

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, July 15, 2021 – 1:00 p.m.

Present: Dale L. Schultz	Chairman (Telephonic)
Joseph M. Hennelly, Jr.	Vice Chair (Telephonic)
Scott P. LeMarr	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)
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 was Stephanie Coulter (Gammage & Burnham).

Approval of Minutes of June 24, 2021 Regular Meeting Minutes, July 1, 2021 Regular Meeting Minutes and July 1, 2021 Executive Session Minutes.

Chairman Schultz asked Mr. Testini if the June 24, 2021 Minutes could be approved without Commissioner Krenzel. Mr. Testini explained open meeting laws were mute on this point and deferred to Robert's Rules of Order, which allows for a commissioner to approve Minutes even if they were not in attendance at that particular meeting.

Vice Chair Hennelly moved to approve the Minutes of the June 24, 2021 regular session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Commissioner LeMarr moved to approve the Minutes of the July 1, 2021 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. The motion passed.

Commissioner LeMarr moved to approve the Executive Session Minutes of the July 1, 2021 and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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 Proposed Civil Penalties Against Uninsured Employers.

1. 2CNP20/21-0610 A Golden Retreat Care Home \$1,000
2. 2NCP20/21-0673 Blueprints Therapeutic Services LLC \$1,000
3. 2NCP20/21-0651 Frontier House, PLLC \$1,000
4. 2CC20/21-0079 Load Star Builders LLC \$1,000

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

1. Truly Nolan of America, Inc.
2. Wal-Mart Associates, Inc.

Chairman Schultz commended Truly Nolan for their wonderful experience modification factor which consistently remains under their industry average.

Commissioner LeMarr moved to approve the items on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr 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.

MD Insulation of AZ, LLC	Fatality/Accident	
5647 S 42 nd Dr	Years in Business:	3
Phoenix, AZ 85014	Empl. Covered by Inspection:	5
Site Location:	948 E Impala Ave	
	Mesa, AZ 85204	
Inspection No:	V4364 - 1527620	
Inspection Date:	4/26/2021	

SERIOUS – Citation 1 - Item 1 –

- a) 948 E Impala Ave, Mesa, AZ 85204: Three employees were working from a mobile scaffold at a height of 11'6" and it had not been erected by a competent person. 29 CFR 1926.451(f)(7)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2a –

- a) 948 E Impala Ave, Mesa, AZ 85204: Three employees were working on a mobile scaffold that was 28" wide, 67" long and 11'6" high without an access. 29 CFR 1926.451(e)(1)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2b –

- a) 948 E Impala Ave, Mesa, AZ 85204: Three employees were insulating the ceiling of an office space from a mobile scaffold without locking the caster wheels. 29 CFR 1926.452(w)(6)
Div. Proposal - \$0.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2c –

- a) 948 E Impala Ave, Mesa, AZ 85204: Three employees were insulating the ceiling of an office space from a mobile scaffold without stabilizing it to a structure. 29 CFR 1926.452(w)(5)
Div. Proposal - \$0.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 2d –

- a) 948 E Impala Ave, Mesa, AZ 85204: Three employees were insulating the ceiling of an office space from a mobile scaffold without using outriggers. 29 CFR 1926.452(w)(6)(ii)
Div. Proposal - \$0.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 3 –

- a) 948 E Impala Ave, Mesa, AZ 85204: Three employees were insulating the ceiling of an office space from a mobile scaffold and riding it as work progressed. 29 CFR 1926.452(w)(6)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00

SERIOUS – Citation 1 - Item 4 –

- a) 948 E Impala Ave, Mesa, AZ 85204: Three employees were insulating the ceiling of an office space from a mobile scaffold without training. 29 CFR 1926.454(a)
Div. Proposal - \$1,000.00 Formula Amt. - \$1,000.00
TOTAL PENALTY - \$4,000.00 TOTAL FORMULA AMT. - \$7,000.00

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

Chairman Schultz asked Mr. Atencio why an electrical contractor was installing edging and Mr. Atencio explained that the generic NAICS code is applied.

Chairman Schultz commented that despite having experience and a competent person they engaged in several risky activities.

Mr. Atencio explained the determination to cite under the competent person not understanding how to put the thing together, the competent person is in charge of erecting and dismantling with mismatched parts that do not go together.

Chairman Schultz confirmed the decision to discontinue the use of the outrigger was made by the competent person.

Chairman Schultz noted he understands the grouping but would not be in favor of the grouping. He understood they are all related to be grouped, but they all contributed to the fatality. The castors were not locked which might have prevented this, or could have prevented this and the fact that they did not stabilize it to the structure or tie it off. The same for the outriggers and it frustrated him how a competent person would remove those outriggers because they were getting in the way.

Mr. Atencio noted the Chairman raised good points.

Vice Chair Hennelly agreed with the general concept that the grouping was generous and can see how they arrived at that conclusion especially as to the first two items that are grouped, the outrigger one seems to be a little different.

Commissioner LeMarr stated the proposed fine is pretty significant for a very small company with just a few employees.

Chairman Schultz appreciated Commissioner LeMarr's perspective.

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley updated the Commissioners with the AMS scorecard metrics for the fiscal year-to-date with the remaining divisions: MIS for their percentage of Cloud-First Milestones Complete and Website Internal Page Refresh; MRO for their number of Customer Service Interactions and Stakeholder Opioid Reduction Education; Special Fund for their number of Supervisory Reviews Completed, Claims Audited and Mr. Testini discussed the Full and Final Settlements; Mr. Ashley continued with Special Services ICA Voluntary Protection Program for Tucson. At a future meeting he will discuss some of the highlights from the new scorecard.

Chairman Schultz commented that he is eager to get back in person to being able to tour and see all of the boards and have a chance to talk to the folks about their incredible accomplishments. He was pleased that it has taken the Commission forward in productivity and employee engagement and it has been a multifaceted win and thanked Mr. Ashley and the team.

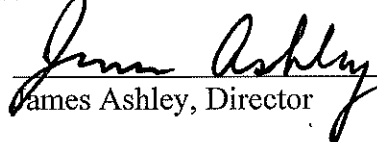
Ms. Dimas confirmed Commission meeting dates through September 2021. Commissioner LeMarr noted he would be available for August 26th.

Public Comment.

There was no other public comment.

Vice Chair Hennelly moved to adjourn, and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion and the meeting was adjourned at 1:53 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  _____
James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary