

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, June 15, 2017 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Scott P. LeMarr	Commissioner
	Steven J. Krenzel	Commissioner
	James Ashley	Director
	Jason M. Porter	Chief Legal Counsel
	Renee Pastor	Self-Insurance
	Jacqueline Kurth	Medical Resource Office Manager
	Renee Englen	Medical Resource Office
	William Warren	ADOSH Director
	Chris Brandon	Compliance Officer
	Billie Gingrass	Compliance Officer
	Brad Harbour	Compliance Officer
	Yvonne Borunda	Legal
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:01 p.m. Also in attendance were Marc Tomeoni, Mary Bobbitt, and Jeremy Bethancourt with The American Society of Safety Engineers (“ASSE”); James Clarke and Paul Wurzel with Express Messenger Systems, Inc.; Summer Roper, Beck Sheehan, Lee Martin and Rob Eaton with Roadrunner Pharmacy, Inc.; Jeff Reisz with Northdown Industries, Inc.; John Sharpe with Southwest Products/Pacific Power Group; Mark Lucas with Arizona Association Lawyers for Injured Workers (“AALIW”); Hugo Roth and Stacy McCreedy with Nestle Waters North America Inc.; and Clawson Williams with Snell & Wilmer.

Approval of Minutes of June 8, 2017 Regular Meeting Minutes and June 8, 2017 Executive Session Minutes.

Chairman Schultz postponed approval of the June 8, 2017 regular meeting Minutes and executive meeting Minutes to a future meeting.

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. 2C16/17-1921 928 Fleet Services, LLC., fka Interstate Tire N Auto LLC
2. 2C16/17-1534 Animal’s Kingdom Pet Sitting Service, Inc.

3. 2C16/17-1872 Apollo Health Care Inc., dba Apollo Residential Program
4. 2C16/17-0076 Birrieria Y Taqueria Cajeme LLC
5. 2C15/16-1916 Cortine Assisted Living LLC
6. 2C16/17-1608 Guiding Angels Assisted Living LLC
7. 2C16/17-1248 Hair J's Barber Shop
8. 2C15/16-2555 Jimin Cheon, LLC., dba Candlelight Cleaners
9. 2C16/17-1624 Maverick General Contractors LLC, dba New Sun Energies
10. 2C15/16-2077 Theocentric Electric LLC

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

1. Chevron U.S.A., Inc.
2. YRC Inc. dba YRC Freight

Commissioner Krenzel moved to approve the items on the Consent Agenda and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Stakeholder Presentation.

ASSE Chapter Secretary Mary Bobbitt discussed the origins and purposes of ASSE.

Mr. Bethancourt discussed ASSE's focus on community outreach, its distracted driving campaign, fall protection, talking at schools, and the impact on safety in everyday life.

Chairman Schultz and Mr. Bethancourt discussed the distracted driving campaign, referenced the website [www.drivesmartarizona.com](http://www.drivesmartarizona.com), discussed ASSE's heat awareness campaign, and the Safety Professional of the Year award.

ASSE Chapter President Marc Tomeoni discussed ASSE's efforts, the next chapter president, and the Commission partnering with ASSE.

Chairman Schultz discussed the Commission's partnership with ASSE.

Discussion and Action regarding the 2017/2018 Arizona Physicians' and Pharmaceutical Fee Schedule.

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Issue 1. Methodology to Determine the Values of Codes Under Review.

Ms. Kurth discussed her work with Public Consulting Group (PCG) to transition the Arizona Physician's and Pharmaceutical Fee Schedule methodology to a RBRVS-based reimbursement methodology, the import of the RBRVS-based fee schedule, and justification for transitioning to the RBRVS-based fee schedule. Ms. Kurth discussed public comments concerning the transition to RBRVS.

Staff recommended the following:

In order to manage potential disruptions stemming from significant reductions in the rates for individual procedure codes, staff recommended using a stop-loss measure that caps rate reductions at 25% across the entire fee schedule.

1. Staff did not recommend developing a special conversion factor for surgery or orthopedic codes. The current proposed conversion factor groups surgery and radiology, which serves to minimize reductions to surgery codes and ensure that over-valued radiology codes bear the brunt of reductions.
  - a. A separate conversion factor for surgery or orthopedics would not be able to target individual code outliers, and would only be able to reduce losses by essentially continuing to overpay for other codes.
  - b. A modification at the level of conversion factor potentially also dilutes the overall objectivity of the methodology.
2. All rates would continue to be calculated according to the RVU-based method, using the three recommended conversion factors.
3. Where the method results in individual RBRVS non-facility (NF) rate reductions greater than 25% of the 2016 ICA rate, the rate reduction would be capped at the 25% reduction.
4. Where the method results in individual RBRVS facility (FAC) rate reductions greater than 25% of the 2016 ICA rate, the rate reduction would be proportionate to the NF rate reduction (*i.e.* a code that has a 40% NF rate reduction would have 15% added to the rate so that the NF rate reduction is equal to 25%). The proportionate approach would add fifteen percent (15%) to the FAC rate reduction. This approach will maintain the overall objectivity of the RBRVS methodology.)
5. The stop-loss cap would apply to the entire fee schedule, not just specific categories of codes. Impartial application of a cap would promote fairness, impartiality, and transparency in the interest of ensuring a smooth transition.
6. Staff recommended establishing the stop-loss at a 25% reduction because that will target virtually all of the individual codes of concern.
7. Staff recommended implementing the stop-loss without a reciprocal stop-gain.
  - a. This would mean that providers expecting improvements in some rates (esp. E&M codes) would be able to see the benefits immediately, avoiding a zero-sum gain among different specialties.
  - b. Without a stop-gain, the Commission can preserve its goals of a re-centering of the fee schedule.

In response to Stakeholder comments, Staff also recommended the following:

1. Increase of five percent (5%) to the current Anesthesia Conversion Factor. This would change the Anesthesia Conversion Factor from \$58.10 to \$61.00.
2. Add three Arizona-specific codes that would allow physicians to bill for time spent meeting with nurse case managers and completing paperwork (such as return-to-work forms):

- a. AZ099-003 (\$75.00) Meeting with Nurse Case Manager, face-to-face with Patient.
- b. AZ099-004 (\$100.00) Meeting with Nurse Case Manager, without face-to-face contact with Patient.
- c. AZ099-005 (\$40.00) Completion of insurance forms (*i.e.* return-to-work status), more than the information conveyed in the usual medical communications or standard reporting form. The Commission may want to consider adopting the use of a standardized Physician's Return to Work form.

Issue 2. Methodology to Update the Values of Codes.

Ms. Kurth discussed the methodology to update codes. She noted that the same two-step methodology that was used to determine the current proposed fee schedule rates will be used to update reimbursement values for all service codes for years following 2017. Ms. Kurth addressed RVUs, back-filling, and the conversion factor. She stated that the majority of the public comments received, particularly from the physicians, support the transition to the RBRVS methodology.

Staff recommended that the Commissioners approve adoption of the RBRVS methodology as described under issue 2 to update the value of the codes annually under the Arizona Physicians' and Pharmaceutical Fee Schedule.

Issue 3. Adoption of Physicians as Assistants at Surgery: 2016 Update.

Ms. Kurth discussed the adoption of Adoption of Physicians as Assistants at Surgery: 2016 Update.

Staff recommended that the Commissioners approve adoption of the Physicians as Assistants at Surgery: 2016 Update.

Issue 4. Designation of Medi-Span as the Publication for Purposes of Determining Average Wholesale Price ("AWP").

Ms. Kurth discussed Medi-Span.

Staff recommended that this publication continue to be used for this purpose.

Issue 5. Payment to treating providers who participate in healthcare, preferred provider organizations, outcome based, or specialty networks.

Ms. Kurth discussed payment to treating providers who participate in healthcare, preferred provider organizations, outcome based, or specialty networks, and indicated that staff is continuing to review this issue. She noted that the Commission received an overwhelming support for the proposed network language from physical therapists, the Arizona Medical Association (ArMA), the Arizona Osteopathic Medical Association (AOMA), and physician groups.

Staff recommended that this issue be set aside in order to conduct further study and investigation into this issue.

Commissioner LeMarr and Ms. Kurth discussed rates for anesthesiologists.

Chairman Schultz, Commissioner LeMarr, and Ms. Kurth discussed the disparities between state fee schedules and Medicare.

Commissioner LeMarr and Ms. Kurth discussed concerns about physicians leaving the market and whether this concern accounts for the 25% cap on the fee change.

Chairman Schultz discussed the proposed conversion factors.

Chairman Schultz discussed the impact of the proposed state-specific codes.

Chairman Schultz discussed Physicians as Assistants at Surgery: 2016 Update and Medi-Span.

Chairman Schultz discussed postponing action on Issue 5. Chairman Schultz, Commissioner LeMarr, and Ms. Kurth discussed Issue 5.

Commissioner Krenzel and Ms. Kurth discussed state-specific codes.

Commissioner Krenzel moved to approve staff recommendations as presented. Commissioner LeMarr seconded the motion, noting that he would have preferred that more Commissioners were present to vote on the agenda item. Chairman Schultz, 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.

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Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Express Messenger Systems, Inc. dba OnTrac	Complaint
4440 E Elwood St., Ste 103	Years in Business: 25
Phoenix, AZ 85040	Empl. Covered by inspection: 55
Site Location: 4440 E Elwood St., Ste 103	
Phoenix, AZ 85040	
Inspection No: A3807-1220084	
Inspection Date: 03/27/2017	

SERIOUS – Citation 1 - Item 1 – Dock Exit: The exit route door was locked with a barrel bolt hasp device that required special knowledge, keys or tools for the employees to operate. (29 CFR 1910.36(d)(1)).

Div. Proposal - \$2,250.00 , Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 – Dock Door: One FlexMH conveyor model Maxx Reach, serial unknown was not provided with guarding to protect the operator and other employees in the equipment area from the ingoing nip points created by the moving conveyor belt. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$2,250.00 Formula Amt. - \$2,250.00



inspection, and filling process, and the system did not have guards along the end of the conveyor belt to prevent accidental contact with the moving parts of the conveyor belt which were sagging several inches below the conveyor belt system thereby exposing employees to caught-by hazards of getting caught between the moving conveyor belt and the frame of the system. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$975.00	Formula Amt. - \$975.00
TOTAL PENALTY - \$2,925.00	TOTAL FORMULA AMT. - \$2,925.00

Mr. Warren noted that Friday will be Chris Brandon's last day at ADOSH, after which he will move to the Arizona Department of Environmental Quality. Mr. Warren noted that he appreciated Mr. Brandon's time at the Commission.

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

Commissioner Krenznel and Mr. Warren discussed the good faith reduction.

Commissioner LeMarr and Mr. Brandon discussed dock height, dock adjustment, the transition to a new facility, and abatement at the current dock.

Mr. Warren noted that a good faith reduction is rare but that he felt it was warranted for this employer.

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

Mr. Warren requested that Roadrunner Pharmacy's citation and proposed penalties be presented to the Commission next. Chairman Schultz agreed to modify the presentation order.

Roadrunner Pharmacy, Inc. 711 E Carefree Hwy, Ste 140 <u>Phoenix, AZ 85085</u>	Complaint Years in Business: 18 Empl. Covered by inspection: 40
Site Location: 711 E Carefree Hwy, Ste 140 Phoenix, AZ 85085	
Inspection No: J7272-1219737	
Inspection Date: 03/24/2017	

SERIOUS – Citation 1 - Item 1 – Compounding rooms: Employees compounded several hazardous drugs from the NIOSH Hazardous Drug list where employees were not protected from exposure to those hazardous drugs by effective engineering controls such as a biological safety cabinet. (A.R.S. 23-403.A).

Div. Proposal - \$1,750.00	Formula Amt. - \$1,750.00
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SERIOUS – Citation 1 - Item 2 –

- a) Compounding rooms: Fit tests were administered to employees, for a required N95 filtering facepiece respirator, where the employee had more than 1 days' growth of facial hair which interfered with the respirator sealing surface. (29 CFR 1910.134(f)(5)).

- b) Compounding rooms: Employees required to wear N95 filtering facepiece respirators, were permitted to be worn when the employee had facial hair that came between the sealing surface of the respirator's facepiece and the employee's face. (29 CFR 1910.134(g)(1)(i)(A)).

Div. Proposal - \$1,400.00	Formula Amt. - \$1,400.00
TOTAL PENALTY - \$3,150.00	TOTAL FORMULA AMT. - \$3,150.00

Mr. Warren summarized the citations and proposed penalties. Mr. Brandon discussed his inspection and reviewed the photographs and report.

Commissioner Krenznel and Mr. Brandon discussed airflow.

Ms. Sheehan noted she has been the pharmacist in charge, and discussed the compounding area and ventilation system conditions. She indicated that the employer understood the respirator and beard issues. Ms. Sheehan indicated that the employer would like to contest Citation 1 – Item 1.

Mr. Eaton stated that he is the employer's owner. Chairman Schultz and Mr. Eaton discussed the benefit of being able to appear at Commission meetings. Mr. Eaton acknowledged the problems associated with his employees' beards. Chairman Schultz and Mr. Eaton discussed the difficulty associated with changes to the hazardous drug list.

