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. Krenzel              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
          Jessic 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 Krenzel 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 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 Requests for Renewal of Self-Insurance Authority.

1. Maricopa County
2. Maricopa County Community College District

Chairman Schultz noted the progress Maricopa County and Maricopa County Community College District have made in reducing their experience modification factors.

Vice Chair Hennelly moved to approve the items on the Consent Agenda 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 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.

Desert Whale Jojoba Company, Inc.  
2101 E. Beverly Drive  
Tucson, AZ 85719  

| Site Location: | 2101 E. Beverly Drive  
| Emp. Covered by inspection: | 34  

Fatality/Accident  
Years in Business: 39  

Inspection No: T3633 - 1276664  
Inspection Date: 11/9/2017

SERIOUS – Citation 1 - Item 1 –

(a) White sphere manufacturing area: The employer did not furnish to each of their employees employment and a place of employment which was free from recognized hazards in that the exhaust ventilation systems, which were intended by the employer to collect fine explosive dust produced by the process and keep the white spray booth under negative pressure, had not been designed or evaluated with respect to the modification and enlargement of the booth which was completed in 2017, and which were not effective at collecting dust in the section of the booth above the spray nozzle; the two Grizzly brand Model G0442 dust collectors which provided exhaust airflow for the white spray booth were not designed or intended by the manufacturer for use with dusts other than wood dusts; and the employer did not follow the recommendations of the manufacturer for cleaning and maintaining the United Air Specialists, Inc. brand dust collector, model SCA or SCB. A.R.S. 23-403.A  
Div. Proposal - $5,000.00  
Formula Amt. - $5,000.00

SERIOUS – Citation 1 - Item 2 –

(a) White spray booth: The employer did not furnish to each of their employees employment and a place of employment which was free from recognized hazards in that a McMaster-Carr brand
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 sitting 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.


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. Krenzel, Commissioner
Jason Porter, Chief Legal Counsel

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

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

PROCEDINGS

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

(Pledge of Allegiance.)

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

Jacqueline Kurth, Manager of the Medical Resource  
Office, will provide a brief overview of the staff report,  
which has been available for review on line on the  
Commission's website. Those wishing to speak may do so by  
filling out a speaker slip. I will call each speaker up to  
the podium. At the beginning of your comments, and for the
record, please identify who you are and who you represent.
You will have five minutes to address the Commission. At the
conclusion of your comments, the Commissioners and Staff may
ask you questions.

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

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

With that, let's begin. Jackie.

MS. KURTH: Okay. Good afternoon, Chairman Schultz
and Commissioners. For the record, my name is Jackie Kurth.
I am the manager of the Medical Resource Office at the
Industrial Commission of Arizona. This year's proposed
Fee Schedule is based on a review of the following
publications: the 2018 Medicare Physician Fee Schedule,
Optum 360 2018, The Essential RBRVS; the Federal Office of
Workers' Compensation Programs, commonly referred to as
"OWCP" September 2017 Fee Schedule; the 2018 Anesthesia Base Units, as listed in the AMA CPT-4; the Center for Medicare and Medicaid Services referred to as "CMS" 2018 Clinical Diagnostic Laboratory Fee Schedule; and the Physicians as Assistants at Surgery: 2018 Update.

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

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

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

Assign RVUs or BUs from the 2018 Medicare Physician Fee Schedule or the AMA 2018 CPT-4. The 2018 Medicare Physician Fee Schedule was the preliminary source for
assigning and updating RVUs for all codes.

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

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

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

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

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

Staff proposes that the 2018/2019 Fee Schedule continue using a multiple conversion factor model consisting of one conversion factor for Anesthesia Services, one for
surgery and radiology codes, and a third for all remaining
service categories, including evaluation of management or
E&M Codes, Pathology and Laboratory, Physical Medicine,
General Medicine, and Special Services.

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

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

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

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

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

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

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

The third proposal, Staff proposed adoption of Physicians as Assistants at Surgery: 2018 Update. Last year, the Commission adopted the Physicians as Assistants at Surgery: 2016 Update. Staff proposed the Commission adopt
the most recent edition of the Physicians as Assistants at Surgery: 2018 Update.

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

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

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

MR. SCHULTZ: Thank you, Jackie.

MS. KURTH: Sure.

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

Thank you.

MS. KURTH: You are welcome.

MR. SCHULTZ: And I do not have a list of folks who
have asked to speak, and so I want to make sure at this time that no one signed in and requested the opportunity to speak.

Okay. Thank you.

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

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

Thank you all for coming.

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

* * * * * *
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