

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 11, 2015 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	David M. Parker	Commissioner
	Michael G. Sanders	Commissioner
	Joseph M. Hennelly, Jr.	Commissioner
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	William Warren	ADOSH Director
	Steven Black	Compliance Officer
	Mitch Baird	Compliance Officer
	Jacque Kurth	Claims
	Molly Jones	Claims
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Commissioner Clint Bolick was not able to attend the meeting. Also in attendance was Kirstin Story representing the Arizona Department of Corrections, John Duncan of US HealthWorks, and Jason Weber of Snell & Wilmer.

Approval of Minutes of May 28, 2015 Regular Session Minutes.

The Commission unanimously approved the Minutes of the May 28, 2015 Regular Session meeting on motion of Commissioner Sanders, second of Commissioner Parker.

Consent Agenda:

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. 2C14/15-2035 Del Cazador, L.L.C., dba Carnicera el Cazador
2. 2C14/15-2399 Herrera's Masonry, LLC
3. 2C14/15-0595 Hitchin Post Stables, Inc., dba Pot A Gold Adventures
4. 2C14/15-0846 Hosein Mozayan Isfahani and Farahnaz Daneshmand, H/W, dba Paradise Juice

5. 2C14/15-2000 Jan & Dean's Moving & Estate Sales, L.L.C., dba Jan & Dean's Furniture Store
6. 2C14/15-2530 JCL & D, LLC, dba Subway #39852
7. 2C14/15-0909 Linked Equipment, LLC
8. 2C14/15-0833 Lordy Be, LLC, dba Harts Home Exceptional Eldercare
9. 2C13/14-2140 MP Magazines, LLC
10. 2C14/15-2279 UFirst Heating and Cooling, Inc.
11. 2C14/15-2413 Vien Dong Supermarket, LLC, dba Vien Dong Market
12. 2C14/15-0466 WD Extreme, LLC, dba Cleator Bar & Yacht Club

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

1. International Paper Company

Chairman Schultz stated that agenda item a. 4, 6, 10, and 11 would be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Commissioner Parker, second of Commissioner Hennelly.

Andrew Wade advised that the employers in Agenda items a. 4. Hosein Mozayan Isfahani and Farahnaz Daneshmand, H/W, dba Paradise Juice, a. 6. JCL & D, LLC, dba Subway #39852, a. 10. UFirst Heating and Cooling, Inc. and a. 11. Vien Dong Supermarket, LLC, dba Vien Dong Market have obtained workers' compensation insurance and staff is recommending a reduced penalty of \$500.00, instead of staff's previous recommendation of a \$1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of \$500.00 against each employer on motion of Commissioner Sanders, second of Commissioner Parker.

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

Laura McGrory described the status of three requests at the Office of the Arizona Governor. With respect to the OSHA reporting and recordkeeping rule, the Governor's Office has approved the Commission's request for an exemption from the rulemaking moratorium. The Commission has been asked to report back to the Governor's office whether any negative public comment is received during the rulemaking process. Commissioner Parker asked if the rulemaking will include reporting and potentially naming of employers with high injury rates. Mr. Warren stated that was not part of this rulemaking, but is a part of a separate program. In response to a question from Chairman Schultz, Ms. McGrory explained the timetable for the proposed rulemaking package.

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

15-3633-06 - Paul Templeton vs. Raytheon Company dba Raytheon Missile System

William Warren presented a summary of Mr. Templeton's complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence

to support pursuit. Mr. Warren responded to questions from the Commissioners. Commissioner Parker commented on current safety practices with respect to hexavalent chromium and asked Steven Black whether the circumstances required the employee be in a medical monitoring program. Mr. Black responded to the question. Commissioner Parker commented on the recognition programs and the rigid enforcement and discipline. Mr. Warren responded to the comments. The Commission unanimously voted not to pursue the complaint on motion of Commissioner Sanders, second of Commissioner Hennelly.

15-3633-07 - William Wilson vs. State of Arizona, Arizona Department of Corrections

William Warren presented a summary of Mr. Wilson's complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to support pursuit. Commissioner Parker summarized his view of the circumstances. Commissioner Sanders commented on the circumstances related to requesting additional leave. Commissioner Sanders noted that he agreed with the recommendation and moved the recommendation.

