SB

322

(FILE 12)

NARPPS

National Association of Rehabilitation Professionals in the Private Sector

SUBJECT: SB 322/HB 352 - WORKERS' COMPENSATION BILL

TO : SENATE LABOR AND COMMERCE COMMITTEE,
SENATOR TIM KELLY, CHAIRMAN

HOUSE LABOR AND COMMERCE COMMITTEE,
REPRESENTATIVE DAVE DONLEY, CHAIRMAN

FROM: ALASKA CHAPTER, NATIONAL ASSOCIATION OF REHABILITATION PROFESSIONALS IN THE PRIVATE SECTOR,
DENNIS J. JOHNSON, PRESIDENT

The National Association of Rehabilitation Professionals in the Private Sector (NARPPS) is the primary association of Rehabilitation Practitioners in private practice. The Alaska Chapter has a membership of about 35 individuals. This membership consists of Vocational Rehabilitation Counselors, Rehabilitation Nurses, Job Placement Specialists, and Occupational Therapists. The primary focus of the association is to promote the practice of ethically and procedurally sound rehabilitation services by qualified Rehabilitation Professionals. Since vocational rehabilitation has become an integral component of Workers' Compensation Laws, we have an obvious interest in the structuring of those Laws. I should point out that the practice of vocational rehabilitation has existed in society long before any attempt to incorporate its principles into the Workers' Compensation system. Some would have you believe that our profession was born from the Workers' Compensation Law and that our only concern is the exploitation of that Law. The only explanation for mischaracterizations of this nature is ignorance on the part of the accuser. In reality, Rehabilitation Practitioners are fair minded, well meaning, and principled people who find themselves attempting to mediate between the injured worker and the employer in a system that has become highly adversarial in nature. Currently, vocational rehabilitation in Alaska's Workers' Compensation system is not the "end benefit of a no-fault system" as it was originally designed, but rather it is a bargaining chip and discovery tool in the settlement and litigation process. Alaska NARPPS is concerned with the proper and ethical use of rehabilitation services as a legitimate Workers' Compensation Benefit. We also are concerned with promoting accountability and responsibility within the rehabilitation industry, independently of, and in conjunction with AWCB and/or legislative provisions.

In reviewing the current bills (SB 322/HB 352), we have surveyed our membership and we are able to take a position in certain areas pertinent to the Bill. There is unanimous agreement among our membership that vocational rehabilitation as it is currently administered under Section 041, of the existing statute is unsatisfactory. The points made hereafter, represent a consensus of our membership and that individual members may have opinions that diverge somewhat or that go beyond our comments here.

Timely (early) referral for assessment and initiation of services has always been a concern of the rehabilitation community. It has been the common experience of Rehabilitation Providers that cases are generally not referred until an injured worker is deeply entrenched in the Workers' Compensation process. Rehabilitation service is viewed by many insurance adjusters as a "last ditch" effort as opposed to a proactive effort. Recently, an independent and objective study by the Menninger Foundation was conducted to analyze the performance of private rehabilitation in Alaska. Two hundred and thirty three cases closed between May 1986 and May 1987, were analyzed. Among other findings, it was significant to note that the average length of time from injury to referral for rehabilitation services was found to be 1.4 years. (A copy of the entire Menninger Report is being included with our written testimony). This is rather surprising when considering that our current Statute requires referral for rehabilitation evaluation 90 days from injury. The simple fact is that referral for evaluation is currently not occurring on a timely basis even though our current system stipulates the 90 day referral time frame. The current Bill on the other hand requires that the injured worker submit a written request for eligibility evaluation within 60 days of the employer's notice of injury. If the worker has failed to do so, he/she has essentially forfeited their rehabilitation benefit. In practice, it has been our experience that injured workers most often do not confront the possibility of an inability to return to their previous occupation until sometime several months post-injury. The 60 day time constraint would also be affected by the injured worker's lack of experience or knowledge with the Workers' Compensation system. The injured worker is dependent upon the information provided by either the Department of Labor or the insurance carrier in order to make an informed decision. Our experience in the field causes us to be skeptical of this dependency. Our membership in general, recommends that referral for evaluation services be clearly mandatory at 90 days post-injury.

In general, Alaska NARPPS supports the proposed change that the Rehabilitation Administrator delegate referrals for eligibility evaluation. Additionally, we strongly encourage that the Alaska Department of Labor Division of Workers' Compensation be held responsible for prompt promulgation of effective regulations of a responsible nature. We strongly feel that the primary deficiency of the current system has been the lack of regulations pursuant to the statutory language. It is imperative that regulations be established and enforced as soon as possible. This we emphasize whether this bill is adopted or whether the current law remains in effect.

The eligibility criteria described in sub-Section d, has also caused concern among our membership. According to this sub-section, the physical demands representative of the employee's job at the time of injury will be extracted from the Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles for the employee's job at the time of injury and any jobs held within the last ten years. This becomes a theoretical assessment not requiring on-site job analysis of the specific job of injury and would not take into account any unique circumstances relevant to the particular job of injury. Also, the stipulations that all jobs held within the last ten years be considered seems arbitrary. In the practice of vocational rehabilitation as it is generally applied in the Workers' Compensation arena, employability is based upon an evaluation of the "whole person" which takes into account not only transferable work skills but also considers such factors as other noninjury related medical or psychological factors; social, personal, and family variables; and labor market considerations. The concern of our membership is that the eligibility criteria currently listed in the bill are based on theoretical analysis and may not represent an actual and valid evaluation of the worker's employability. Our recommendation is that ability to return to previous employment be evaluated according to actual on-site job analysis of that specific job. A second criteria for eligibility should be a determination of whether or not the injured worker is likely to benefit from a rehabilitation services plan taking into consideration all of those factors previously indicated.

Alaska NARPPS recognizes and fully supports the utilization of Qualified and Certified Rehabilitation Professionals. As has occurred in other professions, specialities are being developed within our profession. The specialization of rehabilitation is not well recognized by other industries or professional groups. Therefore, misunderstandings of our industry has resulted in skewed expectations of requested services. We encourage the

State, AWCB, physicians, and attorneys to utilize and request services appropriately and in accordance with statutory provisions. We support the definition of Rehabilitation Specialist that currently exists in the Bill. This language defines a Rehabilitation Specialist as a "person who is a Certified Insurance Rehabilitation Specialist or a person who has equivalent or better qualifications as determined under regulations adopted by the department." This wording allows the department to develop in-state qualifications and standards while at the same time emphasizing the specialized certification in insurance rehabilitation counseling.

Finally, it should be reemphasized that the Alaska NARPPS membership is particularly concerned over the fact that the Rehabilitation Provisions enacted in 1982, never became totally functional because of the lack of regulations needed to administer that Law. Rehabilitation Practitioners are naturally skeptical of any new statutory language for fear of the same circumstances. We strongly assert that a significant level of responsibility lies with the State itself in implementing and regulating rehabilitation services. As a professional association with particular concern in this area, we do offer our services or input.

THE MENNINGER REHABILITATION RESEARCH AND TRAINING CENTER ON PREVENTING DISABILITY DEPENDENCE

Analysis of Private Sector Rehabilitation Services: Alaska

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Supported in part by:
National Institute on Disability and Rehabilitation Research
United States Department of Education
Washington, D.C.

Grant #G008301477

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A. INTRODUCTION

In response to an obvious need of insurance carriers, private sector rehabilitation providers have multiplied during the last 15 years. During this time, the emphasis has been on striving to meet the need, rather than reflecting on what was being done. However, as the field has matured and established itself as an identifiable profession the time has come to do some self-examination.

As the major representative of private sector rehabilitation providers, the National Association of Rehabilitation Professionals in the Private Sector (NARPPS) was given the charge to undertake such a study. In order to comply with the wishes of the membership, NARPPS contacted the Rehabilitation Research and Training Center of The Menninger Foundation.

The Menninger Foundation Rehabilitation Research and Training Center has been established in order to develop programs and suggest policies which will help eliminate the financial dependence of workers who become disabled but are still capable of gainful employment. As a way of accomplishing these goals, the center agreed to undertake this evaluative research as an independent third-party.

The overall objectives of this research are as follows:

a. To determine if there is a significant improvement in return to work among claimants who are referred to rehabilitation professionals in the private sector.

b. To develop a model system for use by insurers in the cost-benefit analysis of vocational rehabilitation services.

c. To ascertain if certain types of vocational rehabilitation services are more likely to result in the client returning to work than are other services.

In addition to the major national study, certain state chapters have requested an overview of the services provided in their particular states for workers' compensation (WC) claimants. The results provided in these individual state reports are limited to the demographic characteristics of WC claimants, the types of services provided, the results of the services, and the costs of those services.

B. METHODOLOGY

For this report, we solicited data on closed cases from Alaska NARPPS member rehabilitation specialists. They were asked to provide demographic, service and closure information on each case they had closed between May 1986 and May 1987. We asked them to eliminate those cases in which the only service to be provided was expert witness testimony. The data collection form used in this study and instructions are shown in the Appendix.

Of the 16 rehabilitation companies contacted, three responded providing us with data on 233 closed cases. Of these, 209 involved worker injury cases, the remaining 24 cases were excluded from this analysis.

We entered the raw data as received into a computer file, doing only minimal coding. After all the data were entered and checked, some of the variables were recoded for analysis. The primary disability was coded

using a coding scheme, based on the part of the body involved, which is shown below:

Part of Body	Code
Cranial Injury	1
Facial, Mandibular	2
Neck	3
Back	4
Shoulders, Arm	5
Hand, Wrist	6
Trunk	7
Skin (Abrasions, Burns)	8
Knee	9
Ankle	10
Foot	11
Legs, Hip	12
Multiple	13
Mental, Emotional Disabilities	14
Not Otherwise Codable	15

Only seven of the 195 cases, in which a primary disability was reported, fell into the "Not Otherwise Codable" group.

The claimants' occupations were coded using the following system:

A. Managerial and Professional Specialty
Includes: Executive, administrative, and managerial workers, as well as professionals such as attorneys, doctors, and teachers

B. Technical, Sales and Administrative Support
Includes: Technicians, sales persons, administrative support personnel such as secretarial and clerical workers

C. Service Occupations
Includes: Domestics, protective service workers, barbers and other personal service providers

D. Precision Production, Craft, and Repair
Includes: Mechanics and repair persons, as well as construction trade workers

E. Operators, Fabricators, and Laborers
Includes: Machine operators, assemblers, transportation workers, laborers, and equipment cleaners

F. Farming, Forestry and Fishing.

Statistical analysis involved standard univariate tests, either X^2 or t-tests as appropriate.

C. RESULTS

3.0 Demographic Analysis

Of the WC claimants served, 77% are men and 23% women.

The majority (65%) were married at the time they were referred for services, while 27% were single. The remaining 8% were divorced, widowed, or separated.

The average worker served was 37.7 years of age (SD = 10.43) at the time of injury. The distribution of ages is shown in Table 1.

Table 1
Distribution of Ages at the Time of Injury

Age Cohort	Percentage
≤ 24	8%
25 - 34	34%
35 - 44	34%
45 - 54	16%
≥ 55	8%
Total	100%

The average WC claimant completed 11.9 years of education (SD = 2.03). The distribution is shown in Table 2.

Table 2
Years of Education of Clients Served

Years	Percentage
≤ 8	5%
9 - 11	22%
12	49%
13 - 15	20%
16	3%
≥ 17	1%
Total	100%

The classifications of the jobs held by the claimants at the time of injury are shown in Table 3.

Table 3

Occupational Classifications of the Jobs Held at the Time of Injury

Occupational Classification	Percentage
A. Managerial/Professional	2%
B. Technical	13%
C. Service	17%
D. Craft	30%
E. Operator/Fabricator	35%
F. Farming	3%
Total	100%

3.1 Types of Injuries

Among the WC claimants referred for rehabilitation services, back injuries were by far the most common cause of disability as shown in Table 4.

Table 4
Types of Injuries by Body Area

Type of Injury	Percentage
Back	58%
Knee	10%
Shoulder	8%
Leg, Ankle, or Foot	7%
Hand or Wrist	5%
Trunk	4%
Other	8%
Total	100%

3.2 Services Provided

In general, the most common types of services provided were job analysis, medical care coordination, non-medical case management, vocational counseling, labor market surveys, and transferable skills analysis. Table 5 shows the percentage of WC claimants provided each service. For simplicity, we have not included services provided to less than 5% of the claimants.

Table 5
Percentage of Clients Receiving Each Service

Type of Service	Percentage Receiving Service
Job Analysis	72%
Vocational Counseling	67%
Non-Medical Case Management	66%
Medical Care Coordination	62%
Labor Market Survey	58%
Transferable Skills Analysis	50%
Vocational Testing	41%
Job Development/Placement	41%
Physical Capacities Testing	31%
Physical Therapy	30%
Work Evaluation	28%
On-the-Job Training	23%
Job Seeking Skills	17%
Job Modification	14%
Psychological Testing/Evaluation	11%
Work Hardening	11%
Back Care Training	10%
Vocational Training	9%
Occupational Therapy	5%

Not all of the rehabilitation services shown in Table 5 were provided by the companies who responded to this survey. Table 6 shows the proportion of the services

listed in Table 5 which were provided by the responding company, another provider, or both the respondent and another provider.

Table 6

Proportion of Services Provided by the Respondent Company, Another Provider, or Both

Type of Service	Services Provided By Respondent	Other	Both	Total
Job Analysis	92%	5%	3%	100%
Vocational Counseling	89%	6%	5%	100%
Non-Medical Case Mgt	88%	3%	9%	100%
Medical Care Coord	71%	22%	7%	100%
Labor Market Survey	90%	5%	5%	100%
Transferable Skills	88%	10%	2%	100%
Vocational Testing	80%	17%	3%	100%
Job Dev/Placement	90%	6%	4%	100%
Physical Capacities	37%	60%	3%	100%
Physical Therapy	3%	97%	0%	100%
Work Evaluation	81%	19%	0%	100%
O.J.T. Coordination	90%	10%	0%	100%
Job Seeking Skills	86%	11%	3%	100%
Job Modification	97%	3%	0%	100%
Psych Testing	22%	74%	4%	100%
Work Hardening	45%	50%	5%	100%
Back Care Training	15%	85%	0%	100%
Voc Training Coord	67%	28%	5%	100%
Occupational Therapy	0%	100%	0%	100%

3.3 Referral and Service Time-Frames

The average length of time from injury to referral was found to be 1.4 years (SD = 1.40). Table 7 shows the amount of time for referral by type of injury. The t-test compares each one to the average for the total group.

Table 7
Length of Time Between Injury and Referral According to Type of Injury

Injury	Average Time	SD	t-Test*
Back	1.5 years	1.44 years	0.3
Knee	1.9 years	1.62 years	1.4
Shoulder	1.4 years	1.16 years	0.0
Leg, Ankle, Foot	1.4 years	1.34 years	0.0
Hand, Wrist	1.0 years	0.89 years	0.7
Other	0.8 years	0.91 years	1.1

* None of the t-tests showed significance at the .05 level of confidence.

It is interesting to note that referral for rehabilitation services appears to be closely tied to the time that the claimants' disabilities become medically stable. The average time from injury to being considered medically stable among this group is 1.3 years (SD = 1.39).

The average amount of time taken for rehabilitation services is 11.2 months (SD = 9.59), that is the time from referral until closure. Table 8 gives the amount of time for services by type of injury.

Table 8
Length of Time Between Referral and Closure According to Type of Injury

Injury	Average Time	SD	t-Test*
Back	12.6 months	11.09 months	0.9
Knee	12.2 months	11.03 months	0.4
Shoulder	9.5 months	6.61 months	0.7
Leg, Ankle, Foot	6.8 months	6.73 months	1.7
Hand, Wrist	7.9 months	5.60 months	1.1
Other	7.8 months	6.46 months	1.5

* None of the t-tests showed significance at the .05 level of confidence.

3.4 Service Outcomes

The service outcomes for all clients in this sample are shown in Table 9.

Table 9
Outcomes for All Clients Served

Closure Status	Percentage
Same Job, Same Company	7%
Different Job, Same Company	3%
Same Job, Different Company	3%
Different Job, Different Company	10%
Uncooperative	8%
Medically Non-Feasible	2%
Vocationally Non-Feasible	0%
Carrier Requested Closure	27%
Employable/No Job	6%
Case Settled	24%
Moved or Died	1%
Other	9%
Total	100%

From the above table one can see that only 23% of the referred clients were closed as having return to work. However, four types of closures probably cannot be considered failures. These four are: Carrier requested closure; case settled; moved or died; and other. When these cases are removed from the analysis, 58% of the remaining clients returned to work. This high rate of return to work is even more impressive when we realize that these clients were considered so severely disabled that they were not considered

medically stable for an average of 1.3 years (SD = 1.39).

It was expected that there would be some differences in outcomes based upon the type of injury sustained, however, the differences observed are not significant (X^2 = 17.43, 20 df.). Table 10 shows how people with various types of injuries had their rehabilitation services closed by the providers who responded to the survey. For presentation purposes we have collapsed the 12 closure statuses into five. All of those who returned to work have been put into one status (RTW). Two groups which retain their singular identity are those for whom the carrier requested closure (CRC) and those who had their cases settled (CS). Those statuses which we previously characterized as unsuccessful by virtue of labeling them as uncooperative, medically or vocationally non-feasible, or employable/no job were placed in one group (U). The remaining two statuses were called "Other" (O).

Table 10
Relationship Between the Type of Injury and Closure Status

Injury	Closure Status* RTW	CRC	CS	U	O	Total
Back	20%	25%	25%	20%	10%	100%
Knee	30%	20%	15%	25%	10%	100%
Shoulder	20%	27%	40%	7%	6%	100%
Leg, Ankle, Foot	29%	36%	21%	0%	14%	100%
Hand, Wrist	30%	30%	40%	0%	0%	100%
Other	40%	20%	20%	10%	10%	100%

* For closure codes, see text.

3.5 Wages

Prior to being seriously injured on the job, the average worker in this sample was earning $671.59 per week (SD = $318.14). For those 40 persons who returned to work, their average wage after return was $516.07 per week (SD = $297.44). Since the people who returned to work are only a subsample of the referred group, these two average wages are not comparable.

Of the 40 people who returned to work, the pre-disability earnings were reported for 31. The average pre-disability wage for this subgroup was $665.47 per week (SD = $283.58); after return, the

average wage was $541.94 per week (SD = $319.95). The average $123.53 per week reduction in wage is not statistically significant (t = 1.6, 60 df.).

The pre-disability earnings of workers who had different types of injuries are shown in Table 11.

Table 11
Pre-Disability Earnings by Type of Injury

Injury	Earnings Per Week Mean	SD	t-Test*
Back	$670.87	$313.59	0.0
Knee	686.64	333.36	0.2
Shoulder	577.38	280.35	0.8
Leg, Ankle, Foot	687.70	285.10	0.1
Hand, Wrist	473.77	302.75	1.7
Other	772.21	340.79	1.5

* None of the t-tests showed significance at the .05 level of confidence.

There were only enough data on return to work cases to compare the post-disability earnings of those with back, shoulder, or knee injuries. These results are shown in Table 12.

Table 12
Post-Disability Earnings by Type of Injury

Injury	Earnings Per Week Mean	SD	t-Test*
Back	$525.39	$302.73	0.1
Knee	300.00	20.00	1.2
Shoulder	380.00	74.83	0.6
Other	559.67	317.19	0.4

* None of the t-tests showed significance at the .05 level of confidence.

3.6 Cost of Services

The average amount billed by the responding provider for services rendered to this sample was $3,670.79 (SD = 3,573.63). This figure is based on per hour charges which because of the cost of living are generally higher than the rest of the country. If as we are told the charge varies from $75 to $80 per hour, then the cost represents 48.9 to 45.9 billable hours.

The average charge per closure status is shown in Table 13, arranged in order of increasing cost.

Table 13
Average Charges Per Closure Status

Closure Status	Charges Mean	Charges SD	t-Test*
Same Job/Same Company	$1,322	$ 837.50	2.5
Carrier Req Closure	2,495	3,120.42	2.1
Other	2,578	2,445.79	1.3
Same Job/Diff Company	2,930	2,266.13	0.4
Medically Not Feasible	2,933	2,432.46	0.4
Employable/No Job	4,041	4,875.96	0.4
Diff Job/Same Company	4,095	6,196.18	0.3
Diff Job/Diff Company	4,644	2,493.81	1.2
Uncooperative	5,036	3,110.24	1.4
Case Settled	5,119	3,558.00	2.5

* A t-score of 2.35 is significant at the 0.2 level, a t-score of 1.97 at the 0.5 level.

It should come as no surprise that the least expensive outcome is when the client is able to return to the same job for the previous employer. The fact that so much money is spent upon clients who are ultimately closed as uncooperative, suggests that it would be more cost effective if an early identification could be made of those clients exhibiting uncooperative behavior.

Table 14 gives the average costs of services according to the type of injury.

Table 14

Average Charges According to Type of Injury

Injury	Charges		
	Mean	SD	t-Test*
Back	$4,000	$3,705.30	0.6
Knee	4,357	4,179.85	0.8
Shoulder	3,633	2,887.68	0.0
Leg, Ankle, Foot	3,491	2,519.09	0.2
Hand, Wrist	3,096	2,516.56	0.5
Other	3,320	3,380.15	0.5

* None of the t-tests showed significance at the .05 level of confidence.

D. CONCLUSIONS

A major problem exists in the analysis of the foregoing data. That is, at the present time there are no comparable data sets available on private sector rehabilitation services. Hopefully, once the national Menninger/NARPPS study is completed, one will be able to compare the data presented here with those from the country as a whole. When that report is available, it should help to identify WC issues and problems which are unique to the Alaska WC system and rehabilitation providers. Until then, we must resort to use with caution the data which exist.

The injured workers referred to these rehabilitation companies are on the average 1.2 years older than the 36.5 years of age for all workers as estimated by the National Institute on Aging (1984). However, these WC claimants are on the average 7.0 years younger than the 44.7 years of age for all workers who are injured whether on or off the job (Hester, Decelles & Hood, 1986).

According to the World Almanac (1987), the average annual wage in Alaska in 1985 was $28,800. The average pre-disability income of the injured workers in this study was 21% higher at $34,922 per year. This fact is

very important in view of the not statistically significant finding that those who returned to work took an average $123.53 per week cut in pay. The resulting $28,180 annual wage is only 2% less than the average for all workers in Alaska. Therefore, even if this decrease in income should be proven true when larger numbers of injured workers are sampled, after return to work they are still doing as well as the average worker in Alaska.

Back injuries are normally the single largest type of on the job injury; however, Alaskan workers may have a greater proportion (58%) than the U.S. as a whole. According to the National Safety Council (Hoskin, et al., 1984), nation-wide back injuries account for less than 29% of job related injuries. However, these are all injuries, not just the serious ones. On the other hand, in our study of individual long term disability (LTD) claimants, we found that back injuries accounted for 20% of all worker disabilities (Hester & Decelles, 1985). These disabilities include acute and progressive illness as well as all injuries. Further analysis of the data in our LTD study revealed that back injuries accounted for 56% of all injuries, whether on or off the job. Therefore, it is likely that while back injuries represent about one-fourth of all on-the-job injuries, they are one-half of the

serious injuries, in which case the Alaska experience is no different from the rest of the country.

In view of the high percentage of back injuries among the WC clients served, there was a surprising lack of job modification and back care training being provided. Obviously, job modification is only possible when agreed to by the employer. However, the rehabilitation specialists may not be bringing this possibility to the employers attention as often as could be done. In an unpublished survey of National Safety Council members, we found that only about one-fourth (26%) of the employers consider this a means of returning a disabled employee to work. However, in a study of PWI programs we found that when placement specialists suggested the possibility to employers they generally agreed to try it and were delighted with the results (Hester & Stone, 1984).

The 58% success rate for return to work seems commendable, however, we do not have any real comparative data. In a study of individual LTD claimants who were provided rehabilitation services, we found a 69% rate of return (Hester, Decelles, & Gaddis, 1986). There is no significant difference between these two results (X^2 = 1.33, 1 df.).

Due to the large number of cases where the carrier requested closure, we took a closer look at the reasons for that request. In over one-half (53%) of the cases, the carrier had requested provision of a specific service, such as, job analysis or labor market survey. Upon completion of that service, the case was closed.

It was distressing to find that carriers in Alaska are generally waiting until the person is considered medically stable before making the rehabilitation referral. This undoubtedly contributes to the fact that the average time from ~~referral~~ injury to closure in Alaska is 2.4 years, which is almost identical to the 2.3 yrs. found in a study of California WC cases (California Workers' Compensation Institute, 1985). However, were referrals to be made earlier, it is reasonable to assume that success would be improved and the amount of time from injury to closure would be shortened.

E. REFERENCES

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APPENDIX

NARPPS/Menninger Rehabilitation Study Data Collection Instructions

The Menninger Foundation, Attention: Edward J. Hester, Ph.D.,
Return To Work Center, 700 Jackson, 9th Floor, Topeka, Kansas 66603
913/233-2051

Please read these instructions carefully before beginning to fill out the case data collection form. We have only provided explanations for those items which we feel might be confusing or those requiring standardized definitions. Below we have provided information on those items in the order in which they appear on the data collection form. After reading the instructions if you have additional questions or concerns, please call Edward J. Hester, Ph.D. 913/233-2051.

I. CLIENT INFORMATION

Provider ID#: The identification number given to you by The Menninger Foundation for this study. All cases which you submit from one office should have the same Provider ID#.

Client ID#: Assign each case submitted a two-digit identification number. BEGIN WITH 01. Please keep a list of the numbers and names on the attached study summary sheet so that if we need to check back with you on a case you will know which case it is.

Type of referral source: Who referred the case to you.

Employment: If the client worked in a major city, there is no need to record the county.

Types of support: Check all the types of disability support that you are aware the client received during the time you provided services.

Total amount of disability support: The total amount of money per week the client received from all of the above sources. (If payment was in the form of a monthly check, divide the amount by 4.3 to get the weekly equivalent), or see the attached hourly wage table.

Education: The actual number of years but for high school grad and higher use the following:

High School Grad or GED	12 years
Associate or Trade School	14 years
Bachelors	16 years
Masters	18 years
Ph.D., M.D., Ed.D., etc.	21 years

Reading G.L., if known: If the client was given a reading test please record the grade level.

English speaking: "Marginal" means that the client can understand simple verbal instructions.

Date of inability to work: Date that the client left his or her job because of a disabling condition. Record month, date, and year in that sequence.

Date medically stable: Date that the client reached maximum medical input (MMI) or was released for at least light work. If during the time you worked with the client, his or her disability did not stabilize nor was he or she medically released for light work, write "NO" after the place for the date. If you do not know the date put in a "?."

Primary disability: This is the "official" primary disability.

Onset: Date of injury or when illness was first observed.

Occupation: The person's last job title.

Spouse employed: At the time of referral, if your records do not contain this information put in a "?."

Employer type: For the purpose of this study a "Major Corp" is one that employs hundreds of employees at the site where the client worked or in the same area. "Self"" means self-employed. If the client was employed by a governmental or quasi-government agency or service, check "Public." This includes school systems, Post Office, etc.

II. SERVICES INFORMATION

Date rehab plan submitted (if required): In addition to submission of a formal rehab plan also consider the submission of a report or letter to the referral source to be a rehab plan if it outlined a recommended summary course of action on the case.

Date rehab plan approved (if required): If a rehab plan was submitted but there was no need for an approval in order to proceed with services then write "N/A" after the space for the date. If the plan was not approved, write "Rejected" after the space for the date. If multiple approvals were needed in a specific case, use the date for the one which allowed you to proceed with services.

Services Provided For This Client: Put an X on the line next to those services provided by you or your company. The second line is for those services provided by another company or organization. If the service was provided by another organiation prior to your involvement, put a "P" on the center line rather than an "X."

III CLOSURE INFORMATION

Date case closed: This date must fall within the time period from which we requested closed cases for this survey.

Closure Status (check only one): Most are self-explanatory but for the following five statuses follow these instructions to insure uniformity in data collection.

Client Uncooperative or Refused Services: Use this status only when benefits continue in spite of the lack of cooperation. If the refusal was used as a basis for stopping benefits, then close as "Employable/Without Job."

Vocationally Non-Feasible: Use this status only on those cases where it was obvious that from a "skill" point of view the client was not employable given the functional limitations, and benefits continued.

Referral Source Requested Closure: Use this status only when the request for closure does not fit into any stated closure status, e.g. "Case Settled." Whenever this status is used, please indicate the reason given for the closure. If no reason was given to you, indicate that fact with a "?" on the line.

Employable/Without Job: Use this status when placement efforts up to the time of closure had not been successful or when the client was declared to be employable and benefits were stopped. Whenever this status is used, indicate if the disability benefits continued after closure.

Case Settled: Use this status only when the case was settled resulting in Vocational Rehabilitation services being terminated prematurely.

If the client is working, is it: ____Full-Time, ____Part-time: If the client was working part-time at the time the case was closed but expected eventually to work into a full-time position, put an "X" in part-time and put "to F-T" after the word "Part-Time."

used in Part I "Client Information."

Wage after return to work: If the client is receiving a monthly salary divide by 4.3 to convert it to weekly. For an hourly wage, multiply by the number of hours per week or see the attached hourly wage table. If you don't know the number of hours per week, use 40 hours for full-time and 20 hours for part-time and write "? hrs" after the word "week." If the client receives other type of remuneration in addition to the regular wage, put "+ (name of benefit)" after the word week, e.g., "+ tips" or "+ meals." In the case of tips or commissions if you were told what they should average per month, enter that after the words "tips" or "commissions." In the event that the client is working only for commission, put in the average commission per week the client should earn and then after the word "week" write "commission only."

Was there a limit on the amount of time this payment would be made: For Workers' Compensation use the statutory limit less the time the client had received WC payments. For LTD, use the policy limit less the time the client received benefits. For those LTD policies which pay until the claimant reaches a specified age, such as 65, please calculate the number of years based on the client's age at time of placement.

Estimated cost of services provided by others: Include only those services which you recommended or you felt were important to the rehabilitation of the client even though they were provided before the case was referred to you. Do not include hospitalization or strictly medical costs.

Comments: Use the back of Page 3 for any comments you have on the case. If you need to include more information on any question than the space provided allows, asterisk the question and put your explanation on the back of Page 3. If you just have general comments on the case, be sure to put "over" on the bottom of Page 3.

LANGDON CLINIC

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Theresa Turner - Office Manager

RE: HB 352

The Langdon Clinic is concerned over two provisions in HB 352 as it relates to "mental injury" in worker's compensation. Our first concern is over the first 15 lines on page 26 of the Bill. Many words used in this section are vague and may cause unnecessary litigation over their meaning: extraordinary, mental injury, predominate cause, pressures, tensions, good faith, misperceptions. It is unclear how work stress can be measured by actual events. Section A would permit intolerable work conditions to exist, from a psychiatric point of view, for all workers just as long as one worker did not demonstrate a great deal more psychiatric disability than his/her coworkers. Overall, we feel page 26 unfairly restricts what should be considered psychiatric disability.

Our other concern is on page 15, lines 5-7. This line could be read to eliminate "mental injury" from being compensated. We do not feel this would be fair to the workers in the state of Alaska.

If there are any further questions, please do not hesitate to contact us.

Aron S. Wolf, M.D., F.A.P.A.

Greg McCarthy, M.D.

4001 Dale Street Suite 101 Anchorage, Alaska 99508 907 561-1361

executive director of the AGC Building Chapter in New York. At least part of the hike may be caused by expanded benefits that Gov. Mario Cuomo proposed in his recent state-of-the-state message. "We've already told our contractors to beware," says Zogg.

Obsolete classifications. One factor affecting contractor rates are inaccurate worker classifications, says Jack Bartsch, vice president of the Assurance Agency, a Chicago-based independent agent. Bartsch explains that classifications are often antiquated, lumping hazardous occupations with less hazardous work. "We need to shake up the entire system for classifications," he says.

Another factor driving up rates is insurers settling questionable claims out of court rather than challenging them, asserts Steven Roberts, vice president of finance for Humphrey & Associates, a Dallas-based electrical contractor. "Rather than challenge a claim, they settle out of court and pass it along in rates," he says.

Insurance experts like Bartsch say contractors could get lower rates if they paid more attention to rate-making. "The common thread is that the construction industry has been silent on this," says ABC's Tocco. "Unless we sit down at the table we're going to be fed something we don't like." ■

By Steven W. Setzer

CRANE SAFETY

Topping lift blamed in mishap

Federal officials believe a mobile crane's topping lift pulled free of the mast or the boom whose movement it controlled last week, sending the boom crashing down onto a college dormitory under construction. Two workers were killed in the accident and two others were seriously injured.

The 100-ft boom was lowering 300 lb of formwork lumber onto the second level of the concrete structure, under construction at Seton Hall University in South Orange, N.J. The boom folded over the concrete slab as it struck the building. The crane's cab did not overturn in the course of the accident.

Charles J. Meister, area director in the Dover, N.J., office of the Occupational Safety and Health Administration, says he believes the topping lift might have lost support when a bolt or pin pulled out of the assembly.

The topping lift is a block and tackle system that raises and lowers the crane's boom. The topping lift, also referred to as a luffing system, extends from the top of the mast to the top of the boom.

The four victims were employed by Politis Construction Co., Rutherford, N.J., the concrete subcontractor to Torcon Inc., the Westfield, N.J.-based general contractor. The crane was operated by Vergona Crane Co. Inc., Edgewater, N.J.

The 500-bed dormitory will consist of two separate structures, one of them five stories high and the other one three stories high, according to a spokesman for Seton Hall University.

A spokesman for Vergona Crane says the crane had been used on the project for about six and a half weeks before the accident. An official of Torcon Inc. said in a prepared statement that "it appears that the collapse was related to mechanical failures of crane components." ■

Crane boom fell on dormitory under construction at Seton Hall University in South Orange, N.J.

LIFT-SLAB CONSTRUCTION

Ban on lift-slab method extended by governor

Connecticut Gov. William A. O'Neill has extended a moratorium on lift slab construction until regulations ensuring the safety of the method can be adopted. The extension was recommended by a panel on construction safety that the governor appointed following the collapse of L'Ambiance Plaza in Bridgeport last year.

"A moratorium in fact can be a ban," O'Neill said. Until he is convinced that the construction method can be used safely, "a moratorium is going to be in effect," he said.

O'Neill adopted Connecticut panel study.

The panel formally released a report recommending more design review and more authority for construction inspectors. The panel report said that construction projects are often carried out with "virtually no one looking over the shoulder of anyone else."

The panel recommended that the state legislature require:

- Designers of record to review shop drawings, read construction logs and observe construction.
- Designers and contractors to submit statements verifying that completed construction conforms to design on projects above a certain size.
- Contractors and subcontractors on buildings above a threshold size to keep daily construction logs in a manner prescribed by the state.
- Municipalities to mandate independent engineering review of design plans for buildings above the threshold size.
- The state building inspector

hard way. He has worked for four years to get construction started on a small private toll bridge between Fargo and Morehead, Minn. Both towns wanted the bridge to be built, he said. All that was lacking was money. But it still took nearly two years to work out the details with five different governmental agencies. The construction of the $1.5-million bridge is targeted for completion in June.

Long fight. Norman E. Ross Jr., vice president and deputy regional manager of Parsons Brinckerhoff Quade & Douglas Inc., has been trying for more than a year to persuade Virginia officials to allow his firm to build and own a 13-mile extension of a toll road near Dulles Airport. "The list [of obstacles] is infinitely long," he said. Most states, including Virginia, outlawed private toll roads after the 1956 start of the Interstate highway program.

Ross said his group agreed to allow the state corporation commission to regulate the toll road. In exchange, his consortium had a bill introduced in the state assembly making it legal to own and operate toll roads. He expects a vote next month. "We're in this business to make money," he said. "We'll do it in March or that's it."

The hurdles are not all one-sided. All three military privatization officers who spoke pointed to similar problems. The contracting authority for the private ownership of military facilities is generally hazy, they said. The military's cost of administering projects is very high, and the financial structure is complex and beyond the experience of most military procurement officers.

The Dept. of Defense has spent $300 million contracting for 4,800 units of "build-to-lease" housing units over the past three years and plans to privatize 11,000 more worth $800 million by 1990. The savings are significant, said Vander Els. But the deals are being restructured for the next batch of projects because of wrong assumptions by the military on contract incentives: "The developer's object in this deal is to borrow as much money as possible and put as little into construction as possible and the difference is what he puts in his pocket. There's nothing wrong with the profit coming at the front end. But it's important for the government to realize that, and that the developer's interest is not to maintain the property for 20 years because he already took the money out.

"It took us three years and a lot of talking to investment bankers and developers and having a few projects blow up in our face before we found this out," he said. ■

By William C. Reinhardt in Washington

INSURANCE

Workers' comp rates soar, led by rising medical costs

Driven by soaring health care costs, expanding worker benefits and a growing number of bogus claims, insurers are raising workers' compensation premium rates again. As in the past, contractors are being singled out for some of the largest increases because of the hazardous nature of construction work.

Interviews with industry officials in several states indicate that contractors, caught between Byzantine insurance rate-making, a crazy-quilt pattern of state regulation and increasing big-ticket claims, have little chance of escaping the vise. The rates they currently pay, which can range up to $50 for every $100 of payroll expense, dwarf the rates found in other industries. The premiums are used for insurance that pays for medical and disability costs associated with injuries suffered by workers on the job.

Bigger hikes coming. Since Jan. 1, state insurance commissions have granted increases averaging 10% to 25% in many states, according to the National Council on Compensation Insurance, New York City. NCCI, which compiles statistics for insurers in 33 states, claims that even bigger hikes will be needed. "Medical [costs] by far are the biggest factor," says Michael Camilleri, NCCI's general counsel.

The biggest rate hikes are in depressed oil-patch states such as Texas and Louisiana, where regulators have held down rate hikes in recent years, says Camilleri. But Northeastern states are feeling the pinch, too. In Maine, for example, several of the state's biggest insurers stopped renewing workers' compensation policies late last year because the state insurance commission refused to grant rate hike requests on the order of 100%. Emergency legislation passed in December reduced workers benefits and temporarily defused the crisis. But a request for a 125% rate hike will be made later this month, say state officials.

Recent rate increases for worker's comp

% chg.

State	All Industry	Contractors
Arkansas	+25.1	+29.0
Texas	+25.0	+29.0
Louisiana	+20.0	+22.2
New Mexico	+24.2	+27.1
Idaho	+12.5	+24.2
S. Dakota	+17.6	+26.3
Colorado	+18.7	+18.3
S. Carolina	+9.9	+14.5
Missouri	+5.6	+11.4

Source: Natl. Council on Compensation Insurance

Employers' revolt. In Massachusetts, rate hikes averaging 20% for most industries and 50% for contractors have caused an employers' revolt over the rate-making process. The Associated Industries of Massachusetts filed suit in state court late last year claiming that rates are being set without proper public scrutiny. While a state Supreme Court justice denied the group's request for an injunction last week, he ordered a full hearing on the issue later this year.

The Associated General Contractors of Massachusetts and the Associated Builders and Contractors are backing the challenge. Steven Tocco, executive director of the local ABC chapter, says the suit turns on questions of control and accountability. The rate-making process is "so convoluted it's hard to understand," he says. "It's a mess. I think they try to make it that way."

In New York, meanwhile, workers' comp rates will be going up sharply in July after fairly modest increases over the past three years, says Jeffrey Zogg,

(2)

Legislative
Information and
Teleconference Networks

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START TIME: _____ DATE: _____

END TIME: _____ PLACE: _____

SPONSOR/SUBJECT: _____

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NAME/REPRESENTING	ADDRESS	PHONE		
Tammy Boswell	1890 E 58th Ave Anchorage, AK 99507	561-0722	✓	
Glen Rainwater			✓	
Larry Brubaker	ANCH. 4106 NORTHWOOD	248-0566	✓	
PAT Reeves	3140 CHESAPEAKE CIRCLE	562-4669		
Rick LaGarde	4300 ARCTIC BLVD. #2	561-8785	✓	✓
JAN HANSEN	3301 Eagle #302	264-2424		✓
Jacquelyn McClintock	1111 8th Ave - Juneau	465-2790		✓
Stephen Fields	6524 Linden Dr	243-1387		✓
Dick Cattanach	8101 Old Seward	349-6666		✓
Robert A. Dees	3310 W. 78th	243-4551		✓
Kevin Dougherty	2501 Commercial	276-1640		✓
Bruno Kruppa	4500 Manitoba	345-7288	✓	

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February 2, 1988

Senator Tim Kelly
Capitol Building, Room 101
Juneau, AK 99803

RE: Proposed Workers Compensation
Legislation

Dear Senator Kelly:

As you know, I have testified and lobbied that the joint labor management bill will reduce the volume of litigation presented to the Alaska Workers Compensation Board. The purpose of this letter is to point out some specific areas where I believe litigation will be reduced.

This law firm has been in numerous cases over the years where the sole issue was a rate increase from the minimum of $110 to a figure that would fall below the $154 proposed minimum compensation rate. This simple $44 increase in the minimum compensation rate will result in a reduction of litigation, simply because the employees that were claiming wage rate increases from $110 to something less than $154 will no longer have to file a claim, in that they will receive $154.

In regard to medical issues, I think the reliance on the AMA Guidelines to determine employee's permanent impairment, and therefore, his entitlement to permanent partial disability benefits, will reduce the amount of litigation. The AMA Guides provide an objective evaluation format, as opposed to the subjective opinion of a doctor. Even if two doctors have differing opinions, one would have to presume that if the AMA Guides were appropriately applied, they would be very close to each other. A variation of 5 percent could and would be expected, but anything more than that would suggest that one of the doctors misapplied the guidelines, or that the patient performed differently before the doctors. The difference in the demonstration of the patient's physical skills could be because of an actual change in his physical condition for a number of reasons, or because the employee is trying to enhance the value of his claim. There will be litigation over these issues, but it is not going to be as much as it is today. The use of objective standards will

reduce the amount of litigation.

The termination of temporary total disability benefits at the point the employee becomes medically stationary or upon the expiration of two years will also result in fewer cases to be litigated. Under the present system, an employee is still entitled to temporary total disability benefits during the time that the lawyers are arguing about the rehabilitation program. This often takes up to six months or a year to resolve, and it is not uncommon for rehabilitation issues to be litigated over a period far exceeding one year. With the termination of temporary total disability benefits at the end of two years or when the employee is permanent and stable, there will be a renewed emphasis on finding a suitable rehabilitation plan in the shortest period of time possible.

One of the most frequently litigated issues is the disputes over future wage earning capacity. Under the current system, for back injuries or neck injuries, the employee is compensated based on his actual loss of wage earning capacity. The wage earning capacity is established by determining what the employee could have made in the future had he not been injured, as compared to what he will make in the future after his injury. The first of these is very subjective, and the second is often subjective, as opposed to a comparison of actual numbers. When such issues are left so wide open for interpretation, attorneys often get involved. The proposed system would be to pay permanent partial disability benefits based upon the permanent impairment rating in accordance with the AMA Guidelines. This is an objective standard as noted above, and should result in a significant decrease in litigation over permanent partial disability benefits.

The last major areas where the bill will reduce litigation is in the determination of the compensation rate. The changes as proposed will make it a more objective standard, thereby eliminating the need for attorneys. I am not entirely pleased with the language as presented in the portion of the Act dealing with determination of the employee's spendable weekly wage, but it is acceptable.

Thus, it is my opinion that this bill will result in a significant decrease in litigation. I do believe that you will probably see an increase in litigation for a year or two after the bill is passed. This is typical with any major change in a system, in that both sides will want to present their arguments on how the new law is to be interpreted. After a year and a half or two years, the frequency of litigation should begin to decline.

I am not sure why I have worked so hard to make my support for this bill known. It is most definitely going to cost my law firm some business, as the decrease in litigation begins to occur. However, I do think this is the best thing for the system overall.

I do want to present you with one word of caution. The bill takes many of the incentives away for attorneys that represent injured employees. You are directly affecting their livelihood in a significant way. The same is true for vocational rehabilitation counselors and the medical profession in general, and chiropractors in particular. Because of that, I would take any of their testimony with a grain of salt, and determine whether they are testifying from a true belief, or whether they are testifying from a fear that the bill will have a negative effect on their personal income.

I would still like to meet with you in order to discuss the workers' compensation system in more detail. This may not be necessary if the bill will pass largely intact, but if you are encountering opposition, I will be able to provide you with some specific information that you can use to support the bill.

I would appreciate it if you could let my office know when the next hearing in Anchorage is going to be. I will be out of town until February 21, and hopefully, the hearing will not be until after that time. If you have a chance to spend some time with me prior to the next hearing, please let my office know so we can arrange a meeting.

In addition to the above, I have done some work determining exactly what payments would be made under the new system for PPD as opposed to the old system. If you want that information and a further breakdown on how the AMA Guidelines work, I will be glad to provide that to you as well.

Sincerely,

MASON & GRIFFIN

Robert B. Mason

RBM:mrm

MTL SERVICES
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MARJORIE T. LINDER, M.A., C.R.C., C.I.R.S.
Vocational Rehabilitation Counselor

February 11, 1988

Senator Tim Kelly,
Representative Dave Donley
Chairmen, Senate and House Labor and Commerce Committees
P.O. Box V
Juneau, Alaska 99811

Re: HB 352/SB 322

Dear Senator Kelly and Representative Donley:

I am a vocational rehabilitation counselor who provided written and oral testimony last week. I want you to understand why I support the whole person formula as a way of scheduling all injuries.

As a rehabilitationist, I believe that any system for compensating disability of any sort tends to contribute to the degree of disability by reducing the normal economic incentives for return to work. I believe, and I have support from national studies, that scheduled systems seem to offer an advantage over wage loss systems in that they discontinue the dependency relationship between the worker and the insurance company at the earliest possible opportunity. That minimizes the effect of compensation on functional overlay and incentives for return to work.

Schedule systems also minimize the necessity for insurance companies to maintain relatively large numbers of reserves against the potential of future wage loss, a very expensive proposition in the current insurance rating system. By removing the interest of the claimant and his attorney to build awards based on wage loss, substantial savings in costs should be realized. By discontinuing the relationship with the insurance company at the earliest possible time, the claimant will also discontinue his relationship with his attorney sooner, thus reducing litigation (which I believe will be heavy at first.)

Despite the critics and actuarial reports, I know that while the currently scheduled awards may increase, the unscheduled awards will decrease and be more predictable. Please give every consideration to supporting this bill.

Yours truly,

Marjorie T. Linder, M.A., CRC, CIRS

Job — what about this?

SENATE BILL NO. 322
HOUSE BILL No. 352

"AN ACT RELATING TO WORKERS' COMPENSATION..."

PROPOSED CHANGE:

Page 10. Sec. AS 23.30.041 REHABILITATION OF INJURED WORKERS. should be changed to read as follows: *

(6) "Rehabilitation Specialist" means a person who is certified by at least one of the following national certifying boards: THE NATIONAL BOARD OF CERTIFIED COUNSELORS (National Certified Counselors - NCC); THE COMMISSION ON REHABILITATION COUNSELOR CERTIFICATION (Certified Rehabilitation Counselor - CRC); THE CERTIFIED INSURANCE REHABILITATION SPECIALISTS COMMISSION (Certified Insurance Rehabilitation Specialists - CIRS); THE AMERICAN BOARD OF VOCATIONAL EXPERTS (DIPLOMATE/FELLOW, VOCATIONAL EXPERT - ABVE).

AT PRESENT, P. 10, Sec. AS 23.30.041 (6) reads as follows:

"rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

240

2

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CURTIS G. SHATTUCK
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ROGER R. SHATTUCK, C.P.C.U.

MICHAEL A. GRUMMETT
ROGER GRUMMETT
NANCY L. BURNS

8

February 19, 1988

Senator Tim Kelly, Chairman
Labor and Commerce Committee
P.O. Box V
Juneau, Alaska 99811

Re: Workers' Compensation Reform Questionnaire

Dear Tim,

In your letter to me dated February 18, 1988 you showed concern with the distribution of funds to the injured employee. You stated that you were concerned that only 40% of every dollar put into workers' comp was distributed to injured workers. You then indicated that the remaining 60% went into overhead, legal, medical, and vocational rehabilitative expenses. I am curious to find out of that remaining 60% how much was broken down between medical expenses to the injured employee and the cost of vocational rehabilitation to the injured employee. I think you'll find that the payments as a result of the accident to the injured employee take up a major portion of that dollar that is paid into workers' compensation. I would appreciate your advising me what you find out in this regard.

I must concur that I believe that there are problems with the workers' compensation system that is currently in place and I also must admit that I do not have a pat answer for you as to how to clean up the problem. One area where you could have an immediate four percent reduction in the workers' compensation premium would be to exempt the premium tax paid by the insurance companies to the State of Alaska on workers' compensation premiums. This four percent premium tax goes into the General Fund. I believe you'll find that the insurance industry as a whole pays a substantial amount of money into the General Fund through the premium tax and is either the fifth or sixth largest contributor of income to the State.

Please keep me advised as to further developments with regard to the Workers' Compensation Reform Act.

It was nice hearing from you and I look forward to seeing you once again on the softball field as we saw you several years ago.

Thank you very much.

Cordially yours,

SHATTUCK & GRUMMETT, INC.

Roger Grummett

RG/js

GARY McCARTHY, LPT

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Physical Therapy
4200 Lake Otis Parkway, Suite 103
Anchorage, Alaska 99508 (907) 561-1876

WTE INC.

Work Therapy Enterprises, Inc.
3700 Woodland Dr. #400
Anchorage, Alaska 99517

243-6116

Liz Dowler
OTR, CRC, CVE

Committee to Establish Standards for Performed Based Physical Capacity Evaluations —

Liz Dowden —
committee
composed of physical + occup. therapist —
attorney —
rehab. counselor
rehab nurse from insurance Co.
physician —

ad hoc comm. of PT + OT

Jon Dresher who — w/state ~~ed~~ suggested this group be formed —

---

basically — want physicians to use an OT or PT they're looking at regulating so it is expert.

"performance based capacity" — WA state Louisiana

Want in workers comp legislation

Alaska Occupational Therapy Association

Committee to Establish Standards for
Performance Based
Physical Capacities Evaluations

ALASKA PHYSICAL THERAPY ASSOCIATION, INC.

A CHAPTER OF THE AMERICAN
PHYSICAL THERAPY ASSOCIATION

Dear Senator Kelly:

We are writing to ask your support on a proposal we are making to add Performance Based Physical Capacities Evaluations to the Worker's Compensation Regulations. We are the committee to establish regulations for therapists to perform these evaluations. This committee was established as Ad Hoc committees of both the physical therapy and occupational therapy associations. The committee is made up of six OT's and PT's and insurance company nurse, a rehabilitation counselor, and an attorney. Attached is a list of the committee members.

We are proposing that P.C.E.'s be clearly defined as a method of providing information to physicians, rehabilitation counselors and the insurance industry. Performance Based P.C.E.'s would be done by a licensed physical or occupational therapist who has obtained training in the assessment of orthopedic problems as well as testing physical capacities evaluations. Protocols are being established that would outline the information that must be provided in every evaluation situation. Protocols are established for persons receiving an evaluation up to six weeks post injury, persons being injured past six to eight weeks, post injury, and protocols for persons with hand injuries. This testing materials would then be provided directly to the primary physician and/or the IME physician being requested by the insurance company. The information can then be used by the physician for the many questions asked of you.

We are proposing that you as physicians be informed of the persons certified in order to do this testing and would be able to refer for such testing either specifically to an individual therapist or just in general for the need of testing. Attached to this letter are the protocols and certification as well as our proposal for regulations.

We are asking your support of our proposal or any suggestions you may have. We would appreciate a suppport letter in writing. Thank you for your assistance in this matter.

Sincerely,

Liz Dowler

Liz Dowler
Chairman

8 AAC 45.124. PHYSICAL CAPACITIES EVALUATIONS.

(1) No employee who has been disabled for more than ninety (90) consecutive days may return to work until the employee has received an evaluation of his or her physical capacity to return to work.

(2) A physical capacities evaluation which is based solely upon the opinion of a treating or consulting physician is valid for the purposes of this section if the evaluation is based upon generally accepted medical standards and those standards are specified in the evaluation report.

(3) If a party objects to the conclusions contained in an opinion-based physical capacities evaluation, the objecting party may, within ten (10) days of receipt of the evaluation report, request that the employee undergo an intensive and systematic evaluation of his or her physical ability to sustain work performance. That performance-based physical capacities evaluation shall be performed by an occupational therapist or physical therapist authorized by law to perform such an evaluation.

(4) Conflicts between an opinion-based physical capacities evaluation and a performance-based physical capacities evaluation shall be resolved by the Rehabilitation Administrator at a rehabilitation conference.

(5) PCE shall consist of:

1 - A subjective interview
2 - Physical assessment (ROM,MMT, Fitness test)
3 - Strength testing - repetitive, dynamic, static
4 - Gross and fine manipulations
5 - Body mechanics, posturing, pacing
6 - Endurance for work activity as compared to job analysis
7 - Feasibility for RTW
8 - Recommendation for RTW

A licensed Physical Therapist or Occupational Therapist would administer the performance based Physical Capacities Evaluations.

In both of these professions, the therapist has either a Bachelors or Masters Degree in his/her field which includes four to twelve months of clinical training. Course work involves the assessment of flexibility, strength, and functional capabilities of patients - an ideally suited background for the proposed testing. 30 hours of additional specialized training in work capacities is required and preceptorships are available locally to augment skills.

The following are outlined test protocols for performing Physical Capacities Evaluations. The items to be evaluated in each protocol are based on standard Physical/Occupational Therapist evaluation procedures.

In additin, items have been adapted from Keith Blankenship, RPT of American Therapeutics and Duane Saunders, RPT, of the Back School in California have been performing Physical Capacities Evaluations on the injured back worker and have been providing education courses for other Physical and Occupational Therapists.

All protocols evaluate flexibility, strength, and the person's ability to perform specific critical demands of their jobs. These job tasks are simulated and overall maximum ability is measured.

Endurance can only be measured in the protocol requiring a minimum of eight hours. In this test, the person works at a functional level that is required in his job and his ability to perform these tasks over time are measured.

PROTOCOL #1 FOR PERFORMING PCE'S

PHYSICAL CAPACITIES

Total time for evaluation: one hour

Purpose: To determine if patient can return to work.

When: Test to be performed any time between s/p injury and up to 8 weeks. Note: after 8 weeks s/p injury and patient has not been working refer to Protocol 2.

One Hour Evaluation - Pain level to be monitored during evaluation.

1. Subjective Interview:
   a. Critical demands of job
   b. Brief work history
   c. Affects of environmental factors

   Objective: Height, weight, posture, gait, balance.

2. ROM: Full ROM measurements of injured joint and related muscles of adjacent joints.

3. Strength: (Dynamic) Manual muscle testing of muscles surrounding injured joint

   a. Maximum effort tests
   b. Functional tests - i.e., squats or hand grip
   c. Lifting tasks - floor to knuckle
      knuckle to shoulder
      12" to knuckle
      knuckle to overhead
   d. Carrying
   e. Pushing/pulling
   f. Critical demands

4. ADL: Evaluate body mechanics

5. Gross Coordination and Fine Manipulation: General assessment.

6. Static Positions: observed (choose 1-2 appropriate to job)

7. Endurance: reported (such as sitting, walking, standing)

Recommendations:

1. Return to work
2. More diagnostic testing
3. More acute therapy
4. Work hardening or OJT

PROTOCOL #2 FOR PERFORMING PCE'S

Time: 6-8 hours

Purpose: To determine if patient can return to work.

When: Test to be performed on anyone off work 8 weeks or more after injury.

Need: Job Analysis

Six-Eight Hour Evaluation

1. Subjective Interview:
   a. Critical demands of job
   b. Brief work history
   c. Affects of environmental factors

   Objective: Height, weight, posture, gait, balance.

2. ROM: Full ROM measurements of injured joint and related muscles of adjacent joints.

3. Strength: (Dynamic) Manual muscle testing of muscles surrounding injured joint

   a. Maximum effort tests
   b. Functional tests - i.e., squats or hand grip
   c. Lifting tasks - floor to knuckle
      knuckle to shoulder
      12" to knuckle
      knuckle to overhead
   d. Carrying
   e. Pushing/pulling
   f. Critical demands
   g. Other maximum effort tests - climbing and bending

4. ADL: Evaluate body mechanics

5. Gross Coordination and Fine Manipulation: Specific tasks that measure the function of injured joint.

6. Static Position Strength Tests: muscles around affected joint. For back patients, use a dynamometer. For all patients be as objective as possible to measure inconsistencies.

7. Endurance: (Objective measures) duplicate job tasks, frequency and other factors of job site as much as possible. Monitor pain, exertion and cardiovascular level of activity. Dynametric testing. In addition, sitting, standing, and walking as appropriate.

The injured worker can:
Sit for ___ hrs. at a time; ___ hrs. in an ___ hr. day.
Stand for ___ hrs. at a time; ___ hrs. in an ___ hr. day.
Walk for ___ hrs. at a time; ___ hrs. in an ___ hr. day.
Alternately sit/stand for ___ hrs. at a time; ___ hrs. in an ___ hr.day.
Alternately sit/walk for ___ hrs. at a time; ___ hrs. in an ___ hr. day.
Alternately stand/walk for ___ hrs. at a time; ___ hrs. in an ___ hr. day

Level Lift	___# frequently (60x in 8 hrs.); ___# occasionally (4x in 8 hrs.)
Stand Up Lift	___# frequently from floor height to waist height.
Weight Carry	___# frequently (60x in 8 hrs.); ___# occasionally (4x in 8 hrs.)
Push/Pull	___# frequently (60x in 8 hrs.); ___# occasionally (4x in 8 hrs.)

Additional Testing:

____	Squat/Kneel	Frequently; Occasionally
____	Bend/Stoop	Frequently; Occasionally
____	Crawl	Frequently; Occasionally
____	Climb	Ladders/Stairs
____	Reach Overhead	
____	Perform Fine Manipulation	
____	Operate Foot Controls	
____	Operate Hand Controls	

8. Feasibility Report: Based on evaluator's observations.

a. Correlation between pain rating and observed behavior. Good Fair Poor

b. Observed body mechanics and material handling ability. Good Fair Poor

c. Observed gross coordination. Good Fair Poor

d. Do the endurance projections appear to be reliable? Yes No
Explain: _____
_____

e. The results of this test appear to be valid. Yes No
Explain: [ ] Pain [ ] Poor Effort [ ] Other _____

f. Is client a symptom magnifier Yes No
If so, this is substantiated how? _____
_____

9. Safety:

Recommendations:

1. PCE level _____
2. Part time Full time
3. Limitations
4. Remedial programs that might reduce client's physical limitations
5. Prognosis

This information was gathered during a _____ hour Physical Capacities Evaluation over ___ days.

FUNCTIONAL CAPACITIES EVALUATION

for HANDS

A. Medical and social history

B. Subjective complaints and subjective functional level

C. Physical Evaluation

1. A/P ROM
2. Grip/pinch strength testing
3. Volumetric, circumference measurements
4. Sensibility testing as indicated
5. Dexterity testing as indicated
6. Functional tolerance profile (maximum strength testing)

D. Job simulation based on job analysis and/or D.O.T. descriptions

E. Symptom response to activity

F. Summary and recommendations

1. Functional levels
2. Limitations
3. Remedial

FEE SCHEDULE FOR OUTSIDE SERVICES

Physical Capacities Evaluations

The following is a list of facilities that provide physical capacities evaluations and their costs. The information was compiled by AIM for the purpose of allowing us to further accommodate your needs. Please feel free to contact AIM to confirm or update this data.

ALPINE PHYSICAL THERAPY, 561-1876
4200 Lake Otis Parkway,
Anchorage, AK 99508

ONE HOUR: PCE performed by Physical Therapist
PCE Form is completed and returned to referral source - patients seen for Physical Therapy only. $58.00

ALASKA TREATMENT CENTER, 272-0586
3710 E. 20th Avenue,
Anchorage, AK 99504

1. The ATC has been providing a comprehensive Back Services Program since July of 1986.

2. The program offers the following Therapies: Acute Care, Back to Basics, Work Hardening, and Performance Based Physical Evaluation Capacities Testing for people who are experiencing acute, on-going, or recurrent back pain and dysfunction.

3. The Physical/Occupational services available to the injured person include evaluation, treatment, and education in proper body mechanics, pain management, neutral back exercise classes, work hardening, and general aerobic conditioning.

4. The goal of the Back to Basics and Work Hardening services is to return injured persons to work or to their optimal level of functioning.

5. The therapy program is decided upon an individual basis at a team conferance with the physician and all other professionals involve in the case.

6. The Performance Based Physical Evaluation Capacities Testing is done per a physicians request to assist in this process. $30 to $40 per hour is charged as needed.

WORK THERAPY ENTERPRISES, 243-6116
3700 Woodland Drive, Suite 400
Anchorage, AK 99504

Physical Capacities Evaluations conducted by
Occupational Therapist.
PCE form is completed and returned to referral source.

Six Hour Evaluation	$450.00
18 Hour Evaluation	$650.00

REHABILITATION MEDICINE ASSOCIATES, 563-8876
2401 East 42nd Avenue
Anchorage, AK 99508

Comprehensive Evaluation of 45 Minutes	$299.00
Physician Interpretation of Data	$100.00
Total Function Package Utilizing B200 Machine	$100.00

The following places do not perform PCE's:
- Anchorage Fracture & Orthopedic Clinic
- Anchorage Physical Therapy
- Chugach Physical Therapy
- Josetta & Company
- Northland Back School
- Professional Physical Therapy
- West Anchorage Physical Therapy

received
8-17-87

Adhoc Committee Members
PCE and Work Hardening Regulations

Liz Dowler, O.T.R.
Work Therapy Enterprises
3700 Woodland Drive
Anchorage, Alaska 99503
243-6116

Eric Olson, Esquire
801 W. Fireweed Lane, Suite 200A
Anchorage, Alaska 99503
277-6532

Linda Glick, O.T.R.
Alaska Hand Rehabilitation
4225 Laurel Street, #255
Anchorage, Alaska 99508
563-8318

Lenore Rush, R.N.
Industrial Indemnity
4341 B Street
Anchorage, Alaska 99503
561-6000

Duane Mayes, Q.R.P.
Northern Rehabilitation
Services, Inc.
4225 Laurel Street, #103
Anchorage, Alaska 99508
561-3152

Jane Thiboutot, L.P.T.
Alaska Treatment Center
3710 E. 20th Avenue
Anchorage, Alaska 95508
272-0586

Gary McCarthy, L.P.T.
Alpine Physical Therapy
4200 Lake Otis, Suite 103
Anchorage, Alaska 99508
561-1876

Marcia Wakeland, L.P.T.
Alpine Physical Therapy
4200 Lake Otis Parkway, #103
Anchorage, Alaska 99508
561-1876

Pat Montague, O.T.R.
Alaska Treatment Center
3710 E. 20th Avenue
Anchorage, Alaska 99508
272-0586

October 15, 1987

To Whom It May Concern:

My name is Kathleen Chamskas. I have lived in the Anchorage area for 22 years. In that time I owned a computer supply business call C.T. & A, which I operated for three years until 1984 when I was forced to give up the business for health reasons.

At that time I was diagnosed as having Multiple Sclerosis and became very actively involved in Nutrition, body building, and education. I enrolled at A.C.C. in the Human Services program. It was during this course lay out that I became involved with Work Therapy Enterprises, Inc. I have been participating in my first and second year practicums with Work Therapy Enterprises.

I am writing this letter to testify that I strongly believe that Physical Capacities Evaluations and Work Hardening programs combined with education can help a person better know himself and develop to his fullest potential. My stong feeling toward this direction are influenced by:

1. Education - gives each person a better understanding of how to help themselves.

2. Physical Capacities Evaluations - help give an objective third party assessment of total physical capacity levels.

3. Work Hardening Programs - help people to prepare themselves for re-entering the work force by strengthening their physical tolerance.

In summary, I have become actively involved in another business as Owner and General Manager and pay Worker's Compensation for five employees, combined with my own physical disability; I see the direct advantages of having injured workers tested objectively by a Physical Capacities Evaluations.

Sincerely,

Kathy Chamskas

Kathy Chamskas

Medical Management Associates

June 20, 1986

Ms. Elizabeth Dowler, OTR, CRC, CVE
Executive Director
Work Therapy Enterprises, Inc.
3700 Woodland Drive, #400
Anchorage, Alaska 99503

Dear Ms. Dowler:

I want to take this opportunity to express my gratitude to you for taking time from your hectic schedule to enlighten me about Work Therapy. Ms. Williams and you are to be commended for the professional, yet caring approach you have towards your clients.

The work hardness program is a tremendous adjunct to physically and emotionally rehabilitating people to return to gainful employment. Your evaluation and assessment procedures provide a valuable tool for encouraging the individual to maximize their talents and abilities.

I am looking forward to working with you in the future. Your staff seem friendly and knowledgeable in their endeavor.

Thank ycu for taking time today to apprise us of your facility and very needful service you are rendering to our vocational community. Additionally, please extend my sincere appreciation to Ms. Williams for her time and insightful information expressed today.

Cordially,

Mary

Mary E. King

John B. Lathen, M.D.
Orthopedics
4115 Lake Otis Parkway, Suites 203/204
Anchorage, Alaska 99508
(907) 561-7300

June 14, 1985

Work Therapy Enterprises, Inc.
3700 Woodlawn Drive, #400
Anchorage, Alaska 99503

RE:

Dear Ms. Dowler;

We are in receipt of the evaluation and assessment on the above named patient, . We are totally impressed by the work and depth of your personal research and your insights into this patient. We totally agree with your evaluation.

Please know that you are now on our "plan" to get people back into the work force. I am trying to stress to my patients that work is the best therapy for them and the sooner I can get them on the force of employed, the better off they will be and the mis-abuse of Workers' Compensation will be attached.

Thank you again, for the wonderful work. We are very much impressed.

Sincerely,

John B. Lathen, M.D.

JOHN B. LATHEN, MD

per Sandra McLean

W.C.

PROGRAM EVALUATION

1. What was your attitude towards the program when you came?
   Skeptical
2. What did you expect? A work environment similar to my job -
3. Do you think an introduction letter would helped you know what to expect? Yes
4. What goals did you establish for yourself while you were here? Strengthen my body - prepare myself as much as possible to return to work
   Did you meet them? yes If not, why?
5. Did you learn anything new? Yes If so, what? To think before I act (to use judgement when necessary)
6. What did you like about being here? The excellent staff - the opportunity to learn to work safely.
7. What aspect of the program benefitted you the most? Learning how to work safely (without fear of injury)
8. Was this program a waste of your time? Most definitely not!
9. What was your activity level when you came in? moderate (2-4 hrs/day) . What was it when you left? moderate plus (4-6 hrs./day)
10. What job can you do? I'm willing to try just about anything (myself job)
11. Do you have a better idea of your physical capacities? Yes - very much so - lost some of my "macho" attitude
    What are your physical capacities? My capabilities are limited only to the extent that my brain can figure out a way to do whatever needs to be done.

OVER

12. How did the counseling increase your self awareness? confidence raising - I have lots of talent & interest

13. Did the counseling get you to think about things you would not have thought about? yes

14. How do you plan on increasing your activity level after leaving this program? Exercise Program

15. What techniques did you learn to manage your symptoms? gradual progression & relaxation

16. What body mechanic techniques did you learn? carrying close to my body

Jolene

PROGRAM EVALUATION

1. What was your attitude towards the program when you came?
tentative, willing

2. What did you expect? pain

3. Do you think an introduction letter would helped you know what to expect? Yes

4. What goals did you establish for yourself while you were here?
physical conditioning

Did you meet them? No If not, why? Short time

5. Did you learn anything new? Yes If so, what? that I could do more than I thought & pain

6. What did you like about being here? comaraderie, physical & emotional support. Feeling of safety

7. What aspect of the program benefitted you the most? the physical stuff

8. Was this program a waste of your time? No

9. What was your activity level when you came in? low normal. What was it when you left? low normal

10. What job can you do? light duty

11. Do you have a better idea of your physical capacities? Yes

What are your physical capacities? better than I thought! With slow & easy progression, I can do anything.

OVER

12. How did the counseling increase your self awareness? Just by talking about things.

13. Did the counseling get you to think about things you would not have thought about? No - But counseling helped me "understand" some things that I thought about by dibit understa

14. How do you plan on increasing your activity level after leaving this program? By working

15. What techniques did you learn to manage your symptoms? Thinking about what needs to be done to function safely

16. What body mechanic techniques did you learn? Using other parts of my body more - less back use.

Liz, Julie, Kath -

Thank you ladies, for your support, encouragment, and help in returning to normalacy.

D.C.

Aug 15

I Josephine Ellis really
enjoy working with
Liz Lutted Pam Mellon
at Work Therapy
Enterprises. I would
recommend many people
to come here for help.
I also learn a lot here
for work and dealing with
peoples. May God
keep these people
Well With many of
success in life!

Josephine Ellis

2148 Sunrise Drive
Anchorage, AK 99508
December 15, 1987

House Labor and Commerce Committee
Representative Dave Donley
Representative Johnny Ellis
Senator Tim Kelly

Gentlemen:

My brief speech at the recent House Labor and Commerce Committee public hearing, regarding worker's compensation, did not cover a few valid points of interest that I would like to share with you.

I am certainly not an expert on the worker's compensation system. However, my experiences and story does certainly extend some very valid problems concerning and reflecting upon this present day compensation system. It also points out with grave clarity how my worker's compensation insurance carrier is taking advantage of the system's failings in order to further their financial profit rewards.

My main complaint and ensuing legal problems within the system started over my not receiving the proper weekly compensation rate benefit from the compensation carrier. This area of concern, despite my attempts to rectify, started on September 24, 1986 and will not be solved until April 28, 1988. To proclaim that the present worker's compensation hearing process moves slow would be quite an understantment of fact.

After submitting the required past two year wage information to the compensation carrier I received, from their adjuster the Weekly Benefit Determination paperwork. Listed on this paperwork was the listed information that I had only made $37,000.00 during the year, 1986, prior to my injury, September 24, 1986. The insurance adjuster went on to further state that due to this amount being significantly less than my prior two year wage earnings that my weekly compensation benefits would be determined by dividing $37,000.00 with the day of the year of my injury, (267th), that this would compute to a weekly compensation check of $534.17. This method of determination is call the Future Earnings Method and is qualified under AS 23.30.220 (2).

As a matter of record my actual wage history for 1986 up to the date of my injury was in fact a gross total of $50,009.73. Not $37,000.00 as invented by the insurance adjuster at my compensation carrier's office. Under the same determination method I should have received a weekly compensation check for $670.00, not $534.17.

I retained a lawyer to assist me with this problem as I was in traction and was facing weeks of hospital confinement. Six weeks later I received a request in letter form from the adjuster for my 1986 wage information to substantiate my claim of making $50,009.73 prior to my accident date. It was also noted on this letter that upon receipt of my W-2 forms my rate would be raised to its proper level. This information was supplied and my rate remained the same with no explanation for such a decision.

My Attorney than filed for a hearing with the Alaska Worker's Compensation Board. I was very amazed that this situation was taking place and it had to go to a hearing to solve. It did not make much sense to me. Wage earnings for 1986 was what I stated and the adjuster had made a very obvious mistake. So why they would trouble everyone with attending a hearing when it was a no win situation for them was beyound my comprehension. I continued to receive the $534.17 per week.

During the pre-hearing conference at the worker's compensation Anchorage office I was more or less threatened by the insurance carrier's Attorney. It was made in offer form through my own Attorney. I was instructed that if I dropped the hearing action that my current amount of $534.17 would continue, however, if I insisted upon continuing on with the hearing process than they would insist upon a reduction and I would receive less than I was presently enjoying. I refused their generosity.

On April 15, 1987 I had my hearing. It was the opposition's contention that due to the prospect of a company layoff,which was suppose to take place two days after my accident, that for the rest of the year, 1986, I would not have been working anyway. So they insisted on the Future Earning Method being used to compute my weekly compensation benefit. They offered as proof to their claim the recent slump that had taken place in the oil field during 1986.

My Attorney had spent most of his time complaining to me about the fact that he wasn't going to make much by way of legal fees under the present day worker's compensation rules. So he seemed to rectify that problem by not doing anything to prepare for our defense against the insistance of using the Future Earnings Method under AS 23.30.220 (2), instead of the Prior Two Year Method. Quite frankly we looked very unprepared at the hearing.

My own vocational counselor was called as a witness for the opposition. His testimony consisted of information gathered during a recent job market survey that he had made regarding past and present employment in the oil field during my accident date to present time. It was his expert conclusion that I would not have found work after September had I been laid off and not injured.

Now my employer's project manager was called and his testimony collaborated and supported the previous testimony given by my vocational counselor. He also added that he had hired no one with his company since the time of my injury during 1986. In cross examination he was asked by my Attorney if he had received any out of State phone calls from employers requesting employee referrals. He replied NO to this question.

The hearing ended and I walked out of the building with my Attorney. At that time he informed me that had it not been for the request of a mutual friend and client of his he would not have taken my case. Again he expressed his dismay over the lack of legal fees gained from the compensation regulations and how he doesn't usually handle these type of litigations as they just are not worth the amount of time that you have to spend on them to win.

The next day, April 16th, my telephone rings at my residence and it is my project manager. He is full of remorse over his testimony and states that he owes me an apology. During the course of his conversation he informs me that there was a drill ship working on the Beaufort Sea with a drilling contract and that they had been plaguing him with phone calls requesting employee referrals. So there really was work for me after my reported layoff date. He said that he was sorry but that he had to protect his own job. I asked him what he meant by that and he told me that he had a conversation in the hallway with their attorney prior to our hearing. He had told him about this drill ship situation and was told to not mention it in the hearing unless directly asked. So he didn't and he felt bad about not bringing it up despite his attorney's instructions.

I was very upset about this suppression of evidence and arranging testimony to support a false claim as the opposition had done. My Attorney was called and he expressed no interest in this matter at all.

Two months go by before the paperwork from the hearing is received with their determination of fact. I find out then that they have gone along with the opposition and concluded that I would have not been able to find employment had I not been hurt for the rest of 1986. My wages were than divided by the total days in the year and the weekly compensation amount was further depleted some thirteen dollars. The end result was that I was allowed to remain at my current level of $534.17 for what reasons I do not know.

Upon examination of this paperwork from the compensation board I find a lot of errors, testimony taken out of context and not clearly understood by them. So I protest and find out that I can file for a new hearing or review. I file for a new hearing and get one.

I also retain a new lawyer and he voices the fact that he is going to go after this previous suppression of evidence and subpoena the Attorney responsible along with my project manager. After months go by and nothing happens I ask him about his plans. My Attorney than tells me that he has decided to not pursue this matter as he has to continue to work with this other Attorney later on in life. So it seems that my Attorney has sold me out again.

My second hearing date was scheduled for December 4, 1987. It was not until the last minute that my Attorney decided to get a defense created despite all of my attempts. This resulted in his postponing my hearing date that took five months to get and I now have one in April 1988 to enjoy.

My Attorney informed me that I had to prove what my employment and rate of pay would have been for this period of disability had I not been hurt. When asked why this was necessary I was told that due to my contesting the compensation rate, the burden of proof was upon me, to prove that the adjuster's computations were inappropriate.

For the past fourteen months I had been concerned with my injury. My days were filled with various doctor appointments, lawyers, rehabilitation, vocational counseling, treatment centers, pain, and etc. I did not feel that it was at all fair that I now have to gaze into a crystal ball and look into the past to proclaim what I would have done had I not been injured. The fact was that I had been injured.

In any event I attempted to do the impossible and arrived at some type of a solution for possible employment. Upon attempting to make my own job market survey to answer the opposition's claims I found great resistance and was even told that they didn't want to rock any boats, etc. So I reported back to my Attorney that my gathering such information was an impossible task.

We than arrived at the solution of my retaining, at $75.00 per hour, my own vocational counselor. So I agreed to this and my Attorney attempted to hire one for me in the Anchorage area. It turned out that my worker's compensation carrier had developed into a major provider of this type of insurance and that all related businesses were concerned with gaining vocational contracts and such with them. So my request was refused as no one wanted to jeopardize their prospects. Finally one was located in Fairbanks and he came to Anchorage and made a job market survey related to the oil field. His conclusions were that there was most certainly employment during the rest of 1986 and for the year of 1987 for me had I not been hurt.

As stated the outcome of this won't be decided upon until my new hearing April 28, 1988. I do know that the opposition is trying to suppress this new evidence with some fancy legal term. They are claiming that all evidence should have been presented at my first hearing and the fact that neither my Attorney or myself knew about this drill ship situation at that time is just plain tough cookies. How this will come out I have no idea. My Attorney has hopes that we can submit this evidence under changing conditions of compensation determination and that it should qualify me for the prior two year method which will allow me a weekly benefit amount of $7 5.00 per AS 23.3.220 (1).

My project manager has informed me that there never was a telephone conversation resulting in his telling me that their attorney had instructed him to not testify about the drill ship. In fact I felt that if pressed he would deny ever making the phone call on April 16, 1987 to my residence. So it certainly points out that the opposition has shut this door and for me to pursue this tact would have dire consequences on my future employment with my old employer.

During the course of my complaining about the treatment I was receiving to Jan Hansen at her Anchorage workers compensation office, I was informed that my situation was a normal one and directly related to Supreme Court Decisions that governed how the system works. She than proceeded to give me copies of these important and precedent setting decisions. The "Gronroos Decision", and the "Deuser Decision." I was further informed by her that such decisions from the Supreme Court mandated that her agency look at each and every case to insure that the proper method was being used to determine the compensation weekly benefit rate to insure that such computations would be fair for both the employer and the employee.

The "Gronroos Decision" involved an individual that retired from his job in 1977. Three years later he decided to take a permanent seasonal position with the State. He injured his back on this new job and there was a dispute over how his compensation benefits should be computed.

I do not feel that this decision applies to my case at all. My employment was and had been for six years and one month on the oil drilling rigs prior to my accident. I was hurt on a drilling rig on the North Slope. My wage history is very clear and leaves a reason for my benefits to be computed on the prior two year method.

The "Deuser Decision" involved another State employee that was under an employment contract. His prior wage history did not fully reflect the money under this contract that he was losing. So he requested that his rate be adjusted under the future earnings method.

Again this decision does not appear to apply to my case. I am an hourly wage earner, my wage earning history went back a solid six years plus. All of my previous tax records was presented to the Hearing Board Members.

It should be very clear that the situation of an Insurance Compensation Carrier does every thing within its power to take advantage of the exsisting system to better serve its' own needs and concerns.

The law firms that are on retainner will, as in my case, lie, threaten, and perjure to win its' cases and be able to set legal precedents for their own fame and fortune. If the actual situation doesn't fit their way of thinking than they will do whatever it takes to fabricate facts so that they appear to be right and the Worker's Compensation Board Members fall for it. Every injured worker that complains faces grave odds against winning under the present rules and regulations. You are guilty unless you prove your innocence. It is my feeling that there is a large faction of this system that looks upon an injured worker as a cripple, a liar, a cheat, and of course a malingerer. The only people that are truely concerned about you are your immediate family members and the medical personnel that is responsible for your healing process.

Insurance carriers demand high premiums from employers and than when it is time for them to pay and assist an injured worker they apply all the pressure that they can muster. Any personnel that they hire directly to help you, rehabilitation nurses, vocational counselors, treatment center aids, all report directly back to them with any comment and motion that you make. I have had their Attorney repeat to me the exact words I have expressed to my vocational counselor. Its quite a mess and a very unfair source of additional stress at a time in an injured worker's life when he doesn't need any more than he is all ready facing with the accident.

There is no injured worker that gets rich on worker's compensation weekly benefits. Those various individuals that report of an injured worker receiving a thousand dollars or more per week while on compensation are telling a tale without any basis of fact. I called the compensation office and researched just what amount of income would warrent an injured worker $1,000.00 on his weekly compensation check. I was told that in order for a single individual to qualify for this amount he would have had to earn for the past two years $2,052.00 per week or $8,208.00 per month. Even in the good Alaskan economy there are very few members of the working force that would match these earning fiqures.

Before any premium increases of 25% are approved for the compensation carriers I would suggest a hard core audit be demanded to answer a few basic questions. One question that needs to be addressed would be what dollar amount does the insurance company spend upon legal retainners to prevent an injured worker from receiving pennies of compensation benefits? How much money could be saved if the insurance carrier just merely paid the claims as the injured worker presented them, how much does their attitude of "every one is screwing us over" actually cost the system?

The worker's compensation system is suppose to assist an injured worker and yet before that is accomplished it supports a whole raft of parasites. After they get their's it is a wonder that anything is left for the injured worker. What little he does get is reduced to its lowest faction when ever possible by the insurance carrier. No benefits, or healing aids are voluntary offered to the injured worker, he has to discover that they exsist and than very humbly request and explain his need properly to the insurance adjuster.

The solution to the entire worker's compensation system is very simple from where I stand. Rules and regulations should be adopted that simplify the process. There should be no areas of concern or possible misinterpretation that the legal minds can get hold of and undermind the intent of the system. Benefit determination is done in an open and simple way. The insurance carrier has a set of simple rules to govern its' actions by and to insure that it concerns itself with assisting the injured worker not tormenting him beyound reason and social conscience. In a word SIMPLICITY.

There should be a Worker's Compensation Review Board to oversee any problems not solved on the hearing process level. This would enable an injured worker to correct any problems before he was forced to go to the Superior Court and than to the Supreme Court. Hopefully this would place a limit on those decisions that are made for an individual that the system attempts to apply to the general public. This present system underminds its own worth and this needs to be addressed and changed.

I feel that your committee and interest is the only buffer that the injured worker has. The entire Legislative Body will be facing a lot of pressure from self serving professionals and the insurance lobbyists. I hope that the voice and needs of WE THE PEOPLE aren't lost in the clamor.

Sincerely yours,

David L. Rogers

David L. Rogers
274-1852

11-10-87
DATE

TO: Sen. Tim Kelly - Senate Labor & Commerce Cmte

FR: Joseph Beckford - Sitka School District

NUMBER OF PAGES (INCLUDING COVER SHEET): 3

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NUMBER: —

Sen. Ellison has suggested that this statement be directed to the Senate Committee for its review of the worker's compensation program.

TO: Members of House Committee on Labor & Commerce
Members of Senate Committee on Labor & Commerce
Representative Ben Grussendorf
Senator Dick Eliason

FR: Joseph B. Beckford, Assistant Superintendent
Sitka School District
PO Box 179
Sitka, Alaska 99835

RE: Concerns Regarding the Worker's Compensation Plan in Alaska

I would like to take this opportunity to address a few concerns regarding Worker's Compensation as it is being administered in Alaska. Basically, it is my impression that the program is not being effectively managed, that is, in such a manner as to aggressively review, evaluate, and provide some reasonable element of control on claims.

Having moved from a state where school districts were enrolled in an aggressively managed state compensation fund, I was surprised by the lack of involvement either available or expected on the part of the employers in Alaska. There is a definite lack of feedback to clients from any responsible sector. Except for receiving periodic computer printouts showing the status of compensation claims, only once in four years have I ever been contacted in any capacity regarding a claim: its validity, cause, or possible corrective action. It seems as though claims are merely filed and liability accounts established. I have seen nothing regarding the evaluation of claims or information to help avoid claims; these types of mechanisms do not seem to be in place, yet they are the quality controllers of a compensation plan.

The problem with worker's compensation plans without adequate controls is an insidious one. The overt signs are things such as twenty-five percent increases in premium costs in one year. The hidden costs are things such as employers who either leave the state or decide against moving to Alaska because of its poor record and high costs relative to compensation claims.

Some businesses are captive employers (i.e. state agencies, municipal government, school districts, etc.), but the taxpaying public is the one who ultimately bears the burden of cost. In our case, being a school district, every tax dollar that goes into worker's compensation premiums is one less dollar available to go towards its intended purpose of educating children. We do not pay according to our own record, but according to a pool of employers scattered around the state. Without adequate mechanisms for employer participation, worker's compensation claims become a problem over which there seems little, if any control Without controls the economic well-being of Alaska is negatively impacted in many ways.

The Worker's Compensation Plan in Alaska has some serious questions to answer. Why a better than two-fold increase in worker's compensation claims during a period when Alaska payrolls have been decreasing (1983-1986)? Is worker's compensation being used as an alternative to unemployment benefits? Is worker's compensation working according to its intended purpose, or rather has it become victim to opportunism?

Hopefully, these and other questions will be resolved in the near future. The Alaskan economy does not need, nor can it support unnecessary and excessive financial burdens at this time. The worker's compensation program can be a humanitarian act designed to provide fair compensation for those whose "ability to earn" has been measurably lessened by a job-related accident, or it can be a cancer which eats away at productivity. Increases in premium costs in excess of thirty-nine percent over a two-year period seem symptomatic of the latter.

Rep: Dave Donely
Sen: Tim Kelly

Dear Sirs:

What I would like to make you aware of has nothing to do with workmans compensation rates but a change I feel would be justifyied.

If a worker is disabled on the job and workmans comps won't pay the worker if the case is protested I feel he should be paid something until settled, at least enough to help the worker out.

Let me tell you what happened to me to explain my point.

10 or 11 years ago I cut off a finger and recieved workmans comp for 6 weeks then went back to work for 2 weeks then was informed I would recieve a couple hundred dollars as final settlement. I took the money for I didn't know not to, I'm a mechanic and you miss a finger, OK end of this case.

I was 47 years old and worked steady for 30 years drawing 6 weeks unemployment in 30 years, If I took a vacation I all-ways had several job calls from contractors waiting for me. I allways took 2 weeks off for hunting and if the employer would not give me the time off I would quite for hunting and most contractors in the state new me to do so and allways had a job waiting for me from some company after hunting. The point is I worked hard and never had to worry about a job.

Well 9 years ago I had a massive heart attack on the job and layed unconcious for 11 days in the hospital and 6 weeks in

over to Page 2

Intensive care. Needless to say I wasn't concerned in making out an accident report which the worker has 10 days to do.

To make a long story short my doctor never will give me a release to go back to work for the heart attack left me with ½ a heart and 1 bad leg amoung other problems. After 2 years and several hearings all one by me the insurance would still not give me one dime. At this time my savings were long gone and about to lose my house, car ect.

I then tryed to go back to work for I couldn't get unemployment for you and couldn't because you have to be ready and willing to go to work. My doctor would not give me a release and warned me not to try to work for I wasn't ready. I got a lesser job than a mechanic just to have some type of income, well I was taken from the job to the hospital for another 6 weeks in the hospital.

After leaving the hospital and being told by several of my doctors "don't you dare trying to go back to work again." I have a blood clot the size of a golf ball and can't work.

After 3 years trying to get social security I finally started getting $550.00 a month social security after finally going through Ben Stevens and being denied many times.

After over 4 years and 4 hearings all one by me a disb judge finally ordered me to recieve workmen's comp.

The insurance company had used reasons like "He didn't fill out an accident report within 10 days, the heart attack

was not work related and not a high pressure job. and so on The job I was doing was a major job on a large piece of equipment that the company wanted done in 5 hours, it got done in 5 hours but N.C. Cat flat shop rate was 11 ½ hours.

Before one of the hearings I was grilled for 2 days in which the insurance company tryed to get me to lie or find a lie in my interview. I remember some of the questions asked of me as he took me through my whole life.

Questions "How were you born? How many friends did you have - in each grade of school, How many times do you have sex with your wife and so forth, things not related to job or of nothing remotely anybody's business but mine and family.

I would testify before a hearing if you have one in the Anchorage area.

I would also like to see some type of cost of living adjustment retroactive for at least a few years, also make the insurance company leave me alone and not make me keep going back for more phisicals, I don't want to leave this state, this is my home with my kids and grand children.

The doctors report on one occasion stated, "This man will never be able to work again" I believe him.

Phone 345-5235

Garland N Reich
15020 Old Seward
Anchorage AK 99516

Huycke General Agency

508 West Sixth Avenue
Anchorage, Alaska 99501

AAMGA

Telex (090) 25-304

907-276-5333

December 18, 1987

Representative Dave Donley
3111 C Street, Suite 150
Anchorage, Alaska 99503

Re: HB-46

Dear Mr. Donley:

In response to my testimony at the November 12, 1987 Public Hearing, you suggested I write to you concerning my problem with AS21.27.200(c). First I feel the need to give you some background. There are dozens of insurance intermediaries conducting property/casualty insurance business in Alaska. Wholesale brokers, managing general agents, underwriting managers, Lloyds brokers, and reinsurance brokers fill one or more functions between the retail broker and insurer. Of these, only five maintain offices in Alaska. Of these, only two are wholly owned and operated by Alaskans: The Insurance Center (Mr. "Gus" Gustafson); and Huycke General Agency (myself).

As I understand it, the State Constitution gives the Legislature power and authority to make laws, and the Executive reponsibility for enforcing those laws. Apparently having failed to come to grips with broker failures, both branches of state government, in spite of these awesome powers, authorities and responsibilities, have passed the buck. This is not a "pro-consumer" action; it is the latest version of the "Deep Pocket Rule." If the Legislature and Executive are unable to correct the problem, may I ask how the industry is expected to do so? Please do not suggest that worn-out idea that we must police our ranks (we have no Constitutional power and authority to do so). The minute a broker gets a whiff of insurers refusing to do business with him/her, a libel/slander/illegal restraint of trade/collusion lawsuit is sure to follow.

Now I have three problems with 21.27.200(c). The first being, is it defective? Was the intent to cover broker dealings directly with the insurer? If so, then maybe I do not have a problem. But if the intent is to apply regardless of the number of intermediaries, there is a serious problem. Did the Division of Insurance make you aware that the more complicated and large the risk placement is, the more intermediaries may be involved? And the more insurers? The most complicated placement I was ever involved in (and I never got into the really BIG stuff), was where I took the original placement from the insured's broker and in turn used the services of three other intermediaries and twelve insurers. Do you not find it stretches things a bit that the insured's payment to his/her broker is payment to the four intermediaries and twelve companies? Please remember that by Statute definition, an intermediary is not an "insurer."

The second problem is that Mr. Gustafson or I may be caught in a chain reaction. As outlined in paragraph one above, our financial security is jeapordized by this law. Further, we are placed at a competitive disadvantage with the other intermediaries. Most of the others are multi-state corporations well able to survive a major Alaskan broker failure. Mr. Gustafson and I have a 100% investment in Alaskan brokers and our fortunes reflect theirs, especially with our current depressed economy. Where in almost any field of business Alaskan ownership is in the minority, I should think you would wish to ensure equal protection of the law for all Alaskans. Instead, I feel this law represents the danger of unfair expropriation of Mr. Gustafson's and my property.

The final problem is that I believe you have established a dangerous precedent. In spite of your disclaimer (subsection "e"), you may have breached the historic separation of Agency from Brokerage. I know how worthless disclaimers can be, especially when the Judiciary decides to make new law on the basis of "Against Public Policy." The existence of a broker is an insurance necessity. In fact, brokers were in business long before agents (Lloyds is over 200 years old). Getting back to placements involving multiple intermediaries and insurers, it is physically impossible for an agent to be appointed by all the insurers that will be involved in a very large placement. Elimination of the broker (i.e., a "unilicense") would create chaos in the insurance industry. And if a sympathetic Judiciary should one day use (c) and (e) to break the difference between brokers and agents, do you think it would stop there? Real estate agents/brokers, stockbrokers, shipping/trucking brokers, etc.

I do not suggest you clarify the law to apply to direct dealings between broker and insurer. I instead suggest you eliminate subsections (c), (d) and (e), and get together with the insurance industry as well as the Division of Insurance to: 1) stiffen the qualifications and financial backing for obtaining a broker license; and 2) beef up the Division so they may make more frequent and effective financial audits of brokers to reduce the exposure of failure.

Respectfully yours,

Peter C. Huycke

cc: Governor Steve Cowper
Tony Smith, Commissioner of Commerce
John George, Director of Insurance
Senator Rick Halford
Senator Tim Kelly
Representative Walt Furnace
Representative Ramona Barnes
The Insurance Center
Preferred General Agency
Rockwood Insurance Company
M. J. Hall Insurance Company
Pat Cowan

1-6-88

ROUGH DRAFT [Dick Blocks Recommendations]

FOR DISCUSSION ONLY

P.1 1 L 14-24
Section 1 (b)

" It is the specific intent of the legislature that the definition of rights and obligations under this act be as set forth by the clear and unambigious language of this Act. If there is any ambiguity as to the rights or obligations of parties, it is the intent of the legislature that the Act be interpreted strictly and that any change, extension or broadening of rights or obligations be only by act of the legislature.

" It is further the intent of the legislature that the system, including the process of administrative hearings for resolving factual disputes, be fair and afford due process, but expidiciously settle factual differences. Accordingly, unless specifically provided otherwise in the Act, factual disputes that cannot be resolved by the weight of the evidence should be resolved by according rebuttable presumptive value to the position of the injured worker."

To: Dave Gottstein

From: Sen. Tim Kelly

ROUGH DRAFT

FOR DISCUSSION ONLY

P. 2 L. 27
Section 2
AS 23.30.020(b)

"There was a causal connection between the physical condition not disclosed [FALSE REPRESENTATION] and the injury to the employee."

ROUGH DRAFT

FOR DISCUSSION ONLY

P.5 L.16
Section 5
AS 23.30.041 (d)

"The rehabilitation specialist performing the eligibility evaluation shall obtain from the physician, as soon as the determination can reasonably be made, a determination of probable physical capacities of the employee at the time of medical stability. The employee shall be eligible for benefits under this section only if the physical capacities of the employee at medical stability are found to be less than the demands, as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" for

(1) the employee's job at the time of injury; or,

(2) any other job that the employee has held within 10 years before the injury or that the employee has held following the injury, for a period long enough to obtain the skills to perform the job adaquately."

ROUGH DRAFT

FOR DISCUSSION ONLY

P. S L. 27
Section 5
AS 23.30.041(e)

"An employee is not eligible for re-employment benefits under this section if:

(1) the employer offers, or obtains for, employee remunerative employment the physical demands of which are not more than the physical capacities of employee determined to exist at medical stability and the employment is in an occupation that generally exists in the labor market; or,

(2) the employee has received rehabilitation benefits in connection with a prior industrial injury under this or any similar section of a Workers' Compensation Act. but, following the receipt of the benefits, was employed at the same or similar occupation as the occupation at the time of the prior injury."

ROUGH DRAFT

FOR DISCUSSION ONLY

P.6 L.6-14
Section 5
AS 23.30.041 (f)

"When an employee is found eligible for, and desires to use, the benefits under this section, the employee shall so notify the employer and the employee and employer jointly shall select a rehabilitation specialist who shall provide a complete re-employment service plan. If the employee and employer cannot agree on the selection of a rehabilitation specialist, but not before thirty days after the employee notifies employer of his desire to to use the benefits, either party may request the re-employment services administrator to assign a rehabilitation specialist. The employer and the employee each have the right to reject the assignment by the re-employment services administrator for cause and shall have the right to one pre-emptive rejection.

ROUGH DRAFT

FOR DISCUSSION ONLY

P.6 L.15
Section5
AS 23.30.041 (f)
(1)

"(g) The re-employment plan must include the following:

(1) an inventory of the employee's technical skills, physical capacities, intellectual capacity, academic achievement, emotional condition and familial support.

(2) a determination of the occupation which the plan establishes as the goal.

(3) a finding that:

i. the occupation established as the goal for the plan is one for which adaquate employment opportunity exists in the labor market; and

ii. the employee's technical skills, physical capacities, intellectual capacity, academic achievement, emotional condition and familial support at commencement of the plan are such that the employee can reasonably be expected to satisfactorily complete the plan and perform in the new occupation; and,

iii. the plan can be completed within the time and cost limitations imposed by this section.

(4) a detailed description and schedule of the plan.

(5) the cost estimate of the plan including provider fees, the amount of tuition, books, tools, supplies, transportation, temporary lodging or job modification devices.

(6) the date the plan will commence; and

(7) the time at which the employee will be medically stable as determined by the physician.

(h) [...as (g) is currently drafted...]

(i) If the rehabilitation specialist, finds that any one of the required findings in subsection (g) (3) is not true, then the employee shall not be entitled to a re-employment plan and the rehabilitation specialist shall provide a report to the employee and the employer stating that fact including the reasons and information upon which such finding is made."

ROUGH DRAFT

FOR DISCUSSION ONLY

P.7 L.21
Section 5
AS 23.30.041 (j)
(1)

"The re-employment plan must be scheduled so that it can be completed and the occupational goal achieved within two years from date of plan acceptance."

ROUGH DRAFT

FOR DISCUSSION ONLY

P.8 L.13 et.seq.
Section 5
AS 23.30.041(j)
(7)

"If the report or plan of the rehabilitation specialist is not approved by either the employer or the employee, either may petition the re-employment service administrator for a modification of the report or plan in a manner set forth in the petition. If no petition is filed within ten days of submission of the report or plan to the employee and employer, the report or plan is deemed approved. If a petition is filed, the non-filing party shall have ten days to file a response. The administrator shall conduct a pre-hearing conference with the parties to resolve differences. If the approval of both parties cannot be obtained at the pre-hearing conference, then the administrator shall prepare a report within ten days following the conference with a recommendation as to the report or plan that ought to be approved. The petition, response and report of the administrator shall be deemed the filing of a claim and notice of claim referred to in AS 23.30.110(a) and (b). The Board shall notice a hearing as provided in AS.23.30.110(c) and proceed pursuant to AS.23.30.110 to resolve the matter.

ROUGH DRAFT

FOR DISCUSSION ONLY

P.8 L.25-28
Section 5
AS23.30.041(k)

"If the employee, during the period of implementation of an approved plan, ceases to be entitled to temporary total or temporary partial disability benefits pursuant to AS 23.30.185 or AS 23.30.200, the employee may elect to draw a weekly payment, payable at no more than the benefits last paid pursuant to AS 23.30.185 or AS 23.30.200, which payments shall be deducted from the amounts to which the employee is entitled pursuant to AS 23.30.190. The total amount paid pursuant to this subsection shall not exceed the amount to which the employee is entitled pursuant to AS 23.30.190."

ROUGH DRAFT

FOR DISCUSSION ONLY

P.8 L.29-
P.9 L.2
Section 5
AS 23.30.041(k) "(__)If the employee, during the period of implementation of an approved plan, has ceased to be entitled to benefits pursuant to AS 23.30.185 and AS 23.30.200 and further has been paid, in periodic payments all of the benefit to which he is entitled pursuant to AS 23.30.190, then the employee is entitled to a weekly payment for the remaining period of the plan at an amount equal to the benefit last paid pursuant to AS 23.30.185 or AS 23.30.200, but in no event more than $525 per week.

ROUGH DRAFT

FOR DISCUSSION ONLY

P.9 L.14-20
Section 5
AS 23.30.041(m) " 'labor market' means the geographic areas where the employee lived and where the employee worked at the time of injury, unless, subsequent to the date of injury, the employee permanently changed residence from Alaska to outside the state, in which case the labor market is anywhere in the state of new residence."

ALASKA'S WORKERS' COMPENSATION REHABILITATION SYSTEM:
A Critical Perspective
and
Suggestions for a functional system.

by

Jon C. Deisher, MA, CRC

INTRODUCTION:

The difficulties being experienced in the Alaska Workers' Compensation Rehabilitation System are not unique. Our difficulties are mirror images of problems virtually nationwide. The central difficulties occur because each state periodically reinvents the rehabilitation wheel. Borrowing of statutory language has liberally occurred. Standardization of approaches is almost non-existent. Little effort is made to apply a systematic method of addressing a usually underestimated and incompletely understood problem. Advise from the rehabilitation industry is either not sought, discounted or ignored. Rehabilitation professionals are less than aggressive in offerring their advise anyway. The only significant standardization seems to be in the similarity of the percieved problems and the complaints made about them. Very little standardization exists regarding what rehabilitation is or what it ought to do.

This paper attempts to address the problems within the current Alaska Workers' Compensation Act and to outline a beginning point for the solutions. It is important to recognize that workable solutions to rehabilitation problems anticipate a process rather than a structure. In developing a process oriented method of addressing rehabilitation issues we must also be prepared to adjust the process periodically as techniques become available to make the process more effective, successful and responsive.

I. VALUES CLARIFICATION: a philosphical beginning.

The problems in Workers' Compensation Rehabilitation systems have been defined and redefined over the years. A recent paper provides a review of nationwide efforts to address rehabilitation issues1. Regardless of the methods addressing them, problems with rehabilitation persist. After changes are instituted, the same or similar complaints seem to arise. An impression persists that the problems are self-perpetuating or unavoidable. I believe we tend to address symptoms rather than the problems themselves. Problems are, perhaps, the nature of the beast. If we confront unavoidable problems which do not go away, regardless of attempted solutions, then we must seriously review how the solutions are generated. I do not believe we have a clear idea of what we want our rehabilitation system to do. We have a clear idea of the concepts we wish to use in developing a rehabilitation system, but not of what the system itself is supposed to do. Until we know what we want rehabilitation systems to do, any change attempt will fail. If we do not know where we are going we will end up somewhere else!

We all agree the system must be competent, responsive, responsible, managable, regulated, time sensitive and cost effective. These qualities are the <u>controls</u> rather than the <u>goals</u> of the system.There are many complaints about how the system is controlled. Because the goals toward which the controls are directed are poorly clarified, we must expect disputes to result. At present, we are more clear about what results we do not want the system to produce than what we want it to produce. Goals are results oriented2. If we do not know where we are going any road will take us there.

We must begin with a basic philosophical premise: a statement of values3. Given foundational values we may more easily move toward agreed upon goals. The following values are suggested:

1) the work ethic and the value of remunerative employment;
2) incentives for early and timely return to work;
3) removal of work disincentives;
4) rights matched with appropriate responsibilities wherein responsibilities are invested with authority, and rights are invested with protections;
5) a well ordered and compassionate sense of justice;
6) continuation of the no-fault assumption of workers' compensation risk.

These are practical values for a Workers' Compensation Rehabilitation system. They are not necessarily operational concepts. They represent the <u>drive</u> of the rehabilitation system. The rehabilitation system itself is the <u>vehicle</u>

carrying the injured worker to his rehabilitation destination. However, to have a vehicle does not mean it is well designed, its destination is clear or its course is well defined.

Improvements to the present Rehabilitation system are both inevitable and desirable. The changes can be either controlled or uncontrolled. Too much is at stake to permit the latter. To permit the former, a ballance is needed. I believe that controlled change must have a philosophical foundation. We must: 1) know where we are going, 2) know the course that will take us there, and 3) have a vehicle that is capable of transporting us.

"Anywhere but here" is NOT an acceptable goal! Any vehicle but the present vehicle is NOT an acceptable reason to change modes of transportation! Undirected change will result in fragmentary special interests influencing the change process, giving us an unballanced, fragmented result.

"What's in it for me" (WIIFM) is NOT necessarily an acceptable motive for change! If selfishly pursued WIIFM is adversarial in nature and inevitably results in dispute, conflict and litigation. Based upon a ballanced "win-win" philosophy, WIIFM is an acceptable negotiating process resulting in agreed upon results4. What we have today is a WIIFM system selfishly pursued. If change dynamics are based upon my winning at your expense, or vice versa, whatever result occurs will be no improvement but will simply move advantages from one place to another. The most productive change dynamics will emphasize values first and gain second.

Problems in workers' compensation rehabilitation are well recognized but poorly defined. Attempts to solve a poorly defined problem will fail in the long run. Our current problems are often described in terms of uncontrolled cost. However, the problem is NOT uncontrolled cost. Uncontrolled cost is the symptom of an ill-defined goal, a poorly constructed statute and an unregulated, paternalisitc bureaucracy. When we clearly define the goal, competently write ballanced, uncontradictatory legislation, and provide managable regulations, then costs will come under control.

Economic considerations must play a central role or nothing will work. However, we must begin with values and work toward economic support, not vice versa. To illustrate, in the 1960's the United States set a goal to place men on the moon. We then developed the means to achieve that goal. We did not decide to build a very expensive space vehicle, build it, and then cast about for something to shoot it at! Once the goal was defined, a vehicle was designed to accomplish it using the minimum bid process. We set a goal and went to the moon on a minimum bid. The goal was accomplished economically. But, as aggressive cost containment took control, our space program suffered a

series of failures not easily repaired. Over zealous cost containment resulted in egregious loss. Cost containment is not a goal but a process.

Rehabilitation is not going to the moon nor are we building space vehicles. We set goals and design vehicles to carry us there. We can learn from other industries as we develop a viable rehabilitation system. We will need careful vigilance. The goals and values we chose will have financial impacts and the ability to resist economic temptations pulling us from our goals will require obdurate self discipline. Economic goals presented as philosophical values must be seen for what they are; incomplete understanding of the problem.

Special interests will attempt to influence the change direction. Experts outside of rehabilitation will assume advisory roles influencing how rehabilitation systems will be designed. Is Joe Namath a credible expert for panty hose? Pete Rose for shampoo? Why should persons outside rehabilitation be credible experts to design rehabilitation systems? People outside of rehabilitation brought us AS23.30.041 which is problematic. The same people are involved in efforts to change AS23.30.041. The same advisors from outside of rehabilitation constructed the current dysfunctional vehicle (041) and are designing its replacement. Is it reasonable that after delivery of a dysfunctional vehicle that we would rely on the same "experts" to construct the next vehicle? Why are these "experts" more credible than representatives from the rehabilitation industry? We are living with an unacceptable product, will we live with the next product made by the same hands? Values and goals that result in rehabilitation systems that work are by definition cost effective and economically sound. But economic arguements resulting in rehabilitation systems that do not work are not cost effective or philosophically sound.

II. "CLASSIC REHABILITATION": the whole person approach

Often relationships are structured by formal systems influencing interactions between parties. We behave in standardized ways in hospitals, courts, churches, and other organizations. Behaviors are standardized by formal rules, codes of conduct and informal expectations and attitudes. Relationships in the Workers' Compensation System are not standarized. Due to a lack of goals, relationships are not structured. Attitudes the players have for eachother vary widely. Attitudes are structured by formal roles and play an important part in how the players work together toward a goal. Due to an absence of a clear goal, the parties in our system often assume informal roles outside of their expertise. If parties can assume responsibilities outside of their expertise it is difficult to hold anyone accountable.

Traditionally, the rehabilitation profession is a multidisciplinary. Multidisciplinary rehabilitation services are predicated upon a goal of the service recipient's successful return to work or maximized independence. Credibility between the various disciplines involved must be high. Physicians, therapists, counselors, social workers, psychologisists, nurses and families work closely together toward the rehabilitation goal. The multidisciplinary approach is the result of decades of experience which demonstrates that the best results obtain from the use of a systems methodology. The systems approach uses a "whole person" perspective of service delivery. The team is composed of professionals who have skills necessary to meet the rehabilitation goal. Team members are involved to the extent they contribute to the goal. This is the "classic Rehabilitation model".

Workers' compensation rehabilitation is not based on the classic model. Service delivery focuses upon the injury and is contrclled within a quasilegal framework. The narrow focus upon the industrial injury and the legal or quasilegal overlay fragments services which traditionally work together. Rehabilitation regulations have not been promulgated since AS23.30.041 was initiated. Service providers work independently of other providers involved with the same case. The compentancies of the various players are not regulated, coordinated or controlled. Sometimes compentancies are totally erroded. The narrow focus of the workers' compensation responsibility and quasilegal overlay destoys and fragments traditionally multidisciplinary service. <u>Professionals are not always in a position to deliver services they are capable of, or worse, may even be expected to provide services they are not capable of.</u>

Conflicts between "classic" rehabilitation and workers' compensation rehabilitation result from different

assumptions of what rehabilitation is. "Rehabilitation" under the Alaska Workers' Compensation Act is not defined at all! A definition of rehabilitation provides a goal. Thus, we have no clear goal. Lack of a definition encourages assumptions which are not standardized. Therefore, the assumptions of the various players regarding what rehabilitation is or should be has resulted in conflicting expectations of rehabilitation goals, services, processes and so forth. A recent proposal to change the Alaska Workers' Compensation System even suggested that the concept of "rehabilitation" be totally eliminated from the provisions for rehabilitation services! We need operational definitions of "rehabilitation" and of rehabilitation concepts usable in the private sector. Rehabilitation professionals themselves must assume some responsibility for lack of clarity in this area.

III. REHABILITATION: not a dirty word

Rehabilitation is not just another fourteen letter word! It is an honorable concept of Latin origins. The prefix "re" means "again". "Habilitation" derives from "habilitare" meaning "to make fit", "enable", "endow with ability or capacity", "render able", "capacitate" and "qualify"5. Classically, to "make the worker fit again" requires medical, psycho-social, educational and vocational assessment services and decisions. Rehabilitation processes, then, must be multidisciplinary to make the worker "fit again". Exactly how this definition can be massaged to fit within a worker' compensation system must begin with operational definitions.

The pressure to amend or eliminate rehabilitation provisions in Alaska's Act is said to be driven by uncontrolled cost. Uncontrolled cost is the symptom that brings attention to rehabiliation systems. It is thought that cost containment will result from statutory change. Everyone agrees that rehabilitation is expensive, but no one knows exactly what forces drive those expenses. Competent rehabilitation is cost effective. Simply because costs are high does not necessarily mean they are uncontrolled or inappropriate. The industry is, and should be, held accountable for its expenses. But forces outside of rehabilitation also drive rehabilitation costs. When rehabilitation costs are symptomatic of those forces, the rehabilitation industry should not be held accountable. The source of the symptoms is not well understood because they are not seen as symptoms but as the basic problems.

Rehabilitation is expensive, but definitions of rehabilitation do not include provisions for cost. At least five forces influence expenses which show as rehabilitation costs: Legitimate rehabilitation services, insurance adjusting, legal services, medical services, and the judicial system. Decisions made by forces outside of rehabilitation have impacts upon expenses for which the rehabilitation industry alone is held accountable. The rehabilitation profession must identify methods to contain costs for which it is responsible. However, other industries are responsible for expenses for which the rehabilitation industry has no control. These expenses must be understood and accountability properly placed. No one, not even the AWCB, has data on this issue.

We do have multiple disciplines involved in Workers' Compensation rehabilitation, but they are not coordinated. The disciplines do not agree on what rehabilitation is. Services are fragmented and the various dsciplines operate in almost mutual exclusivity. The various disciplines practice virtually independently of, and sometimes in spite

of, eachother. Members of the same discipline often compete with eachother on a claim to the detriment of cost containment. Team meetings are rare or non-existent. Duplicated services are common. Concurrent services are uncoordinated. Time loss is uncontrolled and cost containment is illusive. Injured workers and employers are distrustful of eachother. Providers are protective of their turfs. Competence and credibility questions underlie professional interactions. These symptoms contribute to claim life and continuing cost. Rehabilitants are "made fit again" in spite of services rather than because of them. Rehabilitation professionals are often used as tools for litigation and settlement rather than as bonafide service providers. Despite examples of excellent rehabilitation service, everyone involved knows improvements are needed. I fear that present change dynamics threaten to perpetuate and worsen the problem rather than develop a productive process for addressing and resolving the real issues. The last group asked, as an industry, to address problems of vocational rehabilitation and suggest potential solutions is the vocational rehabilitation industry itself. They also seem loathe to initate suggestions.

Private rehabilitation providers are either private business people or employees of private businesses. They are, therefore, very aware of the free enterprise dynamics of making a business work. The same concepts which are viable for business as a whole are applicable to rehabilitation companies. As business people, rehabilitation providers should understand cost containment principles very well. However, given the statutory provisions of how services are requested, ordinary free market dynamics are not allowed to work. Rehabilitation providers are "seduced" into focusing marketing efforts toward the third party payor because the injured worker has no authority to select a rehabilitation provider and no resources to pay for services recieved. A double bind is active here. The goal of the third party is to meet their obligation as soon as possible to reduce costs. Therefore the marketing approach made to the payor focuses on time and cost containment, or the content nature of their services. The goal of the injured worker is to return to work at or near their pre-injury wage. So, the marketing approach to workers focuses on the "classic model", or process nature of services. A conflict exists between the content and process of services, when in both are important. The difficulty arises because providers are influenced by one side who pays and the other side who recieves. It is widely perceived that rehabilitation providers skew their efforts toward payors. The rehabilitation provider must advocate for the best possible rehabilitation service in both content and process.

IV. RHETORICAL CONSIDERATIONS: what are we talking about?

We have definitional problems resulting in conflicting or unrealistic assumptions and expectations. Most of the difficulties we encounter are related to communication or lack of it. (Pareto's Law) Different disciplines talk about the same or similar processes in different ways. The same language is used with different intent. Different words are used synonomously. A wide variety of issues are decided daily based upon no agreement on rehabilitation concepts or questions. To illustrate, the following rhetorical questions are offered which are not currently resolved by the Alaska Workers Compensation Act:

1) - How shall we define rehabilitation? Vocational Rehabilitation? Vocational Rehabilitation Evaluation? Rehabilitation services? Vocational Rehabilitation Services?
- Does successful rehabilitation mean return to work? Ability to return to work? Compromise and Release? Financial Independence? Reasonably attainable employment? Employment? Employability? Placement?
- Is a rehabilitation evaluation a rehabilitation service? Is a rehabilitation evaluation a screening process of collecting data used to justify or deny rehabilitation services? What are the goals of the evaluation?
- When do rehabilitation services begin and end?

2) - How shall Vocational Rehabilitation, Medical Rehabilitation and Psycho-social Rehabilitation services be juxtaposed? Are they the same? Overlapping? Mutually exclusive? Interdependent? Should they be developed without concurrence from their respective practitioners? How will professional advisors be selected?

3) - Who qualifies for rehabilitation services?
- Will claimants be manditorily referred under a time loss formula? Will claimants be voluntarily or self referred under a "rehabilitation fund" or "time window" concept?
- Are rehabilitation services a right or privilege?
- What, if any, financial or time limits obtain for rehabilitation evaluations and/or services?
- Can a claimant reasonably refuse rehabilitation evaluations or services?
- Will injured workers be screened for "elective" rehabilitation services by a return to work scale?

4) - Specifically, what are Qualified Rehabilitation Counselors (QRPs)? Are rehabilitation counselors actually

Re-employment Specialists? How do we know one when we see one?

- What educational/professional credentials are accecptable?
- What autonomy or control will QRPs work under?
- How will QRPs be reimbursed for their services?
- Who will assign the QRPs to injured workers? How?
- Should adjusters and attorneys be specifically qualified to work with industrially injured workers? How will we know a Qualified Rehabilitation Adjuster (QRAdj) or Qualified Rehabilitation Attorney (QRAtt) when we see one?
- What qualifications will the Rehab Administrator have? Can the R.A. be impeached or replaced? How? What is the relationship between the R.A. and the AWCB?
- What authority will qualify or disqualify QRPs, QRAdjs and QRAtts? How?

5) - What is a disability?
- What is the difference, if any, between medical and vocational disabilities? How do we know the difference?
- What is the relationship, if any, between medical stability and vocational stability?
- What is the distinction between permenant and temporary disability? scheduled and unscheduled disability?
- Should all injuries be scheduled?
- To what extent, if any, should rehabilitation services be tied to the Temporary Total Disability concept?

6) - What is a transferrable skill? How do we know one when we see one?6

7) - How is the labor market that applies to the injured worker defined? What variations are permissible? To what extent, if any, will rehabilitation services be determined by labor market conditions?7

8) - What consistutes non-cooperation? How are the concepts of cooperation, mitigation, malingering and refusal defined and related?
- Who can be uncooperative? Who decides?
- Specifically, how are claimants/employees, adjusters/employers, attorneys/representatives, providers, vendors or other participants uncooperative, if at all?
- Under what conditions is it proper to controvert a claim? Is controversion of a claim discretionary? May controversions occur without prior notice? What penalties, if any, accrue for improper controversion?
- What penalties, if any, accrue if a party other than a claimant is not cooperative?

9) - How can roles between the parties be clarified? Who will be responsible for what? How can the parties be encouraged to stay within their defined areas of expertise? How will accountability be established and enforced?

10)- What is Suitable Gainful Employment (S.G.E.)? Does S.G.E. mean "reasonably attainable employment" or "employment"? Is S.G.E. a viable concept?

- How much of a wage loss is acceptable upon return to work to be defined as "suitable"?

- Should a claimant's preference of a vocational goal be a component of S.G.E.?

- Are labor market conditions a component of Suitable Gainful Employment? How should labor market conditions be assessed?

The above rhetorical considerations are not all inclusive or mutually exclusive. However, they are questions which, due to lack of clear resolution, have resulted in significant misunderstanding and litigation. Of course, rehabilitation litigation contributes to rehabilitation expense. The drive of litigation is not the litigator. Rehabilitation litigation results from the absence of clearly defined goals and from confused statutory language. The above questions, when answered, point us toward the values and fundamental philosophy of a viable rehabilitation system and ultimately reduced cost. Efforts made to change how rehabilitation services are designed, defined and delivered must attempt to resolve the questions listed above (IV) in order to reduce the time required to produce a successful rehabilitation result, reduce case life and to establish methods of cost containment. The goal must be a viable system, not special interest advantage.

V. AS23.30.041/MANDITORY REHABILITATION: apples/oranges.

On July 1, 1982, AS23.30.041 or "041", the Workers' Compensation Rehabilitation statute was promulgated. 041 is poorly constructed. It is said to provide manditory rehabilitation services. In fact, only rehabilitation evaluations are manditory. If an injured worker suffers a permanent loss of wage earning capacity he/she must be referred for a full rehabilitation evaluation. As provided by 041, manditory rehabilitation is paralysed. The paralysis of 041 is not a failure of manditory rehabilitation. The failure of 041 is the result of confused statutory construction. Substantial efforts since promulgation have not produced rehabilitation regulations. Under the Alaska Workers' Compensation Act, rehabilitation cannot succeed. The rehabilitation statute is not regulatable due to poorly defined or undefined concepts and convoluted language problems. Neither of the primary parties (Management or Labor) like the rehabilitation product, but this is not necessarily the result (as alleged) of incompetent secondary parties (physicians, rehabilitation providers, educators, or other vendors). Competent and successful rehabilitation services exist inspite of an ambiguous and contradictory statute. Successes are usually the result professional standards and ethics rather than requirements of AS23.30.041.

041 OFTEN CONFLICTS WITH "CLASSIC", TRADITIONAL REHABILITATION PRACTICE. Conflicts between legislative mandate and professional standards are partially responsible for difficulties described above. The conflicts produce litigation. Litigation drives costs of the secondary parties. The secondary parties are then held responsible for increased costs. The extent to which rehabilitation issues are litigated is contrary to the intent of AS23.30.041. Efforts by the Workers' Compensation Committee of Alaska (W.C.C.A.) must be careful to avoid overreactions to costs attitributed to secondary parties which are in fact driven by poor statutory construction.

The avowed purpose of the W.C.C.A. is to reduce workers' compensation costs 30%, not to improve services. In addition, although respected rehabilitation professionals are involved, the W.C.C.A. did not approach professional rehabilitation organizations for consultation regarding problems or solutions. How viable vocational rehabilitation solutions could result from a group not recognized by the vocational rehabilitation profession is a curious question. This is the process which, 6 to 7 years ago, gave us AS23.30.041. Workers' Compensation Rehabilitation need not be in conflict with traditional rehabilition services. A rehabilitation system imposed without recognition or

contribution from rehabilitation organizations is an act of arrogance and questionable credibility. It is incredible that a system of professional practice would be imposed upon an industry which did not participate in its development. Here the motivation of the change agents supporting such efforts should be called into question. Why rehabilitation organizations have not more actively protested is also interesting. Again, the motivation must be to develop a viable system, not in moving or reinforcing advantages.

Manditory rehabilitation is intended to provide a timely and cost effective assessment for returning an industrial injured worker to the work place. Manditory rehabilitation may or may not be a viable concept. It is consistent with the historical no-fault assumption of Workers' Compensation insurance. The ideal of manditory rehabilitation service is to provide a no-fault process by which the injured worker's barriers to employment, if any, may be identified. The value of manditory rehabilitation referral is to reduce disputes over whether employers will refer and employees will be referred for rehabilitation evaluation. Reduced dispute means reduced litigation which means reduced expense, earlier movement of the worker back to the labor market and general cost effectiveness. The process provided by 041 does not adequately reduce litigation or result in timely rehabilitation referral.

Manditory rehabilitation may not be the answer to in providing relief to employers and employees in the workers' compensation dilema. However, the failure of 041 is not necessarily the failure of manditory rehabilitation. As discussed below, manditory rehabilitation never had, and never could have, an opportunity to succeed.

VI. LEGISLATIVE INTENT: the road to hell is paved....

One reason for writing AS23.30.041, was to reduce litigation. The current pressure to change, abolish or rewrite AS23.30.041 is also to reduce litigation. Rehabilitation evaluations to assess the need for rehabilitation services are intended to reduce employer's financial loss and employee's time loss. Due to the manditory nature of rehabilitation referral, claimants are said to have a right to a rehabilitation evaluation whether they want it or not. Employers are responsible to provide the rehabilitation referral (after 90 days of "permanent disability") whether they want to or not. Neither party believes they should be forced to be involved with rehabilitation services. Both parties often believe that rehabilitation is crammed down their throats.

The employer may believe that the manditory rehabilitation referral represents a return to work DISincentive. If a claimant recieves rehabilitation services while recieving disability compensation, he may not be motivated to return to work. An employee may prefer temporary disability (TTD) benefits to remunerative work which may pay less than his compensation. Employers often allege, usually with case citations, that after extensive and expensive rehabilitation services the employee settles his case and then returns to his regular work. Therefore, rehabilitation has been a waste of time and expense.

The employee may believe, that the manditory rehabilitation referral represents exploitation of his injury and paternalistic subversion of his genuine interests to return to work. If an employer can demonstrate an employee's wage earning capacity in any occupation, regardless of the employee's preferred area of employment, then the employee's disability benefits can be controverted. Therefore, rehabilitation is cited as a tool used to minimize the employer's obligations.

The intent of AS23.30.041 was to encourage the employee and employer to come to a mutual agreement for the course of rehabilitation evaluations and services. The parties may come to agreement on virtually anything. But it does not always work out that way. The problems arise when the parties do not come to agreement. Although examples of successful rehabilitation occur under 041, the promise intended by the statute has not been fully realized.

When the parties do not agree on rehabilitation issues, three possible disputes before the Rehabilitation Adminstrator are possible and then, if necessary, may be appealed to the Board. Board decisions may be appealed to Superior Court. The rehabilitation disputes under 041 are:

1) Is the employee eligible for rehabilitation?

a) Shall the employee recieve a rehab evaluation?
b) Does the employee need rehab to return to work?
c) Does the employer owe more service after the rehab services are interrupted or completed?

2) Has the employee been cooperative?
a) Cooperative with Rehab evaluations?
b) Cooperative with Rehab Plan?
c) Cooperative with Rehab provider?

3) Does/do the Rehab plan(s) comply with the 041?

The statutory language used to address rehabilitation disputes is ambigous. Therefore, whatever decision is handed down, appeals are almost automatic. No provisions enforce the Rehabilitation Administrator's decisions during the appeal process. Parties are not required to comply with the Administrator's decision during the appeal process. No formal record is kept during Rehabilitation Hearing. No rules of evidence are provided allowing for admissability of or disagreement on facts in evidence upon which the Administrator's decisions are made. When heard on appeal arguements are heard "de novo"; i.e. the Board may hear the same case based on different arguments, facts, evidence, interpretations and testimony than those heard by the Administrator. The Rehabilitation Administrator may be overturned or upheld for reasons unrelated to the rational of the appealed Decision and Order. <u>The method of dispute resolution perpetuates litigation, contributes to fragmented rehabilitation services, drives up the cost of vendor and attorney fees, and undermines the intent of the statute.</u>

Litigation influences the cost of rehabilitation service. But litigation should NOT be eliminated from the system. The reason for litigation is not because blood thirsty attorneys are chasing rehabilitation ambulances. Our litigation rate is the result of ambiguous rules. Parties need representation for their differences. Creation of an arbitrary process which would eliminate a "due process" method to resolve differences is dangerous and not justified. Current issues are litigated because 1) disputes are generated by the statutory language and 2) no other method is available to resolve bonafide differences. Provisions can be written for resolving rehabilitation disputes in a fair and equitable manner. Equitable rehabilitation provisions are less likely to result in disputes.

VII. REHABILITATION DISPUTES:
A quiet force in Rehabilitation expense.

As stated above, three possible disputes may be addressed by the Rehabilitation Administrator or designee:

1) Referral for rehabilitation evaluation or eligibility issues;
2) Allegations of refusal, non-cooperation or failure to mitigate; and
3) Disagreements regarding the acceptability of a plan.

1) Rehabilitation Referral: referral for an evaluation is called for by AS23.30.041(c):

> "If an employee suffers a permanent disability that precludes return to suitable gainful employment, the employee is entitled to be fully evaluated for participation in a rehabilitation plan within 90 days of the date of injury."

The most difficult interpretation is with the concept of "permanent disability". For the purposes of vocational rehabilitation, "disability" is defined in terms of lost wage earning capacity, not medical impairment as such.8 So, permanent disability means "permanent loss of wage earning capacity". If a question exists regarding whether an employee has lost his/her capacity to earn a wage as a result of an injury, the usual method of determining the loss, if any, is through a vocational evaluation. If the disablity is permanent and precludes return to suitable gainful employment, the employee will be referred for evaluation within 90 days. But evaluation is not required unless the disability is permanent. The permanence is often not known unless an evaluation is done. <u>An evaluation cannot be required unless the loss of wage earning cacity is permenant, but the permenance may not be known unless the wage earning capacity is evaluated!</u> What we have here is a circular language problem which paralyses the referral process and the referral may not be made at all, or made so late that rehabilitation services cannot be maximally effective.

It is common knowledge within the rehabilitation industry that the sooner one has access to rehabilitation services the greater the benefit from those services. Early referral takes advantage of the employee's motivation to work, his engrained work ethic, his existing physical fitness, and his lack of being accustomed to recieving time loss benefits. However, if referral is delayed then the advantages of early referral are lost and the time required for resolving a worker's barriers to return to work is extended. Thus, when a referral is not made in a timely

manner, and the rehabilitation provider is unable to produce early return to work, the provider is held responsible for the extended time loss! AS23.30.041 is said to require manditory referral for a rehabilitation evaluation, but the circular language of the statute prohibits the timely referral from happening.

2) Cooperation: AS23.30.041(h) is the basis for cooperation disputes:

> "Refusal by an injured employee to participate in an evaluation or a rehabilitation plan approved by the rehabilitation administrator or agreed to by the parties results in forfeiture of disability compensation for the period the refusal continues."

Later, the same paragraph goes on to say:

> "The rehabilitation administrator may find that an employee refuses to participate in an evaluation or rehabilitation plan if the employee fails to cooperate with the rehabilitation provider."

In other words, non-cooperation is based upon the employee's "refusal to participate". If an employee refuses to participate with a rehabilitation evaluation or with a rehabilitation plan that was agreed upon or approved by the administrator, then the employee's benefits may be controverted. No basis is given for reasonable refusal to participate. The statute is silent with respect to refusal of any another party to participate!

3) Plan Dispute: AS23.30.041 states that the parties "may agree upon a rehabilitation plan". The intent is that the parties will come to an agreement upon a plan without litigation. However, litigation occurs due to conflicting provisions within the Act. First, an order of preference (AS23.30.041(i)) is presented which must be followed systematically. Plans are prioritized such that if the injured worker can be returned to suitable gainful employment at a level on the order of preference, then plans of a lower level need not be offered. Generally, the higher a plan is on the order of preference, the shorter the plan. Second, the plan must result in suitable gainful employment. AS23.30.265(28) defines Suitable Gainful Employment:

> "'Suitable Gainful Employment' means employment that is reasonably attainable in light of an individual's age, education, previous occupation, and injury and offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to his average weekly wage as determined at the time of injury."

The concept giving rise to the greatest controversy is the "average weekly wage as determined at the time of injury." Longer plans may beadvocated by injured workers or their representatives because of the belief that a longer plan will result in a higher wage. Longer plans also involve longer Temporary Disability benefit payments. Shorter plans may be advocated by employers or their representatives because of a belief that a shorter plan will result in an earlier return to work. Shorter plans also require shortened Temporary Disability payments. Therefore, provisions of the order of preference are taken as the basis for one side of a dispute, while provisions for suitable gainful employment are taken as support for the other. Many disputed plans are argued based on this statutory conflict.

Other areas of litigation based upon the definition of Suitable Gainful Employment include:

1) What is reasonable employment?
What is attainable employment?
Are we discussing actual acquisition of employment or of employable skills?

As presently practiced, reasonably attainable employment is assumed to be focused upon a specific labor market. Although some variations may be taken, the basic parameters of any employee's labor market have been defined as a 50 mile radius or one hour commuting time one way from the workers' residence and from the employers' place of business. (Ragland) In some cases this definition is limiting if the employees' residence is a very rural area with no employment opportunities and the place of employment is also very rural with no employment opportunities. Is it fair that a detemrination of Permanent and Total Disability (PTD) be dependent upon strict labor market parameters?

2) What does "as soon as practical" mean?

Most injuries require virtually no vocational attention for immediate return to work. Others may require much more than the limits allowed under AS23.30.041. Indeed, Pareto's Law may apply here as perhaps 80% of the injuries require 20% of the time and expense of rehabilitation and 20% of the injuries require 80% of the time and expense. But the question remains, how much service is fair for the employer to support, and how much is fair for the employee to expect?

3) What does "as nearly as possible mean"?

In some cases as nearly as possible may mean a mere fraction of the average weekly wage as determined at the time of injury. What fraction of the average weekly wage is suitable to determine that rehabilitation services are no longer needed?

4) Suitable Gainful Employment definition makes no reference to or provisions for either of the parties' preferences. Particularly the injured worker has no choice for a preferred vocational rehabilitation goal. That the

worker's preferences have no statutory standing in determining a rehabilitation goal results in considerable litigation.

As a final comment on SGE, Alaska's definition of SGE is identical to the definition used by the State of Florida.9 It would seem wise to contact the appropriate persons in Florida and request information about 1) how and if they make this definition work, 2) what problems they have had with it, 3) how they resolve the problems and so forth. This would seem a prudent approach to finding successful solutions to a problematic definition.

VIII. THE EMPLOYEE'S and THE ATTORNEY'S INTEREST: Untouchable conflict?

An attorney's relationship with his client is sacred. It is a relationship with strict protections. However, the potential exists within the Worker's Compensation Act for a conflict of interest or appearance of a conflict of interest between an employee and his/her attorney. This is not to say there are occurrances, instances, examples or events to which the following description refers. This discussion simply points out that the construction of the Act permits at least the perception that a conflict could occur between the interests of an employee and his/her attorney. This is not to allege that examples of this kind of conflict have occurred, only that a perception of a conflict could occur. That a perception of a conflict is possible creates a friction between the various parties involved in any given case. Rehabilitation services are often condemned for perceptions which are not always supportable in fact. That condemnations of professional groups can be made based upon perceptions allowed by statutory constructions serves to demonstrate the complexity of our problem and reinforces the need for a ballanced, comprehensive approach to the system's modification.

What is the potential conflict? Our Act provides that employee's attorneys must provide a valuable service in order to be paid. Once it is established that a valuable service has been provided, an employee's representative will recieve 25% of the first $1000.00 he generates for the employee and then 10% of everything more than $1000.00.10 This provision makes it impossible for the employee and the attorney to establish a separate agreement using different percentages, as in personal injury cases.

At the risk of oversimplification, settlement amounts (X) are based upon the difference between the average weekly wage as determined at the time of injury (Y) and the weekly wage the employee is capable of at the end of rehabilitation services (Z), multiplied by a variable time factor (T weeks). In other words, $X = T(Y-Z)$. Formulas vary depending upon whether or not the injury was scheduled and the statutory provisions in effect when the injury occurred. Generally speaking, the bigger the difference between the employee's preinjury wage earning capacity and his post injury wage earning capacity, the larger the settlement amount authorized. A larger wage difference means a larger settlement. If the employee's attorney provides a valuable service he will be paid as outlined above. The larger the settlement, the larger the claimant's attorney's fees. Rehabilitation providers are clearly not involved in the

settlement process so what difference does this make to rehabilitation?

When a rehabilitation plan is written designed to bring an employee's wage earning capacity as nearly as possible to the average weekly wage as determined at the time of injury, then the potential exists for a smaller settlement amount. The statute therefore provides the perception that an attorney's interest may result in condemning an otherwise well designed rehabilitation plan because the settlement amount resulting from the wage earning capacity provides an unattractive percentage for an attorney's fees. It is possible that an attorney could even denigrate his own client to force the presentation of rehabilitation plan producing a lower age earning capacity. A lower wage earning capacity would result in a larger settlement amount from which a larger 10% could be expected.

This a discussion of perception and potential not fact. But this perception provides a credibility problem for employee attorneys. The credibility problem experienced by employee attorneys, combined with the credibility problem experienced by rehabilitation providers mitigates against the overall perception of professional ethics in the workers' compensation system. The credibility of all professionals involved in the Workers' Compensation system suffers as a result. Resolving a problem of perception is very difficult, particularly since instances demonstrating the problem are not available. It is not a problem that can be addressed by the rehabilitation industry or members thereof alone. However, the perception creates an additional credibility problem which directly influences rehabilitation processes. The perception of potential conflict of interest is indicative of another statutory construction problem which creates 1) an impression of predatory professionals feeding off injuries of Alaska workers and 2) establishes, as outlined above, attitudinal and credibility barriers between professional groups.

Finally, the issue of the rehabilitation result establishing a post injury wage earning capacity places rehabilitation professionals in a vulnerable position. It is absolutely prohibited that a rehabilitation provider be involved in settlement issues. Settlement issues properly belong exclusively to the injured worker and to his employer or the insurance carrier. But the rehabilitation product provides the wage earning capacity which will be used to compute a settlement amount. Therefore, the rehabilitation result is central to the ultimate resolution of a claim. Thus, the rehabilitation provider is placed in a conflict where the rehabilitation product anticipates a resolution of a claim, but the rehabilitation provider is prohibited from discussing the resulting impact on settlement of the rehabilitation services. It is probable that an injured

worker will want to discuss the rehabilitation results and its implications for settlement with the rehabilitation provider. In fact, the issue arises when virtually every rehabilitation plan is presented for approval.

Ideally, a provider will refer questions of settlement to the worker's attorney, if he has one. However, the employee's attorney may not have adequate information regarding the rationale for the plan. As discussed, the attorney's interest may not lie with the rehabilitation result. The ground work is laid for divisive relationships between the claimant, his attorney, the rehabilitation provider and the employer. The basis for the divisivness is rooted in the statutory construction of AS23.30.

IX. PROVISIONS FOR UNEMPLOYMENT SERVICES: the lost benefit.

In Alaska, an unemployed worker must apply for unemployment benefits within nine months of his becoming unemployed or his benefits are lost (Citation needed). This means that if an employee is injured, immediately recieves workers' compensation benefits and remains on compensation for more than nine months, then his unemployment benefits are lost. Therefore, an injured worker who recieves workers' compensation and rehabilitation benefits for longer than 9 months, who develops employable or marketable skills as a result of rehabilitaion, but is unable to find immediate employment after rehabilitation, is not eligible for unemployment insurance. He is ineligible despite the fact that he and his employer paid unemployment insurance premiums from which he never recieved any payment because of his compensation benefits. He cannot recieve Unemployment benefits while simultaneously recieving Workers' Compensation. (Citation needed) Thus, a worker who has employable skills after completing rehabilitation services, but is not employed as a result of rehabilitation, has no financial choice but to remain, or attempt to remain, on compensation. A statutory provision is needed, separate from the provisions of the Worker' Compensation, which will hold unemployment benefits "in escrow" until a wage earning capacity or employability is established through rehabilitation services. At that point the employee would have access to unemployment benefits and the employer would be entitled to take an appropriate offset against the Partial Benefits due to the employee.

X. SUGGESTIONS: worth every cent you paid for them!

1) NATIONWIDE REHABILITATION SERVICES RESEARCH: Due to the width and breadth of the workers' compensation problem and the seemingly similar complaints about rehabilitation nationwide, it seems logical to conduct a nationwide analysis of rehabilitation systems. This analysis would be performed by an "independent uninterested third party" funded by the insurance industry. Research groups which have done this type of analysis are: the Rand Corporation and the Meninger Foundation. The research would address issues such as;

What rehabilitation systems are successful?
What determines rehabilitation success?
What are reasonable solutions to the problems of establishing a fair compensation rate?
What is a reasonable goal for vocational rehabilitation services?
What is the definition of Suitable gainful employment?
Basicly, what standarized answers can be suggested for the Rhetorical Questions section described above?

To initiate research of this magnitude will be expensive. But it would provide standardized answers to the fundamental questions hotly being debated concerning Workers' Compensation and Vocational Rehabilitation. As a result of the research perhaps a standardized process could be established. Hypothetically, this research should pay for itself.

2) STATUTORY PROVISIONS FOR PROACTIVE AND EVOLUTIONARY CHANGE: To promulgate a workable workers' compensation system, including rehabilitation systems, will require a planned change process. However, the approach we have taken in recent years has been to sweep all vestages of the previous ways of doing things away and redesign an entire new system. The result is to throw the baby out with the bath water. We need to establish a process whereby existing statutory provisions can be changed thoughtfully and systematically, keeping provisions worth keeping and eliminating or adjusting provisions that are not worth keeping. A system of planned and orderly fine tuning is needed. Statutory provisions can be made allowing for systematic improvements to the workers' compensation system in general and the rehabilitation provisions in particular. Our pattern seems to be a complete revision of the rehabilitation statute every five to six years. Complete revisions of the rehabilitation statute create uncertainty, inconsistency, misunderstandings, prolonged case life and pervasive dissatisfaction. And the stated purpose, to impose cost containment, seems as illusive as ever.

3) ESTABLISH A VOCATIONAL REHABILITATION TASK FORCE: To attempt the design and promulgation of a rehabilitation system by a subcommittee which minimally involves rehabilitation organizations seems designed to fail. It certainly is not designed to represent a perspective of rehabilitation supported by vocational rehabilitation organizations. If our goal is genuinely to design a workable system of rehabilitation then the committee charged with the goal should be predominantly rehabilitation professionals. Ideally, the professionals would be designated by their peers. The Task Force would address specfic questions and problems presented to it and would provide specific recommendations from a rehabilitation point of view.

4) REGULATIONS: Establish mandatory regulations to be promulgated within 6 months of promulgation of the statutory changes and within 6 months of any subsequent change.

5) QUALIFICATIONS: Establish qualifications for professionals serving industrially injured workers: Rehabilitation Providers, adjusters, attorneys. Establish a rule that the Rehabilitation Administrator must, prior to appointment, meet or exceed the qualifications needed for a "journeyman" rehabilitation provider. Qualifications might be established through the Alaska Division of Occupational Licencing.

Separate statutory provisions are needed to ensure that adjusters working with workers' compensation cases are qualified to do so. The current licencing testing for insurance adjusters contain less than five questions related to workers' compensation. Adjusting workers' compensation cases requires a fund of knowledge significantly and qualitatively different from adjusting automobile collision or home fire damage. Specific training of adjusters of the issues, dynamics and concepts involved in workers' compensation and in rehabilitation could represent a source of considerable savings due to more efficient, insightful and appropriate adjusting decisions.

6) DISPUTE RESOLUTION PROCESS: Establish a reasonable dispute resolution process which would include, arbitration, mediation, negotiation and conflict resolution. Litigation should not be eliminated, but should be a method of last resort.

7) SUITABLE GAINFUL EMPLOYMENT: 1) Bring the definition of Suitable Gainful employment under the rehabilition statute; 2) clarify the definition of SGE. 3) make the definition of SGE compatable with the order of preference.

8) PREVENTION: Establish incentives for employers to prevent injuries from occuring in the first place.

9) REHABILITATION WITH THE SAME EMPLOYER: Establish incentives for employers to reemploy their injured workers. An education process may be necessary to educate employers how reemployment of workers who were hurt working for them represents a method to save compensation payments.

10) POST REHABILITATION UNEMPLOYMENT INSURANCE: Statutory provisions are necessary to allow for unemployment insurance access to workers who have completed rehabilitation services. Exactly how the provisions would work would depend heavily upon the definitions and goals of rehabilitation, as explained above.

11) MANDITORY REHABILITATION EVALUATION, VOLUNTARY REHABILITATION SERVICES: Referral for a full rehabilitation evaluation for those workers who have not returned to work for 90 days post injury should continue to be manditory. If the evaluation demonstrates that a worker would benefit from rehabilitation services, but the worker choses to not recieve rehabilitation services, methods should be available to resolve the claim without prejudice. If a worker then decides to obtain rehabilitation services from another source then he could pay for the services from settlement amounts recieved. This suggestion is helpful because it allows the worker to have truly voluntary rehabilitation services after the rehabilitation evaluation. This suggestion is not helpful because the requirements to pay for rehabilitation services out of settlement monies would be impossible to enforce.

12) BALLANCE REHAB. ADMIN. RESPONSIBILITY WITH AUTHORITY.
The rehabilitation administrator must have the following authorities:
1) the power to qualify and disqualify, and to assign and reassign rehabilitation professionals and adjusters.
2) enforce rehabilitation decision and orders until or unless overturned by decisions of the Board or Courts.
3) maintain a formal record.
4) act as the rehabilitation authority for, and ex officio member of, the Board on issues concerning rehabilitation. This would include writing those portions of Board D&O's pertaining to rehabilitation.
5) obtain second rehabilitation opinions, subpoena rehabilitation information.
6) assign penalties to any party for lack of compliance with the rehabilitation statute, rehabilitation regulations or rehabilitation D & O's.
7)

Alaska Interpersonal Communications: Deisher.

8)
9)

13) STANDARDIZE DEFINITIONS AND CONCEPTS.
Define concepts as presented in section IV Rehtorical Considerations.

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SUGGESTED AMENDMENTS
to
Alaska Workers' Compensation Board Rehabilitation Statute.

by

JON C. DEISHER, MA., C.R.C.

Sec. 23.30.041. Rehabilitation of injured workers.

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(a) The board shall select and employ a rehabilitation administrator and may authorize the rehabilitation administrator to select and employ additional rehabilitation staff. The rehabilitation administrator will serve at the pleasure of and will be responsible directly to the board. The rehabilitation administrator will meet or exceed the qualifications requirements for a Qualified Rehabilitation Professional as defined by AS23.30.041(p) and will be certified by either the National Rehabilitation Association (NRA), the National Association of Rehabilitation Professionals in the Private Sector(NARPPS), or both. The Rehabilitation Administrator will meet these qualifications prior to appointment. The rehabilitation administrator is in the partially exempt service under AS39.25.120.

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(b) The rehabilitation administrator shall implement the provisions of this section, study the issue of rehabilitation, both physical and vocational, on a continuing basis, and provide expert rehabilitation advise to the Board on disputed rehabilitation issues before the Board.

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(c) If an employee suffers an <u>industrial injury</u> that precludes return to <u>suitable gainful employment</u> for a period of 90 continuous days, it is presumed the employee's industrial injury has resulted in a <u>vocational disability</u> unless or until otherwise determined through a vocational evaluation. Based upon the <u>presumptive disability</u> the employee is entitled to a full rehabilitation evalutation to determine if a rehabilitation plan is necessary to resolve the employee's barriers to suitable gainful employment. Referral for the full evaluation will include the treating physician's diagnosis, prognosis, recommended treatment and medical opinion regarding the employee's physical capabilities. Opinions regarding the employee's physical capacities may be obtained from a licenced occupational therapist approved and designated in writing by the treating physician. Referral for the full evaluation will be made not later than the 90th day of disability. A full evaluation

shall be performed by a qualified rehabilitation professional as defined in this subsection. If, in the opinion of the qualified rehabilitation professional, the medical, physical, vocational or emotional state of the employee precludes a full evaluation, the rehabilitation professional shall prepare a preliminary evaluation. A Preliminary evaluation will include the reasons why a full vocational rehabilitation evaluation cannot be made or will not be necessary. If a full evaluation is necessary, the Qualified Rehabilitation professional will give a) an opinion as to if or when the employee will be eligible for the full vocational rehabilitation evaluation, and b) any information that would be included in a full vocational rehabilitation evaluation that can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation. If the Qualified Rehabilitation Professional believes that the employee will be able to return to regular employment without further evaluation, then the rehabilitation professional will give an opinion as to the employee's ability to return to suitable gainful employment and report the physical and vocational basis for this opinion.

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d) 1) If the employer does not timely schedule an evaluation under this subsection, the employer will lose al rights to designate a rehabilitation professional and will pay to the employee 20% of a pro rated amount of the employee's compensation rate in addition to the amount already being paid for each day after the 90th day post injury and the employee may retain a qualified rehabilitation professional to perform the evaluation.

2) If the employee does not retain a qualified rehabilitation professional within 14 calender days after the 90th day of time loss, the employer's pro rated penalty will not be paid and the board or person designated by the board will retain a qualified rehabilitation professional to perform the full vocational rehabilitation evaluation.

3) If the board or designee does not retain a qualified rehabilitation professional within 14 calender days after the beginning of the employer's penalty period, the second injury fund will reimburse the employer for all penalties paid or due during the continuance of nonreferral.

4) If, after retaining a rehabilitation professional, either party is dissatisfied with the professional they may change to an alternative professional only once. Each party may change the designated rehabilitation professional once but not sooner than 90 days after the rehabilitation professional is retained. If a rehabilitation professional is retained and remains the provider on a case for six months or more he may be removed from the case only by the rehabilitation administrator. If a provider is removed from

a case by the rehabilitation administrator, the rehabilitation administrator will designate a replacement rehabilitation professional within 72 hours of removal.

The employer will pay the reasonable costs of the vocational rehabiliation evaluation under this subsection.

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(e) A full vocational rehabilitation evaluation by a qualified rehabilitation professional shall include following specific determinations:

(1) whether a vocational rehabilitation services plan will enable the employee to return to suitable gainful employment;

(2) whether the employee can return to suitable gainful employment with or without a vocational rehabilitation services plan;

(3) the wage earning capacity of the employee, if any, after the 90th day of time loss.

(4) if a plan is recommended, a systematic justification of the plan recommendations in terms of the order of preference.

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(f) For eligibility purposes, if the employee's wage earning capacity is determined to be greater than the minimum wage established by the Fair Labor Standards Act and is equal to or greater than the compensation rate based upon the average weekly wage (gross weekly earnings) as determined at the time of injury, the employee may elect to resolve his rehabilitation claim through a lump sum settlement based upon the lost wage earning capacity, if any, and in accordance with AS23.30.200 and/or AS23.30.210.

For eligibility purposes, if the wage earning capacity is less than the compensation rate, the full rehabilitation evaluation will determine whether or not a vocational rehabilitation services plan will enable an employee to return to work at a wage earning capacity equal to or greater than the compensation rate and as nearly as possible to the average weekly wage as determined at the time of injury.

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(g) If the Qualified Rehabilitation Professional determines that a rehabilitation plan is necessary, the plan will include; 1) a proposed vocational goal, 2) a justification for the vocational goal, 3) the beginning and ending dates of proposed rehabilitation services, 4) the responsibilities of the parties, 5) a labor market rationale for the plan, 6) justification of the plan in terms of the employee's physical capacities and 7) the proposed vocational goal's physical requirements. The plan will be designed to result in suitable gainful employment as determined at the beginning of the plan. The plan will consider the employee's preferred vocational goal and if the

employee's preferred vocational goal is not pursued then a justification for not pursuing the employee's preferred goal will be given. The plan will also include all the costs to be incurred by the employer during the vocational rehabilitation plan, and an estimate of whether the continuing benefits and compensation due to the employee under this chapter after the conclusion of the rehabilitation plan will be more or less than the benefits and compensation payable to the employee under this chapter if a rehabilitation plan is not implemented.

Once the Vocational Rehabilitation Services Plan (VRSP) is written by the Qualified Rehabilitation Professional, the VRSP will be served upon the primary parties for their approval or disapproval. If the parties fail to approve or disapprove the VRSP within 30 calender days of service, the QRP will automatically request an informal rehabilitation conference based upon a presumed plan dispute.

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(h) A vocational rehabilitation plan may consist of any of the following and will be consistent with a <u>systematic working of the order of preference</u> as presented in AS23.30.041(h); if the employee can be restored to suitable gainful employment with rehabilitation plans of a higher preference, then a rehabilitation plan of a lower preference may not be required from the employer. However, the employer and employee may agree by their signatures to a vocational rehabilitation services plan, regardless of order of preference, labor market dynamics, expense, or subsequent changes in the parties' preference or circumstances. If the parties agree to a VRSP, then they will be irrevocably bound to their agreement.

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(i) The order of preference for vocational rehabilitation plans is

(1) prosthetic devices and training that enables work at the same or similar occupation with the same employer as at the time of injury;

(2) prosthetic devises and training that enables work at the same or similar occupation with a different employer than at the time of injury;

(3) work site modification and vocational training for the same or similar occupation with the same employer as at the time of injury;

(4) work site modification and vocational training for the same or similar occupation with a different employer than at the time of injury;

(5) training for a new occupation in light of the results of the vocational rehabilitation evaluation, the injured worker's age, education, injury, work history, transferrable skills, applicable labor market and which will result in

suitable gainful employment as defined by AS23.30.265(28). The order of preference for training in a new occupation is as follows: a) on-the-job training; b) vocational training; and c) academic training;

(6) Self employment, if justifiable by the labor market, if the employee is able to succ ully manage a self employment enterprise, and if that enterprise can be reasonably expected to meet Suitable Gainful Employment;

(7) direct placement in an occupation unrelated to previous work history establishing any wage earning capacity greater than the Fair Labor Standards Act for the minimum wage using transferrable skills.

If a vocational rehabilitation services plan is agreed upon by the employee and employer, then the parties will be bound to the agreed upon plan unless reasonable barriers beyond the control of the parties prohibit the successful completion of the plan. Reasonable barriers include medical, physical, psychiatric, emotional, vocational and financial circumstances which preclude the completion of the plan. Changes in the labor market after an agreed upon or approved plan is initiated is not a reasonable barrier. Disputes regarding reasonable barriers must be based upon objective facts presented by bonafide professional experts knowledgable of the alleged barrier(s), will be first addressed in an informal rehabilitation conference. If an informal rehabilitation conference is not successful in resolving the dispute, then the rehabilitation administrator will resolve the dispute through a formal rehabilitation conference. Rehabilitation conferences will be scheduled upon written request.

If a plan is not agreed upon by the parties then the dispute will be resolved through a formal rehabilitation conference upon written request. The rehabilitation administrator may approve, disapprove or modify a disputed plan. If the rehabilitation administrator approves or modifies a rehabilitation plan, then the parties will be bound to the approved plan unless reasonable barriers to the successful completion of the plan, discovered after the plan is initiated, prevents completion. Disputes regarding reasonable barriers to an approved rehabilitation plan will be resolved by the rehabilitation administrator in a formal rehabilitation conference.

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(j) The employer and employee may agree on a vocational rehabilitation plan, whether or not the plan conforms to the provisions of this subsection. If the employer and employee dispute or fail to agree upon a vocational rehabilitation services plan, either of the parties may request a formal rehabilitation conference. Formal rehabilitation conferences will conducted with a formal record. If all of the necessary information is available, the rehabilitation administrator

will verbally approve, modify or deny the plan at the conclusion of the formal rehabilitation conference followed by a written decision within 30 calender days. If all of the necessary information is not available the record will remain open only long enough to obtain the information needed for the rehabilitation administrator's decision. If the record must remain open, then the parties will be noticed that 1) the record remains open, 2) what information is being obtained and 3) the date the record will be closed. The rehabilitation administrator will issue the decision within 30 calender days of the record's closing. If the Rehabilitation administrator approves, modifies or denies the vocational rehabilitation plan verbally, then the decision will be confirmed in writing within 30 calender days. The rehabilitation administrator's decision will be based upon 1) the provisions of this section, 2) the rehabilitation regulations AAC8.000.000, and 3) interpretations within subsequent decisions by the administrator, the Board and the Courts. Within 14 calender days of the rehabilitation administrator's decision either primary party may seek review of the decision by requesting a hearing in accordance with AS 23.30.110. However, the parties will be bound by the administrator's decision unless or until it is overturned by the board or the courts.

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(k) Rehabilitation reports and statistics regarding rehabilitation services and expenses will be documented and filed in accordance with the rehabilitation regulations.

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(l) Vocational rehabilitation services may not exceed 52 calender weeks, except that vocational rehabilitation services may be extended an additional 52 calender weeks if the parties agree, or the rehabilitation administrator approves based upon recommendations made by the qualified rehabilitation provider that special circumstances exist as defined by AS23.30.265(?) and AAC8.000.000. Rehabilitation services are limited to a total of 104 weeks and may not be exceeded unless agreed to by the parties. Breaks for holidays and vacations which are concurrent with rehabilitation services are included in the total of 104 weeks of rehabilitation services. This subsection does not prohibit an employee from requesting, or an employer or carrier from providing, extended vocational rehabilitation services on a voluntary basis. If rehabilitation requires residence away from the employee's customary residence, reasonable cost of board, lodging, and travel shall be paid by the employer. Temporary disability under AS23.30.185 or AS23.30.200 shall be paid throughout the rehabilitation process. The board or designee may, upon petition from the employee, award the employee being rehabilitated under this section an additional monthly stipend of not more than 50%

of the employee's compensation rate if it finds that a case of extreme financial hardship exists. Petitions for extreme financial hardship stipends, if approved, will not be paid retroactively and will be effective no earlier than the date of the petition. The employer shall pay all costs of a rehabilitation plan and rehabilitation services under this section.

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(m) Refusal by an injured employee to participate in, or otherwise fail to reasonably cooperate with, a vocational rehabilitation evaluation or a vocational rehabilitation services plan approved by the rehabilitation administrator or agreed to by the parties, results in a forfeiture of disability compensation for the period the refusal continues. Forfeiture of disability compensation will not begin until or unless allegations of refusal to participate are upheld by the Rehabilitation administrator, his designee or the Board. The rehabilitation administrator may retroactively assess forfeiture of disability compensation which may be liened from future compensation if allegations of refusal or failure to cooperate are sustained. Efforts to resolve disputes of refusal or cooperation will be first attempted in an informal rehabilitation conference upon written request from the employer, the employee, their representatives or the qualified rehabilitation provider. If the informal rehabilitation conference fails to resolve the dispute, then the dispute will automatically be referred for a formal rehabilitation conference. However, if an employee unilaterally begins participation in a rehabilitation plan not supported by the employer or not approved by the administrator during the period of alleged noncooperation, and then successfully completes the rehabilitation plan and becomes employed for a period of 30 consecutive business days following the completion of the rehabilitation plan, the employee shall receive a lump-sum payment of 50 percent of the compensation forfeited by the employee. The lump-sum payment is available only once to an employee refusing rehabilitation and is limited to the total of 52 weeks compensation allowable during the continuance of rehabilitation services or during the duration of the plan, whichever is less. Any wage loss determination made at the conclusion of the employee's unilateral plan will be based either upon the rehabilitation plan proposed by the qualified rehabilitation provider, if any, or the unilateral plan developed by the employee, whichever results in the highest wage earning capacity. The rehabilitation administrator may find that an employee refuses to participate in an evaluation or rehabilitation plan if the employee fails to cooperate with the rehabilitation provider, however a rehabilitation provider's allegation of noncooperation must be well documented and verifiable. A

secondary party may request an informal rehabilitation conference to address allegations of refusal or cooperation.

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(n) Refusal by an employer to participate in, or otherwise fail to reasonably cooperate with, an evaluation or a rehabilitation plan approved by the rehabilitation administrator results in a payment of double the disability compensation normally due during the period the refusal continues. Disputes of employer noncooperation will be addressed first by an informal rehabilitation conference. If the informal rehabilitation conference is not successful in resolving the dispute, then a formal rehabilitation conference before the rehabilitation administrator will resolve the dispute. Requests for rehabilitation conferences will be made in writing.

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(o) For purposes of this section, an employee is restored to suitable gainful employment if the employee can return to
(1) work at the same or similar occupation with the same employer or an employer in the same industry as the employer at the time of injury;
(2) an occupation using essentially the same skills as the job at time of injuy but in a different industry;
(3) an occupation using different skills or transferrable skills but using the employee's academic achievement level or existing vocational knowledge at the time of injury; or
(4) an occupation requiring an academic achievement level that is different from that attained at the time of injury. An employee shall be returned to suitable gainful employment in the order indicated in (1) - (4) of this subsection.

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(p) "Qualified rehabilitation professional" means a person who has at least a 4 year baccelaureat degree from an accredited University and work experience necessary to
(1) make judgements, administer and interpret tests, counsel, and make recommendations concerning the medical, intellectual, emotional ,physical, or motivational capacity of an injured worker to accept and perform suitable gainful employment, and to
(2) design, implement and supervise programs that tend to enhance an injured worker's medical, intellectual, emotional, physical or motivational capacity to accept suitable gainful employment.

Qualified rehabilitation professionals will meet or exceed the requirements for rehabilitation professionals as defined in the rehabilitation regulations. A rehabilitation professional may not practice rehabilitation activities under this section until and unless his/her credentials have been reviewed and approved by the rehabilitation administrator. The rehabilitation administrator will approve or disapprove a rehabilitation professional's qualifications

within 30 calender days of their submission for review. The administrator may suspend review of a rehabilitation professional's qualifications in order to recieve written verification of credentials presented for review. Approval or disapproval of a provider's credentials will be made in writing. The rehabilitation administrator may provide provisional approval of a rehabilitation professionals credentials which may be either revoked or confirmed upon verification of the credentials. A rehabilitation professional may not practice without written provisional or full approval by the rehabilitation administrator.

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(q) "Qualified rehabilitation adjuster" means an insurance company or adjusting company representative or employee who has at least four years of supervised adjusting experience in the field of workers' compensation insurance adjusting. Knowledge required of a Qualified rehabilitation adjuster includes:

(1) the ability to make judgements regarding compensability of industrial injury claims;

(2) knowledge of the psycho-social, physical and medical aspects of industrial injuries;

(3) knowledge of the rehabilitation statute governing industrial injuries;

(4) certification by the Alaska Adjusters Association as a Qualified Rehabilitation Adjuster.

The Rehabilitation Administrator may approve, disapprove, make recommendations to improve or disallow the qualifications of adjusters working with Alaska Industrially Injured Workers.

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(r) Motions to disqualify a rehabilitation provider from practicing rehabilitation services may be made by or to the rehabilitation administrator. Disputes of a rehabilitation professional's qualifications will be heard in a formal rehabilitation conference. If the rehabilitation administrator affirms the disqualification of the rehabilitation professional, the rehabilitation professional may appeal the decision within 14 calender day to the Board. The rehabilitation administrator may provide guidelines for requalification to the rehabilitation professional effected. Disqualification will not take effect until the decision is written by the rehabilitation administrator within 30 calender days of the formal conference and will include an effective date.

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(s) Within six (6) months of the adoption of this chapter, and any subsequent amendments to the rehabilitation provisions contained herein, rehabilitation regulations will be promulgated. The Board and its Director will be directly responsible for promulgation of rehabilitation regulations.

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(t) Amendments to the rehabilitation statute may be made upon petition to the Board. Changes may not be made more frequently than every four (4) years. Petitions for changes in the statute may be made by The Board, Employers, attorneys, employees, labor and management organizations, rehabilitation providers, physicians, and therapists. Upon adoption proposed amendments will supercede and incorporate all previous amendments and will be based in part upon rulings made by the rehabilitation administrator, the Board, and the Courts subsequent to previous amendments. Petitions to amend the rehabilitation statutue will include:

(1) the change(s) proposed;
(2) the reason the change is needed;
(3) the anticipated benefit of the proposed change;
(4) the anticipated effect if the change is not made;
(5) signatures of interested parties who support the proposed change.

Proposed changes to the rehabilitation statute will be presented to a vocational rehabilitation task force who will approve, disapprove or modify the proposed change within 90 days of the statute anniversary date. The task force will be composed of the following:

(1) the rehabilitation adminstrator;
(2) two representatives of management as recommended by the Board;
(3) two representatives of labor as recommended by the Board;
(4) two Qualified rehabilitation professionals as recommended by the Alaska Chapter of the National Association of Rehabilitation Professionals in the Private Sector (NARPPS);
(5) two medical professionals recommended by the Alaska Medical Association.

The rehabilitation administrator with chair the vocational rehabilitation task force. Recommendations for adoption of the proposed amendments will be promulgated according to AAC_____.

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All underlined terms above will require definition.

Rep Collins

ALASKA REVISITED

A brief examination of the performance of the rehabilitation services delivery system in the Alaska Workers' Compensation Program subsequent to passage of rehabilitation laws effective July 1, 1982.

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INTRODUCTION

One of the basic objectives of a modern day workers' compensation program is the provision of medical and rehabilitation services which restore the injured worker's ability to earn wages and return him to the workplace. The social underlying concept of rehabilitation is the intrinsic dignity of mankind, a feeling of self worth and a right to life, liberty and the pursuit of happiness. This concept cannot realistically exist independent of economic wisdom in a workers' compensation program. The timely return of an industrially-injured worker to a safe employment status commensurate with that held at the time of injury, through the investment of necessary resources, is a logical goal in a workers' compensation program. The end result is an economic, as well as a social asset to the injured worker, the compensation system and society. Properly managed rehabilitation yields cost-effective results which enable many disabled workers to return to productive jobs and thus reduce compensation costs.

In 1982, the Legislature of the state of Alaska enacted laws relating to rehabilitation benefits in the state's workers' compensation program. The legislative intent was that an injured worker receive rehabilitation services which enhance the return to suitable gainful employment as quickly as possible. AS 23.30.041 became effective July 1, 1982. Since

that time, numerous opinions and observations have been proffered regarding the service delivery system's performance in rehabilitating the state's injured workers.

The purpose of this project is to provide the Workers' Compensation Division detailed information on the status of the system of rehabilitation service s provisions under AS 23.30.041. This information is needed for the following reasons:

1. A tracking system has not been in place to accumulate data on the effectiveness of the system since its implementation on July 1, 1982.

2. Regulation drafts are being prepared with changes to reduce perceived problems with rehabilitation services. Data is needed to identify the nature, scope and source of rehabilitation problems in a more systematic manner.

3. Computer tracking systems are being designed to monitor the rehabilitation process. Information will assist in determining data elements for this system.

4. A comparison is needed with the study of the rehabilitation process completed in 1981-1982. This comparison, to the extent that it can be made, will allow conclusions to be made about changes in the rehabilitation service delivery process since July 1, 1982, and will serve as a baseline to compare the effect of regulations implemented during 1984.

METHOD OF REVIEW

Workers' compensation files were reviewed of injured workers who experienced ninety or more continuous days of temporary total disability and who were referred to rehabilitation during the period of January 1 through June 30, 1983. This time frame was chosen for two reasons. First, it afforded employers/adjustors a six-month period after the law became effective, to implement and adjust operational procedures necessary to comply with requirements of the new law. Second, it allowed sufficient time for those injured workers who were referred to rehabilitation, to complete the process.

A case review instrument was developed and designed to accumulate information on various aspects and problem areas in the rehabilitation process. Information collected afforded examination of the following:

1. Timeliness in identifying and referring injured workers for an evaluation to determine their need for rehabilitation services.

2. Quality and timeliness of evaluations.

3. Completeness and quality of vocational rehabilitation services plans and provider services.

4. The extent of litigation, i.e., hearings, controversions, etc., in the rehabilitation process and its effect.

It is not possible to accurately determine the number of injured workers who experienced ninety or more days of lost time and who were referred to rehabilitation, during the chosen time frame, under Alaska's current system. A hand count could be made of the Work Status Report submitted by the employer/adjustor. However, since its submission is not presently required by statutes or regulations and is therefore not consistently submitted, as evidenced during the case review activity, it would be less than a reliable index. The automated data system carries only open cases and does not currently have retrieval capability of closed cases. The system does produce computer runs of injured workers whose compensation files are currently open, who experienced ninety or more continuous days of lost time and who were referred to rehabilitation during the period of January 1 through June 30, 1983. One hundred and ninety (190) such cases were produced by a computer run of June 1, 1984. Forty-five (24%) of these cases were sampled. While this obviously is not a completely accurate universe and ergo, sample size, it is the most reasonably obtainable data afforded by the system and is thus used in this light.

FINDINGS

A. Identification and Referral for Evaluation.

Sixty-seven percent (30 out of 45) cases contained a Work Status Report. The average time from the date

of injury to the date the report was received by the Workers' Compensation Board was 148 days, or 4.9 months. Of the thirty cases with Work Status Reports, twenty-two, or 73%, showed the date of referral for a rehabilitation evaluation, while eight, or 27%, did not. In the twenty-two cases where the date of referral is known, the average time from date of injury to date of referral for an evaluation was 160 days, or 5.3 months.

In those eight cases where date of referral for an evaluation could not be determined, and for the remaining fifteen (33%) cases not containing a Work Status Report, but were involved in rehabilitation, the average time from date of injury to date of first evaluation report was 156 days, or 5.2 months. Apparently, rehabilitation involvement in these cases occurred at about the same time as in the twenty-two cases discussed above, that being approximately five months from the date of injury.

Although it appears the present service delivery system is experiencing a significantly lesser delay in referring injured workers for rehabilitation evaluations than the previous system, the fact remains that the system is falling woefully short of meeting the ninety-day requirement set forth in AS 23.30.041.

B. Quality, Completeness and Timeliness of Evaluations.

Of the forty-five cases reviewed, twenty-two, or 48%,

had progressed to the vocational rehabilitation services plan phase, while sixteen, or 35%, continued in evaluation/medical management, and services were ongoing. In the remaining 7 or 15% of the cases, services were terminated during evaluation due to severity of medical condition (three cases), release for work without restrictions (two cases), and compromise and release activities (two cases). Thus, the twenty-two cases actively involved in plans were evaluated.

The average time from the date of the initial report, to the date of the first report indicating the injured worker's involvement in a plan was 119 days, or 3.9 months. Acceptable time frames in workers' compensation programs, with a structured service delivery system, of vocational rehabilitation benefits vary from 30 to 90 days. The advantages of early referral and implementation of rehabilitation plans have been supported by studies which show a direct correlation between early implementation and a successful completion rate.
Obviously, if the system tolerates inordinate delays in the evaluation process, the advantage of early referral will be negated.

Complete evaluations were determined to be those containing medical reports, including a physical capacities evaluation/discussion of specific work restrictions, a

psychological evaluation/discussion regarding the injured worker's psychological state of mind, and a vocational, education and social history. Work evaluations/testing were viewed as optional components of the evaluation, depending on the type of plan or steps determined to be necessary in returning the injured worker to the work place. For example, if, during the initial evaluation phase, the rehabilitation provider determined an opportunity existed for employment in a modified version of the pre-injury job, and the job was within the injured worker's physical and psychological capabilities, work evaluation/testing was unnecessary.

As for completeness of evaluations in the twenty-two cases in plans, eleven, or 50%, contained essentially complete evaluations. In the remaining eleven cases, plans apparently "emerged from the waters," as there were varying degrees of evidence in support of evaluation activities. The basis for return to work plans/activities in these cases, become questionable at best, in lieu of pertinent information derived from evaluations, on which plans are formulated.

C. Quality and Completeness of Vocational Rehabilitation Services Plans.

A sound rehabilitation plan is a complete set of interrelated, rationalized steps containing specific items

which clearly outline what is to be done, who is to do it and the outcome to be achieved. At the very least, a plan contains five essential elements which are:

1. A vocational objective within an estimate of wages;
2. A description of services necessary to achieve the vocational objective;
3. Beginning and completion dates which indicate when the objective is expected to be achieved;
4. An outline of all costs to be incurred; and
5. A description of specific responsibilities and expectations of all parties pertinent to achieving the vocational objective.

Generally, the vocational rehabilitation services plans were incomplete in that twenty of the twenty-two cases with plans did not contain all five of the essential elements. All of the plans/reports provided descriptions of services, some of which were more complete than others and a general discussion of responsibilities of all parties pertinent to plan implementation and completion. Fifty nine percent, or thirteen out of twenty-two cases, contained vocational objectives, and only five of these included wages. Twenty-seven percent, or six out of twenty-two cases, indicated beginning and ending dates of plans. Two plans indicated costs of services and only two plans contained all five essential elements.

The quality of plans and services, unlike the more tan-

gible elements discussed, were more elusive and difficult to assess. The five yardsticks of measurement were:

1. The extent to which options under AS 23.30.041(e) were considered in developing the plan with the injured worker;
2. The extent to which the wages of the vocational objective matched the pre-injury wage;
3. If placement services were focused;
4. The frequency of reports; and
5. The outcome of plans and services.

The rehabilitation provider is responsible for developing the most suitable return to work plan with the injured worker. This requires consideration of the physical, psychological and educational qualification of the injured worker, balanced against the demands of the vocational objective, any other pertinent vocational variables and the pre-injury and post-injury salaries. All of these factors must be evaluated in light of the options provided under AS 23.30.041, and the option which best meets the rehabilitation needs of the injured worker must then be exercised.

In approximately a third, or eight out of twenty-two cases, reports indicate rehabilitation providers spent time and effort with the injured worker, exploring various return-to-work avenues prior to deciding on a defi-

nite option. The factors derived from essentially complete evaluations, along with options previously discussed, were considered, and justification was provided to support the chosen plan. Six of the eight plans were training in combination with placement services, and two were placement alone. In the remaining two-thirds, or fourteen cases, precipitous placement efforts were undertaken with varying degrees of preparation. In some cases where return to work in any capacity with the previous employer was ruled out due to the extent of disability, and the injured worker's need to pursue an entirely new line of work was evident, placement plans were launched with as little information as the injured worker's expressed interest in a vocation, an education and vague vocational history. On occasion, this was done in the absence of a physical capacities evaluation, or at least a medical report outlining the worker's restrictions. In other instances, interest inventories were used in addition to the background information obtained from the injured worker. It is unlikely that justification for these plans, or more to the point, activities, could be offered if options provided in the law were not considered in light of information which should have been, but which obviously was not, obtained from a complete evaluation.

In the five out of thirteen plans where vocational objectives included wages, all were at least 100% of the pre-injury average weekly wage. Information in the remaining eight cases was not sufficient to afford a clue to what the wages might be.

Placement efforts were focused in slightly less than half, or seven out of the sixteen cases with placement plans/activities. In the remaining nine cases, a trial and error approach to placement was undertaken. This approach, with its inherent toll, began to have a negative effect on the return to work effort in most of these cases. Progress reports revealed budding, and in some instances, full blown adversary relationships between rehabilitation provider and injured worker as repeated, undirected efforts proved to be fruitless and protracted. The absence of a sound, rationalized plan of action became acutely evident. Unfortunately, the brunt of this debacle fell to the injured worker, who inevitably was portrayed as uncooperative in the progress reports.

For reasons not apparent in the files, progress reports were issued bi-monthly in four cases, and monthly in the remaining cases. Generally, the reports were sufficient in content to keep parties informed of progress for as long as rehabilitation services were provided. However, in one case where the injured worker completed training,

a closing report was immediately issued even though the worker had not returned to employment, and the same was true for three cases where placement efforts resulted in a return to work. In these three cases, follow-up reports, and apparently, services, were not provided, and there was no way to determine whether these workers made a successful adjustment to returning to their new occupations.

As for the outcome of the twenty-two cases with plans, focused placement services resulted in three injured workers returning to employment; one completed training, but had not returned to work at the time of the last report; five continued in training; and thirteen remained in placement plans with varying levels of services and obviously, little success. Approximately half of these thirteen had been floundering in placement efforts for at least eleven months. Obviously, by any standard, these are not examples of plans in which injured workers are assisted in a timely return to work. Theoretically, they could have completed thirty-seven weeks of vocational training and could have received two months of placement and follow-up services in eleven months, which may have resulted in a successful return to work.

D. Litigation and Board Involvement.

The incidence of litigation or Board involvement was of

little significance in the rehabilitation process in the sixteen cases in evaluation and the twenty-two cases with plans. In the latter group, five cases contained notices of controversion involving non-rehabilitation issues. However, conferences/hearings had not occured at the time of review, and the outcome of the notices is therefore unknown.

THE ROLE OF VARIOUS PARTIES

Members of Alaska's workers' compensation community were contacted in order to get their views on the roles of various parties, in the development of problems in the rehabilitation process.

Generally, the concern most often expressed involves the existing void between AS 23.30.041 and the rehabilitation service delivery process. Problems, whether real or perceived, are attributed to this void by an overwhelming majority of the parties who operate in the system. In the absence of clarification of the law, through established policy and procedures, instructions on how to play the game and rules governing the players, the parties admitted engaging in sundry practices based on their individual interpretations of the law.

For example, Section 24 AS 23,30.265(31) defines "suitable gainful employment" in part as: "...employment that offers an opportunity to restore the individual as soon as practical to a

remunerative occupation and as nearly as possible to his average weekly wage as determined at the time of injury"; whereas the legislative intent stated in Section 1 AS 23.30.041 is "that an injured worker receive rehabilitation services that enhance the return to suitable gainful employment as quickly as possible." These two sections have given rise to disputes over the nature and scope of rehabilitation services to be provided injured workers in their return to work efforts.

There are those among employers who argue that AS 23.30.041 is the section of the law which governs the delivery of rehabilitation services to injured workers, and therefore, returning the injured worker to suitable gainful employment, without regard to the wages of such employment is the sole intent of the law. Accordingly, rehabilitation providers report they are instructed by the employer/adjustor to pursue a course of action compatible with this position when providing services to injured workers. As discovered during the case review, this often results in a placement plan hastily contrived in the absence of a sound evaluation and is presented as the most feasible return to work plan for the injured worker. Reportedly, failure of the rehabilitation provider to follow this course of direction can result in dismissal by the employer/adjustor who then "shops" for a provider who will conduct the injured worker's rehabilitation program in a manner consistent with the employer's position. Most rehabilitation professionals view these limited assign-

ments as the bane of their existence in their efforts to provide quality rehabilitation services to injured workers in Alaska's system. They believe their services to injured workers should be based on the definition of suitable gainful employment, found in AS 23.30.265. In their view, restoring an injured worker to a level of earning compatible with his earnings at the time of injury when possible, in a timely manner, is compatible with the overall objective of a workers' compensation program.

Another concern expressed by many rehabilitation professionals involves what is viewed as a fairly common practice among employers/adjustors. During the course of services, the provider is instructed to perform inappropriate tasks such as an activities check / arrange an independent medical examination under the disguise of medical management. (During the case review, medical management was noted as the only service in thirty-six percent, or sixteen out of forty-five, cases. In twelve of these cases, medical management continued in excess of four months.) Reportedly, in those cases where the provider performs these activities and the results are unfavorable to the injured worker, a pre-hearing conference is scheduled, during which the employer presents these results in an effort to "stack the deck" against the injured worker, in preparation for the Board hearing which is likely to follow. The majority of rehabilitation providers claim resolute resistance to such activities, which in their view are more

appropriately performed by the claims adjustor. However, a few providers readily admit to complying, in varying degrees, with these activities, for different reasons.

First, some refuse to "actively" engage in activities checks, as they do not consider this to be a rehabilitation function. However, they do confess to including in their rehabilitation report, information regarding an injured worker's activities obtained "incidental" to provision of rehabilitation services. They regard this as objectively reporting all factors potentially pertinent to the rehabilitation outcome. They also view arranging independent medical examinations as a legitimate part of medical management services and therefore feel justified in performing this activity.

Still, other providers readily admit to providing whatever services the employer/adjustor requests, as a matter of economic reality. The employer/adjustor, who is the referral source, is viewed as a holder of the purse strings under the current law.

Rehabilitation providers express frustration over their inability to see a rehabilitation plan through its logical conclusion. Apparently, this is due to the lack of professional hours afforded the provider to perform completely, all services necessary to return the injured worker to safe employment. Examples of this were observed during the case review. In one instance, which was discussed earlier, an injured

worker completed training, but was not provided the placement service outlined in the plan. The provider's closing report reflected instructions from the employer/adjustor to close the case, as the worker had completed his "rehabilitation program." In the three cases cited earlier, in which injured workers returned to employment, follow-up services, to assure their adjustment to the working conditions of new occupations were denied by the employer/adjustor.

There is a prevailing notion among rehabilitation professionals in Alaska that they generally lack credibility with the Board and the workers' compensation community in general. Several reasons for this are offered. First, as previously discussed, there is a dearth of information on policy and procedures and rules governing the parties who participate in the state's rehabilitation services delivery process.

Secondly, with the exception of the Southeastern Panel, relatively new lay members comprise all other panels of the Alaska Workers' Compensation Board. Thus, the Board may not be experiencing the benefits derived from having a majority of members who fully understand the workers' compensation program and the rehabilitation philosophy and process within that program. Coupled with the dearth of information, this situation is likely to affect the Board's performance in its

findings and rulings on rehabilitation issues, which contributes to the confusion, frustration, and thus performance, of the rehabilitation providers.

Thirdly, although some believe the rehabilitation administrator is a positive contributing force in the system, there are those among rehabilitation providers who perceive a lack of consistent guidance and positive support from the administrator. Observations were offered regarding the rehabilitation administrator's shift in position/rulings on various rehabilitation issues with the same set of circumstances. Providers complain that this impairs their abilitiy to engage in consistent rehabilitation activities with injured workers, which the Board will view as acceptable and therefore credible. Others view the administrator's criticism as an unduly harsh attack on the system and the rehabilitation providers. They believe their performance and the system would improve significantly if the rehabilitation administrator were to provide in-service training to supplant some of the criticism.

A common complaint among rehabilitation providers and the employer community is the system's failure to apply remedies in those cases where substantial evidence supports the injured worker's repeated failure to cooperate with the rehabilitation effort. When such cases come before the Board, the injured worker is inevitably given a second chance despite evidence which shows the benefit of doubt had been

previously extended, sometimes on more than one occasion. Examples to support this complaint were absent in the cases reviewed.

Another widespread concern involves the failure of treating physicians to provide physical capacities evaluations, or at least detailed, medical reports outlining their patients' work restrictions. This problem seriously hampers the rehabilitation provider's ability to timely develop a return to work plan with an injured worker, since the worker's remaining physical capacity to engage in work, is the first factor to be considered in establishing the vocational objective of a plan.

Members of the medical community offer little insight toward the resolution of this problem which, according to one of its members, exists because of the ever-present threat of malpractice suits.

With the exception of one unsupported claim of skyrocketing costs, employers/adjustors reported an increase in costs has not been observed, although most confessed they do not maintain a tracking system for rehabilitation costs.

A few adjustors reported a noticeable increase in screening and perhaps a slight increase in referral activity. However, several companies believe their long-standing policy and internal guidelines, on monitoring and early referral of injured workers to rehabilitation, have meant little change in

these activities as a result of the new law.

Quite a few employers/adjustors observe the new law has resulted in a proliferation of rehabilitation providers. This development is viewed with mixed feelings. On the one hand, some s e a broader user base, increased competition and thus, an enhanced free market system. They feel thei- ability to pick and choose among a number of providers will ultimately improve the overall quality of services and the performance of the delivery system. Others feel the influx has meant more time and effort spent on reading numerous and various forms of reports and monitoring services in an effort to control costs.

A precious few employers/adjustors view the new rehabilitation law as totally positive. They believe that while rehabilitation services are costly up front, they more than pay for themselves over the long haul, as they facilitate claims management and thus help reduce the overall life and cost of the claim.

The overwhelming majority of employers/adjustors and most rehabilitation providers would like to see standards established and applied, to control who practices rehabilitation in Alaska's workers' compensation program. They belive these standards are most appropriately established by the rehabilitation administrator. However, views vary regarding the overall role of the rehabilitation administrator.

A handful of rehabilitation providers and employers/adjustors believe the administrator should assume a passive role in the services delivery system. They argue that the law provides for involvement only in disputed cases where employer/employee disagreements arise. Otherwise, parties should be allowed to conduct the rehabilitation process in a mutually agreeable manner.

On the other hand, the overwhelming majority of both providers and employers/adjustors take a different position. They believe the rehabilitation administrator's role, first and foremost is active. The role is to define the Workers' Compensation Board's philosophy and policy on the rehabilitation service delivery system. Further, the rehabilitation administrator should develop regulations to be promulgated through the system, which uphold the philosophy and policy of the Board. The administrator's role is to educate members of the community by providing in-service training and on-going information on changes, trends and the general state of the art of rehabilitation programs in a worker s' compensation system.

The rehabilitation administrator has invested considerable effort in drafting numerous sets of rehabilitation regulations ir rder to add clarity and direction to the service delivery system. Unfortunately, his efforts have met with resistance from the small group of employers/adjustors who

disagree with his perception of his role. The administrator uses his expertise acquired through his experience with various workers' compensation rehabilitation services delivery systems, to assume an active leadership role in Alaska's program.

He continues in his efforts to enlighten the Board and the workers' compensation community on acceptable rehabilitation practices and procedures, by participating in conferences and hearings. Unfortunately, his input has been summarily ignored by the Board on occasion, even when such input was solicited by the Board.

The rehabilitation administrator is involved with the rehabilitation community in his effort to assist its members in providing appropriate, quality rehabilitation services to the state's injured workers. As indicated earlier in this discussion, the extent to which his involvement has been effective, has received mixed reviews by the workers' compensation community.

CONCLUSION

The present rehabilitation services delivery system on Alaska's workers' compensation program is experiencing a significantly lesser delay in referring injured workers for reha-

bilitation evaluations, than that experienced by the system prior to AS 23.30.041. The fact remains, that for a system whose fundamental objective is restoring injured workers to work in a timely manner, through the provision of rehabilitation services, five months is not an acceptable delay. Members of the workers' compensation community, who embrace the early referral theory, share the common realization that time can be a deadly enemy to successful rehabilitation. Benign neglect of what originally is a minor disability can result in protracting the condition to the point where an unwholesome attitude regarding return to work becomes permanent and fixed. This inevitably prolongs the life of a claim, which results in a tremendous drain on the compensation system. One can only assume that the delay experienced by Alaska, in referring injured workers to rehabilitation has resulted in increased costs to the system, although it is not known to what extent.

The system is also experiencing a delay in evaluations to determine injured workers' needs for rehabilitation services. Additionally, a substantial number of these evaluations are incomplete and do not contain essential information, which provides the basis for sound vocational rehabilitation plans.

Rehabilitation providers are not devoting sufficient time and effort to injured workers, in exploring various options for vocational rehabilitation plans. Consequently, they are embarking on ill-founded, hastily contrived placement plans,

which fall woefully short of returning a significant number of injured workers to employment. Unfocused, trial and error placement activities are having a negative effect on the rehabilitation process, which results in a gross injustice to Alaska's injured worker and the compensation system in general.

Rehabilitation providers are unable to deliver appropriate and effective rehabilitation services tc injured workers for several reasons. First, employers/adjustors are making limited assignments to providers by pre-determining the scope and course of rehabilitation services the injured worker will receive, prior to engaging the services of the rehabilitation provider. Second, employers/adjustors are instructing rehabilitation providers to perform inappropriate tasks, such as activities checks and arranging independent medical examinations, during the rehabilitation process. Third, rehabilitation providers are not being afforded sufficient professional hours to see injured workers' rehabilitation plans through completion. As a result, post-training placement and placement follow-up services are not being provided to injured workers. Fourth, the failure of members of the medical profession to timely provide medical reports, which outline injured workers' physical capacities, has negatively affected the performance of the system.

Some rehabilitation providers perceive a lack of credibility with the Board and the compensation community. They attribute this to the absence of established policy, procedures and rules governing the rehabilitation process, new lay Board members with limited experience with the system, and a lack of positive guidance and support from the rehabilitation administrator.

With the exception of one unsupported claim, employers/adjustors report no observable change in costs for rehabilitation services as a result of AS 23.30.041.

Although a few employers/adjustors report a slight increase in screening and rehabilitation referral activities, a majority report no significant change in these activities since the new law became effective. This can be interpreted as a less than positive commentary on the system. The 1981-1982 study found that the system was not providing timely and adequate rehabilitation services to a substantial number of the state's injured workers who could benefit from these services. Recommendations were made to improve the system, which led to passage of the current rehabilitation law. Theoretically, this should have resulted in a substantially greater number of injured workers receiving rehabilitation services as a result of an increase in screening and referral activities. The fact that this has not occurred leads to the major conclusion of this discussion, which has signifi-

cantly affected the performance of the system and which has major implications for the future and survival of Alaska's rehabilitation service delivery system.

Members of the workers' compensation community in Alaska are suffering from the void that exists between the language of AS 23.30.041 and the rehabilitation services delivery process. The lack of a published policy, procedures, and regulations outlining responsibilities and expectations of the parties, is the primariy cause of this void. The Workers' Compensation Division's numerous efforts to develop a statement of policy and regulations, acceptable to the workers' compensation community, have met with resistance from a small number of employers/insurers. The basis for this resistance is the disagreement between the Division and the employer/insurer group, over the extent to which the regulations will permit the Division/Rehabilitation Administrator to become involved in the rehabilitation services delivery system. The employer/insurer group favors limited involvement of the Division in the process. The Division, through the rehabilitation administrator, seeks to play a more active, administrative role in the process. The disagreement between the parties has resulted in a hiatus, which has given rise to sundry and questionable practices of the parties operating in the system, which has adversely affected the performance of the system. If left uncorrected, this situation will even-

tually lead to the demise of Alaska's workers' compensation rehabilitation program.

RECOMMENDATIONS

If the Alaska workers' compensation community is to meet the statutory requirements of providing rehabilitation services to injured workers, certain conditions must exist in the system.

First, the Workers' Compensation Board must adopt regulations which give the Workers' Compensation Division the authority and responsibility to implement the provisions of the law, which the rehabilitation administrator is mandated to do, under Section 23.30.041(b). To this end, the rehabilitation administration's responsibilities should include the following:

1. Establish the purpose and goals of rehabilitation.

2. Develop, monitor and make necessary revisions of reporting standards for rehabilitation providers and employers/insurers.

3. Establish standards for qualifying and disqualifying rehabilitation providers and maintain a roster of qualified providers.

4. Assure that all injured workers who are entitled to a rehabilitation evaluation are referred to a qualified rehabilitation provider.

5. Establish a method to routinely review services provided by qualified rehabilitation providers.

6. Establish procedures for resolving disputes related to rehabilitation issues.

7. Provide periodic training in the philosophy and procedures of the Alaska workers' compensation rehabilitation program.

8. Collect data and publish periodic reports evaluating the effectiveness of the workers' compensation rehabilitation program.

Second, the Board and the workers' compensation community must recognize and accept the rehabilitation administrator's expertise in procedures and practices, involving rehabilitating injured workers in a workers' compensation program. The Board must be willing to seek and rely on the administrator's input in order to assure consistency and thus predictability, in its rulings on issues related to rehabilitation programs of Alaska's injured workers.

Third, the existing problem regarding treating physicians' reluctance to provide detailed medical reports and physical capacities evaluations of injured workers, to rehabilitation professionals, must be addressed. Due to its widespread nature and severity, efforts to resolve this problem may warrant interraction between the medical professional association and parties at a high level within the state system.

ALASKA MEDICINE

OFFICIAL JOURNAL
ALASKA STATE MEDICAL ASSOCIATION

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October 28, 1987

Bruce Kniegge, D.C.
Alaska Chiropractic Society
7536 Lake Otis Pkwy.
Anchorage, AK 99507

Dear Bruce:

I have attached a copy of a document that was given to the WCCA task force this morning by Mr. Warren Dvorak. This was reported to be the final draft from the Medical Committee. However, I had never seen this document nor was I consulted concerning its drafting.

With my acceptance to the WCCA board, I brought the credibility of involvement of the medical community, but in the final analysis, WCCA has circumvented our committee and has presented agendas of other interests. It is obvious to me from my perspective, that I have been "used" by WCCA.

I had attempted to bring to our committee a cross section of varying agendas and interests that were concerned with the medical costs of workers compensation. In fact, of the fifteen (15) active members of our committee, only one physician and one chiropractor sat at the table. I am further convinced that we attempted to bring to the WCCA fair and workable language that addressed the need to reduce workers compensation costs. Although each of us had our own agenda, our interaction never steered far from center.

I have sent a letter of resignation to the WCCA Board and questioned the ethics of their response to appointed committees.

I would like to thank each of you for your commitment and involvement in our committee and apologize to each of you if you feel the time spent was in fruitless labor. I am still committed to the reduction of workers compensation costs but a personal ethic requires my response.

Sincerely,

Ray Schalow
Executive Director

MARK

D.J.'s ALASKA RENTALS INC.
405 BONIFACE PARKWAY • ANCHORAGE, ALASKA 99504-1099
(907) 337-2552
DON REDMOND, President

November 17, 1987

American Rental Dealers Insurance
2900 Rockcreek Parkway Suite 610
North Kansas City MISSOURI 64117

Attention: R.H.(Ron) Payton

re: Workman Compensation vs Disability Insurance

Dear Ron:

In November 1986 I went to a meeting that was sponsored by the Alaska Division of Insurance.

The meeting, attended by some 50 to 60 persons from various industries, was held to tell the attendees that their Workman Compensation Premiums were going to increase on January 1, 1987 by an "average: of 14.1%

The impact on our business was more like 21%. Some contractors experienced increases of OVER 40%.

This notice of pending increase brought concerned people out of the woodwork, finally, to vent their anger.

Following that meeting I became involved with a group called "Workman Compensation Committee of Alaska (WCCA)". This committee was formed in 1979 when Workmans Compensation costs began to escalate. For lack of involvement by members of the community it had been all but abandoned until people were advised in November 1986 of the January 1987 increase.

On October 9, 1987, a $100-per-attendee "seminar" was held and attended by some 150 business people, politicians, attorneys, labor representatives, people from the insurance industry and again attended by the Director of the State Division of Insurance.

At this meeting, along with reviewing some examples of abuses within the system we were told by the State Director of Insurance, John George, that we were facing a 25.1% increase effective January 1, 1988!

At that meeting I asked Mr. George "What would happen if I provided weekly disability insurance for my employees and refused to buy Workmans Compensation?"

He referred me to one of the sponsors of the seminar who, as well as operating an insurance consulting business, is a member of the State Workmans Compensation Board.

Her answer was that she did not believe insurers would write group disability policies unless an employer had the workmans compensation policy in place.

ARA's (ARDI) recent solicitation for Disability Insurance implies this also.

Somewhere out there is there not an insurance company that will write a disability policy that is not subject to all the red tape inherent with Government intrusion? (i.e. The Comp. Monstrosity?)

The January 1987 increases have contributed to many businesses closing their doors and/or going into bankruptcy. This pending 1988 increase promises to be a death blow to several more that are already suffering from a very severe economic slow-down.

I would appreciate your researching and responding.

Best Regards

Don Redmond

Don Redmond

DR/bp

enclosure: November 1987 "The WCCA Sounder"

cc: State Senator Tim Kelly
State Representative Dave Donley
State Representative Walt Furnace
State Representative Jim Zawacki

RECD 11/16/87 D-R

The WCCA Sounder

"A publication for people concerned about workers' compensation reform"

November 1987

1988 Increases

Workers' Compensation premiums will skyrocket up to 68 percent in 1988 for some Alaskan businesses under recommended rates recently suggested by the National Council on Compensation Insurance. The 1988 rates were unveiled during public hearings conducted by the State Division of Insurance October 22.

While the average rate increase is 25 percent, many businesses will see greater rate hikes. As a result, Alaskan employers will contribute up to $38 million more in 1988 to cover increasing workers' compensation claims. Workers' comp losses have more than doubled in the past four years, growing from $71 million in 1983 to $159 million in 1986. In 1986, Alaskan businesses paid $153 million. At the same time, payrolls have dropped below 1982 levels.

Rate classifications are divided into four sections. The average 1988 rate increase for each will be:

Manufacturing: includes bakeries, canneries, carpentry shops, machine shops and newspapers: **-14 to +36 percent.**
Contracting: includes plumbing, masonry, welding, electrical, water drilling, excavating, roofing and sewer construction: **+4 to +54 percent.**
Oil and Gas: includes oil companies, oil-field service companies and pipeline firms: **+18 to +68 percent.**
Other: includes logging, trucking, airline, retail sales, hospitals, hotels, restaurants, legal and government agencies: **-7 to +43 percent.**

Reacting to the rate announcement, WCCA president Steve Haag said the increases will certainly signal an end for some employers. "Without a doubt I can say some of the businesses here today will not be here several months from now, and the skyrocketing insurance rates will be a major cause of that," Haag said.

WCCA continues to prepare a legislative reform package for introduction to the 1988 legislature. The State House Labor and Commerce Committee will hold a public hearing on workers' compensation issues November 12.(See page 4.)

Scott Wetzel Services Incorporated

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FEBRUARY 10, 1988

SENATOR TIM KELLY,
REPRESENTATIVE DAVE DONLEY,
COMMITTEE MEMBERS
BOX V
JUNEAU, AK 99811

RE: CHIROPRACTIC CHARGES

DEAR SENATOR KELLY, REPRESENTATIVE DONLEY, AND COMMITTEE MEMBERS:

ATTACHED HERETO ARE A FEW SAMPLES OF CASES WHICH WE FEEL INVOLVE CHIROPRACTIC ABUSE INVOLVING BOTH EXCESSIVE TREATMENT AND/OR EXCESSIVE CHARGES.

AGAIN, I WISH TO STRESS THAT THIS IS A VERY SMALL SAMPLING OF ACTUALLY HUNDREDS OF SUCH CASES THAT WE HAVE HANDLED IN OUR OFFICE, BUT IT IS VERY TIME CONSUMING TO DIG OUT ALL THESE OLD FILES AND GO THROUGH THEM, AS I HAVE DONE ON THE SAMPLES WHICH ARE LISTED HERE.

ALL OF THESE FILES ARE AVAILABLE FOR INSPECTION IN OUR OFFICE, ALONG WITH MANY MANY MORE, SHOULD YOU OR YOUR COMMITTEE MEMBERS, OR OTHERS YOU MAY DELEGATE, CHOOSE TO LOOK AT THE ACTUAL CASE FILES.

I HAVE TRIED TO PROVIDE YOU WITH CASES ACROSS THE STATE TO SHOW YOU NOT ONLY ANCHORAGE CASES, BUT SOUTHEAST, FAIRBANKS, AND KODIAK AS WELL, SO THAT YOU WILL KNOW THE PROBLEMS ARE NOT ISOLATED TO A PARTICULAR AREA OR A PARTICULAR CHIROPRACTOR, BUT ARE WIDESPREAD COMMON PRACTICES.

IF I CAN PROVIDE YOU WITH ANY ADDITIONAL INFORMATION, PLEASE FEEL FREE TO CALL ON ME.

SINCEELY,

SCOTT WETZEL SERVICES, INC.

Renee Murray

RENEE MURRAY
VICE PRESIDENT

RM/CH

Sam McDole v. Municipality of Anchorage
DOI: 1/27/86

Mr. McDole started treatments with the Ireland Chiropractic Treatment Center on 4/28/86. From that date until his further chiropractic treatments were controverted on 7/29/87, he was treated a total of 137 times. The first office visit and modalities cost $507 and during this 15 month period, SWS paid the Ireland Clinic $12,842 for an average of $93.73 per visit.

Theodore Jette v. State of Alaska
DOI: 1/22/85 (Aggravation of pre-existing condition and gross obesity.)

During the period of 4/25/85 through 2/23/87 Theodore Jette was treated a total of 152 times, at a cost of $9,123.80. Further chiropractic treatments were controverted on 2/24/87. Attached is a copy of my letter of 11/10/86 to Dr. Thomas relative to his charges.

Izola Hopkins v. State of Alaska
DOI: 9/26/86

We are attaching hereto the Board Decision and Order, and I refer you to Page Three, the last paragraph, which contains information on the testimony of independent evaluator, John Vollers, D.C., a chiropractic expert on disability evaluation and second opinions, and an instructor in chiropractic. Dr. Voller reviewed the chiropractic treatment of Izola Hopkins, and the records of David Smith, D.C., at the New Frontier Chiropractic Clinic in Fairbanks, and indicated that he found the treatments to be extremely excessive, possibly resulting in the applicant's addiction to chiropractic manipulation to the neglect of physical therapy. Dr. Voller testified that the rough standard for frequency of treatment is once per day during the acute injury, for approximately one week; three times per week for the chronic stage, a maximum of four weeks; and thereafter steadily decreasing for a maximum of a six month period. From the time of the accident on 9/26/86 until the date of the hearing on 11/17/87, Dr. Smith or his partner had treated Ms. Hopkins 190 times, for an average of one visit every 2.08 days.

It should also be noted here that Izola Hopkins was treating with Dr. Smith prior to this injury and, in fact, had received a chiropractic treatment on the morning of the day of the injury, but her tretments accelerated and were at a higher cost following the 9/26/86 incident. For the period 10/13/86 through 9/13/87, (less than one year), we paid the New Frontier Chiropractic Center $17,080 on this claim. Although you will note from the Decision and Order that the Board found this witness not to be credible, and no further benefits of any type including medical, were allowed, there is no way possible to recoup the loss or the payment for chiropractic.

Dwight D. Saunders v. State of Alaska
DOI: 8/19/86

Mr. Saunders was also treated at the New Frontier Chiropractic Center, and during the period 9/14/86 through 6/22/87 they were paid the sum of $11,895, and he was treated 116 times, for an average of $102.54 per visit.

Robert MacNeven v. Municipality of Anchorage
DOI: 10/6/87, 3/26/87, / 16/86, and 8/6/80

Mr. MacNeven started going to Dr. Adrian Barber at the Alaska Chiropractic Clinic with his first back strain on 8/9/80. That was a minor incident, and he was seen only 11 times at a total cost of $971. The next injury was on 4/16/86, and he was treated by Dr. Kent at the Kent Chiropractic Clinic from 4/16/86 through 3/11/87. He was treated 63 times. There were no treatments from 9/16/86 through 2/9/87. The cost for this period of treatment was $4,335. The next low back strain occurred on 3/26/87, and treatments continued at the Kent Chiropractic Clinic from 3/16/86 through 7/30/87, for a total of $3,500. The next injury occurred on 10/6/87, and for the period of 10/6/87 through 12/28/87 we have paid $1,500 to Kent Chiropractic. Chiropractic treatments appear to have ceased on 1/15/88.

Emmet Heidemann v. Municipality of Anchorage

I am attaching a copy of my letter of February 17th, 1983, addressed to Dr. E. E. Waldrop, Chairman of the Ethics Committee of the Alaska Chiropractic Association. This case points up the differences that are charged to Workers' Compensation cases as opposed to private patients, and is being called to your attention for that purpose only, and not for prolonged treatment, inasmuch as this claimant only saw a chiropractor for a short period of time, and then switched over to an orthopedic physician.

Jeff Barnhart v. State of Alaska
DOI: 6/26/83, 10/10/83, and 8/19/84

For Mr. Barnhart's first backstrain of 6/26/83, he was treated 38 times at the Hediger Chiropractic Clinic in Kodiak, Alaska, at a cost of $1,420. His next back strain occurred on 10/10/83, and his chiropractic treatments continued at the Hediger Chiropractic Clinic and he was seen 46 times at a cost of $2,036.40. The next back strain occurred on 8/19/84 and Mr. Barnhart continued his treatments with the Hediger Chiropractic Clinic and he was seen a total of 134 times at a cost of $4,515.75. The payments are continuing to date. In other words, chiropractic treatments have continued uninterrupted since the first back strain of 6/26/83 for a total cost to date of $7,972.15, and a total number of chiropractic visits to date of 218.

David Mullens v. Municipality of Anchorage

Mr. Mullens has been under the chirpractic care of Robert Kent, D.C., of the Kent Chiropractic Clinic, since 1980. In the ensuing seven years, through 11/25/87, he had received 413 chiropractic manipulations at a total cost of $28,423. His chiropractic treatments are continuing to date. We are attaching a graph showing the pattern of his chiropractic care during this 7 year period, and you will note that, for the most part, he was treated an average of 3 times a week.

James Carter v. Municipality of Anchorage:
DOI: 11/18/83 and 2/28/85

For the period 10/12/84 through 3/30/87, Mr. Carter was treated by Dr. Barrington at the Community Chiropractic Clinic a total of 162 times at a total cost of $7,438. In addition, for the period 11/21/83 through 12/28/83 he was treated by chiropractor Cecil F. McLeod, at a total cost of $1,046. In addition, for the period 4/27/87 through 1/8/88 he has been treating with chiropractors Daniel W. Larson and/or James D. Martin, of the Valley Chiropractic Clinic in Wasilla. He has been seen a total of 39 times at a cost of $1,862 and these treatments continue to date. This is a total number of 201 chiropractic treatments at a total cost of $10,346, and his treatments are continuing. I am attaching a recent newspaper article in reference to Mr. Carter's homesteading activities, which you may find of interest.

Lenore J. Morris v. Pay n Save
DOI: 4/25/87

During the period 4/27/87 through 1/14/88 Miss Morris received chiropractic treatments from Dr. C. A. Rubley in Fairbanks. She was seen a total of 65 times at a cost of $5,340. Attached is an independent medical evaluation wherein Ms. Morris's condition is diagnosed as degenerative disk disease at multiple levels in the spinal column between the neck and the low back, and no treatment is needed for this condition.

E. Jayne Bowers v. Wien Air Alaska
DOI: 6/6/84

From the period of 6/7/84 and continuing to date, Ms. Bowers has treated with Kenneth Ketz, of the Anchorage Center for Chiropractic in Anchorage at a cost to date of $10,843. Frankly, this file is too large and it would have been too time consuming to count the actual number of visits, but the dollars speak for themselves.

Eleanor Frisby v. State of Alaska
DOI: 8/23/82

During the period 8/23/82 through 12/4/87, Eleanor Frisby was treated by Dr. Kenneth O. Ketz, at the Anchorage Center for Chiropractic, and the cost to date totals $10,907, and her treatments are continuing. Again, the file is too thick and the visits are too numerous for us to take the time to make an actual count.

Michael A. Mitchell v. Municipality of Anchorage
DOI: 4/30/86

During the period from 5/1/86 through 1/4/88 Mr. Mitchell has been treated by Robert W. Kent, of the Kent Chiropractic Clinic, a total of 65 times at a cost of $5,985. Treatments are continuing at this time.

Tim Copperstone v. Safeway Stores
DOI: 5/28/85

During the period from 5/29/85 through 11/2/87, Mr. Copperstone was treated by Dr. Craig B. Hediger, at the Wasilla Chiroprctic Clinic, a totl of 54 times, and we have paid the sum of $11,087 to date.

David Holt v. Safeway Stores
DOI: 4/9/86

During the period from 4/9/86 through 1/27/88, Mr. Holt was treated at the West Chiropractic Clinic in Soldotna a total of 120 times at a total cost to date of $11,127.50.

You may recall that David Holt is one of the injured workers who appeared before your committee at the public hearings on January 29th. I frankly do not recall what his complaints were, but I can tell you that he has been on continuing temporary total disability benefits of $473.44 per week since 4/10/86, and they are continuing today. So far, Mr. Holt has received the sum of $45,423.16 in time loss benefits, and $21,607.54 in medical benefits, the bulk of which of course is chiropractic. In addition to West Chiropractic Clinic, Mr. Holt drives from Soldotna to Eagle River to obtain his drug prescriptions from Osteopath Samuel H. Schurig, and we have controverted the payment of the mileage from Soldotna to Eagle River to visit this doctor inasmuch as there are competent medical doctors in the Soldotna area from whom he could obtain drug prescriptions.

Audrey Collins v. Safeway Stores
DOI: 1/31/87

During the period of 2/2/87 through 8/8/87 Audrey Collins was seen a total of 99 times by James D. Martin, of the Valley Chiropractic Clinic in Wasilla, at a total cost of $5,516.80. It may be of interest to note that she was also receiving chiropractic care from July 20th, 1984, up until January 20th, 1987, (11 days before the injury at Safeway), as a result of a Workers' Compensation claim that occurred at the Anchorage Daily News. Ms. Collins received time loss benefits through December 20th, 1987, at which time her benefits were controverted because she refused a job with her original employer. She has indicated she is going back to college to obtain a masters degree in psychology.

ALFRED J. DESSERT V. ALYESKA
DOI: 2/1/82

FOR THE PERIOD 9/7/83 THROUGH 8/30/84, MR. DESSERT RECEIVED 190 TREATMENTS FROM AVERY MARTIN AT THE FAMILY CHIROPRACTIC CLINIC AT A COST OF $7,840. MR. DESSERT CONTINUED HIS TREATMENTS WITH DR. MARTIN BEYOND THAT DATE, BUT FURTHER TREATMENTS WERE CONTROVERTED BY THE EMPLOYER.

DOUGLAS MERRITT V. STATE OF ALASKA
DOI: 7/7/83, 3/11/86 AND 2/3/87

FOR THE FIRST INJURY OF 7/7/83, MR. MERRITT WAS TREATED BY LELAND OLKJER, OF THE VALDEZ CHIROPRACTIC CENTER, A TOTAL OF 17 TIMES AT A COST OF $1,110.

FOR THE INJURY OF 3/11/86, HE WAS TREATED BY JAMES C. ABELL, OF THE ABELL CHIROPRACTIC CLINIC, FROM 5/7/86 THROUGH 6/17/86 AT A COST OF $1,214 FOR 17 VISITS.

FOR THE INJURY OF 2/3/87, MR. MERRITT WAS TREATED BY LELAND OLKJER, AT THE VALDEZ CHIROPRACTIC CENTER, FROM 2/6/87 THROUGH 4/6/87, A TOTAL OF 28 TIMES AT A COST OF $2,340. IN ADDITION, HE WAS TREATED BY DR. KENNETH O. KETZ, AT THE ANCHORAGE CENTER FOR CHIROPRACTIC, 7 TIMES AT A COST OF $336.

Scott Wetzel Services Incorporated
An Affiliate of The Home Group Inc
741 Sesame Street • Suite 1A • Anchorage, Alaska 99503
Phone: (907) 561-1725

November 10, 1986

John W. Thomas, Jr. D.C.
P.O. Box 871807
Wasilla, AK 99687

Re: Employee: Theodore Jette
Employer: State of Alaska
Date of Injury: 1/22/85
Claim Number: 2772

Dear Dr. Thomas:

We have recently received your statement in the amount of $893.00 for services rendered to Mr. Jette during the month of September and half of October.

This brings to $8,329.80 the sum that we have paid you in chiropractic treatments for Mr. Jette in less than one year. The interesting part about this is that Mr. Jette as well as the reports received from your office indicate that he is no better than he was since the begining.

You will note that both Dr. Horning and Dr. Kyzer have suggested that Mr. Jette enroll in the Back Treatment School at Alaska Treatment Center and we would appreciate your input as to whether or not you concur with this as a viable option for Mr. Jette in the hopes that his condition can be improved to the point where extensive chiropractic treatment will not continue to be necessary indefinitely. In addition, we note that you, as well as the other physicians, have all indicated that Mr. Jette should be involved in a weight reduction program with abdominal strengthening.

So far, it appears that Mr. Jette has not taken an active interest in attempting to better his own situation by following the well intentioned medical advice of all of you and we are therefore seeking your assistance in getting Mr. Jette involved in the Back School at Alaska Treatment Center and perhaps involved in a physical therapy program through a structured program such as Nautilis Fitness Center or something similiar.

Your thoughts and assistance in attempting to resolve this ongoing problem will be sincerely appreciated.

Very truly yours,

SCOTT WETZEL SERVICES, INC.

cc: Bremerton

cc: 90A

Renee Murray
Vice President

RM/km

Ted Jette vs. State of Alaska

CHIROPRACTOR: John W. Thomas - Wasilla

Date of Injury: 1/22/85

(Aggravation of pre-existing condition and gross obesity)

2/27/85	235 oc	4/3	54.
2/28	116.	4/4	85.
3/1	40	4/8	54.
3/4	72	4/9	54
3/5	72.	4/10	54
3/6	94.	4/11	54
3/7	72.	4/12	54.
3/8	72.	4/15	54
3/11	72.	4/16	54.
3/12	54.	4/17	54.
3/13	54.	4/18	54.
3/14	54.	4/19	54.
3/15	54	4/22	54.
3/18	86	4/23	85.
3/19	54.	4/24	54.
3/20	54.	4/25	54.
3/21	54.	4/26	54.
3/22	85.	4/29	54.
3/25	72.	4/30	54.
3/27	72.	5/1	54.
3/28	72	5/2	54
3/29	72.	5/3	54.
4/1	54.	5/6	94.
4/2	54	5/8	85.

Ted Jette (cont.)

5/10/85	54.	
5/13	54.	
5/15	54.	
5/17	54.	
5/20	85	
5/22	- 54	
5/23	- 54	
5/28	54	
5/29	54	
5/31	54	
6/3	54	
6/4	54	
6/5	54	
6/6	54	
6/10	54	
6/11	54	
6/17	85	
6/18	54	
* 6/19	54	(~~scratched~~)
6/20	54	
6/21	54	
6/24	54	
6/27	54	
7/1	54	
7/3	54	
7/5/85	- 54	
7/8	86	
7/10	54	
7/11	54	
7/12	54	
~~7/15~~	54	
7/22	103.	
7/23	72.	
7/24	72.	
7/26	32.	
8/20	110.	
8/22	54.	
8/26	54.	
8/29	54	
10/22	63.	
10/23	32.	
10/24	32.	
10/25	32.	
10/28	32.	
10/30	94.	
11/1	32.	
11/4	32.	
11/7	32.	
11/13	32	
11/18	32.	
11/21	32.	
11/25	63.	

- Ted Jette (continued)

11/29/85	-	32	
12/3	-	51.80	
12/10		32.	
~~12/14~~		—	
12/17		32.	
12/24		32.	
1/8/86		63.	
1/17		32.	
1/28		32	
2/7		54.	
2/18		48.	
3/3		63.	
3/17		32.	
3/31		32.	
4/14		54	
6/5		85	
6/10		76	
6/17		76	
6/23		76	
7/9		107.	
7/21		76.	
7/28		54.	
8/4		76.	
9/11		85.	
9/12		76.	
9/16		76.	
9/17		124	
9/19/86	—	76.	
9/22		76	
9/24		76	
9/29		76	
10/2		76	
10/6		76	
10/9		76	
10/13		76	
10/16		85	
10/20		54.	
10/27		54.	
11/13		54.	
11/21		76.	
11/25		54	
~~12/10~~		—	
12/19		32.	
12/24		63.	
12/31		32	
1/12/87		54	
1/20		32	
1/26		32	
2/2		32	
2/6		40	
2/9		63	
2/11		40	
2/17		32	
2/23		32	
152 visits		$9,123.80	

ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 1149 Juneau, Alaska 99802

IZOLA HOPKINS,

Employee,
Applicant,

v.

STATE OF ALASKA, PIONEER HOME,

Employer,
(Self-Insured),
Defendant.

DECISION AND ORDER

Case No. 620457

We heard this claim for temporary total disability (TTD) benefits, medical benefits, attorney's fees, and costs on November 17, 1987 in Fairbanks, Alaska. Attorney Michael Stepovich represented the applicant employee, and attorney Shelby Nuenke-Davison represented the defendant employer.

ISSUES

1. Is the applicant entitled to TTD benefits under AS 23.30.185 from May 13, 1987 continuing?
2. Is the applicant entitled to chiropractic care medical benefits under AS 23.30.095(a) from May 13, 1987 continuing in excess of that already paid by the defendants?
3. Is the applicant entitled to statutory minimum attorney's fees and costs under AS 23.30.145?

SUMMARY OF THE EVIDENCE

On September 26, 1986 while working as a licensed practical nurse for the defendant, the applicant injured her neck, back, shoulder, and right arm when a large, elderly patient she was supporting unexpectedly attempted to sit on the floor. Following the injury she saw her chiropractor, David Smith, D.C., at the New Frontier Chiropractic Clinic, who diagnosed vertebral subluxation complexes and restricted her from returning to work. She was treated by her chiropractor nearly daily for several months, then approximately three times per week through the date of the hearing with mobilization, cryotherapy, heat treatment, kinescotherapy, nimmotherapy, and traction.

The applicant testified that before her injury on September 26, 1986 she had never been treated for or suffered from neck problems. In her deposition on September 1, 1987 she at first denied having seen a chiropractor before the injury (Hopkins Dep. p. 24),

but later admitted consulting Dr. Smith previously for low back pain (id. at 28.). In a questionnaire the applicant completed for the state's adjuster, Scott Wetzel Services, on October 20, 1986 she denied any previous injury to her right arm or troubles with her back. In the hearing she admitted seeing Dr. Smith in July of 1986 for sinus problems and for right elbow pains, which she first noticed earlier that month during C.P.R. classes.

Dr. Smith's medical records reveal that the applicant first came under his care on July 11, 1986. Her chief complaint is recorded as being cervical and dorsal pain; she also complained of right elbow pain and headaches. The chiropractor treated her neck, back, and low back, using the same therapies mentioned above from July through the morning of September 26, 1986, a few hours before her injury.

On November 10, 1986 the applicant was seen by Edwin Lindig, M.D., an orthopedic surgeon, who diagnosed cervical myalgia and epicondylitis of the right elbow. Dr. Lindig recommended swimming (which she found onerous), anti-inflammatory medication (to which she felt she would be allergic), and Tylenol (which she did take.) He saw her again on November 19, 1986, and found that she had a full range of motion in her neck and arm, but with a persistent tenderness in those areas. He ascribed her condition to the injury she suffered on September 26, 1986. In the hearing Dr. Lindig testified that she had denied previous upper-back problems, that he had relied on this assertion, and that the chiropractic records of earlier treatment which have now been made available to him have led him to withdraw his opinion about the cause of her physical difficulties.

On January 12, 1987 the applicant was referred to George Vrablik, M.D., another orthopedic surgeon, by the defendants for an medical examination. Dr. Vrablik diagnosed cervical and upper back strain and restricted her from returning to work as a nurse at that time. He recommended weight loss, therapeutic swimming and a work-hardening physical therapy program. She began to participate in the Weight Watchers program until it became financially burdensome, was still unable to tolerate swimming, and soon discontinued the physical therapy when it exacerbated her symptoms. Dr. Vrablik found normal grip strength and mild cervical motion limits during the January visit. On May 1, 1987 he saw her again and approved a physical capabilities evaluation limiting her standing, walking, and sitting; and limiting frequent lifing to 20 pounds, and occasional lifting to 50 pounds.

At the hearing Dr. Vrablik testified that the chiropractic records regarding the applicant's pre-injury treatment reflect symptoms that are virtually identical to the post-injury symptoms. Dr. Vrablik interprets these records to indicate that the applicant's range of motion improved at the time of the injury. He testified

that in his judgment the injury of September 26, 1986 caused no substantial change in her condition, at most a temporary aggravation, and that his physical capabilities evaluation would have been the same for her even if she had not suffered the September 26, 1986 injury.

In the spring of 1987 Dr. Smith left the state to pursue advanced training. His partner in the New Frontier Clinic, George Allen, D.C., took over as the applicant's treating physician, using the same therapies at the same frequency. At the hearing Dr. Allen testified and interpreted Dr. Smith's records. The applicant had been treated by Dr. Smith for neck and back problems from July 11, 1986 onward, but the upper cervical problems were much improved by the time of an evaluation performed on September 12, 1986. The chiropractic evaluation of September 30, 1986 showed low back irritation that affected the entire spine and a loss of grip strength in the right hand. In Dr. Allen's judgment the applicant's condition from September 30, 1986 on was the result of her September 29, 1986 injury.

On or about April 21, 1987 the applicant was referred by Northern Rehabilitation to a job interview with Sew N'Vac, but the applicant declined the position because she did not feel she could physically perform the job and because she was planning to take a vacation. Subsequently this job analysis was approved by Dr. Vrablik for the applicant, but disapproved by Dr. Allen. When the applicant rejected the position the defendants controverted her benefits, but continued to pay some chiropractic charges for a "tapering off" period.

John Vollers, D.C., a chiropractic expert on disability evaluation and second opinions, and an instructor in chiropractic, testified that Dr. Smith's records showed no substantial change in the applicant's symptoms or condition as a result of her injury on September 29, 1986, other than a possible brief exacerbation which would have been resolved by the time of Dr. Lindig's November 19, 1986 evaluation. Dr. Voller's also expressed concern over the frequency of the treatments given at the New Frontier Clinic, which Dr. Voller's found to be "extremely excessive," possibly resulting in the applicant's "addiction" to chiropractic manipulation to the neglect of physical therapy. Dr. Voller's testified that the rough standard for frequency of treatment is: once per day during the acute injury period, for approximately one week; three times per week for the chronic stage, a maximum of four weeks; and thereafter steadily decreasing for a maximum of a six-month period. From the time of the accident to the date of the hearing the applicant had attended 190 treatment sessions, an average of one visit every 2.08 days.

Dr. Vollers was also troubled by the method of charging for treatment at the New Frontier Clinic. Instead of incorporating

several procedures under the office visit charge, as is standard practice, this clinic charged an additional fee for each mode of therapy employed. Dr. Voller's also questioned Dr. Smith's diagnostic skills, indicating that the combination of symptoms reported by Dr. Smith would have indicated gross brain damage.

The applicant argues that she is still disabled from the September 26, 1986 injury, that her TTD and full medical benefits should be restored, and that she is entitled to an award of attorney's fees and costs against the defendants. The defendants argue that they should not be required to pay any additional benefits. Although they do not intend to challenge the applicant's receipt of benefits before the controversion of April 21, 1987, the record is clear that any exacerbation suffered by the applicant on September 29, 1986 was resolved to pre-injury status long before the controversion.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Pre-Existing Injury

AS 23.30.120(a) provides in the pertinent part: "In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that (1) the claim comes within the provisions of this chapter. . . ."

The facts in this case raise the question of whether this claim should have been regarded as compensable at all, suggesting that any need for medical care by the applicant was actually the result of neck and back injury predating the claim. Nevertheless, in Thornton v. AWCB, 411 P.2d 209, 210 (Alaska, 1966) the court held that "a pre-existing disease or infirmity does not disqualify a claim under the work-connection requirement if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the death or disability for which compensation is sought."

In Burgess Construction v. Smallwood, 623 P.2d 312, 316 (Alaska 1981), the Alaska Supreme Court held that the applicant must establish a preliminary link between the injury (or in this case, its aggravation) and the employment. Once the applicant makes a prima facie case of work relatedness the presumption of compensability attaches and shifts the burden of production to the defendants. In the case before us the testimony of Dr. Allen and the applicant indicates that the medical difficulties suffered by the applicant during the period of this claim were all caused by, or aggravated by the injury of September 26, 1986. We find that the applicant established such a "preliminary link", and that the presumption of compensability has attached.

To overcome the presumption of compensability, the defendants must present substantial evidence the injury was not work-related. Id.; Miller v. ITT Arctic Services, 577 P.2d 1044, 1046 (Alaska 1978). Substantial evidence has been consistently defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Miller, 577 P.2d at 1046. In Fireman's Fund American Insurance Cos. v. Gomes, 544 P.2d 1013, 1016 (Alaska 1976), the court explained two possible ways to overcome the presumption: 1) producing affirmative evidence the injury was not work-related; or 2) eliminating all reasonable possibilities the injury was work-related. "Since the presumption shifts only the burden of production and not the burden of persuasion, the evidence tending to rebut the presumption should be examined by itself." Veco Inc. v. Wolfer 693 P.2d 865, 869 (Alaska 1985). The defendants have produced a substantial body of evidence tending to rebutt the presumption, but the defendants did not specifically raise this issue in the prehearing on this case and they chose not to raise or argue this issue at the hearing. This being the case we cannot find that the presumption has been rebutted, regardless of the weight of evidence before us. Simon v. Alaska Wood Products, 633 P.2d 252, 254 (Alaska 1981). We conclude that this was a compensable claim at the time of the September 26, 1986 injury.

II. The Duration of the Compensability of the Claim

The Board has a long-established conclusion that the presumption of compensability applies only to the issue of work connection, not the issue of the nature and extent of disability, supported by a detailed analysis in Arthur Keyes v. Reeve Aleutian Airways, Inc., AWCB Decision No. 85-0312, AWCB Case No. 101061 (November 8, 1985). Beebe v. Providence Hospital, AWCB No. 84-0290 (September 20, 1984), aff'd, 3AN-84-8763 (Alaska Super. Ct., March 11, 1987). Nevertheless, the Alaska Supreme Court has referred to rebutting the "presumption of continuing compensability for temporary total disability." Bailey v. Litwin Corp., 713 P.2d 249, 254 (Alaska 1986).

Even if the applicant should enjoy the benefit of a presumption of continuing compensability, which is doubtful, we are persuaded that the defendant has produced substantial evidence to rebut such a presumption beyond May 13, 1987, the date of controversion. The defendant decided to limit, then terminate the applicant's chiropractic care based on the examination of the applicant and of his medical records by Dr. Vrablik, and on the examination of his medical records by Dr. Vollers. Dr. Vrablik testified that the applicant had returned to pre-injury status by May 1, 1987, and Dr. Vollers testified that she had done so by November 19, 1986. Both of

these dates are before the defendants' date of controversion, May 13, 1987.

Because the defendants have produced substantial evidence that the injury was not work-related, the presumption drops out, and the employee must prove all the elements of his claim by a preponderance of the evidence. Saunders v. State of Alaska, AWCB No. 87-0217 (September 16, 1987). Veco, 693 P.2d at 870. See also Dickman v. Providence Washington Insurance Group, AWCB No. 87-0015 at 11 (January 21, 1987); Tamagni v. Alaska National Bank of the North, AWCB No. 86-0009 at 5 (January 14, 1986); Keyes, AWCB No. 85-0312 at 12-13, and n.5 (November 8, 1985).

We are very troubled by the inconsistency of the applicant's testimony at her deposition, at the hearing, and in her documents. Considering these inconsistencies and convenient omissions we cannot find her to be a credible witness, or give any weight to her testimony. AS 23.30.122. Dr. Voller's professional criticism of the records, diagnosis, billing and treatment of this applicant casts a shadow over the motivation and competence of the New Frontier Chiropractic Clinic staff. We find that evidence from the clinic must be held suspect in this case. This leaves the applicant with very little evidence to counter the opinions of Drs. Vrablik and Vollers that the applicant was in her pre-injury medical condition at the time of the defendants' controversion. We conclude that the applicant has failed to prove by a preponderance of the evidence that she is entitled to benefits beyond the date of the defendants' controversion of her claim.

III. Attorneys Fees and Costs

The applicant requests statutory minimum attorney's fees. As no compensation has been awarded, no attorney's fees may be awarded. AS 23.30.145(a).

ORDER

The applicant's claim for temporary total disability benefits from May 13, 1987 continuing, for medical benefits, and for attorney's fee and costs is denied and dismissed.

DATED at Fairbanks, Alaska, this 2nd day of December, 1987.

ALASKA WORKERS' COMPENSATION BOARD

William S.L. Walters, Designated Chairman

(Not Available For Signature)
Joe J. Thomas, Member

Steve M. Thompson, Member

WSLW/eb

If compensation payable under terms of this decision it is due on the date of issue, and penalty of 20-percent will accrue if not paid within 14 days of the due date unless interlocutory injunction staying payment is obtained in Superior Court.

APPEAL PROCEDURES

A compensation order may be appealed through proceedings in the Superior Court brought by a party in interest against the Board and all other parties to the proceedings before the Board, as provided in the Rules of Appellate Procedure of the State of Alaska.

A compensation order becomes effective when filed in the office of the Board, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

Scott Wetzel Services Incorporated
An Affiliate of The Home Group, Inc
741 Sesame Street • Suite 1A • Anchorage, Alaska 99503
Phone: (907) 561-1725

FEBRUARY 17, 1983

E. E. WALDROUP, D. C.
6851 JEWELL LAKE ROAD
ANCHORAGE, AK 99502

RE: ETHICS COMMITTEE-ALASKA CHIROPRACTIC ASSOCIATION

DEAR DR. WALDROP:

I'M WRITING TO YOU AS CHAIRMAN OF THE ETHICS COMMITTEE OF THE ALASKA CHIROPRACTIC ASSOCIATION ABOUT A SITUATION WHICH I FEEL SHOULD BE CALLED TO THE ATTENTION OF YOUR COMMITTEE.

I'VE ATTACHED HERETO COPIES OF TWO BILLS FROM THE EAGLE RIVER CHIROPRACTIC CLINIC (GERALD W. LIZER, D.C.) WHEREIN IT IS CLEARLY INDICATED HE HAS TWO SEPARATE METHODS OF BILLING; ONE FOR PATIENTS WHO ARE COVERED BY WORKERS' COMPENSATION INSURANCE AND A LOWER BILLING RATE FOR PATIENTS WHO PAY ON A PERSONAL BASIS. THE $58 BILL WAS GIVEN DIRECTLY TO THE PATIENT AND YOU WILL NOTE THAT THE 12/28/82 CHARGE FOR PROCESS NUMBER 97260 IS IN THE AMOUNT OF $24 AND ON THE BILLING TO US THE SAME VISIT IS CHARGED OUT AT $28. THE SAME SITUATION APPLIES ON DECEMBER 30TH AND IN ADDITION FOR PROCESS NUMBER 97119, THE PATIENT WAS CHARGED $10 WHEREAS WE WERE CHARGED $26.

YOU WILL NOTE ON BOTH INVOICES, THE PRINTED CHARGE HAS BEEN CROSSED THROUGH AND ON INVOICE NUMBER 3577 WHICH WAS GIVEN TO THE PATIENT, THE $22 CHARGE WAS CHANGED TO $24 AND ON THE BILLING TO US, IT WAS CHANGED FROM $26 TO $28.

IN ADDITION, ON THE INSURANCE BILLING, I CALL YOUR ATTENTION TO THE CHARGE ON 1/10/83 FOR PROCESS 72010---X-RAYS OF ENTIRE SPINE, WHEREIN THE STATED PRICE ON THE INVOICE IS $56 AND WE HAVE BEEN CHARGED $95.

FRANKLY, THE INSURANCE INDUSTRY IS OF THE OPINION THAT THIS PRACTICE IS RATHER WIDE-SPREAD AMONGST MANY OF THE CHIROPRACTORS AND IT IS MOST UNFORTUNATE FOR THE REPUTATION OF ALL THE GOOD DOCTORS THAT THEY MUST SUFFER FOR THE UNETHICAL PRACTICES OF A FEW.

THIS IS NOT THE FIRST TIME THAT WE HAVE ENCOUNTERED THIS SITUATION, ALTHOUGH I DON'T RECALL IT SPECIFICALLY BEING THIS SAME CLINIC, BUT IN MOST INSTANCES WE ARE SIMPLY TOLD THAT IT WAS AN ERROR IN BILLING AND IT IS SIMPLY SWEPT UNDER THE RUG. I DO NOT THINK THAT IS THE PROPER SOLUTION AND THAT IS WHY I AM CALLING THIS MATTER TO YOUR ATTENTION FOR THE PROPER ACTION.

IN ADDITION TO THE OBVIOUS OVERCHARGE, WE WOULD LIKE TO ADD THE ADDITIONAL COMPLAINT OF EXCESSIVE CHARGES. WE ARE ATTACHING COPIES OF THE BILLINGS FROM THE EAGLE RIVER CHIROPRACTIC CLINIC FOR THE PERIOD 12/28/82 THROUGH 2/7/83, AND IN THAT PERIOD OF JUST OVER ONE MONTH, THE CHARGES TOTAL $1,387.50. INVOICE NUMBER 3640 INDICATES TOTAL CHARGES OF $521 BUT IN ADDING THE INDIVIDUAL CHARGES, THEY ONLY TOTAL $441 AND THAT IS THE AMOUNT WE HAVE USED IN ARRIVING AT THE TOTAL OF $1,387.50. HOWEVER, THERE MAY BE A CORRECTION ON THIS BILL IN THAT PROCESS NUMBER 90000 IS WHITED OUT AND INDICATES $2 AND THIS IS PROBABLY AN ERROR THAT THEY MEANT TO CORRECT BUT DIDN'T.

I MIGHT ALSO STATE THAT IT IS BECAUSE OF THE PRACTICE OF GOUGING INSURANCE COMPANIES BY THE CHIROPRACTIC AND MEDICAL COMMUNITY THAT THERE IS A LOBBYING EFFORT UNDERWAY TO HAVE A BENEFIT PAYMENT SCHEDULE ON ALL WORKERS' COMPENSATION CLAIMS AND NO CHARGE IN EXCESS OF THE BENEFIT SCHEDULE WOULD BE ALLOWED OR PAYABLE.

THANK YOU VERY MUCH FOR LOOKING INTO THIS MATTER FOR US.

VERY TRULY YOURS,

SCOTT WETZEL SERVICES, INC.

RENEE MURRAY
ALASKA MANAGER

RM/VP

CC: AWCB (WITH ENCLOSURES)

Scott Wetzel Services Incorporated
An Affiliate of The Home Group, Inc
741 Sesame Street • Suite 1A • Anchorage, Alaska 99503
Phone: (907) 561-1725

March 7, 1984

George B. Wichman, M. D.
3645 LaTouche Street
Anchorage, AK. 99508

Re: Patient #5-77108
James M. Carter vs. Municipality of Anchorage
Date of alleged injury - 11/18/83

Dear Dr. Wichman:

You and I go back a good many years. In fact, long enough that I recall when you used to jokingly tell all your patients all they needed was a vacation in Hawaii - and one of them took you seriously and the comp board made the insurance carrier pay the claim. You assured me you had learned a lesson and would never repeat that mistake again. I doubt the Board would ever rule that way again because most of the ground rules have changed since those days.

Anyway, working up to the present, we now have the case of James M. Carter who was operated on with a laminectomy on 2/3/84 and given a 10% P.P.D. rating one week later with the recommendation that he be given a settlement so that he might be able to take a vacation in a warmer climate.

First of all, that "ain't the way the game is played anymore". Even in the "old days" when we used to make lump sum settlements for a P.P.D. rating, the Board would not accept a P.P.D. rating until a year or more following a back surgery.

Under current regulations, there is no such thing as a lump sum P.P.D. settlement per se. Settlements, if any, are now predicated on loss of wage earning capacity which can only be determined after the employee returns to gainful employment. If he returns to the same or similar employment, with no loss in wage earnings, he receives nothing.

Obviously, this determination is very premature in Mr. Carter's case. If he recovers and is able to return to his prior employment, he will suffer no wage loss. If he is unable to return to his former occupation, we are required by law to rehabilitate him to a new occupation and when he returns to employment and is again earning wages, then, and only then can his wage earning impairment, if any, be determined.

Should he, in fact, have an earning impairment, the Board generally favors a weekly payment as opposed to a lump sum payment in order to remove any disincentive to prolong disability to wait for a large settlement. I'm sure you will agree that this is a much more reasonable and humanitarian approach to claims handling.

Now the system is designed to return everyone to an active and productive life style in the shortest possible time, which is obviously the best possible result for an injured employee.

I am telling you all of this because I learned recently in a conversation with Dr. Reese that the medical profession is often the last to know of changes in the worker's compensation laws and methods of handling claims. This is really unfortunate because you are such an integral and important factor in the handling of worker's compensation claims. Perhaps we should have a joint meeting and discuss some of these factors.

At any rate, returning to the case of James Carter, he is now under the impression that we owe him a trip to Hawaii. Dr. Wichman, that is not the case and we are not going to do it. I seriously doubt that this back surgery is unique among the thousands of others and that he alone deserves an all expense trip to Hawaii.

Unless and until the Worker's Compensation Board rules that all back surgery patients must be sent out of state to warmer climates to recuperate or live, we are not going to set any precedents by paying for anyone to go to Hawaii, or anywhere else, including Mr. Carter. I feel sure you will understand and agree with our position.

As you know, Mr. Carter took the matter of his lump sum settlement for the rating you gave him to the Worker's Compensation Board and he was given the same information that I have provided you above. Mr. Carter has indicated to us that you told him the Board was wrong and he is still demanding we give him some kind of lump sum, although none of us have any basis to determine what that lump sum should be based on. The old days of a 10% P.P.D. computing to $3000.00 or $6000.00 are long gone.

It's a whole new ball game and we all have to play according to current rules, whether we like it or not. Old habits die hard, but fortunately they do die and everyone is usually better off for it.

Anytime you or your associates would like to take time out of your busy schedules to meet with me, or others from our industry, we will be happy to accomodate you.

Best personal regards,

Renee Murray
Vice President
SCOTT WETZEL SERVICES, INC.

RM/ss

cc: Alaska Worker's Compensation Board
cc: James Carter

IRA

JAMES G. GOLLOGLY, M.D., F.R.C.S. (C)
DOCTOR'S MEDICAL & SURGICAL CLINIC
411 FOURTH AVENUE
FAIRBANKS, ALASKA 99701

TELEPHONE 907-452-4646
907-452-2167

December 16, 1987

ORTHOPAEDIC CONSULTATION

Re: Lenore Morris
Referred by: Becky McLoud, Scott Wetzel Services

HISTORY OF PRESENTING COMPLAINT:

Ms. Morris, a 44 year old white female, relates that she works for Pay and Save, Gavora Mall, as a cashier/clerk/stocker. She has been working there for the past eight years, and in March of 1987, felt that she injured herself when she was lifting boxes and putting up shelving. She noticed a throbbing pain in her low back after she had been lifting up boxes of boots to put on a cart. This was almost at the end of the day, so she finished her shift and went home. When she got up the next morning, her back was still bothering her, so she went to the chiropractor, Dr. Rublee. She took that day off work, but returned to work the next day, and has been at work all the time without any further time lost. Her back is still hurting, but she is still doing her regular job. She is also still going to the chiropractor, approximately three times a week. There was an interval when she did not attend the chiropractor, as about the 15th of July, she was told that Worker's Comp would not pay for it any longer, so she stopped. Then she started going again in November because she started "aching all over."

PRESENTING COMPLAINTS:

She says now that her back still bothers her. She has no real idea of what causes this, but it is now associated with her arms going to sleep, and headaches. She says that sometimes when her back hurts it will go right down into the bottom of her feet and her heels will hurt. The chiropractors are reported to have said that thermo-

December 16, 1987
Re: Lenore Morris

graphy does not show anything, and nobody has given her a clear idea of what is wrong.

PAST MEDICAL HISTORY:

This is notable for her tonsils and adenoids being removed in 1971. Otherwise, she has had two children, who are now aged 27 and 25, and has been very well.

MEDICATIONS:

She occasionally takes Motrin for her menstrual cramps. She gets this medication from Dr. Steiner.

ALLERGIES:

She is not allergic to anything.

SOCIAL HISTORY:

She is originally from Missouri, where she dropped out of high school, but subsequently obtained her GED. She has never been to college. She came up to Fairbanks in 1974, and has been working for Pay and Save, here, since about 1976. She has worked most of her married life, variously in K-Mart and St. Elizabeth's Hospital in Oregon, and in Pay and Save at various locations. She has been married to her first husband for 28 years, and he is self-employed, owning a collection agency and a towing company.

COMPENSATION LEVEL:

She is currently at work and receives her normal work wages. She does not really know if there are any significant compensation problems.

ON EXAMINATION:

She is a very pleasant, middle-aged lady, who weighs 143 pounds and is 5'1.5" tall. Her blood pressure today is 90/50.

EXAMINATION OF HER HEAD:

This appeared to be normal. There was no obvious cause for headaches that I could

detect, as she had good dentition, her ears were normal, and there were no visual problems.

EXAMINATION OF HER NECK:

She had a good range of movement of her neck. She did, however, have some pain when her head was compressed on her neck, and much less pain when her head was distracted from the neck. The pain was localized mainly to the back of the neck.

EXAMINATION OF HER THORACIC AND LUMBAR SPINE:

This looks normal without any obvious deformity. There is a good range of movement of the spine, and she can flex forward to within three inches of the floor. As she straightens up, she does experience some pain in her back, manifest by her putting her hand behind her back. Extension can be carried out to approximately 20 degrees, and lateral flexion is 30 degrees on either side. She is tender at the lumbosacral junction and in the L2 area, and also is minimally tender in multiple other areas.

EXAMINATION OF HER LEGS:

Her leg lengths are equal, and her legs look normal, without any obvious deformities. She has no obvious muscle wasting. The Trendelenberg tests are normal, and straight leg raising tests are normal; LaSegue's signs are negative; the ankle jerks and knee jerks are present and equal bilaterally; the sensation is normal in all the dermatomes; and the power is normal in all the muscle groups tested. The pulses in her feet seemed to be normal.

EXAMINATION OF HER ARMS:

Both arms looked completely normal. There is no evidence of any deformity or muscle wasting. There is a full range of movement of all the joints; the sensation appears to be appropriate in all dermatomes; and the power is normal in all the muscle groups. She does, however, have Tinel's sign positive on both wrists, and Phalen's sign is also positive in both wrists, with the left experiencing more tingling and

numbness than the right. She thus has evidence of carpal tunnel syndrome.

REVIEW OF THE X-RAYS:

Initially, I thought she had no x-rays, so I x-rayed the involved areas of her body today. In the cervical spine, she was seen to have degenerative disc disease at C5-6, with some anterior osteophytosis at this level and some posterior osteophytes encroaching on the neural foramen, but nothiang that would be unacceptable for her age. Similarly, in the thoracic spine, she had some degenerative disc disease with anterior spurring at multiple levels. In the lumbosacral spine, there were minimal signs of disease, but these minimal signs were concentrated at L4-5 and L3-4. There was no advanced disease in any area. An x-ray of both wrists showed that there was a cyst in the right scaphoid, but it was unlikely that this abnormality was contributing to the carpal tunnel syndrome, which was worse on the left wrist.

Subsequent to her leaving, I found a rolled up packet of x-rays and notes from the chiropractor. The x-rays dated from November 5, 1987, and essentially showed the same manifestations of mild degenerative disease, as did the x-rays that I took earlier.

REVIEW OF THE RECORDS:

I do have two lots of copies of the chiropractor's records. According to the notes, she was initially seen by Dr. Rublee on April 27, 1987, and the diagnosis at that time was acute traumatic lumbosacral strain. The chiropractic treatment then commenced. Treatment continued through August 14, 1987, when it was stated that the patient was still having pain and discomfort in the area of injury, and that this was aggravated by her work. However, on June 30, 1987, a note stated that on June 16, 1987, she had started experiencing pain in the cervical and thoracic regions, and at this time chiropractic treatment had been extended to these regions. A new report dated November 15, 1987, by Doug Kenyon, D.C., now diagnoses "muscular strain in the

December 16, 1987
Re: Lenore Morris

low back; cervical brachial syndrome."

DIAGNOSES:

My diagnoses are as follows.

1. Degenerative disc disease at multiple levels in the spinal column between the neck and the low back.

2. Bilateral carpal tunnel syndrome, left worse than right.

3. Possible polymyalgia rheumatica.

DISCUSSION:

Ms. Morris' initial story seems quite clear. She had some back pain at work and this bothered her for a few months. She initially received treatment for this from the chiropractor. About two months after this, she started having having pain in the neck and tingling in the arms. This has all been treated as an exacerbation of the original "injury" two months earlier. The treatment has continued and there is no clear basis put forward in the records as an explanation for the increase of the patient's symptoms.

As far as I am concerned, it seems clear that Ms. Morris has degenerative disease in the spinal column in the cervical, thoracic and lumbar areas. She also has bilateral carpal tunnel syndrome. In addition to this, I have the feeling that there is something else going on: that perhaps she has some arthritis or other underlying condition.

RECOMMENDATIONS:

I cannot see that treatment should continue without a more specific diagnosis in this case. The carpal tunnel syndrome seems obvious to me, and I think she should receive some treatment for this. This is new and has not been so far identified. The degenerative disc disease in her spine is common, and probably does not need a lot of treatment, as she can learn to modify her activities and then to ameliorate her

DOCTOR'S MEDICAL & SURGICAL CLINIC
FAIRBANKS, ALASKA 99701

December 16, 1987
Re: Lenore Morris

symptoms as necessary. I have, however, sent off some tests to see whether she has some sort of arthritis and these results should be forthcoming soon.

ABILITY TO WORK:

I have told Ms. Morris today that she could continue working, as she has been, but that she should try to modify her heavy work and not attempt to do as much as she was able to do twenty years ago. It seems to me that she is a very consciencious and probably very capable worker, and maybe at this point in her life, is doing more than other workers would consider reasonable.

CAUSAL RELATIONSHIP:

I have no doubt that her back started to ache after lifting boxes at work, back in April. However, I think there are other explanations for her other symptoms. Her carpal tunnel syndromes are most likely to be work related, and she may have an arthritic condition.

DISABILITY RATING:

I do not think that Ms. Morris is disabled in any permanent sense.

Sincerely,

James G. Collogly, M.D.
Orthopaedic Surgeon

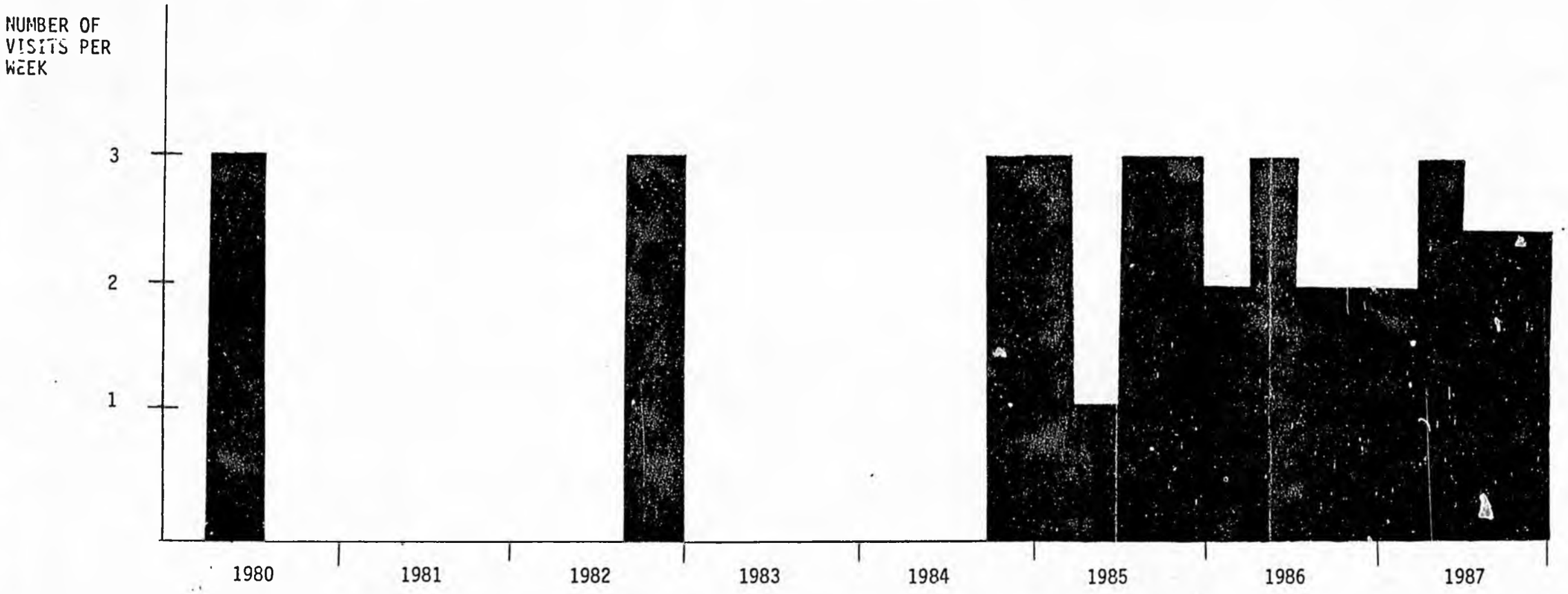
December 22, 1987

Addendum:

Her sedimentation rate was 48 mm/hr; she has abnormal thyroid function tests, and may be hypothyroid; and is also slightly anaemic. She needs an internal medicine evaluation, which I will organise.

HISTORY OF CHIROPRACTIC CARE FOR DAVID MULLINS

TREATED BY ROBERT KENT, D. C.



Mullins reported nine neck and/or back injuries between 1980 and 1987 and total chiropractic care cost

WHAT PRICE FREEDOM?

Economic realities strip the romance out of homesteading

By E.W. PIPER
Daily News reporter

The first day Jim and Gerry Lee Carter stepped foot onto what would become their homestead, they found a brown-bear track as big as the hubcap on a Volkswagen. "That," says Gerry, "was letting us know we had neighbors."

There aren't many human neighbors around the Carters' 160-acre agricultural homestead on the north side of Willow Creek. But there's plenty of wilderness: bears, moose, virgin land waiting to come under the plow. Sometime this spring, they'll have "proved up," giving life to the Jeffersonian ideal of yeoman pioneers carving a life out of the forbidding frontier by the honest sweat of their brows.

Well, not quite.

Jim Carter, Alaska homesteader: "When people start talking about homesteading, they think, 'Free land! We're going to live out in the boonies and get away from people!' That's not us. If we wanted to isolate ourselves, I wouldn't have put in the road."

Gerry Carter, pragmatist: "I think a lot of people would like to homestead, but a very small percentage can actually do it."

Alaska is the last place an American can stake a homestead, gaining title to the land by building a home and living on the land for a designated period. When the state Department of Natural Resources offers 5,300 acres of state land early next month, officials expect applications will come pouring in from would-be pioneers planning to duplicate the Carters' wilderness experience. Since the homestead program was created in 1984, record numbers of people have participated in lotteries and land disposals.

State land disposals are very much 20th-century programs, complete with government regulations and 20-year loans, surveying costs and soil conservation plans. Yet to many of the applicants, the programs provide a red-blooded rush of 19th-century nostalgia, an intoxicating potion mixed from equal parts of American Dream and Manifest Destiny.

"People still harbor the idea that they want to be trappers and live out in the woods," says Gary Gustafson, DNR's chief of land management. "Very few people can actually do that. We all need to have a job in town. This isn't a program where you can live in your cabin and commute to Anchorage. It just

See Page C-2 HOMESTEADING

Jim and Gerry Lee Carter on Alaska [illegible]

Anchorage Daily News/Michael Penn

CC: Larsen, D.C.

atty Friedan re

ILYN GARDNER
stian Science Monitor

/ YORK — Twenty-five years ago, a -old housewife and mother of three in nd County, N.Y., shook American so- uctures to the core with a best seller inched the modern women's movement. ding that deeply entrenched attitudes ial barriers imprisoned educated wom- "housewife trap," Betty Friedan called anded career opportunities and equali- men.

owerful was her message that many still chart the 1960s by two reference where they were when President John nedy was shot, and where they were ey read "The Feminine Mystique."

an appreciates how long a 25 years it n when she hears college students tell h youthful enthusiasm, "Oh, we've you in our history books!"

an hardly resembles a figure em- in a history text. Sitting in the ed living room of her 40th-floor apart- erlooking Central Park, she is dressed en turtleneck, black slacks, and white Modern art hangs on salmon-colored and winter sunlight bounces off a settee upholstered in a splashy red- ple print.

more and more these days, Friedan e her own historian. She will soon r Los Angeles to serve as a visiting ished professor at the University of n California, where, on Feb. 9, she he guest of honor at a gala celebrating er anniversary of her now-classic

is personal point for looking ahead cing back, how does Friedan see what ls "the adventure of my own life" to "the wonderful adventure of the s movement itself, this passionate that has changed possibilities for "?

rhetoric gives away Friedan as an ible optimist. How could she have "The Feminine Mystique" in the first ithout a surplus of hope? But in an w full of the retrospection, introspec- d prophecy appropriate to an anniver-

Feminist Betty I

sary, she sound her note before take over.

Friedan wor mystique in th worse if the s tremors we are recession and se is going to be a kind of uncert scapegoat, becau

Already she that new mystiq the implied mes up your feminis Go home again."

Friedan takes In "Fatal Attrac and crazy" care "pure evil, pure

om Utah to Maine

erma bombeck at wit's end

'8-year-old woman Marshall from Oak Tenn., wrote to ask, state of Utah still never hear it men- a the weather reports. and I worry. Last fall Ridge, the crickets trange. They made ves at home watching hopping about. They hirn, creek, chirp, or r that noise when this and that togeth- ead they let you ap- hem and then jumped to the ceiling ker

e were also moths e disruptive, stomp- nd in my hair when I read in bed. They

dous winter. Don't they measure the length of caterpillars' hair or fuzz? Seems like I've heard of turning over rocks but I don't remember why."

Marshall is a prime example of the nation's infatuation

HOMESTEADING: Ma

Continued from Page C-1

doesn't work that way."

For the majority of people who got state land through various disposal programs over the past 25 years, the little piece of Alaska they got was a little piece of recreational land. That goes for the homestead program, too.

"The homestead program, despite what the Legislature intended, is also a recreational residence program," says Gustafson. "Even though there are requirements that you actually live in it, people find ways to work around it, or they exercise the purchase option."

The "purchase option" to which Gustafson refers was not available to sodbusters in 19th-century Nebraska who "proved up" on their government claims by building a home and putting the prairie to the plow.

Under Alaska's 20th-century program, if you get a homestead or a homesite, you can gain title to the land by buying it outright from the state. Or, if you have the time, the initiative and the energy, you can prove up in the traditional manner. That's what the Carters have done. But this Alaska dream did not come cheaply.

Jim Carter can't put an exact number on his three-year investment, but it's in the tens of thousands of dollars. The Carters' house is a comfortable, two-story, wood-frame home built with conventional milled and manufactured materials. They have a radio telephone, flush toilets, a refrigerator, a gas stove, a microwave oven, and a washer and dryer. They also have a hard-charging diesel generator that provides ample electricity for all of it.

They live a couple of miles off Hatcher Pass Road on the north side of Willow Creek. The Matanuska-Susitna Borough and the state Department of Forestry teamed up to build a narrow bridge across the creek, along with part of the road, because it provides access to future timber harvests. Carter carved out the rest of the road with a rented D8 Cat.

The Carters, married for 25 years and Alaskans for most of the last 16, are very proud of what they've accomplished. And they've got a right to feel that way.

They moved onto the land within a month of winning the lottery. They lived in a tent for the first part of the winter, when they didn't have their small wood stove on the property yet. Gerry tends to shiver a bit when she tells of the day it was 23 below — inside the tent. There wasn't much more than a rough clearing and a rougher Cat trail to the land, but they started building as quickly as possible.

"We were putting nails in a can on the barrel stove so they'd warm up enough to where we could handle them," says Jim, rolling an imaginary, ice-cold 16-penny nail between his fingers as he tells the story.

They moved into the first section of their home little more than three months after seeing the land for the first time. It's been non-stop work since then: digging the well, adding more to the house, digging out and framing walls for a basement, clearing land and putting up fences.

In some respects, the story of the Carter homestead is a modern version of the Frontier Homestead Myth. They certainly have pushed back the forest, and they are sure to put some land to the plow in the future. They'll earn their patent to the land through their labor and initiative.

But in other ways, their experience is an anti-myth. And they know it.

"They give you the land, but then they give you all the government regulations," says Gerry. "I'm not knocking them (the government), but people need to know the land is not free."

The Carters were able to build their homestead because they saved up money from decades of conventional American jobs, and their nest egg has allowed them to work on their homestead rather than working for a paycheck. And in the future, Jim Carter is looking for small timber sales in the area and a little bit of farming to pay the bills. This is not subsistence farming of the 1840s.

In the long run, says Jim Carter, "you have to produce some income off the land."

The Carters understand th reality of homesteading bet ter than a lot of the peopl who make land policy fo Alaska. The frontier mytholc gy has been a major influenc on legislators and administra

CRIME-BURNING: A gruesome

Many dream, but few follow through

tors in both the state and federal governments.

The most blatant example of myth leading land policy in recent years came from the federal Department of the Interior under James Watt. Ronald Reagan's first Interior secretary. In 1983, Watt came to Alaska to announce the opening to homesteading of 10,000 acres of permafrost and black spruce in Alaska's Interior, near Slana, within sight of the magnificent peaks of the Wrangell Mountains.

State land and wildlife managers gagged at the thought, and predicted a fiasco at Slana. There wasn't enough land, water, wildlife or business to support the project, they said. They turned out to be right.

Would-be mountain men and women came to Alaska from all over the country to stake land under an obsolete homesteading law designed for the American prairie, not the Alaska tundra. Within a few months of the staking period, many of the pioneers had left, defeated by limited resources, limited decent land, and limited economic opportunities. Twentieth-century reality snuffed out 19th-century dreams.

State land managers have tried to design programs more suited to the modern day, yet they, too, have to deal with the effects of the frontier mystique on public policy.

The Alaska Constitution, for example, includes this set of straightforward instructions to posterity: "It is the policy of the state of Alaska to settle the land," reads the beginning of Article Eight, the natural resources section.

To comply with this constitutional injunction, the state natural resources department has offered about a million acres of land to the public from the Alaska statehood entitlement of 105 million acres.

The offerings have come through a variety of programs since the mid-1960s. Those programs have been popular, in the strictest sense of the word; people want land from the state and they ask for it frequently. In the 1986 disposal, DNR received 41,000 applications — a record — for parcels on 25,000 acres. (Budget cutbacks left the DNR unable to hold a sale in 1987.)

Gary Gustafson, the DNR manager in charge of the land disposal programs, finds the number of applications particularly striking, because the state's population has been dropping and overall income has been falling.

"There's still a real strong public interest in owning land, particularly rural land. The old cabin-in-the-woods syndrome still lives today," he says. "A lot of people just come in asking about it. The silent majority is really a viable component of the land disposal picture."

While the landless public may like the programs, a lot of institutions with landed interests do not.

"We get criticized all the time when we offer land, usually by people who the state has sold land to in the past," says Gustafson.

A number of people develop a "shut the door behind me' attitude once they've got their particular plot. Real estate developers resent the competition from the state. Conservation groups question the wisdom of Balkanizing the public estate. Rural legislators see disposals as threats to local interests. Local governments gripe about land disposals too, because an influx of new residents to new subdivisions means new schools, new roads and new services with expensive, up-front costs to the existing taxpayers.

Yet despite the variety of vocal — and influential — opponents, DNR is seeing record levels of interest in a rapidly shrinking land disposal program. The reason? An American myth embodied by a single word.

"The word 'homestead' has such a lot of appeal that we've had thousands of people come in," says Gustafson. "They get here and say, 'You're offering free land? How do I get some?' And then of course the word got out in the national media. It was on Paul Harvey. And then we were just inundated with requests. But it (the homestead program) wasn't really different than what we were doing before."

The homestead mythology has combined with economic reality to forge real changes in the state's land disposal program this year.

Gustafson says the state is all but out of the subdivision business. There's enough vacant, private subdivision land in saturated markets like the Mat-Su area right now, and probably will be for a long time. That, along with the fact that homestead lotteries are so popular, means that DNR is concentrating on homesteads, even if the acreage is limited.

"I think we're on the right track by reducing the number of acres we do every year," says Gustafson, who has seen the land disposal programs go from 100,000 acres a year to 5,000. "But, I still think the mystique of having that homestead, and the state constitutional mandate that requires us to offer land, and that in some areas of the state we're the only game in town — all those things combine to make it necessary that the state continue to offer a land disposal program."

But, he adds, most of the best land is gone. Or it was never really there. Back in the populist days of 100,000-acre disposals, people complained that most of it was swamp and muskeg. They were right. Everyone wanted five acres of high ground on a creek, but Alaska has neither enough high ground nor enough creeks in the public estate to satisfy everyone.

Today, says Gustafson, DNR is focusing on quality, not quantity. And now, that quality land — land on the road system, land with good soils and timber, land that people really want — all that is either in private hands or designated for public management, such as economic or conservation purposes.

Gustafson thinks that instead of the old, cabin-in-the-woods philosophy of selling public lands, the state needs to get more creative. He hopes to offer tracts for sale or lease to potential lodge owners, for example, as a way to stimulate the economy — and help the state get maximum return on the valuable public lands owned by all Alaskans. "We need to take the land we have and upgrade its value."

Meanwhile, the frontier myth lives on. People like Jim and Gerry Carter have modified the myth to make it work, but they know they're a minority. "If you have the skill to whittle a cabin out of the woods, all you need is time and an ax," says Gerry. "But realistically, it's not free. We were fortunate to have the time and income to get as far as we did."

The WCCA Sounder

"A publication for people concerned about workers' compensation reform"

November 1987

1988 Increases

Workers' Compensation premiums will skyrocket up to 68 percent in 1988 for some Alaskan businesses under recommended rates recently suggested by the National Council on Compensation Insurance. The 1988 rates were unveiled during public hearings conducted by the State Division of Insurance October 22.

While the average rate increase is 25 percent, many businesses will see greater rate hikes. As a result, Alaskan employers will contribute up to $38 million more in 1988 to cover increasing workers' compensation claims. Workers' comp losses have more than doubled in the past four years, growing from $71 million in 1983 to $159 million in 1986. In 1986, Alaskan businesses paid $153 million. At the same time, payrolls have dropped below 1982 levels.

Rate classifications are divided into four sections. The average 1988 rate increase for each will be:

Manufacturing: includes bakeries, canneries, carpentry shops, machine shops and newspapers: **-14 to +36 percent.**
Contracting: includes plumbing, masonry, welding, electrical, water drilling, excavating, roofing and sewer construction: **+4 to +54 percent.**
Oil and Gas: includes oil companies, oil-field service companies and pipeline firms: **+18 to +68 percent.**
Other: includes logging, trucking, airline, retail sales, hospitals, hotels, restaurants, legal and government agencies: **-7 to +43 percent.**

Reacting to the rate announcement, WCCA president Steve Haag said the increases will certainly signal an end for some employers. "Without a doubt I can say some of the businesses here today will not be here several months from now, and the skyrocketing insurance rates will be a major cause of that," Haag said.

WCCA continues to prepare a legislative reform package for introduction to the 1988 legislature. The State House Labor and Commerce Committee will hold a public hearing on workers' compensation issues November 12.(See page 4.)

New Members

The active membership of WCCA continues to grow as more employers realize the need to reform the workers' compensation system. WCCA thanks these new members for their financial and active support:

Klukwan, Inc.
Municipality of Anchorage
Robinhood, Inc.
Holland America
Alaska Cleaners
Anglo-Alaska Petroleum
Carr-Gottstein Enterprises
AGC, Anchorage Chapter
Hickel Investments
Totem Ocean Trailer Express
Lynden, Inc.
Northern Air Cargo
Alaska Airlines
Reeve Aleutian Airways
GCI
Veco
Arco
Standard Alaska
Enserch
Dimond Alaska Coal
Rain Proof Roofing
Marathon Oil

Seminar Success

Over 100 persons representing a broad cross-section of Alaskan businesses attended the October 8 seminar co-sponsored by WCCA, making it a resounding success. The focus of the seminar was to educate employers about the workers' compensation act.

The Fairbanks Chamber of Commerce has expressed interest in co-sponsoring a similar seminar in Fairbanks in 1988, and Juneau business representatives have also expressed a desire to conduct a similar conference.

WCCA thanks Dr. Michael James and State Insurance Director John George for taking the time from their busy schedules to conduct informative sessions of the seminar along with Shelby Nuenke-Davison and Mary Pierce.

Additional copies of the reference book distributed at the seminar are available for $30. A 5-tape set of audio cassettes of the seminar is available for $40. To obtain either, contact Shelby Nuenke-Davison at 276-6555.

1988 Plans

WCCA will retain noted national expert John Lewis to assist in preparation of reform workers' comp legislation which will be introduced to the 1988 legislature. Lewis, a lawyer, has been a consultant to state governments, business and labor organizations on workers' comp. His clients have included: U.S. Dept. of Labor, Rhode Island Dept. of Business Regulation, Delaware and Maryland State Chambers of Commerce, Louisiana Association of Business and Industry, Michigan State Departments of Labor and Commerce, Oregon Workers' Compensation Department and many others.

Committee Work

WCCA's four hard-working committees have focused on specific aspects of workers' comp law which, if changed, will save employers millions of dollars and make the system better serve both the employee and employer.

1. Vocational Rehabilitation Committee: Among recommendations made by the committee is making rehabilitation program entry voluntary rather than mandatory. Selecton of a re-employment preparation benefit provider would be arrived at mutually by employee and employer and a specific plan would be signed off by a qualified rehabilitation professional and the recipient. What constitutes non-cooperation with the plan would be clearly defined. A maximum amount would be designated for tuition and supply costs.

2. Compensation and Benefits Committee: Among recommendations is a re-definition of "gross earnings" to restrict inclusion of some fringe benefits. Vested interests in a qualified pension or profit sharing plan will be allowed toward determination of gross earnings. The task force has also agreed to a proposal which would hold the last employer liable to pay workers' compensation claims when a dispute arises over which employer may be at fault until the dispute is settled. The committee proposes to tie compensation rates to the area in which the recipient lives. This would allow recalculation of benefits if a claimant moves to a region with a lower cost of living.

3. Medical Committee: The committee recommends placing a limit on the number of times an injured worker can change primary physicians and a limit on how much doctors can charge for services provided to workers' comp recipients. The committee also recommends disputes between employers and employees on medical issues be settled following an evaluation by an independent medical examiner whose findings would carry predominant weight in disputes. The committee proposes a limit on the number of medical visits a claimant may make before an independent medical evaluation is required.

4. Second Injury Fund: The committee has recommended abolishing the current fund to be replaced by what will be called a Return-to-Work Fund administered by the Division of Vocational Rehabilitation. The fund would provide incentives for employers to hire injured workers. Claims now being paid by the second injury fund would be sunsetted with final payments negotiated with claimants prior to sunsetting.

An additional topic being discussed by the task force is the issue of stress as a cause of worker disability. WCCA supports a definition of stress being written into law which would limit when it can be claimed as contributing to a workers' compensation claim.

The labor-management task force is in final negotiations on these and other issues which will be incorporated into a legislative reform package for the 1988 legislature.

Meeting Schedule

Board of Directors
Nikko Gardens Restaurant
2550 Denali, Anchorage -7 a.m.

December 3
January 7
February 4
March 3

Executive Committee
Barratt Inn
4616 Spenard Road, Anchorage - 7 a.m.

November 18	December 9
November 25	December 16
December 2	December 23

House Labor and Commerce Public Hearing on Workers' Compensation
Thursday, November 12, 1987
Legislative Information Office
3111 C Street, Anchorage
1:30-5pm

Workers' Compensation Committee of Alaska
11401 Olive Way
Anchorage, Alaska 99515

MARC

Jim Kelly
P.O. Box 21-0001
Anchorage, AK 99521

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MEMORANDUM

TO: WCCA

FROM: Alaska Society of Chiropractors

RE: WCCA Draft on Sec. 23.30.095 Medical Examinations

Per our recent review of the WCCA proposal for Sec. 23.30.095 Medical Examinations of the Alaska Workers' Compensation Act, we have serious concerns regarding the following:

Definition of "medical"

Independent medical exams by peer group

How is the independent medical exam weighed?

Fifteen visit issue

One change in physician issue

Benefits after contraversion issue

Health Insurance Association of America schedules issue