ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512 **Juneau, Alaska 99811-5512**

BARRY T. DURBROW, Employee, Claimant, v. ARCTIC SLOPE REGIONAL CORPORATION, Self-insured Employer, Defendant.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 202404504 AWCB Decision No. 25-0086 Filed with AWCB Anchorage, Alaska on December 18, 2025

Barry T. Durbrow's (Employee) November 10, 2025 petition, filed on November 12, 2025, appealing a prehearing discovery order was heard on the written record on December 9, 2025, in Anchorage, Alaska, a date selected on November 14, 2025. The November 10, 2025 petition gave rise to this hearing. Non-attorney Employee is self-represented; attorney Martha Tansik represents the self-insured Arctic Slope Regional Corporation (Employer). The record closed at the hearing's conclusion on December 9, 2025.

ISSUES

As a preliminary matter, Employer seeks an order striking Employee's untimely hearing brief.

Employee has not yet responded to Employer's petition to strike his brief; so his position while unknown is presumed to be in opposition.

1) Shall Employee's untimely-filed hearing brief be stricken?

Employee contends that the prehearing conference designee erred as a matter of law or abused her discretion in denying his request for a protective order on a prescription medicine release. He argues that the designee failed to properly tailor the release to medications relative to his work injury with Employer. He seeks an order reversing the designee's decision, and entering a protective order in his favor.

Employer contends that pharmaceutical releases differ from other medical record releases because medications affect the entire body, may be used for more than one purpose and cannot be limited to a particular body part. It argues that the designee properly considered the parties' arguments and the issues in the case and correctly denied the protective order and required Employee to sign the pharmaceutical release. It seeks an order denying Employee's appeal.

2) Shall the designee's discovery order requiring Employee to sign a pharmaceutical release as written be reversed and remanded?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

1) On March 4, 2024, Employee was working for Employer as an "Operator Board Lead." He was exiting the wellhouse when a strong wind caught the wellhouse door, which exacerbated his bicep discomfort. (First Report of Injury, March 5, 2024).

2) On May 14, 2024, Troy Shields, MD, saw Employee for his work injury, took a history and examined him. Employee's chief complaint was "Right Shoulder." Dr. Shields charted, "He would like referral for potential testosterone replacement therapy to speed recovery if he is deficient which is reasonable. We will place the referral. . . ." Listed medications on Dr. Shields' report included: clindamycin and tretinoin both applied to the face, and finasteride and modafinil. (Shields report, May 14, 2024).

3) On June 30, 2025, Kathleen Sturrock, PA-C, noted that in May 2024, Employee had a steroid injection into his right shoulder for his work injury. This, along with home exercise, resolved his pain for about eight months. "Patient reports his right shoulder pain started to return 2 to 3 months ago while mountain biking. He had an injury while shoveling dirt when he felt severe worsening of his right shoulder pain and he also developed shoulder instability and subluxation episodes after that incident. He has a history of shoulder instability and multiple dislocations when he was a

teenager." She also added, "Patient had a prior labral repair and biceps tenodesis done 5 years ago." (Sturrock report, June 30, 2025).

4) On September 8, 2025, Employer sent Employee a cover letter with various medical record releases attached and asked him to sign, date and return them. Employee signed, dated and returned to Employer's lawyer all the releases except for two, both entitled, "Authorization to Release Medical Information Per HIPAA Privacy Regulations." One was to "Pharmacies and/or health care providers or other covered entities, or their designees, having custody of medical or rehabilitation records or information pertaining to the following individual: [Employee]":

> **INFORMATION TO BE DISCLOSED**: Medical and pharmaceutical information from 2018 to the expiration date of this release relating to [Employee].

The second objectionable release was specifically directed to: "Smith's Pharmacy, Carrs/Safeway Pharmacy, Costco Pharmacy, CVS Pharmacy, Fred Meyer/Kroger Pharmacy, Sam's Club Pharmacy, Renown Pharmacy, Walgreens Pharmacy, Walmart Pharmacy." Employee hand-wrote on these releases that he was going to object via a petition to the Alaska Workers' Compensation Board (Board). (Letter, September 8, 2025, with attachments).

5) On September 22, 2025, Employee petitioned for a protective order on Employer's pharmaceutical releases attached to its September 8, 2025 letter. He contended:

> The insurer's attorney is requesting overly broad medical information that is not related to the injury. Information related to prescriptions are part of the doctor's notes and additional information is not required. The employee requests AWCB deny the attorney's request for all pharmacy information since 2018. See attached. (Petition, September 22, 2025).

6) On September 24, 2025, Scot Youngblood, MD, orthopedic surgeon, saw Employee for an employer's medical evaluation (EME). Dr. Youngblood reviewed Employee's medical records and examined him. He diagnosed a right-shoulder strain substantially caused by the March 4, 2024 work injury, "long ago resolved and medically stable, with post-traumatic glenohumeral osteoarthritis, all of which were not permanently aggravated by the work injury and apparently not medically stable; recurrent right-shoulder dislocations as a teenager; subsequent right-shoulder sprain with labral tear and biceps tendinitis, "due to a fall down stairs in 2018"; status post-labral repair and biceps tenodesis in 2020, with post-traumatic glenohumeral osteoarthritis, not aggravated by the injury; left-shoulder strain substantially caused by the work injury, long ago

resolved and medically stable; and left-shoulder status post 2017 labral repair with 2019 tenodesis, not permanently aggravated by the injury, and medically stable. Dr. Youngblood stated that the right-shoulder MRI was actually ordered before the work injury. He also offered his causation opinions, but psychosocial or mental health issues were not included as potential causes for Employee's symptoms. (Youngblood report, September 24, 2025).

7) On October 13, 2025, Employer answered Employee's petition for a protective-order. It noted that he claimed bilateral shoulder injuries, but was refusing to sign "standard pharmacy releases" because he believed Employer should be able to determine his prescriptions from his medical records. Employer argued that pharmacy information is relevant to his case because it demonstrates whether he was previously on any medications, "making his post injury claim for medications more or less likely," and it provides documentation so Employer could make appropriate payments. It cited its constitutional right to defend against claims and relied on the *Granus* decision and various statutes and regulations. Employer argued that pharmacy records were a standard part of the discovery process. Discovering pharmacy records would enable Employer to verify the precise prescriptions and quantities filled as well as frequency and cost. Moreover, it contended that if prescriptions had been filled for the same or similar medications in the past, pharmacy records were an excellent source of such information. Generally, Employer argued that pharmaceutical information would tend to make Employee's right to benefits more or less likely related to the work injury. Employer did not explain how. It sought an order from the Board designee requiring Employee to execute and return the release within 14 days or face appropriate sanctions. (Opposition to Petition For A Protective Order, October 13, 2025).

8) On October 16, 2025, Employer controverted Employee's right to any additional benefits, based on Dr. Youngblood's EME report. It contended that Employee suffered only shoulder strains, which resolved after three months. Employer argued that based on Dr. Youngblood's opinions, any further need for medical treatment was based on either Employee's preexisting conditions, or on post-injury superseding intervening causes. (Controversion Notice, October 16, 2025).

9) On October 28, 2025, the parties appeared before a Board designee at a prehearing conference to address Employee's September 22, 2025 petition for a protective order. The Board's designee recorded the following summarized evidence and arguments:

Discussions:

> This prehearing was set on the EE's 9/22/25 petition for a protective order from signing the prescription release. The following are the parties' positions during the prehearing. The ER stated she received all other releases.
>
> EE:
> The EE stated that he does not want to give the ER his entire medical history and that they need to revise it to be specific to the injury. The EE stated that all prescription information should be in the medical records, since the doctors prescribe it and include it in their notes, which they have access to. If they need additional information about a specific prescription, they can tailor their release accordingly. The EE stated that he wants to ensure that the ER specifies the prescription release the same way as the medical release, specifically for his work injury. The EE, in addition, stated that the ER controverted the benefits, and in light of that, they shouldn't get any additional records until that controversion status has changed. The ER noted that the ER should not stop getting releases even after a controversion.
>
> ER:
> The designee asked if the body part is included in the release. The ER stated that pharmaceutical records differ and are not identified by body part, and they are unable to get information that way. The designee asked the ER why the records went as far as 2018. The ER stated that there were medical records for the same body part two years prior. The ER stated that it is impossible to request pharmacy records the same way you can for medical releases to a specific body part or injury; you can't limit it that way to get the information. The ER noted that it is time-limited to two years from the first day of injury of the same body part. The provider does not allow them to send medical records requests other than the records for that specific body part, and the pharmacy would either send the information or not, so the system itself protects the disclosure of the information. In addition, the ER also noted that the EE can file a petition to strike any records that he believes are not relevant.

Having reviewed the parties' positions on Employee's petition for a protective order, the designee concluded:

> Designee:
> . . . .
>
> In regard to the EE's petition for a protective order from signing the pharmacy release. The designee reviewed the ER's pharmaceutical release, the EE's 9/22/25 Petition for protective order, and the ER's 10/13/25 answer to the petition. The ER has due diligence in investigating the cases that they are paying benefits for, even if the EE is being denied benefits, the ER has to gather their records and find out what they need to pay for related to the injury. The designee believes that the same prescriptions can be used for different body parts, which cannot be limited to a

> specific body part. The ER noted that they are unable to limit the release to a body part for prescription, but they did limit it to two years prior to the first known date of injury to the injured part. In addition, the EE can verify any medical records being filed and object to any records he believes are not related to the injury by filing a petition to strike them. The designee finds that the pharmaceutical information is standard and likely to lead to discoverable information. The EE's 9/22/25 Petition for protective order and order is denied and orders the employee to sign the pharmaceutical release by **11/10/2025.**
> . . . .
>
> **Action**:
> - The EEs 9/22/25 Petition for a protective order . . . is denied and orders the employee to sign the pharmaceutical release by **11/10/2025**. . . . (Prehearing Conference Summary, October 28, 2025).

10) On November 12, 2025, in a petition dated November 10, 2025, Employee timely appealed the designee's October 28, 2025 discovery order to the Board. Attached to his petition was a lengthy, well-organized and well-cited brief setting forth Employee's position. The brief was not presented to the designee prior to or at the October 28, 2025 prehearing conference. (Petition; Petition to Appeal Designee's Discovery Order and for Protective Order Limiting Pharmacy Records, November 10, 2025; observations).

11) On November 14, 2025, the Workers' Compensation Division (Division) sent the parties at their addresses of record, by United States Postal Service (USPS) certified mail, with a return receipt ("green card) requested, a hearing notice for the December 9, 2025 written-record hearing. The notice stated in part, "If filed, oral or written arguments must be filed at the address below and served on all parties no later than five business days prior to the hearing." (Written Record Hearing Notice, November 14, 2025).

12) On December 1, 2025, the Division received from Employee, who resides in Nevada, his signed USPS "green card." The date he received the November 14, 2025 notice is not provided on the "green card." (USPS "green card," received December 1, 2025).

13) December 2, 2025, was five business days before the December 9, 2025 written-record hearing and the date upon which hearing briefs were due. (Observations).

14) On December 2, 2025, Employer timely filed and served a hearing brief. As it had done in its answer to Employee's petition, Employer argued that pharmacy information is relevant to Employee's case because it demonstrates whether he had previously taken medication. In other words, it contended that prescriptions are relevant to determine if Employee was already on

medication for some other cause, or if additional medications are correlated with the work injury and perhaps predate it. Employer contended that pharmacy releases differ from other medical record releases because medications are not necessarily tied to a particular health condition and are not limited by body parts essentially because the medication affects the entire body. Employer contended that allowing it to discover pharmaceutical records would support its constitutional right to defend against claims and allow for broad and liberal discovery. Lastly, Employer noted Employee's right to strike and recover records he believes are irrelevant after they are received, pursuant to the Alaska Workers' Compensation Act (Act). (Employer's Hearing Brief in Support of the Board Designee's 10/28/25 Discovery Order, December 2, 2025; observations).

15) On December 4, 2025, Employee filed a hearing brief; it was untimely. Although the brief does not show proof of service on Employer, Employer apparently received it because it promptly filed a December 5, 2025 petition to strike it as late-filed, below. In his brief, Employee objected to the designee's time limitation on the subject release without regard to medications that may be revealed. He argued that the release was "overbroad." Employee further stated the designee's order ignored possible "tailored alternatives" to the release. Thus, Employee sought a "tailored to relevance" release. He relied on his previous argument that any prescriptions that are relevant to his injury would be reflected in his medical records, which Employer already has. (Employee's brief, December 4, 2025; observations).

16) On December 5, 2025, Employer filed and served a petition for an order striking Employee's brief as late-filed. It contended that the late-filed brief "cannot be considered and must be stricken from the record. See 8 ACC [sic] 45.114." (Petition, December 5, 2025).

17) Employee has not yet filed a claim for benefits. (Agency file: Judicial, Party Actions, Claim tabs, accessed December 9, 2025).

18) There are no mental health issues mentioned or implied in any medical record in Employee's agency file. (Observations).

PRINCIPLES OF LAW

> **The Constitution of the State of Alaska §22. Right of Privacy**. The right of the people to privacy is recognized and shall not be infringed. . . .

In 1972 Alaska citizens, "with their strong emphasis on individual liberty," enacted an amendment to the Alaska Constitution expressly providing for a right to privacy broader in scope than that

found in the United States Constitution. *Ravin v. State*, 537 P.2d 494, 514-15 (Alaska 1975). Neither the state nor the federal right to privacy is absolute, but infringements of the right must be supported by sufficient justification. *Falcon v. Alaska Public Offices Commission*, 570 P.2d 469, 476 (Alaska 1977). Conflicting rights and interests must be balanced. *Messerli v. State*, 626 P.2d 81, 83 (Alaska 1980).

The Act does not expressly address whether the Board has power to protect against disclosure of information based on an employee's constitutional right to privacy. However, by expressly authorizing the Board to order the release of private records in §.107, the legislature granted both implied power and a duty to balance an injured employee's right to privacy against an employer's right and duty to discover information related or relevant to the employee's claims. The Act and administrative regulations must be construed with this balancing in mind.

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
>
> > 1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

The Board may base its decision on testimony, evidence, the Board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

Richard v. Fireman's Fund, 384 P.2d 445, 449 (Alaska 1963) said, "We hold to the view that a workmen's compensation board . . . owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his . . . right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law."

> **AS 23.30.107. Release of information**. (a) Upon written request, an employee shall provide written authority to the employer, carrier . . . to obtain medical . . . information relative to the employee's injury. . . . This subsection may not be construed to authorize an employer, carrier, rehabilitation specialist, or reemployment benefits administrator to request medical or other information that is not applicable to the employee's injury. . . .

Employers must be able to thoroughly investigate workers' compensation claims to verify information provided by the claimant, properly administer claims, effectively litigate disputed claims, and detect possible fraud. Medical record releases are important means of doing so. Medical records contain "uniquely sensitive and personal information." An initial medical release limited to two-years pre-injury is "reasonable" to find relevant evidence in most cases. *Cooper v. Boatel, Inc*., AWCB Dec. No. 87-0108 (May 4, 1987).

Granus v. Fell, AWCB Dec. No. 99-0016 (January 20, 1999) addressed an injured worker's initial refusal to sign medical releases for her employer to obtain records prior to her work injury. She had pricked her finger with a dental instrument and developed an infection. Pain spread up her hand and into her arm and shoulder. Some physicians suggested she had a medical condition, while others attributed her ongoing and spreading symptoms to non-work-related mental-health concerns. *Granus* stated that under §.107(a), an employee must, upon written request, release medical and rehabilitation information "relative" to the employee's injury. Evidence is "relative" to an injury where the information sought is reasonably calculated to lead to facts having any tendency to make an issue in a case more or less likely. As to time limitations, *Granus* stated:

> In our experience, records of medical treatment to the body part or organic system Employee alleges was injured in the course and scope of employment, covering a period of two years prior to the date of injury, are sufficiently likely to lead to admissible evidence to be discoverable in most contested cases. However, the scope of releases the Act requires an employee to sign can only be determined by a review of the unique facts presented, and specific benefits claimed in each case. *Id*. at 10.

Referring to the need to strike an appropriate balance between the employer's right to discovery and the employee's right to privacy for unrelated, irrelevant and confidential information, *Granus* noted: Compelling interests in prompt, fair, and equitable disposition of claims, ensuring integrity of the workers' compensation system, and providing employers with due process, necessarily require that employers be permitted to secure private and irrelevant information that is "reasonably" calculated to lead to admissible evidence. It is foreseeable that reasonable discovery may entail release of private information that is ultimately irrelevant to the issues in an employee's case. To protect an employee's legitimate privacy interests, it is incumbent on the Board to ensure discovery takes place "in the least intrusive manner possible." *Id.* at 23-24.

Granus considered the parties' positions and medical evidence and decided the employee's records for neurological disorders, mental-health counseling and treatment, somatoform disorders, conversion disorder and chronic pain syndrome, and records relating to treatment of her right hand, arm and shoulder were reasonably calculated to lead to discovery of admissible evidence on the issues of the nature and cause of her injury. These records were reasonably calculated to lead to admissible evidence. The *Granus* principle that discovery must be "tailored" to be no more "bothersome or burdensome than necessary" has become standard in workers' compensation cases. The scope of evidence admissible in administrative hearings is generally broader than is allowed in civil courts. Information that would be inadmissible at a civil trial may nonetheless be discoverable in a workers' compensation case if it is reasonably calculated to lead to admissible evidence. The burden of demonstrating relevancy of information being sought rests with the proponent of the release or discovery request. *Id*.

Adkins v. Alaska Job Corps Center, AWCB Dec. No. 07-0128 (May 16, 2007) addressed an injured worker's appeal from a Board designee's denial of a protective order and the designee's order for her to sign a pharmacy record release restricted to pharmaceutical drugs prescribed by physicians the employee saw for her work injury. Her employer sought the releases so it could identify medical providers the claimant had seen for her work injury. Following a prehearing conference, the Board designee issued the following order regarding a pharmacy release:

> Regarding the employee's request for protective order on the unrestricted pharmacy records release. The employee is required to release information relative to her injury. The employer's release should be modified to be restricted to the physicians whom the employee has disclosed she has seen for this injury. She is ordered to sign the release within 14 days of receipt.

Both *Adkins* parties appealed this decision to the Board. After reviewing the parties' respective positions on the pharmacy release issue, *Adkins* offered the following analyses and decision:

> Further, we find the pharmaceutical records, as modified, have not been shown to have any tendency to make contested material facts at issue in this case more or less likely. We find the employer could determine exactly those pharmaceutical drugs being prescribed for the employee's work injury through the treating physician's medical reports.
> . . . .

> We find pharmacy releases restricted to release of physicians who have prescribed medications for the employee since June 14, 2002 forward, with the prescription drugs prescribed redacted, are reasonably likely to lead to the discovery of admissible evidence. We further find that such pharmaceutical releases will not require the pharmacists to make any determinations regarding what a prescription was written for or to exercise independent medical judgment to honor the release.

Adkins' relevant order included:

> . . . .
> 7. The employee's request for a protective order is granted.
> 8. The employee shall sign releases for pharmaceutical records prepared in accord with this decision within 15 days of receipt. The releases shall be limited to the names of the physicians who have prescribed pharmaceutical drugs for the employee from June 14, 2002, forward. The releases shall direct the pharmacy to redact the drugs prescribed by the physicians.
> 9. The Board shall retain jurisdiction over this matter pending the pharmacy's acceptance of the pharmaceutical releases modified by the Board. . . . *Id.*

> **AS 23.30.108. Prehearings On Discovery Matters; Objections to Requests For Release of Information; Sanctions For Noncompliance**. . . .
>
> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases . . . if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. . . . If a discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. . . . The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion (emphasis added).

An agency's failure to apply controlling law may be an abuse of discretion. *Manthey v. Collier*, 367 P.2d 884 (Alaska 1962).

Leigh v. Alaska Children's Services, 467 P.3d 222, 228-29 (Alaska 2020) involved a claimant who requested and obtained a protective order against releasing her mental-health records, given that she only claimed an ankle injury. The Board designee granted the order but on appeal the Board reversed and required the employee to sign a mental-health record release because three physicians had suggested mental-health was adversely affecting her recovery. The claimant appealed and her employer argued to the Alaska Supreme Court that the current causation standard required the Board to look at all possible causes of disability or need for treatment to determine whether work

was "the substantial cause." In *Leigh*, physicians said there was interaction between the claimant's pain complaints and her mental-health.

Leigh construed §.107 to place limits on access to a claimant's medical records to prevent a "fishing expedition." The release law's main purpose was to allow employers to obtain "reasonable medical releases." The Court found the Board's *Granus* decision "persuasive" in determining what "relative to an employee's injury" means; *i.e*., "relative" means essentially the same as "relevant." Agreeing with *Granus*, the Court in *Leigh* said:

> The current causation standard in workers' compensation cases requires the Board to consider the relative contribution of different causes to determine whether a claim is compensable. An employer has a right to develop defenses and discover information relevant to different possible causal factors in response to a worker's written claim. *Id*. at 229.

However, *Leigh* further stated that this was a situation where the claimant did not request mental-health-related benefits, but where the employer had medical evidence suggesting the employee's mental-health played a role in her delayed recovery. In such cases, limitations were based on the "specific circumstances of the case." *Id*. at 230. *Leigh* required the claimant to sign a properly limited mental-health record release.

Moreover, the Board at hearing had considered post-discovery-order briefs and arguments in rendering its decision, without objection from any party. Of further interest on this point is a footnote in *Leigh*, which provided persuasive *dicta*:

> Under AS 23.30.108(c) the Board "may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record." Neither party mentioned the procedural deviation here, and we do not discuss it further. *Id*. at 226, n. 2.

Fletcher v. Pike's on the River, Inc., Memorandum Opinion and Judgment (Alaska 2025) (unpublished but available on Westlaw) also addressed an appeal from a Board designee's discovery order. *Fletcher* said in *dicta* in a footnote:

> Workers' compensation discovery disputes are first decided at a prehearing conference; the decision of the prehearing conference officer can be appealed to the

Board, but hearings on discovery disputes are limited to the same written record that was before the prehearing conference officer. *Id*. at 3, n. 6.

8 AAC 45.114. Legal memoranda. Except when the board or its designee determines that unusual and extenuating circumstances exist, legal memoranda must

(1) be filed and served at least five working days before the hearing, or timely filed and served in accordance with the prehearing ruling if an earlier date was established;
(2) not exceed 15 pages, excluding exhibits, unless at a prehearing the board or its designee determined that unusual and extenuating circumstances warranted a longer memorandum; if the board or its designee granted permission at prehearing to file a legal memorandum exceeding 15 pages, excluding exhibits, it must be accompanied by a one-page summary of the issues and arguments;
(3) be on 81/2 by 11-inch paper of at least 16-pound weight, have margins of at least one inch on all sides, exclusive of headers and page numbers, and have spacing of not less than one and one-half lines, except that quotations may be single-spaced and indented; and
(4) display the text in clear and legible hand printing or writing in black or blue ink or in black typeface equivalent in size to at least 12 point Courier or 13 point Times New Roman or New Century Schoolbook. . . .

8 AAC 45.900. Definitions. (a) In this chapter
. . . .

(5) "claim" includes any matter over which the board has jurisdiction; . . .

ANALYSIS

1) Shall Employee's untimely-filed hearing brief be stricken?

On November 14, 2025, the Division sent the parties by certified mail at their addresses of record a hearing notice for the December 9, 2025 written-record hearing. The notice stated, "If filed, written arguments must be filed at the address below and served on all parties no later than five business days prior to the hearing." On December 1, 2025, the Division received from Employee his signed, USPS certified mail "green card." The date he received the November 14, 2025 notice is not stated on the card. However, Employee received the hearing notice as evidenced by his signature on the card. December 2, 2025 was five business days before the December 9, 2025 written-record hearing, and was the date upon which hearing briefs were due. Based on the

instructions the Division gave him in the November 14, 2025 written-record hearing notice, and on the cited regulation 8 AAC 45.114, Employee's hearing brief was late. *Rogers & Babler*.

Employer petitioned for an order striking Employee's hearing brief because it was untimely. Citing 8 AAC 45.114, Employer argued that the brief "cannot be considered" and "must be stricken from the record." However, while 8 AAC 45.114(1)-(4) states that a legal memorandum must be filed and served at least five working days before a hearing, it does not provide for a "strike" sanction for an untimely brief. Moreover, given his non-attorney, self-represented status, and given that the cited regulation does not provide a brief-striking sanction, Employer's petition for an order striking Employee's hearing brief because it was untimely will be denied. However, this does not mean that all evidence and arguments in Employer's timely, and in Employee's untimely, briefs will be considered. Only evidence and arguments "presented to the . . . designee" may be considered, pursuant to §.108(c). *Leigh*; *Fletcher*.

2) Shall the designee's discovery order requiring Employee to sign a pharmaceutical release as written be reversed and remanded?

The only dispute in this case is a discovery order, which is further limited to a pharmacy records release. The designee denied Employee's September 22, 2025 request for protection against a release for those records. Employee, in attachments to his September 22, 2025 petition for a protective order, objected to two releases regarding pharmacy records. Both were entitled "Authorization to Release Medical Information Per HIPAA Privacy Regulations." One was directed to pharmacies in general; the other was directed to named pharmacies. It is unclear from the agency file if both releases are at issue, because the designee's order refers to a singular "release." Regardless of how many releases remain at issue, the following analyses apply:

a) What benefits are in dispute?

Employee has not filed a claim for benefits. Therefore, there are no benefits currently in "dispute" in the usual sense of a pending "claim." However, on October 16, 2025, Employer controverted Employee's right to additional benefits, based on Dr. Youngblood's EME report. This means Employer will not pay Employee or his medical providers any benefits unless he files a claim and the issue is resolved. *Richard*. Nevertheless, under §.900(a)(5) the word "claim" includes "any

matter over which" this panel has jurisdiction, and not just a formal "Claim For Workers' Compensation Benefits." Sections .107(a)-.108(c) give this panel jurisdiction over appeals from a designee's discovery order even in cases where the injured worker has not filed a claim. The only benefit Employee is pursuing currently is medical care. Employer's controversion includes medical benefits and disputes that his need for it is related to his work injury. Thus, the nature, cause and compensability of Employee's need for medical treatment are in dispute.

b) What release terms are reasonably calculated to lead to evidence relevant to the issue in dispute?

(i) What evidence and arguments may be considered on appeal?

Before addressing terms, this panel must determine what evidence and arguments it may consider in this appeal. The Act is clear on limitations imposed on factfinders when reviewing a designee's discovery order. The applicable statute §.108(c) states that this panel may not consider "any evidence or argument that was not presented" to the designee at the prehearing conference, and shall determine the issue solely on the "written record." For that reason, this decision limited its discussion of the parties' various post-discovery-order pleadings to include only evidence and arguments that were before the designee at the October 28, 2025 prehearing conference. The review is further nuanced because the conference summary is just that -- a summary -- and it may or may not summarize all evidence or arguments presented to the designee orally. However, neither party challenged the designee's October 28, 2025 prehearing conference summary as inaccurate or misrepresenting a party's evidence or arguments on the pharmacy release issue presented to the designee at the prehearing conference.

Neither the Act nor the regulations define what constitutes the "written record." However, the Alaska Supreme Court's 2020 *Leigh* decision in *dicta* called a panel's consideration of additional arguments and briefing outside §.108(c)'s limitations a "procedural deviation." Likewise, the Court's 2025 *Fletcher* opinion provided persuasive language on this issue. It stated, "hearings on discovery disputes are limited to the same written record that was before the prehearing conference officer." This persuasive *dicta* significantly limits this panel's ability to rely on the parties' post-discovery-order pleadings -- timely filed or not. Given the statute's plain language and the Court's *Leigh* and *Fletcher dicta*, this decision will not consider any evidence or argument that was not

presented to the designee before or at the October 28, 2025 prehearing conference where the designee rendered her discovery order.

(ii) Limitation in time.

Medical records contain "uniquely sensitive and personal information." Consequently, time limitations apply. On the other hand, Employer has the right to thoroughly investigate Employee's situation to properly administer his case, effectively litigate disputed issues and detect any possible fraud. *Cooper*. Employee claims a March 4, 2024 injury. His September 22, 2025 petition asked for protection against Employer's pharmacy request going back to "2018." Case law allows "reasonable" discovery of medical records initially beginning two years prior to the work injury. *Cooper*; *Granus*. Ordinarily, that would limit Employer's release to March 2022. Employer seeks a release for pharmacy records with a time limitation going back two years prior to Employee's earliest documented shoulder injury, which was in 2020. Since there was a known 2020 right-shoulder surgical procedure, which could be relevant to Employee's current right-shoulder symptoms, this "unique fact" means the two-year period is adjusted from the earliest documented injury date. *Granus*. Therefore, Employer's request, and the designee's order, allowing Employer to discover pharmaceutical records going back to 2018 is correct and will be affirmed.

(iii) Limitation on subject matter.

Given the sensitive nature of medical records, limitations on subject matter also apply. *Granus*; *Leigh*. Employee's September 22, 2025 petition argued that the objectionable releases requested "overly broad medical information" not related to his injury. He added that prescriptions are part of his doctors' notes and "additional information is not required." In short, Employee wanted the pharmacy release "tailored" to his specific injury.

Employee at the October 28, 2025 prehearing conference stated he did not want to give Employer his entire medical history, and that Employer needed to revise its pharmacy release to be "specific to the injury." Employee stated that all prescription information should be in his medical records, since his doctors prescribe medication and include it in their notes, to which Employer has access. He argued that if Employer needed additional information about a specific prescription, it can "tailor [its] release accordingly." Employee stated he wanted to ensure Employer specified the

prescription release the same way as a medical release -- "specifically for his work injury." He additionally stated that Employer controverted benefits, and consequently it should not get any additional records until that controversion is resolved.

In its October 13, 2025 answer to Employee's petition for a protective order, Employer contended Employee refused to sign "standard pharmacy releases." It argued that pharmacy information is relevant to Employee's "claim" (used in the generic sense) because it demonstrates if he was previously on any medications, "making his post injury claim for medications more or less likely." Employer also contended that pharmaceutical records provide documentation so it can make payments. It cited its constitutional right to defend against claims and cited *Cooper* and *Granus* as support. Employer argued that discovering pharmacy records enables it to verify the "precise prescriptions and quantities filled" as well as their frequency and cost. It implied that pharmacy records are an excellent resource to discover if prescriptions were filled for the same or similar medications in the past that Employee is obtaining now. Employer considered Employee's objection to "standard pharmacy releases" without basis, and claimed it made discovery more cumbersome and difficult, contrary to the Act's intent. AS 23.30.001(1).

Employer at the October 28, 2025 prehearing conference, disagreed with Employee's position on the effect its controversion has on its ability to obtain medical evidence. It further stated that pharmaceutical records differ from other releases and are not identified by "body part." Employer argued that it cannot limit a pharmacy release and still obtain pertinent information. It contended it "is impossible" to request pharmacy records specific to a body part or injury. According to Employer, "providers" will not allow it to send requests for medical records other than records for a specific body part, and "a pharmacy would either send the information or not, so the system itself protects the disclosure of the information." In addition, Employer also suggested that Employee can file a petition to strike any discovered records he believes are not relevant.

Above are the parties' "evidence and arguments" the panel may consider in this appeal under §.108(c), *Leigh* and *Fletcher*. First, Employee's argument that Employer's controversion should prevent it from obtaining any further medical evidence is without legal citation or support. A

controversion does not prevent an employer from obtaining written authorizations for an injured worker to release information under §.107. This argument has no merit and will be rejected.

Second, Employer bears the burden to demonstrate relevancy of information being sought in a pharmacy record release. *Granus*. Employee sought a protective order to tailor and limit Employer's right to obtain a list of his prescription medications going back to 2018. He expressly stated that the pharmacy release was too broad and should be tailored to his specific "work injury." Employer countered that it is "impossible" to tailor a release to obtain pharmaceutical records, for various reasons. But Employee has the better argument. While the designee's order properly required Employee to sign a time-limited release back to 2018 for pharmacy records, it did not restrict the release's subject matter. In that regard, the designee did not follow the law, which in this case was an abuse of discretion. *Manthey*.

