

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, July 21, 2016 – 1:00 p.m.

| | | |
|----------|-------------------------|--|
| Present: | Dale L. Schultz | Chairman |
| | Joseph M. Hennelly, Jr. | Vice Chair |
| | Scott P. LeMarr | Commissioner |
| | James Ashley | Director |
| | Jason M. Porter | Chief Legal Counsel |
| | Bob Charles | Legislative Affairs Chief / Public Information Officer |
| | Renee Pastor | Accounting |
| | William Warren | ADOSH Director |
| | Billie Gingrass | Compliance Officer |
| | Brian Downen | Compliance Officer |
| | Jessie Perez | Compliance Officer |
| | Steve Ripple | Compliance Officer |
| | Jacqueline Kurth | Medical Resource Office |
| | Lorraine Ramirez | Legal Division |
| | Kara Dimas | Commission Secretary |

Chairman Schultz convened the Commission meeting at 1:00 p.m. Also in attendance were Dennis O’Leary, complainant; Robert Scott, complainant; Albert Long; Cathy Vines with CopperPoint Insurance; Martin Aguirre and Vince DeDonatis with Kenyon Plastering of Arizona, LLC; Michael Bida with Finesse Construction, LLC; Steve Biddle with Littler Mendelson (representing North American Pipe Corporation); Steve Haver with SafeFirst Corporation (representing GW Framing, LLC), Ramon Rodriguez and Glenn Wooden with GW Framing, LLC; and Jason Weber with Snell & Wilmer.

Approval of Minutes of July 14, 2016 Regular Meeting.

Commissioner LeMarr moved to approve the Minutes of the June 14, 2016 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.

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. 2C15/16-2628 Person to Person Assisted Living LLC
 2. 2C15/16-2570 Precious Hands Healthcare, LLC
 3. 2C15/16-1912 Sitthiporn Teeravarapich & Unthinka Chamras, husband and wife, & Chairat Vutivanit, a single man, dba Chao Praya Thai Cuisine

- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. Learjet, Inc.
 2. Pinnacle West Capital Corporation
 3. YRC, Inc.

Chairman Shultz removed items (b)(1)-(b)(3) (Learjet, Inc., Pinnacle West Corporation, and YRC, Inc.) from the Consent Agenda.

Chairman Schultz summarized the proposed civil penalties on the Consent Agenda. He stated that Chao Praya Thai Cuisine had secured workers' compensation insurance, resulting in a proposed citation of \$500.00.

Commissioner LeMarr moved to approve the remaining 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.

Learjet, Inc.: Chairman Schultz discussed Learjet's history in Arizona and self-insured status. He highlighted Learjet's continued improvement of its experience modification rate. He discussed the company's required security deposit. Vice Chair Hennelly moved to approve the request for renewal of self-insurance authority for Learjet and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Pinnacle West Capital Corporation: Chairman Schultz discussed Pinnacle West's business operations in Arizona and self-insured status. He highlighted Pinnacle West's experience modification rate and commended the company on its loss experience and safety record. Commissioner LeMarr moved to approve the request for renewal of self-insurance authority for Pinnacle West and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

YRC, Inc.: Chairman Schultz discussed YRC's business operations in Arizona and self-insured status. He discussed the increase in the required security deposit from YRC as a result of certain reported financial information. Vice Chair Hennelly moved to approve the request for renewal of self-insurance authority for YRC and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Presentation from and/or discussion with the Industrial Commission's Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles reported that he has prepared a draft press release related to the Commission's visit to Prescott.

Mr. Charles discussed recent media inquiries related to a fatality in Lake Havasu, wage dispute procedures, and minimum wage.

Mr. Charles and Mr. Ashley updated the Commission on the website development and fillable forms project.

Mr. Charles reported on legislative proposals received from within the Commission. Chairman Schultz commented on the Commission's proactive approach to proposing legislation supported by the Commission's stakeholders.

Mr. Ashley discussed recent media inquiries related to wage issues and commended the Labor Division for their efforts to research and assist the Commission in responding to the inquiries.

