

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, June 13, 2012 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member (telephonic)
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura L. McGrory	Director
	Andrew Wade	Chief Counsel
	William Wright	Asst. Director, ADOSH
	Karen Axsom	Acting Director, Labor Dept.
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:02 p.m. noting a quorum present. Also in attendance were Cynthia Everlith and Mary Chan, Hand & Wrist Specialists; Michael Roberson, SCF Arizona; Brandy Petrone, Goodman Schwartz Public Affairs; Jeff Gray, Arizona Self Insurers Association; Chic Older, Arizona Medical Association; and Eda Barolli of Snell & Wilmer.

Approval of Minutes of June 7, 2012 Meeting

The Commission unanimously approved the Minutes of June 7, 2012 on motion of Mr. McCarthy, second of Mr. Sanders.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
1. 2C11/12-2025 3 Hermanos Carneceria-Convenience, L.L.C.
 2. 2C11/12-1726 Aisake's Adult Care Home, L.L.C.
dba Ant Adult Care Home
 3. 2C10/11-2136 Mainland Equipment Leasing, L.L.C.
 4. 2C11/12-1635 Rodent Proof, L.L.C.
 5. 2C11/12-2665 Spear Enterprises, L.L.C. dba Farmers Insurance
 6. 2C11/12-1930 Sugar, L.L.C. dba Bella, Skin, Body & Boutique
 7. 2C10/11-1896 W. Dean Ethington & Lorraine Ethington,
Husband & Wife dba Ethington Calf Ranch

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

Discussion & Action regarding 2012-2013 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 also 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 25, 2012, public hearing. Ms. McGrory stated that today she would present the issues, the comments received, and her recommendations. The Commissioners would be asked to take the action they deemed appropriate. She explained that, subject to the action taken today, she would prepare a document that incorporates the action taken today along with proposed values based upon whatever methodology the Commission chooses. Ms. McGrory presented the following issues:

1. Adoption of Q-Modifiers for anesthesia services. Ms. McGrory explained that these modifiers are used to identify who was involved in the providing of anesthesia services. She reviewed the comments received and recommended that the Commission decline to adopt Q-Modifiers. Given this recommendation, she also recommended that no action be taken on the issue of reimbursement for Certified Registered Nurse Anesthetists ("CRNA's") and she explained this recommendation. Ms. Oster stated that she agreed with the recommendation not to adopt the Q-modifiers, but she stated that she would like to address the issue of reimbursement for CRNA's. Ms. McGrory stated that if the Commission wanted to address the reimbursement issue, then for consistency purposes, her recommendation would be to address that issue as part of the discussion of reimbursement for Physician Assistants and Nurse Practitioners. Following further discussion, the Commission unanimously declined to adopt the Q-modifiers on motion of Ms. Strickler, second of Mr. Sanders. The rate of reimbursement was considered under discussion of the next issue.

2. Adoption of fees for Physician Assistants ("PA's"), Nurse Practitioners ("NP's"), Physical Therapy Assistants ("PTA's"), and CRNA's. Regarding PTA's, Ms. McGrory explained the issue and reviewed the comments received. She also explained that the Commission does not have the legal authority to adopt a fee schedule for PTAs. For this reason, Ms. McGrory recommended that the Commission decline to adopt fees for PTA's. The Commission unanimously declined to adopt fees for PTA's on motion of Ms. Strickler, second of Ms. Oster. Ms. McGrory explained the issue and reviewed the comments received regarding the adoption of fees for PA's and NP's, referred to as mid-level providers. She recommended that the Commission give consideration to the approach suggested by Travelers and Concentra, which provides for a reduced reimbursement of 85% except in those situations in which the PA or NP works under the direct supervision of a physician. Ms. McGrory explained the approach utilized by Medicare for the reimbursement of mid-level providers and referred to as the "incident to" exception. She reviewed the requirements of the "incident to" exception and explained that if the Commission were to adopt this approach that (unlike Medicare) it recognizes the use of technology in the direct supervision of PA's and NP's. Ms. Oster stated that Medicare has strict requirements and is too involved, but supports the recommended approach as long as it is clearly defined. Ms. McGrory explained the pros and cons of the recommended approach. Ms. Strickler explained how the process currently works with respect to reimbursement of mid-level providers. Mr. Parker stated his concern that payers understand what qualifies under the exception. If the Commission adopts this approach, language would need to be added to the fee schedule to address this and to include the concept of telemedicine technology such as interactive video services. Ms. McGrory suggested that if the Commission

