

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, December 14, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief / Public Information Officer
	Jacqueline Kurth	Medical Resource Office
	William Warren	ADOSH Director
	Phillip Murphy	Assistant ADOSH Director
	Michael Mosesso	Chief Administrative Law Judge
	Marilyn Carter	Human Resource Manager
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Frank Garcia with Premier Risk Management; Cindy Ika with Northern Contours, Inc.; Daniel Romm representing Property Casualty Insurers Association; Ernie Vasquez with Pacwest Energy, LLC dba Jacksons Car Wash; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of November 30, 2017 Regular Meeting Minutes and November 30, 2017 Executive Session Minutes.

Commissioner LeMarr moved to approve the Minutes of the November 30, 2017 regular session meeting 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.

Commissioner Krenzel moved to approve the Minutes of the November 30, 2017 executive session meeting 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 Process for Streamlining the Authorization Process for Treatment that is within the Evidence-Based Treatment Guidelines.

Ms. Kurth discussed the public hearing held on August 17, 2017, and the written public comment period. She provided background concerning the issue of streamlining the authorization process and discussed comments received from stakeholders. She discussed use of a mandated form, instructions for the form, and public comments concerning the existing MRO forms.

She made the following recommendations regarding the legislative directive in Section 5 of Senate Bill 1332 of the Fifty-third Legislature, First Regular Session, that the Commission “determine

a process for streamlining the authorization process for treatment that is within the evidence-based treatment guidelines”:

1. Develop and mandate the use of a medical treatment pre-authorization form with accompanying instructions, including amending A.A.C. R20-5-106(a) to include the new form. Ms. Kurth explained that the form under development will better illustrates the process and relevant timelines.
2. Amend the Treatment Guideline rules to reduce the time period for a payer to respond to a request for pre-authorization or a request for reconsideration from ten business days to seven business days.

Commissioner LeMarr and Ms. Kurth discussed whether the new form would replace existing forms and the benefits of mandating a simplified form.

Mr. Porter discussed the second recommendation, indicating that the reduction of time would apply to responses to both requests for pre-authorization and requests for reconsideration. He discussed the current drafts of the new form and instructions. He discussed the potential impact of mandating the form and the circumstance in cases in which a provider does not use the form.

Chairman Schultz, Commissioner LeMarr, Mr. Ashley, and Ms. Kurth discussed methods of informing the workers' compensation community about the proposed rule changes. Ms. Kurth noted that, though forms are not currently mandated by the rules, some in the payer community are voluntarily using the existing MRO forms.

Mr. Porter discussed the rulemaking process and an estimated targeted effective date of October 1, 2018, for the rule changes.

Chairman Schultz discussed the draft of the new form, noted its simplicity, and stated that he liked the way it steps parties through the process. He also complimented stakeholders for agreeing on changes to the process, which should speed up the process dramatically.

Vice Chair Hennelly noted his agreement with Chairman Schultz concerning the expedited process and stated that he was pleased that it was a group decision.

Commissioner LeMarr moved to approve the recommendations of staff – that the authorization process in Title 20, Chapter 5, Article 13 of the Arizona Administrative Code can be streamlined by:

- (1) Developing and mandating the use of a medical treatment pre-authorization form with accompanying instructions; and
- (2) Reducing the time period for a payer to respond to a request for pre-authorization or a request for reconsideration from ten business days to seven business days.

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.

Commissioner Krenzel moved to direct the Legal Division to initiate rulemaking, consistent with the proposed amendments to A.A.C. R20-5-106, R20-5-1302, R20-5-1303, R20-5-1309, R20-5-1310, and R20-5-1311, by seeking approval from the Office of the Arizona Governor pursuant to

29 CFR 1910.219(e)(1)(i):

a) Car Wash Tunnel: One employee was exposed to in-running nip points from two horizontal running belts on the power transmissions of a towel washer and dryer, manufacturer and model unknown. (29 CFR 1910.219(e)(1)(i)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 5 –

29 CFR 1910.1200(f)(6)(ii):

a) Starting Line: A Scotts brand 2 gallon multi-use pump sprayer that contained corrosive Zep brand Clean Up liquid was not correctly labeled, tagged, or marked with the product identifier and words, pictures, symbols, or combination thereof. (29 CFR 1910.1200(f)(6)(ii)).

b) Finish Line: One five gallon container that contained corrosive Zep brand DZ-7 Neutral Disinfectant Cleaner was not correctly labeled, tagged, or marked with the product identifier and words, pictures, symbols, or combination thereof as the product inside did not match the outside labels. (29 CFR 1910.1200(f)(6)(ii)).

c) Finish Line: A spray bottle that contained corrosive Zep brand DZ-7 Neutral Disinfectant Cleaner was not labeled, tagged, or marked with the product identifier and words, pictures, symbols, or combination thereof. (29 CFR 1910.1200(f)(6)(ii)).

29 CFR 1910.1200(g)(8):

a) 1954 E Highland Ave, Phoenix, AZ 85016: Safety data sheets for hazardous chemicals such as Zep brand Blue Coral Dissolve All, Zep brand Clean Up, and Central Chemical brand Body Solvent were not readily accessible to employees when they were in their work areas as the safety data sheets were solely retrievable from a manager's computer that was located inside a predominantly locked office in the front of the building. (29 CFR 1910.1200(g)(8)).

29 CFR 1910.1200(h)(1):

a) 1954 E Highland Ave, Phoenix, AZ 85016: Employees were not provided effective information and training on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard that the employees had not been previously trained about was introduced into their work area. (29 CFR 1910.1200(h)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

TOTAL PENALTY - \$15,000.00

TOTAL FORMULA AMT. - \$15,000.00

Mr. Warren noted his appreciation for Mr. Vasquez's participation in the process. He summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr and Ms. Warren discussed nozzle pressure and whether the pressure was adjustable. Mr. Warren discussed hazards typically associated with car washes.

Chairman Schultz, Mr. Warren, and Mr. Porter discussed the gravity-based penalty calculation.

Chairman Schultz and Mr. Warren discussed the subject training citation.

Commissioner LeMarr, Mr. Warren, and Mr. Porter discussed the employer's abatement efforts.

Mr. Vasquez discussed the employer's interest in compliance. He indicated that the company's headquarters were immediately contacted by a store manager during a prior inspection, but that he did not find out about the subject inspection until several weeks after the fact. He discussed pending company safety changes in response to the inspection and abatement. He assured the Commission that the cited issues will be corrected.

Mr. Warren stated that ADOSH does not provide proposed citations to employers in advance of issuance and explained the inspection process. He said that ADOSH would have waited for up to an hour if Mr. Vasquez had wished to take part in the inspection.

Mr. Vasquez noted that some of the issues have been corrected, including the Safety Data Sheet issue.

Commissioner LeMarr and Mr. Vasquez discussed the compressor pressure.

Chairman Schultz discussed the Commission's transparent process of notifying employers when an employer appears on a Commission Meeting agenda. He discussed the formal process for notifying an employer of citations and penalties.

Mr. Warren and Mr. Vasquez discussed programmed planned inspections and their applicability to car washes.

Mr. Vasquez discussed the company's Safety Data Sheets and the company's reliance on vendors to provide correctly-labeled chemicals.

Citing quick abatement, Commissioner LeMarr moved to amend the proposed penalties as follows: reduce the penalty for Citation 1, Item 2 from \$2,500.00 to \$1,250.00, for a total proposed penalty of \$13,750. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner Krenzel, Mr. Porter, and Mr. Vasquez discussed the company's contestment rights.

Discussion and/or Action regarding the Consideration of Candidates for the Administrative Law Judge Position, discussion regarding interview questions, second interviews, and the salary. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(1), (A)(2), and (A)(3) to obtain legal advice and to discuss the candidates and the salary.

Mr. Porter recommended that the Commission move into executive session.

Vice Chair Hennelly moved to go into executive session 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.

The Commission went into Executive Session at 2:04 pm.

The Commission returned to regular session at 2:15 p.m.

Commissioner LeMarr moved to approve extending an offer to Candidate No. 1 for the vacant ALJ position. 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/or action regarding Industrial Commission goals, objectives and key initiatives for 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley announced that Victoria Kamm from the Labor Division will participate as a member of the DES Apprentice Program Committee and provided background on the position.

Mr. Ashley discussed a tour of the Arizona Carpenters Union and noted the Union's facilities and training programs. He discussed the improved dialogue between the Commission and the Union and anticipated future collaborations.

Chairman Schultz and Mr. Ashley discussed the Governor's speech at the Rock Products Association's annual Christmas party.

Mr. Ashley discussed a mandatory ADOA workplace-harassment prevention training course.

Mr. Ashley stated that the Commission will be hosting other agencies for monthly benchmark Gembas.

Chairman Schultz and Mr. Ashley discussed a future visit from Henry Darwin, former Chief of Operations for Arizona and lead staffer for the Environmental Protection Agency, to discuss AMS deployment.

Mr. Ashley provided an update concerning website activity and use of online forms.

Mr. Ashley discussed the Governor's focus on cybersecurity issues. He complimented the MIS Division on exceeding the State's cybersecurity requirements.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas presented retirement resolutions for Glenn Saavedra, who has provided six years of state service, and Joe Ornelas, who has provided seven years of state service. Both are safety consultants with ADOSH's Tucson office. Chairman Schultz noted that these retirements will be significant losses for the Tucson office. Chairman Schultz and Mr. Ashley discussed recruitment efforts.

Mr. Ashley discussed judging Christmas stockings in the Labor Division.

Ms. Dimas provided a tentative schedule for 2018 Commission Meetings and confirmed meeting dates through January 2018.

Commissioner LeMarr and Mr. Porter discussed the upcoming ODG expansion agenda item and the availability of relevant information on the MRO webpage.

Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly 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 2:33 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary