Alaska Workers' Compensation Appeals Commission

George Miller Construction, Inc. and Alaska National Insurance Company, Appellants, vs. Harborview Medical Center and Lee L. Lawless, Appellees.	Final Decision Decision No. 156 October 4, 2011 AWCAC Appeal No. 10-029 AWCB Decision No. 10-0155 AWCB Case No. 200605810

Final decision on appeal from Alaska Workers' Compensation Board Decision No. 10-0155, issued at Fairbanks on September 13, 2010, by northern panel members Amanda Eklund, Chair, Jeff Bizzarro, Member for Labor, Sarah Lefebvre, Member for Industry.

Appearances: Richard L. Wagg, Russell, Wagg, Gabbert & Budzinski, P.C., for appellants, George Miller Construction, Inc. and Alaska National Insurance Company. Joseph A. Kalamarides, Law Offices of Kalamarides & Lambert, for appellee, Harborview Medical Center. Robert M. Beconovich, The Law Office of Robert M. Beconovich, LLC, filed a Notice of Non-Participation on behalf of appellee, Lee L. Lawless.

Commission proceedings: Appeal filed October 4, 2010, with a Motion for Stay of Award; Stipulation for Stay of Award filed November 30, 2010; Order on Stipulation for Stay issued November 30, 2010; briefing completed May 18, 2011; oral argument was waived.

Commissioners: David Richards, S. T. Hagedorn, Laurence Keyes, Chair.

By: Laurence Keyes, Chair.

1. Introduction.

Lee L. Lawless (Lawless) was injured while working for George Miller Construction, Inc. (Miller Construction). When complications developed during his medical treatment, Lawless was transferred to and hospitalized at Harborview Medical Center (Harborview) in King County, Washington. Miller Construction and its workers'

compensation carrier, Alaska National Insurance Company (Alaska National), dispute the amount Alaska National owes Harborview for its treatment of Lawless.

This appeal requires the commission to interpret and apply a subsection of a statute, AS 23.30.097(a),[1] and, if appropriate, interpret and apply a subsection of a regulation adopted by the Alaska Workers' Compensation Board (board), 8 AAC 45.082(i).[2] Both the statute and the regulation provide alternatives for limits on

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[1] At the relevant time, which in this matter was 2006, AS 23.30.097(a) read:

> **Fees for medical treatment and services.** (a) All fees and other charges for medical treatment or service are subject to regulation by the board consistent with this section. A fee or other charge for medical treatment or service may not exceed the lesser of
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> (1) the usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, not to exceed the fees in the fee schedule specified by the board in its published bulletin dated December 1, 2004;
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> (2) the fee or charge for the service when provided to the general public; or
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> (3) the fee or charge negotiated by the provider and the employer under (c) of this section.

[2] At the relevant time, 8 AAC 45.082(i) provided:

> Fees for medical treatment are determined as follows:
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> (1) The fee may not exceed the physician's actual fee or the usual, customary, and reasonable fee as determined under this subsection, whichever is lower.
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> (2) The board will publish annually a bulletin for the "*Workers' Compensation Manual*," published by the department which gives the name and address of the organization whose schedule of providers' charge data must be used in determining the usual, customary, and reasonable fee for medical treatment or services for injuries that occur on or after July 1, 1988. The manual, and the organization's name and address are available upon request from the division.
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> (3) The usual, customary, and reasonable fee must be determined based on the 90th percentile of the range of

(footnote continued)

permissible fees or charges for medical treatment of injured Alaskan workers. On reviewing the statute, regulation, relevant case law, the board's decision,[3] and the parties' briefing, we affirm the board. Harborview is entitled to an additional payment for treating Lawless in the amount of $199,432.91.[4]

2. Factual background and proceedings.

This appeal presents questions of law; the facts are not at issue. The underlying facts, as found by the board, are:[5]

> 1) On April 19, 2006, [Lawless] was working for [Miller Construction] when he stepped off the back of a truck and injured his left ankle. [Miller

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> charges for similar services reported to the organization described in (2) of this subsection. The organization charge data must be used as follows:
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> (A) The organization's annual publication of the schedule of usual, customary, and reasonable fees in effect at the time the employee received the treatment must be used. However, if the organization publishes the schedule semi-annually, then the semi-annual publication for the period in which the employee received treatment must be used.
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> (B) If the community in which services were rendered is not included in the organization's data, or if the type of treatment the employee received is not included in the organization's data for the community in which services were rendered, the usual and customary fee must be based on the data reported for the community nearest to the community in which the services were rendered to the employee.
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> (C) If the type of treatment or service the employee received is not included in the organization's data and the employer has evidence that the fee exceeds the usual, customary, and reasonable fee charged in the community for the treatment or services rendered, the employer shall pay the physician based on the employer's evidence.

[3] *Lee L. Lawless v. Harborview Medical Center, et al.,* Alaska Workers' Comp. Bd. Dec. No. 10-0155 (Sept. 13, 2010).

[4] *See Lawless,* Alaska Workers' Comp. Bd. Dec. No. 10-0155 at 10.

[5] We have omitted all of the board's supporting footnotes except one.

Construction] accepted liability for [Lawless's] injury, and provided temporary total disability (TTD) benefits and medical benefits.

2) [Lawless] developed necrotizing fasciitis, a life-threatening complication resulting from his injury, and received extensive medical treatment at Harborview, including left leg and right foot amputation, medication to treat systemic infection, [over] a total of 76 days of inpatient hospitalization.

3) The Alaska Workers' Compensation Medical Fee Schedule (Alaska Fee Schedule) in place at the time of [Lawless's] injury and treatment became effective December 1, 2004.

4) [Lawless] was in intensive care for 20 days and medical/surgical care for 56 days. Per the Alaska Fee Schedule, the medical services provided are assigned a per diem rate of $13,207.50 and $7,586 respectively. Therefore, the cost assigned to the medical treatment [Lawless] received from Harborview, according to the Alaska Fee Schedule, is $688,966.00 (20 days x $13,207.50 + 56 days x $7,586 = $688,966.00), before applying the geography adjustment factor (GAF).

5) It is undisputed Harborview is located in King County, Washington. Applying the GAF for King County from the Alaska Fee Schedule (.926), the medical services provided [Lawless] total $637,982.52 ($688,966.00 x .926 = $637,982.52).

6) Harborview's charge for the services [Lawless] received, when provided to the general public, total $442,201.58.

7) The Hospital Fee Schedule issued by the Washington State Department of Labor & Industries, the applicable fee schedule for workers' compensation claims arising in Washington, states the Percentage of Allowable Charge (POAC) rate for Harborview is 54.9%.

8) After [Lawless's] discharge on August 11, 2006, Harborview submitted an itemized bill to [Alaska National] for $442,201.58.

9) On September 12, 2006, Harborview received payment from [Alaska National] totaling $242,768.67. This amount was calculated by applying the 54.9% POAC designated for injured workers treated at Harborview in the state of Washington to the submitted invoice ($442,201.58 x .549 = [$]242,768.67).

10) The 2009 Ingenix National Fee Analyzer identifies the data used in assigning fee amounts to particular procedures as follows:

> Ingenix Charge Data
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> The data used in the *National Fee Analyzer* is actual provider charge data collected from health insurance payers. This national charge data is aggregated and combined with a

> relative value and conversion factor methodology. The relative value clinically compares and ranks medical procedures by difficulty, work, risk, and the material costs of these procedures. The conversion factor is the dollar amount developed for each charge by dividing the charge by the code's relative value. Please note that while insurance payers contribute billed charges to the data used in this product, no individual physician or clinic is identified in the data. Additionally, no allowed amounts or insurance company paid amounts are used in the product.[6]

11) On June 4, 2009, Chad G., on behalf of Harborview, submitted a "Provider Appeal" to [Alaska National] seeking additional payment beyond the $242,768.67. Harborview asserted it was entitled to payment under the Alaska Fee Schedule, not the Washington Fee Schedule.

12) On June 29, 2009, counsel for [Miller Construction] responded to Harborview, stating its position:

> All medical providers, including hospitals, who treat injured workers in the state of Washington, are compensated in accordance with the POAC factor assigned to them. As such, the usual, customary, and reasonable fee for the treatment in the community would be that fee. While the Alaska Fee Schedule might allow for a greater fee amount than that, the Alaska Act specifically provides that it is the lesser fee that is paid.

13) On January 4, 2010, Harborview filed a Workers' Compensation Claim dated December 22, 2009, claiming medical benefits totaling $442,201.58, penalty and interest.

14) On January 22, 2010, [Miller Construction] filed an Answer dated January 20, 2010. [Miller Construction] denied the claim, asserting it had already paid for medical treatment [Lawless] received at Harborview, Harborview is not entitled to payment calculated under the Alaska Fee Schedule, and Harborview had admitted it had been paid "under the Washington fee schedule where the treatment was rendered."

15) The parties agree on the relevant facts, and compensability of the medical services provided by Harborview is not disputed. At the April 30, 2010, prehearing conference, the parties agreed the sole issue for hearing

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[6] "Ingenix National Fee Analyzer 2009, Charge data for evaluating fees nationally," at 2, available at http://www.shopingenix.com/upload/pdf/1699/NFA.pdf (last accessed September 8, 2010).

is the legal question of which fee schedule applies to the medical services provided by Harborview.

16) At the August 12, 2010, hearing, [Miller Construction's] adjuster Tammi Lindsey testified it is [Alaska National's] normal business practice to apply the POAC to bills received from Washington medical providers. She stated "it has always been the case" that Washington medical providers are reimbursed based on the POAC, although sometimes bills "slip through" and an adjuster, by mistake, fails to apply the POAC. Ms. Lindsey further testified no medical provider other than Harborview has ever disputed the use of the POAC in calculating the usual and customary fee for purposes of Alaska workers' compensation claims.

17) At the August 12, 2010, hearing, counsel for Harborview clarified it seeks only the unpaid amount remaining from the original bill, $199,432.91, which represents its usual, customary, and reasonable fee.[7]

3. Standard of review.

Interpreting statutes and regulations requires the commission to resolve legal questions.[8] We exercise our independent judgment when deciding questions of law.[9]

4. Discussion.

a. Applicable law.

Under old Alaska law, AS 23.30.095(f) set limits on permissible fees or charges for medical treatment of injured workers.[10] In 2005, the Alaska Legislature amended the Alaska Workers' Compensation Act (Act), AS 23.30.001 – .400, including the repeal

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[7] *Lawless,* Alaska Workers' Comp. Bd. Dec. No. 10-0155 at 2-5.

[8] *See State, Dep't of Health & Social Services v. Hope Cottages, Inc.,* 863 P.2d 246, 249 (Alaska 1993).

[9] *See* AS 23.30.128(b).

[10] AS 23.30.095(f) read:

> All fees and other charges for medical treatment or service shall be subject to regulation by the board but may not exceed usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, as determined by the board. An employee may not be required to pay a fee or charge for medical treatment or service. The board shall adopt updated usual, customary, and reasonable medical fee schedules at least once each year.

of AS 23.30.095(f) and the enactment of AS 23.30.097. Although it has since been amended, the version of AS 23.30.097(a) in effect during Lawless's hospitalization, is cited above.[11] Subsection .097(a) provided that the fee or charge owed a medical provider is the lesser[*sic*][12] of: 1) the usual, customary, and reasonable fees for the treatment or service where it is rendered, not to exceed the fee in the December 1, 2004, fee schedule; 2) the fee or charge for the service when provided to the general public; or 3) the fee or charge negotiated by the medical provider and the employer.[13]

In accordance with the authority granted the board in AS 23.30.095(f) and AS 23.30.005(h), which authorizes the board to "adopt regulations to carry out the provisions of [AS 23.30,]" the board first adopted 8 AAC 45.082 in 1983. The regulation has been amended several times since then. However, subsection .082(i), that portion of the regulation that limits fees for medical treatment, was not amended between November 7, 2005, the effective date of the 2005 amendments to the Act,[14] and Lawless's hospitalization at Harborview in 2006. At that time, 8 AAC 45.082(i) read as cited above.[15] Paraphrased, 8 AAC 45.082(i) states that the fee due a medical provider is the lower of: 1) the provider's actual fee, or 2) the provider's usual, customary, and reasonable fee, as determined under the regulation.[16]

Applying the foregoing law, the board held that, pursuant to AS 23.30.097(a)(2), the amount owed Harborview for its treatment of Lawless is "the fee or charge for the service when provided to the general public."[17] That amount, $442,201.58, is less than the amount that would have been owed under AS 23.30.097(a)(1), $637,982.52, when

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11 *See* n.1, *supra*.

12 In 2007, subsequent to Lawless's hospitalization, AS 23.30.097(a) was amended, including substitution of the word "lowest" for "lesser."

13 *See* AS 23.30.097(a).

14 *See Rivera v. Wal-Mart Stores, Inc.,* 247 P.3d 957, 959 n.2 (Alaska 2011).

15 *See* n.2, *supra*.

16 *See* 8 AAC 45.082(i).

17 *See Lawless,* Alaska Workers' Comp. Bd. Dec. No. 10-0155 at 9.

reduced by the GAF. The latter amount is based on "the usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, not to exceed the fees in the fee schedule specified by the board in its published bulletin dated December 1, 2004[.]"[18]

b. The parties' arguments.

In their briefing, the parties make a number of arguments for and against the amount Alaska National paid Harborview. Prefacing its arguments, Alaska National submits that Harborview billed it $442,201.58 and Alaska National paid Harborview $242,768.67. Alaska National argues this amount "represented the appropriate Washington Fee Schedule payment for an injured worker in Washington, and was consistent with the [POAC] for Harborview."[19] It acknowledges "that the Alaska Fee Schedule would allow for a fee greater than either that paid, or the total charged by Harborview."[20] Alaska National concedes that the Alaska Fee Schedule would allow for a fee of $637,982.52, when reduced by the GAF for King County, which is an amount that is greater than the $442,201.58 Harborview charged or the $242,768.67 Alaska National paid.[21]

First, Alaska National maintains that AS 23.30.097(a)(1) provides not one, but two alternatives for setting limits on permissible fees or charges for medical treatment. They are: 1) the usual, customary, and reasonable fees for the treatment or service in the community where it is rendered, **or** 2) the fees set out in the Alaska Fee Schedule.[22] King County, Washington is the community where Harborview is located and where it rendered treatment to Lawless. By virtue of its proposed interpretation of

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[18] AS 23.30.097(a)(1). The third of the alternatives under subsection .097(a) that set limits on fees, the fee or charge negotiated by the medical provider and the employer, was not at issue here. *See* AS 23.30.097(a)(3).

[19] Appellants' Br. 2 (footnote omitted).

[20] *Id.*

[21] *See* Appellants' Br. 2

[22] *Id.* at 4.

sub-subsection .097(a)(1), Alaska National lays the groundwork for its argument that Harborview is owed fees that are commensurate with the fees it would be entitled to for treatment of a Washington worker under Washington law, that is, the fees under the Washington Fee Schedule.

Harborview counters that the intent of the legislature when enacting AS 23.30.097(a), can be gleaned from an opinion letter authored by a Deputy Attorney General.[23] That intent was to limit the permissible fees or charges for medical treatment to the lowest of three alternatives: 1) the usual, customary, and reasonable fees specified in the Alaska Fee Schedule; 2) the fees paid by the general public; or 3) the fees negotiated by the employer and provider.[24] According to Harborview, contrary to the actual wording of sub-subsection .097(a)(1), Alaska National is arguing for the sub-subsection to be understood as limiting fees to those "paid for the treatment or service of injured workers in the community in which it is rendered[,]"[25] in this case, the fees under the Washington Fee Schedule.

In a recent pronouncement on the statutory interpretation process, the Alaska Supreme Court stated that it looks to the plain meaning of the statute, its legislative purpose, and its intent. The court cautioned against a mechanical application of the plain meaning rule, adopting instead a sliding scale approach. The plainer the statutory language, the more convincing the evidence of a contrary legislative intent must be.[26] Following this directive, the commission interprets AS 23.30.097(a)(1) differently than Alaska National. We do not view sub-subsection .097(a)(1) as stating two alternatives for setting limits on permissible fees for medical treatment, one being the fees under

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[23] *See* Appellee's Br. 2. Whether the opinions in the letter accurately reflect the intent of the *legislature* is an open question.

[24] *See* Appellee's Br. 2.

[25] Appellee's Br. 2-3 quoting Appellants' Br. 4 (emphasis omitted). *See also* Appellee's Br. 9.

[26] *See State, Dep't of Commerce, Cmty. & Econ. Dev., Div. of Ins. v. Alyeska Pipeline Serv. Co.,* _____ P.3d ____, Slip Op. No. 6567 at 9 (Alaska, June 10, 2011) (citations omitted).

the Alaska Fee Schedule, the other being the fees for treatment of injured workers in the locale where the treatment is rendered. AS 23.30.097(a) is structured such that each numbered sub-subsection, (a)(1), (a)(2), or (a)(3), states one alternative. Hence, we construe sub-subsection .097(a)(1) as establishing a single alternative for setting limits on fees, using the provider's usual, customary, and reasonable fees, *unless* they exceed the fees in the Alaska Fee Schedule. When the provider's usual, customary, and reasonable fees exceed the fees in the Alaska Fee Schedule, this alternative is not available as a limit on permissible fees. Such a reading appears to us to be the plain meaning of AS 23.30.097(a)(1) and we are unaware of any evidence of a contrary legislative intent. The critical implication of our construction of sub-subsection .097(a)(1) is that it should not be read as supporting an argument for using the Washington Fee Schedule in this case.

Second, AS 23.30.097(a)(2) provides another alternative for setting limits on permissible fees for medical treatment, using the same fee or charge for the treatment when provided to the general public.[27] Citing a principle of statutory interpretation, that each word, sentence, or provision of the statute has a purpose and is not superfluous, Alaska National argues that sub-subsection .097(a)(2) should be interpreted as differentiating between charges billed and fees received by a provider.[28] According to this interpretation of the statute, while Harborview billed $442,201.58, it received $242,768.67, the permissible fee. Harborview, in response, cites the same principle and argues that, although the terms "fee" and "charge," as used in subsection .097(a), are not synonymous, their meanings are not entirely different.[29] Harborview submits that fees are a subset of charges or a type of charge.[30] Any difference in meaning between the two is insignificant.

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[27] *See* n.1, *supra*.

[28] *See* Appellants' Br. 4-7.

[29] *See* Appellee's Br. 11.

[30] *Id.*

The aforementioned principle of statutory construction notwithstanding, we take the view that words in a statute that have similar meanings may be grouped together for a single purpose. For example, AS 23.30.095(f), the predecessor of AS 23.30.097(a), grouped the words "treatment or service" no less than three times.[31] Subsection .097(a), as originally drafted, followed suit to an extent, by referring to "treatment or service" in the body of the subsection three times. However, elsewhere, the subsection references only "the service" in relation to the fee or charge to the general public and makes no reference whatsoever to "treatment or service" when providing for a negotiated fee or charge.[32] It is counterintuitive to conclude that the legislature intended sub-subsections .097(a)(1), (a)(2), or (a)(3) to distinguish between medical "treatment" on the one hand, and "service" on the other. Instead, the commission believes the intent was to group them for payment purposes. We note that, as reinforcement for this interpretation, the 2007 amendments to AS 23.30.097 reworded sub-subsections .097(a)(2) and (a)(3) to consistently refer to "treatment or service."[33] We conclude that the legislature grouped "fees or other charges[,]" "fee or other charge[,]" or "fee or charge" in the statute for the same purpose it grouped "treatment or service," namely, provider payment, irrespective of the characterization as a "fee," "charge," or "other charge." To read anything more into the statute's use of multiple words with similar meanings is unwarranted.

Third, Alaska National takes the position that the board hearing panel erred in a particular respect. It did so when the panel recognized a distinction between fees and charges, yet applied the statute, AS 23.30.097(a), in such a way as to render it a distinction without a difference.[34] Alaska National maintains that the panel resorted to the regulation, 8 AAC 45.082(i)(3), which purportedly does not differentiate between

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[31] *See* n.10, *supra*.

[32] *See* n.1, *supra*.

[33] *See* AS 23.30.097 (§ 36 ch 10 FSSLA 2005; am § 1 ch 39 SLA 2007).

[34] *See* Appellants' Br. 7-8.

fees and charges,[35] in order to equate them. Because the statute distinguishes fees from charges and the regulation does not, the regulation is inconsistent, and, therefore, invalid. In Alaska National's view, the board cannot use the regulation as a basis for determining the permissible amount of the fees or charges owed Harborview.[36] For its part, Harborview reiterates that the board did not equate the terms "fee" or "charge" or related terms when it applied the statute.[37]

To be valid, a regulation must be consistent with the legislation authorizing it. AS 44.62.030, a section of the Administrative Procedure Act, AS 44.62.010 – .950, speaks to this requirement:

> **AS 44.62.030. Consistency between regulation and statute.**
>
> If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

Furthermore, in the specific context of this case, AS 23.30.097(a) *expressly* requires consistency between subsection .097(a) and any regulation the board adopts covering fees and charges for medical treatment.[38]

The commission agrees that 8 AAC 45.082(i) is inconsistent with AS 23.30.097(a), but not because the statute distinguishes between fees and charges and the regulation does not. Both the regulation[39] and the statute[40] allow for use of the

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[35] The regulation uses the terms "fee," "fees," "charges," and "charged" in different contexts. *See* n.2, *supra*.

[36] *See* Appellants' Br. 8.

[37] *See* Appellee's Br. 12.

[38] *See* n.1, *supra*. Here, we note that the timing of the adoption of the version of 8 AAC 45.082(i) that applies here, *see* n.2 *supra*, and the passage of AS 23.30.097 is unusual, in that this version of subsection .082(i) preceded the statute and was not amended until after Lawless was hospitalized. Ordinarily, it is the other way around. A regulation is adopted in the wake of legislation, in order "to carry out the purpose of the statute." AS 44.62.030.

[39] *See* 8 AAC 45.082(i)(1).

[40] *See* AS 23.30.097(a)(1).

medical provider's usual, customary, and reasonable fee. And, arguably, both statute and regulation allow for use of the fee or charge when provided to the general public, although the regulation refers to the provider's "actual" fee.[41] Otherwise, the regulation does not include the alternative that provides for a fee or charge negotiated by the medical provider and employer, which is not at issue here. Because we construe the statute in a way that there is no distinction between fees and charges, as discussed above, and the inconsistency we identify between 8 AAC 45.082(i) and AS 23.30.097(a) is irrelevant to the issue in this appeal, the commission is not persuaded that the board erred in construing "fee" and "charge" similarly. Finally, whether or not there is consistency between 8 AAC 45.082(i) and AS 23.30.097(a), the statute controls over the regulation in any event.[42]

Ultimately, Alaska National maintains that the panel erred when it rejected its argument for application of the POAC to establish the appropriate amount owed Harborview for its services.[43] It finds fault with the panel for not applying the POAC to Harborview's fees when treating Lawless, pointing out that, if he were an injured Washington worker, the POAC would be applied to reduce the amount due Harborview. In the end, Alaska National objects to any discrepancy in the amount Harborview is paid for treating an injured Alaskan worker and the amount it would be paid for treating his or her Washington counterpart.[44]

Harborview argues that Alaska National is attempting to rewrite AS 23.30.097(a).[45] It contends that contrary to the plain language of sub-subsection .097(a)(1) that reads "fees for the treatment or service in the community in which it is rendered," Alaska National would have it read "fees <u>paid</u> for the treatment or service <u>of</u>

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[41] *Cf.* 8 AAC 45.082(i)(1) and AS 23.30.097(a)(2).

[42] *See Anchorage School Dist. v. Hale,* 857 P.2d 1186, 1188-1190 (Alaska 1993).

[43] *See* Appellants' Br. 9-10.

[44] *Id.* at 9-12.

[45] *See* Appellee's Br. 8-11.

injured workers in the community in which it is rendered."[46] By interpreting sub-subsection .097(a)(1) in this manner, Alaska National is able to argue that the Washington Fee Schedule limits Harborview's fees in this case.

Again, we think that AS 23.30.097(a)(1) means what it says. It provides one alternative for limits on permissible fees for medical treatment of injured Alaskan workers. Under this alternative, providers' fees are "capped" by the Alaska Fee Schedule. If a provider's usual, customary, and reasonable fee is equal to or less than the fee in the Alaska Fee Schedule, and that fee is the lowest of the three alternatives set out in AS 23.30.097(a), then that is the amount the provider is owed. Should a provider's usual, customary, and reasonable fee exceed the fee in the Alaska Fee Schedule, this alternative is inapplicable. Nowhere does the language in sub-subsection .097(a)(1) suggest that another fee schedule is applicable.

Similarly, we conclude that the plain meaning of AS 23.30.097(a)(2) is that it provides another alternative for limits on permissible fees for medical treatment. Sub-subsection .097(a)(2) provides a "cap" of sorts on fees, using the fees the provider would ordinarily charge the general public for the treatment in question. There is no language from which to infer that use of the POAC is to be read into this sub-subsection to reduce the ultimate amount payable under this alternative.

It appears to us that Alaska National is mixing its respective arguments under sub-subsections .097(a)(1) and (a)(2) in furtherance of its position that Harborview was paid what it was owed. According to Alaska National, .097(a)(1) should be construed as limiting fees to those Harborview would otherwise be paid for treating an injured Washington worker. .097(a)(2) should be construed as requiring the charges Harborview billed, which are the same as it would charge the general public, to be reduced by the POAC to yield the fees paid to Harborview. By combining the first concept with the second, Alaska National reasons that Harborview's charges for treating Lawless must be reduced by the POAC, ostensibly because they would be reduced in

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[46] *See* Appellee's Br. 3 (emphasis in original).

the same way for a Washington worker. We are not persuaded that Alaska National's interpretation of AS 23.30.097(a) is correct. Instead, the commission construes AS 23.30.097(a) as providing three separate, alternative limits on permissible fees or charges for medical treatment of injured Alaskan workers.

Finally, we discern no legislative intent that is contrary to the plain meaning of AS 23.30.097(a)(1) or (a)(2). Citing *City of Seward v. Hansen,* Alaska Workers' Comp. App. Comm'n Dec. No. 146, 10 (January 21, 2011), Alaska National points out in its reply brief that keeping workers' compensation premiums affordable was one objective of the 2005 amendments to the Act.[47] The nexus of this argument to the issue in this case is that, if lower medical costs lead to more affordable premiums, subsection .097(a) should be interpreted in light of this purpose. We disagree and are reluctant to conclude that any other state's fee structure, schedule, or limitations were intended to be incorporated into Alaska workers' compensation law through the passage of AS 23.30.097(a).

5. Conclusion.

We affirm the board's decision. Harborview is entitled to an additional medical payment in the amount of $199,432.91.

Date: *4 October 2011* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
David Richards, Appeals Commissioner

Signed
S. T. Hagedorn, Appeals Commissioner

Signed
Laurence Keyes, Chair

[47] *See* Appellants' Reply Br. 2-3.

APPEAL PROCEDURES

This is a final decision on the merits of this appeal. The appeals commission affirmed the board's decision granting Harborview's claim for an additional medical payment. The commission's decision becomes effective when distributed unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started).[48] To see the date it is distributed, look at the box below. It becomes final on the 31st day after the decision is distributed.

Proceedings to appeal this decision must be instituted (started) in the Alaska Supreme Court no later than 30 days after the date this final decision is distributed[49] and be brought by a party-in-interest against all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. *See* AS 23.30.129(a). The appeals commission and the workers' compensation board are not parties.

You may wish to consider consulting with legal counsel before filing an appeal. 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

This is a decision issued under AS 23.30.128(e). A party may ask the commission to reconsider this Final Decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion for reconsideration must be filed with the commission no later than 30 days after the day this decision is distributed to the parties. If a request for reconsideration of this final decision is filed on time with the commission, any

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[48] A party has 30 days after the service or distribution of a final decision of the commission to file an appeal to the supreme court. If the commission's decision was served by mail only to a party, then three days are added to the 30 days, pursuant to Rule of Appellate Procedure 502(c), which states:

> **Additional Time After Service or Distribution by Mail.** Whenever a party has the right or is required to act within a prescribed number of days after the service or distribution of a document, and the document is served or distributed by mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

[49] *See* n.48, *supra*.

proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed[50] 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 formatting for publication and the correction of a grammatical error this is a full and correct copy of the Final Decision No. 156 issued in the matter of *George Miller Construction, Inc. v. Harborview Medical Center and Lawless,* AWCAC Appeal No. 10-029, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on October 4, 2011.

Date: *October 11, 2011*

Signed

B. Ward, Commission Clerk

[50] *Id.*