

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, June 29, 2017 – 1:00 p.m.

|          |                   |                             |
|----------|-------------------|-----------------------------|
| Present: | Dale L. Schultz   | Chairman                    |
|          | Scott P. LeMarr   | Commissioner                |
|          | Robin S. Orchard  | Commissioner (telephonic)   |
|          | Steven J. Krenzel | Commissioner                |
|          | James Ashley      | Director                    |
|          | Jason M. Porter   | Chief Legal Counsel         |
|          | Renee Pastor      | Self-Insurance              |
|          | William Warren    | ADOSH Director              |
|          | Yvonne Borunda    | Acting Commission Secretary |

Chairman Schultz convened the meeting at 1:02 p.m. Also in attendance were Paloma Diaz, Legal Division Intern; Victoria Burke with The Triumph Group Operations, Inc.; Kevin Martenson and Scott Martenson with Martenson Construction; Stephanie Coulter with The Cavanagh Law Firm; Grant Hanna with the Arizona State Senate; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of June 8, 2017, June 15, 2017 and June 22, 2017 Regular Meeting Minutes and June 8, 2017 Executive Session Minutes.

Commissioner Krenzel moved to approve the Minutes of the June 8, 2017 Regular Session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner Krenzel moved to approve the Minutes of the June 8, 2017 Executive Session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner Krenzel moved to approve the Minutes of the June 15, 2017 Regular Session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, and Commissioner Krenzel voted in favor of the motion. Commissioner Orchard abstained. The motion passed.

Commissioner Krenzel moved to approve the Minutes of the June 22, 2017 Regular Session meeting and Commissioner Orchard seconded the motion. Chairman Schultz, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr 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.

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a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C16/17-1590 Designer Shades LLC
2. 2C16/17-1982 Elite 1 Academy for Academics and Athletics, LLC
3. 2C15/16-2187 Iconic Freight Solutions, LLC
4. 2C16/17-1934 Leon Furniture
5. 2C16/17-1265 Loving Care Hospice Inc.
6. 2C16/17-1253 OP Transportation, LLC
7. 2C16/17-1602 Speedy Towing and Recovery LLC
8. 2C16/17-0240 Super Splash Car Wash
9. 2C16/17-0367 Trinity Paws, AZ Dog Adoptions LLC
10. 2C16/17-1953 Troy Eugene Somers, a single man dba Adobe Plastering
11. 2C16/17-1881 Wellcraft, LLC
12. 2C16/17-2034 Yavapai Herbal Services, Inc.

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

1. HealthSouth Corporation
2. Pinnacle West Capital Corporation

Chairman Shultz removed items (a)(8), (b)(1), and (b)(2) from the Consent Agenda.

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

Super Splash Car Wash: Mr. Porter noted that Super Splash Car Wash had obtained workers' compensation insurance and recommended a reduced penalty in the amount of \$500.00.

Chairman LeMarr moved to approve issuance of \$500.00 civil penalty against Super Splash Car Wash and Commissioner Krenzel seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

HealthSouth Corporation: Chairman Schultz discussed HealthSouth's experience modification rating, the Commission's prior request that the company utilize ADOSH's consultation services to improve workplace safety, the company's decision to decline to use ADOSH's consultation services, and the company's stated plan to improve workplace safety. He requested a motion to defer action on the agenda item to allow the Commission to engage with HealthSouth in an effort to improve workplace safety and the company's high experience modification rating.

Chairman Schultz and Commissioner LeMarr discussed the timing for a meeting with representatives of HealthSouth.

Commissioner LeMarr moved to defer HealthSouth's request for renewal of self-insurance authority to a later meeting and Commissioner Krenzle seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzle voted in favor of the motion. The motion passed.

Mr. Porter and Ms. Pastor discussed whether any deadline exists for the Commission to act on HealthSouth's renewal request.

Pinnacle West Capital Corporation: Chairman Schultz and Commissioner LeMarr discussed Pinnacle West's outstanding experience modification rating and workplace safety program.

Commissioner Krenzle moved to renew Pinnacle West Capital Corporation's self-insurance authority and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Krenzle, and Commissioner Orchard 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.

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|--|------------------------|----|
| La Mesa RV Center, Inc. (Yuma) dba La Mesa RV Center | Complaint              |    |
| 3255 E. Irvington Road                               | Years in Business:     | 45 |
| Tucson, AZ 85714                                     | Covered by inspection: | 6  |
| Site Location:                                       | 11300 S. Houghton Road |    |
|  | Tucson, AZ 85747       |    |
| Inspection No:                                       | W6968-1210827          |    |
| Inspection Date:                                     | 02/09/2017             |    |

SERIOUS – Citation 1 - Item 1 – Platform: An open-sided platform that was attached, secured and made for a Komatsu (Model FG25TLP-12, SN #512421A) forklift was used to elevate employees 4 feet high and above to retrieve power cords did not have any guardrails on all sides. An employee who was standing on the attached platform at an elevated height fell causing two broken legs and broken ankle. (29 CFR 1910.23(c)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 2 –

(a) La Mesa RV Center, 3255 E Irvington, Tucson, AZ: An attachment made for forklifts designed to move RV's around on lots and at other locations in Tucson did not have the manufacturer's written approval. (29 CFR 1910.178(a)(4)).

(b) La Mesa RV Center, 13000 S. Houghton, Tucson, AZ: Employees were elevated using an open-sided platform that was attached, secured and made for a Komatsu (Model FG25TLP-12t, SN# 512421A) forklift, did not have the manufacturer's written approval. An employee who was standing on the attached platform at an elevated height fell causing two broken legs and broken ankle. (29 CFR 1910.178(a)(4)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00





b) Fiberglass Shop: The safety data sheets (SDS) for the mold release agents, Partall Paste #2, Partall film #10 and other hazardous chemicals were not readily available in the workplace. (29 CFR 1910.1200(g)(8)).

c) Fiberglass Shop: One employee was not provided effective information and training on hazardous chemicals such as catalyst Cadox M-50A at the time of initial assignment and whenever a new hazard was present in their work area. (29 CFR 1910.1200(h)(1)).

|                 |            |                      |            |
|-----------------|------------|----------------------|------------|
| Div. Proposal - | \$750.00   | Formula Amt. -       | \$750.00   |
| TOTAL PENALTY - | \$2,700.00 | TOTAL FORMULA AMT. - | \$2,700.00 |

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

Commissioner LeMarr and Mr. Warren discussed the Compliance Officer who conducted the inspection, the citation grouping, the cooperative approach of the employer, and abatement.

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

The Triumph Group Operations, Inc.  
6733 W. Willis Rd  
Chandler, AZ 85226

Referral  
Years in Business: 24  
Empl. Covered by inspection: 74

Site Location: 6733 W. Willis Rd  
Chandler, AZ 85226  
Inspection NO: W0250-1225706  
Inspection Date: 04/07/2017

SERIOUS – Citation 1 - Item 1 – Warehouse Area: One employee was injured while working on an unguarded Betenbender Shear Model No. 12-3/8 Serial No. 224611. (29 CFR 1910.212(a)(3)(ii)).

|                 |            |                      |            |
|-----------------|------------|----------------------|------------|
| 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.

Commissioner LeMarr and Mr. Warren discussed adjustment of the guard and abatement.

Chairman Schultz and Mr. Warren discussed the company's training program.

Ms. Burke noted the company's abatement efforts.

Commissioner Orchard moved to approve the citation and proposed penalty as presented and Commission LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and action regarding Senate Bill 1332 directive to "review and determine a process for streamlining the authorization process for treatment that is within the evidence-based treatment guidelines."

Mr. Porter discussed Senate Bill 1332's directive that the Commission "review and determine a process for streamlining the authorization process for treatment that is within the evidence-based treatment guidelines." He noted a public hearing would be scheduled in August 2017 to receive stakeholder feedback on the issue. He noted that the proposed resolution would direct the Medical Resource Office to conduct the required review and present a recommendation to the Commission on or before November 30, 2017.

Chairman Schultz and Mr. Porter discussed potential public hearing dates.

Commissioner Krenznel moved to approve the resolution as drafted and Commission LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Discussion and action regarding Commission investigation and study pursuant to A.A.C. R20-5-1301(C).

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Chairman Schultz discussed the criteria outlined in A.A.C. R20-5-1301(C) for modification of the applicability of the Official Disability Guidelines ("ODG") and the use of evidence-based treatment guidelines in other states. He noted that the proposed resolution before the Commission would direct the Medical Resource Office to: (1) conduct an investigation and study regarding the criteria for expansion in R20-5-1301(C); and (2) publicly post a recommendation (with study materials) in preparation for a public hearing (on or before October 31, 2017).

Commissioner LeMarr moved to approve the resolution as presented and Commission Krenznel seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenznel voted in favor of the motion. The motion passed.

Chairman Schultz and Commissioner LeMarr discussed opioid abuse and improvements seen in New Mexico and Texas. Chairman Schultz discussed the impact of ODG on opioid use in Arizona.

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.

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Mr. Ashley discussed the impact of the treatment guidelines in Arizona.

Mr. Ashley provided an update regarding the Claims system modernization project. Chairman Schultz commended Mr. Ashley and staff on their work in planning for this project.

Mr. Ashley provided an update on Goal Council 4, a scheduled visit to the Lewis prison system, plans to set up an OSHA 10-hour class that will be conducted at the prison to help reduce recidivism, and collaboration between the Department of Corrections and the Central Arizona Homebuilders Association. Chairman Schultz noted that the collaboration with Central Arizona Homebuilders is a great example of public-private partnerships. Mr. Ashley discussed a public-private partnership between Uber, the State, and the construction industry to provide transportation to construction workers who work early shifts.

Chairman Schultz and Mr. Ashley discussed the results of the employee engagement survey and plans to roll out employee engagement information.

Mr. Ashley discussed the success of the Commission's on-line services and fillable forms, as well as plans to expand the list of fillable forms.

Chairman Schultz and Mr. Ashley discuss the importance and benefits of the planned Claims system modernization project.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley discussed planning for a Commission meeting in Payson in August 2017.

Ms. Borunda and Mr. Porter confirmed Commission meetings on July 13, 20, 27 and August 11, 17, 31.

Mr. Porter and the Commissioners discussed potential dates for a public hearing related to Senate Bill 1332's directive.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Krenzle seconded the motion. Chairman Schultz, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzle voted in favor of the motion and the meeting adjourned at 2:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By James Ashley  
James Ashley, Director

ATTEST:

Yvonne Borunda  
Yvonne Borunda, Acting Commission Secretary