

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium
Phoenix, Arizona 85007
Thursday, April 17, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	William Warren	ADOSH Director
	Kathleen McLeod	Claims Manager
	David Sosa	Special Fund Monitor
	Kara Dimas	Legal Department
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present and explained that the meeting will be recessed after the public hearing and moved to the third floor Commissioners' Conference Room for consideration of the remaining agenda items. Susan Strickler was not able to attend. Also in attendance were Grant Sanders, Gloria Sanders, 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 2014-2015 Arizona 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, 2014. 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 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. She also noted the recommendations made by the Methodology Committee and the Pharmacy Billing Committee. She thanked the members of those groups: for the Methodology Committee: Kathy McLeod, Chair; Greg Gilbert, Seema Lord, Chic Older, and Cathy Vines. For the Pharmacy Billing Committee: Sandy Shtab, Chair; Adam Fowler, Chris Garland, Trey Gillespie, Kristie Griffin, Mike Roberson, and Sydney Standifird. Ms. McGrory also noted corrections to several proposals in the Radiology Section. For codes 77261, 77262, 77263, 77427, 77431, and 77432, the proposed Professional Component "PC" should mirror the proposed Total Dollar Value. For codes 77424, 77425, 76999 and 78099, the proposed values

for PC and Total should be By Report "BR". The proposed values for code 70170 should be PC - \$30.00, Total - \$95.00 and 70190 should be: - PC - \$22.26, Total - \$67.90.

The following attendees addressed the Commission and responded to questions asked by the Commissioners: Don Bucklin, M.D., Regional Medical Director, U.S. Healthworks; and Cathy Vines, CopperPoint Mutual.

At the conclusion of the testimony, Chairman Parker thanked 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, 2014 at 5:00 p.m. for additional comments. Chairman Parker closed the hearing at 1:20 p.m.

At 1:21 p.m., Chairman Parker recessed the meeting to move the remainder of the meeting to Conference Room 308.

The meeting reconvened at 1:31 p.m. in Conference Room 308.

Discussion &/or Action regarding Legislation

Scot Butler advised that Governor Brewer has exercised her line veto authority on certain items and signed the state budget bills and he presented a summary of HB's 2094, 2221 and 2394 and SB's 1181, 1284, 1307. He stated he has no recommendations for further action on any bills. Ms. McGrory advised that HB 2459, which had a strike everything amendment in the Senate, may have some potential impact on the agency, and staff will communicate those concerns to the Governor's Office.

Approval of Minutes of March 27, 2014 Meeting.

The Commission unanimously approved the Minutes of the March 27, 2014 General Session on motion of Ms. Oster, second of Mr. Sanders.

The Commission unanimously approved the Minutes of the March 27, 2014 first Executive Session on motion of Mr. Hennelly, second of Ms. Oster.

The Commission unanimously approved the Minutes of the March 27, 2014 second Executive Session on motion of Mr. Sanders, second of Mr. Hennelly.

Approval of Minutes of April 2, 2014 Meeting.

The Commission unanimously approved the Minutes of the April 2, 2014 General Session on motion of Ms. Oster, second of Mr. Sanders.

The Commission unanimously approved the Minutes of the April 2, 2014 Executive Session on motion of Mr. Hennelly, second of Mr. Sanders.

Approval of Minutes of April 4, 2014 Meeting.

The Commission unanimously approved the Minutes of the April 4, 2014 General Session on motion of Mr. Sanders, second of Ms. Oster.

The Commission unanimously approved the Minutes of the April 4, 2014 first Executive Session on motion of Ms. Oster, second of Mr. Hennelly.

The Commission unanimously approved the Minutes of the April 4, 2014 second Executive Session on motion of Mr. Sanders, second of Mr. Hennelly.

Approval of Minutes of April 9, 2014 Meeting.

The Commission unanimously approved the Minutes of the April 9, 2014 General Session on motion of Mr. Hennelly, second of Mr. Sanders.

The Commission unanimously approved the Minutes of the April 9, 2014 first Executive Session on motion of Mr. Hennelly, second of Mr. Sanders.

The Commission unanimously approved the Minutes of the April 9, 2014 second Executive Session on motion of Ms. Oster, second of Mr. Sanders.

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation

Mr. Sanders asked if Federal OSHA had responded to the letter from Senators McCain and Flake. Mr. Wade stated that he has not heard anything regarding the letter that Senator's McCain and Flake sent Federal OSHA. Mr. Wade stated that he just learned that Federal OSHA has responded to the Commission's April 2, 2014 request for additional time. According to the letter from Federal OSHA, they are granting the Industrial Commission until one week after the legislature adjourns to submit the Commission's response to the show cause letter. He stated that in the same letter, Federal OSHA denied the Commission's request to bifurcate the proceedings and address the state plan supplement first.

Ms. McGrory stated that in Federal OSHA's response it appears that they believe that triggering of the conditional repeal would result in a gap in state enforcement. Ms. McGrory and Mr. Wade explained staff's position that there would be no gap in enforcement if the conditional repeal was triggered. Mr. Parker explained his analysis that supported staff's position. In response to a question from Mr. Sanders, Mr. Wade and Mr. Parker explained the prior rulemaking process associated with the federal adoption of the residential fall protection standard. Ms. McGrory explained the events following Federal OSHA's rescission of the interim directive in 2010. Mr. Parker stated this will be a continuing agenda item.

Discussion & Action of OSHA Proposed Citations & Penalties

Coast King Packing, LLC
2358 E. 13th St.
Yuma, AZ 85364

Accident
Yrs/Business – 3
Empl. Cov. by Insp. – 28

Site Location: County 11 and Avenue D, Yuma, AZ 85364
Inspection #: P0775-317585107

Insp. Date: 01/08/2014

SERIOUS – Citation 1 - Item 1 – Harvester: The chain drive to the right wing conveyor belt was not adequately guarded to prevent accidental contact by an employee. (1928.57(a)(7)(i)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

Bill Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Mr. Sanders asked how many other harvesters are out there with the same guarding problem. Mr. Parker stated there is a lot of equipment in use that was manufactured before the current safety standards that does not have any guards or they have minimal guards. Mr. Sanders asked how common this hazard is and whether ADOSH could issue an alert. Ms. McGrory responded to the question. Mr. Parker stated that he was impressed with the employer's prompt abatement and he would like to consider a good faith reduction to the penalty. Mr. Parker stated that he liked the idea of an alert to the community and that the matter would be tabled for further information. Mr. Sanders asked for the manufacturers' instructions as well.

Coxwells, Incorporated dba Coxreels
5865 S. Ash Ave.
Tempe, AZ 85283

Planned
Yrs/Business – 90
Empl. Cov. by Insp. – 117

Site Location: 5865 S. Ash Ave., Tempe, AZ 85283
Inspection #: J7272-317588374
Insp. Date: 02/04/2014

SERIOUS – Citation 1 – Item 1 –

- a) Spring Can Department: Rated load markings were not marked on either side of a Yale manual trolley crane, model and serial number unknown. (1910.179(b)(5)).
- b) Spring Can Department: The hook on a Yale Crane manual trolley chain hoist, capacity, model, and serial number unknown, did not have the hooks inspected monthly by the employer and signed reports were not made available upon request. (1910.179(j)(2)(iii)). There were three other instances of this violation.
- c) Spring Can Department: The hook on a Yale Crane manual trolley chain hoist, capacity, model, and serial number unknown, did not have the hoist chains inspected monthly by the employer and signed reports were not made available upon request. (1910.179(j)(2)(iv)). There were three other instances of this violation.
- d) Spring Can Department: One Yale Crane manual trolley chain hoist, capacity, model, and serial number unknown, did not have a complete periodic inspection conducted in the past 12 months. (1910.179(j)(3)). There were three other instances of this violation.
- e) Spring Can Department: The rated load test report for the Yale Crane manual trolley chain hoist, capacity, model, and serial number unknown, was not readily available upon request. (1910.179(k)(2)). There were three other instances of this violation.

Announcements and Scheduling of Future Meetings

Chairman Parker confirmed the dates scheduled for future Commission meetings.

Ms. McGrory provided a brief update on the status of the evidence based medicine Director's committee and stated there may be some recommendations at the next meeting at the end of April. She stated the three decision points that she hopes to get dialed in include where it is appropriate to use treatment guidelines, the treatment guideline or guidelines to recommend, and also the steps of the review process to deal with disputes. There are other decision points that the committee will continue working on and she described those decision points. She expressed her hope that the evidence based guidelines topic can be an agenda item in May.

There being no further business to come before the Commission and no further public comment, the meeting was adjourned at 2:26 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary