

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
The Auditorium
Phoenix, Arizona 85007
Wednesday, April 25, 2012 – 1:00 p.m.

Present:	David Parker	Chairman
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self Insurance Manager
	Noreen Thorsen	Claims Manager
	Pam Sanchez	Asst. Claims Manager
	Melissa Smith	Compliance Supervisor
	Michael Hawthorne	Chief Financial Officer
	Kamen Kovatchev	Self Insurance
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:02 p.m. noting a quorum present. A list of attendees for the Physician's and Pharmaceutical Fee Schedule hearing who chose to sign in is attached. A court reporter was also present. Also in attendance were Scot Butler, the agency's lobbyist, and Eda Barolli of Snell & Wilmer.

Public Hearing to accept comments and other information regarding the 2012-2013 Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B). During this hearing, the Commission may also discuss the fee schedule and information relevant to the annual update

Chairman Parker welcomed interested parties to the public hearing and advised that notice was provided to the public inviting comments. He stated that to allow people the opportunity to respond to comments made by others, the record will remain open for an additional 10 business days, which will be until the close of business on May 9, 2012. He further advised that copies of written comments received through that date will be posted online at the Commission's website at www.ica.state.az.us. He reiterated that anyone wishing to respond to comments that they have heard at the hearing or written comments that are posted online need to do so before the close of the record on May 9th. He also stated that 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 and the transcript will be available for review

Director McGrory summarized the issues, recommendations and proposed changes to the Fee Schedule. She recommended that the Commission continue to designate Medi-Span as the publication to be used for determination of Average Wholesale Price under the Pharmaceutical Fee Schedule. She also advised that there were some corrections that need to be made to the 2012 staff document. First, Code 93529 needs to be added to Table 1, Deleted Codes. Second, the Category III codes found in Table 2, New Codes, should be designated as "RNE" rather than

"BR". Lastly, she advised that a typographical error found in the 2011 Fee Schedule will be corrected in the 2012 Fee Schedule. This correction will delete language that conflicts with the specific dollar value assigned last year to codes 64783, 64872, 64874, 64876 and 69990.

The following attendees addressed the Commission and responded to questions asked by the Commissioners: Chic Older, Executive Vice President, Arizona Medical Association; Anthony Yeung, M.D., Desert Institute for Spine Care; Mark Winer, M.D., Dan Lieberman, M.D., Arizona Center for Neurosurgery; Cynthia Everlith, Arizona Hand & Wrist Specialists; Cynthia Driskell, Arizona Physical Therapy Association; and Amanda Weaver, Executive Director, Arizona Osteopathic Medical Association.

At the conclusion of the testimony, Chairman Parker thanked all of the speakers and stated that all comments received will be considered by the Commission and will be placed on the Commission's web site. He reminded those present that the record would remain open until May 9, 2012 at 5:00 p.m. for additional comments. In response to a question from Commissioner Sanders, Ms. McGrory explained the fee schedule process from this point in time. Mr. Parker invited interested parties to provide additional data that may not have been provided in the NCCI analysis. He closed the hearing at 2:26 p.m. After a brief recess, the Commission continued with its regularly scheduled meeting at 2:35 p.m.

Approval of Minutes of April 11, 2012 Meeting

The Commission unanimously approved the Minutes of April 11, 2012 on motion of Mr. McCarthy, second of Mr. Sanders.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C11/12-0389 Khurseed Faiyaz Kazi, a single woman, dba Lido Motel
2. 2C11/12-0029 Mike Sauer & Marilee Sauer, husband and wife, dba Scattered Rock Ranch Hay Sales aka Scattered Rock Ranch
3. 2C11/12-0011 Spear Enterprises, L.L.C. dba Farmers Insurance

Chairman Parker asked if any of the listed items needed to be removed from the consent agenda. Secretary Hilton stated that there were not. The Commission unanimously approved the items on the consent agenda on motion of Ms. Oster, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Scot Butler advised that the Legislature continues to discuss the State budget. The bills he has been tracking for the agency are done and signed with the exception of HB 2571 and SB 1388 which are still active. He provided an initial list of topics that the Commission may wish to address for the next Legislative session.

Discussion & Action regarding Residential Fall Protection, Fiftieth Legislature, Second Regular Session, Senate Bill 1441, and Adoption of New Rule to Incorporate by Reference the Requirements in Arizona Revised Statutes Title 23, Chapter 2, Article 13

Darin Perkins advised that Senate Bill 1441 directs the Industrial Commission to formally adopt the requirements of Article 13 as part of Arizona's Occupational Safety and Health Plan within thirty days after the effective date of the Bill. The effective date of the Bill is March 27, 2012. Following discussion, the Commission unanimously approved the Notice of Final Rule for A.A.C. R20-5-601.01 and directed ADOSH to file the Notice of Final Rule with the Secretary of State on motion of Mr. Sanders, second of Ms. Oster.

Discussion & Action of ADOSH Discrimination Complaints

#11-50 Yolanda Salazar v. Nextcare Urgent Care - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Salazar. In her complaint, Ms. Salazar alleges that she was terminated for e-mailing a safety concern to management. Mr. Perkins described the employer's position with respect to Ms. Salazar's separation from employment.

Mr. Perkins presented a history of Ms. Salazar's employment and chronology of events and responded to questions from the Commission. The Division recommendation was to pursue the matter since the evidence supports a causal connection between the exercise of protected activity and termination. Mr. Perkins explained the process if the case is pursued. Following discussion, the Commission unanimously voted to pursue the complaint on motion of Mr. Sanders, second of Mr. McCarthy.

#12-7 Carole Pysher v. Wolff Mechanical, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Pysher. In her complaint, Ms. Pysher alleges that she was terminated because she filed a workers' compensation claim, and a safety and health complaint with the Arizona Division of Occupational Safety and Health. In response to the complaint, the employer presented its position with respect to Ms. Pysher's separation from employment.

Mr. Perkins presented a history of Ms. Pysher's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter because there was insufficient evidence to support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations and Penalties

Straightline Utilities, LLC
4630 E. Elwood Street, Suite 4
Phoenix, AZ 85040

Complaint
Yrs/Business - 12
Empl. Cov. by Insp. - 6

SERIOUS - Citation 1, Item 1 - A 12 foot long nylon sling was damaged with cuts, snags and holes and was being used to lift 20 foot pipe sections that were 12 inches in diameter and 300-500 pounds per 20 foot pipe section (1926.251(e)(8)(iii)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, Item 2 – The temporary spoils were not a minimum of two feet back from the top edges of the trench (1926.651(j)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, Item 3 – Employees were working in a trench nine feet deep without adequate cave-in protection for Class C soil (1926.652(a)(1)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL PENALTY - \$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,000.00 on motion of Mr. McCarthy, second of Mr. Sanders.

Socorro's Roofing, LLC
26601 S. 185th Drive
Goodyear, AZ 85338

Complaint
Yrs/Business – 3
Empl. Cov. by Insp. – 4

SERIOUS – Citation 1, Item 1 – Four employees were not protected from falling in or through holes in the working surface, six feet or more above lower levels, by covers or other protective systems (1926.501(b)(4)(i)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, Item 2 – One employee was working on a 5:12 pitch roof at approximately 18' above ground level without utilizing a fall protection system to preclude a fall to the ground below (1926.501(b)(11)). There were two other instances of this violation.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, Item 3 – A training program had not been implemented that instructed each employee in the recognition and avoidance of fall hazards associated with working at elevated heights of 16' and 18' above ground level (1926.503(a)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

GROUPED SERIOUS – Citation 1, Item 4(a) – One section of an aluminum extension ladder did not extend three feet above the upper landing space (1926.1053(b)(1)). There was one other instance of this violation.

Citation 1, Item 4(b) - One 18' long aluminum extension ladder was not used in a manner in which it was intended (1926.1053(b)(4)).

Citation 1, Item 4(c) – One section of an aluminum extension ladder was not secured to preclude displacement (1926.1053(b)(6)).

Citation 1, Item 4(d) – Four employees were utilizing one half of an 18' aluminum extension ladder that was damaged (i.e., dented rung) and was not taken out of service or replaced prior to use (1926.1053(b)(16)). There was one other instance of this violation.

Citation 1, Item 4(e) – One employee did not grasp the ladder with at least one hand while

descending from a section of an aluminum extension ladder to preclude a fall of approximately 16' to the ground below (1926.1053(b)(21)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, Item 5 – Four employees were not trained in the recognition and avoidance of unsafe conditions associated with the use of portable extension ladders (1926.1060(a)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$6,000.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$6,000.00 on motion of Ms. Oster, second of Mr. McCarthy.

Discussion & Action of Request for Renewal of Self Insurance Authority

City of Phoenix – Renee Pastor presented staff's renewal report along with current Fitch, Moody's, Standard & Poor's and Dunn and Bradstreet bond and credit ratings and responded to questions from the Commissioners. Ms. Pastor provided addition information related to the City's self-insurance program. Administration is recommending renewal of workers' compensation self-insurance authority due to the City's financial stability; protections afforded it as a governmental entity and a clean audit report. Mr. Parker commented on the City's efforts to fill the risk manager position and described options with respect to security. He stated to representatives of the City in attendance that Ms. Pastor could assist them with exploring options and the use of an internal service fund would increase the Commission's comfort level with respect to the self-insurance program. The Commission unanimously approved renewal of self-insurance authority on motion of Ms. Oster, second of Mr. Sanders.

Mesa Unified School District No. 4 – Ms. Pastor presented staff's renewal report along with current Moody's and Dunn and Bradstreet bond and credit ratings. Ms. Pastor advised that the District does have a trust fund and uses a confidence level of 80% with a discount rate of 3.5% in reserving claims. Administration is recommending renewal of workers' compensation self-insurance authority based on the District's stable financial condition, ability to raise funds as a government entity; a clean audit report; as well as favorable bond and credit ratings. The Commission unanimously approved continuance of self-insurance authority on motion of Mr. McCarthy, second of Ms. Oster.

Pima County – Ms. Pastor presented staff's renewal report along with current Fitch, Moody's, Standard & Poor's, and Dunn and Bradstreet bond and credit ratings. Ms. Pastor advised that the County has requested an exemption from filing a deposit under Rule 20-5-1114 and that they have a fully-funded risk management fund sufficient to cover actuarial liabilities. The County uses a confidence level of 75% and a discount rate of 2% in reserving claims. Administration is recommending renewal of workers' compensation self-insurance authority due to the County's stable financial condition; clean audit reports; acceptable credit and bond ratings; COP ratings and approval under A.A.C. §R20-5-114 for maintaining a fully-funded risk management fund as an alternative to the posting of other security. The Commission granted continuance of self-insurance authority and approval under A.A.C. R20-5-1114 for maintaining a fully-funded risk management fund as an alternative to the posting of other security on motion of

Mr. Sanders, second of Mr. McCarthy with a vote of 4-0. Mr. Parker did not vote.

Discussion & Action of Attorneys' Fee Petition

Mona Goodband v. Jack Levine – Andrew Wade advised that Jack Levine has petitioned the Industrial Commission to set attorney' fees with respect to work that he performed for Ms. Goodband in connection with Ms. Goodband's workers' compensation claim. Mr. Wade presented a history of the claim and the work performed by Mr. Levine on behalf of Ms. Goodband.

Mr. Wade explained staff's recommendation and responded to questions from the Commission. Following discussion, the Commission unanimously denied the request for attorneys' fees on motion of Ms. Oster, second of Ms. Strickler.

Discussion and Action regarding Resolution Honoring Fallen Arizona Employees

Ms. McGrory stated that April 28th is Workers' Memorial Day and that last year the Commission had passed a Resolution acknowledging and honoring workers. She presented a Resolution to the Commission for their consideration in recognition of this day and what it stands for. The Resolution will be posted on the Commission's website and in the building. The Commission unanimously adopted the Resolution on motion of Mr. Sanders, second of Ms. Oster.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that meetings are scheduled for Thursday, May 10th, Thursday, May 17th and Wednesday, May 23rd, 2012. The Commission scheduled an additional meeting for Thursday, June 7th, 2012.

There being no further business to come before the Commission and no further public comment, Chairman Parker adjourned the meeting at 3:47 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary

THE INDUSTRIAL COMMISSION OF ARIZONA

800 West Washington Street
Phoenix, Arizona 85007

PUBLIC MEETING

Subject: 2012-2013 Physician's Fee Schedule
Date: Wednesday, April 25, 2012
Time: 1:00 p.m.
Location: Auditorium

ATTENDEES ARE INVITED TO SIGN IN

PLEASE PRINT

<u>NAME</u>	<u>E-MAIL</u>	<u>REPRESENTING</u>
Cynthia Everlith	Ceverlith@azhandwrist.com	Az Hand & Wrist.
Chris Olsza		
EMMETT KAHL	EMMETT-KAHL@CORVEL.COM	CORVEL CORP.
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Barbara Trollope	barbara.trollope@phoenix.gov	Phoenix
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Yolanda Santiago	ysantiago@vsit.org	Valley Schools WC Pool
Michael H Winer MD.	mhwinermd@aol.com	myself

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

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NAME	E-MAIL	REPRESENTING
Heather Bernacki	heamer@dmpolitygroup.com	AZPTA
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