

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 28, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Scott P. LeMarr	Commissioner
	Robin S. Orchard	Commissioner
	James Ashley	Director
	Andrew Wade	Chief Legal Counsel
	Melinda Poppe	Deputy Director
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Jacqueline Kurth	Medical Resource Office
	William Warren	ADOSH Director
	Kara Dimas	Commission Secretary

Chairman Schultz 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. Commissioner Hennelly was excused.

Discussion and Action regarding correction of reimbursement values for codes 15273, 15274, 15277, and 15278 adopted for use in the Arizona Physicians' and Pharmaceutical Fee Schedule effective October 1, 2015.

Jacqueline Kurth explained that the reimbursement values for the following codes, which were added as new codes to the 2015 Fee Schedule, were entered incorrectly as "Not Covered Code Values" and approved by the Commission in June 2015. The correct reimbursement values, based on the methodology approved by the Commission, are as follows:

15273	\$614.14	15277	\$670.07
15274	\$194.65	15278	\$231.70

She requested that that the Commission approve the corrected values, and subject to that approval staff will correct and update the Fee Schedule and provide notice to stakeholders of this correction. The Commission unanimously approved the corrections on motion of Commissioner LeMarr, second of Commissioner Orchard.

Public Hearing to accept comments and other information regarding the 2016-2017 Arizona Physicians' and Pharmaceutical Fee Schedule (Fee Schedule) established under A.R.S. § 23-908(B). This agenda item may also include a presentation and discussion regarding a resource-based relative value scale (RBRVS) fiscal impact study related to implementing an RBRVS-based Fee Schedule, and discussion regarding the Fee Schedule and information relevant to the annual update.

Chairman Schultz welcomed interested parties to the public hearing and advised that notice was provided to the public inviting comments. He stated that to allow interested parties 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 12, 2016. 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. Kurth summarized the recommendations and proposed changes to the 2016/2017 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 0.4% or an estimated \$3 million. Ms. Kurth explained the addition of codes for peer review related to the evidence-based medical treatment guidelines and the continued use of Medi-Span for pharmacy pricing.

Coy Jones from Public Consulting Group, Inc. (PCG) summarized the resource-based relative value scale (RBRVS) fiscal impact study. He provided some background information regarding PCG and a brief summary of the RBRVS methodology and the use of conversion factors. He noted that 32 of 44 states that have a Fee Schedule use an RBRVS and he described some of the advantages of using an RBRVS-based reimbursement methodology. He explained why PCG recommended the Commission adopt an RBRVS model that uses one Arizona-specific conversion factor for surgery and radiology service codes, another conversion code for anesthesia services, and a third for all other service codes.

The following attendees addressed the Commission and responded to questions asked by the Commissioners: Chic Older, Arizona Medical Association; Eboni Morris, OneCallCM; and Halina Syposynski, The CORE Institute.

At the conclusion of the testimony, Chairman Schultz 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 12, 2016 at 5:00 p.m. for additional comments. Chairman Schultz closed the hearing at 2:00 p.m.

At 2:01 p.m., Chairman Schultz recessed the meeting to move the remainder of the meeting to Conference Room 308.

The meeting reconvened at 2:10 p.m. in Conference Room 308.

Approval of Minutes of April 14, 2016 Regular Meeting.

Commissioner Orchard moved to insert the words "who has documented extensive safety policies and practices in place," in the fourth sentence in the first full paragraph at the top of page 4 so the sentence would read: "Commissioner Orchard commented on Commissioner LeMarr's comments and holding the employer, who has documented extensive safety policies and practices in place, liable for choices made by an employee." She explained that the sentence would then reflect what she actually said during the meeting. The Commission unanimously approved the April 14, 2016 Minutes, as amended, on motion of Commissioner Orchard, second of Commissioner LeMarr.

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. 2C15/16-1913 Circle Tech, L.L.C.
2. 2C15/16;0911 KAT Designs, Inc.
3. 2C15/16-1456 Priority Well Services, Inc.

Chairman Schultz 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 LeMarr, second of Commissioner Orchard.

Discussion and/or Action regarding Legislation. This agenda item may include Discussion and/or Action Regarding the Sunset Review of the Industrial Commission of Arizona, and related Boards, Committees or Councils.

Mr. Charles commented on the status of the budget bills and the expectations regarding the budget and other legislative activity. He commented on the agency consolidation bill and the proposal to consolidate the OSHA Review Board within the Industrial Commission. He added that the Legislature may have adjourned by the next Commission meeting and he will present an update on the Legislative session at that time.

Presentation from and/or discussion with the Industrial Commission's Public Information Officer. This agenda item may include discussion regarding the operations of the Industrial Commission.

Mr. Charles commented on the seminar ADOSH hosted last week regarding an employer's rights and responsibilities before and after an inspection with presenters Jessie Atencio and Chuck Keller. He commented on the positive feedback from those who attended. Mr. Charles commented on the role of social medial in the Commission's outreach and education efforts.

Chairman Schultz noted that the 2016 Region 9 Voluntary Protection Program Participants' Association (VPPPA) Safety Summit is being held in Chandler from April 26 to 29. Mr. Charles stated he was working on a press release related to this event.

Mr. Ashley commented on a column slated for publication in the Tucson Metro Chamber's publication, the Chamber Edge. He also commented on the April 2016 edition of the Arizona Food Industry Journal and the cover story about the Industrial Commission. Mr. Ashley summarized some of the recent positive feedback from stakeholders. Chairman Schultz noted that the Commission continues to explore opportunities to improve and expand its education and outreach efforts.

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

Genaro's Framing Construction LLC
9133 W Marshall Ave
Glendale, AZ 85305

Planned
Years in Business: 13
Empl. Covered by inspection: 7

Site Location: 11353 W Cottontail Ln
Peoria, AZ 85383
Inspection No: S8089-1122678
Inspection Date: 02/04/2016

REPEAT-SERIOUS – Citation 1 - Item 1 – Roof: Two employees working from the roof were not protected from falling approximately 9 foot 1 inch to a lower level below by guardrail system, safety net system, or personal fall arrest systems. (29 CFR 1926.501(b)(13)).

Genaro's Framing Construction LLC was previously cited for a repeat violation of this occupational safety and health standard or its equivalent standard (name previously cited standard), which was contained in OSHA inspection number 1085599, citation number 1, item number 1 and was affirmed as a final order on 10/15/2015, with respect to a workplace located at 22646 Duncan St Queen Creek AZ 85142.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(1), which was contained in OSHA inspection number 1084863, citation number 1, item number 1 and was affirmed as a final order on 10/14/2015 , with respect to a workplace located at 4176 N 182nd Ln Goodyear AZ 85395 .

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(13), which was contained in OSHA inspection number 1085726, citation number 1, item number 1 and was affirmed as a final order on 12/19/2015, with respect to a workplace located at 4188 N 182nd Ln Goodyear AZ 85395.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(13), which was contained in OSHA inspection number 1065299, citation number 1, item number 1 and was affirmed as a final order on 8/14/2015, with respect to a workplace located at 2909 E Branham Ln Lot 50 phoenix AZ 85042.

Genaro's Framing Construction LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(1), which was contained in OSHA inspection number 1044478, citation number 1, item number 1 and was affirmed as a final order on 7/10/2015, with respect to a workplace located at Lot-23 Camelback 148 Ave Litchfield Park, AZ 85340.

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 2 - Item 1 – Foremen's truck trailer: One portable Air Compressor Model 8422HK30-0001 and Serial number 14030545 with a Honda motor, was not equipped with a pull start guard when in use. (29 CFR 1926.300(b)(2)).

Div. Proposal - \$800.00

Formula Amt. - \$800.00

TOTAL PENALTY - \$5,800.00

TOTAL FORMULA AMT. - \$5,800.00

Mr. Warren summarized the citation and proposed penalty. Commissioner LeMarr asked for additional information regarding the prior inspection history and Mr. Warren responded. Commissioner Orchard noted that an employee was wearing a harness but was not tied off. Commissioner LeMarr asked if there was any type of anchor on the jobsite. Mr. Warren responded to

the question. Commissioner Orchard asked if the abatement photographs were from the same day as the inspection and Mr. Warren confirmed that they were. Commissioner LeMarr referred to mounted photographs numbers 1 and 2 and asked if there was any explanation why the employee was working without being tied off. Mr. Warren responded to the question. Commissioner Orchard asked if a representative of the employer was present and none of those in attendance identified themselves as a representative of the employer.

Mr. Warren commented on the repeat designation and the new Field Operations Manual (FOM). Commissioner Orchard stated she was inclined to give credit for the presence of some fall protection equipment. Commissioner Orchard asked Mr. Warren about follow-up with this employer or offering consultation services to the employer. Mr. Warren responded to the question and commented on the employer's inspection history. Commissioner Orchard noted the quick abatement and that the employer had fall protection equipment available and moved to issue Citation 1 Item 1 with a \$4,000.00 penalty and Citation 2 Item 1 with an \$800.00 penalty for a total penalty of \$4,800.00. Commissioner LeMarr seconded the motion. The Commission unanimously approved the Citations with a total penalty of \$4,800.00.

Chairman Schultz noted that he has scheduled a number of meetings with roofing and framing contractors to explore industry-based solutions for the ongoing problem with noncompliance.

Commissioner LeMarr noted the number of employees compared to the number of inspections and asked if all the inspections were program planned inspections. Mr. Warren responded to the question noting that he believed that some inspections resulted from complaints.

Commissioner LeMarr asked Mr. Wade about the resolutions of recent cases and Mr. Wade responded to the question.

Gorman Roofing Services, Inc. 2229 E University Dr Phoenix, AZ 85034	Planned Years in Business: 16 Empl. Covered by inspection: 7
Site Location: 8330 N 19 th Ave Phoenix, AZ 85021	
Inspection No: T9350-1115517	
Inspection Date: 01/04/2016	

SERIOUS – Citation 1 - Item 1 – Building 12: Three employees engaged in roofing construction activities on a steep slope roof with 5:12 to 7:12 pitch, at a height of approximately 28 feet, were not protected from falling by the use of guardrail systems with toe boards, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(11)).

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
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SERIOUS – Citation 1 - Item 2 – Building 12: Five employees climbed over an approximately 48 inches wall to access the east roof and were not provided with a stairway or ramp. (29 CFR 1926.1051(a)).

Div. Proposal - \$2,000.00	Formula Amt. - \$2,000.00
TOTAL PENALTY - \$4,000.00	TOTAL FORMULA AMT. - \$4,000.00

Mr. Warren summarized the citation and proposed penalty. Commissioner Orchard asked about abatement and Mr. Warren responded to the question. Chairman Schultz asked if the representative from Gorman Roofing Services would like to make any comments.

Dan Gorman introduced himself as the owner of Gorman Roofing and introduced Jeff Gearhart, Gorman Roofing's safety compliance officer. Mr. Gearhart described his role and described procedures he has implemented to assure compliance with OSHA regulations relating to fall protection. He noted that the employee that was not using fall protection has since been terminated and Gorman Roofing has a new superintendent. He provided additional details regarding the safety program. Commissioner LeMarr asked if Mr. Gearhart was a full time employee for Gorman Roofing and Mr. Gearhart replied that he is.

Chairman Schultz thanked Mr. Gorman and commented on what others within the roofing industry have said about challenges with employee compliance given the ease in which roofers can obtain employment. Chairman Schultz noted the need for industry-wide employer enforcement and he applauded Mr. Gorman for his efforts.

Commissioner LeMarr asked Mr. Gorman when the last time his company had a fall injury and Mr. Gorman responded that there have been no fall injuries.

Commissioner LeMarr moved to issue Citation 1 Item 1 as a non-serious with a \$500.00 penalty and Citation 1 Item 2 as a non-serious with a \$500.00 penalty and he explained why. Commissioner Orchard seconded the motion. The Commission unanimously voted in favor of the motion.

LGE Corporation dba LGE Design Build	Planned	
740 N 52 nd St	Years in Business:	21
Phoenix, AZ 85008	Empl. Covered by inspection:	2
Site Location: 21 S 143 rd Ave		
	Goodyear, AZ 85338	
Inspection No: S8089-1118391		
Inspection Date: 01/13/2016		

REPEAT-SERIOUS – Citation 1 - Item 1 – Southwest Corner: Four employees of LTI Contractors were working near an unprotected edge, while exposed to a fall height of thirty-two feet and were not protected from falling by the use of guardrail systems, safety net systems or personal fall arrest systems. (29 CFR 1926.501(b)(1)).

LGE Corporation dba LGE design Build was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(1), which was contained in OSHA inspection number 1060991, citation number 1, item number 1 and was affirmed as a final order on 12/15/2015, with respect to a workplace located at 5538 N 7th St Phoenix, AZ 85012.

Div. Proposal - \$3,000.00	Formula Amt. - \$3,000.00
TOTAL PENALTY - \$3,000.00	TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citation and proposed penalty. Commissioner LeMarr asked Mr. Warren if LTI is a sub-contractor of LGE Design Build and if a citation for LTI also cited. Mr. Warren responded that it was a multi-employer inspection and both were cited. Commissioner Orchard commented on the employees not wearing fall protection until the compliance officer was on-site. She added that she has more compassion for the employer when the employees are wearing their harnesses. Mr. Warren noted that wearing harnesses without being tied off may give the employees a false sense of security. Commissioner Orchard asked Mr. Warren to explain the penalty calculation and Mr. Warren explained how the penalty for a repeat serious is calculated.

Commissioner LeMarr asked for more details about the two employees covered by the inspection. Mr. Warren responded to the question.

The Commission unanimously approved issuing the citation as recommended with a total penalty of \$3,000.00 on motion of Commissioner LeMarr and second by Commissioner Orchard.

Medplast Tempe, Inc. 450 E Geneva Dr Tempe, AZ 85282	Complaint Years in Business: 8 Empl. Covered by inspection: 84
Site Location: 450 E Geneva Dr Tempe, AZ 85282	
Inspection No: H9685-1121091	
Inspection Date: 01/28/2016	

SERIOUS – Citation 1 - Item 1 – Tooling Room: An Emco Compact 10 Lathe, model LR 14-412 and manufacturer number 6383-009, was missing the chip guard to protect the operator and other employees in the area from flying chips, sparks, and accidental contact with the rotating chuck when it is in operation. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 –

a) Machine Room: Procedures were not developed, documented and utilized for the control of potentially hazardous energy when two employees were engaged in non-routine maintenance and service on a Demag Ergotech System plastic Injection molding machine, serial number 877 0561 and facility identified as Machine M34. (29 CFR 1910.147(c)(4)(i)).

b) Machine Room: The employer did not provide training to ensure that the purpose and function of the energy control program are understood by employees and that the knowledge and skills required for the safe application, usage, and removal of the energy controls are acquired by employees. (29 CFR 1910.147(c)(7)(i)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citation and proposed penalty. Commissioner LeMarr commented on mounted photographs number 3 and 4 and the energy control program. Mr. Warren commented on the requirement and noted the grouping of the violations.

Chairman Schultz asked Matt Hallend if he would like to comment. Mr. Hallend, General Manager for the Tempe facility, introduced himself. He thanked the Commission and described the positive experience in working with the ADOSH compliance officers. He noted that he went to the expense of having a new chip guard overnighed and the lock out tag out procedures have been updated. Commissioner LeMarr asked if all of the volative conditions have been abated, including updating the hazardous energy control program, and how soon after the inspection was the abatement completed. Mr. Hallend stated that the new chip guard was installed the day after the inspection, and the lock out tag out training for the system was completed within a week or so. Commissioner LeMarr asked if the lathe was locked out and tagged out because it did not have the guard. Mr. Hallend stated the lathe was not is use and the guard was under the machine.

Thomas Nimmic introduced himself and noted he was with MedPlast Corporate Group. He explained that there are 1700 employees corporate-wide, including international, and domestically

Mr. Warren summarized the citation and proposed penalty. Commissioner LeMarr commented on mounted photograph number 2. Mr. Warren provided additional details regarding the violations. Commissioner Orchard referred to mounted photographs numbers 11 and 12 and asked about the line. Mr. Warren responded that it was an airline for the nail gun. Commissioner Orchard ask about Citation 1 Item 4(b) and the correct way to access the third floor joist. Mr. Warren referred to mounted photographs 15 and 16, commented on the use of the ladder, and explained why the compliance officer grouped the violations.

Chairman Schultz asked if a representative from WMS Builders would like to comment. Gilberto Garcia explained that the employees do have fall protection, but they did not have it in that work truck that day. He noted that he forwarded photographs the day after the inspection to the compliance officer documenting abatement. Commissioner LeMarr asked Mr. Warren about the abatement photographs and Mr. Warren replied that he could not locate the photographs in the inspection file. Commissioner Orchard asked if the employer made corrections for protective eyewear and Mr. Garcia stated they did the next day, as well as having a very extensive safety meeting, that included stressing that employees use their safety equipment. Commissioner Orchard asked if he could convey to the leadership in his company that the Commission looks for a strong presence in leadership from the company. Mr. Garcia added that two of the employees were terminated shortly after the inspection because they kept ignoring the requirements.

Chairman Schultz thanked him for joining the meeting. Commissioner Orchard asked if there was a minimum. Mr. Wade replied that the FOM provides for a minimum of \$100.00 for a serious. Commissioner LeMarr noted that he would assume the employer abated the violations immediately. Commissioner Orchard moved to issue all the citations with a penalty for Citation 1, Items 1, 3, 4 and 5 of \$250.00 each and a \$750.00 penalty for Citation 1 Item 2, for a total penalty of \$1,750.00. Commissioner LeMarr seconded the motion. The Commission unanimously approved the motion.

Commissioner LeMarr asked Mr. Garcia to resend the abatement photos. Mr. Warren added that he will check with the compliance officer.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2016. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

Ms. Poppe stated at the last meeting she reported the Key Performance Indicators (Scorecard) results. She explained that the Commission is seeking feedback regarding the metrics and she anticipates the Scorecard being finalized closer to July. She explained the reason the Commission is seeking feedback is to assure that the Commission is addressing the correct initiatives for the stakeholders and doing so in an appropriate manner. She commented on continuing efforts in leaning out the processes throughout the Divisions.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley stated he was working on a date for a Prescott Commission trip for June or July. He noted the added emphasis on consultation, and that Mr. Charles and Jessie Atencio will be attending the Occupational Safety and Health Consultation Conference in Kansas City in May. Mr. Ashley added that the last in the series of Commission Division presentations is scheduled for the next meeting and the presentation will be from the Management Information Systems Division.

Public Comment.

Steve Richardson with Boss Consultations commented that he was impressed with the questions that were asked by the Commissioners and thought it brought a degree of fairness to the process that he was not previously aware of and thanked the Commissioners for all their efforts.

Pablo Valverde with Metric Roofing stated he was very impressed with the Commission and he had never attended a meeting and did not know what it was all about, and now he knows what he is missing. He sees a lot of the insight and the correlation between ADOSH and what the Commission does and he learned a lot and will be back.

Commissioner LeMarr moved to adjourn and Commissioner Orchard seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 3:25 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Kara Dimas, Commission Secretary