copies. 29 CFR 1910.1030(g)(2)(vii)(D) Div. Proposal - $1,500.00 Formula Amt. - $1500.00

SERIOUS – Citation 1 - Item 4b –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: Employees were not provided information related to the employer’s bloodborne pathogens program to include a procedure for reporting an incident, who to report the incident to, and medical follow up. 29 CFR 1910.1030(g)(2)(vi)(K) Div. Proposal - $0.00 Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 4c –

a) 675 E Cottonwood Lane, Casa Grande, Arizona: Employees were not provided with information on the post exposure evaluation or follow up. 29 CFR 1910.1030(g)(2)(vii)(L) Div. Proposal - $0.00 Formula Amt. - $1,500.00

TOTAL PENALTY - $13,000.00 TOTAL FORMULA AMT. - $30,000.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalty, and reviewed the photographs. He noted corrections to the date for Items 3(c)(b), 3(f)(b) and 3(g)(b) is October 6, 2019.

Commissioner LeMarr and Mr. Atencio discussed whether the 2014 inspection was for the same Casa Grande location, and involved the same managers or supervisors; Mr. Atencio stated that if it were the same location there would have been consideration of a willful violation.

Mr. Selden appreciated the opportunity to address the Commissioners and the opportunity for a telephonic closing conference provided by Mr. Atencio. He noted Community Bridges is a longtime non-profit that provides inpatient psychiatric services at this facility, which inherently is a challenging work environment. Community Bridges has excellent and comprehensive safety programs and operates in a highly regulated industry. Its Director of Compliance, Barbara Lang has a great deal of respect for the state agencies with whom Community Bridges is a partner in providing its services and a safe work environment. This inspection encountered some communication challenges because Ms. Lang was out of the country throughout the inspection, coupled with turnover in the Human Resources function at that facility. Because of the situation there was miscommunication on both sides of the equation reflected by the need to interview some people multiple times. The employer was unaware that a closing conference was done back in October since the investigation continued actively into January. In this case the file is reflective of some gaps of information that ADOSH should have and should consider. He
looks forward to the opportunity to review the file to have better communication with ADOSH on this and resolve this constructively because Community Bridges views its role with ADOSH as a partner in providing for a safe workplace for its employees.

Mr. Atencio confirmed that it was a different location for the 2014 inspection, and wanted the Commissioners to know there was a thorough investigation that required follow-up interviews to either galvanize ADOSH’s position or to provide some type of guidance back to the employer if no citations were to be issued.

Chairman Schultz recused himself since Valleywise Health is in the same business of behavioral health as Community Bridges and as such they share common patients, transfer patients back and forth, in some cases they are actually competitors and to avoid bias he will not participate in voting on whatever motion comes forward.

Commissioner LeMarr moved to approve the citation and proposed penalty as presented and Vice Chair Hennelly seconded the motion. Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. Chairman Schultz abstained. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley summarized the Governor’s Executive Order 2020-29, titled, "Increased Telemedicine Access for Workers' Compensation" and the Order has several components. The Governor’s office was very responsive and acted quickly to address concerns that would help stakeholders and customers of the Industrial Commission at this challenging time. Among the components, it allows occupational therapists and physical therapists to see workers’ compensation patients using telemedicine, allows telemedicine options for Independent Medical Exams, temporarily suspends enforcement of Federal OSHA required in-person yearly hearing tests and medial fit testing to help promote physical distancing, and helps cities, towns, school districts, and employers by delaying quarterly assessment tax payments. A copy of the Executive Order is attached for reference.

Ms. Dimas presented a retirement resolution for Giovanna Nicastro, Administrative Assistant for BLS in our ADOSH Division for 30 years of state service.

Ms. Dimas confirmed Commission meeting dates through June 2020.

Public Comment.

There was no public comment.

Vice Chair Hennelly moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:44 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By [Signature]
James Ashley, Director

ATTEST:

[Signature]
Kara Dimas, Commission Secretary
Executive Order 2020-29
Increased Telemedicine Access for Workers’ Compensation

WHEREAS, on March 11, 2020, a Public Health State of Emergency was declared in Arizona to prepare for, prevent, respond to, and mitigate the spread of the 2019 novel coronavirus (COVID-19); and

WHEREAS, the disease caused by COVID-19 is contagious and can be fatal; and

WHEREAS, certain populations, including the elderly and those with underlying health conditions, are at a higher risk of experiencing a more severe case of COVID-19; and

WHEREAS, in-person visits with healthcare professionals may increase the risk of COVID-19 transmissions; and

WHEREAS, the United States Centers for Disease Control and Prevention (CDC) encourages the use of telemedicine as a means of preventing transmission of the virus at healthcare facilities; and

WHEREAS, the CDC recommends that insurers and providers promote the availability of telehealth services; and

WHEREAS, on March 25, 2020, I issued Executive Order 2020-15 expanding telemedicine for all health insurance plans regulated by the Arizona Department of Insurance and all Arizona Medicaid plans; and

WHEREAS, the spread of COVID-19, the danger the virus poses to at-risk populations, and the need to protect our healthcare workforce includes those workers that have been injured on the job and are applying for or receiving workers’ compensation benefits; and

WHEREAS, A.R.S. § 26-303(E)(1) provides that the governor “shall have complete authority over all agencies of the state government” during a declared emergency; and

WHEREAS, A.R.S § 26-307(A) provides that state agencies, "may make, amend and rescind orders, rules and regulations necessary for emergency functions . . ."; and

WHEREAS, it is necessary to temporarily suspend certain regulations to ensure that Arizona’s injured workers are not unnecessarily exposed to an increased risk of COVID-19 transmission; and
WHEREAS, expansion of telemedicine in Arizona to workers' compensation insurance plans, self-insurance plans and the Special Fund are necessary to ensure the health, safety and welfare of those seeking or receiving workers' compensation benefits and to promote the financial stability of business entities impacted by COVID-19 who are subject to assessment by the Industrial Commission of Arizona.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this state, hereby order as follows:

1. Beginning on April 14, 2020 and continuing for the duration of the Public Health Emergency declared in Arizona on March 11, 2020, all workers' compensation insurance plans regulated by the Arizona Department of Insurance, self-insurance plans regulated by the Industrial Commission of Arizona, and the Special Fund are required to provide coverage for all healthcare services that can be provided through telemedicine if the healthcare service would be covered were it provided through an in-person visit between the injured worker and a healthcare provider.

2. Workers' compensation insurance plans, self-insurance plans and the Special Fund may establish reasonable requirements and parameters for telehealth services, including documentation and recordkeeping, but such requirements and parameters may not be more restrictive or less favorable to providers or injured workers than are required for healthcare services delivered in-person.

3. Workers' compensation insurance plans, self-insurance plans and the Special Fund must allow all electronic means of delivering telehealth, including telephone and video calls.

4. To enable individuals to remain in their homes, workers' compensation insurance plans, self-insurance plans and the Special Fund shall allow a patient's home to be an approved location to receive telemedicine services.

5. Telehealth services subject to this Executive Order may be provided by any Arizona licensed healthcare provider type including, but not limited to, physicians, physician assistants, advanced practice nurses, optometrists, psychologists, dentists, occupational therapists, physical therapists, pharmacists, behavioral health providers, chiropractors, athletic trainers, hearing aid dispensers, audiologists, and speech-language pathologists.

6. No Arizona regulatory board shall enforce any statute, rule, or regulation that would require a medical professional who is licensed by that board and who is authorized to write prescriptions to conduct an in-person examination of an injured worker prior to the issuance of a prescription.

7. Workers' compensation insurance plans, self-insurance plans or the Special Fund may not, except when approval is granted by the Industrial Commission of Arizona in cases of suspected fraud, require an injured worker to submit to an in-person medical examination or in-person medical treatment (under A.R.S. §§ 23-1026, 23-1027 or A.A.C. R20-5-114) and may not suspend rights to workers' compensation benefits or otherwise take any adverse action against an injured worker who refuses to submit to an in-person medical examination or in-person medical treatment.
8. This Executive Order does not expand the scope of practice for any licensed provider type.

9. The Industrial Commission of Arizona may defer requirements to renew the Arizona Division of Occupational Safety and Health’s (ADOSH) required in-person physical exams that have an expiration date between April 1, 2020 and September 1, 2020. However, if the requirements can be completed through telehealth, the employer, or ADOSH shall not defer such requirements.

10. The Industrial Commission of Arizona may extend the April 30, 2020 deadline for assessment payments due under A.R.S. § 23-961(G) & (I) to June 15, 2020, if requested.

11. The Industrial Commission of Arizona may waive all penalties and interest (as outlined in A.R.S. § 23-961(K)) for late payments received pursuant to paragraph 10, above, if requested.


IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

[Signature]

GOVERNOR

DONE at the Capitol in Phoenix on this fourteenth of April in the Year Two Thousand Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

ATTEST:

[Signature]

Secretary of State