MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, June 25, 2020 – 1:00 p.m.

Present: Dale L. Schultz Chairman (Telephonic)
Joseph M. Hennelly, Jr. Vice Chair (Telephonic)
Scott P. LeMarr Commissioner (Telephonic)
Steven J. Krenzel 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)
Charles Carpenter Medical Resource Office Manager (Telephonic)
Renee Englen Medical Resource Office (Telephonic)
Renee Pastor Self Insurance (Telephonic)
Lisa Padgett Labor Director (Telephonic)
Victoria Kamm Labor Supervisor (Telephonic)
Jennifer Krainski Labor Investigator (Telephonic)
Jessie Atencio ADOSH Director (Telephonic)
John Acosta Compliance Officer (Telephonic)
Anna Maria Stonerock ADOSH Admin (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 were Teresa Watson (Court Reporter); Mark Klingensmith (Comfort Systems); Shawn Koval, Chris Braamse and Andrew Brought (D.H. Pace); Randy Cates and Justin Aldes (Seacap plastics); Christine Glover (Snell & Wilmer); Gale Vogler (CopperPoint); Greg Gilbert (Concentra); Brian Allen (Mitchell International); Brett Barratt (NCCI); and Sandy Shtub and Isabel Hernandez (Healthsystem).

Public Hearing regarding the 2020/2021 Arizona Physicians’ and Pharmaceutical Fee Schedule established under A.R.S. § 23-908(B).

Chairman Schultz welcomed interested parties to the public hearing and noted the public hearing gives stakeholders an opportunity to comment on staff proposals regarding the 2020/2021 Arizona Physicians’ and Pharmaceutical Fee Schedule and the recommendations for changes to the Fee Schedule.

Mr. Carpenter reviewed the six items in the staff proposal.

Mr. Ashley noted that over the last month, as of today’s Commission meeting, one written comment was received and posted on the Medical Resource Office page from the Arizona Counties Insurance Pool.

The following attendee addressed the Commission during the Public Hearing: Greg Gilbert (Concentra).
At the conclusion of the testimony, Chairman Schultz noted that the record will remain open for written comments until the close of business on July 2, 2020. Comments received by the Commission will be placed on the Commission’s website, including the transcript from today.

A written transcript of the Public Hearing is attached hereto.

Approval of Minutes of June 11, 2020 Regular Meeting Minutes.

Commissioner Krenzel moved to approve the Minutes of the June 11, 2020 regular session meeting and Commissioner Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel 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. 2CC19/20-0097 Jon Mark McDowell dba All Star Plumbing & Rooter aka All Star Rooter & Plumbing $1,000
2. 2CSP19/20-0151 Rebound Gymnastics West LLC $1,000
3. 2CNP19/20-0565 Let's Help Movers LLC $10,000

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

1. Pinnacle West Capital Corporation

Chairman Schultz removed a.1. Jon Mark McDowell dba All Star Plumbing & Rooter aka All Star Rooter & Plumbing as they are in the process of obtaining insurance. Chairman Schultz also commended Pinnacle West Capital Corporation for their excellent safety record and low experience modification factor. Commissioner Krenzel requested a.3. Let's Help Movers LLC be moved to the regular agenda for an additional comment. Vice Chair Hennelly moved to approve the remaining items on the Consent Agenda 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.

Approval of Proposed Civil Penalties Against Uninsured Employers.

2CNP19/20-0565 Let's Help Movers LLC $10,000

Commissioner Krenzel noted there are not too many $10,000 civil penalties requested and asked Mr. Testini to discuss the process in this matter.
Mr. Testini noted the $10,000 penalty comes by way of being the third civil penalty assessed against Let’s Help Movers LLC. The first was in May 30, 2019, the second was May 14, 2020. They had insurance canceled on February 19, 2020, and this is an employer who will obtain insurance and then drop it once they have complied. In this case, this is the third penalty and that is why it is the maximum of $10,000.

Commissioner LeMarr moved to approve the $10,000 civil penalty assessed against Let’s Help Movers LLC for failure to provide workers’ compensation insurance to protect their employees. 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 Action regarding Proposed Youth Employment Penalty.

CL-1819-0425 D'Mar Pizza, Corp. DBA Sardella's Pizza & Wings
CL-1819-0484 D'Mar Pizza, Corp. DBA Sardella's Pizza & Wings

Ms. Padgett summarized the Labor Department’s investigation for two separate reports of injury involving for the same business and location, which included findings of various violations of A.R.S. § 23-232 (A)(8)(b). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of $1,000.00.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

Vice Chair Hennelly moved to approve issuance of a Civil Penalty in the amount of $1,000.00 to D'Mar Pizza, Corp. DBA Sardella's Pizza & Wings. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

CL-1920-0001 Hei-Tek Automation, LLC

Ms. Padgett summarized the Labor Department’s investigation, which included findings of various violations of A.R.S. § 23-232(A)(4). Ms. Padgett recommended that the Commission approve issuance of a Civil Penalty in the amount of $500.00.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

Commissioner Krenzel moved to approve issuance of a Civil Penalty in the amount of $500.00 to Hei-Tek Automation, LLC. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

Chairman Schultz commented on the excellent work from Ms. Padgett and her team.

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.
R.U.R. Transportation, Inc.  
1364 El Rey Ct  
El Cajon, CA 92021  

Fatality/Accident  
Years in Business: 7  
Empl. Covered by Inspection: 1  

Site Location: 616 W 24th St  
Tempe, AZ 85282  
Inspection No: R2410-1455859  
Inspection Date: 1/10/2020  

Mr. Atencio summarized ADOSH’s fatality investigation and reviewed the file and photographs. This file is related to D.H. Pace. He noted that ADOSH was not recommending a citation.

Chairman Schultz checked if anyone on the phone would like to comment. There were no comments.

The Commission took no action.

D.H. Pace Company, Inc.  
616 W 24th St  
Tempe, AZ 85282  

Fatality/Accident  
Years in Business: 47  
Empl. Covered by Inspection: 13  

Site Location: 616 W 24th St  
Tempe, AZ 85282  
Inspection No: R2410-1455918  
Inspection Date: 2/19/2020  

SERIOUS – Citation 1 - Item 1 –

a) 616 W 24th St, Tempe, AZ 85282: An employee operated a Hyster brand forklift, model #H50XT and serial #A380V06149S, without safely arranging a steel dock level on the forklift tines. 29 CFR 1910.178(o)(1)  
Div. Proposal - $2,500.00  
Formula Amt. - $2,500.00

SERIOUS – Citation 1 - Item 2 –

a) 616 W 24th St, Tempe, AZ 85282: Two employees operated a Hyster brand forklift, model #H50XT and serial #A380V06149S, without receiving training. 29 CFR 1910.178(l)(1)(ii)  
Div. Proposal - $5,000.00  
Formula Amt. - $5,000.00

TOTAL PENALTY - $7,500.00  
TOTAL FORMULA AMT. - $7,500.00

Mr. Atencio discussed ADOSH’s investigation noting this file is in conjunction with R.U.R. Transportation, Inc. and the write up is the same except for the citations. He summarized the citation and proposed penalties.

Commissioner LeMarr noted he thought it was a good investigation and reached the same conclusion the compliance officer did. It was obvious the right tines were not on the forklift to pick up this heavy piece of equipment.

Chairman Schultz and Mr. Atencio discussed the recommendation for solely a training citation and not citations for the condition of the forklift given that the daily checks were done, emergency
equipment was operational, and it was not about the condition of the forklift, it was simply about the failure to use the appropriate additional tines to safely move the load.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Braamse, the Corporate Safety Director for D.H. Pace, thanked the Commission for hearing this matter and inviting their participation in the proceedings. D.H. Pace takes the safety and health of their employees, customers and anyone impacted by their operations very seriously. This incident has deeply impacted the company and employees. In response to this incident D.H. Pace has taken a holistic approach and overhauled the forklift safety program because this incident really exposed that they had a safety gap. They immediately stopped all operations in the company pending each operator being retrained on forklift operations to include a practical evaluation internally done by a trainer within the company. All managers, field and warehouse employees signed a document indicating that they understand that they are not to operate any forklift unless they are properly trained and authorized by the company. They have updated and re-implemented their forklift program to include stronger language outlining specifically who in the company is responsible for ensuring that forklift operators are trained and authorized prior to operating a forklift. They have included a procedure that requires a spotter to be on the ground, in a safe location, any time off loading so the spotter and forklift operator can communicate. Also they have changed how they handle the dock levelers by making sure there are six foot long tines on the dock levelers and they are in the process of going through all other equipment and making sure that any manufacturers’ instructions on safe handling is known and incorporated into training and handling procedures.

Chairman Schultz thanked Mr. Braamse for sharing and noted it is exactly the kind of response that the Commission appreciates. The Commission is focused on trying to make sure that employers create the safest environment possible for their employees.

Commissioner LeMarr moved to amend the proposed Citations with a 20% reduction for good faith, prompt abatement, changes in training and commitment to safety that the employer has demonstrated. The total penalty would be reduced from $7,500 to $6,000. Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.

SeaCa Plastic Packaging, LLC
13549 W Willow Ave
Surprise, AZ 85379

Site Location: 13549 W Willow Ave
Surprise, AZ 85379

Inspection No: I2479 -1464119
Inspection Date: 2/19/2020

Fatality/Accident
Years in Business: 1
Empl. Covered by Inspection: 13

SERIOUS – Citation 1 - Item 1 –

Div. Proposal - $3,000.00
TOTAL PENALTY - $3,000.00

Formula Amt. - $3,000.00
TOTAL FORMULA AMT. - $3,000.00
Mr. Atencio discussed ADOSH’s investigation, summarized the citation and proposed penalty, and reviewed the photographs.

Vice Chair Hennelly noted a typographical error to the years of operation and number of employees to be able to qualify for the size reduction of 40%.

Chairman Schultz and Mr. Atencio discussed that the citation is not related to the fatality, but rather the training citations are for two other employees and discussed the length of the project and whether the employee had operated the same lift for the same function before during the two weeks.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Cates, the General Manager at SeaCa Plastics, noted SeaCa is a family owned company and this fatal accident has impacted the company and employees tremendously. He noted it is a brand new facility in Arizona and did not anticipate anything like this happening. For that they need to become a better company and hopefully what they will be on the other side of this. They have hired a person to focus more on safety and health of the employees, sent all of the maintenance employees through aerial lift training and certification. There was a seasoned maintenance crew with experience in prior jobs with aerial lifts and the urgency to get them certified was not the focus. In hindsight it should have been done differently. They have trained all of their employees now and hopefully with the right program in place this will never happen again because it has impacted them in a way they never really had envisioned.

Chairman Schultz thanked Mr. Cates for his honesty and commitment to safety.

Chairman Schultz offered Mr. Cates ADOSH consultation services to inspect and help build a program with no jeopardy of being fined as long and anything they find would be fixed when this issue is resolved.

Mr. Cates was aware of ADOSH consultation services and planned on using that service. He has used ADOSH consultation services before, and as bad as this process has been, ADOSH and everybody that came during the investigation has been very helpful.

Chairman Schultz thanked him for the comments and noted that Mr. Atencio works hard to make sure his teams take as much of a consultative approach as they can, the Commission’s desire is to have Arizona be the safest state in the nation.

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 LeMarr and Commissioner Krenzel voted in favor of the motion. The motion passed.
a) Warehouse: A Mitsubishi brand forklift, model #FG30 and serial #F13C-30738, had damaged brakes and was not taken out of service.

b) Warehouse: A Mitsubishi brand forklift, model #FG30 and serial #F13C-30738, had a damaged seat and was not taken out of service. 29 CFR 1910.178(p)(1)

Div. Proposal - $2,125.00  
Formula Amt. - $2,125.00

SERIOUS – Citation 1 - Item 1b –

a) Warehouse: A Mitsubishi brand forklift, model #FG30 and serial #F13C-30738, was inspected and not taken out of service for damaged brakes. 29 CFR 1910.178(q)(7)

Div. Proposal - $0.00  
Formula Amt. - $2,125.00

NON-SERIOUS – Citation 2 - Item 1 –

a) 2010 N Forbes Blvd Ste 103, Tucson, AZ 85745: The in-patient hospitalization of an employee was not reported to ADOSH within 24 hours. 29 CFR 1904.39(a)(2)

Div. Proposal - $850.00  
Formula Amt. - $850.00

TOTAL PENALTY - $2,975.00  
TOTAL FORMULA AMT. - $8,100.00

Mr. Atencio discussed ADOSH’s investigation, summarized the citations and proposed penalties.

Chairman Schultz checked if anyone on the phone would like to comment.

Mr. Klingensmith, Director of Safety and Risk Management for Comfort Systems, stated the worker has returned to work and is doing well. What they have determined is that their inspection process failed, so the safety committee determined more layers were needed for the inspections to be looked at and a safety person who goes and inspects the construction job sites in Tucson and inspecting that shop to make sure it does not get out of hand and reviews the inspections on the forklift. Mr. Klingensmith discussed the reasons for the failure to report. All of the company’s administrators now understand the reporting process for a catastrophe or fatality and the applicable reporting time limits. While Comfort Systems feel they have a very good safety culture with an experience modification rate of .59, in this instance they failed one of their employees, and although the fines are extreme, they need to improve.

Chairman Schultz noted he appreciated his comments and wonderful news the employee is back to work. That is a devastating injury. Mr. Klingensmith noted he came back on restrictive duty and that they accommodate and take care of their workers, they are the most important asset and the company is not happy and disappointed when they fail them. They have learned from it and they think they are better now, but have to continue to improve.

Commissioner LeMarr moved to approve the citation and proposed penalties as presented 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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.
Mr. Ashley announced that on Monday the Labor Department will be rolling out the new IT Labor system replacing a multi decade old Voyager system. This will be a Salesforce based platform consistent with the Claims and ALJ systems with critical features to integrate submitted online forms and automatically populate into the new system, and will save 40% of the time for many tasks conducted by the investigators and support staff.

Chairman Schultz noted that was amazing news.

Mr. Ashley issued a directive for the Phoenix and Tucson buildings that masks should be worn in public areas by employees and visitors. This is consistent with the Governor’s guidance for individuals to wear masks when they are unable to physically distance and when in public, and the importance of wearing cloth face coverings which is also consistent with the direction from the Arizona Department of Health Services.

Chairman Schultz thanked ADOSH for their contribution to Valleywise of N95 masks.

Ms. Dimas confirmed Commission meeting dates through August 2020. Commissioner LeMarr noted he would not be available on August 14 or 27.

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 LeMarr and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 2:40 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley, Director

ATTEST:

Kara Dimas, Commission Secretary
INDUSTRIAL COMMISSION OF ARIZONA
PUBLIC HEARING

REPORTER'S TRANSCRIPT OF TELECONFERENCE PROCEEDINGS

Staff Proposal and Request for Public Comment Regarding
2020/2021 Arizona Physicians' and Pharmaceutical Fee Schedule

Industrial Commission of Arizona
Phoenix, Arizona
June 25, 2020
1:00 p.m.

Prepared by:
Teresa A. Watson, RMR
Certified Court Reporter
Certificate No. 50876

Prepared For:
INDUSTRIAL COMMISSION OF ARIZONA
REPORTER'S TRANSCRIPT OF TELECONFERENCE OPENING REMARKS
AND PUBLIC HEARING COMMENTS, 2020/2021 ARIZONA PHYSICIANS' AND
PHARMACEUTICAL FEE SCHEDULE PUBLIC HEARING, was reported by
Teresa A. Watson, Registered Merit Reporter and a Certified
Reporter in and for the State of Arizona.

STAFF PARTICIPANTS:

Dale Schultz, Chairman
Joseph Hennelly, Vice Chair
Scott LeMarr, Commissioner
Steven Krenzel, Commissioner
James Ashley, Director
Gaetano Testini, Chief Counsel
Jason Porter, Deputy Director
Charles Carpenter, MRO Manager
PUBLIC COMMENTS

SPEAKER:

Greg Gilbert.......................... 9
CHAIRMAN SCHULTZ: Our first item of business today is the public hearing regarding the Arizona Physicians' and Pharmaceutical Fee Schedule, and let's start by reminding everyone this public hearing is being held to give members of the public and Commission stakeholders an opportunity to comment on staff proposals regarding the 2020/2021 Arizona Physicians' and Pharmaceutical Fee Schedule and to make additional recommendations for changes to the Fee Schedule. The Staff Proposal has been posted on the Commission's website for the last month.

To help with background noise, your phones have been put on mute. As I said, star six will get you off of mute. If you wish to make a comment, announce yourself and who you are representing.

Charles Carpenter, the Manager of the Medical Resource Office, will provide a brief overview of the staff proposal. Charles.

MR. CARPENTER: Good afternoon, Chairman, Commissioners, Director Ashley, colleagues and guests. Thank you for the time to present the Staff Proposal for the 2020/2021 Physicians' and Pharmaceutical Fee Schedule.

First, the staff recommends the updated service codes, relative value units and reimbursement values as
presented in the Excel tables accompanying the published proposal. The methodology used in computing reimbursement values has not changed from previous years and is outlined (audio interruption). Staff recommends maintaining the RBRVS conversion factors used in the 2019/2020 Fee Schedule. The proposed 2020/2021 Fee Schedule will continue to use CMS's surgical global periods, assign RVUs to consultation services, delineate codes that are unique to Arizona, and not incorporate a geographical adjustment factor. The proposed Fee Schedule codes were calculated using a stop loss cap to service codes whose reimbursement values decreased by more than 25 percent and a stop gain cap to any service codes whose reimbursement values saw an increase of more than 17 and a half percent.

Second, the proposed Fee Schedule continues to designate Medi-Span as the source to determine average wholesale price and determine reimbursement values for pharmaceutical products.

Third, changes are also proposed throughout the 2020/2021 Fee Schedule to clarify the definition and usage of the terms "physician" and "healthcare provider." These changes are intended to conform with the language used by CMS, which defines physicians as those healthcare providers who can provide evaluation and management services according to their scope of practice and Arizona law.

Fourth, staff proposes several revisions to the
introduction section, including the addition of statutory
language to reinforce the timelines and expectations established
by Arizona Revised Statute 23-1062.01, the addition of a
requirement that payers provide proof of valid contracts when
contractual fees disputes with healthcare providers arise, and
the addition of clarification that a current invoice for
materials and supplies is one which is dated within one year of
use.

The addition of the language requiring the payers
to provide proof of valid contracts is intended to expedite
resolution of disputes where a payer contends that the provider
is bound to specific fees based on a contractual agreement with
the payers. The clarification of current invoice is intended to
prevent DME providers from billing for goods based on
non-current purchases orders which may not reflect actual costs
or values of the goods.

Fifth, staff proposes including of four HCPCS
codes that were adopted by the Commission in March 2020 in
response to the spread of COVID-19. Two of the codes are for
virtual check-ins by physicians, and they represent changes to
the Evaluation and Management section. The other two codes are
used for lab testing to detect a COVID-19 infection and are
found in the Pathology and Laboratory section.

Finally, staff proposes clarification to the
description of Arizona Service Code AZ099-005. This billing
code is used when healthcare providers spend additional time 
completing workers' compensation insurance forms. During the 
course of typical treatment, each respective healthcare provider 
is expected to properly document their work according to the 
laws governing their respective practices. Exams, re-exams, 
evaluations and consultations are currently paid at a rate to 
compensate the healthcare provider for their time to document 
patient encounters. Arizona Service Code AZ099-005, however, 
was intended to be used in cases when additional paperwork is 
required either by the Commission, applicable payer, or third-
party administrator, not as a means of increasing revenue based 
on standard medical documentation.

Staff recommends the clarified language presented 
in the proposal to ensure that the code can only be used when an 
additional form is either requested by a payer or required by 
the Commission. The Medical Resource Office appreciates your 
time considering this proposal, and I am happy to take any 
questions from the Commission.

CHAIRMAN SCHULTZ: Thank you, Charles.

Do any of the commissioners have any questions 
for Charles over the proposed changes to the Fee Schedule?

Hearing none, I will now welcome our friends on 
the phone to present oral comments and recommendations regarding 
the 2020/2021 Fee Schedule. The Fee Schedule's been posted on 
our website for a month, and I don't show that we've had anyone
who has requested an opportunity to speak, and so I now would
like anyone who wishes to speak, please, just star six, unmute
yourself, and you can have up to five minutes to speak, to make
comments, to make recommendations.

At the beginning of your comment, for the record
and for the court reporter, please state your name, spell it and
state who you represent. At the conclusion of your comments,
the commissioners and staff may ask you questions.

In the interest of time, please do not repeat
what other speakers have stated. If you agree with what has
been said, simply state as such.

Although the public hearing will end when oral
comments have concluded, written comments will be accepted
through the close of business on Thursday, July 2nd, 2020. Once
the record is closed, the Medical Resource Office and Commission
will carefully consider all comments and available information
and data prior to taking formal action related to the Fee
Schedule. With that, I offer the opportunity for anyone who
wishes to make comments or recommendation, please do so now.
Remember, star six, unmute yourself.

Do we have anyone who wishes to make comments or
recommendations concerning the Fee Schedule?

DIRECTOR ASHLEY: Mr. Chairman.

CHAIRMAN SCHULTZ: Yes.

DIRECTOR ASHLEY: While we're waiting for anyone
on the line that would like to make a comment, I'd just like to note that over the course of the public comment period, over the course of the last month, we have just received one written comment that is posted on our Medical Resource Office page, and that is from the Arizona Counties Insurance Pool.

CHAIRMAN SCHULTZ: Thank you, James.

MR. GILBERT: Hi. This is Greg Gilbert. Can you guys hear me?

CHAIRMAN SCHULTZ: Yes, Greg.

MR. GILBERT: Greg Gilbert with Concentra. I do have a few comments and just a bit of history here that will probably back up why I'm asking the question.

I was involved, gee whiz, going back to 2013 and 2014 with the original committee that was put together to look at then we called ourselves the Arizona Fee Schedule Methodology Committee that was put together to look at a change in the Fee Schedule process for Arizona. And in fact, we developed a letter that was dated January the 14th that was sent to the then commissioner at the time that was giving recommendations that ended up being really part of the original RFP process in the original study that came out back in 2016, in April.

And as part of both the original letter that the Fee Schedule Committee put together and even a discussion in that original study that was proposed, there was discussions about the use of a -- some type of inflationary increase factor
associated with the conversion factor and the annual increase.
So, in essence, annual update to the relative values, which we
have. Multiple conversion factors was the recommendation, which
was what we have, and then there was a discussion about each
year looking at an annual inflator, which is pretty much exactly
what happens with the Medicare process and many other states
that use this same basis.

And so inherently in our discussions, we had
several caveats, and one of them was looking at either like a
Medicare Economic Index, otherwise known as MEI, which a lot of
states today, work comp. states use today, or some other Arizona
inflationary that was decided.

And what I've noticed over the last couple years
of our updates here is it looks like everything is being
followed with the exception of looking at the conversion factor.
The reason why that was important is that, number one, it mimics
the process that happens in both with CMS and with other states,
but one of the ways we were able to get consensus on the
committee, especially from the medical community, was we were
going to have a fee schedule process that was updated annually,
and not every four years, and we were trying to mitigate large
swings in terms of either increases or decreases, which is what
we had seen prior to this change.

And so with that, we talked about the Medicare
Economic Index, which is typically 1 percent or less every year
in terms of an inflation factor applied to a conversion factor, which we thought was reasonable given that, you know, most physician practices see those type of increases each year just at a minimum in terms of staff increases.

Well, I say all of that because when we did the calculation of this year's Fee Schedule -- in the previous year it was pretty much flat, which means there really wasn't any material increase or decrease. When we calculated this year's Fee Schedule, we came up with an actual decrease, about a 1 percent decrease in overall fees, and I bring that up just to let you know the history of what we were thinking when we went through this process of the update is that we wanted some type of small inflationary factor to help medical providers manage their yearly increases in their cost of doing business.

And so my long-winded commentary was to come up with a question of is that something that is going to be considered in the future in terms of these updates? And I would ask that it be considered even this year of some type of inflationary factor to be applied to the conversion factor, along with the updated relative values.

And then the final thing is that we did notice something a little strange, and I'm not sure -- we're going to go back and double-check it, but you know, we have some states -- well, we have lots of states that use the same methodology that Arizona uses, and in those states we were
seeing slight increases based on the relative value changes from 2019 to 2020, plus a conversion factor change, and -- even without a conversion factor change, we saw a general slight increase in our codes, and none of the codes hit the cap on either side.

And what we found with Arizona when we looked at that was, instead of a 1 percent decrease, if you just compared the relative value changes, which theoretically is what Arizona did, unless I don't know something, which is my question, you would have seen an actual about 1.44 percent increase in the codes that we use as opposed to a decrease, and so our question is, is did the Commission go in and look at individual codes and change those? And again, I know I'm saying none of these codes saw any mirror to the cap increase or decrease limits that you have in terms of changes from last year relative values to this year relative values. So if you have a stagnant conversion factor, which means that has not changed, and the only thing that changed was the relative value from 2019 to 2020, the question is: What happened? And why are we seeing a decrease versus an increase?

I'll shut up now and answer any questions if there are any.

CHAIRMAN SCHULTZ: Thank you, Greg. Do any of the commissioners have any questions for Mr. Gilbert?
If not, I would like to at least briefly answer some of your questions. So first is in terms of, let's say, looking at individual codes. We do, but generally we only spend time on things that appear to be outliers. I will also tell you that overall, we look very carefully and do a significant comparison with other medical payer systems to look at where workers' compensation is relative to other payers, because the Commission is very interested in not only keeping us competitive, but as we've taken actions in the past to include provisions for paperwork, which we knew -- which we've heard for many, many years was a detriment to providers participating in workers' compensation. So we very much do a comparison to what other payers are paying, and then we also look very closely at how our reimbursement compares to the reimbursement in other states.

But most of all, Greg, you know, you have until the 2nd to submit written comments, and I would very much appreciate it if you would submit that information in -- you know, in writing so that then we can take a look at it, because I'll tell you, I'm terrible with taking notes. I probably didn't get down correctly what your issues were and the amount. So please submit it to us, because I will tell you that the overriding desire of the Industrial Commission is to make certain that providers are compensated fairly for the work they're doing so that injured workers in the state of Arizona
can expect to be treated by the best and to not get short-tripped as compared to other patients in the offices of our providers.

So thank you very much for taking us down history lane a bit, Greg, also. That was an interesting time, and we did very much appreciate the work of the group in helping us to determine how we would restructure the medical Fee Schedule.

So do any of the commissioners have any other comments or questions of Mr. Gilbert?

James or Charles, any comments?

Otherwise, I'll ask for anyone else on the phone who is interested in making comments or offer recommendation. Please do star six. Star six, unmute yourself, announce yourself, and let us hear what you have to say.

Okay. And once again, please remember that the -- we will accept written comments through the close of business on Thursday, July 2, 2020. Once the record is closed, we will then carefully review in the Medical Review Office and the Commission all of those comments and recommendations and suggestions that are received. So please do file any written comments you might have before that July -- close of business on July 2nd. Thank you.

If no one else has any further input to offer, I'd like to close this public hearing on the Arizona Physicians' and Pharmaceutical Fee Schedule and move to the next item of
business on our Commission agenda.

(End of public comments.)

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CERTIFICATE

I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof, and that the foregoing 15 pages constitute a full, true and correct transcript of said shorthand record; all done to the best of my skill and ability.

DATE at Phoenix, Arizona the 7th day of July 2020.

/s Teresa A. Watson
Teresa A. Watson, RMR
Certified Court Reporter
Certificate No. 50876