

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, April 4, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner
	Orion J. Godfrey	Commissioner
	Gaetano J. Testini	Executive Deputy Director
	Afshan Peimani	Chief Legal Counsel
	Lisa Padgett	Deputy Director
	Charles Carpenter	Legislative Affairs Chief/Public Information Officer
	Renee Englen	Medical Resource Office Admin
	Renee Pastor	Self-Insurance
	Melissa Spurgeon	Labor Director
	Christina Sanchez	Labor Supervisor
	Vincent Argana	Labor Investigator
	Jennifer Cox	Labor Investigator
	Alissa Bodie	Labor Investigator
	Brian Hudson	ADOSH Director
	Phil Murphy	ADOSH Assistant Director
	Anna Maria Stonerock	ADOSH Admin
	Andy Campbell	Chief Administrative Law Judge
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:01 p.m. In attendance, confirmed by roll call were Stephanie Hefner (Snell and Wilmer); Gregg Mosby and Perfect Gutierrez (Iconex); Cynthia Everlith (EMI); Teresa Krempsi (Dr. Greenfield); Russ Hunt and Matt Ashmore (Camping World). Also in attendance on the telephone, confirmed by roll call were CamaLe Russell (City of Peoria); Lorena Sanchez, Michael Anderson, James Brown Jr. and Stephanie Guizar (City of Glendale); Valerie Ruiz (self); Carla Pacheco, Mike Pena and Theresa Chausse (Corvel).

Approval of Minutes of March 28, 2024 Regular Meeting Minutes.

Commissioner Godfrey moved to approve the Minutes of the March 28, 2024 regular session meeting and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

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.

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

1. City of Chandler
2. City of Glendale
3. City of Peoria
4. City of Tempe

b. Approval of Proposed Youth Employment Penalty.

1. YL-2324-0038 GB PHX Desert Ridge LLC DBA CUPBOP

Commissioner Valdez moved to approve the items on the Consent Agenda and Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Discussion and Action regarding the 2024/2025 Arizona Physicians' and Pharmaceutical Fee Schedule.

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Mr. Carpenter thanked the Commission for the opportunity to present the final staff recommendations for the 2024-2025 Physicians' and Pharmaceutical Fee Schedule. Mr. Carpenter also thanked the many stakeholders who have provided input and feedback that was used to improve and update the Fee Schedule this year. Most of the updates in this year's Fee Schedule were based on recommendations initiated by stakeholders and public comments.

The 2024/2025 Fee Schedule update will be effective on May 1st of this year. Previous updates used October 1st as the effective date. The change in effective date allows healthcare providers and payors working within the Arizona Workers' Compensation System an opportunity to implement the changes initiated by both the AMA and CMS Guidelines at the beginning of the year and potentially avoid some of the pitfalls they experienced with a nine-month wait to implement our Fee Schedule. Staff intends to maintain the effective date of May 1st as circumstances permit.

First, staff recommends including the updated service codes, relative value units (RVUs), and reimbursement values as presented in the tables accompanying the published final recommendations. The methodology used in calculating reimbursement values is outlined in detail. The 2024/2025 Fee Schedule will continue to use the Centers for Medicare and Medicaid Services, or CMS's, surgical global periods, assign RVUs to consultation services, and delineate codes that are unique to Arizona. Staff recommends maintaining the values for the RBRVS conversion factors used in the 2024/2025 Fee Schedule for all service categories.

Second, staff recommends adopting the service codes and reimbursement values as presented in the Healthcare Common Procedure Coding System, or HCPCS, table accompanying the published recommendations. The reimbursement values are based on the reimbursement values published by CMS in the January 2024 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fee Schedule. Staff recommends maintaining separate values for rural and nonrural areas and utilizing the methodology established by CMS to designate rural and nonrural areas in Arizona. HCPCS codes that did not have a value assigned by CMS were assigned a

reimbursement value based on data from FAIR Health. The values were then multiplied by a conversion factor of 1.4 resulting in the reimbursement values listed in the table.

Third, staff recommends adopting the Arizona Specific Codes and the assigned reimbursement values in the accompanying table.

Fourth, staff recommends continuing the designation of Medi-Span® as the source to determine Average Wholesale Price (AWP).

Fifth, staff recommends adopting the deletions and additions to the 2024 edition of the American Medical Association's Current Procedural Terminology publication, also known as the CPT®.

Sixth, staff recommends revising each section of the Fee Schedule Guidelines by removing references to codes preceded with the delta symbol. These references are no longer used due to the adoption of standardized language in the previously mentioned resources.

Seventh, staff recommends amending the Introduction Section of the Fee Schedule by removing the reference to the American Medical Association, Evaluations and Management Code and Guideline Changes as this document is no longer published. Staff also recommends adding Subsection A(2) to clarify the manner healthcare providers should bill for services, equipment, and supplies along with an exception when billing for drug testing. Staff recommends adding language to Subsection A(14) that details the billing codes and reimbursement guidelines for telehealth services. Staff recommends adding Subsection B(5) to clarify appropriate practices when submitting and reviewing invoices for healthcare services and establishing documentation and procedural expectations for denials and appeals. Staff recommends removing Subsection E(1) since Arizona statutes indicate who is permitted to treat injured workers. Staff also recommends removing Subsection J since the designation it describes is no longer in use.

Eighth, staff recommends adding a note at the end of the Anesthesia Guidelines to clarify billing procedures for specific procedures.

Ninth, staff recommends updating modifier "47" in the Surgery Guidelines to clarify that the reimbursement values listed in the Anesthesia Fee Schedule should be used. Staff recommends adding additional language clarifying that reimbursement is 50% of the base units and indicating that the modifier should not be used more than once per surgical encounter. The last part was an amendment in response to a public comment requesting clarification of the original staff proposal. Staff recommends adding language to modifier "59" that clarifies how providers should bill for specific services that are reported on the same date of service as an anesthesia code.

Tenth, staff recommends amending the language in Section C of the Radiology Guidelines to clarify the meaning and use of the technical and professional components when they are billed separately.

Eleventh, staff recommends updating the Evaluation and Management Guidelines to correspond with the updates to the Evaluation and Management Guidelines in the 2024 CPT® publication.



Twelfth, staff recommends removing unnecessary language in Subsection A(3) referring to Section J of the Introduction. Staff also recommends adding a note to Section B that clarifies the appropriate use and non-use of modifiers when billing for services or supplies using a HCPCS code.

Thirteenth, staff recommends adding two new sections to the Home Healthcare Guidelines that clarify billing and reimbursement practices.

Finally, staff recommends amending the title of the Special Services Guidelines section to Arizona Specific Codes Guidelines.

The Medical Resource Office recommended the Commission adopt the proposed revisions to the Pharmaceutical Fee Schedule as presented.

Chairman Kavanaugh asked if there were any questions or comments, hearing none.

Vice Chair Hennelly moved to approve staff recommendations to approve the 2024/2025 Fee Schedule as presented and approve the Resolution of Authorization and Commissioner Godfrey seconded the motion. Chairman Kavanaugh commented that the Commission appreciates all of the great work done and working with all of the stakeholders. This is a complex process and very detailed and he appreciates the work that everyone has done and the input that we received. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2324-0092            ADECCO USA INC

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$20,100.00 for violation of A.R.S. § 23-364, for lost wages and removal of assignment \$14,447.36 for a total amount of \$35,447.36, and a \$250.00 civil penalty.

Chairman Kavanaugh asked if the Commissioners had any questions.

Commissioner Valdez moved to approve the issuance of a Penalty for Retaliation in the amount of \$35,447.36 and \$250 civil penalty to ADECCO USA INC. Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Sick Time Subsequent Civil Penalty.

1. ST-2324-0198            West Direct Oil, LLC DBA Diesel Direct

Ms. Spurgeon summarized the Labor Department's investigation into a violation of A.R.S. § 23-372(a) for a prior Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon noted on January 11, 2024 the Labor Department assessed a subsequent civil penalty in the amount of \$1,000.00 for again violating the same statute, which was not paid by the employer and is currently in collections. On January 23, 2024 the Labor Department received another complaint against the employer for the same violation. The employer is still not in compliance with the statute. The



Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Iconex LLC  
4850 W Jefferson St  
Phoenix, AZ 85043

Complaint  
Years in Business: 130  
Empl. Covered by Inspection: 48

Site Location: 4850 W Jefferson St  
Phoenix, AZ 85043  
Inspection No: CP-2024-EG419-0019  
Inspection Date: October 13, 2023

SERIOUS – Citation 1 - Item 1 –

- a) Middle of warehouse: One employee operating a John Dusenbery paper slitter machine, (Model number/serial number unknown), without a guard in place to prevent the employee from making contact with moving parts. 29 CFR 1910.212(a)(1)
- |                             |                                  |
|-----------------------------|----------------------------------|
| Div. Proposal - \$15,625.00 | Formula Amt. - \$15,625.00       |
| TOTAL PENALTY - \$15,625.00 | TOTAL FORMULA AMT. - \$15,625.00 |

Mr. Murphy discussed ADOSH’s inspection, summarized the citation and proposed penalty.

Vice Chair Hennelly asked if an employee had been previously injured on this machine.

Mr. Murphy confirmed and was pulled by the roller and a bar crushed three fingers. Prior to the inspection a guard was installed and ADOSH was notified appropriately.

Chairman Kavanaugh noted he had a request to speak from Mr. Mosby.

Mr. Mosby, the General Manager of Iconex, stated the company had guarding but upgraded the guarding after the accident and before ADOSH came out. They did it on their own behalf to make the machine safer.

Mr. Murphy commented during the inspection the compliance officer became aware of other hazardous conditions so they have to address it, and while he was looking at the machine and interviewing employees he came across the incident that the fingers were crushed. A lot of employers have guards in place but the way for employers to look at it, if an employee could their hand in, around or through to a moving part, it is not effectively guarded.

Commissioner Godfrey noted the photograph showed the guard in place during the inspection. He asked if the penalty being imposed for the injury or what else if the guard was in place.

Mr. Murphy noted it was for the lack of effective machine guarding, the employee received three crushed fingers and confirmed it was for inadequate guarding.

Vice Chair Hennelly asked about the penalty calculation showing at total of 30% for adjustment factors and not adjustment were made. He asked if the 30% was an error or should there have been a reduction.



Mr. Murphy noted the 30% was an error. Good faith reduction refers to the employer's safety and health management system, and there is potential for a quick fix reduction, but did not apply in this case.

Chairman Kavanaugh noted the size reduction did not apply because of the number of employees.

Mr. Murphy noted the citation is for having inadequate guarding where the employee was able to receive crushing injury, the reason for not including all of the reduction factors is because the citation was in direct relation to a causal factor of the employee receiving the injury.

Commissioner Everett moved to amend the citation and proposed penalties. Because of the fast abatement he suggested at 20% Good Faith Discount for a total of \$11,588. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through May 2024.

Public Comment.

Ms. Sanchez wanted to thank the Commission and Ms. Pastor for all of her work and assistance during their self-insurance renewal process.

There was no other public comment.

The meeting was adjourned at 1:45 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Lisa K. Padgett, Deputy Director

ATTEST:



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Kara Dimas, Commission Secretary