

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, January 8, 2015 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Valli Goss	Assistant Chief Counsel
	Larry Gast	Assistant ADOSH Director
	Javier De Echavarri	Compliance Officer
	Ana Maldonado	Compliance Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Scot Butler, Commission lobbyist, Jason Weber of Snell & Wilmer, and Stephanie Coulter of The Cavanagh Law Firm.

Approval of Minutes of December 18, 2014 Regular Meeting.

Chairman Parkers stated the Minutes for December 18, 2014 will be addressed at the next meeting.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C13/14-2297 Ledesma and Associates, L.L.C., dba Crutcher Automotive
 2. 2C14/15-1063 Lopez-Molina Group, L.L.C, dba Putney's Sports Saloon, aka Putney's
 3. 2C14/15-0910 M B Constructors, L.L.C.
 4. 2C14/15-0824 Mex 1 Restaurants, L.L.C., dba Beach Club Cantina
 5. 2C13/14-1777 MJ Recovery, LLC, dba Tarheel Towing, fka Rolaway Enterprises, Incorporated (a Dissolved Corporation)
 6. 2C14/15-1257 Susie's Mama Bear, Inc., dba Susie's Mama Bear, aka Susie's Mama Bear Child Care
 7. 2C14/15-0683 The Brow Lady USA, LLC
 8. 2C13/14-1603 The Out Post General Store, LLC
- b. Approval of Requests for Renewal of Self-Insurance Authority.
1. Dignity Health

Chairman Parker asked if any agenda items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the items on the Consent Agenda on motion of Mr. Sanders, second of Ms. Strickler.

Discussion and/or Action regarding Legislation.

Scot Butler commented on the new Legislative session, briefly summarized the results of the recent election, and commented on the make-up of the current Arizona House and Senate. He summarized when information about new legislative proposals will be available and that he will provide the Commission with information about bills of interest to the Commission. Mr. Butler stated that Governor Doug Ducey's State of the State is scheduled for January 12, 2015 and Governor Ducey is expected to release details regarding his budget proposals on January 16. Mr. Butler mentioned that the rulemaking moratorium will continue. He summarized other items of interest to the Commission and noted that he does not recommend that the Commission initiate any legislation at this time. Mr. Butler responded to Chairman Parker's questions about the projected budget shortfalls for the current budget as well as the budget for next fiscal year and the potential impacts such as budget reductions in some or all general fund programs and fund transfers. Chairman Parker asked Mr. Butler if he has learned of any discussions or proposed legislation related to the Commission and Mr. Butler responded to the question. Ms. McGrory added that she has heard that legislation concerning vexatious claimants may be introduced. She added that legislation regarding the bad faith issue may be reintroduced, and that some claimants' attorneys have expressed frustration with what they perceive as bad policy related to the evidence based medical treatment guidelines, but whether any related legislation is introduced remains to be seen. Mr. Sanders added that he talked with Representative Fann and she did not mention any new legislation related to the Commission. Ms. McGrory commented on the projected budget deficit and how a general fund deficit may impact the Commission even though the Commission is not a general fund agency and has sufficient revenue of its own to cover its appropriation. Ms. McGrory also commented on the January 5, 2015, rulemaking moratorium, Executive Order 2015-01, and she explained why the rulemaking moratorium does not prohibit the Commission from engaging in rulemaking but does encourage agencies such as the Commission to be very judicious about rulemaking. She noted that the Commission should address the priorities and principles of the rulemaking moratorium when ADOSH is required to adopt a new federal standard or in making rules, for example, related to the evidence based medical treatment guideline process, to demonstrate that the Commissioners are performing a thoughtful analysis as to whether it is appropriate to move forward with rulemaking.

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.

Ms. McGrory stated there was nothing to report at this time.

Discussion & Action regarding OSHA Review Board Appointments pursuant to A.R.S. §23-422 and A.R.S. §23-423.

Larry Gast advised that there is a vacancy for a member representing the labor position on the OSHA Review Board. The members of the Arizona Division of Occupational Safety and Health

Mr. Gast explained why a ten percent reduction for history does not apply to Citation 1, Item 1, and stated the recommended penalty was actually \$5,000.00 because the violation caused or contributed to a serious injury.

Chairman Parker commented on Citation 1, Item 2, noting that the employer needed to perform the hazard assessment, control hazards at the source through engineering controls, reduce exposure to hazards through administrative work practice controls, and if a risk cannot be engineered out or administrative controls do not provide sufficient protection, then the employer must provide proper PPE. He noted that ADOSH is not necessarily suggesting that PPE was appropriate here, but is taking the position that the employer did not perform the assessment which might have resulted in engineering, safe work practice and administrative controls that would have reduced the risk. Chairman Parker commented that the reference in Item 2 should be 29 C.F.R. 1910.132(d)(1) instead of A.R.S. 1910.132.

Chairman Parker asked about the general duty clause and industry recognition of the hazards. Mr. Gast responded to the question and noted a 2011 compliance directive that described the hazard and abatement measures and a settlement agreement between federal OSHA and the GEO Group that also addresses the hazard and abatement measures. Mr. Gast described GEO's operations in Arizona and the measures GEO agreed to implement including worksite analysis, job hazard assessment and hazard prevention controls through engineering, panic buttons, closed circuit monitoring, random health and welfare checks by guards, and similar measures. Mr. Gast commented on some measures the Arizona Department of Corrections had, or had nearly completed since the assault, including engineering controls, and items such as panic buttons and closed circuit monitoring in the classrooms which establish that abatement was feasible. Chairman Parker noted that the Commission does not consider post-incident corrective actions as evidence of preexisting recognition of a hazard and described what post-incident corrective actions might establish.

Chairman Parker also asked about common practices in the industry and Mr. Gast responded to the question. Chairman Parker followed up with the differences between the visitor room and the classrooms and Mr. Gast noted that visible measures may deter attacks. Ms. McGrory commented on whether a hazard assessment had been performed pertaining to the teachers and the classrooms, and work practice controls in the classrooms were insufficient. Vice Chair Strickler asked if classes were normally held in the classrooms and if the test proctoring was performed by DOC employees. Mr. Gast stated that the teachers, who performed the test proctoring, were DOC employees and it was a common and regular practice to have teaching and proctoring in the classrooms and there was no video monitoring in the classrooms. Vice Chair Strickler also asked if the teachers have the same type of equipment that a regular corrections officer would have- if they would be armed or have any type of equipment on them that would help protect them, or if they would have a radio. Mr. Gast stated no, except for the radio. Vice Chair Strickler reiterated that the typical teacher on a typical average day would use these specific classrooms and only have a radio. Chairman Parker clarified that corrections employees inside the complex do not normally carry firearms unless they are on a tactical teams, although the corrections officers are often trained on firearms. Mr. Sanders questioned why the DOC would place a female employee, with no protection, in a room with sexual predators. Mr. Sanders and Mr. De Echavarri discussed how the inmates may move from location to location within the unit. Mr. Gast responded to Mr. Sanders' questions regarding the nature of the assault. Mr. Sanders stated that these circumstances are so disturbing and asked whether the citation is a willful violation- to place a teacher in a room unprotected, unmonitored, and unguarded with six sexual predators. Ms. McGrory commented on the theory provided by DOC that if there is a group of inmates, including individuals who are classified as sexual offenders, that the group will protect the teacher. It is when there is a one on one where the risk is deemed to increase.

Mr. De Echavarri responded to Mr. Hennelly's question about the probability of the teacher being left alone with an inmate. Chairman Parker added that, from his experience with jails and prisons, there are a large number of civilians moving around the facility - all of the facilities maintenance people, the administrative staff, the program staff, the religious staff. He stated that is managed fairly closely - people know where they are going and cannot go through doors into certain areas without control. He stated that he does not want it to appear that you could never have a person one on one in the same area with an inmate. There are trustees in the jails and prisons that get to move fairly freely through the areas of their responsibilities. But something went wrong here, and this is different. It is a situation with a high risk that was allowed to move into a condition of higher risk, and what happened, should never have occurred in that facility.

Mr. Hennelly asked whether the victim suffered a permanent disability. Mr. Gast responded that ADOSH did not address the victim's current condition in detail and described some aspects of the victim's condition at the time of the interview.

Vice Chair Strickler asked about the compliance officer's interactions with DOC and their response. Mr. Gast described some corrective measures such as installing closed circuit monitors in all of the classrooms and improved their monitoring. Vice Chair Strickler asked whether the DOC is aware that there could be the potential civil penalties and Mr. Gast responded to the question.

Mr. Sanders asked for clarification regarding the use of a radio to summon help and whether the attacker knocked the radio out of the victim's hand. Mr. De Echavarri described the layout of the classroom, the presence of a radio, and the cordless phone that was at the teacher's desk. He explained what transpired after the attack with both the victim and the attacker attempting to summon help and how long it took for help to arrive.

Mr. Sanders commented on the extreme risk in placing a teacher with sexual predators, the process of allowing inmates to leave after completing the test, and how installing video surveillance does not seem adequate under all circumstances. He added that a total penalty \$10,000 would not be sufficient.

Chairman Parker asked about abatement for Item 2. Mr. Gast responded to the question, and Chairman Parker commented on the process if the employer fails to abate. Mr. Sanders commented on the severe impact the assault must have had on the victim.

Mr. Hennelly asked if ADOSH considered whether willful citations would be appropriate in this case and Mr. Gast stated that the potential for willful citations was considered. He commented on some factors that would support a willful and some that negated a willful classification.

Chairman Parker called for a motion, Mr. Sanders moved the recommendation. Vice Chair Strickler asked for clarification and Chairman Parker clarified the procedural posture of the motion and seconded the motion for the purpose of discussion. Vice Chair Strickler questioned the penalty amount of \$9,500.00 and Mr. Sanders added if there was something else that can be done, he would be happy to withdraw the motion. Chairman Parker commented on ADOSH's penalty policy. Mr. Hennelly asked if the penalty could be set at \$7,000.00 each. Chairman Parker stated that the statutory maximum is \$7,000.00 per violation. Mr. Wade commented on the Commission's discretion to assess the full \$7,000.00. Chairman Parker stated that there is a motion and a second for \$9,500.00. Mr. Sanders asked if he could modify his motion. Chairman Parker replied that he could modify his motion as long as the second for the motion agrees, and he would rather have an alternative motion. Mr. Hennelly made an alternative motion to issue the recommended citations

with a \$7,000.00 penalty on each citation for a total of \$14,000.00. Mr. Sanders seconded. Mr. Sanders asked whether a corrections institution should be held to a higher standard in this instance than any other employer. Chairman Parker stated that the standard for willful is the same, but how it is applied may be different. Mr. Wade added that whether a violation is within the core or essential part of an employer's business is something that can be considered. Chairman Parker commented on the analogy in healthcare accreditation, which is the minimum standard. In corrections, the accreditation standard is the best practice, rather than the minimum. Ms. Goss commented that the Eyman unit is not accredited.

Mr. Hennelly asked if there was a method for ADOSH to follow up to determine if the victim is suffering from a permanent disability and whether the Commission can assess the \$25,000.00 penalty under A.R.S. 23-418.01. Chairman Parker stated the additional penalty of \$25,000.00 is only available for a willful. Ms. McGrory commented on the time-frame to issue a citation. Mr. Wade read the statute and stated it applies to a willful or repeated violation causing the employee permanent disability. Chairman Parker clarified that the victim is an employee and not a contractor. There was no further discussion and the Commission unanimously voted in favor of Mr. Hennelly's motion with a total penalty amount of \$14,000.00.

SVC Manufacturing, Inc.
409 S. 104th Ave
Tolleson, AZ 85353

Fatality/Accident
Years in Business: 15
Empl. Covered by inspection: 1

Site Location: 410 S. 104th Ave
Tolleson, AZ 85353

Inspection No: U9805-1004788

Inspection Date: 07/10/2014

Mr. Gast summarized ADSOH's investigation into a fatal accident and noted that the investigation did not identify any violations and ADOSH was not recommending any citations.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Parker commented on Doug Ducey's inauguration as Arizona Governor that he and Mr. Sanders attended on January 5, 2015.

Chairman Parker confirmed the dates scheduled through March 2015 for future Commission meetings.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:01 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Latra L. McGrory, Director

ATTEST:


Kara Dimas, Commission Secretary