ALASKA WORKERS' COMPENSATION BOARD

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

WILLIAM C. SECCARECCIA, Employee, Claimant, v. CIRCLE PLUMBING & HEATING, INC., Employer, and ALASKA NATIONAL INSURANCE COMPANY, Insurer, Defendants.	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 202409972 AWCB Decision No. [26-0039] Filed with AWCB Anchorage, Alaska on May 28, 2026

William Seccareccia's (Employee) April 10, 2026 petition appealing a discovery order was heard on May 12, 2026, on the written record, in Anchorage, Alaska, a date selected on April 14, 2026. The petition gave rise to this hearing. Attorney Carson Honeycutt represents Employee. Attorney Adam Sadoski represents Circle Plumbing & Heating, Inc. and Alaska National Insurance Company (Employer). The record closed at the hearing's conclusion on May 12, 2026.

ISSUE

Employee contends the designee abused his discretion when he granted Employer's petition for a protective order in the April 1, 2026 prehearing conference summary. He contends the designee abused his discretion by exceeding his authority and failing to correctly apply controlling law.

Employer contends the designee did not abuse his discretion in granting its request for a protective order against producing Katelyn Denner for cross-examination.

Should the designee's April 1, 2026 discovery order be affirmed?

FINDINGS OF FACT

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

1) On July 23, 2024, Employer reported Employee was injured on July 17, 2024, when he started feeling a burning sensation in his lower back that became extremely painful and made it hard for him to move. (First Report of Injury, July 23, 2024).

2) On September 12, 2025, Employee sought permanent partial impairment (PPI) benefits, medical and transportation costs, a penalty for late paid compensation and for an unfair or frivolous controversion, and attorney fees and costs. He said he was, "Injured in scope and course of employment: back: stood up from sitting on a bucket and felt sharp pain in back." (Claim for Workers' Compensation Benefits, September 12, 2025).

3) On October 8, 2025, Employer denied "PPI, Injections, surgery, related transportation costs, Attorney's Fees, Penalties, Interest, and Unfair/Frivolous Controversion." It contended,

> Per the 10/22/25 chart note from Jared Kirkham, M.D., Employee was medically stable as of that date. Dr. Kirkham stated no permanent partial impairment was related to the work injury of 7/17/24. Per Dr. Kirkham's 11/27/24 chart note Employee's low back pain began occurred after an L5-S1 microdiscectomy in 2017, and therefore pre-existed the work injury. Dr. Kirkham recommended against injection and surgery. (Controversion Notice, October 8, 2025).

4) On November 22, 2025, Employee signed the Examinee Verification Form and a copy of his photo ID was not on the document. He filled out and signed page one and filled out page two of the Medical Questionnaire, he did not fill out page three or four. (Examinee Verification Form, November 22, 2025).

5) On November 25, 2025, Katelynn Denner emailed Ashley Pool:

> Your claimant, William Seccareccia was scheduled to be seen on 11/22/2025 at 03:00 PM in our ExamWorks Anchorage clinic by Eric Varley, D.O.

> Unfortunately, we were unable to proceed with this examination. The claimant refused to complete important paperwork needed to proceed with the claim. This was reviewed with the physician scheduled to see the claimant, and it was determined that we could not proceed without this information.
>
> We regret any inconvenience this may cause you. We will reach out to you? soon so reschedule the event. If additional detail is needed, please feel free to reach out to us. (Email, November 25, 2025).

6) On November 25, 2025, Pool asked Denner for a copy of the documents that Employee refused to complete. (Email, November 25, 2025).

7) On December 1, 2025, Denner mailed Pool:

> Please find attached the intake forms that are typically sent out to claimants and Examinee Verification Form (done in clinic). For the Examinee Verification Form, we make a copy of the claimant's ID attached to the top right corner and they sign at the bottom during the appointment.
>
> Failure to sign the form may necessitate a rescheduling of the examination.
>
> I did not witness any interactions with Mr. Seccareccia and the front desk staff, however. If the doctor requires the completion of paperwork and the claimant declines, at that point we need to arrange for the appointment to be rescheduled. (Email, December 1, 2025).

8) On December 1, 2025, Employer petitioned to compel Employee to attend and submit to an employer's medical evaluation (EME). It contended Employee refused to complete paperwork necessary for the EME to proceed, and the physician was unable to conduct the EME. Employer contended AS 23.30.095(e) requires Employee to submit to an EME if requested by the Employer or ordered by the Board. (Petition, December 1, 2025).

9) On December 1, 2025, Employer denied all benefits starting November 22, 2025, contending Employee appeared for a properly noticed EME on November 22, 2025, and refused to complete paperwork required to proceed with the EME and the physician was unable to conduct the EME. It contended Employee refused to submit to an examination under AS 23.30.095(e). (Controversion Notice, December 1, 2025).

10) On December 10, 2025, Employee requested cross-examination of Denner for the December 1, 2025 email to clarify the opinion of the author, the reason for the opinion, and facts underlying the opinion. (Request for Cross Examination, December 10, 2025).

