

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2013 MTWCC 7

WCC No. 2009-2272

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VANESSA GAUDETTE

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

**Summary:** Petitioner contends that she has suffered either from Multiple Chemical Sensitivity or somatoform disorder since reacting to odors during renovations at her workplace. Although Respondent accepted liability for her respiratory condition, Petitioner contends that Respondent has unreasonably refused to accept liability for her continuing condition. Respondent contends that Petitioner suffered only a temporary aggravation of an underlying respiratory condition, that she has reached maximum medical improvement for that aggravation, and that her present complaints are not causally related to her industrial injury.

**Held:** Petitioner has not met her burden of proving that her present condition is causally related to her industrial injury. She reached maximum medical improvement for a temporary aggravation of an underlying condition and is not entitled to further indemnity or medical benefits.

**Topics:**

**Causation: Injury.** Petitioner did not prove that her condition was causally related to her industrial injury where reports of her sensitivity to odors predated her industrial injury, no contemporary medical records supported her account of a reaction to an aerosol office cleaner, one medical provider opined that her reactions were actually anxiety attacks, an industrial hygienist found no contaminants in the workplace, and medical providers who supported Petitioner's contentions offered no evidence in support of their opinions beyond Petitioner's subjective

reports. Moreover, other medical experts opined that Petitioner's condition had a psychological origin, and some of Petitioner's symptoms could be readily explained as side effects of medications she took. Petitioner further failed to follow treatment recommendations, refused to disclose part of her medical history to some providers, and refused to undergo a recommended diagnostic procedure. While some evidence supported Petitioner's claim, it is significantly weaker than the evidence to the contrary.

**Proof: Causation.** Petitioner did not prove that her condition was causally related to her industrial injury where reports of her sensitivity to odors predated her industrial injury, no contemporary medical records supported her account of a reaction to an aerosol office cleaner, one medical provider opined that her reactions were actually anxiety attacks, an industrial hygienist found no contaminants in the workplace, and medical providers who supported Petitioner's contentions offered no evidence in support of their opinions beyond Petitioner's subjective reports. Moreover, other medical experts opined that Petitioner's condition had a psychological origin, and some of Petitioner's symptoms could be readily explained as side effects of medications she took. Petitioner further failed to follow treatment recommendations, refused to disclose part of her medical history to some providers, and refused to undergo a recommended diagnostic procedure. While some evidence supported Petitioner's claim, it is significantly weaker than the evidence to the contrary.

**Physicians: Treating Physician: Weight of Opinions.** Where a medical expert with "significantly superior" credentials saw Petitioner for a single in-depth evaluation, the Court concluded that under the treating physician rule, the opinion of Petitioner's treating physician was entitled to greater weight because of the length and depth of her relationship with Petitioner. Therefore, although the expert opined that Petitioner suffered from somatoform disorder, the Court was persuaded by the treating physician's unequivocal opinion that Petitioner did not suffer from somatoform disorder.

¶ 1 The trial in this matter occurred over the course of several days. It began on March 14, 2012, at the Workers' Compensation Court. At that session, Petitioner Vanessa Gaudette was present and was represented by Laurie Wallace. Leo S. Ward represented Respondent Montana State Fund (State Fund), and Greg E. Overturf attended as State Fund's representative.

¶ 2 On March 15, 2012, trial reconvened at Charles Fisher Court Reporting in Helena, with the same parties present. Court recessed at 11:40 a.m. and reconvened at the Workers' Compensation Court at 1:00 p.m.

¶ 3 On June 11, 2012, trial reconvened at Charles Fisher Court Reporting in Helena. Gaudette and Wallace participated via videoconference from Charles Fisher Court Reporting in Kalispell. Ward and Overturf attended in person.

¶ 4 On July 20, 2012, trial reconvened at Charles Fisher Court Reporting in Helena. Gaudette and Wallace participated via videoconference from Charles Fisher Court Reporting in Kalispell. Ward and Overturf attended in person.

¶ 5 On August 1, 2012, trial reconvened at the Workers' Compensation Court. Wallace, Gaudette, and Ward participated by telephone. Wallace made a closing statement and I granted Ward leave to file a written closing statement.

¶ 6 On August 17, 2012, Ward filed State Fund's post-trial brief and I deemed this matter submitted for decision.

¶ 7 Exhibits: I admitted Exhibits 1 through 40, 46, 47, 49, 58, and 60 without objection. I overruled all relevancy objections and admitted Exhibit 57. I admitted Exhibits 41 and 42 over Gaudette's objections. I sustained Gaudette's objections to Exhibits 43 through 45 and 51 through 56 and excluded those exhibits. Specific to Exhibit 45, I sustained Gaudette's objection pending the testimony of Emil J. Bardana, Jr., M.D., at which time State Fund would have the opportunity to lay foundation for this exhibit and Gaudette would have the opportunity to voir dire Dr. Bardana regarding the foundation for his psychiatric opinions. After State Fund's direct examination of Dr. Bardana, Gaudette renewed her objection to pages 60, 62, 65, and 66 of Exhibit 45. I sustained her objection as to any content on those pages in which Dr. Bardana could be construed as offering a psychiatric or psychological diagnosis and those pages remain excluded. I sustained Gaudette's best evidence objection to Exhibit 48, but retained the transcript for ease of reference. State Fund subsequently submitted a compact disk containing the examination of Herman Staudenmayer, Ph.D., and I admitted that into evidence as Exhibit 48. State Fund withdrew Exhibit 50. I sustained Gaudette's objection to Exhibit 59; while I excluded it as an exhibit, I retained it in the exhibit book and permitted the parties to use it as a demonstrative exhibit.

¶ 8 Witnesses and Depositions: The depositions of Gaudette, Neal Rogers, M.D., John C. Schumpert, M.D., Linda Wilhelm, and Dana Hillyer, MN, RN, CS, APRN, may be considered part of the record. On March 14, 2012, Gaudette was sworn and testified. On March 15, 2012, Nancy A. Didriksen, Ph.D., was sworn and testified via videoconferencing. Lynne Grosfield and Herman Staudenmayer, Ph.D., were sworn

and testified in person. On June 11, 2012, Dr. Staudenmayer continued his testimony via videoconferencing. Emil J. Bardana, Jr., M.D., was sworn and testified via videoconferencing. On July 20, 2012, Drs. Staudenmayer and Bardana concluded their respective testimony via videoconferencing.

¶ 9 Issues Presented: The parties presented the following issues for resolution:

Issue One: Whether Petitioner's current condition is causally related to her industrial injury of October 8, 2007;

Issue Two: Whether Petitioner is entitled to temporary total disability benefits and reasonable medical expenses related to the treatment of her industrial injury;

Issue Three: Whether Petitioner is entitled to an increase in award for unreasonable delay or refusal to pay proper workers' compensation benefits pursuant to § 39-71-2907, MCA; and

Issue Four: Whether Petitioner is entitled to costs and attorney's fees pursuant to §§ 39-71-611, -612, MCA.

#### FINDINGS OF FACT

¶ 10 On October 8, 2007, Gaudette suffered an industrial injury in the course and scope of her employment with the State of Montana. State Fund accepted liability for Gaudette's industrial injury – specifically for a temporary aggravation of her respiratory condition – and paid her temporary total disability (TTD) benefits from March 29, 2008, until June 4, 2008. State Fund also paid some medical benefits in April and May 2008.<sup>1</sup>

¶ 11 The medical records pertinent to the present case begin in 2001, when Gaudette sought counseling services from Dana Hillyer, an advanced practice registered nurse with prescriptive authority in the State of Montana.<sup>2</sup> Hillyer has associate, bachelor's, and master's degrees in nursing with a specialty focused in psychiatric mental health nursing. She is board-certified in psychiatric mental health nursing and is a clinical nurse specialist.<sup>3</sup>

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<sup>1</sup> Pretrial Order, Statement of Uncontested Facts.

<sup>2</sup> Hillyer Dep. 6:1-3.

<sup>3</sup> Hillyer Dep. 5:13-25.

¶ 12 Hillyer first saw Gaudette on January 24, 2001, on referral from therapist Mary R. Chronister, Ph.D.<sup>4</sup> Gaudette reported that she was having angry outbursts and believed she was depressed. Gaudette told Hillyer that she wanted to stabilize her emotions and better handle her life.<sup>5</sup> Hillyer diagnosed Gaudette with a major depressive disorder, recurrent, moderate, and bipolar II disorder.<sup>6</sup>

¶ 13 On September 24, 2001, Hillyer noted that Gaudette had not accepted the diagnosis of a bipolar disorder.<sup>7</sup> Hillyer provided medical management and treated Gaudette through March 4, 2002, and then discharged Gaudette to Dr. Chronister's care.<sup>8</sup>

¶ 14 On August 15, 2003, Dr. Chronister expressed concern that Gaudette's psychological status had deteriorated since December 2000. Dr. Chronister noted, "The most marked decline began following the two concussions she sustained in 2002. She has exhibited distorted perceptions, illogical thinking, poor judgment, impulsive behavior, and misleading communication."<sup>9</sup>

¶ 15 On October 27, 2003, Gaudette again sought psychotherapy with Hillyer. Gaudette reported that she had recently been diagnosed with bipolar disorder. Gaudette also reported that since March 2002, she had suffered a severe concussion in an automobile accident and that a subsequent MRI revealed lesions on her brain which were consistent with cerebral palsy and which might also be connected with her bipolar disorder. Gaudette further reported periods of depression and mania. She had quit her job in March 2003. In June 2003, she had attempted suicide. Hillyer recommended weekly therapy sessions to help Gaudette understand her bipolar disorder and manage her symptoms.<sup>10</sup>

¶ 16 In 2004, Gaudette began working for the Department of Revenue as a customer service representative. She initially worked in an office at the department's liquor warehouse location, but was soon transferred to a different building. In early 2005, she returned to work at the liquor warehouse.<sup>11</sup> The liquor warehouse is a 92,000 square foot building built in 1979. The department's Liquor Control Division manages state

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<sup>4</sup> Hillyer Dep. 15:7-14.

<sup>5</sup> Hillyer Dep. 16:3-9.

<sup>6</sup> Ex. 1 at 485-89.

<sup>7</sup> Ex. 1 at 514.

<sup>8</sup> Ex. 1 at 522-23.

<sup>9</sup> Ex. 3 at 15.

<sup>10</sup> Ex. 1 at 2-4.

<sup>11</sup> Trial Test.

wholesale liquor operations, including warehouse shipping and receiving, accounts receivable and payable, inventory management, liquor order processing, agency contract management, and customer service.<sup>12</sup>

¶ 17 Throughout 2004 and 2005, Gaudette continued to treat with Hillyer. On March 14, 2005, Hillyer noted that Gaudette was tearful and overwhelmed, she was experiencing significant marital difficulties, and she also was suffering from sinus congestion, fever, dizziness, and tightness in her chest.<sup>13</sup> The next day, Hillyer noted that Gaudette continued to have dizziness, nausea, and sinus pressure and that she intended to seek treatment at Urgent Care. Most of Hillyer's notes for this appointment reflect their discussion regarding Gaudette's marital crisis.<sup>14</sup>

¶ 18 On March 24, 2005, Gaudette returned for a follow-up appointment and reported some improvement in her psychological condition although her marital crisis had worsened and she and her husband had decided to separate. Gaudette planned to move out of their home in April.<sup>15</sup>

¶ 19 On March 30, 2005, Gaudette returned to Urgent Care complaining that she was developing allergies to scented products and was experiencing chest tightness, difficulty breathing, coughing, and dizziness. PA-C Kay Bills-Kazimi treated Gaudette and noted in her history:

[Gaudette] was at work for about a half an hour this morning when one of her coworker's perfume suddenly caused her eyes to burn, her nose to burn, and severe shortness of breath and wheezing. Symptoms have gotten worse over the last hour and she ended up leaving work due to the symptoms. . . . She tells me that [s]he does have a history of asthma, but she's not used an albuterol inhaler since 2000 . . . . Over the last several months she has developed increasing sensitivities to certain aerosols, highly scented lotions, and perfumes. . . ."<sup>16</sup>

Bills-Kazimi assessed Gaudette as having allergic asthma and prescribed an inhaler.<sup>17</sup>

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<sup>12</sup> Ex. 32 at 1.

<sup>13</sup> Ex. 1 at 86-87.

<sup>14</sup> Ex. 1 at 88-89.

<sup>15</sup> Ex. 1 at 91-92.

<sup>16</sup> Ex. 9 at 9.

<sup>17</sup> *Id.*

¶ 20 Gaudette testified at trial. I found Gaudette to be a credible witness insofar as I do not doubt that she genuinely believes the substance of her testimony regarding her condition. However, I do not find her testimony reliable. I believe her passionate belief in her preferred explanation for her chemical sensitivities has led her to interpret and recall events in a manner which fits into her belief system regardless of factual discrepancies. Where Gaudette's testimony is at odds with contemporary medical records, I find the medical records to be a more reliable record.

¶ 21 Gaudette testified that in March or April of 2005, one of her coworkers sprayed a desk cleaning product<sup>18</sup> and Gaudette inhaled it. Gaudette testified that after that incident, she began having frequent coughing spells around her coworkers because of their perfume and cologne and she began avoiding the office restroom because the smell of air freshener bothered her. Gaudette began having asthma attacks at work that did not resolve with the use of her albuterol inhaler. She visited Urgent Care on several occasions because of breathing difficulties.<sup>19</sup>

¶ 22 On April 1, 2005, Hillyer noted that Gaudette had called her and reported that on March 30, 2005, she had gone to Urgent Care with severe wheezing and respiratory distress. Gaudette informed Hillyer that:

[S]he is very sensitive to strong scents, especially air fresheners, perfumes or scented lotions. She stated that she contacted her employer regarding the fact that there were strong scents in the office and that they needed to remove the air fresheners from the bathrooms. When she went into work today she had another asthma attack that required the use of her inhalers and required her to leave because the air fresheners were still present and there was no way for her to work with the strong odors.

She was very upset about the development of her asthma. She also was upset about her working environment. She feels as if people think she is "a freak."<sup>20</sup>

¶ 23 Gaudette arranged an appointment with Hillyer to address some urgent concerns on April 5, 2005. Gaudette reported that she had had an overwhelming conflict with a family member and she asked Hillyer to speak to her parents to reassure them that she was not suicidal. Hillyer did so. Hillyer further noted:

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<sup>18</sup> Herein referred to as the "desk spray incident."

<sup>19</sup> Trial Test.

<sup>20</sup> Ex. 1 at 93.

When the patient arrived for her appointment today she stated that she was overwhelmed by the air freshener from my bathroom. She stated that even that slight scent had caused her to start wheezing. She was not sure that she could continue the appointment.

I did take out the air freshener from the bathroom and removed it from the immediate office. I also opened the windows in my office to allow for some circulation of air.

. . . .

[Gaudette] was very emotional when she entered the office. She stated that she was having difficulty at work. She stated that despite having requested people refrain from using scented lotions or perfumes around her this request had been ignored. She stated that she continued to experience tightness in her chest and wheezing. She stated that she has been having to use her inhalers several times a day. She also complains that her co-workers have been rude to her often mocking her because of her need to use her inhaler.<sup>21</sup>

Hillyer further noted that Gaudette intended to seek acupuncture and that she was reluctant to seek treatment with a pulmonologist or allergist because she did not want to be prescribed additional medications.<sup>22</sup>

¶ 24 Hillyer opined that Gaudette had experienced “some sort of reactive airway disease related to sensitivity to odors and scents.” Hillyer noted that Gaudette’s sensitivity had caused her some difficulty at work, and that Gaudette was also experiencing increased family conflict. Hillyer and Gaudette discussed the possibility of Gaudette taking a week or two off work to manage her mood and receive treatment for her respiratory problems.<sup>23</sup> Hillyer made no mention in her notes of the desk spray incident specifically. Given the level of detail in Hillyer’s notes, I find it difficult to believe that Hillyer would not have noted the incident if Gaudette had mentioned it.

¶ 25 On April 8, 2005, Gaudette returned to Urgent Care and reported that she had developed wheezing, dizziness, and shortness of breath after a coworker’s boyfriend walked past her desk while wearing cologne. Bills-Kazimi diagnosed her with an allergic asthma exacerbation.<sup>24</sup> Gaudette testified that she is certain that she informed

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<sup>21</sup> Ex. 1 at 94.

<sup>22</sup> Ex. 1 at 95.

<sup>23</sup> *Id.*

<sup>24</sup> Ex. 9 at 10.



medical personnel about her reaction's relationship to the desk spray incident, but she is surprised and angry that they did not note it in her medical chart.<sup>25</sup> I find it more probable that, as the March records of Hillyer and Bills-Kazimi reflect, Gaudette was suffering from some sinus and respiratory distress for which she sought medical attention and, as she related to Bills-Kazimi, she had been experiencing odor sensitivity "[o]ver the last several months."<sup>26</sup>

¶ 26 On April 11, 2005, Gaudette returned to Urgent Care because she believed she was having an asthma attack from a coworker's cologne. Gaudette also reported that she had had problems with exposure to scents while shopping over the weekend. Bills-Kazimi noted that Gaudette's oxygen statistics were 97% to 98% prior to the use of supplemental oxygen. Bills-Kazimi opined that Gaudette may have an underlying anxiety or panic disorder.<sup>27</sup>

¶ 27 On April 13, 2005, Hillyer noted that Gaudette was "very resistant" to the idea that she was suffering from anxiety rather than asthma. Gaudette reported that her acupuncturist suggested that her symptoms might be caused by a recurrent yeast infection and stress. Gaudette was dubious of this assessment. Gaudette informed Hillyer that she had filed a workers' compensation claim.<sup>28</sup>

¶ 28 Gaudette testified that when she treated with an acupuncturist on April 13, 2005, she informed the acupuncturist that her reactivity had originated with the desk spray incident but, in spite of the fact that the desk spray incident was the primary reason she visited the acupuncturist, the acupuncturist did not note the incident in Gaudette's history.<sup>29</sup> Again, I find it difficult to believe that if this incident was as significant at the time as Gaudette now insists, that all of Gaudette's contemporary medical providers failed to make note of it.

¶ 29 On April 20, 2005, Gaudette again returned to Urgent Care with respiratory complaints. Gaudette had not returned to work since her previous visit to Urgent Care. Bills-Kazimi noted that Gaudette complained of persistent nasal congestion, shortness of breath, and wheezing whenever she had exposures to fragrances. She reported reacting to the scent of her husband's shampoo. Gaudette had discontinued the use of an antihistamine Bills-Kazimi had prescribed because it "wasn't working," and she

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<sup>25</sup> Gaudette Dep. 109:10-19.

<sup>26</sup> Ex. 9 at 9.

<sup>27</sup> Ex. 9 at 12.

<sup>28</sup> Ex. 1 at 97.

<sup>29</sup> Gaudette Dep. 112:4 – 113:4.

refused to try a different antihistamine because she feared it would aggravate her depression. Bills-Kazimi also noted:

She tells me that she is going to be filing a worker's comp claim for her symptoms, as she remembers having been sprayed by some type of dust spray, a spray used to dust objects at work, sometime last month in March, but she cannot tell me when this happened. When she was exposed to this, it started her coughing a little bit, but she had no problems breathing, no shortness of breath.<sup>30</sup>

Bills-Kazimi further noted that she spoke with Hillyer and Hillyer advised her that Gaudette has a significant anxiety disorder, is very resistant to treatment, and prefers to use "natural therapies" to prescriptive mood stabilizers. Bills-Kazimi informed Hillyer that she wanted to start Gaudette on Zyrtec for her allergic asthma and Hillyer stated that she expected significant resistance on Gaudette's part.<sup>31</sup>

¶ 30 On April 21, 2005, Hillyer reported that Gaudette's employer had informed her that it would not make special accommodations for her "environmental allergies." Hillyer noted that Gaudette was reluctant to try an antihistamine medication and that she intended to consult with a naturopath to seek other options to manage her allergies. Hillyer noted that Gaudette was treating her asthma with acupuncture and meditation.<sup>32</sup>

¶ 31 Gaudette testified that prior to the desk spray incident she was healthy.<sup>33</sup> Gaudette testified that she had no chemical sensitivities or reactivity prior to then.<sup>34</sup> However, Gaudette acknowledged that on a few occasions, including one on March 30, 2005, she sought medical treatment after reacting to a coworker's perfume or to air freshener. Gaudette testified, however, that these reactions all occurred subsequent to the desk spray incident.<sup>35</sup> Gaudette testified that on each of these occasions, she reported that her reactivity originated from the desk spray incident, but on each occasion, that history was omitted from her medical history.<sup>36</sup> I find it difficult to believe that, had Gaudette informed her health care providers that this incident occurred and that she believed it triggered her chemical sensitivities, that none of these multiple health care providers noted this incident in their respective notes. I further note that

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<sup>30</sup> Ex. 9 at 13.

<sup>31</sup> *Id.*

<sup>32</sup> Ex. 1 at 99-100.

<sup>33</sup> Trial Test.

<sup>34</sup> Gaudette Dep. 100:5 – 101:14.

<sup>35</sup> Gaudette Dep. 105:4-21.

<sup>36</sup> Gaudette Dep. 106:3-19.

Gaudette's explanation does not account for Bills-Kazimi's note that Gaudette reported she had been experiencing odor sensitivity for several months.

¶ 32 On April 28, 2005, Alan A. Wanderer, M.D., prepared a report after evaluating Gaudette's condition. He assessed Gaudette as probably having a chronic reactive airway disease. Gaudette did report the desk spray incident to Dr. Wanderer and he opined that her exposure to chemical desk cleaner aggravated her symptoms. While Gaudette reported subsequently being affected by other odors and chemicals, Dr. Wanderer did not believe Gaudette's exposure to desk cleaner to be the cause. Dr. Wanderer recommended that Gaudette be allowed to work in a clean room with no perfumes or chemical odors that could affect her; that Gaudette should avoid tobacco smoke and diesel smoke; and that she should try an inhaled steroid.<sup>37</sup> Dr. Wanderer additionally recommended that Gaudette place an air purifier near her desk.<sup>38</sup> Gaudette testified that her employer accommodated Dr. Wanderer's recommendations.<sup>39</sup>

¶ 33 On May 3, 2005, Gaudette reported to Hillyer that an allergist had diagnosed her with multiple chemical sensitivity (MCS). Gaudette noted that her employer would not allow her to return to work without a release from her allergist and recommendations for workplace accommodations.<sup>40</sup>

¶ 34 On July 12, 2005, Dana Headapohl, M.D., M.P.H., issued a report following an independent medical examination (IME) of Gaudette. Dr. Headapohl opined that Gaudette had pre-existing reactive airway disease which was temporarily aggravated by an aerosol office foam cleaner. Dr. Headapohl opined that no present symptoms of Gaudette's were related to the exposure to the cleaner, and that the exposure only temporarily aggravated her asthma.<sup>41</sup>

¶ 35 On September 8, 2005, Hillyer noted that Gaudette reported some struggles with odor sensitivity, but that she was doing well overall.<sup>42</sup> Gaudette testified that the acupuncture treatments improved her condition and by October 2005, her breathing difficulties had resolved.<sup>43</sup>

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<sup>37</sup> Ex. 11 at 10-11.

<sup>38</sup> Ex. 11 at 12.

<sup>39</sup> Trial Test.

<sup>40</sup> Ex. 1 at 101.

<sup>41</sup> Ex. 12.

<sup>42</sup> Ex. 1 at 122.

<sup>43</sup> Trial Test.

¶ 36 In 2006, Gaudette saw Hillyer every three or four weeks. Gaudette testified that at the beginning of the year, she felt well both physically and mentally. Gaudette testified that she had a little bit of stress and anxiety from her job, particularly after she accepted a promotion. She further testified that she and her estranged husband had reconciled and purchased a home together and that this was a somewhat stressful situation. Gaudette testified that these were tolerable stressors.<sup>44</sup>

¶ 37 Contrary to her trial testimony, however, Gaudette told Hillyer on many occasions in 2006 that her job was stressful and overwhelming. For example, on August 30, 2006, Hillyer noted, “She is struggling with her current position. She again is in that position where she does not like her job and she is feeling overwhelmed.”<sup>45</sup> On October 9, 2006, Gaudette reported continuing stress at work and unhappiness with her job position.<sup>46</sup> Gaudette also reported ongoing marital conflict<sup>47</sup> and she and Hillyer continuously made adjustments to her medication dosages because of depression, mania, sleep disruption, difficulty concentrating, and other difficulties related to Gaudette’s mood disorder and/or side effects to her medications.<sup>48</sup>

¶ 38 In late 2006, Hillyer made more changes to Gaudette’s medications, eliminating Abilify and adding lithium carbonate.<sup>49</sup> Gaudette also ceased using Topamax.<sup>50</sup> On December 28, 2006, Gaudette noted that she had “done really well” with the lithium increase and was not experiencing adverse side effects.<sup>51</sup> Gaudette reported continued improvement in concentration since discontinuing Topamax. Hillyer noted that Gaudette’s mental status had stabilized with the use of lithium.<sup>52</sup>

¶ 39 On February 6, 2007, Hillyer noted that her goal was to maintain Gaudette’s acceptance of the use of lithium as it appeared to be a good mood stabilizer for her. Hillyer and Gaudette agreed that she could lengthen the interval between appointments to once per month.<sup>53</sup> In the following months, Hillyer noted that Gaudette had some weight gain, probably due to the lithium, but that Gaudette did not wish to change her

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<sup>44</sup> Trial Test.

<sup>45</sup> Ex. 1 at 151.

<sup>46</sup> Ex. 1 at 155.

<sup>47</sup> See, for example, Ex. 1 at 126, 128, and 132.

<sup>48</sup> See, for example, Ex. 1 at 128, 136, and 150.

<sup>49</sup> Ex. 1 at 158

<sup>50</sup> Ex. 1 at 165.

<sup>51</sup> Ex. 1 at 166.

<sup>52</sup> *Id.*

<sup>53</sup> Ex. 1 at 170.

medications because of the stability she was experiencing. Hillyer noted, “She feels she is functioning well in all areas of her life.”<sup>54</sup> Hillyer recommended that Gaudette resume taking Topamax because it had shown effectiveness in treating weight gain in patients using antipsychotics or mood stabilizing medications. Although Gaudette expressed concern about the possibility of cognitive slowing which she had previously experienced with Topamax, she agreed to resume taking it.<sup>55</sup> On September 4, 2007, Gaudette reported that the Topamax was helping her with her weight, but she had noticed some cognitive impairment.<sup>56</sup>

¶ 40 In 2007, Gaudette engaged in travel and physical activity such as hiking and martial arts. Gaudette testified that she was very active in martial arts at this time and typically attended martial arts sessions five days a week. Gaudette testified that she had no asthma issues at this time.<sup>57</sup>

¶ 41 Gaudette testified that for part of 2006 and 2007, her condition went into remission.<sup>58</sup> However, in October 2007, renovations began at the liquor warehouse. Workers repainted the office area and removed floor tile. Gaudette testified that she began having breathing problems during the week the renovations began and she had an asthma attack that Friday. She informed her supervisor that she needed her workstation moved. The following Monday, Gaudette began working in the Mitchell Building. She worked in the Mitchell Building until the end of November 2007.<sup>59</sup>

¶ 42 Gaudette stated that although her supervisor had arranged for her to work in an office at the Mitchell Building which had a door that she could close, she was exposed to odors in the hallways and restroom. Gaudette testified that she experienced breathing difficulties from air fresheners and perfumes at the Mitchell Building.<sup>60</sup>

¶ 43 On October 17, 2007, Hillyer reported that Gaudette had had a relapse of her asthma after she was exposed to paint and solvents in her work area during some building remodeling. Gaudette experienced wheezing, shortness of breath, and

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<sup>54</sup> Ex. 1 at 182.

<sup>55</sup> Ex. 1 at 182-83.

<sup>56</sup> Ex. 1 at 186.

<sup>57</sup> Trial Test.

<sup>58</sup> Gaudette Dep. 126:21 – 128:23.

<sup>59</sup> Trial Test.

<sup>60</sup> Trial Test.

tightness in her chest. Gaudette told Hillyer that she intended to seek asthma treatment with Michael Bergkamp, N.D.<sup>61</sup>

¶ 44 On October 31, 2007, Dr. Bergkamp wrote a letter in which he stated that he saw Gaudette in his office for an allergy consultation on that day and that Gaudette presented with a severe, constant cough which Gaudette attributed to “chemical sensitivities that she has been exposed to at work.” Dr. Bergkamp stated that he would “support any efforts that can reduce this reaction in her work environment.”<sup>62</sup>

¶ 45 On November 20, 2007, Gaudette reported to Hillyer that she had become increasingly sensitive to irritants since her October exposure to paint and solvents. Gaudette stated that she experienced tightness in her chest, wheezing, and coughing from exposure to any chemical or fragrance.<sup>63</sup> On November 30, 2007, Dr. Bergkamp filled in a Certification of Health Care Provider (Family and Medical Leave Act of 1993) form in which he asserted that Gaudette suffered from MCS and that she was allergic to “perfumes, paints, solvents, etc.,” in her workplace.<sup>64</sup>

¶ 46 Gaudette testified that she took medical leave in December 2007 because she could not get her reactivity under control.<sup>65</sup> Gaudette testified that when she returned to work in December 2007, she had difficulty with asthma attacks and coughing fits. Gaudette testified that for weeks or months she only worked part-time to try to avoid contact with the odors at the liquor warehouse.<sup>66</sup>

¶ 47 On December 20, 2007, Hillyer noted that Gaudette was struggling with reactive airway disease due to irritants in her work environment. Gaudette reported that she was overwhelmed because she was behind on her workload and because her department directors requested that she produce a list of everything to which she is sensitive. Gaudette further reported that she was now experiencing odor sensitivity outside of work and she had had an asthma attack during a martial arts class due to someone wearing heavy perfume.<sup>67</sup>

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<sup>61</sup> Ex. 1 at 189.

<sup>62</sup> Ex. 14 at 3.

<sup>63</sup> Ex. 1 at 191.

<sup>64</sup> Ex. 14 at 5-6.

<sup>65</sup> Gaudette Dep. 134:25 – 135:5.

<sup>66</sup> Trial Test.

<sup>67</sup> Ex. 1 at 194.

¶ 48 On December 26, 2007, Gaudette reported that she had returned to full-time work.<sup>68</sup> On January 2, 2008, she reported continuing breathing difficulty at work and difficulty dealing with coworkers who did not understand her condition.<sup>69</sup> Gaudette testified that during January 2008, she was also exposed to wood stain and pesticide at work.<sup>70</sup>

¶ 49 On January 14, 2008, Dr. Bergkamp again indicated on an FMLA-related form that Gaudette's workplace "is a constant source of these irritants" which trigger her respiratory problems. Dr. Bergkamp opined that paint, solvents, and cleaners are among the agents which trigger Gaudette's asthma.<sup>71</sup> Dr. Bergkamp did not testify at trial. From his records, the only evidence of what he bases his opinions on is Gaudette's word. Furthermore, I have no understanding of why Dr. Bergkamp believed that Gaudette was either only exposed to these substances at work, or that these substances only caused reactions when the exposure occurred in the workplace. Since Dr. Bergkamp does not appear to have made any objective medical findings regarding the cause of Gaudette's condition, but bases his opinions solely on Gaudette's subjective reports of what she believes is causing her respiratory condition, I find his opinions entitled to little, if any, weight.

¶ 50 On January 24, 2008, Gaudette informed Hillyer that exposure to air fresheners and cleaning chemicals caused her to develop a rash and joint and muscle pain.<sup>72</sup> On January 30, she reported that she was becoming more reactive to her workplace environment and complained that some coworkers refused to abide by the fragrance-free policy.<sup>73</sup>

¶ 51 On February 6, 2008, Gaudette again reported conflicts with coworkers over their use of scented products. Hillyer noted that she expressed concern to Gaudette about Gaudette's "emotional reactivity given the workplace issues" and suggested that Gaudette's medications were "perhaps . . . not working as well as they could be." However, Gaudette was unwilling to consider changes to her medication regimen.<sup>74</sup>

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<sup>68</sup> Ex. 1 at 196.

<sup>69</sup> Ex. 1 at 197.

<sup>70</sup> Trial Test.

<sup>71</sup> Ex. 14 at 8-9.

<sup>72</sup> Ex. 1 at 202.

<sup>73</sup> Ex. 1 at 204.

<sup>74</sup> Ex. 1 at 206.

¶ 52 By March 2008, Gaudette testified that she was struggling to perform her job duties. She was absent too frequently to manage her workload. When she was at work, she often found herself too tired to concentrate on her job duties.<sup>75</sup>

¶ 53 During her next several appointments with Hillyer, Gaudette continued to report difficulty with chemical sensitivities at work. Gaudette frequently reported missing work or leaving early because of reactions to chemicals in her workplace. Gaudette also spoke with Hillyer regarding marital problems.<sup>76</sup> On April 25, 2008, Gaudette expressed fear that she would be terminated from her position due to difficulties which had arisen around her requests for accommodations for her chemical sensitivities and she further informed Hillyer that her divorce had been finalized the previous week.<sup>77</sup>

¶ 54 Near the end of April 2008, the carpets were cleaned in the liquor warehouse offices and Gaudette could no longer tolerate the building. Gaudette also had some conflicts with her supervisor. Gaudette testified that she asked her supervisor if she could work from home and her supervisor agreed; however, her supervisor never followed through on the necessary steps to allow her to do so. Gaudette also asked for permission to attend a public meeting via teleconference. Her request was denied and she was ordered to attend the meeting in person. She was also ordered to wear a paper face mask at the meeting. Gaudette testified that she was humiliated by wearing a mask in public and she suffered an asthma attack because of the humiliation.<sup>78</sup>

¶ 55 On May 1, 2008, Gaudette attempted suicide. She testified that her suicide attempt was due to stress from work and the fact that her employer had embarrassed her by making her wear a face mask. Gaudette acknowledged that her marriage ended at around the same time, but she testified that her marriage break-up was only “mildly stressful” and was not a factor in her suicide attempt.<sup>79</sup>

¶ 56 On May 1, 2008, a nurse at St. Peter’s Hospital contacted Hillyer and informed her that Gaudette had been admitted after an overdose. Hillyer noted that Gaudette had not expressed any self-harm or suicidal ideation at her previous appointment. She further noted, “[Gaudette] has however been under significant stress as far as having

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<sup>75</sup> Trial Test.

<sup>76</sup> Ex. 1 at 208-24.

<sup>77</sup> Ex. 1 at 225.

<sup>78</sup> Trial Test.

<sup>79</sup> Trial Test.



gone through a divorce as well as having ongoing issues related to her asthma and chemical sensitivities and her difficulty managing the work environment.”<sup>80</sup>

¶ 57 Gaudette took May 2008 off work under FMLA. She testified that she felt that she could not return to work because her employer had betrayed her trust by cleaning the carpets in her office. She also felt that she needed some time to recover from her suicide attempt.<sup>81</sup>

¶ 58 Gaudette returned to full-time work during the first week of June 2008. She found that she developed breathing problems as each shift progressed due to exposures in the workplace. Gaudette testified that she had breathing problems, coughing, phlegm, chest pain, joint pain, headaches, and sinus pain.<sup>82</sup>

¶ 59 On June 10, 2008, John C. Schumpert, M.D., M.P.H., FACOEM, conducted an IME of Gaudette. In his subsequent report, Dr. Schumpert noted that the purpose of the IME was to determine Gaudette’s current diagnosis, if her recent episode was the result of an exacerbation of chronic reactive airway disease or represents a diagnosis of MCS, if she had suffered a temporary or permanent aggravation of a pre-existing condition, and if she had reached maximum medical improvement (MMI). Dr. Schumpert was also to provide recommendations for additional treatment or diagnostic testing, and discuss any other issues which had not been previously addressed. As part of the IME, Dr. Schumpert reviewed medical records and conducted a history and physical examination of Gaudette.<sup>83</sup>

¶ 60 In his report, Dr. Schumpert noted that he was concerned that the medications Gaudette took for her bipolar disorder might be causing her respiratory problems, but Gaudette refused to disclose her medications to him.<sup>84</sup> Dr. Schumpert noted that he conducted a methacholine challenge test and he found the result “positive for the diagnosis of asthma.”<sup>85</sup> Dr. Schumpert conducted further allergy testing that came back positive for mountain cedar trees and cat dander, but negative for other tested allergies including multiple mold species.<sup>86</sup>

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<sup>80</sup> Ex. 1 at 227.

<sup>81</sup> Trial Test.

<sup>82</sup> Trial Test.

<sup>83</sup> Ex. 16.

<sup>84</sup> Ex. 16 at 9.

<sup>85</sup> Ex. 16 at 11-12.

<sup>86</sup> Ex. 16 at 12.

¶ 61 Dr. Schumpert assessed Gaudette as having, in pertinent part, a temporary aggravation of underlying asthma, work-related, at MMI; odor intolerance, not work-related; history of asthma, not work-related; and histories of bipolar II disorder, major depressive disorder, generalized anxiety disorder, hypothyroidism, and closed head injury.<sup>87</sup> Dr. Schumpert testified that he would classify Gaudette as having suffered a temporary aggravation because he could not identify any exposure which would have been significant enough to cause a permanent aggravation.<sup>88</sup>

¶ 62 Dr. Schumpert also opined that some of Gaudette's symptoms may be caused by something other than asthma, but since Gaudette refused to undergo a laryngovideostroboscopy, he could not make a diagnosis. He further noted, "The diagnosis of multiple chemical sensitivities has a significant number of proponents in the lay press and in alternative medical specialties; however, the toxicology literature does not conclusively support the physiological basis for the existence of this diagnosis."<sup>89</sup>

¶ 63 Gaudette testified that she was unable to undergo the laryngovideostroboscopy Dr. Schumpert recommended because the test was going to occur in an office setting and since it involved putting chemicals directly onto her larynx, she did not believe the medical providers would be able to open her airway if something went wrong.<sup>90</sup>

¶ 64 Dr. Schumpert further opined that Gaudette's only treatable condition is asthma.<sup>91</sup> He stated:

Environmental fragrances can cause physical symptoms, particularly in sensitive individuals. The sensitivity, however, is typically psychological and not physical. . . .

Environmental fragrances often cause a number of symptoms that are unrelated to the respiratory tract, including dizziness, headaches, dysphoria, nausea, palpitations, and emesis. When such symptoms occur, the exposure is typically considered to be odor-intolerance, and not multiple chemical sensitivity. There is no basis for that diagnosis, as no evidence for an allergic or other direct physiologic response has been demonstrated. . . .

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<sup>87</sup> Ex. 16 at 12-13.

<sup>88</sup> Schumpert Dep. 98:5-20.

<sup>89</sup> Ex. 16 at 14.

<sup>90</sup> Gaudette Dep. 150:19 – 151:6.

<sup>91</sup> Ex. 16 at 18.

Thus, it is likely that the individual's exposures to environmental fragrances are causing the symptoms that she is experiencing; however, it is more probable than not that these symptoms are due to psychological and not physical conditions.<sup>92</sup>

¶ 65 On June 17, 2008, John R. Harrison, Ph.D., issued a neuropsychological IME report after evaluating Gaudette. Dr. Harrison noted that Gaudette refused to discuss her mental health history with him and that she insisted that her respiratory complaints and her mental health history were unrelated.<sup>93</sup> Dr. Harrison further noted that Gaudette denied any history of sexual abuse, which is inconsistent with Hillyer's records.<sup>94</sup> Dr. Harrison reviewed Gaudette's medical records, including a few treatment notes from Hillyer and medical records from Diana Corzine, M.D., who diagnosed Gaudette with acute bronchitis and reactive airway disease on October 19, 2001.<sup>95</sup> Dr. Harrison also noted medical records from March 30, April 11, and April 20, 2005, in which Gaudette saw Bills-Kazimi after developing respiratory problems after being exposed to fragrances in the workplace. Bills-Kazimi noted that she believed Gaudette's asthmatic condition had a significant anxiety component and that in a conversation with Hillyer, Bills-Kazimi learned that Gaudette:

has a significant anxiety disorder, that she is very resistant to treatment, that [Hillyer] has tried to put [Gaudette] on mood stabilizers to better control her bipolar disorder, and repeatedly [Gaudette] has refused this. Oftentimes, she has wanted to use "natural therapies". Generally, any new medication has been met with significant resistance . . . .<sup>96</sup>

¶ 66 Dr. Harrison noted, "We should defer to objective evaluation by an allergist, but the current symptom patterns appear to be, at least in part, anxiety-related."<sup>97</sup> He opined that a relationship between Gaudette's physical symptoms and psychiatric history was probable.<sup>98</sup>

¶ 67 On July 2, 2008, Gaudette informed Hillyer that she was going to face disciplinary action at work for failing to work a 40-hour week.<sup>99</sup> Gaudette was no longer

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<sup>92</sup> Ex. 16 at 19.

<sup>93</sup> Ex. 6 at 1.

<sup>94</sup> Ex. 6 at 7.

<sup>95</sup> Ex. 6 at 3.

<sup>96</sup> Ex. 6 at 5.

<sup>97</sup> Ex. 6 at 12.

<sup>98</sup> *Id.*

<sup>99</sup> Ex. 1 at 247.

working full-time. She testified that she typically felt well first thing in the morning, but by the afternoon she would leave work because of illness. Gaudette testified that in July 2008, her employer applied asphalt and paint outside the liquor warehouse and also cleaned the carpets and applied pesticide. Gaudette testified that she continued to have difficulty with exposures to her coworkers' use of scented products. She continued to experience increased reactions outside of work and on one occasion she had to leave a grocery store because of an asthma attack.<sup>100</sup>

¶ 68 Tiffany Ott, M.S., prepared an industrial hygiene report regarding the environments at issue in Gaudette's case. On July 15, 2008, Ott conducted an industrial hygiene inspection at the liquor warehouse and conducted similar testing at Gaudette's home in Helena.<sup>101</sup> Ott found no significant level of biological contamination in the samples taken from either Gaudette's home or workplace. Ott concluded that the carbon dioxide concentrations collected were within normal ranges at both places, and the samples showed zero concentrations of carbon monoxide and volatile organic compounds (VOCs) in both locations. However, Ott noted that the liquor warehouse has a history of employee complaints about the presence of diesel exhaust fumes and she noted that the potential for this exposure would be greater in the winter months. Ott recommended further investigation of the diesel exhaust complaints during the winter months. Ott recommended the installation of carbon monoxide detectors in the office area. Ott also recommended sampling for the presence of trace amounts of VOCs. She further recommended continuing the fragrance-free policy and recommended the establishment of source management protocols to reduce worker exposures to pesticides, VOCs, and cleaning products.<sup>102</sup>

¶ 69 On July 22, 2008, Gaudette asked Hillyer to visit with her in her car because she felt unable to tolerate Hillyer's office. Hillyer agreed and reported that Gaudette was struggling with exposures to chemicals and that she felt overwhelmed.<sup>103</sup>

¶ 70 In July 2008, Gaudette also began to treat with Neal Rogers, M.D.<sup>104</sup> Dr. Rogers is a board-certified otolaryngologist.<sup>105</sup> He is a member of the American Academy of Otolaryngologic Allergy.<sup>106</sup> Dr. Rogers testified that he diagnosed Gaudette with allergic

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<sup>100</sup> Trial Test.

<sup>101</sup> Ex. 32 at 3.

<sup>102</sup> Ex. 32 at 12-13.

<sup>103</sup> Ex. 1 at 251.

<sup>104</sup> Trial Test.

<sup>105</sup> Rogers Dep. 5:17-20.

<sup>106</sup> Rogers Dep. 7:9-12.

asthma, which is asthma which has a basis in an allergic sensitivity.<sup>107</sup> Dr. Rogers testified that he diagnosed Gaudette with allergic asthma based on her history and without performing any diagnostic testing or reviewing any of Gaudette's medical records.<sup>108</sup>

¶ 71 Dr. Rogers testified that he diagnoses "chemical sensitivity" based on the history a patient describes to him. He explained:

They state they go into a certain building, they get exposed to something, and they get symptoms. I believe most of these patients. Obviously, you're trying to separate them out from somebody who has psychological issues or irritant-type things. I feel I've seen enough of these patients and spoken to enough of them and done enough reading about them that I can more or less make a diagnosis by history.<sup>109</sup>

¶ 72 On July 23, 2008, Dr. Rogers opined that Gaudette has significant asthma which was worsened by exposures over the past few months. Dr. Rogers opined that Gaudette's asthma has a "chemical component" and he advised her to "avoid all chemicals . . . as much as possible . . . ." He opined that Gaudette has "major" chemical sensitivities and he suggested provocative neutralization testing. He recommended that she continue receiving glutathione treatments and recommended infrared sauna treatment to rid herself of toxins.<sup>110</sup>

¶ 73 On August 11, 2008, Dr. Rogers saw Gaudette for a follow-up visit.<sup>111</sup> He advised her to see a pulmonologist or general allergist. He further opined that her employer should give Gaudette a private office to work in and that she should wear a respirator when traveling through common areas.<sup>112</sup>

¶ 74 On August 26, 2008, Dr. Rogers reported that he performed sublingual testing on Gaudette and that she reacted to distilled water. Dr. Rogers noted, "I did try to explain to her that that was my negative control and that she should not [have] felt anything at

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<sup>107</sup> Rogers Dep. 13:22-25.

<sup>108</sup> Rogers Dep. 80:13-23.

<sup>109</sup> Rogers Dep. 24:10-25.

<sup>110</sup> Ex. 19 at 1-2.

<sup>111</sup> Ex. 19 at 8.

<sup>112</sup> Ex. 19 at 9.

all to that one. She states that she knows that it could be from her having worked this morning and coming over here late in the afternoon.”<sup>113</sup>

¶ 75 Dr. Rogers testified that he has, on three or four occasions, had patients who reported reactions to distilled water. He noted, “At that point, I really have to question.”<sup>114</sup> Dr. Rogers noted that Gaudette’s reaction to distilled water was subjective and that distilled water is odorless and should not cause any reaction.<sup>115</sup> He further testified that when Gaudette had a reaction to distilled water, he was skeptical about her condition. He testified:

I mean I believe these patients. They have a lot of emotional component to their problems because they’re going through some very difficult times. They get mental changes from these things. They’re getting displaced from a job. They’re under huge amounts of stress. They’re tough. They’re just very difficult.<sup>116</sup>

¶ 76 Dr. Rogers testified that Gaudette did not inform him that she had attempted suicide a few months before she treated with him. He testified that he would have considered this to be significant information and that it indicated that she has “some significant psychiatric issues.”<sup>117</sup>

¶ 77 On August 29, 2008, Gaudette was terminated from her position at the liquor warehouse. She testified that she had been unable to meet her employer’s requirement of working 40 hours per week because of her illness.<sup>118</sup> Gaudette testified that after she was fired, her condition improved because she no longer had to suffer exposures at the liquor warehouse. However, she still had problems with reactions when she ran errands. Gaudette continued treating her condition with glutathione IVs and vitamin B.<sup>119</sup>

¶ 78 On September 22, 2008, Dr. Rogers attempted to retest Gaudette for chemical sensitivity. However, Gaudette refused to come into the office upon her arrival because Dr. Rogers’ staff had not “prepare[d] it for her by opening all the windows and airing it out prior to her arrival.” After Gaudette signed a release, Patricia Fulton, RN, apparently initiated Gaudette’s appointment in an outer area of the office. Gaudette complained of

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<sup>113</sup> Ex. 19 at 14.

<sup>114</sup> Rogers Dep. 103:17-23.

<sup>115</sup> Rogers Dep. 104:10-20.

<sup>116</sup> Rogers Dep. 37:3-13.

<sup>117</sup> Rogers Dep. 72:14-24.

<sup>118</sup> Trial Test.

<sup>119</sup> Trial Test.

a headache and burning sensation due to the chemicals in Dr. Rogers' office building. Fulton performed some sublingual testing and Gaudette reported symptoms with formaldehyde and minimal symptoms with benzene. Although Fulton asked Gaudette to return after a lunch break to continue testing, Gaudette declined.<sup>120</sup> Later that afternoon, Gaudette called Dr. Rogers' office and reported that she was experiencing symptoms from the morning's testing. Fulton explained that it was unlikely that Gaudette was experiencing any symptoms from the testing and suggested that Gaudette had suffered a new exposure, but Gaudette denied the possibility.<sup>121</sup>

¶ 79 On September 25, 2008, Gaudette returned to Dr. Rogers' office to continue the chemical testing. Upon arriving, she began coughing and complained of headache, dizziness, and left-hand numbness. Fulton and Dr. Rogers decided against further testing.<sup>122</sup> Dr. Rogers testified that he discontinued Gaudette's testing because he concluded that she was too complex of a patient for him to treat.<sup>123</sup>

¶ 80 In spite of Gaudette's reaction to distilled water, Dr. Rogers testified that from the provocative neutralization testing, he concluded that Gaudette had some type of sensitivity to chemicals.<sup>124</sup> Dr. Rogers testified that otolaryngologists and specialty allergists find provocative neutralization testing to be effective.<sup>125</sup> Dr. Rogers acknowledged that general allergists do not agree with provocative neutralization testing and contend that the testing does not work.<sup>126</sup> What remained unexplained to my satisfaction was this: if Dr. Rogers believes that one can disregard Gaudette's alleged reaction to distilled water because she may have actually been reacting to some other, earlier exposure, why does Dr. Rogers believe that in other instances, Gaudette reacted specifically to the substance he was exposing her to, and not to some other, earlier exposure? It does not appear that the provocative neutralization testing Dr. Rogers performed on Gaudette was controlled in any way and there is no way to state conclusively that any reactions Gaudette reported occurred as a result of the "target" substance as opposed to other substances present in the environment either prior to or during the testing. For this reason, I do not give any weight to the conclusions Dr. Rogers reached from this testing.

