

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street  
Auditorium and Conference Room 308  
Phoenix, Arizona 85007  
Thursday, April 30, 2015 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair
	Michael G. Sanders	Commissioner
	Joseph M. Hennelly, Jr.	Commissioner (Audio and Video)
	Dale Schultz	Commissioner
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	ADOSH Director
	Bryan Williams	Compliance Officer
	Kathleen McLeod	Claims Manager
	Jacqueline Kurth	Claims Department
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present and explained that the Commission meeting will be recessed after the second agenda item, regarding the Physicians' and Pharmaceutical Fee Schedule, and the Commission meeting will move to the third floor Commissioners' Conference Room for consideration of the remaining agenda items.

Public Hearing to accept comments and other information regarding the 2015-2016 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 14, 2015. He further advised that copies of written comments received through that date will be posted online at the Commission's website. 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.

Ms. McGrory summarized the recommendations and proposed changes to the 2015/2016 Fee Schedule. She described the three sections of the report containing the recommendations and explained how the public can view that report. She summarized the impact analysis performed by the National Council on Compensation Insurance (NCCI) and noted that the NCCI determined that the proposed changes would result in an estimated overall increase in Arizona workers' compensation cost of 1.1% or an estimated \$8 million. Director McGrory explained that the NCCI had addressed two alternative scenarios, and determined that they would have a negligible impact on Arizona overall workers' compensation cost, with the term negligible meaning less than 0.1%.

The following attendees addressed the Commission and responded to questions asked by the Commissioners: Donald Bucklin, M.D., Regional Medical Director, U.S. Healthworks; Deb Kuehn, V.P. Coding, U.S. Healthworks; Don Lipsy, Client & Regulatory Communications Manager, Coventry Health Care; Cathy Vines, Director, CopperPoint Mutual; Dr. Mark Greenfield, Orthopedic Surgeon; and Brian O'Hayre, DEO, MBI.

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 website. He reminded those present that the record would remain open until May 14, 2015 at 5:00 p.m. for additional comments. Chairman Parker closed the hearing at 1:45 p.m.

At 1:47 p.m., Chairman Parker recessed the meeting to move the remainder of the meeting to Conference Room 308.

The meeting reconvened at 2:01 p.m. in Conference Room 308.

Approval of Minutes of April 23, 2015 Regular Meeting.

Chairman Parker stated this agenda item would be tabled.

Consent Agenda:

Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C14/15-1829 Louis A. Bernard, a single man, dba Eagle-Eye Auto Glass & Tint
2. 2C13/14-2322 Maguire Consulting, LLC
3. 2C14/15-0332 Pete Diaz Sr., a single man, dba The Lube Shop
4. 2C14/15-1848 The Rockin Star Ranch, L.L.C.
5. 2C14/15-2278 Trigen Concrete, Inc.

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 Commissioner Sanders, second of Commissioner Schultz.

Discussion and/or Action regarding Legislation.

Scot Butler was not able to be at the meeting and this agenda item will be rescheduled for next week.

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 are three requests pending. Chairman Parker stated that a stakeholder had asked him about the status of the ADOSH recordkeeping rulemaking. Ms. McGrory responded to the question and Chairman Parker asked her to contact the Governor's Office for an update.

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



Chairman Parker commented on difficulties with employers who modify or manufacture their own devices and whether the item can be safely used even though it constitutes a technical violation. Mr. Williams responded to the comment. Commissioner Schultz noted there was no citation specific to the user-installed corrugated roof on the equipment shown in mounted photograph 6. Chairman Parker asked if installation of the corrugated roof was one of the other two instances in Citation 1 Item 2 and Mr. Warren agreed. Commissioner Schultz added that the installation of the corrugated roof may constitute a technical violation, but if it was done in the interest of providing a safer workplace, he was glad to see there was no citation or fine associated with that item. Mr. Warren commented that improvised or modified lifting devices have resulted in tragedies.

Commissioner Schultz also commented on the employer's prompt abatement for the milling machine. Mr. Warren commented that Mr. Williams was impressed with the employer's cooperative attitude and prompt abatement.

Chairman Parker commented on the relatively few violations given this employer's facility and problems with weight on industrial mezzanine floors. Vice Chair Strickler moved to issue the Citation with a total penalty of \$3,250.00 and Commissioner Sanders seconded the motion. The Commission unanimously voted in favor of the motion.

#### Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory stated the dates for the Industrial Commission's Annual Claims Seminar are confirmed for August 13 and 14, 2015. Chairman Parker commented on the format for the Claims Seminar and described the process to arrange for any needed accommodations.

Mr. Warren noted the Arizona Workers' Memorial Day went well and thanked Commissioner Hennelly for his presentation and presiding over the moment of silence. He commented on the Marana Safety Summit and explained the Safety Stand Down Day is actually over the next two weeks and will emphasize fall protection and construction.

Ms. Dimas confirmed the dates scheduled through June 2015 for future Commission meetings. Commissioner Schulz noted he may appear by telephone for the May 14 meeting.

#### Public Comment.

Chairman Parker stated that Dr. Mark Greenfield has asked to address the Commission. Chairman Parker described limitations for the Commission to respond to public comments during this agenda item.

Dr. Greenfield explained that he wanted to bring to the attention of the Commission the increasing amount of peer review that is being used by the industrial insurance carriers and how the use of certain types of peer reviews is becoming a real impediment in treating the injured workers of Arizona. He identified concerns with carriers relying on out-of-state peer review physicians to determine and authorize treatment, the use of, for example, urologists, pulmonologists, family physicians, anesthesiologists, pain management doctors, and internists to perform reviews regarding orthopedic surgery, and the possibility that peer review doctors are not adequately reviewing the records. Dr. Greenfield explained why these concerns are problematic. He noted that patients are frustrated when medical treatment is denied and those patients may not know about available remedies. Dr. Greenfield added that when patients proceed with the process to challenge the carrier's denial of medical treatment, more times than not, the carrier will back down and they will override

the peer review. He added that this is becoming almost a norm rather than the exception and is becoming a problem to provide quality care to the injured workers of Arizona and is very frustrating.

Dr. Greenfield commented on the peer review doctors reliance on treatment guidelines to deny treatment and the lack of recourse. He noted that peer review doctors will sometimes call him and if he is not available within 30 minutes, they will deny his request for surgery. Dr. Greenfield described difficulties with responding to those kinds of calls within 30 minutes. He explained that he did not know where else to address the problem and since he was already here today, thought it might be helpful to bring it to the Commission's attention and maybe let him know if there is anything that he can do.

Chairman Parker asked Ms. McGrory if she would talk with Dr. Greenfield after the meeting. Commissioner Schulz asked for clarification on how a carrier would obtain a peer review that consists, for example, of a pediatrician in Florida reviewing an Arizona orthopedic surgeon's request for surgery. Dr. Greenfield explained that there are peer review services that some carriers may contract with and he described the frequency with which he sees some of the same physicians performing these reviews, reiterated some issues with out of state physicians performing peer reviews, and explained the lack of recourse for the typical patient.

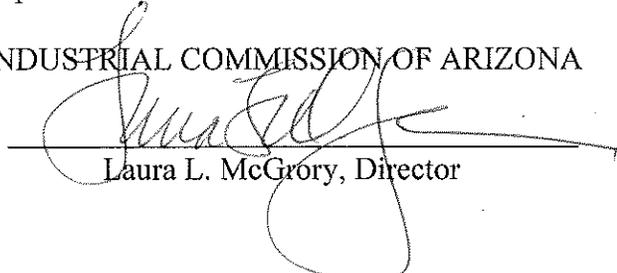
Chairman Parker commented on the "J" process and Ms. McGrory noted the introduction section of the Physicians Fee Schedule comments on the bad faith statute and how the types of situations that Dr. Greenfield was describing could be addressed. She added that the process for the use of evidence based medical treatment guidelines addresses some of the issues Dr. Greenfield identified.

Dr. Greenfield thanked the Commission.

There being no further business to come before the Commission and no other public comment, the meeting was adjourned at 2:27 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
\_\_\_\_\_  
Laura L. McGrory, Director

ATTEST:

  
\_\_\_\_\_  
Kara Dimas, Commission Secretary