#### MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, February 22, 2024 - 1:00 p.m.

Present: Dennis P. Kavanaugh

Chairman

Joseph M. Hennelly, Jr.

Vice Chair Commissioner

D. Alan Everett

Maria Cecilia Valdez

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 Pastor

Self-Insurance (Telephonic)

Melissa Spurgeon

Labor Director Labor Investigator

Kimberly Gooby

**ADOSH Interim Director** 

Phil Murphy Taryn North

**ADOSH Compliance** 

Victoria Medina

**ADOSH Compliance** 

Anna Maria Stonerock

**ADOSH Admin** 

Kara Dimas

**Commission Secretary** 

Chairman Kavanaugh convened the meeting at 1:10 p.m. Chairman Kavanaugh noted the passing of Larry Leiberman on February 21, 2024, a former Industrial Commission Administrative Law Judge and a long time workers' compensation attorney. In attendance, confirmed by roll call were Stephanie Hefner (Snell and Wilmer); Dr. Mark Amols (New Direction Fertility Centers, LLC); and Steven Coffin (Attorney for employer Greystar Management Services Limited Partnership) (Pace Selden Gilman Marks). Also in attendance on the telephone, confirmed by roll call was Nitra Hawkins (City of Mesa).

## Approval of Minutes of February 15, 2024 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the February 15, 2024 regular session meeting and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez 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.

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

- 1. City of Mesa
- b. Approval of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties Less Than \$15,000.
  - 1. Doege Development LLC PP-2023-JL680-0023
  - 2. Gleason Roofing LLC CP-2024-JW184-0038
  - 3. MyLand Company, Inc. CP-2024-EG419-0024
  - 4. Wolverine Daylight, LLC PP-2003-JL-680-0024

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

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2324-0071 Surveillance Security, 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 \$20,462.83 for violation of A.R.S. § 23-364 (\$10,462.83 for lost hourly wages and holiday pay and \$10,000.00 to deter future violations).

Chairman Kavanaugh and Ms. Peimani discussed that there was no conflict of interest despite Surveillance Security, Inc. contracting with the Industrial Commission because the relationship does not relieve the employer's responsibility to comply with Arizona Labor Laws.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$20,462.83 to Surveillance Security, Inc. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

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

Chairman Kavanaugh discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Greystar Management Services Limited Partnership 16220 North 7th Street

Phoenix, AZ 85022

Site Location:

16220 N 7th St

Phoenix, AZ 85022

Inspection No: Inspection Date: UR-2023-JW184-0034

September 22, 2023

SERIOUS – Citation 1 - Item 1 –

Unprogrammed Related

Years in Business:

30

Empl. Covered by Inspection:

3

a) Building 47 Roof: Three employees were troubleshooting a Goodman air conditioning unit model # and serial # unknown on the roof of a three story apartment complex, approximately 32' above the ground without a fall protection system in place. 29 CFR 1910.28(b)(1)(i) Formula Amt. - \$11,162.00 Div. Proposal - \$11,162.00

### SERIOUS – Citation 1 - Item 2 –

a) Building 47 Roof: Three employees were troubleshooting a Goodman air conditioning unit model # and serial # unknown on the flat roof of a three story apartment complex, approximately 32' above the ground without having received fall protection training. 29 CFR 1910.30(a)(1)

Div. Proposal - \$11,162.00

Formula Amt. - \$11,162.00

TOTAL PENALTY - \$22,324.00

TOTAL FORMULA AMT. - \$22,324.00

Mr. Murphy discussed ADOSH's inspection, summarized the citation and proposed penalties.

Chairman Kavanaugh asked if this citation was related to one on the prior Agenda and this Citation is against the management company. Mr. Murphy confirmed and noted this file was not ready to bring at the same time.

Commissioner Everett clarified that the fatality is what initiated the inspection and Mr. Murphy confirmed.

Commissioner Everett asked about the employees on the roof. Mr. Murphy noted that there were two scenarios and that Greystar Management initially went up to identify and troubleshoot.

Chairman Kavanaugh confirmed that this inspection involved the employees of Greystar Management.

Chairman Kavanaugh noted he did not have a request to speak.

Commissioner Everett moved to approve the citation and proposed penalties as presented and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

New Direction Fertility Centers, PLLC

Complaint

1760 E Pecos Rd, Ste 532

Years in Business:

10 9

Gilbert, AZ 85295

1760 E Pecos Rd, Ste 532

Empl. Covered by Inspection:

Gilbert, AZ 85295

Inspection No:

Site Location:

CP-2023-TN976-0011

Inspection Date:

September 27, 2023

SERIOUS – Citation 1 - Item 1a –

a) Phlebotomy Area: Three employees are exposed to needle stick hazards, while required to remove the hub from the needlestick before placing the needlestick in the sharps container. 29 CFR 1910.1030(d)(2)(vii)(A)

Div. Proposal - \$10,938.00

Formula Amt. - \$10,938.00

#### SERIOUS – Citation 1 - Item 1b –

a) Phlebotomy Area: Three employees with occupational exposure were not provided with bloodborne pathogen training. 29 CFR 1910.1030(g)(2)(i)

Div. Proposal - \$0.00 Formula Amt. - \$10,938.00

### <u>SERIOUS</u> – Citation 1 - Item 2 –

a) Phlebotomy area: Three employees with occupational exposure while the hepatitis B vaccine and vaccination series was not made available. 29 CFR 1910.1030(f)(1)(i)

Div. Proposal - \$7,813.00

Formula Amt. - \$7,813.00

TOTAL PENALTY - \$18,751.00

TOTAL FORMULA AMT. - \$29,689.00

Mr. Murphy discussed ADOSH's inspection, summarized the citation and proposed penalties.

Chairman Kavanaugh noted he had a request to speak from Dr. Amols.

Dr. Amols, Medical Director at New Direction Fertility Centers, thinks the fines are quite excessive. These citations are very expensive for a clinic that does not make a lot of money but are able to help people who cannot afford fertility, and this would be quite a burden on them. Dr. Amols discussed why he felt some of the citations were not correct. The company uses an HR company and to their best knowledge thought they were doing it right, and for a company that works hard to offer very affordable treatment, it will hurt them more than most companies.

Commissioner Valdez confirmed with Dr. Amols that everyone redid the training for something that was missing, he called the HR company and everyone had to finish the training before they started work and was documented the next day.

Chairman Kavanaugh noted that if the Commission decides to recommend a penalty, he would have a chance to protest and have an informal conference with ADOSH staff to review matters as well.

Mr. Murphy noted in addition, both Industrial Hygienist who were on the inspection were present and could speak further if needed. Unfortunately there are programs, where employers go out and hire a company to give them a program however it is still the employer's responsibility to make sure that what the company is providing as far as training and programs meets the requirements and standards.

Vice Chair Hennelly asked based on the doctor's comments, was the abatement with respect to Item 1b where he indicated that the employees were provided with bloodborne pathogen training?

Mr. Murphy noted he spoke to the compliance officers and they have not received abatement on any of the citations.

Dr. Amols noted that they have not provided abatement to ADOSH but do have the documentation.

Vice Chair Hennelly stated, with everyone's understanding that this is just the start of the process and the company will have an opportunity to present abatement documentation, he moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Chairman Kavanaugh thanked Dr. Amols and noted his comments were appreciated and hopefully you will have a discussion with staff as the process moves ahead.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through April 2024.

Mr. Testini commented that the Physicians and Pharmaceutical Fee Schedule Public Hearing will be March 7, 2024 and the proposed changes are posted on the Industrial Commission website under the MRO Office.

#### Public Comment.

There was no public comment.

The meeting was adjourned at 1:51 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By Gaetano J. Testini, Executive Deputy Director

ATTEST:

Kara Dimas, Commission Secretary