Stakeholder Presentation.

The stakeholder who planned to present was not present.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

15-2865-30 - O'Leary vs. Atlas Material Testing Technology L.L.C.

Mr. Warren presented a summary of Mr. O'Leary's complaint, Atlas Material Testing Technology's response, and the findings of the ADOSH investigation. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to support a violation of A.R.S. § 23-425(B).

Commissioner LeMarr requested clarification regarding the Mr. O'Leary's year-end report and performance improvement plan. Mr. Warren and Mr. Ripple responded to the questions. Vice Chair Hennelly commented that Mr. O'Leary's June 16, 2015, e-mail did not raise any safety issues and asked whether other documents were requested. Mr. Ripple responded to the question.

Chairman Schultz invited Mr. O'Leary to address the Commission. Mr. O'Leary discussed his complaint, safety issues that existed at the company during his employment, and the company's response to his complaint. Chairman Schultz clarified the scope of the Commission's discrimination inquiry and noted the complexity of these types of cases. He explained that, although the Commission is interested in resolving safety hazards, the mere existence of safety violations is not sufficient to sustain a discrimination complaint.

Vice Chair Hennelly commented on the standard of proof in discrimination actions. He moved to adopt the recommendation of ADOSH to not pursue Mr. O'Leary's complaint. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

15-9037-12 - Scott vs. North American Pipe Corporation

Mr. Warren summarized Mr. Scott's complaint, North American Pipe's response, and the findings of the ADOSH investigation. Mr. Warren recommended that the Commission pursue the matter, concluding that the investigation revealed evidence supporting a violation of A.R.S. § 23-425(B).

Commissioner LeMarr asked for clarification regarding the chronology of events and the company's internal investigation into the 07/10/15 incident. Mr. Warren responded to the questions. Vice Chair Hennelly discussed the chronology of events and inquired about the company's stated reason for terminating Mr. Scott. Mr. Warren responded and discussed a redacted memorandum regarding the termination provided by the company. He commented on ADOSH's inference that the memorandum contained evidence of discrimination. Chairman Schultz discussed the attorney-client privilege, noting that withholding information based on the attorney-client privilege does not necessarily mean that the withheld information is negative. Mr. Warren mentioned the section of the Whistleblower Investigative Manual pertaining to employer-withheld evidence. Vice Chair Hennelly expressed concerns about drawing negative inferences from the withholding of attorney-client communications. He asked Mr. Warren to further explain the guidance outlined in the Whistleblower Investigative Manual pertaining to withheld evidence. Mr. Warren provided further explanation. Chairman Schultz and Mr. Warren discussed documentation provided by the company.

Vice Chair Hennelly asked about the documentation related to the termination of a different employee. Mr. Perez explained the documentation, noting that similar documentation had not been provided to support Mr. Scott's termination.

Commissioner LeMarr expressed his concern about gaps in the information provided during the investigation. Chairman Schultz complimented Mr. Perez on his investigation and analysis.

Chairman Schultz invited Mr. Scott to address the Commission. Mr. Scott stated that everything had been covered and he had no comments.

Chairman Schultz invited Mr. Biddle to address the Commission. Mr. Biddle provided some background on the company and discussed the company's "My Safe Workplace" hotline. He discussed Mr. Scott's usage of "My Safe Workplace." He discussed the circumstances and content of Mr. Scott's anonymous OSHA complaint. He discussed the chronology of events, including the incident on 7/10/15 and the company's response to, and investigation of, the incident. He discussed the company's termination process and the decision to terminate Mr. Scott. He discussed the attorney-client privilege and the information and interviews provided by the company. He described the company's procedures for forklift accidents and the reason for Mr. Scott's suspension. He commented further on the chronology of events and documentary evidence, concluding that the decision to terminate was made before the company even had knowledge of the OSHA complaint. He requested that the Commission not pursue a claim against the company.

