ALASKA WORKERS' COMPENSATION BOARD

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

SHANNON K. PATTERSON, Employee, Claimant, v. MATANUSKA-SUSITNA BOROUGH SCHOOL DISTRICT, Self Insured Employer, Defendant.	FINAL DECISION AND ORDER AWCB Case No. 201416158 AWCB Decision No. 18-0111 Filed with AWCB Anchorage, Alaska on October 26, 2018

Shannon Patterson's (Employee) February 10, 2015 and March 11, 2015 claims for benefits were heard in Anchorage, Alaska, on January 16, 2018, a date selected on December 5, 2017. Employee's January 31, 2018 petition for reconsideration or modification of *Patterson v. Matanuska-Susitna Borough School District*, AWCB Case No. 18-0005 (January 12, 2018) (*Patterson III*) was heard on the written record on October 12, 2018, when the panel met to deliberate. Attorney Richard Harren appeared and represented Employee who appeared and testified. Attorney Constance Livsey appeared and represented Matanuska-Susitna Borough School District (Employer). Witnesses included Don Patterson, Kristy Johnson and Jake Worden, who appeared in person; Debbie Haynes, M.A., Paul Wert, Ph.D., and Jacque Ficek who appeared by telephone; and Jay Johnson, M.D., who appeared by deposition, all on Employee's behalf. Keyhill Sheorn, M.D., appeared by telephone and testified for Employer.

Patterson v. Matanuska-Susitna Borough School District, AWCB Decision No. 17-0029 (March 16, 2017) (*Patterson I*) made comprehensive factual findings and ordered sanctions for Employee's failure to attend and participate at her deposition, granted Employee's order for a

protective order and outlined the terms and restrictions of Employee's deposition. *Patterson v. Matanuska Susitna Borough School District*, AWCB Decision No. 17-0055 (May 16, 2017) (*Patterson II*) declined to strike Employer's late filed brief and Employee's request for production was granted in part, denied in part, and remanded to a designee to make rulings as required under AS 23.30.108. *Patterson v. Matanuska Susitna Borough School District*, AWCB Decision No. 18-0005 (January 12, 2018) (*Patterson III*), denied Employer's petition to exclude Employee's late filed evidence and granted its petition to strike her late filed attorney fee affidavit.

The record closed when the panel members reviewed the file in detail, reviewed admissible post-hearing closing arguments and briefs and deliberated on October 12, 2018.

ISSUES

Employer contended Employee made an unlawful change in her physician choice when she hired Dr. Wert as an expert medical witness. It contended Employee's attorney selected Dr. Wert expressly as an expert to conduct a forensic evaluation and, therefore, Dr. Wert was not a "change," "referral" or "substitution" physician.

Employee contends she was initially referred for psychological counseling to a specialist, Kevin O'Leary, Ph.D., by her attending physician, Duane Odland, D.O. Employee contends when Dr. O'Leary refused to continue to treat her, Dr. Odland referred her to Dr. Wert as "a necessary replacement for Dr. O'Leary." Employee contends referral to a specialist is not an unlawful change of physician, but even if Employer has a valid objection to Dr. Wert as an illegal physician change, Employer waived its objection "through its inactivity."

1) **Should Dr. Wert's report and opinions be stricken?**

Employee contends she suffered a mental injury from contact with a student's bodily fluids and from the lack of support from Employer in the aftermath of the work incident and the student's death. She contends she is entitled to the presumption of compensability. Employee also claims she suffered a "mental-mental" injury because the stress she experienced due to the September 23, 2014 work incident was extraordinary and unusual.

Employer contends Employee failed to provide proof to support the sudden assertion of her entirely new claim for a "physical-mental" injury. Employer contends Employee waived any claim for physical illness or injury. It also contends Employee failed to provide evidence she has a mental health diagnosis related to the September 23, 2014 event and, even if she had, did not offer persuasive evidence on any element necessary to prove a "mental-mental" injury.

2) **Does Employee have a work-related mental injury?**

Employee contends she is entitled to medical and transportation benefits after Employer's January 5, 2015 controversion. She seeks reimbursement, payment and continuing medical care.

Employer contends Employee is not entitled to any additional medical care. It contends her claim for additional medical treatment is based on highly technical medical considerations involving a psychiatric diagnosis and contends medical evidence is a necessary element of proof and Employee has no medical evidence to support her claim.

3) **Is Employee entitled to medical benefits?**

Employee contends she is entitled to temporary total disability (TTD) benefits from January 5, 2015 through February 6, 2015, and temporary partial disability (TPD) benefits for the time she was off work to treat with Dr. O'Leary after she returned to work for Employer. Employee contends if she receives indemnity benefits it will give her a full eight years of service as a public employee and enable her to vest in the Alaska Teachers' Retirement System (TRS).

Employer contends Employee was no longer entitled to TTD or TPD benefits on January 5, 2015, based upon Dr. Glass' opinion she was medically stable and able to return to work as a school nurse. It contends Employee is not entitled to additional time loss benefits.

4) **Is Employee entitled to TTD benefits after January 5, 2015?**

5) **Is Employee entitled to TPD benefits after her return to full time work?**

Employee contends she is entitled to past and ongoing benefits as the result of her attorney's efforts. Consequently, she seeks interest, attorney fees and costs.

Employer contends Employee is not entitled to additional benefits. Therefore, it contends there is no basis for interest, attorney fees or costs.

6) Is Employee entitled to interest, attorney fees and costs?

Employee requests reconsideration or modification of *Patterson III*, which denied acceptance of Employee's late filed attorney fee affidavit and cost evidence. Employee contends uncontrollable circumstances placed the attorney fee affidavit as a lesser priority than hearing preparation. She contends Employer was not prejudiced by the late-filed fee affidavit because there was ample time to object post-hearing and her late-filed fee and cost evidence should be accepted.

Employer contends Employee's petition for reconsideration or modification is an attempt to belatedly cure a failure to comply with the statute and regulation. It contends Employee's attorney waived his ability to recover fees in excess of the statutory minimum. Employer contends *Patterson III* is consistent with the Act, regulations and established precedent and there is no basis for its reconsideration or modification.

7) Should *Patterson III* be reconsidered?

8) Should *Patterson III* be modified?

FINDINGS OF FACT

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

1) On November 6, 2004, Employee had suicidal ideation. Daniel Safranek, M.D., diagnosed depression and started Employee "back" on Lexapro, an anti-depressant, "which she has done well with before" and prescribed Trazadone. Employee said as a school nurse she had been having difficulty since the school year started because there were more students and she was struggling to accomplish her tasks. Employee denied any other stressors. She was tired and hungry "all the time" and had no energy. On the evening of November 5 and morning of

November 6, 2004, she had thoughts of driving her car off the mountain at Hatcher's Pass; however, her son and her religion stopped her from hurting herself. Dr. Safranek told Employee to follow up with psychiatry. (Providence Alaska Medical Center, Dr. Safranek, November 6, 2004; Psychiatric Emergency Room Psychiatric Consultation, Lisa Cherry, MSW, November 6, 2004.)

2) On November 19, 2004, Employee reported she had problems with depression much of her life, including while growing up. The stressors identified "over the last few years" included attempting to raise her husband's half-sisters after his mother passed, caring for her mother-in-law in 1997, reporting her brother-in-law for sexually abusing his 16 year old daughter, which led to many family members "disowning" her in 2000. Kathleen Matthews, RN, ANP, diagnosed moderate major depressive disorder, recurrent, increased Employee's Lexapro and kept her on Trazadone, and referred her for individual counseling. Work was not mentioned as a stressor. (Diagnostic Evaluation, ANP Matthews, November 19, 2004.)

3) On July 19, 2006, Employee was evaluated for bipolar disorder upon referral from Dr. Odland, D.O. Since Employee's November 19, 2004 evaluation with ANP Matthews, she had one follow-up visit with Providence Behavioral Medicine Group and was doing well, until Employee discontinued her Lexapro and got "quite depressed." Dr. Odland prescribed Cymbalta, which made Employee feel anxious and unable to sleep. Other antidepressants Employee tried included Paxil, Prozac, Traxodone, Effexor, Celexa, Lexapro, and Cymbalta. They all worked briefly, but caused Employee to become anxious and experience "electric shock," so they were all eventually discontinued. ANP Matthews diagnosed a mood cycling disorder, "most likely a bipolar II disorder" and started Employee on a mood stabilizing medication, lithium. (Psychiatric Evaluation, ANP Matthews, July 19, 2008.)

4) On February 6, 2007, Employee reported difficulty functioning at work and at home in relationships. A sleep study identified sleep fragmentation for which ANP Matthews prescribed Sonata and Rozerem. ANP Matthews diagnosed bipolar II disorder versus mood disorder, NOS, and severe insomnia. (Progress Note, ANP Matthews, February 6, 2007.)

5) On April 10, 2007, Employee was overwhelmed in her job as a school nurse, which she had done for 10 years. During therapy, she remarked to Jeff Gasser, LPC, "Parents are the hardest part, they don't give a crap. I'm burned out." She threatened to quit her job if she could find a

new one. Employee also expressed criticism of her mother-in-law, her "evil bitch" sister, and her parents who she felt did not want her. (Chart Note, Jeff Gasser, LPC, April 10, 2007.)

6) Between May 17, 2007 and January 1, 2008, LPC Gasser continued to counsel Employee who continued to express her feelings were hurt because the school did not provide support, and frustration with parents who were uncaring. She continued to threaten to quit her job and had done so by July 19, 2007. Employee's complaints regarding her own parents' uncaring nature included emotional deprivation and anger carried over from her childhood. LPC Gasser diagnosed Employee with "posttraumatic stress disorder by history." On January 1, 2008, after discussing Employee's "faulty assumption" with LPC Gasser, Employee refused to make a follow-up appointment. (Chart Notes, LPC Gasser, May 17, 2007 – January 1, 2008.)

7) In 2010, Kathleen Matthews, RN, ANP, treated Employee for Depressive Disorder, NOS. (Chart Notes, Kathleen Matthews, September 16, 2010, November 7, 2010, November 15, 2010.)

8) On August 21, 2014, Jay Johnson, D.O., completed a "Statement of Examining Physician" required by Employer for Employee's employment. The form states, "The examination included a review of her past medical history and thorough physical examination. A copy of the medical history and examination findings will be maintained in my patient files. They may be reviewed by you or your authorized representative upon written request." Dr. Johnson found Employee free from communicable disease and physically and emotionally fit for her duties as a school nurse. (Statement of Examining Physician, Dr. Johnson, August 21, 2014.)

9) On September 25, 2014, Employee reported a September 23, 2014 injury: "While performing mouth to mouth resuscitation on a student, got some of student's vomit, blood tinged foam nasal and mouth secretions on my face and inside my mouth when student released them. I had / was using a micro shield mask; however, during attempts to remove foreign bodies to clear / establish airway, vomit, blood-tinged foam secretions got onto the mask and in my face and mouth & post incident stress responses are occurring now." (Employee Report of Occupational Injury or Illness to Employer, September 25, 2014.)

10) On September 30, 2014, Employee was tested for Hepatitis C and HIV. Employee was non-reactive to both. (Quest Diagnostics Final Status Report, October 2, 2014.)

11) Employee did not obtain a physical injury from exposure to the student's bodily fluids. (Experience; observations; inferences from the above.)

12) On October 2, 2014, TTD benefits commenced. Employer paid Employee $927.69 per week. (Compensation Report, July 20, 2018.)

13) On October 2, 2014, Employee's "Initial Information" stated she was afraid of going to work because she might accidentally hurt a student due to shaky hands, emotional upset, and "concentration." She expressed fear she would hurt someone "by not responding in a similar circumstance because I am so freaked out about the situation." Employee was afraid she might have hepatitis C from exposure; her mother-in-law died from hepatitis C in 1997 and she was "now thinking over and over about it." Employee reported difficulties in her work environment; she had started a new job at a new school and then the September 23, 2014 incident occurred. Employee identified her strengths as being a "great school nurse," a good mother, educated and willing to learn, listening to others, compassionate and empathetic. She noted sleep fragmentation disorder, said she had been hospitalized and tried many medications for mental health reasons. Employee described her medical history and said she had an upcoming colonoscopy for stomach and intestinal issues, multiple past surgeries, depression and anxiety. (Kevin O'Leary, Psy.D. - Patient Demographic / Insurance Information / Initial Information, Shannon Patterson, October 2, 2014.)

14) On October 3, 2014, Employee sought assistance to cope with emotional aftermath of attempting to assist a student with CPR after the student lost consciousness, including "anxiety, sadness, residual undifferentiated feelings of shock, etc." "Pt reports and displays symptoms of severe anxiety, upset, and general distress at having witnessed the child's medical struggle and having been a part of the medical care attempts." She reported "repeated nightmares of 'seeing his head' with bodily fluids being expelled through all conceivable orifices and cavities, and her hands rendered useless in the dream." Employee also reported difficulty getting used to a new school and environment since starting a new job, and concern regarding litigation involving the student's death. Employee expressed doubts about her fitness for duty as a school nurse, "as she feels her shaking hands and bouts of crying, extreme sadness, and extreme anxiety 'are not something any kid should have to deal with in their school nurse.'" Dr. O'Leary told Employee to use meditation and relaxation exercises, and to explore what in her background may have left her predisposed to "PTSD – like shock after such an event." He diagnosed Employee with adjustment disorder with mixed anxiety and depression and indicated PTSD had to be ruled out. Dr. O'Leary indicated her prognosis was fair to good and stated, "I will write her a short letter

summarizing this report of hers to me should she wish to pursue medical time-off with her employers." (Initial Information Form, Shannon Patterson, October 2, 2014; Initial Intake Interview, Dr. O'Leary, October 3, 2014.)

15) On October 5, 2014, Employee composed her recollections of the September 23, 2014 event. Employee made sure 911 was called as she ran out of her office towards the student. When she arrived, secretions were coming out of the student's mouth and his face was blue. Someone said the student was having a seizure so Employee rolled him onto his side, cleared his mouth and opened his airway. Employee checked to see if the student was breathing and when she determined he was not, she asked someone to get her CPR mask. She felt for a pulse in the student's neck, did not find one, and did two abdominal thrusts. Someone then handed Employee her CPR mask. Once the CPR mask was placed, Employee began to give the student breaths and the principal, Scott Nelson, began chest compression. Employee recalled the student's "mouth kept filling up with stuff and his nose kept having stuff come out." The student was rolled on his side and Employee cleaned his mouth, placed the mask, repositioned, and gave two breaths while Nelson did chest compressions. Employee did not see the student's chest move when she gave breaths. She felt the pulse four times, but it was weak and went away. Employee and Nelson kept giving CPR, rolling the student, and cleaning his mouth and nose. Employee thought they made it through four cycles before the EMTs arrived; however, to Employee it seemed like it took them forever to arrive. Mrs. Blackman-Green talked calmly to Employee when she went to the bathroom to wash her mouth, face, hair and hands with soap and water. Employee learned the student's name and found his health registration form in her emergency binder, which she copied for the EMTs and the police officer. She completed a student incident / accident report and was relieved of her duties for the day so she could see her physician regarding possible exposure to pathogens. (Shannon Patterson's handwritten notes, October 6, 2014.)

16) On October 8, 2014, Dr. O'Leary found Employee "safe and stable" and "wanting to return to work but feels not 'quite' able to yet." Dr. O'Leary encouraged Employee's desire to return to work and strongly supported her "getting back on the horse" when it was safe for her to do so. Dr. O'Leary found Employee has a "penchant for collecting 'lost babies'" which heightens the loss of the student. In drawing this conclusion, Dr. O'Leary referenced Employee's five small dogs, and adopting Jake and two younger sisters-in-law. He restricted Employee's return to

work stating, "[Employee] may benefit from some continued time off work as she learns to cope with recent on-site trauma." (Chart Note, Dr. O'Leary, October 8, 2014; Matanuska-Susitna Borough School District Workers' Compensation Return to Work Authorization, Dr. O'Leary, October 8, 2014.)

17) On October 14, 2014, Employee's psychiatric, as well as systems exams were completely normal. Employee was restricted from work until October 20, 2014, due to "situational stress at work." (WC Return to Work Authorization Form, Dr. Odland, October 14, 2014.)

18) On October 15, 2014, Employee had an e-mail appointment with Dr. O'Leary. Employee wrote, "One of the things that is causing me to worry (be anxious) is I'm afraid I'm going to lose my full-time job (which I have worked hard to get back to be doing) because I freaked out over this incident / situation. I'm new to the school, staff, and students, and this is how their nurse copes with a 'crisis'?" She also noted, "I'm having a few nightmares / bad dreams, otherwise attempting to get some rest / sleep." Employee did not describe her nightmares or bad dreams. (Email appointment with Dr. O'Leary, Shannon Patterson, October 15, 2014.)

19) On October 22, 2014, through an email appointment, Dr. O'Leary told Employee she had post-traumatic stress and adjustment disorder. He advised Employee to "get back on the horse" and get back to work. He expressed confidence Employee could "get over this" but will have "a little scar tissue forever." (Email appointment with Dr. O'Leary, Shannon Patterson, October 22, 2014.)

20) On October 29, 2014, Dr. O'Leary noted Employee was safe and stable and educated her on "systemic desensitization with relaxation exercises" to enable her to reenter work. "D&I need to control traumas, and general empathy and support for deep anxiety resulting from incident and perhaps characterological structures as well." (Chart Note, Dr. O'Leary, October 29, 2014.)

21) On November 17, 2014, Employee was safe and stable and Dr. O'Leary had a "promising session" with Employee because her anxiety symptoms were significantly reduced. Employee exhibited a positive trend, confirming she felt more control and mastery over her internal and external world. She had gained insight into her attempts to shed an "unhelpful identification" with the deceased student, "as well as increasing mindfulness of her tendency to psychologically 'ramp' herself up in panic and anxiety inducing ways." (Chart Note, Dr. O'Leary, November 17, 2014.)

22) On November 24, 2014, Employee was safe and stable and Dr. O'Leary found Employee's presentation and reports continued to trend in a positive direction, although Employee displayed excessive emotionality and anxiety when discussing the student and her school work environment. Employee's "dreams of feeling disabled and unable to use arms or legs to complete work tasks" were explored. Dr. O'Leary told Employee she needed to add a mantra to her relaxation exercises, "When at work, I stay in my adult shoes." He empathized with Employee's resentment towards school administrators, but continued to encourage factual and truthful communication with them and to not catastrophize her situation. Dr. O'Leary encouraged Employee to clearly focus on anxiety and stress reduction to a degree that would enable her to return successfully to the workplace. He said Employee's prognosis was improving "this week and last, and hopefully trend will continue." Dr. O'Leary wanted to cement gains and push further toward Employee resuming her work duties. (Chart Note, Dr. O'Leary, November 24, 2014.)

23) On November 26, 2014, Dr. O'Leary "[e]xplored how egocentric trauma defenses have made Kenneth's trauma and death 'all about her' even when these issues are obviously not, produced confirming associations, this line of logic can hopefully help her 'put this stress down.'" Employee's mental status continued to improve slowly; she was less anxious, but "still emotional and labile even in session." (Chart Note, Dr. O'Leary, November 26, 2014.)

24) On December 1, 2014, Dr. O'Leary "pushed" Employee "to begin visualizing what a potential return to work would be like for her," and said she can "begin such visualization exercises at home without physiologically activating herself into panic or anxiety states." (Chart Note, Dr. O'Leary, December 1, 2014.)

25) On December 3, 2014, Dr. O'Leary encouraged Employee's "commitment to returning to work at earliest appropriate juncture." (Chart Note, Dr. O'Leary, December 3, 2014.)

26) On December 8, 2014, Employee developed a list of seven needs and goals to accomplish when she returned to work. (Email from Shannon Patterson to Dr. O'Leary, December 8, 2014.)

27) On December 9, 2014, S. David Glass, M.D., Employer's medical evaluator (EME) administered a MMPI-2 evaluation. He determined Employee's testing did not reinforce an Axis I psychiatric disorder, nor did it indicate Employee has PTSD. Dr. Glass noted Employee displayed "no evidence of exaggerated startle response or hypervigilance." He "considered" diagnosing Employee with dysthymic disorder "in view of [Employee's] longstanding history of

a mood disorder with the waxing and waning of depressive symptomatology beginning in childhood and the use of antidepressant agents - Wellbutrin." Dr. Glass opined Employee does not have a formal DSM-IV disorder caused by her employment as an elementary school nurse. He noted Employee reported feeling frustration and stress working with elementary students in the past and had discontinued that work in 2007, and returned to elementary school duties in the 2014 school year. Dr. Glass opined the cause of Employee's dysthymic disorder was multidimensional and included both constitutional and developmental components, but work stress did not contribute to her dysthymic disorder diagnosis, which is not a true psychiatric disorder. He said, "While the tragedy in September can be considered unusual - fortunately not a common occurrence - aspiration crises with small children would not be as extraordinary or unusual in a comparable work environment (small children aspirating)." Dr. Glass indicated Employee's perception of the September incident was accurate; however, despite the emotionally traumatic nature of the event, psychosocial factors, including personality psychodynamics and Employee's prior psychiatric issues along with past and ongoing dissatisfaction with elementary school nursing "are the reason for her remaining off work and reporting symptoms." He said any continuing need for psychotropic medication or counseling "involves her pre-existing psychiatric issues / diagnosis and personality psychodynamics," which preexisted her work injury. Dr. Glass believed Employee should have dealt with the distress generated by the incident after a few counseling sessions and returned to work. He determined her past and current dissatisfaction with elementary school nursing were the reasons for Employee remaining off work and reporting symptoms. Dr. Glass acknowledged Employee continued to report insecurities and apparent distress with elementary school nursing. Despite that, he found Employee was able to return to work as an elementary school nurse and any psychiatric disorder caused directly by the September 23, 2014 incident was medically stable without a ratable permanent psychiatric impairment. (EME Report, Dr. Glass, December 9, 2014.)

28) On December 10, 2014, Dr. O'Leary clarified he had engaged Employee in cognitive therapy but a return to work goal date had not been set. Although Dr. O'Leary had suggested many return to work dates, Employee's reported symptoms precluded setting a return to work goal date. Employee's mental status and anxiety levels improved slowly but steadily. A February 1, 2015 return to work goal was set. (Chart Note, Dr. O'Leary, December 10, 2014.)

29) On December 17, 2014, Dr. O'Leary reported Employee was largely upbeat, positive, had an optimistic tone and increased self-confidence, which he linked to Employee's goal to return to work by February 1, 2015. Dr. O'Leary said Employee "appears to authentically be getting better." He "pushed further into her need to watch, monitor, and improve on her deeper character style of constant anxiety." (Chart Note, Dr. O'Leary, December 17, 2014.)

30) On January 5, 2015, TTD payments ceased. (Controversion Notice, January 13, 2015; Compensation Report, July 20, 2016.)

31) On January 5, 2015, Employee felt anxious about returning to work and feared regression into PTSD symptoms. Dr. O'Leary encouraged her to try and, if symptoms progressed, he would consider additional steps. He advised Employee to consult with human resources and her union representative so she fully understood her rights and responsibilities. (Chart Note, Dr. O'Leary, January 5, 2015.)

32) On January 7, 2015, Employee was safe and stable. Dr. O'Leary provided "positive reinforcement" for Employee's plan to offer Employer "a part-time 'trial' return to work as early as next week, mirroring her seemingly authentic desire to resume employment." Dr. O'Leary "explored need to not feel persecuted by colleagues who inquire about her status, as that is not synonymous with 'pressuring' her." He confirmed there were no safety risks with Employee's return to work. (Chart Note, Dr. O'Leary, January 7, 2015.)

33) On January 8, 2015, Dr. O'Leary reported Employee's anxiety was significantly decreased from a ten at intake to a four per her report. He provided Employee ongoing repetitive coping strategies and assurances "that even if a decision is made that she needs to return to work prior to our informal Feb 1 deadline, 'You can do this!'" (Chart Note, Dr. O'Leary, January 8, 2015.)

34) On January 12, 2015, Dr. O'Leary generally agreed with Dr. Glass' opinion Employee "can and should return to work fairly soon." However, he also found "highly questionable" the logic Dr. Glass used to draw his conclusion and stated:

> Dr. Glass' opinion that the pt suffers with no Axis I diagnosis and should have been able to deal with her distress after Kenneth's death in a few sessions' seems inaccurate. Neither Dr. Glass nor I knew the pt prior to the incident with Kenneth, so we have few baseline data markers on which to go beyond the pt's report of previous functioning. Per that, the pt has been very consistent in reporting anxiety and depressive sxs greatly heightened by and after watching Kenneth choke and (later) die. She seems to clearly meet clinical criteria for an Adjustment Disorder, and may also meet criteria for Acute Stress Disorder,

> PTSD, and/or Specific Phobia. The symptoms inherent in these constellations are easily traced back to her involvement in the Kenneth incident. Given this, it seems inaccurate to posit that [Employee] only needed ‘‘a few sessions" of treatment related to the Kenneth trauma. Even the most aggressively managed care coordination models could not possibly deny the appropriateness of a course of therapy for such disorders that would usually be measured in months (and maybe years), not a few sessions. If [Employee] had attempted to return to work after a few sessions, it is my opinion that there would have been an extremely high likelihood she would not have been able to function, leaving the school, the children, and [Employee] in the extremely problematic position of having a nurse on duty regressing, panicking and emoting inappropriately. There should be no doubt that [Employee] needed the treatment she received.
>
> I concur with Dr. Glass' test findings and related conclusions that a pre-existing tendency toward histrionic reactions may be present in the patient; that tendency does not mitigate the legitimacy of her need for treatment of the Axis I disorders discussed above, presumably created and exacerbated by the trauma she faced on the job.

Dr. O'Leary concurred with Dr. Glass that benzodiazepines should be reduced or eliminated. He did not, however, concur with Dr. Glass' recommendation for future treatment with antidepressant medications only. Dr. O'Leary, "in alignment with well-established standards of care" recommended Employee comply with her medication regimen but also seek ongoing outpatient psychotherapy to further reduce her symptoms. Based upon Dr. O'Leary's work with Employee, he found she had proven herself amenable and responsive to psychotherapy. He agreed with Dr. Glass that once Employee successfully returned to work, her continued psychotherapy should "presumably be financed by [Employee] and her insurance company." (Review of Dr. Glass' Report, Dr. O'Leary, January 12, 2015.)

35) On January 13, 2015, Employer controverted TTD and TPD benefits effective January 5, 2015; permanent partial impairment (PPI) benefits; reemployment benefits; and mental health treatment benefits from January 5, 2015, and ongoing. Employer relied on Dr. Glass' EME report and stated the reasons these specific benefits were controverted are:

1. Employee is capable of returning to work as an elementary school nurse (her job at the time of work incident).

2. Employee has no ratable impairment related to the work incident.

3. Any ongoing need for care is unrelated to the work incident.

4. The work incident is not unusual and extraordinary in comparable work environment.

(Controversion Notice, January 13, 2015; EME Report, Dr. Glass, December 9, 2014.)

36) On January 14, 2015, Dr. O'Leary reviewed the controversion notice and noted Employee "admirably used a panoply of her coping strategies used in this therapy to calm self in a matter of minutes." He reported Employee "produced calm and positive responses to today's discussion, which seems promising for her future return to work and of course for her life in general." (Chart Note, Dr. O'Leary, January 14, 2015.)

37) On January 21, 2015, Dr. O'Leary explored how Employee "should be looking forward to returning to work in the sense that she has the power to positively influence a large number of students." (Chart Note, Dr. O'Leary, January 21, 2015.)

38) On January 30, 2015, Employee told Dr. O'Leary, "I am not going to be at work Monday yet because no one knows what they are going to be doing with me apparently." (Email from Shannon Patterson to Dr. O'Leary, January 30, 2015.)

39) On February 1, 2015, Dr. Johnson said, "I believe that [Employee] can be diagnosed with (initially) Acute Stress Disorder and Adjustment Disorder, followed by Post Traumatic Stress Disorder. It appears that she is making good progress and deserves to be supported through this for as long as necessary." (Letter from Dr. Johnson "To Whom It May Concern," February 1, 2015.)

40) On February 4, 2015, Mike Dinges notified Employee Krista Grilliot would contact her about returning to work. Ms. Grilliot would tell Employee where she would be working and what type of work she would be doing. It was anticipated Employee would help schools get their paperwork caught up. (Email from Mike Dinges to Shannon Patterson, February 4, 2015.)

41) On February 4, 2015, Dr. O'Leary noted, "[L]ack of communication from employer has made employment situation or lack thereof somewhat absurd now." (Chart Note, Dr. O'Leary, February 4, 2015.)

42) On February 6, 2015, Dr. Odland disagreed with some of Dr. Glass' December 9, 2014 opinions. Specifically, he did not agree Employee was medically stable or ready to return to work full time. Dr. Odland acknowledged Employee had improved; however, he believed further measurable improvement could be achieved with continued medical treatment and

transition back to the work place over time. His plan was for her to return to work on a part-time basis starting with the mornings in February 2015, and then transitioning to full-time duties starting in March 2015. He said she would need to take Wednesday afternoons off for the remainder of the school year to complete her treatment with Dr. O'Leary. (Letter from Dr. Odland, February 6, 2015; Return to Work Authorization, Dr. Odland, February 6, 2015.)

43) On February 9, 2015, Employee returned to work at Wasilla Middle School with a new supervisor. She reported all had gone well and she received perfect performances on her skills check-off. Employee felt welcomed back to work and appreciated. She said, "I'm a survivor! I can do this! I can make it through this school year!" (Email from Patterson to Dr. O'Leary, February 9, 2015.)

44) On February 10, 2015, Employee filed a workers' compensation claim and requested a second independent medical evaluation (SIME). She claimed TTD, TPD, medical and transportation costs, a compensation rate adjustment, penalty, interest, and a finding of unfair or frivolous controversion. (Workers' Compensation Claim, February 9, 2015.)

45) On February 11, 2015, Dr. O'Leary addressed Employee's successful return to work as an itinerant nurse and her use of coping strategies and insights successfully. He suggested Employee explore "her interior world and related mental life now that more pressing dramas seem to be resolving." (Chart Note, Dr. O'Leary, February 11, 2015.)

46) On February 18, 2015, Dr. O'Leary's therapy focused on Employee's "forward looking resiliency skills and attitudes" as Employee "with some excitement -- may find herself in need of a new job or even career after her current contract expires in May." Dr. O'Leary and Employee agreed on a goal to reduce Employee's fluoxetine upon expiration of Employee's contract with Employer. (Chart Note, February 18, 2015.)

47) On February 25, 2015, Dr. O'Leary determined Employee continued to exhibit reduced symptoms and "significant general improvement." (Chart Note, Dr. O'Leary, February 25, 2015.)

48) On February 27, 2015, Dr. Odland reviewed Employee's school nurse job description, predicted she would not have a PPI rating resulting from the September 23, 2014 work injury and had physical capacities to perform the school nurse position's physical demands. He approved her to perform the job and released her to return to work with no restrictions. Dr. Odland noted Employee was to continue her appointments with Dr. O'Leary. Based on

Dr. Odland's responses, rehabilitation specialist Forooz Sakata determined Employee not eligible for reemployment benefits. (Return to Work Authorization, Dr. Odland, February 27, 2015; Response to Job Description, Dr. Odland, February 27, 2015; Reemployment Benefits Eligibility Evaluation, Ms. Sakata, March 10, 2015.)

49) On March 4, 2015, Employee's anxiety successfully modulated after she returned to full-time employment. She reported vomiting the first day as school nurse for a primary school. Dr. O'Leary said this was "reminiscent obviously of Kenneth." He encouraged "forward looking discussions" as they planned Employee's treatment discharge around May 20, 2015, the school year's end. (Chart Note, Dr. O'Leary, March 4, 2015.)

50) On March 4, 2015, Employer controverted Employee's claim, citing:

- Employee has no physical condition or injury as a result of the claimed work injury.
- Employer's IME concluded that Employee does not have a psychiatric or psychological disorder caused by her employment as a school nurse.
- The work incident of 09/23/2014 is not the substantial cause of employee's time loss. IME physician Dr. Glass opined that psychosocial factors including personality psychodynamics and her prior psychiatric issues along with dissatisfaction with elementary school nursing are the reason for employee remaining off work.
- The work incident of 09/23/2014 is not the substantial cause of employee's need for further medical treatment after 12/09/2014.
- Employer's IME deemed employee medically stable on 12/09/2014 and opined that employee is capable of returning to work. No TTD or TPD is payable after the date of medical stability and / or released to return to work. AS 23.30.185; AS 23.30.200.
- Employee's treating physician, Dr. Odland, released her to part-time work effective 02/22/2015. He released her to full-time work effective 02/27/2015.
- Employee's treating physician, Dr. O'Leary, stated that "once the pt is able to successfully return to work, the first course of psychotherapy should presumably be financed by Ms. Patterson and her insurance company."
- All physicians now agree that the 09/23/2014 work incident is not the substantial cause of any disability or any further need for medical / psychiatric treatment.
- All controversions are made in good faith and supported by medical and factual evidence in the possession of the employer at the time of controversion.
- Employer properly calculated employee's weekly compensation rate.
- All benefits have been timely paid or controverted, no penalty or interest are owed.
- There is no ongoing medical dispute warranting a Board SIME.

(Controversion Notice, March 4, 2015.)

51) On March 11, 2015, Employee was back to work full-time. Her March 4, 2015 petition for a protective order was granted in part and denied in part. The designee ordered Employee to sign medical releases going back to 1995 based upon mental health records indicating she had a mental health condition in 1997. The designee ordered Employer to table its employment and union records release until reemployment benefits became an issue. (Prehearing Conference Summary, March 16, 2015.)

52) On March 11, 2015, Employee amended her claim for TTD benefits from January 5, 2015 through February 6, 2015; TPD benefits from February 9, 2015 through February 27, 2015; medical costs of $1,351.15; $373.00 in transportation costs, a compensation rate adjustment; penalty; interest; a finding of unfair or frivolous controversion; and an SIME. (Workers' Compensation Claim, March 11, 2015.)

53) On March 18, 2015, Dr. O'Leary advised Employee to stop "clinging to anger re: those who have not treated her well throughout the process post-Kenneth, need to re-interpret meta-meaning of continuing to dream about Kenneth trauma." He encouraged Employee to explore career options in healthcare and nursing-related endeavors that did not involve direct patient care. Dr. O'Leary promoted ending therapy in mid or late May. His note did not include a description of Employee's dreams. (Chart Note, Dr. O'Leary, March 18, 2016.)

54) On March 24, 2015, reemployment benefits administrator (RBA) designee Deborah Torgerson found Employee not eligible for reemployment benefits based on Ms. Sakata's March 10, 2015 report. (Letter to Employee from RBA Designee Torgerson, March 24, 2015.)

55) On April 1, 2015, Dr. O'Leary noted Employee was growing impatient waiting for the end of the nursing and school semester. He explored ways "to break the loop of anxiety and misery she has unfortunately lived in for the past number of months." (Chart Note, Dr. O'Leary, April 1, 2015.)

56) On April 15, 2015, Employee continued to exhibit significant anxiety. Dr. O'Leary described the cause as:

> [A] complicated constellation of symptoms and dynamics, perhaps partially residual from the original trauma last September regarding Kenneth, but also reportedly highly related to current work stress stemming from reports of very unclear communication from the school district, and specifically HR, union unresponsiveness, potentially unpaid worker's comp claims, and significant

> anxiety related to future work security lack of clarity. Given all this a working diagnosis of anxiety continues to make this therapy valid and medically necessary and indicated, and I con't to leave the termination date of this work up to the pt, although she seems as of today interested in keeping with our tentatively planned d/c date in late May.

(Chart Note, Dr. O'Leary, April 15, 2015.)

57) On April 29, 2015, Employee reported a "bad day." Dr. O'Leary noted it was related to Employee's "job's unknowns" and "related frustrations" with Employee's perceived "very unclear communication in the workplace." Dr. O'Leary noted Employee's misery in her job would not last much longer because there were less than three weeks left in the school year. (Chart Note, Dr. O'Leary, April 29, 2015; Chart Note, Dr. O'Leary, May 20, 2015.)

58) On May 6, 2015, Employee continued to prepare for treatment termination with Dr. O'Leary. He noted, "most sxs reduced, but some nightmares remain, maintain Rx, future career plan focus as well as self-care." (Chart Note, Dr. O'Leary, May 6, 2015.)

59) On May 13, 2015, Dr. O'Leary reported Employee had ongoing and deepening frustration with Employer based upon her perceived "lack of clear communication." (Chart Note, Dr. O'Leary May 13, 2015.)

60) On May 14, 2015, Employee reported her supervisor observed her with students, watched her log and document for an hour, and then notified Employee they would meet "next Tuesday" to "go over it" and to have her union representative at the meeting. (Email from Shannon Patterson to Dr. O'Leary, May 14, 2015.)

61) On May 20, 2015, Employee had ongoing and deepening frustration; she perceived a lack of clear communication from Employer. A recent performance evaluation and resultant remediation plan spiked Employee's emotional reactions. Dr. O'Leary advised Employee to consider carefully human resource and union policies, specifically focusing on the need for clear communication and measurable job expectations. He suggested doing so might hold her in good stead. This was Employee's last session with Dr. O'Leary; however, follow-up was available at Employee's request. Employee requested Dr. O'Leary revise some chart notes. He explained he cannot alter a clinical document, but would review her concerns and possibly offer clarifying amendments. (Chart Note, Dr. O'Leary, May 20, 2015; Email from Patterson to Dr. O'Leary, May 20, 2015.)

62) On June 2, 2015, Employee told Dr. O'Leary she received a contract from Employer for full time employment for the 2015 / 2016 school year. She would start her school nurse position with Sherrod Elementary School in the fall. "I will fulfill that 188 days to make it to my vestment in the State Retirement system after all!" (Email from Patterson to Dr. O'Leary, June 2, 2015.)

63) On September 21, 2015, Employee requested assessment to see if she still had PTSD. Dr. O'Leary said, "review of DSM sxs appeared to reveal that pt continues to suffer with chronic PTSD." Employee was concerned her license would be at risk if she did not inform the Board of Nursing of her mental-health status. Dr. O'Leary told Employee, "So, while I want to make clear in writing it is not my advice to you to lie to licensing board . . . if you're not telling, I can't tell them anything about you." He notified her he could not guarantee the nursing board would not find out she had been in treatment and has an adjustment disorder and / or PTSD. He reiterated, "If you don't tell them, I CAN'T tell them. So use your best judgment and make of that what you will." Dr. O'Leary gave Employee a second option, which was to write something brief saying Employee did have PTSD; that he was not qualified to evaluate a nurse's fitness for duty; but that he did not see any reason why Employee should not work. (Progress Note, Dr. O'Leary, September 21, 2015; E-mail from Dr. O'Leary to Shannon Patterson, September 27, 2015.)

64) On October 16, 2015, Dr. Odland said Employee's September 23, 2014 injury occurred "while performing mouth to mouth resuscitation on a student and got exposed to vomit, blood tinged foam, nasal and mouth secretions and post-incident stress, anxiety, depression, grief, PTSD." Employee's mental status was normal. (Physician's Report, Dr. Odland, October 16, 2015.)

65) On November 3, 2015, Employee requested an appointment with Dr. O'Leary. She said, "I may need to meet more than once, we can discuss at the appointment. I'm using my tools and coping skills still having a very difficult month coping with the stressors of the job and memories. I will take a sick day if needed. I need help." Dr. O'Leary notified Employee of two available appointment dates and she responded, "May I have both please. I'm putting in sick days for those days. I have already been chastised for having no sub nurse coverage on the day I had surgery last month. I'm to the point my health is more important than a secretary bitching at me." (Email exchange between Shannon Patterson and Dr. O'Leary, November 3, 2015.)

66) On November 11, 2015, Dr. O'Leary gave Employee the diagnoses adjustment disorder with mixed anxiety and depressed mood, and posttraumatic stress disorder, unspecified. He reviewed with Employee "professional/psychic boundaries for 'not taking the bait' for drama and contention with principal, coupled with hopefully anxiety reducing self-validation strategies to reduce agitation and self-doubt." (Progress Note, Dr. O'Leary, November 11, 2015.)

67) On November 13, 2015, Dr. O'Leary reported Employee had an "improved and more upbeat general mental state relative to earlier this week baseline." He focused "on the importance of interpreting interpersonal phenomena in a less stimulating, 'less personal,' less defensive-activating manner." (Progress Note, Dr. O'Leary, November 13, 2015.)

68) On January 15, 2016, Dr. O'Leary found Employee experiencing "secondary trauma" from Employer's lack of emotional support. (Chart Note, Dr. O'Leary, January 15, 2016.)

69) On January 21, 2016, Employee reported a staff member collapsed and she was ready to use the AED and began CPR. She waited for the ambulance and did not need to defibrillate, but was scared. She said, "I went into my office after and I closed my office door to take a breather (cry). Anyways my boss although trying to mean well, advises me if I think I'm going home I need to look at the message that it might or will give my staff. (Nurse not trustworthy or mentally stable to work for them.) . . . . So I did ask for debriefing which was told wasn't needed. Bull shit. I needed it! Once again denied one; I was told my incident report [was] sufficient." (Email from Shannon Patterson to Dr. O'Leary, January 21, 2016.)

70) On January 22, 2016, Employee told Dr. O'Leary she may need to visit. "The child choked today thank God teacher did abdominal thrusts and cleared by time I sprinted to classroom. They are going to be okay. Fifth grade boy. Imagine that." (Email from Shannon Patterson to Dr. O'Leary, January 22, 2016.)

71) On February 22, 2016, Dr. O'Leary determined Employee's stress levels were "up due to reports of lack of school district support." Coping strategies were explored and "possibility of soothing and empowerment if she begins searching for a new job in a new nursing field, perhaps one where she does not have to 'fly solo' clinically." (Progress Note, Dr. O'Leary, February 22, 2016.)

72) On April 18, 2016, Employee reported, "As the last 26 contract days are here, the grief of it all and anxiety / anger is coming out despite all the resiliency tools." (Email from Shannon Patterson to Dr. O'Leary, April 18, 2016.)

73) On April 19, 2016, Dr. O'Leary reviewed coping strategies and encouraged Employee to use them as she waited out the remaining 25 days of her employment contract with Employer. (Progress Note, Dr. O'Leary, April 19, 2016.)

74) On May 16, 2016, the Estate of Kenneth Terrance Hayes filed a complaint for damages against Employer, Lenore Zupko, and John Does 1-10 in Alaska Superior Court. The complaint alleges the student's death occurred as the direct and proximate result of Employer's negligence by and through its staff. Paragraph 17 states:

> Shannon Patterson, at all times relevant herein was the school nurse for the Iditarod Elementary School. Shannon Patterson, may be one of the John Doe 1-10 defendants should the discovery in this matter disclose that Shannon Patterson was, in some manner negligently and proximately responsible for the events and happenings alleged in this complaint and for plaintiffs' damages.

(Complaint, May 16, 2016.)

75) On May 17, 2016, Employee reported she received an evaluation stating she was proficient. "Nothing exemplary about my nursing skills or accomplishments this school year." After Employer offered Employee a contract for the 2016 / 2017 school year, Employee reported, "it felt so good to write, 'I respectfully decline!' And to turn in my resignation letter I've had hanging on my fridge since April of 2015! I have four days left in this job and then I have achieved the goal I never thought I'd accomplish!" She told Dr. O'Leary, "The anxiety weight is lifting off my shoulders and the nightmares are less frequently occurring now." Employee said she weaned herself down to 1/2 to 1 mg Xanax daily on her own and planned to be completely off the prescription by summer's end. She resigned from her position with the school district effective the last working day of the 2016 school year. (Email from Shannon Patterson to Daniel Michael, May 17, 2016; Email from Shannon Patterson to Dr. O'Leary, May 17, 2016.)

76) On June 21, 2016, Employee filed an amended workers' compensation claim now describing how the injury happened as, "Child choked at school and died 10 days later." Body part injured was amended and states "psyche." Employee amended her "nature of injury" to include PTSD, anxiety, and depression. Employee's amended claim did not include a compensation rate adjustment or a request for a finding of unfair or frivolous controversion. She amended her TTD claim to include benefits from May 24, 2016, and continuing. Her TPD claim did not change.

She continued to claim medical and transportation costs, which had both increased from her March 11, 2015 claim. (Workers' Compensation Claim, June 29, 2016.)

77) On June 23, 2016, Dr. O'Leary continued to diagnose adjustment disorder with mixed anxiety and depressed mood and posttraumatic stress disorder, unspecified. He reviewed the coping strategy of "distancing statistical abnormalities" of "bad days" rather than perseverating on them. He also reviewed coping strategies to address other concerns related to Employee's, hopefully, temporary mood downturn connected to resigning her school nurse position with Employer. (Progress note, Dr. O'Leary, June 23, 2016.)

78) On July 7, 2016, Dr. O'Leary notified Employee he received a records request from Burr, Pease & Kurtz and requested Employee sign the release of information form he provided. Dr. O'Leary added he thought it was dangerous, "and potentially catastrophic," to introduce Employee's therapy records into her workers' compensation proceedings. He asked Employee to carefully consider "what's going on right now," and gave her a chance to revoke her consent for release of Employee's records to Employer. Dr. O'Leary reminded Employee she signed an agreement she would not use the records for legal purposes, the signed agreement is part of her chart to be released, "which may make you look bad in the eyes of a reader." Dr. O'Leary stated, "Further, the notes are written for clinical purposes not legal ones, meaning that the notes tend to focus on your problems, often making you appear more ill than you might actually be." Dr. O'Leary emphasized he wanted to be helpful in Employee's life, not harmful to her legal proceedings. He referred Employee to Richard Lazur, Psy.D., if she needed a psychological expert to become involved in her workers' compensation claim. Dr. O'Leary stated, "He is not your therapist, is hence not bound by the problems I've detailed above, is skilled and experienced in working in a legal setting (I am not), and can represent your interests appropriately." (Email to Shannon Patterson, Dr. O'Leary, July 7, 2016.)

79) On October 18, 2016, Dr. Odland said he was providing medication management for Employee's mental health disorder. "She maintains adequate compliance with follow-up and her mental health issues in no way impact her ability to practice nursing." (Letter To Whom It May Concern, Dr. Odland, October 18, 2016.)

80) On December 8, 2016, Employee gave a "Statement in Lieu of Deposition" when Employer's selected representative, Mr. Wuestenfeld, and Employer's attorney appeared for Employee's properly noticed deposition. Employee did not appear for her deposition while Mr.

Wuestenfeld and Employer's attorney were present. Upon their departure, Employee appeared and her recorded statement, under oath, was taken, as follows: Employee last worked on May 22, 2016, at the school year's end. She did not return to work in the fall because she needed to work on healing herself. She said, "I was attempting to do so at the same time while I continued my employment on the job where this incident occurred and was not able to work in that environment any longer and get well because. . . ." Employee felt she needed to heal "from the trauma of working with children and what happened with the student that died." Employee had been a substitute school nurse for six years, starting working full-time for Iditarod Elementary School in 2014, and 27 days into the school year, students came running into her office screaming someone had collapsed in the hallway. Employee went running and found the student unresponsive. She began CPR and continued until EMS arrived. The student was life-flighted to Anchorage, put on life support, and then taken off ten days later. That was the first time Employee "ever had to deal with that." Before that happened, Employee loved her job; she was happy to be "back full-time" and not be a substitute school nurse anymore. Her six years of substitute nursing involved pre-kindergarten through 12th grade. Prior to substitute school nursing, Employee worked for six years full-time at Snowshoe Elementary School. Employee returned to full-time school nursing "for retirement." She had to work for 12 additional years to work 20 years before retiring and wanted to end her career as a school nurse. As a substitute nurse Employee did not receive retirement credits. When Employee left her job in May, she was offered, but declined a contract. She said she terminated her contract because, "I was no longer able to work in that environment anymore." She added:

> After the incident, I went back to school nursing. They took me from the school at Iditarod Elementary and made a position called an itinerant nurse position, and so basically I was a pool nurse again, sent all over the Valley every day, but they kept my full-time status and then the following school year, they found an elementary school. So they said you're going to go here because there's, you know, no other place to put you. And so I worked there and did lots and lots and lots of things to be able to work in the environment, but it's too traumatic for me.

Employee described her inability to "handle or manage" her job while "working in that environment":

> After the incident, I was fearful an incident like what happened was going to happen again and so I had anxiety, fear that something was going to happen -- I

> guess a decrease in my confidence as a nurse and so I did everything to overcome that I could, but I had a similar incident with a student that began to choke. Thank goodness their substitute teacher knew what to do and began abdominal thrusts and so we were able to take care of that. And then I had a staff member collapse and I was ready to do CPR and had him hooked up to the defibrillator and called an ambulance, and it -- it really shook me up. And despite no matter how hard I tried to fit in and overcome my anxiety issues and prove to myself, you know, hey, you got this, I wasn't able to do it. . . .
>
> Despite trying all that and then continue my counseling, I was still going back to that environment where I was terrified that a kid was going to choke because they eat in the classroom and I was fearful I would freeze and not be able to help a student in need. And so every day I would come home and go right to bed just because I was so exhausted from the stress of it -- the worry of it.

Had the incident not occurred, Employee is confident she would still be a school nurse. Employee wants to find a new career path. "I am unable without being too emotional to work with children at this point." Employee believes she suffers from anxiety, chronic PTSD, and clinical depression. She believes PTSD is causing her anxiety and depression. She said she was seeing Dr. O'Leary and "it was helping me, you know, get through working, but I would come back to that job the next day and I wasn't getting better. I was still going back to that environment." Employee said she is not a quitter and wanted to end her school nursing career on a good note, which she believes she did. She remained in her job until May of 2016, because she wanted to make it 12 years to vest for her retirement. Later, she said she "walked away without the eight-year vestment mark." Under TRS, Employee was a tier two, and needed eight years to vest. She had accrued six years of service and went back to school nursing so she could vest. "From all intents and purpose of the paper I received from my district that said I had met my eight-year vestment, but now there's an issue with that, and we'll talk about that later, but. . . ." With an eight-year vestment, Employee would be eligible for TRS health insurance when she is 60 years old. Employee would like to overcome PTSD. She never knows when it will surface. When she learned a student had been murdered, even though she was not personally acquainted with the student, her heart hurt. She said the news hit her really hard; she becomes emotional and has difficulty with boundaries, which she attributes to PTSD. She said she still can't drive by the school "without getting sick to my stomach physically because that's where it happened." Employee lives at the end of Hart Lake's runway where life flights fly out. She said every time helicopters take off, "which is all the time," she's reminded of the student being life-flighted

from the school. She would like peace and "not having to cry every time I hear that." She would like help with the nightmares she has "about his face." She sleeps with a mattress on the floor, instead of the bed frame, because she has a nightmare the student is "coming out from under the bed and it's always of his head and what I worked on. I need help with that." Employee's health insurance has paid Dr. Odland $1,096.31 for ten medical management appointments related to Employee's work incident from January 5, 2015 through October 18, 2016, and Employee's out-of-pocket expense for these appointments is $465.00. Employee had medical bills totaling $5,593.00 for treatment with Dr. O'Leary; $3,779.95 had been paid by her health insurance and she paid $1,813.05 out-of-pocket. Employee said, all Dr. O'Leary's charges were for treatment related to the work incident. Employee had out-of-pocket medication costs of $383.62 for drugs prescribed for her work-related injury. Employee said she was not released to return to work until February and she claims time loss benefits for the entire month of January 2015, and the first week of February 2015. During the first week of February, Employee said

> Employer did not have "a school" for her and it took Employer "a week to figure out what they were doing with me and said they're not going to pay me for that week even though I was going through 800 emails and during this time, my CPR card had expired. So I had to retake the class and get certified again because it's my job requirement. So I did that that week. . . .

Employee had 800 emails to check because while she was restricted from work, her union representative and Dr. O'Leary told her to stop checking her work email and arranging substitutes because it was becoming "very stressful." Employee said she stopped checking emails and arranging substitutes in November 2014 and "then when I stopped in November, it got really nasty. And so that's that part." Employee returned to work part-time for the month of February, and requests time loss "benefits for part days" and also for the weekly half days off for appointments with Dr. O'Leary after she returned to work. She asks for no indemnity benefits after May 13, 2015. Employee claims TTD from January 5, 2015 through February 6, 2015, and TPD from February 9, 2015 through February 27, 2015 and for March 4, 18, and 25, 2015, April 1, 8, 15, and 22, 2015, and May 6 and 13, 2015. Employee claims she traveled 3,348.6 miles for work related medical treatment after Employer's controversion and she requests transportation benefits for those miles. (Sworn Statement, Shannon Patterson, December 8, 2016.)

81) On February 1, 2017, Dr. O'Leary terminated his relationship with Employee due to "third-party scrutiny." He thought Employee would have better results with a new therapist and, on referral, gave Employee three names. (Email from Dr. O'Leary to Patterson, February 1, 2017.)

82) On March 16, 2017, *Patterson v. Matanuska-Borough School District*, AWCB Decision No. 17-0029 (March 16, 2017), issued. Employer's petition for sanctions for Employee's failure to attend and participate at her deposition was granted. Employee was ordered to reimburse Employer for three hours of attorney fees and costs associated with Employer's workers' compensation attorney's preparation and attendance at the December 8, 2016 deposition. Employee's petition for a protective order was granted. Employer had a right to depose Employee and the deposition was to occur at the board's offices; Employer was permitted to select its representative to accompany Employer's workers' compensation attorney to the deposition; and during the deposition, only Employer's workers' compensation attorney was permitted to ask questions, make objections, or speak to Employee or her attorney. (*Patterson I*.)

83) On April 3, 2017, Employee testified she received her Bachelor of Science degree in nursing and her school nurse license and Registered Nurse license in 1996, and has taken continuing education courses to maintain her teaching certificate endorsing school nursing and her national certification in school nursing. Employee has never had any disciplinary action taken against or limitations upon her nursing licensure. Employee must renew her nursing license every two years and her teaching certification every five years. She has not received any disciplinary action, nor has she ever had limitations on her teaching certificate. Employee became nationally certified in school nursing in 2015. Employee started working as a substitute school nurse for Employer in 1999 and continued as a substitute school nurse until 2001 when she was hired by Employer as a full-time school nurse. While working as a volunteer nurse, Employee responded to minor injuries and to a concussion. Employee worked as a full-time school nurse for Snowshoe Elementary from 2001 until 2007, and then went back to substitute school nursing. She subbed until she took a job at Providence Behavioral Mental Health in 2010 and worked there until 2011. Employee was unemployed after she left Providence Behavioral Mental Health until she went back to work for Employer as a substitute or pool school nurse in the fall of 2013. Employee returned to full-time work for Employer as a school nurse in 2014. She continued to work for Employer until she resigned in May 2016. Since the September 2014 incident, Employee renewed her CPR, Basic Life Support, and Medic First Aid certifications, and

obtained an instructor certificate and national school nurse certification. Employee declined a contract for the 2016 / 2017 school year. During all times Employee worked for Employer, she maintained CPR, Basic Live Support, and Medic First Aid certifications, which included use of automated defibrillators. Employee was, in the past, also licensed as an Alaskan EMT I and a Certified Nursing Assistant, which she let lapse when she became a registered nurse. Employee has "been looking" for nursing positions with Providence, the Departments of Health and Corrections, Southcentral Foundation, and the Alaska Native Medical Center; however, she has not submitted applications because she does not believe she has the requisite experience. If a position became available for which Employee thought she was qualified, she would apply for it. Employee's claim seeks lost wages for the time she was off work and not yet released to return to work by her physician, lost wages when she returned to work part-time, lost wages for half-days when she met with her physician because she had used all her leave. Additionally, she seeks coverage for her prescription medications, follow-up medical management, and therapy. Employee believes she lost wages through the end of the 2015 / 2016 school year. She seeks medical benefits until she no longer needs prescription medications. Since 1987, when Employee attempted suicide, she has been treated for "situational" depression. In 2017, Employee had been Dr. Odland's patient for 26 years. Employee was treated for bipolar disorder, anxiety and depression from 2004 to 2010. It was during this time she was diagnosed with sleep fragmentation disorder and she was having symptoms caused by her medications' side effects and "situational things that were taking place." Employee was diagnosed with a mood disorder. Dr. Halverson took Employee off work for six weeks in 2007 while diagnosing and stabilizing her for sleep fragmentation disorder. Employee developed a friendship with Dr. Johnson after having worked with him at Providence Behavioral Health. When he was no longer there, he served and assessed Employee from his home. Her arrangement with him continued until he retired in December 2014, and Dr. Odland took over prescribing medications for Employee. After initially doing a phone consult with Dr. Johnson, Employee began to see Dr. Odland for mental health concerns after the September 2014 work incident. She attempted to obtain assistance such as a critical incident debriefing through two Employer departments. She was told to contact her member assistance plan and after 17 attempts to reach someone, she called Dr. Johnson and asked if he would help her get in with a therapist. Dr. Johnson provided Employee "phone consultation care for free," monitored her, and referred her to Dr. O'Leary.

Employee doubted Dr. Johnson maintained a medical chart on her because he was her friend and would provide physicals for new employment and a rebuttal to Employer's independent medical evaluation. Employee said she resigned her position with Employer after the 2015 / 2016 school year because, "In spite of my efforts to put this incident behind me, I was not able to, and every day for the lunch recess hour I felt helpless and had anxiety for the whole school year, and I couldn't live like that anymore. So I removed myself." The September 2014 incident occurred at Iditarod Elementary, but when Employee resigned, she was working at Sherrod Elementary School. (Patterson Deposition, April 3, 2017.)

84) Employee was asked, "Are you at this time making any claim for any physical injury or illness as a result of the September 2014 choking incident?" She said, "I don't know. That's why I'm here." She was then asked, "Physical condition as opposed to a mental health condition?" Employee replied, "Okay. No. Then no." (*Id*.)

85) On April 10, 2017, Dr. Odland referred Employee to Paul Wert, Ph.D., a psychologist licensed in Washington and Idaho, for a psychological evaluation. (Referral, Dr. Odland, April 10, 2017.)

86) On April 14, 2017, Dr. Wert noted Employee "was referred for the purpose of psychological evaluation by Wasilla, Alaska physician, Dr. Duane Odland. Shannon was also referred by Wasilla, Alaska attorney, Richard L. Harren." Dr. Wert administered the Millon Clinical Multiaxial Inventory-III (MCMI-III), which revealed Employee's "reported feelings of weakness, fatigability, and physical illness may represent the somatic expression of her underlying mood of depression. Simple responsibilities may at times demand more energy than she can muster." Her testing results also found Employee "appears to be experiencing symptoms . . . indicative of an anxiety disorder. She reports a growing apprehensiveness over trivial matters, an increase in a variety of psychosomatic signs, and psychological symptoms, such as restlessness, diffuse fears, catastrophic anticipations, and distractibility." It further revealed the "enduring and pervasive personality traits that underlie this woman's emotional, cognitive, and interpersonal functioning." Dr. Wert's report states,

> Related to, but beyond her characteristic level of emotional responsivity, this woman appears to have been confronted with an event or events in which she was exposed to severe threat, a traumatic experience that precipitated intense fear or horror on her part. Currently, the residuals of this event appear to be persistently re-experienced with recurrent and distressing recollections, such as in cues that

> resemble or symbolize an aspect of the traumatic event. Where possible, she seeks to avoid such cues and recollections, such as in cues that resemble or symbolize an aspect of the traumatic event. Where possible, she seeks to avoid such cues and recollections. Where they cannot be anticipated and actively avoided, such as in dreams or nightmares, she may become terrified, exhibiting a number of symptoms of intense anxiety. Other signs of distress might include difficulty falling asleep, outbursts of anger, panic attacks, hypervigilance, exaggerated startle response, or subjective sense of numbing and detachment.

Dr. Wert found Employee displays symptoms of both depression and anxiety, including fatigue, sleep disturbance, sweating and tension, and concentration difficulties. He found Employee has "habitual and maladaptive methods of relating, behaving, thinking and feeling." Dr. Wert interpreted the testing results to conclude Employee was dysphoric, insecure, and had abandonment fears, somatic symptoms, and diminished capacity for pleasure, grew anxious over trivial matters, claustrophobic anticipations, and had poor self-image. His evaluation identified Employee has passive dependency and becomes angry toward others who do not appreciate her need for affection and nurturance. He opined her presentation was suggestive of borderline personality disorder. Dr. Wert concluded Employee was affectively unstable and "continues to experience symptoms of posttraumatic stress disorder (PTSD), associated with incident which occurred on or around September 23, 2014." He based his conclusion on Employee's exposure to actual or threatened death when she witnessed the student choking. Dr. Wert recommended Employee receive outpatient mental health treatment and be medically assessed for use of Prasozin, originally a blood pressure medication that was found to be helpful with veterans experiencing nightmares and troubling dreams as a result of PTSD. He diagnosed Employee under the DSM-5 with PTSD; major depression, recurrent, severe, without psychotic features; generalized anxiety disorder; R/O adjustment disorder with anxiety; dependent, avoidant (socially), and possibly borderline personality features or traits. (Psychological Evaluation, Dr. Wert, April 26, 2017.)

87) Dr. Odland referred Employee to Debbie Haynes for "evaluation and treatment for PTSD." (Referral, Dr. Odland, Undated.)

88) On May 11, 2017, Employee complained of "increased stress and anxiety since the incident at work involving the death of a student." Employee felt Employer's "staff was somewhat less than supportive." Dr. Odland determined Employee was not yet medically stable and it was undetermined if she could return to her job or if she would have a permanent impairment. He

counseled Employee and moved her to "supportive care." (Physician's Report, Dr. Odland, May 11, 2017.)

89) On May 16, 2017, *Patterson v. Matanuska Susitna Borough School District*, AWCB Decision No. 17-0055 (May 16, 2017) (*Patterson II*) declined to strike Employer's late-filed brief and addressed Employee's requests for production, which were granted in part, denied in part, and remanded to a board designee to make rulings as required under AS 23.30.108. Employee was not entitled to a duplicate copy of records Employer already produced. She was entitled to all correspondence or evidence of correspondence between Dr. Glass and Employer prior to Dr. Glass' December 9, 2014 report. Three of Employee's requests for production were remanded to be decided at a prehearing so that if either party was not satisfied with the designee's ruling an appeal could appropriately be made to the board without necessitating assignment of an entirely new panel. (*Patterson II*.)

90) On May 23, 2017, Dr. Johnson testified he retired from Providence Behavioral Medicine Group in 2013. He specialized in child, adolescent and young adult behavioral medicine. For 20 years, Dr. Johnson taught medical and nursing students child and adolescent psychiatry. He met Employee in 2010, when she worked as a part-time nurse for Providence Behavioral Medicine Group. They worked together until Employee "was given a hard time by her supervisor" and stopped working for Providence Behavioral Medicine Group. As long as Dr. Johnson knew Employee "she was always happy with school nursing." On August 21, 2014, he did a "physical exam" for Employee so she could work for Employer; however, he was not actively engaged in practicing medicine. He signed Employer's form and certified he was familiar with Employee's past medical history and conducted a physical exam. Dr. Johnson was familiar with Employee's past medical history because he "had copies of it." He had no doubt Employee was fit for her job as an elementary school nurse. Dr. Johnston was aware Employee was horrified and devastated when the student she was trying to revive died. He recommended she see Dr. O'Leary for psychological counseling when Employee's attempts to find a therapist were unsuccessful. Dr. Johnson and Employee had regular contact since they parted ways at Providence Behavioral Medicine Group; they have "become really good friends." Dr. Johnson does and does not have a bias in favor of Employee. He "sees her issues," "understands her diagnoses" and he fully agrees with some because of what he has observed. At the same time, he believes Employee is a kind and exceptional person, which "obviously would color [his] vision

somewhat." Dr. Johnson had an opportunity to review Dr. Glass' report and did not think it was fair. He supposed "having a kid die in front of you" could be considered an occupational problem, but he thinks "that's kind of cold." Dr. Johnson believes Employee has PTSD, anxiety with "some overlay of agoraphobia" and "some other things" Dr. Glass did not mention. He thinks Employee has had anxiety for a large part of her life, but that it has increased "a considerable amount" due to the work incident. Dr. Johnson said Employee is "fearful of the event coming back to haunt her" in terms of "extreme agitation and unrest," which increases her anxiety. He said, although it seems unlikely it would happen, if Employee is in a situation where another child could choke, Employee's anxiety is increased because she is hoping it will not happen again, which makes her "pretty much anxious all the time." Dr. Johnson's "foundation" for diagnosing Employee with PTSD is the time he spent in the military when he saw many soldiers returning from Iraq and Afghanistan. He said it is "estimated that two thirds of all service members coming back from the Mid-East war have PTSD to one extent or another." He intimated he got "pretty used to seeing what it is; and what one finds is "that people -- it's spontaneous and they certainly don't want it to happen, but it just happens on its own. Usually because of some stimulus they relive the event as if they were there." As PTSD relates to Employee, he said, "[I]f you relive that each time, it's horribly upsetting. And unfortunately with -- the part that bothers me the most is all that she has gone through with this trial and with having to retell this -- her tale over and over and over again she keeps reliving what happened to her, and all it's doing is prolonging her issue and keeping her from healing, sadly enough." Dr. Johnson said Employee gave up her job as a school nurse because she had a "constant lurking terror" that "something was going to happen again and she would lose another child" and she did not feel comfortable in the position. He found the work incident was "a horrible thing" and a "unique and unusual situation that should be treated as a one of a kind thing." Dr. Johnson was motivated to draft the February 1, 2015 letter "To Whom It May Concern" because he thought Employee was "not getting a fair view from both the school and from the -- I don't know about workman's comp, but whoever was -- she just wasn't getting a fair shake." He thought she needed something that explained how valuable and worthwhile she was and so he wrote the letter. Employee assisted Dr. Johnson to travel to and get settled in his home in Seattle, Washington. She was responsible for monitoring his blood pressure and other vital signs that needed to be checked. Then, Dr. Johnson and his wife took a road trip with Employee and her

foster son for Employee's evaluation in Spokane, Washington, with Dr. Wert. He "totally" agrees with Dr. Wert and believes he gave Employee a "fair" evaluation. Dr. Johnson commented that Dr. Wert's and Dr. O'Leary's opinions are basically the same. He was impressed that Dr. Wert considered Employee's personality and history; "her history has quite a lot to do with it." Dr. Johnson mentioned Employee's "mother was abusive and there was a lot of reasons why she is the way she is. And so -- but I'm really impressed with -- and he also mentioned, which Dr. Glass did not, of the anxiety disorder which I still can't believe somebody couldn't see that." Dr. Johnson also noted Dr. Wert "said both depression and anxiety, which is true." He said because Dr. Wert then "mentioned the posttraumatic stress disorder and, yeah, basically, I was very happy with his report because I thought it was an accurate and fair reflection of her diagnosis." Prazosin is a beta blocker recommended by Dr. Wert that Dr. Johnson had recommended to Employee "a few years ago." He was under the impression Employee "didn't have anybody that would follow her and -- I didn't want to just give [Prazosin] to her without being there and watching what was going on." Dr. Odland could have prescribed and monitored side effects and dosages. If Employee was prescribed Xanax or Wellbutrin after the work incident, Dr. Johnson believes there is a causal relationship between the work incident and Employee's need for those medications and he is "not aware of anything else that would have caused that" need. For Employee's medical treatment needs, Dr. Johnson thinks psychotherapy is more important than medications but remarked they are designed to work together. Doing just therapy might eventually work, but it would take a little longer than if the medication were added to the therapy. Using medications without therapy would be much less likely to result in a "great outcome." Dr. Johnson believes Dr. O'Leary is excellent. Dr. Johnson said some people are more fragile than others and how quickly someone recovers from a child's death is "totally up to the individual." He objected to Dr. Glass' opinion Employee should have appropriately dealt with the stress caused by the work incident "after a few sessions with the counselor and resumed work." "To expect somebody just to get over a child's death that you attempted to change and experienced on a one to one basis in a couple episodes I think is an extremely -- extremely bizarre view." One thing that has distressed Dr. Johnson is "throughout all this has been how much repetition of the trauma has -- [Employee] has been forced to repeat and repeat and repeat by going through all the testimony and trials and everything else." His concern is that any time Employee "has to review her history or go over any paperwork or re-

discuss any parts of this case, it's as reliving the case again." Dr. Johnson couldn't provide a number of times Employee had to discuss the event; however, he said "each time she has to deal with it, it causes her acute anxiety and it increases her PTSD symptoms." He said the workers' compensation litigation is "terribly traumatic" for Employee. Dr. Johnson wanted a decision to be made on Employee's behalf to "get her the help that she needs and end all this legal work because all it's doing is making her worse." Dr. Johnson said he was not Employee's physician but he did not know in what capacity he was offering his testimony; he was giving his professional opinion about the quality of evaluations and recommendations and how he would proceed. He admitted he provided a referral to Dr. O'Leary, but did so as both a licensed physician and a friend, but "it was more as a licensed physician than a friend." Dr. Johnson does not have a file or chart notes for Employee; he does not have all the medical records Dr. Glass reviewed, nor has he traced Employee's history and how the different diagnosis of bipolar disorder was made. Dr. Johnson admitted he offered medical psychiatric opinions regarding Employee without reviewing her complete medical record or even the record Dr. Glass reviewed. He also admitted he is Employee's advocate; however, he qualified his advocacy when he said his psychiatric opinions are unbiased and impartial. Dr. Johnson offered to go to Employee's union office because she told him she was not getting a fair shake; she felt like she was alone and things were not in her favor; she felt like she wasn't getting the benefit of the doubt when she should have; and she wanted his support. He was not sure who was not giving Employee the benefit of the doubt, but believed it was Employer or the board. Employee represented to Dr. Johnson that nobody was listening to her or taking her seriously. He was under the impression Employee was unhappy and needed someone she could lean on, but had no proof Employee was not being fairly treated. (Dr. Johnson Deposition, May 23, 2017.)

91) Dr. Johnson was aware Employee was trained in basic CPR and it could be anticipated she may need to use CPR while performing school nurse duties. People dying is not a common part of a medical provider's experience, but Dr. Johnson said it does happen. He confirmed it probably happened once a year in behavioral health clinics; that it could happen twice a year or more than twice a year. It was possible patients at the Providence Behavioral Medicine Clinic for children, where Employee worked, committed suicide. Dr. Johnson felt if Employee returned to work for Employer "in a very nurturing environment that could be where she was supported and appreciated" the stress she experienced would have been "considerably different." Based

upon Employee's perspective, he said, "However, that wasn't the case according to Shannon. The case was that they didn't want to deal with her. They -- she was getting all kinds of evaluations that were inaccurate and -- from the principal and she wasn't basically was being treated not as a team member." Dr. Johnson said, in the proper setting, Employee would be able to return to work as a nurse, "as long as it didn't involve anything that was going to cause the PTSD to increase." He suggested it was possible the principal may have felt his criticisms of Employee were just. Dr. Johnson agreed something can happen in the work place to two people and one will get PTSD while the other does not. He said Employee is prone to PTSD and he encouraged her to return to work. (*Id.*)

92) On June 13, 2017, Employee filed Dr. Wert's April 26, 2017 report on a medical summary. (Medical Summary, June 13, 2017.)

93) On June 13, 2017, Employee initiated therapy with Debra Haynes. Employee's complete client information form stated she had previous therapy with Dr. O'Leary, Jeff Grasser, Cornerstone, and Life Quest. She did not list Dr. Wert. Employee said she was seeking counseling for "evaluation and treatment for PTSD," which she has had since September 23, 2014, and a traumatic event initially caused her PTSD. (Client Information Form, Shannon Patterson, June 13, 2017.)

94) In an undated note, Debra Haynes noted Employee feels abandoned; "doesn't trust her former employer -- principal." Ms. Haynes also noted Employee was protecting her license and obtained a national certification in school nursing, has been a registered nurse for 21 years with 18 years in school nursing. (Notes, Debra Haynes, Undated and attached to 10/30/2017 Medical Summary.)

95) On June 13, 2017, June 26, 2017, and July 11, 2017, Employee completed outcome rating scales notated by Ms. Haynes. The scale measures Employee's feelings over the previous week in several areas of her life, individually, interpersonally, socially and overall. Marks to the left of a line represent low levels and marks to the right of the line indicate high levels. On June 13, 2017, Ms. Haynes stated Employee's personal well-being was made better by leaving her job -- "for a little bit." Employee's marks on all areas were to the far left. On June 26, 2017, Ms. Haynes noted Employee felt she had failed because she could not defeat her fear or anxiety. Employee's marks were again to the far left. On July 11, 2017, Ms. Haynes noted Employee

was sleeping better and anxiety was decreased. Employee's marks were to the far right. (Outcome Rating Scale, Shannon Patterson, June 13, 2017, June 26, 2018, and July 11, 2018.)

96) On June 21, 2017, Employer requested cross-examination of Dr. Wert to ascertain the basis and rationale of his opinions. Employee did not object to Employer's request for cross-examination, nor did she assert Dr. Wert's report is admissible as a business records exception to hearsay. (Request for Cross-Examination, June 21, 2017; Record.)

97) On August 24, 2017, Mr. Harren attempted to file his affidavit, as attorney for Employee, with the Superior Court in the *Estate of Kenneth Terrence Hayes v. Matanuska Susitna Borough School District* matter. In his affidavit, Mr. Harren identifies Employee's workers' compensation case involves a mental injury. He states, "An issue in the Workers' Compensation case is whether the trauma experienced by my client is within the usual and ordinary stress causing activity of her job. She is the elementary school nurse who tried to save the young boy's life. My client has been diagnosed with continuing PTSD because of her experiences related to the tragedy. . . ." (Affidavit of Richard Harren, Attorney for Shannon Patterson, August 24, 2017.)

98) Mr. Harren's August 24, 2017 affidavit partially states the standard applied when determining if a mental injury caused by mental stress is compensable under AS 23.30.010(b). (Experience.)

99) On October 24, 2017, Keyhill Sheorn, M.D., psychiatrically evaluated Employee at Employer's request. This was Employer's first physician change from Dr. Glass and was a permissible physician change. (Judgment; experience; observations.)

100) On October 24, 2017, prior to evaluating Employee, Dr. Sheorn administered the Structured Inventory of Malingered Symptomatology. Employee scored 27, which "was significantly above the cutoff score of 14. The score comes from the number of answers she gave that are atypical, improbable, inconsistent, or illogical for people with true mental disorders." An elevated score, such as Employee's, indicates concern for exaggeration of symptoms in a medico-legal complaint, and caution for multiple inconsistencies in the records and within the clinical interview. During Dr. Sheorn's interview, she noted Employee's behavior was remarkable. Employee "appeared" to sob, would stop suddenly, smile and make a comment or stop and appear ready for Dr. Sheorn to ask the next question. Ms. Patterson reported she did not remember the period of time after the incident; however, she did recall a message issued by

the principal providing notice a student had an incident and had been transported to the hospital. Employee was incensed because the hospital to which the student was transported was shared and Employee thought this was a HIPAA violation. Employee also recollected trying to find someone to cover for her after the incident so she could leave school and be seen by her family practice doctor. She recalled someone asking her why she needed to see her doctor "at that moment" and replying, "I had all that vomit and stuff in my mouth and I needed to go see my healthcare provider!" Employee shared she was vomiting and walking and throwing up trying to get "that taste" out of her mouth and she needed to be tested for tuberculosis, hepatitis and AIDS. Employee had already been vaccinated for hepatitis A and B, so she was only concerned about hepatitis C and HIV. Employee said when the blood tests came back negative her mind was cleared of those concerns. Dr. Sheorn attempted to elicit PTSD symptoms and asked Employee if she felt she had nightmares or flashbacks. Employee replied she had nightmares two or three times a week and flashbacks at night that made it difficult to sleep; however, Dr. Sheorn said Employee was unable to describe either. After conducting an interview, administering evaluations, and reviewing Employee's extensive medical record and depositions, Dr. Sheorn 's diagnostic impression of Employee's psychiatric mental health condition is:

> [Employee] does not have, and did not, by the records or her own report, have Posttraumatic Stress Disorder. She does have a significant and pre-existing personality disorder that is manifest by periods of functioning and periods of decompensation. The records are replete with documentation of [Employee] being chronically malcontent - at times becoming suicidal, unduly angry, irritable, or intolerant of her job, her mother, mother-in-law, sister, husband, and the parents at the school. The incident on September 23, 2014 is the most recent focus of her therapeutic attention, and this has become a diversion from the real problem -- which is her underlying mental illness and maladaptive ways of coping with stress. There is no causal connection from the work-related incident to her ongoing presentation of dramatic symptoms.

Dr. Sheorn said there is enough evidence in her clinical exam of Employee and the records reviewed to diagnose borderline personality disorder. However, Dr. Sheorn also found strong histrionic personality disorder elements based on Employee's "pattern of attention seeking behavior, extreme emotionality, and appears to have difficulty sustaining herself when the focus is not on her." To be diagnosed with histrionic personality disorder under the DSM-5, an individual must display a pervasive pattern of excessive emotionality and attention seeking,

beginning by early adulthood and present it in a variety of contexts, as indicated by five or more of eight criteria. Dr. Sheorn identified Employee has only three histrionic personality disorder criteria, which are: 1) Is uncomfortable in situations in which she is not the center of attention; 2) displays rapidly shifting in shallow expression of emotions; and 3) shows self-dramatization, theatricality and exaggerated expression of emotion. Dr. Sheorn concluded Employee shows stronger borderline personality disorder diagnostic elements and said:

> Her records document the typical long-standing history of unstable relationships, fear of perceived abandonment, irritable anger, chronic malcontent, and suicidality. The addition of the diagnosis 'Bipolar II' back in 2006 is a strong indicator that someone was thinking of borderline personality disorder. Dr. O'Leary has peppered his records with his concerns about Ms. Patterson's characterological structure and her character style. Dr. Glass stated that 'personality psychodynamics and psychosocial factors are involved past and present, and records reflect personality issues.' He stated that 'psychosocial factors including personality psychodynamics and her prior psychiatric issues along with past and ongoing dissatisfaction with elementary school nursing are the reason for her remaining off work and reporting symptoms.'

Dr. Sheorn summarized Employee's extensive medical record and commented that Dr. Wert's report did not mention Employee had any prior mental health diagnosis or treatment. She did find, however, that "Dr. Wert's assessment was congruent with both Dr. O'Leary and Dr. Glass."

> His testing of Ms. Patterson showed the 'enduring and pervasive personality traits that underlie this woman's emotional, cognitive, and interpersonal functioning.' He highlighted her 'more habitual and maladaptive methods of relating, behaving, thinking, and feeling.' Specifically, the scoring noted her passive dependency and her anger toward others who 'fail to appreciate her need for affection and nurturance.' She was dysphoric, insecure, and had fears of abandonment. She would grow anxious over trivial matters, and had catastrophic anticipations. Dr. Wert saw her as affectively unstable, cited her poor self-image as suggestive of borderline pathology, and diagnosed her on Axis II with Borderline, Dependent, and Avoidant personality features or traits.

To receive a borderline personality disorder diagnosis, five of nine criteria must be met. Dr. Sheorn determined Employee met seven of the nine criteria. Specifically, she met: 1) Frantic efforts to avoid real or imagined abandonment; 2) A pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealism and devaluation; 3) Identity disturbance: markedly and persistently unstable self-image and sense of

others; 4) Recurrent suicidal behaviors, gestures, or threats or self-mutilation; 5) Affective instability due to a marked mood reactivity; intense episodic dysphoria, irritability, and anxiety, usually lasting for only a few hours, rarely more than a few days; 6) inappropriate, intense anger or difficulty controlling anger (frequent displays of temper, constant anger, physical fights); and 7) Transient, stress-related paranoia ideas or severe dissociative symptoms. Dr. Sheorn said Employee's work incident "flashbacks" "do not do not fit the pattern of a traumatic flashback, and are instead the typical regressed psychotic illusions that occur in borderline personality disorder"; fulfilling the seventh criteria.

> Some of the other clinical signs of this disorder are Ms. Patterson's defense mechanisms (Dr. O'Leary mentioned the need to reduce projective identification), her inability to conjure up a visceral image, and a dramatic affective instability. As far back as 5/3/07, Mr. Grasser documented that Ms. Patterson's primary identified problem was mood instability. Newer research has shown that this pattern of such an unstable mood is predictive of borderline personality disorder, just as its absence is clear evidence that disorder is not present.

Therefore, Dr. Sheorn concluded Employee's diagnosis is borderline personality disorder with histrionic traits. She said, "Dr. Glass' use of the old DSM IV-TR is still consistent with the DSM-5 and these opinions are congruent." She also said, "Dr. Glass' overall testing did not indicate PTSD or any other Axis I disorder." Dr. Sheorn's diagnostic evaluation also clarified she could not make a PTSD diagnosis. Under the DSM-5, there are eight criteria that must be analyzed before making a PTSD diagnosis. The first, Criteria A, is a "stressor," and Dr. Sheorn acknowledged Employee's September 23, 2014 work incident was catastrophic and could qualify as a "stressor." However, Dr. Sheorn said, by Employee's own description, she did not respond with intense fear, helplessness, or horror to the student's situation. "In fact, she has been consistent in describing, and bragging publically, that she was not helpless during the child's collapse and that she was able to provide her best first responder emergency care and deliver him to the EMTs. Therefore, Criteria A is not met." The second, Criteria B, involves "intrusion symptoms." Dr. Sheorn also found Employee does not satisfy Criteria B because "she has not avoided the target incident. What she is avoiding is returning to work." Dr. Sheorn noted the reason Employee gave for resigning from her school nursing job is "she wants to avoid being put in a position to medically help a child because she does not want to expose herself again to someone else's body fluids." However, contact with the student's vomit, blood, and salvia while

performing CPR did not cause Employee any "true harm or threat of harm." Dr. Sheorn said it merely caused a "what if" situation. "What if she contracted Hepatitis C? What if she contracted AIDS? These were future events of [Employee's] own imagination, and had nothing to do with the actual situation that had happened. PTSD is a disorder of memory, not of fantasy." Dr. Sheorn found Employee's stress, abhorrence, and over-reactivity symptoms fall into the hysteria category satisfying one of the borderline personality disorder criteria -- "transient, stress-related paranoia ideas or severe dissociative symptoms." The example Dr. Sheorn referred to was Employee's report she screamed at the child and God to leave her alone while kicking the child's head, which is a volleyball, under the bed. Dr. Sheorn said Criteria H, which requires the disturbance is not attributable to another medical condition, further clarifies Employee does not have PTSD. Dr. Sheorn identified "that other condition" in Employee's case is malingering. She said:

> [Employee's] score on the SIMS malingering inventory was quite elevated. She was quite careful not to present herself with limited intelligence or as psychotic, but she highly endorsed illogical symptoms of neurologic impairment, impaired memory, and a disturbed mood.
>
> Malingering can take several forms, the pure form which is simply making up symptoms. The second form is called partial malingering when the person has some symptoms but exaggerates them and the impact they have. The third form, the category of [Employee's] malingering, is called false imputation. This is when the person has valid symptoms but attributes them to a compensable cause, rather than to the true source. An example of this would be when [Employee] complained to Dr. O'Leary about being 'chastised' at work and that a secretary had been 'bitching at' her. Dr. O'Leary stated that [Employee] was now suffering 'secondary trauma' from a lack of emotional support from the school district. This illuminates the iatrogenic weight added to [Employee's] symptoms. She may, indeed, have some anxiety, disordered thinking, and behavior, but it is not causally related to the incident of September 23, 2014. Instead, her symptoms are related to her personality structure and to secondary gain.
>
> Ms. Patterson stated that her fears were assuaged when her blood test results were returned negative. And yet she still exhibits a visceral horror at the memory of having vomit and saliva in her hair, on her face, and in her mouth. Her affect and thought processes collapsed while she was describing her vision of the child's head as a soccer ball. While there is a large component of malingering in this case, this momentary psychotic deterioration would be difficult to manufacture for secondary gain. Even generating the thought requires a psychotic interface -- much less if [Employee] actually acts them out in the privacy of her bedroom late

> at night. This symptom is strongly related to the severity of her personality disorder.

AS 23.30.010(b) was quoted to provide Dr. Sheorn the criteria for determining if a mental injury caused by mental stress is compensable. Applying this standard, Dr. Sheorn opined the September 23, 2014 incident did not cause Employee to suffer a mental health injury, but stated, "[I]t must be remembered that [Employee] herself later alleged that she felt accused as negligent in the death of the student and this was a 'primary factor in causing her PTSD.' She also contended that the estate's litigation and the Employer's attempt to assign blame and culpability to her triggered PTSD symptoms. She contended that the attorney for the estate triggered her PTSD symptoms." Despite Employee's contentions, Dr. Sheorn indicated none of these factors meet PTSD Criteria A. Dr. Sheorn also said, "The requirement to perform CPR certainly would not be considered an extraordinary or unusual task for a licensed RN. She had been trained and certified in this skill. The skill itself and the requirement to perform this task should not be confused with the extraordinary or unusual calamity that befell the child." Dr. Sheorn opined the work stress occasioned by the September 23, 2014 events did not cause a work-related mental health injury. "[Employee's] personality organization and her poor coping skills are the cause of her symptoms." Determining Employee did not sustain a mental injury, Dr. Sheorn determined the question regarding mental stability was not applicable and Employee did not sustain an impairment. Dr. Sheorn opined no treatment Employee received has been related to any mental injury from the September 23, 2014 incident. However, she found a review of Employee's treatment necessary "because when a patient is not getting better, then either the diagnosis is wrong or the treatment is wrong." Dr. Sheorn believed Dr. Odland attempted to treat Axis II symptoms using Axis I techniques. She said:

> The mood and cognitive symptoms of a personality disorder rarely respond to antidepressants, antipsychotics, or anxiolytics. The use of benzodiazepines is contraindicated for use in someone who has borderline personality disorder in that it disinhibits someone who is already labile and disinhibited. The early records document her stimulated reaction to these drugs. The anticonvulsant can dampen some of the reactivity, but the providers' perpetuation of the addictive sleep agent Sonata is inappropriate. This drug is to be used only short-term and in the most minimal dose possible. Not only has it been continually prescribed for at least ten years now, the dose is escalating and has just again been doubled to 40mg. The maximum recommended dose is 20mg -- at which level it is to be tapered and discontinued if used for a long period of time. Rather than doing that, Dr. Odland

> has approved 40mg, according to [Employee]. [Employee's] 'diagnosis' of sleep fragmentation disorder is much more likely than not caused by the interruption of REM sleep by the benzodiazepines and Sonata. To continue to not only use, but increase the dose, of the very drugs that are causing the problem is circular and below the standard of care.

Dr. Sheorn opined treatment Employee received from Dr. O'Leary's was elective and in no way connected to a work event. Dr. Sheorn believed Dr. O'Leary should have had some sense of Employee's personality disorder and "been on high alert for her histrionic trait of assuming the relationship is more intimate than it was." While Employee "may have felt comforted by him, and he may have felt that his wish to have private communication with her *(no-notes-nothing-never);* amend her chart and let her peruse the change; or collude with her to deceive the Board of Nursing was somehow in her best interest, he never-the-less violated her boundaries." Dr. Sheorn also found Dr. O'Leary's quick termination of the counselor patient relationship via email was below the standard of care, "especially after allowing such a disturbed patient who had issues with abandonment to have such personal contact with him. It is of concern that, in the abrupt termination, Dr. O'Leary used bullying tactics, manipulation, and outright threats to [Employee's] already impaired self-esteem in an attempt to coerce her to block the subpoena of his office records." Dr. Sheorn determined that, based upon Employee's own statements, "she is functioning at a level high enough not just to care for herself, but to care for fragile others 'like a regular nurse would.' She is able to intervene medically on an airplane, manage her household, her parent's household, and keep up with friends and her children. She described no functional limitation and appears to be cognitively and neurologically intact. There is no indication that these skills could not be applied to the workplace." Dr. Sheorn based her opinions upon a reasonable degree of medical certainty. (*Id.*)

101) On November 22, 2017, after learning the merits hearing was rescheduled for January 16, 2018, Mr. Harren notified Ms. Livsey he was training a new staff person, Kimberly Perkins, and requested Ms. Livsey send him "the dates you are calendaring relative to the new hearing it would be much appreciated. If the dates that Kimberly calendars in the meantime differ we will figure out the problem." (Mr. Harren's email to Ms. Livsey and Ms. Wright, November 22, 2017.)

102) On November 22, 2017, Ms. Wright forwarded Mr. Harren's November 22, 2017 email message to Workers' Compensation Officer Harvey Pullen with the following message:

> When you do the prehearing conference summary for the *Patterson v. Mat Su Borough School District* December 5, 2017 prehearing, could you please make sure you include all the hearing related filing deadlines with specific dates. Mr. Harren probably does not know what they are and he has a new staff person who definitely doesn't know them. Please also remind him to make sure he includes in his evidence copies of all unpaid medical bills. I am so sorry, but to assure the hearing is efficient and predictable, the EE and her attorney do need to be properly advised and educated.

(Chair Wright's email to Harvey Pullen, November 22, 2017.)

103) On December 5, 2017, the parties stipulated to serve and file witness lists and legal memoranda by January 8, 2018. Additionally, they stipulated to file evidence "in accordance with 8 AAC 45.060, 8 AAC 45.112, 8 AAC 45.114, and 8 AAC 45.120" by December 27, 2017. Parties also stipulated to file objections to evidence filed by the opposing party by January 5, 2018; and to a January 10, 2018 deadline to file deposition transcripts and Employee's attorney fee affidavit. (Prehearing Conference Summary, December 5, 2017.)

104) The December 5, 2017 prehearing conference was held 22 days before the hearing evidence filing deadline and 37 days before the attorney fees and costs affidavit filing deadline. (Experience; judgment; observations.)

105) On December 27, 2017, after 5:00 p.m., Employee's hearing evidence was filed electronically, which moved the actual filing date to December 28, 2017. (Employee's Notice of Filing Evidence for Hearing, December 27, 2017; Department of Labor and Workforce Development Commissioner's Order No. 001.)

106) On December 28, 2017, Employee filed 965 pages of evidence. (Record.)

107) On January 5, 2018, Employer requested all documentary evidence filed by Employee be stricken if filed after the December 27, 2017 evidence filing deadline established in 8 AAC 45.120(f) and the December 5, 2017 prehearing conference summary. (Petition, January 5, 2018.)

108) On January 8, 2017, Employee requested her hearing brief due on January 9, 2018, be accepted one day late. (Petition, January 8, 2018.)

109) On January 9, 2018, Employer filed its hearing brief. (Record.)

110) On January 10, 2018, Employee filed her hearing brief one day late. Employer waived any objection to the late filed brief. (*Id*.)

111) On January 10, 2018, Employee filed her hearing brief. (Record.)

112) On January 10, 2018, Designated Chair Wright contacted the parties to determine their availability for a prehearing conference to identify and simplify the hearing issues. The parties' filings indicated there were preliminary issues that could be dealt with prior to hearing and preserve hearing time for evidence presentation. (Experience; judgment; observations.)

113) On January 11, 2018, Mr. Harren answered and opposed Employer's January 5, 2018 petition and requested the late filed hearing evidence be included in the record. (Prehearing Conference, January 11, 2018.)

114) On January 11, 2018, Mr. Harren petitioned for an extension of time to file his attorney fee affidavit. (Prehearing Conference Summary, January 12, 2018.)

115) On January 11, 2018, the issues identified for hearing were: TTD (January 5, 2015 through February 6, 2015 and May 24, 2016 until Employee was medically stable); TPD (for every Wednesday afternoon Employee missed work while treating with Dr. O'Leary during the period February 9, 2015 through May 21, 2015); medical and transportation costs; interest; attorney fees and costs; and Employer's October 5, 2017 petition for payment of its attorney fees and costs, which the parties stipulated will not be further addressed at the January 16, 2018 hearing because Employee committed to pay this board ordered sanction if she recovers nothing at hearing and if she does recover, the parties stipulated the amount owed may be deducted from her recovery. A previously identified hearing issue was Employee's compensation rate adjustment claim. Mr. Harren had not used the division's online benefits calculator, nor had he formulated a contention regarding what the compensation rate should be. He agreed to the designee utilizing the online benefit calculator with the evidence currently in the record to calculate Employee's compensation rate. The prehearing conference summary states:

> The 10/24/2014 second report of injury, which is a compensation report, showed Employee's gross weekly wage is $1,558.62, which extrapolates to an annual salary of $81,048.24. The compensation rate for this gross weekly wage is $927.59. Neither the board's file, nor Employee's evidence contain Income Tax Returns or other evidence of Employee's earnings for the two years preceding Employee's injury. According to the available evidence, Employee's compensation rate has been properly calculated.

Employee's claim for compensation rate adjustment was not identified as an issue for hearing. (Prehearing Conference Summary, January 11, 2018.)

116) On January 12, 2018, Employee filed her attorney's affidavit of fees and costs. Fees for Mr. Harren as of January 10, 2018 were $66,400.00 for 166 hours of work at $400.00 per hour. Paralegal costs for Colleen Ouzts were $9,280.00 for 58 hours at $160.00 per hour. Litigation costs totaled $4,224.17, and did not include Dr. Wert's charge for evaluating Employee. The affidavit was signed by Mr. Harren on January 11, 2018; however, the certificate of service was not dated. The affidavit was received and date-stamped by the division on January 12, 2018. (Affidavit of Costs Including Paralegal Costs & Fees, January 11, 2018.)

117) On January 12, 2018, *Patterson v. Matanuska-Susitna Borough School District*, AWCB Decision No. 18-0005 (January 12, 2018) (*Patterson III*) issued. Employer's petition for exclusion of Employee's late-filed evidence was granted and Employee's request for leave to file her attorney's fee affidavit and costs bill late was denied. The parties had stipulated to a December 27, 2017 hearing evidence filing deadline, 20 days before hearing, which is the hearing evidence filing deadline under 8 AAC 45.120(f). *Patterson III* found Employer was not prejudiced by the late filing. On the other hand, Employee was not granted an extension to file her attorney fee affidavit and cost bill. *Patterson III* found the fee affidavit filing deadline was missed by two days and late filings by Employee's attorney had been a recurring event. Even though Mr. Harren's affidavit was filed four days before hearing, it was filed on a Friday, and it provided Employer only one working day to review because the Monday before hearing was a holiday. Good cause did not exist to extend Employee's attorney fee affidavit and costs filing deadlines and Employee's petition for a filing deadline extension was denied. (*Patterson III*.)

118) On January 13, 2018, Employee withdrew her claim for frivolous controversion, penalties, and for Dr. O'Leary's charges other than for reimbursement of his therapy sessions, which Mr. Harren said were "already paid in full." (Email from Mr. Harren to Workers' Compensation and Ms. Livsey, January 13, 2018.)

119) Employer's certified teaching staff nurse position is expected to provide comprehensive health services in accordance with law and Employer procedures for each individual student and includes the following relevant essential duties: 1) Provides temporary and emergency care to ill or injured students; 2) Provides crisis intervention determining need for emergency referrals and providing on-going follow-up. (Matanuska-Susitna Borough School District Certified Teaching Staff, Title: Nurse, Adopted PMH 01/22/03.)

120) Jacquelyn Ficek is a police officer in Wasilla and Palmer, Alaska. She met Employee in college; they were both enrolled to be school nurses. Ficek thought Employee was well-suited to be a school nurse. After the student choked, Ficek attempted to get Employee enrolled in some type of critical incident debriefing; however, because Employee was not a first responder, she could not be enrolled. Ficek said she had been a peer for critical incident debriefing, and involved in critical incident debriefings for deaths. She was aware Employee had appointments with several doctors, including Dr. O'Leary. Ficek is familiar with PTSD because her father is a Vietnam veteran. She observed Employee's behavior; Employee was focused on what happened and was traumatized by her memory of the incident and was scared. Ficek advised Employee to keep good notes and write everything down. She learned the student died and broke the news to Employee, who then started thinking about all the "what ifs" in the situation. When Employee returned to work for Employer, she was working fulltime at a school in Palmer. She had "new stress" that was different than when she worked at Iditarod. Ficek said Employee was placed on a plan to improve her performance when Lucy Hope evaluated Employee, but that Hope did not have direct contact with Employee. Employee felt animosity because of the plan. Ficek said Employee's decision to retire was a struggle; she wanted to make sure she had sufficient service years to vest. Since Employee's retirement, she is a changed person. Employee is more subdued, and avoids doing things, especially with children. For example, when Ficek was with Employee at Red Robin restaurant, a balloon popped and Employee "freaked out." Employee is withdrawn from doing things with family and friends. She is more timid. Ficek and Employee are best friends. (Ficek.)

121) Donald Patterson met Employee after he graduated from Bartlett High School and they were married four or five years later. Over the last 26 years, they have only been separated for less than two years and have lived together continuously for the past five years. Employee is Patterson's best friend. Employee was outgoing, compassionate, emotional and involved with children. When he came home from work, Employee told Patterson about the student's choking incident. She was anxious, withdrawn and concerned. Employee was devastated when the student passed away. She is slowly progressing back to the person she once was. Employee walked away from Employer because every working day she was reliving the trauma; she was physically and mentally exhausted. She does not do a lot of things she used to do, such as go around children. Patterson and Employee have been married and divorced twice; the second

time prior to 2014. Patterson said Employee is a very happy person; however, he did not deny her mental health history prior to 2014. Employee's bouts with depression have always been based upon life's events, although he is not aware or familiar with her medical records and has no medical training. He disagrees with the major depressive disorder diagnoses given Employee in 2004 and 2006 by a psychiatrist and mental health provider. He defers to his "personal opinion" and observations from living with her; he knows her only as a happy person, except for times when she has been depressed. Patterson was aware Employee had tried several antidepressant medications prior to 2007. Patterson said he was aware Employee was diagnosed with bipolar disorder in the late 2000s only because that is what defense counsel was reading. (Donald Patterson.)

122) Dr. Wert is a licensed psychologist in Washington and Idaho. He has a Bachelor of Science degree in psychology, a Master of Science degree in clinical psychology, and Ph.D. in counseling psychology. For the past 15 years, he has exclusively performed "court related" evaluations upon referrals from private attorneys and courts. Prior to the past 15 years, he had a clinical practice; he does not practice "clinically" any longer. Dr. Wert said one cannot do an assessment and then clinically treat an individual; it would be a conflict because an evaluator is supposed to be objective and a therapist serves as their client's advocate and acts accordingly. Dr. Wert's role in Employee's assessment was to perform an objective psychological evaluation. On April 14, 2017, Dr. Wert interviewed Employee for an hour and 50 minutes and administered an objective personality inventory and, prior to preparing his report, reviewed information provided to him by Mr. Harren including Employee's April 3, 2017 videotaped deposition, her speech transcript given at University of Alaska Anchorage on October 10, 2015, medical information from the Public Employee's Health Trust, email communications between Employee and Dr. O'Leary, the voluminous medical records from Providence Behavioral Health Group and information from the Alaska Department of Workforce Development regarding Employee. Dr. Wert reviewed the disorders with which he diagnosed Employee in his April 26, 2017 report. He ruled out adjustment disorder with anxiety, which is diagnosed when a person is going through some difficulties, typically as a result of an incident that generates anxiety or concern. Dr. Wert read the criteria to diagnosis PTSD contained in the DSM-5. He concluded she met Factor 1 because Employee was exposed to something traumatic and a child died within 10 days of the trauma. Factor 2 requires one or more intrusion symptoms and Dr. Wert found Employee had at

least four, intrusive recollections of the traumatic event, distressing dreams of the event, dissociative reactions of the event feeling like the event was happening again, and distress when exposed to "cues" that reminded her of the event. Dr. Wert reviewed Factor 3, persistent avoidance of the stimuli associated with the traumatic event, and said Employee met those criteria. He also said she met symptoms of Factor 4, negative alterations and cognitions and mood beginning or worsening after the traumatic event occurred. It is possible an individual could have "mood" issues prior to a traumatic event, but that would not rule out a PTSD diagnosis. An example of "worsening" is increased depression levels. Factor 5, is marked alterations in arousal and reactivity associated with the traumatic event, beginning or worsening after the traumatic event, and Dr. Wert said Employee met three of the symptoms, concentration problems, sleep disturbance and hypervigilance. He found her symptoms lasted more than one month so she met Factor 6. Dr. Wert diagnosed Employee with depression. He was not sure how long she had been depressed, but believed it was shortly after the incident on September 23, 2014. Dr. Wert would never diagnose someone he had not personally evaluated. If he had been told Employee was depressed in 2011, Dr. Wert would have no opinion about whether or not Employee was depressed unless she had told him she was. He said treatment of PTSD is somewhat controversial. Dr. Wert recommended cognitive behavioral techniques, such as prolonged exposure to the traumatic event where the person talks about the event over and over and over again until it becomes pedestrian to do it and as a result anxiety decreases. He also recommended eye movement desensitization and reprocessing, which requires specialized training but he is aware not many psychologists have that special training. (Dr. Wert.)

123) Debra Haynes has been a licensed therapist since 2009. She serves as a mental health counselor in both private practice and for the Employer. She is not a medical doctor, nor does she have a Ph.D. She has a master's degree in counseling. She had her first intake with Employee on June 13, 2017, upon referral from Dr. Odland. Later, when Employee shared Dr. Wert's report with Ms. Haynes, she "read it to get some outside information." Ms. Haynes said getting "other evaluative information" was helpful to understand Employee's history. Ms. Haynes received a copy of Dr. Sheorn's report, which contained a review of Employee's treatment from 2004 through 2013. She did not, however, have a copy of Dr. Glass' report, did not have Jeff Gasser's, Dr. Odland's, Ellen Halverson's or Providence Behavioral Medicine Group's treatment records for Employee. Ms. Haynes did not confer with any of Employee's

medical providers. She saw Employee six times for one hour sessions; their last session was on December 16, 2017. Ms. Haynes diagnosed Employee with PTSD based upon Employee's self-report. Employee's completed Ms. Haynes "client intake form" and listed her symptoms. Ms. Haynes said Employee sought an evaluation and treatment for PTSD. Ms. Haynes said she is a short-term solution-focused therapist and Employee's request for an evaluation and treatment for PTSD "does not necessarily mean that was medically justified." Ms. Haynes believed Employee suffered from PTSD from their initial visit and does not know it is completely resolved. Employee had nightmares and a startle response. However, by December 2018, Employee's self-reporting on the Scott Miller self-rating report indicated Employee was feeling better. Ms. Haynes does not think employment was the cause of Employee's PTSD; she believes the incident at work caused Employee's symptoms. Calling 911 when a student is choking is the appropriate course of action whether the call is made by a school nurse or another staff member. (Haynes.)

124) Susan Magestro, has a bachelor's of science degree in criminology and a master's degree in "teaching." She met Employee during the summer of 2012, when Employee enrolled in a conference facilitated by Ms. Magestro. Employee also enrolled in three more conferences with Ms. Magestro in 2013. In June 2015, Employee informed Ms. Magestro she had been placed on a plan for improvement. Ms. Magestro learned of the incident involving the student and was surprised Employer would place Employee on a performance improvement plan. Ms. Magestro asked Employee to speak at two conferences. A December 2016 course was attended by nurses and after Employee spoke on resiliency and overcoming diversity, the nurses gave her a standing ovation. After Employee's presentation, she and Ms. Magestro have not had contact. Ms. Magestro reviewed Dr. Sheorn's report a few days before testifying. She admitted she does not give mental health diagnoses. She "works" with victims after they have received a diagnosis. Her work focuses on victims of violence and crime. She did not know Employee prior to the spring of 2012 and found her "very different" in June 2015. Ms. Magestro said Employee displayed "more anxiety" and was "more nervous." Employee "stroked a dog quite a bit." Ms. Magestro is not a medical doctor, an advanced nurse practitioner or a licensed psychologist. If a student is choking, she considers it the school nurse's job to respond and that requesting someone call 911 is the standard. Ms. Magestro has never supervised Employee's work for Employer. (Magestro.)

125) Kristy Johnson is Dr. Johnson's wife. Mrs. Johnson met Employee when she worked as a nurse with Dr. Johnson at Providence Behavioral Medicine Group. Mrs. Johnson believes Employee is "lovely" and "cares deeply about everything." Mrs. Johnson recalled Employee being super excited about starting her job at Iditarod Elementary, but does not recall when that was. After the incident with the student, Mrs. Johnson recommended Employee see Dr. O'Leary. Mrs. Johnson and Employee are very good friends; Employee assisted with Dr. Johnson's care when he was placed in palliative care. Mrs. Johnson said that although leaving the job was difficult for Employee, she had to leave her job with Employer because she had flashbacks and was traumatized by memories, which made her job emotionally draining. Mrs. Johnson believed the traumatic memories of the student's death were harder for Employee because she is a sensitive person. (Kristy Johnson.)

126) Jake Worden was Employee's foster child who lived with her and Mr. Patterson since 2002, when he was 12 years old, but has lived with them "permanently" since 2007. He graduated from high school in 2009. He recalled Employee being excited to get a fulltime job at Iditarod Elementary School and "it didn't bother her, she was fine with it" being around elementary kids. After the incident with the student choking, Employee called Mr. Worden and she sounded "very not well." She was frantic "she was not there emotionally or mentally." Mr. Worden said his mother went to see Dr. Odland after the incident because she needed to talk to someone and she was worried. He said his mother does not try to be the center of attention; she wants to know everything about everyone else; she is more interested in meeting new people and not being secluded. Before the incident, she was willing to go out and do things. Now, she stays at home in her room. He believes she joined the car club in 2015, but is not sure of the date. He said she joined it to meet new people and be less secluded. (Worden.)

127) Dr. Sheorn is a psychiatrist and during her residency studied personality disorders. She was first licensed in 1985 and maintains an active practice focusing almost exclusively on PTSD. About 20 percent of Dr. Sheorn's practice is conducting independent medical forensic evaluations. She served as Employer's medical evaluator and evaluated Employee on October 24, 2017. Dr. Sheorn submitted a report to Ms. Livsey earlier than December 23, 2017; however, Ms. Livsey contacted Dr. Sheorn and asked about the report's omission of Employee's records from 2004 to 2008. Dr. Sheorn explained she had reviewed Employee's pre-morbid records and summarized them on another document and failed to attach the document to her

report. She included them in the second December 23, 2017 report, which was filed on December 26, 2017. Dr. Sheorn was not asked to, nor would she permit her opinion to be altered by Ms. Livsey. (Dr. Sheorn.)

128) Mr. Harren and Employee's dog, Baloo, accompanied Employee to her evaluation with Dr. Sheorn. Dr. Sheorn would not permit Mr. Harren to attend the evaluation, nor would she permit Employee to record the interview because any kind of observation or taping could distort the evaluation. (*Id.*)

129) Dr. Sheorn was under no time constraints and spent two hours interviewing Employee. Dr. Sheorn commented "as far as [PTSD] Criterion A, what Employee witnessed, was exposed to, and the level of trauma, can be heavily debated." Dr. Shorn explained the concept of "dosage exposure," which refers to how close a person was to a victim who dies or who was injured. Dr. Sheorn said Employee did not know the student or his name when the incident occurred, and was exposed to the trauma for only a brief period of time. Dr. Sheorn said even if the trauma met Criterion A, that this was an unspeakably catastrophic event, Employee was unable to describe for Dr. Sheorn, nor could she find in Employee's records, a description of what the trauma was. Dr. Sheorn said she was very specific in asking Employee, "What was the worst part of this for you?" and Employee did not have the language to describe what it was. Dr. Sheorn acknowledged a child died and was not dismissing that; however, she said PTSD is a disorder of memory and Employee was unable to tell Dr. Sheorn what it was that was stuck in her soul. Dr. Sheorn further explained PTSD is a haunting by something, but Employee could not describe what was haunting her. Dr. Sheorn pressed Employee to tell about a flashback; it was nothing Dr. Sheorn had ever heard before when patients would describe PTSD. She opined what Employee described "was a near psychotic episode of revenge." Dr. Sheorn could not find anywhere in Employee's record her description of a nightmare, of a flashback, of what the trauma is, of what Employee is avoiding, or to what Employee has a startle response. She did not witness any of those PTSD signs when interviewing Employee, nor did Employee describe any of those symptoms. Dr. Sheorn noted Employee could recite the PTSD symptoms checklist, but when probed further, Employee did not manifest any of the PTSD signs or symptoms. Employee did not have the visceral reactivity that goes along with PTSD. Dr. Sheorn pointed out Dr. Wert's testimony recited the PTSD criterion, but he also was unable to describe what Employee's symptoms were and what signs he observed. Dr. Sheorn said the PTSD symptoms

checklist is available online and the DSM-5 is available at Barnes & Noble. Employee's description of a "flashback" was kicking student's head under the bed. Employee reported to Dr. Sheorn she had "flashbacks" all the time, especially at night when she was trying to go to sleep. When Dr. Sheorn asked Employee to describe her flashbacks, Employee smiled, which Dr. Sheorn found disconcerting, "because at that point most people are crying, hyperventilating, or looking around furtively, gasping or rocking." But, Employee smiled; she was very calm and said, "It is a head and its oozing oil from all its orifices, no matter what I do." Dr. Sheorn said Employee then got really energized and reported she puts Legos and Harry Potter books under the bed, yelled at the head and yelled at God. When Dr. Sheorn asked Employee where she was seeing the head, Employee got irritable and said she was above the head looking down, and was doing CPR. Dr. Sheorn reported Employee then got energized again, laughed, and said when the soccer ball would roll under the bed Employee didn't want to sleep on the bed with it under there. Employee said that is why she put the children's toys and books under the bed; things they can play with. For Employee, the head was a 10-year-old. Then Employee said she attempted to make a wooden block around the side and in front of her bed to help prevent the head from rolling out. When she traveled, she would sleep on an air mattress. Employee's history, symptoms and the report she provided, according to Dr. Sheorn, is not at all indicative of PTSD, but rather borderline personality disorder. Those with borderline personality disorder become stressed, can get almost psychotic, have delusions, get paranoid, and say things that are quite distorted. The "pre-psychotic" episodes do not last very long but are one of the hallmark symptoms of borderline personality disorder. Dr. Sheorn explained properly diagnosed PTSD, in a lay person's terms, is something unspeakable happens, cataclysmic, and the person does not have the ability to understand it was real, or what happened. Part of the event, not everything, but part, gets filed away in a different part of the brain. It is not filed away in memory; it is filed away in a primitive, unconscious part of the brain. An individual then spends a lot of time not thinking about the event, which is avoidance. A great amount of time and effort is spent not allowing the unconscious to become conscious. Although an individual does not want to think about the event, thoughts bubble up anyway. If people do not think about it, they then have nightmares and flashbacks. Flashbacks are an actual reliving, real-time, as if the event were happening, and people have no awareness of where they are. Dr. Sheorn said PTSD is a catastrophic mental illness and although it is thrown around nonchalantly, in reality it is a "very,

very terrible mental illness." People expend a great deal of energy not thinking about an event and not remembering and that is why the DSM-5 addresses changes in how people feel, how they think, their mood changes, that they become disengaged, feel bad about themselves, blame themselves and blame other people. Memories are buried unconsciously and, therefore, people do not have all PTSD symptoms at once. They just have some symptoms and people tend to fall into different clusters. Dr. Sheorn added that it is very treatable. (*Id.*)

130) Dr. Sheorn heard Dr. Wert testify and reviewed his report. Her findings and conclusions are different than his. She said Dr. Wert got a sound social history from Employee, but nothing in his report indicates he read Employee's medical records or Dr. Glass' report. Dr. Sheorn said what Dr. Wert was described with Employee and CPR is not PTSD; he describes a phobia, which is very different. Employee has specific fears about being back in school and doing what school nurses do. Dr. Sheorn was critical because Dr. Wert arrived at the PTSD diagnosis from Employee's self-report. He gave Employee the MCMI III inventory, which bases a PTSD diagnosis on DSM-IV, not DSM-5. She said it does not analyze data and computer interpretation and scoring are no longer provided because it is outdated. Dr. Sheorn found it clear from his report that Employee exaggerated some of her responses. For example, by Employee's self-report, she checked all symptoms on the PTSD checklist. Dr. Wert went through and selected the ones he thought Employee truly had. Dr. Sheorn found no evidence in Dr. Wert's report that indicates how he arrived at the PTSD diagnosis; Dr. Sheorn believes it was based solely upon Employee's self-reporting and opines that is not adequate. (*Id.*)

131) Based upon review of all medical records, reports, and her exam of Employee, Dr. Sheorn determined Employee has never had PTSD. She diagnosed Employee with no other mental health or mental illness disorders due to the student choking. She agrees with Dr. Glass that all Employee's mental health diagnoses and disorders pre-existed the September 23, 2014 work incident. (*Id.*)

132) Employee reported to Dr. Sheorn she felt she handled the choking incident appropriately; she was proud of her response, of her recertification and of her presentations. Employee did not think she mishandled the incident in any way and Dr. Sheorn concurred. (*Id.*)

133) Dr. Sheorn commented Dr. Glass saw Employee three months after the work incident, administered the MMPI-2, and determined Employee had modest histrionic psychodynamics. Dr. Sheorn agreed and explained when an individual has histrionic traits, they need to be the

center of attention and become very unhappy when they are not. Dr. Sheorn referred to Dr. O'Leary's remark that Employee made this event about herself. She said Employee's personality style is immature, dramatic, and she has made persistent efforts since the student's choking incident to make this about her and not about the child, other students, or the family. Dr. Sheorn concluded Employee met enough criteria to be diagnosed with borderline personality disorder with histrionic traits. She opined Employee's borderline personality disorder diagnosis is not caused by stress at work; the diagnosis goes back to before Employee's age of attachment, which is before age two. She explained that bipolar and borderline personality disorders are synonymous and noted Employee has also been diagnosed with major depression, but not as a primary diagnosis. Employee's 2000 records revealed she had difficulty functioning at work and at home, which Dr. Sheorn said is consistent with borderline personality disorder. (*Id.*)

134) Employee's histrionic focus on the event made it seem more traumatic than it actually was. Dr. Sheorn acknowledged the event was dramatic; however, not dramatic enough to cause psychotic mental illness. She does not believe Employee met criteria A, but would not argue that, and moved on to criteria B. Dr. Sheorn emphasized Employee was not able to describe intrusive symptoms. Employee said she had flashbacks, but was unable to describe what those were and Dr. Sheorn found no reports that described the flashbacks. Dr. Sheorn determined Employee did not meet criteria C, which is avoidance. Dr. Sheorn said, Employee is "certainly not avoiding thinking about these things; she's been talking about it nonstop since the event happened." Dr. Sheorn noted that Dr. Johnson spent a couple of hours on the phone with Employee talking about it and Employee gave public presentations about it, she wrote about it, and she talked to a therapist about it. Dr. Sheorn noted criteria C requires an avoidance of trauma related external reminders and that Employee did not want to go back to the school. Regardless, Dr. Sheorn said there is a big difference between a bad memory and PTSD. Dr. Sheorn said it was understandable Employee might not want to go back to the school and may be worried another child is going to code; however, PTSD is a psychological fear, not a fear of doing a job because it may go badly. Dr. Sheorn noted there is a difference between avoiding the intrusiveness of the event and Employee avoiding her job. She observed Employee did not want to go back to work and had a long documented history of not wanting to be there. Employee did not want to work with small children anymore; she wanted to work in a high school and she did not want to be judged by people. Employee's terror was being held accountable and being sued.

Dr. Sheorn said Employee's fear she was going to be named in a wrongful death suit was her "PTSD." However, Dr. Sheorn discerned that was a potential future event and PTSD can only be based on a real memory. Employee had a fear of what would happen in the future if she was taken to court, sued or held responsible for the student's death. Dr. Sheorn determined that was Employee's primary fear. However, that did not happen; it was a fantasy, not PTSD. Dr. Sheorn acknowledged it may have been a real fear for Employee; however, a "what if" scenario is not PTSD, it is anxiety. (*Id.*)

135) Dr. Sheorn agreed with Dr. Glass' opinion Employee was able to return to work as a school nurse if she chose to do so and that she was capable and well trained. She absolutely agreed with Dr. Odland's unrestricted release for Employee to return to work in mid-February 2015. Dr. Sheorn also agreed with Dr. Odland's October 2016 letter acknowledging Employee had mental health issues; however, she was dealing with them appropriately and could work as a school nurse. Dr. Sheorn entirely agrees with Dr. Glass' and Dr. O'Leary's recommendations Employee may benefit from continued mental health treatment, not on the basis of the work incident, but based on Employee's underlying mental health conditions. Dr. Sheorn emphasized the need for therapy is not at all related to the September 23, 2014 work incident. (*Id.*)

136) Dr. Sheorn opined Employee's premorbid condition, specifically 10 years treatment for bipolar disorder and major depressive disorder, were not significant in her reaction to the work incident and "did not predispose her to have this kind of reaction to develop PTSD." (*Id.*)

137) Dr. Sheorn reviewed Dr. O'Leary's treatment records in their entirety and is critical of his treatment of Employee. She noted Employee's boundaries have been violated frequently first by Dr. Halverson because Employee was a patient and then her employee; second, by Dr. Johnson because Employee worked for him and then became a friend; and by Dr. O'Leary because he offered open communication, engaged in off-color jokes and the familiarity between him and Employee was not therapeutic for somebody who already had trust issues and a long history of reacting to her perceptions of abandonment. Dr. Sheorn found Dr. O'Leary bullied and was unkind to Employee. When Dr. O'Leary "walked out" on Employee, Dr. Sheorn found this below the standard of care. Dr. Sheorn said Dr. O'Leary certainly understood some of Employee's pathology, but he did not do the right thing for her. Dr. Sheorn anticipated Dr. O'Leary's treatment of Employee made her feel awful. Notes Dr. Sheorn reviewed from Ms. Haynes indicated Employee was feeling bad about herself. (*Id.*)

138) Dr. Sheorn was aware Employee did not know the student who choked, but a kind person, like Employee, may feel bad about a child's death. PTSD, however, does not discriminate and it does not matter if a person is nice or not nice. Dr. Sheorn said it would have been a heavier weight for Employee had she known the student and noted Employee's exposure was no more than five minutes. (*Id.*)

139) Employee discussed nightmares with Dr. O'Leary and prepared and submitted a document to him, which contains 13 items on lists and includes her fear of sleeping at night because she has thoughts of the student's head. (Employee.)

140) The only document which resembles a list composed by Employee in the medical record was filed on Employer's December 7, 2016 medical summary. This medical summary contains a complete copy of Dr. O'Leary's medical chart, including photos, emails and other documents Employee provided to Dr. O'Leary. One document is entitled, "Nightmares/Bad Dreams that I can remember having since 9/23/14." Employee's reported nightmares are as follows:

> 1) Student's head and only his head, no body, face is blue, his eyes are shut and his mouth/nose are oozing with vomit, blood, pink foamy air bubbled secretions and I'm trying to clear out his mouth and nose but no matter how hard I try to clear them out they keep filling up and I can't get an airway to give him oxygen via mouth to mouth.
>
> 2) Student's head and only his head, no body, face is blue and mouth, nose, eyes, and ears are all oozing with an oily/black looking slime and I keep trying to clear/empty the mouth, nose, eyes, and ears but the slime never stops coming for me to be able to give him oxygen via mouth to mouth and I keep getting the slime in my mouth and trying to wipe it off with the back of my hand from my face and it starts filling up my mouth and I start choking and can't breathe.
>
> 3) Giving some of my younger students mandated health screenings and I'm measuring their heights and weights but instead of the numbers on the scales for height and weight being numbers they are in some weird symbols. And I can't understand the symbols so I have to ask the students what the symbols mean and I can't figure out how to write these symbols down or translate them. The kids are all making fun of me and calling me, "A dumb nurse."
>
> 4) Went out on the playground to help a student who had fallen off the slide on their head and instead of giving them cervical spine support, getting help and doing a "90 second appraisal" I just grab the kid up and carry him inside the building to the nurse's office and they become paralyzed because I made them get up and run in with me.

> 5) Walked back into building (school/work) after being absent on medical leave and the teachers/staff, parents and students are all lined up in the school entry way and halls leading to my office. They all have books (the ones I read about in an email that were donated to our school by Life Alaska Donor Services) and everyone starts throwing the books at my head and body and screaming "killer"!

(Undated "Nightmares/Bad Dreams that I can remember having since 9/23/14," December 16, 2015 Medical Summary, chronologically between October 14, 2015 and October 16, 2015 Email Psychotherapy Appointments, Dr. O'Leary.)

141) Employee's mileage log records her transportation from January 5, 2015 through November 9, 2016, with 3,348.6 total miles. (Employee Shannon K. Patterson's Mileage Reimbursement, December 8, 2016.)

142) At the January 16, 2018 hearing's conclusion, the parties were reminded an issue for hearing was compensability under AS 23.30.010(b). The parties were asked to focus their closing arguments beyond compensability on TTD from January 5, 2015 through February 6, 2015, and May 24, 2016 until medical stability. The parties were asked to point out the medical records that support their respective arguments regarding TTD during those periods. The parties were also asked to focus on TPD from February 9, 2015 until May 21, 2015, every Wednesday afternoon Employee missed work to treat with Dr. O'Leary. Parties were advised if Employee's claim is found compensable, her medical expenses are well documented in Employee's Exhibit 2. The parties were also asked to brief Employer's request for Dr. Wert's report and testimony to be excluded under *Phillips v. Biliken Investment Group, Inc.*, AWCB Decision No. 14-0020 (February 19, 2014). (Record.)

143) On January 19, 2018, Employer filed its closing arguments and requested Employee's claims be denied and dismissed in their entirety contending Employee failed to prove any claim for additional benefits. Employer notes at the final prehearing conference before hearing, held on December 5, 2017, Employee confirmed she was asserting a claim for TTD from January 5, 2015, the last day for which she was paid time loss benefits, through February 6, 2015; and from May 24, 2016, when Employee resigned from her job with Employer, until she was medically stable; and TPD from February 9, 2015, when Employee returned to work, through February 21, 2015, the school year's end; medical and transportation costs; interest; and attorney fees and costs. Employer contends Employee did not identify the date she was medically stable. It contended, at the January 16, 2018 hearing's conclusion, Employee asserted an entirely new

claim for a "physical-mental" injury, based upon Employee's contact with the choking student's vomit. Employer contends Employee has no physical injury because she was tested for and found to be free from any pathogen exposure or related illnesses and the record is devoid of any shred of evidence Employee suffered a physical injury from the September 23, 2015 work incident. Moreover, Employer contends Employee explicitly waived any claim for physical injury or illness in response to a direct question in her April 3, 2017 deposition testimony and is bound by her response given under oath. Employer contends Employee is not entitled to the presumption of compensability because she "has asserted only a pure mental-mental claim: a claim for a mental injury caused by mental stress" and her claim fails for lack of proof. In addition to proving her work stress was extraordinary and unusual in comparison to pressures and tensions experienced by other school nurses in a comparable work environment and that work stress was the predominant cause of the mental injury, Employer contends Employee must produce medical evidence to support her time loss claims for both TTD and TPD, as well as prove her claims to medical treatment and related mileage. Employer contends Employee's friends' and family's testimony is insufficient. Employer contends Employee devoted her entire presentation of evidence attempting to prove a PTSD diagnosis, and failed to produce medical evidence supporting her claims for time loss and medical treatment under the required legal standard. Employer contends Employee failed on each prong of necessary proof; specifically she failed to prove she has a compensable mental injury, that she was unable to work and was not medically stable, and that mental health treatment was reasonable and necessary. (Employer's Written Closing Argument, January 19, 2018.)

144) Employer requested note be taken that Employee resides in Wasilla, Alaska, not Spokane, Washington where Dr. Wert practices. Employer contends Employee offered no reason why she would be seeking medical treatment in Spokane. Employer contends through Dr. Wert's admissions at hearing it is clear he is not a treating physician; does not know Dr. Odland, nor has Dr. Odland referred any other patient to him; and although he received some materials along with the request to evaluate Employee, he did not believe they came from Dr. Odland; he was not given all Employee's records; and he has no role in this claim allowed under the Act. Employer contends the referral from Dr. Odland to Dr. Wert is a sham, intended to avoid the plain language and intent of the Act. Further, Employer contended Mr. Harren, in marked contrast, is known to Dr. Wert because Mr. Harren has referred a number of his other clients to

Dr. Wert all for the purpose of preparing reports for litigation purposes. Based upon his testimony, Employer contends Dr. Wert had no intention to provide psychological treatment to Employee; has never spoken to Dr. Odland; and did not address his report to Dr. Odland. Employer contends Dr. Wert is an impermissible "plaintiff expert." Employer contends Dr. Wert's testimony, and confirmation Employee paid for his evaluation as a litigation expense, make it clear Dr. Wert has no role in providing reasonable and necessary medical treatment to Employee. Employer contended Dr. Wert is a medical expert retained purely for purposes of litigation, contrary to the Act and to prior decisions, and his report and testimony must be excluded. Employer contended Dr. Wert's report and opinions should not be considered for any purpose under *Phillips v. Biliken Investment Group*, AWCB Decision No. 14-0020 (February 19, 2014. (*Id.*)

145) On January 22, 2018, Employee filed her closing arguments and reiterated her hearing arguments. She drew attention to her hearing brief, which "chronicles aftershock, after aftershock, after aftershock" and contends this "unending series of shocks" is ignored by Employer in its briefs, citations to a school nurse's duties, and its attempts to distill Employee's exposure down to a three to four minute event. Employee asserted the "whole incident" from the moment she was called from her office until the paramedics life-flighted the student to Anchorage "was about 20 minutes." In 1997, Employee's mother in law died from hepatitis C and Employee contended, after the September 23, 2014 incident, she frequently worried she had contracted hepatitis C when she had contact with the student's bodily fluids. Employee contended she "demonstrated her strength of character and responsibility to herself by sticking with her job long enough to protect her retirement investment." Employee contended remaining in her school nursing position exhausted her and left her with little time or energy for herself or for "immediate gratification." Employee contended her "pleasure in submitting her resignation reflects her sense of accomplishment in having met her goal of not being fired, or not retained, and vesting in her retirement." Employee contends two things have helped her improve. The first is resolution of the lawsuit against Employer, which Employee contends eliminates her need to testify regarding "those 20 minutes, and the post tragedy interactions / investigations." The second is Employee's establishment of a business she contends "will fully insulate her from the threat of responsibility for child's choking or other emergency." Employee contends Drs. Glass' and Sheorn's reports are not complete, timely, fair or accurate. Employee contends if Dr. Glass'

report is compared to her transcript of his interview, details "from the typewritten transcript, such as the '20-minute time of crisis' and activities of paramedics to avert a tracheotomy and clear the airway cannot be found to have been reported to any other caregiver." Employee contends Dr. Glass did not have much of Dr. O'Leary's file. Dr. Sheorn had Dr. O'Leary's record in its entirety; however, Employee contends Dr. Sheorn "does not appear to have read it in much detail." Employee's closing arguments did not address TTD from January 5, 2015 through February 6, 2015, and May 24, 2016 until medical stability, nor did it identify the medical records that support her TTD claim. Employee's closing brief did not make legal arguments regarding Employee's contention she is entitled to TPD from February 9, 2015 until May 21, 2015, every Wednesday afternoon she missed work to treat with Dr. O'Leary. (Employee's Closing Argument, January 22, 2018.)

146) Employee contends Dr. Wert is a specialist and referral to a specialist by an attending physician is not considered a change in physician. She contends Dr. Odland recognized Employee's need for a psychological evaluation and referred her to Dr. Wert for that purpose. Employee contends Dr. Wert was a referral from Dr. Odland and a necessary replacement for Dr. O'Leary who was driven away by litigation. Employee contends her case is distinguishable from *Phillips* because in *Phillips*, the employer notified Phillips a week before hearing of its contention Phillips illegally changed his physician. Employee contended Phillips did not provide evidence demonstrating his attending physician made a referral to the medical expert or that the medical expert was the substitution. Further, Phillips had no evidence his attending physician refused to provide services, or that he was changing his attending physician to the medical expert, and Phillips failed to show he gave the employer notice of the change before it occurred as required by AS 23.30.095(a). Employee contends Employer waived its right to assert Dr. Wert was an unlawful change of physician through inactivity. (*Id.*)

147) On January 23, 2018, Employee filed a supplemental affidavit of attorney fees and costs for time spent by Mr. Harren from January 10, 2018 through January 19, 2018. Mr. Harren logged 53.7 "supplemental" hours at $400.00 per hour for a total of $21,480.00. Supplemental costs were $1,150.00 for Dr. Wert's testimony and $1,350.00 for Susan Magestro's. (Affidavit of Attorney Fees and Costs, January 23, 2018; Timesheet: Time Spent by Richard L. Harren on Shannon Patterson, January 23, 2018.)

148) On January 31, 2018, Employee requested modification / reconsideration of the January 12, 2018 decision (*Patterson III*) to strike Employee's late filed fee affidavit and requested the attorney fees and costs affidavit filed one day late be accepted. Employee contends the issue of acceptance of the late filed affidavit of fees and costs was not ripe when decided because there was no Employer nor Employee petition but rather Employee's attorney simply asked if Employer would agree to waive any objection to his late filed fee affidavit. Attached to Employee's request was an email showing Employee's attorney's affidavit of fees and costs was filed and served upon Employer's attorney on Thursday, January 11, 2018 at 4:59 p.m., rather than 5:02 p.m., which was when Paralegal Ouzts' affidavit in support of Employee's reply to Employer's opposition to late filed exhibits was filed. Employee stated, "The board must consider the absence of any prejudice to the employer given the options for eliminating any prejudice to the employer and the equity of whether employee and her attorney should forfeit the entirety of the $75,000 in costs and fees necessary to oppose the employer of the very difficult issue of mental injury that persists after such extraordinary and unusual event." (Petition, January 30, 2018.)

149) Employee confirmed she is asserting a mental-mental injury. (*Id.*; experience; inferences.)

150) On February 20, 2018, Employer opposed Employee's petition for modification / reconsideration of the January 12, 2018 decision denying acceptance of Employee's late filed affidavit of attorney fees. Employer contended the board's decision was procedurally and substantively correct, and no grounds for modification / reconsideration exist. Employer contended Employee's counsel has an established pattern of failing to meet deadlines in this matter despite a December 5, 2017 prehearing held to clarify the issues for hearing and establish hearing-related filing deadlines. Employer noted Employee filed her hearing evidence late, filed her hearing brief late, and counsel filed his attorney fees and costs affidavit late. Additionally, Employer noted the affidavit due on January 10, 2018, was dated January 11, 2018, and because it was filed after the close of business on January 11, 2018, it was considered filed on January 12, 2018, two days late. Employer requested Employee's request for reconsideration be denied. (Employer's Opposition to Employee's 01/30/2018 Petition for Reconsideration of AWCB Interlocutory Order Striking Employee's Late Filed Attorney Fee Affidavit, February 20, 2018.)

151) On February 28, 2018, parties were directed to file legal memoranda by March 15, 2018 on Employee's request for modification of *Patterson III*. (Prehearing Conference Summary, February 28, 2018.)

152) On March 15, 2018, Employer filed its brief opposing Employee's petition for modification / reconsideration and reiterated its arguments made in opposition to Employee's petition. Employer focused on 8 AAC 45.180, which it contends requires a request for fees in excess of the statutory minimum to be denied where, as in Employee's case, counsel fails to comply with the fee affidavit filing deadline. Employer contends the burden was on Mr. Harren to comply with the filing deadline and because he failed to meet the deadline and offered flimsy excuses for his failure, *Patterson III* properly denied Employee's request to extend the filing deadline for Employee's attorney fee affidavit and costs bill. Employer noted 8 AAC 45.180(d)(1) requires an attorney seeking actual fees to supplement his fee affidavit at hearing by testifying about any fees incurred after the fee affidavit is filed and contends Mr. Harren failed to do so. Employer contends Mr. Harren neither addressed attorney fees during the January 16, 2018 hearing, nor sought permission to submit a later supplementation, nor addressed attorney fees in his closing brief. Employer contends neither the provision for reconsideration nor modification exist to provide a party with a second "bite at the apple" or a back door to present arguments that should have been properly presented prior to, or at, the merits hearing. Employer contends Mr. Harren is unable to prove excusable neglect for his late filed fee affidavit, which is the only possible way to avoid the clear mandate that if his attorney fee affidavit is not timely filed, fees in excess of the statutory minimum are not permitted. Employer contends Employee's petition offers no valid basis for *Patterson III*'s determination to be altered and the penalty for failing to timely file the fee affidavit is limiting any fee award to statutory minimum fees on any benefits awarded. Employee requested Employee's request for reconsideration be denied and *Patterson III* be reaffirmed. (Employer's Brief, March 15, 2018.)

153) On March 15, 2018, Employee requested an extension until March 19, 2018, to file her brief in support of her *Patterson III* modification request to permit her to obtain a copy of the January 11, 2018 prehearing conference recording. An extension was granted until March 27, 2018. (Petition, March 15, 2018; Correspondence to Harren and Livsey from Wright, March 16, 2018.)

154) On March 27, 2018, "Employee's Brief on the Issue of Reconsideration of Attorney Fees" was filed. Despite its title, the brief stated, "Employee . . . by way of a Brief / Argument on the issue of the Board's modification of decision relating to attorney fees respectfully yields to the law cited by the Board's hearing officer as correct and accurate." Employee, however, contends "a fair and equitable result relating to the huge forfeiture of fees and costs requires that the Board reconsider this exclusion / forfeiture." Employee stated:

> In order to fairly represent Shannon Patterson, the attorney had to disregard his own interests except to the extent that Shannon Patterson's victory was a condition precedent to his receipt of a fee from the controverting Employer. Given uncontrollable circumstances, combined with the fleeting opportunity for finality represented by the January 16 hearing date, and, Shannon Patterson's litigation stress, and its harmful effects upon her condition, every effort was made by the attorney to complete and win her case with a lesser regard for his ability to personally profit by placing his Fee Affidavit in a higher priority than her hearing brief, admissibility of evidence, arrangements of witnesses, etc.

Mr. Harren conceded he requested the hearing officer to decide "a preliminary issue related to the failure to file a timely Fee Affidavit." Mr. Harren asserts he brought the issue up to see if Employer objected to the late filed fee affidavit. Mr. Harren contends, "[T]he issue was raised about the same time that the Employer waived the delay in filing the employees [sic] hearing brief. The delay and circumstance which, like a domino, certainly influenced the filing preparation of the fee agreement." Employee asserted Mr. Harren and his staff worked for weeks prior to his fee affidavit filing deadline to prepare an accurate attorney and staff time record. Employee contends the late filed fee affidavit caused no prejudice "because since the hearing date, and, ongoing, the Employer certainly can take time to object and to point out prejudicial mistakes in that Affidavit." (Employee's Brief on the Issue of Reconsideration of Attorney Fees, March 27, 2018.)

155) On March 27, 2018, Mr. Harren filed an affidavit with attachments, including his 2017 profit and loss statement. The profit and loss statement reflects total fee income of $198,305.77, with a $578.00 loss for workers' compensation cases, and "officer's wages" of $76,500.00. Mr. Harren said, "The amount at stake if my fee affidavit is tossed out is more than one third of last year's entire gross revenues. The value of fees that I have expended in this case is approximately equal to last year's earnings by me in my law practice as my wages for the year were $76,500." Mr. Harren provided Kimberly Perkins' timecard and stated:

> I hired [Kimberly Perkins] to fill the void that was left by the departure of two excellent legal assistants during 2017, Roxie Miller and Anuhea. Attached hereto as Exhibit 3 is evidence of the time and accounting software program which I purchased primarily for workers compensation cases, as I have always been deficient at capturing my time. This purchase was made in November 2017 with the expectation that Kimberly would input all my time, past and future, into the software's that I could easily summarize it, manipulated [sic], edited [sic], and attach it to a fee affidavit. Kimberly spent a couple of days in seminars learning how to use it. I purchased three versions of it, one for myself, one for Colleen, and one for Kimberly. The cost for the initial purchase was close to $1000 and it has maintenance cost of hundreds of dollars thereafter. . . . We have never launched it. No one other than Kimberly has had training in its use.

Exhibit 3 is an e-mail from TPS Software to Kimberly Perkins with instructions and links to download the necessary files so Mr. Harren's law office could install its new TPS time and billing software. Ms. Perkins was provided an implementation guide and invited to contact TPS support service whenever she required assistance. She was notified the TPS license included a 60 day free support package and told, "Please call us when you're ready to install. We will be happy to assist you with installing the program and help get it up and running." Mr. Harren said he and his staff "scrambled" to finish the attorney fee affidavit so that it could be filed only one day late and contended they succeeded in filing it at 4:57 p.m. Mr. Harren stated

> Any acceleration of the filing time would have compromised the hearing officer's desire for an accelerated emergency prehearing / hearing on preliminary issues, would have compromised my health, would have compromised the interest of clients in unrelated cases, it would have compromised the interests of Shannon Patterson who was faced with the prospect of unwillingly treating physicians (e.g. Dr. O'Leary), and an ever shrinking opportunity to present her case.

(Affidavit of Richard L. Harren Re Employee's Brief on the Issue of Reconsideration of Attorney Fees, with Exhibit Attachments, March 27, 2018.)

156) Mr. Harren has a pattern of tardy filings. (*Mitchell v. United Parcel Service*, AWCB Decision No. 18-0042 (May 1, 2008).)

157) On September 13, 2018, upon inquiry by the designated chair the division researched Employee's electronically filed attorney fee affidavit, paralegal cost affidavit, and request for reconsideration or modification. Initially, the attorney fee affidavit filing date was recorded by the division as January 12, 2018. Upon review, it was confirmed the attorney fee affidavit was

filed on January 11, 2018 at 4:59 p.m., its filing date in the division's database was corrected to January 11, 2018. Employee's paralegal cost affidavit was properly recorded as being filed on January 12, 2018, because it was received by the division electronically after 5:00 p.m. on January 11, 2018. Initially, Employee's petition for reconsideration or modification filing date was recorded by the division as January 31, 2018. Upon review, it was confirmed the petition for reconsideration or modification was filed on January 30, 2018 at 4:59 p.m., and its filing date was corrected to January 30, 2018. (Patterson Record in ICERS database, September 13, 2018; Department of Labor and Workforce Development Commission's Order No 001.)

158) On September 13, 2018, the designated chair requested Ms. Livsey forward the service email she received with Mr. Harren's attorney fee affidavit, which she provided the same day. It showed Mr. Harren's paralegal electronically filed and served his fee affidavit on January 11, 2018, at 4:59 p.m. (Emails between Janel Wright, Ms. Livsey and Mr. Harren, September 13, 2018.)

159) On September 13, 2018, the designated chair requested Mr. Harren provide the confirmation receipt issued by the board for his attorney fees and costs affidavit. Again on September 26, 2018, Mr. Harren was reminded of the September 13, 2018 request and was asked again to provide the confirmation receipt he received from the division when he filed his attorney fees and costs affidavit on January 11, 2018. On October 1, 2018, Mr. Harren's confirmation receipt was provided. On Friday, January 12, 2018, at 9:27 a.m., the division confirmed it received

Mr. Harren's attorney fees and costs affidavit. Confirmation receipts are not sent out immediately after a document is electronically filed. (Emails to Ms. Livsey and Mr. Harren from Janel Wright, September 13, 2018 and September 26, 2018; October 1, 2018 Email Response from Mr. Harren; October 1, 2018 Email from Leilani Farmakis with January 12, 2018 AWCB Confirmation Receipt; observations; experience.)

PRINCIPLES OF LAW

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; . . . .

> **AS 23.30.005. Alaska Workers' Compensation Board.**
> . . . .
>
> (h) The department shall adopt rules . . . and shall adopt regulations to carry out the provisions of this chapter. . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

A decision may be based not only on direct testimony, medical findings, 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, 533-34 (Alaska 1987).

> **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. . . .
>
> (b) Compensation and benefits under this chapter are not payable for mental injury caused by mental stress, unless it is established that (1) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment; and (2) the work stress was the predominant cause of the mental injury. The amount of work stress shall be measured by actual events. The mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer.

To determine if the presumption of compensability applies, work-related mental injuries are divided into three groups for purposes of analysis: mental stimulus that causes a physical injury, or "mental-physical" cases; physical injury that causes a mental disorder, or "physical-mental" cases; and mental stimulus that causes a mental disorder, or "mental-mental" cases. *Kelly v. State Department of Corrections*, 218 P.3d 291 (Alaska 2009). To prevail, a claimant must satisfy each element of the test for mental-mental injury by a preponderance of the evidence, without the presumption. *Williams v. State of Alaska, Dept. of Revenue*, 938 P.2d 1065 (Alaska 1997).

Although the Act does not define "individuals in a comparable work environment," it has been interpreted to mean other employees holding the same position for an employer. *Id*. The Act also does not define "extraordinary and unusual" stress, and an examination of the common meanings of those words does not clarify the legislature's intent. *Kelly* at 300. In *Kelly*, the Alaska Supreme Court noted Webster's Dictionary's definitions of "unusual," which is "[n]ot usual, common, or ordinary" and "extraordinary," which is "[b]eyond what is common or usual" or "very exceptional." *Id.* (Citations omitted). The court has looked to legislator's comments to provide insight into what types of events would qualify as "extraordinary and unusual." *Id*. at 300-01. It noted examples such as an iron worker nearly falling to his death and an air traffic controller who felt responsible for a plane crash that killed many people. *Id*. at 301.

Quoting Professor Larson, the Court noted cases involving sudden fright and fear are generally "rated unusual in comparison with any norm . . . [c]ontinuous terror and dramatic brushes with death are not the normal routine of life." *Id*. (Citation omitted). In determining whether an employee's stress was "extraordinary and unusual" compared to his coworkers, it is an error to focus merely on the frequency of an event rather than the "character and quality" of an event. *Id*. Unusual and serious circumstances should be considered. *Id*. at 302. For example, when a prison guard was threatened, circumstances that distinguish that threat from threats other prison guards experienced should be considered, such as the guard was alone and unarmed, was cornered by a strong inmate who has been convicted of murder, the inmate was armed with a sharpened pencil, which he threatened to use to stab the guard in the eyes and then stab him to death, and the corrections officials treated the threat differently than others and kept the inmate

and guard separated. *Id*. at 301-02. In a case involving a posttraumatic stress disorder claim by a convenience store clerk following a robbery, it was held a "manifest happening of a sudden traumatic nature from an unexpected cause or unusual strain, the legal-causation test is met irrespective of the absence of similar stress on other employees." *Id.* at 302.

Although work-related stress must "be measured by actual events," the statute does not prohibit consideration of the claimant's perception of the actual events, since such a prohibition could prevent compensation claims based on diagnostic criteria for posttraumatic stress disorder. *Kelly,* at 299-300. However, a claimant's perception she feels stress is, by itself, inadequate to establish "extraordinary and unusual" stress. *Id*. at 300. *Kelly* noted PTSD "criteria require a determination by the clinician that a patient's response to a threat of death or serious injury 'involved intense fear, helplessness, or horror' and noted the SIME physician who evaluated Mr. Kelly, "testified that only about five to ten percent of the people exposed to a 'psychic trauma sufficient to meet the criteria for the diagnosis' of PTSD actually develop the disorder." *Id.*

Alaska is a notice pleading state. *Great Western Savings Bank v. George W. Easley Co.,* 778 P.2d 569 (Alaska 1989). Notice pleading requires only a "short and plain statement of the claim" that will give the defendant fair notice of the claim and the grounds upon which it rests. *Id.* at 577.

> **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. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician to provide all medical and related benefits. The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians. . . .

> **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
>
> (1) the claim comes within the provisions of this chapter; . . . .

Under AS 23.30.120(a)(1), benefits sought by an injured worker for physical-mental and mental-physical injuries are presumed to be compensable. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). Where a work-related physical injury results in a mental disorder, such as depression, the presumption is applied. *Thoeni v. Consumer Electronic Services,* 151 P.3d 1249 (Alaska 2002)). However, where work-related stress results in a mental injury, such as PTSD, a claimant is required to prove each element of the test for mental injury by a preponderance of the evidence, without the benefit of the presumption of compensability. *Kelly* at 297 (discussing the former AS 23.30.395(17), now codified at AS 23.30.010(b)).

The court in *Runstrom v. Alaska Native Medical Center,* 280 P.3d 567 (Alaska 2012), emphasized classification is important because AS 23.30.120's presumption of compensability does not apply to mental-mental claims, which makes them generally more difficult to prove, and those claims must be based on unusual and extraordinary work-related stress. "The fact that an accident produces unusual stress does not transform it into a mental-mental claim -- the key to analyzing such claims is to look at the underlying cause of the disability." *Id.*

When the presumption of compensability is applicable to a claim for compensation it involves a three-step analysis. To attach the presumption of compensability, an employee must first establish a "preliminary link" between his or his injury and the employment. *Tolbert v. Alascom, Inc*., 973 P.2d 603, 610 (Alaska 1999). If the employee establishes the link, the presumption may be overcome at the second stage when the employer presents substantial evidence that a cause other than employment played a greater role in causing the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center,* AWCAC Decision No. 150 (March 25, 2011). Credibility is not examined at the second stage. *Veco, Inc. v. Wolfer*, 693 P.2d 865 (Alaska 1985). In the third step, if the employer's evidence rebuts the presumption, the employee must prove her case by a preponderance of the evidence. 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, 72 (Alaska 1964).

> **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.

This statute's intent was "to restore to the Board the decision making power granted by the Legislature when it enacted the Alaska Workers' Compensation Act." *De Rosario v. Chenega Lodging*, 297 P.3d 139, 146 (Alaska 2013). The Alaska Workers' Compensation Appeals Commission is required to accept the board's credibility determinations. *Id*. The Alaska Supreme Court defers to board determinations of witness credibility. *Id*. If the board is faced with conflicting medical opinions, each of which constitutes substantial evidence, and elects to rely on one opinion rather than the other, the Supreme Court will affirm the board's decision. *Id*. at 147. It was error for the commission to disregard the board's credibility determinations. *Id*. at 145-47.

> **AS 23.30.130. Modification of awards.** (a) Upon its own initiative . . . 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 under the procedure prescribed in respect of claims in AS 23.30.110. . . .

While examination of all evidence is not mandatory with a mistake allegation, AS 23.30.130(a) confers continuing jurisdiction over workers' compensation matters to the board. *George Easley Co. v. Lindekugel*, 117 P.3d 734, 743 (Alaska 2005). By comparison and contrast, a petition for reconsideration has a 15-day time limit for the request and the board's power to reconsider "expires 30 days after the decision has been mailed . . . and if the board takes no action on a petition, it is considered denied." (*Id*. at n. 36).

> **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. . . .
>
> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or 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 a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered.

The Alaska Workers' Compensation Appeals Commission in *Israelson v. Alaska Marine Trucking, LLC*, AWCAC Decision No. 226 (May 27, 2016), analyzed whether the board abused its discretion when it awarded statutory minimum attorney's fees, on the ground the fee affidavit was not timely filed in accordance with 8 AAC 45.180, and that Mr. Israelson had not shown grounds to waive or modify the filing requirement pursuant to 8 AAC 45.195. On Friday, June 19, 2015, counsel for Mr. Israelson filed two affidavits for attorney's fees, one for his lead counsel, Thomas Slagle, itemizing 105.3 hours of attorney time and the other for co-counsel Daniel Bruce, itemizing 7.8 hours of attorney time plus 7.3 hours of paralegal time plus costs. The case was heard on Tuesday, June 23, 2015. Mr. Slagle filed a supplemental affidavit of fees on June 26, 2015, itemizing an additional 35.9 hours of attorney time. Also following hearing, Mr. Slagle filed affidavits explaining he had been unable to format his fee request and that on the morning of June 18, 2015, he contacted his transcriptionist to assist in that endeavor, but she was otherwise occupied and unable to assist him until the next morning. His affidavit indicated he received the properly formatted fee request from his transcriptionist at 7:18 a.m. on June 19, 2015, and on that same day the fee affidavit was filed and served on opposing counsel by email and first class mail.

The board's decision granted the claim for benefits and awarded statutory minimum attorney fees, on the ground the fee affidavit was not timely filed and Mr. Israelson had not shown grounds to waive or modify the filing requirement pursuant to 8 AAC 45.195. The board found Mr. Slagle experienced in workers' compensation cases, did not seek assistance from another person when his transcriptionist informed him she was unavailable to assist in formatting his fee

request, did not seek an extension of time or timely file an affidavit accompanied by a handwritten or summary statement of time and he provided no reason for the late filing by Mr. Bruce. Mr. Israelson appealed contending the board erroneously failed to excuse the late filed fee affidavit.

The commission did not condone Mr. Slagle's lapse, but also did not consider it to be excusable neglect. *Id.* at 7. "Similarly, we do not see that failing to provide verbal notice or to file any document at all within the time allowed constitutes substantial compliance with 8 AAC 45.180." *Id.* at 7-8. The commission stated the issue was not whether Mr. Slagle substantially complied with 8 AAC 45.180, or whether the board should have excused non-compliance under 8 AAC 45.195. Rather, the commission viewed the issue as whether the board abused its discretion by failing to extend the time allowed for filing a fully-compliant affidavit of fees, pursuant to 8 AAC 45.063(b). It held:

> [B]y its terms, 8 AAC 45.063(b) is limited to the extension of time periods established by the Board's regulations. In addition, we note that with respect to time deadlines, 8 AAC 45.063(b) is the more specifically applicable regulation than 8 AAC 45.195: under the latter regulation, the Board may excuse the failure to file any affidavit at all, not merely the late filing of an affidavit otherwise compliant with 8 AAC 45.180. We conclude that it is 8 AAC 45.063(b), not 8 AAC 45.195, that governs the Board's exercise of discretion with respect to extensions of time established by regulation. (Footnotes omitted.)

The commission concluded, when the circumstances warrant, the board has exercised its discretion to provide additional time to file an affidavit of attorney's fees and considered the following circumstances: (1) whether the delay in filing was minimal; (2) whether the late affidavit was otherwise compliant with 8 AAC 45.180; (3) whether the affidavit was delivered to opposing counsel on the date of filing; (4) whether there was prejudice to a party; (5) whether there was a pattern of failure to meet deadlines by the claimant or his counsel; and (6) whether the fee awarded is reasonable compensation as compared with the fee claimed. *Id.* at 10-11. (Citations omitted.) *Israelson* found the board was mistaken in not providing a one day extension, and extending 8 AAC 45.180's filing deadline was warranted because (1) the delay in filing was minimal; (2) besides being filed late, the affidavit was compliant with 8 AAC 45.180; (3) the affidavit was delivered to opposing counsel the day it was filed; (4) there was no

prejudice to the opposing party; (5) a pattern of failure to meet deadlines by claimant or his counsel was not identified; and (6) the board's attorney fee award "did not appear" reasonable compared to the fee claimed. *Id.*

In *Mitchell v. United Parcel Service*, AWCB Decision No. 18-0042 (May 1, 2008), Richard Harren represented the claimant. This case was heard on October 4, and on November 21, 2017. On September 29, 2017, Mr. Harren requested acceptance of his late-filed attorney fee and cost pleadings. On October 3, 2017, Mr. Harren filed an October 2, 2017 affidavit stating he works on a contingent basis, and has over 30 years' experience representing injured Alaskans and has presented cases before the board and the Alaska Supreme Court. There were no attachments to Mr. Harren's affidavit; there was nothing itemizing the hours worked on behalf of Mr. Mitchell or the work performed. On October 3, 2017, Mr. Harren filed an affidavit stating he had represented Mr. Mitchell for approximately three and one-half years and employed Anuhea Reimann-Giegerl, Roxie Miller and Colleen Ouzts as paralegals or legal assistants. Miller retired in February 2017, followed by Reimann-Giegerl in July 2017. On October 6, 2017, Mr. Harren filed affidavits from his paralegals. Ouzts affied for Miller, but Miller did not provide an affidavit as required by 8 AAC 45.180(f)(14)(D). While Ouzts explained why Miller could not provide an affidavit on short notice, there was no explanation why Miller could not have provided an affidavit if given adequate notice. Miller's costs were not awarded.

The employer objected to the employee's attorney fees and to his paralegal and legal assistants' costs because it never received an itemized accounting of the employee's attorney fees. When the November 21, 2017 hearing concluded, the chair left the record open until December 5, 2017, so Employee could file an updated attorney fee affidavit. On December 6, 2017, Mr. Harren filed another fee and costs affidavit. The second fee affidavit was one day late. *Mitchell* found most of Ouzts' costs were reasonably incurred in assisting Mr. Harren; however, because the employee's closing arguments were filed late, and the panel did not consider them, the costs for Ouzts' closing argument efforts were not awarded. *Mitchell* found its order giving the employee additional time to file attorney fee and cost documentation, and giving employer time to object, was correct.

> Harren conceded his fee documents were late and lacking but explained he had been on a hunting trip prior to hearing and had difficulty obtaining information from paralegals he no longer employed. Even then, once Employee obtained the information, a miscommunication between Harren and his current paralegal resulted in additional delays. Since the hearing was continued to late November, because Employer was given an opportunity to object to Employee's attorney fee submission and because limiting Employee's attorney fees to statutory minimum fees should he prevail would result in considerable revenue loss for his attorney, the oral order giving Employee more time to file appropriate documentation for his attorney fees and costs and giving Employer a chance to respond was correct.
>
> **AS 23.30.155. Payment of compensation**. . . .
> . . . .
>
> (p) An employer shall pay interest on compensation that is not paid when due. . . .
>
> **AS 23.30.185. Compensation for temporary total disability.** In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

In *Vetter v. Alaska Workmen's Compensation Board,* 524 P.2d 264 (Alaska 1974), the court explained disability benefits under the Act. "The concept of disability compensation rests on the premise that the primary consideration is not medical impairment as such, but rather loss of earning capacity related to that impairment." *Id.* at 266. An award of compensation must be supported by a finding the claimant suffered a decrease in earning capacity due to a work-connected injury or illness. *Id*. A claimant is not entitled to compensation when she, through voluntarily conduct unconnected with her injury, takes herself out of the labor market. *Id.* Once an employer overcomes the presumption of compensability, an employee is required to prove his loss of earnings was due to a work-related injury and resultant disability, not to a voluntary retirement.

> **AS 23.30.200. Temporary partial disability**. (a) In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial

disability benefits may not be paid for a period of disability occurring after the date of medical stability. . . .

AS. 23.30.395. Definitions. In this chapter,
. . . .

(24) "injury" means accidental injury . . . arising out of an in the course of employment, . . .

(28) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence.

8 AAC 45.082. Medical treatment.
. . . .

b) A physician may be changed as follows:
. . . .

(2) Except as otherwise provided in this subsection, an employee injured on or after July 1, 1988, designates an attending physician by getting treatment, advice, an opinion, or any type of service from a physician for the injury. . . .
. . . .

(4) Regardless of an employee's date of injury, the following is not a change of an attending physician:
. . . .

(B) The attending physician . . . refuses to provide services to the employee; the first physician providing services to the employer thereafter is a substitution of physicians and not a change of attending physicians
. . . .

(c) If, after a hearing, the board finds a party made an unlawful change of physician in violation of AS 23.30.095(a) or (e) or this section, the board will not consider the reports, opinions, or testimony of the physician in any form, in any proceeding, or for any purpose. If, after a hearing, the board finds an employee made an unlawful change of physician, the board may refuse to order payment by the employer.

Phillips v. Bilikin Investment Group, Inc., AWCB Decision No. 14-0020 (February 19, 2014), addressed the employer's contention the employee made an unlawful physician change when the employee's attorney, Richard Harren, selected Thomas Gritzka, M.D., expressly as an expert and, therefore, he was not a "change," "referral" or "substitution" physician. Mr. Harren stipulated he selected, Dr. Gritzka and arranged and paid for his examination of the employee, and for his reports. The employee also contended his due process rights were violated by the employer's silence on the issue "until the last minute." Dr. Gritzka evaluated the employee on September 26, 2012, and in his report provided a basis for dispute warranting an SIME. The employer brought its objection to Dr. Gritzka's examination and report to Mr. Harren's attention on February 10, 2014, eight days before the case was scheduled for hearing. On February 13, 2014 the parties contacted the hearing officer and Mr. Harren expressed concern over the employer's recent objection to Dr. Gritzka's reports and testimony. The parties were advised the employer's objection would be heard as a preliminary matter at hearing and the employee had the burden to demonstrate Dr. Gritzka was a valid physician under the Act and regulations. Employee did not provide evidence demonstrating Dr. Gritzka was a change, referral or substitution physician and, in fact, conceded he was a hired medical expert. *Phillips* rejected the employee's argument he had a right to hire an independent expert outside the Act's limitations. It stated:

> The Act and regulations contain no suggestion a party has a right, apart from those provided under AS 23.30.095(a) and (e), to obtain additional opinions or evaluations from medical experts. Such practice would contravene the statutes and revert back to "doctor shopping," which the legislature eliminated years ago. In some cases, parties have procured medical experts without objection from opposing parties and these experts' opinions have been considered. This is not one of those cases. Employer objected to Dr. Gritzka's participation alleging he was an unlawful change in Employee's choice of attending physician. Regulation 8 AAC 45.082(c) codifies decisional law disallowing reliance by a party on unlawfully obtained medical opinions. If a party makes an unlawful change of physician in violation of AS 23.30.095(a) or (e), or 8 AAC 45.082, the panel "will not consider the reports, opinions, or testimony of the physician in any form, in any proceeding, or for any purpose." The panel has no discretion. Employee stipulated the evaluation with Dr. Gritzka was arranged and paid for solely by his attorney. Employee failed to show any exception applied to his situation. He also failed to demonstrate Dr. Gritzka was a valid change, referral or substitution physician.

Consequently, it was found Dr. Gritzka was a hired medical expert retained outside the limitations of AS 23.30.095(a) and 8 AAC 45.082(c). *Phillips* sustained the employer's objection and did not consider Dr. Gritzka's report for any purpose. *Phillips* found there is no time limit for party to object to an unauthorized medical expert and neither the law nor the regulation provide a waiver of a party's right to object to an unlawful physician. Considering the timing of the employer's objection, due process concerns were raised because the employee believed until the week before hearing he could rely upon Dr. Gritzka's reports and testimony at hearing. To protect the employee's due process in light of the employer's late objection and the employee's reliance on the employer's previous silence, the record was held open for 45 days so the employee could depose any physicians he had seen prior to the hearing date, to obtain evidence in lieu of Dr. Gritzka's inadmissible report and testimony.

> **8 AAC 45.063. Computation of Time.**
> . . . .
>
> (b) Upon petition by a party and for good cause, the board will, in its discretion, extend any time period prescribed by this chapter.

ANALYSIS

1) Should Dr. Wert's report and opinions be stricken?

If an employer or injured worker makes an unlawful change of physician, the reports, opinions, or testimony of that physician will not be considered in any form, in any proceeding, or for any purpose. 8 AAC 45.082(c). Employer contends Employee hired Dr. Wert as a forensic expert and Employee's evaluation with Dr. Wert was not a physician change, a referral or a substitution. Employer requested Dr. Wert's report and opinions be stricken. *Id*. Employee contends she saw Dr. Wert on referral from Dr. Odland after Dr. O'Leary would no longer treat her. 8 AAC 45.082(b)(2), (4)(B). Employee further contended Employer waived its objection to Dr. Wert as an illegal physician change through inactivity.

As an initial matter, Employer did not waive its objection to Dr. Wert as an illegal physician change. Dr. Wert evaluated Employee on April 14, 2017. He issued his report on April 26, 2017, which states he saw Employee on referral from Dr. Odland and Mr. Harren. His report

was filed on a medical summary on June 13, 2017, and Employer requested cross-examination of Dr. Wert on June 21, 2017. 8 AAC 45.052. Employee presented Dr. Wert at hearing, which gave Employer an opportunity to cross-examine Dr. Wert on how he came to evaluate Employee. It was not until Dr. Wert's testimony that Employer was aware Dr. Wert was conducting a forensic evaluation, objected and requested his report and testimony be stricken under *Phillips*. Without Dr. Wert's testimony, Employer would have had no basis to request his report be stricken. Moreover, there is no time limit for party to object to an unauthorized medical expert and neither the law nor the regulation provide a waiver of a party's right to object to an unlawful physician. *Phillips.*

Dr. Wert's report will not, however, be stricken. Employee's case is distinguishable from *Phillips*. Based upon Mr. Harren's experience in the *Phillips* case, he was aware a referral from Employee's attending physician was needed. AS 23.30.095(a). While it is unusual and suspect when an attorney suggests to an attending physician or to an employer's medical expert to whom a referral should be made, it is not prohibited and occurs frequently. *Rogers & Babler*.

Referrals to specialists are permitted because often attending physicians are unable to provide further opinions or medical services that will improve injured workers' conditions and a provider with greater or different expertise is required. Dr. Odland is a primary-care physician, not a psychiatrist or psychologist. He made a referral to Dr. Wert, not for treatment, but for a "psychological evaluation." Dr. Wert has for the past 15 years "exclusively" performed "court related" evaluations upon referrals from private attorneys and courts. Dr. Wert's testimony creates doubt the purpose of his evaluation was for purposes other than as an expert retained solely for litigation; however, he conducted an evaluation, diagnosed Employee and made recommendations for future treatment, thereby satisfying Dr. Odland's request for a psychological evaluation. Dr. Wert is a specialist and the referral to him is permitted. AS 23.30.095(a). To order otherwise could have a chilling effect on attending physician referrals made to obtain advice from a specialist on an appropriate course of treatment, which could prolong an injured workers' disability, contravening the legislature's intent. AS 23.30.001(1).

2) Does Employee have a work-related mental injury?

Work-related mental injuries fall into three categories: mental stimulus that causes a physical injury, or "mental-physical" cases; physical injury that causes a mental disorder, or "physical-mental" cases; and mental stimulus that causes a mental disorder, or "mental-mental" cases. *Kelly*. Employee claims two types of mental stress claims, each based upon PTSD. One is a physical injury that caused a mental disorder -- a physical-mental injury. Employee also claims a mental-mental injury; in other words, a mental stimulus caused a mental disorder. Each will be analyzed.

a) Did Employee suffer a compensable physical-mental injury?

Employee claims her exposure to the student's bodily fluids caused her mental stress because she feared she had contracted hepatitis C, or another communicable disease from exposure to pathogens. A claim for benefits due to the mental trauma of exposure to pathogens is appropriately classified as a physical-mental claim and is presumptively compensable. *Runstrom; Thoeni*. Employer contends Employee waived a mental-physical claim when she was asked if she was making a claim for a physical condition as opposed to a mental health condition and under oath stated she was not.

Had Employee responded she was claiming her mental disorder was caused by a physical injury, Employer may have spent additional time on defending against a physical-mental claim. It was not until the final minutes of the January 16, 2018 hearing that Employee first asserted her claim was for a mental disorder caused by a physical injury. When a claim's nature is not revealed until after parties have presented their evidence, it verges upon a denial of the defense's due process. A "claim" under the Act is a "written request for benefits" and may be made on a claim form available on the division's website. The form provides boxes that can be checked to claim any or all benefits available under the Act. The form does not contain a box or block for a claimant to complete that would provide notice to an employer of which section or sections of AS 23.30.010 the claimant asserts entitlement to benefits. Employee is required to give a "short and plain statement" of the claim that gives fair notice and the grounds upon which the claim rests. *Great Western.*

At her April 3, 2017 deposition, Employee was specifically asked, "Are you at this time making any claim for any physical injury or illness as a result of the September 2014 choking incident?" Her reply was that she did not know. The question was then further clarified and Employee was asked, "Physical condition as opposed to a mental health condition?" Employee replied, "Okay. No. Then no." Mr. Harren attended Employee's April 3, 2017 deposition, as did the designated chair. Mr. Harren did not request to go off the record to consult with Employee in an attempt to clarify her answer. Employer therefore had every reason to believe Employee was asserting only a "mental-mental" claim and had no notice until the final minutes of the January 16, 2018 hearing, which does not constitute fair notice and Employee's "physical-mental" claim was waived.

In the alternative, if there was fair and sufficient notice to Employer of Employee's "physical-mental" claim, the presumption analysis applies and at the first stage, Employee must present some, minimal relevant evidence that as a result of exposure to the student's bodily fluids on September 23, 2014, she developed a physical injury and from that physical injury, a mental health disorder. AS 23.30.120; *Tolbert*. Credibility is not assessed at this stage of the analysis. *Wolfer*. Laboratory tests, paid for by Employer, for hepatitis C and HIV were nonreactive; Employee did not sustain an occupational disease or infection from exposure to the student's bodily fluids. AS 23.30.395(24). She therefore does not raise the presumption of compensability. *Meek.*

Alternatively, since the amount of evidence needed to raise the presumption is minimal, Employee's exposure to student's bodily fluids and receiving laboratory studies for hepatitis C and HIV may raise the presumption for a physical injury. *Tolbert*. If the presumption for a physical-mental injury is raised by this exposure and Employee's statements she suffers posttraumatic stress disorder since her mother-in-law's death was caused by hepatitis C and she was concerned her exposure caused her, too, to contract hepatitis C, at the second stage of the presumption analysis, Employer has overcome the presumption with substantial evidence. *Runstrom*. Employer is able to do so with Dr. Sheorn's EME report. Employee reported to Dr. Sheorn she was concerned about hepatitis C and HIV, but when the laboratory tests came back negative, her concerns no longer remained. Dr. Sheorn determined Employee does not have, and

never did have PTSD. Dr. Sheorn stated, despite the September 23, 2014 incident providing the most focus for Employee's therapeutic attention, it is merely a diversion from Employee's real problem, which is her pre-existing mental illness and maladaptive methods of coping with stress. She opined there is no causal connection between the work incident and Employee's ongoing symptoms. When viewed in isolation, Dr. Sheorn's opinion is substantial evidence Employee did not sustain a physical-mental injury. *Wolfer*.

Once Employer produces substantial evidence to rebut the presumption, at the third stage of the analysis, the presumption of compensability drops out, and Employee has the burden to prove all elements of her physical-mental claim by a preponderance of the evidence. To do so, she must induce a belief in the minds of the fact finders the asserted facts are probably true. *Saxton*.

Dr. Wert diagnosed Employee with PTSD; major depression, recurrent, severe, without psychotic features; generalized anxiety disorder; dependent, socially avoidant, and possibly borderline personality features or traits. He attributed the given diagnoses to Employee's exposure to actual or threatened death when she witnessed the student choking. He did not attribute any of Employee's diagnoses to Employee's exposure to the student's bodily fluids, nor did he opine Employee's mental health conditions were caused by her exposure to student's bodily fluids.

Dr. Sheorn was conscientious, reliable and credible in her report. It is given great weight. AS 23.30.122; *DeRosario*. Employee's assertions during her evaluation with Dr. Sheorn that she no longer had concerns regarding her physical well-being after receiving the non-reactive lab results for hepatitis C and HIV belie Employee's assertions at hearing that a physical injury caused her to have a mental disorder. Medical support for Employee's physical-mental claim simply does not exist in the record; she is unable to prove by a preponderance of the evidence her employment with Employer is the substantial cause of a mental disorder caused by her exposure to the student's bodily fluids. AS 23.30.010(a). To the contrary, even Employee's own statement contradicts her contention her physical-mental claim is compensable. She did not have a physical-mental injury.

b) Did Employee suffer a compensable mental-mental injury?

Employee's other mental injury claim is for PTSD caused by a mental-mental injury. Employee contends it was caused by work-related stress, an unsupportive work environment and lack of immediate attention to her mental health needs after the September 23, 2014 incident. Unlike Employee's physical-mental claim, the presumption of compensability does not apply to her mental-mental claim. AS 23.30.120(c); *Williams*. Without the presumption of compensability, Employee must prove by a preponderance of the evidence: (1) work-related stress resulted from extraordinary and unusual pressures and tensions in comparison to other persons in a comparable work environment and (2) work-related stress was the predominant cause of posttraumatic stress disorder or other mental injury. AS 23.30.010(b). The amount of work stress must be measured by actual events and cannot be caused by good faith personnel actions such as work evaluations, job transfer or job termination. *Id.* A claimant's perception she feels stress is, by itself, inadequate to establish "extraordinary and unusual" stress. *Kelly*. "Individuals in a comparable work environment" means other employees holding the same position for an employer. *Williams.*

i) Was the work-related stress caused by extraordinary and unusual pressures and tensions in comparison to other school nurses?

Employee was a school nurse; therefore, her stress will be compared to that of other school nurses working for Employer. Employer's school nurses are expected to provide comprehensive health services for each student in a school, which includes providing emergency care to ill or injured students, crisis intervention and determining the need for emergency referrals. Employer's school nurses are also expected to provide on-going follow-up. On September 23, 2014, Employee faithfully and competently executed her school nurse duties when she provided emergency medical care to a choking student.

Work incidents involving sudden fright and fear can be rated unusual in comparison with any norm. *Kelly*. The amount of work stress Employee experienced must be measured by actual events. Choking incidents and other incidents in which a student or staff member's life may be threatened were not continuous or the norm, but they were also not unusual. On January 21, 2016, Employee reported to Dr. O'Leary a staff member had collapsed. Employee was ready to

defibrillate and begin CPR, but the ambulance arrived and further intervention from Employee was not necessary. On January 22, 2016, Employee contacted Dr. O'Leary for an appointment after being called to a classroom when a student was choking. The student's teacher did abdominal thrusts and cleared the student's airway before Employee arrived. When students are choking, school nurses are expected to respond. In fact, other school staff may also respond. On September 23, 2014, the principal and Employee worked together to resuscitate the choking student.

Dr. Glass acknowledged the student's choking was an "unusual" tragedy; however, he stated aspiration crises with small children is not extraordinary or unusual in a school environment. Susan Magestro, has a master's degree in teaching and is a criminologist who works with victims of crime after they have received a psychiatric diagnosis. Ms. Magestro considers it the school nurse's duty to respond if a student is choking, and calling 911 is a standard. Ms. Magestro's master's degree in teaching adds to the credibility of her testimony it is a school nurse's job to respond to choking students. AS 23.30.122.

Dr. Johnson, a psychiatrist and Employee's friend, opined Employee's anxiety is increased when she is in situations where another child could choke and because she is hoping another person will not choke. He said this makes her "pretty much anxious all the time." Dr. Johnson's testimony confirms Employee is continually anxious, despite the absence of unusual or extraordinary pressures. School nurses must be present in schools where there are students and staff who eat and are at risk of choking. School nurses intervene with actual and potential health concerns for both acute and chronic illnesses, injuries and emergencies. *Rogers & Babler*. Employee presented no evidence the school environment, which placed Employee in a setting where another child could choke, created extraordinary and unusual pressure or tension for other school nurses or staff.

No doubt, attempts to resuscitate the choking student were frightening and stressful, but to be compensable the stress must result from "extraordinary and unusual pressures and tensions." AS 23.30.010(b). Performing her duty to provide emergency care to a choking student by attempting resuscitation is not unusual or extraordinary; it is what is expected of all school

nurses working for Employer. *Rogers & Babler*. Likewise, choking incidents and other life-threatening emergencies are the types of incidents all Employer's school nurses and staff respond to when needed, as Employee did on more than one occasion.

Considering the "character of the threat," Employee's case is distinguishable from *Kelly*. Kelly, a corrections officer, was alone and unarmed when he was cornered by a strong inmate who had been convicted of murder. The inmate was armed with a sharp pencil, capable of causing death when aimed at a victim's eye or neck, and threatened to use it to stab Kelly in the eyes and then stab him to death. Kelly was subjected to a traumatic death threat. Employee, on the other hand, was not threatened. She was called upon to perform her school nurse duty to intervene when a student was choking. Employee did not even know the student's name. Although it may have been unsettling for Employee to provide first responder medical care to a choking child testimony showed the work stress was not unusual or extraordinary. *Rogers & Babler*.

Employee stated she felt she was being accused of being negligent in the student's death and this was a primary factor causing her PTSD. She also contends the estate's litigation, the Employer's attempt to assign blame and culpability to her and the attorney for the student's estate triggered PTSD symptoms. Employee was never named as a party in the student's estate's lawsuit. She was never accused of providing negligent or inadequate medical care to the student on September 23, 2014. Employee feared what would happen if she was named as a defendant in a lawsuit by the student's estate or held responsible for the student's death. However, these fears were not based upon "actual events" and do not constitute an extraordinary or unusual work stress or tension. AS 23.30.010(b).

In addition to the September 23, 2014 incident, Dr. O'Leary noted Employee experienced "secondary trauma" from Employer's lack of emotional support. Employee contends Employer's failure to provide her "debriefing" after the September 23, 2014 incident and the incidents when she responded to a collapsed staff member and another choking student caused her stress level to go up. Employee contends she was subjected to "aftershock, after aftershock, after aftershock" and that the series of shocks while working for Employer was unending. She expected Employer to offer her follow-up attention after she performed her duty to provide

emergency medical care to students and staff. However, in addition to providing crisis intervention, Employee's school nurse duties required her to provide on-going follow-up after a crisis. Instead, Employee was dismayed because Employer did not provide her "debriefing."

Historically, Employee has been dissatisfied with the emotional support she received from her parents, employers and others with whom she has had relationships. Dr. Sheorn credibly testified Employee has a pattern of attention seeking behavior, extreme emotionality and difficulty sustaining herself when the focus is not on her; indicative of borderline personality disorder with histrionic traits. AS 23.20.122; *DeRosario*.

Although a stressful experience, Employee has failed to prove her experience attempting to resuscitate the student on September 23, 2014, or Employer's failure to meet her emotional support needs was an extraordinary or unusual pressure or tension in comparison to other school nurses. But even had she been able to prove work stress resulted from extraordinary and unusual pressures and tensions, the next element she must establish is the work stress was the predominant cause of posttraumatic stress disorder.

ii) Was work stress the predominant cause of a mental injury?

For work stress to be the predominant cause of a mental injury, the amount of work stress must be measured by actual events and cannot be caused by personnel actions taken in good faith by an employer. AS 23.30.010(b).

Dr. Wert's testing revealed Employee reported weakness, fatigue and physical illness as somatic expressions of underlying depression. He noted Employee has "habitual and maladaptive methods of relating, behaving, thinking and feeling" and her testing results indicated Employee was dysphoric, insecure, had abandonment fears, somatic symptoms, and diminished capacity for pleasure, grew anxious over trivial matters and had claustrophobic anticipations and poor self-image, all suggestive of borderline personality. Dr. Wert diagnosed PTSD; major depression, recurrent, severe, without psychotic features; and generalized anxiety disorder. He indicated adjustment disorder with anxiety needed to be ruled out; and Employee had dependent, socially avoidant, and possibly borderline personality features or traits. Dr. Wert concluded Employee

was "affectively unstable" and experienced PTSD symptoms "associated" with the September 23, 2014 work incident when Employee witnessed the student choking.

Dr. Wert gave Employee the PTSD diagnosis without reviewing any of her medical and mental health records or Dr. Glass' report. He did not contemplate or consider Employee's extensive medical record or prior mental health treatments and diagnoses. His opinion is based primarily upon the social and medical history Employee provided. Finally, although Dr. Wert's testimony recited the PTSD criterion, he was unable to describe what Employee's symptoms were or what signs and behaviors he observed and relied upon to diagnose PTSD. For all these reasons, Dr. Wert's report and testimony are not entitled to, nor given, weight. AS 23.30.122.

Dr. O'Leary initially diagnosed Employee with adjustment disorder with mixed anxiety and depression. Eventually, Dr. O'Leary also diagnosed Employee with PTSD; however, he noted Employee's "egocentric trauma defenses" made the student's trauma and death all about Employee, even when these issues obviously were not.

Prior to the September 23, 2014 work incident, Employee had a longstanding history of psychological disorders, including mood cycling disorder, bipolar disorder, PTSD and depression much of her life that led to suicidal ideation most recently in 2004. Employee's discontent because she perceived Employer did not provide her support has a long history. Employer's lack of support hurt Employee's feelings and, because of that, she quit her school nurse job with Employer in 2007. Historically, Employee also complained about her parents' uncaring nature, including emotional deprivation and anger she carried since childhood. Her psychological diagnoses and bouts of psychological disorders frequently stemmed from others' failures to meet Employee's desire for some form of support, care and concern. When Employee does not receive the support she desires, she loses emotional control. Drs. O'Leary, Glass and Sheorn agree, Employee has a pre-existing tendency toward histrionic reactions.

Dr. Glass' testing indicated Employee did not have PTSD or any other Axis I disorder. Dr. Sheorn's evaluation, which is given great weight, confirmed Employee does not meet the PTSD diagnostic criteria. The first criteria, A, requires a stressor. All providers and experts

agree the September 23, 2014 incident was tragic and a stressor. However, by Employee's own description, she did not respond with intense fear, helplessness or horror. Dr. Sheorn did, however, admit what Employee witnessed, was exposed to, and the level of trauma, can be heavily debated when determining if Employee meets Criteria A. She elaborated by explaining "dosage exposure," which refers to how close a person was to a victim who dies or who was injured. Employee did not know the student or his name when the incident occurred and was exposed to the trauma for only a brief period of time. Even if the trauma met Criteria A, that this was an unspeakably catastrophic event, Employee was unable to describe for Dr. Sheorn, nor could she find in Employee's records, a description of what the trauma was for Employee. Dr. Sheorn explained PTSD is a memory disorder, it is a haunting by something and Employee was unable to describe to Dr. Sheorn "what it was that was stuck in her soul" or "what was haunting her."

The second criteria, B, requires intrusion symptoms. Employee did not meet Criteria B because she has not avoided the target incident. What Employee is avoiding is returning to work. Employee rationalized resigning her position because she wants to avoid being put in a position to medically help a child so she does not expose herself again to someone else's bodily fluids. However, Employee's exposure to the student's vomit, blood, and salvia while performing CPR did not cause her harm. The exposure merely caused "what if" situations and the "possibilities" were Employee's imagined future events, which have nothing to do with what actually occurred on September 23, 2014.

To further analyze Criteria B, Dr. Sheorn attempted to elicit PTSD symptoms and inquired if Employee had nightmares or flashbacks. PTSD is properly diagnosed when something cataclysmic happens, the person does not have the ability to understand it was real, or what happened and spends a lot of time not thinking about the event and not allowing the unconscious to become conscious. This is avoidance. Thoughts of the event bubble up anyway in nightmares and flashbacks, which are an actual reliving, real-time, as if the event were happening. Employee wrote about five nightmares she had since the September 23, 2014 incident, and none of them fully describe her reliving the actual event and only one has a slight resemblance. Despite Employee's assertion she had nightmares two or three times a week and flashbacks at

night that made it difficult to sleep, Employee was unable to describe either to Dr. Sheorn. What Employee described as "flashbacks" did not fit the pattern of a traumatic flashback associated with PTSD. Instead, Employee smiled, was quite calm and described a head oozing oil from all its orifices, no matter what she did; Employee then got really energized and reported she puts Legos and Harry Potter books under her bed and yells at the head and at God. When Dr. Sheorn asked where she saw the head, Employee got irritable and said she was above the head looking down, and was doing CPR. Employee then got energized again, laughed, and said when the soccer ball would roll under the bed, she did not want to sleep on the bed and that is why she put the children's toys and books under the bed; things children can play with. For Employee, the head was a 10-year-old. Dr. Sheorn said Employee's reflections on her "flashbacks" were regressed psychotic illusions that occurred because Employee has borderline personality disorder. Because PTSD is a disorder of memory, not of fantasy, Dr. Sheorn determined Employee "disqualified" Criteria B.

Dr. Sheorn also ruled out PTSD through a Criteria H analysis, which requires the "disturbance" is not attributable to the psychological effects of another medical condition. She identified false imputation malingering as a medical condition, other than the work incident, responsible for Employee's symptoms. Employee has symptoms she attributes to a compensable cause, the September 23, 2014 work incident, rather than to the true source. An example of Employee's false imputation malingering identified by Dr. Sheorn was when Employee complained to Dr. O'Leary she was "chastised" at work and that a secretary had been "bitching at" her. Employee took exception to Employer's policy she obtain a substitute school nurse when she had to miss work for surgery and when Employer brought it to her attention, she requested appointments with Dr. O'Leary to deal with the stressors of her job. He thought Employee was suffering 'secondary trauma' from a lack of emotional support from Employer. Dr. Sheorn found this illustrates the iatrogenic weight given to Employee's symptoms, and acknowledged Employee may indeed have some anxiety, disordered thinking and behavior, but it is not causally related to the incident of September 23, 2014. Instead, her symptoms are related to Employee's personality structure and secondary gain. Considering the voluminous evidence presented in this case, and Dr. Sheorn's analysis, false imputation malingering is an accurate diagnosis. Employee's inability to meet Criteria H bars a PTSD diagnosis. DSM-5.

Finally, Dr. Sheorn administered the Structured Inventory of Malingered Symptomatology. An elevated score indicates the examiner should be concerned the examinee's symptoms are exaggerated in a medico-legal complaint and that there may be multiple inconsistencies in the records and within the clinical interview. Employee scored 27, which "was significantly above the cutoff score of 14." Employee's elevated score was derived from the number of atypical, improbable, inconsistent or illogical answers for people with true mental disorders. In both her report and hearing testimony, Dr. Sheorn provided many examples of inconsistencies in Employee's reports to Dr. Sheorn and her behavior, inconsistent with a PTSD diagnosis.

The September 23, 2014 incident was tragic. Employee competently and expertly performed her duties as a school nurse on that day. To many, including Drs. O'Leary and Sheorn, Employee emphasized she was not helpless during the student's collapse and provided her best first-responder emergency care, which enabled her to deliver the student to the EMTs resuscitated.

Employee was proud of her ability to perform her job as a school nurse. Regardless, and despite the frequent assertions Employee loved her job as a school nurse, which are not credible, Employee was not happy as a school nurse. After the incident, when Employee returned to work, she felt animosity because she was placed on a performance improvement plan. Employee's goal was to vest in the Alaska Teachers' Retirement System. Employer offered Employee a school nurse contract for the 2016-2017 school year, but she declined. Employee's testimony she terminated her contract because she was "no longer able to work in that environment anymore" is not credible. AS 23.30.122. Instead, Employee resigned her position with Employer believing she had completed sufficient service years to vest. *Vetter*. Despite Dr. O'Leary's recommendation that Employee speak to her union and human resources, she did not seek appropriate advice prior to resigning her position and had not met the eight-year vestment. Employee declined a 2016-2017 contract with great enthusiasm and boasted to Dr. O'Leary when she submitted her resignation letter, it had been hanging on her refrigerator since April 2015. Unfortunately, when Employee "respectfully declined" Employer's 2016-2017 contract offer, she was eight weeks shy of vesting and, consequently, is not eligible for Alaska Teachers' Retirement System benefits or health insurance when she is 60 years old.

Employee claims entitlement to indemnity benefits from January 5, 2015 through February 6, 2015, and for the time she missed work to attend appointments with Dr. O'Leary. She contends if compensation for this period is compensable, it will give her a full eight years of service and enable her to vest in the Alaska Teachers' Retirement System. This is the motivating factor for Employee's claim she suffered a mental-mental injury or a physical-mental injury as a result of the September 23, 2014 incident. Employee's testimony and presentation do not support a mental injury claim and are not credible. AS 23.30.122.

Employee's lay witnesses are her close family or friends. These witnesses include Don Patterson, Kristy Johnson, Jake Worden and Jacque Ficek. Their observations of Employee's behavioral changes after the September 23, 2014 incident are noted. However, this case involves complex mental health diagnoses. The lay witnesses' observations are just that -- lay witness observations. These observations comport with the non-work-related, pre-existing causes for Employee's need for medical treatment and disability she relates to the work incident. Standing alone they are not entitled to weight proving Employee suffered PTSD as a result of the work incident. AS 23.30.122.

Dr. Sheorn's report and testimony described Employee's behavior in detail. She also credibly explained her conclusion Employee does not have PTSD, but rather borderline personality disorder with histrionic traits. Dr. Sheorn has expertise in personality disorders and maintains an active practice focusing almost exclusively on PTSD, with only approximately 20 percent of her practice spent conducting independent medical forensic evaluations. Dr. Sheorn's determination Employee's anxiety, disordered thinking and behavior are not causally related to the September 23, 2014 incident but, instead, her symptoms are related to her personality structure and to secondary gain are credible and given pronounced weight. *Id.*

3) Is Employee entitled to medical benefits?

Employee claims medical benefits arising from a mental injury. If Employee's need for medical treatment arose out of and in the course of employment, medical benefits are compensable.

AS 23.30.010(a); AS 23.30.095. Employee has not sustained a compensable mental injury. AS 23.30.010(b); *Kelly*. Her claim for medical benefits will be denied.

4) Is Employee entitled to TTD benefits after January 5, 2015?

Employee contends she is entitled to TTD benefits from January 5, 2015 through February 6, 2015. AS 23.30.185. In reliance upon Dr. Glass' report Employee was medically stable and able to return to work, Employee's benefits were controverted on January 5, 2015, and she returned to work on February 6, 2015. Dr. O'Leary disagreed Employee needed only a few counseling sessions before returning to work, but concurred with Dr. Glass' opinion Employee should return to work. However, as early as January 7, 2015, and prior to reviewing Dr. Glass' report, Dr. O'Leary confirmed there were no safety risks with Employee's return to work and that she was stable. Employee has not met her burden of proof to establish a compensable mental injury and is not entitled to an award of TTD benefits. However, even if she had, she was medically stable and able to return to work on January 5, 2015. AS 23.30.395(28). Indemnity benefits terminate upon medical stability. AS 23.30.185. Although Drs. Glass' and O'Leary's declarations of Employee's medical stability are only two days apart, Dr. Glass' opinion is given more weight. He has far more experience with determining medical stability than Dr. O'Leary who openly admitted he was not qualified to assess a nurse's fitness for duty. AS 23.30.122.

5) Is Employee entitled to TPD benefits after her return to full time work?

Employee returned to full-time work for Employer on February 9, 2015. She contends she is entitled to TPD benefits for the time she was off work to treat with Dr. O'Leary after she returned to work for Employer. AS 23.30.200. Employee has not met her burden of proof to establish a compensable mental injury, and is not entitled to TPD benefits. However, even if she had, benefits may not be paid for a period of disability occurring after the date of medical stability. *Id.* Employee was medically stable and able to return to work on January 5, 2015. Her claim for TPD benefits will be denied.

6) Is Employee entitled to interest attorney fees and costs?

Interest is awarded to compensate for the time value of money in the event of late-paid compensation. AS 23.30.155(p). Reasonable attorney fees and costs are awardable only upon

successful prosecution of a claim. AS 23.30.145(b). Employee did not meet her burden of proof to establish a compensable mental injury; she did not successfully prosecute her mental injury claim. Her claim for interest, attorney fees and costs must be denied.

7) Should *Patterson III* be modified?

Patterson III denied Employer's petition to exclude Employee's late filed evidence, but did not grant Employee an extension to file her attorney fee affidavit and costs bill. *Patterson III* found the fee affidavit filing deadline was missed by two days and found the fee and cost affidavit was due on January 10, 2018, but was filed after 5:00 p.m. on January 11, 2018, and therefore considered filed on January 12, 2018. The factual finding Employee's fee affidavit was filed two days late was a mistake. The attorney fee affidavit was filed at 4:59 p.m. on January 11, 2018; however, it was initially entered into the division's database in error as having been received after 5:00 p.m. This has been corrected. A mistake in a factual determination is basis for modification. AS 23.30.130; *Lindekugel*. *Patterson III* will be modified to reflect Employee's attorney fees affidavit and costs bill was filed one day late, at 4:59 p.m. on January 11, 2018.

8) Should *Patterson III* be reconsidered?

The Act must be interpreted to ensure quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers. AS 23.30.001(1). Requests for time deadline extensions for attorney fee affidavits and cost bills can be extended for good cause. 8 AAC 45.063(b); *Israelson*. Discretion exists to grant a petition for additional time under several circumstances. *Id.* The first, is whether the filing delay was minimal. By the parties' stipulations, Employee's fee affidavit was due on January 10, 2018. It was however, not filed until 4:59 p.m. on Thursday, January 11, 2018. This provided Employer with only one working day prior to the January 16, 2018 hearing to review Employee's attorney fee affidavit and cost bill because Monday, January 15, 2018, was Martin Luther King Day, a national holiday.

Whether the late affidavit was otherwise compliant with the regulations and whether the affidavit was delivered to opposing counsel on the filing date is answered in the affirmative. Whether

there was prejudice to a party is another consideration. Employee's fee affidavit filing date gave Employer only one working day to review the affidavit and cost bill. It is not fair to assume opposing counsel will give up weekends and holidays because Employee's attorney fee affidavit and cost bill was filed late. Employer was prejudiced with only one day to review the fee affidavit.

Next, whether there was a pattern of failure to meet deadlines must be considered. Mr. Harren has historically been challenged to meet deadlines. In *Mitchell*, an order was sought accepting his late-filed attorney fee affidavit and cost evidence. It was conceded fee documents were late and lacking but Mr. Harren had been on a hunting expedition for a week prior to hearing and had difficulty obtaining information from paralegals he no longer employed. The hearing in *Mitchell* was continued, and because limiting Employee's attorney fees to statutory minimum fees should he prevail would result in considerable revenue loss for his attorney, Employer was given an opportunity to object to Employee's attorney fee submission and additional time to file appropriate documentation for his attorney fees and costs was granted. Mr. Harren's second fee affidavit in *Mitchell* was one day late and closing arguments were filed one day late and, hence, not considered.

As in the *Mitchell* case, Employee contended Mr. Harren's significant employee turnover in the last year contributed to the delay in evidence filing and his ability to timely file a fee and cost affidavit. Employee's attorney has a pattern of failures to meet distinct regulatory deadlines and deadlines to which parties have stipulated. This pattern continued in Employee's case. Employee's 965 pages of hearing evidence due on December 27, 2017, were filed one day late on December 28, 2017. Employee's hearing brief due on January 8, 2018, was not filed until January 10, 2018. Mr. Harren's fee affidavit was filed on January 11, 2018, one day late. His affidavit of costs including paralegal costs and fees and Ms. Ouzts' paralegal costs affidavit were not filed until January 12, 2018.

The final circumstance to consider is whether the statutory fee awarded is reasonable compensation as compared to the fee claimed. Employee did not prevail on her claim and will not be awarded attorney fees and costs. This consideration is moot.

Late filings by either employees or employers, whether pleadings, evidence or affidavits, cause cases to become far more cumbersome than the Act intended. AS 23.30.001(1); AS 23.30.005. This impediment creates unnecessary litigation and expenses. Good cause does not exist to extend the time for Employee to file her fee affidavit and cost bill and her petition for reconsideration of *Patterson III* will be denied. *Israelson.*

CONCLUSIONS OF LAW

1) Dr. Wert's report and opinions should not be stricken.
2) Employee does not have a work-related mental injury.
3) Employee is not entitled to medical benefits.
4) Employee is not entitled to TTD benefits after January 5, 2015.
5) Employee is not entitled to TPD benefits after her return to full time work.
6) Employee is not entitled to interest, attorney fees or costs.
7) *Patterson III* will be modified.
8) *Patterson III* will not be reconsidered.

ORDER

1) Employee's claim for benefits is denied.

2) *Patterson III* is modified to reflect Employee's attorney fees affidavit and costs bill was filed one day late, at 4:59 p.m. on January 11, 2018.

3) Within 14 days of issuance of this decision and order, Employee is to reimburse Employer for three hours of attorney fees and costs associated with Ms. Livsey attending the December 8, 2016 deposition as reflected on the invoice Ms. Livsey was ordered to serve within five days of *Patterson I*'s issuance.

Dated in Anchorage, Alaska on October 26, 2018.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Janel Wright, Designated Chair

/s/
Amy Steele, Member

/s/
Rick Traini, 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 Shannon K. Patterson, employee / claimant v. Matanuska Susitna, Borough School District, self-insured employer / defendant; Case No. 201416158; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on October 26 , 2018.

/s/
Charlotte Corriveau, Office Assistant