

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 20, 2020 – 1:00 p.m.

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| Present: | Dale L. Schultz | Chairman |
| | Joseph M. Hennelly, Jr. | Vice Chair |
| | Scott P. LeMarr | Commissioner |
| | Steven J. Krenzel | Commissioner |
| | James Ashley | Director |
| | Gaetano Testini | Chief Legal Counsel |
| | Jason M. Porter | Deputy Director |
| | Trevor Laky | Legislative Affairs Chief / Public Information Officer |
| | Renee Pastor | Self Insurance |
| | Janine Locke | Special Services Manager |
| | Marilyn Carter | Human Resources Manager |
| | Charles Carpenter | Medical Resource Office Manager |
| | Jessie Atencio | ADOSH Director |
| | Larry Gast | Discrimination Supervisor |
| | Chandler Everett | Compliance Officer |
| | Ron Mills | Compliance Officer |
| | Karriem Allah | Compliance Officer |
| | Mike Amparano | Compliance Officer |
| | Kara Dimas | Commission Secretary |

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were LouAnn Sampson Sibley and George Sibley, M.D.; Marsha Foutz; Chris Westfall (Mission Royale Partners, LLC); John Miller (Professional Contracting, Inc.); Scot Butler (AZ Naturopathic Assn.); Shanlie Blair (Snell & Wilmer). Chairman Schultz noted that Dr. Sibley was a neighbor many years ago and an ER doctor at Desert Samaritan at that time.

Approval of Minutes of February 13, 2020 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the February 13, 2020 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. Commissioner Krenzel abstained. 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

Chairman Schultz noted the low experience modification factor for Maricopa County. Commissioner LeMarr sits on the Board of Trustees for the County and therefore recused himself.

Commissioner Krenzel moved to approve the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr abstained. The motion passed.

Safety Committee Update and Topic Discussion.

Ms. Locke outlined the Commission's accident investigation and trend analysis which is part of being a VPP site. She reviewed the tracking of accidents and the committee that investigates to help prevent any further accidents. The spreadsheet and graphs show the type of accident, location, date reported, the body part and type of hazard and estimate or actual costs.

Chairman Schultz noted he was impressed by the number of near misses recorded, most organizations record just an actual injury, but it's the near misses that enable you to do preventative work and without that it is hard to get enough data to identify trends and the opportunity to do preventative work.

Ms. Locke and Chairman Schultz agreed to update the Commissioners with this data twice a year so they can provide support to have an effective safety program.

Ms. Carter outlined the OSHA 300 Log for the Agency going back 10 years showing the numbers of injuries, type, and location. The 2019 data shows a slip and fall which happened off-site; the person is still out under medical care.

Mrs. Sibley asked how to obtain a copy of the documents. Chairman Schultz noted it was for our employee injuries and internal for our own safety programs. He also noted that any materials in this meeting are public records.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

19-4067-13 Sibley v. Concentric Healthcare Solutions LLC

Chairman Schultz discussed the purpose of and process under A.R.S. § 23-425 for the Commission's review of ADOSH determination.

Mr. Atencio noted that the Commissioners had been provided copies of the Summary of Appeal and Analysis, ADOSH Findings, Complainant's Request for Appeal and the Report of Investigation (ROI) for their consideration prior to the Commission Meeting. Mr. Atencio reviewed the Summary of Appeal and Analysis noting the discrimination complaint was not timely for the following reasons: 1) the Complainant reported being fired for exercising OSHA-protected activity on October 17, 2018, which clearly followed the telephone calls to ADOSH alleged by the Complainant by several weeks, and 2) the Complainant said during several intake interviews that her substantial purpose in calling ADOSH was to report safety concerns and several other allegations related to patient care, elder abuse,

nursing practice standards and certification, improper documentation of potential exposure to blood borne pathogens and Respondent's refusal to allow her to report the assault to police. Mr. Atencio noted the appeal was timely and received on November 8, 2019.

Mr. Atencio reviewed the background, analysis and accusation of complaint mishandling. Mr. Gast discussed ADOSH phone records and the inability to determine who would have spoken on those calls. Mr. Atencio noted ADOSH practices and policy of using telephone logs to generate notes for new or existing cases.

Mr. Gast noted ADOSH does not dispute that Mrs. Sibley called, but does not know who she spoke to or the contents of the conversation. Commissioner LeMarr and Mr. Atencio discussed the numerous routes the call could have followed, depending on what the caller stated.

Vice Chair Hennelly confirmed with Mr. Gast that the calls came into the main ADOSH number.

Mrs. Sibley, a licensed nurse in California and Arizona, and Dr. Sibley, her husband, provided the history of the incident in which Mrs. Sibley was injured while trying to protect patients at Haven Behavioral Health. Mrs. Sibley explained that she called ADOSH on two occasions, speaking once with a male and once with a female. Mrs. Sibley explained the importance of being a mandatory reporter. Mrs. Sibley expressed frustration with the Arizona Nursing Board, ADOSH, her former employer, and Concentra.

Dr. Sibley and Mrs. Sibley made the decision to leave the meeting.

Chairman Schultz noted before they go, that he works in healthcare and it is critical to report, definitely is, if we do not expose these things, we do not make progress unless we expose what is going on.

Dr. Sibley noted the Commission took her seriously.

Chairman Schultz also hoped that she raised these serious concerns with the licensing agencies for those facilities.

Chairman Schultz appreciated her raising the issues and coming down to speak with us and we do want things to get better.

Dr. Sibley, Mrs. Sibley and Ms. Foutz left the meeting.

Mr. Atencio stated that ADOSH did investigate a complaint for safety and health, over the allegations for workplace violence as well as blood borne pathogens on February 26, 2019, and a response was sent to the Complainant on April 30, 2019. Mr. Atencio noted the discrimination case is separate.

Chairman Schultz knows the training on being respectful and treating everyone with concern and to take every complaint as legitimate so those are the things that are key in the agency. He assumed the other Commissioners also created a timeline, which indicates you cannot have reported an adverse action before the adverse action took place. The calls get to be irrelevant to them and what is important is then, is there evidence of either these things occurring that would cause equitable tolling and agreed with the analysis of going through that and using the WIM as the basis for that. We do not have control

over other agencies that she may have complained to that would have been frankly far more appropriate for the nature of the issues that she is finding concern with. Ours is purely to deal with the issue of her appeal on the ADOSH denial of her discrimination claim and that it was denied based upon being untimely and that is the sole issue that is before the Commissioners.

Commissioner LeMarr asked about the whole thing being about the timeline and timeliness and validity of her situation, and all about the timeliness and what kind of interview was conducted with the respondent - Mr. Gast described the process. Commissioner LeMarr, Mr. Gast and Mr. Atencio discussed the termination and that Mrs. Sibley has filed with Federal OSHA but ADOSH has not heard back from Federal OSHA on their open file.

Vice Chair Hennelly, Mr. Atencio, Mr. Gast and Commissioner LeMarr discussed that the date of termination and the dates of injury did not add up to be within the required 30 days.

Chairman Schultz noted the three options available to the Commission are to affirm, remand or overturn the decision of ADOSH.

Commissioner LeMarr noted this is going to call for speculation but it seems clear that there were phone calls to ADOSH on July 27th and July 31st before the alleged discrimination happened. So those calls would have been on safety. Mr. Gast responded on the intake interview with Mrs. Sibley and Ms. Rassi, Mrs. Sibley talked about contacting OSHA and telling them about the blood borne pathogen hazards, and the workplace violence hazards. Commissioner LeMarr asked if it was not about losing her job but was about an unsafe work environment and improper things going on and people hurt. Mr. Atencio added that the reports were not only for herself, but peers on the floor, also patient safety. Mr. Gast added it was also other issues that were not related to OSHA such as nursing practices. Commissioner LeMarr noted there was a safety inspection that did not identify any issues, and wondered if it was a thorough inspection of the whole facility or just the spot. Mr. Atencio noted that as an improvement with the compliance officers, under the additional information, they would only have it and would be expanded beyond the complaint items based on observed or complaint hazards, and that information is not listed.

Commissioner LeMarr asked if the inspection was solely based on the complaint received by Mrs. Sibley of patients on the floor, and patients not supported. Mr. Atencio noted the complaint is what ADOSH in the span of control can handle, patient safety is something different unless it is based upon something like ergonomics. In this instance, the Complainant is saying that she was assaulted, exposed to blood borne pathogens and improperly tested. They were not able to corroborate her claims, they asked questions of the management and follow-up with the policies and procedures and did interviews on sight with staff and those applicable to that area or the same type job duties and in this instance they do not have anything that was in violation of the OSHA standards.

Chairman Schultz asked for a motion to affirm, remand or overturn the decision of ADOSH.

Vice Chair Hennelly noted based on the timeline as best as determined, we cannot meet the necessary goal of establishing that the complaint was made timely. He wished there was more information on the calls, but it seems the most likely subject was the blood borne pathogens etc. that was talked about. Even at the earliest date that he sees from the record and described here today, which would have been the hearing in November 26, 2018, that is still over 30 days from the last date that he could determine would have been her termination date of October 17, 2018 and having trouble finding anything that would fit into those 30 days. Based on that, Vice Chair Hennelly moved to affirm the recommendation for appeal of ADOSH case 19-4067-13. Commissioner Krenznel seconded the motion.

Chairman Schultz, Vice Chair Hennelly and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr voted against the motion. The motion passed with a vote of 3 to 1.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

19-4067-13 Sibley v. Concentric Healthcare Solutions LLC

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

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.

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| Mission Royal Partners LLC | Complaint |
| 11 S Mission Pkwy | Years in Business: 3 |
| Casa Grande, AZ 85194 | Empl. Covered by Inspection: 6 |
| Site Location: 125 S Mission Pkwy | |
| Casa Grande, AZ 85194 | |
| Inspection No: T3633 -1452148 | |
| Inspection Date: 12/19/2019 | |

SERIOUS – Citation 1 - Item 1 –

- a) Shop: Employees maintained batteries and were exposed to sulfuric acid, and the emergency eyewash mounted on the east outside wall of the building did not work. 29 CFR 1910.151(c)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2 –

- a) 125 S Mission Pkwy, Casa Grande: Employees who operated the Caterpillar brand forklift, model V50D, serial number 3EC3308, had not been trained and evaluated. 29 CFR 1910.178(l)(1)(i)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 –

- a) Shop: The Central Machinery brand air compressor, unknown model and serial number, did not have a guard on the horizontal belt. 29 CFR 1910.219(e)(1)(i)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 4 –

- a) Shop: A circuit breaker panel located in the southeast corner did not have both sections of the dead front installed. 29 CFR 1910.305(d)(2)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00
TOTAL PENALTY - \$4,000.00 TOTAL FORMULA AMT. - \$4,000.00

and thanked them for what they did. He was in the wrong and did learn a few things that he should have learned five years ago.

Commissioner LeMarr moved to amend the Citation by proposing that items 1, 2, 3, and 5 be issued as proposed and that Item 4 be remanded for a total penalty of \$4,000.00. He believed Mr. Miller has indicated that there was an adequate amount of engineering survey of the structure and did not believe item #4 was applicable. Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Discussion and Action regarding the Appointment of Members to the Boiler Advisory Board.

Mr. Atencio explained that A.R.S. 23-486 requires the Industrial Commission to maintain a Boiler Advisory Board to assist the Commission in drafting standards and regulations for boilers, pressure vessels and lined hot water heaters. The Boiler Advisory Board consists of the following: One member who represents the boiler, pressure vessel or lined hot water heater manufacturer industry; One member who represents a public utility; One member who represents the insurance industry; One member who is an owner or operator of a boiler, pressure vessel or lined hot water heater; One member who is a licensed contractor. There are currently three positions to vote on.

Sheldon Lee with SRP is the only Public Utility nominee and if voted on and approved he will serve three additional years.

Either Bake Shaffer, Shaffer Dry Cleaning & Laundry or Bill Hay, Executive Director Western States Drycleaners & Launderers Association as Owner/Operators would replace Richard Walton.

John Soldinski with Emmerson Boiler Inc. and William Mann with Arizona Boiler Company as Licensed Contractors.

ADOSH and the Chief Boiler Inspector recommend: (1) the incumbent Sheldon Lee to continue in his position for Public Utilities, (2) Bake Shaffer for the Owner/Operator position, and (3) John Soldinski who is the incumbent and wants to continue in the Licensed Contractor position.

Mr. Ashley noted that Richard Walton, the incumbent for the Owner/Operator of a boiler, pressure vessel or lined hot water heater position has expressed to ADOSH that he appreciated his time on the Board however he does not wish to continue to serve.

Commissioner LeMarr moved to appoint Sheldon Lee, Bake Shaffer and John Soldinski to the Boiler Advisory Board and Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2020. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley noted that the nation and state are going through the once a decade US Census and the agency is being asked to assist the Arizona Office of Tourism, Debbie Johnson is the head of the Department and Chair of the 2020 Arizona Complete Count Census Committee. We will have posters

around the agency and additional promotional material and social media posts to assist with participation. There is also a full page of information in this quarter's ADOSH Advocate.

Mr. Ashley introduced Lee Charles Carpenter as the new Medical Resource Office Manager. Mr. Carpenter noted his experience and background.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley announced that next week will be a Safety Gemba and we will visit all divisions following the Commission meeting.

Mr. Ashley noted there will be several municipalities up for self-insurance renewal and a couple will be making presentations.

Ms. Dimas confirmed Commission meeting dates through April 2020.

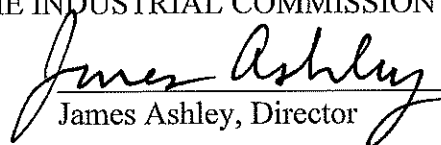
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenznel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenznel voted in favor of the motion and the meeting was adjourned at 2:46 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary