

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Auditorium
Phoenix, Arizona 85007
Wednesday, June 19, 2013 – 1:00 p.m.

Present:	David Parker	Chairman
	Susan Strickler	Vice Chair
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Michael Hawthorne	Chief Financial Officer
	William Warren	Director, ADOSH
	Renee Pastor	Manager, Self Insurance
	Chris Anderson	Legal Counsel
	Kathy McLeod	Director's Office
	David Sosa	Special Fund Manager
	Terry Ann Apodaca	Special Fund
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Grant and Gloria Sanders; Cathy Vines of SCF Arizona; Sara Sparman of Kutak Rock; and Andrea Lewis of Snell and Wilmer.

Public Hearing to accept comments and other information regarding the one-half percent assessment under A.R.S. §23-1065(F). During this hearing, the Commission may also discuss the assessment and information relevant to the levying of the assessment

Chairman Parker welcomed interested parties to the public hearing and stated that the Commission published notice of this hearing on May 1, 2013 inviting comments. He described the process for today's hearing and explained that the record will close at the conclusion of the hearing. The Commission will discuss and may take action on this assessment at a later scheduled meeting. A court reporter was present for this agenda item.

Mike Hawthorne addressed the Commission and summarized his report and exhibits. He noted that under A.R.S. §23-1065(F), the Commission is authorized to assess a one-half percent assessment if the total annual reserved liabilities of the Special Fund for apportionment under § 23-1065 exceed six million dollars. The assessment was previously assessed for calendar years 2005, 2006, 2007, 2010, 2011, 2012 and 2013 and was not assessed for 2008 and 2009. As of June 30, 2012 the Special Fund's total actuarial liability for apportionment under A.R.S. § 23-1065(B) and (C) was \$94.1 million at a confidence level of 80%. Mr. Hawthorne stated that, in view of the foregoing apportionment liabilities there is justification and authority to continue the one-half percent assessment under A.R.S. §23-1065(F) for calendar year 2014.

There were no comments from the attendees. Chairman Parker closed the hearing at 1:06 p.m. The Commission continued with its regularly scheduled meeting.

Approval of Minutes of June 13, 2013 Meeting

The Commission unanimously approved the Minutes of the June 13, 2013 meeting on motion of Mr. McCarthy, second of Ms. Strickler.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers

1. 2C12/13-1104 Abandale, L.L.C. dba Abandale Florist
2. 2C12/13-0540 Car Smart, L.L.C.
3. 2C12/13-0160 Dreamcatcher Anesthesia, Inc.
4. 2C12/13-1738 Jesus Vizzerra & Wendy Vizzerra, H/W, dba Jesse's Pro Tire & Wheel Off Road Center
5. 2C12/13-1744 Patrick Holdings, L.L.C.
6. 2C11/12-2913 Rapid Response Services, L.L.C.
7. 2C12/13-1737 The Heritage At Carefree, L.L.C.

Chairman Parker stated that agenda item a (7) would be removed from the consent agenda. The Commission unanimously approved the remaining consent agenda items on motion of Mr. Sanders, second of Ms. Oster. Andrew Wade advised that with regard to item a (7) The Heritage At Carefree, L.L.C., the employer has obtained workers' compensation insurance and he is recommending a penalty of \$500.00 be assessed against this employer. The Commission unanimously assessed the recommended penalty of \$500.00 against employer a (7) on motion of Mr. Sanders, second of Mr. McCarthy.

Discussion &/or Action regarding Legislation

Chairman Parker stated that the legislature has adjourned sine die and that Scot Butler would be at the next meeting to give a final legislative summary.

Discussion & Action of Proposed OSHA Citations & Penalties

Running Bear Development, LLC
24000 Waalew Rd.
Apple Valley, CA 92307

Site Location: 14999 Hwy 66, Topock, AZ 86436
Inspection #: H1793-317038099
Insp. Date: 03/19/2013

Complaint
Yrs/Business -- 2.5
Empl. Cov. by Insp. -- 1

SERIOUS – Citation 1 - Item 1 – Employees working below overhead construction work were not protected by helmets. (1926.100(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Six subcontractor employees were working on a roof 12' to 14' above ground level without utilizing a fall protection system or other equivalent means to prevent a fall. (1926.501(b)(2)(ii)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 – A Gehl Dynalift forklift, (model # DL10L55 and product identification number 10L55JY0445314) loaded with plywood was left unattended without the load engaging means being lowered. (1926.602(c)(1)(vi)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 4 –

(a) Portable ladders were used for access to an upper landing surface and the ladder side rails did not extend at least 3 feet (.9 m) above the upper landing surface to which the ladder was used to gain access. (1926.1053(b)(1)).

(b) Two portable a-frame ladders were used by three employees for purposes other than the purposes for which they were designed to access the landings of the patio and roof under construction. (1926.1053(b)(4)).

(c) Two unsecured ladders were used on surfaces that were not stable and level. (1926.1053(b)(6)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$3,600.00

TOTAL FORMULA AMT. - \$3,600.00

Bill Warren explained that the two case files being presented today are related and that this was a multi-employer work site. Running Bear Development was the general and controlling employer. Complete Elite was a subcontractor working at the same site. Mr. Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,600.00 on motion of Ms. Strickler, second of Mr. McCarthy.

Complete Elite Construction, Inc.

2947 Star Line Dr.

Lake Havasu City, AZ 86403

Site Location: 14999 Hwy 66, Topock, AZ 86436

Inspection #: H1793-317038107

Insp. Date: 03/19/2013

Unprogrammed Related

Yrs/Business – 25

Empl. Cov. by Insp. – 8

SERIOUS – Citation 1 - Item 1 – Employees working below overhead construction work were not protected by helmets. (1926.100(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Six employees were working on a roof 12' to 14' above ground level without utilizing a fall protection system or other equivalent means to prevent a fall. (1926.501(b)(2)(ii)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 – The employer did not implement a training program that instructed each employee in the recognition and avoidance of fall hazards associated with working at elevated heights of six feet or more above ground without the use of a fall protection system. (1926.503(a)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 4 – A Gehl Dynalift forklift, (model # DL10L55 and product identification number 10L55JY0445314) loaded with plywood was left unattended without the load engaging means being lowered. (1926.602(c)(1)(vi)).

Div. Proposal - \$600.00

Formula Amt. - \$600.00

SERIOUS – Citation 1 - Item 5 –

(a) Portable ladders were used for access to an upper landing surface and the ladder side rails did not extend at least 3 feet (.9 m) above the upper landing surface to which the ladder was used to gain access. (1926.1053(b)(1)).

(b) Two portable a-frame ladders were used by three employees for purposes other than the purposes for which they were designed to access the landings of the patio and roof under construction. (1926.1053(b)(4)).

(c) Two unsecured ladders were used on surfaces that were not stable and level. (1926.1053(b)(6)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$5,100.00

TOTAL FORMULA AMT. - \$5,100.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,100.00 on motion of Ms. Oster, second of Mr. McCarthy.

Discussion &/or Action regarding Request for Extension of Time to Provide the Commission with a Safety Report for Costco

Renee Pastor advised that she has spoken with Costco's Risk Manager who has requested an extension of time until July 31, 2013 to provide a detailed safety report. Chairman Parker asked Ms. Pastor to communicate to Costco's Risk Manager that the Commission has approved Costco's request for additional time to prepare a comprehensive report and Costco may have until July 31, 2013 to submit the report.

Discussion & Action regarding Application for Renewal of Self-Insurance Authority. 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

MTD Southwest, Inc. - Chairman Parker asked if any of the Commissioners wanted to discuss confidential information in Executive Session. Hearing no request, he stated Ms. Pastor could present her report and the Commission could go into Executive Session later if needed. Rene Pastor presented staff's renewal report along with a current Experian credit rating and responded to questions from the Commissioners. The company is privately held and the financials are not released to the public. Ms. Pastor stated that staff is recommending renewal of workers' compensation self-insurance authority based on the Company's financial soundness; a clean audit report and good credit ratings. Following discussion, the Commission unanimously approved renewal of authorization to self-insure on motion of Mr. Sanders, second of Ms. Oster.

Discussion & Action regarding 2013-2014 Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Laura McGrory provided a brief summary of this year's fee schedule update process. She advised that the Commissioners had been provided a summary of the issues and comments received, along with copies of the actual comments and a copy of the transcript of the April 17, 2013, public hearing. Ms. McGrory stated that today she would present the issues and her recommendations and would ask the Commissioners to take the action they deemed appropriate. She then explained the steps that would be taken subject to the action taken today. Ms. McGrory presented the following issues:

1. Updated Values for Select Codes and Adoption of Deletions, Additions and Terminology Changes in 2012 CPT®-4

Ms. McGrory stated that the proposed values for select codes and the adoption of deletions, additions and terminology changes in 2012 CPT®-4 are found in Tables 1 through 5 attached to the document provided, which is unchanged from the prior information provided. She explained that the reimbursement values for the codes were calculated using the methodology approved by the Commission last year. She recommended that these values be adopted for the 2013 fee schedule. She explained that commission staff would continue to work with stakeholders and explore other methodologies to calculate reimbursement values for codes. Ms. McGrory also recommended that the new and deleted codes and terminology changes from the 2012 CPT be adopted. The Commission unanimously adopted recommendations to approve the proposed values for the select codes and the updates from the 2012 CPT on motion of Ms. Oster, second of Mr. Sanders and directed staff to continue to explore the methodology used to calculate reimbursement.

2. Designation of Medi-Span as the Publication for Purposes of Determining Average Wholesale Price ("AWP")

Ms. McGrory recommended the continued use of Medi-Span as the publication for purposes of determining AWP. The Commission unanimously approved the continued use of Medi-Span on motion of Mr. McCarthy, second of Ms. Strickler.

3. Standardized Billing Formats for Pharmacy Billing

Ms. McGrory stated that Healthsystems recommends that the Commission adopt a national standard for pharmacy billing. She summarized their recommendation and explained the claim form being recommended. She also explained the benefits and disadvantages to using a standardized claim form and recommended that the Commission decline the suggestion to require the use of the NCPDP Workers' Compensation Property & Casualty Claim Form, Version 1.1. Ms. McGrory recommended that the Commission ask the affected stakeholders (payers, pharmacies, and providers) to provide more information regarding the impact of adopting the use of this claim form and whether there are organizational, process, or cost barriers that need to be considered before requiring the use of this form in the processing of Arizona workers' compensation claims.

Ms. McGrory suggested this may best be accomplished through the creation of a workgroup of affected stakeholders that is tasked to address these questions. While Commission

staff would not necessarily need to participate in this workgroup, she could create the workgroup, and ask that the workgroup address these issues.

She also suggested that the concern raised by ASIA that it is confusing when a physician bills for physician dispensed medications on the same claim form that is used to claim reimbursement for professional services, could be addressed as well by the workgroup.

Ms. Oster stated that she would like to know what other states have adopted the drug claim form for workers' compensation and whether it has resulted in additional system costs. She also stated that she would like to hear from more PBM's and TPA's on the issue. Ms. Strickler stated that she would support a workgroup to address this issue. She stated that, as a self-insured that cannot direct medical care, it is an issue for them. Ms. Oster stated she would support the workgroup as well. Following further discussion, the Commission unanimously agreed to decline adoption of the recommendation of Healthesystems at this time and supported the creation of a workgroup to study the issue on motion of Mr. Sanders, second of Ms. Strickler.

4. Physician Dispensing of Medications

Ms. McGrory stated that Healthesystems requests that the Commission restrict physician dispensing by limiting the timeframe within which a physician may receive reimbursement for dispensing medications. She advised that without taking a position on the merit of the proposal it was her opinion that the Commission did not have the legal authority under A.R.S. § 23-908 to define, restrict, or expand the scope of practice of physicians. This scope of practice is both defined and regulated by other entities. Additionally, she advised that physicians have been given specific statutory authority to dispense medication. Ms. McGrory recommended that the Commission decline to adopt the recommendation of Healthesystems to restrict physician dispensing.

Ms. Oster explained that addressing the pharmacy billing issue may address this issue as well. She agreed that the Commission did not have the authority over the issue. Ms. Strickler questioned whether resolving the billing issue would resolve this issue and explained why. Ms. McGrory referred to the study attached to the comment from Healthesystems, which suggests a corollary between increased indemnity costs and physician dispensing. Mr. Parker explained the moral hazard associated with physician dispensing. He stated that he thought the California study lends some credibility to that. Mr. Parker stated that addressing this issue may require a legislative change. Following further discussion, the Commission unanimously voted to decline adoption of the recommendation of Healthesystems on motion of Ms. Strickler, second of Ms. Oster.

5. Utilization of Code 80101

Ms. McGrory advised that the concern expressed by SCF Arizona and others regarding code 80101 reflects a problem that has been encountered throughout the country. She stated that the issue was effectively summarized in the written comment received by SCF, which was provided to the Commissioners. She explained that entities have addressed the issue in different ways, but ultimately it has been resolved by imposing limits on reimbursements for drug testing, in particular on "point of care" drug testing. In the context of the CPT codes that are used in Arizona, effectively addressing this issue requires consideration of two companion drug testing codes - 80100 and 80104. She then explained those two codes and stated that the appropriate

code to bill for “point of care” drug testing using the kits described by SCF Arizona is code 80104, not 80101. She also stated that it appears reasonable to limit the reimbursement for such testing as suggested by SCF and recommended that language be added to the Pathology and Laboratory Guidelines section of the fee schedule that states how reimbursement shall be made when using the simple drug testing kits as follows:

1. For purposes of this fee schedule, reimbursement for Codes 80100, 80101, and 80104 is subject to the following:
 - a. A provider is entitled to reimbursement under code 80100 for drug testing that is performed using complex chromatographic instruments. Additionally, a payer is only required to pay for one unit of service per patient encounter regardless of the number of drug classes tested.
 - b. A provider is entitled to reimbursement under code 80101 for complex chemistry analyzers that involve a distinct analysis per drug class. A payer is not required to reimburse under this code for testing methods such as drug test kits, dipsticks, cups, cassettes, and cards that are interpreted either visually, with the assistance of a scanner, or are read utilizing a device outside the instrumented laboratory setting (i.e., non-instrumented devices).
 - c. A provider is entitled to reimbursement under code 80104 for drug testing that is performed using a drug test kit. This includes testing methods such as dipsticks, cups, cassettes, and cards that are interpreted visually, with the assistance of a scanner, or are read utilizing a device outside the instrumented laboratory setting (i.e., non-instrumented devices). This also includes a drug test kit that is described as using an “immunochromatographic method.” A payer is only required to pay for one unit of service per patient encounter regardless of the number of drug classes tested.
2. A provider seeking reimbursement for “point of care” drug testing must submit to the payer written documentation establishing:
 - a. That the testing is medically necessary and reasonably required;
 - b. The type of drug testing utilized; and
 - c. The provider’s interpretation of the “point of care” testing.

For purposes of this section, “point of care” testing is testing that is performed at or near the site of patient care, (i.e. the physician’s office)

Ms. McGrory did not propose any change in the current values associated with the foregoing codes and explained why. She stated that if stakeholders want to revisit this value next year and bring to the table specific dollar amounts to consider, then the Commission can certainly evaluate the issue at that time. Following discussion, the Commission unanimously adopted the recommended language on motion of Ms. Strickler, second of Ms. Oster. The motion was modified to include leaving the values for the codes as currently set forth in the fee schedule and unanimously approved.

Ms. McGrory advised that based on the action taken today, she will prepare a summary document. This document will be posted on the Commission's website in the near future. On or about September 1st, Commission staff will post on the Commission's website the updated fee schedule, which will become effective October 1, 2013.

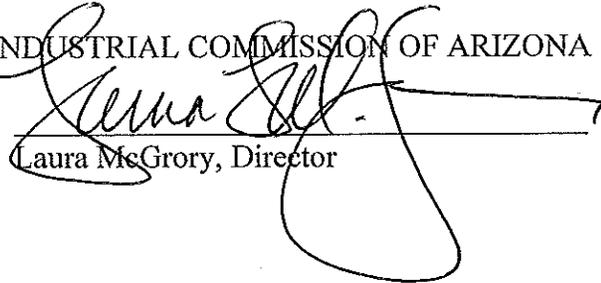
Announcements and Scheduling of Future Meetings

The next meeting of the Commission is scheduled for Wednesday, July 3, 2013. The Commission also confirmed August 9, 14, and 21, 2013 for meetings.

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

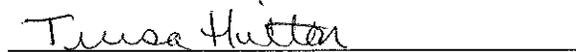
THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary