MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, January 11, 2018 – 1:00 p.m.

Present: Dale L. Schultz  Chairman
Joseph M. Hennelly, Jr.  Vice Chair
Robin S. Orchard  Commissioner
Steven J. Krenzel  Commissioner
Jason M. Porter  Acting Director
Jonathan Hauer  Acting Chief Legal Counsel
Renee Pastor  Self Insurance
Jacqueline Kurth  Medical Resource Office
William Warren  ADOSH Director
Billie G inggrass  Compliance Officer
Ellen Granillo  ADOSH Staff
Kara Dimas  Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Thomas Coccia with Automated HealthCare Solutions; Steve Cortright, David Cortright, and Michael Cortright with Western Bonded Products, Inc. dba Flex Foam; Tyler Damman and Malcolm Persen with Resolute Performance Contracting; Erica Davenport; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of December 21, 2017 Regular Meeting Minutes and December 14, 2017 Executive Session Minutes.

Commissioner Orchard moved to approve the Minutes of the December 21, 2017 regular session meeting and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner Krenzel moved to approve the Minutes of the December 14, 2017 executive session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel voted in favor of the motion. Commissioner Orchard 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. The Procter & Gamble Company
Commissioner Krenzel moved to approve the item on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action of Resolution Appointing Custodian of Records.

Mr. Porter discussed Frank Lopez’s employment with the Commission and recommended that he be appointed Custodian of Records and Special Assistant.

Commissioner Orchard moved to appoint Mr. Lopez as Custodian of Records and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Vice Chair Hennelly moved to appoint Mr. Lopez as Special Assistant to the Industrial Commission of Arizona and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.


Ms. Kurth discussed the current language found in Special Services Code AZ099-005 in the Arizona Physicians’ and Pharmaceutical Fee Schedule and related stakeholder confusion regarding its application. Ms. Kurth recommended that the language be changed to the following:

AZ099-005 Completion of workers’ compensation insurance forms (i.e., return-to-work status, work restrictions, supportive care recommendations), not to exceed one billing in a thirty (30) day period.

Ms. Kurth also recommended that the staff be permitted to correct and update the Fee Schedule accordingly and provide notice to stakeholders of the correction.

Chairman Schultz and Ms. Kurth discussed the nature of the stakeholder confusion and the intent of Special Services Code AZ099-005.

Commissioner Orchard and Ms. Kurth discussed the intent of the proposed modification.

Commissioner Krenzel moved to approve the proposed change to Special Services Code AZ099-005 and associated actions as recommended by staff. Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, 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.
Mr. Warren and Ms. Gingrass summarized ADOSH’s fatality investigation and reviewed the file and photographs. Mr. Warren stated that ADOSH did not recommend any citations.

Commissioner Orchard, Chairman Schultz, Mr. Warren, and Ms. Gingrass discussed whether: (1) appropriate training was in place; (2) the employer’s equipment was properly maintained; and (3) personal protective equipment was provided to employees. They also discussed additional testing performed on the subject equipment and ADOSH’s decision to hire engineers who evaluated whether the incident was related to an equipment malfunction.

A representative of the employer discussed the deceased employee and the impact of the employee’s death on the employer. Chairman Schultz and the representative discussed how the employer’s insurance had handled the matter.

As recommended by ADOSH, the Commission took no action.

SERIOUS – Citation 1 - Item 1 –

a) Building 3 east side: Two employees operated a Yale forklift model GLP050VXNVSE090, serial number B675V078865 with an attachment that was without the manufacturer’s prior written approval which affected the capacity of the forklift. (29 CFR 1910.178(a)(4)).

b) Building 3 east side: Two employees used a Yale forklift model GLP050VXNVSE090, serial B675V078865 with an aftermarket clamp attachment and the forklift had not been marked to show the approximate weight of the truck and attachment combination at maximum elevation with the load laterally centered. (29 CFR 1910.178(a)(5)).

   Div. Proposal - $5,000.00  
   Formula Amt. - $1,500.00

SERIOUS – Citation 1 - Item 2 –

a) 617 N 21st Ave, Phoenix, AZ 85009: Powered industrial truck (PIT) operator training and evaluation was not conducted by persons who had the knowledge, training and experience to train PIT operators in that the trainer did not provide information from the Yale model GLP 050VXNVSE090,
serial B675V078865 operators manual and believed the unapproved attachments did not affect the capacity of the PIT. (29 CFR 1910.178(l)(2)(iii)).

b) Building 3 east side: Two employees utilized a Yale forklift model GLP050VXNVSE090, serial B675V078865 and did not receive training on the specific operating instruction, warnings and precautions for the type of truck the operator was authorized to operate. (29 CFR 1910.178(l)(3)(i)(A)).

c) Building 3 east side: The employer did not provide effective employee training of the clamp attachment used on a Yale forklift model GLP050VXNVSE090, serial B675V078865 to recognize the weight, capacity and safe operating limitations. (29 CFR 1910.178(l)(3)(i)(G)).

Div. Proposal - $5,000.00
Formula Amt. - $1,250.00

SERIOUS – Citation 1 - Item 3 – a) Building 3 east side: One employee operated a Yale forklift model GLP050VXNVSE090, serial B675V078865 utilizing a clamp attachment and load, travelled with the load elevated approximately 12 feet 6 inches above the grade surface at a slope of approximately 1.5 to 2.5 degrees. (29 CFR 1910.178(n)(7)(iii)).

Div. Proposal - $5,000.00
Formula Amt. - $1,500.00
TOTAL PENALTY - $15,000.00
TOTAL FORMULA AMT. - $4,250.00

Mr. Warren discussed the fatality investigation, summarized the citation and proposed penalties, and reviewed the history and photographs.

Chairman Schultz discussed the grouping of the citations. Chairman Schultz, Mr. Warren, and Ms. Gingrass discussed the forklift’s seatbelt, maintenance, and labeling; the partial inspection focusing solely on the subject incident; the height of the subject load; and whether there were any visibility issues.

Commissioner Orchard and Ms. Gingrass discussed when the incident occurred and a safety audit that was conducted three days after the accident.

David Cortright discussed the incident, changes to the company’s forklift certification program, elimination of the second shift, and the company’s abatement efforts.

Commissioner Orchard and Mr. Cortright discussed the employer’s decision to eliminate the second shift.

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

Kay Construction, Inc.  Referral
1006 W. Frier Dr.  Years in Business: 26
Phoenix, AZ 85021  Empl. Covered by inspection: 8
Site Location: 3430 W. Aire Libre Ave.
Phoenix, AZ 85053
Inspection No: P2115-1251279
Inspection Date: 08/01/2017

REPEAT-SERIOUS – Citation 1 - Item 1 – 3430 W. Aire Libre Ave, Phoenix, AZ: Two employees engaged in framing activities on a one-story house, were not protected from falling over 17 feet 1 ½
inches to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(13)).

The Kay Construction, Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(13) which was contained in ADOSH inspection number 1184725, citation number 1, item number 1 and was affirmed as a final order on 12/16/2016, with respect to a workplace located at 16879 E. Palatial Dr., Fountain Hills, AZ 85268.

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SERIOUS – Citation 2 - Item 1 – 3430 W Aire Libre Ave: Two employees used an A-frame stepladder, (model and serial number unknown), as means of access and egress to the roof by stepping on the top step of the stepladder. (29 CFR 1926.1053(b)(13)).

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TOTAL PENALTY - $3,000.00 TOTAL FORMULA AMT. - $3,000.00

Mr. Warren summarized the citations and proposed penalties and reviewed the photographs.

Commissioner Orchard and Mr. Warren discussed the referral source for the inspection and the Repeat-Serious penalty calculation.

Chairman Schultz, Commissioner Orchard, and Mr. Warren discussed the subject ladder’s use, how the ladder’s use was determined, and proper use of ladders.

Commissioner Orchard and Mr. Warren discussed the employer’s citation history and whether a prior fall-protection citation was within the “repeat” timeframe.

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

Chairman Schultz, Commissioner Orchard, and Mr. Warren discussed Citation 2, Item 1 regarding the A-frame ladder.

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.

There was no discussion concerning this agenda item.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Warren discussed Ms. Granillo’s employment with the Commission and her decision to take a position with the Maricopa County Attorney’s Office. Mr. Warren and Chairman Schultz wished Ms. Granillo well and thanked her for her service.

Ms. Dimas confirmed Commission meeting dates through February 2018 and a Commission trip to Lake Havasu City planned for March 28-29, 2018.

Mr. Porter discussed a resolution reflecting action taken at the December 21, 2017 meeting pursuant to Arizona Administrative Code R20-5-1301(C).
Public Comment.

There was no public comment.

Commissioner Krenzel moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 1:47 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By [Signature]

Jason M. Porter, Acting Director

ATTEST:

Kara Dimas, Commission Secretary