

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Telephonic Meeting
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, March 26, 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 Porter	Deputy Director (Telephonic)
	Trevor Laky	Legislative Affairs Chief/Public Information Officer (Telephonic)
	Renee Pastor	Self Insurance (Telephonic)
	Charles Carpenter	Medical Resource Office Manager (Telephonic)
	Donald Denmon	Assistant Claims Manager (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 were Brett Barratt (NCCI); Phillip Cundiff (City of Avondale); Dianne Shoemake and Lorena Sanchez (City of Glendale); Joanna Morse (Glendale Elementary School District No. 40); Debbie Baker (Consultant for Glendale Elementary School District No. 40 and Valley Schools Workers Compensation Group); Barbara Sanders and Tana Pulles (Pima County); Ross Richards and Zachary Mitchell (Ross Aerial Equipment, L.L.C. dba Ross Equipment Rentals); Shanlie Blair (Snell & Wilmer), Mark Kendall and Gale Vogler (CopperPoint Insurance); Joanna Smith (Del Sol Therapy); Ken Eichler and Ginger Schell (Corvel); Dr. Adam Kramer (Palo Verde Pain Specialist); Charlene (inaudible)(Med Data); Daniel Medeiros (Concentra); Perla Gastelum (Palo Brea Pain and Rehab); additional unidentified callers.

Approval of Minutes of February 27, 2020 Regular Meeting Minutes.

Commission LeMarr moved to approve the Minutes of the February 27, 2020 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner LeMarr voted in favor of the motion. Commissioner Krenzel 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 Proposed Civil Penalties Against Uninsured Employers.

1. 2C19/20-0104 Fortees Salon & Spa LLC \$1,000
2. 2CMO19/20-0031 Packman Movers LLC \$5,000
3. 2CLP19/20-0151 AZ Landscape Pros LLC \$1,000
4. 2CMO19/20-0026 Deft Movers LLC \$1,000
5. 2CNP19/20-0272 Greyleaf Studio LLC \$1,000

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

1. City of Avondale
2. City of Glendale
3. Dignity Health
4. Glendale Elementary School District No. 40
5. Heartland Express, Inc.
6. Intel Corporation
7. Maricopa County Community College District
8. Pima County
9. The Salvation Army U.S.A. Western Territory
10. Washington Elementary School District No. 6

Chairman Schultz removed 3(a)(5) Greyleaf Studio, LLC from the Consent Agenda. Chairman Schultz also split the Consent Agenda in case there were comments on the self-insurance renewals.

Commissioner Krenzel moved to approve the Proposed Civil Penalties as amended and 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 listed the Requests for Renewal of Self-Insurance Authority. Vice Chair Hennelly requested that 3(b)(2) City of Glendale, 3(b)(4) Glendale Elementary School District No. 40 and 3(b)(7) Maricopa County Community College District be removed from the Consent Agenda so Ms. Pastor could address the equity to total liability ratio.

Commissioner LeMarr moved to approve the Renewal for Self-Insurance Authority as amended 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.

3(b)(2) City of Glendale, 3(b)(4) Glendale Elementary School District No. 40 and 3(b)(7) Maricopa County Community College District – Vice Chair Hennelly noted his question was for each of the three was the respect to the ratio and if there was anything that Ms. Pastor could add to it.

Ms. Pastor noted the fund equity ratio declined basically because expenditures increased. For the City of Glendale the ratio declined because liabilities included higher accounts payable and higher vouchers payable, but their assets were not bad and the ending balanced decreased. The liabilities divided by the net assets remainder is where the fund liability comes from. Essentially they just had an increase in liability overall in the general fund.

Vice Chair Hennelly noted he was looking at the progress of the fund equity ratio and it's a significant drop from last year and wanted to make sure there was no kind of ongoing problem with this one or the others.

Ms. Pastor noted they all had fiscal year 2019 increases in expenditures and decreases in tax base and assets. Next year she is looking for presumptions to be a factor and looking at the trust fund balance and as long as the entities are self-funding the trust funds, there is substantial money to pay the claims and operate.

Vice Chair Hennelly noted that Ms. Pastor will be watching for the impact on presumption as that moves forward.

Vice Chair Hennelly asked about Glendale Elementary School District No. 40, it's the same, the ratio is very low again, which can reflect on their ability of payment and wanted to see if there was anything to be concerned about on an ongoing basis and the ratio has been low the last couple of years.

Ms. Pastor noted theirs go up and down with their tax base because they are a relatively small district compared to the other districts, their expenditures increase was due to the increase in teacher salary, which subsequently increased their retirement fund, the other part was the accounts payable and operating and the revenue declined because the tax base is stationary.

Vice Chair Hennelly asked if the equity fund ratio used for the Maricopa County Community College District has something to do the asset base that is used or a different explanation.

Ms. Pastor noted it was the same as the fund balance with the liability divided by the fund balance and same as the district with a decline in enrollment and the base is going down and not sure of the impact of COVID-19 because they are having decreased Pell grants and loans. The COVID-19 is going to have an impact with more online learning, it is still steady but their expenses are going up and they do pay their teachers pretty well. She noted when they first became self-insured they had a trust fund and because the district is a special entity, it no longer has a trust fund and somewhere they got rid of it, and do operate any losses on a cash flow basis.

Vice Chair Hennelly confirmed that it does not give Ms. Pastor pause to currently recommend renewing the self-insurance authority, they have the excess insurance set up at a moderate level and the bond posted for the liabilities.

Ms. Pastor continues to recommend approval of self-insurance for the Maricopa County College District.

Chairman Schultz thanked Ms. Pastor for watching the self-insured entities so closely.

Vice Chair Hennelly moved to approve the City of Glendale, Glendale Elementary School District No. 40 and Maricopa County Community College District for Renewal of Self-Insurance Authority and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr and Commissioner Krenzler voted in favor of the motion. The motion passed.

Discussion and Action regarding immediate adoption of new fee schedule codes related to COVID-19 testing, virtual check-ins, and e-visits for use in the 2019/2020 Arizona Physicians' and Pharmaceutical Fee Schedule.

Mr. Carpenter discussed adoption of new telehealth codes to expand the telehealth services for use in the 2019/2020 Arizona Physicians' and Pharmaceutical Fee Schedule. He suggested the codes become effective immediately.

Mr. Carpenter noted the Medical Resource Office recommends the adoption of certain codes. There are three CPT[®]-4 codes that are used for E-Visits, three Healthcare Common Procedure Coding System (HCPCS) codes for qualified non-physician Healthcare Providers and two Healthcare Common Procedure Coding System (HCPCS) codes for virtual check-ins, and two Healthcare Common Procedure Coding System (HCPCS) codes for laboratory testing of COVID-19 virus, and one CPT[®]-4 for testing of COVID-19 virus.

Ms. Baker asked if COVID-19, a risk the general public is subject to, and therefore not covered by workers' compensation. Chairman Schultz noted it could be covered under workers' compensation and would have to be tied to the relationship to employment. In healthcare it is a significant potential, that is why, although the codes will not be frequently used, could be used and want to make sure the Fee Schedule is updated to take care of that potential but also very much to accommodate the move towards tele-health which is happening at an astounding rate. Ms. Baker agreed that healthcare works are certainly at risk, she thinks of the school district and A.R.S. §23-901.01 and COVID-19 does not qualify as an occupational disease under that statute and in her opinion for anyone other than a healthcare worker.

Mr. Porter added that adopting the codes, particularly the testing and diagnostic codes for COVID-19 are not intended to be any commentary about whether workers' comp claims filed for COVID-19 would, or would not be, compensable. The Commission wants to adopt the codes so they are available for use in the event workers' who file COVID-19 claims but each claim would be evaluated on a case by case basis depending on the circumstances, the nature of the work. There is Arizona case law on the contraction of contagious diseases. The main intent of these new codes is to relax restrictions on access to non-face-to-face medical services, and allow those medical services to be provided to injured workers who need care during this time without needing to go do face-to-face visits with physicians. We will continue to monitor this situation, and if the public health emergency is released and we no longer need these codes, the Commission will take action. If the situation continues longer than expected the Commission will consider adopting these codes in next year's Fee Schedule.

Charlene with Med Data asked about CPT Code 87635 and the assigned Fee Schedule amount, and if there will be an amount assigned to that code. Mr. Carpenter noted there is no RVU set for that code and it is going to be By Report (BR). It is going to be a case by case basis.

Ms. Smith with Del Sol asked about a start date for tele-health. Mr. Carpenter noted that tele-health is a service that physicians can utilize. If talking about qualified, non-physician healthcare providers, then what determines when that can be utilized is realistically Arizona Statute which governs who can and who cannot provide those services. Mr. Porter stated that under current Arizona law, physical therapy and occupational therapy are not included as medical providers that are authorized to engage in tele-medicine. However yesterday the Governor issued an Executive Order in the context of healthcare insurance that would authorize tele-medicine to be used to the full extent by all medical providers. There have been several questions whether the Governor's Order was intended to include medical services provided under the workers' compensation plan and we are waiting for word back from the Governor's Office. For purposes of what the Commission is doing today we are adopting codes that would apply to qualified non-physician healthcare providers, and a billing code for those services.

A caller asked for clarification that the codes can or cannot be used until clarification is provided. Mr. Porter noted we cannot provide legal advice on the legal impact of the Executive Order that was issued yesterday.

Chairman Schultz and Mr. Porter discussed that if we get the clarification if it would be posted either on the website or what is determined to be the best way to distribute the information.

Chairman Schultz noted this particular crisis has presented an opportunity to greatly enhance the use of tele-medicine and many providers are ramping up their services, which is why it is extremely important and important to adopt these codes now so they can begin to be used to provide whatever information we can to clarify the situation for folks to have some direction about how to bill and expectations to get paid for services.

Dr. Kramer with Palo Verde Pain Specialist wanted some clarification on a couple points regarding tele-health.

Mr. Carpenter noted if he needed more guidance the codes have a lot of what is needed for implementation and on the draft proposal on the website. Mr. Porter added that Mr. Carpenter could help identify the existing 73 tele-health codes that have been adopted and part of the current Fee Schedule.

Commissioner LeMarr moved to adopt the new Fee Schedule codes related to COVID-19 testing, virtual check-ins and E-visits for use in the 2019/2020 Arizona Physicians and Pharmaceutical Fee Schedule. 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 Appointment of Special Assistant to the Industrial Commission of Arizona.

Mr. Denmon requested that Robert Galyen be appointed as Special Assistant to the Industrial Commission to be authorized as the Special Assistant for the Claims Division. He noted Mr. Galyen's background for the designation.

Commissioner LeMarr moved to appoint Robert Galyen as Special Assistant to the Industrial Commission of Arizona 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.

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.

National Machine Company dba NMG Aerospace
2223 S Wilson St.
Tempe, AZ 85282

Fatality/Accident
Years in Business: 33
Empl. Covered by Inspection: 155

Site Location: 2223 S Wilson St.
Tempe, AZ 85282
Inspection No: K6582 -1449010
Inspection Date: 12/05/2019

Mr. Atencio removed this item from the agenda for further review with the compliance officer and legal team.

Chairman Schultz and Mr. Atencio discussed if there was a time deadline for this item and it will be scheduled for the April 9, 2020 meeting.

Ross Aerial Equipment, L.L.C.
dba Ross Equipment Rental
407 S 17th Ave
Phoenix, AZ 85007

Fatality/Accident
Years in Business: 25
Empl. Covered by Inspection: 9

Site Location: 3006 E Holmes Ave
Mesa, AZ 85204
Inspection No: K6582 -1456896
Inspection Date: 1/21/2020

Mr. Atencio summarized ADOSH's fatality investigation and reviewed the file and photographs. He noted that ADOSH was not recommending a citation.

Commissioner Krenzel and Mr. Atencio discussed the time of inspection and if the truck ramp was operational to lower the unit and nothing was noted to be malfunctioning. Commissioner Krenzel noted it looked like a very robust safety program.

Chairman Schultz and Mr. Atencio discussed how long the employee had worked for the company.

Chairman Schultz asked if the representatives from Ross Aerial Equipment would like to make any comments and they did not.

The Commission took no action.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through May 2020.

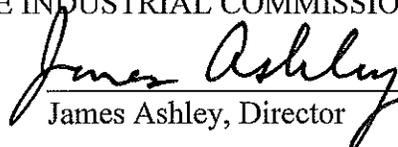
Public Comment.

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 2:08 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary