# ALASKA WORKERS' COMPENSATION BOARD

**P.O. Box 115512** **Juneau, Alaska 99811-5512**

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| PRINCILLA URSERY,<br><br>Employee,<br>Claimant,<br><br>v.<br><br>GOLD BELT,<br><br>Employer,<br>and<br><br>NATIONAL UNION FIRE INS. CO. OF PITTSBURGH,<br><br>Insurer,<br>Defendants. | ) | FINAL DECISION AND ORDER<br><br>AWCB Case No. 202306881<br><br>AWCB Decision No. 26-0036<br><br>Filed with AWCB Anchorage, Alaska on May 13, 2026. |

Princilla Ursery (Employee)'s October 10, 2024, February 25, 2025, August 28, 2025, and November 19, 2025 claims were heard on April 14, 2026 in Anchorage, Alaska, a date selected on February 11, 2026. A January 14, 2025 hearing request gave rise to this hearing. Attorney Adam Franklin appeared and represented Employee. Attorney Colby Smith appeared and represented Gold Belt and National Union Fire Insurance Company of Pittsburgh (Employer). Alois Treybal, MD, testified on behalf of Employee. For Employer, Maria Armstrong-Murphy, MD, testified. The record closed at the hearing's conclusion on April 14, 2026.

## ISSUES

Employee contends Employer must pay for medical care and treatment for weight loss and ketamine infusion therapy to allow her to recover from her work injury.

Employer contends Employee was morbidly obese prior to her work injury and her injury did not exacerbate or aggravate her obesity to warrant medical benefits. Further, Employer relies on the opinions of its employer medical evaluation (EME) physicians that ketamine infusion therapy is neither reasonable nor medically necessary.

1) **Is Employee entitled to medical benefits specifically, weight-loss medication and ketamine infusions?**

Employee contends that Employer unfairly or frivolously controverted her benefits.

Employer contends that each and every controversion notice it filed was supported by the law, the facts, or both.

2) **Did Employer unfairly or frivolously controvert Employee's claim?**

Employee contends Employer should be penalized and interest is owed on its unfair or frivolous controversion.

Employer argues that no controversion was unfair or frivolous thus no penalty or interest is owed.

3) **Is Employee entitled to a penalty and interest on controverted claims?**

Employee contends she is entitled to attorney fees and costs on all benefits awarded.

Employer does not dispute Employee's attorney's fee affidavit but contends no benefits should be awarded and therefore, no fees or costs are owed.

4) **Is Employee entitled to attorney's fees and costs?**

## FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

1) On May 9, 2023, Employee slipped and fell on her right knee while working as a military family life counselor in Delta Junction, Alaska. (First Report of Injury, May 9, 2023).

2) On May 9, 2023, Employee was taken to Fairbanks Memorial Hospital. A computed tomography (CT) scan of her right lower extremity showed posttraumatic nonenhancement 4.5 centimeter segment of the popliteal artery with a small amount of active hemorrhage with three vessel runoff to the foot on

delayed imaging, and sequelae of knee dislocation with comminuted fibular head fracture and probable minor cortical injury of the anterior medial femoral condyle. Also observed was a large hemarthrosis and a lateral subluxation of the patella with adjacent hematoma. Diagnoses and review of the CT scan were performed by Claire Waite, MD. (Waite medical imaging report, May 9, 2023).

3) On May 10, 2023, Employee was transported from Fairbanks, Alaska to Anchorage, Alaska and seen in the Providence Anchorage Hospital Emergency Department by Ellen Dore, MD. Dr. Dore noted an injury of the right popliteal artery congruent with a ground level fall, and a closed fracture of the proximal end of the right fibula with unspecified facture morphology. Employee was admitted to the trauma service with orthopedic and vascular consultations. (Dore report, May 10, 2023).

4) On May 10, 2023, Ian Brimhall, DO performed a right lower extremity popliteal artery bypass with contralateral great saphenous vein (GSV) harvest, fasciotomy, and external fixator to the right leg. (Brimhall operative report, May 10, 2023).

5) On May 10, 2023, Priya Patel, MD, Vascular Surgeon, performed a right above knee popliteal to below knee popliteal bypass with reversed GSV, a popliteal artery thrombectomy, ligation and exclusion of behind knee popliteal artery, left GSV harvest, and four-compartment fasciotomy. (Patel operative report, May 10, 2023).

6) On May 12, 2023, Dr. Patel performed a wound washout and exploration, and wound partial closure with wound vac placement on Employee's fasciotomies. (Patel operative report, May 12, 2023).

7) On May 15, 2023, Dr. Patel removed staples from prior closures, and evacuated hematoma from both medial and lateral wounds. (Patel operative report, May 15, 2023).

8) On May 17, 2023, Jonathan Barnes, MD, Vascular Surgeon, performed a sharp excisional debridement of skin and subcutaneous tissues greater than 25 centimeter square of the right lower extremity; a wound vac was also placed on the lower right extremity. (Barnes operative report, May 16, 2023).

9) On May 27, 2023, Employee was discharged from Providence Alaska Medical Center, Robert Finch, MD issued the following discharge diagnoses: (1) traumatic right knee dislocation, (2) popliteal artery rupture with acute limb ischemia, (3) posterolateral femur hematoma on CT on May 15, 2023, (4) Enterobacter cloacae on wound culture on May 15, 2023 sensitive to cefepime, (5) leukocytosis, improving, (6) acute blood loss anemia, (7) urinary retention, (8) opiate induced constipation, (9) hypertension, and (10) mild sleep apnea. He also noted Employee had risk factors of morbid obesity and hypertension. (Finch discharge note, May 27, 2023).

10) On June 29, 2023, Employee filed a claim for temporary total disability (TTD) and permanent partial impairment (PPI) benefits, attorney's fees and costs, medical costs, penalty for late paid compensation, and interest. (Claim, June 29, 2023).

11) On July 3, 2023, Tyler Smith MD, performed a removal of Employee's right knee spanning external fixation and manipulation of the right knee under anesthesia. James Lee, MD, performed a skin graft from the left to the right knee. (Smith operative report, Lee operative report, July 3, 2023).

12) On July 3, 2023, Employee entered a comprehensive rehabilitation plan at St. Elias Specialty Hospital in Anchorage, Alaska. She was discharged on October 11, 2023, at the time of discharge her diagnoses were, (1) ischemic lower right extremity secondary to popliteal artery rupture secondary to right knee dislocation, (2) right knee dislocation, (3) tibial head fracture, (4) uncontrolled hypertension, (5) complex regional pain syndrome (CRPS), (6) anemia, (7) obstructive sleep apnea, and (8) obesity class III. (Various providers, progress notes, July 3, 2023 to October 11, 2023).

13) On July 25, 2023, Employer denied all benefits stating, "The employer contends this injury did not occur in the course and scope of employment and was not at a remote location." (Controversion notice, July 25, 2023).

14) On October 2, 2023, Employer withdrew its controversion. (Withdrawn Controversion Notice, October 2, 2023).

15) On October 10, 2023, Employee filed a claim for TTD benefits, an unfair or frivolous controversion, attorney's fees and costs, medical costs, penalty for late paid compensation, and interest. Employee noted Employer had withdrawn its controversion but still had not paid any benefits. (Claim, October 10, 2023).

16) On November 2, 2023, Employee rescinded her October 10, 2023 claim after speaking with Employer a mailing error occurred, and she wished to rescind her claim. (Petition, November 2, 2023).

17) On December 18, 2023, Employee was seen by Lars Matkin, MD, at Alaska Fracture and Orthopedic Clinic. Dr. Matkin noted Employee's knee was unstable and ligamentous in the setting of severe arthritis; he recommended a hinged prothesis. Employee underwent a left knee corticosteroid injection. (Matkin note, December 18, 2023).

18) On February 1, 2024, Employee returned to Dr. Matkin. She reported her nerve pain was improving. Dr. Matkin noted Employee's only surgical option would be a highly constrained knee prosthesis. He expressed concerns about her BMI being over 50 which made her "high risk" for any procedure. (Matkin note, February 1, 2024).

19) On April 10, 2024, Douglas Prevost, MD performed a right total knee arthroplasty utilizing a revision hinged, rotating hinged implant system. Dr. Prevost provided pre- and post-operative diagnoses: (1) severe right knee osteoarthritis, (2) super morbid obesity, BMI 53.98, height 5'8", weight 355, (3) ligamentous unstable right knee joint, (4) history of compartment syndrome, right lower extremity, and (5) history of peroneal nerve injury, right lower extremity. (Prevost operative note, April 10, 2024).

20) On September 5, 2024, Employee began treating with Alois Treybal, DO. Dr. Treybal diagnosed Employee with CRPS of the lower limb, he recommended perineural injection therapy (PIT) for her lower leg pain. He also diagnosed Employee with morbid obesity and recommended Employee begin using Zepbound. Dr. Treybal recommended a strong weight reduction medication because in his opinion Employee needed to lose 40-50% of her body weight in order to recover adequately from her surgeries. (Treybal note, September 5, 2024).

21) On October 10, 2024, Employee filed a claim for attorney's fees and costs, transportation costs, and medical costs. Employee requests authorization for weight loss medication and travel expenses over Employer's denial. (Claim, October 10, 2024).

22) On January 10, 2025, Dr. Treybal responded to a questionnaire proffered by Employee's attorney. Dr. Treybal responded Employee's fall at work was the substantial cause of her disability and need for treatment. He expounded prior to her work injury Employee was able to drive a car and work without issue, after her fall she is now wheelchair bound and unable to work due to her multiple surgeries precipitated by her fall. Dr. Treybal explained after Employee's injury to her right knee and arterial ruptures in her right leg, veins were harvested from her left leg, requiring invasive procedures to both legs resulting in her neuropathic pain in both legs; he attributed both legs and their pathologies to Employee's fall at work. Dr. Treybal noted Employee was struggling to improve in relation to her CRPS, he would like to move forward with ketamine infusions which have shown success with things like fibromyalgia and other pain conditions; he would like to see Employee walking on her own again. (Treybal letter, January 10, 2025).

23) On January 13, 2025, Employee was evaluated by Amit Sahasrabudhe, MD for an EME. Dr. Sahasrabudhe reviewed medical records starting on May 9, 2023 to the date of the evaluation, and performed a physical examination on the Employee. Dr. Sahasrabudhe provided the following diagnoses: (1) right knee dislocation, (2) status post placement and removal of right lower extremity external fixator, (3) status post right lower extremity four compartment fasciotomy with skin grafts, (4) right lower extremity popliteal bypass with thrombectomy; donor site from the left proximal medial

thigh, (5) status post right total knee arthroplasty, (6) subjectively reported and medical record-based documentation of CRPS, (a diagnosis not confirmed by this examiner), (7) right lower extremity pain with diminished range of motion, strength, and function, and (8) left proximal medial thigh pain and fluid collection. On a non-industrial basis, he diagnosed (1) morbid obesity, and (2) probably bilateral lower extremity neuropathy. Dr. Sahasrabudhe opined the work injury was the substantial cause of Employee's disability and need for treatment, with the exception of CRPS, which would need to be determined by a pain management specialist. Regarding pre-existing conditions, he noted Employee had neuropathy in her legs prior to the injury and was morbidly obese, these two conditions combined with her fall created her current condition. In his opinion her fall would not have had such a severe sequelae had she not been obese and her recovery would have been less prolonged in the absence of her pre-existing neuropathy. He recommended she continue with physical therapy to increase her strength and did not recommend any additional surgeries. He noted she was not medically stable at this time. When asked about weight loss medications, Dr. Sahasrabudhe stated while Employee may benefit from weight loss medications, the need for said weight loss medications would objectively not be related to the industrial incident in question. (Sahasrabudhe EME report, January 13, 2025).

24) On February 13, 2025, Jill Stagg, PT, authored a letter to Employee's attorney. Stagg has been treating Employee since 2024; she noted Employee would benefit from weight loss medications to improve her mobility. She indicated Employee has gained weight over the course of treatment with her and it would be reasonable for Employee to begin a weight loss medication regimen to allow her to better mobilize and recover. (Stagg letter, February 13, 2025).

25) On February 19, 2025, Employer denied weight loss medications. Employer relied on the January 13, 2025 EME report from Dr. Sahasrabudhe, who opined weight loss medications would not be related to the May 9, 2023 work injury. (Controversion Notice, February 19, 2025).

26) On February 25, 2025, Employee filed a claim for attorney's fees and costs and medical costs. Employee stated Employer's February 19, 2025 controversion conflicts with recommendations from Employee's treating physicians. (Claim, February 25, 2025).

27) On February 27, 2025, Employee was seen at the Ketamine Wellness Institute in Fairbanks, Alaska. Certified Registered Nurse Anesthetist (CRNA) Nicole McCune provided a 150mg infusion of ketamine over a two hour period. McCune noted Employee was being treated for persistent pain, and explained a routine treatment plan would consist of at least six low dose IV ketamine infusions over the course of two to three weeks. (McCune note, February 27, 2025).

28) On March 17, 2025, Employer answered Employee's February 25, 2025 claim. Employer reiterated Dr. Sahasrabudhe did not believe Employee's work injury caused her to become obese, and while she may benefit from weight loss medication the need for such medication would objectively not be related to her work injury. (Answer, March 17, 2025).

29) On March 17, 2025, Employee filed an affidavit of readiness for hearing (ARH) on her October 11, 2024 and February 26, 2025 claims for weight loss medication, and other claimed benefits. (Affidavit of Readiness for Hearing, March 17, 2025).

30) On March 21, 2025, Employee returned to Dr. Treybal's office for a follow-up appointment. He noted Employee had undergone four ketamine sessions since her last visit. She reported her pain levels decreased for approximately nine hours and returned usually late in the evenings after a session. She reported improved physical therapy sessions and overall pain reduction. (Treybal note, March 21, 2025).

31) On March 25, 2025, Mark Umbrellaro, MD, performed an excision of left thigh seroma including skin, subcutaneous tissue, and muscle fascia. The removal of the seroma was without complication. (Umbrellaro operative note, March 25, 2025).

32) On June 4, 2025, Employee fell while riding in a vehicle that stopped resulting in Employee falling out of her wheelchair. X-rays and magnetic resonance imaging at Fairbanks Memorial Emergency Room did not show any acute injuries to Employee's legs. Mark Simon, MD, noted Employee reported pain in her left leg and prescribed Percocet and Toradol to alleviate her pain symptoms. (Simon note, June 4, 2025).

33) On July 18, 2025, Dr. Umbrellaro performed an incision and drainage of a large thigh seroma and debridement of abscess cavity with wound vac placement. Employee's June 4, 2025 fall created an infection that required surgical intervention. (Umbrellaro note, July 18, 2025).

34) On June 10, 2025 the parties filed a stipulation to cancel a scheduled hearing for June 25, 2025. The stipulation approved by the Board stated the following:

> Employee, Princilla Ursery, and Employer, Goldbelt Inc., file this stipulation to cancel the upcoming hearing scheduled for June 25, 2025. The scheduled hearing was going to address two issues: (1) Employee's request and prescription for weight loss medication and (2) Employee's issues timely obtaining an operational and safe wheelchair from employer and their providers. Regarding (1), Employer issued a withdrawal of its controversion and has agreed to pay for the medication. Regarding (2), at this point Employer has supplied a working wheelchair and is working with Employee to fix any remaining issues. According, Ms. Ursery is satisfied that a hearing is not necessary and that the Board cannot provide her further relief. Resolution of both issues for hearing

constitutes "good cause" to cancel the hearing. (Stipulation to Cancel Hearing Scheduled for 6/25/25, June 10, 2025).

35) On June 10, 2025, Employer withdrew its February 19, 2025 controversion pertaining to weight loss medications. (Withdrawal of February 19, 2025 Controversion, June 10, 2025).

36) On June 13, 2025, the Board approved the parties' June 10, 2025 stipulation. (Stipulation Approved, June 13, 2025).

37) On August 28, 2025, Employee filed a claim for a finding of an unfair or frivolous controversion, attorney's fees and costs, medical costs, penalty, and interest. Employee stated in her claim, "Employer failed to approve prescribed medications, Wegovy. The pharmacy claims they have called for approval on multiple occasions in the past two weeks and the prescription is denied." (Claim, August 28, 2025).

38) On September 10, 2025, Employer answered Employee's August 28, 2025 claim. It contended it has not denied payment for weight loss medications. Employer provided authorization forms in which payment for Wegovy/Semaglutide were authorized for prescriptions from January 3, 2025 through August 28, 2025. (Answer, September 10, 2025).

39) On October 6, 2025, Employee underwent an EME. Employee was evaluated in the examination room by Maria Armstrong-Murphy, MD, physical medicine and rehabilitation physician; Dr. Amit Sahasrabudhe oversaw the evaluation remotely via telemedicine. Dr. Sahasrabudhe's opinion remained consistent from the prior examination and Dr. Armstrong Murphy provided supporting opinions from a physical medicine perspective. Regarding weight loss medication Dr. Sahasrabudhe stated Employee was morbidly obese prior to the industrial incident, and there is no legitimate indication for her to be provided weight loss medication on an industrial basis. Dr. Armstrong-Murphy indicated any weight loss medication should be managed by her primary care physician and is outside the realm of the claim. Regarding ketamine infusions, Dr. Sahasrabudhe opined he was unaware, regardless of causation, of any legitimate need or indication for ketamine infusions and does not recommend said treatment. Dr. Armstrong-Murphy deferred to a pain management specialist for a specific recommendation of ketamine infusions, but she also noted morbid obesity has a high mortality rate given complications with medications, and in her opinion use of ketamine was simply too risky. (Sahasrabudhe; Armstrong-Murphy, EME report, October 6, 2025).

40) On November 4, 2025, Employer denied ketamine infusions and weight loss medications based upon the EME opinions of Dr. Sahasrabudhe, and Dr. Armstrong-Murphy. (Controversion Notice, November 4, 2025).

41) On November 19, 2025, Employee filed a claim for the same benefits claimed in the August 28, 2025 claim. Employee's claim is in response to Employer's November 4, 2025 controversion of ketamine infusions and weight loss medication. (Claim, November 19, 2025).

42) On December 10, 2025, Employer denied ketamine infusions and weight loss medication under the same reasoning as its November 4, 2025 controversion. (Controversion, December 10, 2025).

43) On December 12, 2025, Muhammad Ashraf, MD, Medical Director of Ketwell Alaska, supplied an opinion letter for Employee's ketamine treatment. Dr. Ashraf noted after clinical ketamine use Employee has experienced improvements including reduced baseline pain intensity, decreased nerve hypersensitivity, temporary increases in function ability, and improved tolerance to physical movement. He noted this outcome has been seen in other patients experiencing CRPS. (Ashraf letter, December 12, 2025).

44) On January 15, 2026, Employee filed ARH on her claims for ketamine infusions and weight loss medication authorizations. (ARH, January 15, 2026).

45) On February 11, 2026, the parties attended a prehearing conference. A hearing was set for April 14, 2026 on Employee's October 10, 2024, February 25, 2025, August 28, 2025, and November 19, 2025 claims for medical benefits (weight loss medication, and ketamine infusions), attorney's fees and costs, penalty, interest, and finding of an unfair or frivolous controversion. (Prehearing Conference Summary, February 11, 2026).

46) On April 7, 2026, Employer filed its hearing brief. Employer contended Employee's request for authorization of weight loss medication and ketamine infusions should be denied. Employer relied on the opinions of Drs. Sahasrabudhe and Armstrong-Murphy to rebut the presumption Employee is entitled to those medical benefits. Employer noted other Board decisions have awarded weight loss medication and diabetes medications where an Employee is required to lose weight or treat diabetes prior to a recommended surgery. Employer averred the facts presented in this case differ as Employee's treating physician Dr. Treybal has recommended weight loss medications which could improve Employee's conditioning and could improve Employee's knee condition. Employer asked that the Board deny such a request as Dr. Treybal's opinion is merely speculative and indicates what "could" happen if Employee were to take weight loss medication. Employer asserted Employee is not entitled to any attorney fees and costs if unsuccessful at hearing. Pertaining to the unfair or frivolous controversion, Employer relied on the second EME opinions of Dr. Sahasrabudhe and Armstrong-Murphy to support its subsequent denial of weight loss medication after the parties' board-approved stipulation. (Employer's Hearing Brief, April 7, 2026).

47) On April 7, 2026, Employee filed her hearing brief. Employee contended weight loss medication and ketamine infusions are both reasonable and necessary medical treatment to address her work injury. She noted due to her work injury her weight has increased which has hindered her ability to recover. She relied on the opinion of Dr. Treybal who had recommended Wegovy over a year ago. She relied on Dr. Muhammed Ashraf's opinion that ketamine infusions to treat Employee's CRPS as both reasonable and necessary. Employee argued she has raised the presumption with her injury and overcome the presumption analysis by a preponderance of the evidence in the form of her treating physicians' opinions. Employee requested a finding of an unfair or frivolous controversion when Employer denied weight loss medications after stipulating to them, and for attorney fees and costs as well as statutory fees on future medical benefits. (Employee's Hearing Brief, April 7, 2026).

48) On April 7, 2026, Employee's attorney submitted a fee affidavit. Franklin's rate was $515.00 per hour, he accounted for 35.45 hours in this litigation totaling $18,256.75. He also had $560.50 in costs which included notary services, physician letters, parking and travel for Employee's deposition in Fairbanks, Alaska. Franklin also included the necessary *Rusch* factors in his affidavit explaining his experience, time put into this case, his rate, and other pertinent facts required when requesting Board awarded fees. (Fee Affidavit of Adam Franklin, April 7, 2026).

49) On April 14, 2026, Dr. Alois Treybal testified on behalf of Employee. Dr. Treybal has been Employee's treating physician for almost two years. He described himself as a navigator for Employee as she has physical therapy, lymphatic treatments, routine medications, and other primary care issues that he assists with. As part of his role, he can prescribe medications. Dr. Treybal stated he was trying to prescribe Wegovy for Employee for a few reasons, first, Employee is obese and her weight is affecting her ability to recover from her injury, and secondly, he noted weight loss medications specifically "glucagon-like peptide-1's (GLP-1s)" can have off label uses that assist with other medical issues such as inflammation which Employee suffers from. In his opinion, weight loss medication would be reasonable and necessary to allow Employee to actually recover from her injuries, due to her weight and the weight she has gained since her injury, Employee has not been able to meaningfully participate in her recovery. Dr. Treybal believes getting some weight of Employee will have a cascade effect on her ability to recover. He placed a referral to a ketamine infusion clinic for Employee. Dr. Treybal explained due to her CRPS, ketamine has proven to be useful in reducing that type of pain as it has been used for patients with multiple sclerosis and fibromyalgia. He likened reducing Employee's pain under the same rationale as weight loss medication, if Employee can reduce her pain through ketamine infusions, she will be able to more meaningfully participate in her own recovery. Dr. Treybal

noted that he does not expect Employee to start a vigorous exercise regimen once she receives these medications but rather, she would be able to actually ambulate around her house and start movement, and in his opinion any movement for Employee would be beneficial. He also noted on cross examination Employee's weight has fluctuated over the past three years, at the date of her injury she weighed 386 pounds, in September of 2024 she had a max weight of 439 pounds, but in May of 2025 she had gone down to 422 pounds. Dr. Treybal clarified that anytime he has a patient over 400 pounds there is a need to lose weight in order to be in overall better health; he strongly believes Employee would be a good candidate for weight loss medication. On cross examination he acknowledged that ketamine does have risks but most if not all those risks are mitigated when administered in a clinical setting with constant monitoring. (Treybal Hearing testimony, April 14, 2026).

50) At hearing, Dr. Maria Armstrong-Murphy testified on behalf of Employer. Dr. Armstrong-Murphy is a specialist in physical medicine and rehabilitation. In her opinion, Employee was morbidly obese prior to her work injury, and could not justify a prescription of weight loss medication for Employee's pre-existing obesity. However, she concurred with Dr. Treybal's opinion Employee would benefit from increased mobility. Dr. Armstrong-Murphy noted immobility in patients can create a cascade of physiological responses, such as inflammation, joint and tendon issues, and issues with muscles and bones. Regarding ketamine infusions, Dr. Armstrong-Murphy opined she did not believe Employee had CRPS and therefore, using ketamine to treat CRPS was incorrect. She expounded ketamine works in the brain and has a dissociative effect, where a patient may experience less pain through the brain but not necessarily an overall decrease in pain. Dr. Armstrong-Murphy noted with Employee's obesity being in a dissociative state increases her fall risk. She agreed in a clinical setting the fall risk is minimized but not completely mitigated and for those reasons she could not recommend ketamine infusions. (Armstrong-Murphy hearing testimony, April 14, 2026).

51) On April 14, 2026, at the conclusion of the hearing, Franklin provided an updated accounting of his fees to include time from the date his fee affidavit was due, to the date of hearing. His requested fees were $21,186.23 (44.05 hours at $515.00 per hour). (Activities export sheet for Adam Franklin, April 14, 2026).

52) On April 20, 2026, Employee's attorney submitted a supplemental fee affidavit. Franklin requested 3.5 hours at $515.00 per hour for the time spent at hearing, and an additional $1,200.00 for the costs associated with securing Dr. Treybal to testify on behalf of Employee. (Franklin supplemental fee affidavit, April 20, 2026).

PRINCIPLES OF LAW

The Board may base its decision on testimony, evidence, the Board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987). "In our view, when a claim for benefits is premature, it should be held in abeyance until it is timely, or it should be dismissed with notice that it may be refiled when it becomes timely." *Egemo v. Egemo Const. Co.*, 998 P.2d 434, 441 (Alaska 2000).

> **AS 23.30.010. Coverage**. (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or . . . the need for medical treatment of an employee if the disability . . . of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability . . . or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the . . . disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability . . . or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment. . . .

It is a fundamental principle in workers' compensation law that an employer "must take" the injured employee "as he finds him." *Wilson v. Erickson*, 411 P.2d 998, 1000 (Alaska 1970). *Morrison v. Alaska Interstate Constr., Inc*., 440 P.3d 224, 233-34 (Alaska 2019) stated:

> The statutory language does not require the Board to look at the type of injury in identifying the substantial cause of the need for medical treatment. Alaska Statute 23.30.010(a) requires the Board to "evaluate the relative contribution of different causes of the . . . the need for medical treatment." That subsection then provides, "Compensation or benefits under this chapter are payable for . . . medical treatment if, in relation to other causes, the employment is the substantial cause of the . . . need for medical treatment." When read together, these sentences do not reflect an instruction to consider the type of *injury* when evaluating compensability; instead, they require the Board to look at the *causes* of the injury or symptoms to determine whether "the employment" was a cause important enough to bear legal responsibility for the medical treatment needed for the injury.

> **AS 23.30.012. Agreements in regard to claims.** (a) At any time after death, or after 30 days subsequent to the date of the injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in

> regard to a claim for injury or death under this chapter . . . . Otherwise, the agreement is void for any purpose. Except as provided in (b) of this section, an agreement filed with the division discharges the liability of the employer for the compensation, notwithstanding AS 23.30.130 . . . and is enforceable as a compensation order. . . .

The parties' right to settle claims under AS 23.30.012 is limited to claims that arise under the Workers' Compensation Act (Act). *Reeder v. Municipality of Anchorage*, AWCAC Decision No. 116 (September 28, 2009) at 11. "The board's authority to approve a settlement agreement under AS 23.30.012, and thereby confer upon it the status of a board order or award, may be invoked only if the agreement settles claims that may be raised under the Workers' Compensation Act." *Id*. *Reeder* further states, "The reason for this regulation [forbidding undisclosed agreements] is plain; because the board's approval coverts the settlement to a board order, the board must be fully informed of the orders it makes." *Id*. at 12.

A settlement agreement is a contract and is subject to interpretation as other contracts. *Williams v. Abood*, 53 P.3d 134, 144 (Alaska 2002) (*citing Cameron v. Beard*, 864 P.2d 538; 545 (Alaska 1993)); *followed in Reeder*. Contract interpretation is a legal, rather than factual issue. *Weiner v. Burr, Pease &Kurtz, P.C.*, 221 P.3d 1, 5 (Alaska 2009). The primary goal of contract interpretation is to give effect to the parties' reasonable expectations. *Reeder*. To the extent they are not overridden by statute, common law principles of contract formation and rescission apply to settlement agreements. *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079; 1093 (Alaska 2008); *applied in Hugo Rosales v. Icicle Seafoods*, AWCAC Decision No. 163 (July 11, 2012). A valid contract requires "an offer encompassing all the essential terms, unequivocal acceptance by the offeree, consideration, and an intent to be bound." *Sea Hawk Seafoods, Inc. v. City of Valdez*, 282 P.3d 359; 364 (Alaska 2012).

While broad language in settlement agreements implies that all claims are settled, if the parties specifically state that a claim is not settled, it remains contested. *Williams* at 144; applied in *Northstar Earthmovers v. Sanders*, AWCAC Decision No. 046 (June 7, 2007). Thus, an agreement that states an employer does not waive its rights to contest liability for future medical benefits, and does not limit or condition that right, merely reserves the parties' rights, as they existed at the time of settlement. *Sanders* at 10.

> **AS 23.30.095. Medical treatments, services, and examinations**. (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the

> process of recovery requires, not exceeding two years from and after the date of injury to the employee. . . .

*Municipality of Anchorage, v. Carter*, 818 P.2d 661, 664-66 (Alaska 1991) held "process of recovery" language in §.095(a) allows the Board to authorize continuing care even beyond two years after date of injury where evidence establishes such care promotes an employee's recovery. *Carter* held the statute grants the Board discretion to award such "indicated" care "as the process of recovery may require." *Philip Weidner & Associates, Inc. v. Hibdon*, 989 P.2d 727, 731-33 (Alaska 1999) set the Board's limits when reviewing recommended medical care made within two years post-injury:

> Under Alaska's Workers' Compensation Act, an employer shall furnish an employee injured at work any medical treatment "which the nature of the injury or process of recovery requires" within the first two years of the injury. The medical treatment must be reasonable and necessitated by the work-related injury. Thus, when the Board reviews an injured employee's claim for medical treatment made within two years of an injury that is undisputably work-related, its review is limited to whether the treatment sought is reasonable and necessary.
> . . . .
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> . . . However, where the claimant presents credible, competent evidence from his or her treating physician that the treatment undergone or sought is reasonably effective and necessary for the process of recovery, and the evidence is corroborated by other medical experts, and the treatment falls within the realm of medically accepted options, it is generally considered reasonable. If the employee makes this showing, the employer is faced with a heavy burden -- the employer must demonstrate to the Board that the treatment is neither reasonable and necessary, nor within the realm of acceptable medical options under the particular facts. It is not the Board's function to choose between reasonable, yet competing, medically acceptable treatments. Rather, the Board must determine whether the actual treatment sought by the injured employee is reasonable.
> . . . .
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> . . . Choices between reasonable medical options and the risks entailed should be left to the patient and his or her physician. The superior court correctly stated that the Board should not have overridden the consensus reached in the physician-patient decision-making process. We therefore hold that Hibdon proved her claim by a preponderance of the evidence. . . .

> **AS 23.30.120. Presumptions**. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
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> (1) the claim comes within the provisions of this chapter;

Benefits sought by an injured worker are presumptively compensable and the presumption applies to any claim for compensation under the Act. *Meek v. Unocal Corp.*, 914 P.2d 1276 (Alaska 1996). To attach the presumption, and without regard to credibility, an injured worker must establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603 (Alaska 1999). Once the presumption attaches, and without regard to credibility, an employer must rebut the raised presumption with "substantial evidence." *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). "Substantial evidence" is relevant evidence a reasonable mind might accept as adequate to support a conclusion, considering the whole record. If the employer's evidence rebuts the presumption, it drops out and the employee must prove his claim by a preponderance of the evidence. *Miller v. ITT Arctic Services*, 577 P.2d 1044 (Alaska 1978). This means the employee must "induce a belief" in the fact-finders' minds that the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71 (Alaska 1964). In the third step, evidence is weighed, inferences are drawn, and credibility is considered. *Huit.*

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

The Board has the sole power to determine witness credibility, and its findings about weight are conclusive even if the evidence is conflicting. The Board's credibility findings are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009). The Board has sole discretion to determine weight accorded to medical testimony and reports. When doctors' opinions disagree, the Board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Dec. No. 087 (August 25, 2008).

> **AS 23.30.130. Modification of awards**. (a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions . . . or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits . . . whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case . . . . [T]he board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation. . . .

When parties enter into a stipulation regarding compensability of an employee's diabetes, and file the stipulation with the Board, the stipulation has the effect of a Board order such that the employer is required to petition the Board for a modification of the order if it wishes to contest the condition's

continuing compensability. *Harris v. M-K Rivers*, 325 P.3d 510, 522 (Alaska 2014).

In *Underwater Const. v. Shirley*, 884 P.2d 156 (Alaska 1994), the Alaska Supreme Court observed:

> Alaska Statutes . . . outline the manner by which compensation payments are to be made. Compensation is "payable without an award, except where liability to pay

> compensation is controverted by the employer." AS 23.30.155(a). If payment of compensation is controverted, the employee is entitled to a hearing and a compensation order "rejecting the claim or making the award." AS 23.30.110(e). If an award is made, then compensation is "payable under the terms of an award." AS 23.30.155(f). . . . . [A]n employer seeking to modify or terminate payments made under a Board order must first seek the approval of the Board. AS 23.30.130(a).

Thus, when an employee sought, and was entitled to, an express award of permanent and total disability benefits, it was an error to not make the award because such an award would require the employer to first seek modification and obtain board approval before terminating benefits. *Id*. at 161.

In *Cavitt v. D&D Services,* AWCAC Decision No. 248 (May 4, 2018), the Commission applied *Shirley* and held, in awarding attorney's fees, the Board undervalued its order "confirming [the employee's] entitlement to TTD" because the employer would have to seek modification of that order before it terminated benefits.

"The power to modify *awards* for changed conditions or mistakes of fact expressed under .130 does not, however, extend to *settlements*. Subsection .012 provides that approved settlement agreements discharge the liability of the employer for compensation *notwithstanding subsection .130." Olsen Logging Co. v. Lawson*, 856 P.2d 1155, 1158-59 (Alaska 1993) (emphasis in original).

> **AS 23.30.145. Attorney Fees.** (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed . . . and the benefits resulting from the services to the compensation beneficiaries.
>
> (b) If an employer otherwise resists the payment of compensation or medical

> and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered. . . .

*Wise Mechanical Contractors v. Bignell*, 718 P.2d 971 (Alaska 1986) held attorney fees should be reasonable and fully compensatory, considering the contingency nature of representing injured workers, in order to ensure adequate representation. *Childs v. Copper Valley Elec. Ass'n*, 860 P.2d 1184 (Alaska 1993) held that when an employee does not prevail on all issues, attorney fees should be based on the issues on which the employee prevailed. *State of Alaska v. Wozniak*, 491 P.3d 1081 (Alaska 2021) affirmed a Board decision that awarded the successful claimant a lump-sum attorney fee for past work on the claim and statutory minimum fees on continuing benefits. *Wozniak* held that the Board may fashion a fee award as it sees fit as long as the award is not manifestly unreasonable. *Rusch v. Southeast Alaska Regional Health Consortium*, 517 P.3d 1157, 1162 (Alaska 2022) compared attorney fee awards and stated, "Claimants' attorneys must prevail 'on a significant issue on appeal' to be awarded fees for an appeal; in contrast Board-awarded fees depend on success on the claim itself."

> **AS 23.30.155. Payment of compensation.** (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . .
> . . . .
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> (e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.
> . . . .
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> (o) The director shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the director, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

The Alaska Supreme Court has taken a broad reading of the term "controverted," and has held a "controversion in fact" can occur when an employer did not file a formal controversion. *Alaska Interstate v. Houston*, 586 P.2d 618 (Alaska 1978). A controversion-in-fact can occur when an employer does not "unqualifiedly accept" an employee's claim for compensation, *Shirley* at 159, or when an employer consistently denies and litigates its obligation to pay an increase in benefits. *Wien Air Alaska v. Arant*, 592 P.2d 352 (Alaska 1979). A controversion-in-fact also occurs when an employer does not file a controversion notice but denies liability for benefits in its answer to a claim. *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007).

A controversion notice must be filed "in good faith" to protect an employer from a penalty under AS 23.30.155(e) or to avoid referral to the Division of Insurance under AS 23.30.155(o). *Harp v. ARCO Alaska, Inc.*, 831 P.2d 352, 358 (Alaska 1992). "For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits." *Harp* at 358. And in *Stafford v. Westchester Fire Ins. Co. of New York*, 526 P.2d 37 (Alaska 1974), the Court held that when nonpayment results from bad faith reliance on counsel's advice, or mistake of law, imposition of a penalty is appropriate. In *Harris*, the Supreme Court declined to decide whether a controversion that is not made in good faith under *Harp* is always frivolous or unfair under AS 23.30.155(o). In *Vue v. Walmart Associates Inc.*, 425 P.3d 270 (Alaska 2020), the Supreme Court applied *Harp* and held the controversion of medical benefits was frivolous when it lacked a factual basis because the employer's medical evaluator's opinion (1) was not based upon knowledge and experience with the treatments at issue, (2) indicated a treatment option was a "judgment call" as the choice of treatment is left with the employee and his treating physician in such situation, (3) doubted thesource of pain but had no basis to dispute the treating physician's diagnosis and (4) acknowledged some treatment was effective in some cases but contained no information on why he thought it would not be useful to the employee.

**8 AAC 45.050. Pleadings. . . .**

. . . .

(f) **Stipulations**.

(1) If a claim or petition has been filed and the parties agree that there is no dispute as to any material fact and agree to the dismissal of the claim or petition, or to the dismissal of a party, a stipulation of facts signed by all parties may be filed, consenting to the immediate filing of an order based on the stipulation of facts.

(2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or a prehearing.

(3) Stipulations of fact or to procedures are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. A stipulation waiving an employee's right to benefits under the Act is not binding unless the stipulation is submitted in the form of an agreed settlement, conforms to AS 23.30.012 and 8 AAC 45.160, and is approved by the board.

(4) The board will, in its discretion, base its findings upon the facts as they appear from the evidence, or cause further evidence or testimony to be taken, or order an investigation into the matter as prescribed by the Act, any stipulation to the contrary notwithstanding.

## ANALYSIS

**1) Is Employee entitled to medical benefits specifically, weight-loss medication and ketamine infusions?**

The Alaska Workers' Compensation Act (Act) in §.095(a) is clear regarding Employer's obligation to provide Employee with medical treatment. Employer "shall furnish" medical treatment "for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury. . . ." *Hibdon* clarified the discretion a hearing panel has during the two-year post-injury period -- review is "limited." If Employee's physician recommended treatment within two years from her injury date, and Employee claimed it, this panel may review Employee's claim for medical care "only to determine whether the treatment" she sought in her claim "was reasonable and necessary." *Id*.

That the litigation process may result in the treatment occurring outside the two-year window is irrelevant. *Hibdon* further stated that if an injured worker received conflicting medical advice,

she may present credible, competent evidence from her attending physician stating the treatment sought is "reasonably effective and necessary for the process of recovery." If corroborated by other medical experts, and if the treatment falls within the realm of medically accepted options, "it is generally considered reasonable." *Id*.

Employee claims medical treatment from Employer. This includes weight loss medication to allow her to recover from her work fall, and ketamine infusions to treat her neuropathic pain. Employee does not claim that the work injury caused her obesity. Employee claims that controlling her weight to allow for recovery, and ketamine infusions to treat her neuropathic pain are reasonable medical treatments that Employer is required to provide.

*a) Weight Loss Medication*

The parties' June 2025 stipulation resolved all of the issues in Employee's October 11, 2024 claim which were set for a June 25, 2025 hearing, and cancelled the hearing. In the June 2025 stipulation, Employer withdrew its controversion for weight loss medication and had already provided a wheelchair to Employee.

Contract interpretation's goal is to give effect to the parties' reasonable expectations. *Reeder*. The June 2025 stipulation did not expressly state Employer was required to seek an order prior to terminating medical benefits. Employer agreed to withdraw its controversion for weight loss medication, and based on the record, it authorized weight loss medication for Employee. Neither party in briefing or hearing argued the relevance of the stipulation and its bearing on medical benefits. However, the stipulation is clear that Employer would pay for weight loss medication, it makes no mention of duration or reserving the right to controvert based upon new opinions or information. Employee filed a claim on August 28, 2025 indicating weight loss medications had been rejected and Employee was no longer receiving the medication. Therefore, termination of medical benefits pursuant to the stipulation requires an order. 8 AAC 45.050(f)(3); *Harris*. The June 2025 stipulation entitled Employee to medical benefits until terminated by an order.

Alternatively, the statutory presumption under §120(a)(1) applies to any claim for compensation under the Act including medical care. *Meek*. Without regard to credibility, Employee raises the

presumption that she is entitled to weight loss medication through Dr. Treybal's opinion that she needs to lose weight to become mobile and recover *Tolbert*; *Huit*. The burden shifted to Employer to rebut the raised presumption with "substantial evidence" to the contrary. *Huit*. "Substantial evidence" is relevant evidence a reasonable mind might accept as adequate to support a conclusion, considering the whole record. *Miller*. Without regard to credibility, Employer rebutted the raised presumption with Dr. Sahasrabudhe's and Armstrong-Murphy's opinion that weight loss medication was not reasonable because Employee's obesity was preexisting. Dr. Sahasrabudhe added "the need for said weight loss medications would objectively not be related to the industrial incident in question ." *Huit*. Employer shifted the burden back to Employee who must prove her claim for medical benefits by a preponderance of the evidence. *Saxton*.

It is undisputed that Employee injured her leg on May 9, 2023, while working for Employer. It is undisputed that Employee underwent multiple surgeries to address her work injury. EME Dr. Sahasrabudhe agreed the work injury with Employer was "the substantial cause" of Employee's disability and need for treatment. Drs. Treybal and Sahasrabduhe agreed that Employee's preexisting morbid obesity is a compounding factor in her treatment, because it heightens her risk for infection, ability to recover, and can lead to other medical issues. All agreed her weight was not well-controlled. Dr. Sahasrabudhe noted from a surgical perspective there was no additional recommendation for future surgery to address Employee's legs. Dr. Treybal agreed no further surgeries were necessary but noted Employee still needed to lose weight in order to recover.

The treatment she seeks from Employer is "for the period" necessary to better control her weight to become more mobile as she is currently wheelchair bound. The "nature of the injury" at this point includes a regimen of physical therapy and mobility exercises. The "process of recovery" includes her participation in physical therapy. Employer disavows responsibility for the weight loss medication as she was previously morbidly obese prior to the injury.

Employee has to prove her medical claim by a preponderance of the evidence. *Steffey*; *Saxton.* Dr. Treybal testified Employee's weight has limited her ability to move, and therefore recover.

He noted Employee was able to perform her job before the work injury despite being obese but now after multiple surgeries she is wheelchair bound and her weight has fluctuated, trending upwards. His testimony was credible. AS 23.30.122; *Smith*. Drs. Sahasrabudhe and Armstrong-Murphy both agreed Employee was obese prior to her work injury and her work injury did not cause her to become obese. Dr. Sahasrabudhe in his reports denied weight loss medication as her weight was not the substantial cause of her disability. Dr. Armstrong-Murphy agreed with Dr. Treybal that losing weight would assist in Employee's recovery, but she noted work was not what caused Employee to be obese. Dr. Treybal's testimony corroborated with his treatment of Employee over the past year and a half is given more weight than the EME opinions of Dr. Sahasrabudhe and Dr. Armstrong Murphy. *Moore*. Based on these facts, Employee proves she needs ongoing medical treatment in the form of weight loss medication in order to aid her recovery from her work injury. *Saxton*.

*b) Ketamine Infusion Therapy*

Again, the statutory presumption under §120(a)(1) applies to any claim for compensation under the Act including medical care. *Meek*. Without regard to credibility, Employee raises the presumption that she is entitled to ketamine infusion therapy through Dr. Treybal's opinion that Employee has CRPS and neuropathic pain to which ketamine infusion therapy has shown to have substantial benefits for similar types of pain. *Tolbert*; *Huit*. The burden shifted to Employer to rebut the raised presumption with "substantial evidence" to the contrary. *Huit*. "Substantial evidence" is relevant evidence a reasonable mind might accept as adequate to support a conclusion, considering the whole record. *Miller*. Without regard to credibility, Employer rebutted the raised presumption with Dr. Armstrong-Murphy's opinion that ketamine infusion therapy was not reasonable. She added "morbid obesity has a high mortality rate given complications with medications, and in her opinion use of ketamine was simply too risky." *Huit*. Dr. Sahasrabudhe noted he could find no reason to authorize the use of ketamine for Employee. Employer shifted the burden back to Employee who must prove her claim for medical benefits by a preponderance of the evidence. *Saxton*.

Dr. Sahasrabudhe opined he was unaware, regardless of causation, of any legitimate need or indication for ketamine infusions and does not recommend said treatment agreed the work injury with Employer was "the substantial cause" of Employee's disability and need for treatment. Dr.

Armstrong-Murphy deferred in her EME opinion to that of a pain management specialist regarding ketamine, but as previously stated she considered the treatment "risky." Dr. Armstrong-Murphy testified at hearing that ketamine can cause a dissociative state which would make Employee a fall risk as she is currently wheelchair bound and morbidly obese. On cross-examination, Dr. Armstrong-Murphy agreed that ketamine administered in a clinical setting may minimize fall risk, but she maintained she did not believe it was reasonable or necessary for Employee. She also contended she did not believe Employee had CRPS based upon the Budapest Criteria. Employee's treating physician Dr. Treybal testified at hearing he recommended Employee seek ketamine infusions due to her neuropathy in her legs, he noted he had treated other patients with similar symptoms with ketamine successfully. Dr. Treybal maintained in his opinion that ketamine would assist in Employee's pain reduction and would allow her to more meaningfully participate in physical therapy, he noted as much in his medical reports. Presently, Dr. Treybal continues to treat Employee; Dr. Treybal's opinion was also credible and given considerable weight given his experience treating Employee. AS 23.30.122; *Smith*; *Moore*. Less weight is given to the opinions of Drs. Sahasrabudhe and Armstrong-Murphy. *Id*. Based on these facts, Employee proves she needs ongoing medical treatment in the form of ketamine infusion therapy for her May 9, 2023 work injury by a preponderance of the evidence. *Saxton.*

**2) Did Employer unfairly or frivolously controvert Employee's claim?**

Employee sought a finding that Employer unfairly or frivolously controverted her benefits under
§.155(o). Such a finding, if made, would not benefit Employee, but would result in this decision asking the Division director to notify the Division of Insurance that Employer's insurer had frivolously or unfairly controverted benefits.

The law regarding an unfair or frivolous controversion arises from §.155(o) and *Harp*. An employer or insurer must file a controversion notice "in good faith" to protect it from a penalty, or to avoid a finding of an unfair or frivolous controversion. For a controversion notice to be filed in good faith, "the employer must possess sufficient evidence in support of the controversion, that if the claimant does not introduce evidence in opposition to the

controversion," a panel would find the claimant was not entitled to benefits. The relevant evidence is what the employer possessed at the time the controversion was made. *Harp*.

A controversion may be "fact-based" or "legal-based." *Irby*. In other words, an employer may have a factual reason to controvert an injured worker's right to benefits. For example, if an employer told the adjuster that an injured worker was not physically present on the job site on a stated injury date, the employer would be justified in controverting the employee's right to benefits because a work-related injury would be an impossibility since the employee was not present on that date. A controversion may be "legal-based" if, for example, the injured worker lacked medical evidence of work-related injury or disability. An employer may controvert on both bases.

Here the parties' Board approved stipulation to the payment of weight loss medications occurred on June 13, 2025. It should be noted there were issues with Employee actually receiving the medication due to denials at the pharmacy, and Employer noted it provided authorization for weight loss medications through August 28, 2025, so it was unclear exactly why Employee was not receiving them. Regardless, on November 4, 2025, Employer controverted weight loss medications based upon the EME opinions of Drs. Sahasrabudhe and Armstrong-Murphy from their October 6, 2025 EME opinion. Employee takes issue with the controversion as Dr. Sahasrabudhe issued a similar opinion in his EME report from January 13, 2025, and Employer stipulated to weight loss medication after that EME report. Employer lacked a legal defense when it stopped providing medical benefits without an order to overcome the parties' June 2025 stipulation. Employer's November 11, 2025 controversion of medical benefits was made in bad faith; it unfairly or frivolously controverted benefits in the absence of an order. *Harp*; *Stafford*; *Vue*; *Rogers & Babler*. This decision will ask the division director to refer this case to the division of insurance for further investigation. AS 23.30.155(o); 8 AAC 45.182(d)(1), (e).

**3) Is Employee entitled to a penalty and interest on controverted claims?**

Employee seeks a penalty under AS 23.30.255(e). A controversion notice must be filed in "good faith" to protect Employer from a penalty. *Harp*. For the reasons set for above, incorporated here by reference, Employer's November 4, 2025 controversion of medical benefits was made in

bad faith. *Harp*; *Rogers & Babler*. Employer stopped paying medical benefits on November 4, 2025. Employee is entitled to penalties on controverted weight loss medication medical benefits.

Interest is mandatory. AS 23.30.155(p). Employee is entitled to interest on benefits awarded in this decision that were not paid when due, in accordance with the Act. AS 23.30.155(p).

**4) Is Employee entitled to attorney's fees and costs?**

Employee also claims attorney fees, and costs. AS 23.30.145. Employer did not have specific objections to Employee's attorney fees regarding time-spent or hourly-rate.

Attorney fees should be reasonable and fully compensatory, considering the contingency nature of representing injured workers, in order to ensure adequate representation. *Bignell*. Unlike the situation where an injured worker appeals and prevails on a "significant issue on appeal" and gets full reasonable fees, an injured worker at a hearing must prevail on the "claim" itself. *Rusch*. Employee prevailed on both her medical claims and she was unsuccessful in request for a finding of an unfair or frivolous controversion.

A party prevailing on a medical benefit is routinely awarded attorney fees because it provides a benefit to the injured worker. Here, Employee requested authorizations for weight loss medications and ketamine infusion therapy over Employer's objections and prevailed on both. Employee's request for a lump-sum attorney fee and cost award will be granted. Employer will be ordered to pay Employee's attorney $23,749.25 in full, reasonable attorney fees and costs for past work on this case ($21,186.25 from Franklin's original affidavit at hearing + ($1,802.50) 3.5 hours for the hearing + ($560.50) in costs which included notary services, physician letters, parking and travel for Employee's deposition in Fairbanks, Alaska + ($1,200) Dr. Treybal testimony costs).

In addition to legal fees for past work done in this case, Employee also requested ongoing statutory minimum attorney fees on all benefits payable to Employee or on his behalf resulting from this decision and order. Pursuant to *Wozniak*, Employee's request will be granted. Employer will be directed to pay Employee's attorney statutory minimum attorney fees on the value of all

medical benefit payments resulting from this decision, until Employee reaches medical stability.

## CONCLUSIONS OF LAW

1) Employee is entitled to medical benefits in the form of weight loss medication and ketamine infusion therapy.
2) Employer unfairly or frivolously controverted medical benefits.
3) Employee is entitled to a penalty and interest.
4) Employee is entitled to attorney fees and costs.

## ORDER

1) Employee's October 10, 2024, February 25, 2025, August 28, 2025, and November 19, 2025 claims for medical benefits are granted.
2) Employee's claim for weight loss medication for her recovery until the date of medical stability is granted.
3) Employee's claim for ketamine infusion therapy for her recovery until the date of medical stability is granted.
4) Employee's request for a finding of an unfair or frivolous controversion is granted.
5) Employer is ordered to pay penalties on past due medical benefits, specifically weight loss medications.
6) Employer is ordered to pay interest on past due medical benefits specifically weight loss medications from August 28, 2025 until current.
7) Employee's claim for attorney fees and costs is granted. Employer is ordered to pay Employee's attorney $23,749.25 for his legal fees and costs for services rendered through this decision's date.
8) Employer is also ordered to pay Employee's attorney 10 percent statutory minimum attorney fees on the value of all medical care resulting from this decision and order until Employee reaches medical stability.

Dated in Anchorage, Alaska on May 13, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kyle Reding, Designated Chair

/s/
Pam Cline, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

## APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

## RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

## MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the

board to modify this decision under AS 23.30.130 by filing a petition in accord with 8 AAC 45.150 and 8 AAC 45.050.

## CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of PRINCILLA URSERY, employee / claimant v. GOLD BELT, employer; NATIONAL UNION FIRE INS. CO. OF PITTSBURGH, insurer / defendants; Case No. 202306881; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on May 13, 2026.

/s/
Rosie Ambrose, Workers' Compensation Technician