

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, July 7, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (video conference)
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	William Wright	Asst. Director, ADOSH
	Sylvia Simpson	Controller
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Ms. Oster had not yet arrived. Also in attendance were Scot Butler, the agency's lobbyist; Robin Klug and David Trenijo of Telcom Construction; and Eda Barolli of Snell & Wilmer.

Approval of Minutes of June 22, 2011 Meeting

The Commission unanimously approved the Minutes of June 22, 2011 on motion of Mr. McCarthy, second of Mr. Parker.

Ms. Oster arrived during the vote but did not participate in the vote.

Discussion & Action of ADOSH Discrimination Complaint

#10-73 Elizabeth Du Preez v Roadrunner Pharmacy, Inc. – Bill Wright requested that consideration of this matter be tabled and Chairman Delfs stated that this matter would be tabled.

Discussion & Action of Proposed OSHA Citations and Penalties

Telcom Construction, Inc. 2218 200 Street E PO Box 189 Clearwater, MN 88320-0189	Complaint Yrs/Business – 2 Empl. Cov. by Insp. – 9
Site Location: 43 <sup>rd</sup> Avenue & Van Buren, Phoenix, AZ 85009	
Inspection #: Y5457/315297697	
Insp. Date: 02/10/11	

SERIOUS – Citation 1, item 1 – Employees were working in an excavation 10' deep, 18' wide and 10' long and had not been instructed in the recognition and avoidance of hazards associated with excavations (1926.21(b)(2).

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

SERIOUS – Citation 1, item 2 – At least 4 employees of Telcom Construction and 5 employees of Qwest were working in an excavation 10' deep, 18' wide and 10' long that had not been inspected by a competent person (1926.651(k)(1)).

Div. Proposal - \$2,250.00	Formula Amt. - \$2,250.00
TOTAL PENALTY - \$6,250.00	TOTAL FORMULA AMT. - \$6,250.00

Mr. Wright summarized the citations and proposed penalty as listed. He advised that the 10% adjustment factor should be moved from size to history and that the Division proposal for Citation 1, item 1 should be \$4,500.00 for a total proposed penalty of \$6,750.00. He responded to questions from the Commissioners. Ms. Oster questioned whether Telcom and Qwest had recently been on the agenda and whether the citations were the same. Mr. Wright responded to the question. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$6,750.00 on motion of Mr. McCarthy, second of Ms. Strickler with a provision that if any prior citation would have increased the recommended penalty, that ADOSH return this matter to the next meeting for reconsideration.

Desert View Lath and Plaster, Inc. 2433 W. Placito Desierto Murado Tucson, AZ 85705	Planned Yrs/Business – 19 Empl. Cov. by Insp. – 4
Site Location: 2410 E. River Road, Tucson, AZ 85718	
Inspection #: A9339/315442103	
Insp. Date: 03/17/11	

REPEAT SERIOUS – Citation 1, item 1 – Employees were working from scaffolds 16' – 38' high, 3' wide and 10' to 150' long that did not have the retainer pins secured through the post openings on the baseplate stems and the scaffold legs. The scaffold legs were resting on the bolt through the baseplate stem (1926.451(f)(4)). There were two other instances of this violation.

DESERT VIEW LATH AND PLASTER, INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD OR ITS EQUIVALENT 1926.451(f)(4) WHICH WAS CONTAINED IN ADOSH INSPECTION 314948928, CITATION 1, ITEM 3, ISSUED ON 11/17/10 WITH RESPECT TO A WORKPLACE LOCATED AT 101 WEST IRVINGTON ROAD IN TUCSON, AZ.

Div. Proposal - \$4,000.00	Formula Amt. - \$4,000.00
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SERIOUS – Citation 2, item 1 - Scaffold foundations (earth) for scaffolds 10-38' high, 3' wide and 10-150' long were at angles causing incomplete baseplate contact with the ground/mud sill (1926.451(c)(2)(i)). There were three other instances of this violation.

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
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SERIOUS – Citation 2, item 2 - Daily inspections prior to the start of each shift were not completed (1926.451(f)(3))

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
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GROUPED SERIOUS – Citation 3, item 3a - The four employees that had been working from the scaffolds applying the lath and wire to the structures had not been trained to recognize the safety hazards associated with working from scaffolds (1926.454(a)).

Citation 3, item 3b – The employees had not been trained by a competent person to erect and

inspect scaffolds (1926.454(b)).	
Div. Proposal - \$ 800.00	Formula Amt. - \$ 800.00
TOTAL PENALTY - \$8,800.00	TOTAL FORMULA AMT. - \$8,800.00

Bill Wright summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Noting that Citation 1 was characterized as a repeat serious, Mr. Parker expressed concerns over whether the employer was moving in the right direction to correct the violations. Mr. Wright stated this could be discussed in informal conference. Mr. Parker stated that the educational piece is important so the violations do not reoccur. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$8,800.00 on motion of Ms. Oster, second of Mr. Parker.

Element Architectural Metals, LLC	Complaint
2610 E. Washington Street	Yrs/Business - 3
Phoenix, AZ 85034	Empl. Cov. by Insp. - 3
Site Location: 2610 E. Washington Street, Phoenix, AZ 85034	
Inspection #: I7163/315419028	
Insp. Date: 03/02/11	

SERIOUS – Citation 1, item 1 – The employer did not develop and implement a written lockout/tagout program and procedures for maintenance personnel and/or repair persons to prevent the release of stored energy during the performance of major and minor repair work (i.e. work on punch presses)(1910.147( c)(1)

Div. Proposal - \$750.00	Formula Amt. - \$750.00
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SERIOUS – Citation 1, item 2 – Two employees were operating a forklift without training and certification (1910.178(l)(1)(i).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
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SERIOUS – Citation 1, item 3 – Two employees operated a punch press without an awareness barrier installed to prevent employees from contacting rotating and moving parts (1910.212(a)(1). There were 4 other instances of this violation.

Div. Proposal - \$750.00	Formula Amt. - \$750.00
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SERIOUS – Citation 1, item 4 – A press brake was lacking a guard installed over the horizontal drive belt and pulleys to prevent accidental contact (1910.219(d)(1).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
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SERIOUS – Citation 1, item 5 – One press brake was lacking a guard to prevent accidental contact with rotating sprockets and chain (1910.219(f)(3).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
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SERIOUS – Citation 1, item 6 – One 2" x 4" 110 volt electrical outlet was not effectively closed on the unused openings (1910.305(b)(1). There was another instance of this violation.

Div. Proposal - \$ 750.00	Formula Amt. - \$ 750.00
TOTAL PENALTY - \$4,500.00	TOTAL FORMULA AMT. - \$4,500.00

Bill Wright summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously



Discussion and/or Action regarding United Food & Commercial Workers Local 99, et. al, v. Jan Brewer, in her capacity as Governor of the State of Arizona, et al., U.S. District Court case number 2:11-cv-921-PHX-SRB. 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

Mr. Wade stated that this is a continuing agenda item. The State has filed responsive pleadings and no hearing dates have been set yet.

Discussion & Action regarding 2011-2012 Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Ms. McGrory provided a summary of comments received with staff analysis and recommendations. She stated that the first issue requiring discussion and action is the methodology to select reimbursement values. After summarizing the comments, proposal submitted by the Arizona Medical Association (ArMA), medical costs in Arizona, and the impact that the proposal would have on the values of the codes under review, she recommended that the Commission adopt the following: If the current Arizona fee schedule value is less than the 75<sup>th</sup> percentile of the surveyed states, then the value is raised to the 75<sup>th</sup> percentile. If the current fee schedule value is more than the 75<sup>th</sup> percentile, but less than the highest state surveyed, then the current value is maintained. If the fee schedule value is higher than the higher state surveyed, then the value is reduced to that level. Ms. Strickler asked if there was an opportunity for the public to respond ArMA's proposal. Ms. McGrory explained the public hearing process and stated that the record is held open for 10 days after the hearing to afford parties the opportunity to respond to other comments received. Ms. Strickler suggested that additional input and comments be solicited on the ArMA proposal. Following additional discussion on this issue, Chairman Delfs directed that ASIA and SCF be given another opportunity to provide comment on ArMA's proposal before the next Commission meeting.

The Commission discussed medical claim costs in Arizona and NCCI's impact statement. Mr. Parker expressed concern that Arizona's workers' compensation medical costs were higher than regional and countrywide costs. The Commission continued to discuss workers' compensation medical cost drivers in Arizona and how they vary from state to state. Ms. McGrory suggested that the issue be considered from a comprehensive point of view to include not just physician costs, but prescription medications and other cost drivers.

The second issue considered by the Commission was the use of Category III codes. Ms. McGrory provided a description of these codes and summarized the comments received. She recommended that these codes be adopted with "By Report" values, explaining that the Commission does not have jurisdiction under the Fee Schedule statute to impose a pre-negotiation requirement (as suggested by one of the comments received). Following discussion, the Commission unanimously adopted the Category III codes with "By Report" values on motion of Mr. Parker, second of Mr. McCarthy.

The third issue considered by the Commission was perceived inequities between codes 97003 and 97004. Ms. McGrory summarized the comments received, noting that when this issue was considered by the Commission last year, the Commission decline to review these

codes out of cycle. Following discussion, the Commission unanimously declined to reconsider their previous decision not to consider these codes out of cycle on motion of Mr. McCarthy, second of Ms. Oster.

The fourth issue considered by the Commission was the proposal that the Commission adopt "Q" modifiers for anesthesia services. Ms. McGrory summarized the comments and recommended that this issue be deferred until next year to allow a more thorough analysis of the issue. Following discussion, the Commission unanimously agreed to defer consideration of adoption of these codes until next year for a more thorough discussion on motion of Mr. McCarthy, second of Mr. Parker.

The fifth issue considered by the Commission was the adoption of deletions and additions and terminology changes to CPT@4. Ms. McGrory advised that no comments were received on this issue and that the adoption of deletions, additions and terminology changes simply conforms the Arizona Fee Schedule to changes made in the CPT@4. Following discussion, the Commission unanimously adopted the deletions, additions and terminology changes by reference on motion of Mr. Parker, second of Mr. McCarthy.

The sixth issue considered by the Commission was a list of issues raised for future discussion. Ms. McGrory summarized the list of issues, identifying which issues could be added to next year's staff report and which issues could not be considered for jurisdictional reasons. No action was required on this issue.

In response to a question from Ms. Strickler, Ms. McGrory explained that a summary of action taken by the Commission regarding the fee schedule will be posted on the web site once the fee schedule process is concluded.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission

Ms. McGrory summarized Commission activity to date with regard to Mr. Butler's list of activities and issues presented under the legislative agenda item. She also provided an update regarding the agency's 2010 annual report.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, July 13<sup>th</sup> and that meetings are also scheduled for July 28<sup>th</sup> and August 12<sup>th</sup>. The Commission scheduled additional meetings for August 25<sup>th</sup> and 31<sup>st</sup>.

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

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura L. McGrory, Director

ATTEST:

  
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Teresa Hilton, Commission Secretary