

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, March 17, 2016 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	Scott P. LeMarr	Commissioner
	James Ashley	Director
	Andrew Wade	Chief Legal Counsel
	Melinda Poppe	Deputy Director
	Bob Charles	Legislative Affairs Chief / Public Information Officer
	Renee Pastor	Accounting
	Jacqueline Kurth	Medical Resource Office
	William Warren	ADOSH Director
	Steven Ripple	Discrimination Investigator
	Jesse Perez	Discrimination Investigator
	Ruben Rodriguez	Discrimination Investigator
	Kara Dimas	Commission Secretary

Chairman Schultz convened the Commission meeting at 1:00 p.m. noting a quorum present. Commissioner Orchard was excused. Also in attendance were Jim Stabler, Cathy Vines and Mark Kendall from CopperPoint, Alex Miles and Jay Coryers from Maricopa County Medical Society, Bureau of Medical Economics, Matthew Disraeli, Lauren King from Triadvocates, Debra Runbeck from ALLIW, Lydia Terrazas, Commission Intern, and Jason Weber of Snell & Wilmer.

Approval of Minutes of February 25, 2016 Regular Meeting.

The Commission unanimously approved the Minutes of the February 25, 2016 Regular Session meeting on motion of Commissioner LeMarr, second of Vice Chair Hennelly.

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. 2C15/16-1993 Affordable Movers of the Valley, LLC dba Movers of the Valley
 2. 2C13/14-1663 Comfort Care Rose Arbor House, LLC
 3. 2C14/15-0720 Just Delivery AZ LLC
 4. 2C15/16-1032 Matheny & Company LLC

5. 2C15/16-1034 Medical Clinic of Arizona, LLC
6. 2C14/15-2009 Old School Motorcycle Company LLC

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

1. City of Peoria
2. Arizona Counties Workers' Compensation Pool
3. Pima County
4. Roman Catholic Church Diocese of Tucson

Chairman Schultz stated that agenda items b. 1, 3, and 4, would be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Vice Chair Hennelly, second of Commissioner LeMarr.

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 described the status of SB 1500 and commented on other bills of interest to the Commission.

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 Industrial Commission Day at the Capitol that was held on March 14, 2016 noting the event was well-attended and he has received positive feedback from those who attended. Chairman Schultz thanked Mr. Charles for his outreach efforts, including the use of social media, and he described some of the benefits of the outreach program. Mr. Ashley added that the Arizona Food Marketing Alliance will be profiling the Industrial Commission in the next edition of the Arizona Food Industry Journal.

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

City of Peoria: Commissioner LeMarr moved to renew self-insurance authority with an exemption from the requirement to post security and Vice Chair Hennelly seconded the motion. Chairman Schultz noted that the City of Peoria has requested an exemption from the requirement to post security and thanked Ms. Pastor for performing an analysis regarding that request. He explained that he is comfortable that all existing and potential liabilities for workers' compensation are well covered by the City of Peoria and how the self-insurance program that includes an option for an exemption from the posting of security demonstrates the Commission's desire to work with and assist employers in addressing their workers' compensation obligations at the lowest possible cost while still maintaining the security necessary to insure that workers are protected as is the State. The Commission unanimously approved the motion.

Pima County: Chairman Schultz noted that Pima County has requested an exemption from the requirement to post security and staff's analysis establishes that the County will be able meet all the requirements including having sufficient funds to cover current and future liabilities. Vice Chair Hennelly moved to renew self-insurance authority with an exemption from the requirement to post

security and Commissioner LeMarr seconded the motion. The Commission unanimously approved the motion.

Roman Catholic Church Diocese of Tucson: Chairman Schultz explained that he asked that this agenda item be addressed as a regular agenda item because of the experience modification rates. He strongly recommended that the Diocese work with the ADOSH Consultation Section to address the continued negative loss experience. Ms. Pastor commented on staff's review of the Diocese's workers' compensation claims. Commissioner LeMarr moved to approve self-insurance authorization renewal for the Roman Catholic Church Diocese of Tucson. Vice Chair Hennelly seconded the motion. The Commission unanimously approved the motion.

Discussion and Action Regarding Rulemaking Relating to the Development and Implementation of a Process for the use of Evidence Based Medical Treatment Guidelines to Treat Injured Workers under A.R.S. § 23-1062.03.

Chairman Schultz asked if there was a motion to approve the notice of final rulemaking and directing staff to submit the notice to the Governor's Regulatory Review Council and to take such action as necessary to complete the rulemaking process. Commissioner LeMarr moved that motion and Vice Chair Hennelly seconded the motion. Chairman Schultz turned to the audience and asked if there was any discussion or comments from anyone. Hearing none, he noted that staff did an excellent job of responding to the public comments and addressing the issues raised and he was extremely comfortable with the results and noted that the Commission is ready to move forward with the rulemaking. The Commission unanimously voted in favor of the motion. Chairman Schultz added the rules and the rulemaking materials were complete and easy to follow and very much in line with the desires of both the Director's Advisory Committee that made recommendations and the Commission's adoption of those recommendations.

Executive Session under A.R.S. § 38-431.03(A)(2) and (A)(3) to Obtain Legal Advice and Discuss Records Exempt from Public Inspection Related to Rulemaking for the Development and Implementation of a Process for the use of Evidence Based Medical Treatment Guidelines to Treat Injured Workers under A.R.S. § 23-1062.03.

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

15-2919-42 - Maricopa County Medical Society, Bureau of Medical Economics (BME)

Mr. Warren presented a summary of the complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission not pursue the matter because the investigation did not identify sufficient evidence to support pursuit.

Commissioner LeMarr asked for clarification regarding the timeline and information provided to the complainant. Mr. Ripple and Mr. Warren provided additional details. Vice Chair Hennelly commented on the timeline. He moved the Commission not pursue the complaint further.

Chairman Schultz asked if Mr. Coryers or Mr. Miles would like to comment. They stated they were available to answer any questions. Commissioner LeMarr asked whether the allegation regarding mold had been thoroughly investigated and Mr. Coryers explained the source of the odor. Commissioner LeMarr seconded the motion. Chairman Schultz asked if there was any further discussion. There was no further discussion and the Commission unanimously voted in favor of the motion not to pursue.

15-3875-10 - Chipotle Mexican Grill, Inc.

Mr. Warren presented a summary of the complaint, the employer's response, and the results of the ADOSH investigation. Mr. Warren recommended that the Commission pursue the matter and he explained why.

Commissioner LeMarr explained his view of the evidence. Mr. Rodriguez commented on his efforts to obtain information from the employer. Vice Chair Hennelly asked if the employer provided any evidence to support its position and Mr. Rodriguez responded to the question.

Chairman Schultz asked Mr. Disraeli if he had any comments. Mr. Disraeli commented on his promotions. Commissioner LeMarr moved to pursue and direct staff to take such action as is necessary including the filing of an action in court. Vice Chair Hennelly seconded the motion. The Commission unanimously voted in favor of the motion.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

15-2919-42 - Maricopa County Medical Society, Bureau of Medical Economics (BME)
15-3875-10 - Chipotle Mexican Grill, Inc.

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

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

City of Kingman, Fleet Maintenance	Planned	
310 N Fourth St	Years in Business:	133
Kingman, AZ 86401	Empl. Covered by inspection:	30
Site Location:	3700 E Andy Devine	
	Kingman, AZ 86401	
Inspection No:	H1793-1107040	
Inspection Date:	11/18/2015	

SERIOUS – Citation 1 - Item 1 – Shop Area: A written respiratory protection program was not established and implemented for the employee using the 3-M brand Organic Vapor Respirator Model 5101, 5201 & 5301, half-face respirator, that included the following elements: (29 CFR 1910.134(c)(1)).

- I- Procedures for selecting respirators for use in the workplace;
- II- Medical evaluations of employees required to use respirators;

- III- Fit testing procedures for tight-fitting respirators;
- IV- Procedures for proper use of respirators in routine and reasonably foreseeable emergency situations;
- V- Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators;
- VI- Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators;
- VI- Training of employees in the respiratory hazards to which they are potentially exposed to during routine and emergency situation;
- VIII- Training of employees in the proper use of respirators, including putting on and removing them, any limitations on their use, and their maintenance; and
- IX- Procedures for regularly evaluating the effectiveness of the program.

Div. Proposal - \$1,350.00 Formula Amt. - \$1,350.00

SERIOUS – Citation 1 - Item 2 – Fleet Maintenance Shop: A chuck guard was not used to protect the operator from the point of operation on one Monarch Machine Tool Company lathe, model number unknown and serial number 35417. (29 CFR 1910.212(a)(1)).

Div. Proposal - \$2,250.00 Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 3 – Shop Floor: One Dayton pedestal mounted bench grinder, model and serial number unknown was not anchored to prevent walking or moving. (29 CFR 1910.212(b)).

Div. Proposal - \$1,350.00 Formula Amt. - \$1,350.00

TOTAL PENALTY - \$4,950.00 TOTAL FORMULA AMT. - \$4,950.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner LeMarr asked for additional details regarding the grinder described in Item 3 and Mr. Warren responded to the question.

Vice Chair Hennelly moved to issue the citations as recommended with a total penalty of \$4,950.00 and Commissioner LeMarr seconded the motion. The Commission unanimously voted in favor of the motion.

Pisani Construction, LLC	Planned	
3126 E Iris St	Years in Business:	35
<u>Mesa, AZ 85213</u>	Empl. Covered by inspection:	4
Site Location:	38300 N. Gantzel Rd	
	San Tan Valley, AZ 85140	
Inspection No:	A3807-1107193	
Inspection Date:	11/20/2015	

SERIOUS – Citation 1 - Item 1 – Building A: Two employees working on the 2nd floor of a building with unprotected sides at a height of 12 feet above the lower level 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)).

Div. Proposal - \$1,250.00 Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 2 – Building A: Two employees did not receive fall protection retraining when the employees demonstrated inadequacies in knowledge and skill in that the

employees believed it acceptable to work on a roof without fall protection if positioned 6 feet away from the roof's edge. (29 CFR 1926.503(c)(3)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 - Item 3 – Building A, east: One employee was observed standing on the top step of a 10 foot step ladder, model and serial number unknown, while installing beam hangars at a height of approximately 8 feet 10 inches above a lower level. (29 CFR 1926.1053(b)(13)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Mr. Warren summarized the citation and proposed penalty as listed and reviewed the mounted photographs. Vice Chair Hennelly asked Mr. Warren to provide additional details regarding Item 2 and the determination that retraining was necessary. Mr. Warren summarized the requirements and employer knowledge of the hazards. Vice Chair Hennelly commented on whether the employees were improperly trained and Mr. Warren provided additional information regarding the circumstances. Commissioner LeMarr commented on the six-foot distance from an unprotected edge.

Commissioner LeMarr explained that he believed the employees were trained but not trained properly and that there is an indication of a good faith attempt at compliance. Commissioner LeMarr moved to issue the citations as recommended with a \$1,000.00 penalty for Item 1, \$1,000.00 for Item 2, and \$750.00 for Item 3. He further explained his motion. Vice Chair Hennelly seconded the motion. The Commission unanimously approved issuing the citation with a total penalty of \$2,750.00.

Whitton Framing, Inc.
49 N. Mesa Drive
Mesa, AZ 85201

Planned

Years in Business: 10

Empl. Covered by inspection: 7

Site Location: 2849 E Detroit St
Gilbert, AZ 85233

Inspection No: W0250-1106943

Inspection Date: 11/19/2015

REPEAT-SERIOUS – Citation 1 - Item 1 – Second floor, northeast corner: One employee engaged in residential construction activities was exposed to a fall of approximately 11 feet and was not protected from falling by guardrail systems, safety net systems, or personal fall arrest systems. (29 CFR 1926.501(b)(13)).

Whitton Framing, Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(13), which was contained in OSHA inspection number 1080009, citation number 1, item number 1 and was affirmed as a final order on November 12, 2015 with respect to a workplace located at 2937 E. Binner Dr., Chandler, AZ 85225.

Div. Proposal - \$3,000.00

Formula Amt. - \$3,000.00

SERIOUS – Citation 2 - Item 1 – Ground level, southeast side: One worker used a Louisville 8 ft. stepladder that did not have the metal spreaders or locking devices engaged to hold the front and back sections in an open position during use. (29 CFR 1926.1053(b)(4)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Mr. Warren summarized the citation and proposed penalty as listed and reviewed the photographs. Commissioner LeMarr commented on the presence of guardrails and Mr. Warren noted that mounted photograph number 5 depicts abatement. Commissioner LeMarr asked Mr. Warren about the incomplete installation of guardrails, improper use of a ladder, and the availability of other ladders at the site. Mr. Warren responded to the questions. The Commission unanimously approved issuing the citation and assessed the recommended penalty of \$4,500.00 on motion of Vice Chair Hennelly and second of Commissioner LeMarr.

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 thanked the Commissioners, staff and members of the community for participating in the first Annual Industrial Commission Day at the Capitol. She presented an update regarding the Key Performance Indicators (Scorecard).

Chairman Schultz asked about the evidence based medicine and noted that one of the Commission's key initiatives is for an efficient pre-authorization process that includes a new electronic system. Ms. Poppe summarized recent activity regarding the evidence based medical treatment guidelines, the electronic process, and the use of treatment guidelines in the workers' compensation system. Chairman Schultz added that the rulemaking package was very well written and well put together, the potential savings are significant, and how the use of the treatment guidelines will improve medical care and provide for more compassionate care. He also commented on problems with opiate addiction.

Ms. Poppe commented on efforts to prepare for what could be a significant volume in the pre-authorization process when the rules become effective. Vice Chair Hennelly stated he thought the rulemaking package was really well done and could move through it with no questions.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Warren announced that the Arizona Chapter of National Safety Council awarded Jenny Mandeville the 2015 Howard Pyle Award, and he explained why this is a prestigious award.

Commissioner LeMarr announced that the Senate Commerce and Workforce Committee approved the appointments of Chairman Schultz, Commissioner Orchard, and Director Ashley as well as his own appointment to the Commission. Chairman Schultz described the next step in the process.

Ms. Dimas explained that the Commission is being presented with a retirement resolution recognizing Alice Colburn for three years of state service with the Administrative Law Judge Division.

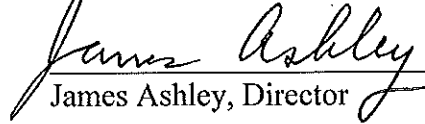
Ms. Dimas confirmed the meeting schedule through April and commented on the upcoming OSHA Safety Summit. Chairman Schultz commented on the Safety Summit and opportunities to meet with southern Arizona city, county, and industry representatives and that the Commissioners can expect a full agenda.

Public Comment.

There was no public comment. Commissioner LeMarr moved to adjourn and Vice Chair Hennelly seconded the motion. The Commission unanimously voted to adjourn and the meeting was adjourned at 2:23 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary