

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

IN THE MATTER OF THE PETITION )  
FOR A FINDING OF THE FAILURE TO )  
INSURE WORKERS' COMPENSATION ) FINAL DECISION AND ORDER  
LIABILITY, AND ASSESSMENT )  
OF A CIVIL PENALTY AGAINST, ) AWCB Case No. 700004063  
)  
ANCHORAGE ONCOLOGY ) AWCB Decision No. 13-0095  
CENTRE, LLC, )  
) Filed with AWCB Anchorage, Alaska  
Defendant. ) on August 12, 2013  
)

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The May 1, 2012 Petition for Finding of Failure to Insure and Assessment of Civil Penalties against Anchorage Oncology Centre, LLC (Employer), was heard April 3, 2013, in Anchorage, Alaska. Christine Christensen, Investigator for the Special Investigations Unit of the Workers' Compensation Division (Division), Alaska Department of Labor and Workforce Development (DOL), represented the State of Alaska and testified. Latha Subramanian, MD, represented Employer and testified. The record was held open to allow Dr. Subramanian and the Division to propose a payment plan for the unpaid penalty under *In re Alaska Oncology Centre, LLC*, AWCB Dec. No. 08-0182 (October 9, 2008), (*Alaska Oncology I*), and any penalty assessed under this decision, as well as to allow Employer to provide 2011 tax returns. When neither a proposed payment plan nor Employer tax returns were filed, the record closed June 26, 2013, when the board met to deliberate.

## ISSUES

The Division contends Employer was operating a business using employee labor during a period when it was not insured for workers' compensation liability, failed to provide proof of workers'

compensation liability coverage, and should be assessed a civil penalty for its failure to insure. Employer does not dispute these contentions, but asks that mitigating factors be considered in assessing a civil penalty.

1. Was Employer subject to and in violation of AS 23.30.085(a)-(b)'s requirements to file evidence of compliance with workers' compensation insurance law?
2. Was Employer subject to and in violation of AS 23.30.075 and the requirements and penalties in AS 23.30.080?
3. Shall Employer be assessed a civil penalty for failure to insure, and if so, in what amount?

#### FINDINGS OF FACT

Evaluation of the record as a whole establishes the following facts and factual conclusions by a preponderance of the evidence:

1. Latha Subramanian is the sole member and operator of a limited liability company operating a medical practice under the name Anchorage Oncology Centre, LLC. Employer's business license was issued in 2000. (Christensen; State of Alaska, Dept. of Commerce, Community and Economic Development Records, Business License Information for Anchorage Oncology Centre, LLC).
2. On September 10, 2011, Employer became uninsured when its workers' compensation policy through Liberty Northwest was canceled for failure to report payroll and non-payment of premium. (NCCI; 8/16/2011 Cancellation Letter from Liberty Northwest).
3. Employer was mailed notice of the cancellation of its policy which was in effect from July 8, 2011 to July 8, 2012, by Liberty Northwest via certified mail, return receipt requested, to the address of record on August 16, 2011. (8/16/2011 Cancellation Notice from Liberty Northwest). The notice of cancellation was received by Employer on August 19, 2011. (USPS Track & Confirm printout; Division Ex. 5).
4. On May 1, 2012, Employer was served a petition for a finding of failure to insure under AS 23.30.075 and for assessment of a civil penalty under AS 23.30.080(f), along with a discovery demand, via certified mail. Employer received the documents on May 2, 2012. (5/1/2012 Petition and Discovery Demand. USPS Track and Confirm Printout).

5. On May 4, 2012, Employer obtained workers' compensation liability insurance. (Christensen; Subramanian; NCCI).
6. Employer had two employees working during the period September 10, 2011 through May 3, 2012. (Christensen; Subramanian; ESD; Employee Workday Records).
7. During all uninsured time periods addressed herein, Employer was an "employer," using employee labor, and had neither workers' compensation insurance to pay workers' compensation benefits if an employee were injured on the job, nor approval to self-insure. (Christensen; Subramanian; ESD; NCCI).
8. Latha Subramanian was the person actively in charge of the business during the period Employer was uninsured. (Christensen; Subramanian).
9. Employer was operating using employee labor and without workers' compensation insurance from September 10, 2011 through May 3, 2012, a period of 237 calendar days. (Christensen; Subramanian; National Council on Compensation Insurance (NCCI), Proof of Coverage Search, Anchorage Oncology Centre, LLC, (collectively "NCCI")).
10. Employer has been before the board as an uninsured employer in case number 700002603 heard on September 10, 2008. The findings of fact contained in *Anchorage Oncology I* are incorporated herein. *Anchorage Oncology I* assessed Employer a civil penalty of \$16,125.00, which remains unpaid. The Division was ordered to work with Employer to propose a payment plan within thirty days of the decision and order, during which time the penalty was suspended. (*Anchorage Oncology I*; Christensen; Workers' Compensation System).
11. Payment of the \$16,125.00 penalty assessed in *Anchorage Oncology I* became due in full on November 18, 2008. (Experience, judgment, observations and conclusions; AS 23.30.080(g); 8 AAC 45.063).
12. Dr. Subramanian testified she never received her copy of the decision and order in *Anchorage Oncology I*, and believed based on her testimony, that she would not be assessed a penalty for being uninsured. Dr. Subramanian questioned why she never received a follow up phone call from the Division, the investigator, or the board, seeking payment of the assessed penalty. Dr. Subramanian asserted the board should waive the previously assessed \$16, 125.00 based on the Division's failure to attempt any collection efforts in the last five years. (Subramanian).

13. Employer was properly served by certified mail with a copy of *Anchorage Oncology I* at the address of record on October 9, 2008. A copy was also mailed via certified mail to Dr. Subramanian personally at the same address via certified mail on the same date via certified mail. Neither piece of certified mail was returned to the board. (Workers' Compensation System; Record).
14. Employer was aware of its obligation to secure workers' compensation insurance. (Subramanian; *Anchorage Oncology I*).
15. Employer had previous violations of AS 23.30.075, from March 22, 2000, through November 1, 2007. (*Anchorage Oncology I*).
16. Employer has had one injury reported to the Division, which occurred during a period it was uninsured. Employer has met all financial obligations regarding this injured worker. (AWCB No. 200717055; *Anchorage Oncology I*).
17. From September 10, 2011 through May 3, 2012, Employer was uninsured for 237 calendar days and accrued 283 uninsured work days. (Christensen; Employee Workday Records).
18. The daily prorated premium based upon an estimated annual premium of \$920.00 is \$2.52. (Current Policy issued by Traveler's; Division's Exhibit 9).
19. Multiplying the daily prorated premium of \$2.52 times 237 uninsured calendar days results in \$597.24 in worker's compensation premiums Employer would have paid if in compliance with AS 23.30.075. (Christensen).
20. The nature of Employer's business is a medical oncology clinic. (State of Alaska, Dept. of Commerce, Community and Economic Development Records, Business License Information for Anchorage Oncology Centre, LLC; Subramanian).
21. Employer's employees are certified medical assistants, registered nurses, and clerical staff. (Subramanian).
22. Employer concedes it was noncompliant from September 10, 2011 through May 3, 2012. (Subramanian).
23. Employer testified she is very busy and mail often gets overlooked because she does not have a business manager and cannot find reliable clerical staff. Employer also testified she never received the audit request or cancellation notice from Liberty Northwest. (Subramanian).
24. Employer has not implemented any business practices to prevent lapses in workers' compensation coverage since *Anchorage Oncology I*, which a reasonably prudent business

person would implement, including monitoring and reviewing incoming mail. (Experience, judgment, observations and conclusions).

25. Dr. Subramanian testified her gross annual income from Anchorage Oncology, LLC, is \$150,000 to \$200,000, and her monthly salary is \$4,000 to \$8,000. (Subramanian).
26. Tax returns or income statements for the business were not provided. (Record).
27. Employer was provided the opportunity to request a payment plan and submit its tax returns to justify any requested payment plan after the hearing. During the hearing it was made clear to Dr. Subramanian that an additional civil penalty would be assessed for the 2011/2012 lapse on top of the previous penalty that remains outstanding, however Employer has failed to request a payment plan or file any financial documentation. (Record).

#### PRINCIPLES OF LAW

Employers have a duty to insure their employees against work-related injury.

**AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that

(1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

(2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;

(3) this chapter may not be construed by the courts in favor of a party;

(4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The board may base its decision not only on direct testimony and other tangible evidence, but also on 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, 533-534 (Alaska 1987).

**AS 23.30.060. Election of direct payment presumed.** (a) An employer is conclusively presumed to have elected to pay compensation directly to employees for injuries sustained arising out of and in the course of the employment

according to the provisions of this chapter, until notice in writing of insurance, stating the name and address of the insurance company and the period of insurance, is given to the employee.

**AS 23.30.075. Employer's liability to pay.** (a) An employer under this chapter, unless exempted, shall either insure and keep insured for the employer's liability under this chapter in an insurance company or association . . . or shall furnish the board satisfactory proof of the employer's financial ability to pay directly the compensation provided for. . . .

(b) If an employer fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the board, upon conviction the court shall impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one year. . . . If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits in which the corporation is liable under this chapter if the corporation at that time is not insured or qualified as a self-insurer.

**AS 23.30.080. Employer's failure to insure.** (a) If an employer fails to comply with AS 23.30.075. . . .

. . .

(d) If an employer fails to insure or provide security as required by AS 23.30.075, the board may issue a stop order prohibiting the use of employee labor by the employer until the employer insures or provides the security as required by AS 23.30.075. The failure of an employer to file evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption that the employer has failed to insure or provide security as required by AS 23.30.075. If an employer fails to comply with a stop order issued under this section, the board shall assess a civil penalty of \$1,000 a day. The employer may not obtain a public contract with the state or a political subdivision of the state for three years following the violation of the stop order.

...

(f) If an employer fails to insure or provide security as required by AS 23.30.075, the division may petition the board to assess a civil penalty of up to \$1,000.00 for each employee for each day an employee is employed while the employer failed to insure or provide the security required by AS 23.30.075. The failure of an employer to file evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption that the employer failed to insure or provide security as required by AS 23.30.075.

(g) If an employer fails to pay a civil penalty order issued under (d), (e), or (f) of this section within seven days after the date of service of the order upon the employer, the director may declare the employer in default. The director shall file a certified copy of the penalty order and declaration of default with the clerk of the superior court. The court shall, upon the filing of the copy of the order and declaration, enter judgment for the amount declared in default if it is in accordance with law. Anytime after a declaration of default, the attorney general shall, when requested to do so by the director, take appropriate action to ensure collection of the defaulted payment. Review of the judgment may be had as provided under the Alaska Rules of Civil Procedure. Final proceedings to execute the judgment may be had by writ of execution.

Workers' compensation acts nationwide frequently provide for penalties against employers that fail to obtain workers' compensation insurance. *See* 101 C.J.S. Workers' Compensation §1577. When an employer is subject to the requirements of AS 23.30.075 and fails to comply, a civil penalty may be assessed. Since November 7, 2005, the effective date of the 2005 amendments to the Alaska Workers' Compensation Act, when an employer subject to the provisions of AS 23.30.075 fails to insure, the law grants discretion to assess a civil penalty of up to \$1,000.00 for each employee, for each day an employee is employed while the employer fails to insure.

Alaska's penalty provision is one of the highest in the nation. *See e.g., In re Alaska Native Brotherhood #2*, AWCB Decision No. 06-0113 (May 8, 2006); *In re Wrangell Seafoods, Inc.*, AWCB Decision No. 06-0055 (March 6, 2006); *In re Edwell John, Jr.*, AWCB Decision No. 06-0059 (March 8, 2006). Alaska's statute's severity is a policy statement -- *i.e.*, failure to insure for workers' compensation liability will not be tolerated in Alaska.

In assessing an appropriate civil penalty, consideration is given to a number of factors to determine whether an uninsured employer's conduct, or the impact of such conduct, aggravates or mitigates its offense. A penalty is assessed based on the unique circumstances arising in each case. The primary goal of a penalty under AS 23.30.080(f) is not to be unreasonably punitive, but rather to bring the employer into compliance, deter future lapses, ensure the continued employment of employees in a safe work environment, and to satisfy the community's interest in fairly penalizing the offender. *Alaska R & C Communications, LLC v. State of Alaska, Division of Workers' Compensation*, Alaska Workers' Compensation Appeals Commission, AWCAC Appeal No. 07-043 (September 16, 2008). A penalty is not intended to destroy a business or cause the loss of employment. *Id.* at 27. The employer's ability to pay the penalty must also be assessed. *Id.* For

lapses which occurred after November 7, 2005, and prior to February 28, 2010, a line of cases were developed and referred to in board decisions in which penalties were assessed against uninsured employers.<sup>1</sup>

**8 AAC 45.176. Failure to provide security: assessment of civil penalties.** (a) If the board finds an employer to have failed to provide security as required by AS 23.30.075, the employer is subject to a civil penalty under AS 23.30.080(f), determined as follows:

(1) if an employer has an inadvertent lapse in coverage, the civil penalty assessed under AS 23.30.080(f) for the employer's violation of AS 23.30.075 may be no more than the prorated premium the employer would have paid had the employer been in compliance with AS 23.30.075; the division shall consider a lapse in coverage of not more than 30 days to be inadvertent if the employer has changed carriers, ownership of the employer has changed, the form of the business entity of the employer has changed, the individual responsible for obtaining workers' compensation coverage for the employer has changed, or the board determines an unusual extenuating circumstance to qualify as an inadvertent lapse;

(2) if an employer has not previously violated AS 23.30.075, and is found to have no aggravating factors, and agrees to a stipulation of facts and executes a confession of judgment without action, without a board hearing, the employer will be assessed a civil penalty of two times the premium the employer would have paid had the employer complied with AS 23.30.075;

(3) if an employer has not previously violated AS 23.30.075, and is found to have no more than three aggravating factors, the employer will be assessed a civil penalty of no less than \$10 and no more than \$50 per uninsured employee

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<sup>1</sup> See *In re Edwell John, Jr.* AWCB Decision No. 06-0059 (March 8, 2006), *In re Hummingbird Services*, AWCB Decision No. 07-0013 (January 26, 2007), *In re Wrangell Seafoods, Inc.*, AWCB Decision No. 06-0055 (March 6, 2006), *In re Absolute Fresh Seafoods, Inc.*, AWCB Decision No. 07-0014 (January 30, 2007), *In re Alaska Native Brotherhood #2*, AWCB Decision No. 06-0113 (May 8, 2006), *In re Alaska Sportsfishing Adventures*, AWCB Decision No. 07-0040 (March 1, 2007), *In re Rendezvous, Inc.*, AWCB Decision No. 07-0072 (April 4, 2007) and *In re Corporate Chiropractic, Inc.*, AWCB Decision No. 07-0098 (April 24, 2007). *In Re Wrangell Seafoods, Inc.*, AWCB Decision No. 06-0055 (March 6, 2006), *In Re Wrangell Seafoods, Inc.*, AWCB Decision No. 07- 0093 (April 20, 2007); *In re St. Mary's Assisted Living Home*, AWCB Decision No. 07-0059 (March 21, 2007) ; *In re EM Enterprises, Inc.*, AWCB Decision No. 07-0104 (April 25, 2007) (\$35.00 per employee per day), *In re Thompson Log & Gift*, AWCB Decision No. 07-0062 (March 23, 2007); *In re Hummingbird Services*, AWCB Decision No. 07-0013 (January 26, 2007); *In re Academy of Hair Design*, AWCB Decision No. 07-0122 (May 10, 2007); *In re Halo Salon*, AWCB Decision No. 07-0142 (May 30, 2007); *In re Pizza Express*, AWCB Decision No. 07-0144 (May 30, 2007); *In re White Spot Café*, AWCB Decision No. 07-0174 (June 27, 2007); *In re Outboard Shop*, AWCB Decision No. 07-0197 (July 12, 2007), among others.



workday; however, the civil penalty may not be less than two times the premium the employer would have paid had the employer complied with AS 23.30.075; without a board hearing, if an employer agrees to a stipulation of facts and executes a confession of judgment without action, the employer will be given a 25 percent discount of the assessed civil penalty; however, the discounted amount may not be less than any civil penalty that would be assessed under (2) of this subsection;

(4) if an employer is found to have no more than six aggravating factors, the employer will be assessed a civil penalty of no less than \$51 and no more than \$499 per uninsured employee workday; however, the civil penalty may not be less than two times the premium the employer would have paid had the employer complied with AS 23.30.075; without a board hearing, if an employer agrees to a stipulation of facts and executes a confession of judgment without action, the employer will be given a 25 percent discount of the assessed civil penalty; however, the discounted amount may not be less than any civil penalty that would be assessed under (3) of this subsection;

(5) if an employer is found to have no fewer than seven and no more than 10 aggravating factors, the employer will be assessed a civil penalty of no less than \$500 and no more than \$999 per uninsured employee workday; however, the civil penalty may not be less than four times the premium the employer would have paid had the employer complied with AS 23.30.075; without a board hearing, if an employer agrees to a stipulation of facts and executes a confession of judgment without action, the employer will be given a 25 percent discount of the assessed civil penalty; however, the discounted amount may not be less than any civil penalty that would be assessed under (4) of this subsection;

(6) if an employer is found to have more than 10 aggravating factors, the employer will be assessed a civil penalty of \$1,000 per uninsured employee workday.

(b) A civil penalty assessed under (a) of this section may not exceed the maximum civil penalty allowed under AS 23.30.080(f).

(c) An employer receiving government funding of any form to obtain workers' compensation coverage under AS 23.30.075 that fails to provide that coverage may be assessed the maximum civil penalty under AS 23.30.080(f).

(d) For the purposes of this section, "aggravating factors" include

(l) failure to obtain workers' compensation insurance within 10 days after the division's notification of a lack of workers' compensation insurance;

- (2) failure to maintain workers' compensation insurance after previous notification by the division of a lack of coverage;
- (3) a violation of AS 23.30.075 that exceeds 180 calendar days;
- (4) previous violations of AS 23.30.075;
- (5) issuance of a stop order by the board under AS 23.30.080(d), or the director under AS 23.30.080(e);
- (6) violation of a stop order issued by the board under AS 23.30.080(d), or the director under AS 23.30.080(e);
- (7) failure to comply with the division's initial discovery demand within 30 days after the demand;
- (8) failure to pay a penalty previously assessed by the board for violations of AS 23.30.075;
- (9) failure to provide compensation or benefits payable under the Act to an uninsured injured employee;
- (10) a history of injuries or deaths sustained by one or more employees while employer was in violation of AS 23.30.075;
- (11) a history of injuries or deaths while the employer was insured under AS 23.30.075;
- (12) failure to appear at a hearing before the board after receiving proper notice under AS 23.30.110;
- (13) cancellation of a workers' compensation insurance policy due to the employer's failure to comply with the carrier's requests or procedures;
- (14) lapses in business practice that would be used by a reasonably diligent business person, including
  - (A) ignoring certified mail;
  - (B) failure to properly supervise employees; and
  - (C) failure to gain a familiarity with laws affecting the use of employee labor;

(15) receipt of government funding of any form to obtain workers' compensation coverage under AS 23.30.075, and failure to provide that coverage.

**AS 23.30.085. Duty of employer to file evidence of compliance.** (a) An employer subject to this chapter, unless exempted, shall initially file evidence of compliance with the insurance provisions of this chapter with the division, in the form prescribed by the director. The employer shall also give evidence of compliance within 10 days after the termination of the employer's insurance by expiration or cancellation. These requirements do not apply to an employer who has certification from the board of the employer's financial ability to pay compensation directly without insurance.

(b) If an employer fails, refuses, or neglects to comply with the provision of this section, the employer shall be subject to the penalties provided in AS 23.30.070 for failure to report accidents; but nothing in this section may be construed to affect the rights conferred upon an injured employee or the employee's beneficiaries under this chapter.

**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.

**8 AAC 45.195. Waiver of Procedures.** A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

#### ANALYSIS

- 1. Was Employer subject to AS 23.30.085(a) and (b) requirements to file evidence of compliance with workers' compensation insurance law?*

Based upon Ms. Christensen's credible testimony, the record, and Dr. Subramanian's testimony and admissions, Anchorage Oncology, LLC, was an "employer" and Dr. Subramanian owned and operated Anchorage Oncology, LLC, as a limited liability company. As an employer, Anchorage Oncology, LLC, is subject to AS 23.30.085. The administrative record, convincing hearing

testimony, and Dr. Subramanian's admissions show Employer failed to provide evidence of compliance with workers' compensation insurance requirements from September 10, 2011 through May 3, 2012, as required by AS 23.30.085. Although Employer had an opportunity to file evidence of compliance, the record discloses no evidence of insurance from September 10, 2011 through May 3, 2012, as required by AS 23.30.085. Consequently, Employer was in violation of AS 23.30.085(a) and (b) from September 10, 2011 through May 3, 2012.

2. *Was Employer subject to, and in violation of, AS 23.30.075 and subject to the requirements and penalties in AS 23.30.080?*

Based on Employer's failure to provide evidence of compliance or evidence it ceased to be an employer during this relevant period, it is presumed, as a matter of law, Employer failed to insure or provide security as required by law from September 10, 2011 through May 3, 2012. Employer provided no evidence to rebut the presumption it failed to insure or provide security under AS 23.30.075. Rather, Employer concedes it was out of compliance and allowed employees to work without workers' compensation insurance coverage for the lapsed periods. Employer had a general duty to provide workers' compensation insurance for its employees. Employer employed two employees from September 10, 2011 through May 3, 2012, and is, therefore, subject to the Alaska Workers' Compensation Act, including AS 23.30.075 and AS 23.30.080.

Employer is required by law to insure for liability and to insure its employees for workers' compensation benefits under the Act. Employer failed to insure for workers' compensation liability from September 10, 2011 through May 3, 2012, and was in violation of AS 23.30.075. Consequently, pursuant to AS 23.30.060, Employer has elected direct payment of compensation for any compensable claims arising during the periods it was in violation of AS 23.30.075. Employer will be subject to the penalties provided in AS 23.30.080, during the period Employer was in violation of AS 23.30.075, subsequent to November 7, 2005.

3. *Shall Employer be assessed a civil penalty for its failure to insure, and if so, in what amount?*

AS 23.30.080(f) permits a civil penalty assessment against an uninsured employer of up to \$1,000.00 per day of uninsured employee work. Based upon the statute's specific language and

AS 23.30.135(a), discretion to assess an appropriate civil penalty shall be exercised. Many factors must be considered in deriving the discretionary penalty and this decision and order has weighed and considered them all.

Employer operated without insurance for 283 uninsured employee workdays for the period September 10, 2011 through May 3, 2012. The maximum penalty for which Employer could be liable is \$283,000. Considering the unique circumstances of this case, however, this sum could lead to destruction of this business.

The aggravating factors under 8 AAC 45.176 in this case are:

1. Failure to maintain coverage after previous notification by the division of a lack of coverage--the lapse in *Anchorage Oncology I*.
2. A violation of AS 23.30.075 that exceeds 180 days--this lapse is 237 calendar days.
3. Previous violations of AS 23.30.075--the lapse in *Anchorage Oncology I*.
4. A history of injuries or deaths...while [uninsured]--the uninsured injury that led to *Anchorage Oncology I*.
5. Failure to pay a previous penalty assessed by the board--the penalty assessed but unpaid in *Anchorage Oncology I*.
6. Cancellation of a workers' compensation policy due to the employer's failure to comply with the carrier's requests or procedures--failure to comply with Liberty Northwest's audit requests.
7. Lapses in business practice that would be used by a reasonably diligent business person, including
  - (A) Ignoring certified mail--Employer claimed not to have received two copies of the decision and order in *Anchorage Oncology I* mailed to it by the board and the certified copy of the cancellation notice mailed by Liberty Northwest.

The seven aggravating factors in this case are striking considering this Employer has been before the board before. Dr. Subramanian obviously learned nothing regarding Employer's responsibility to provide workers' compensation insurance as she took no steps to prevent future lapses. At hearing Dr. Subramanian acknowledged having implemented no business practice in her office over the last five years for dealing with certified mail and not hiring a business manager to manage the business aspects of her practice. Dr. Subramanian is not credible in any of her assertions including those that Employer did not receive the board's decision in *Anchorage Oncology I* or Liberty Northwest's August 16, 2011 cancellation notice. There are no mitigating factors in this case.

8 AAC 45.176 went into effect February 28, 2010, accordingly, the regulation and mandatory penalties set forth in the regulation's matrix must be applied to this case. An employer with a previous violation of AS 23.30.075 automatically falls into 8 AAC 45.176(a)(4), (5) or (6). In this

case (a)(5) applies since this employer has seven aggravating factors, one of which is a previous violation of AS 23.30.075. This results in a minimum penalty of \$500.00 dollars per uninsured employee workday, but no less than four times the premium employer would have paid had it been insured. Anchorage Oncology, LLC, has 283 uninsured employee workdays which when multiplied by \$500.00 results in a minimum penalty of \$141,500.00.

In order to facilitate Employer's ability to stay in business and avoid layoffs while paying all assessed civil penalties, a structured payment plan will be permitted, however the payment of the penalty assessed will not be stayed. Employer will be ordered contact Investigator Christensen within ten days of issuance of the decision and order to request a payment plan. Investigator Christensen and Employer may then jointly request a stay in order to craft a payment plan. Pursuant to AS 23.30.080, Employer is assessed and ordered to pay a civil penalty of \$141,500.00 for the 283 uninsured employee workdays during which Employer failed to insure between September 10, 2011, and May 3, 2012, as required by AS 23.30.075.

Employer is also given notice that payment of the \$16,125 civil penalty assessed in *Anchorage Oncology I* remains immediately due and payable.

The division's Special Investigation Unit will be directed to monitor Employer quarterly for compliance for ten calendar years, or the length of any payment plan, from the date of this decision.

#### CONCLUSIONS OF LAW

1. Employer was subject to, and in violation of, AS 23.30.085(a) and (b) requirements to file evidence of compliance with workers' compensation insurance law.
2. Employer was subject to, and in violation of, AS 23.30.075 and subject to the requirements and penalties in AS 23.30.080.
3. Employer shall be assessed and ordered to pay a civil penalty in the amount of \$141,500.00 for its failure to insure between September 10, 2011, and May 3, 2012.

ORDER

- 1) The division's May 1, 2012, petition for failure to insure and assessment of a civil penalty is granted.
- 2) At any time Anchorage Oncology Centre, LLC, has employees, it shall maintain workers' compensation insurance coverage in accord with AS 23.30.075, and shall file evidence of compliance in accord with AS 23.30.085.
- 3) Pursuant to AS 23.30.060(a), Latha Subramanian, MD, and Anchorage Oncology Centre, LLC, are personally, jointly, severally and directly liable for any and all benefits payable under the Act for compensable injuries to employees during the uninsured period(s).
- 4) Pursuant to AS 23.30.080(f), Anchorage Oncology Centre, LLC is assessed a civil penalty of \$141,500.00 for the uninsured period between September 10, 2011, and May 3, 2012. Employer is ordered to contact Investigator Christensen within ten days of issuance of the decision and order to request a payment plan. The parties may then jointly request a stay in order to propose a payment plan.
- 5) Anchorage Oncology Centre, LLC, **shall pay \$141,500.00 within seven (7) days of this decision in accord with AS 23.30.080(g).** Anchorage Oncology Centre, LLC, is ordered to make all payments to the Alaska Department of Labor, Division of Workers' Compensation, P.O. Box 115512, Juneau, Alaska 99811-5512. Anchorage Oncology Centre, LLC, is **ordered to make its checks payable to the Alaska Workers' Compensation Benefits Guaranty Fund. Checks must include AWCB Case Number 700004063, and AWCB Decision Number [DecisionNumber].**
- 6) The SIU is directed to monitor Latha Subramanian and Anchorage Oncology Centre, LLC, for ten (10) years from this decision's date for continued compliance with the Act's insurance requirements.
- 9) The SIU is ordered to prepare a proposed Liability Discharge Order within 30 days of Anchorage Oncology Centre, LLC's full, timely, civil penalty payment as set forth in this decision and order. The proposed order will be addressed in accord with 8 AAC 45.130.

*In re: ANCHORAGE ONCOLOGY CENTRE, LLC and LATHA SUBRAMANIAN*

Dated in Anchorage, Alaska on August 12, 2013.

ALASKA WORKERS' COMPENSATION BOARD

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Laura Hutto de Mander, Designated Chair

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Amy Steele, Member

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Patricia Vollendorf, Member



APPEAL PROCEDURES

This compensation order is a final decision and becomes effective when filed in the board's office, unless it is appealed. Any party in interest may file an appeal with the Alaska Workers' Compensation Appeals Commission within 30 days of the date this decision is filed. All parties before the board are parties to an appeal. 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 that the reconsideration request is considered denied because the board takes no action on reconsideration, whichever is earlier.

A party may appeal by filing with the Alaska Workers' Compensation Appeals Commission: 1) a signed notice of appeal specifying the board ordered appealed from; 2) a statement of the grounds for the appeal; and 3) proof of service of the notice and statement of grounds for appeal upon the Director of the Alaska Workers' Compensation Division and all parties. Any party may 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 grounds upon which the cross-appeal is taken. Whether appealing or cross-appealing, parties must meet all requirements of 8 AAC 57.070.

RECONSIDERATION

A party may ask the board to reconsider this decision by filling 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 Anchorage Oncology Centre, LLC; Employer / defendants; Case No. 700004063; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served upon the parties on August 12, 2013.

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Pamela Hardy, Office Assistant