

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Telephonic Meeting  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, August 31, 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 M. Porter	Deputy Director (Telephonic)
Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
Renee Pastor	Self Insurance (Telephonic)
Charles Carpenter	Medical Resource Manager (Telephonic)
Renee Englen	Medical Resource Office (Telephonic)
Lisa Padgett	Labor Director (Telephonic)
Victoria Kamm	Labor Supervisor (Telephonic)
Jennifer Krainski	Labor Investigator (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 were Brad Bothun, Jerry Brown and Tony Rickoff (JBS Tolleson, Inc. dba JBS US); Robert Deheer and Robert Dishmon (Jim Brown & Sons Roofing Company, Incorporated dba JBS Roofing); and Greg Couet, Kristen Murphy and Kim Kuhn (Nail It Framing & Construction).

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.

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

1. TMC Healthcare

Chairman Schultz complimented TMC Healthcare on their excellent experience modification factor.

Commissioner LeMarr moved to approve the Consent Agenda and Commissioner Krenzel 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 regarding the 2020/2021 Arizona Physicians' and Pharmaceutical Fee Schedule.

Mr. Carpenter noted public hearings were held on June 25 and August 17, 2020 regarding proposed changes to the Fee Schedule and all written comments have been posted on the Medical Resource Office website. In addition to oral comments made during the public hearings, written comments were received from Arizona Counties Insurance Pool, Healthsystems, Mitchell Pharmacy Solutions, Concentra, Integriion Group, Injured Workers Pharmacy, CopperPoint, Arizona Self-Insurers' Association Reimbursement Consultants, Arizona Property Casualty Insurance Association, and the American Association of Payers, Administrators, and Networks. Public comments were largely supportive of the proposed changes in the Amended Staff Proposal. Following careful review and consideration of all public comments, staff recommends the Commission adopt the following changes/updates to the 2020/2021 Fee Schedule:

First, staff recommends the updated service codes, relative value units (RVUs) and reimbursement values as presented in the amended Excel tables published on the MRO webpage. The methodology used in computing reimbursement values has not changed from previous years and is outlined in detail in the Amended Staff Proposal. Staff recommends maintaining the RBRVS conversion factors used in the 2019/2020 Fee Schedule. The 2020-2021 Fee Schedule will continue to use CMS's surgical global periods, assigned RVUs to consultation services, delineate codes that are unique to Arizona, and not incorporate a geographical adjustment factor. The recommended Fee Schedule does not apply a Stop-Gain, but does apply a Stop-Loss Cap to any service codes whose reimbursement values have incurred a decrease of greater than 50% since the transition to the RBRVS-based system.

Second, staff recommends that the Fee Schedule continue to designate Medi-Span® as the source to determine Average Wholesale Price (AWP) and determine reimbursement values for pharmaceutical products.

Third, changes are recommended throughout the 2020/2021 Fee Schedule guidelines to clarify the definition and usage of the terms "physician" and "healthcare provider." These changes are intended to conform with the language used by CMS, which defines "physicians" as those healthcare providers who can provide Evaluation and Management services according to their scope of practice and Arizona law.

Fourth, staff recommends several revisions to the Introduction section, including the addition of statutory language to reinforce the timelines and expectations established by A.R.S. § 23-1062.01, the addition of a requirement that payers provide proof of valid contracts when contractual fee disputes with healthcare providers arise, and the addition of clarification that a "current invoice" for materials and supplies is one which is dated within one year of use. The addition of the language requiring payers to provide proof of a valid contract is intended to expedite resolution of disputes where a payer contends that the provider is bound to specified fees based on a contractual agreement with the payer. The clarification of "current invoice" is intended to prevent DME providers from billing for goods based on non-current purchase orders which may not reflect actual costs or values of the goods.

Fifth, staff recommends continued inclusion of four HCPCS codes that were adopted by the Commission in March 2020 in response to the spread of COVID-19. Two of the codes are for virtual check-ins by physicians and they represent changes to the Evaluation and Management section. The other two codes are used for lab testing to detect a COVID-19 infection and are found in the Pathology and Laboratory section.