Mr. Warren discussed the Commission's citation and penalty issuance procedure. Mr. Brandon noted that the subject citation penalty did not constitute a willful violation.

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

The Commissioners took a five minute break.

The Commission reconvened at 2:43 p.m.

Northdown Industries Inc. 4741 W Polk St <u>Phoenix, AZ 85043</u>	Referral Years in Business: 15 Emp. Covered by inspection: 11
Site Location: 4741 W Polk St Phoenix, AZ 85043	
Inspection No: W0250-1220418	
Inspection Date: 03/28/2017	

SERIOUS – Citation 1 - Item 1 – Warehouse: One employee was working on a conveyor belt near an Allen Bradley model Panel View Plus 600 product scale serial number unknown was not protected from rotating parts while performing his daily duties. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$5,000.00

Mr. Warren summarized the citation and proposed penalty and reviewed the photographs.

Chairman Schultz and Mr. Warren discussed the inspection and abatement.

Mr. Reiszwitz noted their company's recent move and the addition of new guarding to the subject machine.

Commissioner Krenzel moved to reduce the proposed penalty to \$2,500.00, citing the employer's good faith, including quick fix abatement. Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner LeMarr and Commissioner Krenzel thanked Mr. Reiszwitz for the quick abatement.

Southwest Products Corporation  
11690 N 132<sup>nd</sup> Ave  
Surprise, AZ 85379

Site Location: 11690 N 132nd Ave  
Surprise, AZ 85379  
Inspection No: D4452-1199763  
Inspection Date: 12/27/2016

Referral  
Years in Business: 65  
Empl. Covered by inspection: 5

SERIOUS – Citation 1 - Item 1 – Assembly Line: One employee used a cutoff wheel on the flange of a fuel storage tank that had flammable vapors present within the storage tank, resulting in a flash burn to his leg, hands and face. (29 CFR 1910.106(b)(6)).

Div. Proposal - \$5,000.00	Formula Amt. - \$5,000.00
TOTAL PENALTY - \$5,000.00	TOTAL FORMULA AMT. - \$5,000.00

Mr. Warren and Mr. Harbour summarized the citation and proposed penalty and reviewed the photographs.

Commissioner LeMarr and Mr. Harbour discussed the confined space and the position of the employee during the incident.

Mr. Sharpe discussed the subject employer and suggested that the incident was an anomaly. He stated that the company took corrective action and increased training.

Commissioner LeMarr noted his appreciation for the company's dedication to safety. Commissioner LeMarr and Mr. Sharpe discussed policy changes, abatement, and confined-space training.

Commissioner Krenzel and Mr. Sharpe discussed industry standard practice and whether the employee's action comported with company policy.

Mr. Ashley and Mr. Sharpe discussed the employee's condition. Mr. Harbour noted the employee was performing a non-routine task with an additional procedural step.

Commissioner LeMarr moved to reduce the proposed penalty to \$2,500.00, citing quick abatement, robust training, and the company's outstanding safety culture. Commissioner Krenzel seconded the motion. Chairman Schultz, 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 noted that the Commission's AMS audit went very well with some very helpful feedback. Chairman Schultz noted the Divisions' accomplishments.

Mr. Ashley noted that Chief Henry Darwin will become the U.S. Environmental Protection Agency's Chief of Operations.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley thanked the Commissioners for judging the Commission's AMS contest.

Mr. Clawson announced this was his last meeting and he is moving to a new opportunity and that he has learned a lot from the Commission.

Ms. Dimas confirmed meetings through July 2017.

Chairman Schultz, Commissioner LeMarr, Commissioner Krenzel, and Mr. Porter discussed holding a Commission meeting concerning Proposition 206 Rulemaking the week of June 19, 2017. Commissioner LeMarr and Mr. Porter discussed the Commission's authority to promulgate regulations. Mr. Ashley noted that he would provide updated rulemaking documents to the Commissioners once they are ready.

Public Comment

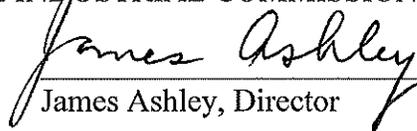
Mr. Lucas commented that he was just there to listen and that he felt that it was a very good meeting.

Chairman Schultz, Commissioner Krenzel, and Mr. Porter discussed the process for the annual review of the Physicians' and Pharmaceutical Fee Schedule. Mr. Porter contrasted this process with the rulemaking process.

Commissioner Krenzel moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion and the meeting adjourned at 3:18 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
James Ashley, Director

ATTEST:

  
Kara Dimas, Commission Secretary