Mr. Warren discussed differences between how Mr. Scott was treated and how the other terminated employee was treated. Chairman Schultz noted some similarities in the company's process in the two cases. Mr. Warren reiterated ADOSH's conclusions and recommendation.

Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr discussed the chronology of events and timing of relevant events. Chairman Schultz, Vice Chair Hennelly, and Mr. Scott discussed the July 11 "My Safe Workplace" report. Mr. Scott discussed the content of his July 11 report, his prior complaints, and various safety issues that existed during his employment.

Chairman Schultz indicted that prior complaints referenced by Mr. Scott were not included in the documentation and further discussed the July 11 report.

Mr. Scott discussed non-safety-related employment issues that occurred while he was at the company. Chairman Schultz stated that the employment issues are outside the scope of the Commission's inquiry. He discussed Mr. Scott's employment-related complaints. He asked for further information about complaints Mr. Scott made to the employer in March. Mr. Scott discussed the circumstances of his March complaints. Chairman Schultz asked about conversations recorded by Mr. Scott. Mr. Scott mentioned that he had years' worth of recorded conversations. Chairman Schultz reiterated that the Commission was focused on the reporting of safety issues. Mr. Scott provided additional information related to his safety concerns. Chairman Schultz reiterated the scope of the Commission's inquiry.

Chairman Schultz asked for clarification regarding the July 10 incident and Mr. Scott discussed the circumstances of the incident and the company's response to the incident. Chairman Schultz asked whether Mr. Scott was aware of the policy not to move anything after a dropping incident. Mr. Scott discussed applicable company practices for dropping incidents. Chairman Schultz commented that another employer had been terminated for moving evidence after a dropping incident. Mr. Scott discussed the company's past practices in response to dropping incidents and described what was communicated to him after the July 10 incident. Chairman Schultz inquired about conversations recorded by Mr. Scott. Mr. Scott declined to answer the question.

Vice Chair Hennelly moved to go into executive session and Commissioner LeMarr seconded the motion. Commissioner LeMarr, however, invited Mr. Biddle to respond before a vote.

Mr. Biddle commented on the chronology of events and timing of the company's actions. Commissioner LeMarr asked Mr. Biddle to address the company's termination process. Mr. Biddle responded to the question. He also noted that Mr. Scott was not terminated after a number of earlier safety complaints and reiterated that termination followed the July 10 incident and investigation. Chairman Schultz mentioned a memorandum in the report about the company's termination process.

Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion to go into executive session. The motion passed.

The Commission moved into executive session at 2:18 p.m.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

15-2865-30 - O'Leary vs. Atlas Material Testing Technology L.L.C.

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

15-9037-12 - Scott vs. North American Pipe Corporation

The Commission returned to regular session at 2:35 p.m.

Chairman Schultz asked Mr. Biddle whether the redacted memorandum was directed to inside or outside counsel. Mr. Biddle responded to the question.

Vice Chair Hennelly stated that he found Mr. Scott's termination questionable, but not for reasons of concern to the Commission. He noted his concern that the chronology does not support a conclusion that Mr. Scott's termination was related to his OSHA complaint. He moved to not pursue Mr. Scott's complaint and Commissioner LeMarr 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.

Finesse Construction LLC
dba Finesse Property Services, L.L.C.
7825 E. Evans Rd Ste 500
Scottsdale, AZ 85260

Referral
Years in Business: 10
Empl. Covered by inspection: 3

Site Location: 808 N. Scottsdale Rd
Tempe, AZ 85281
Inspection No: H9685-1131288
Inspection Date: 03/08/2016

SERIOUS – Citation 1 - Item 1 –

- a) 7825 E Evans Rd Ste 500, Scottsdale, AZ 85260: The employer did not develop and implement a written respiratory protection program with required worksite-specific procedures and elements for three employees who were required to wear 3M N95 particulate respirators. (29 CFR 1910.134(c)(1)).
- b) 7825 E Evans Rd Ste 500, Scottsdale, AZ 85260: The employer did not provide a medical evaluation for four employees who were required to wear 3M N95 particulate respirators in the workplace. (29 CFR 1910.134(e)(1)).
- c) 7825 E Evans Rd Ste 500, Scottsdale, AZ 85260: The employer did not ensure four employees were fit tested prior to requiring them to wear 3M N95 particulate respirators in the workplace. (29 CFR 1910.134(f)(1)).
- d) 7825 E Evans Rd Ste 500, Scottsdale, AZ 85260: The employer did not provide comprehensive, understandable respirator training prior to requiring four employees to wear 3M N95 Particulate Respirators. (29 CFR 1910.134(k)).

Div. Proposal - \$450.00

Formula Amt. - \$450.00

SERIOUS – Citation 1 - Item 2 –

- a) South Side of Building: Two employees did not stand firmly on the floor of the basket of an elevated Genie S60X Aerial Boom Lift, identification number 20631, while engaged in painting activities approximately 20 feet in the air. (29 CFR 1926.453(b)(2)(iv)).
- b) South Side of Building: Two employees working from an elevated Genie S60X Aerial Boom Lift, identification number 20631, were not wearing a body belt for fall restraint or using a personal

fall arrest system while exposed to a fall approximately 20 feet to the ground below. (29 CFR 1926.453(b)(2)(v)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – South Side of Building: Two employees who performed work from a Genie S60X Aerial Boom Lift, identification number 20631, were not provided training prior to performing work from the aerial lift. (29 CFR 1926.454(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – South Side of Building: One employee engaged in painting activities on the second story ledge of a building was not protected from falling approximately 20 feet to the ground below by the use of guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 – South Side of Building: One employee was exposed to a fall of approximately 20 feet to the ground below while engaged in painting activities on second story of a building and was not provided a training program to enable the employee to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$3,450.00

TOTAL FORMULA AMT. - \$3,450.00

Mr. Warren summarized the citation and proposed penalties as listed and reviewed the photographs. Chairman Schultz asked whether workers could operate the boom from within the lift cage. Mr. Warren responded to the question. Chairman Schultz noted that the workers could have raised the height of the bucket rather than standing on the cage rails. Mr. Warren responded to the question and discussed the type of lift that was used. Chairman Schultz asked about the grouping in the citation. Mr. Downen explained the reasons for the grouping.

Chairman Schultz invited Finesse Construction to address the Commission. Mr. Bida did not have any comment.

Commissioner LeMarr moved to amend the citation and proposed penalties as follows: combine Items 4 and 5 with a combined penalty of \$750.00, for a total proposed penalty of \$2,700.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

GW Framing LLC
1725 N. 103rd St
Mesa, AZ 85207

Site Location: 295 E Roosevelt St
Phoenix, AZ 85004
Inspection No: H9685-1129136
Inspection Date: 02/29/2016

Referral
Years in Business: 10
Empl. Covered by inspection: 20

SERIOUS – Citation 1 - Item 1 – Third Floor Northwest Side: Two employees engaged in residential construction framing activities on the third floor of an under construction apartment building were not protected from falling 10 feet 8 inches to the level below by guardrail systems, safety net system,

or personal fall arrest systems, nor were employee(s) provided with an alternative fall protection measure under another provision of paragraph 1926.501(b). (29 CFR 1926.501(b)(13)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 - Item 2 – Second Floor Northwest Side: One employee used a Louisville brand 10 Foot reinforced plastic step ladder, model FS1510, in the closed position to install roof joists. (29 CFR 1926.1053(b)(4)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$4,000.00

TOTAL FORMULA AMT. - \$4,000.00

Mr. Warren summarized the citation and proposed penalties as listed and reviewed the photographs and past inspection history. Vice Chair Hennelly asked about the penalty calculation for Item 2. Mr. Warren noted an error in the report and responded to the question. Commissioner LeMarr noted that one of the prior inspections resulted in no citations and how rare it was to see that in a prior inspection history.

Chairman Schultz asked about the LL classification for Item 2 and the calculation of the penalty. Mr. Warren answered the questions and explained the calculation.

Commissioner LeMarr commented on what the company was doing right and the circumstances of the violations. He moved to amend the proposed penalties, as follows: Item 2 be reduced to \$750.00, for a total penalty of \$3,250.00. Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner LeMarr voted in favor of the motion. The motion passed.

Kenyon Plastering of Arizona, Inc.
4001 W Indian School Rd
Phoenix, AZ 85019

Referral

Years in Business: 35

Empl. Covered by inspection: 5

Site Location: 5800 W Peoria Ave.
Glendale, AZ 85302

Inspection No: H9685-1130928

Inspection Date: 03/04/2016

SERIOUS – Citation 1 - Item 1 – Southwest Side of Building: Three walkaways on the first, second, and third tier platforms of a fabricated frame scaffold were not at least 18 inches wide exposing employees to fall hazards of approximately 7 feet to 21 feet. (29 CFR 1926.451(b)(2)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 – Southeast Side of Building: A three foot wide fabricated frame scaffold approximately 14 feet 9 inches high by 60 linear feet 7 inches long was not guyed, tied, or braced at the closest horizontal member to the 4:1 height and repeated vertically at locations of horizontal members every 20 feet to prevent the scaffold from tipping and falling over exposing employees to fall hazards. (29 CFR 1926.451(c)(1)(ii)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1 - Item 3 – Southeast Side of Building: A three foot wide fabricated frame scaffold approximately 14 feet 9 inches high by 60 linear feet 7 inches long was not inspected for visible defects by a competent person before the scaffold was released for employees to work from it. (29 CFR 1926.451(f)(3)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 4 – Southeast Side of Building: A six foot green Werner fiberglass step ladder, model unknown, and a five foot yellow step ladder, model unknown, were used by employees on the first and second tier working platforms of a fabricated frame scaffold. (29 CFR 1926.451(f)(15)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$11,750.00

TOTAL FORMULA AMT. - \$11,750.00

Mr. Warren summarized the citation and proposed penalties as listed and reviewed the photographs. Commissioner LeMarr commented on his experience working with scaffolding companies and asked whether representatives of the scaffolding company were interviewed. Mr. Downen responded that Kenyon Plastering has their own scaffolding and erection crew.

Vice Chair Hennelly asked for clarification on Item 2, the applicable standard, and whether the scaffolding was guyed, tied, or braced. Mr. Downen responded to the questions and Mr. Warren discussed the standard.

Chairman Schultz invited a representative of Kenyon Plastering to address the Commission. Mr. DeDonatis, Kenyon Plastering's safety director, provided some background on the company and its operations. He discussed the scope of the particular job and the use of scaffolding at the project. He stated that the scaffolding was marked as unsafe with a big red sign and described the company's use of signage. He discussed the erection of the scaffolding and the reason it was not tied off. He stated that the scaffolding was set in compliance. He noted that the injured employee is back to work and discussed safety changes implemented by the company.

Mr. Warren commented on the presence of a red sign on the collapsed section of scaffolding. He discussed the standard that requires scaffolding to be tied off. Chairman Schultz asked for clarification on the number of scaffolding ladders and the number of signs at the ladder access points. Mr. Downen, Mr. Aguirre, and Mr. DeDonatis discussed the presence and usage of signs on the scaffolding.

Commissioner LeMarr inquired about planking on the scaffold and use of toeboards. Mr. DeDonatis and Mr. Downen discussed the use of toeboards and planking. Commissioner LeMarr and Mr. Downen noted the incorrect number of planks on the turn in the scaffolding. Mr. Warren and Mr. DeDonatis discussed the circumstances causing the scaffolding to collapse. Chairman Schultz asked whether the scaffolding had previously been hit by vehicles. Mr. DeDonatis described the worksite and the nature of the job. He further discussed the company's usage of signs on scaffolding and the company's policies on ladder usage. Mr. DeDonatis and Mr. Aguirre addressed the employee's unauthorized usage of a ladder. Mr. DeDonatis discussed the company's training program.

Chairman Schultz asked when the employees had been instructed to work on the roof top. Mr. DeDonatis responded to the question. Chairman Schultz asked what steps the company had taken since the incident to prevent a repeat occurrence. Mr. DeDonatis described improved videos and training program.

Vice Chair Hennelly inquired about the status of the injured employees and Mr. DeDonatis responded to the question. He noted that one of the injured employees was being re-trained to inspect scaffolding.

Mr. Warren commented further on the violations that existed at the time of inspection. Chairman Schultz commented on the serious nature of the employees' injuries.

Commissioner LeMarr discussed the company's commitment to safety, but noted that the company's safety program failed at this job. He moved to amend the citation and proposed penalties, as follows: delete Item 4, for a total penalty of \$9,500.00. 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 regarding the 2016 Arizona Physicians' and Pharmaceutical Fee Schedule.

Ms. Kurth outlined issues pertaining to the 2016-2017 Arizona Physicians' and Pharmaceutical Fee Schedule and asked that the Commission take action on the following 5 issues:

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

Ms. Kurth discussed the proposed transition from the current seven-state survey methodology used to calculate reimbursement values for codes to a Resource-Based Relative Value Scale (RBRVS) system. She explained the RBRVS system and the Commission's study into the adoption of a RBRVS fee schedule, including feedback received from the public. She recommended the Commission convert to a RBRVS-based fee schedule and explained how an RBRVS-based system would benefit the Commission. Ms. Kurth also recommended that the Commission hire an outside consultant to assist with conversion of the current fee schedule to an RBRVS-based system.

Commissioner LeMarr asked about public concerns raised by Chic Older (with the Arizona Medical Association) regarding the anesthesia reimbursement values. Mr. Kurth responded to the question and described the Commission's efforts to review and update pertinent codes based on current methodologies. Chairman Schultz and Ms. Kurth addressed other concerns raised by Mr. Older, including concerns related to radiology, flight of physicians, making changes revenue neutral, the pertinent transition period, and the usage of networks to negotiate rates down. Chairman Schultz discussed Commission efforts to understand and address the stated concerns and the Commission's desire for providers to view workers' compensation claimants as preferred customers. He discussed efforts to reduce paperwork and simplify provider office practices.

Ms. Kurth discussed data provided by Public Consulting Group related to comparisons between workers' compensation and Medicare rates. She noted that the RBRVS system will establish rates in excess of 125% of Medicare and well above the group-health rates. Chairman Schultz and Ms. Kurth discussed the usage of network agreements and silent networks in the industry and how reimbursement rates are impacted. Chairman Schultz noted that the Commission would be looking at addressing the issue and would be looking into how to make the fees that the Commission adopts be a floor that providers are paid.

Vice Chair Hennelly asked about compensation for the outside consultant. Mr. Ashley responded to the question. Ms. Kurth mentioned that the current Commission staff does not have the ability to do the conversion.

2. Reimbursement for Participation in Peer Review as Described in the Evidence Based Treatment Guideline Process Approved by the Commission on December 18, 2014.

Ms. Kurth recommended the adoption of two Arizona specific codes for the medical providers to use when billing for time spent consulting with a Peer Reviewer as part of the new treatment guidelines process. She outlined the proposed reimbursement rates and the public comment received. Chairman Schultz asked how many negative comments were received. Ms. Kurth responded that none were received. She discussed feedback received from the medical community regarding the rates.

3. Designation of Medi-Span[®] as the Publication for Purposes of Determining Average Wholesale Price ("AWP").

Mr. Kurth explained the Medi-Span[®] publication and its use in determining AWP under the Pharmaceutical Fee Schedule. She discussed public comments related to Medi-Span[®]. She recommended that the Medi-Span[®] publication continue to be used for determining AWP.

4. Updated Values and Adoption of Deletions, Additions, General Guidelines, and Identifiers of the CPT[®]-4.

Ms. Kurth discussed the proposed updated values for all codes. She reported that no public comments were received on the proposed values, deletions, additions, general guidelines and identifiers of the CPT[®]-4. She recommended that the Commission adopt the proposed values for all codes and adopt the deletions, additions, general guidelines, and identifiers.

Ms. Kurth further discussed concerns raised by the Arizona Medical Association about the impact of discount/silent networks on the entire workers' compensation system. She discussed action previously taken by the Commission to address billing conflicts. She reported that the Arizona Medical Association was concerned that discount networks continue to exist and compromise the whole basis of the fee schedule.

Ms. Kurth discussed CopperPoint Insurance Companies' recommendation that the Commission adopt the assistant at surgery guidelines as defined by CMS. She mentioned an alternative publication - the Physicians as Assistants at Surgery, 2016 Update - published by the American College of Surgeons.

Finally, Ms. Kurth discussed comments received from OrthoArizona regarding administrative intermediaries and shadow or phantom networks. She noted that OrthoArizona strongly recommends that the Commission institute a ban on any network for workers compensation patients that would pay less than 90% of the Commission's fee schedule.

Chairman Schultz asked for Ms. Kurth's recommendation on CopperPoint's suggestion to use CMS as the guidelines for assistants at surgery. Ms. Kurth responded to the question and discussed present confusion over the use of assistant surgeons and their compensation rates. She mentioned that the CMS guidelines would probably compliment a RBRVS fee schedule and their adoption might make sense. Chairman Schultz asked about timing of incorporating the CMS guidelines into the 2017 fee schedule (independent of the shift to RBRVS) and whether the CMS guidelines would be consistent with the fee schedule set to be released on October 1, 2016. Ms.

Kurth discussed her past experience with conflicts between CMS-based guidelines and AAOS. She stated that she was not sure whether the CMS assistants-at-surgery guidelines would pose any conflicts with the other publications that the Commission has adopted.

Ms. Vines noted that the AAOS is silent as to the usage of assistant surgeons and explained that the CMS guidelines would address that issue. Chairman Schultz inquired about the process to get the CMS guidelines in place for this year as opposed to waiting. Ms. Kurth stated that the Commission could adopt the CMS guidelines and they could be made applicable to the October 1, 2016 fee schedule. Chairman Schultz asked Mr. Porter to look into the procedure for adopting the CMS guidelines. Mr. Porter stated that he and Ms. Kurth would discuss the matter and include it as an agenda item at another meeting before October 1. Chairman Schultz noted that he did not anticipate any opposition to adopting the CMS guidelines. Ms. Kurth indicated that the use of surgical assistants was a common dispute between providers and payers.

Commissioner LeMarr moved to adopt the recommendations as presented, including a recommendation to undertake a study of the potential of implementing the CMS assistant surgery guidelines. 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/or action regarding Industrial Commission goals, objectives and key initiatives for 2016. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Mr. Ashley reported on agency Scorecard metrics related to the Labor Division (decreasing resolution of wage claims), ALJ (decreasing time to render decisions), and Special Fund Division (decreasing time to pay injured workers in No Insurance claims). Chairman Schultz commented on the importance of timely paying benefits to injured workers.

Mr. Ashley discussed progress on the rollout of the ALJ portal.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley discussed preliminary planning for a Commission trip to Flagstaff on October 5-6.

Mr. Ashley announced a stakeholder meeting at the Office of Administrative Hearings on Friday, July 22, related to the transition of ADOSH cases.

Chairman Schultz mentioned the Arizona State Advisory Forum of NCCI on October 6 and the upcoming Workers' Compensation Seminar in Flagstaff.

Ms. Dimas announced a retirement resolution for Labor Director, Karen Axsom.

Ms. Dimas confirmed meeting dates through October.

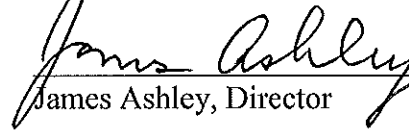
Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 4:00 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary