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Following these events, the family was under substantial emotional stress and each of them was provided mental health counseling.⁸ K had been held back in first and third grades and was in a special needs program.⁹ He had been bullied in school, and was suspended for fighting (with bullies) in both middle and high school.¹⁰ In November, 2007, K (then 14) and a young friend vandalized a middle school, resulting in court proceedings and additional counseling, which resulted in a diagnosis of ADHD and, at some point, a prescription for Adderall.¹¹ Beyond that, a psychologist's report found "nothing wrong."¹² However, his parents recognized he lacked social skills and that he was defiant and prone to frustration and fits of anger.¹³

Mr. H incurred a back injury in 2009, after which he was unable to work in his former occupation as a sheet metal worker. With the loss of employment, financial difficulties added to the level of family stress. Mr. H became a stay-at-home dad, and Ms. H obtained employment outside the home. Spending more time at home, Mr. H began to focus more on his children's behavior at home. Ms. H had been a relatively lax disciplinarian as compared with her husband. In Mr. H's view, the children needed more structure and discipline, which included grounding and loss of privileges. With Mr. H's constant presence in the home and his increased attempt to impose and enforce limits on their behavior, conflict between Mr. H and his sons became more frequent.

The older boys, A and K, proved particularly resistant to Mr. H's efforts. A, by 2011, was making plans to move out of the home as soon as he graduated in the spring. K continued to

⁶ See R. 28-29; 123-124.

⁷ R. 28, 181-182. See Protective Services Report (5/12/2006, 5/22/2006); R. 34-35.

⁸ Testimony of U. H. See, e.g., Ex. H6, H7; No Name Hospital Admission Psychiatric Evaluation (3/2/2011), p. 1.

⁹ No Name Hospital Admission Psychiatric Evaluation (Dr. X, psychiatrist) (3/2/2011) (hereinafter, Admission Evaluation), p. 1; Neuropsychological Evaluation (Dr. V, licensed clinical psychologist), p. 2 (3/20/2011).

¹⁰ Neuropsychological Evaluation at p. 2.

¹¹ Testimony of U. H; see generally, Ex. AA; No Name Intake Comprehensive Assessment Tool, Part III, p. 1; Admission Psychiatric Evaluation, p. 1.

¹² Testimony of U. H; No Name Admission Evaluation, pp. 1-2.

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be particularly challenging. Mr. H recognized that K had significant limitations in communication and social functioning, and he was concerned that K's exposure to Mr. C could have created underlying emotional difficulties.

In Mr. H's judgment, K's special needs and emotional state placed him at risk of being unable to successfully live independently when he left the family home. In addition, Mr. H believed that it was important for K to develop positive social relationships outside of the home. Mr. H was of the view that a home environment with strict, clear rules and consequences for the violation of those rules would assist K in learning the coping skills he would need in order to live independently.

Mr. H's effort to enforce the rules and consequences he deemed appropriate was often stymied by the K's defiance. In Mr. H's view, to obtain conformity with the rules it was necessary for him to create a fear factor in K through the threat or administration of corporal discipline.¹⁴ The highest level of discipline he threatened or administered was to strike K with a belt. He had used that as a disciplinary method for K and E when they were younger.¹⁵

During the winter of 2010-2011, U H was working at a child center, with all day (24 hours) on site shifts on Wednesday through Saturday.¹⁶ Mr. H had two back surgeries on December 4 and 10, and was in some pain.¹⁷ On the morning of January 13, 2011, K had failed to do the dishes, a chore of his. Mr. H confronted him about this and took away his breakfast cereal and a computer that was in his backpack. K went to brush his teeth, and Mr. H followed after him with a belt in his hand. K grabbed a knife out of a drawer and told his father to back off. Mr. H put the belt down and called police, who responded to the residence.¹⁸

Following that incident, Mr. H contacted K's special education teacher and suggested that in the event K felt angry with him, K could "grab[] his coat and go[] for a walk" as a "clear sign"

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¹⁶ R. 67, 143.

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to Mr. H that K needed to disengage, “to get away.”¹⁹ K and his parents visited a counselor, M Y, who planned weekly sessions with K to work on communication, social skills, and anger management.²⁰

About six weeks later, on the evening of February 24, the three boys were in the garage playing video games. It was around 8:00 p.m. Ms. H was at work. Mr. H was in the kitchen, getting ready to make jerky. Mr. H had earlier talked with K, and K had agreed to help. A came into the house to use the bathroom, and Mr. H asked him to tell K to come in to get started on the jerky. A went out into the garage. K and E bickered, and K threw something into a garbage can. Mr. H heard the commotion. K came in, clearly agitated. Mr. H asked him what had occurred. K said it was nothing. Mr. H was not satisfied with this answer and instructed K to sit down and talk about what had happened. K did not sit. Mr. H repeated his instruction, and K still did not sit or more fully respond to his questions. Mr. H told K that if he did not sit and discuss what had occurred, Mr. H would get his belt and punish him. K still did not sit or respond. Mr. H went and got his belt and an altercation between the two ensued. They pushed at each other and Mr. H struck K six or eight times on the legs, inflicting a bruise.²¹ Mr. H shoved K into a chair. In the course of the altercation, K received a cut on the bridge of his nose, apparently from his glasses.²²

After sitting in the chair for some time without further incident or discussion, K went to his room and went to bed. The next morning, when K went to school, school officials noted the cut and K informed them what had occurred. The matter was reported to the Office of Children’s Services, which initiated an investigation. A week later, on March 1, K and his parents had a discussion about his behavior. K again became agitated. He expressed thoughts of harming himself or Mr. H. Ms. H called police and had K transported to a mental health facility

¹⁹ Ex. NN 10.

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²¹ *See generally*, R. 66-67, 86, 142 (note of K’s report), 146 (note of A’s report); Testimony of U. H. The school nurse reported observing a “light hematoma on his thigh[.]” R, 149. Photographs were taken to document the hematoma, but the mark observed by the nurse is not apparent on the photographs in the record. *See* R. 172-173.

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in Anchorage, where he was diagnosed with Asperger's syndrome.²³ On March 24, Ms. H moved out of the home and shortly thereafter initiated divorce proceedings.²⁴ K was discharged to her custody on March 30,²⁵ and the Office of Children's Services issued a substantiated finding of abuse in April.²⁶

III. Analysis

A. Policy Background

The Alaska legislature has found that parents have "the right to exercise reasonable corporate discipline."²⁷ At the same time, it has required certain individuals, such as health care providers, school teachers, and child care providers, to report to the Department of Health and Social Services instances in which they suspect that a child has suffered harm as a result of child abuse or neglect,²⁸ "[i]n order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical injury...."²⁹

The Office of Children's Services is required to investigate such reports of harm.³⁰ Before initiating an investigation, the office screens reports.³¹ If an investigation is conducted, the office will determine whether the report was substantiated or not substantiated.³² The

²³ No Name Hospital Neuropsychological Evaluation (Dr. V, licensed clinical psychologist) (3/20/2011).

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²⁷ AS 47.05.065(a)(B).

²⁸ AS 47.17.020(a).

²⁹ AS 47.17.010.

³⁰ AS 47.17.025. See generally, Office of Children's Services, Child Protective Services Manual, §2.2.5 (rev. 3/13/2009) (hereinafter, CPS Manual). The CPS Manual is available to the public online at dhss.alaska.gov/ocs/Pages/publications (accessed October 23, 2013). The administrative law judge takes official notice of the contents of the manual; either party may object by filing a proposal for action. See 2 AAC 64.300.

³¹ CPS Manual, §2.1 at 2 (Policy D), 8 (Procedure D) (rev. 2/10/2010).

³² CPS Manual §2.2.10.1 (rev. 6/1/2004).

office’s written policy is to issue a substantiated finding when “the available facts indicate a child suffered harm as a result of abuse or neglect as defined in AS 47.17.290.”³³

B. Applicable Law

AS 47.17.290(2) states:

“[C]hild abuse or neglect” means the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby.

Prior to 2013, the qualifying phrase “under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby” in AS 47.17.290(2) was treated as applicable to the antecedent compound noun “physical injury.”³⁴ A decision issued after the altercation between Mr. H and his son had occurred interpreted AS 47.17.290(2) in a manner different than it had previously been applied.³⁵ As interpreted in the new decision, the qualifying phrase “under circumstances [*etc.*]” does not apply to the antecedent, “physical injury.”³⁶

A subsequent decision, issued after the hearing in this case, held that a finding of substantiated abuse will be sustained whenever a physical injury was incurred as a result of corporal discipline, on the ground that “parental discipline that causes any degree of physical injury is not reasonable and is, instead, an act of physical abuse.”³⁷ Previously, the degree of

³³ CPS Manual §2.2.10.1 (*rev.* 6/1/2004) (“Policy: ...A substantiated finding is one where the available facts indicate a child suffered harm as a result of abuse or neglect as defined by AS 47.17.290.”); §2.2.4, p. 17 (*rev.* 3/13/2009) (“Substantiated: refers to a finding where the available facts indicate a child suffered harm as a result of abuse or neglect as defined in AS 47.17.290.”).

³⁴ In re A.B., OAH No. 10-0157-DHS (Commissioner of Health and Social Services 2010), p. 7, n. 64; In Re X & Y.Z., OAH No. 09-0958-DHS (Commissioner of Health and Social Services 2010), p. 4; In Re R. & J.R., OAH No. 06-0021-CHC (Commissioner of Health and Social Services 2007) p. 14, *citing In Re John Doe*, OAH No. 06-0112-DHS 3 (Commissioner of Health and Social Services 2007) p. 3. *See also*, In Re M.M., OAH No. 08-0531-DHS (Commissioner of Health and Social Services 2009), p. 2; In Re K.S., OAH No. 07-0600-DHS (Commissioner of Health and Social Services 2007).

³⁵ In Re C.X., OAH No. 12-0761-SAN (Commissioner of Health and Social Services 2013).

³⁶ *See In Re C.X.*, OAH No. 12-0761 (Commissioner of Health and Social Services 2013), p. 3.

³⁷ In Re N.M., OAH No. 12-0423-SAN (Commissioner of Health and Social Services 2013), p. 3. *See also*, In Re F.T., OAH No. 13-0050-SAN (Commissioner of Health and Social Services 2013), p. 4 (child hit with belt as punishment; bruise is physical injury; physical injury “is sufficient to support a finding of child abuse”); In Re U.Z., OAH No. 12-0422-SAN, at 3-4 (Commissioner of Health and Social Services 2013), *appeal pending*, No. 3AN 13-09124 CI (Alaska Superior Court).

injury had been a factor in determining whether corporal discipline was considered to be child abuse.³⁸

The term “physical injury” has not been defined in statute or regulation for purposes of AS 47.17.290(2).³⁹ Accordingly, as in prior decisions, the term will be applied in its ordinary meaning⁴⁰ that is, “anything that causes some damage to a person’s body, even if slight.”⁴¹ A visible bruise constitutes a physical injury within that meaning.⁴²

C. Mr. H’s Conduct Was Child Abuse

As described above, the interpretation of AS 47.17.290(2) changed after the conduct at issue in this matter occurred. Accordingly, the evidence will be considered under both the prior and current interpretations of AS 47.17.290(2).

1. *Mr. H’s Conduct Was Harmful*

Under the prior interpretation of AS 47.17.290(2), in order to establish that child abuse had occurred in a case involving physical injury it was necessary to make a showing that the physical injury occurred under circumstances indicating that the child’s health or welfare was harmed or threatened. Applying that interpretation, the Office of Children’s Services established child abuse in this case, because it showed that K’s mental health was harmed. In particular, within a week after the incident, K was placed in a mental health treatment facility due, in large part, to the conflict with his father over corporal disciplinary measures.

Under the current interpretation of AS 47.17.290(2), a showing of physical injury is sufficient to establish that child abuse occurred. Because K incurred a physical injury (a cut on the bridge of his nose and a bruise on his leg) when struck by his father, Mr. H’s conduct was child abuse as defined in AS 47.17.290(2). In effect, under the new interpretation of AS 47.17.290(2), the existence of a physical injury establishes that there has been “harm” within the

³⁸ See In Re X. & Y. Z., OAH No. 09-0589-DHS (Commissioner of Health and Social Services 2010 (physical and mental harm established)).

³⁹ For purposes of proceedings under AS 47.10, the term “physical injury” means “a physical pain or an impairment of a physical condition.” AS 47.17.990(26); AS 11.81.900(b)(46).

⁴⁰ See, e.g., In Re John Doe, OAH No. 06-0112-DHS (Commissioner of Health and Social Services 2007), at 3.

⁴¹ In Re N.M., OAH No 12-0423-SAN (Commissioner of Health and Social Services 2013), at 2, note 2.

⁴² *Id.* See also, In Re F.T., OAH No. 13-0050-SAN (Commissioner of Health and Social Services 2013), p. 4 (bruise from being struck with a belt “demonstrates there was physical injury”).

meaning of the Office of Children’s Services policy applicable to a substantiated finding of abuse.⁴³

2. *The Conduct Was Not Reasonable Corporal Discipline*

Alaska law provides that parents have the right to use reasonable corporal discipline. However, recent decisions hold that corporal discipline that results in physical injury in the form of bruising is unreasonable.⁴⁴ In this case, Mr. H argues that his actions constituted reasonable corporal discipline. Because it is undisputed that Mr. H inflicted a physical injury on his son, under the recent decisions Mr. H’s conduct was child abuse as a matter of law.

In any event, the circumstances of this case do not support Mr. H’s argument that he engaged in reasonable corporal discipline. Mr. H testified that he had been advised by professional counselors not to use corporal discipline. K was seventeen years old, on the verge of emancipation, far beyond the age that reasonable corporal discipline is generally administered. Mr. H was aware that K had substantial difficulties in communication and social functioning, that he was easily frustrated, and that he was prone to fits of anger. Just a few weeks previously, K had reacted to the same form of discipline by confronting his father with a knife. There was no emergency or exigency that warranted immediate intervention by Mr. H. Mr. H ignored obvious signs of distress on K’s part and acted in the heat of the moment rather than after pausing for passions to subside, and he did not provide K with the space (emotional and physical) that he clearly needed in order to respond appropriately. Mr. H had alternative means of obtaining the information he had demanded from K, such as questioning his brothers. Mr. H’s stated goal was to instill a “fear factor” in his son, not to educate, model, inform, or otherwise contribute to K’s emotional growth and maturity. In light of all of these circumstances, Mr. H’s administration of corporal discipline by striking his son with a belt was unreasonable.

IV. Conclusion

The facts (Mr. H struck his child, resulting in physical injury and harm to his mental health) establish child abuse under both the current and former interpretation of AS 47.17.290(2).

⁴³ See note 33, *supra*.

⁴⁴ See note 37, *supra*.

The preponderance of the evidence is that Mr. H's conduct was not reasonable corporate discipline.

The substantiated finding is sustained.

DATED January, 15, 2014.

Signed

Ree Sailors
Deputy Commissioner

APPEAL RIGHTS

This is a final decision for purposes of appeal rights. Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

[This document has been modified to conform to the technical standards for publication.]

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL FROM THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of:)
)
U H) OCS No.
) OAH No. 12-0099-DHS
_____)

[REJECTED PROPOSED] DECISION

I. Introduction

U H and his seventeen-year-old son had an altercation in March, 2011, during which Mr. H struck his son with a belt. Based on that incident, the Office of Children’s Service (OCS) issued a substantiated finding of child abuse.

Mr. H filed an appeal and the assigned administrative law judge conducted a hearing. Assistant Attorney General Megyn Greider represented OCS and Mr. H represented himself. Testimony was heard from Mr. H, OCS caseworker Lynn Brooks, and a police officer who responded to the home on the date of the incident.

Mr. H’s son incurred a physical injury when struck by his father. The substantiated finding is therefore sustained.

II. Facts

U and T H married in 1998, when U was 29 and T was 21. They had previously had three sons: A (1992), K (1993), and E (1997).⁴⁵ Mr. H, a sheet metal worker, was steadily employed and Ms. H stayed home with the children. During the summer of 2005, Mr. H was largely absent while working at a job site in No Name.⁴⁶ Earlier that year, Ms. H had become acquainted with Z C, who at times looked after the children while their parents were out of town.⁴⁷ Mr. C was on probation for a conviction for possession of child pornography, and in

⁴⁵ R. 51-54. The couple had been unable to cohabit previously because their relationship had resulted in Mr. H being convicted of sexual assault due to T’s age, and the conditions of probation restricted his association with T. See R. 43-49.

⁴⁶ See Letter, B. N (No Name, Inc.) (2/18/2013).

⁴⁷ R. 23.

September his association with the H children came to the attention of his parole officer when he discovered in Mr. C's possession a picture of A exposing his buttocks.⁴⁸ That revelation resulted in the revocation of Mr. C's probation.⁴⁹ Nonetheless, the following spring, Ms. H left the state with her three children to take up residence with Mr. C in Pennsylvania.⁵⁰ When Mr. H, who had been absent at a job site, discovered what had occurred, he reported the matter to police and Ms. H returned home with the children.⁵¹

Following these events, the family was under substantial emotional stress and each of them was provided mental health counseling.⁵² K had been held back in first and third grades and was in a special needs program.⁵³ He had been bullied in school, and was suspended for fighting (with bullies) in both middle and high school.⁵⁴ In November, 2007, K (then 14) and a young friend vandalized a middle school, resulting in court proceedings and additional counseling, which resulted in a diagnosis of ADHD and, at some point, a prescription for Adderall.⁵⁵ Beyond that, a psychologist's report found "nothing wrong."⁵⁶ However, his parents recognized he lacked social skills and that he was defiant and prone to frustration and fits of anger.⁵⁷

Mr. H incurred a back injury in 2009, after which he was unable to work in his former occupation as a sheet metal worker. With the loss of employment, financial difficulties added to the level of family stress. Mr. H became a stay-at-home dad, and Ms. H obtained employment outside the home. Spending more time at home, Mr. H began to focus more on his children's behavior at home. Ms. H had been a relatively lax disciplinarian as compared with her husband.

⁴⁸ R. 23.

⁴⁹ See R. 29. The family members were interviewed and A reported that Mr. C had "touched him inappropriately by grabbing his genitals." R. 23-27.

⁵⁰ See R. 28-29; 123-124.

⁵¹ R. 28, 181-182. See Protective Services Report (5/12/2006, 5/22/2006); R. 34-35.

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In Mr. H's view, the children needed more structure and discipline, which included grounding and loss of privileges. With Mr. H's constant presence in the home and his increased attempt to impose and enforce limits on their behavior, conflict between Mr. H and his sons became more frequent.

The older boys, A and K, proved particularly resistant to Mr. H's efforts. A, by 2011, was making plans to move out of the home as soon as he graduated in the spring. K continued to be particularly challenging. Mr. H recognized that K had significant limitations in communication and social functioning, and he was concerned that K's exposure to Mr. C could have created underlying emotional difficulties.

In Mr. H's judgment, K's special needs and emotional state placed him at risk of being unable to successfully live independently when he left the family home. In addition, Mr. H believed that it was important for K to develop positive social relationships outside of the home. Mr. H was of the view that a home environment with strict, clear rules and consequences for the violation of those rules would assist K in learning the coping skills he would need in order to live independently.

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⁷² AS 47.17.020(a).

⁷³ AS 47.17.010.

⁷⁴ AS 47.17.025. See generally, Office of Children’s Services, Child Protective Services Manual, §2.2.5 (rev. 3/13/2009) (hereinafter, CPS Manual). The CPS Manual is available to the public online at

the office will determine whether the report was substantiated or not substantiated.⁷⁶ The office’s written policy is to issue a substantiated finding when “the available facts indicate a child suffered harm as a result of abuse or neglect as defined in AS 47.17.290.”⁷⁷

B. Applicable Law

AS 47.17.290(2) states:

“[C]hild abuse or neglect” means the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby.

Prior to 2013, the Commissioner issued a number of adjudicative decisions in which the qualifying phrase “under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby” in AS 47.17.290(2) was treated as applicable to the antecedent compound noun “physical injury.”⁷⁸ In addition, the Commissioner (consistent with the Office of Children’s Services’ express written policy) required a showing of actual harm to the child’s health or welfare, rather than only a threat of harm, in order to sustain a substantiated finding of abuse.⁷⁹

In a decision issued after the hearing in this case, the Commissioner interpreted AS 47.17.290(2) in a manner different than it had previously been applied.⁸⁰ As interpreted in the new decision, the qualifying phrase “under circumstances [*etc.*]” has been deemed applicable

dhss.alaska.gov/ocs/Pages/publications (accessed October 23, 2013). The administrative law judge takes official notice of the contents of the manual; either party may object by filing a proposal for action. See 2 AAC 64.300.

⁷⁵ CPS Manual, §2.1 at 2 (Policy D), 8 (Procedure D) (rev. 2/10/2010).

⁷⁶ CPS Manual §2.2.10.1 (rev. 6/1/2004).

⁷⁷ CPS Manual §2.2.10.1 (rev. 6/1/2004) (“Policy: ...A substantiated finding is one where the available facts indicate a child suffered harm as a result of abuse or neglect as defined by AS 47.17.290.”); §2.2.4, p. 17 (rev. 3/13/2009) (“Substantiated: refers to a finding where the available facts indicate a child suffered harm as a result of abuse or neglect as defined in AS 47.17.290.”).

⁷⁸ In re A.B., OAH No. 10-0157-DHS (Commissioner of Health and Social Services 2010), p. 7, n. 64; In re X & Y.Z., OAH No. 09-0958-DHS (Commissioner of Health and Social Services 2010), p. 4; In re R. & J.R., OAH No. 06-0021-CHC (Commissioner of Health and Social Services 2007) p. 14, citing In re John Doe, OAH No. 06-0112-DHS 3 (Commissioner of Health and Social Services 2007) p. 3. See also, In re M.M., OAH No. 08-0531-DHS (Commissioner of Health and Social Services 2009), p. 2; In re K.S., OAH No. 07-0600-DHS (Commissioner of Health and Social Services 2007).

⁷⁹ In re R. & J.R., OAH No. 06-0021-CHC at 14 (Commissioner of Health and Social Services 2007), citing In re M.S., OAH No. 06-0112-DHS (Commissioner of Health and Social Services 2007), p. 3. See also, In re M.M., OAH No. 08-0531-DHS, p. 2 (Commissioner of Health and Social Services 2009); In re K.S., OAH No. 07-0600-DHS (Commissioner of Health and Social Services 2007).

⁸⁰ In re F.T., OAH No. 13-0050-SAN (Commissioner of Health and Social Services 2013).

only to the antecedent noun “maltreatment.”⁸¹ Under that decision, it is not necessary to show that a child’s health or welfare is harmed or threatened in order to meet the statutory definition of child abuse, and a substantiated finding will be sustained in the absence of any showing of harm to the child. It is only necessary to show that the child incurred a physical injury.

In a subsequent decision, in another departure from prior adjudicative decisions, the Commissioner ruled that a finding of substantiated abuse will be sustained whenever a physical injury was incurred as a result of corporal discipline, on the ground that “parental discipline that causes any degree of physical injury is not reasonable and is, instead, an act of physical abuse.”⁸² Under the Commissioner’s prior decisions, the degree of injury (*e.g.*, the existence of actual harm) had been a factor in determining whether corporal discipline was considered to be child abuse.⁸³

The term “physical injury” has not been defined in statute or regulation for purposes of AS 47.17.290(2).⁸⁴ Accordingly, as in prior decisions, the term will be applied in its ordinary meaning⁸⁵ that is, “anything that causes some damage to a person’s body, even if slight.”⁸⁶ A visible bruise constitutes a physical injury within that meaning.⁸⁷

C. Mr. H’s Conduct Was Child Abuse

The conduct at issue in this case occurred at a time when the Department interpreted AS 47.17.290(2) as requiring a showing of harm or a threat of harm to the child’s health or welfare.

⁸¹ In Re F.T., OAH No. 13-0050-SAN (Commissioner of Health and Social Services 2013), p. 4 (“Under this new rule, the phrase ‘by a person under circumstances that indicate that the child’s health or welfare is threatened thereby,’ only applies to claims of maltreatment...The last part of this statutory clause does not apply to injury, neglect, sexual abuse, or sexual exploitation.”).

⁸² In Re N.M., OAH No. 12-0423 (Commissioner of Health and Social Services 2013), p. 3. *See also*, In Re F.T., p. 4 (child hit with belt as punishment; bruise is physical injury; physical injury “is sufficient to support a finding of child abuse”); In Re U.Z., OAH No. 12-0422-SAN, at 3-4 (Commissioner of Health and Social Services 2013), *appeal pending*, No. 3AN 13-09124 CI (Alaska Superior Court).

⁸³ *See* In Re X. & Y. Z., OAH No. 09-0589-DHS (Commissioner of Health and Social Services 2010 (physical and mental harm established); In Re [redacted], OAH No. 09-0510-DHS (Commissioner of Health and Social Services 2010) (child hit with a switch, leaving a “red mark”, not “bruises” but “like red scratches”). These decisions were consistent with the then-existing version of the CPS Manual. *See* In Re [redacted], at 4. The relevant portions of the manual have since been revised, and no longer provide guidance on this issue.

⁸⁴ For purposes of proceedings under AS 47.10, the term “physical injury” means “a physical pain or an impairment of a physical condition.” AS 47.17.990(26); AS 11.81.900(b)(46).

⁸⁵ *See, e.g.*, In Re John Doe, OAH No. 06-0112-DHS (Commissioner of Health and Social Services 2007), at 3.

⁸⁶ In Re N.M., OAH No 12-0423-SAN (Commissioner of Health and Social Services 2013), at 2, note 2.

⁸⁷ *Id.* *See also*, In Re F.T., p. 4 (bruise from being struck with a belt “demonstrates there was physical injury”).

As described above, the Commissioner's most recent decisions have expressly changed the interpretation of AS 47.17.290(2), and by implication reject the Office of Children's Services written policy that a substantiated finding calls for a showing of harm rather than only a threat of harm.

The conduct at issue in this matter occurred before the Commissioner issued the most recent decisions. Accordingly, the evidence will be considered under the law and policy in effect both before and after those decisions.

1. Mr. H's Conduct Harmed K's Mental Health

As previously stated, the Office of Children's Service's written policy is to issue a substantiated finding based on evidence of actual harm to a child's health or welfare. In this case, the office did not prove that the physical injury incurred by K was harmful to his physical health.⁸⁸ However, it has shown that his mental health was harmed. In particular, within a week after the incident, K was placed in a mental health treatment facility due, in large part, to the conflict with his father over corporal disciplinary measures.

2. K's Physical Health Was Threatened

The circumstances under which the altercation occurred plainly created a threat to K's physical health. There is an inherent risk of injury when a parent attempts to inflict corporal discipline on a resisting seventeen year old male: such an incident can easily lead to a brawl or accidental injury. In this particular case, moreover, K had, only a few weeks previously, taken out a knife to confront his father when he last attempted to inflict corporal discipline. Under these circumstances, Mr. H's attempt to inflict corporal discipline by striking K with a belt created a substantial and imminent risk to K's physical health.

3. The Conduct Was Not Reasonable Corporal Discipline

Alaska law provides that parents have the right to use reasonable corporal discipline. However, the Commissioner has previously ruled that without regard to the circumstances, corporal discipline that results in physical injury in the form of bruising is unreasonable. In this

⁸⁸ In this respect, this case is similar to In Re F.T. In that case, a parent disciplined a child by striking her with a belt, causing a bruise. The evidence did not establish that this physical injury was harmful to the child's health. *Id.*, p. 4, n. 18. See also In Re [redacted], OAH No. 09-0510-DHS (Commissioner of Health and Social Services 2010) (OCS employee testimony that use of an implement such as a means of corporal punishment is not considered per se to be physical abuse if it leaves only a transitory bruise).

case, Mr. H argues that his actions constituted reasonable corporal discipline. Because it is undisputed that Mr. H inflicted a physical injury on his son, under the Commissioner's most recent rulings Mr. H's conduct was child abuse as a matter of law.

In any event, the circumstances of this case do not support Mr. H's argument that he engaged in reasonable corporal discipline. Mr. H testified that he had been advised by professional counselors not to use corporal discipline. K was seventeen years old, on the verge of emancipation, far beyond the age that reasonable corporal discipline is generally administered. Mr. H was aware that K had substantial difficulties in communication and social functioning, that he was easily frustrated, and that he was prone to fits of anger. Just a few weeks previously, K had reacted to the same form of discipline by confronting his father with a knife. There was no emergency or exigency that warranted immediate intervention by Mr. H. Mr. H ignored obvious signs of distress on K's part and acted in the heat of the moment rather than after pausing for passions to subside, and he did not provide K with the space (emotional and physical) that he clearly needed in order to respond appropriately. Mr. H had alternative means of obtaining the information he had demanded from K, such as questioning his brothers. Mr. H's stated goal was to instill a "fear factor" in his son, not to educate, model, inform, or otherwise contribute to K's emotional growth and maturity. In light of all of these circumstances, Mr. H's administration of corporal discipline by striking his son with a belt was unreasonable.

IV. Conclusion

Under the Commissioner's most recent adjudicative decisions, the undisputed facts (Mr. H struck his child, resulting in physical injury) establish child abuse as a matter of law. However, those decisions were issued after the hearing in this case and at the hearing the Office of Children's Services' position (consistent with prior adjudicative decisions and the agency's written policy) was that it needed to show actual harm in order to sustain the substantiated finding.⁸⁹ Accordingly, the evidence in this case has also been considered under the law as interpreted and applied by the Commissioner prior to the most recent decisions. Viewed in that

⁸⁹ Statement of the Issue (2/21/2013), at 2 ("[T]he issue in this appeal is whether, by a preponderance of the evidence, K A. H suffered harm as a result of physical abuse by his father, U A. H.").

light, the preponderance of the evidence is that actual harm was inflicted and that Mr. H's conduct was not reasonable corporate discipline.

The substantiated finding is sustained.

DATED October 29, 2013.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]