

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, July 22, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (video conference)
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Suzanne Marwil	Legal Counsel
	Darin Perkins	Director, ADOSH
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Mr. McCarthy was not able to attend. Also present was Teresa Yi of Snell & Wilmer.

Approval of Minutes of July 14, 2010 Meeting

The Commission unanimously approved the Minutes of July 14, 2010 on motion of Mr. Parker, second of Ms. Strickler.

Discussion & Action regarding 2010-2011 Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Ms. McGrory stated there are several additional issues to be addressed. In follow-up to an earlier discussion regarding determination of AWP, her original recommendation was that AWP be determined on the day the medication is dispensed and that each entity select and advise of the publication they are using. Ms. McGrory is now recommending that the Commission select the publication and address the administrative burden. Following discussion, the Commission unanimously adopted the following language on motion of Mr. Delfs, second of Mr. Parker. "Except as provided below, Average Wholesale Price shall be determined on the date a drug is dispensed from pricing published in the most recent issue, as updated in the most recent update, of a nationally recognized pharmaceutical publication designated by the Commission.

An entity responsible for payment of prescription drugs may select the following as an alternative to the foregoing if the selection is made no later than October 1st of each year. This selection shall be communicated in writing to the Commission and remaining effect until the following October 1st: AWP shall be determined on the date a drug is dispensed from pricing published in the most recent issue, as updated quarterly, of the publication designated by the Commission. For purposes of this paragraph, quarterly means the first day of the month on January, April, July and October".

The Commission also unanimously adopted MediSpan as the publication for determining AWP on motion of Mr. Parker, second of Ms. Strickler.

Ms. McGrory stated that the next issue is to revisit exceptions previously discussed regarding the 75% excel formula for determination of values. She stated that, in addition to the

exceptions that have been approved, she is recommending two more. One is for codes that are specific to Arizona since no values are available from other states. The second is for codes with a "BR", By Report, designation since values can range widely for those codes. The Commission unanimously accepted the two additional exceptions on motion of Mr. Parker, second of Ms. Oster.

Ms. McGrory stated that she believes this addresses all of the issues that were pending. She will prepare a summary of actions taken, along with new values for codes which will be posted on the website the first or second week of August. By September, she stated that the new fee schedule will be posted. Chairman Delfs thanked Ms. McGrory for her hard work on the fee schedule update. He expressed his appreciation that the community, in particular Chic Older of the Arizona Medical Association, has been collaborative and cooperative and offered input regarding the issues. He also stated that the stakeholder group to be formed to consider the use of networks and other fee discount agreements is a good step forward. The make up of the group was discussed and Ms. McGrory stated that she would appreciate suggestions from the Commissioners and would like a broad representation to include the Self Insurers Association and Pharmacy Association.

Discussion & Action of Proposed OSHA Citations and Penalties

Anthony L. and Jane Doe Vay dba
CertaPro Painters of Scottsdale
2922 N. 70th Street, Suite 100
Scottsdale, AZ 85251

Complaint
Yrs/Business - 9
Empl. Cov. by Insp. - 3

Site Location: 5115 N. 27th Avenue, Phoenix, AZ 85017

Inspection #: R0738/314617820

Insp. Date: 06/08/10

SERIOUS - Citation 1, item 1 - Employees were not trained in the recognition and avoidance of hazards associated with the operation of aerial lifts (1926.454(a)).
(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 2 - An employee's personal fall arrest system (PFAS) was rigged in such a way that the employee could contact the ground in the event of a free fall (1926.502(d)(16)(iii)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, item 3 - Employees painting at various heights of 9' to 22' from aerial lifts while using a personal fall arrest system (PFAS) and exposed to falls were not provided adequate training to recognize the hazards or in the procedures to be followed to minimize those hazards (1926.503(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

NONSERIOUS - Citation 2, item 1 - The employer did not maintain the 2009 OSHA 300 Log or OSHA 300A Summary of Work-Related Injuries and Illnesses (1904.1(a)(2)). There were two other instances of this violation.

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$2,550.00

TOTAL FORMULA AMT. - \$2,550.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these

violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,550.00 on motion of Ms. Oster, second of Ms. Strickler.

Westover Roofing, LLC
9650 E. Cana Street
Herford, AZ 85615

Unprogram Related
Yrs/Business – 8
Empl. Cov. by Insp. – 8

Site Location: 400 Denman Avenue, Sierra Vista, AZ 85635
Inspection #: P0775/314617499
Insp. Date: 05/25/10

SERIOUS – Citation 1, item 1 – Employees were working on top of the building's patio roofs installing felt roofing paper at a height of 10'6" above the ground and were not protected from falling by the use of a guardrail system, safety net, or personal fall arrest system (1926.501(b)(10)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – Employees working on top of the building's patio roof installing felt roofing at a height of 10'6" above the ground were not provided training to recognize the hazards of falling or in the procedures to be followed in order to minimize those hazards (1926.503(a)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 2, item 1 – The log and summary of work related injuries and illnesses was not maintained for the establishment (1904.1(a)(2)).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$1,800.00

TOTAL FORMULA AMT. - \$1,800.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,800.00 on motion of Ms. Strickler, second of Ms. Oster.

Galco International, LTD
2019 W. Quail Avenue
Phoenix, AZ 85027

Planned
Yrs/Business – 40
Empl. Cov. by Insp. – 135

Site Location: 2019 W. Quail Avenue, Phoenix, AZ 85027
Inspection #: S2603/314384678
Insp. Date: 04/06/10

SERIOUS – Citation 1, item 1 – Two employees were operating a forklift without formal training and certification (1910.178(l)(1)(i)).

(No inspection history in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, item 2 – Four sewing machines did not have the vertical drive belts guarded and the pulley completely enclosed to prevent accidental contact with rotating parts, pinch points and in-going nip points (1910.219(d)(1)). There were two other instances of this violation.

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, item 3– A hot cutter did not have the chain and sprocket assembly enclosed to prevent the operators from placing any part of the body into the danger zone during the operating cycle (1910.219(f)(3)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$5,250.00

TOTAL FORMULA AMT. - \$5,250.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,250.00 on motion of Ms. Oster, second of Ms. Strickler.

Klimate King Air Conditioning & Heating, LLC
11713 W. Thunderbird Road
El Mirage, AZ 85335

Planned
Yrs/Business – 25
Empl. Cov. by Insp. – 8

Site Location: 11713 W. Thunderbird Road, El Mirage, AZ 85335

Inspection #: Z5834/314617697

Insp. Date: 06/09/10

SERIOUS – Citation 1, item 1 – A written lockout/tagout program and procedures for the maintenance and servicing of a machine or equipment where the unexpected energizing, start-up or release of stored energy could occur and cause injury had not been established and implemented (1910.147(c)(1)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, item 2a – Safety related work practices had not been developed or implemented for HVAC technicians performing work on or near equipment or circuits that were energized or could be energized (1910.333(a)).

Citation 1, item 2b - Employees were not provided with adequate personal protective equipment designed to protect employees while working on energized equipment (1910.335(a)(1)(i)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$1,500.00

TOTAL FORMULA AMT. - \$1,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$1,500.00 on motion of Ms. Strickler, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C10/11-0127
2C09/10-2772

Curtis Byrd, a Single Man dba Diamondback Movers
Raymond M. McCartney & Jennifer McCartney,

Husband & Wife dba Ray's Landscape and Design

Mr. Wade advised that he is removing consideration of civil penalties for the two above listed employers from consideration. The first employer has again obtained insurance and he is no longer recommending a penalty. He will check coverage in three months to be sure the policy is still in effect. With regard to the second employer, Mr. Wade advised that the name listed on the agenda is not correct.

Announcements and Scheduling of Future Meetings

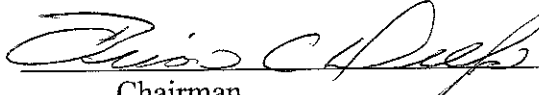
Ms. McGrory stated that tomorrow is the first furlough day for state employees and that the office will be closed until Monday. Information has been posted on the web site, along with signs on the building informing the public.

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, August 5th and that meetings have also been scheduled for August 18th and 26th.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:25 p.m.

APPROVED:

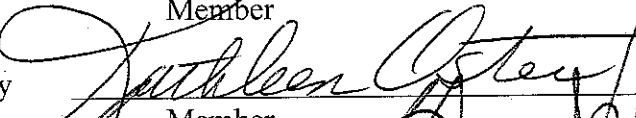
THE INDUSTRIAL COMMISSION OF ARIZONA

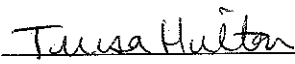
By 
Chairman


By 
Vice Chairman

By _____
Member

ATTEST:

By 
Member


Commission Secretary

By 
Member