Alaska Workers' Compensation Appeals Commission

Shannon K. Patterson, Appellant, vs. Matanuska-Susitna Borough School District, Appellee.	Final Decision Decision No. 283 November 17, 2020 AWCAC Appeal Nos. 18-023, 19-020 AWCB Decision Nos. 18-0111, 19-0103 AWCB Case No. 201416158

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 18-0111, issued at Anchorage, Alaska, on October 26, 2018, by southcentral panel members Janel Wright, Chair; Rick Traini, Member for Labor; and Amy Steele, Member for Industry; and, Final Decision and Order No. 19-0103, issued at Anchorage, Alaska, on October 9, 2019, by southcentral panel members Janel Wright, Chair; Rick Traini, Member for Labor; and Robert Weel, Member for Industry.

Appearances: Richard L. Harren, Law Offices of Richard L. Harren, PC, for appellant, Shannon K. Patterson; Nora G. Barlow, Barlow Anderson, LLC, for appellee, Matanuska-Susitna Borough School District.

Commission proceedings: Appeal of Final Decision and Order No. 18-0111 filed November 26, 2018; order staying appeal proceedings issued July 10, 2019; appeal of Final Decision and Order No. 19-0103 filed October 24, 2019; order lifting stay of appeal proceedings issued October 30, 2019; order consolidating appeals issued October 30, 2019; briefing completed June 9, 2020; oral argument held on June 30, 2020.

Commissioners: James N. Rhodes, S. T. Hagedorn, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

1. Introduction.

Shannon K. Patterson (Ms. Patterson) filed appeals with the Alaska Workers' Compensation Appeals Commission (Commission) from two decisions of the Alaska Workers' Compensation Board (Board), both decisions involving the same work injury

with the Matanuska-Susitna Borough School District (MSBSD).[1] In Dec. No. 18-0111, the Board found Ms. Patterson was not entitled to any additional time loss or medical benefits. She timely appealed this decision to the Commission. She then filed a petition with the Board seeking a Second Independent Medical Evaluation (SIME). The Commission stayed the appeal from Dec. No. 18-0111 pending the Board's resolution of her petition for an SIME. Following the Board's denial of the requested SIME, Ms. Patterson timely appealed Dec. No. 19-0103 and the Commission consolidated the two appeals.

Numerous extensions of time have been granted throughout the course of these appeals, along with the stay of proceedings. Two extensions totaling 17 days were granted for the preparation of transcripts. Ms. Patterson was granted several extensions of time totaling 122 days for preparation of her opening brief. The original appeal was stayed a total of 112 days while Ms. Patterson pursued her petitions filed with the Board. MSBSD was granted extensions totaling 44 days for filing its responsive brief. Ms. Patterson was granted an additional 14-day extension for her reply brief. The total number of days for the stay and all extensions is 309.

Oral argument was heard on June 30, 2020, and the Commission now affirms both Board decisions as supported by substantial evidence in light of the record as a whole.

2. Factual background and proceedings.[2]

Ms. Patterson has a long history of mental issues. On November 6, 2004, she saw Daniel J. Safranek, M.D., at Providence Alaska Medical Center, to whom she reported suicidal ideation. Dr. Safranek diagnosed her with depression and started her on an anti-depressant, Lexapro, "which she has done well with before." Dr. Safranek suggested she

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[1] *Patterson v. Matanuska-Susitna Borough Sch. Dist.*, Alaska Workers' Comp. Bd. Dec. No. 18-0111 (Oct. 26, 2018)(Dec. No. 18-0111); *Patterson v. Matanuska-Susitna Borough Sch. Dist.*, Alaska Workers' Comp. Bd. Dec. No. 19-0103 (Oct. 9, 2019)(Dec. No. 19-0103).

[2] We make no factual findings. We state the facts as found by the Board, adding context by citation to the record with respect to matters that do not appear to be in dispute.

follow up with psychiatry in the valley.[3] She continued to treat with him for the remainder of 2004.

Ms. Patterson reported to Kathleen J. Matthews, R.N., A.N.P. (with Ellen J. Halverson, M.D.'s office) that she had problems with depression much of her life, including while growing up. The stressors identified "over the last few years" included attempting to raise her husband's half-sisters after his mother passed, caring for her mother-in-law in 1997, and reporting her brother-in-law for sexually abusing his 16-year old daughter which led to many family members "disowning" her in 2000. Ms. Matthews diagnosed moderate major depressive disorder, recurrent, increased Ms. Patterson's Lexapro and kept her on Trazodone, and referred her for individual counseling. Work was not mentioned as a stressor.[4] She continued treatment.

On July 19, 2006, Ms. Patterson began treatment with Duane I. Odland, D.O., who diagnosed her with bipolar disorder and prescribed Cymbalta, which made her feel anxious and unable to sleep. She tried other antidepressants, including Paxil, Prozac, Trazodone, Effexor, Celexa, Lexapro, and Cymbalta. They all worked briefly, but caused her to become anxious and experience "electric shock" so they were eventually discontinued. She continued in treatment with Dr. Odland.[5]

By February 6, 2007, Ms. Patterson reported difficulty functioning at work, at home, and in relationships. A sleep study identified sleep fragmentation for which ANP Matthews prescribed Sonata and Rozerem, and diagnosed Bipolar II Disorder versus Mood Disorder NOS, and severe insomnia.[6]

Ms. Patterson, on April 10, 2007, saw Dr. Halverson who referred her to Jeff Grasser, M.S., L.P.C.[7] Ms. Patterson reported she was overwhelmed in her job as a school nurse, which she had been doing for ten years. During therapy, she remarked to

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[3] R. 3650-52.

[4] R. 3574-77.

[5] Dec. No. 18-0111 at 5, No. 3.

[6] R. 3592.

[7] R. 3598.

Mr. Grasser, "Parents are the hard part – they don't give a crap – I'm burned out." She threatened to quit her job if she could find a new one. Ms. Patterson also expressed criticism of her mother-in-law, her "evil bitch" sister, and her parents who she felt did not want her.[8]

Between April 19, 2007, and January 7, 2008, Mr. Grasser continued to counsel Ms. Patterson who continued to express that her feelings were hurt because the school did not provide support, and she was frustrated with parents who were uncaring. She continued to threaten to quit her job and did so by July 19, 2007. Her complaints regarding her own parents' uncaring nature included emotional deprivation and anger carried over from her childhood. Mr. Grasser diagnosed Ms. Patterson with "posttraumatic stress disorder by history." On January 7, 2008, after discussing Ms. Patterson's "faulty assumptions" with Mr. Grasser, she refused to make a follow-up appointment.[9]

Ms. Patterson treated with Dr. Halverson in 2008, 2009, and 2010.[10] In 2010, she again saw Ms. Matthews who treated her for Depressive Disorder NOS.[11]

On August 21, 2014, Jay D. Johnson, D.O., completed a "Statement of Examining Physician" required by MSBSD for Ms. Patterson's employment. The form stated, "The examination included a review of her past medical history and thorough physical examination. A copy of the medical history and examination findings will be maintained in my patient file records. They may be reviewed by you or your authorized representative upon written request." Dr. Johnson found Ms. Patterson physically and emotionally fit for her duties as a school nurse.[12]

On September 25, 2014, Ms. Patterson reported a work injury on September 23, 2014. She was working as a school nurse for MSBSD when she was required to aid the

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[8] R. 3599-603.

[9] R. 3604-07, 3609-10, 3612-17, 3619-20.

[10] R. 3621-38.

[11] R. 3678-80.

[12] R. 3786.

assistant principal in providing mouth-to-mouth resuscitation and chest compressions on a student who was choking.[13] She stated that, "While performing mouth to mouth resuscitation on a student got some of students vomit, blood tinged foam nasal and mouth secretions on my face and inside my mouth when student released them. I had / was using a micro shield mask; however, during attempts to remove foreign bodies to clear / establish airway, vomit, blood tinged foam secretions got onto the mask and in my face and mouth & post incident stress responses are occurring now."[14] On September 30, 2014, she was tested for Hepatitis C and HIV, both of which were nonreactive.[15]

Ms. Patterson began treating with Kevin O'Leary, Psy.D., to cope with the aftermath of witnessing the student's medical struggle and performing cardiopulmonary resuscitation (CPR) on him when he lost consciousness after choking on food. Ms. Patterson was anxious, upset, sad, and had "residual undifferentiated feelings of shock, etc." Dr. O'Leary diagnosed her with adjustment disorder with mixed anxiety and depression, and wanted to rule out posttraumatic stress disorder (PTSD).[16] "Pt reports and displays symptoms of severe anxiety, upset, and general distress at having witnessed the child's medical struggle and having been a part of the medical care attempts." Ms. Patterson reported "repeated nightmares of 'seeing his head' with bodily fluids being expelled through all conceivable orifices and cavities, and her hands rendered useless in the dream." Dr. O'Leary told her to use meditation and relaxation exercises, and to explore what in her background may have left her predisposed to "PTSD – like shock after such an event." He diagnosed Ms. Patterson with adjustment disorder with mixed anxiety and depression and indicated PTSD had to be ruled out.[17] He also told her she had PTSD and adjustment disorder, and advised her she needed to "get back on the horse" and get

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[13] Exc. 292.

[14] Exc. 292.

[15] R. 3690.

[16] Exc. 20.

[17] Exc. 20.

back to work. He expressed confidence she could "get over this," but will have "a little scar tissue forever."[18]

On November 26, 2014, Dr. O'Leary "explored how egocentric trauma defenses have made [the student's] trauma and death 'all about her' even when these issues are obviously not, produced confirming associations, this line of logic can hopefully help her 'put this stress down.'" Ms. Patterson's mental status continued to improve slowly; she was less anxious.[19]

On December 9, 2014, S. David Glass, M.D., performed an Employer's Medical Evaluation (EME) and administered an MMPI-2 evaluation. He determined Ms. Patterson's testing did not reinforce an Axis I psychiatric disorder, nor did it indicate she had PTSD. Dr. Glass "considered" diagnosing her with dysthymic disorder "in view of Ms. Patterson's longstanding history of a mood disorder with the waxing and waning of depressive symptomatology beginning in childhood and the use of antidepressant agents – Wellbutrin." Dr. Glass opined she did not have a formal DSM-IV disorder caused by her employment as an elementary school nurse. He noted she reported feeling frustration and stress working with elementary students in the past and had discontinued that work in 2007, but returned to elementary school duties in 2014. Dr. Glass opined the cause of Ms. Patterson's dysthymic disorder was multidimensional and included both constitutional and developmental components, but work stress did not contribute to her dysthymic disorder diagnosis, which is not a true psychiatric disorder. He said, "While the tragedy in September could be considered unusual – fortunately not a common occurrence – aspiration crises with small children would not be as extraordinary or unusual in a comparable work environment (small children aspirating)." Dr. Glass indicated Ms. Patterson's perception of the September incident was accurate; however, despite the emotionally traumatic nature of the event, various psychosocial factors, including personality psychodynamics and her prior psychiatric issues along with past and ongoing dissatisfaction with elementary school nursing "are the reason for her remaining off work

[18] R. 3890.

[19] R. 3939.

and reporting symptoms." He added that any continuing need for psychotropic medication or counseling "involves her pre-existing psychiatric issues / diagnosis and personality psychodynamics," which preexisted her work injury. He believed Ms. Patterson should have been able to deal with the distress generated by the incident after a few counseling sessions and return to work. He acknowledged she continued to report insecurities and apparent distress with elementary school nursing. Despite that, Dr. Glass opined she was able to return to work as an elementary school nurse and any psychiatric disorder caused directly by the September 23, 2014, incident was medically stable without a ratable permanent psychiatric impairment.[20]

On December 10, 2014, Dr. O'Leary clarified he had engaged Ms. Patterson in cognitive therapy, but a return to work goal date had not been set. Although Dr. O'Leary had suggested many dates for her to return to work, her reported symptoms precluded setting a return to work goal date. As her mental status and anxiety levels improved slowly, but steadily, a goal of returning to work by February 1, 2015, was set.[21]

On January 13, 2015, MSBSD, relying on the report by Dr. Glass, controverted further temporary total disability (TTD) and temporary partial disability (TPD) benefits effective January 5, 2015; permanent partial impairment (PPI) benefits; reemployment benefits; and mental health treatment benefits from January 5, 2015, and ongoing.[22]

On January 12, 2015, Dr. O'Leary reviewed Dr. Glass's report, reviewed the DSM-IV criteria for PTSD, and opined Ms. Patterson met the diagnostic criteria stemming from the September 23, 2014, incident with the student. Dr. O'Leary stood by his adjustment disorder diagnosis.[23] Dr. O'Leary concurred with Dr. Glass that benzodiazepines should be reduced or eliminated. He did not, however, agree with the recommendation for future treatment with antidepressant medications only. Dr. O'Leary recommended Ms. Patterson comply with her medication regimen, but also seek ongoing outpatient

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[20] Exc. 293-313.

[21] R. 3947.

[22] R. 9-10; Exc. 293-313.

[23] R. 3229-30.

psychotherapy to further reduce her symptoms. Dr. O'Leary found she had proven herself amenable and responsive to psychotherapy. He agreed with Dr. Glass that once she successfully returned to work, her continued psychotherapy should "presumably be financed by Ms. Patterson and her insurance company."[24]

On February 6, 2015, Dr. Odland disagreed with some of Dr. Glass's opinions, stating he did not agree Ms. Patterson was medically stable or ready to return to work full time. He acknowledged she had improved; however, he believed further measurable improvement could be achieved with continued medical treatment and transition back to the work place over time. His plan was for her to return to work on a part-time basis starting with the mornings in February 2015, and then transitioning to full-time duties starting in March 2015.[25]

However, on February 9, 2015, Ms. Patterson returned to work at Wasilla Middle School.[26] She reported all had gone well and she received perfect performances on her skills check-off. She felt welcomed back to work and appreciated. She said, "I'm a survivor! I can do this! I can make it through this school year!"[27] On February 10, 2015, Ms. Patterson filed a workers' compensation claim and requested an SIME, TTD, TPD, medical and transportation costs, a compensation rate adjustment, penalty, interest, and a finding of unfair or frivolous controversion.[28]

On February 27, 2015, Dr. Odland reviewed her school nurse job description, predicted she would not have a PPI rating resulting from the September 23, 2014, work injury, and had the physical capacities to perform the school nurse position's physical demands. He approved her to perform the job and released her to return to work with no restrictions.[29]

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24 R. 3229-30.

25 Exc. 39; R. 3640.

26 Exc. 40.

27 Exc. 40.

28 Exc. 317-18.

29 Exc. 46.

Based on Dr. Odland's responses, rehabilitation specialist Forooz G. Sakata, M.S., determined Ms. Patterson was not eligible for reemployment benefits.[30] On March 24, 2015, reemployment benefits administrator designee Deborah Torgerson found Ms. Patterson was not eligible for reemployment benefits based on Ms. Sakata's March 10, 2015, report, which indicated Ms. Patterson had returned to her usual and customary employment.[31] She did not appeal this decision.

Ms. Patterson's anxiety by March 4, 2015, was successfully modulated after she returned to full-time employment. She reported vomiting the first day as school nurse for a primary school. Dr. O'Leary said this was "reminiscent obviously of the trauma with Kenneth." He encouraged "forward looking discussions" as they planned her treatment discharge around May 20, 2015, the school year's end.[32]

However, on March 18, 2015, Dr. O'Leary advised Ms. Patterson to stop "clinging to anger re: those who have not treated her well throughout the process post-Kenneth, need to re-interpret metameaning of continuing to dream about Kenneth trauma. . . ." He encouraged her to explore career options in healthcare and nursing-related endeavors that did not involve direct patient care. Dr. O'Leary promoted ending therapy in mid or late May. His note did not include a description of her dreams.[33]

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

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

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30 Exc. 46; R. 5837-48.

31 R. 5849.

32 R. 3995.

33 R. 3998.

> this, a working diagnosis of anxiety continues to make this therapy valid and medically necessary and indicated. . . .[34]

Ms. Patterson, on April 29, 2015, reported a "bad day." Dr. O'Leary noted it was related to her "job's unknowns" and "related frustrations" with her perceived "very unclear communication in the workplace." Dr. O'Leary noted Ms. Patterson's misery in her job would not last much longer because there were less than three weeks left in the school year.[35]

Ms. Patterson continued to prepare for treatment termination with Dr. O'Leary. He noted, "most sxs reduced but some nightmares remain, maintain Rx, future career planning focus as well as self-care."[36] By May 13, 2015, Dr. O'Leary reported she had ongoing and deepening frustration with MSBSD based upon her perceived "lack of clear communication."[37] She reported on May 20, 2015, she felt continuing frustration, related to her perception of a lack of clear communication from MSBSD. A recent performance evaluation and resultant remediation plan spiked her emotional reactions. Dr. O'Leary advised her to consider carefully human resource and union policies, specifically focusing on the need for clear communication and measurable job expectations. He suggested doing so might hold her in good stead. This was her last session with Dr. O'Leary; however, follow-up would be available at her request.[38]

Ms. Patterson reported to Dr. O'Leary on June 2, 2015, that she received a contract for full-time employment for the 2015/2016 school year. She would start her school nurse position with Sherrod Elementary School in the fall. "I will fulfill that 188 days to make it to my vestment in the State Retirement system after all!"[39]

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[34] R. 4008.

[35] R. 4012, 4020.

[36] R. 4015.

[37] R. 4016.

[38] R. 4019.

[39] R. 4031.

On September 21, 2015, Ms. Patterson requested assessment to see if she still had PTSD. Dr. O'Leary said, "review of DSM sxs appeared to reveal that pt continues to suffer with chronic PTSD."[40] She was concerned her license would be at risk if she did not inform the Board of Nursing of her mental-health status.[41]

On October 16, 2015, Dr. Odland said Ms. Patterson's September 23, 2014, injury occurred "while performing mouth to mouth resuscitation on a student and got exposed to vomit, blood tinged foam, nasal and mouth secretions and post-incident stress, anxiety, depression, grief, PTSD." Her mental status was normal.[42]

On November 11, 2015, Dr. O'Leary determined Ms. Patterson was safe and stable. He gave her the diagnoses of adjustment disorder with mixed anxiety and depressed mood, and PTSD, unspecified. Dr. O'Leary reviewed with her "professional/psychic boundaries for 'not taking the bait' for drama and contention with principal, coupled with hopefully anxiety-reducing self-validation strategies to reduce agitation and self-doubt."[43]

On January 21, 2016, Ms. Patterson reported a staff member collapsed and she was ready to use the AED and began CPR. She waited for the ambulance and did not need to defibrillate, but was scared. She said, "I went into my office after and I closed my office door to take a breather (cry). Anyways my boss although trying to mean well, advises me if I think I'm going home I need to look at the message that it might or will give my staff. (Nurse not trustworthy or mentally stable to work for them.). . . . So I did ask for debriefing which was told wasn't needed. Bull shit. I needed it! Once again denied one; I was told my incident report [was] sufficient."[44] On January 22, 2016, she told Dr. O'Leary she may need to visit because "A child choked today thank God teacher

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40 R. 4048.

41 Exc. 52; R. 4048.

42 Dec. No. 18-0111 at 19, No. 64.

43 R. 4089.

44 R. 4098.

did abdominal thrusts and cleared by time I sprinted to classroom. They are going to be okay. Fifth grade boy. Imagine that."[45]

Dr. O'Leary, on February 22, 2016, reported Ms. Patterson's stress levels were "up due to reports of lack of school district support." Coping strategies were explored and "possibility of soothing and empowerment if she begins searching for a new job in a new nursing field, perhaps one where she does not have to 'fly solo' clinically."[46] He explored with her coping strategies for her "feeling of secondary trauma from lack of school district emotional support."[47]

On April 19, 2016, Dr. O'Leary again found Ms. Patterson was safe and stable. He reviewed coping strategies and encouraged her to use them as she waited out the remaining twenty-five days of her employment contract with MSBSD.[48]

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

> Shannon Patterson, at all times relevant herein was the school nurse for the Iditarod Elementary School. Shannon Patterson, may be one of the John Doe 1-10 defendants should the discovery in this matter disclose that Shannon Patterson was, in some manner negligently and proximately responsible for the events and happenings alleged in this complaint and for plaintiffs' damages.[49]

On May 17, 2016, Ms. Patterson reported she received an evaluation stating she was proficient. "Nothing exemplary about my nursing skills or accomplishments this school year. . . ." After MSBSD offered her a contract for the 2016/2017 school year, she reported, "[i]t felt so good to write, 'I respectfully decline!' And to turn in my resignation letter I've had hanging on my fridge since April of 2015! I have four days left in this job

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[45] R. 4099.

[46] R. 4109.

[47] R. 4109.

[48] R. 4128.

[49] Exc. 54-59.

and then I have achieved the goal I never thought I'd accomplish!" She told Dr. O'Leary, "The anxiety weight is lifting off my shoulders and the nightmares are less frequently occurring now." She said she weaned herself down to 1/2 to 1 mg Xanax daily on her own and planned to be completely off the prescription by summer's end. She resigned from her position with the school district effective the last working day of the 2016 school year.[50]

Ms. Patterson filed an amended workers' compensation claim on June 21, 2016, now describing how the injury happened when "Child choked at school and died ten days later." Body part injured was amended and stated psyche. She amended her "nature of injury" to include PTSD, anxiety, and depression. Her amended claim did not include a compensation rate adjustment or a request for a finding of unfair or frivolous controversion. She amended her TTD claim to include benefits from May 24, 2016, and continuing, and her TPD claim did not change. She continued to claim medical and transportation costs, which had both increased from her March 11, 2015, claim.[51]

On June 23, 2016, Dr. O'Leary continued to diagnose adjustment disorder with mixed anxiety and depressed mood, and PTSD, unspecified. He reviewed the coping strategy of "distancing statistical abnormalities" of "bad days" rather than repeating them incessantly. He also reviewed coping strategies to address other concerns related to Ms. Patterson's, hopefully, temporary mood downturn connected to resigning her school nurse position with MSBSD.[52]

However, on July 7, 2016, Dr. O'Leary notified Ms. Patterson he received a records request from Burr, Pease & Kurtz and opined it was dangerous, "and potentially catastrophic," to introduce her therapy records into her workers' compensation proceedings. He asked her to carefully consider "what's going on right now," and gave her a chance to revoke her consent for release of her records to MSBSD. Dr. O'Leary reminded Ms. Patterson she signed an agreement she would not use the records for legal

[50] R. 4133.

[51] Exc. 61-62.

[52] R. 4146.

purposes, because, in part, "the notes are written for clinical purposes not legal ones, meaning that the notes tend to focus on your problems, often making you appear more ill than you might actually be." Dr. O'Leary emphasized he wanted to be helpful in Ms. Patterson's life, not harmful to her legal proceedings. He referred her to Richard Lazur, Psy.D., if she needed a psychological expert to become involved in her workers' compensation claim.[53]

On October 18, 2016, Dr. Odland said, "She maintains adequate compliance with follow-up and her mental health issues in no way impact her ability to practice nursing."[54]

In her deposition on April 3, 2017, Ms. Patterson testified she received her Bachelor of Science degree in nursing and her school nurse license and Registered Nurse license in 1996, and has taken continuing education courses to maintain her teaching certificate endorsing school nursing and her national certification in school nursing. She started working as a substitute school nurse for MSBSD in 1999 and continued as a substitute school nurse until 2001, when she was hired by MSBSD as a full-time school nurse. While working as a volunteer nurse, Ms. Patterson responded to minor injuries and to a concussion. She worked as a full-time school nurse from 2001 until 2007, and then went back to substitute school nursing. She subbed until she took a job at Providence Behavioral Medicine Group in 2010 and worked there until 2011. Ms. Patterson returned to full-time work for MSBSD as a school nurse in 2014, and continued to work for MSBSD until she resigned in May 2016. She had continued to renew her CPR, Basic Life Support, and Medic First Aid certifications, and obtained an instructor certificate and national school nurse certification. During all times Ms. Patterson worked for MSBSD she maintained CPR, Basic Life Support, and Medic First Aid certifications, which included use of automated defibrillators. In the past, she was also licensed as an Alaskan EMT I and a Certified Nursing Assistant. Since 1987, when she attempted suicide, she had been treated for "situational" depression. In 2017, she had been Dr. Odland's patient for twenty-six years. She was treated for bipolar disorder, anxiety, and depression from

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53 R. 4149-50.

54 R. 3756.

2004 to 2010. It was during this time she was diagnosed with sleep fragmentation disorder and she was having symptoms caused by her medications' side effects and "situational things that were taking place." She developed a friendship with Dr. Johnson after having worked with him at Providence Behavioral Medicine Group, and he continued to serve and assess her from his home. This arrangement with him continued until he retired in December 2014 and Dr. Odland took over prescribing medications for her.

Ms. Patterson began to see Dr. Odland for mental health concerns after the September 2014 work incident. She attempted to obtain assistance such as a critical incident debriefing through two MSBSD departments. She was told to contact her member assistance plan and after seventeen attempts to reach someone, she called Dr. Johnson and asked if he would help her get in with a therapist. Dr. Johnson provided her "phone consultation care for free," monitored her, and referred her to Dr. O'Leary. Ms. Patterson doubted Dr. Johnson maintained a medical chart on her because he was her friend and would provide physicals for new employment and a rebuttal to MSBSD's independent medical evaluation (IME). Ms. Patterson said she resigned her position with MSBSD after the 2015/2016 school year because, "In spite of all my efforts to put this incident behind me, I was not able to, and every day for the lunch recess hour I felt helpless and had anxiety for the whole school year, and I couldn't live like that anymore. So, I removed myself." The September 2014 incident occurred at Iditarod Elementary, but when she resigned, she was working at Sherrod Elementary School.[55]

Ms. Patterson was asked, "Are you at this time making any claim for any physical injury or illness as a result of the September 2014 choking incident?" She said, "I don't know. That's why I'm here." She was then asked, "Physical condition as opposed to a mental health condition?" Ms. Patterson replied, "Okay. No. Then no."[56]

On April 10, 2017, Dr. Odland referred Ms. Patterson to Paul M. Wert, Ph.D., a psychologist licensed in Washington and Idaho, for a psychological evaluation.[57] Dr. Wert

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55 Shannon Patterson Dep., Apr. 3, 2017.

56 *Id.*

57 R. 3760.

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

> Related to, but beyond her characteristic level of emotional responsivity, this woman appears to have been confronted with an event or events in which she was exposed to severe threat, a traumatic experience that precipitated intense fear or horror on her part. Currently, the residuals of this event appear to be persistently re-experienced with recurrent and distressing recollections, such as in cues that resemble or symbolize an aspect of the traumatic event. Where possible, she seeks to avoid such cues and recollections. Where they cannot be anticipated and actively avoided, such as in dreams or nightmares, she may become terrified, exhibiting a number of symptoms of intense anxiety. Other signs of distress might include difficulty falling asleep, outbursts of anger, panic attacks, hypervigilance, exaggerated startle response, or subjective sense of numbing and detachment.

Dr. Wert found Ms. Patterson displayed symptoms of both depression and anxiety, including fatigue, sleep disturbance, sweating and tension, and concentration difficulties. He found she had "habitual and possibly maladaptive methods of relating, behaving, thinking and feeling." Dr. Wert interpreted the testing results to conclude she was dysphoric, insecure, had abandonment fears, somatic symptoms, diminished capacity for pleasure, grew anxious over trivial matters, had claustrophobic anticipations, and had poor self-image. His evaluation identified she has passive dependency and becomes angry toward others who do not appreciate her need for affection and nurturance. He

opined her presentation was suggestive of borderline personality disorder. Dr. Wert concluded Ms. Patterson was affectively unstable and "continues to experience symptoms of Posttraumatic Stress Disorder (PTSD), associated with incident which occurred on or around September 23, 2014." He based his conclusion on her exposure to actual or threatened death when she witnessed the student choking. Dr. Wert recommended she receive outpatient mental health treatment and be medically assessed for use of Prasozin, originally a blood pressure medication that was found to be helpful with veterans experiencing nightmares and troubling dreams as a result of PTSD. He diagnosed her under the DSM-5 with PTSD; major depression, recurrent, severe, without psychotic features; generalized anxiety disorder; R/O adjustment disorder with anxiety; dependent, avoidant (socially), and possibly borderline personality features or traits.[58]

Ms. Patterson, on May 11, 2017, complained of "increased stress and anxiety since the incident at work involving the death of a student." She felt MSBSD's "staff was somewhat less than supportive." Dr. Odland determined she was not yet medically stable and it was undetermined if she could return to her job or if she would have a permanent impairment. He counseled Ms. Patterson and moved her to "supportive care."[59]

In his deposition on May 23, 2017, Dr. Johnson testified he retired from Providence Behavioral Medicine Group in 2013. He specialized in child, adolescent, and young adult behavioral medicine. He met Ms. Patterson in 2010, when she worked as a part-time nurse for Providence Behavioral Medicine Group, and they worked together until she "was given a hard time by her supervisor." On August 21, 2014, he did a "physical exam" for her so she could work for MSBSD; however, he was not actively engaged in practicing medicine. He signed Ms. Patterson's past medical history and conducted a physical exam. Dr. Johnson was familiar with her past medical history because he "had copies of it." He had no doubt she was fit for her job as an elementary school nurse. He recommended she see Dr. O'Leary for psychological counseling when her attempts to find a therapist were unsuccessful. Dr. Johnson maintained regular contact with Ms. Patterson and they

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[58] Exc. 75-82.

[59] R. 3776.

had "become really good friends." Dr. Johnson believed he did not have a bias in favor of Ms. Patterson, because he "see[s] her issues," "understand[s] her diagnoses," and he fully agreed with some because of what he has observed. At the same time, he believed Ms. Patterson was a kind and exceptional person, which "obviously would color [his] vision somewhat." He supposed "having a kid die in front of you" could be considered an occupational problem, but he thinks "that's kind of cold."[60] Dr. Johnson believed Ms. Patterson had PTSD, anxiety with "some overlay of agoraphobia," and "some other things" Dr. Glass did not mention. He thought she had anxiety for a large part of her life, but that it had increased "a considerable amount" due to the work incident. Dr. Johnson said she was "fearful of the event coming back to haunt her" in terms of "extreme agitation and unrest," which increases her anxiety. Her anxiety was increased because she was hoping it would not happen again, which made her "pretty much anxious all the time." Dr. Johnson's "foundation" for diagnosing Ms. Patterson with PTSD was the time he spent in the military when he saw many soldiers returning from Iraq and Afghanistan. Dr. Johnson said she gave up her job as a school nurse because she had a "constant lurking terror" that "something was going to happen again and she would lose another child," and she did not feel comfortable in the position. He found the work incident was "a horrible thing" and a "unique and unusual situation that should be treated as a one of a kind thing." Dr. Johnson was motivated to draft the February 1, 2015, letter "To Whom It May Concern" because he thought Ms. Patterson was "not getting a fair view from both the school and from the – I don't know about workman's comp, but whoever was – she just wasn't getting a fair shake." Dr. Johnson mentioned Ms. Patterson's "mother was abusive and there was a lot of reasons why she is the way she is. And so – but I'm really impressed with – and he also mentioned, which Dr. Glass did not, of the anxiety disorder which I still can't believe somebody couldn't see that." Dr. Johnson also noted Dr. Wert "said both depression and anxiety, which is true." He objected to Dr. Glass's opinion

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[60] It is not clear from this statement whether Dr. Johnson knew the child did not die in front of Ms. Patterson. The child died ten days later in the hospital, an event, although certainly very sad for Ms. Patterson, quite different from having a child die while working on the child.

Ms. Patterson should have appropriately dealt with the stress caused by the work incident "after a few sessions with the counselor and resumed work." "To expect somebody just to get over a child's death that you attempted to change and experienced on a one to one basis in a couple episodes I think is an extremely – extremely bizarre view." One thing that has distressed Dr. Johnson "throughout all this has been how much repetition of the trauma has – [Ms. Patterson] has been forced to repeat and repeat and repeat by going through all the testimony and trials and everything else." His concern is that any time Ms. Patterson "has to review her history or go over any paperwork or re-discuss any parts of this case, it's as reliving the case again." He provided a referral to Dr. O'Leary, but did so as both a licensed physician and a friend, but "it was more as a licensed physician than a friend." Dr. Johnson did not have a file or chart notes for Ms. Patterson; he did not have all the medical records Dr. Glass reviewed, nor had he traced her history and how the different diagnoses of bipolar disorder were made. Dr. Johnson admitted he offered medical psychiatric opinions regarding Ms. Patterson without reviewing her complete medical record or even the record Dr. Glass reviewed. He also admitted he is her advocate.[61]

Dr. Johnson was aware Ms. Patterson was trained in basic CPR and it could be anticipated she may need to use CPR while performing school nurse duties. People dying is not a common part of a medical provider's experience, but Dr. Johnson said it does happen. He confirmed it probably happened once a year in behavioral health clinics; that it could happen twice a year or more than twice a year.[62]

Ms. Patterson initiated therapy with Debra G. Haynes, M.Ed., L.P.C., on June 13, 2017. Ms. Patterson said she was seeking counseling for "evaluation and treatment for PTSD," which she has had since September 23, 2014, and a traumatic event initially caused her PTSD.[63] In an undated note, Ms. Haynes noted Ms. Patterson felt abandoned; "doesn't trust her former employer – principal." Ms. Haynes also noted Ms. Patterson

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[61] Jay D. Johnson Dep., May 23, 2017.

[62] *Id.*

[63] R. 3815-16.

was protecting her license and obtained a national certification in school nursing, had been a registered nurse for twenty-one years with eighteen years in school nursing.[64] On July 11, 2017, Ms. Haynes noted Ms. Patterson was sleeping better and her anxiety was decreased.[65]

On October 24, 2017, Keyhill Sheorn, M.D., psychiatrically evaluated Ms. Patterson at MSBSD's request. Prior to evaluating Ms. Patterson, Dr. Sheorn administered the Structured Inventory of Malingered Symptomatology, on which she scored 27, which "was significantly above the cutoff score of 14. The score comes from the number of answers she gave that are atypical, improbable, inconsistent, or illogical for people with true mental disorders." An elevated score, such as Ms. Patterson's, indicates concern for exaggeration of symptoms in a medico-legal complaint, and caution for multiple inconsistencies in the records and within the clinical interview. Ms. Patterson reported she did not remember the period of time after the incident; however, she did recall a message issued by the principal providing notice a student had an incident and had been transported to the hospital. Ms. Patterson shared she was vomiting and walking and throwing up trying to get "that taste" out of her mouth and she needed to be tested for tuberculosis, hepatitis, and AIDS. Ms. Patterson had already been vaccinated for Hepatitis A and B, so she was only concerned about Hepatitis C and HIV. Ms. Patterson said when the blood tests came back negative her mind was cleared of those concerns.

Dr. Sheorn attempted to elicit PTSD symptoms and asked Ms. Patterson if she felt she had nightmares or flashbacks. Ms. Patterson replied she had nightmares two or three times a week and flashbacks at night that made it difficult to sleep; however, Dr. Sheorn said Ms. Patterson was unable to describe either.

After conducting an interview, administering evaluations, and reviewing Ms. Patterson's extensive medical record and depositions, Dr. Sheorn's diagnostic impression of Ms. Patterson's psychiatric mental health condition was:

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64 R. 3817.

65 R. 3821-26.

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

Dr. Sheorn said there was enough evidence in her clinical exam of Ms. Patterson and the records reviewed to diagnose borderline personality disorder. However, Dr. Sheorn also found strong histrionic personality disorder elements based on Ms. Patterson's "pattern of attention seeking behavior, extreme emotionality, and appears to have difficulty sustaining herself when the focus is not on her." To be diagnosed with histrionic personality disorder under the DSM-5, an individual must display a pervasive pattern of excessive emotionality and attention seeking, beginning by early adulthood and present it in a variety of contexts, as indicated by five or more of eight criteria. Dr. Sheorn identified Ms. Patterson has only three histrionic personality disorder criteria. Dr. Sheorn concluded Ms. Patterson showed stronger borderline personality disorder diagnostic elements and said:

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

Dr. Sheorn summarized Ms. Patterson's extensive medical record and commented that Dr. Wert's report did not mention whether Ms. Patterson had any prior mental health

diagnosis or treatment. She did find, however, that "Dr. Wert's assessment was congruent with both Dr. O'Leary and Dr. Glass."

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

To receive a borderline personality disorder diagnosis, five of nine criteria must be met. Dr. Sheorn found Ms. Patterson met seven of the nine criteria. Dr. Sheorn said Ms. Patterson's work incident "flashbacks" "do not do not fit the pattern of a traumatic flashback, and are instead the typical regressed psychotic illusions that occur in borderline personality disorder." Dr. Sheorn concluded Ms. Patterson's diagnosis was borderline personality disorder with histrionic traits. She said, "Dr. Glass's use of the old DSM IV TR is still consistent with theDSM-5 and these opinions are congruent." She also said, "Dr. Glass's overall testing did not indicate PTSD or any other Axis I disorder." Dr. Sheorn's diagnostic evaluation also clarified she could not make a PTSD diagnosis. Dr. Sheorn said, by Ms. Patterson's own description, she did not respond with intense fear, helplessness, or horror to the student's situation. "In fact, she has been consistent in describing, and bragging publicly, that she was not helpless during the child's collapse and that she was able to provide her best first responder emergency care and deliver him to the EMT's."

Dr. Sheorn also found Ms. Patterson did not satisfy Criterion B because "she has not avoided the target incident. What she is avoiding is returning to work." Dr. Sheorn noted the reason Ms. Patterson gave for resigning from her school nursing job is "she wants to avoid being put in a position to medically help a child because she does not want to expose herself again to someone else's body fluids." However, contact with the student's vomit, blood, and salvia while performing CPR did not cause Ms. Patterson any

"true harm or threat of harm." Dr. Sheorn said it merely caused a "what if" situation. "What if she contracted Hepatitis C? What if she contracted AIDS? These were future events of Ms. Patterson's own imagination, and had nothing to do with the actual situation that had happened. PTSD is a disorder of memory, not of fantasy."

Dr. Sheorn found Ms. Patterson's stress, abhorrence, and over-reactivity symptoms fell into the hysteria category satisfying one of the borderline personality disorder criteria – "transient, stress-related paranoia ideas or severe dissociative symptoms." The example Dr. Sheorn referred to was Ms. Patterson's report she screamed at the child and God to leave her alone while kicking the child's head, which is a volleyball, under the bed.

Dr. Sheorn identified "that other condition" in Ms. Patterson's case is malingering. She said:

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

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

AS 23.30.010(b) was quoted to provide Dr. Sheorn the criteria for determining if a mental injury caused by mental stress is compensable. Applying this standard, Dr. Sheorn opined the September 23, 2014, incident did not cause Ms. Patterson to suffer a mental health injury, but stated, "[I]t must be remembered that Ms. Patterson herself later alleged that she felt accused as negligent in the death of the student and this was a 'primary factor in causing her PTSD.' She also contended that the estate's litigation and the Employer's attempt to assign blame and culpability to her triggered PTSD symptoms. She contended that the attorney for the estate triggered her PTSD symptoms." Despite Ms. Patterson's contentions, Dr. Sheorn indicated none of these factors meet PTSD Criterion A.

Dr. Sheorn also said, "The requirement to perform CPR certainly would not be considered an extraordinary or unusual task for a licensed RN. She had been trained and certified in this skill. The skill itself and the requirement to perform this task should not be confused with the extraordinary or unusual calamity that befell the child." Dr. Sheorn opined the work stress occasioned by the September 23, 2014, events did not cause a work-related mental health injury. "Ms. Patterson's personality organization and her poor coping skills are the cause of her symptoms." Determining Ms. Patterson did not sustain a mental injury, Dr. Sheorn determined the question regarding medical stability was not applicable and Ms. Patterson did not sustain an impairment. Dr. Sheorn opined no treatment Ms. Patterson received has been related to any mental injury from the September 23, 2014, incident. However, she found a review of Ms. Patterson's treatment necessary "because when a patient is not getting better, then either the diagnosis is wrong or the treatment is wrong."

Dr. Sheorn opined treatment Ms. Patterson received from Dr. O'Leary was elective and in no way connected to a work event. Dr. Sheorn believed Dr. O'Leary should have had some sense of Ms. Patterson's personality disorder and "been on high alert for her histrionic trait of assuming the relationship is more intimate than it was." While Ms. Patterson "may have felt comforted by him, and he may have felt that his wish to

have private communication with her (*no-notes-nothing-never*); amend her chart and let her peruse the change; or collude with her to deceive the Board of Nursing was somehow in her best interest, he never-the-less violated her boundaries." Dr. Sheorn also found Dr. O'Leary's quick termination of the counselor/patient relationship via email was below the standard of care, "especially after allowing such a disturbed patient who had issues with abandonment to have such personal contact with him. It is of concern that, in the abrupt termination, Dr. O'Leary used bullying tactics, manipulation, and outright threats to Ms. Patterson's already impaired self-esteem in an attempt to coerce her to block the subpoena of his office records." Dr. Sheorn determined that, based upon Ms. Patterson's own statements, "Ms. Patterson is functioning at a level high enough not just to care for herself, but to care for fragile others 'like a regular nurse would.' She is able to intervene medically on an airplane, manage her household, her parent's household, and keep up with friends and her children. She described no functional limitation and appears to be cognitively and neurologically intact. There is no indication that these skills could not be applied to the workplace." Dr. Sheorn based her opinions upon a reasonable degree of medical certainty.[66]

At hearing, Jacquelyn H. Ficek testified she was a police officer in Wasilla and Palmer, Alaska. She met Ms. Patterson in college; they were both enrolled to be school nurses. After the student choked, Ms. Ficek attempted to get Ms. Patterson enrolled in some type of critical incident debriefing; however, because Ms. Patterson was not a first responder, she could not be enrolled. She was aware Ms. Patterson had appointments with several doctors, including Dr. O'Leary. Ms. Ficek was familiar with PTSD because her father was a Vietnam veteran. She observed Ms. Patterson's behavior; Ms. Patterson was focused on what happened and was traumatized by her memory of the incident and was scared. Ms. Ficek advised Ms. Patterson to keep good notes and write everything down. She learned the student died and broke the news to Ms. Patterson, who then started thinking about all the "what ifs" in the situation. When Ms. Patterson returned to work for MSBSD, she was working full-time at a school in Palmer. She had "new stress"

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[66] R. 3828-61.

that was different than when she worked at Iditarod. Ms. Ficek said Ms. Patterson was placed on a plan to improve her performance and Ms. Patterson felt animosity because of the plan. Ms. Ficek said Ms. Patterson's decision to retire was a struggle; she wanted to make sure she had sufficient service years to vest. Since Ms. Patterson's retirement, she is a changed person. Ms. Patterson is more subdued, and avoids doing things, especially with children. Ms. Ficek and Ms. Patterson are best friends.[67]

Donald A. Patterson testified he met Ms. Patterson after he graduated from Bartlett High School and they were married four or five years later. Over the last twenty-six years, they have only been separated for less than two years and have lived together continuously for the past five years. Ms. Patterson is Mr. Patterson's best friend. Ms. Patterson was outgoing, compassionate, emotional, and involved with children. When he came home from work, Ms. Patterson told Mr. Patterson about the student's choking incident. She was anxious, withdrawn, and concerned. Ms. Patterson was devastated when the student passed away. She is slowly progressing back to the person she once was. Ms. Patterson walked away from MSBSD because every working day she was reliving the trauma; she was physically and mentally exhausted. She does not do a lot of things she used to do, such as go around children. Mr. and Ms. Patterson have been married and divorced twice; the second time prior to 2014. Ms. Patterson is a very happy person; however, he did not deny her mental health history prior to 2014. Ms. Patterson's bouts with depression have always been based upon life's events, although he is not aware or familiar with her medical records and has no medical training. He disagreed with the major depressive disorder diagnoses given Ms. Patterson in 2004 and 2006 by a psychiatrist and mental health provider. He deferred to his "personal opinion" and observations from living with her; he knew her only as a happy person, except for times when she has been depressed. Mr. Patterson was aware Ms. Patterson had tried several antidepressant medications prior to 2007. Mr. Patterson said he was

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[67] Hr'g Tr. at 204 – 27, Jan. 16, 2018.

aware Ms. Patterson was diagnosed with bipolar disorder in the late 2000s only because that was what defense counsel was reading.[68]

Dr. Wert testified he is a licensed psychologist in Washington and Idaho. He has a Bachelor of Science degree in psychology, a Master of Science degree in clinical psychology, and Ph.D. in counseling psychology. For the past fifteen years, he has exclusively performed "court related" evaluations upon referrals from private attorneys and courts. Prior to the past fifteen years, he had a clinical practice, but he no longer practices "clinically." Dr. Wert said one cannot do an assessment and then clinically treat an individual because it would be a conflict, because an evaluator is supposed to be objective and a therapist serves as their client's advocate and acts accordingly. Dr. Wert's role in Ms. Patterson's assessment was to perform an objective psychological evaluation. On April 14, 2017, Dr. Wert interviewed Ms. Patterson for an hour and fifty minutes and administered an objective personality inventory and, prior to preparing his report, reviewed information provided to him by Mr. Harren, including Ms. Patterson's April 3, 2017, videotaped deposition, a transcript of her speech given at University of Alaska Anchorage on October 10, 2015, medical information from the Public Education Health Trust, email communications between Ms. Patterson and Dr. O'Leary, the voluminous medical records from Providence Behavioral Medicine Group, and information from the Alaska Department of Labor and Workforce Development regarding Ms. Patterson. Dr. Wert reviewed the disorders with which he diagnosed Ms. Patterson in his April 26, 2017, report. He ruled out adjustment disorder with anxiety, which is diagnosed when a person is going through some difficulties, typically as a result of an incident that generates anxiety or concern. Dr. Wert read the criteria to diagnose PTSD contained in theDSM-5. He concluded she met Factor 1 because she was exposed to something traumatic and a child died within ten days of the trauma. Factor 2 requires one or more intrusion symptoms and Dr. Wert found she had at least four, intrusive recollections of the traumatic event, distressing dreams of the event, dissociative reactions of the event feeling like the event was happening again, and distress when exposed to "cues" that

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[68] Hr'g Tr. at 233 – 39; 244 – 49.

reminded her of the event. Dr. Wert reviewed Factor 3, persistent avoidance of the stimuli associated with the traumatic event, and said Ms. Patterson met those criteria. He also said she met symptoms of Factor 4, negative alterations and cognitions and mood beginning or worsening after the traumatic event occurred. It is possible an individual could have "mood" issues prior to a traumatic event, but that would not rule out a PTSD diagnosis. An example of "worsening" is increased depression levels. Factor 5 is marked alterations in arousal and reactivity associated with the traumatic event, beginning or worsening after the traumatic event, and Dr. Wert said she met three of the symptoms, concentration problems, sleep disturbance, and hypervigilance. He found her symptoms lasted more than one month so she met Factor 6. Dr. Wert diagnosed her with depression. He was not sure how long she had been depressed, but believed it was shortly after the incident on September 23, 2014. Dr. Wert would never diagnose someone he had not personally evaluated. If he had been told Ms. Patterson was depressed in 2011, Dr. Wert would have no opinion about whether or not she was depressed unless she had told him she was. He said treatment of PTSD is somewhat controversial. Dr. Wert recommended cognitive behavioral techniques, such as prolonged exposure to the traumatic event where the person talks about the event over and over and over again until it becomes pedestrian to do it and, as a result, anxiety decreases. He also recommended eye movement desensitization and reprocessing, which requires specialized training, but he was aware not many psychologists have that special training.[69]

At hearing, Debra Haynes testified she has been a licensed therapist since 2009. She serves as a mental health counselor in both private practice and for the MSBSD. She is not a medical doctor, nor does she have a Ph.D. She has a master's degree in counseling. She had her first intake with Ms. Patterson on June 13, 2017, upon referral from Dr. Odland. Later, when Ms. Patterson shared Dr. Wert's report with Ms. Haynes, she read it to "get some outside information." Ms. Haynes said getting "other evaluative information" was helpful to understand Ms. Patterson's history. Ms. Haynes received a copy of Dr. Sheorn's report, which contained a review of Ms. Patterson's treatment from

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[69] Hr'g Tr. at 252 – 62.

2004 through 2013. She did not, however, have a copy of Dr. Glass's report nor did she have reports from Jeff Grasser, Dr. Odland, Ellen Halverson, or Providence Behavioral Medicine Group. Ms. Haynes did not confer with any of Ms. Patterson's medical providers. She saw Ms. Patterson six times for one-hour sessions; their last session was on December 16, 2017. Ms. Haynes diagnosed Ms. Patterson with PTSD based upon Ms. Patterson's self-report. Ms. Patterson completed Ms. Haynes "client intake form" and listed her symptoms. Ms. Haynes said Ms. Patterson sought an evaluation and treatment for PTSD. Ms. Haynes said she is a short-term solution-focused therapist and Ms. Patterson's request for an evaluation and treatment for PTSD "does not necessarily mean that was medically justified." Ms. Haynes believed Ms. Patterson suffered from PTSD from their initial visit and did not know it had completely resolved. Ms. Patterson had nightmares and a startle response. However, by December 2018, Ms. Patterson's self-reporting on the Scott Miller self-rating report indicated Ms. Patterson was feeling better. Ms. Haynes did not think employment was the cause of Ms. Patterson's PTSD, but she believed the incident at work caused Ms. Patterson's symptoms. Calling 911 when a student is choking is the appropriate course of action whether the call is made by a school nurse or another staff member.[70]

Susan Magestro testified she has a Bachelor of Science degree in criminology and a master's degree in "teaching." She met Ms. Patterson during the summer of 2012, when Ms. Patterson enrolled in a conference facilitated by Ms. Magestro. Ms. Patterson also enrolled in three more conferences with Ms. Magestro in 2013. In June 2015, Ms. Patterson informed Ms. Magestro she had been placed on a plan for improvement. Ms. Magestro learned of the incident involving the student and was surprised MSBSD would place Ms. Patterson on a performance improvement plan. Ms. Magestro asked Ms. Patterson to speak at two conferences. A December 2016 course was attended by nurses and after Ms. Patterson spoke on resiliency and overcoming diversity, the nurses gave her a standing ovation. Since Ms. Patterson's presentation, she and Ms. Magestro have not had contact. Ms. Magestro reviewed Dr. Sheorn's report a few days before

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[70] Hr'g Tr. at 294 – 316.

testifying. She admitted she does not give mental health diagnoses. She "works" with victims after they have received a diagnosis. Her work focuses on victims of violence and crime. She did not know Ms. Patterson prior to the spring of 2012 and found her "very different" in June 2015. Ms. Magestro said Ms. Patterson displayed "more anxiety" and was "more nervous." Ms. Patterson was "stroking her dog quite a bit." Ms. Magestro is not a medical doctor, an advanced nurse practitioner, or a licensed psychologist. If a student is choking, she considers it the school nurse's job to respond and that requesting someone call 911 is the standard. Ms. Magestro has never supervised Ms. Patterson's work for MSBSD.[71]

Dr. Johnson's wife, Kristy Johnson, testified she met Ms. Patterson when she worked as a nurse with Dr. Johnson at Providence Behavioral Medicine Group. Mrs. Johnson believes Ms. Patterson is "lovely" and "cares deeply about everything." Mrs. Johnson recalled Ms. Patterson being super excited about starting her job at Iditarod Elementary, but does not recall when that was. After the incident with the student, Mrs. Johnson recommended Ms. Patterson see Dr. O'Leary. Mrs. Johnson and Ms. Patterson are very good friends; Ms. Patterson assisted with Dr. Johnson's care when he was placed in palliative care. Mrs. Johnson said that although leaving the job was difficult for Ms. Patterson, she had to leave her job with MSBSD because she had flashbacks and was traumatized by memories, which made her job emotionally draining. Mrs. Johnson believed the traumatic memories of the student's death were harder for Ms. Patterson because she is a sensitive person.[72]

Jake Worden testified he was Ms. Patterson's foster child who lived with her and Mr. Patterson since 2002, when he was twelve years old, but has lived with them "permanently" since 2007. He graduated from high school in 2009. He recalled Ms. Patterson being excited to get a full-time job at Iditarod Elementary School and "it didn't bother her, she was fine with it" being around elementary kids. After the incident with the student choking, Ms. Patterson called Mr. Worden and she sounded "very not

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[71] Hr'g Tr. at 320 – 38.

[72] Hr'g Tr. at 340 – 43.

well." She was frantic, "she was not there emotionally or mentally." Mr. Worden said his mother went to see Dr. Odland after the incident because she needed to talk to someone and she was worried. He said his mother does not try to be the center of attention; she wants to know everything about everyone else; she is more interested in meeting new people and not being secluded. Before the incident, she was willing to go out and do things. Now, she stays at home in her room. He believed she joined the car club in 2015, but is not sure of the date. He said she joined it to meet new people and be less secluded.[73]

At hearing, Dr. Sheorn testified at length and was cross-examined by Ms. Patterson's attorney. She is a psychiatrist and during her residency studied personality disorders. She was first licensed in 1985 and maintains an active practice focusing almost exclusively on PTSD. About twenty percent of Dr. Sheorn's practice is conducting independent medical forensic evaluations. She served as MSBSD's medical evaluator and evaluated Ms. Patterson on October 24, 2017.

A question about Dr. Sheorn's report arose because she initially submitted a report to MSBSD's attorney which was then revised after MSBSD's attorney contacted Dr. Sheorn and asked about the report's omission of Ms. Patterson's records from 2004 to 2008. Dr. Sheorn explained she had reviewed Ms. Patterson's pre-morbid records and summarized them on another document and failed to attach the document to her report. She included them in the second December 23, 2017, report, which was filed on December 26, 2017. Dr. Sheorn stated she was not asked to, nor would she have permitted her opinion to be altered by MSBSD's attorney.[74]

Mr. Harren and Ms. Patterson's dog, Baloo, accompanied her to her evaluation with Dr. Sheorn. Dr. Sheorn would not permit Mr. Harren to attend the evaluation, nor would she permit Ms. Patterson to record the interview because any kind of observation or taping could distort the evaluation.[75]

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[73] Hr'g Tr. at 412 – 17.

[74] Hr'g Tr. at 347 – 51.

[75] *Id.*

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

Dr. Sheorn noted Ms. Patterson could recite the PTSD symptoms checklist, but when probed further, she did not manifest any of the PTSD signs or symptoms. Ms. Patterson did not have the visceral reactivity that goes along with PTSD. Dr. Sheorn pointed out Dr. Wert's testimony recited the PTSD criterion, but he also was unable to describe what Ms. Patterson's symptoms were and what signs he observed. Dr. Sheorn said the PTSD symptoms checklist is available online and the DSM-5 is available at Barnes & Noble. Ms. Patterson's description of a "flashback" was kicking the student's head under the bed. Ms. Patterson reported to Dr. Sheorn she had "flashbacks" all the time,

especially at night when she was trying to go to sleep. When Dr. Sheorn asked Ms. Patterson to describe her flashbacks, Ms. Patterson smiled, which Dr. Sheorn found disconcerting, because "by that point [most people] are crying usually or hyperventilating or looking around furtively or gasping or rocking." But, Ms. Patterson smiled; she was very calm and said, "It's a head and oozing oil from all its orifices no matter what I do." Dr. Sheorn said Ms. Patterson then got really energized and reported she put Legos and Harry Potter books under the bed, yelled at the head, and yelled at God. When Dr. Sheorn asked Ms. Patterson where she was seeing the head, Ms. Patterson got irritable and said she was above the head looking down, like she was doing CPR. Dr. Sheorn reported Ms. Patterson then got energized again, laughed, and said when the soccer ball would roll under the bed Ms. Patterson didn't want to sleep on the bed with it under there. Ms. Patterson said that is why she put the children's toys and books under the bed; things they can play with. For Ms. Patterson, the head was a 10-year-old. Then Ms. Patterson said she attempted to make a wooden blockade around the side and in front of her bed to help prevent the head from rolling out. When she traveled, she would sleep on an air mattress.

Ms. Patterson's history, symptoms, and the report she provided, according to Dr. Sheorn, are not at all indicative of PTSD, but rather borderline personality disorder. Those with borderline personality disorder become stressed, can get almost psychotic, have delusions, get paranoid, and say things that are quite distorted. The "pre-psychotic" episodes do not last very long, but are one of the hallmark symptoms of borderline personality disorder. Dr. Sheorn explained properly diagnosed PTSD, in a lay person's terms, is something unspeakable happens, cataclysmic, and the person does not have the ability to understand it was real, or what happened. Part of the event, not everything, but part, gets filed away in a different part of the brain. It is not filed away in memory; it is filed away in a primitive, unconscious part of the brain. An individual then spends a lot of time not thinking about the event, which is avoidance. A great amount of time and effort is spent not allowing the unconscious to become conscious. Although an individual does not want to think about the event, thoughts bubble up anyway. If people do not think about it, they then have nightmares and flashbacks. Flashbacks are an actual

reliving, real-time, as if the event were happening, and people have no awareness of where they are.

Dr. Sheorn said PTSD is a catastrophic mental illness and although it is thrown around nonchalantly, in reality it is a "terrible, terrible mental illness." People expend a great deal of energy not thinking about an event and not remembering and that is why the DSM-5 addresses changes in how people feel, how they think, their mood changes, that they become disengaged, feel bad about themselves, blame themselves, and blame other people. Memories are buried unconsciously and, therefore, people do not have all PTSD symptoms at once. They just have some symptoms and people tend to fall into different clusters. Dr. Sheorn added that it is very treatable.[76]

Dr. Sheorn heard Dr. Wert testify and reviewed his report. Her findings and conclusions are different than his. She said Dr. Wert got a sound social history from Ms. Patterson, but nothing in his report indicates he read Ms. Patterson's medical records or Dr. Glass's report. Dr. Sheorn said what Dr. Wert described with Ms. Patterson and CPR is not PTSD; he describes a phobia, which is very different. Ms. Patterson has specific fears about being back in school and doing what school nurses do. Dr. Sheorn was critical because Dr. Wert arrived at the PTSD diagnosis from Ms. Patterson's self-report. He gave Ms. Patterson the MCMI-III inventory, which bases a PTSD diagnosis on DSM-IV, not DSM-5. She said it does not analyze data and computer interpretation and scoring are no longer provided because it is outdated. Dr. Sheorn found it clear from his report that Ms. Patterson exaggerated some of her responses. For example, by Ms. Patterson's self-report, she checked all symptoms on the PTSD checklist. Dr. Wert went through and selected the ones he thought Ms. Patterson truly had. Dr. Sheorn found no evidence in Dr. Wert's report that indicated how he arrived at the PTSD diagnosis; Dr. Sheorn believed it was based solely upon Ms. Patterson's self-reporting and opined that was not adequate.[77]

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76 Hr'g Tr. at 352 – 59.

77 Hr'g Tr. at 359 – 61.

Based upon review of all medical records, reports, and her exam of Ms. Patterson, Dr. Sheorn determined Ms. Patterson has never had PTSD. She diagnosed Ms. Patterson with no other mental health or mental illness disorders due to the student choking. She agrees with Dr. Glass that all of Ms. Patterson's mental health diagnoses and disorders pre-existed the September 23, 2014, work incident.[78]

Ms. Patterson reported to Dr. Sheorn she felt she handled the choking incident appropriately; she was proud of her response, of her recertification and of her presentations. Ms. Patterson did not think she mishandled the incident in any way and Dr. Sheorn concurred.[79]

Dr. Sheorn commented Dr. Glass saw Ms. Patterson three months after the work incident, administered the MMPI-2, and determined Ms. Patterson had modest histrionic psychodynamics. Dr. Sheorn agreed and explained when an individual has histrionic traits, they need to be the center of attention and become very unhappy when they are not. Dr. Sheorn referred to Dr. O'Leary's remark that Ms. Patterson made this event about herself. She said Ms. Patterson's personality style is immature and dramatic, and she has made persistent efforts since the student's choking incident to make this about her and not about the child, other students, or the family. Dr. Sheorn concluded Ms. Patterson met enough criteria to be diagnosed with borderline personality disorder with histrionic traits. She opined Ms. Patterson's borderline personality disorder diagnosis is not caused by stress at work; the diagnosis goes back to before Ms. Patterson's age of attachment, which is before age two. She explained that bipolar and borderline personality disorders are synonymous and noted Ms. Patterson has also been diagnosed with major depression, but not as a primary diagnosis. Ms. Patterson's 2007 records revealed she had difficulty functioning at work and at home, which Dr. Sheorn said is consistent with borderline personality disorder.[80]

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[78] Hr'g Tr. at 361 – 62.

[79] Hr'g Tr. at 362.

[80] Hr'g Tr. at 362 – 68.

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

a fantasy, not PTSD. Dr. Sheorn acknowledged it may have been a real fear for Ms. Patterson; however, a "what if" scenario is not PTSD, it is anxiety.[81]

Dr. Sheorn agreed with Dr. Glass's opinion that Ms. Patterson was able to return to work as a school nurse if she chose to do so and that she was capable and well trained. She absolutely agreed with Dr. Odland's unrestricted release for Ms. Patterson to return to work in mid-February 2015. Dr. Sheorn also agreed with Dr. Odland's October 2016 letter acknowledging Ms. Patterson had mental health issues; however, she was dealing with them appropriately and could work as a school nurse. Dr. Sheorn entirely agrees with Dr. Glass's and Dr. O'Leary's recommendations Ms. Patterson may benefit from continued mental health treatment, not on the basis of the work incident, but based on Ms. Patterson's underlying mental health conditions. Dr. Sheorn emphasized the need for therapy is not at all related to the September 23, 2014, work incident.[82]

Dr. Sheorn opined Ms. Patterson's premorbid condition, specifically ten years of treatment for bipolar disorder and major depressive disorder, were not significant in her reaction to the work incident and "didn't predispose her to have this type of reaction, [or], to develop PTSD."[83]

Dr. Sheorn reviewed Dr. O'Leary's treatment records in their entirety and is critical of his treatment of Ms. Patterson. She noted Ms. Patterson's boundaries had been violated frequently, first by Dr. Halverson because Ms. Patterson was a patient and then her employee; second, by Dr. Johnson because Ms. Patterson worked for him and then became a friend; and by Dr. O'Leary because he offered open communication, engaged in off-color jokes, and the familiarity between him and Ms. Patterson was not therapeutic for somebody who already had trust issues and a long history of reacting to her perceptions of abandonment. Dr. Sheorn found Dr. O'Leary bullied and was unkind to Ms. Patterson. When Dr. O'Leary "walked out" on Ms. Patterson, Dr. Sheorn found this below the standard of care. Dr. Sheorn said Dr. O'Leary certainly understood some of

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81 Hr'g Tr. at 368 – 71.

82 Hr'g Tr. at 372 – 76.

83 Hr'g Tr. at 374.

Ms. Patterson's pathology, but he did not do the right thing for her. Dr. Sheorn anticipated Dr. O'Leary's treatment of Ms. Patterson made her feel awful. Notes Dr. Sheorn reviewed from Ms. Haynes indicated Ms. Patterson was feeling bad about herself.[84]

Dr. Sheorn was aware Ms. Patterson did not know the student who choked, but a kind person, like Ms. Patterson, may feel bad about a child's death. PTSD, however, does not discriminate and it does not matter if a person is nice or not nice. Dr. Sheorn said it would have been a heavier weight for Ms. Patterson had she known the student and noted Ms. Patterson's exposure was no more than five minutes.[85]

Ms. Patterson discussed nightmares with Dr. O'Leary and prepared and submitted a document to him, which contains thirteen items on lists and includes her fear of sleeping at night because she has thoughts of the student's head.[86]

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

> 1) Student's head and only his head, no body, face is blue, his eyes are shut and his mouth/nose are oozing with vomit, blood, pink foamy air bubbled secretions and I'm trying to clear out his mouth and nose but no matter how hard I try to clear them out they keep filling up and I can't get an airway to give him oxygen via mouth to mouth.
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> 2) Student's head and only his head, no body, face is blue and mouth, nose, eyes, and ears are all oozing with an oily/black looking slime and I keep trying to clear/empty the mouth, nose, eyes, and ears but the slime never stops coming for me to be able to give him oxygen via mouth to mouth and I keep getting the slime in my mouth and trying to wipe it off with the back

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84 Hr'g Tr. at 377 – 78; 384 – 85.

85 Hr'g Tr. at 390 – 92.

86 Hr'g Tr. at 408.

of my hand from my face and it starts filling up my mouth and I start choking and can't breathe.

> 3) Giving some of my younger students mandated health screenings and I'm measuring their heights and weights but instead of the numbers on the scales for height and weight being numbers they are in some weird symbols. And I can't understand the symbols so I have to ask the students what the symbols mean and I can't figure out how to write these symbols down or translate them. The kids are all making fun of me and calling me, "A dumb nurse."
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> 4) Went out on the playground to help a student who had fallen off the slide on their head and instead of giving them cervical spine support, getting help and doing a "90 second appraisal" I just grab the kid up and carry him inside the building to the nurse's office and they become paralyzed because I made them get up and run in with me.
>
> 5) Walked back into building (school/work) after being absent on medical leave and the teachers/staff, parents and students are all lined up in the school entry way and halls leading to my office. They all have books (the ones I read about in an email that were donated to our school by Life Alaska Donor Services) and everyone starts throwing the books at my head and body and screaming "killer"![87]

The Board found Ms. Patterson confirmed she was asserting a mental-mental injury.[88]

At the September 2019 hearing, the question before the Board was whether to grant Ms. Patterson's petition seeking an SIME. The Board found that the question of whether to order an SIME depends, in part, on the date by which an SIME must be requested. Dr. Wert's April 26, 2017, opinions reflect a dispute with Dr. Glass's December 9, 2014, opinions.[89]

The Board then held that Dr. Sheorn's December 23, 2017, opinions were received by Ms. Patterson on December 26, 2019, and reflected a dispute with Dr. Wert's April 26, 2017, opinion, Dr. O'Leary's January 12, 2015, and November 11, 2015, opinions, and Dr. Odland's February 6, 2015, opinion. The Board calculated that sixty days from

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87 R. 3901.

88 Dec. No. 18-0111 at 60, No. 149.

89 Dec. No. 19-0103 at 9, No. 21.

December 26, 2017, was February 24, 2018.[90] This was the date by which Ms. Patterson needed to provide the required documentation to complete her request for an SIME.

On January 11, 2018, a prehearing was held to simplify and clarify the issues for hearing and to record the parties' stipulations. The issues identified for hearing were: TTD benefits from January 5, 2015, through February 6, 2015, and May 24, 2016, until Ms. Patterson was medically stable; TPD benefits from February 9, 2015, through May 21, 2015, for every Wednesday afternoon Ms. Patterson missed work while treating with Dr. O'Leary; medical costs; transportation costs; interest; and attorney fees and costs. The SIME dispute was not set for hearing.[91] Ms. Patterson did not request a continuance of the January 16, 2018, hearing nor did she request an SIME at the January 16, 2018, hearing.[92] The Board found Ms. Patterson did not timely request an SIME.

The Board then analyzed whether an SIME would have helped it to analyze and review the voluminous medical record and testimony when it reached its decision to deny Ms. Patterson benefits in Dec. No. 18-0111. The Board decided it had sufficient information from the records and testimony to consider whether Ms. Patterson's mental health issues met the necessary standard, i.e., unusual and extraordinary stress, by which to order benefits. The Board found that the plethora of medical records and testimony available to it was sufficient for its review and decision-making, and an SIME would not have been of assistance in evaluating this evidence.

3. Standard of review.

The Board's findings of fact shall be upheld by the Commission on review if the Board's findings are supported by substantial evidence in the light of the record as a whole.[93] On questions of law and procedure, the Commission does not defer to the Board's conclusions, but rather the Commission exercises its independent judgment. "In reviewing questions of law and procedure, the commission shall exercise its independent

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[90] *Id.* at 16, No. 23.

[91] Dec. No. 19-0103 at 16, No. 24.

[92] *Id.*, No. 25.

[93] AS 23.30.128(b).

judgment."[94] The Commission, when interpreting a statute adopts "the rule of law that is most persuasive in light of precedent, reason, and policy."[95] The Board's determination of findings are "conclusive even if the evidence is conflicting or susceptible to contrary conclusions."[96] The Board has the sole power to determine the credibility of a witness and the weight to be accorded to testimony, both witnesses and medical reports.[97] These findings regarding credibility of witnesses are binding on the Commission.[98]

4. Discussion.

Ms. Patterson timely appealed Dec. No. 18-0111 to the Commission and then filed a petition with the Board asking it to order an SIME. The Commission stayed the appeal and remanded the matter to the Board so it could rule on Ms. Patterson's petition. The Board then issued Dec. No. 19-0103 in which it decided it did not need an SIME and denied her petition. Ms. Patterson appealed Dec. No. 19-0103 to the Commission and the Commission consolidated the two appeals into one appeal since the same injury was involved in both appeals and the facts were common to both Board decisions.

In Dec. No. 18-0111, the Board determined that Ms. Patterson was not entitled to any additional workers' compensation benefits, having received all the benefits to which she might be entitled under the Alaska Workers' Compensation Act (Act). The Board held that her mental work injury had resolved and her current mental issues were not due to work-related stress that was unusual or extraordinary. Further, the Board found that the substantial cause of her mental issues was her pre-existing mental health conditions which had not been aggravated by her work. In Dec. No. 19-0103, the Board determined that Ms. Patterson was not entitled to an SIME because she had not timely requested an SIME and, furthermore, the Board found an SIME would not have assisted it in reviewing

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94 AS 23.30.128(b).

95 *Guin v. Ha*, 591 P.2d 1281, 1284 n. 6 (Alaska 1979).

96 AS 23.30.122; *Sosa de Rosario v. Chenega Lodging*, 297 P. 3d 139 (Alaska 2013) (*Sosa de Rosario*).

97 AS 23.30.122.

98 *See, Sosa de Rosario*, 297 P.3d 139.

or evaluating the full medical record before it. Therefore, the Board held that an SIME would not have assisted it in reviewing and deciding her workers' compensation claim.

There is no question Ms. Patterson, in 2014, was involved in what ultimately was a very tragic event. As the school nurse in September 2014, she was called upon to assist in reviving a student who had choked. She is reported to have made all the right decisions, from having someone immediately call 911 to donning appropriate garb which she did prior to performing CPR, as she was trained to do, on the choking student with the assistance of the Principal. By her own testimony, the EMT squad arrived about five minutes later and transported the student to the hospital. Some ten days later the student died. There is no question that this was a sad event.

However, the question before the Board was whether the mental issues Ms. Patterson suffers were substantially caused by this incident and whether this incident was unusual and extraordinary for a school nurse so as to make her claim compensable. The Board found her work as a school nurse would have required her to respond to such choking incidents, and noted she subsequently did so on two other occasions. Thus, the Board found this incident was not unusual or extraordinary for a school nurse. The Board also found Ms. Patterson has a long-standing history of mental problems which were the substantial cause of her current mental issues. The Board denied her claim in Dec. No. 18-0111. In Dec. No. 19-0103, the Board held that given the complete medical record before it and the lengthy testimony by Drs. Wert and Sheorn, an SIME would not have added any additional understanding of Ms. Patterson's claim and an SIME would not have provided additional assistance.

Ms. Patterson, in her appeal brief to the Commission, cited to several articles regarding mental illnesses and PTSD which she offered to the Commission to show how the Board erred in its findings. However, the Commission may not accept new evidence in an appeal and must rely on the Board's record and the parties' briefs and arguments in evaluating the Board's decision.[99] None of these articles are in the Board's record and, therefore, were not considered by the Commission in reaching this decision.

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[99] AS 23.30.128(a); 8 AAC 57.190.

a. Is the denial of benefits to Ms. Patterson (Dec. No. 18-0111) supported by substantial evidence?

The Act provides at AS 23.30.120 that the presumption of compensability does not apply to a mental injury. This statute states that "[t]he presumption of compensability established in (a) of this section does not apply to a mental injury resulting from work-related stress." The Act further provides at AS 23.30.010 that mental injury from work-related stress must be from unusual and extraordinary stress in comparison to that suffered by individuals in similar work environments.

> Compensation and benefits under this chapter are not payable for mental injury caused by mental stress, unless it is established that (1) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment; and (2) the work stress was the predominant cause of the mental injury. The amount of work stress shall be measured by actual events. A mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer."[100]

b. Credibility.

The Commission's analysis is controlled by the Board's findings of credibility. The Board has the sole power for making credibility determinations. AS 23.30.122 states:

> The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusion. . . .

Credibility findings by the Board are binding on the Commission. "The board's findings regarding the credibility of testimony of a witness before the board are binding on the commission."[101] The Alaska Supreme Court (Court), in *Sosa de Rosario v. Chenega Lodging*, reviewed this section and iterated that the legislative history of AS 23.30.122 indicated the intention of the legislature to "restore to the Board the decision making power granted by the Legislature when it enacted the Alaska Workers' Compensation

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100 AS 23.30.010(b).

101 AS 23.30.128(b).

Act."[102] The Court continued by stating this section was intended to clarify and emphasize the role of the Board in determining credibility of witness and the weight given to medical reports and testimony.[103] Then the Court added that it construed AS 23.30.128(b) as meaning that the Commission must follow the determinations of the Board because "to bind" is to impose a legal duty and the Commission, therefore, must accept the Board's determinations.[104]

The Board, in Dec. No. 18-0111, made numerous credibility findings.

The Board explicitly found both Dr. Glass and Dr. Sheorn credible. "Dr. Sheorn was conscientious, reliable and credible in her report. It is given great weight."[105] The Board then discounted the testimony and report by Dr. Wert because he "did not attribute any of [her] diagnoses to [her] exposures to the student's bodily fluids, nor did he opine [her] mental health conditions were caused by her exposure to the student's bodily fluids."[106]

The Board found Dr. Sheorn credibly testified at hearing and gave her testimony great weight.[107] The Board likewise gave more weight to the report of Dr. Glass, over that of Dr. O'Leary whom, the Board stated, had admitted he was not qualified to assess a nurse's fitness for duty.[108] The Board also found Ms. Patterson's "testimony and presentation do not support a mental injury claim" and that she was not credible.[109]

The Commission may not weigh these findings nor change them. Ms. Patterson contends that these credibility findings are erroneous, in part because Drs. Glass and Sheorn were hired by MSBSD and by implication are, therefore, biased against her

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102 *Sosa de Rosario*, 297 P.3d 139, 146.

103 *Id.*

104 *Id.*

105 Dec. No. 18-0111 at 80.

106 *Id.*

107 *Id.* at 89.

108 *Id.* at 90.

109 *Id.* at 89.

because they were paid for their reports, and should not have been relied upon by the Board. Ms. Patterson has cited to no law by which the Commission could set aside these credibility findings even if, as she contends, the reports are biased. Moreover, this same logic applies to the report and testimony of Dr. Wert, which Ms. Patterson contends the Board should have used. Dr. Wert was initially contacted by her attorney and on referral from her treating doctor, Dr. Odland. Therefore, he too potentially had an incentive to skew his findings and reports. There is no direct evidence any of the doctors based their diagnoses and reports on the monies paid to them for their reports. Moreover, the Board has the sole authority to make these findings.[110] The Commission is bound by statute and case law to accept these findings as binding on the Commission.

c. Substantial evidence.

The Board, in Dec. No. 18-0111, found that Ms. Patterson had not proven her claim by a preponderance of the evidence and denied her any additional workers' compensation benefits. MSBSD had initially paid some time loss and some medical benefits before controverting her claim based on the report by Dr. Glass in December 2014 that she did not suffer PTSD as a result of her working on the choking student in September 2014. The Commission reviews this decision to see if it is supported by substantial evidence in the record as a whole. As noted above, the Commission reviews the record as a whole to determine if the Board's conclusion is supported by substantial evidence. The Commission accepts the Board's findings of credibility.

The Board, in Dec. No. 18-0111, reviewed in great detail Ms. Patterson's medical history, her current medical records, the EME reports by Drs. Glass and Sheorn, and the report of her IME by Dr. Wert. The Board also analyzed the requirements for a school nurse and heard lay testimony. The Board heard testimony from Drs. Wert and Sheorn at the hearing.

The Board found school nurses must be present in schools where there are students and staff who eat and are at risk of choking. School nurses intervene with actual and potential health concerns for both acute and chronic illnesses, injuries, and

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[110] *Traugott v. ARCTEC Alaska*, 465 P.3d 499 (Alaska 2020).

emergencies. It found Ms. Patterson presented no evidence the school environment, which placed her in a setting where another child could choke, created extraordinary and unusual pressure or tension for school nurses or staff.[111] The Board specifically did not discount that the attempt to resuscitate the choking student was frightening and stressful for Ms. Patterson, but to be compensable the stress must have resulted from "extraordinary and unusual pressures and tensions."[112] The Board found performance of her duty to provide emergency care to a choking student by attempting resuscitation was not unusual or extraordinary. Rather, this is the kind of situation a school nurse is expected to be able to perform and is expected of all school nurses working for MSBSD. Moreover, Ms. Patterson was proud of her performance and by all reports behaved exemplary. Likewise, choking incidents and other life-threatening emergencies are the types of incidents all MSBSD's school nurses and staff respond to when needed, as Ms. Patterson did on more than one occasion.[113] The Board looked to the testimony of several people who acknowledged that an aspect of being a school nurse would be attending to choking students and staff. Moreover, Ms. Patterson herself properly and without a problem was called to assist with a collapsed staff member and another choking student on two subsequent occasions.[114]

The Board properly distinguished Ms. Patterson's case from *Kelly v. State of Alaska, Department of Corrections*. In *Kelly*, the correction officer was not just threatened verbally by prisoners, the officer was alone when physically threatened by an armed prisoner who threatened to stab Kelly to death. This was an unusual and extraordinary event. The Board found that although it may have been unsettling for Ms. Patterson to provide first responder medical care to a choking child, testimony showed the work stress was not unusual or extraordinary.

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[111] Dec. No. 18-0111 at 82.

[112] AS 23.30.010(b).

[113] Dec. No. 18-0111 at 83.

[114] *Id.*

Moreover, the Court, in *Kelly*, noted that an injured worker's perception that she feels stress is inadequate to establish extraordinary and unusual stress.[115] The Board noted that it was Ms. Patterson's perception that MSBSD should have given her additional help at the time of the choking incident and this lack of attention caused her stress. She also perceived that MSBSD might hold her responsible for any negligence in the choking incident. There is no evidence to support these perceptions.

The Board noted that in addition to the September 23, 2014, incident, Dr. O'Leary stated Ms. Patterson experienced "secondary trauma" from MSBSD's lack of emotional support because of her lack of "debriefing" after the September 23, 2014, incident and the other incidents when she responded to a collapsed staff member and another choking student. It was this lack of "debriefing" that caused her stress level to increase. Ms. Patterson contends she was subjected to "aftershock, after aftershock, after aftershock" and the series of shocks while working for MSBSD was unending. She expected MSBSD to offer her follow-up attention after she performed her duty to provide emergency medical care to students and staff. However, the Board found that as well as providing crisis intervention, Ms. Patterson's school nurse duties required her to provide on-going follow-up after a crisis. Instead, Ms. Patterson was dismayed because MSBSD did not provide her "debriefing." Historically, Ms. Patterson had been dissatisfied with the emotional support she received from her parents, employers, and others with whom she has had relationships.[116]

Although the event on September 23, 2014, while Ms. Patterson performed her duties as a school nurse, was a stressful experience, the Board found Ms. Patterson failed to prove her experience attempting to resuscitate the student on September 23, 2014, or MSBSD's failure to meet her emotional support needs was extraordinary or unusual pressure or tension in comparison to that felt or sustained by other school nurses.[117]

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[115] *Kelly v. State, Dep't of Corr.*, 218 P.3d 291, 300 (Alaska 2009) (*Kelly*).

[116] Dec. No. 18-0111 at 83 – 84.

[117] *Id.*

Even had Ms. Patterson been able to prove work stress resulted from extraordinary and unusual pressures and tensions, the next element she had to establish was that the work stress was the predominant cause of her mental illness. Ms. Patterson asserted one of her mental illnesses caused by work stress was PTSD.[118]

In analyzing if work stress was the predominant cause of Ms. Patterson's mental injury, the Board relied most heavily on medical opinions from the record and testimony at hearing to arrive at its legal conclusions.[119] The Board found Dr. Wert diagnosed PTSD; major depression, recurrent, severe, without psychotic features; and a generalized anxiety disorder. He indicated adjustment disorder with anxiety needed to be ruled out; and Ms. Patterson had dependent, socially avoidant, and possibly borderline personality features or traits. He concluded Ms. Patterson was "affectively unstable" and experienced PTSD symptoms "associated" with the September 23, 2014, work incident when Ms. Patterson witnessed the student choking. The Board found Dr. Wert gave Ms. Patterson the PTSD diagnosis without reviewing or considering any of her medical and mental health records or Dr. Glass's report. His opinion was based primarily upon the social and medical history Ms. Patterson provided. Finally, the Board found, although Dr. Wert's testimony recited the PTSD criterion, he was unable to describe what Ms. Patterson's symptoms were or what signs and behaviors he observed and relied upon to diagnose PTSD. For all these reasons, Dr. Wert's report and testimony were not entitled to, nor given, any significant weight.[120]

The Board also reviewed Dr. O'Leary's record and found he initially diagnosed Ms. Patterson with adjustment disorder with mixed anxiety and depression. Eventually, Dr. O'Leary also diagnosed Ms. Patterson with PTSD; however, he noted Ms. Patterson's "egocentric trauma defenses" made the student's trauma and death all about Ms. Patterson, even when these issues obviously were not.[121]

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118 Dec. No. 18-0111 at 84.

119 *Id.* at 84 – 89.

120 *Id*. at 84 – 85.

121 *Id.* at 85.

The Board found Ms. Patterson's discontent with MSBSD, because she perceived it did not provide her with the support she sought, had a long history. The perceived lack of support hurt her feelings and, because of that, she quit her school nurse job with MSBSD in 2007. Historically, Ms. Patterson also complained about her parents' uncaring nature, including emotional deprivation and anger she carried since childhood. Her psychological diagnoses and bouts of psychological disorders frequently stemmed from others' failures to meet Ms. Patterson's desire for some form of support, care, and concern. The Board also found that when Ms. Patterson does not receive the support she desires, she loses emotional control. There is no medical dispute between Drs. O'Leary, Glass, and Sheorn on this point; they agree Ms. Patterson has a preexisting tendency toward histrionic reactions.[122]

The Board found Dr. Sheorn credibly testified Ms. Patterson had a pattern of attention seeking behavior, extreme emotionality, and difficulty sustaining herself when the focus was not on her, which was indicative of borderline personality disorder with histrionic traits.[123]

Dr. Glass's testing, three months after the incident, indicated Ms. Patterson did not have PTSD or any other Axis I disorder three months after the student's choking incident in 2014. Dr. Sheorn's evaluation, to which the Board gave great weight in Dec. No. 18-0111, confirmed Ms. Patterson did not meet the PTSD diagnostic criteria. The Board reviewed the various PTSD diagnostic criteria and how Dr. Sheorn analyzed those criteria. Additionally, Dr. Sheorn administered the Structured Inventory of Malingered Symptomatology. An elevated score indicates the examiner should be concerned the examinee's symptoms are exaggerated in a medico-legal complaint and that there may be multiple inconsistencies in the records and within the clinical interview. Ms. Patterson scored 27, which was significantly above the cutoff score of 14. Ms. Patterson's elevated score was derived from the number of atypical, improbable, inconsistent, or illogical answers for people with true mental disorders. The Board found in both her report and

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[122] Dec. No. 18-0111 at 85.

[123] *Id.* at 36.

hearing testimony, Dr. Sheorn provided many examples of inconsistencies in Ms. Patterson's reports to Dr. Sheorn and her behavior, inconsistent with a PTSD diagnosis.[124]

Moreover, the medical record supports the finding that her work at MSBSD is not the substantial cause for any current mental health issues Ms. Patterson may have. First, there is the December 2014 EME report of Dr. Glass who opined she had recovered from any consequences of the September choking incident. On February 15, 2015, Dr. Odland found Ms. Patterson had no PPI from the work injury, and Ms. Patterson had returned to work full time as a school nurse. On March 18, 2015, Dr. O'Leary advised Ms. Patterson to stop "clinging to anger." Dr. Odland, on October 16, 2015, found Ms. Patterson to be normal. Dr. O'Leary, on November 11, 2015, found her to be safe and stable. In January 2016, Ms. Patterson was called upon to assist both when a staff member collapsed and when a child choked. She responded to both professionally and calmly. In May 2016, when Ms. Patterson declined another contract with MSBSD, she did so proudly, noting her resignation had been hanging on her refrigerator since 2015.

Most importantly, the Board, in Dec. No. 18-0111, found Ms. Patterson was not credible and her failure to vest in her MSBSD-provided retirement and health care plan was the secondary gain motivating her claim. The evidence considered was voluminous and included testimony and reports from medical and mental health professionals including Drs. Odland, Johnson, O'Leary, Wert, Glass, and Sheorn and Debra Haynes. The Board made credibility determinations, discounted the weight to be given to Dr. Wert's opinions and testimony, found the greater weight to be given to Dr. Sheorn and relied upon her opinions in reaching its conclusions.[125]

The question is whether Ms. Patterson proved her claim by a preponderance of the evidence. Initially, she alleged a mental injury resulting from work-related stress, which under AS 23.30.120(c) does not have the benefit of the presumption of compensability. The Board also analyzed her claim of a physical-mental injury arising

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[124] Dec. No. 18-0111 at 85 – 88.

[125] *Id.* at 85.

from the fluids she encountered while trying to resuscitate a choking student. The Board first noted that she raised this issue in the closing moments of the January 18, 2018, hearing and, thus, had not provided MSBSD with proper notice nor afforded it its due process rights. At her deposition in April 2017, Ms. Patterson was asked if she was asserting a physical injury and her response was "No. Then No."[126] She was represented by counsel at this deposition who did not attempt to clarify her answer nor did he request time to confer with his client. He simply let the answer stand. Thus, when he asserted a physical injury in his closing statements at the 2018 hearing, it was the first time MSBSD was put on notice of such a possible injury. The Board could have properly denied the new issue without further analysis, as being untimely raised.

However, the Board applied the presumption of compensability analysis and reviewed the medical evidence and testimony presented by the treating doctors as well as Dr. Wert, and the EME doctors Glass and Sheorn, utilizing the presumption of compensability analysis. Since the amount of evidence necessary to raise the presumption of compensability is minimal, the Board accepted that Ms. Patterson was exposed to a student's bodily fluids and this potential exposure to Hepatitis C and/or HIV would be enough to raise the presumption.[127] The Board then, correctly, found that the EME report of Dr. Sheorn was substantial evidence to overcome the presumption. Dr. Sheorn was able to document that Ms. Patterson was relieved and no longer concerned about Hepatitis C or HIV when her tests were negative. Thus, any physical consequence from the choking incident had resolved.

Dr. Sheorn also determined that Ms. Patterson did not suffer from PTSD, that her work was not the substantial cause of her mental conditions, and that any current mental issues were the result of her pre-existing mental illnesses. The Board found that Dr. Sheorn is a qualified medical doctor, whose opinion at this stage is not judged for credibility and, therefore, her opinion is substantial evidence. The Board then,

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[126] Dec. No. 18-0111.

[127] *See, e.g., Resler v. Universal Servs., Inc.*, 778 P.2d 1146 (Alaska 1989); *Burgess Constr. Co. v. Smallwood*, 623 P.2d 312 (Alaska 1981).

alternatively, applied the presumption analysis and found Ms. Patterson's exposure to the student's bodily fluids and receiving laboratory studies for Hepatitis C and HIV raised the presumption for a physical injury since her mother-in-law's death was caused by Hepatitis C and she was concerned her exposure caused her, too, to contract it. Without judging credibility, the Board found MSBSD rebutted the presumption with Dr. Sheorn's report. Ms. Patterson reported to Dr. Sheorn she was concerned about Hepatitis C and HIV, but when the laboratory tests came back negative, her concerns no longer remained. Dr. Sheorn determined Ms. Patterson did not have, and never did have PTSD. Dr. Sheorn stated, despite the September 23, 2014, incident providing the most focus for Ms. Patterson's therapeutic attention, it was merely a diversion from Ms. Patterson's real problem, which was her pre-existing mental illness and maladaptive methods of coping with stress. Dr. Sheorn opined there was no causal connection between the work incident and Ms. Patterson's ongoing symptoms. The Board found that when viewed in isolation, Dr. Sheorn's opinion was substantial evidence Ms. Patterson did not sustain a physical-mental injury.

The burden was then on Ms. Patterson to prove a physical-mental injury by a preponderance of the evidence. The Board found Dr. Wert's opinion did not serve as evidence to prove Ms. Patterson sustained a physical-mental injury, primarily because he could not attribute any of Ms. Patterson's diagnoses to her exposure to the student's bodily fluids, nor did he opine her mental health conditions were caused by her exposure to student's bodily fluids. Similarly, no other provider connected her problems to her exposure to the student's bodily fluids. The Board then gave Dr. Sheorn's report great weight because it was conscientious, reliable, and credible. Ms. Patterson's assertions during her evaluation with Dr. Sheorn that she no longer had concerns regarding her physical well-being after receiving non-reactive lab results for Hepatitis C and HIV belie her later assertion that a physical injury caused her to have a mental disorder. The Board found no medical support for Ms. Patterson's physical-mental claim in the record, and, thus, she was unable to prove by a preponderance of the evidence her employment with MSBSD was the substantial cause of a mental disorder caused by her exposure to the student's bodily fluids. Ms. Patterson's own statement contradicted her contention her

physical-mental claim was compensable.[128] The Board's credibility findings, as discussed above, are binding on the Commission.

The Board next analyzed if Ms. Patterson suffered a compensable mental-mental injury. Ms. Patterson claimed PTSD was caused by a mental-mental injury. Specifically, she claimed a mental-mental injury was caused by work-related stress, an unsupportive work environment, and lack of immediate attention to her mental health needs after the September 23, 2014, incident. The Board held a mental-mental injury is not entitled to the presumption analysis and Ms. Patterson was required to prove by a preponderance of the evidence two criteria: (1) work-related stress resulted from extraordinary and unusual pressures and tensions in comparison to other persons in a comparable work environment, and (2) work-related stress was the predominant cause of PTSD or other mental injury. The Board analyzed both criteria. In looking at whether the work-related stress was caused by extraordinary and unusual pressures and tensions in comparison to other school nurses, the Board compared Ms. Patterson's stress to that of other school nurses working for MSBSD. MSBSD's school nurses are expected to provide comprehensive health services for each student in a school, which includes providing emergency care to ill or injured students, crisis intervention, and determining the need for emergency referrals. MSBSD's school nurses are also expected to provide on-going follow-up. The Board found that on September 23, 2014, Ms. Patterson faithfully and competently executed her school nurse duties when she provided emergency medical care to a choking student. It further found choking incidents and other incidents in which a student or staff member's life may be threatened were not continuous or the norm, but they were also not unusual. Several examples involving Ms. Patterson existed in the record. On January 21, 2016, Ms. Patterson reported to Dr. O'Leary a staff member had collapsed. Ms. Patterson was ready to defibrillate and begin CPR, but the ambulance arrived and further intervention from Ms. Patterson was not necessary. On January 22, 2016, Ms. Patterson contacted Dr. O'Leary for an appointment after being called to a classroom when a student was choking. The student's teacher did abdominal thrusts and

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[128] Dec. No. 18-0111 at 79.

cleared the student's airway before Ms. Patterson arrived. When students are choking, school nurses are expected to respond and, in fact, other school staff may also respond. On September 23, 2014, the principal and Ms. Patterson worked together to resuscitate the choking student. Dr. Glass acknowledged the student's choking was an "unusual" tragedy; however, he stated aspiration crises with small children is not extraordinary or unusual in a school environment. Susan Magestro has a master's degree in teaching and is a criminologist who works with crime victims after they have received a psychiatric diagnosis. Ms. Magestro considers it the school nurse's duty to respond if a student is choking, and calling 911 is a standard. The Board noted that Ms. Magestro's master's degree in teaching lent credibility to her testimony that it is a school nurse's job to respond to choking students.[129]

Dr. Johnson, a psychiatrist and Ms. Patterson's friend, opined Ms. Patterson's anxiety is increased when she is in situations where another child could choke and because she is hoping another person will not choke. He said this makes her "pretty much anxious all the time." Dr. Johnson's testimony confirmed Ms. Patterson is continually anxious, despite the absence of unusual or extraordinary pressures.[130]

School nurses must be present in schools where there are students and staff who eat and are at risk of choking. School nurses intervene with actual and potential health concerns for both acute and chronic illnesses, injuries, and emergencies. It found Ms. Patterson presented no evidence the school environment, which placed her in a setting where another child could choke, created extraordinary and unusual pressure or tension for school nurses or staff.[131] The Board did not discount that attempts to resuscitate the choking student were frightening and stressful for Ms. Patterson, but to be compensable the stress must have resulted from "extraordinary and unusual pressures and tensions." After thoroughly examining the medical records and the reports of Drs. Glass, Wert, and Sheorn, the Board found that Drs. Glass and Sheorn were more

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[129] Dec. No. 18-0111 at 81 – 82.

[130] *Id.* at 84 – 89.

[131] *Id.*

credible than Dr. Wert and gave greater weight to their reports. The Board noted in particular that Dr. Wert did not have Ms. Patterson's complete medical history or medical reports and relied on her descriptions of her medical and social history to reach a conclusion she suffered PTSD from the September incident with the choking student to give his report and testimony less weight. The Board also found that Dr. Sheorn reviewed each criteria in DSM-5 and explained how Ms. Patterson did not meet enough of the criteria for a diagnosis of PTSD. Dr. Wert, while asserting such a diagnosis, was unable to articulate which criteria Ms. Patterson actually met to support the diagnosis.

Because Ms. Patterson was unable to prove her work stress resulted from extraordinary and unusual pressures and tensions, the analysis could have ended and Ms. Patterson's claim would have not been found compensable; however, to make certain there was not more to Ms. Patterson's evidence, that nothing was left unconsidered, and the decision was not wrong, Dec. No. 18-0111 analyzed the next element of a compensable mental injury.[132]

The Board next analyzed the matter to see if Ms. Patterson suffered a compensable mental-mental injury. Ms. Patterson claimed PTSD was caused by a mental-mental injury. Specifically, she claimed a mental-mental injury was caused by work-related stress, an unsupportive work environment, and lack of immediate attention to her mental health needs after the September 23, 2014, incident. The Board found a mental-mental injury is not entitled to the presumption analysis and Ms. Patterson was required to prove by a preponderance of the evidence two criteria: (1) work-related stress resulted from extraordinary and unusual pressures and tensions in comparison to other persons in a comparable work environment, and (2) work-related stress was the predominant cause of PTSD or other mental injury. The Board analyzed both criteria. The first was work-related stress caused by extraordinary and unusual pressures and tensions in comparison to other school nurses. The Board then compared Ms. Patterson's stress to that of other school nurses working for MSBSD and determined school nurses are expected to provide comprehensive health services for each student in a school, which includes providing

[132] Dec. No. 18-0111 at 81 – 84.

emergency care to ill or injured students, crisis intervention, and determining the need for emergency referrals. MSBSD's school nurses are also expected to provide on-going follow-up. The Board then found that on September 23, 2014, Ms. Patterson faithfully and competently executed her school nurse duties when she provided emergency medical care to a choking student. It further found choking incidents and other incidents in which a student or staff member's life may be threatened were not continuous or the norm, but they were also not unusual. Several examples involving Ms. Patterson existed in the record. On January 21, 2016, Ms. Patterson reported to Dr. O'Leary a staff member had collapsed. Ms. Patterson was ready to defibrillate and begin CPR, but the ambulance arrived and further intervention from Ms. Patterson was not necessary. On January 22, 2016, Ms. Patterson contacted Dr. O'Leary for an appointment after being called to a classroom when a student was choking. The student's teacher did abdominal thrusts and cleared the student's airway before Ms. Patterson arrived. The Board found when students are choking, school nurses are expected to respond and, in fact, other school staff may also respond. On September 23, 2014, the principal and Ms. Patterson worked together to resuscitate the choking student. Dr. Glass acknowledged the student's choking was an "unusual" tragedy; however, he stated aspiration crises with small children is not extraordinary or unusual in a school environment. Susan Magestro has a master's degree in teaching and is a criminologist who works with crime victims after they have received a psychiatric diagnosis. Ms. Magestro considers it the school nurse's duty to respond if a student is choking, and calling 911 is a standard. The Board found Ms. Magestro's master's degree in teaching gave credibility to her testimony stating it is a school nurse's job to respond to choking students.[133]

The Board's decision is supported by substantial evidence in light of the whole record. Substantial evidence is that which reasonable minds would accept as in support of the conclusion.[134] Here the Board reviewed in detail all of Ms. Patterson's medical

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[133] Dec. No. 18-0111 at 81 – 82.

[134] *Miller v. ITT Arctic Servs.*, 577 P.2d 1044, 1046 (Alaska 1978).

records and heard testimony from Drs. Wert and Sheorn at hearing.[135] Ms. Patterson was afforded the opportunity to cross-examine Dr. Sheorn and did cross-examine her. The Board concluded that Ms. Patterson was not entitled to any additional benefits. Her treating physician, Dr. Odland, on February 10, 2015, stated Ms. Patterson would have no PPI and would be able to return to work as a school nurse. Ms. Patterson did return to full-time work and on October 16, 2015, Dr. Odland stated she was normal. She had by this time completed the school year from February to June 2015, and was started on the new school year. Dr. O'Leary, on March 18, 2015, indicated Ms. Patterson was doing better and advised her to stop "clinging to [her] anger." Dr. O'Leary, on November 11, 2015, stated Ms. Patterson was stable and safe. He repeated this on March 16, 2016, after she had responded to choking incidents, one of a staff member and one of a child. These opinions support, in part, the opinions of Dr. Glass and Dr. Sheorn.

In December 2014, Dr. Glass found Ms. Patterson did not suffer from PTSD. His opinion was confirmed by Dr. Sheorn in December 2017 and again in detail at the hearing in 2018. The Board discounted Dr. Wert's findings of PTSD because he relied on Ms. Patterson's description of her medical history and did not have a significant portion of her prior medical records. The Board found that Dr. Glass's and Dr. Sheorn's reports rebutted any presumption of compensability (although there is no presumption for a mental injury caused by work stress, the Board used this analysis in looking at whether Ms. Patterson sustained a physical-mental injury). Substantial evidence is required to rebut the presumption of compensability and an EME standing alone by a qualified medical doctor stating that work was probably not a substantial cause of the disability is substantial evidence.[136] Evidence which is sufficient to rebut the presumption of compensability and which the Board decides to give more weight is substantial evidence

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135 *See, e.g., Traugott*, 465 P.3d 499 (Alaska 2020).

136 *Big K Grocery v. Gibson*, 836 P.2d 941, 942 (Alaska 1992).

to support the Board's decision.[137] Moreover, it is the province of the Board to decide which doctors to believe and who to trust.[138]

The Board's finding that Dr. Sheorn was more credible than Dr. Wert, the Board's extensive analysis of the voluminous medical records, and the Board's reliance on specific medical records over other medical records are all the basis for finding that the Board's holding that Ms. Patterson is not entitled to additional benefits is supported by substantial evidence in the record as a whole. Dec. No. 18-0111 is affirmed.

d. Is the decision not to order a Second Independent Medical Evaluation supported by substantial evidence? (Dec. No. 19-103).

Ms. Patterson, after an adverse decision from the Board in Dec. No. 18-0111, petitioned the Board to order an SIME. She asserted that the medical records relied on by the Board were biased, at least in part, because they were paid for by MSBSD. She asserted that she should have been entitled to an SIME with an "objective" psychiatrist and a "touchy feely" psychologist. She contended, if such were ordered, she would go into the evaluations knowing they were fair and unbiased. As support for her request for an SIME, Ms. Patterson asked, "What if there is more to this?" and "What if the board was wrong?" She also pointed to M. Scott Peck, author of *The Road Less Traveled*, for the assertion psychoanalysis must be lovingly administered and Ms. Patterson felt under attack by Dr. Sheorn.[139] Ms. Patterson stated she felt unable to defend herself after her evaluation by Dr. Sheorn because she was denied permission to record the interview and evaluation. Ms. Patterson asserts Dec. No. 18-0111 will harm her until the day she dies and harms her reputation. She further contended the Board abrogated her due process rights when it did not order an SIME.

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[137] *Weaver v. ASRC Fed. Holding Co.*, 464 P.3d 1242, 1254-55 (Alaska 2020).

[138] *Butts v. State of Alaska, Dep't of Labor and Workforce Dev.*, 467 P. 3d 231, 243 (Alaska 2020) (*Butts*).

[139] Dr. Sheorn was the EME for MSBSD and, by the nature of an EME, she was not see by Dr. Sheorn for psychoanalysis.

Ms. Patterson admits the Board has discretion on whether to order an SIME as part of its investigation, but, in her opinion, the Board's discretion should have ended when it, according to her, abrogated her constitutional right to due process and right to proper and just compensation. She bases, in part, her argument on the perceived biases in the reports of Dr. Glass and Dr. Sheorn, and on the time limitation she felt she was under when she was cross-examining Dr. Sheorn.

MSBSD contends the Board did not abuse its discretion when it did not order an SIME, in part because Ms. Patterson requested an SIME only after she did not receive the benefits she sought in Dec. No. 18-0111. MSBSD points to the fact that Ms. Patterson did timely start the SIME process back when she first filed her claim for benefits. She also knew in December 2017 that grounds existed for an SIME because the EME report of Dr. Sheorn disagreed with the report of her "independent" evaluation with Dr. Wert. Nonetheless, she did not list the SIME as an issue in the prehearing held to decide the issues for the 2018 hearing, nor did she request a continuance at hearing in order to have an SIME. MSBSD asserts Ms. Patterson knowingly waived her right to an SIME. Moreover, MSBSD contends the Board has the discretion to order an SIME when there is a significant gap in the medical record and an SIME would help the Board in resolving the issue before it. The Board found no significant gap in the medical records and decided an SIME was not needed in order for it to address the issue of whether Ms. Patterson suffered a mental injury while working for MSBSD. Also, MSBSD asserts Ms. Patterson's counsel agreed to the amount of time the Board scheduled for the hearing and to the time allocated for MSBSD's presentation of its case. The time allocations included the time for the cross-examination of Dr. Sheorn.

The Board, in Dec. No. 19-0103, decided that an SIME would not have helped it to analyze the medical records and testimony to reach its conclusion in Dec. No. 18-0111. Based on its analysis, the Board found that Ms. Patterson was not entitled to any additional workers' compensation benefits. The medical disputes have existed in this case since Dr. Glass issued his report on December 9, 2014. The most recent medical dispute occurred between Dr. Wert's April 26, 2017, report and Dr. Sheorn's

December 23, 2017, report.[140] Considering the amount of medical evidence before it, the Board, exercising its right, decided an additional evaluation was not necessary. The Board held it did not need additional investigation and evidence in order to reach its decision.[141]

On February 10, 2015, Ms. Patterson filed a workers' compensation claim and requested an SIME, TTD, TPD, medical and transportation costs, a compensation rate adjustment, penalty, interest, and a finding of unfair or frivolous controversion.[142] Ms. Patterson at no time filed any additional paperwork to move the process forward for an SIME. For most of the time prior to the hearing in 2018, Ms. Patterson was represented by competent legal counsel who knew, or should have been aware of, the process for obtaining an SIME. Moreover, there is no guarantee an SIME would have provided Ms. Patterson with the kind of "objective" psychiatrist and "touchy feeling psychologist" she sought and would have met what she says she needed to feel that the process had been fair and unbiased. These statements indicate an attempt to retry her case.

At the 2019 hearing, the Board found that the question of whether to order an SIME depended, in part, on the date by which an SIME must be requested. Dr. Wert's April 26, 2017, opinions reflect a dispute with Dr. Glass's December 9, 2014, opinions.[143] Dr. Sheorn's December 23, 2017, opinions, received by Ms. Patterson on December 26, 2017, reflect a dispute with Dr. Wert's April 26, 2017, opinion, Dr. O'Leary's January 12, 2015, and November 11, 2015, opinions, and Dr. Odland's February 6, 2015, opinion. Sixty days from December 26, 2017, was February 24, 2018.[144]

On January 11, 2018, a prehearing was held to simplify and clarify the issues for hearing and to record the parties' stipulations. The issues identified for hearing were:

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140 Dec. No. 19-0103 at 22, No. 41.

141 *Id.* at 28 – 29.

142 Exc. 317-18.

143 Dec. No. 19-0103 at 9, Nos. 20-21.

144 *Id.* at 16, No. 23.

TTD benefits from January 5, 2015, through February 6, 2015, and May 24, 2016, until Ms. Patterson was medically stable; TPD benefits from February 9, 2015, through May 21, 2015, for every Wednesday afternoon Ms. Patterson missed work while treating with Dr. O'Leary; medical costs; transportation costs; interest; attorney fees and costs. An SIME dispute was not set for hearing.[145] If Ms. Patterson felt she needed an SIME, it could have been listed as an issue for hearing, but was not.

Moreover, Ms. Patterson did not request a continuance of the January 16, 2018, hearing nor did she request an SIME at the hearing on January 16, 2018.[146] It was not until Dec. No. 18-0111 was issued that Ms. Patterson filed a petition with the Board requesting it order an SIME. She contended that an SIME with "an objective psychiatrist and a 'touchy feely' psychologist" would make her feel that the evaluations would be fair and unbiased.[147] The Commission stayed the appeal of Dec. No. 18-0111 in order to allow the Board to address the petition for an SIME.

MSBSD opposed the petition for an SIME contending Ms. Patterson had waived her right to an SIME by neither timely filing a petition in 2015, nor completing the SIME form demonstrating that there had been a dispute between its first EME with Dr. Glass's report of December 9, 2014, and Ms. Patterson's treating physician, Dr. Odland, when on February 6, 2015, he stated he disagreed with Dr. Glass. Ms. Patterson, in her February 10, 2015, claim for benefits, asked for an SIME, but did not file a petition for one. MSBSD further contended she waived her right to an SIME following her next request for an SIME in February 2017, when she did file a petition for an SIME, but she did not file a completed SIME form. At the prehearing on March 28, 2017, to set a date for a hearing on her petition, the SIME was not listed as an issue for the hearing. Neither Ms. Patterson nor her attorney objected to the Prehearing Summary and so the issue of an SIME was not heard at the scheduled hearing.[148] MSBSD asserted Ms. Patterson

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145 Dec. No. 19-0103 at 16, No. 24.

146 *Id.*, No. 25.

147 *Id.* at 22, No. 43.

148 *Id.* at 8, Nos. 15-16.

waived her right to an SIME by not following up on her request for one until after the Board decided she was not entitled to any additional workers' compensation benefits in Dec. No. 18-0111.

The requirements for seeking an SIME are found at AS 23.30.095(k) and 8 AAC 45.092. The statute provides "In the event of a medical dispute regarding determinations of causation, medical stability, . . . or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician . . . selected by the board from a list established and maintained by the board."[149] The Board's regulation provides:

(g) If there exists a medical dispute under AS 23.30.095(k),

(1) the parties may file a

(A) completed second independent medical form, available from the division, listing the dispute together with copies of the medical records reflecting the dispute, and

(B) stipulation signed by all parties agreeing

(i) upon the type of specialty to perform the evaluation or the physician to perform the evaluation; and

(ii) that either the board or the board's designee determine whether a dispute under AS 23.30.095(k) exists, and requesting the board or the board's designee to exercise discretion under AS 23.30.095(k) and require an evaluation;

(2) a party may petition the board to order an evaluation; the petition must be filed within 60 days after the party received the medical reports reflecting a dispute, or the party's right to request an evaluation under AS 23.30.095(k) is waived;

(A) the completed petition must be filed timely together with a completed second independent medical form, available from the division, listing the dispute; and

(B) copies of the medical records reflecting the dispute; or

(3) the board will, in its discretion, order an evaluation under AS 23.30.095(k) even if no party timely requested an evaluation under (2) of this subsection if

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[149] AS 23.30.095(k)

(A) the parties stipulate, in accordance with (1) of this subsection, to the contrary and the board determines the evaluation is necessary; or

(B) the board on its own motion determines an evaluation is necessary.

The statute provided the Board "may" order an SIME, but does not mandate the Board to order one whenever there is a medical dispute. The Board has the authority to decide medical disputes without having ordered an SIME.[150] The Board looked at the most recent event for which an SIME could have been requested by Ms. Patterson. While the hearing on the merits of her claim was heard on January 16, 2018, Ms. Patterson neither requested the need for an SIME be added to the list of issues for the hearing, nor requested a continuation in order to ascertain that she desired an SIME. She had not met the regulatory requirements for an SIME.

The Board then analyzed whether it needed an SIME in order to understand the nature of Ms. Patterson's injury. The Board found Ms. Patterson claimed two types of mental stress injuries, each based upon PTSD. One was a physical injury that caused a mental disorder – a physical-mental injury. She also claimed a mental-mental injury; in other words, a mental stimulus caused a mental disorder. The Board determined in Dec. No. 18-0111 that Ms. Patterson did not have either mental injury. In that decision, the Board first found that Ms. Patterson had not raised a physical-mental injury until the final minutes of the January 16, 2018, hearing. Further, when her April 3, 2017, deposition was taken, she was asked if she was claiming a physical-mental injury and specifically stated she was not. The Board then found that MSBSD had not received sufficient notice of a physical-mental injury claim nor had it been given fair notice of the grounds upon which a physical-mental claim rested.

The Board reviewed its decision in Dec. No. 18-0111 that Ms. Patterson also had not proved her claim for a mental injury from stress related to the choking event on September 23, 2014. The Board then reviewed Dec. No. 18-0111 to see whether an SIME would have altered its decision. The Board noted that Ms. Patterson claimed two

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[150] *See Butts*, 467 P.3d 231, 243.

types of mental stress claims, each based upon PTSD. One was a physical injury that caused a mental disorder – a physical-mental injury. She also claimed a mental-mental injury; in other words, a mental stimulus caused a mental disorder. Each was analyzed and it was determined Ms. Patterson did not have either mental injury. The Board determined Ms. Patterson did not raise a physical-mental injury until the final minutes of the January 16, 2018, hearing. Further, when her April 3, 2017, deposition was taken, she was asked if she was claiming a physical-mental injury and she stated she was not. The Board found MSBSD did not have sufficient notice of a physical-mental injury claim and had not been given fair notice or the grounds upon which a physical-mental claim rested.

The Board also held that school nurses must be present in schools where there are students and staff who eat and are at risk of choking. School nurses intervene with actual and potential health concerns for both acute and chronic illnesses, injuries, and emergencies. It found Ms. Patterson presented no evidence the school environment, which placed her in a setting where another child could choke, created extraordinary and unusual pressure or tension for school nurses or staff.[151]

The Board did not discount attempts to resuscitate the choking student were frightening and stressful for Ms. Patterson, but to be compensable the stress must have resulted from "extraordinary and unusual pressures and tensions." The Board found performing her duty to provide emergency care to a choking student by attempting resuscitation is not unusual or extraordinary; it is expected of all school nurses working for MSBSD. Likewise, choking incidents and other life-threatening emergencies are the types of incidents all MSBSD school nurses and staff respond to when needed, as Ms. Patterson did on more than one occasion.[152]

The Board distinguished Ms. Patterson's case from *Kelly* and found that although it may have been unsettling for Ms. Patterson to provide first responder medical care to a choking child, testimony showed the work stress was not unusual or extraordinary. It

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[151] Dec. No. 19-0103 at 16-19, Nos. 26-27; 19, No. 29.

[152] *Id.* at 19, No. 30.

found, in addition to the September 23, 2014, incident, Dr. O'Leary noted Ms. Patterson experienced "secondary trauma" from Employer's lack of emotional support because her "debriefing" after the September 23, 2014, incident and after incidents when she responded to a collapsed staff member and another choking student was not provided and caused her stress level to go up. Ms. Patterson contends she was subjected to "aftershock, after aftershock, after aftershock" and the series of shocks while working for MSBSD was unending. She expected MSBSD to offer her follow-up attention after she performed her duty to provide emergency medical care to students and staff. However, the Board found in addition to providing crisis intervention, Ms. Patterson's school nurse duties required her to provide on-going follow-up after a crisis. Instead, Ms. Patterson was dismayed because MSBSD did not provide her "debriefing." Historically, Ms. Patterson has been dissatisfied with the emotional support she received from her parents, employers, and others with whom she has had relationships. The Board found Dr. Sheorn credibly testified Ms. Patterson has a pattern of attention seeking behavior, extreme emotionality, and difficulty sustaining herself when the focus is not on her; indicative of borderline personality disorder with histrionic traits.[153]

Although the event on September 23, 2014, while Ms. Patterson performed her duties as a school nurse, was a stressful experience, the Board found Ms. Patterson failed to prove her experience attempting to resuscitate the student on September 23, 2014, or MSBSD's failure to meet her emotional support needs was an extraordinary or unusual pressure or tension in comparison to other school nurses. The Board, in Dec. No. 18-0111, conducted an alternative analysis.[154]

Because Ms. Patterson was unable to prove her work stress resulted from extraordinary and unusual pressures and tensions, the analysis could have ended and Ms. Patterson's claim would have not been found compensable. However, to make certain there was not more to Ms. Patterson's evidence, that nothing was left

[153] Dec. No. 19-0103 at 19-20, No. 31.

[154] *Id.* at 20, No. 32.

unconsidered, and the decision was not wrong, the Board analyzed the next element of a compensable mental injury.[155]

Even had Ms. Patterson been able to prove work stress resulted from extraordinary and unusual pressures and tensions, the next element she had to establish was that the work stress was the predominant cause of her mental illness. Ms. Patterson asserted one of her mental illnesses caused by work stress was PTSD.[156]

In analyzing if work stress was the predominant cause of Ms. Patterson's mental injury, the Board relied most heavily on medical opinions to arrive at its legal conclusions.[157] The Board found Dr. Wert diagnosed PTSD; major depression, recurrent, severe, without psychotic features; and, a generalized anxiety disorder. He indicated adjustment disorder with anxiety needed to be ruled out; and Ms. Patterson had dependent, socially avoidant, and possibly borderline personality features or traits. He concluded Ms. Patterson was "affectively unstable" and experienced PTSD symptoms "associated" with the September 23, 2014, work incident when Ms. Patterson witnessed the student choking. The Board found Dr. Wert gave Ms. Patterson the PTSD diagnosis without reviewing or considering any of her medical and mental health records or Dr. Glass's report. His opinion was based primarily upon the social and medical history Ms. Patterson provided. Finally, the Board found although Dr. Wert's testimony recited the PTSD criterion, he was unable to describe what Ms. Patterson's symptoms were or what signs and behaviors he observed and relied upon to diagnose PTSD. For all these reasons, Dr. Wert's report and testimony were not entitled to, nor given, weight.[158]

The Board then found Dr. O'Leary initially diagnosed Ms. Patterson with adjustment disorder with mixed anxiety and depression. Eventually, Dr. O'Leary also diagnosed Ms. Patterson with PTSD; however, he noted Ms. Patterson's "egocentric

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155 Dec. No. 19-0103 at 20, No. 33.

156 *Id.*, No. 34.

157 *Id.*, No. 35.

158 Dec. No. 19-0103 at 20-21, No. 36.

trauma defenses" made the student's trauma and death all about Ms. Patterson, even when these issues obviously were not.[159]

The Board, in Dec. No. 18-0111, found Ms. Patterson's discontent, because she perceived MSBSD did not provide her support, has a long history. MSBSD's lack of support hurt Ms. Patterson's feelings and, because of that, she quit her school nurse job with MSBSD in 2007. Historically, Ms. Patterson also complained about her parents' uncaring nature, including emotional deprivation and anger she carried since childhood. Her psychological diagnoses and bouts of psychological disorders frequently stemmed from others' failures to meet Ms. Patterson's desire for some form of support, care, and concern. The Board found that when Ms. Patterson does not receive the support she desires, she loses emotional control. There is no medical dispute between Drs. O'Leary, Glass, and Sheorn on this point; they agree Ms. Patterson has a preexisting tendency toward histrionic reactions.[160]

Dr. Glass's testing indicated Ms. Patterson did not have PTSD or any other Axis I disorder. Dr. Sheorn's evaluation, which was given great weight, confirmed Ms. Patterson did not meet the PTSD diagnostic criteria. The Board reviewed PTSD's various diagnostic criteria and how Dr. Sheorn analyzed those criteria. Additionally, Dr. Sheorn administered the Structured Inventory of Malingered Symptomatology. Ms. Patterson had an elevated score which was derived from the number of atypical, improbable, inconsistent, or illogical answers for people with true mental disorders. The Board found in both her report and hearing testimony, Dr. Sheorn provided many examples of inconsistencies in Ms. Patterson's reports to Dr. Sheorn and her behavior, inconsistent with a PTSD diagnosis.[161]

The Board, in Dec. No. 18-0111, found Ms. Patterson was not credible and her failure to vest in her employer-provided retirement and health care plan was the secondary gain motivating her claim. The evidence the Board considered was voluminous

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159 Dec. No. 19-0103 at 21, No. 37.

160 *Id.*, No. 38.

161 *Id.* at 21-22, No. 39.

and included testimony and reports from medical and mental health professionals including Drs. Odland, Johnson, O'Leary, Wert, Glass, and Sheorn and Debra Haynes. Dec. No. 18-0111 made credibility determinations, discounted the weight given to Dr. Wert's opinions and testimony, gave great weight to Dr. Sheorn and relied upon her opinions in reaching its conclusions.[162]

The Court, in *Butts*, stated, "When medical experts disagree about the cause of an employee's injury, we have held that as a general rule 'it is undeniably the province of the Board and not this court to decide who to believe and who to distrust.'"[163] Nothing in the statute required the Board to order an SIME which was untimely requested and not necessary to the Board's decision making. The line of cases cited in *Butts* supports the Board's decision making process here.

The Board properly considered the medical evidence presented and in Dec. No. 18-0111 denied Ms. Patterson any additional benefits. The Board then reviewed that decision when considering her request for an SIME and decided an SIME would not have assisted it in its review. This decision was within the Board's authority to make. After considering the medical disputes, the Board held that an additional evaluation was not necessary and would not have helped the Board to decide Dec. No. 18-0111.[164] This decision was the Board's to make and is supported by substantial evidence in the record. The Board's Dec. No. 19-0103 is affirmed.

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[162] Dec. No. 19-0103 at 22, No. 40.

[163] *Butts*, 467 P.3d at 243, citing *AT & T Alascom v. Orchitt*, 161 P.3d 1232, 1243 (Alaska 2007)(quoting *Bradbury v. Chugach Elec. Ass'n*, 71 P.3d 901, 909 (Alaska 2003).

[164] *Id.*

5. Conclusion.

The Board's Final Decision and Order No. 18-0111 and Final Decision and Order No. 19-0103 are AFFIRMED.

Date: *17 November 2020* Alaska Workers' Compensation Appeals Commission

Signed
James N. Rhodes, Appeals Commissioner

Signed
S. T. Hagedorn, Appeals Commissioner

Signed
Deirdre D. Ford, Chair

APPEAL PROCEDURES

This is a final decision. AS 23.30.128(e). It may be appealed to the Alaska Supreme Court. AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the Alaska Supreme Court must be filed no later than 30 days after the date shown in the Commission's notice of distribution (the box below).

If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*:

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

RECONSIDERATION

A party may ask the Commission to reconsider this decision by filing a motion for reconsideration in accordance with AS 23.30.128(f) and 8 AAC 57.230. The motion for reconsideration must be filed with the Commission no later than 30 days after the date shown in the Commission's notice of distribution (the box below). If a request for reconsideration of this final decision is filed on time with the Commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or, no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision No. 283, issued in the matter of *Shannon K. Patterson v. Matanuska-Susitna Borough School District*, AWCAC Appeal Nos. 18-023 and 19-020, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on November 17, 2020.

Date: *November 19, 2020*

Signed

K. Morrison, Appeals Commission Clerk