ALASKA WORKERS' COMPENSATION BOARD

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

SAMANTHA ATLAS, Employee, Claimant, v. STATE OF ALASKA, Self-insured Employer, Defendant.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201617084 AWCB Decision No. 22-0061 Filed with AWCB Anchorage, Alaska on September 8, 2022

The State of Alaska's (Employer) July 27, 2021 petition to dismiss Samantha Atlas' (Employee) April 11, 2019 and May 28, 2019 claims was heard on July 19, 2022, in Anchorage, Alaska, a date selected on May 25, 2022. The parties' May 25, 2022 stipulation gave rise to this hearing. Non-attorney Barbara Williams represented Employee who testified as the only witness; Assistant Attorney General Michelle McComb represented Employer. The hearing began telephonically, but all participants ultimately appeared in person. During the hearing, panel member Michael Dennis disclosed that in a casual discussion while on a break late in the hearing, he discovered for the first time that he knew McComb's husband through work. Employer had no objection to Dennis being on the panel; Employee objected. After hearing Employee's arguments, the designated chair overruled them and declined to remove Dennis from the panel. This decision examines that oral order and decides Employer's petition on its merits. The record closed on August 22, 2022, when the panel met to deliberate Employer's petition after carefully reviewing the extensive agency record in this case.

ISSUES

Employee contended panel member Dennis should be disqualified from hearing her case because he disclosed late during the hearing that he knew McComb's husband through work. Though she could not point to a specific reason, Employee felt "uncomfortable" with Dennis on the panel.

Employer contended it had no objection to Dennis hearing the case. An oral order declined to remove Dennis from the panel.

1) Was the oral order declining to disqualify panel member Dennis correct?

Employer contends Employee has intentionally and repeatedly ignored designees' orders without good cause and consistently refused to participate in the process for her agreed-upon second independent medical evaluation (SIME). It seeks an order dismissing her present claims.

Employee contends she has done her best to move the SIME process forward. She contends others including Employer are at fault for her lack of medical treatment and contends she should not be required to attend an SIME until after she receives treatment for her posttraumatic stress disorder (PTSD). Employee contends she has been "patient" to this point and objects to any sanctions.

2) Should Employee be sanctioned?

FINDINGS OF FACT

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

1) On November 14, 2012, Employee told a physical therapist treating her for a 2012 thumb injury that her "Mom passed away unexpectedly." (Advanced Hand Orthopedics, Occupational Therapy Record, November 14, 2012).

2) On November 19, 2016, Employee told paramedics she was a staff member at work for Employer when a patient punched her twice in the chest with his fist. She "fell backwards but caught herself, no loc" [loss of consciousness], and had two puffs from her Albuterol inhaler with some relief of her shortness-of-breath complaint. Employee reported that "only her chest hurts," and she did not have a headache. The paramedic recorded Employee "at times seems like

her shortness of breath is getting better," but upon arrival at the hospital she still had it. Objectively, Employee had "slightly labored" breathing but her "chest show[ed] no bruising or tenderness to palpation." Her extremities showed no swelling, and she was able to stand and walk on her own. The paramedic recorded, "ER staff was notified that I thought that something else is going on" and the emergency room physician should see her. The paramedic's assessment included only "shortness of breath," and his primary impression was limited to "Respiratory Distress." (Anchorage Fire Department Prehospital Care Report, November 19, 2016).

3) On November 19, 2016, Employee told the emergency room staff she had "shortness of breath" after she was "punched in the chest twice" by a patient at work. "Staff . . . [at work] state that she fell backward over a table and was momentarily unresponsive. However, the patient adamantly denies any head injury or loss of consciousness." Her head examination was normal without evidence of trauma, and she denied neck, back or any other pain and said she wanted to go home but staff at work made her go to the emergency room. Employee had "normal mood and affect," and was "alert and oriented to person, place, and time." The diagnosis was "assault" and "chest wall contusion." Computer tomography (CT) head, neck and chest scans were unremarkable. There was no evidence of chest bruising and hip x-rays were negative. (Alaska Regional Hospital Emergency Room report, November 19, 2016).

4) On November 25, 2016, Employee returned to the emergency room with complaints of headaches, nausea and dizziness. She referenced her November 19, 2016 incident and said she now had a "tender spot" on her scalp and "may have hit her head when she fell to the ground." There was no speech difficulty; Employee's head showed no trauma. Her eyes were negative for photophobia, pain, discharge, redness, itching and visual disturbance. Employee's musculoskeletal exam was negative for motion loss, arthralgias, back pain, gait problems, joint swelling, myalgias, neck pain and stiffness; her neck had normal motion. Her neurological exam was negative for tremors, seizures, syncope, facial asymmetry, speech difficulty, weakness, light-headedness, and numbness, but was positive for dizziness and headaches. Employee reported no hallucinations, behavioral problems, confusion, sleep disturbance, self-injury, dysphoria, or decreased concentration or agitation; she was neither nervous nor anxious or hyperactive. Nonetheless, the examiner's clinical impression was, "Concussion, with loss of

consciousness of 30 minutes or less." (Alaska Regional Hospital Emergency Room Report, November 25, 2016).

5) On December 15, 2016, Employee completed an intake form for a primary care provider. Under "Family History," under the "If Deceased" category she checked "Yes" for both her father and mother; as to cause of death or their age when they died, she wrote "Don't Remember." (Primary Care Associates, affiliates of US Healthworks form, December 15, 2016).

6) On December 15, 2016, Employee told Mari Hately, MD, that a patient hit her in the chest and "I was briefly unconscious" and had hazy vision and headaches and said, "I forget easy." (Physician's Report, undated). She told Dr. Hately the patient "struck her directly in the chest very hard knocking her backwards," and she "fell onto a wooden table and chairs, and was knocked unconscious." Employee said she awoke "in an ambulance on the way" to the hospital. She reported ongoing headaches, vision changes, focusing issues, forgetfulness, sleeping difficulty, daily nausea, mood changes, anxiety, photophobia, neck pain and fear. Employee reported no history of high blood pressure. Based on this history, Dr. Hately assessed a chest and head injury, a concussion, and for the first time in Employee's injury-related medical records, a "neck strain." (Hately report, December 15, 2016).

7) On January 4, 2017, Employee told neurologist Scot Hines, MD, that a patient assaulted her "though she cannot tell [him] a lot about what occurred during this period." From her description, Dr. Hines surmised it "sounds as if she was grabbed by the neck, thrown to the floor, and her head was struck." For the first time since the incident, Employee reported "nightmares regarding being assaulted." Dr. Hines diagnosed a traumatic brain injury (TBI), PTSD, hypertension and cervicalgia. He suggested if her condition persisted she may need a behavioral health specialist or psychiatrist along with neuropsychological testing that can better evaluate and treat her. Employee's presentation suggested anxiety and depression. (Hines report, January 4, 2017).

8) On January 6, 2017, Dr. Hately revised her diagnoses to include TBI, concussion, chest injury, neck strain and PTSD. She referred Employee to occupational therapy for speech and language assistance "after the brain injury," to a neuropsychologist for testing and to a psychiatrist for PTSD treatment. (Hately report, January 6, 2017).

9) On January 6, 2017, Employee also saw Alyx Morey, OD, who performed an eye examination and testing. Testing was "normal & symmetrical" between both eyes, which

indicated "no lag or impairment in visual processing." Dr. Morey noted, "Visual field testing was very unreliable with significant false negatives." Employee had 20/20 vision in both eyes but demonstrated "photophobia." Dr. Morey diagnosed "headache, photophobia secondary to traumatic loss of consciousness" from the November 19, 2016 work injury. (Morey report, January 6, 2017).

10) On January 13, 2017, Dr. Hately referred Employee to Greatland Clinical Associates to address her purported TBI and "likely PTSD." (Hately referral, January 13, 2017).

11) On February 6, 2017, Dr. Hately charted Employee had "not yet had an appointment with Greatland Clinic, whom I referred her to for PTSD." (Hately report, February 6, 2017).

12) Nothing in Employee's medical records explained why Employee had not gone to Greatland Clinic. (Observations).

13) On February 8, 2017, Employee for the first time in her injury-related medical records reported right shoulder pain that increased with activity and movement. She did not recall a "pulling injury" on November 19, 2016, "but does believe she landed on the right arm." (Alaska Physical Therapy Specialists (APTS) report, February 8, 2017).

14) On February 15, 2017, Kathrine Hardy, APRN, saw Employee for her work injury for the first time. Her diagnoses included chest injury, concussion with loss of consciousness for less than 30 minutes, neck strain, TBI, PTSD and high blood pressure. (Hardy report, February 15, 2017).

15) On March 11, 2017, Eugene Wong, MD, and Michael Frazier, MD, examined Employee for an employer's medical evaluation (EME). Among other things, they implied she had no TBI and opined she had no "cognitive residual" from one. The symptoms previously attributed to a head injury were, in their opinion, psychiatrically based and questionably related to anxiety, PTSD or depression. Her right shoulder and spine symptoms were attributed to "somatization" arising from her assault. Drs. Wong and Frazier recommended no additional speech therapy beyond completing her current course. (Wong, Frazier report, March 11, 2017).

16) On May 1, 2017, Employee recounted she and her providers were planning on her to return to work in two weeks. (APTS report, May 1, 2017).

17) After extensive physical, speech, and cognitive therapy, in early 2017 as her providers anticipated her returning to work soon, Employee began complaining more about her right shoulder. (Hines report, May 5, 2017; observations).

18) On May 5, 2017, Dr. Hines agreed Employee has PTSD. (Hines report, May 5, 2017).

19) On May 8 and 9, 2017, Employee told her speech and language therapist that she was "concerned" about the PTSD diagnosis. Therapist Anne Ver Hoef noted "likes to describe past events with very high levels of details." She recommended Employee return to work on a structured and limited basis. (Ver Hoef reports, May 8 and 9 , 2017).

20) On May 11, 2017, APRN Hardy agreed with Ver Hoef's opinion about Employee returning to work. (Hardy note, May 11, 2017).

21) On May 11, 2017, immediately after obtaining opinions from multiple providers that she could return to work, Employee reported after her most recent physical therapy (PT) session she felt good until she got home, "reached to the left" and had "sudden, and excruciating pain to her right shoulder" with new symptoms described as "paresthesia." (Hardy report, May 11, 2017).

22) At some point in May 2017, Employee began making handwritten "tracking pain scenarios." In her notes, Employee records among other things pain frequency. She also prepared drawings depicting her body and on them described her sensations such as: "Inside right arm flesh is loose"; "right arm inside is being ripped apart by shoulder bone"; above her elbow felt like "inside skin has split down the middle and flops side to side while being stabbed or torn"; her right arm was being "tugged by thick rope"; the inside of her right arm "is torn in half and swaying left to right and tearing apart at the same time"; she awakened during sleep with "excruciating pain"; she could not brush her hair and it felt like her "shoulder is grinding bones." As far as any "relief," Employee wrote in all capital letters, "NONE DISCOVERED YET!" Employee reported "continuing," non-stop pain with "no tapering." Her human silhouette drawing demonstrated where the "sharp, tugging, ripping" sensations were and was accompanied by a drawing of what appears to be a stop sign with the words "BEWARE OF MY PAIN" written on it. Employee's drawings of her right hand include a pointed knife on or in her arm next to the words "ripped off bone" and "stabbing pain." She wrote, "feels like inside arm flesh being ripped apart," with arrows pointing to lines with large drops of blood coming from them. Employee's face drawing demonstrates her alleged headaches and eye issues with what appear to be ever-increasing-in-size teardrops and the words "Sucks Feeling All This Pain." On the bottom of this drawing Employee wrote, "VISION THE REAL DEAL PAIN OF ANOTHER," accompanied by drawings depicting eyeglasses. (Employee's drawings, May 2017).

23) On May 23, 2017, Employee reported she was returning to work for Employer on May 30, 2017, in a paperwork position. (Ver Hoef report, May 23, 2017).

24) On May 26, 2017, Employee saw Christopher Albert, PA-C, for a right shoulder orthopedic evaluation. She told PA-C Albert she was "brutally attacked" by a psychiatric patient and did not recall the attack but remembered "waking up" shortly after it. Employee listed PTSD as one of her various diagnoses. PA-C Albert provided a shoulder injection, which he said would be diagnostic of a shoulder problem if it resolved her pain. (Albert report, May 26, 2017).

25) On May 31, 2017, APRN Hardy wrote, "This note will contain the HPI [History of Present Illness] from all visits, as it recently came to this practitioner's attention that the entire history must be included in WC [workers' compensation] notes." She added: "Samantha is a 50-year-old woman who works at API and on November 19th, during an admission of one of the new patients, the new patient struck her directly in the chest very hard knocking her backwards. She fell onto a wooden table and chairs, and was knocked unconscious. When she awoke, she was in an ambulance on the way to the Alaska Regional ER." APRN Hardy then edited previous HPI entries from her reports to date, into this report. (Hardy report, May 31, 2017).

26) On June 1, 2017, Employee reported to Ver Hoef that PA-C Albert's shoulder injection "did not alleviate the pain." (Ver Hoef report, June 1, 2017).

27) On June 2, 2017, Employee saw Suzanne Fix, MD, to evaluate her "back pain with radiation to the right arm." Dr. Fix discussed the case with PA-C Albert and "given her history" ordered cervical spine magnetic resonance imaging (MRI). Dr. Fix recorded "a work injury where she was attacked by a patient while working in API. She suffered a traumatic brain injury and had immediate onset of right shoulder and arm pain. . . ." Dr. Fix diagnosed "cervical spondylosis at C4-5 and C5-6; neck pain with radiation in the right arm; and right shoulder pain with history of partial supraspinatus tear." She prescribed medication and cervical nerve root blocks. Dr. Fix referred Employee to Alfred Lonser, MD, to consider Complex Regional Pain Syndrome (CRPS) in the right arm as a differential diagnosis. (Fix report, June 2, 2017).

28) On June 8, 2017, Employee reported her arm, shoulder and neck hurt so much she occasionally "blacks out." (Ver Hoef report, June 8, 2017).

29) On June 13, 2017, Employee reported her arm, shoulder and neck pain was getting "worse by the day." She had been calling PA-C Albert's [Dr. Tower's] office for proposed injections but she was feeling "harassed" by that facility. (Ver Hoef report, June 13, 2017).

30) On June 16, 2017, Employee had the recommended cervical spine injections. (Michel Gevaert, MD, report, June 16, 2017).

31) On June 26, 2017, Dr. Lonser evaluated Employee for her right-sided neck, shoulder and arm pain "secondary to an assault at work by a patient." Employee reported a patient at work hit her in the chest "causing her to fall backwards onto a wooden table and chair." For the first time in her medical records, Employee reported a classic CRPS sign and symptom description: Her entire right arm "will turn red almost purple" and will be "hot to the touch" with "swelling in the right side of the neck, right shoulder and right arm" and "just the lightest touch will cause extreme pain." Employee said when the pain becomes extreme, she will "black out" for "seconds or minutes." On examination, other than subjective pain and motion loss, Dr. Lonser found no signs consistent with a CRPS diagnosis. Nevertheless, he diagnosed CRPS Type II in the right upper extremity and opioid dependence and at least implied these diagnoses arose from her work injury with Employer. He recommended medication and a right ganglion nerve block to treat the reported CRPS. (Lonser report, June 26, 2017).

32) On July 20, 2017, Dr. Lonser provided the stellate ganglion block injections to address the CRPS diagnosis. (Lonser, APTS reports, July 20, 2017).

33) On July 26, 2017, Employee reported to PA-C Albert that Dr. Lonser's injections did not resolve "her right shoulder and arm pains." Looking at Employee's MRI findings, PA-C Albert found she had a "mixture" between a rotator cuff pathology and cervical radiculopathy. He opined her MRI portrayed a "poor outcome" for rotator cuff repair surgically. PA-C Albert recommended continued PT and other conservative measures. (Albert report, July 26, 2017).

34) By August 10, 2017, Employee was expressing "a LOT of frustrations regarding several different medical offices." She expressed "confrontational" interactions with people at her medical providers' offices because of her frustration. Employee felt as though she had been "passed from doctor to doctor" without getting answers or a treatment plan. She was told she needed shoulder surgery but "does not seem to be able to schedule" it with the physician with whom she consulted. (Ver Hoef report, August 10, 2017).

35) On August 14, 2017, physical medicine specialist Susan Klimow, MD, performed nerve conduction velocity (NCV) and electromyography (EMG) tests on Employee's right upper extremity. All tests were within normal limits and there was no evidence of peripheral nerve

entrapment or neuropathy, and no evidence of upper extremity acute or chronic radiculopathy. (Klimow reports, August 14, 2017).

36) On August 21, 2017, APRN Hardy noted Employee said she had "regained remarkable" motion to her shoulder "without pain." Given this, APRN Hardy said Employee was ready to return to full-duty work. (Treating Physician's Progress Report, Hardy report, August 21, 2017).

37) On August 21, 2017, Employee also saw Dr. Lonser to whom she reported right shoulder pain at "8/10 with medications taken," and "reduced range of motion." He found no signs or symptoms consistent with CRPS but again diagnosed CRPS Type II, cervical spondylosis and shoulder joint pain. Employee reported that Dr. Tower's office would not schedule her for surgery and could only give her limited injections. Dr. Lonser provided a referral to Anchorage Fracture & Orthopedic Clinic so Employee could get a second opinion "to see if surgery is a good idea for her right shoulder." (Lonser report, August 21, 2017).

38) On September 5, 2017, orthopedic surgeon Gregory Schumacher, MD, examined Employee's right shoulder and her previous MRI. He could not get any internal rotation from her shoulder "suggesting that she has a case of adhesive capsulitis." Dr. Schumacher reviewed the MRI and disagreed with the interpretation: "Basically, this is a pretty minimal disruption of the supraspinatus without full-thickness component, otherwise, a pretty normal study." He diagnosed "adhesive capsulitis after a traumatic injury." Dr. Schumacher recommended a steroid injection and more PT; he did not suggest she needed surgery then or in the future. (Schumacher report, September 5, 2017).

39) On September 5, 2017, Jason Sweeney, MD, gave Employee a right shoulder steroid injection. (Sweeney report, September 5, 2017).

40) On September 6, 2017, Employee told PT she had seen Dr. Schumacher and he said she needed to have surgery on her shoulder "but not yet." (APTS report, September 6, 2017).

41) On September 6, 2017, Employee also saw Dr. Gevaert. Notably his history states:

> . . . The patient punched her in the chest area. She was knocked over and fell hard on a wood table and chair. She was briefly unconscious. She fell to the right side. She had hazy vision, speech problems, and experienced severe pain in the head. She was admitted to the emergency department and released later that day.
> . . . .
>
> She essentially has two problems: neck pain and shoulder pain.

> She immediately felt pain following the assault. . . . I performed transforaminal epidural steroid injections, right C5-6 and C6-7. This injection gave her significant relief. . . .
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> In addition, the patient experienced significant shoulder pain. This has evolved into a frozen shoulder. Dr. Schumacher did not recommend surgery. The patient is presently under the care of Dr. Tower's office. She states that the PA performed an intraarticular steroid injection at the office which did not give her any relief.

Dr. Gevaert's impressions were work-related assault; persistent pain; right frozen shoulder; questionable PTSD; and poor sleep hygiene. He recommended facet injections for her neck and steroid injections for her shoulder. Employee said she was doing "fine" at work but had developed poor sleep hygiene. Dr. Gevaert suggested reassessing the need for psychological or psychiatric support "soon." (Gevaert report, September 6, 2017).

42) On September 8, 2017, John McCormick, MD, gave Employee a right shoulder steroid and anesthetic injection. (McCormick report, September 8, 2017).

43) On September 26, 2017, Employee told Dr. Gevaert that 50 percent of her symptoms had improved, and he concluded at least 50 percent of her cervicothoracic region symptoms were related to right shoulder internal derangement. He recommended she continue with EMDR [eye movement desensitization and reprocessing] and PT. (Gevaert report, September 26, 2017).

44) On October 10, 2017, Employee for the first time in her injury-related medical records reported "left" shoulder pain. (APTS report, October 10, 2017).

45) On October 11, 2017, APRN Hardy noted Employee had a "psy" setback at work and encouraged her to seek PTSD counseling. She recorded they "had discussed PTSD counseling in the past, but at the time, it would not have been as effective." Employee said she had a friend whose wife knew people who specialized in PTSD counseling; APRN Hardy recommended a referral to a psychiatrist "to initiate this process." (Hardy report, October 11, 2017).

46) On October 12, 2017, Employee reported the recommendation for a psychiatric evaluation discouraged her and meant she had "taken a step back." (APTS report, October 12, 2017).

47) On November 14, 2017, approaching the one-year anniversary of her injury, Employee told APRN Hardy she had not been able to find a counselor or psychiatrist that would accept a workers' compensation case. "At this point, though, she needs to see someone to help with the PTSD coping." (Hardy report, November 14, 2017).

48) On November 15, 2017, Ver Hoef gave Employee several names of PTSD counselors. Employee said APRN Hardy told her "she [Hardy] does not know the counselors in the community very well." (Ver Hoef report, November 15, 2017).

49) On November 28, 2017, APRN Hardy told Employee to call the Anchorage Police Department (APD) to see who they use "victims/officers injured" so she could make her "new 1st priority" finding a PTSD counselor. (Hardy report, November 28, 2017).

50) On December 10, 2017, Employee went to the emergency room for a rash. Her neck examination was normal; her extremities had normal tone and full range-of-motion. (Alaska Regional Hospital Emergency Room Report, December 10, 2017).

51) On January 2, 2018, Employee reported she contacted "a couple counselors" and left messages for them to call back. (APTS report, January 2, 2018).

52) On January 9, 2018, Dr. Lonser referred Employee for psychiatric evaluation for "trauma following attack with increased anxiety." (Lonser report, January 9, 2018).

53) By February 7, 2018, Employee had still not seen a psychiatrist. A provider at Dr. Lonser's office suggested she contact her insurance to find out who was in "her network." (Nicole Baker, NP, report, February 7, 2018).

54) By March 13, 2018, Employee had not seen a psychiatrist but had found one in network and was on a waiting list for an appointment. (Baker report, March 13, 2018).

55) On March 16, 2018, Dr. Gevaert recommended Employee return to Dr. Schumacher to see if surgery for her right shoulder was appropriate. (Gevaert report, March 16, 2018).

56) On March 28, 2018, Employee was to attend an EME with neurologist Sean Green, MD, in Anchorage. She did not attend so Dr. Green performed a medical record review instead and issued a report. Dr. Green opined Employee had "serious pseudo-neurologic and chronic pain symptoms" reflecting serious "psychiatric disease and/or malingering." He did not believe Employee had evidence of a TBI or a concussion. In his opinion, if she had PTSD, it was not related to her November 19, 2016 event. Dr. Green opined there was no neurological condition related to an injury; the incident was the substantial cause of the resolved chest contusion but not any other diagnosis. He recommended a forensic psychiatrist evaluation supported by a neuropsychological evaluation including MMPI-2 testing. (Green report, March 28, 2018).

57) On April 2, 2018, Dr. Schumacher examined Employee's right shoulder; she was frustrated because it was not "back to normal." He opined "frustration" was not an "indication for surgery"

and suggested a "different opinion if that is not suitable to her." In Dr. Schumacher's view, Employee was in the "nonoperative camp" and shoulder surgery would not improve her condition and may worsen it. (Schumacher report, April 2, 2018).

58) On April 3, 2018, Employee promptly saw orthopedic surgeon Bradley Sparks, MD, who recommended right shoulder surgery. (Sparks report, April 3, 2018).

59) On April 12, 2018, APRN Hardy said Employee's need for right shoulder surgery "dates to the original injury," but there was a delay in pursuing it because her TBI prevented this from being fully evaluated. (Hardy report, April 12, 2018).

60) On May 8, 2018, Employee had her 100th PT appointment for this injury; PT continued. (APTS report, May 8, 2018).

61) On May 10, 2018, Employee told Dr. Gevaert she "got upset" when Dr. Schumacher did not recommend right shoulder surgery. She also for the first time mentioned "episodic flank pain." (Gevaert report, May 10, 2018).

62) On May 18, 2018, orthopedic surgeon Scot Youngblood, MD, saw Employee for an EME. He noted "significant pain behaviors and very odd behavior." Employee's injury description included the assault and a fall "back onto right side of wooden arm of chair to wooden table," where she "hit head and right side of arm-shoulder." Dr. Youngblood's only "verifiable diagnosis with any relation to the claimed injury event" was a chest contusion, which had long resolved. He opined Employee needed no further medical treatment or diagnostic testing. However, he had no objection to a psychiatric evaluation, but he could not explain her subjective symptoms on any objective orthopedic basis. (Youngblood EME report, May 18, 2018).

63) On May 24, 2018, APRN Hardy charted Employee was a "no-show," and "has not initiated counseling as of yet, but this is no longer an option -- she must call Greatland Counseling today to get on their schedule." APRN Hardy recommended PTSD therapy for "all injured employees" who work for Employer. (Hardy report, May 24, 2018).

64) On June 11, 2018, Employee reported an event while at work for Employer where a patient grabbed her left breast and arm from behind. On examination her neck had normal motion; her "musculoskeletal" motion was normal. Neurologically and psychiatrically, Employee's examination was normal. (Alaska Regional Hospital Emergency Room records, June 11, 2018).

65) On June 14, 2018, APRN Hardy recorded Employee had her first "counseling appointment" scheduled with "Wisdom Traditions, Rebecca Haussner," and they accepted workers' compensation insurance. (Hardy report, June 14, 2018).

66) On June 28, 2018, APRN Hardy said Employee finally saw a PTSD provider, but subsequently they called to advise she would need to see a psychiatrist and that provider, Wisdom Traditions, could not meet her needs. APRN Hardy directed Employee to "call them again" and ask for assistance in finding a psychiatrist. She opined Employee's mental health prevented her right shoulder problem from being discovered earlier. Though she had it, Employee did not give Dr. Youngblood's report to APRN Hardy. (Hardy report, June 28, 2018).

67) By July 5, 2018, Employee reported she had reviewed the Youngblood EME report and was not approved for shoulder surgery. (APTS report, July 5, 2018).

68) On July 5, 2018, Dr. Green again recommended Employee undergo evaluation from a forensic psychiatrist and neuropsychologist to address "probable malingering and/or somatic symptom disorder" and to rule out PTSD. (Green report, July 5, 2018).

69) On July 20, 2018, Employee told Dr. Sparks her workers' compensation adjuster would not pay for right shoulder surgery, but she told Dr. Sparks "she would like to have her shoulder taken care of either way, whether she is to [sic] with her private insurance or Worker's Comp." He said he would "try to figure this out and then [he would] schedule surgery with her private insurance." (Sparks report, July 20, 2018).

70) On August 23, 2018, Dr. Sparks performed right shoulder surgery on Employee for a partial thickness rotator cuff tear, impingement and adhesive capsulitis. He also recommended additional PT. (Sparks report, August 23, 2018).

71) On September 11, 2018, Employee initially reported her right shoulder was "much better than it was before." (Sparks report, September 11, 2018).

72) On September 18 and 19, 2018, Paul Craig, PhD, performed a neuropsychological EME on Employee; she demanded her significant other Barry Coke be present. Dr. Craig found Employee "oppositional" in refusing to answer simple questions like, "When did you move to Alaska?" The next day, Employee was "contrite" and told Dr. Craig she did not want to discuss some items in Coke's presence, which Dr. Craig found conflicted with her request that Coke be present during the clinical interview. When she finally provided answers to questions she refused to answer the day prior, Employee's answers in Dr. Craig's view "probably had little or

nothing to do" with her oppositional approach on the first day. On this issue, he concluded, "Rather, her reluctance to answer questions appeared to be reflective of deliberate and conscious oppositionality." On the "Fake Bad Scale" in one test Employee scored 31; the cut-off score between normal symptom validity and "symptom exaggeration" is 24 points. Employee's score was 4.2 standard deviations above the mean, "which is a dramatic elevation." Dr. Craig concluded, "Basically, her symptoms and complaints do not appear to be credible as contrasted with medical and psychiatric patients who are representing their symptoms and problems in a straightforward manner." In his history taking, Dr. Craig recorded:

> When asked about her biological parents, she stated that both are deceased no additional information was forthcoming. . . .
> . . . .
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> As stated above, during the second day of the evaluation, Ms. Atlas asked to speak with the examiner again so that she could answer some of the questions he had posed to her during the clinical interview. The examiner accommodated her request. It quickly became obvious that Ms. Atlas knew the correct answers to several of the questions about which she had previously claimed no memory. Likewise, Ms. Atlas was able to answer some questions that she refused to answer the day before. . . .
> . . . .
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> With regard to family history, Ms. Atlas stated that her father died before her mother. When her father died, he was about 87 or 88 years old. He had heart problems and pulmonary problems. Her mother was younger than her father. Her death occurred when she was about 75 or 76 years old. The mother died about one week after the father died, according to Ms. Atlas. . . .
> . . . .
>
> As a neuropsychologist, the current examiner cannot definitively opine about the need for medical treatment. However, the current examiner noted in the record review that "fear and anxiety" were first identified as a specific problem on 12/06/16, when Ms. Atlas consulted with Dr. Makin, an internist. Ms. Atlas did not follow up with Dr. Makin and began seeing Dr. Hately for her primary care. Nine days after seeing Dr. Makin, Dr. Hately also identified "anxiety" as a salient issue for Ms. Atlas. A neurologist also pointed out that post-traumatic stress was the probable cause for her subjective complaints as early as 01/04/17. The subsequent health records are replete with comments about her emotional distress. She was recommended to obtain psychiatric and/or behavioral health treatment by multiple providers. A nurse practitioner first recommended a neuropsychological evaluation on 03/03/17. Despite all these statements in the health records and recommendations for psychiatric care and behavioral healthcare, Ms. Atlas has

> essentially received no mental health services at any time, either before or after the 11/19/16 assault. She saw one unlicensed counselor for one session during June 2018. This counselor has subsequently been granted a license as a professional counselor in Alaska, and was probably working under a licensed provider's supervision at "Wisdom Traditions" clinic during June 2018. In any case, this unlicensed and probably inexperienced counselor called Ms. Atlas after the intake appointment and stated to Ms. Atlas that she would need to seek services elsewhere. As stated above, Ms. Atlas has not seen even one licensed mental health professional before or after 11/19/16. Mental health treatment rather than medical treatment has been needed since she was injured. Patients presenting with somatic symptom disorder [SSD] typically do not accept psychological explanations for their subjective complaints. Therefore, it is not surprising that Ms. Atlas has avoided receiving mental health care despite repeated recommendations in this regard. . . . The current examiner cannot opine whether Ms. Atlas was primarily responsible for sidestepping these recommendations, or whether her healthcare providers failed to adequately follow-up with mental health recommendations. . . . Ms. Atlas's story that she told healthcare providers about the assault evolved over time. Her increasing report of loss of consciousness understandably led healthcare providers to over interpret the severity of her injury and to impute an underlying traumatic brain injury. . . . Because of her diagnosed but as yet untreated psychiatric diagnoses, the current examiner opines that Ms. Atlas needs to be evaluated and treated by a board-certified psychiatrist. In addition to psychiatric evaluation and treatment, Ms. Atlas may benefit from very tightly-structured cognitive-behavioral psychotherapy focused on her psychiatric diagnoses. She may also benefit from a tightly-managed behaviorally-oriented pain treatment program. Cognitive-behavioral psychotherapy and/or behavior therapy should be provided by a properly trained and licensed psychologist who has experience working with somatic symptom disorder patients and PTSD patients. . . . Certainly, Ms. Atlas's healthcare providers could have been more insistent and persistent regarding Ms. Atlas receiving mental health evaluation and treatment. Case management services could have been implemented to make sure that Ms. Atlas saw a properly-trained, credentialed, and experienced mental health provider shortly after she was assaulted at work. At the same time, it is highly probable that Ms. Atlas actively avoided following up on any recommendations for mental health treatment given what is known about somatic symptom disorder patients. . . . (Craig report, September 18, 2018).

73) Dr. Craig by experience and reputation is well-known to the Board. It is not likely he incorrectly recorded the information Employee gave him about her parents. (Experience; judgment; inferences drawn from the above).

74) By October 16, 2018, Employee reported continuing and ongoing soreness in her right shoulder and "difficulty sleeping on her right side." (APTS report, October 16, 2018).

75) On November 5, 2018, adjuster Ashley Moser recorded in her notes a teleconference she had with Employee that day. Employee told Moser she had "called the police dept and fire dept to ask who they send their employees to 'when they go through something like this' but they work with different insurance/union." (Moser notes, November 5, 2018).

76) On November 6, 2018, APRN Hardy said she had made a "soft referral" of Employee to Rehabilitation Institute of Washington (RIW) in September 2018 for its TBI clinic. She received a call from the RIW clinic on November 2, 2018, stating Employee "was there" and was "unable to reach WC coordinator." APRN Hardy discussed this with Employee and initiated a "formal referral." At this visit, APRN Hardy thought Employee looked like her presentation 18 months earlier and she had increased fear and anxiety. She recommended Employee have her care continued in a setting trained for long-term TBI recovery. (Hardy report, November 6, 2018).

77) On November 15, 2018, RIW faxed a letter to APRN Hardy outlining the care available at its facility; it focuses on TBI and "chronic pain." The letter alleged there "are no such programs in Alaska." The letter does not say RIW treats PTSD. (RIW letter, November 15, 2018).

78) On November 19, 2018, the second anniversary of her work injury, Employee told APRN Hardy that Family Medical Leave provisions have been invoked at work and she had been removed from the schedule. Though her sleep had "improved some," the previous night Employee said she was not able to "stop her brain from replaying her injury." Employee told APRN Hardy she had not received any psychiatric care for her PTSD. (Hardy report, November 19, 2018).

79) On November 19, 2018, Employee also served the adjuster with extensive formal discovery requests pursuant to Alaska Rules of Civil Procedure 26, 34 and 37. (Request for Production to the Insurer and/or Adjuster the Representative, November 19, 2018).

80) By November 27, 2018, at PT visit 142, Employee was still reporting "stiffness and soreness" in her right shoulder. (APTS report, November 27, 2018).

81) On November 27, 2018 [the letter is erroneously dated 2017], APRN Hardy wrote:

> . . . There was difficulty finding a psychiatric office that would see her, so there was apox. a 15-month delay with this visit. She was seen by the psychiatrist once, and informed they couldn't help her, without follow-up provided. . . .
> . . . .

> Her care has been fragmented, as some services were able to achieve (therapies, rotator cuff repair). After learning about the Rehabilitation Institute of Washington, and the Multi-Specialty and Interdisciplinary Brain Injury Rehabilitation Program, this program is the best option returning Ms. Atlas to full health. By treating both cognitive remediation and rehabilitation, simultaneously addressing pain, fear, physical, and emotional needs, but also educational and vocational abilities, in a concentrated intensive setting, this option has the best chance to do so. (Hardy letter, November 27, 2018).

82) On November 28, 2018, Dr. Sparks examined Employee and found her at "maximum medical improvement." Employee told him her right shoulder was doing much better than it was previously and she had regained significant motion. He referred Employee to Jared Kirkham, MD, for a permanent partial impairment (PPI) rating, and returned her to full-duty work. (Sparks report, November 28, 2018).

83) On December 5, 2018, Dr. Kirkham saw Employee to provide a right shoulder PPI rating. He noted, "there is discrepancy between the prior medical records and the patient's account as to what actually transpired during the work incident." Dr. Kirkham reported, "currently the patient reports ongoing right shoulder pain. She describes it as throbbing. She reports reduced strength and range of motion in her right shoulder. She reports that she needs assistance to don and doff her bra. . . ." Dr. Kirkham found a "mild degree of exaggerated pain behavior." He determined, "if a right shoulder injury is accepted as related to the work injury on November 19, 2016," Employee has a three percent whole-person PPI rating for her right shoulder. He agreed with other examiners and said, "the only identifiable work injury from November 19, 2016, is a sternal contusion, which has resolved." In his opinion, Employee's other complaints, including cervical spine pain and concussive symptoms including headaches were not substantially caused by the work injury. (Kirkham report, December 5, 2018).

84) On December 14, 2018, Deanna Bean, RN, a medical case manager provided a progress report for work she had done on Employee's case between November 15, 2018 through December 13, 2018. Among other things, RN Bean said she contacted Employee by phone and explained her role in the claim. She attempted to get updated medical record releases from her, but Employee did not respond. RN Bean continued to try to contact Employee by email and telephone, "but did not receive any response." She agreed with Dr. Craig's opinion that Employee needed to be treated for PTSD, rather than for TBI as APRN Hardy had suggested.

RN Bean also noticed Employee's story "of how the injury occurred changed multiple times throughout her treatment." (Bean Progress Report Number 1, December 14, 2018).

85) On December 14, 2018, Employee was still complaining of aching, shooting, stabbing, sharp, burning, pinching pain in her right: arm, shoulder, neck and head; "nothing" made the pain better. Sudden movements made her awaken at night with "deep pain" and Employee said she needed assistance to take off her shirt "very carefully" and to put it back on. (AA Spine & Pain Clinic report, December 14, 2018).

86) On December 18, 2018, Employee told Dr. Hately that on December 17, 2018, she went to work for Employer, unaware the person who had assaulted her on November 19, 2016, was in the lobby. She was "incredibly afraid." Employee said she had a "significant activation of her PTSD." She remembered "being on the floor in the fetal position and is unsure how she got there" and recalled "slamming her hands down on the table screaming for help." Employee said she was "still undergoing ocular therapy" for the November 19, 2016 injury. She reported "finally seeing a psychiatrist." Dr. Hately was unclear why Employee had not been able to get into RIW for treatment and opined she had not made much progress from when Dr. Hately originally saw her two years earlier. (Hately report, December 18, 2018).

87) On December 18, 2018, Employee also saw Katherine Smith, NP, and reported pain in her: Right head, neck, shoulder, and arm; both wrists and hands; right chest; right upper- , mid- and lower-back; right abdomen; left hip and thigh; right knee; and both ankles and feet. She reported her migraines were relieved by various injections and blocks and stated they "have been ongoing since 2016," "never go completely away" and were "constant." Employee stated her neck pain radiated into both shoulders and midway down her back. She reported neck pain had also been ongoing since November 19, 2016. Her pain level on this visit was "10/10" after she had last taken her Tramadol "[that] morning." (Smith report, December 18, 2018).

88) On December 18, 2018, Employee also participated in a telephonic, structured, intensive, multidisciplinary-program-treatment-planning-conference with RIW. She reported that on November 19, 2016, a patient assaulted her at work and she "fell backward striking her arm and head on a table and chair." If there was loss of consciousness, "it was likely momentary." In this conference, Employee reported she had persistent headaches and light sensitivity, but her right shoulder and upper extremity pain were "largely resolved" following surgery and PT. She also reported insomnia related to emotional distress, nightmares and hypervigilant startle

reactions "apparently part of posttraumatic stress disorder." RIW identified the following injuries or medical issues: (1) chest contusion, resolved; (2) head contusion with possible loss of consciousness and without significant post-concussion complaints or cognitive symptoms at this time; (3) chronic headaches either post-concussive or cervicogenic with associated light sensitivity; and (4) right-shoulder strain with rotator cuff tear, post-surgery with symptom improvement. It also identified likely PTSD related to her injury and SSD with predominant pain. RIW found Employee was a good candidate for its "pain management program." The plan was to include "psychological counseling and education" and "treatment of PTSD." (James Moore, PhD; Heather Kroll, MD, RIW report, December 18, 2018).

89) On December 20, 2018, APRN Hardy recorded a call from RN Bean stating Employee was approved to travel to RIW and participate in its "intensive program." APRN Hardy confirmed that RN Bean was a "patient advocate." Adjuster Moser was arranging for Employee to travel to RIW initially for four weeks' treatment. (Hardy report, December 20, 2018).

90) On December 24, 2018, Moser emailed RIW and stated:

> Please accept this fax as confirmation that Ms. Atlas' claim is open and billable and she is authorized to attend a Structured Intensive Multidisciplinary Program Evaluation and treatment as requested by RIW and as recommended by Dr. Paul Craig in his 9/19/18 IME report. Please submit billing with medical reports to Penzer North America. Billing for treatment administered for a claim under Alaska jurisdiction is processed under the Alaska Fee Schedule.
>
> Should you have any questions or need additional information for billing, please let me know. My contact information is listed below. (Moser email, December 24, 2018).

91) On January 8, 2019, Employee told NP Smith she was having "bilateral shoulder tenderness" with "increased left shoulder pain." (Smith report, January 8, 2019).

92) On January 9, 2019, Employee began her treatment with RIW. Headaches were her main complaint. Employee claimed to be in "occasional contact with her parents" who, she said, lived in Washington. She acknowledged that prior assaults at work had no "emotional or psychological impact on her," and she denied experiencing other traumatic events in her lifetime. Diagnoses were the same as in the December 18, 2018 preliminary report, and included "significant psychological sequelae" including PTSD and SSD; opioid dependence with Tramadol; high blood pressure; and sleep disturbance related to PTSD. The plan was for

Employee to "work through" the trauma associated with her injury. (Kroll report, January 9, 2019).

93) On January 14, 2019, clinical psychologist Sean Tollison, Ph.D., spent 60 minutes evaluating Employee, who scored "72/80" on the PTSD checklist; according to the report, "33" or above meets criteria for PTSD. He also planned her treatment. Overall, he spent approximately 300+ minutes with Employee on one-on-one counseling and cognitive behavioral therapy (CBT) during her stay at RIW. (Tollison reports, January 14, 2010 through March 1, 2019).

94) On February 11, 2019, Employee said her left shoulder hurt before she started treatment and continued to feel sore and stiff. (Kroll report, February 11, 2019).

95) On February 15, 2019, RN Bean reported her activities from January 16, 2019 through February 15, 2019. She researched psychologists in Anchorage to find follow-up care for Employee when she returned to Alaska. (Bean Progress Report Number 3, February 15, 2019).

96) On February 25, 2019, Employee said her right shoulder had constant pain over the entire deltoid with a "throbbing and sharp sensation." Overhead lifting aggravated her pain, as did putting on or taking off a jacket or shirt. Employee said her left shoulder and arm felt like her right arm did before her shoulder surgery; the left arm was now more painful than the right. Her continuous throbbing headaches remained. Psychologically, Employee still felt "very fearful." In her view, her PTSD symptoms "have not changed." However, Prazosin had been helpful with her sleep. RIW opined Employee would benefit from continuing her medication and obtaining ongoing psychological counseling in Alaska. (Kroll report, February 25, 2019).

97) On February 28, 2019, Employee was still anxious and reactive to others. Dr. Tollison recommended she work with a mental health provider in Alaska for another 90-180 days. He did not think Employee would be able to return to her job with Employer because her PTSD symptoms would be "easily triggered." (Tollison report, February 28, 2019).

98) On March 1, 2019, Employee completed her RIW treatment. Dr. Tollison thought there were two main factors that contributed to Employee's slow progress in recovering from PTSD: (1) emotional distress caused by alleged news of an FBI investigation of Employer over patient-care violations; and (2) her focus on psychological symptoms and her need to get validated on her current limitations. (Tollison report, March 1, 2019).

99) On March 14, 2019, RN Bean closed her file. She would let Dr. Tollison know who Employee "chose as a therapist." (Bean Closing Report, March 14, 2019).

100) On March 22, 2019, adjuster Moser wrote to APRN Hardy and asked her to explain how medications Employee was taking were still medically necessary to treat PTSD, which Moser explained was "currently the only remaining condition accepted under the above-referenced claim." (Moser letter, March 22, 2019).

101) On April 2, 2019, APRN Hardy said Employee had an appointment with "Kelsey Cade" the following Thursday for PTSD treatment arranged with RIW's help. APRN Hardy stated: "PT HAS DONE ALL ASKED OF BY API, BUT EVEN AFTER ALL THIS TIME, PT HAS NOT PROGRESSED, AND STILL HAS EXTENSIVE PTSD. CONCERN FOR HER LONG-TERM HEALTH IS NOW AT QUESTION." (Hardy report, April 2, 2019; emphasis in original).

102) On April 9, 2019, APRN Hardy reported Employee was able to establish care with "L'Ann Kelsey" for PTSD therapy. APRN instructed Employee to not do any patient care or be in any patient care setting. Employee claimed to have seen "the person that caused her injuries in her neighborhood," which made her feel unsafe to go for a walk. (Hardy report, April 9, 2019).

103) On April 11, 2019, Williams entered her appearance as Employee's non-attorney representative and petitioned to compel formal discovery from Employer. (Notice of Appearance; Petition, April 10, 2019).

104) On April 11, 2019, Employee claimed temporary total disability (TTD), permanent total disability (PTD), PPI, medical and transportation benefits, a compensation rate adjustment, an unfair or frivolous controversion and attorney fees and costs arising from her November 19, 2016 injury. (Claim for Workers' Compensation Benefits, April 11, 2019).

105) On April 17, 2019, Employee reported to Dr. Sparks she had participated in "boot camp" at RIW and while so doing her left shoulder became "very aggravated, painful, and eventually fairly stiff." Left shoulder x-rays were normal. Dr. Sparks recommended PT for six weeks. (Sparks report, April 17, 2019).

106) On April 29, 2019, seven weeks after Moser's March 22, 2019 letter, APRN Hardy responded and said Employee was taking Gabapentin, Tramadol and Acetaminophen, which was medically necessary to treat PTSD and her pain; she was taking Prazosin, which was medically necessary to treat Employee's PTSD and to help her sleep. (Hardy response, April 29, 2019).

107) On April 23, 2019, APRN Hardy recorded that Employee had an appointment with Kelsey for PTSD therapy, but the therapist would be out of office for a family emergency "for the next few weeks." (Hardy report, April 23, 2019).

108) On April 30, 2019, Employer answered Employee's claim and contended, among other things, that Employee had failed to actively pursue treatment for her PTSD and had thus failed to mitigate her losses. (Employer's Answer, April 30, 2019).

109) On May 7, 2019, the parties appeared at a prehearing conference to address Employee's petition to compel discovery. The designee continued the conference at Employee's request. (Prehearing Conference Summary, May 7, 2019).

110) By May 14, 2019, Employee reported PTSD counselor Kelsey was still out with a family emergency and it would be another two or three weeks before she returned. APRN Hardy suggested she reach out to Dr. Tollison for a phone visit because her "PTSD work is at a standstill"; Employee agreed to reach out to Dr. Tollison but said she was having increased stress with phone calls and letters regarding her case. Williams, who was also present at this visit, reported Employee's home was disorganized, "consistent with her PTSD symptoms." APRN Hardy considered "updating mannerisms" as reported from Williams. (Hardy report, May 14, 2019).

111) On May 20, 2019, Employer denied all benefits "except as it relates to the treatment of PTSD and aggravation of SSD substantially caused by the 11/19/16 work incident." (Controversion Notice, May 20, 2019; emphasis in original).

112) On May 28, 2019, Employee reported having received a controversion notice but not understanding exactly what it meant. She said she had a telephonic appointment with Dr. Tollison later that day. (Hardy report, May 28, 2019).

113) On May 28, 2019, Dr. Sparks re-examined Employee's left shoulder and recommended a "closed manipulation" under anesthesia. (Sparks report, May 28, 2019).

114) On May 29, 2019, Employee claimed TTD and PPI benefits, medical costs and related transportation expenses, unfair or frivolous controversion and a late-payment penalty. (Claim for Workers' Compensation Benefits, May 28, 2019).

115) On June 4, 2019, Employee's left shoulder MRI showed diffuse, moderately severe rotator cuff tendinopathy and a full-thickness tear of the superior labrum. (MRI report, June 4, 2019).

116) On June 4, 2019, Employer's attorney Lars Johnson responded to Employee's formal discovery requests informally. He explained the need to redact the claims file before producing it. Johnson stated Employee would receive all medical records sent to EME physicians if she had not already received them. He stated the only recorded statement he may have had was Employee's recorded interview and he was not aware Employer performed any other interviews relating to the November 19, 2016 incident. (Email, June 4, 2019).

117) On June 10, 2019, Employer denied all benefits "except treatment of PTSD and aggravation of SSD substantially caused by the 11/19/16 work incident, as well as injury to the left shoulder incurred during treatment related to the 11/19/16 work incident." (Controversion Notice, June 10, 2019; emphasis in original).

118) On June 11, 2019, Dr. Sparks recommended left shoulder surgery to address Employee's complaints once her case "gets out of litigation." (Sparks report, June 11, 2019).

119) On June 25, 2019, Employee told Dr. Sparks she wanted to move forward with left shoulder surgery even though it would result in restricted motion. (Sparks report, June 25, 2019).

120) On June 26, 2019, APRN Hardy opined "delay in diagnosing the shoulder injuries is directly related to how she presented initially after her injury." This included, in APRN Hardy's view, Employee being "basically non-verbal," and her history being presented by her fiancé at her initial examination. Employee reported that Dr. Tollison said he could not treat her telephonically because he was not licensed in Alaska. PTSD therapist Kelsey had returned from her family emergency and APRN Hardy encouraged Employee to contact her. (Hardy report, June 26, 2019).

121) On June 26, 2019, Employer petitioned to remove Williams as Employee's representative citing a conflict-of-interest. It also petitioned to increase the withholding recovery rate to recoup a significant TTD overpayment Employer had made to Employee. (Petitions, June 26, 2019).

122) On June 27, 2019, Employee petitioned for a protective order against signing certain releases. (Petition, June 27, 2019).

123) On July 3, 2019, the parties attended a prehearing conference to address Employee's petition to compel discovery. The designee could take no action on the June 26 and June 27, 2019 petitions because the time to respond had not yet run. Employee wanted to know when her

discovery would be provided from Employer; Employer's lawyer said they were working on it and had to redact many documents. (Prehearing Conference Summary, July 3, 2019).

124) On July 8, 2019, Employee told APRN Hardy that counselor Kelsey was back in town but said, without citing any specifics, "scheduling has been an issue." (Hardy report, July 8, 2019).

125) On August 6, 2019, APRN Hardy referred Employee back to RIW for PTSD treatment. She noted Employee's left shoulder surgery had been delayed three times. APRN Hardy opined the chest injury, concussion with loss of consciousness less than 30 minutes, PTSD, right rotator cuff tear and left labral tear, all "date back from initial injury." (Hardy report, August 6, 2019).

126) On August 6, 2019, Employee completed health forms for "Concentra," and stated she injured both shoulders during an "assault by patient" in 2016. Employee stated she did not have any "eye pain, blurred vision, or vision loss." She left blank the question "Did you hit your head?" (Concentra forms, August 6, 2019).

127) On August 23, 2019, orthopedic surgeon EME Dr. Youngblood re-examined Employee. She told him that on June 11, 2018, a patient assaulted her at work, squeezed her left arm and armpit, as well as her breast forcefully, and "that is when her left shoulder pain began." Employee said she had "immediate pain in the left shoulder," which progressed over the next six months. She said her right shoulder "improved significantly" after her 2018 surgery. Employee was dissatisfied with RIW's treatment because it was like "two full-time gym memberships," but she thought "she was going to get more mental counseling." Though recognizing she had left-shoulder pain before she went to RIW, Employee said her RIW program made it worse. She denied any specific traumatic event, fall or other injury to the left shoulder but attributed her increased left-shoulder symptoms to "the excessive working out that she was made to do" at RIW. Employee denied any prior problems with or treatments to her left shoulder before she went to work for Employer or before the November 19, 2016 injury. Any motion aggravated her left-shoulder pain including "nightfall" even if she was not in bed. (Youngblood report, August 23, 2019).

128) On examination, Dr. Youngblood noted "significant pain behaviors, as well as odd behavior" including the way she held her left shoulder girdle somewhat elevated. Employee had global give-way weakness on the left side and "subphysiologic strength." In Dr. Youngblood's view, the left shoulder was a mirror image of the EME he had previously performed on her right shoulder. However, he noted Employee's gait was normal, and opposite her gait examination at

his prior EME. Dr. Youngblood found no atrophy in either upper extremity. During her left shoulder examination, Employee reported "knife stabbing" pain when he gently touched her anywhere near the left shoulder or arm above the elbow. Employee refused some range-of-motion movements for the left shoulder. Dr. Youngblood deferred his examination of Employee's left shoulder due to her report of "excruciating pain" with any movement. (Youngblood report, August 23, 2019).

129) On reviewing left shoulder MRI imaging, Dr. Youngblood found no evidence of adhesive capsulitis. He diagnosed (1) chest contusion, resolved; (2) alleged possible loss of consciousness, deferred to the neurologist; (3) no evidence of cervical spine or right shoulder injury substantially caused by the November 19, 2016 work injury; (4) cervical spondylosis not substantially caused or aggravated by the November 19, 2016 work injury; (5) minimal right shoulder rotator cuff tear, preexisting and age-related, not substantially caused or aggravated by the November 19, 2016 work injury; (6) left shoulder rotator cuff tendinopathy with partial-thickness tear, preexisting, age-related and not substantially caused by the November 19, 2016 work injury or any associated treatment; (7) marked pain behavior and symptom magnification; and (8) disability conviction. (Youngblood report, August 23, 2019).

130) Dr. Youngblood opined the left-shoulder MRI images were within normal limits for Employee's age and in many cases would be asymptomatic. In his view, those conditions were not responsible for her subjective complaints and her left-shoulder presentation. He concluded:

> Unfortunately, the physical examination in this case is marred by florid pain behaviors, diffuse tenderness to feather touch, and essentially marked pain with any motion whatsoever of the left shoulder. This is not the picture of a patient with the objective left shoulder diagnoses noted above, or that of adhesive capsulitis or even complex regional pain syndrome. Given these marked pain behaviors, there is obvious psychological overlay to today's presentation and examination. . . . [T]he examinee's subjective symptoms and her presentation today are due to [these] psychiatric diagnoses, and not her objective orthopedic pathology. (Youngblood report, August 23, 2019).

131) Dr. Youngblood reviewed 2,200 pages of Employee's medical records and determined her allegation that left-shoulder issues began with the patient assault on June 13, 2018 "is not in any way supported by the medical record." He noted the emergency room report from that date documented a normal left-shoulder examination. Dr. Youngblood found no mention of left-shoulder pain in Employee's records until NP Smith's entry on January 8, 2019. He also opined

the RIW PT treatments were "exactly those you would recommend or administer for someone with asymptomatic rotator cuff condition." Dr. Youngblood opined these would not make her shoulder condition worse and noted Employee's effort level in RIW PT was routinely documented as "poor" or "self-limited." Further, in his view those records show no acute injury or trauma during any therapy session. Dr. Youngblood opined the November 19, 2016 work injury caused the need for initial evaluations in the emergency room and treatment for a month post-injury. "Anything after this would be completely unrelated to the industrial injury of November 19, 2016." He found no clear-cut indication for left-shoulder surgery. Dr. Youngblood opined there was no PPI rating related to the November 19, 2016 work injury. He identified no objective reason for any work restrictions or limitations. (Youngblood report, August 23, 2019).

132) On September 11, 2019, Employer denied Employee's right to all benefits "except treatment of PTSD and aggravation of SSD substantially caused by the 11/19/16 work incident." (Controversion Notice, September 11, 2019).

133) On September 25, 2019, the parties attended a prehearing conference to address, among other things, Employee's petition to compel formal discovery and for a protective order regarding releases. The designee held action on the protective order petition on releases in abeyance because Employer had provided new releases. Employee again questioned where her discovery was, and Employer's representative said it was finished and had given Employee "fee instruction for pickup." Employee stated she could not pay the fee; the parties discussed using Zend To in lieu of paper copies. (Prehearing Conference Summary, September 25, 2019).

134) On October 7, 2019, Dr. Sparks performed left-shoulder surgery on Employee. He found the "rotator cuff appear to be intact." (Sparks report, October 7, 2019).

135) On October 10, 2019, Williams testified she is not "out drumming up medical care for the people" she assists:

> A. . . . They don't know -- like in this case, the person doesn't know where to go to look for that extra psychological counselor, and no we're not looking for you to even suggest because she needs the time to process the information and to make the choice because of her disabilities. . . .
> . . . .
>
> Q. When you say you don't help a patient find a medical provider, why not?

> A. Well, say, like my friend Joel that got dumped at that pain clinic yesterday. . . . Now he needs help to find somebody who can see him. So I called around and I found two clinics that might see him with his horrible problem with his opioid thing. . . . That's the instance I'm looking for somebody for medical help, not just let's go find the best guy for this. . . . (Deposition of Barbara Williams, October 10, 2019, at 68, 70-71).

When asked if she tried to help Employee find a new counselor for PTSD, Williams said:

> We're working on that right now. I'm looking at who's available in this town. We're going to talk to some of those people together because she has to participate in the process. . . . (*Id*. at 71).

Williams agreed there was no issue with Employer paying for Employee's PTSD treatment. (*Id*.).

136) On October 17, 2019, the parties attended a prehearing conference to discuss seven record releases Employer wanted Employee to sign and return. The Board designee ordered Employee to sign and return all seven, with one minor change to one. The designee also set a hearing on Employer's petition to increase its deduction from ongoing disability payments to recoup an overpayment, for January 23, 2020. (Prehearing Conference Summary, October 17, 2019).

137) On October 30, 2019, APRN Hardy stated Employee's left shoulder was work-related and arose from her November 19, 2016 work injury. (Physician's Report, October 30, 2019).

138) On November 5, 2019, Employee petitioned "for reconsideration" of the designee's October 17, 2019 order on releases. (Petition, November 5, 2019).

139) On November 7, 2019, APRN Hardy said she received a telephone call from Dr. Tollison at RIW. He had reviewed her referral and said, "he does . . . have the ability to help her." However, Dr. Tollison provided a referral to Lesley Heathershaw with "Acadia" who offers intensive in- and out-patient PTSD therapy in Washington. APRN Hardy noted her conversations with staff members at Acadia and the "Refuge Program" who said they were able to work with workers' compensation insurance. Later, the Refuge Program reported that "TBI aftereffect with cognitive delays is too extensive" for its facility and recommended a different program at Centre for Neuro Skills (Neuro Skills) and Sierra Tucson. (Hardy report, November 7, 2019).

140) On November 21, 2019, APRN Hardy charted Employee could not receive services from local PTSD therapist Kelsey, but Employee had received referrals from her, and Employee had

"reached out, but either full, counseling to children at this time, no returned calls, or no secondary to workers comp." APRN Hardy referred Employee to Neuro Skills or Sierra Tucson to evaluate and treat her for "initial injury with TBI, ongoing PTSD, unable to secure local ongoing therapy." (Hardy report, November 21, 2019).

141) On December 5, 2019, Employee reported she awakened herself several times while sleeping at night recently, screaming. "When she wakes she is in a full defensive mode with her arm up above her head. She has some recall -- bits and pieces of the injury, but twisted, she looks up, sees him smile at her, then he is beating her." (Hardy report, December 5, 2019).

142) On December 10, 2019, Employer attended a prehearing conference but neither Employee nor Williams attended; the designee was unable to contact Williams by telephone. The prehearing conference was to address Employee's petition to reconsider the October 17, 2019 prehearing conference summary rulings. The designee noted he could not act on Employee's petition to reconsider his October 17, 2019 orders because she filed her request more than 10 days after the Division of Workers' Compensation (Division) served the summary. The designee reiterated deadlines for the parties' filings for the January 23, 2020 TTD overpayment recoupment hearing. (Prehearing Conference Summary, December 10, 2019).

143) There is no evidence in Employee's file showing she or Williams notified the Division that they could not attend the December 10, 2019 prehearing conference. (Agency file).

144) On December 12, 2019, APRN Hardy testified she had spoken to the lead psychiatrist at RIW, Dr. Tollison, who told her RIW "did not have the facilities that Samantha required." He referred APRN Hardy to "Kim Young with Acadia" [later referred to by the witness as a care coordinator] and APRN Hardy had also been calling Sierra Tucson. She was awaiting contact from these facilities and from Neuro Skills but had not "received a call back from them." When APRN Hardy suggested Employee had said, or implied, Employer was delaying her treatment:

> Q. Okay. As far as matter of record, her psychological care is open and billable in the eyes of the State. It's currently compensable.
>
> A. I just need to find somewhere I can get her into that. I'm glad to hear that. Thank you.
>
> . . . .
>
> Q. So in 2019, after she had completed the program at RIW, Ms. Atlas began treatment with L'Ann Kelsey?

A. Yes.

Q. So what was Ms. Kelsey providing in terms of services?

A. Continued PTSD psychiatric therapy.

Q. And did you think that treatment was appropriate to address Ms. Atlas's psychological concerns?

A. She came highly recommended by Dr. Tollison to continue that therapy here, but, honestly, between when Samantha went to see her and then L'Ann's own family emergency, I don't think they really got very far into anything. There weren't that many visits that happened before L'Ann was out. And then when L'Ann was out, everything just stalled again.
. . . .

Q. But [L'Ann] did return at some point?

A. Yes.

Q. And when she returned, you know if she was willing to treat Ms. Atlas?

A. I know that there were communication issues. Samantha that [sic] would call and not receive calls back, but I don't know as far as L'Ann's side, what was happening in her office. But from what I understand, counseling has not resumed at this point.
. . . .

Q. And I'd like to talk a little bit -- you just mentioned Ms. Atlas had some trouble scheduling things with Ms. Kelsey. What do you know about that?

A. I would ask Samantha if everything had restarted yet, she said, no, there were phone calls that were placed back and forth, no official appointments had been set.

Q. So phone calls back and forth. What does that mean?

A. That's all I know.

Q. So if Ms. Atlas told you, like, she would make phone calls, they would call back and they had trouble connecting; is that what you thought that meant?

A. That's what I thought that meant.
. . . .

> Q. So as far as you know, why didn't Ms. Atlas not [sic] resume care with Ms. Kelsey?
>
> A. I don't have an answer for that.
> . . . .
>
> Q. . . . So on that date, October 11, 2017, did you recommend to Ms. Atlas that she get PTSD counseling?
>
> A. It was an ongoing conversation even at this point.
>
> Q. . . . But on that day, do you see a reference?
>
> A. On that day she mentioned that she had a colleague whose wife knows people who specialized in PTSD counseling, and I encouraged her to reach out, because I was running out of ideas and running out of people to give her to look into. And I was pulling at every resource and every string that was possibly out there, if there was somebody that -- I heard it from a friend who heard it from a friend, I was even willing to reach out to them.

APRN Hardy identified from Internet information shown to her that Mariana Ivanovic at Medical Park Family Care in Anchorage, her clinic's "competitor," was a provider who "does a lot of the things that Samantha does need." She agreed it would "absolutely" be helpful if someone local could assist Employee with her treatment. APRN Hardy said she would follow up on that lead. She agreed she was "tearing up a little bit" on several occasions during the deposition as she answered questions about Employee's case. Though she recognized Dr. Craig was a specialist in psychological issues, his concerns about Employee's somatic disorder affecting her subjective complaints is "not going to sway what [APRN Hardy does], per se." After reviewing Dr. Craig's explanation of the diagnostic testing he performed, which uses a computer-generated interpretive report to eliminate bias, APRN Hardy stated, "I'm not a big fan of things that come out of computers." When asked what frustrated her most about Employee's situation, she said, "We had Deanna Bean, the RN, and then just as quickly as I felt we had somebody that could help me navigate through that, she was taken away again." RN Bean was the "nurse advocate person."

> Q. So when we talked about your frustrations with the employer or the insurance adjuster or workers' comp adjuster, whoever you might be frustrated with, do you see yourself as being on the same side, so to speak, with Ms. Atlas in any disputes?

> A. I'm her advocate. That's the best way to say it.
> . . . .
>
> Q. Do you feel like part of the problem with locating the psychiatrist or appropriate therapist for her has been the fact that some people [don't] take workers' compensation?
>
> A. Part of it, and we did get her into Wisdom Traditions. Turned out it wasn't an appropriate place and location for her, but even from them I didn't get any name of somebody who could potentially help. So I was pulling on strings and contacts trying to find somebody who does more with that type of work and just wasn't able to get anywhere. It's like I was spinning my wheels in mud.
> . . . .
>
> Q. Do you believe that she's had a hard time finding practitioners because a lot of them just don't take worker's comp.?
>
> A. That is my impression, but also finding specialists that actually deal with PTSD, with the psychiatric aspect that goes into that as well. (Deposition of Kathrine Hardy, December 12, 2019).

145) On December 13, 2019, a Board designee sent Williams five letters advising her that her client in another case had a five-physician SIME scheduled with the first physician seeing her client on January 22, 2020, another physician seeing her on January 23, 2020, and other physicians seeing her client on several dates thereafter. All five physicians were seeing Williams' client out-of-state. (Agency file in AWCB case number 201615256).

146) On December 27, 2019, Dr. Craig stated regarding the November 19, 2016 injury, "[d]espite ongoing evidence in the health records of emotional and behavioral symptoms," APRN Hardy did not document a counseling appointment for Employee until June 14, 2018. That appointment was set up with Wisdom Traditions with a person not licensed as a mental health provider in Alaska in June 2018; Dr. Craig could not comment on why APRN Hardy recommended that practitioner. Nevertheless, he noted Rebecca Haussner, the person who saw Employee there once before she was licensed, was then-currently licensed. Based on information on Wisdom Traditions' website, Dr. Craig opined that Wisdom Traditions was not in September 2018, and was not in December 2019, an appropriate mental health provider for Employee. He recommended she have treatment from a board-certified adult psychiatrist with experience in treating injured workers with PTSD and SSD. That provider may call upon a

psychologist or other licensed mental health professional to augment the psychiatric treatment with psychotherapy. In Dr. Craig's opinion, the PTSD treatment should involve a combination of judiciously selected and monitored psychotropic medications and symptom-specific psychotherapeutic treatment. He anticipated Employee's SSD would make her attempt to define all her symptoms as somatic rather than psychiatric. Dr. Craig further predicted if Employee is seen on an outpatient basis by professionals "who adopt a sympathy and nurturance role with her, it is highly predictable that no functional progress will be achieved." In his opinion, outpatient treatment would be appropriate, and the treatment length would be in the psychiatrist's discretion. Her psychotherapeutic sessions should start out at minimum one hour per week for perhaps four weeks. The sessions including psychiatric and psychotherapy treatments should be weekly for approximately 20 sessions focusing on her PTSD and SSD, over a six-month interval. Thereafter, her primary care provider could monitor and refill Employee's psychotropic medication. (Craig report, December 27, 2019).

147) Dr. Craig opined many providers in Alaska could meet Employee's psychiatric and psychotherapeutic treatment needs. He suggested as examples, Ramzi Nasser, MD, at Alliance Behavioral Medicine, and Greatland Clinical Associates. Dr. Craig stated there was "no sensible rationale" for treating Employee elsewhere when the services she needs are, in his view, readily available here. He cautioned that Employee could contact clinics in Alaska and "behave on the phone or in person" in a way that would result in her not being accepted as a patient. Dr. Craig suggested a nurse case manager may be of assistance. (Craig report, December 27, 2019).

148) Dr. Craig did not personally know counselor L'Ann Kelsey, but noted a person with that last name had her license put on probation in May 2016 for two years. Nevertheless, in his opinion the primary care provider to treat Employee's PTSD and SSD should be a psychiatrist. (Craig report, December 27, 2019).

149) On December 31, 2019, the parties attended a prehearing conference and Employee requested a continuance of the January 23, 2020 hearing because Williams would be traveling out-of-state with her other client for a five-physician SIME on January 23, 2020, and Employer had "recently produced" "15,000 pages" of records, which would take longer to review because Employee has "disabilities." She did not mention it took her 18 days from the designee's letter in case 201615256 to request a continuance; Employer would not have known that other appointment. In response, Employer contended documents had been available to Employee

since August and were sent to her in October. Nevertheless, Employer consented to a short continuance. The designee questioned why all "15,000" records would be relevant to Employer's request for an enhanced, overpayment recoupment. Employee contended her pay records were relevant and she should not be "forced into a hearing before she was ready." She raised concerns about the designee's January 24, 2020 order to sign medical releases, which she contended were protected by federal law and not discoverable. The designee rescheduled the hearing for February 6, 2020, noting the hearing issue was "not complex." Employer said it had sent Employee releases approximately a week prior and asked her to sign and return them promptly or file a petition for a protective order. (Prehearing Conference Summary, December 31, 2019).

150) On January 24, 2020, Employer petitioned to compel Employee to respond to its previously propounded informal discovery requests, including: (1) signed releases Employer provided on May 23, 2019, to which Employee did not respond until she filed her June 27, 2019 petition for a protective order. Employer contended that on October 17, 2019, the Board's designee ordered Employee to sign and return the releases but instead, she did nothing until November 14, 2019, when Employee filed a petition asking the designee to "reconsider" his October 17, 2019 order. On December 10, 2019, the designee had found that petition was time-barred. Employer noted since then it had mailed releases to Williams at least twice and had requested signatures on those releases at least three times but had not received Employee's signed releases or any additional pleadings related to them; (2) Employee had told Alaska Spine Institute to not release her records from that facility and consequently, it refused to release them to Employer after attempts on November 12, 2019, December 18, 2019 and January 8, 2020; (3) Employer had requested a list of mental health treatment counselors Employee told her primary care provider she had contacted about receiving psychiatric care; it contended it had requested copies of these lists on November 14, 2019, December 18, 2019 and January 8, 2020, but had received no response; (4) Employer requested notes Williams took at an August 23, 2019 EME, and Williams refused to provide them contending they were protected under the Americans With Disabilities Act (ADA); (5) Employer requested prehearing conference recordings Williams asserted she had made; it said it requested the recordings on January 8, 2020, and had received no response; (6) Employer wanted to complete Williams' deposition it had begun on October 10,

2019; it asked Williams "multiple times" for dates to arrange the deposition's completion, but contended she had not provided any. (Petition to Compel, January 24, 2020).

151) On January 30, 2020, APRN Hardy was to introduce Employee to a nurse case manager, but because she purportedly had "severe anxiety," "this was not accomplished." Rather, Employee said she was leaving for Neuro Skills in eight days for PTSD therapy. Employee also said a process server awakened her a day prior delivering documents that increased her anxiety and she had not been able to complete her activities of daily living since then. APRN Hardy suggested Employee should not participate in the February 6, 2020 hearing and recommended that "all such issues/appointments be on hold until" Employee returned from Neuro Skills with appropriate treatment. (Hardy report, January 30, 2020).

152) On February 6, 2020, the parties appeared for a hearing on Employer's July 11, 2019 petition for an enhanced recoupment of a significant overpayment to Employee. Because of disagreements between the parties and lengthy argumentative testimony, the hearing could not be completed on that date. (*Atlas v. State of Alaska*, AWCB Decision No. 20-0072 (August 17, 2020) (*Atlas I*)).

153) On February 11, 2020, Employee and Williams were in Bakersfield, California, at Neuro Skills on referral from APRN Hardy. The resultant 31-page March 24, 2020 preadmission evaluation report "Addendum" requested authorization for Employee to participate in a "specialized, post-acute, brain injury, inpatient (residential rehabilitation) neuro rehabilitation program" at Neuro Skills. The evaluation states Employee and her family require "extensive TBI/PTSD" education support and training to reintegrate her into a "normal life." Diagnoses included: Diffuse TBI with loss of consciousness of 30 minutes or less; PTSD; chest injury; concussion with loss of consciousness; hypertension; neck strain; strain of muscle, fascia and tendon at "a level"; rotator-cuff tear, right-shoulder status post-surgical repair; and left labral tear with bursitis and tendinopathy. The evaluation listed numerous symptoms and complaints. The author reviewed APRN Hardy's notes, hospital and other records Williams provided. In summary, these medical records disclosed that in 2017 and 2018, Employee purportedly could not find a provider willing to help with her PTSD. The evaluation recorded Employee had a fiancée Barry Cook [sic], three children and a brother and sister who lived out-of-state; there was no mention of Employee's parents. She reported Williams was her ADA representative who was "assisting with medical needs and coordination." According to the report, Employee needed

"EMDR" for her PTSD symptoms. The report's preliminary recommendations and treatment plan included "patient and family education and training" to address her "mild traumatic brain injury/post-concussion syndrome." "Areas of deficit" would be addressed by the following disciplines: PT; occupational therapy; speech therapy; counseling; nursing; behavior management; and clinical case management. In the author's opinion, Employee needed consultations with a neurologist and physiatrist with brain-injury experience to address migraine headache management and a neuro-optometry expert to address "visual perceptual deficits." It also recommended endocrine testing for her "traumatic brain injury." Additional recommendations were for a brain MRI, formal hearing evaluations, right-knee pain evaluation and a formal sleep study. Kathy Bermejo, MA, authored the report. (Neuro Skills Pre-Admission Evaluation Report Addendum, March 24, 2020).

154) On February 14, 2020, the Division noticed the continuation of the February 2020 hearing on the recoupment issue to March 19, 2020. (Hearing Notice, February 14, 2020).

155) On March 25, 2020, Employer petitioned for a Board order to forfeit Employee's benefits or dismiss her claim if she refused to sign and return releases ordered at the October 17, 2019 prehearing conference. (Petition, March 25, 2020).

156) On April 8, 2020, the parties attended a prehearing conference where the designee noted the January 23, 2020 hearing had been continued; the rescheduled February 6, 2020 hearing had also been continued to March 19, 2020, and that hearing was also continued because Employee "was ill." The designee discussed discovery disputes between the parties. Williams stated Employee had only seen one mental health provider "Kelsey Cade" and Employee would provide the list of providers she had contacted. Williams said she would provide Employer with copies of prehearing conferences she had recorded. The parties discussed completing Williams' deposition, given the pandemic. The designee granted Employer's petition to compel production of the list of mental health providers Employee contacted and the prehearing conference recordings. The parties stipulated to a hearing on June 18, 2020, on Employer's petition for an enhanced recoupment that was to have been heard on January 23, 2020. (Prehearing Conference Summary, April 8, 2020).

157) On April 20, 2020, APRN Hardy stated PTSD services Employee needed are not available in Alaska; she also needed treatment for her TBI. In her opinion, RIW does not have the "extensive therapies that she needs." APRN Hardy stated, "specialized psychiatric care has been

recommended by every practitioner she has seen, including the physicians from her independent medical examinations, yet none of these therapies have been completed." She asked the reader for "consideration for the treatment plan for this patient." (Hardy letter, April 20, 2020).

158) On April 27, 2020, APRN Hardy charted that Employee was "still trying to get the case covered," and Williams, her patient advocate, was "working with her to get into treatment." (Hardy report, April 27, 2020).

159) On May 14, 2020, APRN Hardy said either she or Employee had found two practitioners in Alaska, one that specialized in TBI and one in PTSD. However, "inpatient intensive is still the only long-term solution" in APRN Hardy's opinion. She now recommended a brain and brainstem MRI with and without contrast, which for unspecified reasons, she said Employee could not have obtained two years prior. (Hardy report, May 14, 2020).

160) A June 16, 2020 record from APRN Hardy is the last medical record in the chronological SIME records; it is record 2,459. (Hardy report, June 16, 2020; SIME records).

161) On June 18, 2020, the parties completed the continued February 6, 2020 recoupment hearing. Williams again contended it was not fair that Employee has "gone untreated" for her mental health care for two years. (*Atlas I*).

162) APRN Hardy's June 19, 2020 reports are the most current medical records filed on a medical summary in this case. (Medical Summary, September 23, 2020; SIME Medical Records).

163) On June 30, 2020, Employer petitioned for an SIME based on disputes between Employee's and Employer's medical providers regarding her "claimed injuries and compensable treatment." (Petition, June 30, 2020).

164) On July 6, 2020, Employer's lawyer Adam Franklin wrote APRN Hardy a letter stating:

> This letter is a courtesy notice to inform you that the State of Alaska intends to controvert, *i.e*., not cover or pay for, future appointments with your office by Ms. Samantha Atlas in relation to her claimed work-related injuries. The State of Alaska has never controverted, and has tried to actively encourage, Ms. Atlas' participation in mental health treatment for her claimed PTSD condition with a local practitioner. However, review of the records from prior appointments with your office indicates no medications are being prescribed or dispensed and the appointments do not include treatment for her claimed PTSD condition.

> You and Ms. Atlas may proceed as you wish. This letter is a courtesy given that the State of Alaska previously paid for these appointments. (Franklin letter, July 6, 2020).

165) Numerous physical examinations APRN Hardy performed on Employee throughout 2019 and ending in June 2020 demonstrated "no swelling, erythema or discharge" in Employee's eyes. (Hardy reports, 2019 through May 28, 2020).

166) On July 10, 2020, Employee filed a medical summary beneath which she attached a same-dated pleading entitled "Notice of Intent to Rely." Attached to the latter document are: (1) the April 20, 2020 letter from APRN Hardy, which includes opinions and recommendations; (2) a photograph and brief biography for Bermejo a "postacute brain injury rehabilitation professional"; (3) a biography for Lynn Hicks, PhD, at Bridges Counseling Connection (Bridges) in Anchorage; (4) handwritten notes from a May 18, 2020 teleconference with "Crystal" at Bridges; the note states Bridges takes "WC" and states it requires "primary insurance" if "WC doesn't cover," and says Bridges does not take "complicated cases" and "no litigation stuff"; (5) a photograph with basic information for Lee Ann Gee, MD, a psychiatrist with a specialty in depression, anxiety, PTSD and other mental disorders along with a May 14, 2020 handwritten note that states "Does not take workers' compensation" and "conflict of interest worked w/Sam [Samantha Atlas] at API"; (6) the February 11, 2020 pre-admission report, and addendum dated March 24, 2020, for Employee from Neuro Skills, which includes various evaluations and recommendations, which Bermejo signed; and (7) the July 6, 2020 letter from Franklin to APRN Hardy advising her Employer planned to controvert services at her office because she was not providing PTSD treatment. (Medical Summary; Notice of Intent to Rely, July 10, 2020).

167) On July 23, 2020, the parties attended a prehearing conference to discuss Employer's June 30, 2020 petition for an SIME. "Ms. Williams said Ms. Atlas was not opposed and agreed to move forward." Williams agreed to review and complete an SIME form by August 22, 2020. The designee advised the parties the SIME would not be scheduled until the form had been received. The designee set other SIME deadlines to be completed by October 31, 2020. Employee did not contend she could not attend an SIME until she received PTSD treatment. (Prehearing Conference Summary, July 23, 2020).

168) On August 26, 2020, Employer asked for an order requiring Employee to sign and return the SIME form the designee had ordered her to sign by August 22, 2020. (Petition, August 26, 2020).

169) On September 3, 2020, Employee filed 27-page, 54-page, 67-page, 128-page and 237-page documents requesting "reconsideration" of a decision involving witnesses, subpoenas, discovery and a host of other issues. The initial 27-page pleading was identical on each filing, but the numerous petitions had various documents attached to each. (Requests for Reconsideration, September 2, 2020).

170) On September 3, 2020, the designee noted in the agency file that "no action" was taken on Employee's September 2, 2020 petitions because, "Time for reconsideration expired." (ICERS Judicial, Party Actions, Petition tabs, September 3, 2020).

171) On September 29, 2020, the parties attended a prehearing conference to discuss Employer's August 26, 2020 petition to compel Employee to sign the SIME form. Employer noted Employee had agreed on July 23, 2020 to move forward with the SIME and review and complete the SIME form as the designee had ordered her to by June 30, 2020, and file it with the Division by August 22, 2020, but she had not done so. For the first time, Employee objected to missing information on the SIME form; she also contended she had developed an eye infection, which made reviewing documents with Williams difficult. The designee ordered Employee to sign and file the SIME form by no later than October 29, 2020, and file the SIME medical binders with the Division by no later than November 30, 2020. Employee again did not state she could not attend an SIME until she received PTSD treatment. (Prehearing Conference Summary, September 29, 2020).

172) On March 18, 2021, the parties attended a prehearing conference where Employer stated Employee had still not signed and returned the SIME form. Williams did not deny, but again stated Employee had an eye infection that limited her ability to review records. The designee again extended the deadline for Employee to sign and file the SIME form to March 26, 2021, and to review and file the SIME binders with the Division by June 1, 2021, one year after Employer had initially requested the SIME. Employee again did not state she could not attend an SIME until she received PTSD treatment. (Prehearing Conference Summary, March 18, 2021).

173) On or about March 31, 2021, Employee signed and filed the SIME form without a date and wrote the words "under duress" after her signature. (SIME Form, filed March 31, 2021).

174) On July 7, 2021, Employer attended a prehearing conference to discuss progress in the case, but Employee and Williams did not attend. Employer was concerned with "the lack of movement in this case" and Williams' "continued apparent disregard" for the adjudication

process. The designee reiterated that an SIME could not be scheduled without Employee's review of the medical binders and without her associated affidavit. However, he noted Williams had signed and filed the SIME form on March 31, 2021. (Prehearing Conference Summary, July 7, 2021).

175) There is no evidence in Employee's agency file showing she or Williams notified the Division that they could not attend the July 7, 2021 prehearing conference. (Agency file).

176) On July 14, 2021, Employee emailed an unspecified person a formal production request in accordance with Alaska Civil Rules 26, 34 and 37. (Email, with Request for Production to the Insurer and or Adjuster or Their Legal Representative, July 14, 2021).

177) On July 27, 2021, Employer petitioned to dismiss Employee's claim. Attached to the petition was the following letter from its attorney:

> Employer . . . respectfully requests the . . . Board . . . to dismiss . . . Employee's claim for failure to prosecute.
>
> Samantha Atlas, the Employee, has repeatedly delayed the resolution of her claim by failing to cooperate with the SIME process. The Employee has persistently ignored the Board's order to sign the SIME form and review the medical binders. The Employee has been granted multiple extensions to prepare for the SIME since the Employer filed for an SIME on June 30, 2020 -- over one year ago. Most recently, the Employee and the Employee's non-attorney representative failed to appear for the July 7th, 2021 prehearing conference to discuss the Employee's failure to review the SIME binders by the most recent extended deadline, June 1, 2021. The Employee's signature on the SIME form states that it was "signed under duress."
>
> Separately, the Employee refuses to submit to medical treatment. Psychiatric medical treatment has been recommended by most every provider and remains uncontroverted. The Employee has been made aware of this fact.
>
> The Employee directly benefits from delaying an SIME, and ultimately a hearing on the merits, because the Employee continues to receive temporary total disability payments. The Employee's ready flouting of workers' compensation law, regulation, and the authority of the Board betrays the desire for "quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers." The Board should dismiss the Employee's claim because the Employee refuses to participate in the recovery process and the SIME process. (Petition; attached letter, July 27, 2021).

178) On August 26, 2021, Employee petitioned to compel Employer to produce formal discovery she propounded by email on July 14, 2021. (Petition, August 26, 2021).

179) On September 28, 2021, Employer attended a prehearing conference to discuss case progression, but Employee and Williams again did not attend. It again expressed frustration with no case movement and with Williams' "continued apparent disregard" for the adjudication process. Rather than set a hearing on Employer's petition to dismiss, the designee scheduled another prehearing conference to allow Employee and Williams another opportunity to participate in the process. (Prehearing Conference Summary, September 28, 2021).

180) There is no evidence in Employee's agency file showing she or Williams notified the Division that they could not attend the September 28, 2021 prehearing conference. (Agency file). To the contrary, on August 3, 2021, Williams said, in respect to her request to reschedule a September 22, 2021 prehearing conference to September 28, 2021, "That should work for us also." (ICERS Judicial; Communications tabs; email, August 3, 2021).

181) On October 28, 2021, the parties attended a prehearing conference and agreed to hold Employer's July 27, 2021 petition to dismiss in abeyance and set new SIME deadlines. Contrary to what a previous designee had stated, this designee said a fully executed SIME form was not in the agency file and the SIME would not be scheduled until it had been filed with the Division. The parties agreed to file the form that day. The designee formulated SIME questions and directed parties to file the medical record binders with the Division by November 5, 2021. (Prehearing Conference Summary, October 28, 2021).

182) On November 5, 2021, Williams signed an affidavit stating she had reviewed the SIME binders "for the above referenced claimant," as her "ADA advocate" and the records were "correct" to the best of her knowledge. On or about this same date, Employee apparently also re-signed and filed an SIME form eight days late without the words "under duress" following her signature. (Affidavit, November 5, 2021; SIME Form, undated by Employee).

183) On December 3, 2021, a Board designee notified the parties that Employee had appointments to see SIME physician Mark Kimmel, PhD, in Berkeley, California on January 25, 2022, for the first part of her panel-SIME and SIME physician Leon Barkodar, MD, in Los Angeles, California for the second part. (Harvey Pullen letters, December 3, 2021).

184) On January 18, 2022, Employee petitioned for a protective order postponing the SIME "due to the uptick in Covid cases and ill health." (Petition, January 18, 202[2]).

185) On January 19, 2022, given Employee's petition on short-notice, the designee canceled the SIME and scheduled a prehearing conference for February 17, 2022, "to discuss how best to proceed." (Pullen letter, January 19, 2022; Prehearing Notice, January 20, 2022).

186) On February 17, 2022, the Division canceled the same-dated prehearing conference because Williams emailed and said she was unavailable that day and had an unspecified but "unexpected scheduling conflict." (ICERS; Judicial; Communications; tabs; email, February 17, 2022).

187) On March 15, 2022, Employer attended a prehearing conference to discuss case progress, but Employee and Williams did not attend. The designee confirmed the SIME had been canceled pursuant to Employee's January 18, 2022 petition, and set a hearing for April 20, 2022, on Employer's July 27, 2021 petition to dismiss. (Prehearing Conference Summary March 15, 2022).

188) There is no evidence in Employee's file showing she or Williams notified the Division that they could not attend the March 15, 2022 prehearing conference. (Agency file).

189) On April 13, 2022, Employer contended Employee failed to cooperate with the SIME process and ignored several Board designee orders. It contended she failed to provide good cause for her "failure to cooperate" and her failures were "repeated, willful and egregious." Employer contended the Board should treat an SIME as "discovery" because parties have the right to discovery after they receive an SIME report. It contended similar sanctions available in discovery disputes should apply to an SIME. Employer contended Employee's present claim should be dismissed for her repeated failure to comply with Board orders regarding the SIME process. (Employer's Hearing Brief, April 13, 2022).

190) Employer contended Employee relied on a letter from Katmai Eye stating she needed more time to review medical records because her eye condition, which she also claims is related to her work injury, interferes with her vision. Employee said this report is in her agency file, but Employer contends it does not have it. Employer noted the last known time Employee treated with Katmai Eye was in September 2018, two years before the first deadline for filing the SIME binders with the Board. Noting the eye doctor's report was "stale" by the time the binder review order was made, Employer contended it nonetheless took Employee a year and one-half to complete her SIME binder review. It contended if Employee truly had three consecutive eye infections preventing binder review, she should have raised that issue at the appropriate

prehearing conferences when the binders were discussed. Rather, Employer noted Employee failed to appear at two prehearing conferences scheduled to address SIME progress. It further noted it has no medical record stating Employee ever had an eye infection and she did not supplement the SIME records with any eye-doctor reports. (Employer's Hearing Brief, April 13, 2022).

191) Further, Employer contended even if Employee was ill or had difficulty reviewing the SIME binders, that would not explain her delay in signing the two-page SIME form or why she eventually signed it "under duress." Employer contended it was Williams who ultimately signed the affidavit stating the binders were complete. It contended Employee and Williams offered no explanation why Williams could not and did not review the medical records for completeness earlier. Employer cited the July 7, 2021 prehearing conference that was scheduled to discuss the SIME binders and the fact Employee had missed three deadlines and the case was making no progress more than a year after she had agreed to an SIME. When Employee did not attend that prehearing conference, it delayed the process further because the designee did not establish new SIME deadlines. Employer noted she also did not appear for the September 28, 2021 prehearing conference, which delayed the SIME process again. (Employer's Hearing Brief, April 13, 2022).

192) Employer contended Employee's last-minute petition to delay the SIME scheduled for January 2022 was strategically timed, so the Division had no choice but to cancel the SIME. It further contended, even after the Division scheduled a subsequent prehearing conference to get the SIME appointment back on track, Employee rescheduled that conference "due to family medical issues." Employer contended she even failed to appear at the rescheduled prehearing conference. It contended lesser sanctions would not convince Employee to cooperate with the SIME process because to date she has not taken any Board order seriously. Employer contended a records-review SIME is not appropriate for a psychological issue and would merely punish it, the party not at fault, for the delay. It contended suspending benefits would put Employee in a worse position than she would be in if her present claims were dismissed and would hurt Employer because it wants Employee to get treatment and recover. (Employer's Hearing Brief, April 13, 2022).

193) On April 14, 2022, Employee agreed there was a medical dispute about her injuries and necessary medical treatment for injuries she contended occurred on or about November 20, 2016 and "on June 11, 2018." She contended Employer had "interfered" with her ability to receive

medical care and she had not received necessary treatment. Employee contended lack of care affected her ability to participate in an SIME. She agreed she was receiving TTD benefits, but her mental health condition remained untreated and implied it was Employer's fault; she relied on information she said she filed on July 10, 2020. Employee contended Employer had written her treating physician on July 6, 2020, stating Employer would not pay for her treatment. (Employee's Hearing Brief Petition to Dismiss Failure to Cooperate for SIME, April 13, 2022).

194) Employee contended she had gone to a facility in Bakersfield [Neuro Skills on February 11, 2020] "in an effort to get into the right program for her to be able to recover and potentially return to work." She contended while Employer stated it wanted her to utilize uncontroverted medical benefits, Employer had said "no [to] any the treatment that may benefit the employee." Employee contended Employer has "not allowed her to treat." Williams cited her own illness, a death in her family, her ill husband and Williams' experience with COVID-19 on "the last scheduled hearing day" as legitimate reasons for delays. She contended "the employee has demonstrated great patience with the COVID 19 virus, her untreated medical conditions, unavailability and change in staff for the Department of Law (4 changes in attorney since 2019)." (Employee's Hearing Brief Petition to Dismiss Failure to Cooperate for SIME, April 13, 2022).

195) Employee conceded she agreed to the SIME at the July 23, 2020 prehearing conference and "is still agreeable" to it, but the Board must "give weight to her accommodations" and to opinions from her treating eye specialist stating she had eye infections and impairment "due to her work-related injury" that would require her to have additional time "to review and process." She contended the workers' compensation system "activates" her PTSD and "sets off her conditions." (Employee's Hearing Brief Petition to Dismiss Failure to Cooperate for SIME, April 13, 2022).

196) Employee contended Employer should have paid for treatment she received at Neuro Skills in Bakersfield and for her shoulder surgery. She contended she had "14 total exposures" at work and at least seven were "traumatic." However, Employee contended only her 2016 and 2018 injuries required specialized treatment for PTSD. In short, Employee contended either Employer failed to arrange for her to see appropriate physicians to treat her PTSD, or refused to pay for it. She contended she was not intentionally or willfully disregarding the law in respect to the SIME process. Though she is willing to cooperate with the SIME process, Employee said, for the first time since Employer requested the SIME, she believed it would be "fairer" if she had time to get

her PTSD treatment before seeing the evaluators. Employee contended Employer "interfered" with her treatment by "suggesting providers that had a variety of conflicts ranging from not taking workers' compensation payments, late payments, and conflict of interest." She contended while there is no formal controversion "there is a de facto controversion in place" because there is nowhere in Anchorage to treat her, and Employer "refused" to let her treat at Neuro Skills. There were no exhibits attached to Employee's hearing brief. (Employee's Hearing Brief Petition to Dismiss Failure to Cooperate for SIME, April 13, 2022).

197) On April 19, 2022, Employee petitioned to continue the April 20, 2022 hearing stating, "Ms. Atlas has become unavailable" for the hearing "because of a death in her immediate family." She did not include an affidavit setting out the facts she expected to prove through Employee's testimony, efforts made to get her to attend the hearing, or the date Williams first knew Employee would allegedly be absent or unavailable. (Petition, April 19, 2022).

198) On April 20, 2022, the parties' representatives appeared for a hearing on Employer's petition to dismiss Employee's claim and the panel addressed Employee's petition to continue as a preliminary matter. Employer opposed a continuance based on its experience with Employee's delays. Williams contended Employee's father "just passed" and she has untreated PTSD and has been waiting for treatment; she asked the panel to "accommodate" Employee's situation. Employer contended Dr. Craig's report stated Employee's parents died in 2018, and questioned the factual basis for Employee's continuance request. Williams disagreed Employee's parents were deceased when Dr. Craig examined her; she contended Employee's mother was "alive and well" in the Seattle area and reiterated that her father had "just passed . . . recently." She stated Employee was with her mother and could not participate telephonically because she was upset about her father's death. Williams contended Employee's testimony was necessary to address Employer's petition to dismiss so she could describe how this process was "affecting her"; Employer conceded her testimony could be necessary. The panel reluctantly granted the hearing continuance and "froze" the record as it existed on April 20, 2022. It directed Williams to adhere to 8 AAC 45.074 in the future if she requests a hearing continuance. (Record).

199) On May 25, 2022, the parties attended a prehearing conference and agreed to reschedule the April 20, 2022 hearing to July 19, 2022. Employee requested accommodations related to her PTSD. (Prehearing Conference Summary, May 25, 2022).

200) On July 19, 2022, at 9:00 AM the parties appeared for a hearing on Employer's petition to dismiss. McComb appeared in-person and Williams and Employee initially appeared together on the same speakerphone. The designated chair advised Williams her phone audio was poor. Williams ultimately agreed to come to Anchorage with Employee to participate in-person at the hearing and the hearing was adjourned until they arrived. (Record).

201) At approximately 11:20 AM, the hearing reconvened with all participants in-person and the parties made opening statements generally consistent with hearing briefs previously filed for the continued April 20, 2022 hearing. Employee added a contention that the Division had suspended SIME procedures due to COVID-19 and said no one had ever contacted Williams or Employee to say those restrictions had been lifted. Employee was initially allowed to sit next to Williams at the counsel's table rather than sit in the separate witness chair during her testimony. (Record).

202) The first question McComb asked Employee at hearing was, "Where do you currently live; what's your address?" Employee reacted hostilely and wanted to know why that question was asked and accused McComb of "laughing" at her. The record discloses no laughter. McComb said she had not laughed at Employee, but admitted she smiled after Employee's response to relieve McComb's nervousness as this was her first administrative hearing. Employee angrily engaged with McComb for several minutes about her "feelings"; while this went on, McComb objected to Williams "passing a note" to Employee. The designated chair asked Williams if she had passed a note to Employee, and she responded "no." Employee volunteered that she had simply looked over and happened to see what Williams had written on her yellow notepad. The panel observed that Williams had placed her notepad at a sharp angle directed toward Employee, which would have made it easy for her to read whatever Williams had written. Employee again engaged hostilely with McComb and accused her of "judging" and being "argumentative." The designated chair directed Employee to sit in the witness chair, away from Williams. Employee began pacing behind the witness seat; the designated chair took a 20-minute adjournment, after only one question, so Employee could regain her composure. (Record).

203) Employee eventually provided "her address" as Williams' address and told McComb her residence address was "none of [her] business." She explained that Williams gets her mail and assists her in understanding the legal process. Employee refused to say where she resided and stated she does not trust anyone and feared a specific Division staff member was going to "kill

[her]." Williams explained she opens all of Employee's mail, reads it, shows it to her and explains it. Employee refused to say if she lived with her boyfriend, but agreed he had attended appointments with her and he had "served" subpoenas on her behalf. (Record).

204) Employee evaded McComb's questions. She conceded she went to the adjuster's office with her boyfriend to "serve" subpoenas and went into the building with him. Employee said APRN Hardy told her someone with "workers' comp" said she was no longer allowed to come into Hardy's medical building to see anyone for additional medical treatment. (Record).

205) As Employee continued with her "outbursts" at hearing, as Williams described them, Williams said Employee had "no control" over these because of her "untreated medical condition." When asked, Employee could not describe the untreated medical condition to which Williams had referred because she was "not a doctor." When asked if she was obtaining PTSD counseling, Employee evaded and said every time she sought a provider in Anchorage they declined to see her once they found out it was "workers' compensation." According to Employee, "Nobody in town wants to see [her]" because they said they would not get paid. Employee described seeing a practitioner in the Dimond Center whose name she could not recall. She saw another provider on International Airport Road that said she was not qualified to treat her. Employee expressed frustration stating she was "telling stories to strangers who can't help [her]." When asked what else she had done to obtain PTSD treatment, Employee evaded and said she was "confused" and did not know where to go for help since those she talked to would not accept her. (Record).

206) Employee sees Williams more than three times a week to talk about how she is doing. Williams occasionally goes to medical appointments with her, but does not take her shopping. She accompanied Employee on trips to California to seek PTSD treatment. One unspecified provider told Employee she did not meet their criteria. (Record).

207) Employee said that before her injury she worked seven days a week, 16 hours per day. She was currently receiving TTD benefits by check every two weeks sent to Williams' address; Employee signs and deposits the checks in her account; she said Williams never signed her checks for her, and they were never deposited in Williams' account; Employee chuckled when asked if she ever asked Williams to sign Employee's name on her checks and said "no." (Employee).

208) Employee denied missing any prehearing conferences without giving prior notice to the Division that she was sick. If she did not attend a prehearing conference, Employee said it was because she was either sick or had an eye infection. Employee was aware Williams did not attend prehearing conferences when Employee was also not in attendance, but said Williams always told her she had not attended, had contacted the Division to advise beforehand she could not attend, rescheduled the prehearing conference and told Employee the new date. (Employee).

209) At hearing, Employee reviewed the first SIME form she signed and said she wrote "under duress" after her signature because she felt "threatened" by unnamed persons and felt she had to sign the form or unspecified things would happen. She agreed she was wearing dark sunglasses at hearing and said bright lights sometimes bother her [the hearing room lights are darkened by "cloud filters"]. Employee said she has been told she cannot put work-related medical care on her health insurance. She agreed Employer paid for her right-shoulder surgery. Employee said she paid for her left-shoulder surgery; health insurance did not pay for it. She testified when she had eye infections, she could not drive and had difficulty reading; she could not recall dates when she had eye infections, but said they "come and go" and she saw her doctor at Katmai Eye for treatment. Employee knew that a hearing had been continued because her father died; when asked when he died, Employee declined to answer calling it "personal" and "private." However, Employee testified she never told Williams "the hour he died." She evaded and could "not be specific" with the date when asked if he died "within the past year." At this point, Williams asked for a break, which was granted. (Employee; record).

210) On cross-examination, Employee testified she had treatment with APRN Hardy until one day when Hardy took her aside and told her she could no longer see Employee because "one of the staff at workers' comp" told her they would not pay her anymore. According to Employee, APRN Hardy told her she was no longer allowed to come into her building for treatment even with cash-in-hand to see anyone practicing in that building. Employee testified she could not even use her health insurance, for which she paid a premium, for non-work-related medical conditions; her explanation as to why was unclear. In her opinion, when Employer took APRN Hardy's deposition, it "conditioned" her treatment because "workers' comp" told her they would no longer pay for it. Employee recalled speaking with Williams about names Employer had given them for possible treatment providers and said she and Williams together called the providers and took notes. According to Employee, the providers would decline to accept her

case when they found out it was workers' compensation. Williams contended she had filed on a Notice of Intent to Rely, various documents documenting the efforts Employee had made to find PTSD treatment. She further contended she "re-filed" it with her hearing brief. After a lengthy search for the document during a hearing recess, it was found that Williams had filed the material to which she referred beneath her July 10, 2020 Medical Summary, which the Division properly filed under "Medical Summary" in Employee's file, making it difficult to find. (Employee; Williams; record).

211) Employee testified APRN Hardy referred her to RIW, and she went there for PTSD treatment. She evaded when asked whether she received PTSD treatment there and implied she did not because the physician was often unavailable. Employee said RIW was not what she and APRN Hardy expected. She implied she hurt her left shoulder at RIW and had to contact a physician upon returning to Alaska. Employee said she paid for left-shoulder treatment from her own pocket. Employee said eventually APRN Hardy wrote a letter stating the mental health treatment she needed was not available in Alaska. Williams traveled with her to Malibu and Bakersfield looking for programs to assist her. Employee said she obtained a report from Neuro Skills and presented it to Franklin, who represented Employer. She testified Franklin wrote her a letter stating Employer would not pay for treatment at Neuro Skills. Employee said she and Williams paid their own travel expenses for this assessment. (Employee).

212) When responding to a leading question from Williams, Employee testified her father had died on an unspecified date, but the family could not get together for a funeral because of COVID-19 restrictions. She implied the funeral to which she referred that resulted in the April 2022 hearing being continued was a belated funeral, implying that her father had not actually "recently" died but had died at some previous, unspecified point and she was going to the funeral service in April 2022. (Employee; record).

213) Employee testified that when she was reviewing the SIME records, her eyes started bothering her, so she went to the eye doctor. That was when she asked her eye doctor to write a letter describing her limitations for ADA purposes. Employer objected to any reference to the "ADA document," which Employee characterized as an "*ex parte*" record that Employer has no right to see pursuant to unspecified federal statutes or regulations. It objected to Employee and the panel relying upon a medical record that Employer had never seen. (Employee; record).

214) Employee said she tried to seek PTSD treatment; barriers she contends she experienced included providers telling her they do not accept workers' compensation cases. She testified she "tried [her] best" to participate in prehearing conferences, examinations and hearings. Employee conceded that on some days she does not want to be around people and does not trust anyone. She blamed others for her lack of PTSD treatment. Employee does not think it is fair for Employer to "require" her to spend her own money on work-related medical care. She conceded Franklin wrote her a letter encouraging her to get mental health treatment; she admitted she has received no additional medical health treatment since Franklin's unspecified letter. Employee reiterated that she called the military and police and fire departments [in 2018] to find out where their employees go to receive help for PTSD issues. (Employee).

215) Late in the hearing, following a break, panel member Dennis disclosed that during a conversation he had with McComb over a break, he discovered he knows McComb's husband through work. Dennis is an insurance broker and represents The Dentist Insurance Company. He arranges seminars at which McComb's husband teaches dentists how to avoid claims. Dennis had never met McComb before and said his business relationship with her husband would not impact his ability to be fair and impartial in Employee's case. He declined to recuse himself. Employer had no objection to Dennis participating. Employee objected stating she had no specific reason to remove Dennis from the panel but felt "uncomfortable" knowing he knew McComb's husband. As remaining panel member, the designated chair considered the matter, reviewed the regulations and overruled Employee's objection. (Record).

216) Employee reviewed each document attached to her July 10, 2020 Notice of Intent to Rely, that she misfiled under a "Medical Summary." She recalled APRN Hardy's April 20, 2020 letter regarding PTSD care in Alaska. Employee identified Williams' hand-written notes memorializing the May 18, 2020 conversation she and Williams had with a Bridges representative. She agreed Dr. Gee had a "conflict of interest" because she worked with her while Employee worked for Employer and cared for some of Employee's patients. Employee also agreed Dr. Gee did not take workers' compensation cases. She could not recall if "Dr. Bridges" took workers' compensation cases. The May 18, 2020 note, which Williams referred to as the "May 28, 2020" note, stated Bridges accepted workers' compensation cases but needed her primary insurance in case workers' compensation did not cover the expenses. Williams' notes mentioned the facility did not take "complicated cases" and "no litigation stuff." Upon

answering another leading question from Williams, Employee stated Bridges required prepayment; the designated chair interjected that the note in question did not state that, but said Bridges required primary insurance in the event workers' compensation did not cover the treatment. Thereafter, again responding to leading questions, Employee agreed Bridges required her to bill her regular insurance, but she averred this was at a time when that insurance "was not working." Employee clarified she was told "over and over again" that if she had a work-related injury she could not bill it to her health insurance. She stated Bridges considered her case "complicated" and would not accept her case because it involved litigation. Employee said she traveled to Neuro Skills on February 11, 2020 for an evaluation and said she provided staff there with relevant medical records. (Employee).

217) Employee said she spent about $30,000 from her own pocket for left-shoulder surgery, and related physical therapy and medications. She said she had provided the medical records and associated bills for this treatment to the adjuster but could not recall when. Employee said her eye infections are related to her work injury with Employer. When asked how, Employee said she "never really had stuff like this before [she] got assaulted." Williams accompanied Employee on the trip to California to find PTSD treatment; they visited Neuro Skills and another facility in Malibu both in February 2020. Employee said she has no objection to going to an SIME but is worried about being around people with COVID-19 and crowds because it is hard "to maneuver and get around" and "loud noises" bother her. However, Employee traveled to Washington in 2021 and 2022 for "personal family matters;" in 2020 she traveled to California as described above but could not remember if she traveled anywhere else that year. She testified she did not travel by air anywhere within Alaska in 2020 through 2022. Employee said she does not drive a vehicle because she does not want to, because loud noises bother her, and she does not want to get in an accident. She travels in vehicles as a passenger. Employee said she did not travel anywhere as a passenger in a vehicle farther than Wasilla from 2020 through 2022. (Employee).

218) When asked what Employer or its adjuster should do or what was lacking in their efforts, Employee said she needed PTSD treatment and counseling; if it is not available here, she should be able to get it out-of-state so she can get better, move on and go back to work. When asked to be more specific, Employee stated perhaps Employer could preauthorize treatment. She gave RIW as an example and added the physician there said she needed to be available for daily

treatment sessions. APRN Hardy referred her to RIW for PTSD treatment and counseling and she was under the impression that is what would happen when she got there. However, Employee testified when she got to RIW, she felt like she had "two full-time gym memberships." It was "nothing but, . . . weight training," physical rehabilitation and exercising. There was also "medicine education," explaining drug interactions. Likewise, "Dr. Bridges" would not see her locally because, according to Employee, they had "problems getting paid" timely. Employee agreed there are facilities in Alaska that treat PTSD patients and could treat her PTSD, but they will not take her case because it was either too complicated, the facility did not accept workers' compensation cases, or they did not get involved in litigation. When asked if she ever successfully located a facility that would her PTSD, Employee evaded and suggested unspecified facilities would call the adjuster and she implied the adjuster would equivocate on whether they would pay. When asked to clarify, Employee stated Neuro Skills and RIW said they would accept workers' compensation cases. When asked why she had not received treatment at either facility, Employee said "payment for the program." She testified that Franklin said Employer would not pay for treatment at Neuro Skills. Employee also said there were vague "scheduling" or "paperwork" difficulties and unspecified, non-returned calls from unidentified persons in 2020 that impeded her ability to attend a program at Neuro Skills. When asked why she never got PTSD treatment at RIW as she testified, Employee testified "they" [she later clarified "they" as "probably" the adjuster] "never really got into that." (Employee).

219) RIW's records show Employee received at least eight and one-half hours mental health treatment from Dr. Tollison. (RIW records).

220) When asked what effort she had made recently to find a provider to treat her PTSD that would accept workers' compensation cases, Employee evaded and said, "I'm confused. I don't know who else to call." She again referenced her 2018 calls Employee said she had made to the military, police and fire departments. Employee said she had also done an Internet search and ran into "the same thing"; according to her, most of the places will not take workers' compensation. Hypothetically, if it turned out no provider in the United States would treat her because none would accept workers' compensation insurance, Employee testified she would want retraining so she could go back to work; she averred she could not be retrained until she got PTSD treatment. In her opinion, without PTSD treatment, she could not return to work. (Employee).

221) Employee offered no specific written evidence or testimony of any efforts she made to obtain treatment for her PTSD and SSD conditions since June 2020. (Agency file; Employee).

222) Employer contended Employee has Williams representing her who is well-versed in workers' compensation law and could have and should have ensured important deadlines were met, but did not. In its view, a records-review SIME would not be appropriate given the psychological issues and the need for face-to-face interaction with the examiners. Employer contended it never denied treatment for PTSD. It wants Employee to get medical treatment and return to work. However, Employer contended it has been prejudiced because this case has not moved along quickly, predictably or at a reasonable cost. In its opinion, Employee's failure to cooperate is largely at fault for the delays in this case. (Employer's hearing arguments).

223) Employee contended she made a good faith effort to cooperate with the SIME process. She emphasized the numerous attorneys representing Employer and implied a lack of continuity as fault for the delays. In her view, Employer expects her to "perform like a pet" even though she has ADA accommodations. Employee contended she has "done everything she can" to find treatment. She blamed the Division for its lack of direction regarding SIME attendance during COVID-19. Employee contended the facilities from which she sought PTSD treatment were those given to her by Franklin, implicitly blaming him for the delays. She contended RIW gave her PT, work hardening and "some" treatment for PTSD. Employee contended she has a "big hole" in her medical care for PTSD and cannot get it unless she pays for it herself, which she should not have to do. "Nobody has called her" to talk about the $30,000 she spent from her own pocket. "Nobody from the state" called Employee or Williams to ask if Employee "is ready to go to the SIME." When the designated chair asked Williams if Employee was ready to go to the SIME now, Williams responded, "No, she wants some treatment before she gets there so she can go." Employee referenced other work-related injuries she had with Employer and queried why Employer would "withhold" PTSD treatment for her and deemed Employer's alleged action as "bullshit." She reiterated her claim that Employer has interfered with her ability to obtain medical care for her PTSD. Both parties said they still want the SIME. (Record).

224) This is a complex case involving mental health issues; significant benefits are at stake and an SIME would assist the Board in best ascertaining the rights of all parties. (Experience, judgment and inferences drawn from the above).

225) Physicians examining and treating injured workers rely heavily on the history provided by the patient in formulating their diagnoses and treatment plans. (Experience, judgment).
226) Employee has never filed a Request for Conference asking for a prehearing conference or an Affidavit of Readiness for Hearing seeking a hearing on any issue in this case. (Agency file).
227) The Division has conducted 16 prehearing conferences in this case, all of which occurred after Williams entered her appearance for Employee. Employee and Williams missed 25 percent of those without prior notice to the Division. Three of those, on July 7, 2021, September 28, 2021 and March 15, 2022, were to address matters that could be averse to Employee's positions. Each missed prehearing conference caused delay in this case progressing. (Observations).
228) Employer filed 15 controversions but none have ever controverted treatment for Employee's PTSD or SSD; in fact, three notices that denied all or some benefits expressly excepted PTSD and SSD treatment arising from Employee's November 19, 2016 injury. (Controversion Notices, October 31, 2018, December 19, 2018, January 31, 2019, May 20, 2019, May 30, 2019, May 30, 2019, June 10, 2019, June 26, 2019, June 27, 2019, September 11, 2019, July 7, 2020, March 23, 2020, May 13, 2020, July 16, 2020, and December 21, 2020).

PRINCIPLES OF LAW

> **AS 23.30.001. Legislative intent**. It is the intent of the legislature that
> (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

The Board may base its decision 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 23.30.095. 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. . . .
> . . . .

> (d) If at any time during the period the employee unreasonably refuses to submit to medical or surgical treatment, the board may by order suspend the payment of further compensation while the refusal continues, and no compensation may be paid at any time during the period of suspension, unless the circumstances justified the refusal.
> . . . .

Richard v. Fireman's Insurance Co., 384 P.2d 445, 448-50 (Alaska 1963), clarified the first clause in AS 23.30.095(a) and stated:

> Under the present wording of the [A]ct we do not believe that it was the intent of the legislature to place upon an employer the affirmative duty to select and otherwise arrange for medical and surgical care for the injured workman, except in the two situations hereinafter mentioned.
>
> While section 6 of the [A]ct states that the employer '*shall furnish* such medical [and] surgical treatment . . . for such period as the nature of the injury or the process of recovery may require' [emphasis added], it is apparent from a reading of the remainder of that section and the provisions of the [A]ct relating to employer's insurance coverage that the liability of the employer is to pay for the medical services, not to arrange for them. Under the [A]ct, the injured employee makes his own selection of any licensed physician within the state, except when in its judgment the Board thinks some other selection should be made (footnote omitted). . . . .
>
> Only if the employee is unable to designate a physician and the emergency nature of the injury requires immediate medical care or if the employee does not desire to designate a physician and so advises the employer does the act require the employer to designate the physician. This case does not fall within either of the exceptions stated. . . .
> . . . .
>
> The appellant sets forth certain dire consequences which will follow if the [A]ct is interpreted to mean that an employer has no affirmative duty to provide needed medical attention for an injured employee. The employee, he says, will have a difficult time contracting with doctors and hospitals without insurance company backing. Often the workman will have to obtain a loan before he will be accepted for treatment. In some cases[,] he may forego needed treatment rather than run the risk of the insurance carrier avoiding liability. Those things may all very well be but they would not justify us in giving a judicial construction to the [A]ct which is contrary to the apparent intent of the legislature that, absent the exceptions mentioned in section 6 of the [A]ct, the only affirmative duty of the employer or the insurance carrier in a case such as the appellant's is that of paying for all necessary medical expenses. . . .

In *Metcalf v. Felec Services*, 784 P.2d 1386 (Alaska 1990) the Board held the injured worker had unreasonably refused treatment for a head injury that resulted in recurring headaches. The claimant had "steadfastly refused" treatment, which consisted of prescription medicine, and refused to undergo a computerized tomography (CT) scan with or without contrast, and an angiogram. At hearing, the panel determined though his injury was compensable, the worker had unreasonably refused medical treatment under AS 23.30.095(d). The Court on appeal found the Board's conclusion that Metcalf had unreasonably refused to accept medical treatment was supported by substantial evidence. *Metcalf* set forth the test for determining reasonableness of treatment refusal:

> (1) the risk and seriousness of side effects;
> (2) the chance of a cure or improvement; and
> (3) any first-hand negative experience or observations of the patient regarding either the prescribed procedures or medical care in general.

In affirming the Board's decision on this point, *Metcalf* said §095(d) "appears clear and unambiguous," and found none of the above factors applicable. To address a concern that employees may "purposefully drag out a hearing, obtain unnecessary continuances, and otherwise connive to enlarge the period during which benefits are still being paid," *Metcalf* noted the employer's ability to ask for a hearing and the Board's regulation regarding continuances, which are granted only for carefully delineated "good cause." "If the Board finds that a request for a delay by an employee is not for good cause, it can and should deny it." Moreover, *Metcalf* stated:

> If and to the extent that Felec can demonstrate that Metcalf acted unreasonably and thereby caused delay in the issuance of the Board's decision, the Board may, in its discretion, offset Metcalf's benefits.

In *Gothing v. Gildersleeve, Inc*. AWCB Dec. No. 93-0135 (June 1, 1993), the Board addressed a similar issue and said:

> AS 23.30.095(d) authorizes us to suspend disability compensation if an employee unreasonabl[y] refuses to submit to medical treatment. The available evidence indicates Employee did not return for a follow-up examination with Dr. Schulz one week after his 25 November 1992 examination, as instructed, and did not participate in physical therapy as Dr. Lowney recommended. It also appears

> Employee failed to attend the bone scan Dr. Lowney recommended. A bone scan is a diagnostic procedure, not "treatment." However, medical tests are necessary for a physician to diagnose and prescribe the appropriate treatment.
>
> We find Employee failed to submit to and cooperate with the medical treatment prescribed by Drs. Schulz and Lowney, contrary to his responsibility as set out in AS 23.30.095(d).
>
> Employee has not explained his actions. We have neither reason to believe nor evidence to support a finding that Employee's failure to submit to medical treatment was justified or necessary. Based on the evidence available we find Employee's failure to submit to medical care was unreasonable. We find Employee's disability compensation should be suspended under the authority in AS 23.30.095(d).

Williams v. Alaska Power & Telephone Co., AWCB Dec. No. 08-0040 (March 3, 2008), came to a similar result and cited pre-statehood federal law:

> The federal District Court for Alaska noted:
>
> [T]he law contemplates that the injured workman will do everything humanly possible to restore himself to his normal strength so as to minimize his damages, and where he fails to do so, the consequent disability results from the voluntary conduct of the employee, and not the injury. (*Phillips Petroleum Co. v. Alaska Industrial Board*, 17 Alaska 658, 663 (D. Alaska 1958).
>
> The law has consistently held that an employee who unreasonably refuses to follow the medical advice of a treating physician, and by this failure prevents or delays recovery of the ability to return to work, thereby forfeits entitlement to compensation benefits during the period of unreasonable refusal of treatment (citations omitted).
>
> **AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance.** (a) . . . If the employee fails to file a petition and fails to deliver the written authority as required by AS 23.30.107 within 14 days after service of the request, the employee's rights to benefits under this chapter are suspended until the written authority is delivered.
>
> (b) . . . If the board or the board's designee orders delivery of the written authority and if the employee refuses to deliver it within 10 days after being ordered to do so, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board . . . determines that good cause existed for the refusal to provide the written authority.

> (c) . . . If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. . . .

The Alaska Workers' Compensation Appeals Commission (AWCAC or Commission) stated the first purpose of an SIME is to provide information to the Board; it is not a discovery tool to be used by one party against another. *Geister v. Kid's Corp, Inc.*, AWCAC Dec. No. 045 (June 6, 2007). *Olafson v. State of Alaska*, AWCAC Dec. 061 (October 25, 2007) held:

> Sanctions that may be appropriate in discovery violations are inappropriate because an SIME is not a discovery tool exercised by the parties; it is an investigative tool exercised by the board to assist the board by providing disinterested information.

Even after *Olafson*, Board decisions have not consistently determined if an employee's claim can be dismissed for failure to attend an ordered SIME. Orders have advised employees that their benefits may be forfeited or suspended, or claims dismissed if the employee failed to cooperate with an SIME. *Perry-Plake v. State of Alaska*, AWCB Dec. No. 10-0148 (August 31, 2010). *Longenecker v. Colaska, Inc.*, AWCB Dec. No. 08-0045 (March 7, 2008), granted the employer's petition to dismiss because the employee failed to attend two SIMEs, and refused to attend three depositions, which are a part of discovery. *De Loretto v. Trident Seafoods*, AWCB Dec. No. 17-0075 (July 3, 2017) dismissed the employee's claim and found the employee's refusal to attend an ordered SIME "caused Employer undue prejudice as Employer incurred unreasonable costs for cancellation and transportation expenses, including cashed per diem checks, when Employee did not attend the two SIME panels and for additional prehearing conferences to reschedule the SIME panel after Employee did not attend the first SIME panel." The employee's refusal to attend the SIME without justification delayed the investigatory process for over a year and interfered with Employee's claims moving forward quickly and efficiently. *Olson v. Federal Express Corp.*, AWCB Dec. No. 14-0048 (April 7, 2014), ordered the SIME to proceed as a records-review should the employee fail to attend and held §108 and Civil Rule 37 not applicable to a petition to dismiss based on an employee's failure to cooperate in scheduling and attending a Board-ordered SIME.

> **AS 23.30.110. Procedure on claims**. . . .
>
> (g) An injured employee claiming or entitled to compensation shall submit to the physical examination by a duly qualified physician which the board may require. The place or places shall be reasonably convenient for the employee. . . . Proceedings shall be suspended and no compensation may be payable for a period during which the employee refuses to submit to examination. . . .
>
> **AS 23.30.115. Attendance and fees of witnesses**. [B]ut the testimony of a witness may be taken by deposition or interrogatories in accordance with the rules of Civil Procedure. . . .

In *Brown v. Carr-Gottstein*, AWCB Dec. No. 88-0117 (May 6, 1988), a party objected to formal "requests for production." *Brown* took "a dim view of efforts to graft the Rules of Civil Procedure onto our proceedings." *Brown* further noted:

> AS 23.30.115 does not mention requests for production. They are, therefore, another 'means of discovery' available at our discretion on the petition of a party. 8 AAC 45.054(b). In the past we have refused to order discovery by formal means in the absence of evidence that informal means of obtaining relevant evidence have been tried and failed. . . .

Brown refused to order a party to respond to formal "requests for production" unless and until the requesting party first attempted informal requests for the information and failed.

> **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 . . . is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. . . .

The Board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.,* 204 P.3d 1001, 1008 (Alaska 2009).

> **AS 23.30.135. Procedure before the board**. (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

Willfulness in discovery disputes is defined as "the conscious intent to impede discovery, and not mere delay, inability or good faith resistance." *Hughes v. Bobich*, 875 P.2d 749, 752 (Alaska

1994). Repeated noncompliance with Board orders is also willful. *Brown v. Gakona Volunteer Fire Dep't*, AWCB Dec. No. 15-0143 (October 24, 2015). The sanction of dismissal of an employee's claim cannot be upheld absent a reasonable exploration of "possible and meaningful alternatives to dismissal." *Hughes*, 875 P.2d at 753. A conclusory rejection of sanctions other than dismissal of the case does not suffice. *DeNardo v. ABC Inc. RV Motorhomes*, 51 P.3d 919, 926 (Alaska 2002).

> **AS 23.30.250. Penalties for fraudulent or misleading acts; damages in civil actions.** (a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; . . . or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be punished as provided by AS 11.46.120-11.46.150.
>
> (b) If the board, after a hearing, finds that a person has obtained compensation, medical treatment, or another benefit provided under this chapter, or that a provider has received a payment, by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit, the board shall order that person to make full reimbursement of the cost of all benefits obtained. Upon entry of an order authorized under this subsection, the board shall also order that person to pay all reasonable costs and attorney fees incurred by the employer and the employer's carrier in obtaining an order under this section and in defending any claim made for benefits under this chapter. If a person fails to comply with an order of the board requiring reimbursement of compensation and payment of costs and attorney fees, the employer may declare the person in default and proceed to collect any sum due as provided under AS 23.30.170(b) and (c).
>
> (c) To the extent allowed by law, in a civil action under (a) of this section, an award of damages by a court or jury may include compensatory damages and an award of three times the amount of damages sustained by the person, subject to AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

Grace v. F .S. Air Service, Inc., AWCB Dec. No. 02-0186 (September 17, 2002), applied §250 and found the injured worker knowingly made false and misleading statements for the purposes of obtaining benefits under the Act. *Grace* ordered the injured worker to reimburse his employer $244,325.06 including medical benefits, time-loss benefits, expert witness fees and the employer's attorney fees and costs.

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

(f) **Stipulations**.
. . . .

(2) . . . Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or a prehearing.
(3) Stipulations of fact or to procedures are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. . . .

8 AAC 45.052. Medical summary. (a) A medical summary on form 07-6103, listing each medical report in the claimant's or petitioner's possession which is or may be relevant to the claim or petition, must be filed with a claim or petition. The claimant or petitioner shall serve a copy of the summary form, along with copies of the medical reports, upon all parties to the case and shall file the original summary form with the board.
. . . .

(d) After a claim or petition is filed, all parties must file with the board an updated medical summary form within five days after getting an additional medical report. A copy of the medical summary form, together with copies of the medical reports listed on the form, must be served upon all parties at the time the medical summary is filed with the board. . . .

8 AAC 45.054. Discovery. (a) The testimony of a material witness, including a party, may be taken by written or oral deposition in accordance with the Alaska Rules of Civil Procedure. . . .

(b) Upon the petition of a party, the board will, in its discretion, order other means of discovery. . . .

8 AAC 45.074. Continuances and cancellations. (a) A party may request the continuance or cancellation of a hearing by filing a

(1) petition with the board and serving a copy upon the opposing party; a request for continuance that is based upon the absence or unavailability of a witness

(A) must be accompanied by an affidavit setting out the facts which the party expects to prove by the testimony of the witness, the efforts made to

> get the witness to attend the hearing or a deposition, and the date the party first knew the witness would be absent or unavailable; . . .

8 AAC 45.092. Second independent medical evaluation. . . .
. . . .

(h) In an evaluation under AS 23.30.095(k), the board or the board's designee will identify the medical disputes at issue and prepare and submit questions addressing the medical disputes to the medical examiners selected under this section. . . .
. . . .

> (3) the party served with the binder to review the copies of the medical records to determine if the binder contains copies of all the employee's medical records in that party's possession; the party served with the binder must file the binder with the board not later than 10 days after receipt and, if the binder is
>
> > (A) complete, the party served with the binder must file the binder upon the board together with an affidavit verifying that the binder contains copies of all the employee's medical records in the party's possession; or
> >
> > (B) incomplete, the party served with the binder must file the binder upon the board together with a supplemental binder with copies of the medical records in that party's possession that were missing from the binder and an affidavit verifying that the binders contain copies of all medical records in the party's possession. . . .

(i) . . . The evaluation ends when the physician reviews the medical records provided by the board, receives the results of all consultations and tests, and examines the injured worker, if that is necessary. The board will presume the evaluation ended after the injured worker was examined. If the evaluation ended at a later date, the physician must state in the report the date the evaluation was done. . . .

8 AAC 45.105. Code of conduct. (a) Nothing in this section relieves a board member's duty to comply with the provisions of AS 39.52.010-39.52.960 (Alaska Executive Branch Ethics Act) and 9 AAC 52.010-9 AAC 52.990. A board member holds office as a public trust, and an effort to benefit from a personal or financial interest through official action is a violation of that trust. A board member is drawn from society and cannot and should not be without personal and financial interests in the decisions and policies of government. An individual who serves as a board member retains rights to interests of a personal or financial nature. Standards of ethical conduct for a board member distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.
. . . .

> (c) The recusal of a board panel member for a conflict of interest under the procedures set out in 8 AAC 45.106 may occur only if the recusal is based on clear and convincing evidence that the board panel member (1) has a conflict of interest that is substantial and material; or (2) shows actual bias or prejudgment.
>
> (d) The recusal of a board panel member to avoid impropriety or the appearance of impropriety under the procedures set out in 8 AAC 45.106 may occur only if the recusal is based on clear and convincing evidence that the board panel member (1) has a personal or financial interest that is substantial and material; or (2) shows actual bias or prejudgment.
>
> **8 AAC 45.106. Procedures for board panel members to avoid conflict of interest, impropriety, and appearance of impropriety**. . . .
>
> (d) . . . If the board panel member does not recuse oneself from the proceeding, the remaining board panel members shall determine whether the board panel member who is the subject of the petition may hear the case.

In *Kling v. Norcon, Inc.*, Superior Court Case No. 3AN-92-1232 (September 2, 1993), an injured worker had appeared for his hearing against two defendants before a three-member Board panel. The "labor" panel member immediately recused himself, leaving the hearing officer and the "industry" member, a quorum, remaining. The industry member disclosed that his company had retained the employer's attorney "for the last five years" to handle its workers' compensation cases. He also disclosed he had "an active case with her at the moment" that was "actually closing up." The industry member said he had also retained the law firm representing the second defendant in the case as well. Despite the employee's objections, the industry member refused to step down "claiming that he could be fair." (*Id.* at 2). The Board ruled against Kling on his case's merits, and he appealed to the superior court and contended the Board's proceedings violated his right to due process because the Board member was allowed to sit on the case despite his acknowledged, ongoing and extensive professional relationship with the employer's attorney. The Superior Court affirmed the Board and found:

> The court . . . concerned . . . there was at least an appearance of impropriety here, undertook to research additional law. . . . No case directly on point was found. Despite broad language regarding the importance of preserving the "appearance of justice," the opinions in this area rest on the maxim that adjudicators enjoy a presumption that they are unbiased. Only a direct, usually personal and pecuniary interest can operate to rebut the presumption. *See, Schweiker v. McClure*, 45 U.S.

> 188 (1982); *Sifagaloa v. Bd. of Trustees*, 840 P.2d 367 (Hawaii 1992); *Airline Pilots Ass'n v. United States Department of Transportation*, 899 F.2d 1230 (D.C. Circ. 1990). No such interest was demonstrated in this case. (*Kling* at 12).
>
> **8 AAC 45.120. Evidence**. . . .
>
> (e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. . . .

On June 1, 2021, the Division posted the following to its public website under "Bulletins":

> Effective June 1, 2021
>
> Due to the CDC recommendation, domestic travel is authorized with limited recommendations.
>
> • During Travel
>
> o Follow all CDC COVID-19 guidelines as they evolve regarding travel, physical distancing, hand hygiene, cleaning and disinfection, and respiratory etiquette.
> o Follow all state and local recommendations and requirements, including mask wearing and social distancing.
>
> • After Travel
>
> o Self-monitor for COVID-19 symptoms; isolate and get tested if you develop symptoms.
> o Follow all state and local recommendations or requirements.
>
> This bulletin serves as **termination** of Bulletin 20-02 (REVISED) dated January 1, 2021. (Bulletin No. 21-03, June 1, 2021; emphasis in original).

ANALYSIS

1) Was the oral order declining to disqualify panel member Dennis correct?

During a break late in the hearing, Dennis learned during a conversation with McComb that he knew her husband through work. He disclosed the potential conflict-of-interest as soon as he appreciated it. Absent any reliable, direct and specific evidence to the contrary, Dennis is presumed to be unbiased. *Kling*; *Schweiker; Sifagaloa; Airline Pilots*. Employee had the burden to show he is biased; she conceded her objection to Dennis was non-specific. The Superior Court in *Kling* noted only "a direct, usually personal and pecuniary, interest can operate to rebut the presumption" that a panel member is unbiased. There is no such evidence in this case.

If Employee objected because she thought Dennis had a conflict of interest, she failed to meet that burden. She presented no evidence showing Dennis could not be fair and impartial or that he has a substantial and material conflict of interest. 8 AAC 45.105(c), (d). If Employee objected based on impropriety or the appearance of impropriety, she similarly failed to meet her burden. The law contemplates panel members being drawn from society and they cannot and should not be without personal and financial interests in government decisions and policies. Minor and inconsequential conflicts are "unavoidable in a free society" and distinguishable from those that are "substantial and material." 8 AAC 45.105(a). McComb and Dennis did not know each other before the hearing. Employee failed to provide any evidence that Dennis has a substantial and material personal or financial interest in her case or showed actual bias or prejudgment simply because he knows McComb's husband through his work. Based on the above, the remaining panel member's decision to not disqualify Dennis was correct. 8 AAC 45.106(d).

2)Should Employee be sanctioned?

Employer is frustrated with the lack of progress in Employee's case over the last few years. It continues to pay her $1,211 a week in TTD benefits, as temporarily adjusted to recoup an overpayment as set forth in *Atlas I*, with no end in sight. Employer seeks an order dismissing Employee's claims as an appropriate sanction. Employee says she too is frustrated and contends Employer has "withheld" PTSD treatment and her mental health issues remain unabated. In her hearing brief for the continued April 2022 hearing, Employee for the first time revealed she did

not want to attend the SIME until after she received PTSD treatment. She blames Employer and others for delays in this case and contends she should not be sanctioned.

The first statute in the Alaska Workers' Compensation Act (Act) sets forth the legislature's intent: The Act must be interpreted to ensure quick, efficient, fair, and predictable delivery of benefits to Employee if she is entitled to them, at a reasonable cost to Employer. AS 23.30.001(1). These goals have not been met in this case. The primary reason for this, at least for the past two-plus years, is that Employee has no incentive to attend an SIME, which Employer requested on June 30, 2020, and to which she stipulated on July 23, 2020, well over two years ago. Consequently, she has done little over the last two years to obtain medical treatment for PTSD and SSD. Now, two years after agreeing to the SIME, Employee contends PTSD treatment is a prerequisite to attending one. She continues to receive $1,211 per week in TTD benefits, equaling $62,972 per year, tax-free. The extensive record discussed below shows that Employee and her representative have demonstrated a pattern of intentional delay.

On July 23, 2020, Williams agreed to review and complete the SIME form by August 22, 2020; the designee set other SIME deadlines to be done by October 31, 2020. Williams did not return the SIME form by the due date. This inaction required Employer to file an August 26, 2020 petition for an order requiring Employee to sign and return the SIME form. Employee did not explain why Williams could not have reviewed the form and return it by the deadline.

On September 29, 2020, the parties met to discuss the SIME and related petition to compel Employee's signature on the SIME form and Williams contended Employee had developed an eye infection making it difficult to review documents with Williams. There is no medical evidence in Employee's agency file demonstrating she ever had an eye infection. Employee again failed to explain why Williams could not have reviewed the two-page SIME form by the deadline. Moreover, a party served with SIME medical record binders need only review the records to "determine if the binder contains copies of all the employee's medical records in that party's possession." By law, they have 10 days to do so. 8 AAC 45.092(h). Reviewing SIME records simply involves comparing whatever records Employee had in her possession with the records provided to her from Employer, to make sure they are all present in the SIME binders.

There is no need or requirement for Employee or Williams to review every medical record for content. Furthermore, Employee never filed a medical summary prior to July 10, 2020, when she filed one with one page that was a medical record and included another document from Bermejo. The absence of medical summaries informs that Employee had no medical records in her possession other than those Employer served on her. Otherwise, she would have been filing them on medical summaries with her claim and thereafter within five days of receipt as the law requires. 8 AAC 45.052(a), (d). Thus, all Employee or Williams had to do was check to ensure those two documents were in the SIME binders and make sure all the records were hers -- a simple name-check.

The designee nonetheless extended Employee's deadline to sign and return the SIME form by October 29, 2020, and to file the SIME medical binders by November 30, 2020. Months passed and on March 18, 2021, the parties attended another conference where Employer noted Employee or Williams had still not signed and returned the SIME form; Employee and Williams did not dispute this. Williams again contended, without proof, that Employee had an eye infection, which she contended made it difficult for her to review the two-page form. The file still contained no evidence Employee ever had an eye infection. To the contrary, every examination APRN Hardy performed on Employee in 2019 and through mid-2020 expressly stated she had no eye issues other than to wear special glasses. The designee again extended the deadline for Employee to file the SIME form to March 26, 2021, and to file the binders by June 1, 2021, one year after Employer had initially requested the SIME.

On or about March 31, 2021, Employee signed and filed the SIME form without a date and wrote on it the words "under duress" after her signature. This gave hope that the SIME process might move forward. Months later, on July 7, 2021, the parties were to attend a prehearing conference, but Employee and Williams did not attend. Employer expressed concern that Employee and her representative disregarded the adjudication process. The designee noted that though Employee had filed the SIME form on March 31, 2020, the SIME could not be scheduled without Employee's affidavit of completeness for the SIME medical records. On July 27, 2021, Employer petitioned to dismiss Employee's claim, and contended she repeatedly delayed her claim's resolution by failing to cooperate with the SIME process.

Rather than move forward with the SIME process, almost immediately Employee petitioned to compel Employer to respond to formal production requests she had sent on July 14, 2021. None of her formal production requests directly affected an SIME. *Rogers & Babler*. Moreover, formal production requests under the civil rules are not initially authorized under the Act; with exception of depositions and interrogatories, the civil discovery rules generally do not apply, and document discovery is to be done initially informally. AS 23.30.115(a); *Brown*; 8 AAC 45.054(a), (b). Employer had no obligation to even respond to a "formal" production request. Therefore, Employee's petition to compel Employer's response to a formal production request was a delay tactic she used to divert from, and further postpone, the SIME process. *Rogers & Babler*.

Knowing in July 2021 that Employer had petitioned to dismiss her claims, and knowing this issue would be addressed at the next prehearing conference, Employee and Williams failed to attend the September 28, 2021 conference. At this conference, Employer again expressed frustration with no progress in Employee's case and asked for a hearing on its petition to dismiss. Again, the designee scheduled a follow-up prehearing conference to allow Employee yet another opportunity to participate in the process. On October 28, 2021, the parties attended a prehearing conference and Employer agreed to hold its petition to dismiss in abeyance, and the designee set new SIME deadlines. This was the third time a designee had set new SIME deadlines. This designee said the SIME form was not in the agency file and an SIME would not be scheduled until it was filed with the Division. The parties agreed to file it by October 28, 2021, and the designee directed the parties to file the medical record binders by November 5, 2021.

On November 5, 2021, on one of the few times Employee or her representative followed a designee's order, Williams signed an affidavit stating she had reviewed the SIME binders and Employee's records were "correct" to the best of her knowledge. Neither Employee nor Williams explained why Williams could not have reviewed the SIME records for "completeness" earlier regardless of Employee's alleged eye infections, since Williams is the person who ultimately signed the affidavit. The parties also filed a new signed SIME form without the words "under duress" following Employee's signature. At this point, it appeared the SIME process was

finally moving forward after one and one-half years. On December 3, 2021, the designee noticed an SIME with two physicians in Southern California for January 25 and 27, 2022.

However, on January 18, 2022, just days before the two-physician SIME was to occur, Employee petitioned for a protective order postponing the SIME "due to the uptick in COVID cases and ill health." However, at hearing Employee testified she traveled to Washington for "family matters" in 2020, 2021 and 2022, two of those years coming during the height of COVID-19. She provided no medical evidence documenting "ill health." Employee failed to explain how she was able to travel for "family matters" during those pandemic years but was overly concerned about traveling to her SIME appointments in January 2022. Given her travel for personal reasons, her concerns over COVID-19 in January 2022 were unreasonable and it and her claim of "ill health" absent any medical evidence supporting her or Williams' statements, were not credible. AS 23.30.122; *Smith*.

Since the Division canceled the SIME based upon Employee's statements, another prehearing conference was set for March 15, 2022, to get the case back on track. Again, Employee and Williams did not attend. They have a pattern of not attending prehearing conferences when they know an action, such as a hearing being scheduled, may be detrimental to Employee's positions. *Rogers & Babler*. This time, however, the designee set a hearing on Employer's July 27, 2021 petition to dismiss for April 20, 2022.

On April 13 and 14, 2022, the parties filed their hearing briefs for the April 20, 2022 hearing. In keeping with her prior actions, on April 19, 2022, Employee petitioned to continue the hearing with Williams contending Employee had become unavailable for the hearing "because of a death in her immediate family." Neither Employee nor Williams provided an affidavit setting out the facts she expected to prove through Employee's testimony, efforts made to get her to attend the hearing, or the date Employee or Williams first knew she would be absent or unavailable, as required by the applicable regulations. 8 AAC 45.074(a)(1)(A).

At hearing on April 20, 2022, the panel addressed Employee's April 19, 2022 petition to continue as a preliminary matter. Williams contended, without evidence, that Employee's father

had "just passed." Employer objected and correctly noted Employee told Dr. Craig in 2018 that her parents were already deceased; it questioned Employee's grounds for a continuance. Williams disagreed Employee's parents were deceased when Dr. Craig examined her; she maintained Employee's mother was "alive and well" in Washington and reiterated that her father had "just passed . . . recently." She stated Employee was with her mother and could not participate telephonically because she was upset about her father's death. Given the solemnity of the "recent" death allegation and Employer's concurrence that Employee's testimony would be necessary, the panel continued the hearing again by oral order and froze the record, but did not issue a written decision.

At hearing on July 19, 2022, Employee refused to state when her father passed away, and intentionally evaded related questions. Her testimony that she could not recall if her father died in the past year was not credible. AS 23.30.122; *Smith*. Employee's medical records in respect to her parents cast doubt on her credibility in all respects. On November 14, 2012, Employee told a physical therapist that her "Mom passed away unexpectedly." If that was true, she would not have needed to leave the state to comfort her mother as Williams represented in her continuance request at the April 20, 2022 hearing. On December 15, 2016, about a month after her injury with Employer, Employee told a primary care provider that both her parents were deceased. If that were true, Employee had no valid reason to seek an April 20, 2022 hearing continuance. On September 18, 2018, Employee initially refused to tell Dr. Craig about her parents. The next day, she told him "that her father died before her mother." Employee continued in detail, "When her father died, he was about 87 or 88 years old. He had heart problems and pulmonary problems. Her mother was younger than her father. Her death occurred when she was about 75 or 76 years old. The mother died about one week after the father died, according to Ms. Atlas. . . ." Dr. Craig charted details based on what Employee had told him about her parents. *Rogers & Babler*. For unexplained reasons, Employee did not want to share this with Dr. Craig while her significant other was in the room with her. Dr. Craig's report charting what Employee told him about her parents is credible and given significant weight compared to what Williams told the panel to get the April 20, 2022 hearing continued and what Employee said at the July 19, 2022 hearing to justify her failure to cooperate in the SIME

process. AS 23.30.122; *Smith*. Oddly, on January 9, 2019, Employee told RIW she was in "occasional contact with her parents" who, she said, lived in Washington.

At this point, the status of Employee's parents is unclear. However, it is relevant to her credibility and the weight accorded to her physicians. If Employee is not being truthful with the panel, the panel may not believe anything she says; if she was not honest with her physicians, her lack of candor and honesty will result in the fact-finders giving less weight to their medical opinions. Those medical opinions are directly relevant to her claims. Medical providers rely on their patient's reporting to make diagnoses and treatment plans. If for example, Employee is withholding from her medical providers or misrepresenting information about her parents, parental figures or childhood trauma, this will affect their opinions. *Rogers & Babler*. It is also unclear if Employee told Williams in April 2022 that her father had recently passed and she had to leave town to be with her mother, or if Williams developed that story on her own to inappropriately obtain a hearing continuance to avoid a hearing that could result in a decision adverse to her client. If Employee's father had not "recently" died but died four years earlier, prior to Dr. Craig's 2018 examination as she told him, the false and misleading premise used to obtain a continuance of the April 20, 2022 hearing was a ruse. It is also unlikely, as Employee implied at hearing, and not credible that a funeral service was held four years after his passing. AS 23.30.122; *Smith*.

These inconsistencies warrant the following advisory to Employee and Williams: It is a crime for any person to knowingly make a false or misleading statement, representation, or submission related to a benefit under the Act. It is also a crime for a person to knowingly assist, abet, solicit, or conspire in making a false or misleading submission "affecting the payment, coverage, or other benefit" under the Act. Similarly, it is a crime for a person to employ or contract with a person to coerce or encourage an individual to file a fraudulent compensation claim. Furthermore, persons engaging in this conduct are civilly liable to a person adversely affected by such conduct. If a person is found to have obtained compensation, medical treatment or another benefit provided under the Act by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit, that person will be ordered to make full reimbursement of the cost of all benefits obtained, including all reasonable costs and attorney

fees incurred by the employer or carrier in obtaining an order and in defending against any claim made under the Act. If a civil action is brought, the civil award may include compensatory triple damages as well as attorney fees to the prevailing party. AS 23.30.250(a)-(c); *Grace*.

Employee blames everyone but herself for her failure to obtain medical treatment for PTSD and SSD. Employer must pay for reasonable and necessary, work-related medical care; it does not have to arrange for it. AS 23.30.095(a); *Richard*. Her contention that Employer's delayed response to her formal discovery requests, and the fact it changed attorneys several times, is irrelevant. Those events had nothing to do with Employee's ability to obtain medical treatment. Her testimony and APRN Hardy's notes show Employer bore no responsibility for Employee, Williams and Employee's providers' failure to obtain mental health treatment for her PTSD and SSD conditions.

The record shows Employee, her providers and Williams did relatively little to obtain medical treatment for her PTSD and SSD. For example, on January 4, 2017, Dr. Hines was the first physician to diagnose PTSD and suggested she may need a behavioral health specialist or psychiatrist and neuropsychological testing. On January 6, 2017, Dr. Hately referred her to a neuropsychologist for testing and to a psychiatrist for PTSD treatment. There is no evidence Employee followed through with these recommendations. On January 13, 2017 Dr. Hately specifically referred Employee to Greatland Clinic; Employee has never explained why she did not go there. Dr. Hately on February 6, 2017, noted Employee had not yet made an appointment with that clinic. On May 8, 2017, Employee told therapist Ver Hoef she was "concerned" about her PTSD diagnosis, implying she did not agree with it. This explains why Employee failed to follow through on treatment recommendations from her own providers early in this case.

By October 10, 2017, APRN Hardy, contrary to her prior records, stated she had discussed PTSD counseling with Employee in the past, but it would not have been as effective as it would be in October 2017, and encouraged her to seek PTSD counseling with a psychiatrist. There is no evidence Employee did. On October 12, 2017, Employee told APTS that she was discouraged by the recommendation for a psychiatric evaluation and considered that "a step back," again implying she disagreed with the diagnosis and treatment. On November 14, 2017, Employee

told APRN Hardy she had not been able to find a counselor or psychiatrist that would accept her case. Employee presented no contemporary evidence of any efforts she made to find the recommended provider and, based on her comments above, a reasonable inference is that she did nothing because she disagreed with the need to see a psychiatrist. *Rogers & Babler*. Nevertheless, APRN Hardy renewed her prescription for PTSD treatment. The next day, Ver Hoef gave Employee "several names of PTSD counselors," and there is no evidence Employee made any efforts at that time to connect with those referrals. On November 20, 2017, APRN Hardy told Employee to call first responders to see who they use as PTSD counselors.

Finally, by January 2, 2018, Employee told APTS that she had contacted "a couple counselors" and left messages for them to call back; there is no evidence Employee ever followed-up on these calls. A week later Dr. Lonser referred her for a psychiatric evaluation. By February 7, 2018, Employee told Dr. Lonser's office she still had not seen a psychiatrist; there is no explanation why. By March 13, 2018, Employee told Baker she had still not seen a psychiatrist but had found one "in network" and was waiting for an appointment; there is no evidence she ever obtained one. Meanwhile, on May 8, 2018, Employee had her 100th PT appointment for this injury and PT continued. On May 24, 2018, APRN Hardy charted that Employee was a no-show for her appointment and had not initiated counseling; she recorded, "but this is no longer an option" and said Employee "must call Greatland Counseling today to get on their schedule." This entry implies that APRN Hardy was frustrated with Employee's failure to act on numerous recommendations for PTSD treatment. *Rogers & Babler*. Eventually, on June 14, 2018, Employee said she had her first appointment with counselor Haussner who would accept workers' compensation cases. There is no record in the agency file for this visit. However, Haussner reportedly told Employee she needed a psychiatrist. APRN Hardy directed Employee to "call [Haussner] again" and ask for assistance in finding one.

On July 5, 2018, EME Dr. Green recommended she see a psychiatrist and neuropsychologist to address "probable malingering and/or somatic symptom disorder" and to rule out PTSD. In September 2018, EME Dr. Craig saw Employee and found her "oppositional" in refusing to answer even simple questions. She scored high on the "Fake Bad Scale" and Dr. Craig found her dramatic presentation was not credible compared with other medical and psychiatric patients. He

noted Employee had received no mental health services since her November 19, 2016 assault notwithstanding numerous recommendations for it. Dr. Craig also recommended an evaluation with a board-certified psychiatrist.

On November 2, 2018, Employee appeared at RIW to check out its facility. On November 8, 2018, nearly a year after APRN Hardy recommended Employee contact first responders, adjuster Moser had a teleconference with Employee who told her she had called first responders to find a PTSD provider to no avail. This is the first and only evidence that Employee followed through with APRN Hardy's November 28, 2017 recommendation that she do so. She had still received no psychiatric care for her PTSD. By November 27, 2018, Employee had her 142nd PT visit and was still reporting "stiffness and soreness" in her right shoulder notwithstanding a surgical repair.

Employee has a duty to mitigate her injury and do "everything humanly possible" to restore herself to health, including mental health; it is not Employer's duty. *Williams*; *Richard*. Rather than work on finding a PTSD provider, on November 19, 2018, Employee served the adjuster with extensive and unauthorized formal discovery requests citing Alaska Rules of Civil Procedure. Meanwhile, she was also receiving orthopedic treatment for her various ailments; when a physician gave her an opinion she did not like, like Dr. Schumacher, Employee simply went to a different physician and found someone willing to treat her. Employer provided RN Bean as a medical case manager; she agreed with Dr. Craig's opinion that Employee needed to treat for PTSD and not for TBI as APRN Hardy had suggested.

On December 18, 2018, Employee had a telephonic conference with providers at RIW; they formulated a plan to treat Employee for among other things, PTSD. On the same day, Dr. Hately was "baffled" why Employee looked the same as she looked two years earlier and still had not received treatment with RIW. On December 24, 2018, adjuster Moser pre-authorized Employee's treatment at RIW. However, Employee was disappointed with her treatment she began there on January 9, 2019, and said it was more like a gym membership and did not provide her with any PTSD treatment; this is inconsistent with RIW's records, which stated Dr. Tollison spent over 300 minutes with her on one-on-one counseling and CBT and introduced her to

Prazosin, which Employee later said benefited her mental health. On March 14, 2019, RN Bean closed her file stating she would let Dr. Tollison know who Employee "chose as a therapist" to continue her treatment in Anchorage; there is no evidence Employee ever chose anyone.

On April 2, 2019, APRN Hardy blamed Employer for Employee's lack of PTSD treatment, stating Employee had done all Employer asked of her, but had still not received adequate PTSD treatment. This statement is not supported by the record; Employee had not even done all APRN Hardy had been asking her to do since early 2017. APRN Hardy's statements are not credible and are given little weight. AS 23.30.122; *Smith*. In April 2019, Employee was able to establish care with Kelsey for PTSD therapy, but unfortunately this provider had a licensing issue; there are no records in Employee's agency file from her. Though this was undoubtedly disheartening to Employee, there is no evidence Employer had anything to do with it. Similarly, there is no evidence Employee continued to seek PTSD treatment immediately thereafter.

Employer never controverted Employee's right to receive PTSD and SSD treatment related to her injury and excepted those treatments from its controversions made on other grounds. It suggested medical providers, and Employee criticized Employer when those providers would not accept her as a patient, according to her hearsay testimony. Employee's testimony and arguments in this regard are not credible. AS 23.30.122; *Smith*.

Meanwhile, in her 2019 deposition, Williams said she did not "drum up" medical care for her clients but she does "call around" and try to find them help. When asked if she tried to help Employee find a new PTSD counselor, Williams said, "were working on that right now." Williams agreed Employer was not refusing to pay for Employee's PTSD treatment.

On November 7, 2019, APRN Hardy got suggestions from Dr. Tollison for PTSD treatment; when these did not pan out, APRN Hardy learned about Neuro Skills, and on November 21, 2019, referred Employee there. On December 12, 2019, RIW told APRN Hardy that it did not have the facilities Employee required. In her December 12, 2019 deposition, APRN Hardy testified that Kelsey eventually returned to practice, but she did not know why Employee had not resumed care with her. APRN Hardy also identified a local, competing clinic that "does a lot of

the things" Employee needed but there was no evidence APRN Hardy or Employee ever followed up with that possible referral. In respect to Employee, APRN Hardy said, "I'm her advocate. That's the best way to say it." APRN Hardy became emotional during her deposition. It is unusual for a medical professional to tear-up as APRN Hardy did while testifying about a patient's case. *Rogers & Babler*. Given her avowed advocacy on Employee's behalf and her emotional involvement with this case, APRN Hardy's opinions will be given less credibility and weight. AS 23.30.122; *Smith*.

On December 27, 2019, Dr. Craig recommended 20 psychiatric and psychotherapy treatments focusing on Employee's PTSD and SSD over a six-month period. He opined there are many providers in Alaska that could meet her needs and suggested Dr. Nasser and Greatland Clinic. There is no evidence Employee ever followed up with any of these providers. On February 11, 2020, Employee and Williams went to Bakersfield on referral to Neuro Skills; after an evaluation, Bermejo formulated a treatment plan. On July 10, 2020, Employee filed various documents including handwritten notes purporting to show efforts Employee and Williams had made in May 2020, to contact various local mental health providers, to no avail. Meanwhile, Employer had to petition for an order compelling Employee to sign medical releases, a process that took months.

The record shows no evidence Employee did anything since mid-2020 to the present to obtain medical care for her mental-health conditions. Her hearing testimony simply reiterated efforts she made in 2018 and 2020, but offered no evidence of more recent efforts for over two years. Employee has not obtained or filed any new medical records in this case since June 2020. Her testimony regarding Employer's alleged interference with her medical care is not supported by the record. Employee's testimony about mental-health providers not accepting her as a patient when they found out this is a workers' compensation case, or when they learn that Employer is involved and has a reputation for not paying its bills, is multi-level hearsay and is insufficient to support factual findings based on her testimony. 8 AAC 45.120(e). Unlike the situation in *Richard*, Employee's need for PTSD treatment was never an "emergency" that would justify Employer stepping in to designate an attending physician for her.

On June 30, 2020, Employer petitioned for an SIME. On July 23, 2020, Employee non-opposed the petition and agreed to move forward with the SIME. Thereafter, the designee set multiple dates for Employee to return a signed SIME form and the SIME binders with the appropriate affidavit. As discussed above, Employee and Williams thereafter repeatedly thwarted the SIME process. Just as she blamed Employer for her failure to receive PTSD treatment, Employee blamed the Division for not calling Williams or her and telling them that previous COVID-19 SIME restrictions had been loosened or changed. But on June 1, 2021, the Division posted Bulletin 21-03 on its website clearly stating that the new bulletin terminated a 2020 bulletin restricting travel for SIME appointments.

Given all the above, Employee and William's tactics are willful, deliberate and intended to delay the SIME and "purposefully drag out a hearing, obtain unnecessary continuances, and otherwise connive to enlarge the period during which benefits are still being paid" and delay this case's resolution while Employee continues to receive the maximum weekly disability benefit. *Rogers & Babler*; *Metcalf*. Thus, this decision will formulate relief that incentivizes Employee to move her case forward, and which will implement the legislative mandates in AS 23.30.001(1) and best ascertain all parties' rights. AS 23.30.135(a).

Employer contends "discovery sanctions" should apply to this case because an SIME is either discovery or subject to it. AS 23.30.108(a)-(c). However, the Commission has already addressed this issue and its precedent states an SIME is not a discovery tool. Therefore, any sanction cannot be based on statutes or cases associated with discovery. *Geister*; *Olafson*; *Olson*. Cases Employer cited to support its position are either distinguishable because they included discovery disputes and refusing to participate in an SIME, or are contrary to the Commission's precedent. *Perry-Plake*; *Longenecker*; *De Lorreto*. While discovery-statute sanctions do not apply, the "willfulness" definitions found in related cases are helpful here. Based on the above analysis, Employee and Williams have engaged in a "conscious intent" to impede the SIME and "not in mere delay, inability or good faith resistance." *Hughes*. However, their actions do not require dismissal as there are "possible and meaningful alternatives" to it. *DeNardo*.

While Employee has never expressly stated she refused to go to mental health treatment, her actions since her 2016 injury have shown that she did little over the intervening years to obtain PTSD treatment mostly because she disagreed with the concept that her mental health may be playing a major role in her somatic symptomology. *Rogers & Babler*. In other words, Employee has "refused treatment" through inaction and failure to follow through. *Metcalf*. She has passively and unreasonably refused medical treatment under AS 23.30.095(d). She has not demonstrated that obtaining the repeatedly recommended mental health care has (1) risk of serious side effects; (2) would not give her a good chance of cure or improvement; or (3) she has any first-hand negative experience with mental health care. *Metcalf*. Rather, she now wants to receive her PTSD treatment *before* she goes to the SIME. Employee's unreasonable delay "is not for good cause" and her request for PTSD treatment will be rejected. *Metcalf*. Whether she has PTSD, if it is work-related and what treatment for it is proper is in dispute, as is malingering.

Rather than dismiss her claim in its entirety, this decision will suspend her TTD benefits. She passively and unreasonably refused to submit to medical treatment, including past and ongoing PTSD and SSD treatment, and for over two years has stymied the SIME evaluation, which is important in determining causation and ongoing treatment. *Gothing*. The suspension will begin September 8, 2022, and no benefits are payable, under AS 23.30.095(d) and AS 23.30.110(g). The suspension will continue until the SIME "ends" as defined in 8 AAC 45.092(i). If Employer has no grounds on which to controvert her ongoing disability benefits following the "end" of the SIME, it will reinstate Employee's disability benefits on October 21, 2022, the day after Dr. Barkodar sees her, subject to its right to controvert as provided by law. AS 23.30.095(d); *Williams*; *Phillips*.

The Division will reschedule Employee's original two-physician panel SIME as follows: She will be directed to see Dr. Kimmel in person on Tuesday, October 18, 2022, beginning at 9:00 AM, in Berkeley, California. Employee will be directed to then see Dr. Barkodar on Thursday, October 20, 2022, beginning at 9:00 AM, in Walnut Park, California. The designee will send the standard physician and patient notification letters in accordance with this decision and applicable regulations. Employee is advised that if she fails to attend and cooperate in these SIMEs as scheduled, her benefits will remain suspended under AS 23.30.095(d) and AS 23.30.110(g). The

hearing panel will prepare and provide questions for the designee to send to each SIME physician to address in their respective examinations based on the medical disputes in the record. The designee will schedule a prehearing conference to determine any special travel-related needs Employee may have and to allow the parties to supplement the current SIME records with additional records they may obtain prior to the first SIME visit with Dr. Kimmel. If either party has medical providers' depositions that have not already been filed, they will be directed to file them immediately and they will be sent to the SIME panel. Dr. Craig's hearing testimony will also be provided.

Lastly, Employee has repeatedly mentioned a June 2018 work injury in conjunction with her November 19, 2016 injury subject of this decision. To avoid future difficulties and to assist Employee and her representative, Employee is advised that the only claim adjudicated in this decision is the one arising from her November 19, 2016 injury with Employer. If Employee plans to contend that one or more additional injuries are implicated in her current need for treatment for PTSD or SSD, she will be directed to file a claim in each of those cases, which then can be joined together judicially and resolved at the same time. The instant decision is only binding on the parties in the instant case.

CONCLUSIONS OF LAW

1) The oral order declining to disqualify panel member Dennis was correct.
2) Employee will be sanctioned.

ORDER

1) Employer's July 27, 2021 petition to dismiss Employee's claims is denied at this time.
2) Employee is ordered to attend an SIME in accordance with this decision and order.
3) Employee's current TTD benefits are hereby ordered suspended effective September 8, 2022, and no TTD benefits are payable from today until the SIME ends as described in this decision. When Employee has attended both SIME appointments and the SIME "ends" following Dr. Barkodar' s appointment, Employer will resume TTD benefit payments on October 21, 2022. Thereafter, continuing TTD benefits remain subject to Employer's subsequent controversion

based on its defenses, the Act and the regulations. This order does not affect her medical benefits.

4) The panel will prepare questions for the designee to send to the SIME physicians.

5) If either party has medical providers' depositions that have not already been filed, they are ordered to file them immediately and they will be sent to the SIME panel.

6) The designee will send an audio recording of Dr. Craig's hearing testimony in *Atlas I* to the SME physicians.

7) The parties will attend a prehearing conference at their earliest, mutually available date and the designee will inquire as to any special needs Employee has to attend the SIME, and will direct the parties to submit any medical records in their possession not already provided in the previous SIME medical records or on medical summaries by a date-certain, in the designee's discretion.

8) If Employee plans to contend that one or more additional injuries are implicated in her current need for treatment for PTSD or SSD, she is directed to file a claim in each of those cases.

Dated in Anchorage, Alaska on September 8, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Michael Dennis, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance 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 accordance 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 Interlocutory Decision and Order in the matter of Samantha Atlas, employee / claimant v. State of Alaska, self-insured employer; defendant; Case No. 201617084; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on September 8, 2022.

/s/
Rachel Story, Office Assistant