Sixth, staff recommends clarification to the description of Arizona Service Code AZ099-005. This billing code is used when healthcare providers spend additional time completing workers' compensation insurance forms. During the course of typical treatment, healthcare providers are expected to properly document their work according to the laws governing their respective practices. Exams, re-exams, evaluations, and consultations are currently paid at a rate to compensate the healthcare provider for their time to document patient encounters. Arizona Service Code AZ099-005, however, was intended to be used in cases when additional paperwork is required either by the Commission, applicable payer, or third-party administrator, not as a means of increasing revenue based on standard medical documentation. Staff recommends the clarified language to ensure that the code can only be used when an additional form is either requested by a payer or required by the Commission.

Seventh, staff recommends the adoption of a standard for time-based services. The proposed language is found in the Physical Medicine Guidelines of the Fee Schedule and establishes that the Centers for Medicare and Medicaid Services (CMS) guidelines be used when billing and reimbursing time-based services. Adopting this standard ensures uniformity in the reimbursement of time-based services.

Eighth, staff recommends amending and revising portions of the Pharmaceutical Fee Schedule Guidelines. Staff recommends amendments to clarify the definitions of a "pharmacy accessible to the general public" and a "pharmacy not accessible to the general public" and to correct an inadvertent omission in Section VII(A)(1). The amendments also include a new, narrow exception to the general rule that would allow a pharmacy not accessible to the general public to dispense and receive payment for medications that are dispensed to an injured worker only during a compensability dispute that ultimately resolves in favor of the injured worker. This new exception will make it easier for injured workers whose claims have been denied to receive prescription medication services during the period of time in which they are protesting the denial of their claim.

Finally, staff recommends the addition of a few clarifying and/or non-substantive revisions in Sections III and VII of the Pharmaceutical Guidelines which are intended to resolve potential conflicts within the Guidelines and improve consistency. The revisions are intended to: (1) clarify that physician-administered medications need not be dispensed by a pharmacy accessible to the general public and a licensed pharmacist; (2) clarify that reimbursement for prescription medications should be based on the actual medication dispensed, except where other guidelines direct that reimbursement value be established based on a different medication or different dosage; and (3) clarify that the limitations on dispensing by physicians or pharmacies not accessible to the general public do not apply to dispensing during in-patient hospital care or upon discharge from in-patient hospital care.

Mr. Carpenter recommended the Commission adopt the proposed revisions to the Pharmaceutical Fee Schedule as presented.

Chairman Schultz read the recommended Resolution that the Commission would adopt.

Commissioner LeMarr moved to approve staff recommendations as presented and Vice Chair Hennelly 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 regarding Proposed Youth Employment Penalty.

1. CL-1819-0439 GLC Restaurants, Inc. dba McDonald's

Ms. Padgett summarized the Labor Department's investigation, which included findings of various violations of A.R.S. § 23-232(A)(8)(b), A.R.S. § 23-233(A)(1), (A)(2), (A)(3) and (A)(4). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of \$1,000.00.

Vice Chair Hennelly moved to approve issuance of a Civil Penalty in the amount of \$1,000.00 to GLC Restaurants, Inc. dba McDonald's. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

2. CL-1819-0398 Home Depot, U.S.A., Inc. dba Home Depot

Ms. Padgett summarized the Labor Department's investigation, which included findings of various violations of A.R.S. § 23-231(A)(13), (A)(11) and (A)(7). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of \$300.00.

Commissioner Krenzel moved to approve issuance of a Civil Penalty in the amount of \$300.00 to Home Depot, U.S.A., Inc. dba Home Depot. Vice Chair Hennelly 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.