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<sup>120</sup> Ex. 19 at 18.

<sup>121</sup> Ex. 19 at 19.

<sup>122</sup> Ex. 19 at 22.

<sup>123</sup> Rogers Dep. 36:8-14.

<sup>124</sup> Rogers Dep. 15:17-23.

<sup>125</sup> Rogers Dep. 17:6-17.

<sup>126</sup> Rogers Dep. 19:6-14.

¶ 81 Dr. Rogers further testified that general allergists contend that there is no way to test for allergies to specific chemicals; for this reason, he referred Gaudette to Dr. William Rea, whom Dr. Rogers considers both a colleague and a teacher.<sup>127</sup> Dr. Rogers agreed that Dr. Rea is “very controversial.”<sup>128</sup> Dr. Rogers also testified that sublingual testing such as Dr. Rea performs is not FDA-approved. He noted, “Sublingual testing for chemicals is way out there. There are a lot of peer-reviewed, excellent studies on mold, dust, pollen, inhalant-type things. But for the chemicals, the FDA isn’t even looking at that at this point.”<sup>129</sup>

¶ 82 On September 26, 2008, Gaudette reported to Hillyer that she had had a difficult week due to the formaldehyde exposure during Dr. Rogers’ testing. Gaudette further reported that she had been experiencing intermittent numbness in her left hand and fingers ever since someone in her neighborhood had sprayed pesticide.<sup>130</sup>

¶ 83 On October 17, 2008, Herman Staudenmayer, Ph.D., issued his report from his psychological evaluation of Gaudette. In the introduction to his report, Dr. Staudenmayer listed his qualifications as follows:

I am a licensed psychologist in the State of Colorado. I have been in private practice for the past 30 years, working with the medical community in the diagnosis and treatment of patients with psychosomatic and psychogenic illnesses including patients presenting with beliefs about the phenomenon postulating low-level “chemical sensitivities” to multiple chemicals, i.e. [Idiopathic Environmental Intolerance]. During this time, I have become familiar with the practices of clinical ecologists and advocates of this phenomenon on a first hand basis, including those associated with the Environmental Health Center, Dallas, specifically William J. Rea, M.D. I am trained and versed in the methods and techniques of cognitive psychology, psychophysiology, psychological and neuropsychological testing, and clinical practice. I have been actively engaged in research and published numerous articles on IEI relevant to this case . . . .<sup>131</sup>

¶ 84 Dr. Staudenmayer testified that he prefers the term Idiopathic Environmental Intolerance (IEI) over the term Multiple Chemical Sensitivity (MCS). He further testified

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<sup>127</sup> *Id.*

<sup>128</sup> Rogers Dep. 131:18-19.

<sup>129</sup> Rogers Dep. 103:1-11.

<sup>130</sup> Ex. 1 at 268.

<sup>131</sup> Ex. 27 at 1.



that he has concluded that IEI has a psychogenic causal relationship rather than a toxicogenic one.<sup>132</sup> Dr. Staudenmayer testified via videoconference. While I acknowledge that Dr. Staudenmayer is a well-qualified expert witness, I view his opinion testimony with some skepticism. It is clear from Dr. Staudenmayer's background and from his testimony in this case that he is firmly convinced that MCS does not exist and he approached Gaudette's case fully committed to this opinion. I have no doubt that, regardless of the specifics of Gaudette's case, Dr. Staudenmayer was ultimately going to conclude that she did not have MCS and that all of her complaints have alternate explanations. With this in mind, while I found some of Dr. Staudenmayer's testimony compelling and while I found him a credible witness at trial, I do not find his conclusions wholly convincing.

¶ 85 Dr. Staudenmayer reviewed Gaudette's medical and psychiatric records at State Fund's request.<sup>133</sup> In addition to interviewing Gaudette, Dr. Staudenmayer also had Gaudette fill out a patient history form and he conducted psychological testing (MMPI-2 and MCMI-II), a panic attack checklist, the Computer Assessment of Response Bias, and the Word Memory Test.<sup>134</sup>

¶ 86 Dr. Staudenmayer testified that Gaudette has poor insight into her psychological condition and denies that it contributed to her present condition.<sup>135</sup> Dr. Staudenmayer opined that Gaudette's belief in MCS was closed to alternative psychological explanations, and that her belief "has been unwittingly reinforced or intentionally instilled by the doctors who have evaluated or treated her." Dr. Staudenmayer opined that Gaudette had undergone numerous scientifically unsubstantiated treatments, and that the temporary relief she attributed to some of them was a placebo effect.<sup>136</sup>

¶ 87 Dr. Staudenmayer found Gaudette's MMPI-2 results to be consistent with the diagnosis of undifferentiated somatoform disorder with "an overvalued idea bordering on a delusion about chemical intolerances." He stated, "The psychodynamics involve lack of insight about unresolved psychological conflicts, denial of alternative psychological explanations, and projection of symptoms due to stress-responses or emotional disorders onto the environment."<sup>137</sup> Dr. Staudenmayer found Gaudette's MCMI-II results to have characteristics associated with obsessive compulsive personality disorder, narcissistic personality disorder, and schizoid personality disorder. Dr. Staudenmayer

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<sup>132</sup> Trial Test.

<sup>133</sup> Ex. 27 at 1.

<sup>134</sup> Ex. 27 at 2.

<sup>135</sup> Trial Test.

<sup>136</sup> Ex. 27 at 14.

<sup>137</sup> *Id.*

further recommended that Gaudette have her diagnosis of bipolar disorder re-evaluated.<sup>138</sup>

¶ 88 Dr. Staudenmayer concluded:

Ms[.] Gaudette's condition, which she labels MCS, has no toxicological basis. The scientific literature does not support a toxicogenic basis for the theory that has many names including Environmental Illness (EI), MCS, and Idiopathic Environmental Intolerances (IEI). Several respected medical associations have deemed the diagnostic and treatment methods to be scientifically unsubstantiated and potentially harmful. Based on the review of the medical records in this case, there is also no toxicological basis for the alleged injury Ms. Gaudette claims to have suffered at the workplace. Therefore, there is no workplace injury.<sup>139</sup>

¶ 89 Dr. Staudenmayer opined that Gaudette's psychological condition was not aggravated by her alleged exposures to odors at work.<sup>140</sup> Dr. Staudenmayer further testified that Gaudette had multiple social, workplace, and personal stressors in 2005 and 2007 and he did not know how the non-work stressors could be excluded in assigning causation to Gaudette's alleged exposures.<sup>141</sup>

¶ 90 Dr. Staudenmayer further concluded that Gaudette's condition is wholly psychogenic and that the acute symptoms she exhibits after an alleged exposure are consistent with panic attacks. Dr. Staudenmayer recommended that the polysychopharmaceutical approach to Gaudette's psychological condition should be re-evaluated and that she should discontinue the use of alternative medical treatments, which he found to be unsubstantiated and without merit.<sup>142</sup>

¶ 91 Dr. Staudenmayer opined that Gaudette has undergone numerous unsubstantiated treatments and has reported relief from some of them.<sup>143</sup> He opined that her condition has been "iatrogenically exacerbated" by the naturopaths and other providers with whom she has sought treatment. He alleged that Drs. Didriksen and Rea

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<sup>138</sup> Ex. 27 at 15.

<sup>139</sup> Ex. 27 at 15-16.

<sup>140</sup> Trial Test.

<sup>141</sup> Trial Test.

<sup>142</sup> Ex. 27 at 16.

<sup>143</sup> Trial Test.

reinforced Gaudette's belief in MCS, and that Hillyer "unwittingly" contributed to this because, he alleged, Hillyer has no understanding of MCS or IEI.<sup>144</sup>

¶ 92 Dr. Staudenmayer stated that while the MMPI-2 test results suggested that malingering be considered in Gaudette's case, he concluded that she was not consciously malingering but likely exhibited undifferentiated somatoform disorder. Dr. Staudenmayer testified that undifferentiated somatoform disorder does not have a physical trigger or physical cause, but rather is psychological displacement where an individual focuses on physical symptoms rather than psychological symptoms.<sup>145</sup>

¶ 93 Dr. Staudenmayer opined that Gaudette's appearance of malingering more likely reflects self-deception than any volitional attempt to deceive others. He noted that self-deception is characteristic of primary gain rather than secondary gain, and opined that the motive underlying Gaudette's primary gain is to avoid addressing unresolved psychological conflicts and anxiety. Dr. Staudenmayer further opined that secondary gain is also evident in Gaudette's case. He cites both Gaudette's relationship with her husband, which he characterized as her using her illness to manipulate him, and litigation, to both be examples of secondary gain.<sup>146</sup>

¶ 94 Hillyer testified that she does not believe that the symptoms Gaudette attributes to MCS are symptoms of a mood disorder. She believes Gaudette suffers some sort of physical reaction to chemicals.<sup>147</sup> Hillyer stated that throughout the time she treated Gaudette, she never believed that Gaudette met the diagnostic criteria of somatoform disorder.<sup>148</sup> Hillyer stated that she does not agree with Dr. Staudenmayer's opinion that Gaudette suffers from somatization, paranoia, panic disorder, and agoraphobia because Dr. Staudenmayer did not demonstrate how Gaudette meets the criteria for any of these diagnoses.<sup>149</sup> Hillyer testified that she had never considered diagnosing Gaudette with any of these conditions.<sup>150</sup>

¶ 95 On October 27, 2008, Gaudette saw William J. Rea, M.D., at the Environmental Health Center in Dallas, Texas.<sup>151</sup> Gaudette testified that she found Dallas hard to tolerate. She struggled with exhaust fumes and found that she could not tolerate the

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<sup>144</sup> Trial Test.

<sup>145</sup> Trial Test.

<sup>146</sup> Ex. 27 at 15.

<sup>147</sup> Hillyer Dep. 395:16-22.

<sup>148</sup> Hillyer Dep. 71:17-20.

<sup>149</sup> Hillyer Dep. 101:9-20.

<sup>150</sup> Hillyer Dep. 101:21-23.

<sup>151</sup> Ex. 20.

special hotel rooms which Dr. Rea kept for his patients. Gaudette testified that she determined that the problems she experienced from Dr. Rea's hotel room were from maids wearing perfume. She arranged it so that each day, she would pass her used linens out the door and a maid would hand her fresh linens without entering the room. Gaudette found that this arrangement made the room tolerable.<sup>152</sup>

¶ 96 On November 12, 2008, Dr. Rea wrote a memorandum stating that Gaudette required accommodations at her workplace including avoidance of direct exposure to smoke, fresh paint, cleaning supplies, and other building maintenance supplies “with explicit chemical content.”<sup>153</sup> Dr. Rea set forth a detailed list of “medically necessary” accommodations for Gaudette, including no use of pesticides, herbicides, air fresheners, deodorants, disinfectants, potpourri, products containing chlorine or ammonia, products containing petrochemicals, or oil-based paints in or around the building in which Gaudette worked. Dr. Rae further stated that carpeting should be removed from Gaudette's work area and replaced with terrazzo, terra cotta, uncoated wood, or non-toxic linoleum, and that Gaudette should be provided with an outdoor parking space located as near as possible to a building entrance.<sup>154</sup>

¶ 97 On November 26, 2008, Dr. Rea issued a report regarding Gaudette's case. Dr. Rea performed a variety of tests and found that Gaudette demonstrated sensitivities to several molds, mites, methacholine, cigarette smoke, ethanol, ladies' cologne, men's cologne, orris root, phenol, unleaded gas, fireplace smoke, jet fuel, benzene, hexane, immune globulin, and oat. Dr. Rea diagnosed Gaudette with toxic encephalopathy, reactive airway disease, autonomic nervous system dysfunction, immune deregulation, hypogammaglobulinemia, vasculitis, allergic rhinosinusitis, chemical sensitivity, arthralgia, asthma, dermatitis, and cerebral palsy.<sup>155</sup>

¶ 98 Dr. Rea further opined:

This patient has undergone extensive diagnostic work-up and it is evident that she has multi-organ system dysfunction. The triple camera brain SPECT scan revealed patterns associated with neurotoxicity. It has been in my medical experience that toxic chemical exposures will affect many organ systems and produce a complex medical condition. This patient's immune system is deregulated as shown by the immunological studies. This is clearly evident with the skin testing results, which show sensitivities

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<sup>152</sup> Trial Test.

<sup>153</sup> Ex. 20 at 33.

<sup>154</sup> Ex. 20 at 34-35.

<sup>155</sup> Ex. 20 at 5.

to several pollens, molds and chemicals. More specifically this patient skin tested positive and symptoms were provoked when this patient skin tested several common chemicals. It is well known in the profession, a patient who has a strong sensitivity to a particular substance will cross react with other antigens. Pupillography through an iriscorder and the heart rate variability test reveals autonomic nervous system dysfunction. This patient exists in a hypermetabolic and hyper-reactive state. This state has a tendency to deplete this patient's nutrient pools, consequently impairing detoxification and resulting in the patient's susceptibility to accumulation of chemicals.<sup>156</sup>

¶ 99 Dr. Rea further opined that the venous blood gas results he obtained “suggest inadequate utilization of oxygen due to tissue shunting” and, “[t]his may be secondary to cellular damage due to toxic chemical exposures.”<sup>157</sup> Dr. Rea concluded that Gaudette's diagnosis is related to chronic and cumulative exposure to chemicals while at work. He opined that Gaudette is totally disabled by neurotoxicity and sensitivities and that she is unable to engage in work now and in the foreseeable future.<sup>158</sup> Dr. Rea did not explain how he determined that Gaudette's exposures occurred in the workplace and not elsewhere.

¶ 100 Dr. Rea recommended numerous treatments, including intravenous therapy with vitamins, minerals, and amino acids; antigen injections; autogenous lymphocytic factor; heat depuration therapy; 18-day oxygen therapy; and environmental controls.<sup>159</sup> Dr. Rea further stated that Gaudette required certain medically necessary services or items: treatment at the Environmental Health Center – Dallas including heat depuration therapy, intradermal skin testing, antigen therapy, and office visits; consumption of glass-bottled or filtered water; antigen/immunotherapy injections and related administration supplies; and a diet of organically-grown foods free of preservatives, dyes, medications, and “chemicals which can provoke this patient's sensitivity symptoms.”<sup>160</sup> Dr. Rea further recommended that Gaudette not undergo laryngovideostroboscopy chemical challenge testing, noting that she is “extremely unstable and fragile” and opining that she would risk the “strong possibility of a life threatening reaction while undergoing this test.”<sup>161</sup>

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<sup>156</sup> Ex. 20 at 7.

<sup>157</sup> Ex. 20 at 8.

<sup>158</sup> *Id.*

<sup>159</sup> Ex. 20 at 5-7.

<sup>160</sup> Ex. 20 at 31.

<sup>161</sup> Ex. 20 at 32.

¶ 101 Gaudette testified that the treatment she received while seeing Dr. Rea included sauna, mild exercise, occasional use of an oxygen tank, nutritional supplements, and gammaglobulin shots. However, Gaudette found she could not complete her testing and treatment with Dr. Rea because she could not tolerate the clinic environment.<sup>162</sup>

¶ 102 Dr. Rea did not testify in this case. As noted elsewhere in these findings, he is, at best, a “controversial” figure in the medical community. Dr. Rea’s testing, diagnoses, and proposed treatments for Gaudette are well outside the boundaries of the types of medical services typically evaluated by this Court. Other expert witnesses who testified in this case find Dr. Rea’s theories to be unsubstantiated and these experts offer numerous citations to peer-reviewed studies in support of their respective positions. Conversely, Gaudette has not presented any persuasive evidence as to why I should find Dr. Rea’s unconventional beliefs to be more credible than those of mainstream medical community. Therefore, I find that Dr. Rea’s opinions are entitled to less weight in this case.

¶ 103 Gaudette testified that she first began wearing a face mask after she left Dr. Rea.<sup>163</sup> Gaudette returned to Helena where she resided in a house owned by her ex-husband. Gaudette discovered that she could no longer leave the house because of her condition and she ceased treating with Dr. Bergkamp because she could not tolerate his office. Gaudette testified that she began having cognitive difficulties. She had a hard time balancing her checkbook and she could not organize her thoughts.<sup>164</sup>

¶ 104 On April 21, 2009, Emil J. Bardana, Jr., M.D., presented his records review findings in writing to State Fund’s counsel. Dr. Bardana testified at trial. I found him to be a credible witness. Dr. Bardana is board-certified in internal medicine and allergy and immunology. Dr. Bardana testified that historically, he has criticized MCS. Dr. Bardana stated that, like Dr. Staudenmayer, he prefers the term IEI to MCS as it was the term adopted by the World Health Organization in 1996. Dr. Bardana stated that MCS should be referred to as IEI because it has an unknown cause and does not refer to a clinically defined disease as it has no diagnostic markers and no relationship between exposures and symptoms have ever been proven.<sup>165</sup>

¶ 105 Dr. Bardana opined that Gaudette’s condition was not caused by exposures at work, but can be explained by her history of psychological and physical ailments. Dr. Bardana testified that while Gaudette had a historical diagnosis of bronchial asthma,

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<sup>162</sup> Trial Test.

<sup>163</sup> Trial Test.

<sup>164</sup> Trial Test.

<sup>165</sup> Trial Test.

this diagnosis has never been confirmed on physiologic grounds. He further assessed Gaudette as probably having vocal cord dysfunction syndrome, but noted this has not been verified because of Gaudette's refusal to undergo a laryngovideostroboscopy.<sup>166</sup>

¶ 106 Dr. Bardana testified that while he agreed with much of Dr. Schumpert's report, he disagreed with the reliance Dr. Schumpert placed on the methacholine challenge test. Dr. Bardana alleged that a positive methacholine test is not diagnostic of asthma but reflects underlying bronchial hyperreactivity which could be associated with a variety of conditions including vocal cord dysfunction. He stated that while the methacholine challenge test is usually positive in untreated asthmatics, it is not diagnostic. Dr. Bardana stated that the methacholine challenge test detects underlying bronchial hyperreactivity, but individuals who are not asthmatic may also exhibit bronchial hyperreactivity.<sup>167</sup>

¶ 107 Dr. Schumpert testified that Gaudette's positive reaction to methacholine means she has asthma.<sup>168</sup> Dr. Schumpert testified that he would be surprised to learn that Dr. Bardana disagreed with his asthma diagnosis. Dr. Schumpert further stated that his training disagrees with Dr. Bardana's assertion that a positive methacholine challenge test is not diagnostic of bronchial asthma.<sup>169</sup> However, placed into the context of Dr. Bardana's report, Dr. Schumpert concluded that he agreed with Dr. Bardana's assertion that a positive methacholine test must be put into context with other factors before reaching an asthma diagnosis.<sup>170</sup>

¶ 108 Dr. Bardana further testified that Dr. Rogers' approach for reaching an asthma diagnosis was inappropriate. Dr. Bardana stated that, to reach a diagnosis of asthma, one must first show reversible obstructive airway disease and that Dr. Rogers failed to do so. Dr. Bardana stated that Dr. Rogers made his diagnosis on history alone without any objective evidence. He noted that Dr. Rogers did not conduct any spirometric or bronchodilator testing, and that he did not review any of Gaudette's medical records.<sup>171</sup>

¶ 109 Dr. Bardana testified that he did not find cause for concern in Gaudette's reported reaction to distilled water during Dr. Rogers' testing because the provocation neutralization testing Dr. Rogers performed is not reliable, not controlled, and not

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<sup>166</sup> Trial Test.

<sup>167</sup> Trial Test.

<sup>168</sup> Schumpert Dep. 89:18 – 90:1.

<sup>169</sup> Schumpert Dep. 110:22 – 111:21.

<sup>170</sup> Schumpert Dep. 111:22 – 112:22.

<sup>171</sup> Trial Test.

blinded.<sup>172</sup> Dr. Bardana further testified that provocation neutralization testing and treatment has been conclusively debunked. He stated that a number of studies have demonstrated that provocation neutralization testing and treatment is wholly unsupported by evidence-based medicine.<sup>173</sup> Dr. Bardana characterized Dr. Rogers' use of glutathione IVs as "somewhat benign," although while he did not believe it would cause any problems, he also did not believe it was a necessary or effective treatment.<sup>174</sup>

¶ 110 Dr. Bardana found that much of Dr. Rea's testing lacked validity for diagnostic purposes. He opined that venous blood gas testing would not provide any useful data, while spec scans are not applicable in Gaudette's case.<sup>175</sup> Dr. Bardana further opined that testing for allergens such as methacholine, cigarette smoke, alcohol, cologne, fireplace smoke, and unleaded gasoline are "nonsensical" because these are not available allergens nor is this testing FDA-approved. Dr. Bardana asserted that trying to test someone by injecting them with unleaded gasoline or fireplace smoke is pseudoscience.<sup>176</sup>

¶ 111 Dr. Bardana opined that Dr. Rea's allegation that Gaudette could suffer a life-threatening reaction from a laryngovideostroboscopy to be "an irrational statement without reasonable substantiation."<sup>177</sup> Dr. Bardana alleged that the treatments that Dr. Rea proposed for Gaudette are "totally unsupported by evidence-based medicine."<sup>178</sup>

¶ 112 Dr. Bardana further opined that allergy testing had indicated that Gaudette was "not an allergic individual" and that the testing performed by Drs. Schumpert and Wanderer indicated that she was highly unlikely to react in an allergic manner.<sup>179</sup> Dr. Bardana opined that Gaudette has a proclivity to anxiety and that her history suggests that her episodes of "asthma" are more likely panic attacks. He further noted that panic/fear reactions are frequently associated with vocal cord dysfunction, and that vocal cord dysfunction is frequently misdiagnosed as asthma.<sup>180</sup> Dr. Bardana testified

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<sup>172</sup> Trial Test.

<sup>173</sup> Trial Test.

<sup>174</sup> Trial Test.

<sup>175</sup> Trial Test.

<sup>176</sup> Trial Test.

<sup>177</sup> Ex. 45 at 50.

<sup>178</sup> Trial Test.

<sup>179</sup> Trial Test.

<sup>180</sup> Trial Test.



that medical literature reflects a relationship between vocal cord dysfunction and stress, depression, psychological trauma, sexual abuse, and psychological disorders.<sup>181</sup>

¶ 113 Dr. Bardana testified that Gaudette's condition can be adequately explained by her history of physical and psychological ailments. He opined that the odors Gaudette was exposed to at work may have been annoying, but he does not believe they could be considered "toxic."<sup>182</sup> He further opined that while Gaudette "picks out perfumes and desk cleaners" and other workplace items and deems them toxic exposures, there is no scientific basis by which to distinguish a coworker's cologne from substances Gaudette could likewise be exposed to in other settings.<sup>183</sup>

¶ 114 On May 12, 2009, Gaudette sought treatment with Walter Crinnion, N.D., and Jill Odgren-Cole, N.M.S., at the Southwest Naturopathic Medical Center (SNMC) in Scottsdale, Arizona. During her intake interview, Gaudette reported the history of her sensitivities and further presented Dr. Crinnion and Odgren-Cole with a "reference article on methacholine solution." Gaudette informed them that she was still suffering from chest pain from the methacholine challenge test Dr. Schumpert performed in June 2008. Gaudette alleged that she reported chest pain during the test, but that the technicians administering the test "ignored her and dumped her out on a bench" and that she had suffered chest pain ever since this incident.<sup>184</sup> I find it wholly unbelievable that some eleven months later, Gaudette would allege this for the first time given the amount of medical treatment she had received in the interim, including her regular appointments with Hillyer and her visit to Dr. Rea, especially in light of the detailed litany of reactions she consistently reported to her medical providers. Such patently false statements made by Gaudette – whether willful or unintentional – underpin my decision to give very, very little weight to medical opinions formed with any reliance on Gaudette's subjective history.

¶ 115 On May 19, 2009, Gaudette returned for a follow-up appointment at SNMC. Dr. Crinnion and Odgren-Cole recommended a series of colonics. Gaudette agreed to a less frequent regimen. Gaudette requested documentation, diagnostic tests, and treatment that would help her pursue her workers' compensation claim for her October 2007 exposure, but Dr. Crinnion stated that he did not know of any testing that could document the chemical damage from her workplace, and he had no way of knowing what kind of solvents or pesticides were used in her workplace at the time of her alleged

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<sup>181</sup> Trial Test.

<sup>182</sup> Trial Test.

<sup>183</sup> Trial Test.

<sup>184</sup> Ex. 24 at 2.

injury.<sup>185</sup> Dr. Crinnion and Odgren-Cole diagnosed Gaudette with toxic encephalopathy. They recommended treatment with a series of colonics along with a “Meyer’s IV c/ GSH.”<sup>186</sup>

¶ 116 On June 4, 2009, SNMC’s attending physician Jessica Tran, N.D., and primary student Elaine Kozuka, N.M.S., noted that Gaudette entered the clinic to check in, but then went outside and refused to re-enter the building because she alleged a cleaning crew was using a product that she could smell and she did not want to be exposed to any chemicals. Dr. Tran and Kozuka were unable to proceed with Gaudette’s treatment because she refused to re-enter the clinic.<sup>187</sup>

¶ 117 On June 9, 2009, Gaudette arrived at the SNMC and stated that she was unable to tolerate a smell from the clinic’s ventilation system. Gaudette waited outside until her IV treatment was prepared.<sup>188</sup>

¶ 118 Gaudette continued to treat with IVs at SNMC on a regular basis. For her appointments, she typically wore a face mask and waited outside the office until her IV was ready in order to minimize her time inside the building. On June 26, 2009, she was asked to remove her mask for a few seconds so that her throat could be examined and she immediately became “agitated” and began coughing.<sup>189</sup> On July 2, 2009, Gaudette arrived for a 9 a.m. appointment but the staff was unable to have her IV ready until 10 a.m. Gaudette refused treatment, stating that too many people had been in the IV room by that time and that she would be unable to tolerate it.<sup>190</sup>

¶ 119 On July 13, 2009, Gaudette again refused treatment and left the clinic.<sup>191</sup> On July 16, 2009, Gaudette wrote a letter to SNMC asking the clinic to reconsider its decision not to take Gaudette’s vitals and complete her intake outdoors.<sup>192</sup>

¶ 120 On July 22, 2009, Gaudette informed Hillyer that she was suffering from exposure to vehicle exhaust and campfire smoke, she had difficulties with SNMC, and she was planning to seek treatment with a clinician in Missoula whom she believed

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<sup>185</sup> Ex. 24 at 7.

<sup>186</sup> Ex. 24 at 9.

<sup>187</sup> Ex. 24 at 12.

<sup>188</sup> Ex. 24 at 13.

<sup>189</sup> Ex. 24 at 22.

<sup>190</sup> Ex. 24 at 25.

<sup>191</sup> Ex. 24 at 30.

<sup>192</sup> Ex. 24 at 31-33.

would accommodate her chemical sensitivities.<sup>193</sup> On July 30, 2009, Gaudette told Hillyer that she was staying at a campground outside of Helena and she intended to seek treatment with a naturopath in Missoula the following week.<sup>194</sup>

¶ 121 After returning to Montana, Gaudette began treating with Christine C. White, N.D., a naturopathic physician in Missoula. Dr. White treated Gaudette with glutathione IVs.<sup>195</sup>

¶ 122 Gaudette had difficulty securing acceptable housing and stayed in campgrounds outside of Helena and Missoula.<sup>196</sup> On November 27, 2009, she found a rental home in Arlee, Montana.<sup>197</sup> Gaudette moved into the rental after cleaning it, having the carpets steam cleaned, airing it out, and running an air filtration system for a few days.<sup>198</sup> However, Gaudette continued to complain of sensitivities from the carpeting as well as from odors coming into the apartment from the outside world, including wood smoke, cigarette smoke, and the smell of laundry detergent and fabric softener.<sup>199</sup>

¶ 123 On April 18, 2010, Hillyer noted that Gaudette reported becoming more sensitized to chemicals and environmental odors and that she was struggling with reactions whenever she went out in public. Gaudette had begun staying in a campground more frequently because she had difficulty tolerating her rental home.<sup>200</sup>

¶ 124 On April 20, 2010, Dr. White noted that Gaudette reported that her condition was worsening. Dr. White noted that Gaudette's symptoms appeared to be exacerbated. Dr. White started Gaudette on "sick building detoxification drops," a homeopathic remedy.<sup>201</sup>

¶ 125 On April 30, 2010, Gaudette reported to Hillyer that she was primarily living in a campground and returning to her rental house only to shower.<sup>202</sup>

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<sup>193</sup> Ex. 1 at 323.

<sup>194</sup> Ex. 1 at 325.

<sup>195</sup> Trial Test.

<sup>196</sup> Ex. 1 at 337.

<sup>197</sup> Ex. 1 at 342, 345.

<sup>198</sup> Ex. 1 at 344, 345.

<sup>199</sup> Ex. 1 at 347.

<sup>200</sup> Ex. 1 at 366.

<sup>201</sup> Ex. 26 at 32.

<sup>202</sup> Ex. 1 at 368.

¶ 126 On June 15, 2010, Gaudette reported to Dr. White that the homeopathic sick building detoxification drops were helping her and she was now able to come into town once that week without getting sick.<sup>203</sup>

¶ 127 On August 3, 2010, Gaudette returned to see Dr. Rogers. He reviewed the reports of Dr. Rea's evaluation and treatment. Dr. Rogers assessed Gaudette's condition, noting: "Multiple chemical sensitivities. This is one of the worst cases that I have seen." He opined that Gaudette had a "spreading phenomenon" with increasing sensitivities to chemicals in the environment. Dr. Rogers recommended that Gaudette return to Dallas for additional testing and treatment. He further recommended a neuropsychiatric evaluation.<sup>204</sup>

¶ 128 In September 2010, Gaudette sat for a deposition regarding this case. Gaudette appeared wearing a face mask. She described it as three layers of charcoal – an outer layer of bituminous charcoal and two inner layers of activated charcoal.<sup>205</sup> Gaudette testified that she wears the mask everywhere but at home.<sup>206</sup> Gaudette testified that, if she were to remove the mask, she would begin coughing, her nose would run, and she would be forced to leave the building.<sup>207</sup>

¶ 129 At the time of her deposition, Gaudette still resided in a rental house in Arlee.<sup>208</sup> Gaudette testified that she found that at times she could not tolerate the house and experienced symptoms including asthma, coughing, phlegm, chest pain, headaches, sinus pain and pressure, burning eyes, fatigue, and joint pain.<sup>209</sup> Gaudette explained that when conditions in the house become intolerable, she goes to "the woods" and either sleeps in her car or sets up a tent.<sup>210</sup>

¶ 130 Gaudette testified that when she reacts to an odor, she exhibits approximately 24 symptoms, including headaches, sinus pain, sinus congestion, chest congestion, coughing with phlegm, coughing, chest pain, nausea, crusty eyes, matted eyes, tremors, shakiness, foggy-headedness, memory loss, asthma, extreme fatigue, light

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<sup>203</sup> Ex. 26 at 34.

<sup>204</sup> Ex. 19 at 27.

<sup>205</sup> Gaudette Dep. 145:2-9.

<sup>206</sup> Gaudette Dep. 145:22-24.

<sup>207</sup> Gaudette Dep. 145:10-14.

<sup>208</sup> Gaudette Dep. 9:9-18.

<sup>209</sup> Gaudette Dep. 16:5-16.

<sup>210</sup> Gaudette Dep. 19:22 – 20:4.

sensitivity, joint and muscle pain, and stiffness. Gaudette testified that she does not believe any of her physical complaints are related to her psychological conditions.<sup>211</sup>

¶ 131 On September 30, 2010, Dr. White noted that Gaudette was treating less frequently because of financial constraints. Gaudette was also no longer able to tolerate Dr. White's office. Dr. White opined that Gaudette needed the ability to seek more frequent treatment than she was currently able to afford. Dr. White strongly encouraged Gaudette to seek referral to a neuropsychologist through Dr. Rogers.<sup>212</sup>

¶ 132 Gaudette traveled to Texas to treat with Nancy A. Didriksen, Ph.D.<sup>213</sup> On October 21 and 22, 2010, Dr. Didriksen conducted a neuropsychological evaluation of Gaudette. Dr. Didriksen opined that Gaudette is presently disabled primarily due to chemical/environmental sensitivity which developed after toxic exposures in the workplace occurring in 2005 and 2007. Dr. Didriksen further opined that symptoms of Gaudette's bipolar II disorder were exacerbated by toxic exposures in the workplace. Dr. Didriksen found that Gaudette had no chemical sensitivities prior to 2005 but was now unable to tolerate incitants found in ordinary commercial, work, school, or social settings without significant adverse reactions.<sup>214</sup> Dr. Didriksen further found that Gaudette's neuropsychological testing indicated mild impairment with the greatest difficulty noted on measures of higher cortical functions including new learning and problem-solving, abstract reasoning, concept formation, mental efficiency, and judgment as well as the ability to deal with unique or novel problem-solving situations. Dr. Didriksen also observed deficits in sensory and motor functioning of a type typically seen in patients following toxic/neurotoxic exposure.<sup>215</sup>

¶ 133 Dr. Didriksen testified at trial via videoconference. I found her to be a credible witness. Dr. Didriksen has a Ph.D. in health psychology behavioral medicine. Since completing her Ph.D., Dr. Didriksen has evaluated and treated people with chronic physical illnesses, including chronic pain, chronic fatigue, and fibromyalgia. She specializes in the treatment of people who have been exposed to toxic substances or who suffer from environmental illness.<sup>216</sup>

¶ 134 Dr. Didriksen found that Gaudette was exposed to known neurotoxins in her workplace, including solvents, pyrethroid pesticides and diesel exhaust. She further

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<sup>211</sup> Gaudette Dep. 189:2-25.

<sup>212</sup> Ex. 26 at 35.

<sup>213</sup> Trial Test.

<sup>214</sup> Ex. 29 at 34.

<sup>215</sup> Ex. 29 at 35.

<sup>216</sup> Trial Test.

noted that several factors likely contribute to Gaudette's neurocognitive deficits, including medication effects, fluctuations in thyroid functioning, indirect effects of respiratory problems, previous head injuries, and bipolar II disorder. However, Dr. Didriksen opined that the observed deficits "are probably due most significantly to the toxic/neurotoxic exposure, as Ms. Gaudette functioned well prior to exposures in the workplace."<sup>217</sup> Dr. Didriksen opined that Gaudette is disabled and precluded from returning to any workplace setting now and in the foreseeable future.<sup>218</sup>

¶ 135 Dr. Staudenmayer disagreed with Dr. Didriksen's belief that Gaudette had no evidence of cognitive issues prior to her alleged workplace exposures. He noted that Gaudette's records, dating back to 2000, record cognitive dysfunction complaints.<sup>219</sup>

¶ 136 Dr. Bardana disagreed with Dr. Didriksen's assertion that Gaudette was "functioning well" prior to her 2005 workplace exposures. He noted that Gaudette had a history of sexual abuse and suicide attempts, that she had neurological dysfunction after a 2001 motor vehicle accident, and that she sought treatment with a psychotherapist in May 2001 for anger issues. Dr. Bardana further noted that Gaudette was found to have memory impairment, as well as a report of airway symptoms, hypothyroidism, and anxiety in 2001. She also suffered a head injury after falling off a horse in September 2001 and reported some neurological problems afterwards. Dr. Bardana further noted that Gaudette had been involved in another motor vehicle accident on April 15, 2002, and reported increased memory problems and post-concussion vertigo afterwards. Dr. Bardana further noted that Gaudette expressed suicidal ideation in 2002 and that she took several prescriptive medications which are known to have effects on mentation, cognition, and memory. Gaudette also attempted suicide in 2003. Finally, in 2005, she reported the onset of fragrance intolerance prior to any alleged exposures at work. Dr. Bardana further noted that several items in Gaudette's medical history from 2005 to 2007 do not support Dr. Didriksen's assertion that Gaudette functioned well during the interim between her two alleged workplace exposures.<sup>220</sup>

¶ 137 After seeing Dr. Didriksen, Gaudette returned to Arlee. In September 2011, she could no longer afford to rent the house. She decided to travel to Arizona to stay with a community of people who have MCS. However, after she arrived in Arizona, she had a

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<sup>217</sup> Ex. 29 at 36-37.

<sup>218</sup> Ex. 29 at 37.

<sup>219</sup> Trial Test.

<sup>220</sup> Trial Test.

disagreement with the community and she decided to spend the winter camping in Utah and California.<sup>221</sup>

¶ 138 In October 2011, Gaudette became homeless and remained so at the time of trial. Gaudette testified that she was unable to find any home that she could tolerate without aggravating her breathing difficulties.<sup>222</sup> Gaudette testified that she does not believe she could return to her time-of-injury job because she cannot tolerate being indoors without wearing a face mask. She also cannot handle stress and finds that she gets overwhelmed by “normal everyday stuff.”<sup>223</sup>

¶ 139 On March 2, 2012, Linda Wilhelm testified via deposition. Wilhelm began working for the department in August 1997 and remained employed by the department at the time of her deposition.<sup>224</sup> Wilhelm worked in the liquor warehouse in 2004 and 2005.<sup>225</sup> Wilhelm moved to the Mitchell Building in the fall of 2005 because she was experiencing health problems from odors at the liquor warehouse caused by a re-roofing project.<sup>226</sup> Wilhelm testified that she is allergic to smells including perfumes, any scented products, wood smoke, cigarette smoke, and cleaning supplies.<sup>227</sup> Wilhelm testified that she experienced very few problems working at the liquor warehouse aside from the tar smell from the roofing project and rare occurrences of fragrance or perfume odors.<sup>228</sup>

¶ 140 Lynn Grosfield testified at trial. I found her to be a credible witness. Grosfield worked for the department from 1978 or 1979 until October 2010. Grosfield spent several years working in the office area of the liquor warehouse and worked at the liquor warehouse at the same time as Gaudette.<sup>229</sup> Grosfield testified that she worked at the liquor warehouse during the time that a new roof was installed, and it was “miserable” because of fumes from the roofing.<sup>230</sup>

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<sup>221</sup> Trial Test.

<sup>222</sup> Trial Test.

<sup>223</sup> Trial Test.

<sup>224</sup> Wilhelm Dep. 6:23 – 7:9.

<sup>225</sup> Wilhelm Dep. 16:3-5.

<sup>226</sup> Wilhelm Dep. 16:6-24.

<sup>227</sup> Wilhelm Dep. 19:18-21.

<sup>228</sup> Wilhelm Dep. 22:10-19.

<sup>229</sup> Trial Test.

<sup>230</sup> Trial Test.

¶ 141 Grosfield testified that while she worked at the liquor warehouse, she developed a chronic cough which interfered with her job duties.<sup>231</sup> Grosfield testified that she sought medical treatment for sinus infections, bronchitis, and pneumonia during the time she worked for the department. Grosfield testified that she understood her medical diagnosis to be environmental asthma and her medical providers recommended she cease working at the liquor warehouse. Grosfield testified that she filed a workers' compensation claim for her condition, but it was denied.<sup>232</sup>

¶ 142 It is difficult for me to assign much weight to the testimony of Wilhelm and Grosfield beyond their lay testimony regarding the conditions of the liquor warehouse at the time of the roofing project. I find that the workers at the liquor warehouse were exposed to unpleasant odors during the roofing project and the office area of the liquor warehouse was an unpleasant place to work during that time. However, Gaudette has not alleged that she suffered any injury from the roofing project, but rather that she was injured from exposure to chemicals from the indoor renovations and office cleaning. As to Wilhelm's and Grosfield's testimony regarding their medical diagnoses, no medical records or medical testimony was put into evidence. I have no way of assessing whether each of them correctly understood their diagnoses, nor do I have any way of assessing whether they obtained these diagnoses from qualified, credible medical providers. Therefore, I cannot give this testimony any weight.

#### CONCLUSIONS OF LAW

¶ 143 This case is governed by the 2007 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Gaudette's industrial accident.<sup>233</sup> An injured worker bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks.<sup>234</sup> In the present case, for the reasons set forth below, I have concluded that Gaudette has not met this burden.

#### **Issue One: Whether Petitioner's current condition is causally related to her industrial injury of October 8, 2007.**

¶ 144 Causation is an essential element to an entitlement to benefits and a claimant has the burden of proving a causal connection by a preponderance of the evidence.<sup>235</sup>

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<sup>231</sup> Trial Test.

<sup>232</sup> Trial Test.

<sup>233</sup> *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

<sup>234</sup> *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

<sup>235</sup> *Grenz v. Fire and Cas. of Conn.*, 250 Mont. 373, 380, 820 P.2d 742, 746 (1991). (Citation omitted.)



¶ 145 Gaudette offers two theories as to why she believes her claim is compensable. First, she argues that she suffers from MCS caused by her October 8, 2007, industrial injury. Alternatively, she argues that if the Court determines that she does not suffer from MCS, then she suffers from somatoform disorder and that this condition is a result of her October 8, 2007, industrial injury.<sup>236</sup>

¶ 146 While both parties have presented their case as a referendum on the existence or non-existence of MCS as a disease with a physical, non-psychological cause, I need not make such a broad determination on the merits of the single case before me. Even assuming *arguendo* that MCS exists, I cannot conclude from the evidence presented that Gaudette has met her burden of proving that she suffers from this condition and that it is causally related to her October 8, 2007, industrial injury.

¶ 147 In weighing the evidence to determine whether Gaudette's current condition is causally related to her October 8, 2007, industrial injury, I found that little of the evidence presented weighs in Gaudette's favor. Gaudette's reported sensitivities to odors predated this industrial injury by at least several years. These sensitivities came to the forefront beginning in March 2005, when Gaudette began a series of visits to Urgent Care for treatment. Although in retrospect, Gaudette has insisted that these sensitivities began with her exposure to some sort of aerosol office cleaning agent, none of the contemporary medical records support her recollection and in fact those records suggest she experienced odor sensitivity for at least several months prior to this time. Bills-Kazimi's medical records offer a fairly persuasive case that Gaudette suffered not from asthma attacks but from anxiety. Both Dr. Headapohl and Dr. Wanderer opined that Gaudette suffered a temporary aggravation to an underlying "reactive airway" condition of some sort.

¶ 148 Following the October 8, 2007 industrial injury, I note that Ott found nothing in Gaudette's workplace to suggest that Gaudette suffered any unusual exposures there. Although Drs. Bergkamp and Rea both opined that Gaudette's condition was caused by exposures at work, neither offered any evidence in support of their contentions beyond Gaudette's subjective reports.

¶ 149 From the evidence presented, I cannot even conclude it is more probable than not that Gaudette has asthma. As set forth in the findings above, many of the medical providers who treated Gaudette accepted her historical diagnosis of asthma as fact and conducted no testing to confirm the diagnosis. Although Dr. Schumpert diagnosed

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<sup>236</sup> Since somatoform disorder is a psychological condition, Gaudette acknowledges that she must not only prove that she has somatoform disorder but that her condition is "physical-mental." As set forth below, I ultimately concluded that Gaudette has not proven that she suffers from somatoform disorder and therefore I need not reach the issue of whether it would be compensable in this case.

Gaudette with asthma based upon the methacholine challenge test he performed, Dr. Bardana disagreed with Dr. Schumpert that a methacholine challenge test is definitive and upon considering Dr. Bardana's opinion in the context of his report, Dr. Schumpert acknowledged that differential diagnoses needed to be ruled out. Even if I were to conclude that Gaudette indeed has asthma, the evidence presented indicates that any aggravation to Gaudette's alleged asthmatic condition was only temporarily aggravated by her October 8, 2007, industrial accident.

¶ 150 Regardless of the accuracy of the asthma diagnosis, Dr. Schumpert further opined that it was more probable than not that Gaudette's chemical sensitivities had a psychological rather than physical origin. Dr. Harrison likewise opined that Gaudette's condition was at least partially anxiety-related and found a probable link between her psychiatric issues and physical complaints.

¶ 151 Although Gaudette also contends that she has suffered cognitive impairment as a result of her October 8, 2007, industrial accident, as the findings indicate above, the cognitive impairment which she relates to MCS is equally well explained by some of the medications she takes for her psychiatric conditions, and she first reported cognitive difficulties prior to the October 8, 2007, incident. I therefore cannot conclude that it is more probable than not that Gaudette's alleged cognitive impairment was caused by the industrial accident.

¶ 152 Finally, I note that Gaudette's resistance to diagnosis and treatment has not helped her case. As noted in the findings above, she failed to follow treatment recommendations and instead sought alternative therapies of questionable therapeutic value. She refused to follow Bills-Kazimi's treatment recommendations to control her respiratory difficulties in 2005. In 2008, Gaudette refused to undergo a laryngovideostroboscopy and therefore vocal cord dysfunction could not be diagnosed or ruled out as a possible cause of her symptoms. Gaudette further refused to disclose her medications to Dr. Schumpert, and refused to discuss her mental health history with Dr. Harrison.

¶ 153 Even in her pursuit of alternative natural treatments, Gaudette has not followed through with courses of treatment; rather, she has changed providers whenever her beliefs have been challenged in any way. While I question the efficacy of the treatment proposed at the SNMC in Scottsdale, I cannot help but note that Gaudette became uncooperative with this medical provider and began alleging problems with the clinic environment after the provider refused to aid her with this workers' compensation claim. This turn of events supports Dr. Staudenmayer's opinion that the secondary gain of this litigation is a factor in Gaudette's alleged medical condition.

¶ 154 While Gaudette has presented some evidence to support her MCS claim, it is circumstantial – such as the testimony of Wilhelm and Grosfield – or it is grounded in Gaudette’s subjective reports. This evidence is significantly weaker than the evidence to the contrary and I therefore cannot conclude that it is more probable than not that Gaudette suffers from MCS due to her October 8, 2007, industrial accident.

¶ 155 Gaudette argues that if I do not find that she suffers from MCS, then I should conclude that she has a compensable somatoform disorder. Although I have not found it more probable than not that Gaudette has MCS, I cannot find it more probable than not that she therefore has somatoform disorder. While Dr. Staudenmayer has suggested that Gaudette may have undifferentiated somatoform disorder, Hillyer has testified that she has never believed Gaudette has met the diagnostic criteria for somatoform disorder.

¶ 156 As a rule, the opinions of treating physicians are entitled to greater weight in this Court. However, the treating physician’s opinion is not conclusive and this Court remains the finder of fact.<sup>237</sup> This Court has previously found the opinion of a doctor more persuasive because of his longer and later treatment of a claimant.<sup>238</sup> In *Alberts v. Transportation Ins. Co.*, the Court framed the rule as, “between equally qualified physicians, the one who has treated a claimant for a longer amount of time would generally be in a better position to understand the claimant’s diagnosis, prognosis, and impairment more fully than a physician who had evaluated the claimant on only one occasion.”<sup>239</sup>

¶ 157 Hillyer is Gaudette’s treating physician for her psychiatric condition. While I find Dr. Staudenmayer has significantly superior credentials, I must weigh this against the length of time and frequency with which Hillyer has treated Gaudette. Although Hillyer may have fewer credentials than Dr. Staudenmayer, she is in a much better position to assess Gaudette’s psychiatric condition than a psychiatrist who saw Gaudette for a single, albeit in-depth, evaluation. Given the length and depth of her relationship with Gaudette, I find that Hillyer is in the better position to opine whether Gaudette has somatoform disorder. Hillyer testified unequivocally that Gaudette does not.

¶ 158 Therefore, weighing Hillyer’s opinion against Dr. Staudenmayer’s, I conclude that Gaudette has not proven that she suffers from somatoform disorder. Since she has not proven that she has the condition, I need not reach the issue of whether she can prove a causal connection between this condition and her industrial injury.

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<sup>237</sup> *Kloepfer v. Lumbermen’s Mut. Cas. Co.*, 276 Mont. 495, 498, 916 P.2d 1310, 1312 (1996).

<sup>238</sup> *Siegler v. Liberty Ins. Corp.*, 2001 MTWCC 23, ¶ 53.

<sup>239</sup> *Alberts*, 2006 MTWCC 34, ¶ 17 (citing *Kloepfer*, *supra*).

**Issue Two: Whether Petitioner is entitled to temporary total disability benefits and reasonable medical expenses related to the treatment of her industrial injury.**

¶ 159 Since I have concluded that Gaudette's current condition is not causally related to her October 8, 2007, industrial injury, I must further conclude that she is not entitled to any temporary total disability benefits. As to Gaudette's entitlement to reasonable medical expenses, the evidence presented has indicated that Gaudette suffered only a temporary aggravation as a result of her October 8, 2007, industrial injury and that she has reached MMI for the temporary aggravation. Therefore, no additional medical benefits are due.

**Issue Three: Whether Petitioner is entitled to an increase in award for unreasonable delay or refusal to pay proper workers' compensation benefits pursuant to § 39-71-2907, MCA.**

**Issue Four: Whether Petitioner is entitled to costs and attorney's fees pursuant to §§ 39-71-611, -612, MCA.**

¶ 160 Since Gaudette is not the prevailing party, she is not entitled to her costs, attorney fees, or a penalty.<sup>240</sup>

JUDGMENT

¶ 161 Petitioner's current condition is not causally related to her industrial injury of October 8, 2007.

¶ 162 Petitioner is not entitled to temporary total disability benefits and reasonable medical expenses related to the treatment of her industrial injury.

¶ 163 Petitioner is not entitled to her costs, attorney fees, or a penalty.

¶ 164 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

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<sup>240</sup> §§ 39-71-611, -2907, MCA.

DATED in Helena, Montana, this 19<sup>th</sup> day of March, 2013.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Laurie Wallace  
Leo S. Ward  
Submitted: August 17, 2012