

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Auditorium
Phoenix, Arizona 85007
Thursday, May 28, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Louis W. Lujano, Sr.	Member
	Marcia Weeks	Member
	John A. McCarthy, Jr.	Member
	David Parker	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	William Wright	Asst. Director, ADOSH
	Randy Austin	Boiler Section, ADOSH
	Gary Norem	Chief Financial Officer
	Noreen Thorsen	Claims Manager
	David Sosa	Special Fund Monitor
	Theresa Acosta	Special Fund
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Larry Etchechury, fee schedule consultant, and Jenypher Jones of Snell & Wilmer. A list of attendees for the fee schedule hearing who chose to sign in is attached. Court reporter was also present and transcript of the public hearing will be available.

Chairman Delfs introduced new Commissioner, David Parker, and welcomed him to his first Commission meeting.

Public Hearing to accept comments and other information regarding the 2009-2010 Physicians' and Pharmaceutical Fee Schedule

Chairman Delfs welcomed interested parties to the public hearing and advised that notice was provided to the public on April 3, 2009 inviting comments. He also advised that the record will remain open for public comments until June 11, 2009 at 5:00 p.m. At a later scheduled meeting, the Commission will discuss and may take action on the fee schedule update. A court reporter was present for this agenda item.

Director McGrory gave a summary of the staff document with proposed updates and changes to the fee schedule. The following attendees addressed the Commission and responded to questions from the Commissioners and Director: Cathy Vines, Director, Claims Medical Management, SCF Arizona; David M. Ott, M.D., SCF Arizona Medical Director; Cynthia Everlith, Practice Administrator, Arizona Hand & Wrist Specialists; Kristine Kennedy, AVP, Operations & Gov't Affairs, Healthsystems; Randall S. Prust, M.D., Chic Older, Executive Vice President, Arizona Medical Association; Zoran Maric, M.D.; and Larry Etchechury, consultant to the ICA.

Chairman Delfs thanked all of the speakers and stated that all comments made will be considered by the Commission. He reminded those present that the record would remain open until June 11th for additional comments. He closed the hearing at 2:10 p.m. The Commission continued with its regularly scheduled meeting.

Approval of Minutes of May 21, 2009 Meeting

The Commission approved the Minutes of the May 21, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy. Commissioner Parker abstained.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1080	Casa de los Abuelos Dos, LLC
2C08/09-1446	Exit Productions, Inc. dba Exit 7 Sports Bar
2C07/08-2217	Vahid N. Hamidi, D.D.S. dba Smile Reflections aka Smileworks
2C08/09-1598	Pierre Langue, a single man dba Architectural Wood Interiors Inc.

Andrew Wade advised that a compliance investigation confirmed that the above listed employers were operating (or had operated) a business with employees, but without workers' compensation insurance. Giving consideration to the factors of A.R.S. §23-907(K), Mr. Wade recommended civil penalties of \$1,000.00 be assessed against employers #1080, 1446 and 2217. He further recommended a civil penalty of \$5,000.00 be assessed against employer 1598 since this is their second civil penalty. Following discussion, the Commission unanimously assessed the recommended penalties of \$1,000.00 against employers #1080, 1446 and 2217, and a civil penalty of \$5,000.00 against employer #1598 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Final rulemaking regarding the following rule in A.A.C, Title 20, Chapter 5, Article 6, Occupational Safety and Health for Construction and General Industry: A.A.C. R20-5-602

Mr. Wright explained the amendment to the electrical standard regarding the use of ground fault protection which consisted of adding the words "construction like" to the standard. Following discussion, the Commission unanimously adopted the final rulemaking amendments on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Final rulemaking regarding the following rules in A.A.C. Title 20, Chapter 5, Article 4, Arizona Boilers and Hot Water Heaters: A.A.C. R20-5-401, R20-5-402, R20-5-403, R20-5-404, R20-5-405, R20-5-406, R20-5-407, R20-5-408, R20-5-410, R20-5-411, R20-5-412, R20-5-413, R20-5-415, R20-5-416, R20-5-417, R20-5-418, R20-5-419, R20-5-420, R20-5-429, R20-5-430, R20-5-431, R20-5-432

Mr. Wright explained that the proposed changes to the boiler rules are to update the current standards and adopt an updated version of codes for the installation, operation and maintenance of boilers, water heaters and pressure vessels. He responded to questions from the Commission and advised that the Boiler Advisory Board has reviewed the proposed rule changes and has recommended approval and that no comments were received from the public. Following

discussion, the Commission unanimously adopted the final rulemaking amendments on motion of Mr. Lujano, second of Mrs. Weeks.

Discussion & Action of Proposed OSHA Citations and Penalties

Chairman Delfs stated that the Arizona Public Service Company file would be addressed today but that the rest of the OSHA files on the agenda will be held until next week.

Arizona Public Service Company
400 N. 5th Street
Phoenix, AZ 85004

Fatality
Yrs/Business – 56
Empl. Cov. by Insp. – 5

Site Location: Saguaro Switchyard, MP #288 on I-10, Red Rock, AZ 85245
Inspection #: A9339/312836141
Insp. Date: 12/02/08

SERIOUS – Citation 1, item 1 – Existing hazardous conditions related to the work being performed on the high voltage lines and equipment were not thoroughly evaluated before allowing employees to work in these areas.

(Three inspections with no violations in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 2 – The foreman in charge of the high voltage 2nd Phase work did not thoroughly brief the exposed employees on the hazards associated with their job, energy source controls or the personal protective equipment required. There was another instance of this violation.

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 3 – An employee was working on the 2250 MCM cables to the 3rd Phase Wave Trap that connect to the couple capacitor voltage transformer without inspecting or testing to verify that the equipment had been de-energized.

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 4 – The employer allowed employees to approach and fuzzz high voltage lines and equipment and take conductive equipment such as a non-insulated manlift closer than what was allowed by the minimum distance chart.

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 5 – An employee was performing work on the 2250 MCM cables that connect the 3rd Phase Wave Trap to the coupled capacitor voltage transformer (CCVT) and the CCVT had not been de-energized of it's stored energy, tested for voltage or grounded prior to the work.

Div. Proposal - \$ 7,000.00

Formula Amt. - \$ 7,000.00

TOTAL DIV. PROP. - \$35,000.00

TOTAL FORMULA AMT - \$35,000.00

Mr. Wright summarized the citations and proposed penalty as listed. The Division proposal was for the gravity-based penalties with no adjustment factors since the violations directly related to the fatality. Chairman Delfs questioned the apparent similarity between Citation 1, item 3 and item 5. Mr. Wright explained the differences between the proposed citations. Mr. Wright responded to Mr. Parker's request for clarification regarding the standards and the hazards identified in the proposed citations. The Commission approved issuing the citations and assessed the recommended penalty of \$35,000.00 on motion of Mr. Lujano, second of Mrs. Weeks. Mr. Delfs voted nay due to difficulty in understanding the differences and lack

of clarity between items 3 and 5.

Ms. McGrory asked if the Commissioners would find it helpful if the OSHA packet identified the standard cited in the proposed citation. Chairman Delfs stated that might be helpful.

Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated that there was nothing new to report.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that there is nothing new regarding bills and that the Legislature is continuing to work on the budget. She gave an update on meetings at the Legislature.

Discussion &/or Action regarding Industrial Commission of Arizona, for Itself and as Trustee for the Special Fund of the Industrial Commission of Arizona; and the Special Fund of the Industrial Commission of Arizona, Petitioners, v. Dean Martin, Arizona State Treasurer, in his official capacity; Janice K. Brewer, Governor of the State of Arizona, in her official capacity, Respondents. The Commission may move into Executive Session under A.R.S. §§38-431.03(A)(3) and (A)(4) for Discussion and Consultation with the Attorneys of the Public Body regarding Pending Litigation or Settlement Discussions in order to resolve Litigation. 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

Ms. McGrory gave an update regarding the filing of amicus briefs and the Supreme Court's conference schedule.

Announcements

Mr. Wade advised that in follow-up to Ms. Week's inquiry regarding a previously issued civil penalty, the Air Safety Flight Academy has applied for workers' compensation insurance from SCF Arizona and the application is currently in the underwriting stage.

Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, June 4, 2009 at the Tucson ICA office and will begin with a lump sum commutation hearing at 10:00 a.m.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:45 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By Brian C. Delfs
Chairman

By Kevin W. Lujano, Sr.
Member

By Kevin Webb
Member

ATTEST:

By [Signature]
Member

Teresa Hulton
Commission Secretary

By [Signature]
Member

THE INDUSTRIAL COMMISSION OF ARIZONA

800 West Washington Street
Phoenix, Arizona 85007

PUBLIC MEETING

Subject: 2009-2010 Physician's Fee Schedule
Date: Thursday, May 28, 2009
Time: 1:00 p.m.
Location: Auditorium

ATTENDEES ARE INVITED TO SIGN IN

PLEASE PRINT

<u>NAME</u>	<u>REPRESENTING</u>
<u>DON DEARYH, DC</u>	<u>AZ ASSOC OF CHIROPRACTIC</u>
<u>Stephanie Timmons</u>	<u>Concentra</u>
<u>Darla Nigg</u>	<u>Concentra</u>
<u>Cynthia Evered</u>	<u>Az Hand & Wrist</u>
<u>Kristine Kennedy</u>	<u>Healthsystems</u>
<u>SANDY SHAB</u>	<u>Healthsystems</u>
<u>Cathy Vines</u>	<u>SCF Arizona</u>
<u>David Ott, MD</u>	<u>SCF AZ</u>
<u>Russell Rouse MD</u>	<u>SELE</u>
<u>Lynn Doran</u>	<u>SCF AZ</u>
<u>Eoin Carey</u>	<u>Arizona Pharmacy Alliance</u>

ANYONE WISHING TO ADDRESS THE COMMISSION, PLEASE
FILL OUT A "REQUEST TO SPEAK" FORM