Chairman Schultz stated that before addressing the motion, he would offer Kirstin Story the opportunity to address the Commission. Ms. Story stated she was available to answer questions. There were no questions for Ms. Story and Chairman Schultz stated the Commission could proceed with the motion. Commissioner Parker stated he would second Commissioner Sanders' motion if the motion included a specific finding that there was no adverse action. Mr. Sanders agreed to include that finding in the motion. The Commission unanimously voted not to pursue the complaint with a finding that there was no adverse action on the amended motion of Commissioner Sanders, second of Commissioner Parker.

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

James Thomas Productions, Inc. 1300 Highland Ave., Ste. 200 Manhattan Beach, CA 90266	Fatality/Accident Years in Business: 10 Empl. Covered by inspection: 75
Site Location: 1 Cardinals Dr. Glendale, AZ 85305	
Inspection No: H1793-1018280	
Inspection Date: 1/14/2015	

SERIOUS – Citation 1 - Item 1 – Jobsite: An employee was not provided training to recognize the hazards of falling and the procedures to be followed in order to minimize these hazards. (29 CFR 1926.503(a)(1)).

Div. Proposal - \$7,000.00	Formula Amt. - \$7,000.00
TOTAL PENALTY - \$7,000.00	TOTAL FORMULA AMT. - \$7,000.00

Mr. Warren summarized the investigation into the death of an employee and explained the citations and proposed penalty as listed. Commissioner Parker commented on his experience with theatrical rigging and lighting and asked for more details about how the employee fell. Mr. Warren responded to the question. Commissioner Parker asked about certification and training. Mr. Warren commented on the SPRAT (Society of Professional Rope Access Technicians) certification. Commissioner Parker clarified that the employee had industry training on how to do

its safety program. Commissioner Parker commented on the potential safety culture and the employer's need to change that culture. Commissioner Sanders added that there were six serious deleted citations on their history and asked for details regarding the deletion of those citations. Mr. Warren responded that some of the citations were below the \$2,500 threshold and the deletions were related to global settlements. Commissioner Sanders suggested the Commission address the delegation of authority and explained he is in favor of showing some discretion where employers are producing jobs and improving the economy but this employer could end up with a fatality.

Commissioner Hennelly asked Mr. Warren what ADOSH could do to follow up with this employer and whether random inspections are possible. Mr. Warren responded to the question. Ms. McGrory commented on challenges employers may face with disciplining employees during a time when construction activity is increasing.

Commissioner Parker noted that retaining a safety consultant is a positive step and added that the employer must find a means to have its employees engaged with safety.

Chairman Schultz noted that retaining a safety consultant is a positive commitment towards safety but the employer must make other commitments as well. He added that if the employer has purchased and made fall protection equipment available, this helps communicate the employer's interest in safety and the supervisors must enforce the safety requirements. Chairman Schultz commented that the penalty alone is not severe enough to affect any change. Commissioner Sanders asked for more details regarding the availability of fall protection equipment and Mitch Baird responded to the question and provided additional details regarding his findings during the inspection.

Commissioner Parker commented on having this file reviewed for a potential willful citation. Mr. Warren responded that Legal has already reviewed this file.

Chairman Schultz asked if there were any further questions, comments or discussion or a motion. Commissioner Parker moved staff's recommendation and Commissioner Sanders seconded the motion and added that he did not see a reason to cut the employer any slack. Mr. Wade commented on the Commission's discretion.

Commissioner Parker moved to remove the reduction for size on Citation 1, Item 1, which would make the penalty \$5,000.00. Commissioner Sanders commented on a penalty of \$10,000.00 and noted that a higher penalty may help save a life.

Chairman Schultz clarified the current motion is to follow staff's recommendation on the citation and the penalty and a second to that at \$4,500.00. Commissioner Parker explained that he wanted to amend his motion and remove the size reduction on citation 1, item 1, make the penalty \$5,000.00 for citation 1, item 1 and \$1,500.00 for citation 2, item 1 for a total penalty of \$6,500.00. Commissioner Sanders seconded the amended motion. Commissioner Parker asked Mr. Warren to include in the discussion with this employer management commitment, top down leadership, employee engagement, and to assure that the employer is not just relying upon a safety consultant as the exclusive safety remedy. The Commission unanimously approved the amended motion and assessed the penalty of \$6,500.00.

Discussion and Action regarding the 2015 Arizona Physicians' and Pharmaceutical Fee Schedule.

Ms. McGrory provided a brief summary of 2015 Arizona Physicians' and Pharmaceutical Fee Schedule process. She advised that the Commissioners had been provided a summary of the nine issues and comments received, along with copies of the comments and a copy of the transcript of the April 30, 2015, public hearing. Ms. McGrory stated that she would present the issues and her recommendations and would ask the Commissioners to discuss and take action separately on each issue. She explained the steps that would be taken subject to the action taken today. Ms. McGrory presented the following issues:

1. Updated Values and Adoption of Deletions, Additions, General Guidelines, Identifiers, and Modifiers of the CPT®-4.

Ms. McGrory stated that the proposed values for all codes, which were calculated based on the current methodology, were set forth in the staff study and the excel document that was posted on line. She explained that no public comments were received on the proposed values. One comment was received in support of the proposal to adopt the deletions, additions, general guidelines, identifiers, and modifiers of the CPT®-4. Ms. McGrory recommended the Commission adopt the proposed values for all codes and adopt the deletions, additions, general guidelines, identifiers, and modifiers of the CPT®-4. The Commission unanimously approved the adoption of the proposed values for all codes and adopt the deletions, additions, general guidelines, identifiers, and modifiers of the CPT®-4 on motion of Commissioner Parker, second of Commissioner Sanders.

2. Methodology to Determine the Values of Codes Under Review.

Ms. McGrory explained that the public was given the opportunity to provide feedback with respect to the changes that the Commission adopted last year, which included reviewing the values of all codes, updating the Fee Schedule to the most recent edition of the CPT®-4 codes (which required incorporating updates from both the 2014 and 2015 CPT®-4 and moving the review date for the state survey to January 31, 2015. The feedback received from the public was very positive with respect to these changes. Ms. McGrory explained that with respect to those changes that were adopted last year and implemented this year, no action is required by the Commission unless they wanted to modify something that was done. Her recommendation was that the Commission take no action since the public was uniformly supportive of the changes that were made.

Commissioner Parker agreed and explained that he continues to believe that this is a good interim solution while the Commission explores alternatives that will turn out to be a better process. He explained why he remains concerned with the current methodology, which is good for now and working but he does not think it will be sustainable long term. Ms. McGrory explained the status of the process to hire an outside vendor to conduct a study of moving to an RVRBS based system. Chairman Schultz asked about the burden the current process imposes on staff. Ms. McGrory explained that the process was labor and time intensive. Chairman Schultz explained his concern with the amount of work involved in reviewing over 10,000 codes, which also creates opportunities for mistakes and problems. He stated that he wants to make sure there was an end in sight within a reasonable period of time. Ms. McGrory stated that the foundation for reviewing all codes has been laid, and that she would expect next year to be an easier process

for staff. She explained, though, that when you are dealing with that many values, codes and numbers, there may be mistakes. She explained that the proposed values are published for public comment so that mistakes, if any, can be identified before the Commission takes action to adopt the value. She explained the process if mistakes are discovered after a value has been adopted. Following further discussion, the Commission unanimously agreed to take no action on this issue on motion of Commissioner Sanders, second of Commissioner Parker.

3. Adoption of National Correct Coding Initiative Edits as published by the Centers for Medicare and Medicaid Services (“CMS”).

Ms. McGrory explained the purpose of the edits and that the comments received supported the adoption of them. She recommended the Commission adopt the National Correct Coding Initiative Edits as published by CMS. Following discussion, the Commission unanimously approved the adoption of the National Correct Coding Initiative Edits as published by CMS on motion of Commissioner Hennelly, second of Commissioner Parker.

4. Reimbursement for Participation in Peer Review as Described in the Evidence Based Treatment Guideline Process Approved by the Commission on December 18, 2014.

Ms. McGrory explained that the Commission previously adopted the recommendation of the Director’s Advisory Committee that physicians be reimbursed for participating in peer review as described in the Evidence Based Medicine Treatment Guidelines process. She explained that public comment was requested on the reimbursement value that should be adopted and whether an existing code or new Arizona specific code should be used for this purpose. She summarized the comments received on this issue noting that there is not a consensus on whether a physician participating in the peer review process should even be compensated. Ms. McGrory recommended that a decision on this issue be deferred until after implementation of the pilot program and the treatment guideline process is closer to implementation. She also recommended that if a reimbursement value is adopted for participation in peer review that the Commission adopt an Arizona specific code for this service. Following discussion, the Commission unanimously approved to take no action at this time on motion of Commissioner Sanders, second of Commissioner Hennelly.

5. Designation of Medi-Span as the Publication for Purposes of Determining Average Wholesale Price (“AWP”).

Ms. McGrory explained the use of a publication to determine AWP and that the Commission has historically designated Medi-Span for this purpose. She recommended that the Commission continue to designate Medi-Span for this purpose. Following discussion, the Commission unanimously approved the continued use of Medi-Span on motion of Commissioner Parker, second of Commissioner Sanders.

6. Adoption of Add-On and Modifier “-51” Exempt Codes.

Ms. McGrory explained how the Commission has historically used asterisks to identify Add-On and Modifier “-51” Exempt Codes. Since the Commission has now adopted the identifiers of the CPT®-4, which includes identifiers of Add-On and Modifier “-51” Exempt Codes, she recommended that the Commission discontinue the use of the asterisks to identify Add-On and Modifier “-51” Exempt Codes. Following discussion, the Commission

unanimously approved to discontinue the use of asterisks to identify Add-On and Modifier “-51” Exempt Codes on motion of Commissioner Sanders, second of Commissioner Hennelly.

7. Pharmacy Dispensing Fee for Over the Counter Medications.

Ms. McGrory explained that this issue was raised last year, but tabled for additional review and public comment this year. She summarized the public comments received noting that most of the comments supported a dispensing fee for filling a prescription strength dose of an over the counter (“OTC”) medication. There was disagreement with respect to how the issue should be handled with respect to the dispensing of a non-prescription strength OTC. She explained the jurisdiction of the Commission to set fees for prescription medications, which is defined under statute to mean any drug, including label and container according to context, that is dispensed pursuant to a prescription order. She explained that for this reason the dispensing fee set forth in the Fee Schedule does not apply to an OTC medication that is not dispensed pursuant to a prescription order. She recommended that the Commission take no action on the issue, but that language be added to the Fee Schedule stating that the dispensing fee does not apply to an OTC medication that is not dispensed pursuant to a prescription order. She noted that taking no action other than adding the recommended language to the Fee Schedule would mean that the dispensing fee would apply to an OTC medication that is dispensed under a prescription order, whether it is prescription or non-prescription strength. She explained that in that situation a dispensing fee was fair and appropriate since this type of transaction involves a pharmacist’s time, expertise and intervention to fill the prescription order.

Commissioner Parker commented that he followed the recommendation and stated there is no provision in law or rule for a dispensing fee for a non-prescription strength medication. He explained how OTC medications can be prescribed and filled and expressed his concern if a payer does not want to reimburse the injured worker for OTC medications. Commissioner Sanders asked if that was the reason a physician would write a prescription for an OTC medication-so that the injured worker does not have to pay for the medication. Ms. McGrory responded that may be one reason. Additional discussion continued on the dispensing of, and payment for, non-prescription strength OTC medications. Chairman Schultz explained that it seems like every other person has a different opinion on the issue. Some employers and carriers want to pay the dispensing fee in order to try to get higher compliance with taking a medication. Others say it is not a prescription medication and there should be no dispensing fee for non-prescription medicines. He explained that he thinks Ms. McGrory found a mid-point on the issue and it is in line with the Commission’s statutory authority.

In response to a question from Commissioner Sanders, Ms. McGrory explained the dispensing fee of \$7.00. She also explained the Fee Schedule reimbursement formula for prescription medication and that under that formula some OTC medication filled by prescription may actually be less expensive. Chairman Schultz explained that he has heard more consistently that it is not about cost savings, but it is about compliance. An injured worker is far more likely to get and take a medication if it is dispensed under a prescription order.

Commissioner Parker stated that the ultimate goal is to bring employees back as far and as fast as possible. Everything in the system should accomplish that goal. When that is done, then it is good for employees, good for employers, and good for the cost of the system. He explained that he does understand the frustration associated with this issue, but that it really comes down to there is no provision in law for a dispensing fee for OTC medication that is not written by

prescription. Ms. McGrory explained the process to revise the pharmaceutical fee schedule if the Commission is going to do anything to change the formula or change the dispensing fee.

Chairman Schultz asked Ms. McGrory to restate the staff recommendation. She recommended that the Commission take no action on the issue, except that language be added to the Fee Schedule stating that the dispensing fee does not apply to an OTC medication that is not dispensed pursuant to a prescription order. She noted that taking no action other than adding the recommended language to the Fee Schedule would mean that the dispensing fee would apply to an OTC medication that is dispensed under a prescription order, whether it is prescription or non-prescription strength. On motion of Commissioner Parker, seconded by Commissioner Sanders, the Commission unanimously approved taking no action other than adding the recommended language to the Fee Schedule stating that the dispensing fee does not apply to an OTC medication that is not dispensed pursuant to a prescription order.

8. Billing for Pharmaceuticals.

Ms. McGrory explained that last year the Commission declined to take action on requiring standardized billing for pharmaceuticals and advised that it would continue its review, which would include consideration of providing direction on how to bill for pharmaceuticals dispensed by a physician. She summarized the public comments received on the issues and noted that there appeared to be a consensus for ingredient level billing for compounded drugs, but not a consensus on the other issues. With respect to the information that is required to be included in a billing for a pharmaceutical, she recommended that the Fee Schedule be amended to require that a billing for a physician dispensed repackaged drug include the NDC of the repackaged drug and the NDC of the original manufacturer. She also recommended that a billing for a compound drug include the NDC for each underlying ingredient used in the compound.

Commissioner Parker stated that comments from several people added a new dimension regarding the importance of providing NDC information. It is not just a billing issue, but a tracking issue for safety recall purposes. He stated that he agreed with the recommendation. Following further discussion, the Commission unanimously approved requiring that a billing for a physician dispensed repackaged drug include the NDC of the repackaged drug and the NDC of the original manufacturer, and that a billing for a compound drug include the NDC for each underlying ingredient used in the compound, on motion of Commissioner Sanders, second of Commissioner Hennelly.

Ms. McGrory stated with respect to the form used for the paper billing of pharmaceuticals by a physician, she would recommend that the Commission require physicians follow the instructions published by the National Uniform Claim Committee when using the CMS 1500 form to bill for physician dispensed medications. She explained the instructions for the reporting of repackaged drugs, which requires the listing of the repackaged NDC first, followed by the original manufacturer NDC, along with appropriate qualifiers and units. She also recommended that if a physician does not bill using the CMS 1500 form, or is not able to include all the required information on the CMS 1500 form (due to software/system limitations), then the physician may provide the required information separately or as an attachment to the CMS 1500 form. She explained the reasons for her recommendation. The Commission unanimously approved this recommendation, on motion of Commission Hennelly, second by Commissioner Sanders.

Ms. McGrory stated that with respect to the form used for the paper billing of pharmaceuticals by non-physician entities (e.g. pharmacy, pharmacy benefit manager, etc.) she would recommend that the Commission require the use of the most recent version of the NCPDP Workers' Compensation/Property & Casualty Universal Claim Form (WC/PC UCF). She explained the reasons for her recommendation. The Commission unanimously approved this recommendation, on motion of Commissioner Hennelly, second by Commissioner Parker.

9. Deletion of Pathology Codes 80100, 80101, and 80104.

Ms. McGrory stated that the Commission requested public comment of whether new language would needed to be included in the Pathology and Laboratory Guidelines since codes 80100, 80101 and 80104 are being deleted by the CPT. No language was suggested. She recommended that the Commission take no action on this issue. Following discussion, the Commission unanimously approved taking no action on motion of Commissioner Sanders, second of Commissioner Hennelly.

Ms. McGrory explained the next steps in the process, which would include the posting in early August of a summary of the Commission action taken today.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory noted that the public hearing on the A.R.S. § 23-1065(F) assessment is scheduled for June 18th. Commissioner Hennelly commented on his availability for this meeting.

Mr. Warren commented on the ADOSH Safety Summit in Prescott Valley scheduled for July 22 and 23, 2015. Commissioner Sanders mentioned he may attend on July 23rd.

The Commission reviewed the meeting schedule through July and scheduled meetings for August 6, 14 and 27.

There was no public comment and Chairman Schultz asked if there was a motion to adjourn. Commissioner Sanders moved to adjourn and Commissioner Hennelly seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:52 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Kara Dimas, Commission Secretary