A. Are Psychological Injuries Compensable Under The Act?

1. Definition Of Psychological Injury Or Traumatic Neurosis.


2. Compensability Of Psychological Injuries.

   The Kansas Workers Compensation Act does not have a statute which specifically allows for the recovery of benefits for non-physical psychological conditions. In particular, K.S.A. § 44-508(f)(1) defines a personal injury as a lesion or change in the physical structure of the body causing damage or harm thereto. It does not mention nonphysical or psychological conditions as compensable injuries entitled to be compensated under the Act.

   However, Kansas Courts have long held that psychological injuries, or traumatic neurosis, are compensable under the Kansas Workers Compensation Act. The basis for these decisions is the secondary injury rule – when a primary injury under the Workers Compensation Act is shown to have arisen out of the course of the employment, every natural consequence that flows from the injury including a new and distinct injury, is compensable if it is the direct and natural result of the primary injury. See Adamson v. Davis Moore Datsun, Inc., 19 Kan. App. 2d 301, 312, 868 P.2d 546 (1994); Love v. McDonald’s Restaurant, 13 Kan. App. 2d 397, Syl. ¶ 1, 771 P.2d 557, rev. denied 245 Kan. 784 (1989).

   Although Kansas courts have long held that traumatic neurosis cases are compensable, the Kansas Supreme Court has recently invoked the strict interpretation rule to limit the
benefits available under the Kansas Workers Compensation Act to only those benefits set forth in the language of the statute. Specifically, in *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494 (2007), the Kansas Supreme Court reversed decades of precedent allowing individuals with bilateral extremity impairments to collect body as a whole and work disability benefits. The decision overturned the judicial decisions which had allowed such benefits, relying upon the literal language of the relevant statute.

When construing statutes, we are required to give effect to the legislative intent if that intent can be ascertained. When a statute is plain and unambiguous, we must give effect to the legislature's intention as expressed, rather than determine what the law should or should not be. A statute should not be read to add that which is not contained in the language of the statute or to read out what, as a matter of ordinary language, is included in the statute.

*Casco*, 283 Kan. at Syl. ¶ 6. The Court further stated that: “courts cannot add something to a statute that is not readily found in the language of the statute.” *Casco*, 283 Kan. at 525.

This decision was followed by *Bergstrom v. Spears Mfg. Co.*, 289 Kan. 605, 214 P.3d 676 (2009). In *Bergstrom*, the Kansas Supreme Court prohibited the judicially-approved practice of imputing wages in work disability cases when the claimant did not exhibit a good-faith effort to engage in a post-termination work search. The good-faith requirement was not codified anywhere in the Kansas Workers Compensation Act. In rejecting this judicially created requirement, the Court held:

When a workers compensation statute is plain and unambiguous, the courts must give effect to its express language rather than determine what the law should or should not be. The court will not speculate on legislative intent and will not read the statute to add something not readily found in it. If the statutory language is clear, there is no need to resort to statutory construction.

A history of incorrectly decided cases does not compel the Supreme Court to disregard plain statutory language and to perpetuate incorrect analysis of workers compensation statutes. The court is not inexorably bound by precedent, and it will reject rules that were originally erroneous or are no longer sound.

*Bergstrom*, Syl. 1, 2.

In light of these recent Kansas Supreme Court rulings, the decisions upholding the compensability of psychological injuries may be vulnerable. In fact, the Board was recently presented with the question of whether the plain language of the Act would allow for compensation to be paid for psychological injury in *Bosse v. Benedictine College*, Docket No. 1,051,537 (Kan. App. Bd. July 2014). However, the Board declined
to address the issue because the respondent had failed to raise the issue before the administrative law judge.

B. **Elements Necessary To Establish A Compensable Traumatic Neurosis Injury Under The New Law.**

The Kansas Supreme Court has held that great care should be exercised in granting an award for a traumatic neurosis injury due to the nebulous characteristics of a neurosis. *Berger v. Hahner, Foreman & Cale, Inc.*, 211 Kan. 541, 550, 506 P.2d 1175 (1973) (Old Law).

The Board has indicated that there is an increased burden on the claimant to establish a compensable psychiatric injury under the New Law.

> It is evident that the legislature intended to expand the requirements necessary to prove both an accident and personal injury under the revised 2011 version of the Act. This new language appears to increase claimant’s burden when alleging traumatic neurosis following an accident.


1. **Elements That Must Be Proven To Establish A Compensable Traumatic Neurosis Injury.**

   a. **Work related physical injury.**


   Not only must a physical injury exist, the accident must also be the “prevailing factor” in causing the physical injury. *See K.S.A. § 44-508(f)(2)(B)(ii).*

   b. **Symptoms of a traumatic neurosis.**


   b. **The neurosis is directly traceable to the physical injury.**
(1) The neurosis must be determined to be directly traceable to the physical injury. See Love, 13 Kan. App. 2d 397, Syl. ¶ 1. If the neurosis is not directly traceable to the physical injury, the traumatic neurosis would not be compensable. See Loewen, 2012 WL 2890477 at *3.

For example, in Loewen, the claimant injured his back when lifting a 1,200 pound piece of metal which had fallen on his brother while at work. Claimant had a history of anxiety and depression and had been treated for those conditions before the accident. The medical evidence indicated that claimant’s PTSD was caused by witnessing his brother being crushed by the steel, not by his back injury.

The Board denied claimant’s request for treatment for PTSD, depression and anxiety and indicated that the New Law requires that the claimant’s psychological injury be directly traceable to the accident.

The PTSD is directly traceable to the accident which happened to his brother, but not the accident which happened to claimant. This is even more true with the rigid new legislation which omits compensation for aggravations, accelerations or exacerbations of preexisting conditions.


Similarly, in Frank v. Air Capital Delivery The Warehouse, LLC, Docket No. 1,070,906 (Kan. App. Bd. April 2016), claimant was involved in a fiery motor vehicle accident. She later developed PTSD that was determined to be traceable to her memory of the traumatic vehicle accident and the memories of things associated with driving and fires. However, the claimant failed to establish that her PTSD was directly traceable to the physical injuries she suffered in the MVA. The Board denied claimant’s request for benefits based upon a traumatic neurosis injury.

(2) The Appeals Board has also held that it is not necessary for a medical doctor to provide a directly traceable opinion. A psychologist$^1$ (who is not a medical doctor) is qualified to offer a directly traceable opinion. See Moody v. KBW Oil & Gas Co., Docket No. 1,061,633, 2014 WL 1758037, p. 15, fn. 36 (Kan. WCAB April 28, 2014) (hereinafter “Moody 3”). See also Jordan-Cain v. State of Kansas, Docket No. 1,058,656, p. 7 (Kan. App. Bd. March 2014) (hereinafter “Jordan-Cain 2”).

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$^1$ Psychiatrists are medical doctors. Psychiatrists begin their careers in medical school and after earning their M.D., go on to residency training in mental health. As medical doctors, psychiatrists can do what most psychologists in the United States cannot – they can prescribe drugs.
In fact, the Kansas Court of Appeals has implied that the claimant’s testimony alone is sufficient to establish the directly traceable element. *See Alaniz v. Dillon Cos.*, 2014 Kan. App. Unpub. LEXIS 570, 329 P.3d 557, 2014 WL 3731939 (July 25, 2014).


But *see Gilman v. Training & Evaluation Center of Hutchinson, Inc.*, Docket No. 1,071,182 (App. Bd. June 2015) (claim for psychological injury denied because psychologist did not explicitly use “directly traceable” or “prevailing factor” language and seemed to indicate the cause of claimant’s psychological distress was his preexisting depression and anxiety).

c. The accident is the prevailing factor in causing the traumatic neurosis.


(2) Although perhaps duplicative, it is nonetheless still necessary for the claimant to offer evidence on both the “directly traceable” and “prevailing factor” requirements. *See Moody 3. Heyen v. City of Wichita*, No. 1,064,079, 2013 WL 2455722 (Kan. WCAB May 29, 2013) (Board stated that claimant would need to prove that her psychological injury was directly traceable to her physical injury and that her accident was the prevailing factor in causing her psychological injury).

(3) The Board has held that it is not necessary for a medical doctor to provide a prevailing factor opinion. A psychologist (who is not a medical doctor) is qualified to offer a prevailing factor opinion. *See Moody 3, fn. 36, p. 15. See also Jordan-Cain 2, p. 7 (“Neither the Kansas Workers Compensation Act, nor case law, imposes a requirement that a worker must prove by competent medical evidence he or she sustained a personal injury by accident arising out of and in the course of employment.”).

(4) The prevailing factor opinion must be based upon the relevant statutory criteria. *See Moody v. KBW Oil & Gas Co.*, Docket No. 1,061,633, 2013 WL 4051831, at *6 (Kan. WCAB July 23, 2013) (hereinafter “Moody 1”) (physician’s prevailing factor opinion rejected when the physician gave a “blanket” opinion that the accident was the prevailing factor in all of claimant’s diagnosis, including PSTD and depression, but acknowledged lack of knowledge of claimant’s preexisting psychological treatment and lack of expertise in rating psychological conditions). *See also Moody 1, at *6,
(psychologist opinion that the claimant’s anxiety and depression symptoms were “a result” of the traumatic brain injury and stress associated with lifestyle changes was insufficient to meet the prevailing factor legal standard which requires proof of “the” primary factor in relation to all other factors, not “a” resulting effect).

d. **The accident did more than solely cause an aggravation of a preexisting mental disorder.**

Under the New Law, an “injury” is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic. See K.S.A. § 44-508(f)(2). The injury is not compensable because the accident was only a “triggering or precipitating factor.” See K.S.A. § 44-508(g)(2). As with physical injuries, “traumatic neurosis injury would not be compensable if the injury solely aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.” See K.S.A. § 44-508(f)(2).

Medical evidence is not necessary to establish the existence of something more than solely an aggravation, but it is recommended. See Moody 2, at *8. The Board has held that a psychologist can provide a valid opinion on this issue even though not a medical doctor. See Moody 3, at *15.

C. **Medical Treatment Issues.**

Treatment for psychological issues often involves therapy as well as prescription medication (i.e. – anti-depressant, anti-anxiety, etc.). While psychologists are qualified to perform therapy, they cannot prescribe medication since they are not medical doctors. As a result, it is often necessary to have two authorized treating doctors – a medical doctor to prescribe the medication and a psychologist to provide therapy.

D. **Establishing Permanent Impairment Of Function For A Traumatic Neurosis Injury.**

1. **K.S.A. § 44-508(u) defines “functional impairment” as:**

   "Functional impairment" means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American medical association guides to the evaluation of impairment, if the impairment is contained therein.

   K.S.A. § 44-508(u)(emphasis added).
2. The Act describes the method to calculate functional impairment.

   The extent of permanent partial general disability shall be the percentage of functional impairment the employee sustained on account of the injury as established by competent medical evidence and based on the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein, until January 1, 2015, but for injuries occurring on and after January 1, 2015, based on the sixth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

   K.S.A. § 44-510e(a)(2)(B) (emphasis added).

   a. Competent medical evidence.

   Both statutes use the term “competent medical evidence.” This term is not defined in the statute. However, the Kansas Court of Appeals has also held by implication that the when the term “competent medical evidence” is used in a statute, it requires the opinion of a physician. For example, the Appeals Board held in Kirker v. Bob Bergkamp Constr. Co., No. 107,058, 2012 WL 4937471, at *6 (Kan. Ct. App. Unpub. October 12, 2012) that the opinion of a physician was required when determining the amount of preexisting impairment. The Kansas Court of Appeals reversed the Board and held that because K.S.A. § 44-501(c) did not contain the term “competent medical evidence,” then the testimony of a physician was not required to establish the amount of preexisting impairment of function. By implication, when the term “competent medical evidence” is specifically used in a statute, the testimony of a medical doctor is required.

   The term “competent medical evidence” is also consistent with the long-standing requirement that medical evidence take the form of a medical opinion provided by a physician that is stated within a reasonable degree of medical probability or certainty. See, e.g., Suhm v. Volks Homes, Inc., 219 Kan. 800, 804, 549 P.2d 944 (1976) (a valid “medical opinion” must be stated within a “reasonable medical probability, not a mere ‘possibility’”); Rorabaugh v. General Mills, Inc., 187 Kan. 363, 372-73, 556 P.2d 796 (1960) (a “medical opinion” must be expressed based upon a medical probability); Karle v. Board of County Comm’rs of Kearney County, 188 Kan. 800, 807, 366 P.2d 241 (1961) (to be valid, a medical opinion must be stated upon a medical probability, not a possibility).

   In addition, other jurisdictions have held that the term “competent medical evidence” in a workers compensation case requires evidence to be provided by a licensed physician and not a licensed psychologist. See Miller v. Bethlehem City
Council, 760 A.2d 446, 451 (P.A. 2000). See also Freemon v. VF Corp., Kay Windsor Div., 675 S.W.2d 710 (Tenn. 1984) (testimony of a psychologist concerning permanent disability rejected in workers compensation case because the psychologist’s testimony was not considered to be from “competent medical authorities”); Tafoya v. Shinseki, 2011 U.S. App. Vet. Claims, 2011 WL 5903840 (Nov. 28, 2011) (the witness, who was not a physician, lacked necessary qualifications to offer an opinion which would meet “competent medical evidence” standard as required by relevant regulations).

An opinion of a clinical psychologist who is not a physician or medical doctor cannot be stated within a reasonable degree of medical probability since a psychologist lacks the requisite qualifications to offer such an opinion. As a result, the opinion of a clinical psychologist who is not a medical doctor and who is unable to express an opinion within a “reasonable medical probability” would not amount to “competent medical evidence” and would not meet the requirements set forth in K.S.A. § 44-510e(a)(2)(B).

It does not appear that the full Board has directly addressed the issue of whether the term “competent medical evidence” requires a medical doctor’s opinion. However, one member of the Appeals Board has implied that a psychologist can nonetheless offer a valid opinion on the percentage of claimant’s impairment of function. See Jordan-Cain 2, p. 7 (“This Board Member acknowledges that under K.S.A. 2011 Supp. 44-510e(a)(2)(B), competent medical evidence is necessary to establish the percentage of claimant’s functional impairment. However, the appellate courts [under the Old Law] have held the finder of fact is free to consider all the evidence and decide for itself the percent of disability the claimant suffers.”).

Any objection to an impairment of function opinion rendered by a psychologist must be made at the earliest opportunity and cannot be raised for the first time on appeal. See Cook v. State, 2014 Kan. App. Unpub. LEXIS 487, 326 P.3d 1091; 2014 WL 2871436 (Kan. App. June 20, 2014). In Cook, the ALJ ordered an IME with a psychologist to determine if the claimant had suffered a permanent impairment of function as the result of traumatic neurosis. After the psychologist provided the ALJ with his impairment rating and the ALJ awarded benefits based upon the psychologist’s rating, the respondent appealed and argued to the Board that “depression is a medical condition and is best assessed by physicians, not psychologists.” The Board affirmed the ALJ’s award. On appeal, the Kansas Court of Appeals ruled that respondent’s contention that claimant’s depression was best assessed by a physician was not an objection that the ALJ had misapplied the law in selecting or relying upon the psychologist. In response to the respondent’s argument that it was not given an opportunity to object because the ALJ had decided on his own to obtain the psychologist’s opinion, the court indicated that the respondent could have written a letter to the ALJ and opposing counsel objecting to the use of a psychologist after the ALJ issued the order appointing the psychologist to perform an IME. The Kansas Court of Appeals
dismissed the appeal for lack of jurisdiction ruling that it could not consider the issue because the respondent had raised the issue of whether the psychologist’s opinion amounted to competent medical evidence for the first time on appeal.

Not only must an objection be raised at the earliest opportunity, the issue must also be raised and argued in the respondent’s submission letter. See Jordan-Cain v. State of Kansas, Docket No. 1,058,565 (AB March 2016) (hereinafter “Jordan-Cain 3”). In Jordan-Cain, the claimant offered the testimony of Dr. Robert Barnett on the issue of functional impairment related to claimant’s psychological issue. Dr. Barnett is a clinical psychologist, not a medical doctor. The respondent timely objected to Dr. Barnett’s opinions on functional impairment during his deposition. However, the respondent apparently failed to argue in its submission letter that Dr. Barnett was not qualified to offer an opinion on functional impairment because he was not a physician. The ALJ relied upon Dr. Barnett’s opinion to find that the claimant had an impairment of function rating attributable to traumatic neurosis. On appeal, the Board refused to consider or decide whether a non-medical doctor is qualified to offer an impairment of function rating stating: “respondent did not raise this as an issue in its submission letter to the ALJ… the Board will not consider this on appeal.” Jordan-Cain 3, p. 16.

b. The AMA Guides, fourth edition.

For injuries suffered prior to January 1, 2015, the Act also requires that a claimant establish the amount of permanent impairment of function for traumatic neurosis based upon the AMA Guides, fourth edition.

The AMA Guides itself, since the AMA Guides, fourth edition sets forth the qualifications for those attempting to offer an opinion on permanent impairment of function. The AMA Guides, specifically state:

In general, it is a physician’s responsibility to evaluate a patient’s health status and determine the presence or absence of an impairment.


Again, because it is a physician’s responsibility to determine the presence or absence of an impairment, the opinion of a nonphysician would arguably not meet the requirements of the statute which require that the impairment of function sustained by the employee be based on the AMA Guides.

However, as indicated above, the Board has ruled that a psychologist can offer an opinion on the amount of permanent impairment of function based upon the AMA Guides. See Moody 3 (“The Board rejects respondent’s specific argument that Kansas law precludes a rating from a psychologist because the Guides limit a rating opinion only from a physician.”); Jordan-Cain 3, p. 16 (same).
The *AMA Guides, fourth edition*, contain a specific chapter relating to Mental and Behavioral Disorders. *See AMA Guides, fourth edition*, Chapter 14, pp. 291-302. Unlike the earlier versions of the *Guides*, the authors decided to use classes of impairment in Chapter 14 rather than using percentages for estimates of mental impairments. The reason given by the authors for the lack of percentages was:

> [T]here are no precise measures of impairment in mental disorders. The use of percentages implies a certainty that does not exist, and the percentages are likely to be used inflexibly by adjudicators, who then are less likely to take into account the many factors that influence mental and behavioral impairment. Also, because no data exists that show the reliability of the impairment percentages, it would be difficult for *Guides* users to defend their use in administrative hearings. After considering this difficult matter, the Committee on Disability and Rehabilitation of the American Psychiatric Association advised *Guides’* contributors against the use of percentages in the chapter on mental and behavioral disorders of the fourth edition.


Although no percentages of impairments are provided in Chapter 14, the *AMA Guides, fourth edition* does contain percentages of impairments for mental disorders in Chapter 4, The Nervous System. Chapter 4 contains percentages of impairment for aphasia and communication disturbances, disturbances of mental status and integrative functioning and emotional behavioral disturbances. *See AMA Guides, fourth edition*, Chapter 4, pp. 141-42. Arguably, because the Act requires that an impairment of function rating must be “based on” the *AMA Guides*, and the Act requires percentages for impairments, a permanent impairment of function percentage rating can only be based upon Chapter 4, not Chapter 14 of the *AMA Guides, fourth edition*.

In *Ortega v. Kaw Valley Electric*, Docket No. 1,037,644 (App. Bd. May 13, 2011), the ALJ adopted an impairment of function rating based upon the *AMA Guides, second edition*, because the psychologist had testified that the *AMA Guides, fourth edition* did not contain specific percentages of impairment as required by K.S.A. § 44-510e. On appeal, the Board affirmed the ALJ’s award which utilized the *AMA Guides, second edition* to determine claimant’s functional impairment for psychological impairment. The Board ruled that the impairment of function rating should be based upon the *AMA Guides, fourth edition* if the rating is found in the *Guides*. However, because the psychologist had testified that the *AMA Guides, fourth edition* did not contain specific percentages, it was permissible to utilize the *AMA Guides, second edition*. *See also Cerritos v. Tyson Fresh Meats*, No. 93,177, 2005 WL 1089708 (Kan. Ct. App. Unpub. May 6,

But see Holland & Aerotek, Docket No. 1,050,978 (App. Bd. January 2014) (the Board refused to recognize the functional impairment opinion of Dr. Barnett which was based upon the AMA Guides, second edition stating: “The Kansas legislature mandated that any impairment under the Kansas Workers Compensation Act is to be determined pursuant to the fourth edition of the Guides, if the impairment is contained therein… Dr. Barnett’s use of the second edition violates the above legislative mandate.”).

c. The AMA Guides, sixth edition.

Effective January 1, 2015, the extent of the permanent impairment of function suffered by an employee in Kansas must be based on the AMA Guides, sixth edition. K.S.A. §§ 44-510d and 44-510e.

As with the fourth edition of the Guides, the sixth edition reemphasizes the requirement that only a physician may offer a valid opinion on the amount of an employee’s permanent impairment of function.

Impairment evaluation requires medical knowledge. Physicians duly recognized by an appropriate jurisdiction should perform such assessments within their applicable scope of practice and field of expertise.


The sixth edition is similar to the fourth edition as it also contains a separate chapter which addresses impairment of function for psychiatric impairments and neurological impairments, including cerebral function, disorders of spinal cord function, craniocephalic pain, trigeminal neuralgia, disorders of the neuromuscular junction, peripheral neuropathy and myopathic disorders. See AMA Guides, sixth edition, Chapter 13, p. 323.

The sixth edition also contains a chapter which specifically addresses mental and behavioral disorders. See AMA Guides, sixth edition, Chapter 14, pp. 347-82. However, the Guides emphasize that this chapter should only be used for a mental and behavioral disorders that exist without a physical impairment. See AMA Guides, sixth edition, Chapter 14, p. 349. In states like Kansas which require a physical injury to accompany the mental or behavioral disorder to make it compensable, Chapter 14 would not be appropriate to support a valid impairment of function rating because the use of Chapter 14 would result in a duplication of the impairment for the mental disorder.
In most cases of a mental and behavioral disorder accompanying a physical impairment, the psychological issues are encompassed within the rating for the physical impairment, and the mental and behavioral disorder chapter should not be used.

*AMA Guides, sixth edition*, Chapter 14, p. 349.

In *Moody 3*, the Board stated that there is no legal requirement that the psychologist conduct psychological testing before offering an opinion. See *Moody 3*, at *16. However, the *AMA Guides, sixth edition*, strongly encourages that mental status and integrative function deficits be diagnosed and the accompanying impairment of function be established with the use of neuropsychological assessment and testing. See *AMA Guides, sixth edition*, p. 330. Consequently, an opinion on the amount of permanent impairment of function for a traumatic neurosis injury would arguably only be “based on” the *Guides* and valid if provided by a medical doctor who has had a neuropsychological assessment or testing performed. An opinion based upon a one-time evaluation performed by a nonphysician, or without a neuropsychological assessment, would arguably not meet the criteria set forth in the sixth edition. If the sixth edition criteria have not been met, any impairment of function opinion would not be “based on” the *AMA Guides* as required by K.S.A. § 44-510e(a)(2)(B).

**E. Establishing A Task Loss For A Traumatic Neurosis Injury.**

Under the Kansas Workers Compensation Act, an employee may be eligible to recover a “work disability” if the injured worker can establish the various requirements found at K.S.A. § 44-510e(a)(2). One of the elements that must be established is “task loss.”

"Task loss” shall mean the percentage to which the employee, in the opinion of a licensed physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the five-year period preceding the injury. The permanent restrictions imposed by a licensed physician as a result of the work injury shall be used to determine those work tasks which the employee has lost the ability to perform.

K.S.A. § 44-510e(a)(2)(D)(emphasis added).

Permanent restrictions imposed by a psychologist as a result of the work injury would not meet the statutory requirement that the permanent restrictions be imposed by a “licensed physician.” Accordingly, permanent restrictions imposed by a psychologist cannot be used to establish a task loss. To establish a task loss based upon a traumatic neurosis injury, the permanent restrictions must be imposed by a licensed physician – such as a psychiatrist. See *Spivey v. Brewster Place*,
Docket No. 1,025,309, p. 2 (App. Bd. January 2013) (the issue of whether a psychologist was a “physician” so as to provide an admissible task loss opinion was raised but not decided.).

F. Overcoming The Presumption That The Respondent’s Obligation To Provide Medical/Psychological Treatment Ends When The Claimant Reaches MMI.

When an injured worker sustains a traumatic neurosis injury, it is not unusual for the injured worker to need palliative care extending beyond the point when the claimant is judged to have reached MMI.

Under the New Law, once a claimant reaches maximum medical improvement, it is presumed that the employer’s obligation to provide further medical care terminates. See K.S.A. § 44-510h(e).

It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, shall terminate upon the employee reaching maximum medical improvement.

The New Law provides that the presumption can be overcome. However, to overcome the presumption, the claimant is required to introduce medical evidence to sustain his burden of proof.

Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reached maximum medical improvement.

K.S.A. § 44-510h(e) (emphasis added).

However, the Board has ruled that the opinions of a psychologist can be used to support a
determination for the need of future psychological care. *See Jordan Cain 3*, p. 18 (“All five
psychologists indicated claimant needs future psychological treatment. Claimant is awarded
future medical treatment for his major depressive disorder.”).