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

III. REHABILITATION: not a dirty word

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

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

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

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

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

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

IV. RHETORICAL CONSIDERATIONS: what are we talking about?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1) Is the employee eligible for rehabilitation?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Later, the same paragraph goes on to say:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

settlement process so what difference does this make to rehabilitation?

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

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

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

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

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

IX. PROVISIONS FOR UNEMPLOYMENT SERVICES: the lost benefit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alaska Interpersonal Communications: Deisher.

8)
9)

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

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SUGGESTED AMENDMENTS
to
Alaska Workers' Compensation Board Rehabilitation Statute.

by

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

Sec. 23.30.041. Rehabilitation of injured workers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CORRECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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All underlined terms above will require definition.

Rep Collins

ALASKA REVISITED

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

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INTRODUCTION

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

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

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

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

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

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

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

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

METHOD OF REVIEW

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

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

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

2. Quality and timeliness of evaluations.

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

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

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

FINDINGS

A. Identification and Referral for Evaluation.

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

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

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

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

B. Quality, Completeness and Timeliness of Evaluations.

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

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

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

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

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

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

C. Quality and Completeness of Vocational Rehabilitation Services Plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Litigation and Board Involvement.

The incidence of litigation or Board involvement was of

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

THE ROLE OF VARIOUS PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

these activities as a result of the new law.

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATIONS

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

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

1. Establish the purpose and goals of rehabilitation.

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

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

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

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

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

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

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

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

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

ALASKA MEDICINE

OFFICIAL JOURNAL
ALASKA STATE MEDICAL ASSOCIATION

2401 E.42ND ● SUITE 104
ANCHORAGE, ALASKA 99508
(907) 562-2662

October 28, 1987

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

Dear Bruce:

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

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

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

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

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

Sincerely,

Ray Schalow
Executive Director

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

ALASKA MEDICINE

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Sincerely,

Ray Schalow
Executive Director

MARK

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

November 17, 1987

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

Attention: R.H.(Ron) Payton

re: Workman Compensation vs Disability Insurance

Dear Ron:

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

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

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

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

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

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

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

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

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

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

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

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

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

I would appreciate your researching and responding.

Best Regards

Don Redmond

Don Redmond

DR/bp

enclosure: November 1987 "The WCCA Sounder"

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

RECD 11/16/87 D-R

The WCCA Sounder

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

November 1987

1988 Increases

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

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

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

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

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

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

Scott Wetzel Services Incorporated

741 Sesame Street • Suite 1A • Anchorage, Alaska 99503-6686

Phone: (907) 561-1725

FEBRUARY 10, 1988

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

RE: CHIROPRACTIC CHARGES

DEAR SENATOR KELLY, REPRESENTATIVE DONLEY, AND COMMITTEE MEMBERS:

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

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

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

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

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

SINCEELY,

SCOTT WETZEL SERVICES, INC.

Renee Murray

RENEE MURRAY
VICE PRESIDENT

RM/CH

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

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

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

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

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

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

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

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

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

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

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

Emmet Heidemann v. Municipality of Anchorage

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

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

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

David Mullens v. Municipality of Anchorage

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

November 10, 1986

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

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

Dear Dr. Thomas:

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

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

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

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

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

Very truly yours,

SCOTT WETZEL SERVICES, INC.

cc: Bremerton

cc: 90A

Renee Murray
Vice President

RM/km

Ted Jette vs. State of Alaska

CHIROPRACTOR: John W. Thomas - Wasilla

Date of Injury: 1/22/85

(Aggravation of pre-existing condition and gross obesity)

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

Ted Jette (cont.)

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

- Ted Jette (continued)

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

ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 1149 Juneau, Alaska 99802

IZOLA HOPKINS,

Employee,
Applicant,

v.

STATE OF ALASKA, PIONEER HOME,

Employer,
(Self-Insured),
Defendant.

DECISION AND ORDER

Case No. 620457

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

ISSUES

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

SUMMARY OF THE EVIDENCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Pre-Existing Injury

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

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

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

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

II. The Duration of the Compensability of the Claim

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

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

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

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

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

III. Attorneys Fees and Costs

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

ORDER

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