

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308

Phoenix, Arizona 85007

Thursday, December 18, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	ADOSH Director
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Jacqueline Kurth	Claims Division
	Kathryn Harris	Staff Attorney
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance was Cathy Vines of CopperPoint Mutual, Steve Weiss, attorney, Weston Montrose, attorney, Anne DeGraw of Triadvocates, and Jason Weber of Snell & Wilmer.

Approval of Minutes of December 11, 2014 Regular Meeting and Executive Session.

The Commission unanimously approved the Minutes of the December 11, 2014 Regular Session on motion of Mr. Sanders, second of Ms. Strickler. The Commission unanimously approved the Minutes of the December 11, 2014 Executive Session on motion of Mr. Hennelly, second of Mr. Sanders.

Discussion and/or Action regarding the Development and Implementation of a Process for the Use of Evidence Based Medical Treatment Guidelines, Where Appropriate, to Treat Injured Workers. This Agenda Item will include Discussion and/or Action regarding the December 1, 2014, Document Drafted and Approved by the Director's Advisory Committee on Evidence Based Medical Treatment Guidelines Addressing the Process for the Use of Evidence Based Medical Treatment Guidelines.

Ms. McGrory explained that this was a continuing agenda item from last week and that the only additional public comment received was a letter from attorney Dee Dee Samet, which was provided to the Commissioners. Ms. McGrory stated that she continues to support the recommendations of the Director's Advisory Committee ("Committee") as reflected in the December 1, 2014, process draft of the Committee. She noted that there was a request to speak on this agenda item.

Chairman Parker acknowledged the request to speak from Cathy Vines, CopperPoint Mutual, and invited her to address the Commission. Ms. Vines asked that the Commissioners take affirmative action on the Committee's recommendations and move to the next phase of implementation of the process. She summarized the work of the Committee over the last two years, including the assistance that they looked for, and the feedback received from the public. She stated that she disagrees with

the request for additional time to take action on the recommendation and explained why. She explained that the recommendation is a consensus agreement from recognized experts after many hours of careful consideration and spirited discussions. She stated that she does not believe that rulemaking is necessary to implement the process, but would leave that decision to the experts. She explained that she would like to see this chapter closed and the process move forward as a pilot dealing with chronic pain and the prescribing of opioids so that the Commission can gather real data and real Arizona experience. Evidence-based treatment guidelines should be adopted by Arizona with expanded application to all conditions after a pilot period has ironed out any additional administrative problems that were unforeseen by the recommended process.

Vice Chair Stickler stated that a criticism received at the last meeting was a perception that claimants were not well represented on the Committee. She asked Ms. Vines her opinion as to whether claimant interests were well represented on the Committee. Ms. Vines stated that she believed that they were. She stated that there was a good selection of core Committee members representing the claimants' interests and, at appropriate points in time, the Committee sought expertise from the pain management community and the claims adjuster community. She also explained that some physicians continued to participate throughout the process and many times the physicians were asked their opinions, as the ones who treat the injured workers, what is best, how they felt and how would it work. In that sense, she thought that injured workers were very well represented.

Following additional discussion, Mr. Steve Weiss requested to speak. Mr. Weiss stated that he represents injured workers and an entirely different constituency than Ms. Vines and her organization. Speaking as one of the members of the Committee, he stated that he agreed with Ms. Vines that there is nothing to be gained by any further delay and he requested the Commissioners approve the Committee's recommendations as reflected in the final draft. He explained, however, that does not mean that he agrees with everything in the draft, which will be dealt with in a different time and place.

Chairman Parker asked if there were any other requests to speak, and there were none. He stated that after reading Ms. Samet's letter, he watched the video archives of the legislative committee hearings and read the fact sheets that were transmitted to the Governor with the final bill. He also watched the video where Senator McComish introduced the amendment that added this piece to the bill. He stated that he reviewed the minutes of prior Commission meetings regarding this legislation. He stated that there is no mention anywhere that this process was supposed to be restricted to supportive care. He explained that he was not sure if Ms. Samet was confusing this legislation with earlier legislation dealing with settlement authorization for supportive care or, if that was just a discussion some people had outside of the process. He also stated that he believed that all interests were well represented throughout the process. Mr. Sanders stated that he sat in on several meetings of the Committee and had read the minutes from other meetings. He stated that he was very impressed with the way the community came together to try and find something that would work, and work well, for employees and employers in Arizona.

Chairman Parker stated that he does believe that rulemaking is necessary to implement the process for the use of treatment guidelines even though a piece of the process is voluntary, because we are prescribing how that voluntary piece will work, and either side can trigger it. He explained that he wants to make sure that the rules are flexible so that additional, extended rulemaking is unnecessary to expand the process to areas beyond pain management. He suggested the rules be drafted to give the Commission the authority to determine the scope of the process. If the process works well, and it is time to expand it to other body parts, then additional rulemaking would be

unnecessary. He stated that he really appreciated the work of the Committee. He explained that, from what he has seen and heard around the country, he thinks Arizona is going to have a much better product, which will lead to better outcomes for everyone. Mr. Sanders added that the Committee did a wonderful job and produced a good product.

After further discussion, Mr. Sanders moved that the Advisory Committee's recommendations be adopted. Chairman Parker confirmed that the motion is to adopt the Advisory Committee's December 1, 2014, draft and proceed as discussed. Vice Chair Strickler seconded the motion. The Commission unanimously voted in favor of the motion.

Discussion and Action regarding Resolutions in Recognition of Outstanding Work.

Ms. McGrory explained that, at the suggestion of Commissioner Sanders, the Commission acknowledged the committee members who have worked tirelessly on this project. She presented resolutions for the Commissioners to sign for each Committee member. Mr. Sanders made a motion to approve the resolutions, seconded by Mr. Hennelly. The Commission unanimously voted in favor of the motion. Chairman Parker once again thanked the Committee for their work.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C14/15-0930 Glendale Flowers of Arizona, L.L.C., dba Glendale Flowers
2. 2C13/14-2320 JDS Express, LLC
3. 2C13/14-1372 Liberty Barbershop AZ#1 LLC
4. 2C14/15-0904 Luxe Builders, LLC
5. 2C13/14-2363 Red Vapor, LLC
6. 2C14/15-1065 Roberto Enriquez & Olga Sanchez Contreras, H/W, dba Roberto's Landscaping

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

1. Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association (SRP)

Chairman Parker stated that agenda item a. 5. would be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Ms. Strickler, second of Mr. Sanders.

Andrew Wade advised that Red Vapor, LLC. has obtained workers' compensation insurance and staff is recommending a 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 Red Vapor, LLC on motion of Mr. Sanders, second of Mr. Hennelly.

Discussion and/or Action regarding Legislation.

Ms. McGrory advised that Scot Butler was unable to attend today, but that he planned to attend the next meeting, January 8, 2015.

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation.

Ms. McGrory stated that she spoke with Mr. Zack Barnett. She summarized her conversations with Mr. Barnett and stated that she anticipates a decision from federal OSHA sometime in early January.

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

Chairman Parker stated that the next two matters in this agenda item are from the same location. Mr. Warren added that both the Crowther Plumbing, Inc. and Hamblin & Son Construction, LLC agenda items are related to the same investigation and one employer is a general contractor and the other a subcontractor. Chairman Parker asked Mr. Warren to describe the conditions and findings and that action on each will be handled separately. Mr. Warren summarized the inspections and explained the photographs relating to both employers.

Crowther Plumbing, Inc.
P.O. Box 2450
Flagstaff, AZ 86003

Unprogrammed Related
Years in Business: 13
Empl. Covered by inspection: 1

Site Location: 2459 W Pikes Peak Dr
Flagstaff, AZ 86001
Inspection No: T9350-1001027
Inspection Date: 10/06/2014

SERIOUS – Citation 1 - Item 1 – Building 17: A wall opening where there was a drop of approximately 15 feet 3 inches, and the bottom of the wall opening was flush with the floor, and employees of a subcontractor were exposed to falls and no standard rail or intermediate rail was provided for the wall opening. (A.R.S. § 23-492.03(I)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 – Building 17: Five employees of a subcontractor were working on the third story deck, at a height of approximately 20 feet above the ground below, where the unprotected sides and edges were not protected by standard guardrails or by any other means. (A.R.S. § 23-492.04(F)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from Commissioners. Chairman Parker clarified that this was multi-employer worksite doctrine citation for exposure to subcontract employees, and noted some of the facts that support the application of the doctrine. The Commission unanimously approved the citation and assessed the recommended penalty of \$3,000.00 on Crowther Plumbing, Inc. on motion of Mr. Sanders, second of Ms. Strickler.

Hamblin & Son Construction, LLC
19547 S 191st Dr
Queen Creek, AZ 85142

Complaint
Years in Business: 12
Empl. Covered by inspection: 6

Site Location: 2431 W Pikes Peak Dr
Flagstaff, AZ 86001
Inspection No: T9350-998832
Inspection Date: 10/06/2014

SERIOUS – Citation 1 - Item 1 – Building 17: A wall opening where there was a drop of approximately 15 feet 3 inches, and the bottom of the wall opening was flush with the floor, and employees were exposed to falls and no standard rail or intermediate rail was provided for the wall opening. (A.R.S. § 23-492.03(D)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 2 – Building 17: Five employees were working on the third story deck, at a height of approximately 20 feet above the ground below, where the unprotected sides and edges were not protected by standard guardrails or by any other means. (A.R.S. § 23-492.04(F)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1 - Item 3 – Building 17: Five employees were working at heights above 6 feet and the Company did not have a Fall Protection Plan on site. (A.R.S. § 23-492.07(A)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 Item 4 – Building 17: An employee operated a JLG SKY TRAK Model number GN5A3 Serial number 965932, and the employer did not provide training in the safe operation of the equipment. (29 CFR 1910.178(D)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 5 – Building 17: Five employees were utilizing an 8 foot fiberglass step ladder, Make and Model unknown, as a means of access to an elevated work level by leaning the ladder against the wall. (29 CFR 1926.1053(b)(4)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$5,250.00

TOTAL FORMULA AMT. - \$5,250.00

Mr. Warren summarized the citation and proposed penalty as listed and responded to questions from Commissioners. Chairman Parker asked for clarification regarding access to the step ladder. Mr. Warren described the step ladder and how employees used the step ladder to access an elevated work level. The Commission unanimously approved the citation and assessed the recommended penalty of \$5,250.00 on Hamblin & Son Construction, LLC on motion of Mr. Hennelly, second of Mr. Sanders.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. McGrory announced that she will be meeting with Ms. Wendy Briggs and Mr. Jim Norton on Friday to talk about the Industrial Commission. She explained that Ms. Briggs and Mr. Norton have been appointed to Governor Ducey's Government Reform Transition Sub Committee and have been tasked with meeting with agency directors within the scope of their subcommittee.

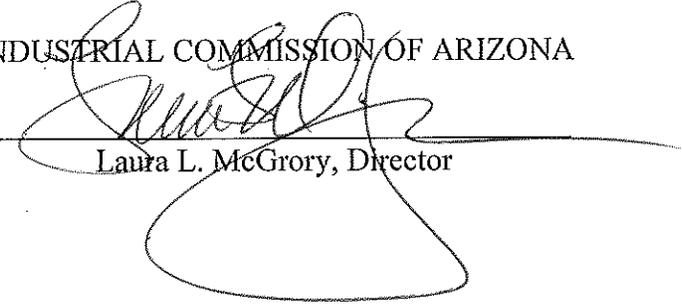
Ms. McGrory stated the Commissioners have been provided a copy of NCCI's 2014 Medical Data Report for Arizona. She explained that NCCI staff are available to present the information at a future meeting. The information will also be posted on the Commission's website.

Chairman Parker confirmed the dates scheduled through February 2015 for future Commission meetings and confirmed that the dates for March were still good for everyone.

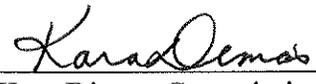
There being no further business to come before the Commission and no public comment, the meeting was adjourned at 1:33 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


Laura L. McGrory, Director

ATTEST:


Kara Dimas, Commission Secretary