

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, April 23, 2015 – 1:00 p.m.

Present:	David M. Parker	Chairman (video)
	Susan Strickler	Vice Chair
	Michael G. Sanders	Commissioner (audio)
	Joseph M. Hennelly, Jr.	Commissioner
	Dale L. Schultz	Commissioner
	Laura McGrory	Director
	Kathryn Harris	Legal Counsel
	Kathleen McLeod	Claims Manager
	Jacqueline Kurth	Claims
	William Warren	ADOSH Director
	Larry Gast	Assistant ADOSH Director
	Steve Ripple	Compliance Officer
	Erik Anderson	Compliance Officer
	Collen Krueree	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. Chairman Parker welcomed new Commissioner Dale L. Schultz. Also in attendance were Jim Stabler and Cathy Vines from CopperPoint Mutual, Jeff Gray of R&R Partners for the Arizona Self-Insurers Association (ASIA), Steve Weiss, Robert Stolz, Arizona Department of Transportation (ADOT) Safety & Risk, Ted Howard and Sue Olsen from ADOT and Jason Weber of Snell & Wilmer.

Approval of Minutes of April 9, 2015 Regular Session Minutes.

Vice Chair Strickler moved to approve the Minutes of the April 9, 2015 Regular Session meeting and Commissioner Hennelly seconded the motion. The motion passed with Chairman Parker, Vice Chair Strickler, and Commissioner Hennelly voting in favor of the motion.

Consent Agenda:

Chairman Parker noted that staff reports for some of the self-insurance renewals includes information regarding the efforts of Commission staff to address claims processing practices, and if any Commissioners wanted additional information regarding those issues, the items can be removed from the consent agenda and addressed separately.

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into

Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. 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.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C14/15-0583 Ashanti Care Assisted Living
2. 2C14/15-2417 Bravo's Towing, LLC
3. 2C14/15-0197 CBS Holdings, L.L.C. dba R&B Recycling Center
4. 2C14/15-1828 Desert Valley Dental of Phoenix, P.L.L.C., dba Desert Valley Dental
5. 2C14/15-1786 Hambicki's Truck & Container Sales, Inc.
6. 2C13/14-2174 Mesa Metal Industries, LLC
7. 2C13/14-2345 Ruiz Transport, LLC
8. 2C14/15-0193 We Care Clinic, LLC dba Medical Centers of Arizona

b. Approval of Requests for Renewal of Self-Insurance Authority.

1. Mesa Unified School District No. 4
2. Regis Corporation
3. The Kroger Co.

Chairman Parker asked if any agenda item needed to be removed or heard separately. Ms. Harris asked that a. 6. be removed from the consent agenda. The Commission unanimously approved the remaining items on the consent agenda on motion of Commissioner Hennelly, second of Commissioner Schultz.

Kathryn Harris advised that Mesa Metal Industries, LLC had workers' compensation insurance at the time of the investigation and staff is not recommending a civil penalty at this time.

Discussion and/or Action regarding Legislation.

Ms. McGrory advised that she had spoken to Scot Butler and that he would have his final report at next week's meeting.

Discussion and Action Regarding Requests to the Governor's Office for Approval Under Executive Order 2015-01 to Proceed with Rulemaking.

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

Discussion and Action Regarding Implementation of a Process for the use of Evidence Based Medical Treatment Guidelines to Treat Injured Workers under A.R.S. §23-1062.03, which may include a discussion of initiating a pilot program and/or rulemaking.

Ms. McGrory stated that she understood that discussions had taken place regarding a pilot program, but she was not aware of the specific details. She invited others to update the Commission on this issue. Vice Chair Strickler stated that she spoke with representatives from CopperPoint and the Arizona Self-Insured Association who are interested in starting this process as a pilot program. She explained that challenges associated with a pilot program and suggested that additional stakeholder meetings may need to be held with claimant attorneys, physicians,

carriers and the Commission to discuss a possible framework and with getting all stakeholders in agreement.

Chairman Parker asked Jeff Gray if he had any comments from the Arizona Self-Insured Association ("ASIA") board. Jeff Gray addressed the Commission and reported that there is an interest in implementing this process as a pilot program. He stated that it will be easier for the carriers to utilize evidence based medicine treatment standards, but that participation by claimants may be a challenge. He added that it is probably easier to opt into a pilot program by using ODG standards for treatment of chronic pain, but expressed concern over how a pilot might work in principal unless claimants are willing to participate.

Chairman Parker thanked Mr. Gray and asked if there were thoughts or questions from other Commissioners. Commissioner Schultz asked if there were any time constraints on taking action. Ms. McGrory explained the time-frames of the legislation and advisory committee, and that the Commission adopted the recommendations of the advisory committee last December. Since that time the focus has shifted to determining how to implement the process. She explained that from the stakeholders' perspective, those who support this process would like to get it launched as soon as possible, whether the process is implemented through a pilot program or through rulemaking, and that participants will have to determine how much time they need to prepare for their respective roles in the process.

Ms. McGrory informed Chairman Parker that Jim Stabler, of CopperPoint Mutual, had asked to speak. Chairman Parker invited Mr. Stabler to address the Commission. Mr. Stabler stated he met with CopperPoint staff and that they would be willing to participate in a pilot, and that they would need at least 60 days to set up their processes. He noted the claimant concerns and explained that rulemaking would provide a safeguard to carriers and claims administrators because there is no presumption of correctness in the guidelines by statute or by rule. He explained why participation in the pilot by the claimants' bar is necessary. He added that he has discussed the topic with Ms. McGrory and he believes some focused stakeholder meetings would be helpful and he explained why.

Chairman Parker asked if any of the Commissioners had questions. Chairman Parker asked Mr. Stabler if full participation from all stakeholders would be required to test the proposed process. Mr. Stabler responded that even limited participation by CopperPoint, other TPAs and a few of the larger claimant firms, would quickly reveal if there were some problems with this process and also may dispel some of the misconceptions. Ms. McGrory explained why she agreed that limited participation could still provide some valuable information. She stated that a focused stakeholder meeting could be valuable to discuss implementation of a pilot process. Mr. Stabler commented on the importance of keeping this process moving so that the legislation is implemented before more time passes, noting that the industry is frustrated at how long this has taken. Chairman Parker thanked Mr. Stabler and noted that he shared that concern. Chairman Parker stated that evidence based medicine documents treatment that has been proven effective for most people and that it will help keep injured employees from languishing if their conditions are not improving. He explained that he wants to move this process forward as fast as reasonably possible, taking the concerns of the parties into consideration. Chairman Parker asked about the timeframe necessary to determine if the process would work or if it needs to be tweaked. Mr. Stabler responded that he estimates a minimum of six months with a minimum of 20 to 30 cases to go through the system from start to finish, including having an expedited 1061(J) process, to measure satisfaction levels with the stakeholders. Chairman Parker thanked Mr. Stabler.

Chairman Parker asked Steve Weiss if he had any thoughts to add. Steve Weiss affirmed Mr. Stabler's comments. He stated that he would urge everybody involved in this process going forward to implement something, whether that is more discussions about a pilot or on to rulemaking. He expressed concern if participation in a pilot program would be mandated. He explained that the fast track hearing concept could be implemented now without a pilot program or rulemaking, noting that Chief ALJ Poppe has indicated that she is interested in implementing a fast track process beyond the evidenced based medicine process. Chairman Parker thanked Mr. Weiss and asked if there were any questions. Vice Chair Strickler asked Mr. Weiss if he thought that a stakeholder meeting would be valuable from the claimants' bar's perspective and if not, then suggested that the Commission just move forward with rulemaking. She stated that she is trying to ease everyone's concerns by looking at a pilot program to flush out the process before it gets lock down in rulemaking. Mr. Weiss explained why he believes another stakeholder meeting could be beneficial.

Vice Chair Strickler suggested that a stakeholder meeting be set up within the next two weeks to determine if a pilot is feasible. If it does not appear to be feasible, then the process should proceed through rulemaking. Chairman Parker asked Ms. McGrory when staff would be ready to submit a draft of proposed rulemaking. Ms. McGrory stated about four weeks. Chairman Parker stated that we then have four weeks to determine if a pilot program makes sense and asked what pieces would need to be in place to proceed with the pilot program. Ms. McGrory explained that the process was developed in contemplation of an electronic process, and she noted the difficulty of managing this process by paper. She added that the Commission could handle a paper process for a smaller pilot and explained the other things that would need to be in place such as the vendors that would be doing the external peer review. Chairman Parker asked if two to three months would be sufficient. Ms. McGrory explained that Commission staff, along with some of the stakeholders, would need to get together and have some focused discussions to identify what needs to be in place and map out a timeframe in terms of what is a realistic date to launch a pilot. She stated that she was hesitant to say that it could be done in 90 days. She explained that conducting the meeting with the attorneys will provide a sense of whether any of the claimants will be willing participate in the process. Vice Chair Strickler agreed and explained that the Commission should have the stakeholder meetings and prepare for the rulemaking at the same time so that rulemaking can proceed if a pilot program is not feasible.

Ms. McGrory responded to Chairman Parker's question about how long the rulemaking process is likely to take from the filing of the notice of proposed rulemaking until the rules are effective. Chairman Parker asked if there was a way to run a pilot program and start the rulemaking process concurrently. Ms. McGrory identified some concerns with running the processes concurrently.

Chairman Parker summarized by stating that the Commission could defer proceeding with rulemaking if a pilot program appears feasible after the first meeting but if it appears that it is not likely to have suitable participation, then the Commission should probably proceed with the rulemaking. Vice Chair Strickler added that there are a lot of moving parts and that is the key.

Ms. McGrory asked if those involved would be willing to provide her with names of attorneys to participate in the first meeting and she agreed to coordinate the scheduling of the meeting. Chairman Parker asked if there were any other thoughts or discussion on this matter. He thanked Ms. McGrory for taking the lead and thanked everyone that attended the meeting regarding this item and for their helpful comments.

Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH) Discrimination Complaint.

Commissioner Sanders asked who the representatives were from ADOT in attendance. They were identified as Robert Stolz for ADOT Safety & Risk Management, and Ted Howard and Sue Olsen from ADOT.

14-2865-09 - Francis Himpsl vs. State of Arizona, Arizona Department of Transportation

Larry Gast explained that the investigator, Steve Ripple, was present and is available to answer any questions. Mr. Gast presented a summary of Mr. Himpsl's complaint, the employer's response, and the results of the ADOSH investigation. Mr. Gast recommended that the Commission not pursue the matter.

Chairman Parker noted that he did not know any of the individuals who work in this area with ADOT and commented on his personal observations resulting from having worked at ADOT approximately 20 years ago. He commented on the testing the engineers perform, the eye wash station in the room and shower, and what he perceived as a timely response. He asked if the other Commissioners had any thoughts or questions.

Commissioner Schultz added that he reviewed the materials and wanted to compliment staff on a very thorough and balanced investigation. He explained that ADOT took appropriate action, complimented them in their response to Mr. Himpsl's complaint and agreed with staff's recommendation.

Chairman Parker asked if there were other thoughts or questions or a Motion. The Commission unanimously voted not to pursue the complaint on motion of Commissioner Schultz, second of Commissioner Hennelly.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Southwest Fabrication, L.L.C.
22233 N 23rd Avenue
Phoenix, AZ 85027

Fatality/Accident
Years in Business: 18
Empl. Covered by inspection: 60

Site Location: 22233 N 23rd Avenue
Phoenix, AZ 85027
Inspection No: T9350-1017776
Inspection Date: 1/13/2015

SERIOUS – Citation 1 - Item 1 – Cage Department: A KINEFAC MC-80 Cylindrical Die Rolling Machine, serial number 1367 had a rotating work piece that was not guarded to protect the operator and other employees from coming into contact with the hazardous energy. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 2 –

- a) Cage Department: One 480 volt Square D disconnect switch for the Landis #2 Hydraulic Pump was not legibly marked and identified. (29 CFR 1910.303(f)(2)).

b) Cage Department: One 240 Volt Siemens disconnect switch for the Landis #1 was blocked by storage. (29 CFR 1910.303(g)(1)(ii)).

c) Cage Department: A 480 volt Square D disconnect switch for the Landis #2 Hydraulic Pump, lacked strain relief, as the outer insulation of the supply cord was pulled away from the conductors connected to the junction box. (29 CFR 1910.305(g)(2)(iii)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$8,250.00

TOTAL FORMULA AMT. - \$8,250.00

Mr. Warren summarized the citations and proposed penalty as listed. Chairman Parker asked for clarification on Item 1. Mr. Anderson responded to the question and explained how the equipment functioned. Chairman Parker noted that it was under the guarding standard and not the lock-out tag-out standard. He asked for other comments or thoughts from Commissioners.

Commission Schultz asked about the adjustment factors on items number 1 and 2 and Mr. Warren stated that the violation identified in item 1 caused or contributed to a fatality and under ADOSH's penalty policy, there are no discounts where a violation causes or contributes to a serious injury or death. Chairman Parker commented on the adjustment factors for size, good faith and history.

Commissioner Sanders asked about mounted photograph 12 and what appeared to be a red shut off button, its location, if there was an opportunity to reach that quickly and whether there may have been a different outcome if it was located someplace else. Mr. Anderson responded to the question and provided some additional information regarding the accident. Vice Chair Strickler asked about the position of the employee with reference to mounted photograph number 2. Mr. Anderson responded to the question. Chairman Parker commented on mounted photograph number 4. Commissioner Sanders commented on abatement, mounted photograph 3 and the location of the control box. Mr. Anderson commented on the guarding. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$8,250.00 on motion of Commissioner Sanders, second of Commissioner Schultz.

Johnson Manley Lumber Company
11471 E. Squash Blossom Loop
Tucson, AZ 85747

Complaint
Years in Business: 45
Empl. Covered by inspection: 3

Site Location: 11471 E. Squash Blossom Loop
Tucson, AZ 85747
Inspection No: F3875-1032567
Inspection Date: 2/9/2015

SERIOUS – Citation 1 - Item 1 – Homesite 92: An employee was observed installing plywood on a 5/12 pitch roof at a height of 19 feet above the lower level, and was not protected by a guardrail system, safety net system, personal fall arrest system, or an alternative fall protection measure to prevent a fall. (29 CFR 1926.501(b)(13)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 – Homesite 92: Two employees were observed conducting wood framing from the second floor at a height of 11 feet above the lower level, and the window openings were not protected by guardrails, safety nets, or personal fall protection. (29 CFR 1926.501(b)(14)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 – Homesite 92: Employees who were exposed to fall hazards had not been trained to recognize fall hazards and in procedures to control these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citations and proposed penalty as listed. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$4,500.00 on motion of Vice Chair Strickler, second of Commissioner Hennelly.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory reminded the Commission that the Physician's and Pharmaceutical Fee Schedule hearing is scheduled for next week. She noted the Commission has received a written comment from the Property Casualty Insurers (PCI) and that comment, as well as the NCCI's (National Council on Compensation Insurance) analysis of the proposed changes, can be viewed on the Commission's website.

Mr. Warren announced that the Workers' Memorial Day is scheduled for April 28, 2015 at Wesley Bolen Plaza. He added that the Marana Safety Summit is scheduled for April 29, 2015 for 2 days of safety training. Chairman Parker stated that he has been asked to do the opening address.

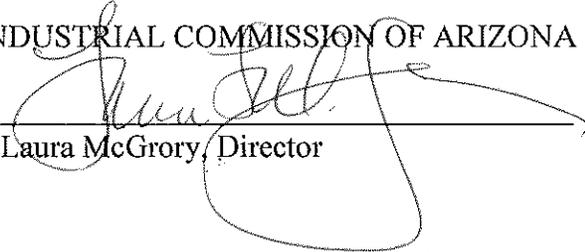
Ms. McGrory commented on a group photograph when all the Commissioners are present. Ms. McGrory noted that next week's meeting will begin in the first floor auditorium for agenda items 1 and 2 and the plan is to then adjourn and reconvene in the third floor conference room for the remainder of the meeting.

The Commission reviewed the meeting schedule through June and there were no changes.

There being no further business to come before the Commission and no announcements, future scheduling of meetings, or public comment, the meeting was adjourned at 2:25 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Laura McGrory, Director

ATTEST:


Kara Dimas, Commission Secretary