

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium and Conference Room 308
Phoenix, Arizona 85007
Thursday, April 26, 2018 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Steven J. Krenznel	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Melinda Poppe	Deputy Director
	Jacqueline Kurth	Medical Resource Office Manager
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Self Insurance
	Jessie Atencio	ADOSH Interim Director
	Steve Black	Compliance Officer (Telephonic)
	Afshan Peimani	Staff Attorney
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:02 p.m.

Public Hearing to accept comments and other information regarding the 2018/2019 Arizona Physicians' and Pharmaceutical Fee Schedule (Fee Schedule) established under A.R.S. § 23-908(B).

Chairman Schultz introduced the agenda item regarding the 2018/2019 Arizona Physicians' and Pharmaceutical Fee Schedule.

Ms. Kurth presented the Staff Proposal and Request for Public Comment for the 2018-2019 Physicians' and Pharmaceutical Fee Schedule.

No public comments were made during the Public Hearing. A written transcript of the Public Hearing is attached hereto.

Chairman Schultz recessed the meeting at 1:15 p.m. The meeting reconvened at 1:21 p.m. in Conference Room 308. Also present was Charles Keller representing Desert Whale JoJoba Company; Amber Schwartz with Desert Whale JoJoba Company; Darren VandeVoorde and Cristy Zarate with Bashas/Food City; Jason Weber, Michael Fassett, and Casey Milton with Snell & Wilmer.

Approval of Minutes of April 19, 2018 Regular Meeting Minutes.

Commissioner Krenznel moved to approve the minutes of the April 19, 2018 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenznel 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

nozzle band heater, part number 3594K118, with a maximum heat output of 1200 degrees F, was installed in a spray booth which produced combustible wax dust which was known by the employer to have a cloud minimum ignition temperature (cloud-MIT) of approximately 750 degrees F. A.R.S. 23-403.A

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 3 –

- (a) White spray booth: Combustible jojoba wax dust had accumulated inside the white spray booth in sufficient quantities to cause a deflagration. 29 CFR 1910.22(a)(1)

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 4 –

- (a) Sphere manufacturing areas: Employees were not provided with and required to wear flame-resistant clothing in the spray booths and sifting areas where they could be exposed to combustible dust flash fires. 29 CFR 1910.132(a)

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

TOTAL PENALTY - \$20,000.00

TOTAL FORMULA AMT. - \$20,000.00

Mr. Atencio discussed ADOSH's investigation, explained the employer's manufacturing process, described the explosion leading to the inspection, and summarized the citation and proposed penalties. Mr. Black summarized findings from his investigation and discussed the circumstances leading to the explosion, the size of the dust particles created during the manufacturing process, the amount of dust generated, and the type of work uniforms utilized.

Vice Chair Hennelly, Mr. Atencio, and Mr. Black discussed Citation 1, Item 1, the availability of suitable exhaust and ventilation systems, and the type of ventilation systems in use at the facility.

Vice Chair Hennelly and Mr. Black discussed the enlarged size of the manufacturing booths and the suitability of the ventilation systems in use at the facility.

Vice Chair Hennelly, Mr. Black, and Mr. Atencio discussed the interplay between Citation 1, Item 1 and Citation 1, Item 3, including the overall housekeeping requirements and the necessity for adequate ventilation systems.

Chairman Schultz, Mr. Black, and Mr. Atencio discussed daily cleaning efforts at the facility and the company's reported dust monitoring program. Mr. Black noted that the company had no schedule for cleaning the rafters, a location where dust could build-up. He discussed the circumstances leading to the explosion. Mr. Atencio and Mr. Black discussed the use of colored dots for monitoring the accumulation of dust.

Chairman Schultz discussed employer knowledge and the company's awareness of alternative air handling systems. Chairman Schultz, Mr. Black, and Mr. Atencio discussed company and industry knowledge of the dust hazard, the existence of a related national standard (NFPA 655), dust testing performed by the company in 2014, and training provided to employees related to the hazards of combustible dust.

Mr. Keller stated that the Commission has the statutory authority and responsibility to approve citations and classifications. He discussed the issue regarding the Commission's role in the citation/penalty process. Mr. Porter discussed A.R.S. § 23-415.

Mr. Keller commended Mr. Black on his inspection in a complex case. He discussed the difference between "dust" and the wax beads that were manufactured at the facility and explained the significance of the distinction. He noted that the ventilation systems in use were never meant to remove dust from the environment and discussed the purpose for the ventilation system.

Chairman Schultz and Mr. Keller discussed whether the company had engineered solutions beyond housekeeping to control the dust, the difference between "combustible" dust and "explosive" dust, and the cause of the explosion. Chairman Schultz, Mr. Keller, and Ms. Schwartz discussed the distinction between the manufactured product and waste product generated by the process.

Vice Chair Hennelly noted that the ADOSH summary states that the dust was "combustible."

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

Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petitions and the reasonable hourly rates used in analyzing fee petitions.

Alan Schiffman, Schiffman Law, P.C. and Robert Wisniewski, The Law Office of Robert Wisniewski, P.C. / D. McPherson

Chairman Schultz and Vice Chair Hennelly commended Ms. Peimani on her analysis and the thoroughness of the information provided.

Ms. Peimani discussed her analysis of the Petitions for Attorney's Fees submitted by Mr. Schiffman and Mr. Wisniewski and their representation of Mr. McPherson. Ms. Peimani recommended that Mr. Schiffman and Mr. Wisniewski split an award of 25% of Applicant's indemnity benefits for a period of ten years from July 1, 2017, based on the pro rata share of the hours each firm worked. She recommended that Mr. Schiffman's firm receive 11.75% of the award (up to \$2,079.29) and Mr. Wisniewski firm receive 88.25% of the award (up to \$15,624.46).

Vice Chair Hennelly, Chairman Schultz, Mr. Porter, and Ms. Peimani discussed the decision to split the award between the two firms and the hourly rate used in the analysis.

Chairman Schultz and Mr. Porter discussed whether an attorney can enforce an engagement agreement with a client to the extent an attorney cannot obtain adequate relief from the Commission.

Commissioner Krenzel moved to approve staff's recommendation and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner Krenzel requested a short recess at 2:22 p.m.

The meeting reconvened at 2:27 p.m.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2018. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley noted the Benchmark AMS Visit with representatives of APS. He noted that Rob Woods from the Government Transformation Office attended.

Mr. Ashley reminded the Commissioners that the banner signing for the Commission's VPP kick-off will be held on May 3, 2018. He discussed the successful safety pledge drive that was held with Commission employees.

Mr. Ashley noted the Employee Appreciation BBQ will be held on Thursday, May 10th, in the Phoenix office and Thursday, May 17th, in the Tucson office.

Mr. Ashley noted that the Commission is planning a June meeting in the Casa Grande area.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through June 2018.

Mr. Atencio noted the ADOSH "Stand Down" events planned to commence on May 7, 2018.

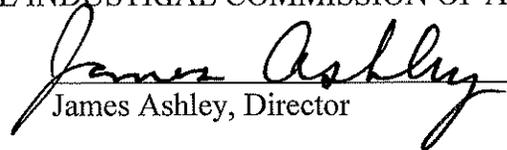
Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:31 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

PUBLIC HEARING
STAFF PROPOSAL and REQUEST FOR PUBLIC COMMENT
2018/2019 Arizona Physicians' and Pharmaceutical Fee Schedule

Phoenix, Arizona
April 26, 2018
1:00 p.m.

APPEARANCES:

James Ashley, Director
Dale Schultz, Chairperson
Joseph M. Hennelly, Jr., Vice Chairperson
Jason M. Porter, Chief Legal Counsel
Jacqueline L. Kurth, Manager of the Medical Resource Office
Steven J. Krenznel, Commissioner
Jason Porter, Chief Legal Counsel

PREPARED BY:
Vicki L. O'Ceallaigh Champion, CCR
Certified Reporter
Certificate No. 50534

(Original)

Perfecta Reporting
(602) 421-3602

201804260914181

1 Phoenix, Arizona
2 April 26, 2018
3 1:00 p.m.

4 P R O C E E D I N G S

5 MR. SCHULTZ: I'd like to call this meeting of the
6 Industrial Commission to order. I'd like to start with the
7 Pledge.

8 (Pledge of Allegiance.)

9 MR. SCHULTZ: Our first order of business today is
10 the public hearing concerning the 2018/2019 Medical Fee
11 Schedule. Welcome to our Annual Fee Schedule Hearing. This
12 hearing is being held to give you, the regulating community,
13 an opportunity to comment on the 2018/2019 Fee Schedule
14 recommendations and to submit your own recommendation for
15 changes to the Fee Schedule, and so we have had posted
16 proposed or recommended changes. I don't want anyone to feel
17 constrained. If you feel there are other issues that should
18 be addressed in the Medical Fee Schedules, you are free to
19 submit those comments to us.

20 Jacqueline Kurth, Manager of the Medical Resource
21 Office, will provide a brief overview of the staff report,
22 which has been available for review on line on the
23 Commission's website. Those wishing to speak may do so by
24 filling out a speaker slip. I will call each speaker up to
25 the podium. At the beginning of your comments, and for the

1 record, please identify who you are and who you represent.
2 You will have five minutes to address the Commission. At the
3 conclusion of your comments, the Commissioners and Staff may
4 ask you questions.

5 In the interest of time, please do not repeat what
6 other speakers have stated. If you agree with what has been
7 said, simply state such. To allow people the opportunity to
8 respond to comments made by others, the record will remain
9 open for an additional 10 business days, which will be until
10 the close of business on May 10, 2018. Comments received
11 through today's hearing will also be posted online on the
12 Commission's website.

13 Again, anyone wishing to respond to comments that
14 they have heard today or written comments that are posted
15 online, need to do so before the close of the record on
16 May 10, the end of the business day May 10.

17 With that, let's begin. Jackie.

18 MS. KURTH: Okay. Good afternoon, Chairman Schultz
19 and Commissioners. For the record, my name is Jackie Kurth.
20 I am the manager of the Medical Resource Office at the
21 Industrial Commission of Arizona. This year's proposed
22 Fee Schedule is based on a review of the following
23 publications: the 2018 Medicare Physician Fee Schedule,
24 Optum 360 2018, The Essential RBRVS; the Federal Office of
25 Workers' Compensation Programs, commonly referred to as

1 "OWCP" September 2017 Fee Schedule; the 2018 Anesthesia Base
2 Units, as listed in the AMA CPT-4; the Center for Medicare
3 and Medicaid Services referred to as "CMS" 2018 Clinical
4 Diagnostic Laboratory Fee Schedule; and the Physicians as
5 Assistants at Surgery: 2018 Update.

6 The 2018 Staff Proposal and Request for Public
7 Comment document is posted on the Industrial Commission
8 website at www.azica.gov under the Medical Resource Office
9 Division or the Medical Provider Resource webpage. The Excel
10 tables that include all of the codes and proposed
11 reimbursement values and the NCCI Analysis of the Proposed
12 2018/2019 Fee Schedule are also posted on the Industrial
13 Commission website.

14 There are four proposals included in this year's
15 Staff Proposal and Request for Public Comment. The first
16 proposal is: The Adoption of Updates to Relative Value Units
17 and Reimbursement Values. The Proposed Fee Schedule is based
18 upon a two-step methodology to complete reimbursement values
19 for all applicable service codes.

20 Step 1: RVUs and Anesthesia Base Units or BUs are
21 assigned to each code. This is done by using one of the
22 following five methods:

23 Assign RVUs or BUs from the 2018 Medicare Physician
24 Fee Schedule or the AMA 2018 CPT-4. The 2018 Medicare
25 Physician Fee Schedule was the preliminary source for

1 assigning and updating RVUs for all codes.

2 Next, if we were unable to assign an RVU to a code
3 using the previous method, we used OPTUM 360 2018 Essential
4 RBRVS to assign RVUs to Gap Codes. Those are the codes that
5 are not included in the Medicare Physician Fee Schedule.

6 Third, we used the September 2017 Federal Office of
7 Workers' Compensation Fee Schedule, the OWCP Fee Schedule,
8 for codes that we could not assign an RVU using one of the
9 first two methods.

10 The fourth method was used for the Pathology and
11 Laboratory Codes. We relied upon the Centers for Medicare
12 and Medicaid Services 2018 Clinical Diagnostic Laboratory Fee
13 Schedule to assign RVUs.

14 And, lastly, for any remaining codes that could not
15 be assigned an RVU by using one of the previous four methods,
16 we utilized a back-filling approach to assign RVUs for any
17 codes that have a current rate, but could not be assigned an
18 RVU using one of the previously mentioned methods.

19 Once RVUs were assigned to all service codes, the
20 second step involved calculating the reimbursement value by
21 multiplying the applicable RVU by the Arizona-specific
22 conversion factor.

23 Staff proposes that the 2018/2019 Fee Schedule
24 continue using a multiple conversion factor model consisting
25 of one conversion factor for Anesthesia Services, one for

1 surgery and radiology codes, and a third for all remaining
2 service categories, including evaluation of management or
3 E&M Codes, Pathology and Laboratory, Physical Medicine,
4 General Medicine, and Special Services.

5 It should be noted that the 2018 CMS Medicare
6 Physician Fee Schedule; Optum Essential RBRVS 2018; and the
7 2017 Federal Office of Workers' Compensation Program, OWCP
8 Fee Schedule, lists RVUs for all the Category III codes --
9 these are commonly called "temporary codes" or "T" codes, but
10 they do not assign a reimbursement value and instead
11 designate these codes as either "C," contractor price; "N,"
12 noncovered service; "R," restricted service or coverage; or
13 "X," exclusion by law.

14 Under workers' compensation, we do not use these
15 classification codes, and therefore, Staff proposes that all
16 Category 3 codes be designated as Relativity Not Established
17 or RNE. The proposed conversion factors for the 2018/2019
18 Fee Schedule are surgery radiology, \$82.38; all others,
19 \$64.63; and anesthesia, \$61.

20 Additionally, the proposed 2018/2019 Fee Schedule
21 continues to use CMS's surgical global periods. The proposed
22 2018/2019 continues to assign RVUs to consultation services,
23 recognizing the functional importance of these services.
24 However, these consultation service codes observe the
25 bundling principles used by CMS to avoid excessive

1 reimbursement rates.

2 The 2018/2019 Fee Schedule does not incorporate a
3 Geographic Adjustment Factor or "GAF." Many of you who are
4 familiar with Medicare know that Medicare uses GAFs to assign
5 RVUs and reimbursement values. CMS uses one GAF for the
6 entire state of Arizona, so we follow along with Medicare.

7 All CPT codes that contain explanatory language
8 specific to Arizona will continue to be preceded by the
9 simple triangle symbol. Codes that are unique to Arizona and
10 are not otherwise found in the CPT-4 are preceded by an AZ
11 identifier.

12 Staff proposed to continue to apply a 25 percent
13 Stop Loss Cap to any service codes whose reimbursement values
14 incurred a decrease of greater than 25 percent due to the
15 transition to a RBRVS-based system. Okay. That's it for the
16 first proposal.

17 The second proposal or issue is the designation of
18 Medi-Span as a publication for the purposes of determining
19 average wholesale price. Staff proposed that Medi-Span
20 continue to be designated as a publication for the Commission
21 for purposes of determining average wholesale price.

22 The third proposal, Staff proposed adoption of
23 Physicians as Assistants at Surgery: 2018 Update. Last year,
24 the Commission adopted the Physicians as Assistants at
25 Surgery: 2016 Update. Staff proposed the Commission adopt

1 the most recent edition of the Physicians as Assistants at
2 Surgery: 2018 Update.

3 And the last proposal, Staff proposed the Adoption
4 of Deletions, Additions, General Guidelines, and Identifiers
5 of the CPT-4. The proposed 2018/2019 Fee Schedule is based
6 upon Staff review of the deletions and additions to the
7 CPT-4. The proposed 2018/2019 Fee Schedule is intended to
8 conform to changes that have taken place in the 2018 edition
9 of the CPT-4.

10 And we received NCCI, the National Council for
11 Compensation Insurance. They do an analysis of our proposed
12 fee schedule each year. NCCI estimates that the changes to
13 the proposed medical fee schedule that will be effective
14 October 1, 2018, would result in an estimated impact of
15 0.1 percent, or approximately \$900,000, on overall
16 workers' compensation system costs in Arizona.

17 With that, I would be happy to answer any questions.

18 MR. SCHULTZ: Thank you, Jackie.

19 MS. KURTH: Sure.

20 MR. SCHULTZ: Before we move to public comment, do
21 any of the Commissioners have any questions for Jackie about
22 the recommendations presented?

23 Thank you.

24 MS. KURTH: You are welcome.

25 MR. SCHULTZ: And I do not have a list of folks who

1 have asked to speak, and so I want to make sure at this time
2 that no one signed in and requested the opportunity to speak.

3 Okay. Thank you.

4 Well, I will make that request now, verbally. If
5 there is anyone who wishes to make any comments on the
6 recommendation or to raise any other issue considering the
7 2018/2019 Fee Schedule, now is your opportunity to speak.

8 If not, thank you all for coming to the public
9 hearing, and we are now going to adjourn temporarily and move
10 upstairs to the Commission offices to continue our regular
11 Industrial Commission meeting.

12 Thank you all for coming.

13 (WHEREUPON, the proceedings concluded at
14 1:16 a.m.)

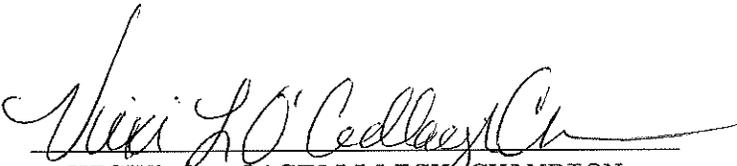
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I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof, and that the foregoing 9 pages constitute a full, true, and correct transcript of said shorthand record, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 7th day of May, 2018.


VICKI L. O'CEALLAIGH CHAMPION
CR No. 50534

18 APR 10 PM 12:50 1087415583