

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JAMES OJA,)
)
Employee,)
Claimant,)
)
v.) INTERLOCUTORY
) DECISION AND ORDER
)
KIEWIT INFRASTRUCTURE WEST CO.,) AWCB Case No. 202406010
)
Employer,) AWCB Decision No. 26-0034
and)
) Filed with AWCB Anchorage, Alaska
OLD REPUBLIC INSURANCE) on April 30, 2026
COMPANY,)
)
Insurer,)
Defendants.)
)

Kiewit Infrastructure West Company's and Old Republic Insurance Company's (Employer) March 10, 2026 petition to quash the second independent medical evaluation (SIME) physician deposition and James Oja's (Employee) March 11, 2026 petition to compel Employer to abide by the stipulation regarding the SIME physician deposition was heard on April 14, 2026 on the written record. A March 31, 2026 stipulation gave rise to this hearing. Attorney Adam Franklin represented Employee. Attorney Martha Tansik represented Employer. The record closed when deliberation concluded on April 14, 2026.

ISSUE

Employer contends Employee's March 6, 2026 deposition notice of the SIME physician failed to meet the requirements under 8 AAC 45.092(j)(1)(A) because it was untimely and failed to specify

the time, date, and location the deposition was to occur. It contends it stipulated to continue the SIME deposition and then Employee acknowledged he had the obligation to conform to the notice deadline in the regulation and Employer confirmed with Employee that the deadline had passed by emails they exchanged, demonstrating both parties believed the regulation applied. Employer contends nothing in their agreement required Employer to take the SIME physician's deposition again and it fulfilled the stipulation because it provided the SIME physician the medical records he had not reviewed and paid for the additional records review and addendum SIME report. It contends Employee failed to meet his legal requirements and the Board firmly enforces them. Employer contends the SIME deposition is not needed to assist the Board because the medical issues are not complex. It contends Employee can pay for the SIME physician to attend and testify at hearing. Employer requests an order quashing the SIME physician deposition.

Employee contends Employer stipulated to continue the SIME physician's deposition. He contends Board decisions reflect a routine practice of continuing depositions to complete them at later dates. Employee contends the regulation does not require a second deposition notice after the SIME addendum report was issued. He contends that the SIME physician's deposition is needed to assist the Board in its interpretation and application of the SIME addendum report because the case involves a medically complex diagnosis and opinion regarding causation and his credibility. Employee requests orders compelling Employer to honor their stipulation to resume the continued SIME deposition and denying Employer's petition to quash.

Should the SIME physician's deposition be quashed?

FINDINGS OF FACT

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

- 1) On May 9, 2024, Employee reported lower back pain with no specific accident or injury. (First Report of Injury, May 9, 2024).
- 2) On May 31, 2024, Employee reported he was injured on February 22, 2023 while working for Employer and described it as "Injury to tailbone after operating heavy equipment over a period of time. Employee started with Kiewit on 1/4/23. Employee first sought medical treatment at OPA

on 2/22/23. X-rays obtained on 4/15/24; “coccyx is malpositioned, flexed and to the right.” (Employee Report of Occupational Injury or Illness to Employer, May 31, 2024).

3) On June 16, 2024, Employee sought temporary total disability (TTD), permanent partial impairment (PPI), and medical benefits, and attorney fees and costs. (Claim for Workers’ Compensation Benefits, June 16, 2024).

4) On July 17, 2024, Employer denied TTD benefits from December 2023 through April 2024 because Employee received unemployment during that period, PPI benefits because no rating had occurred, and attorney fees and costs because no attorney had entered on his behalf. (Controversion Notice and Answer to Employee’s Workers’ Compensation Claim, July 17, 2024).

5) On July 25, 2024, Employee verbally amended his claim to add penalty and interest. (Prehearing Conference Summary, July 25, 2024).

6) On August 9, 2024, Employer amended its controversion notice and answer to deny penalty, interest, and a request for a finding of unfair or frivolous controversion. (Amended Controversion Notice and Amended Answer to Employee’s Workers’ Compensation Claim, August 9, 2024).

7) On October 29, 2024, Employer denied all benefits effective September 21, 2024, including retraining, time loss, medical/travel/transportation (including out of state treatment) and PPI based upon Jason Thompson’s, MD, reports. (Controversion Notice, October 29, 2024).

8) On October 30, 2024, Employee sought TTD and PPI benefits, medical and transportation costs, penalty for late paid compensation, interest, and attorney fees and costs. (Claim for Workers’ Compensation Benefits, October 30, 2024).

9) On November 20, 2024, Employer denied all benefits effective September 21, 2024 based upon Dr. Thompson’s reports. (Controversion Notice and Answer to Employee’s Workers’ Compensation Claim, November 20, 2024).

10) On July 11, 2025, Employer submitted an affidavit of review and service of medical records, along with the medical records, for pages one through 2,006. (Affidavit of Review and Service of Medical Records, July 11, 2025).

11) On April 22, 2025, Employee requested an SIME. (Petition, April 22, 2025).

12) On May 12, 2025, Employer did not oppose the SIME petition. (Non-Opposition to Petition for SIME, May 12, 2025). It attached a mutually signed SIME Form. (SIME form May 12, 2025).

13) On May 20, 2025, the parties stipulated to conducting an SIME and set deadlines. (Prehearing Conference Summary, May 20, 2025).

14) On July 18, 2025, Employee submitted an affidavit he received the medical records provided by Employer for pages one through 2,006 and he possessed additional medical records and was submitting them for inclusion in the SIME, along with the medical records, for pages 2,007 through 2,837. (Affidavit of Adam R. Franklin, July 18, 2025).

15) On August 13, 2025, the Division sent Peter Lasater, MD, a letter for the September 19, 2025 SIME and enclosed a complete set of medical records. (Letter, August 13, 2025).

16) On August 18, 2025, Employee submitted an affidavit he received medical records and he was submitting them for inclusion in the SIME, along with the medical records, for pages 2,838 through 2,908. (Affidavit of Adam R. Franklin, August 18, 2025).

17) On August 22, 2025, the Division sent Dr. Lasater supplemental SIME records pages 2,838 through 2,908. (Letter, August 22, 2025).

18) On September 19, 2025, Dr. Lasater examined Employee for an SIME, and he noted Employee stated, “that prior to this, he had no prior history of issues in his low back, coccyx, or lower extremities and no prior history of injuries to that area.” Dr. Lasater opined the cause of Employee’s disability was coccydynia “which I do believe was brought on an related to his employment with [Employer].” He said Employee’s history is consistent with developing coccydynia over the course of his employment by the repeated pressured and force on the coccyx area as described by Employee when using an excavator to lift up very heavy pieces of dirt and then slamming down on the ground that he estimated happened hundreds of times per week over the course of a year, working six to seven days per week. Employee’s preexisting type II coccyx is his normal anatomy and predisposed him to be at a higher risk of developing coccydynia. Dr. Lasater noted the records he reviewed started in 2024 and Employee had no known history of preexisting coccydynia or previous issues with the lumbar spine. He said if additional medical documentation was obtained showing why Employee had a lumbar spine magnetic resonance image (MRI) before the work injury, it could potentially change his opinion. Dr. Lasater stated Employee’s work is the substantial cause of his disability, he continued to be disabled, and he reached medical stability on December 15, 2024. He recommended additional physical therapy, acupuncture, massage, and steroid injections around the coccyx because Employee said he had gotten relief in the past from them. If Employee ever decided to pursue it, coccygectomy would be a reasonable option to consider because he has tried every other conservative measure and he

continued to experience severe and debilitating symptoms. (Lasater SIME report, September 19, 2025).

19) On September 24, 2025, Employer submitted an affidavit of service of supplemental medical records, along with the medical records, for pages 2,909 through 2,918. (Affidavit of Service of Supplemental Medical Records, September 24, 2025).

20) On September 30, 2025, the Division received Dr. Lasater's SIME report and sent it to the parties. (ICERS SIME report entry, September 30, 2025).

21) On October 27, 2025, Employer noticed a January 20, 2026 deposition of Dr. Lasater at 3:30 p.m. "at the offices of Michigan Surgery Specialists. . . ." (Notice of Scheduling Deposition, October 27, 2025).

22) On November 26, 2025, Employee amended his claim to seek permanent total disability (PTD) benefits. (Amended Claim for Workers' Compensation Benefits, November 26, 2025).

23) On December 11, 2026, Employer denied all benefits effective September 21, 2024, including PTD benefits. (Controversion Notice and Answer to Employee's Amended Workers' Compensation Claim, December 11, 2026).

24) On January 20, 2026, Dr. Lasater stated he reviewed about 1,253 pages of medical records. (Deposition of Dr. Peter Lasater, January 20, 2026 at 12-13). His records began March 8, 2025 and went through July 10, 2025. (*Id.* at 13). Dr. Lasater did this examination in association with Dane Street and they sent him the records, and they will filter records if they do not feel they are pertinent. (*Id.*). Tansik asked Dr. Lasater if he felt confident issuing an opinion knowing that there are over 2,000 pages of records he has not seen, including prior injury records and a potential intervening injury, Dr. Lasater responded, "What with this new information, I would say no, 'cause it sounds like there's pertinent, other medical record information. Which, as we discussed, could potentially change my opinion, which I can't, you know, say one way or the other at this point, if it does, without seeing them" (*Id.* at 31-32). Tansik asked if Dr. Lasater had the time and capacity to review them and update his report if they have him the records, and Dr. Lasater stated, "Yeah. Yeah. I mean, I just need some time to do it. But yeah, I could definitely do it." (*Id.* at 32). Tansik asked Franklin, "do you stipulate to continuing this assignment process and deposition process?" (*Id.*). Franklin answered, "Yes." (*Id.*).

25) On February 2, 2026, the Division received Dr. Lasater's addendum SIME report dated January 29, 2026 that he issued after reviewing additional records going back from 2008 through

2025. (Lasater SIME addendum report, February 2, 2026). In response to the question, “Please list all causes of James Oja’s disability or need for treatment,” he stated:

I would still say, as I did in my original report, that one of his causes of disability is coccydynia; however, after going through the records, it is evident there are many other factors/diagnoses at play here as well. These other diagnoses would include a chronic history of low back pain listed to have been present for up to the last 30 years, with a history of chronic underlying lumbar spondylosis and lumbar disc herniations, and additionally, a history of chronic internal hemorrhoids.

To summarize the pertinent points in found in the review of theses [sic] additional records, I would note the following:

Going back to as early as 2008, there is mention of low back pain and a low back injury. At that time, he injured his low back cleaning rocks from an excavator using a shovel.

Another incident occurred in August of 2010 where he was working on a road construction crew, and a vehicle struck the crew’s pickup truck and then slammed into the claimant hitting him on the right hip. He was complaining of significant back pain following that.

Moving forward, there were multiple incidents of continuing low back pain that he was complaining about. For instance, a progress note from 02/10/2015, from Dr. Spencer, the claimant was evaluated for low back pain which had progressively worsened over the past 6 months, and he was diagnosed with mild L4-L5 and L5-S1 degenerative disc disease. It is noted in that note that Mr. Oja was complaining of pain with sitting and it states, “getting out of his pickup truck can be excruciating at times and sitting in a movie for 2 hours or riding on an airplane causes significant increased low back pain.” There is note of a right wrist muscle strain from 12/26/2016 following a fall.

His pain was severe enough that he underwent lumbar spine MRI on 03/22/2018, which showed multilevel facet hypertrophy at L3-L4 and L4-L5 with some minimal disc bulging seen at L4-L5 and L5-S1.

Another progress note by Jared Kirkham, MD dated 04/05/2018. Noticed he is being evaluated for chronic neck and low back pain. It states in the HPI “his low back pain has also been present for several decades.” Several months after that on 11/19/2018, he underwent a fluoroscopically guided low back injection of right L4-L5 and L5-S1 facets.

Another note dated 02/26/2019, from The Anchorage Fracture and Orthopedic Clinic noted that he re-injured his back on 02/23/2019, while lifting a gate.

It is also noted he presented to the emergency department on 09/02/2019, for back pain. This occurred after he was lifting a generator causing him to throw on his back. He then later followed up with the Anchorage Fracture and Orthopedic Clinic about 3 days later and he was complaining of low back pain and radiation of pain to the buttock area. He was diagnosed with lumbar strain/sprain, spondylosis and lumbar degenerative disc disease.

He underwent another MRI on 09/30/2019, of the lumbar spine which noted severe facet disease most notable at L3- L4, also diffuse disc bulging at L4-L5, possibly some impingement on descending nerve roots of L5.

A note from Anchor Medical Group which appears to be his PCP noted back pain was positive in the review of systems.

He underwent a colonoscopy on 04/21/2021, which identified mild internal hemorrhoids.

A tele-health visit through Anchor Medical Group on 11/16/2021, noted that stress and low back pain keep him awake at night. He was also mentioning new right posterior leg radiation down to his knee which started in autumn of that year.

He presented to the emergency department on 07/03/2023, with a chief complaint of rectal pain which had been going on for about 2 months and reported that 2 months prior he was reaching over to pick up a boat motor and felt something pop in his rectal area. It notes in the HPI that he had a history of hemorrhoids which he had been previously been treated for. Shortly after that he was seen at Alaska Colorectal Surgery by June George, MD for perianal irritation and hemorrhoids with comments noting "he is a heavy equipment operator notes that the seats are bad, his hemorrhoids are a "regular battle" they come and go. He has flared currently. He gets itching burning and pain, it can last all day.

It is also noted from a progress note dated 12/18/2023 from Anchor Medical Group that in the HPI states "he is also thrown on his back shoveling the driveway for which he has seen chiropractor."

Another follow-up note from Alaska Colorectal Surgery signed by Dr. June George dated 01/05/2024, stated "he notes that it really hurts to sit, he does better standing or laying down, he has never had this before, the pain can go down his legs, he has lower back pain and pressure and feels like something is "out." He notes that he hurt his back shoveling snow "3 weeks ago."

Another progress note from Orthopedic Physicians Alaska dated 01/22/2024, which appears to include excerpts from a PT evaluation noted "55-year-old male who presents with chronic episodic low back pain, reports he has been dealing with back pain for more than 40 years, notes flares will come and go and he is unsure what will cause his pain to start. He has had a very active life, was raised on a Montana

Ranch, rodeo, rodeo clown for years, reports a lot of abuse to his joints and back.”
A little bit later down it states[,] “commenced as a result of: Fell at his cabin landing
on a skid steer bucket.”

When asked, “If in your opinion one cause of James Oga's disability or need for medical treatment is a pre-existing condition, did the 12/15/2023 employment injury aggravate, accelerate or combine with the pre-existing condition to cause disability or need for treatment”, Dr. Lasater responded:

My initial answer to this was that there was no pre-existing condition as I not had any medical records which indicated any pre-existing issues and the claimant denied there being any pre-existing issues, injuries or conditions. Obviously, as per the excerpts I cited above, that is not the case. While I do still think that the mechanism of the injury in question, that being, using an excavator with a bad seat and continual slamming on the tailbone area, is feasible which I think could have aggravated his underlying condition. I think overall it is evident he was requiring treatment for his low back issues well before this. Additionally, there are so many other injuries which have come to light, both going back well before the injury in question as well as occurring around the same time, such as the fall occurring in 12/2023, that it is difficult to argue that the work injury in question by itself caused significant aggravation.

The argument might also be made that the claimant’s previous history was in the low back, but his current complaints are more in the coccyx/tailbone region; however, as I noted above going back to 2021, he was found to have hemorrhoids and then was having apparent symptoms from those hemorrhoids in 07/2023, after attempting to pick up a boat motor. I would also point out he was having pain/difficulty sitting back in 2015 per the reference I made in the above question from the 02/10/2015 progress note. Additionally, overall there appears to have been a progressive migration in the location of the claimant’s pain. For instance going back to around the time of the cited injury in question which was around 12/2023, his main complaint initially was low back pain as mentioned in that note from Anchor Medical Group dated 12/18/2023. Additionally, the Alaska colorectal surgery note from 04/18/2024, noted he had difficulty sitting but had low back pain as I mentioned above. A note from Orthopedic Physicians Alaska from 01/19/2024, in the physical exam under musculoskeletal noted non-tender to palpation, no step-offs noted. Physical therapy notes, such as the 01/22/2024, note from physical therapy noted his chief complaint was low back pain. This was after he had stopped the job at Kiewit which was through 12/2023. It is then noted in a physical therapy note dated 02/29/2024, under objective findings that there was “no pain to over pressure at the sacrum tailbone or lower L/S spinal segments.” Then things begin to change, for instance a note dated 03/12/2024, from physical therapy stated “LBP [for low back pain] decreasing, able to sit for short times now. Pain in tailbone and pelvis is chief complaint as low back pain decreases.” I would point out this is

approximately 3 months after he had finished the job with Kiewit and his pain seems to be migrating naturally from the low back to affect more of the coccyx/tailbone area.

To summarize and put all this together, it indicates that the work injury from 12/15/2023, possibly could have caused some aggravation. However, I do not see any evidence that it caused enough disability on its own to necessitate treatment as he was already going down that path requiring treatment already.

Dr. Lasater said the work injury did not produce a temporary or permanent change in Employee's preexisting condition and he no longer thought the work injury was the substantial cause of his disability. He opined Employee was medically stable as of December 15, 2024 and no additional treatment was necessary to address any injuries sustained from the work injury. He concluded his report by stating:

I would end by saying that overall after reviewing these records, it is evident that the claimant is an inaccurate historian whether this is intentional or unintentional I cannot say. As I had stated in the HPI of my original report "he states that prior to this he had no prior history of issues in his low back, coccyx or lower extremities and no prior history of injuries to that area." After reviewing these additional records, it is quite evident that is not true.

Additionally, while unrelated to this workplace issue, a further example of the claimant being an inaccurate historian was the complaints he was telling me in our initial exam of the symptoms in his hands. He had told me that his issues in his hands had started in 01/2023. The claimant believed that there is a direct connection with the symptoms in the sacrum and the symptoms in his hand stating that they had started around the same time which was around the time of his employment at Kiewit. He told me he bilateral carpal tunnel releases in 2011, however per the additional medical records, those surgeries were done at the end of 2017. It is noted he initially did well following those surgeries, however then he began having recurrent symptoms in 2018, for instance a note from Dr. Kirkham 11/20/2018, noted he had developed numbness in the left fourth and fifth fingers over the last several months. Later on 03/31/2021, he followed up with Dr. Kurt Mentzer complaining of bilateral wrist numbness and tingling with gradual onset since 2020. While it is not expected that the claimant should remember verbatim exact timelines and dates for symptoms and treatment, these records starkly contrast the report the claimant gave to me. (Lasater addendum SIME report, January 29, 2026).

26) On February 2, 2026, Dr. Lasater's office emailed the January 29, 2026 addendum SIME report to Tansik. (Email, February 2, 2026). Tansik forwarded Dr. Lasater's addendum SIME report to Franklin. (Email, February 2, 2026).

27) On February 19, 2026, Franklin emailed Carrie Craig at the Division at 11:08 a.m. and copied Tansik:

Hi Carrie, I was hoping you could help with a question regarding this fiasco in the Oja SIME where the reviewing physician did not receive all of the SIME records prior to issuing his report and prior to Ms. Tansik and I traveling to Detroit for his deposition. We have thus far been unable to isolate what happened, but it appears that neither the parties nor the Board were at fault for this problem.

The doctor sent a \$3,000 bill for his deposition, although the deposition ended up being about 20 minutes and only addressed his lack of receipt of the records. Would it be possible to inquire with Dr. Lasater's office if his deposition invoice provides for us to complete his deposition now that he has reviewed the records and issued his addendum report? (Email, February 19, 2025).

28) On February 19, 2026, at 11:37 a.m. Craig emailed Tansik, Franklin, and Harvey Pullen, at the Division, "In case you have not received it yet, I have attached Dr. Lasater's addendum report in Mr. Oja's case. Please let me know if you have questions or concerns. Adam, in response to your email this morning regarding the deposition invoice: I will reach out to Dr. Lasater and let you all know what he says. He is generally quick to respond." (Email, February 19, 2026).

29) On February 19, 2026, at 11:55 a.m. Craig emailed Tansik, Franklin, and Pullen, "As I am catching up on my emails, I found this invoice for the addendum review and report which we received 2/2/2026 from Dane Street in this case. If you have already received this, please disregard." (Email, February 19, 2026).

30) On February 19, 2026, at 12:15 p.m. Tansik wrote,

We have reached out to Dane Street to check on the actual costs for a number of reasons. Most important being, as you know, they failed to provide over 2000 pages of records to the SIME, resulting in a failed deposition and the need for an addendum. They have not responded to questions about these bills or how they planned to make the incredible cost they charged correct when they so completely failed to provide the records. Those emails are attached for your records. Ms. Wright was copied at the time.

Mr. Franklin asked some valid questions about this earlier today to you with a possible solution. That also needs response.

The Employer and Insurer are waiting to pay pending response to our questions. (Email, February 19, 2026).

31) On February 24, 2026, at 5:25 p.m. Franklin emailed Tansik, and copied Pullen and Craig, “Hello, I’m hoping we could get some clarity about this deposition question. There is a 30 day deadline to submit questions or set a deposition and we are up against it. Also, frankly, both parties really got mistreated/cheated in this situation and we need the Board’s help.” (Email, February 24, 2026).

32) On February 25, 2026, at 8:51 a.m. Tansik emailed Franklin, and copied Pullen, Craig, and Janel Wright, at the Division:

I agree that the parties need the Board’s assistance to get a response to Adam’s question about whether the amount previously charged for the deposition (\$3,000) covers the cost of a repeat deposition now that the physician was actually provided with and has reviewed the records. @Craig, Carrie D (DOL) are you able to urgently get us some answers about this?

To be clear, Employer and Insurer only feel “mistreated” (and that’s a little strong, disappointed and irritated would be better) in that they have had and will have to pay large bills (both legal and SIME related) for an error caused by the physicians’ office that effectively resulted in a do-over - and there’s no recourse under the Act to obtain reduction of any bill related to that if it does not occur voluntarily. While there is certainly significant frustration with how this SIME occurred, my clients do not feel “cheated.” But, that frustration does mean that we would support seeing if the prior deposition funds can also be applied to a follow-up. We all want the Board to have the clearest report and information possible from its physician and the best information to rely upon when making determinations on the case.

From the Employer’s perspective, the records have now all been received and reviewed and there is a complete report based on those records - so without other action we are close to the end of the SIME process. (Email, February 25, 2026).

33) On February 25, 2026, at 3:02 p.m. Craig emailed Tansik, Franklin, Pullen, and Wright,

My apologies for not responding sooner and I understand the frustrations with this case. The following is my email to Dr. Lasater about the invoice costs, “I received an email from the parties earlier asking if the deposition invoice provides for the parties to complete your deposition now that you have had a chance to review the complete records and issued the addendum report?”

Dr. Lasater responded, “I am happy to do another deposition with them, however it would be billed as a new deposition. Let me know if they would like to proceed.”

Is there any information you would like me to pass along to Dr. Lasater or anything else I can assist with? (Email, February 25, 2026).

34) On February 25, 2026, at 3:15 p.m. Franklin emailed Craig, and copied Tansik, Pullen, and Wright:

So the Board has no problem with him showing up at a deposition completely unprepared, billing \$3,000, wasting literally dozens of hours of attorney time, thousands of dollars in travel costs, and then demanding another \$3,000 to complete his actual deposition now that he has actually done his job and reviewed the records? Did the Board make any attempt to reason with him or even make a request for consideration given that his office created this problem or is the Board just ferrying messages? Just want to make sure I understand the situation and efforts made to rectify this situation. (Email, February 25, 2026).

35) On February 25, 2026, at 3:18 p.m. Tansik emailed Craig, Franklin and copied Pullen and Wright, "I guess what we were seeking is more advocacy regarding costs due to physician error to ensure all records were received and reviewed the first time. His office received and failed to give him 2000 pages of records. It is unfair that the parties are asked to incur thousands of dollars in extra costs due to their error." (Email, February 25, 2026).

36) On February 25, 2026, at 4:09 p.m. Craig emailed Tansik, Franklin, and copied Pullen and Wright, "I appreciate the feedback. I have just emailed Dr. Lasater a request that he waive the fee for the second deposition with a pointed reminder of the upcoming SIME selection panel. I will of course keep everyone looped in." (Email, February 25, 2026).

37) On February 26, 2026, at 1:16 p.m., Craig emailed Tansik and Franklin, and copied Pullen and Wright, "Dr. Lasater has proposed the following, he is offering to waive the fee for the first 60 minutes of the deposition, which amounts to \$1500. If the deposition goes beyond an hour, then fee would \$500 for every 30 minutes thereafter. Is that acceptable?" (Email, February 26, 2026).

38) On February 26, 2026, at 1:21 p.m. Franklin emailed Craig and copied Tansik, Pullen, and Wright, " Carrie, thanks for your efforts on this. This guy...sure, that is better than the full fee so we/I will take it." (Email, February 26, 2026).

39) On February 26, 2026, at 2:07 p.m. Craig emailed Franklin, and copied Tansik, Pullen, and Wright"

And thank you for being flexible. I will [let] Dr. Lasater know.

I also wanted to add that Dr. Lasater claims he has thus far charged and been paid only \$1,500, however the invoice from Dane Street (attached) says \$3000. The following is from his fee schedule which coincides with his offer:

8. Deposition Testimony of sixty (60) minutes or less \$1500.00

9. Deposition Testimony for each 30-minutes increment \$500.00 over the first 60 minutes. (Email, February 26, 2026).

40) On February 26, 2026, at 2:07 p.m. Tansik emailed Franklin, "Let me know what dates he gives you ASAP, please." (Email, February 26, 2026). Then, Tansik emailed Craig, Franklin and copied Pullen and Wright at 2:19 p.m.:

I have forwarded the attached invoices to my clients, which is what we have been charged. Please tell me if these are inaccurate or should have been different - we will need immediate answers and corrected ones from Dane Street.

Quite frankly, I am extremely unhappy that my clients have been charged \$16,000 for the examination and records review (duplicate invoices with two different amounts) and an additional \$3000 for the employer requested deposition which is apparently an overcharge from what you are saying.

Can you please immediately obtain whatever the correct invoice amounts are meant to be based on the schedule from Dr. Lasater with the Board? (Email, February 26, 2026).

41) On February 26, 2026, Craig emailed Tansik and Franklin, and copied Pullen and Wright, "I have reached out to Dr. Lasater about the depo invoice. I will send him your attachments as well for clarification and will reach out to Dane Street. Of course, I will continue to keep everyone informed." (Email, February 26, 2026).

42) On March 5, 2026, at 3:58 p.m. Tansik emailed Franklin, "The IME addendum was received in our office on 2/2/26, which I believe makes us past the 30 day deadline for scheduling or sending additional questions. 8 AAC 45.092. Is that your understanding as well?" (Email, March 5, 2026). Franklin responded at 4:06 p.m., "That is my understanding as well." (Email, March 5, 2026). Franklin responded again at 4:15 p.m., "I did file for the deposition, though, so I'm still intended to do that. Still need a date." (Email, March 5, 2026). Tansik replied at 5:29 p.m., "I did not receive a notice of deposition? And as you crushed me on this issue previously...you have to actually schedule it. Did I miss a pleading?" (Email, March 5, 2026). Franklin responded at 5:36 p.m., "It is sitting in my file, but I'm looking for the service email." (Email, March 5, 2026).

Franklin emailed again at 5:37 p.m., “I don’t think I have ever complied regarding the notice of intent versus needing the date within 30 days. I’ve pretty much only filed the notice of intent and then figured out the scheduling.” (Email, March 5, 2026). Franklin emailed yet again at 5:40 p.m., “I can’t find it...well, I guess it’s up to you how you want to play this. I’ll fight for it if needed. We were discussing his fees, I think I made it pretty clear I was planning to take his deposition.” (Email, March 5, 2026). Tansik replied at 5:57 p.m., “Let me talk to my client.” (Email, March 5, 2026).

43) On March 6, 2026, in an email dated March 5, 2026 at 6:06 p.m., Employee filed a notice of his intent to depose Dr. Lasater. “Employee intended and believed that his notice was filed on February 26, 2026, but is unable to locate the service information. The intended filing is attached.” The notice did not include a date, time, or location for the deposition. (Email, March 5, 2026; Refile Notice of Intent to Depose SIME Physician, March 6, 2026). Employee attached a notice of his intent to depose Dr. Lasater dated February 26, 2026 to his March 6, 2026 notice. The notice did not include a date, time, or location for the deposition. The service section stated it was emailed to Employer on February 26, 2026. (Notice of Intent to Depose SIME Physician, February 26, 2026).

44) The February 26, 2026 Notice of Intent to Depose SIME Physician was not filed on February 26, 2026; it was first filed on March 6, 2026. (Record).

45) On March 9, 2026, at 5:11 p.m. Dr. Lasater emailed Franklin and Martha, “I understand that you would like to reschedule the deposition for Mr. Oja. Would you like to schedule this for some time in April or May? Will you both be coming over to Michigan in person again? Just let me know what works and we can find a day/time.” (Email, March 9, 2026). Franklin replied at 9:29 p.m., “Hello, thanks for getting back to me. it would be great if we could accomplish it before May 12. I may or may not be able to make it back out in person. I could rearrange things in April except on 4/14, 4/20 and 4/20.” (Email, March 9, 2026).

46) On March 10, 2026, at 4:32 a.m. Dr. Lasater replied to Franklin and copied Tansik, “Would Tuesday, April 21, at 8:30 pm work? Same office as last time. . . .” (March 10, 2026). Tansik replied at 1:45 p.m.

A couple of things.

First, my clients are deciding whether or not they plan to petition to quash the deposition for procedural reasons. I should have an answer today on that. If we move to quash, the Alaska Board will have to make a determination about whether the SIME deposition goes forward. I can imagine that Mr. Franklin will want to hold a date in case he prevails and the deposition goes forward or my clients choose not to petition to quash.

To that end, second, the proposed date (4/21) does not work for me, I am so sorry. . . . Without waiving any defenses or the ability to petition to quash as discussed addressed above, the week of April 13th, 22-24, or the 27th or 28th can be held.

Thank you, Dr. Lasater for being responsive. It is appreciated. (Email, March 10, 2026).

47) On March 10, 2026, at 3:39 p.m. Dr. Lasater responded, “ No problem at all. How about Tuesday, April 18th at 3:30 pm. . . .” (Email, March 10, 2026).

48) On March 10, 2026, Employer requested an order quashing the deposition with Dr. Lasater for failure to comply with regulations. It contended Employee failed to adhere to the regulations and case law regarding SIME depositions and he did not timely or properly notice the deposition as required by 8 AAC 45.092(j)(1)(A). (Petition, March 10, 2026). Employer contended the notice of deposition did not include a deposition date, time, or location and only noted an intent to take the deposition. It contended the deposition notice is invalid as a matter of law because it was filed more than 30 days after the parties received the SIME report. Employer cited *Gilmore* to contend the SIME deadlines are hard and fast and are not excused unless there is an extremely complicated medical situation, which does not exist in this case. It contended Employee’s belief that he had filed the deposition notice timely is not sufficient. Employer contended permitted Employee to proceed with the deposition would undermine the purpose of the statutory deadline. It contended Employee could pay for Dr. Lasater to attend and testify at hearing under 8 AAC 45.092(j)(B)(3). Employer requested the deposition be quashed. (Memorandum In Support of Petition to Quash SIME Deposition, March 10, 2026).

49) On March 11, 2026, by an email dated March 10, 2026 at 5:34 p.m., Employee petitioned to an order “compelling discovery” and “other: abide by stipulated continuation of deposition.” He wrote, “On January 20, 2026, the parties stipulated to continue the deposition of the SIME, Dr. Peter Lasater. See transcript filed 2/2/26, P. 32. Employer refuses to select a date for the continued deposition and filed a petition to quash employee’s request.” (Petition, March 11, 2026).

50) On March 13, 2026, Employee opposed Employer's March 10, 2026 petition, contending the parties agreed to continue the SIME deposition in the January 20, 2026 deposition at a later date. He contended "Employer cannot repudiate their agreement/stipulation after the fact simply because they now believe it is advantageous." Employee contended the panel must allow Employee the opportunity to complete his cross-examination of the SIME physician in accordance with the parties' stipulation to continue the deposition. He contended "whether Employee's counsel forgot about the continued status of the deposition or not when he refiled a notice of intent to depose the SIME [physician] is irrelevant." Employee contended the regulatory notice requirement in 8 AAC 45.092(j) was already fulfilled and, "Even if Employee was required to file a new notice, Employee provided sufficient notice of his intent to depose the SIME to satisfy the statutory requirement." He contended he clearly intended to file his notice of intent to depose the SIME physician on February 26, 2026 as shown by the parties' communications as well as his notice refiled on March 5, 2025. Employee contended but for Employer's refusal to schedule the deposition, the parties would likely have selected a deposition date by March 9, 2025, 35 days after the parties received the addendum SIME report. He contended his counsel utilized identical notice of intent to depose documents to satisfy the regulation for years. Employee argued the case involves a medically complex issue and extenuating circumstances. He requested orders compelling Employer to honor its stipulation to resume the continued SIME deposition and denying Employer's petition to quash the SIME deposition. Employee attached seven notices of intent to depose SIME physicians documents from other cases signed by Franklin where the notices stated the employee intended to depose the SIME physician and did not give a time, date, or location. (Opposition to Employee's March 10, 2026, Petition to Quash SIME Deposition, March 13, 2026).

51) On March 23, 2026, Employer requested a written record hearing on its March 10, 2026 petition to quash the SIME petition. (ARH, March 23, 2026).

52) On March 23, 2026, Employee agreed the Board should hold one hearing on Employer's March 10, 2026 petition and Employee's March 11, 2026 petition. However, Employee sought an oral hearing and did not agree to a written record hearing. (Employee's Partial Non-Opposition to Employer's ARH and Clarification Regarding Employee's [sic] March 13 [sic], 2026 ARH, March 23, 2026).

53) On March 23, 2026, Employer did not oppose a hearing on both the March 10, 2026 and March 11, 2026 petitions as they are on the same topic. (Non-Opposition to Hearing Both Petitions, March 23, 2026).

54) On March 31, 2026, the parties stipulated to an expedited written record hearing on the March 10, 2026 and March 11, 2026 petitions and to an “emergency prehearing conference to set briefing deadline within a week of that prehearing [conference]” and “to waive the remainder of the regulatory requirements.” (Stipulation to Written Record Hearing, March 31, 2026).

55) On April 6, 2026, the Division served notice of an April 14, 2026 written record hearing with briefs due April 13, 2026. (Hearing Notice Written Record Served, April 6, 2026).

56) On April 13, 2026, Employer filed a hearing brief contended Employee’s February 24, 2026 email noted the obligation to conform to the deposition notice deadlines in 8 AAC 45.092(j) and Employer acknowledged his admission of the deadline on February 25, 2026 and then asked him for dates provided by Dr. Lasater on February 26, 2025. It contended Employer supported the stipulation to continue the SIME deposition process in accordance with the Act’s deadline and that they believed Employee was coordinating the second deposition. Employer contended the deadline to notice Dr. Lasater’s deposition was March 3, 2026, and neither Employer nor Employee filed a notice of deposition by that date. It contended Employer confirmed with Employee that the deadline has passed on March 5, 2026 by emails they exchanged, demonstrating that both parties believed the regulations applied. Employer contended Employee filed the deposition notice late on March 6, 2026, and it did not contain the date, time, or location for the deposition. It contended Employee also did not provide any documentation of efforts to secure a date from Dr. Lasater’s office in the March 6, 2026 deposition notice. Employer again cited *Gilmore* to contend Employee’s March 6, 2026 deposition notice was untimely and invalid. It contended it fulfilled the parties’ stipulation regarding the SIME addendum because it provided the additional records and paid for the additional records review and addendum SIME report. Employer contended nothing in their agreement required it to again take Dr. Lasater’s deposition, especially after the parties were informed Dr. Lasater would consider it a new deposition. It contended Employee simply failed to meet his regulatory requirement. Employer contended the medical issue is not complex. It contended there is no notice of deposition for the Board to approve or permit because Employee failed to remedy the errors in the March 6, 2025 deposition notice.

Employer contended Employee could pay for the SIME physician to attend and testify at a hearing in accordance with 8 AAC 45.092(j)(B)(3). (Employer’s Hearing Brief, April 13, 2026).

57) On April 13, 2026, Employee contended Board decisions reflect the routine practice of continuing depositions to complete them at later dates and cited *Epperly, Reuer, and Wegener*. He contended 8 AAC 45.092(j) does not require a second deposition notice after the SIME issued an addendum report and did not require a separate notice since Employer already properly noticed the deposition. Employee contended Dr. Lasater’s deposition is needed to assist the Board in its interpretation and application of the SIME addendum report. He contended the case involved a medically complex issue and extenuating circumstances, as Dr. Lasater entirely changed his medical diagnosis of coccydynia and opinion regarding causation based upon his review of the additional medical records and he made characterizations regarding Employee’s credibility and medical history, which could affect the Board’s evaluation of Employee’s credibility. Employee requested the Board compel Employer to honor their stipulation to resume the continued SIME deposition and deny Employer’s petition to quash. (Opposition to Employee’s March 10, 2026 Petition to Quash SIME Deposition, April 13, 2026).

PRINCIPLES OF LAW

AS 23.30.001. Legislative intent. It is the intent of the legislature that

(1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers.

...

(4) hearings in workers’ compensation cases shall be impartial and fair to all parties and that 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 not only on direct testimony, medical findings, and other tangible evidence, but also on 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, 531 (Alaska 1987).

AS 23.30.115. Attendance and fees of witnesses. (a) . . . the testimony of a witness may be taken by deposition or interrogatories according to the Rules of Civil Procedure. . . .

8 AAC 45.054. Discovery. (a) The testimony of a material witness, including a party, may be taken by written or oral deposition in accordance with the Alaska Rules of Civil Procedure. . . .

8 AAC 45.120. Evidence. . . .

(e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. . . .

AS 23.30.135. Procedure before the board. (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

When a statute or regulation is part of a larger framework or regulatory scheme, even a seemingly unambiguous statute must be interpreted in light of the other portions of the regulatory whole.”
Alaska Airlines, Inc. v. Darrow, 403 P.3d 1116, 1127 (Alaska 2017).

8 AAC 45.050. Pleadings.

. . . .

(f) For stipulations under this subsection,

(1) a stipulation of facts signed by all parties may be filed if the parties agree that there is no dispute as to any material fact and agree to the dismissal of a filed claim or petition or the dismissal of a party; by filing a stipulation of facts under this paragraph, the parties agree to the immediate filing of an order based upon the stipulation of facts;

(2) stipulations between the parties may be made in writing at any time before the close of the record or may be made orally in the course of a hearing or a prehearing;

(3) stipulations of fact or to procedures are binding upon the parties named in the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation; a stipulation waiving an employee's right to benefits under AS 23.30 is not binding unless the stipulation

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is submitted in the form of an agreed settlement, conforms to AS 23.30.012 and 8 AAC 45.160, and is approved by the board;

(4) notwithstanding any stipulation to the contrary, the board may base its findings upon the facts as they appear from the evidence, may cause further evidence or testimony to be taken, or may order an investigation into the matter as prescribed by AS 23.30.

Contract interpretation is a legal, rather than factual issue. *Weiner v. Burr, Pease & Kurtz, P.C.*, 221 P.3d 1, 5 (Alaska 2009). The primary goal of contract interpretation is to give effect to the parties' reasonable expectations. *Reeder v. Municipality of Anchorage*, AWCAC Dec. No. 116 (September 28, 2009). A valid contract requires "an offer encompassing all the essential terms, unequivocal acceptance by the offeree, consideration, and an intent to be bound." *Sea Hawk Seafoods, Inc. v. City of Valdez*, 282 P.3d 359; 364 (Alaska 2012).

"Contracts are to be interpreted so as to give effect to the reasonable expectations of the parties, that is, to give effect to the meaning of the words which the party using them should reasonably have apprehended that they would be understood by the other party." *Craig Taylor Equipment Corp. v. Pettibone Corp.*, 659 P.2d 594, 597 (Alaska 1983). Courts look to the contract's language in totality, the objects sought to be accomplished by it, the circumstances surrounding its adoption, and case law interpreting its provisions, to ascertain the parties' reasonable expectation. *Id.* The contract interpretation rule requiring ambiguous contracts to be construed against the contract's drafter applies to "contracts of adhesion" where the parties are "of such disproportionate bargaining power that [one of them] could not have negotiated for variations in the terms of [a] standard [contract]." *Graham v. Rockman*, 504 P.2d 1351, 1357 (Alaska 1972). The rule does not apply to unambiguous contract terms. *U.S. v. Henry*, 427 P.2d 584 (Alaska 1967).

The mere fact that two parties disagree as to the interpretation of a contract term does not necessarily imply that an ambiguity exists in the contract. Rather, an ambiguity exists only when the contract, taken as a whole, is reasonably subject to differing interpretations (footnote omitted). . . . (*Modern Construction, Inc. v. Barce, Inc.*, 556 P.2d 528, 529-30 (Alaska 1976)).

In *Wegener v. MT. View Car Wash, Inc.*, AWCBC Dec. No. 05-0247 (September 28, 2005), the injured worker's deposition was continued until the next day when the employee testified he was having a hard time breathing because of pain and cramping. His deposition was completed the

next day. In *Reuer v. Firstgroup America, Inc.*, AWCB Dec. No. 17-0144 (December 18, 2027), the SIME physician's deposition was continued, to be completed at a later date, after he had difficulty locating documents. In *Epperly v. State of Alaska*, AWCB Dec. No. 19-0075 (July 12, 2019) the parties agreed to continue Employee's deposition at a later date to allow Employee to collect additional information, including information from a cell phone.

8 AAC 45.063. Computation of time. (a) In computing any time period prescribed by the Act or this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday.

(b) Upon petition by a party and for good cause, the board will, in its discretion, extend any time period prescribed by this chapter.

Israelson v. Alaska Marine Trucking, LLC, AWCAC Decision No. 226 (May 27, 2016) found an attorney's late filed attorney's fee and costs affidavit was an implied request to extend time under 8 AAC 45.063(b).

8 AAC 45.092. Second independent medical evaluation. . . .

(j) After a party receives an examiner's report, communication with the examiner is limited as follows and must be in accord with this subsection. If a party wants the opportunity to

(1) submit written questions or depose the examiner, the party must

(A) file with the board and serve upon the examiner and all parties, not later than 30 days after receiving the examiner's report, a notice of scheduling a deposition or copies of the written questions; if notice or the written questions are not served in accordance with this paragraph, the party waives the right to question the examiner unless the opposing party gives timely notice of scheduling a deposition or serves written questions; and

(B) initially pay the examiner's charges to respond to the written questions or for being deposed; after a hearing and in accordance with AS 23.30.145 or 23.30.155(d), the charges may be awarded as costs to the prevailing party;

(2) communicate with the examiner regarding the evaluation or report, the party must communicate in writing, serve the other parties with a copy of the written

communication at the same time the communication is sent or personally delivered to the examiner, and file a copy of the written communication with the board; or

(3) question the examiner at a hearing, the party must initially pay the examiner's fee for testifying; after a hearing and in accordance with AS 23.30.145 or AS 23.30.155(d), the board will, in its discretion, award the examiner's fee as costs to the prevailing party.

(k) If a party's communication with an examiner is not in accordance with (j) of this section, the board may not admit the evidence obtained by the communication at a hearing and may not consider it in connection with an agreed settlement.

Myers v. Piston & Rudder Service, AWCB Dec. No. 99-0017 (January 27, 1999), a case involving complex medical conditions including myocardial infarctions, arterial insufficiency, neurotoxicity and short-term memory loss, allowed a party to depose an SIME physician when the deposition request was made more than 30 days after the parties received the SIME report. *Myers* found the deposition would allow him to explain and clarify his opinions, which would be helpful to the Board panel in deciding the case. *Myers* relied on AS 23.30.135(a) to support this decision.

Jewell v. Alcan Electric & Engineer, AWCB Dec. No. 00-0128 (June 30, 2000), a case involving a routine spinal fracture injury, declined to allow a party to depose an SIME physician when the deposition request was made more than 30 days after the parties received the SIME report. *Jewell* declined to waive the 30-day requirement in 8 AAC 45.092(j)(1)(A) because doing so would be contrary to the legislature's mandate to furnish a simple, speedy, remedy for injured workers. *Jewell* noted the lengthy period during which the injured worker had waited for his SIME and further noted the employer could still cross-examine the SIME physician at hearing.

Brown-Kinard v. Key Services Corp., AWCB Dec. No. 00-0190 (August 31, 2000), noted the Board had "enacted strict standards to assure that its SIME doctors are impartial and qualified to offer opinions in their area of expertise." *Brown-Kinard* further noted parties are permitted to depose an SIME doctor, but "must follow the guidelines established at 8 AAC 45.092(j)(1)." *Hayes v. Guardian Security Systems, Inc.*, AWCB Dec. No. 01-0241 (November 28, 2001), reiterated that after "a party receives the SIME's report, the party is permitted to send interrogatories . . . but must follow the requirements of . . . 8 AAC 45.092(j)." *Marple v. State of Alaska*, AWCB Dec. No. 17-

0127 (November 9, 2017), emphasized that a party’s questions under 8 AAC 45.092(j)(1)(A) must be “timely.”

Roberge v. ASRC Construction Holding Co., AWCB Dec. No. 18-0128 (December 14, 2018), dealt primarily with whether time associated with post-report SIME questions extended the time it took to complete an SIME for statute of limitation purposes. The employee contended his question to an SIME physician did not violate 8 AAC 45.092(j)(1)(A) because he filed it “under 8 AAC 45.092(j)(2), not 8 AAC 45.092(j)(1).” *Roberge* did not permit the questions and said:

Allowing a letter sent to the SIME physician that contains a question to fall under 8 AAC 45.092(j)(2) because a letter is a communication in writing regarding the SIME report permits a party to disregard the 30[-]day time limit under 8 AAC 45.092(j)(1). Employer’s April 5, 2017 letter did not comply with 8 AAC 45.092(j)(1) because it was submitted more than 30 days after the last SIME report was received on October 24, 2016.

Chambers v. State of Alaska, AWCB Dec. No. 19-0089 (September 4, 2019), addressed 8 AAC 45.092(j) and (k) and held that because the employer’s attorney’s telephone communications with an SIME physician “were contrary to subsection (j), subsection (k) requires the evidence obtained as a result be excluded.” *Weatherwax v. The Frameworks*, AWCB Dec. No. 20-0025 (April 16, 2020), reaffirmed that parties have a right to send questions to an SIME physician but “must do so within 30 days after receiving the SIME report” under 8 AAC 45.092(j)(1)(A).

Nelson v. State of Alaska, AWCB Decision No. 22-0047 (June 30, 2022) affirmed the prehearing conference discovery order declining to send the employer’s post-report questions to the SIME physician because it failed to timely submit them.

Gilmore v. Municipality of Anchorage, AWCB Dec. No. 23-0047 (September 1, 2023) granted the employee’s petition to quash the SIME physician’s deposition. The employer’s first notice of deposition, though timely filed, provided notice that a deposition was to occur at a future unknown date. Nine days later, it filed another deposition notice late that provided the date and time of the SIME physician deposition. *Gilmore* considered the language in 8 AAC 45.092(j)(1) and AS 23.30.115, 8 AAC 45.054(a), AS 23.30.135(a), 8 AAC 45.120(e), Alaska Civil Procedure Rule 30(b)(1), and *Darrow* and held the time and place for taking the deposition be included in the

“notice of scheduling a deposition” and that the first notice did not comply with the Act because it failed to provide the time and place of taking the deposition. It found the second notice also failed to comply because it was filed late. *Gilmore* stated the overall purpose of 8 AAC 45.092(j)’s 30-day notice requirement is to provide a quick, efficient, fair, and predictable process for parties to question the SIME physician about the opinions in the report. It found the Board’s regular practice is not to excuse a party’s failure to comply. *Gilmore* found the employer failed to provide “good cause” to extend 8 AAC 45.092(j)(1)’s 30-day deadline as it failed to provide evidence indicating when the employer asked the SIME physician’s office for dates of availability and the SIME physician’s office provided dates of availability after the notice deadline.

8 AAC 45.195. Waiver of procedures. 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.

Alaska Civil Rule 30. Depositions upon oral examination. . . .

. . . .

(b) Notice of Examination: General Requirements. . . .

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. . . .

A “continuance” is defined as the adjournment or postponement of a trial or other proceeding to a future date. *Black’s Law Dictionary* 387 (10th Ed. 2014). To “adjourn” means to end or postpone a proceeding. *Id.* at 49. A contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. *Id.* at 389. An oral contract is a contract that has been agreed to but not fully reduced to writing. *Id.* at 396. A stipulation is a voluntary agreement between opposing parties concerning some relevant point; especially an agreement relating to a proceeding, made by attorneys representing adverse parties to the proceeding. *Id.* at 1641.

ANALYSIS

Should the SIME physician's deposition be quashed?

Employer contended it stipulated to continue the January 20, 2026 SIME deposition and it fulfilled its agreement because it provided Dr. Lasater the medical records and paid for the additional records review and addendum SIME report. It contended Employee failed to meet his legal requirements for scheduling Dr. Lasater's deposition because his notice was late and he failed to provide the date, time, and location for the deposition. Employer contended the Board firmly enforces the SIME guidelines in 8 AAC 45.092(j) in decisions, citing *Gilmore*. Employee contended Employer stipulated to continue Dr. Lasater's deposition and there is a common practice to continue depositions to complete them at later dates. He contended 8 AAC 45.092(j) does not require a second deposition notice after the SIME addendum report was issued.

Stipulations to procedure are binding and have the effect of an order a subsequent order relieves a party from the terms of the stipulation for good cause. 8 AAC 45.050(f)(3). Stipulations can be made in writing or orally. 8 AAC 45.050(f)(2). A stipulation is a voluntary agreement between opposing parties concerning some relevant point. *Black's*. An oral contract is a contract that has been agreed to but not fully reduced to writing. *Id.* A valid contract requires "an offer encompassing all the essential terms, unequivocal acceptance by the offeree, consideration, and an intent to be bound." *Sea Hawk Seafoods, Inc.* Contract interpretation's goal is to give effect to the parties' reasonable expectations. *Reeder*. Courts look to the contract's language in totality, the objects sought to be accomplished by it, the circumstances surrounding its adoption, and case law interpreting its provisions, to ascertain the parties' reasonable expectation. *Id.*

While it is true that parties can and do agree to continue depositions and to alter the normal deadlines under the Act under 8 AAC 45.050(f)(3), Employee must prove the parties' oral deposition stipulation included a term that the parties agreed to alter the SIME deposition process under the Act when scheduling Dr. Lasater's second deposition. The January 20, 2026 deposition transcript contains the oral stipulation regarding Dr. Lasater's continued deposition. Dr. Lasater had not reviewed the 2,918 pages contained in the SIME binders; he only reviewed 1,253 pages. Tansik asked Dr. Lasater if had the time and capacity to review the entire medical record and

update his report, Dr. Lasater said yes. Then Tansik asked Franklin if he agreed to continue “the assignment process and deposition process,” and Franklin answered yes. Employer offered to continue the SIME process and deposition process of Dr. Lasater until he reviewed the entire medical record and issued an addendum SIME report and Employee accepted. A continuance is defined as the adjournment or postponement of a proceeding to a future date. *Black’s*. To adjourn means to end or postpone a proceeding. *Id.* Employee orally agreed to end or postpone Dr. Lasater’s deposition, ending or postponing his right to examine Dr. Lasater, until Dr. Lasater completed reviewing the entire medical record and issued an addendum SIME report; Employer orally agreed to pay for Dr. Lasater to review the entire medical record and issue an SIME addendum report. *Sea Hawk Foods*.

Employer had noticed the first deposition that had been continued and paid for Dr. Lasater to review the medical record and issue an addendum SIME report. The parties’ agreement did not address the process or cost of re-noticing Dr. Lasater’s deposition after the addendum SIME report was issued. Emails exchanged between the parties and Division staff show the parties took issue with Dr. Lasater’s bill for the deposition as it was his office’s error which led to the need for an addendum report and continuation of the first deposition, extending the SIME process and SIME costs. On February 24, 2026, Employee noted in an email that the 30-day deadline to submit questions or to “set a deposition” was approaching. On February 25, 2026, Employer confirmed in an email that the parties are close to the end of the SIME process without other action. On February 26, 2026, Division staff informed the parties Dr. Lasater agreed to waive the fee for the first 60 minutes of a second deposition, amounting to a waiver of \$1,500, with \$500 billed for every 30 minutes after; and Employee stated “we/I will take it” and Employer asked Employee to provide the dates Dr. Lasater provided him.

On March 5, 2026, Employer emailed Employee that they were past the 30-day deadline for scheduling a deposition, and Employee responded, “That is my understanding as well.” Then Employee followed up and said he filed for the deposition, and he still intended to do it, but he still needed a date. Employer responded that it did not receive a deposition notice and Employee had to actually schedule it and asked if it missed a pleading. Employee responded that it was in his file but was looking for it; he said he did not ever comply with the deposition notice

requirements, he only filed a notice of intent to depose and expected to figure out scheduling, and that he could not locate the notice of intent to depose. Employee said he would fight for it “if needed” as they had been discussing fees and he made it “pretty clear” he was planning to take Dr. Lasater’s deposition. On March 6, 2026, by email dated March 5, 2026 at 6:06 p.m., Employee filed a notice of his intent to depose Dr. Lasater and he did not include the time, date, or location for the deposition. Employee could have negotiated regarding the procedure for the SIME deposition after the SIME addendum report issued but he did not. *Graham*. There is no evidence of any disproportionate bargaining power. *Id.* The parties’ failure to specify the SIME deposition procedure in their oral stipulation did not make the contract term ambiguous. *Henry*. Based upon the oral stipulation made at the deposition and parties email exchange, the parties’ reasonable expectations when they agreed to continue Dr. Lasater’s deposition, was that they expected to follow the Act’s requirements and that either party needed to notice Dr. Lasater’s deposition within 30 days of the SIME addendum report. *Reeder; Pettibone Corp.; Graham; Henry*.

8 AAC 45.092(j)(1) requires a party to file and serve a notice of scheduling the deposition of the SIME physician no later than 30 days after receiving the SIME physician’s report and to initially pay the charges for being deposed. This decision incorporates the analysis in *Gilmore* to require the notice of an SIME physician deposition to include the time and place. AS 23.30.115; AS 23.30.135(a); 8 AAC 45.054(a); 8 AAC 45.120(e); 8 AAC 45.092(j)(1); Alaska Civil Procedure Rule 30(b)(1); *Darrow*. The intent of the regulation is to provide a quick, efficient, fair, and predictable process for parties to question the SIME physician about the opinions in the report. *Gilmore*. 8 AAC 45.092(j) makes no distinction as to whether the SIME report is the first report or an addendum SIME report. The intent of the regulation remains the same after an SIME addendum report. Because depositions are taken according to the Alaska Rules of Civil Procedure, a notice of deposition is required under the Act to depose an SIME physician after an addendum SIME report is issued. AS 23.30.115(a); 8 AAC 45.092(j)(1); 8 AAC 45.054(a); *Gilmore*.

The parties received Dr. Lasater’s addendum SIME report on February 2, 2026. The regulation required the parties to notice Dr. Lasater’s deposition by March 4, 2026 (February 2, 2026 + 30 days = Wednesday, March 4, 2026). 8 AAC 45.063(a); 8 AAC 45.092(j). Employee’s March 6, 2026 deposition notice was late because it was filed more than 30 days after Dr. Lasater’s February

2, 2026 addendum SIME report. Employee also included a notice of intent to depose Dr. Lasater dated February 26, 2026 with his March 6, 2026 notice. However, the February 26, 2026 deposition notice was not filed until March 6, 2026. It was also filed late. *Id.* Neither deposition notices included the date, time, and location of Dr. Lasater's deposition, which are required under the Act. *Gilmore.* Employee failed to follow the Act's procedures for Dr. Lasater's deposition.

The Board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties but it is also bound by procedures provided in the Act. AS 23.30.135(a). While parties may stipulate to alter procedures under 8 AAC 45.050(f)(3), in the absence of such a stipulation, the Board's regular practice is to not excuse a party's failure to comply with the notice requirements unless there is good cause. *Gilmore.* However, 8 AAC 45.063(b) provides a time period prescribed by the Act can be extended for good cause. *Israelson.*

Employer contended Dr. Lasater's deposition is not needed to assist the Board because the issues are not complex. Employee contended Dr. Lasater's deposition is needed to assist the Board in its interpretation and application of the SIME addendum report because the case involves a medically complex diagnosis and opinion regarding causation that included characterizations about Employee's credibility and medical history. Dr. Lasater's addendum SIME report clearly explains his opinion regarding causation and why it changed from his first report. *Myers.* Employee can still call and examine Dr. Lasater at hearing under 8 AAC 45.092(j)(3). Therefore, there is no good cause to extend the time period prescribed by 8 AAC 45.092(j)(1). *Rogers & Babler.* The SIME physician's deposition should be quashed. Employer's March 10, 2026 petition to quash will be granted and Employee's March 11, 2026 petition to compel will be denied.

CONCLUSION OF LAW

The SIME physician's deposition should be quashed.

ORDER

- 1) Employer's March 10, 2026 petition to quash the SIME physician deposition is granted.
- 2) Employee's March 11, 2026 petition to compel is denied.

