

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium
Phoenix, Arizona 85007
Wednesday, April 17, 2013 – 10:00 a.m.

Present:	David Parker	Chairman
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Kathleen McLeod	Special Assignment
	Larry Gast	ADOSH Acting Director
	Katherine Gosiger	Safety
	Leticia Ramirez	Safety
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 10:00 a.m. noting a quorum present. Ms. Strickler was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist, and Andrea Lewis of Snell and Wilmer. A list of attendees who chose to sign in for the hearing is also available.

Public Hearing to accept comments and other information regarding the 2013-2014 Physicians' and Pharmaceutical Fee Schedule established under 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 1, 2013. 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 1st. 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 recommendations and proposed changes to the Fee Schedule.

The following attendees addressed the Commission and responded to questions asked by the Commissioners: Chic Older, Executive Vice President, Arizona Medical Association; Cynthia Everlith, Administrator, Arizona Hand & Wrist Specialists; and Cathy Vines, Director, SCF Arizona.

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 1, 2013 at 5:00 p.m. for additional comments. Chairman Parker closed the hearing at 10:33 a.m. After a brief recess, the Commission continued with its regularly scheduled meeting at 10:38 a.m.

Approval of Minutes of April 10, 2013 Meeting

The Commission unanimously approved the Minutes of the April 10, 2013 General Session on motion of Ms. Oster, second of Mr. Sanders.

The Commission held consideration of the Minutes of the April 10, 2013 Executive Session.

Discussion &/or Action regarding Legislation

Scot Butler provided a brief update on SB 1310 and HB 2485.

Discussion and Action regarding Arizona Division of Occupational Safety and Health inspection of Arizona Grand Resort. This agenda item may include comment from the public and may also include discussion and action regarding potential citations and penalties

Larry Gast gave a summary of the timeline and events and advised that ADOSH received a safety and health complaint from Mrs. Lua alleging that employees were experiencing potential violence in the workplace. The complaint was based on an allegation by Mrs. Lua that she was injured at work by a co-worker who deliberately struck her with a linen cart. Following established procedure, ADOSH notified the employer of the alleged hazard by letter and requested a response to the allegation. The employer responded advising that it had investigated the allegation and asserted that the alleged hazard did not exist. The employer also provided documentation of its workplace violence policies and procedures. Based on the information received, ADOSH advised the parties by letter that the alleged hazard was either corrected or no longer existed based on the response from the employer. Mrs. Lua objected to ADOSH's findings. In response, ADOSH conducted a formal investigation of her complaint which included an onsite inspection by two ADOSH inspectors and interviews of numerous witnesses. Following its investigation, ADOSH was not able to confirm Mrs. Lua's allegations of workplace violence. ADOSH did not issue any citations to the employer as it was unable to establish that the employer had violated its obligations under the Arizona Occupational Safety and Health Act. Mrs. Lua also filed a complaint with ADOSH alleging retaliation by her employer under Arizona Revised Statutes § 23-425. The separate discrimination complaint is currently under investigation by ADOSH. Mr. Gast advised that an informal closing conference had been held yesterday, after which time Mrs. Lua presented a letter to him in Spanish. Leticia Ramirez of ADOSH translated the letter into English and this was also presented.

Mrs. Lua's husband, Ramon Lua, was present and addressed the Commission on his wife's behalf and responded to questions from the Commissioners. Also present was Caroline Larsen of Ogletree Deakins, the employer's attorney, who also addressed the Commission and responded to questions from the Commissioners. Chairman Parker explained that the Commission's decision today relates to whether the employer has a safe work place free from recognized hazards. Mr. Sanders stated that he did not feel a decision could be made until it was verified that the letter Mrs. Lua wrote in Spanish had been translated correctly. Mr. Lua was

provided a copy of the letter and stated he would have Mrs. Lua read and verify that it has been translated correctly. Following further discussion, Chairman Parker thanked Mr. Lua for being here and made a motion to affirm ADOSH's decision not to pursue the complaint which was seconded by Mr. McCarthy. The motion passed three to one with Mr. Sanders voting nay. Mr. Parker stated that ADOSH would continue to review the retaliation complaint on its own merits.

At 12:05 p.m., Chairman Parker recessed the meeting to move the remainder of the meeting to Conference Room 308.

Upon return to the third floor Commissioners Conference Room, the Commission unanimously voted to go into Executive Session on motion of Mr. Sanders, second of Ms. Oster.

Executive Session under A.R.S. § 38-431.03(A)(1) to Interview and Discuss Candidates for the Position of ADOSH Director.

a. 11:00 a.m. – 12:15 p.m. (approximately) Interview candidate

Discussion and/or action regarding the consideration of candidates, salary, and appointment of Director of the Arizona Division of Occupational Safety and Health. The Commission may vote to discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(1). A list of the names of the candidates may be reviewed in the Office of the Director by contacting the Commission's Executive Secretary. The Commission may defer a decision on this matter to a later date

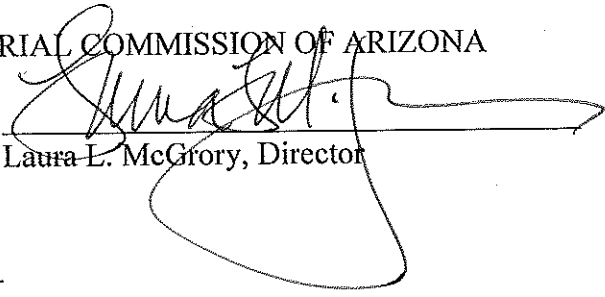
Upon return to General Session, the Commission agreed to interview the top three candidates on Friday, April 19th in a less structured interview with open discussion beginning at 9:00 a.m. Mr. Sanders made a motion to bring back candidates 2, 3 and 5 which was seconded by Mr. McCarthy and unanimously approved. The Commissioners had a brief discussion regarding the salary range for the position.

Announcements and Scheduling of Future Meetings

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:30 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Laura L. McGrory, Director

ATTEST:


Teresa Hilton, Commission Secretary