<p>Artisan Roofing Systems, LLC 6985 N Camino Martin Tucson, AZ 85704</p> <hr/> <p>Site Location: 1604 W Seabiscuit St Tucson, AZ 85704</p> <p>Inspection No: B8139 - 1480599</p> <p>Inspection Date: 06/25/2020</p>	<p>Complaint</p> <p>Years in Business: 8</p> <p>Empl. Covered by Inspection: 3</p>
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REPEAT SERIOUS – Citation 1 - Item 1 –

- a) 1604 W Seabiscuit St, Tucson, AZ 85704: Two employees were working on the roof of a new single story home without an adequate fall protection system install. 29 CFR 1926.501(b)(10)

Artisan Roofing Systems, LLC was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 29 CFR 1926.501(B)(10) which was contained in ADOSH Inspection Number 1427526, Citation Number 01, Item Number 01, issued on 01/09/20 and was final order on 02/04/20 and abated on 08/30/2019, with respect to a workplace located at 6543 S Diablo, Tucson, AZ.

Div. Proposal - \$3,000.00	Formula Amt. - \$1,500.00
TOTAL PENALTY - \$3,000.00	TOTAL FORMULA AMT. - \$1,500.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, and reviewed the photographs.



Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 5 –

- a) 7262 N Oracle Rd, Tucson, AZ: Three employees were working in an excavation 7.5’ deep, 11.5’ wide, and 10’ long without a protective system installed. 29 CFR 1926.651(a)(1)

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$7,000.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner Krenzel and Mr. Atencio discussed if the hazards were abated.

Chairman Schultz and Mr. Atencio discussed Photograph No. 3 and why there was no citation for fall protection.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

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

Jim Brown & Sons Roofing Company, Incorporated  
 dba JBS Roofing  
 5537 N 59<sup>th</sup> Ave  
 Glendale, AZ 85301

Unprogrammed Related  
 Years in Business: 40  
 Empl. Covered by Inspection: 1

Site Location: 5831 E McLellan Rd  
 Mesa, AZ 85205  
 Inspection No: V4664 - 1479058  
 Inspection Date: 06/15/2020

REPEAT-SERIOUS – Citation 1 - Item 1 –

- a) 5831 E McLellan Rd., Mesa, AZ, 85205: One employee on a roof 11ft above the ground level was not using a fall protection system. 29 CFR 1926.501(b)(1)

The Jim Brown & Sons Roofing Company, Incorporated DBA JBS Roofing was previously cited for a violation of this Occupational Safety And Health Standard or its equivalent standard 1926.501(B)(10), which was contained in ADOSH Inspection Number 1263517, Citation Number 1, Item 1 and was affirmed as a final order on 3/30/2018, with respect to a workplace located at 840 W Oriole Way, Chandler, AZ, 85256, and abated on September 14, 2017.

Div. Proposal - \$3,000.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$1,500.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalty, and reviewed the photographs.





were not valid but the inspection was expanded for machine guarding issues and discussed ADOSH's investigation, summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr and Mr. Atencio discussed Photograph No. 5 and the yellow chain around the worker's waist which Mr. Atencio stated looked like a plastic tool belt.

Vice Chair Hennelly asked about the source for guidelines or rules for COVID 19 protection, given that the CDC had issued guidelines which were not mandatory. Mr. Atencio noted ADOSH is looking to see if the employer is making good faith efforts to comply with the CDC guidelines and Arizona Department of Health Services and best practices of the general industry.

Chairman Schultz commented that it seemed from the information presented that there are a number of things which the Commission is expected to consider in setting penalty amounts. Chairman Schultz and Mr. Atencio discussed the employer being cooperative with the inspector at the time of the inspection, abating the nip points in a timely and adequate manner, and taking voluntary action to improve their safety program and promoting workplace safety in the community in terms of their excellent safety programs and their COVID safety program. Mr. Atencio noted the program for machine guarding is extensive, and references to Subpart O to show the reason of what and why it is important to guard things. Chairman Schultz commented that they make a good faith effort to implement an effective safety program or better like a VPP approach to safety and overall commitment to workplace safety, noting the plant is 422,272 square foot operation with many potential hazards and have both an effective written and implemented program.

Chairman Schultz asked if the representative from JBS would like to answer questions. Mr. Brown noted he is the general manager and thanked the Chairman for his comments and they do take safety extremely seriously.

Commissioner LeMarr noted his question regarding the yellow chain around the employee's waist. Mr. Brown noted it is a plastic chain and used around the waist to hold certain tools and commonly used throughout the facility, they use the plastic which will break away easily in case it does get caught.

Chairman Schultz described the photograph of the rendering conveyor belt and asked what happened at the end of the belt. Mr. Brown described the process.

Chairman Schultz asked about another photograph with a worker standing at the end of a fleshing conveyor belt and asked about what he would be doing and how often they would be there because he is the employee most exposed to the nip point. Mr. Brown explained they do have a person standing there to ensure the hides are properly hung on the chain conveyor, and that everything found by the inspector was immediately corrected that evening and guarded correctly.

Chairman Schultz asked about the cleaning of the conveyors. Mr. Brown replied that because it is not a food production department the machinery in that department is cleaned by a team and have procedures and policies to follow and is washed down with hot water hoses every night.

Chairman Schultz asked where the potential exposure is on the walkway over the salt brine. Mr. Atencio noted it would be behind, and based on the interviews, the round pad has buttons and cut-off switches that would put employees outside of the guardrail system.



REPEAT-NON-SERIOUS – Citation 2 - Item 2 –

- a) 25310 S Saint Ruben Ct, Gilbert, AZ 85298: Five employees were exposed to trip hazards as construction materials were not kept clear from worksite passageways. 29 CFR 1926.25(a)

Load Star Builders LLC was previously cited for a violation of this Occupational Safety And Health standard or its equivalent standard 1926.25(a), which was contained in ADOSH Inspection Number 1392216, Citation Number 2, Item 1 and was affirmed as a final order on 12/31/2019, with respect to a workplace located at 20849 E Saddle Way, Queen Creek, AZ 85142, and was abated on 4/30/2019.

Div. Proposal - \$160.00	Formula Amt. - \$80.00
TOTAL PENALTY - \$4,960.00	TOTAL FORMULA AMT. - \$2,480.00

Mr. Atencio discussed ADOSH's investigation, summarized the citations and proposed penalties, and reviewed the photographs.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

Commissioner Krenzel moved to approve the citations and proposed penalties as presented 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.

Nail It Framing and Construction LLC  
18664 N 84<sup>th</sup> Dr  
Peoria, AZ 85382

Referral  
Years in Business: 3  
Empl. Covered by Inspection: 4

Site Location: 15591 W Roosevelt St  
Goodyear, AZ 85338  
Inspection No: I2479 - 1468460  
Inspection Date: 03/09/2020

SERIOUS – Citation 1 - Item 1 –

- a) 15991 W Roosevelt St, Goodyear, AZ, 85338: Two employees were exposed to a 22' X 24' wood wall panel that was not rigged to prevent it from falling when lifted. 29 CFR 1926.1425(c)(1)

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
TOTAL PENALTY - \$1,000.00	TOTAL FORMULA AMT. - \$1,000.00

Mr. Atencio discussed ADOSH's investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Commissioner LeMarr and Mr. Atencio discussed the possibility of a multi-employer citation but based on information that the crane did not have any direct relationship to the rigging the crane service and general contractor were not cited.

Mr. Couet the owner of Nail It, who suffered the traumatic brain injury, noted he closed his company down, and remains under doctor's care for the head injury and memory loss. He noted he has been in the industry for over 25 years, but this is all new to him. He just wanted to let the Commission know his status and thanked the Commission for the opportunity.

Chairman Schultz thanked them for joining us but hates to hear of any business disappearing because the goal of the Industrial Commission is to support the business community of Arizona as well as the employees by creating safe places to work.

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through November 2020.

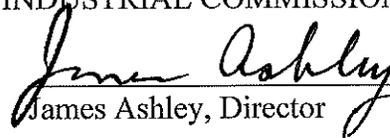
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzel 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 2:54 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary