

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988
5390 SLAB SB 322 (file 12) 8672

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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			Total
	Respondent	Other	Both	
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 ($\chi^2 = 17.43, 20 \text{ df.}$). 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*					Total
	RTW	CRC	CS	U	O	
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		t-Test*
	Mean	SD	
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		t-Test*
	Mean	SD	
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		t-Test*
	Mean	SD	
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	Mean	Charges	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 ($\chi^2 = 1.33, 1 \text{ df.}$).

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 ^{injury} referral to closure in Alaska is 2.4 years ^{which is almost identical to Tu 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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Hester, E. & Decelles, P. (1985). The worker who becomes physically disabled: A handbook of incidence and outcomes, Topeka, KS: The Menninger Foundation.

Hester, E., Decelles, P., & Gaddis, E. (1986). The relationship between age and physical disability among workers: Implications for the future. Topeka, KS: The Menninger Foundation.

Hester, E. & Stone, E. (1984). Utilization of worksite modification, Topeka, KS: The Menninger Foundation.

Hoskin, A., et al. (1984). Accident facts: 1984 edition, Chicago: National Safety Council.

National Institute on Aging, (1984). Macroeconomic-demographic model, Washington, DC: National Institutes of Health.

The World almanac and book of facts (1987). New York: World Almanac.

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 organization 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 "o 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.



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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.

A handwritten signature in cursive script that reads "Aron S. Wolf M.D."

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

A handwritten signature in cursive script that reads "Greg McCarthy M.D."

Greg McCarthy, M.D.

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.

read
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

read

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 con-

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.



O'Neill adopted Connecticut panel study.

vinced that the construction method can be used safely, "a moratorium going to be in effect," he said.

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 sign statements verifying that complex construction conforms to design projects above a certain size.

- Contractors and subcontractors building above a threshold size 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

read Bigger hikes coming to bottom of page 9

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 G. 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 com-

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

mission 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.

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.

stop

2



Legislative Information and Teleconference Networks

Legislative Teleconference Network SIGN-IN SHEET

START TIME: _____

DATE: _____

END TIME: _____

PLACE: _____

SPONSOR/SUBJECT: _____

Please Print



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ADDRESS

PHONE

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Tammy Boswell	1890 E 58th Ave Anchorage, AK 99507	561-0722	✓	
Alex Reinwater			✓	
Ann Brubaker	ANCH. 4106 NORTHWOOD	248-0566	(C)	
PAT Reeves	3140 CHESAPEAKE CIRCLE	562-4669		
Rick LaGarde	4300 ARCTIC BLDG. #2	561-8785	✓	✓
JAN HANSEN	3301 Eagle #302	264-2424		✓
JACQUELYN MacDONALD	1111 8th Ave - Jones	465-2790		✓
Stephen Fields	6524 Linden Dr	243-1387		✓
Jack Cantanucci	8101 Old Jensen	398-6666		✓
Robert Anders	3310 W. 78th	243-4951		✓
KEVIN DEIGHTON	2501 Commercial	276-1640		✓
Bruce Kappes	4500 MANITOWOC	345-7288	(C)	

MASON & GRIFFIN
ATTORNEYS AT LAW

550 W. 7th Avenue • Suite 285
Anchorage, Alaska 99501

Robert B. Mason
Admitted in:
Alaska, Texas
Robert L. Griffin
Andrew J. Lambert

(907) 274-5546

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 ~~reduction 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.~~

Senator Tim Kelly
Page 3
February 2, 1988

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:mrn

MTL

SERVICES

9111 Vanguard Drive
Anchorage, Alaska 99507
(907) 344-3341

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:

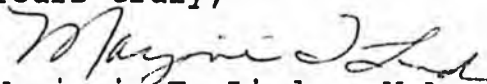
I am a vocational rehabilitation counselor who provided written and oral testimony last week. I want you to understand why I support the whole person formula as a way of scheduling all injuries.

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

SENATE BILL NO. 322
HOUSE BILL No. 352

John
What about this?

"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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Juneau, Alaska 99801

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

MICHAEL A. GRUMMETT
ROGER GRUMMETT
NANCY L. BURNS

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.

Senator Tim Kelly
February 19, 1988
Page Two

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,

SHATLUCK & GRUMMETT, INC.


Roger Grummett

RG/js



GARY McCARTHY, LPT

*Alpine
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 Performance Based Physical Capacity Evaluations -

Liz Douder -
committee

composed of physical & occup. therapist -
attorney -
rehab. counselor
rehab nurse from insurance Co.
physician -

ad hoc comm. of PT + OT

Jon Drescher when w/state suggested
this group be formed -

basically - want physicians to use an OT or PT
they are looking at regulating so it is
exper.

"performance based capacity" - WA state
Louisiana

Went in workers comp. legislation



Alaska Occupational Therapy Association

Committee to Establish Standards for
Performance Based
Physical Capacities Evaluations



ALASKA PHYSICAL THERAPY ASSOCIATION, INC.

Dear Senator Kelly:

A CHAPTER OF THE AMERICAN
PHYSICAL THERAPY ASSOCIATION

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 support 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 addition, 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 conference 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

Adhoc Committee Members
PCE and Work Hardening Regulations

received
8-17-87

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, O.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 99508
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 you 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

received
6/17/85

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

Barbara M. Lathen

PROGRAM EVALUATION

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

5 Keptical

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 (weld job)

11. Do you have a better idea of your physical capacities? Yes - very much so - lost some of my "mucko" 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 I 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 didn't understand
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, Lulie, Kate -

Thank you ladies, for your support, encouragement, and help in returning to normalcy.

D.C.

Aug 15

I Josephine & Ellis really
enjoy working with
Liz Lullied Pan 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 understatement 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 beyond 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 insistence 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 then 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 then 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 retainer 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 figures.

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 retainers 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 exist 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 undermine 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 beyond 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 undermines 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
274-1852

11-10-87

DATE

TO: Sen. Tim Kelly - Senate Labor & Commerce CodeFR: Joseph Beckford - Sitka School DistrictNUMBER OF PAGES (INCLUDING COVER SHEET): 3THIS IS BEING SENT BY THE
LEGISLATIVE INFORMATION OFFICE,
SITKA, ALASKA

Please note that we have a Rapicom 230 Auto-Telecopier. This machine transmits pages up to 8 1/2 x 14 inches. Our telecopier direct line is (907) 747-5807.

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ARE MISSING OR ILLEGIBLE.

BILLING
NUMBER: —

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

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 Donohy
Sen: Tim Kelly

Dear Sirs:

What I would like to make you aware of has nothing to do with workman's compensation rates but a change I feel would be justified.

If a worker is disabled on the job and workman's comp 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 received workman's comp for 6 weeks then went back to work for 2 weeks then was informed I would receive 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 allways 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 ^{maxime}.

Well 9 years ago I had a heart attack on the job and layed unconscious 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 $\frac{1}{2}$ a heart and 1 bad leg among 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 tried 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 ~~my~~ 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 ~~it~~ ^{550⁰⁰} a month social security after finally going through Ten Stevens and being denied many times.

After over 4 years and 4 hearings all one by me a dist judge finally ordered me to receive 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 1/2 hours.

Before one of the hearings I was grilled for 2 days in which the insurance company tried 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.

Question "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 physicals, 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

December 18, 1987

907-276-5333



Telex (090) 25-304

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 responsibility 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 jeopardized 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
FOR DISCUSSION ONLY

Dick Block's Recommendations

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 unambiguous 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

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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 adequately."

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."

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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 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.

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P.6 L.15
Section 5
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 adequate 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...]

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(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."

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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."

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P.B.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.

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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."

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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.14-30

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 Interpersonal Communications: Deisher.

MARK

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. Advice from the rehabilitation industry is either not sought, discounted or ignored. Rehabilitation professionals are less than aggressive in offering their advice anyway. The only significant standardization seems to be in the similarity of the perceived 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.

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I. VALUES CLARIFICATION: a philosophical 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 controls rather than the goals 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 drive of the rehabilitation system. The rehabilitation system itself is the vehicle

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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 balance 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 unbalanced, 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 balanced "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, paternalistic bureaucracy. When we clearly define the goal, competently write balanced, uncontradictory legislation, and provide manageable 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

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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 standardized. Due to a lack of goals, relationships are not structured. Attitudes the players have for each other 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, psychologists, 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 controlled 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 competencies of the various players are not regulated, coordinated or controlled. Sometimes competencies are totally eroded. The narrow focus of the workers' compensation responsibility and quasilegal overlay destroys and fragments traditionally multidisciplinary service. 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.

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