To avoid becoming a "fishing expedition," Employer's release must be tailored and reasonably calculated to obtain prescription information relative to Employee's shoulder injury. The information sought is "relative" or relevant to Employee's injury if it is reasonably calculated to lead to facts having any tendency to make an issue in a case more or less likely. Employer had to articulate to the designee at the prehearing conference some reasonable connection between every prescription Employee had received going back to March 2018, and his right-shoulder injury in 2024, to make discovery of that information "calculated to lead to admissible evidence." *Granus*.

Employer's arguments are conclusory. For example, an injured worker may be prescribed Viagra for erectile dysfunction, eyedrops for dry eyes, and psychotropic medication to address depression or anxiety. Without medical evidence suggesting that these medications could affect a right-shoulder injury, an employer could not support a broad pharmaceutical record release that would allow it to obtain such sensitive information. Yet, that is what the designee ordered in this case. Employer obtained a release allowing it to discover all medications Employee had taken since 2018 -- in other words, it got a fishing net, not a line baited for a specific species of fish.

Employer's "impossibility" argument is also not well taken. Previous decisions have restricted pharmacy releases in various ways. *Adkins*. Employee has a constitutional right to privacy broader

than that provided in federal law. Alaska Const. §22; *Ravin*. Invading that right requires adequate justification and a careful balancing act. *Falcon*; *Messerli*. Discovery must take place "in the least intrusive manner possible." *Granus*. A broad release requiring Employee to divulge every prescription he has obtained since 2018 is the most intrusive method for Employer to obtain discovery. According to *Granus*, found persuasive by the court in *Leigh*, discovery must be no more bothersome or burdensome than necessary. The *Granus* analysis is the only rubric that has become "standard" in workers' compensation cases.

Before the designee on October 28, 2025, Employer offered no medical evidence suggesting or even implying that all prescriptions Employee may have obtained since 2018 could affect his shoulder injury. Consequently, the designee's approval of an over-broad pharmacy release that required him to allow Employer to discover this information was an abuse of the designee's discretion under §.108(c). *Manthey*. The October 28, 2025 order denying Employee's request for a protective order and requiring him to sign the pharmacy release (or releases as the case may be) will be reversed and the case remanded to the designee to issue a protective order limiting the subject matter of the pharmacy release in accordance with this decision. *Leigh*.

Employer presented no evidence that a pharmacy could not release a list of prescribed pharmaceuticals limited to type or class, while excluding (or redacting) others. A release could be tailored to medication related to pain or orthopedic conditions, while excluding other medications that have no rational connection to a shoulder injury. On remand, the parties are encouraged to agree on a tailored pharmacy release going back to 2018 that will encompass release of pharmaceuticals that could reasonably have some nexus to his shoulder injury.

To be clear, just as birth-control medications for a female injured worker could not reasonably be likely to lead to discovery of admissible evidence for a broken ankle, other medications like painkillers, anti-inflammatories, and muscle relaxants clearly may. If the parties are unable to formulate an agreeable pharmacy release that allows Employer to obtain pharmaceutical records addressing a shoulder injury, while protecting Employee's constitutional right to privacy, Employer may present a new release written in accordance with this decision to Employee for his

signature. He reserves his right to file a petition for a protective order on that release. The designee will be directed to apply the above analyses as she reviews any such petition in the future.

CONCLUSIONS OF LAW

1) Employee's untimely-filed hearing brief will not be stricken.
2) The designee's discovery order requiring Employee to sign a pharmaceutical release as written will be reversed and remanded.

ORDER

1) Employer's December 5, 2025 petition to strike Employee's hearing brief is denied.
2) The designee's October 28, 2025 discovery order is reversed and remanded.
3) The parties are encouraged to agree on a pharmacy release going back to 2018 that will encompass release of pharmaceuticals that could reasonably have some nexus to Employee's shoulder injury.
4) If the parties are unable to agree on a pharmacy release that allows Employer to obtain pharmaceutical records addressing a shoulder injury, while protecting Employee's constitutional right to privacy, Employer may present him with a new release written in accordance with this decision for his signature.
5) Employee reserves his right to file a petition for a protective order on that release.

Dated in Anchorage, Alaska on December 18, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Randy Beltz, Member

/s/
Brian Zematis, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Barry T. Durbrow, employee / claimant v. Arctic Slope Regional Corporation, self-insured employer; defendants; Case No. 202404504; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on December 18, 2025.

/s/
Rochelle Comer, Workers' Compensation Officer I