

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

RENEE PUMA,)
)
Employee,)
Claimant,)
)
v.) INTERLOCUTORY
) DECISION AND ORDER
)
WILSON BROTHERS DISTRIBUTING,) AWCB Case No. 202510114
)
Employer,) AWCB Decision No. 25-0091
and)
) Filed with AWCB Anchorage, Alaska
UMIALIK INSURANCE CO.,) on December 30, 2025
)
Insurer,)
Defendants.)
)

Renee Puma's (Employee) September 1, 2025, petition (filed on September 2, 2025) to strike records and opinions of Jared Kirkham, MD, and to preclude his testimony, was heard on the written-record on December 3, 2025, in Anchorage, Alaska, a date selected on September 30, 2025. The September 1, 2025, petition gave rise to this hearing. Attorney Keenan Powell represents Employee; attorney Colby Smith represents Wilson Brothers Distributing and its insurer (Employer). The record closed when the panel deliberated on December 29, 2025.

ISSUE

Employee contends that Employer's adjuster Molly Friess improperly interfered with Employee's selection of an authorized physician to treat her. She further argues that Employer's agent, nurse case manager Camilla Davis, conspired with Friess to influence Employee's treatment by suggesting that Dr. Kirkham was Employee's only option for needed medical care. Moreover,

Employee contends that without a medical release, Davis conferred with Dr. Kirkham *ex parte* to develop a treatment plan. She argues that Friess used Dr. Kirkham as her “retained expert” under the “guise of a treating physician” and foreclosed Employee’s treatment and evaluation elsewhere through Davis’ representations. Employee contends that neither Friess nor Davis disclosed that Friess and her employer Umialik had an alleged conflict of interest because they frequently use Dr. Kirkham as an employer’s medical evaluation (EME) physician. Further, Employee argues that when she asserted her privacy rights and her right to designate a treating physician, Friess “bullied” her and became “hostile.” Because in her view Dr. Kirkham was a “wolf in sheep’s clothing,” or in other words, “a retained expert dressed up like a treating physician,” Employee seeks an order striking all of Dr. Kirkham’s medical opinions and records and precluding Employer from introducing his opinions or testimony in this case for any purpose.

Employer contends there was no collusion or bias and Employee’s injury was accepted, benefits were paid and nothing has ever been denied. It argues that Employee was an “established patient” with Dr. Kirkham and had seen him prior to her work injury. Employer contends that case law does not favor striking relevant evidence, especially when there is no evidence of bias. Rather, in Employer’s view, factfinders have authority to weigh and determine evidence and witness credibility at hearing. Moreover, it argues that a treating physician’s chart notes are “automatically admissible as business records” and are relevant to a claim. Employer contends that Dr. Kirkham, on referral, did what one would expect a treating physician to do -- listen to the patient’s complaints and establish a treatment plan. Therefore, it argues that this decision should not exclude Dr. Kirkham’s notes and should deny Employee’s petition to strike.

Should Employee’s September 1, 2025, petition to strike medical evidence be denied?

FINDINGS OF FACT

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

- 1) Employee resides in Valdez, Alaska. (First Report of Injury, July 25, 2025).
- 2) On July 14, 2025, Employee said she suffered “multiple injuries” when she “lost footing exiting truck” while at work for Employer. (First Report of Injury, July 25, 2025).

3) On July 14, 2025, Employee went to the emergency room at Providence Valdez Medical Center (Providence Valdez). Staff recorded in Employee's chart:

Today she had a witnessed fall getting out of her truck when she slipped and apparently hit her buttocks and head on the step and door on the way down before falling onto the ground on her right side[;] fall distance was approximately 6 feet. She has a bad headache and associated neck pain that is new. Her pain radiates down her right arm. She also complains of wrist pain and right hand pain, especially in her ring finger, wincing when she moves them. She also complains of internal left hip pain and has a history of bilateral THA [total hip arthroplasty]. There is also an abrasion on her right knee that she did not know was there until she removed her pants. She remembers slipping and then remembers waking up on the ground, but does not remember the other in between events of the actual trauma[;] thus probably had a brief period of loss of consciousness. . . .

Among other things, Employee was treated for a fractured finger in her right hand. The emergency department advised Employee to follow up with her primary care provider and see a hand and orthopedic specialist within one week. (Providence Valdez report, July 14, 2025).

4) On July 22, 2025, Caroline Bourquin, FNP-C, with Orthopedic Physicians Alaska (OPA) in Anchorage, Alaska, removed Employee from work and ordered physical therapy (PT) with Providence Valdez PT, in Valdez for six weeks. (OPA report, July 22, 2025).

5) On July 23, 2025, Kristin Kinstrey, PA-C, with Providence Valdez Primary Care (Providence Primary) saw Employee for her work injury. PA-C Kinstrey extended Employee's PT to include her neck and scheduled a follow-up visit in three weeks. (Kinstrey report; Physician's Report, July 23, 2025).

6) On July 23, 2025, PA-C Kinstrey referred Employee to Providence Valdez PT for evaluation and treatment. (Referral Order Reprint, July 23, 2025).

7) On July 25, 2025, John Cullen, MD, family physician with Providence Primary, saw Employee for pain in her right wrist beginning with her work injury on July 14, 2025. Among other things, he noted that she "tried to get an MRI [magnetic resonance imaging] ordered 4 months ago. . . ." for her right hand. Dr. Cullen recommended among other things an MRI, but if that was not approved, a computed tomography (CT) scan would be considered. (Cullen Report; Physician's Report, July 25, 2025).

8) On August 4, 2025, Employee went to Providence Valdez PT to begin PT for her right-hand symptoms arising from her work injury. (Providence Valdez PT report, August 4, 2025).

9) On August 6, 2025, Employee texted someone who Employee had listed in her text messages as “Workmans [sic] Comp. Nurses,” and stated she needed an MRI done because she was not progressing. The nurse, probably Davis with Essential Medical Management (EMM), responded and stated, “I have made some calls to OPA in Anchorage, and they cannot guarantee that the MRI and physician appointment can be done on the same day or the next day. I suggest that we give Providence until next week. . . .” (Text message, August 6, 2025).

10) On August 6, 2025, Employee texted Davis and said:

Okay, things have changed. I am going to Anchorage on Friday, 10 AM. Appointment at [A]nchorage, [F]racture and [O]rthopedic, and they are doing my MRI at 1:00 PM and I am driving home. I am not sure where the disconnect is with my injuries, but Molly asked me if I could jus[] []et up in the. . . . (Text message, August 6, 2025, emphasis in original).

11) On August 7, 2025, Davis phoned and faxed the “Provider Office” at “AFOC,” [Anchorage Fracture & Orthopedic Clinic] and spoke with a provider there for “0.3.” She prepared an “Appointment Letter/RTW” [return to work], which was a request for Dr. Kirkham, who works at AFOC, to express his opinion about Employee’s ability to “return to work”; records show he is the provider who eventually saw her at AFOC. (EMM invoice, August 24, 2025; experience, judgment and inferences drawn from the evidence; all quoted times are tenths of an hour).

12) On August 8, 2025, Davis made “Multiple” calls totaling “0.4” to an unspecified “Provider.” (EMM Invoice, August 24, 2025).

13) On August 8, 2025, Dr. Kirkham saw Employee for her “July 14, 2025” work injury. His report summarized the radiographic and lab findings. It also listed her various symptoms and states in two places that she had a “May 19, 2025” work injury. The report stated Employee had no primary care physician. Dr. Kirkham recommended a right-wrist MRI to evaluate for an occult fracture, and a cervical spine MRI for “further evaluation.” He also prescribed gabapentin and said he would see her back via telemedicine to review MRI results, as she lives in Valdez. Dr. Kirkham made referrals to the AFOC clinic for x-rays and to Northern Lights Imaging for the MRIs. His report noted that Friess was the adjuster. (Kirkham report, August 8, 2025).

14) On August 8, 2025, Employee had MRIs in Anchorage. (MRI reports, August 8, 2025).

15) On August 11, 2025, Davis again called an unspecified provider’s office for “0.1.” (EMM Invoice, August 24, 2025).

16) On August 12, 2025, a referral was made for Employee to see Alaska Neurology Center, in Anchorage, to evaluate her concussion and related symptoms. The referral's origin is difficult to determine but contains Employee's Providence Primary patient number and likely came from PA-C Kinstrey. (Referral Order Reprint, August 12, 2025).

17) On August 12, 2025, PA-C Kinstrey wrote that Employee was under her care for concussion treatment and physical injuries sustained from her fall at work. Employee had a "considerable concussion" and required continued "brain rest." She was following up with her orthopedic specialist on her wrist injury and was referred to a neurologist for her persistent concussion symptoms. (PA-C Kinstrey letter, August 12, 2025). PA-C Kinstrey also referred Employee to massage therapy for her spine, head and shoulder for eight weeks. (Providence Primary prescription, August 12, 2025).

18) On August 12, 2025, a referral was made for Employee to see massage therapist Cassandra Howard for her right-upper-extremity and neck pain. The origin of this document is difficult to determine but bears Employee's Providence Primary patient number and likely came from PA-C Kinstrey. (Referral Order Reprint, August 12, 2025).

19) On August 13, 2025, Cassandra Howard saw Employee for the first time for massage therapy to address her work injury. (Howard report, August 13, 2025). Thereafter, Howard saw her for massage therapy on August 18, 21, 27 and September 2, 2025. (Howard reports, August 21, August 27 and September 2, 2025).

20) On August 13, 2025, Employee called the Workers' Compensation Division (Division) to complain about her adjuster and to obtain information. (Agency file: Judicial, Communications, Phone Call tabs, August 13, 2025).

21) On August 14, 2025, at 2:19 PM, adjuster Molly Friess emailed Employee and said:

Renee,

I[n] order for massage therapy in Valdez to be authorized in Valdez we need a referral from Dr. Kirkham. (Email, August 14, 2025).

22) On August 14, 2025, Dr. Kirkham saw Employee in a telemedicine visit to follow-up on her work injury. He stated he had been treating her for right-hip pain, acute neck pain, headaches, right-arm pain, and right-wrist pain after her work injury with Employer, and again noted "May 19, 2025" and "July 14, 2025" injuries. Dr. Kirkham listed her problems and noted that the right-

wrist MRI did not disclose a surgical issue and he recommended she use a brace for comfort. He also recommended PT for her right-wrist and stated, “we will start with Providence in Valdez, but ultimately I would recommend that she work with the certified hand therapist.” Dr. Kirkham discussed her case with “Dr. Cepela.” He also reviewed the cervical MRI, which showed significant stenosis that could be causing her right-arm radicular pain, and he recommended formal PT for her cervical spine. Dr. Kirkham added, “I have also discussed her case with her nurse and case manager, Camilla Davis, RN. . . .” He hoped Employee could return to full-duty by October 14, 2025. “Extra time was needed to fill out the Worker’s Compensation paperwork and to discuss [Employee’s] case with Camilla Davis, RN.” (Kirkham report, August 14, 2025).

23) On August 14, 2025, Dr. Kirkham referred Employee to Providence Valdez PT for right-wrist and cervical PT. Dr. Kirkham’s referrals listed Employer’s insurer as the primary insurer for the right-wrist but listed either Employee’s health provider or Medicaid as the primary and secondary insurance for the other issues. (Referrals, August 14, 2025).

24) On August 14, 2025, at 8:09 PM, Employee replied to Friess’ earlier email and asked:

Can you explain why it [a referral to PT in Valdez] has to be from Dr. Kirkham the specialist? Dr. Kinstey [sic] is my doctor that is treating me in Valdez for the injuries before I was able to get a specialist to look at me.

[N]ot being difficult but I just talked to your case manager about this today[.]

[T]hank you (email, August 14, 2025).

25) On August 15, 2025, at 7:32 AM, Friess responded to Employee’s email and asked:

Renee,

Who is your treating physician for this claim? (Email, August 15, 2025).

26) On August 15, 2025, at 10:05 AM, Employee replied to Friess and said:

[M]y doctor, who is overseeing my care and making sure I get to the specialist I need to and is watching my concussion and assessing my ability to go back to work is Dr. Kinstrey. I hope I’m answering this correctly. Is that what you’re asking me? (Email, August 15, 2025).

27) On August 15, 2025, at 10:40 AM, Friess emailed Employee:

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Renee,

You can't have two treating physicians for WC [workers' compensation]. It is my understanding Dr. Kirkham is directing care at this point, yes? If that is the case, all referrals need to come from Dr. Kirkham. (Email, August 15, 2025).

28) On August 15, 2025, at 10:46 AM, Employee responded to Friess' email and stated:

Molly,

He is referring me to PT after his assessment of the MRI. He is not treating my concussion, nor has he addressed my job or any other incidents. I have follow ups with him for my wrist and neck in two weeks to see what PT care has been doing. PT has not started yet. It was a referral given by OPA and they said no return until I had follow up with them until [S]ept 9, my physicians in Valdez referred me to get a referral to diagnose how to treat. [T]hey were unavailable so Valdez clinic sent my MRI referral to AFOC to Dr. Kirkham. He has not mentioned that he would be overseeing my head trauma or anything else. So he was the specialist referred for care of orthopedic needs. I was also given a neurologist referral and I see in my chart that it was approved. Does this mean that they will be my primary care physician? (Email, August 15, 2025; emphasis added).

29) On August 15, 2025, Davis emailed the adjuster. Thereafter, on the same day she phoned "Dr. Kirkham." (EMM Invoice, August 24, 2025).

30) On August 15, 2025, Dr. Kirkham referred Employee to massage therapy in "Office," for 12 visits for right-wrist pain and for cervical radiculopathy. (Kirkham referral, August 15, 2025).

31) On August 15, 2025, the Division sent Employee at her request the "Workers' Compensation and You" brochure, "Employee's Guide to Workers Compensation," and an attorney's list. (Agency file: Judicial, Communications, Email tabs, August 15, 2025).

32) On August 17, 2025, Employee sent Dr. Kirkham a letter "terminating any and all medical services" from him effective immediately. She stated that she did not transfer or change her treating physician in her workers' compensation case and contended Dr. Kirkham was never authorized to act as her primary provider. Employee expressed concern about communications between Dr. Kirkham and workers' compensation representatives allegedly made without her knowledge or consent. (Letter, August 17, 2025).

33) On August 17, 2025, at 6:08 PM, Employee emailed Friess and stated:

To Whom it may concern:

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I do not wish to change my treating physician from Dr. Kinstrey in Valdez at the Valdez Medical Clinic.

Dr. Kirkham was the doctor used to get MRIs done that were not available and still are not available in Valdez at Providence [H]ospital. He has not treated me for any other problems related to this workman's comp claim.

Dr. Kinstrey is the treating physician and has been since 22nd of July 2025. I have not given Umialik Insurance adjuster, case manager, or nurse verbal or written permission to go behind my back and seek alternative care for me or represent me. I do not wish for their assistance and have not signed any paperwork stating they have permission to change any of my care.

Dr. Kinstrey is my treating physician and will remain so.

She can be reached at

[phone number redacted for privacy]
Valdez [M]edical [C]linic

[T]hank you very much, [Employee] (Email, August 17, 2025).

34) On August 18, 2025, PA-C Kinstrey "Pending Review" referred Employee for "Orthopedic Surgery" and named Dr. Kirkham as the provider to "Evaluate & Treat" Employee. (Referral Order Reprint, August 18, 2025).

35) On or about August 18, 2025 (the document is difficult to read), Dr. Kirkham responded to a questionnaire from Davis. His hand-written answers are also difficult to read but it appears he repeated his diagnoses from his chart notes. Dr. Kirkham said Employee was not able to return to full-duty work but estimated she could return to modified work on or about September 18, 2025. He estimated Employee could return to full-duty work on or about October 18, 2025. Dr. Kirkham stated Employee was not medically stable but estimated a target date for medical stability as on or about October 18, 2025. He said it was "Unknown" if Employee would incur a permanent impairment. Employee was not "released" from Dr. Kirkham's care for the work injury. (Kirkham responses, August 18, 2025).

36) On August 19, 2025, Employee sent the Division an email stating, among other things, that she had contacted a "workman's comp. attorney" and the attorney told Employee that if she had more problems with the adjuster or the nurse case manager the attorney would open case for her. (Agency file: Judicial, WC Actions, Rejected Filing, August 19, 2025).

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37) On August 20, 2025, Davis received and reviewed a fax from AFOC, which included 18 pages of medical records. (EMM Invoice, August 24, 2025).

38) On August 21, 2025, at 10:19 AM, Friess emailed Employee and stated:

Renee,

Attached is the referral from Dr. Kirkham for massage therapy. (Email, August 21, 2025).

39) On August 21, 2025, at 2:50 PM, Employee responded to Friess' email:

Molly,

I have gotten a referral from my treating physician Dr. Kinstrey. There were HIPPA [sic] violations and Dr. Kirkham['s] services were terminated as well as the Umialik nurse and case manager. All parties received letters.

Thank you, [Employee] (Email, August 21, 2025).

40) On August 21, 2025, at 4:07 PM, Friess told Employee in an email:

Renee,

HIPAA does not apply to worker's compensation.

HIPAA, or the Health Insurance Portability and Accountability Act, does not directly apply to most workers' compensation entities like employers or insurers.

You fired the best people to help you with your claim. I guess you are on your own. (Email, August 21, 2025).

41) On August 21, 2025, at 4:29 PM, Friess emailed the following to Employee:

Renee,

The attached letter and medical release will be in tomorrow's mail, regular and certified.

If you do not return the signed medical release or file a petition with the Alaska Workers' Compensation Board by Friday, 09/05/2025, all benefits will be suspended. (Email, August 21, 2025).

42) On August 22, 2025, Friess mailed Employee a letter to which was attached a “Release of Medical Information” form. The letter asked Employee to sign and return the release within 14 days, or her benefits would “be suspended.” It also advised that she had a duty to provide written authority to Friess to obtain medical and rehabilitation information relative to her injury. The letter advised Employee that she had a right to file a petition for a protective order within 14 days. The attached release stated in relevant part,

I, the undersigned person, give my consent and authorize you to release the following medical records and information in your possession to Umialik insurance Company, Essential Medical Management, the defendants, or representative of the defendants, in the above Workers’ Compensation Claim filed by me. I also consent and authorize, but do not necessarily request, you to discuss the following medical records and information pertaining to me with the defendant or the defendant’s representative.

Medical records and information relating to the treatment of my injury or illness at work, and the following parts of my body, diagnoses or conditions, organ systems, chief complaints and/or symptoms:

Head, neck, right shoulder, right wrist. (Letter, August 22, 2025; release).

43) On August 27, 2025, PA-C Kinstrey referred Employee to Valdez Therapy Occupational Therapy (OT). (Kinstrey report, August 27, 2025).

44) On September 1, 2025, Powell wrote to Friess and informally asked for production. Relevant requests for the instant hearing included: “1. All adjuster’s notes, 2. All nurse case manager notes, 3. All correspondence , including email and texts, between the injured worker and your adjusting firm and/or your nurse case manager regarding this case, 4. All correspondence , including email and texts, between any and all physicians and your adjusting firm and/or your nurse case manager regarding this case. . . .” (Letter, September 1, 2025).

45) On September 2, 2025, Friess told Powell, “Puma stated several times verbally that her treating physician is [PA-C Kinstrey] in Valdez. If she would like to change physicians, that is fine with us. There is no dispute regarding treating physician. . . .” (Email, September 2, 2025).

46) On September 2, 2025, in a document dated September 1, 2025, Employee filed a “Certificate of Service” and attached claim Entry of Appearance, September 1, 2025 informal discovery letter to Friess, and an “Email string between Molly Freiss and Renee Puma dated 8/14/25-8/17/25” and “8/21/25.” (Certificate of Service, September 1, 2025).

47) On September 2, 2025, in a document dated September 1, 2025, Employee filed a cross-examination request on a “9.1.25 COS,” which presumably means “Certificate of Service.” “Molly Friess” is the document’s author who Employee wanted to cross-examine. The reason she requested to cross-examine Friess was to “explore basis of representation and Ms. Friess’ knowledge of workers’ compensation law.” Employee asserted her right to cross-examine Friess on all statements she made in texts or emails to Employee, copies of which were attached to Employee’s September 1, 2025, Certificate of Service. (Request for Cross-Examination, September 1, 2025; inferences drawn from the above).

48) On September 2, 2025, in a document dated September 1, 2025, Employee filed a cross-examination request on Dr. Kirkham’s August 8 and 14, 2025 reports to “explore bias and basis for opinion and *ex parte* contact (unauthorized)” with Employee, Davis or Friess. (Request for Cross-Examination, September 1, 2025).

49) There is no evidence in Employee’s agency file that Friess or Dr. Kirkham have ever been presented for cross-examination in this case. (Agency file; observations).

50) On September 2, 2025, in a document dated September 1, 2025, Employee claimed an unfair or frivolous controversion, medical care and transportation costs, a penalty for late-paid compensation, interest, attorney fees and costs. Reasons for Employee’s claim included:

(1) Controversion-in-fact arising from adjuster’s failure and refusal to authorize treatment per treating PAC Kinstrey’s 7/22/25 and 7/23/25 referrals for physical therapy and referral by OPA on July 22, 2025.

(2) Controversion-in-fact arising from interference by adjuster with the selection of the injured employee’s authorized physician arising from the adjuster’s refusal to honor designation of PAC Kinstrey.

(3) Improper influencing or attempt by adjuster and/or nurse case manager to influence a medical opinion by a physician treating or examining the injured employee arising from unauthorized communication between Camilla Davis and Dr. Kirkham violation of AS 23.30.095(i).

(4) Controversion-in-fact of the injured employee’s privacy rights arising from unauthorized communication between Camilla Davis and Dr. Kirkham.

(5) Misrepresentation of fact by Molly Friess on August 21, 2025, when she stated to the injured worker that “HIPAA does not apply to workers compensation” without informing Ms. Puma that she did have protected privacy rights in violation of AS 21.36.125(a).

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(6) Attempt to influence the injured worker's choice of treating physician with the email on August 21, 2025, stating "You fired the best people to help you with your claim. I guess you're on your own."

(7) Failure to disclose a conflict of interest insomuch as Umialik has retained Dr. Kirkham in the past as an employer expert.

(8) Controversion-in-fact arising from Molly Friess' refusal to accept the selected treating physician. See email August 15, 2025.

(9) Manipulated Ms. Puma into seeing Dr. Kirkham by claims that she couldn't be seen in OPA and that Dr. Kirkham was the only option for obtaining an MRI. (Claim for Workers' Compensation Benefits, September 1, 2025).

51) On September 2, 2025, in a document dated September 1, 2025, Employee also petitioned for an order to, "Strike medical records and opinions of Dr. Jared Kirkham and further to preclude taking or introducing his testimony." Employee stated she did not know Employer routinely retained Dr. Kirkham as an employer's medical evaluator (EME) but conceded "she was referred to Dr. Kirkham by her primary." Employee alleged a "conflict of interest" arising from Dr. Kirkham's involvement as an EME for Employer's insurer in other cases, and as a treating physician in her case. She noted that in respect to an August 14, 2025, follow-up visit with Dr. Kirkham by phone, nurse case manager Davis had "insisted" on attending the appointment telephonically, but Employee did not call her during the appointment. Nevertheless, Dr. Kirkham expressly documented that he discussed the case with Davis. Employee thus presumed Dr. Kirkham had *ex parte* communication with Davis. She further argued that although PA-C Kinstrey had referred Employee to massage therapy, Friess refused to approve it unless Dr. Kirkham made the referral. Employee contended she had a right to designate her treating provider. She also argued that interference by a person with her selection of an authorized physician or the improper influencing or attempt by a person to influence a medical opinion is a misdemeanor. Employee alleged a conspiracy between Friess and Davis to improperly influence Employee's treatment. She based this on the following allegations:

(1) Friess refused to honor referrals to PT made by OPA and PA-C Kinstrey;

(2) When Employee could not get an MRI on her wrist in Valdez, Davis claimed she could not guarantee a same-day appointment at OPA for the MRI and evaluation and suggested the "only option" was to see Dr. Kirkham at AFOC;

(3) Without a medical release permitting *ex parte* contact, Davis conferred with Dr. Kirkham to develop a treatment plan;

(4) After Davis conferred with Dr. Kirkham, he wrote a PT referral, and Friess finally agreed to authorize PT.

Employee contended that Friess used Dr. Kirkham as a retained expert and “virtually foreclosed treatment and evaluation by OPA” based on Davis’ representations. She further argued that Friess failed to disclose that Employer’s insurer had an alleged “conflict of interest” because it had used Dr. Kirkham as an EME in other cases. Lastly, Employee contended that Friess tried to “bully” her into accepting Dr. Kirkham as her treating physician and became “hostile” when Employee stood up for her privacy rights and her right to designate her own physician. She concluded that since Dr. Kirkham is on the insurer’s “payroll,” he cannot be “both treater and EME.” Consequently, Employee argued that Dr. Kirkham’s past relationship with the insurer “hopelessly undermines the validity of his medical opinion.” She requested an order striking all medical records and opinions from Dr. Kirkham as well as precluding his testimony in this case. (Petition; Petition to Strike Medical Records, Opinions and Preclude Testimony of Dr. Jared Kirkham, September 2, 2025).

52) On September 4, 2025, PA-C Kinstrey wrote, “[Employee] is a patient under my care for significant concussion, wrist and neck injuries related to workers comp injury 7/14/2025. She may return to work on [sic] upon release from ortho specialist, Dr. Patricia Fox.” (Kinstrey letter, September 4, 2025).

53) On September 5, 2025, Employee returned to Howard for more massage therapy. (Howard report, September 5, 2025). Howard gave massage therapy to Employee on September 9, 12, 16, 19, 23, 26 and 29, 2025. (Howard reports, September 9, 12, 16, 19, 23, 26 and 29, 2025).

54) On September 12, 2025, Employee wrote, “Because she could not get into OPA, and unaware the Dr. Kirkham is routinely retained by insurance companies as [an] “independent” medical expert, she [Employee] was referred to Dr. Kirkham by her primary.” (Petition for Protective Order II: Against Executing Medical Release Requested by Griffin and Smith Via Letter Dated 9/5/25, September 12, 2025).

55) On October 3, 2025, Mary Fox, MD, orthopedic surgeon, at OPA stated Employee was not able to return to work at that time. She also ordered electrodiagnostic testing to evaluate

Employee's suspected cervical radiculopathy and ordered PT at Providence Valdez PT for her right hand. (Work/School Status Note; Referral Order; Therapy Order, October 3, 2025).

56) On October 3, 2025, Employee petitioned for an order compelling discovery. Among the things she wanted from Employer that she claimed it had not provided were all adjuster's notes and all nurse case manager notes. (Petition to Compel Discovery, October 3, 2025).

57) On October 6, 2025, PA-C Kinstrey stated:

[Employee] is a patient under my care after suffering from accident at work. Patient is currently undergoing physical therapy and occupational therapy. She is still awaiting evaluation by neurosurgery that is scheduled for 11/6/2025. Her orthopedic specialist has recommended that she not work until after her repeated evaluation after the completion of her physical therapy and occupational therapy. She may return to work on 11/15/2025 pending release from orthopedic specialist. (Kinstrey letter, October 6, 2025).

58) On October 6, 2025, PA-C Kinstrey referred Employee for massage therapy to the upper body, neck, scalp and upper extremities for eight weeks. (Providence Valdez Primary prescription, October 6, 2025).

59) On November 13, 2025, Employer submitted a letter with attachments totaling 710 pages to Employee in response to her informal discovery requests. Excluded from the production were documents on which Employer claimed the attorney-client privilege and attorney work-product, and adjuster notes after Employer retained Smith. Likewise, Employer redacted reserve information and the adjuster's "mental impressions" regarding "case strategy and evaluation." Many of the numerous text messages attached to the letter are illegible and difficult to determine from whom they came or to whom they were sent. Employee's texts often have grammatical errors apparently due to voice-to-text issues, which makes them difficult to understand. Many documents are repetitious and duplicative. One attachment, Bates-stamped 27, states the following, sent from an unidentified person to an unidentified person on an unidentified date:

[H]ello I wanted to add Millie back into this conversation. I explained to her our disappointment with the MRI machine being down today. I have made some [indiscernible] to OPA in Anchorage and they cannot guarantee that the MRI and physician appointment can be done on the same day or the next day. I suggest that we give Providence until next week. They are supposed to be reaching out to you about the MRI as soon as the machine is fixed. I will reach out again to Sara tomorrow.

Cross-referencing this to other documents in the discovery suggests this may be Davis' August 6, 2025, response to Employee's email. Later in the attachments, some of the same text messages appear in a more legible form. (Letter, November 13, 2025).

60) On November 20, 2025, the parties appeared at a prehearing conference to address Employee's October 3, 2025, petition to compel all adjuster and case manager notes, and all correspondence between any physicians and Employer's adjusting firm or its nurse case manager in this case. After hearing the parties' arguments, the Board's designee granted the petition in part and denied it in part. She granted Employee's petition to compel all adjuster and case manager notes, and all correspondence between any physicians and the adjuster or nurse case manager in this case. Notably, the designee gave Employer (she mistakenly typed "Employee") until December 12, 2025, to produce this material to Employee, which date was nine days after the December 3, 2025, hearing for which this material would be most relevant. (Prehearing Conference Summary, November 20, 2025; observations).

61) On November 21, 2025, Employee filed her hearing brief. She reiterated the arguments made in her September 1, 2025, petition and added an argument contending that including Dr. Kirkham's opinions or testimony would violate her right to a fair hearing. Employee cited the *Toennis* case for support. She contended that it is irrelevant whether Employee agreed to see Dr. Kirkham. Employee argued that Davis' actions vis-à-vis Dr. Kirkham were those of a person setting up an EME. She emphasized that Davis texted her the day prior to her appointment with Dr. Kirkham and stated that Davis would be attending her appointment via phone to assist with "collaborating with the plan of care." Employee referenced numerous itemized billings from Davis setting forth discussions between the adjuster and Dr. Kirkham. Her brief criticized entries in Dr. Kirkham's report, such as attributing causation to an alleged "May 19, 2025" incident, opinions which Employee attributed to his role as an EME, rather than as a treating physician. (Employee's Hearing Brief, November 21, 2025).

62) Employee further argued that she had requested discovery from Employer including adjuster's and nurse case managers' files, which she alleged were not provided. Consequently, Employee contended that Employer's failure to comply with discovery requests can be construed as "spoilation of evidence," justifying an "adverse inference." The adverse inference Employee sought is that the adjuster's and nurse case managers' files would prove that Employer and Davis "herded" Employee to Dr. Kirkham, Friess converted him into a hired expert, and Davis influenced

Dr. Kirkham's opinions in violation of the law. She cited to Dr. Kirkham's "gratuitous inclusion of irrelevant medical history and inaccurate allegations of an injury date that did not happen" as evidence of his loyalty to the insurance company by providing it with "defense evidence." Employee cited the *Grimes* decision to support her "adverse inference" argument. (Employee's Hearing Brief, November 21, 2025).

63) Moreover, Employee argued that *Toennis* was a "strikingly similar case" where the Alaska Workers' Compensation Commission (Commission) held that contested medical records may not be considered by factfinders in any proceeding and must be stricken from the record. She contended that Friess in *Toennis* had similarly converted a treating physician to an EME, "just as she did here." In *Toennis*, "The employee's concern for an early evaluation was satisfied, just as [Employee's] need for a wrist MRI was here, but the physician's loyalty was then owed to the insurer and not the patient." She noted that it was irrelevant that the injured worker in *Toennis* agreed to see the medical provider as an EME rather than as a treating physician, "because the issue was fairness." Employee further noted that Davis had contacted Dr. Kirkham or his office before her first appointment, between the first and second appointments and conversed with him over the phone after her second appointment before he dictated his chart note, as shown by the reference to that conversation included in the note. She relied on the fairness requirement set forth in AS 23.30.001(1). (Employee's Hearing Brief, November 21, 2025).

64) In summary, Employee contended that inclusion of Dr. Kirkham's records or his testimony in this case would "unfairly taint the proceeding" and deny her a fair hearing. She added:

The Commission [in *Toennis*] also noted that Mr. Toennis was not represented at the time that Molly Friess converted his treating physician to her retained expert observing "[t]his is an important component because a layperson is far less likely to understand the significance of the change than an attorney." Here, too, [Employee] was not represented when she was herded into seeing Dr. Kirkham. She had no reason to know about his prior business relationship with Molly Friess and Umialik, nor the implications of that established bond. (Employee's Hearing Brief, November 21, 2025).

65) On November 21, 2025, Employer agreed Employee has a right to designate an attending physician. However, it contended there is no evidence Employer tried to direct Employee's medical care. Employer stated that PA-C Kinstrey referred Employee to an "orthopedist" for her complaints, and Dr. Kirkham (who this panel knows is a physiatrist, not an orthopedist) was the

physician who ultimately evaluated her. It further noted that Dr. Kirkham recommended some of the same treatment that her attending physician suggested. Dr. Kirkham made opinions that were in Employee's favor. Employer further argued that there was no evidence that Dr. Kirkham was biased against Employee. (Employer's Hearing Brief, November 21, 2025).

66) Employer contended that prior Board decisions and other case law do not favor striking relevant evidence. Rather, it argued that factfinders at hearings have the right to give weight and credibility to medical opinions. Employer stated it has an absolute right to present evidence and witnesses at hearings. Moreover, it argued that the Board favors discovery and admission of relevant evidence including notes from a treating physician. (Employer's Hearing Brief, November 21, 2025).

67) Employer distinguished *Toennis* on its facts. In *Toennis*, Friess converted a known appointment that was supposed to be for a treating neuropsychological evaluation into a known EME. The employee later stated he did not consent to this change. The Commission excluded the report at issue "as a matter of fairness." Employer further noted that *Toennis* distinguished the role of a treating physician from an EME physician, finding that a treating physician's role is to listen to the patient's complaints and establish a treatment plan. It contended that was what Dr. Kirkham did in this case, which Employer contended matched the Commission's definition of what is expected of a treating physician. Lastly, Employer contended the Board should not exclude Dr. Kirkham's chart notes from the record because they are relevant to the claim and Employee was referred to him by her treating physician and had she had treated with him in the past. (Employer's Hearing Brief, November 21, 2025).

68) No party filed an Affidavit of Readiness for Hearing in this case. There is no evidence that Dr. Kirkham or Friess have been deposed in this case. (Observations).

PRINCIPLES OF LAW

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 the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

. . . .

(4) hearings in workers' compensation cases shall be impartial and fair to all parties and . . . all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The Board may base its decision on testimony, evidence, its "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). In *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 35-37 (Alaska 2007) (*AKPIRG*), the Alaska Supreme Court (Court) stated, "Neither the Appeals Commission nor the Board has jurisdiction to hear any action outside of a workers' compensation claim."

AS 23.30.008. Powers and duties of the commission. (a) . . . Unless reversed by the Alaska Supreme Court, decisions of the commission have the force of legal precedent.

(b) The commission . . . shall maintain, index, and make available for public inspection the final administrative decisions and orders of the commission and of the board. . . .

AS 23.30.095. Medical treatments, services, and examinations. . . .

(i) Interference by a person with the selection by an injured employee of an authorized physician to treat the employee, or the improper influencing or attempt by a person to influence a medical opinion of a physician who has treated or examined an injured employee, is a misdemeanor.

Toennis v. Crowley Holdings, Inc., AWCBC Dec. No. 24-0036 (June 24, 2024) (*Toennis I*) decided an injured worker's petition to strike a report from a neuropsychologist. The employee contended he scheduled an appointment to see Dustin Logan, PhD, for a neuropsychological evaluation. The employee's ex-wife had searched for a neuropsychologist and had found Dr. Logan in March 2022. She obtained an appointment for the employee to be seen in October 2022. The employee was a truck driver and had been rear-ended. He claimed, among other things, head trauma and a resultant traumatic brain injury. The employer's adjuster, Friess, scheduled an EME with an orthopedic surgeon and with Dr. Kirkham, for July 2022. The employee failed to appear for Dr. Kirkham's examination, but Dr. Kirkham reviewed the worker's records and concluded his chronic pain complaints were not substantially caused by his work injury but were instead multifactorial.

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Causes included the worker's history of chronic pain, age, genetics, personality factors, obesity, deconditioning and "especially psychosocial factors."

In August 2022, the employer's agent requested available dates when Dr. Logan could evaluate the employee for an EME. Dr. Logan's office contacted Friess to "find out if there ha[d] been a change in the need for a clinical evaluation vs. [EME]." Friess stated that an EME was needed as soon as possible and discussed with Dr. Logan the differences between an EME and a clinical evaluation. In mid-September 2022, Dr. Logan's office called the employee to confirm he would attend the EME. His office did not record any objection from the employee to the evaluation being conducted as an EME. Upon appearing for the EME, the employee was given a written and verbal explanation for the purpose of Dr. Logan's EME visit. The employee gave his verbal and written consent to the EME before it began. Dr. Logan's EME report was unfavorable to the injured worker and resulted in a controversy. At the time this was occurring, the employee was not represented by an attorney.

In November 2023, the employee filed a petition to strike Dr. Logan's EME report on the grounds that the employer unlawfully interfered with his selection of a treating physician. He testified at hearing that he believed Friess had taken his doctor away from him. Friess testified that she did some research and found that Dr. Logan could see the employee much sooner if the appointment was for an EME. In short, she said she was trying to help the employee get seen sooner. Friess said the employee did not object to the change. She admitted that she did not explain to the employee the differences between a treating physician and an EME.

After hearing the evidence and arguments, the Board in *Toennis I* found there was no evidence supporting the employee's position that he did not consent to changing Dr. Logan's appointment from a treating physician to an EME. *Toennis I* further found that the employee's testimony on various points was inconsistent with his previous statements as well as with medical records. It found his testimony not credible. *Toennis I* also found that Friess had no duty to tell the employee about the differences between a treating physician examination and an EME visit. Accordingly, *Toennis I* denied the employee's petition to strike Dr. Logan's report based on unlawful interference with the employee's selection of a treating physician.

The employee petitioned the Commission to review *Toennis I. Toennis v. Crowley Holdings, Inc.*, AWCAC Order on Petition for Review (February 28, 2025) (*Toennis IV*) decided the employee's petition on several issues, which included: (1) *Toennis I* did not have a reasonable basis to find that the employee consented to the insurer converting his doctor's appointment to an EME; (2) *Toennis I* mischaracterized and incorrectly interpreted evidence; (3) *Toennis I* impliedly and improperly concluded that the employee's alleged consent to the employer's interference with his choice of physician excused the employer's violation of the interference statute; and (4) the employer improperly changed physicians without his written consent. Based on these arguments, the employee contended that Dr. Logan's report should have been stricken from the record.

The Commission in *Toennis IV* cited the Board's findings from *Toennis I* and addressed the issues: *Toennis IV* stated the Board's finding that the employee had consented to the change in Dr. Logan's role was binding on the Commission. However, it further explained:

The Commission starts by acknowledging that there is a difference in approach when a doctor is acting as a treating doctor and when a doctor is acting as an EME physician. A treating doctor is expected to put the concerns of the patient first, including, e.g., diagnosis of the patient's complaints, recommendations for future treatment regardless of origin of the complaints, and establishment of treatment goals. Further, there are different confidentiality rules depending on the role of the doctor. A treating physician, under HIPPA, is restricted regarding with whom (i.e. any third-party) the doctor may discuss the examination, the evaluation, the diagnosis, and any treatment.

The EME doctor's concerns are to answer the questions put forth by the employer, including, most importantly, questions concerning the connection of the current condition to the work injury. The EME physician is free to discuss the evaluation and report with the employer/adjuster who has hired the doctor. Thus, a different lens is used when the doctor is acting as a treating doctor (or on a referral from the treating provider, as here) than when the doctor is acting as an EME doctor at the request of the employer/adjuster. The Commission does not question the integrity of Dr. Logan or the validity of his report, but the Commission is concerned with the significant difference in the approach to an examination/evaluation when the doctor is acting as a treating physician rather than when the doctor is acting as an EME physician.

Moreover, Mr. Toennis, the employer, the Board, and the Commission all lost important evidence when Dr. Logan changed from being a treating doctor to being an EME doctor, because we don't know what Dr. Logan would have said had he

evaluated Mr. Toennis as a potential patient rather than seeing him one time for an EME. *Id.* at 15-16.

Toennis IV found that Dr. Logan was “retained” to be a treating physician months before the appointment was changed to an EME. The employee fully expected Dr. Logan to see him as a patient and make findings about his condition and recommend treatment options. *Toennis IV* reasoned that once the appointment was changed to an EME, the option of Dr. Logan “evaluating Mr. Toennis as a patient was removed, along with any insights he might have had” for his treatment “as his patient.” *Id.* at 16-17.

Toennis IV further noted the Alaska Workers’ Compensation Act (Act) made “interference” by a person with the selection by an injured employee of a physician “a misdemeanor.” While noting that the “interference” statute did not “directly apply” to the employee’s situation, the Commission added that the concept expressed in the statute supported the notion that the patient-doctor relationship “is important and must be maintained.” It added, “An employer must not influence either the choice of a treating doctor or the course of medical care.” *Id.* at 17.

Most notably, *Toennis IV* found the legislature mandated “fairness” as an “important aspect in workers’ compensation litigation” under AS 23.30.001(1). In this regard, *Toennis IV* found the employer interfered with the employee’s selection of a treating doctor when it converted Dr. Logan to its own EME physician. However, *Toennis IV* also found this action was “without malice” and done because Friess realized she could schedule an earlier evaluation if the appointment was changed to an EME. *Toennis IV* further noted:

This conversion did change the tenor and tone of [Dr. Logan’s] report and, thus, the report is tainted. The remedy is to remove Dr. Logan’s report from the records to be submitted to the SIME physicians, and from further Board consideration. In the interest of preserving the fairness and impartiality of the workers’ compensation system, his report must be excluded from the medical records being sent to the SIME physicians, and from further Board consideration. *Id.* at 18.

Notwithstanding its recognition that the Board had authority to make binding credibility determinations, and the Board in *Toennis I* found the employee not credible and found he agreed to change Dr. Logan’s appointment from a treating physician to an EME, *Toennis IV* decided that the “underlying fairness and impartiality” of including Dr. Logan’s report in the record required

the Commission “to look solely at whether [Dr. Logan’s] should be included in the records . . . and . . . further Board consideration.” *Id.* Consequently, *Toennis IV* found the employer “interfered with” the employee’s right to a treating doctor evaluation when it changed Dr. Logan’s appointment to an EME. *Id.*

In essence, *Toennis IV* found the unrepresented employee’s consent to the change irrelevant to the Commission’s determination. *Toennis IV* found the employee’s status as an unrepresented litigant was an “important component” because as a lay person he was far less likely to understand the significance of the change than would an attorney. *Toennis IV* found the record “unclear” about what the employee knew about differences between his appointment as a referral to a treating provider and his appointment as an EME. The Commission found it was “not clear” that the employee “totally understood” the difference in goals of the two kinds of evaluations. It noted that it was “entirely possible” that Dr. Logan’s evaluation would be the same regardless of his evaluator status. Nonetheless, “the evaluation had a different purpose and that change in purpose tainted the report, or at least,” gave “an impression of possible taint.” *Id.* at 19. *Toennis IV* is not a reported Commission decision.

Grimes v. Haslett, 641 P.2d 813 (Alaska 1982) was a civil case involving a motor vehicle accident. *Grimes* cited a party’s argument under the “adverse inference” rubric that suggests when a party has relevant evidence and fails to produce it upon request in civil court, the judge or jury may apply an adverse inference to that evidence. In other words, the judge or jury could conclude that the non-produced evidence would cut against the party retaining it. However, the Court approved the trial judge’s remedy allowing a party more time to obtain expert testimony when the opposing party’s expert changed his opinion without advising the other party prior to trial.

In only one reported Board decision, a party successfully applied the “adverse inference” rubric in *Boyd v. Arctic Slope Native Assoc.*, AWCB Dec. No. 00-0200 (September 15, 2000). In *Boyd*, the parties presented cross-petitions to exclude evidence. The employee had requested discovery from her employer of an in-house investigator’s report regarding her work injury. The employer had objected based on relevancy and privacy, since the report included names and personally identifiable information from several individuals working at the employee’s workplace. Thus, the

employer refused to produce the document. At a prehearing conference, the Board's designee ordered the employer to produce the investigator's report to a Board hearing officer, as the panel chair, for *in camera* review. After reviewing it, the hearing officer directed the employer to produce the report to the employee, which it did. At a later hearing, the employee contended that under §.054(d) the employer should be sanctioned for withholding discovery. *Boyd* reasoned:

By the letter of .054(d), the . . . report should not be introduced into evidence at hearing. The employee argues that we should not exclude the report, because the employer would then reap the benefit of its refusal to co-operate with discovery. The employee argues that the report should be admitted, but some other sanction should be imposed because the employee was prejudiced by the employer's withholding of this evidence. Because the employee received the report only two days prior to the hearing, almost three years from the date of the incident, the employee asserts she was unable to conduct a counter-investigation or provide the report to her own physicians.

. . . .

We note that some parts of the . . . report are favorable to the employee, while others are not. We find it would be manifestly unjust to exclude the report under the facts of this case. However, we find that it is appropriate to impose some sanction for employer's unreasonable failure to respond to the employee's discovery requests or produce the report. 8AAC 45.195 provides:

A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

We will not exclude the . . . report. Nor will we exclude the reports and testimony of the physicians who viewed it. Although we note that the employee could have sought a continuance in response to the late-produced discovery, we find that by the time it was produced, over three years after the incident, the employee had already been prejudiced.

We find we have the authority to modify the . . . remedy of exclusion provided in 8AAC 45.054(d) and fashion a more equitable sanction. Based on the facts of this case, we find the most appropriate sanction would be to admit the report and apply an adverse inference against the employer as to its contents. Thus, if a [sic] facts asserted in the report are capable of two different interpretations or inferences, we will draw the inference most favorable to the employee. *Id.* at 16-18.

Richards v. University of Alaska, 370 P.3d 603, 614 (Alaska 2016) rejected a party’s contention in an administrative appeal, in reference to “bare allegations,” stating “argument is not evidence.”

AS 44.62.460. Evidence rules. (a) Oral evidence may be taken only on oath or affirmation.

(b) Each party may

- (1) call and examine witnesses;
- (2) introduce exhibits;
- (3) cross-examine opposing witnesses on matter relevant to the issues, even though that matter was not covered in the direct examination;
- (4) impeach a witness regardless of which party first called the witness to testify;
- and
- (5) rebut the adverse evidence.

(c) If the respondent does not testify in behalf of the respondent, the respondent may be called and examined as if under cross-examination.

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded.

8 AAC 45.052. Medical summary. . . .

(c) Except as provided in (f) of this section, a party filing an affidavit of readiness for hearing must attach an updated medical summary, on form 07-6103, if any new medical reports have been obtained since the last medical summary was filed.

(1) If the party filing an affidavit of readiness for hearing wants the opportunity to cross-examine the author of a medical report listed on the medical summaries that have been filed, the party must file with the board, and serve upon all parties, a request for cross-examination, together with the affidavit of readiness for hearing and an updated medical summary and copies of the medical reports listed on the medical summary, if required under this section.

(2) If a party served with an affidavit of readiness for hearing wants the opportunity to cross-examine the author of a medical report listed on the medical

summaries filed as of the date of service of the affidavit of readiness for hearing, a request for cross-examination must be filed with the board, and served upon all parties, within 10 days after service of the affidavit of readiness for hearing.

(3) After an affidavit of readiness for hearing has been filed, and until the claim is heard or otherwise resolved,

(A) all updated medical summaries must be accompanied by a request for cross-examination if the party filing the updated medical summary wants the opportunity to cross-examine the author of a medical report listed on the updated medical summary; and

(B) if a party served with an updated medical summary and copies of the medical reports listed on the medical summary wants the opportunity to cross-examine the author of a medical report listed on the updated medical summary, a request for cross-examination must be filed with the board and served upon all parties within 10 days after service of the updated medical summary. . . .

8 AAC 45.120. Evidence. . . .

(f) Any document . . . that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing. The right to request cross-examination specified in this subsection does not apply to medical reports filed in accordance with 8 AAC 45.052; a cross-examination request for the author of a medical report must be made in accordance with 8 AAC 45.052.

(g) A request for cross-examination filed under (f) of this section must

(1) specifically identify the document by date and author, and generally describe the type of document; and

(2) state a specific reason why cross-examination is being requested.

(h) If a request is filed in accordance with (f) of this section, an opportunity for cross-examination will be provided unless the request is withdrawn or the board determines that

(1) under a hearsay exception of the Alaska Rules of Evidence, the document is admissible;

(2) the document is not hearsay under the Alaska Rules of Evidence. . . .

Rusch v. Southeast Alaska Regional Health Consortium, 453 P.3d 784, 802 n. 70 (Alaska 2019) stated in respect to evidence rules applicable to Board proceedings:

The Commission erroneously evaluated this issue as the application of a Board regulation and incorrectly stated that AS 44.62.460 does not apply to Board hearings because of a Board regulation. The Alaska Administrative Procedure Act applies to Board proceedings “where procedures are not otherwise expressly provided by the Alaska Workers’ Compensation Act.” AS 44.62.330(a)(12). While the Board has the power to promulgate regulations interpreting the Act, AS 23.30.005, a regulation is not a statute and cannot overrule one. We have applied AS 44.62.460 to workers’ compensation proceedings in the past. . . .

Frazier v. H.C. Price/CIRI Construction JV, 794 P.2d 103, 105-06 (Alaska 1990) addressed parties’ disputes over medical report admissibility when reports were subject to a request for cross-examination. The employer sent the injured worker to a clinic for two EMEs; the reports were favorable to the employee, so the employer requested cross-examination of its own EMEs. The Board held that the employer must be provided with an opportunity to cross-examine its EME physicians at the claimant’s expense. Reversing, *Frazier* said, “The reason for admitting such reports is obvious: the party that authorized the report has in effect vouched for the competence and credibility of the report’s author; his need to impeach the credibility and competence of the author through cross-examination is therefore less urgent.” Cited Alaska R. Evid. 801(d)(2)(C), the Court stated, “Nonetheless, the regulation clearly did not intend to require an opportunity for cross-examination in cases like this: cross-examination was to be required only when the written medical report was hearsay.”

In *Parker v. Power Constructors*, AWCB Dec. No. 91-0150 (May 17, 1991) the employer sought to rely on three documents to which the employee had filed *Smallwood* objections: (1) a summary prepared for the employee’s discharge from a nursing home; (2) a physical examination report prepared during the employee’s residence at the nursing home; and (3) a letter from the employee’s physician to his counsel. *Parker* permitted the employer to introduce all three. It found the nursing home summary, and the physical examination report prepared during the employee’s residence at the nursing home were “trustworthy enough to permit admission under the business records exception to the hearsay rule,” and said, “If the employee wishes to present evidence supporting his challenge to the trustworthiness of these documents at hearing he will be permitted to do so.”

Parker also permitted into evidence the responsive letter, harmful to the employee’s position, from his physician to his lawyer, finding that “by soliciting [the doctor’s] opinion, the employee authorized the report and vouched for its author’s credibility and competence.”

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

....

(11) “Smallwood objection” means an objection to the introduction into evidence of written medical reports in place of direct testimony by a physician; see *Commercial Union Insurance Companies v. Smallwood*, 550 P.2d 1261 (Alaska 1976). . . .

Alaska R. Evid. 801. Definitions. The following definitions apply under this article:

....

(c) **Hearsay.** Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) **Statements Which Are Not Hearsay.** A statement is not hearsay if

....

(2) *Admission by Party-Opponent.* The statement is offered against a party and is (A) the party’s own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator or of a party during the course and in furtherance of the conspiracy. . . .

Black’s Law dictionary does not include a legal definition for “collaborating.” *Black’s Law Dictionary*, Abridged Fifth Edition, 1983. “Collaborating” is a present participle of “collaborate,” which is a verbal meaning to “work with.” *Cambridge Dictionary* online, 2025.

ANALYSIS

Should Employee’s September 1, 2025, petition to strike medical evidence be denied?

The sole issue for decision here is Employee’s September 1, 2025, petition to strike Dr. Kirkham’s opinions, and any possible testimony from him, as evidence. The merits of Employee’s September 1, 2025, claim is not before the panel or decided here.

(1) What admissible evidence is before the panel?

The first consideration in this analysis is the evidence presented upon which this decision may rely. The Act contains no evidence rules, so under *Rusch* the rules in AS 44.62.460(a)-(d) apply. This was a written record hearing so there was no oral evidence, no witness testimony and neither party could cross-examine anyone, rebut adverse evidence or call an opposing witness and cross-examine them. *Id.* at (a)-(c). Thus, there is little “direct” evidence. “Relevant evidence shall be admitted” if it is the type upon which responsible persons customarily rely in conducting serious affairs. Hearsay evidence is admissible and may be used to supplement or explain direct evidence “but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action.” *Id.* at (d). Under Evidence Rule 801(c) hearsay “is a statement, other than one made by the declarant while testifying at the . . . hearing, offered in evidence to prove the truth of the matter asserted.” However, under Evidence Rule 801(d)(2) a statement is not hearsay if the statement is an “admission by a party-opponent.”

The peculiar facts in Employee’s case raise interesting procedural and admissibility questions, which must be addressed. Here, while the evidence in the medical records is slim at best, the parties appear to agree that, for whatever reason, Employee could not obtain an MRI in Valdez timely. They also agreed that she needed an MRI. All the evidence in this case, including texts, letters and emails from Employee, Friess and Davis addressing Dr. Kirkham’s involvement were statements made by those declarants while not testifying at hearing. Each party uses those declarations to prove “the truth of the matter asserted” in them, to bolster their respective positions on the pending issue. Therefore, unless those declarations fit into an exception, they are “hearsay” under Civil Rule 801(c). Hearsay is admissible but the panel cannot base its decision solely on hearsay unless it would be admissible over objection in a civil matter under §460(d).

Employee clearly offers Friess' and Davis' statements against Friess as a party-adjuster and against Davis as a party-agent, respectively. The evidence shows Friess and Davis made these statements in a representative capacity. Friess and Davis likely believe their statements are true, and there is no question they were made within the scope of their agency or employment and made during that relationship. Employer does not dispute this. Thus, these statements are non-hearsay "admissions" by party opponents and are admissible under Alaska R. Evid. 801(d)(2)(A)-(E).

However, other unusual procedural issues affect this analysis as well. On September 2, 2025, in documents dated September 1, 2025, Employee requested cross-examination of Dr. Kirkham on his reports, and of Friess on her letters, texts and emails. There was never an Affidavit of Readiness for Hearing filed in this case. *Rogers & Babler*. Therefore, applying 8 AAC 45.052(c)(1)-(3) regarding time limits for requesting cross-examination of a physician is difficult because the regulations do not address this precise situation. Different regulations apply to Employee's request to cross-examine Friess under 8 AAC 45.120(f)-(h). Employee timely met those requirements because she requested cross-examination of Friess more than 10 days prior to this written-record hearing. Neither Dr. Kirkham nor Friess have ever been presented for cross-examination. *Rogers & Babler*.

Employee asserted her right to cross-examine Dr. Kirkham under §.900(11) and Friess under §.120(f). Concurrently, she also brought this petition to strike Dr. Kirkham's reports and relies on his same "Smallwooded" records, and Friess' same letters, emails and texts to which she demanded her right to cross-examine Friess, as evidence. She relies on Dr. Kirkham's reports and on Friess' and Davis' letters, texts and emails as the only actual evidence to support her petition. This creates an obvious procedural problem.

Documents under a request for cross-examination cannot be considered at hearing unless the authors are presented for cross-examination. *Smallwood*; 8 AAC 45.120(h). This cannot happen at a written record hearing, and there are no depositions in the agency file. Employee, by relying on Dr. Kirkham's "Smallwooded" reports, and on Friess' emails, texts and letters, either withdrew her right to cross-examine Dr. Kirkham and Friess, or she overlooked the fact that she requested to cross-examine them both and that neither has been presented for cross-examination. Moreover,

ordinarily a party cannot “*Smallwood*” its own physician and try to shift the cost to cross-examination that physician to the opposing party. *Frazier; Parker*.

In any event, the panel is reluctant to find on this written-record that Employee withdrew her right to cross-examine Dr. Kirkham or Friess. Her objections were not directed to their statements as “hearsay.” In the context of Employee’s petition to strike Dr. Kirkland’s reports, she wanted to question them about their interactions with each other. Therefore, Employee’s *Smallwood* objection to Dr. Kirkland’s reports will remain intact. Consequently, since Dr. Kirkham has not been made available for cross-examination, his reports are not admissible as evidence for this hearing. Likewise, Friess has not been presented for cross-examination and her declarations subject of Employee’s request for cross-examination cannot be considered at this hearing. Thus, the remaining “direct evidence” includes Davis’ documents, on which Employee did not assert her right to cross-examination, and medical records (excluding those from Dr. Kirkham).

(2) *Alternately, the evidence does not support Employee’s position.*

Given the peculiar procedural posture of this case, this decision will include an alternative analysis that considers both Dr. Kirkham’s records and Friess’ communications. On her primary issue, Employee contends that Employer herded her into seeing Dr. Kirkham who Employer knew from previous experience was an Employer-friendly physician that it had used in previous EMEs. She argues that Friess and its Davis conspired to interfere with her selection of an authorized physician at OPA to treat her, and improperly influenced or attempted to influence a medical opinion of a physician who had treated or examined her. She raises these contentions under §.095(i):

(i) Interference by a person with the selection by an injured employee of an authorized physician to treat the employee, or the improper influencing or attempt by a person to influence a medical opinion of a physician who has treated or examined an injured employee, is a misdemeanor.

Employee also relies on *Toennis IV* as support for her contentions. There are issues with this panel relying on *Toennis IV* as well. Under AS 23.30.008(b), the Commission maintains, indexes and makes available for public inspection “final administrative decisions and orders of the commission.” It also makes available “Memorandum Decisions.” However, it does not publish its “orders” in individual cases. *Toennis IV* is such an order and is not a published decision and is

not found on the Commission's website. Under AS 23.30.008(a), unless the Supreme Court reverses, "decisions of the commission have the force of legal precedent." Therefore, since *Toennis IV* is not a published decision, it is not "precedent" in the instant case.

Nevertheless, this alternative analysis will consider *Toennis IV*'s guidance on this issue. *Toennis IV* is distinguishable on its facts from the instant case. First, the main distinction is that in *Toennis I*, both the injured worker and Friess testified. They gave the panel explanations about their respective actions, and the factfinders assessed and judged their credibility and gave weight to their testimony. In the instant case, there was no testimony because this was a written-record hearing. Consequently, Employee asks the factfinders here to draw many inferences not based on facts presented as evidence. Argument "is not evidence." *Richards*.

In *Toennis I*, the injured worker located a neuropsychologist to address his alleged work-related traumatic brain injury. The claimant had an appointment months into the future with Dr. Logan. The injured worker wanted to see a neuropsychologist promptly, so Friess, the same adjuster working the instant case, testified that she contacted Dr. Logan's office and learned that he could see the employee sooner if the appointment was changed from a treating physician to an EME. Here, by contrast, neither Friess nor Davis changed what may have been an existing appointment with OPA into an EME appointment with OPA. The only evidence supporting that there even was an appointment with OPA was Employee's text message, which said she had an appointment on August 8, 2025, at 10:00 AM, which is hearsay. Moreover, there is no evidence found in the record suggesting who, if anyone, canceled that possible appointment, or if it was canceled at all.

Employee relies primarily on §.095(i) to support her contentions. But *Toennis IV* concluded §.095(i) did not directly apply to that claimant's situation because Friess' actions did not constitute interference with selection of the physician or an improper influencing or attempt to influence the physician's opinion. Oddly though, and without much analysis, *Toennis IV* also found that the employer "interfered with" the employee's right to a treating-doctor evaluation when it changed Dr. Logan's appointment to an EME. *Toennis IV* based this finding on the employee's self-represented status, and on its finding that it was unclear what the injured worker actually knew about differences in purpose between a treating-physician evaluation and an EME, factors that

Toennis determined were “strategic.” Here, a possible OPA appointment was not changed into an OPA EME. There would have been no reason for Friess to explain anything to Employee about differences between an attending physician versus an EME, because there is no evidence Dr. Kirkland was an EME. The logic behind Employee’s theory is hard to follow.

Apparently, Employee contends that the method Friess used to ‘herd’ Employee into seeing a physician favorable to Employer changed slightly from her tactic in *Toennis I*, but the result was the same -- the injured worker was “prejudiced.” But *Toennis IV* also noted that the injured worker in that case lost the benefit of what might have been a “different opinion” had Dr. Logan been a treating physician -- that was the prejudice the claimant suffered in *Toennis*. By comparison, here Employee knows exactly what Dr. Kirkham was going to say as a treating physician because he said it in his reports. Dr. Kirkham’s reports were overall favorable to Employee. By contrast, Dr. Logan’s *Toennis* report was known to be awful for the injured worker’s case -- it was very harmful to his position and formed the basis for the employer to controvert. By comparison, it is difficult to see how Employee was prejudiced by Dr. Kirkham’s reports. Employer followed Dr. Kirkham’s recommendations. To date, Employer has not formally controverted anything in this case. Employee may argue that at some point Dr. Kirkham would turn on her in favor of Employer. Speculation about what may or may happen in the future is also not evidence. *Richards*.

Employee places great emphasis on Dr. Kirkham’s reference to a “May 19, 2025” injury, which she says did not exist. She contends this, and other comments in his medical reports, show Dr. Kirkham was providing Employer with “defense evidence.” Again, Employee’s argument is not evidence. *Richards*. The genesis of the May 19, 2025, date is not obvious from the record. Moreover, it is not surprising that Dr. Kirkham would record Employee’s prior medical history, health status, weight and vital signs in his report. That is what treating doctors do. If Employee is unhappy with Dr. Kirkham’s reports, including references to a May 19, 2025, alleged injury, or any other opinion, she can use those comments to attack the weight and credibility accorded to his report or any testimony he might give at a hearing. Since Employee fired Dr. Kirkham as a treating physician, it is unlikely he will see her again.

Like the claimant in *Toennis IV*, Employee was not represented by an attorney when she saw Dr. Kirkham. Indeed, and to the point, the panel found no clear evidence showing how Employee even came to see Dr. Kirkham, or how his name came up in the first instance. The only referral to Dr. Kirkham found in the file came from Employee's treating provider, PA-C Kinstrey. The medical records show this, and Employee so stated in her emails and briefing. On August 15, 2025, Employee emailed Friess and said, "Valdez clinic sent my MRI referral to AFOC to Dr. Kirkham." On September 12, 2025, Employee wrote in briefing, "Because she could not get into OPA, and unaware that Dr. Kirkham is routinely retained by insurance companies as [an] 'independent' medical expert, she [Employee] was referred to Dr. Kirkham by her primary."

There are references in Davis' itemized billing statement to discussions with Dr. Kirkham, and some references to other "providers" with no explanation about the content or context of those discussions. While there are some similarities between this case and *Toennis IV*, the major differences cannot be ignored. *Toennis IV* does not support Employee's main contention because it requires factfinders to infer essentially all necessary facts to support her position.

Even considering the letters, texts and emails from Friess and Davis as evidence, there is nothing in those statements that prove either Friess or Davis interfered with Employee's selection "of an authorized physician to treat" her under §.095(i). Employee's brief argues they did, but there is no evidence showing that Friess or Davis even suggested Dr. Kirkham as an alternate to OPA. And "argument is not evidence." *Richards*. All that the texts show is that Davis contacted OPA and found it could not guarantee that Employee could be seen for the MRI and evaluated by a physician on one trip from Valdez to Anchorage, even if she spent the night. Employee neither implies that this was not a true statement, nor offers evidence that it false.

Likewise, nothing in those texts, letters and emails prove or even suggest that Friess or Davis improperly influenced or attempted to influence any physician's medical opinion who had examined or treated Employee. All that can be said from Davis' itemized billings is that she had contact with Dr. Kirkham regarding Employee. Why she did is not known. What they discussed is not known. His medical records on their face do not support an inference that Davis tried to manipulate Dr. Kirkham's opinions. Employee reads something nefarious into Davis'

“collaborating with the plan of care” with Dr. Kirkham. She pointed to no legal definition suggesting that a nurse case manager “cooperating” with a physician regarding a care plan is inherently suspect. There is no evidence as to what Davis’ role was in this case. To “collaborate” with someone generally means to “work with” that person. *Cambridge Dictionary*. That Friess and Davis were working with Dr. Kirkham does not suggest they were colluding with him to interfere with her medical treatment or influence his opinions. Therefore, given the lack of evidence this decision cannot find that Employer or its agents violated §.095(i).

(3) *Employee’s other arguments lack merit.*

Employee’s remaining arguments will be addressed in order as follows:

(a) *Employer’s failure to provide Friess’ and Davis’ files justifies “an adverse inference.”* The adverse inference that Employee seeks is a finding that Friess’ and Davis’ files would prove that Employer “herded” her to Dr. Kirkham, and Friess converted him into Employer’s hired expert. She relies on *Grimes*, which was a civil case to which Civil Rules apply. Its facts are not similar to those of the instant case and made an “adverse inference” that allowed an adverse party more time to present rebuttal evidence when surprised at a hearing, which is not applicable here.

The panel found only one reported agency decision in which an “adverse inference,” as Employee uses that term here, was applied to a discovery dispute. In *Boyd* a designee ordered an employer to provide an investigator’s report to the injured worker. When the employer failed to provide it the employee moved to strike. *Boyd* refused to strike the report from the record. Rather, *Boyd* held that if at hearing, “facts asserted in the report are capable of two different interpretations or inferences, we will draw the inference most favorable to the employee.” It is hard to see how this remedy would apply here, since Dr. Kirkham’s reports were favorable to Employee in their opinions and conclusions, with exception of a date, the genesis of which is unknown.

Moreover, when Employer failed to produce Friess’ and Davis’ files as requested, Employee had a statutory remedy. She used that remedy and filed a petition for an order compelling production of those files. The parties appeared at a prehearing conference and the designee ordered Employer to produce the records by December 12, 2025. Whether Employer has or has not produced those

records is shown in the agency file. However, Employee knew or should have known that December 12, 2025 was nine days after this written-record hearing. Therefore, she knew or should have known that if produced, the information she contends is critically relevant to her petition to strike Dr. Kirkham's records would not be available in time for this hearing. Employee could have and perhaps should have sought a later hearing date, or asked for a hearing continuance knowing that the evidence she believes justifies an "adverse inference" was forthcoming but would probably not be produced by December 3, 2025. These factors do not justify this decision making any "adverse inference" about what those documents may or may not reveal.

(b) *Friess refused to honor referrals that OPA and PA-C Kinstrey had made for PT.* This contention goes to Employee's claim on its merits. Even if true, it is not probative on the question presented at this written-record hearing.

(c) *Davis claimed she could not guarantee a same-day appointment at OPA for the recommended MRI and evaluation, and convinced Employee that the only option was to see Dr. Kirkham at AFOC.* As analyzed above, admissible evidence shows that Davis stated OPA could not guarantee it could see Employee for the MRI and an appointment on the same date or even the next day. Employee offered no evidence suggesting this was a false statement. Moreover, the panel found no evidence supporting the argument that Davis "convinced Employee" that seeing Dr. Kirkham was the only option. There was no sworn testimony stating that, and the panel found no admission to that effect.

(d) *Davis, without a medical release permitting ex parte contact, conferred with Dr. Kirkham to "collaborate the plan of care" for her.* Part of this argument also goes to Employee's claim on its merits. The above analysis already addressed the "collaborating" allegation. Even if true, this contention does not justify striking Dr. Kirkham's reports or barring his testimony.

(e) *Only after Davis conferred with Dr. Kirkham would Dr. Kirkham write the PT referral and would Friess agree to it.* Employee has failed to show why, even if this allegation is true, it should result in a decision striking Dr. Kirkham's reports and barring his testimony in the future. Moreover, since there is no evidence of what Dr. Kirkham and Davis spoke about, it does not

follow that if Dr. Kirkham wrote a PT referral after Davis spoke with him that the conversation caused the referral. Without evidence, such logic is a *post hoc ergo proctor hoc* fallacy.

(f) *After Employee asserted her rights, Friess tried to “bully” her and became “hostile.”* Employee is probably referring to Friess’ comment that Employee was “on [her] own” after she fired Dr. Kirkham and Davis. Employee’s interpretation of Friess’ comment is subjective. Friess later wrote to Powell stating there was no dispute over Employee’s attending physician and she was free to change physicians. There is no evidence that Friess took any adverse action against Employee because she fired Dr. Kirkham and Davis. The case remains non-controverted and Employee is receiving benefits. Workers’ compensation cases are adversarial; while professionalism is always desirable, there is no law against what Friess said. Employee must look out for her best interest, while Employer and its insurer protect their interests. If Friess’ comments violated an insurance adjuster’s code of ethics or some other rule outside the Act and related regulations, this panel has no jurisdiction over such issues. *AKPIRG*.

(g) *Employee faults Dr. Kirkham for suggesting she had preexisting medical conditions and “gratuitously” including “irrelevant” medical history, which she contends shows his “duty of loyalty” was to the insurer.* Dr. Kirkham’s reports in this case look like his reports in other cases where he was the treating physician, and look like reports from other physicians, which this panel has reviewed for decades. Treating physicians usually list preexisting medical conditions and a thorough medical history. While Employee is free to infer nefarious intent from these inclusions, the panel will not go that far and cannot see this as a basis to strike his reports.

(h) *Employer and its agents did not disclose an alleged conflict-of-interest between Employer and Dr. Kirkham.* Employee implies, without citing any applicable statute, regulation, or code of ethics, that Employer, its adjuster, or perhaps even Davis, had a duty to advise Employee that Employer had used Dr. Kirkham as an EME physician in the past. The panel is unaware of any such duty. This contention is likewise without merit.

Employer argues there is no evidence supporting Employee’s allegations. It contends there is no evidence Dr. Kirkham was an EME physician or was biased against Employee in any way. Employer cites his behavior was likened to a treating physician as evidence that he was in fact a

treating physician. Employer has the stronger argument under these facts. Absent testimony, and direct evidence supporting Employee’s arguments, she has failed to meet her burden of proof and her petition to strike Dr. Kirkham’s records and preclude him from testifying will be denied. This decision comports with both “fairness” and the right all parties’ have for their evidence to be considered, under AS 23.30.001(1) and (4).

CONCLUSION OF LAW

Employee’s September 1, 2025, petition to strike medical evidence should be denied.

ORDER

- 1) Employee September 1, 2025, petition to strike Dr. Kirkham’s medical records is denied.
- 2) Employee’s September 1, 2025, petition to prohibit Dr. Kirkham’s testimony in this case as a treating physician is denied.

Dated in Anchorage, Alaska on December 30, 2025.

ALASKA WORKERS’ COMPENSATION BOARD

_____/s/
William Soule, Designated Chair

_____/s/
Anthony Ladd, 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 Renee Puma, employee / claimant v. Wilson Brothers Distributing, employer; Umialik Insurance Co., insurer / defendants; Case No. 202510114; 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 30, 2025.

_____/s/_____
Rochelle Comer, Workers Compensation Officer I