adopts this approach, that specific criteria be included in the fee schedule which would reference today's technology and telemedicine. Mr. Parker stated he would lean towards the recommendation and that if there is abuse, the Commission can come back and fix it. Following further discussion, the Commission unanimously adopted reimbursement for PA's and NP's at 85% of the fee schedule except if the services are provided incident to a physician's professional services which will be defined and set forth in the Arizona Fee Schedule on motion of Mr. Parker, second of Ms. Strickler.

As a follow-up to the PA and NP reimbursement issue, Ms. McGrory stated that SCF had suggested that the Commission restrict the type of services provided by a PA or NP. Ms. McGrory stated that the Commission does not have the authority to define, restrict or expand the scope of practice for these mid-level providers and recommended that the Commission decline to adopt this proposal. Following discussion, the Commission declined to take the action requested by SCF Arizona.

With regard to CRNA's, Ms. McGrory explained the issue. She stated that if the Commission decides to adopt a reimbursement rate for CRNA's that it adopt something similar to the action taken for PA's and NP's. Ms. Oster agreed and stated she was comfortable with 85%. In response to a question from Mr. Parker, Mr. Parker recognized Chic Older who explained the level of training and authority of CRNA's. The Chairman also recognized Jeff Gray, who stated CRNA's are widely used in rural Arizona and are not required to work under an anesthesiologist. Following further discussion, the Commission unanimously set reimbursement for CRNA's at 85% on motion of Ms. Strickler, second of Ms. Oster.

3. Adoption of fees for injectable drugs. Ms. McGrory explained the issue and reviewed the comments received. She explained in response to a comment received from Travelers that the Commission does not have authority to adopt fees for most of the services provided in the HCPCS codes. She explained that although the Commission has jurisdiction to adopt fees for injectable drugs, she recommended that the Commission decline to adopt a separate schedule of fees for injectables. She stated, however, that a provider needs to identify the injectable being used through the use of an accepted industry identifier such as the NDC code to enable the payer to make appropriate payment. The Commission discussed how the injectables are currently billed and the use of the NDC numbers on billings. The Chairman recognized Cynthia Everlith, who stated that currently some payers want them to use the J codes and they also use the NDC numbers. Ms. McGrory stated that there may be variations in reporting, but as long as the payer receives enough information to identify the drug it may be better for the Commission not to get involved at this time, which involvement could make the system more difficult and burdensome. The Chairman recognized Mike Roberson who stated he agreed with Arizona Hand & Wrist's position and sees no need for change at this time since they have worked out a system. Following further discussion, the Commission unanimously declined to adopt a separate schedule of fees for injectables on motion of Mr. Sanders, second of Ms. Oster.

4. Survey Methodology. Ms. McGrory reviewed the current survey methodology to calculate fee schedule values and advised that the current policy reflects reimbursement values based on the 75th percentile of the surveyed values. She explained that last year this methodology produced unexpected and substantial decreases in values that caused significant concern for the medical community. Therefore, the Commission modified the methodology to limit the number of codes being decreased. This year, use of the 75th percentile methodology produced similar results and similar concerns from the medical community. She explained that

comments received from payers reflect a concern that adoption of last year's methodology creates a one-sided process, with no consideration given to the payers who are impacted by some significant increases in values. In view of the foregoing, Ms. McGrory recommended that the Commission give consideration to the following methodology, which incorporates the modification requested by ArMA, but also addresses the concerns raised from the payer's perspective:

- Current Arizona values between the 75th and 100th percentile (of the states surveyed) would stay the same.
- Current Arizona values over the 100th percentile (of the states surveyed) would come down to the 100th percentile (the highest state surveyed), excluding the two specific codes identified by ArMA (22840 and 22842) which would remain at the current Commission value.
- Current Arizona values below the 75th percentile would be brought up to the 75th percentile subject to the following condition: Increases shall be capped at 25% unless and except as necessary to bring a current value up to the 50% percentile.

Ms. McGrory advised that she provided NCCI the proposed values for the codes under review. Based on NCCI's analysis, the overall impact on the workers' compensation system would be .4% or \$2.1 million. The dollar impact on overall system costs inclusive of self-insurance was estimated to be \$2.5 million. Ms. McGrory stated that the revised values using the new methodology were also shared with ArMA, ASIA and SCF Arizona. She summarized their comments regarding the revised methodology. Discussion followed regarding the methodology and the need to try to fashion an approach that is responsive to the community's needs. Ms. Strickler stated stakeholders should be brought to the table to work on this throughout the year. Mr. Parker stated that he agreed changes should be made in the methodology to limit increases and stated he was concerned that the NCCI estimate does not consider the impact on self-insurance data and the large deductible piece. The Chair recognized Chic Older, who stated that he understood the concerns raised and agreed with the Director's strategy. He also explained ArMA's concern with Arizona's multiple procedure rule. Ms. Strickler stated she would go with the recommendation for the time being, but would like to bring stakeholders together to continue to work on this issue. Ms. Oster stated that Arizona's multiple procedure rule is different than other states and suggested this be looked at next year. Following further discussion, the Commission unanimously adopted the methodology recommended by Director McGrory on motion of Mr. Sanders, second of Ms. Strickler

5. Designation of publication for purposes of determining Average Wholesale Price ("AWP"). Ms. McGrory explained the issue and the comments received. She recommended that the Commission continue to designate MediSpan® as the publication for determining AWP under the Pharmaceutical Fee Schedule. The Commission unanimously approved the recommendation on motion of Ms. Oster, second of Mr. Sanders.

6. Reimbursement for Prescription Drugs. Ms. McGrory described the current reimbursement formula for prescription medication. She explained that the Commission is being asked to consider increasing the reimbursement for prescription drugs to average wholesale price "AWP" plus 10%. Ms. McGrory stated she did not believe that sufficient information was presented to support a change in the current reimbursement provisions of the fee schedule and recommended that the Commission decline to take action on this issue. In response to a question from Mr. Parker regarding repackaged medications, Ms. McGrory explained the

language that was added to the fee schedule several years ago regarding repackaging and the NDC numbers that are required to be used. She stated that the Commission's approach to the issue appeared to have addressed most of the concerns. The Chair recognized Mike Roberson who stated that some providers continue to use the repackager's NDC number, which in that instance can result in the need to obtain additional information. Following further discussion, the Commission unanimously declined to change the current reimbursement provisions for prescription drugs on motion of Ms. Oster, second of Mr. Sanders.

7. Air Ambulance Services. Ms. McGrory stated that the Commission was asked to address the issue of reimbursement for air ambulance services. She stated that the Commission does not have jurisdiction to address this issue and she recommended that the Commission decline to take action on this issue. The Commission unanimously declined to take action on this issue on motion of Mr. Sanders, second of Ms. Oster.

8. Silent PPO's. Ms. McGrory advised that the Commission received information regarding the continued use of silent PPO's. She stated that the Commission previously took action (which became effective July 25, 2011) to address the use of silent PPO's and explained the language that was added. Ms. McGrory stated that she did not believe any action was warranted under the Fee Schedule at this time. However, if payers are not complying with the spirit and intent of the fee schedule regarding this issue, then the Commission can address the issue with payers by educating them as to the language of the fee schedule. If necessary, the Commission can address the issue through the bad faith/unfair claims processing practices statute. In this regard, the Commission will review allegations provided and move forward as it is appropriate to do so. Chairman Parker stated that no action would be taken at this time.

9. Adoption of new and deleted codes and terminology changes. Ms. McGrory recommended that the new, deleted codes and terminology changes from the 2011 CPT be adopted. The Commission unanimously adopted the updates from the 2011 CPT on motion of Ms. Strickler, second of Ms. Oster.

Discussion &/or Action regarding the Development and Implementation of a Process for the Use of Evidence-Based Medical Treatment Guidelines under HB 2368

Ms. McGrory provided an update on the status of the Director Advisory Committee and stated that she is still trying to connect with some of the potential members and hopes to have the names and date of the first meeting by the next Commission meeting. The Commissioners agreed to think about what they would like to see for a statement of goals and discuss this further at the June 28th meeting.

Discussion &/or Action regarding Legislation

Ms. McGrory stated that there is nothing new to report and that Scot Butler is scheduled to provide an election update at the next meeting.

Discussion & Action of Proposed OSHA Citations & Penalties

Northeast Scottsdale Auto Group, Inc. dba
Greulichs Auto Repair
4915 E. McKellips Road
Mesa, AZ 85210

Complaint
Yrs/Business – 35
Empl. Cov. by Insp. – 3

Site Location: 4915 E. McKellips Road, Mesa, AZ 85210
Inspection #: N4762/316509918
Insp. Date: 05/21/12

SERIOUS – Citation 1, Item 1 – Four skylights had no skylight screen or fixed standard railing around the skylights to prevent an employee from falling through the skylights (1910.023(a)(4)). (No inspection history in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from accident.

Citation 1, Item 2a – The 22 foot tall fixed ladder of the unbroken length did not have a cage installed (1910.027(d)(1)(ii)).

Citation 1, Item 2b – The 22 foot tall fixed ladder had not been inspected regularly or properly anchored, as only 6 of the 12 mounting brackets were securely attached to the vertical concrete wall (1910.027(f)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

Bill Wright 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 \$3,500.00 on motion of Mr. Sanders, second of Ms. Oster.

Discussion & Action of Proposed Youth Employment Penalties

Ms. McGrory introduced Karen Axsom, Acting Director of the Labor Department.

CL 1112-0013 Western Grade LLC – Karen Axsom advised that this case involved a 17 year old youth employed as a general laborer who was injured while cleaning the screens on a mobile screen unit. She explained why the work the youth was performing is considered to be in connection with a mine or quarry occupation and was in violation of A.R.S. §23-231. She responded to questions from the Commission. The Commissioners discussed the good faith reduction that could be applied and the circumstances where a reduction would be appropriate. Ms. Strickler and Mr. Sanders noted that the proposed penalty structure seemed low. Ms. McGrory explained that increasing the penalties would require a change in the statute. Following discussion, the Commission unanimously assessed the recommended penalty of \$600.00 on motion of Mr. McCarthy, second of Mr. Sanders.

CL 1112-0014 S & M Desert Pizza, Inc. dba Little Caesars Pizza – Ms. Axsom advised that this case involved a 17 year old youth employed as a pizza crew member who sustained a

laceration and crush injury to the left index finger when cleaning the dough roller, a machine that is considered a power-driven bakery machine. The Division's investigation confirmed the prohibited employment and violation of A.R.S. §23-231. Chairman Parker requested this file be referred to ADOSH for investigation of potential lockout/tagout violations. Following discussion, the Commission unanimously assessed the recommended penalty of \$600.00 on motion of Ms. Oster, second of Ms. Strickler.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that meetings are scheduled for June 28, July 11, 18, and 26, and August 10, 2012.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 2:55p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary