MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, February 2, 2012 – 1:00 p.m.

Present:	David Parker	Chairman
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Michael Sanders	Member (video conference)
	Laura L. McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Melinda Poppe	Legal Counsel
	Darin Perkins	Director, ADOSH
	Michael Hawthorne	Chief Financial Officer
	Sylvia Simpson	Controller
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:01 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist; Cathy Vines of SCF Arizona; Jeff Gray of Arizona Self Insurance Association; Beth Rau of Fry's Food Stores; Chris Garland of Avizent Risk; Chic Older of the Arizona Medical Association; and Eda Barolli of Snell & Wilmer.

Chairman Parker welcomed newly appointed Commissioner Michael Sanders back to the Commission. Mr. Parker also expressed his gratitude to past Chairman Brian Delfs, stating that he was a great mentor and moved things forward with a very deft hand.

Discussion &/or action regarding Report of the Directed Care Evaluation Committee regarding the Directed Care Pilot Program Established under A.R.S. §23-1070(F) (added by HB 2584)

Laura McGrory stated that the Commissioners have been provided with a written report outlining the history and activities of the Directed Care Evaluation Committee for the Directed Care Pilot Program, along with copies of the Minutes from the Committee's meetings. She explained the purpose of the Pilot Program - to determine whether self-insured public sector entities can, through a directed care and medical management program, contain costs, improve health care, and improve return to work results for injured employees and that the pilot program is limited to a two year period. She identified the members of the Committee and introduced the members that were present. Ms. McGrory described the efforts to enlist the participation of a self-insured city, but to date, no city has expressed an interest in participating in the pilot program. Ms. McGrory described the committee's efforts to establish a protocol to measure results. The Committee consulted with the Arizona County Insurance Pool (ACIP), and their representative, Susan Strickler. Ms. Strickler provided a wealth of information to the Committee. Mr. McGrory described the information Ms. Strickler supplied as well as her research, her participation with the Committee, and the ACIP's concerns regarding the pilot program. In view of the fact that no self-insured city expressed an interest to participate in the program, and in view of the concerns expressed by the Arizona County Insurance Pool regarding

their participation in this program, the Committee unanimously approved the following language to present to the Commissioners:

1) No eligible self-insured city responded to the invitation to participate in the directed care pilot program established under A.R.S. §23-1070(F). Therefore, the Directed Care Pilot Program Evaluation Committee ("Committee") did not consult with any self-insured city regarding the establishment of protocol for the assessment and reporting of data under this pilot program.

2) As required under A.R.S. §23-1070(F), the Committee consulted with the Arizona Counties Insurance Pool ("Pool") regarding the establishment of protocol for the assessment and reporting of data under the directed care pilot program. The Pool advised that it would be unable to meet the protocols under consideration by the Committee and further advised that it was unable to present any alternative proposal to the Committee.

3) Based on the foregoing, the Committee determined that protocol for assessment and reporting of data under A.R.S. §23-1070(F) could not be established.

Ms. McGrory stated that in view of the statutory terms of the pilot program, along with the Committee's recommendations, that the Commission take no action on the pilot program at this time. She also advised that committee members were present to answer questions. In response to a question from Mr. McCarthy, Ms. Rau stated that she was a little surprised that no city had expressed an interest in the pilot program and described some possible reasons for the lack of interest. Mr. Sanders stated, that as an observation, he wondered why the legislature did not work more closely with ACIP to determine that if the Commission did in fact adopt a protocol, that they would not be able to participate in it. Mr. Parker stated his view on the desirability of public sector ability to direct medical care and explained the reasons for that view. He asked whether the Committee members were aware of any reason from their experience with the private sector self-insureds that would indicate that public sector directed medical care might be desirable. Ms. Rau responded to the question. Chris Garland commented on possible reasons for the lack of interest from self-insured cities. She further stated that more and more primary care physicians are refusing to treat industrial patients. Ms. Garland stated she feels this supports the need for public-sector directed medical care.

Ms. McGrory stated that the question for the Commission at this time is how to proceed under the pilot program given the lack of interest from any self-insured city and the concerns raised by ACIP. Chic Older stated that he supported the Committee's work and all the efforts made to develop a protocol for the pilot program. Mr. Older stated he feels comfortable that the Committee did its work and he supported the Committee's recommendation.

Chairman Parker stated that, at this point, the Commission has a report and recommendation from the Committee. He stated that the Committee's work was commendable and greatly appreciated and that the Commission should accept staff's recommendation to take no action at this time regarding the pilot program. Mr. Sanders stated that he wanted to clarify that his comments were regarding the legislature and not the Committee and that he agreed they had done a commendable job. Chairman Parker stated that unless there is a motion to the contrary, the Commission would take no action at this point on this matter. He again thanked the Committee members for their work on this and stated it educated him as well.

Discussion &/or Action regarding Legislation

Scot Butler presented a summary of proposed legislation including HB 2131, 2155, 2366, 2368, HCR 2030, SB 1016, 1334, and 1388. With regard to HB 2365, Mr. Butler explained the concerns with the bill as written and noted that similar legislation has been proposed in prior sessions. He stated the Commission has taken a neutral position in the past and that he recommends that the Commission continue to take a neutral position and communicate the agency's concerns with the bill. With regard to HB 2367, he recommended that the Commission oppose the bill as written and explained why he was making that recommendation including the lack of any dispute resolution system at the health care organization level which could result in an overwhelming amount of litigation before the Commission. Ms. Strickler stated that she felt it was premature to take a position and explained why. Mr. Butler responded to questions regarding whether the Commission should take a position at this time. Discussion continued regarding this issue.

Chairman Parker invited Jeff Gray to comment. Mr. Gray stated that there are issues with HB 2367 including drafting errors. In response to a question from Ms. Oster he stated he thought the Arizona Self-Insurers Association would support the bill if the bill is amended. Chairman Parker asked if anyone else from the public wished to address the Commission on this issue. Mr. Older addressed the Commission and expressed concern with the timing of the bill given the anticipated changes in the health care system. He also expressed concern that the bill would impact the availability of quality physicians in the workers' compensation system.

With regard to SB 1441, Mr. Butler's preliminary recommendation was that the Commission oppose the bill as written and he explained why.

The Commission approved Mr. Butler's recommendations for the Commission to take a neutral position with concerns regarding HB 2365, to oppose as written HB 2367, and to oppose as written SB 1441 on motion of Mr. McCarthy, second of Ms. Oster. Mr. Parker, Mr. McCarthy and Ms. Oster voted in favor of the motion. Mr. Sanders abstained from the vote. Ms. Strickler voted against the motion.

Approval of Minutes of January 25, 2012 Meeting

The Commission approved the Minutes of the January 25, 2012 General Session on motion of Mr. McCarthy, second of Ms. Oster. Mr. Sanders abstained.

The Commission approved the Minutes of the January 25, 2012 Executive Session on motion of Mr. McCarthy, second of Ms. Strickler. Mr. Sanders abstained.

Consent Agenda:

a. Approval of Proposed Penalties Against Uninsured Employers.

1.	2C10/11-1466	AMHB Brokerage, LLC dba AMHB of Arizona
2.	2C10/11-1975	M.C. Nottingham Co. of So. Cal. (A California Corporation)
3.	2C11/12-0774	Lifelong Learning Research Institute, Inc.

4. 2C11/12-0618 Raymond P. Bakotic, D.O., PLLC

Chairman Parker asked if any of the listed items needed to be removed from the consent agenda. Secretary Hilton stated that there were not. The Commission unanimously approved the items on the consent agenda on motion of Ms. Strickler, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations & Penalties

Cienaga Canyon Contractors, L.L.C.
3615 E. Calle Del Prado
Tucson, AZ 85716-5022

Unprogrammed Related
Yrs/Business – 13
Empl. Cov. by Insp. – 6

Site Location: 3046 N. Deer Track Road, Tucson, AZ 85749
Inspection #: A9339/316073279
Insp. Date: 09/27/11

SERIOUS – Citation 1, Item 1 – A chop saw had a set screw placed inside of the gravity guard preventing the guard from closing over the blade (1926.300(b)(4)(ii)).
(One inspection with no violations in the past three years.)
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, Item 2 – A portable four inch angle grinder was not equipped with a safety guard (1926.300(b)(1)).
Div. Proposal - $600.00 Formula Amt. - $600.00

SERIOUS – Citation 1, Item 3 – Employees were decking and framing on the roof of a residential custom home at heights that were approximately 15-18 feet above ground without any fall protection (1926.501(b)(13)).
Div. Proposal - $ 750.00 Formula Amt. - $ 750.00

SERIOUS – Citation 1, Item 4 – Employees were decking and framing the roof of a residential custom home at heights that were approximately 15-18 feet above ground and had not received any training on fall protection (1926.503(a)(1)).
Div. Proposal - $ 750.00 Formula Amt. - $ 750.00
TOTAL PENALTY - $2,850.00 TOTAL FORMULA AMT. - $2,850.00

Darin Perkins 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 $2,850.00 on motion of Mr. McCarthy, second of Ms. Oster.

Announcements and Scheduling of Future Meetings

Mr. Wade introduced new staff attorney, Melinda Poppe, to the Commissioners.

Ms. McGrory advised that an agenda item for next week will be the selection of Vice Chairman of the Commission.

Ms. Hilton reminded the Commissioners that there are Commission meetings scheduled for February 9th and 23rd, 2012. The Commissioners scheduled additional meetings on March 1st

and March 14th, 2012.

There being no further business to come before the Commission and no further public comment, Chairman Parker adjourned the meeting at 2:25 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By _____
Laura L. McGrory, Director

ATTEST:

_____
Teresa Hilton, Commission Secretary