11) On December 11, 2025, Employee answered Employer's December 1, 2025 petition, contending it was moot because Employee was willing and able to attend a properly noticed EME. He contended he did not refuse to complete necessary paperwork as he completed the paperwork provided to him in advance of the appointment and had it available for submission for the appointment, pages one and two. Employee contended he objected to filling out paperwork that was not provided in advance of his appointment, *i.e.*, pages three and four. He contended he filled out the Examinee Verification Form. Employee contended his attendance at the appointment and completing the documents provided to him before the appointment demonstrated compliance with the statutory obligations. He contended his request for legal review of the new forms provided the day of the appointment before filling them out was justified under AS 23.30.095. Employee contended his attorney was not available the day of the appointment because it was a Saturday. He contended there was good cause for his alleged refusal to complete pages three and four:

> The Alaska Supreme Court in *Bockus v. First Student Servs.*, 384 P.3d 801, 808 (Alaska 2016), emphasizes that the EIME process itself must be reasonable. Presenting new forms at the last minute, without prior notice or opportunity for legal review, renders the process unreasonable. If the process is not reasonable William's concerns are valid and not a willful refusal.

Employee contended the EME physician could have asked Employee the questions on the new forms during his examination without cancelling the appointment. He contended the front desk staff initially told him the EME physician would still see him if he did not complete pages three and four, and that he was only informed the EME physician would not see him and had canceled the appointment after he declined to complete pages three and four. Employee contended that if the Examinee Verification Form with another claimant and physician's name provided by Employer is the basis of its petition to compel, his alleged refusal is justified because the agent was asking him to complete paperwork intended for someone else. (Answer to Employer's December 1, 2025, Petition to Compel, December 11, 2025).

12) On December 19, 2025, Employer requested a protective order against producing Denner for cross examination. It contended the underlying document is a record produced during the normal course of business and is an exception to the hearsay rule under Alaska Rule of Evidence 803(6). (Petition, December 19, 2025).

13) On January 5, 2026, Employee contended the email did not qualify as a business record under Evidence Rule 803(6). He contended it was not created as a part of a regularly conducted business activity nor was it made pursuant to a routine practice. Employee contended it was prepared after the EME appointment in anticipation of litigation and records created for litigation purposes lack the reliability required for admission under the business records exception. He contended the email and circumstances of the preparation of the email indicate a lack of trustworthiness because the documents provided have the wrong name on them. Employee contended the email contains hearsay within hearsay because it relays statements allegedly made by individuals not under a business duty to report. He contended each layer of hearsay within a business record must independently satisfy a recognized hearsay exception, and if any embedded statement does not meet an exception, the document is inadmissible for the truth of the statement and must be subject to cross-examination. Employee contended Denner's narrative concerns matters directly related to the EME and Employer's handling of the claim, which is relevant to credibility and bias. He contended preventing investigation into the creation, purpose, and accuracy of the email would unfairly prejudice Employee. Employee requested Employer's petition for a protective order be denied in its entirety. (Answer to Employer's Petition for Protective Order, January 5, 2026).

14) On January 20, 2026, Employee filed an affidavit of service with a January 12, 2026 statement by Judith Conte. She stated:

> 1. I accompanied my son, William Seccareccia on November 22, 2025 for his appointment at Exam Works Anchorage clinic for his 3 p.m. appointment with Dr. Eric-Varley. We arrived at 2:43 p.m.
> 2. There was a receptionist at a desk situated behind a plexiglass, which was located at the far end of the waiting room.
> 3.The waiting room was approximately twenty feet long and about eight feet wide where five or six other adults plus children waited. There was also a large television tuned to a loud sitcom with a laugh track, set in the middle of the room, facing a single row of folding chairs pressed against the side wall. There was also a community food distribution center in the waiting room where at least one person picked up food from a stocked bookshelf that was almost adjacent to the plexiglass. There were no tables or private areas; adults with clipboards sat next to each other against the wall.
> 4. One of the adults stood at the plexiglass, so William waited his turn as the other adults milled around, chatting or watching the television show.
> 5. I stood next to William as he checked in. The time was approximately 2:47 p.m.

> 6. I observed the woman remove two completed forms from a file and said they had received them from William, but now he had to complete additional ones. She asked for William's identification, and he complied. When William asked why he had to fill out additional forms since he filled out the ones he had previously received from Exam Works, the woman said they always forget to include these additional forms; she also said it was up to William if he wanted to fill out the new forms and would be seen by the doctor whether or not he did.
> 7. I observed William sign one form which, reading over his shoulder, I saw confirmed receipt of his ID and also that he had brought a family member with him to the appointment.
> 8.The second form was a multiple-page document with small print that asked detailed, specific questions about pain, symptoms and other health related issues. While William looked at the document, the woman stood, saying she was going to speak to the doctor. When she returned, she said the reason for the forms was to make the exam shorter and simpler.
> 9. By then, the waiting room had filled with more people, some of whom formed a line behind William. The TV remained loud, and waiting room was busy and noisy. There was no private or quiet space.
> 10. William told the woman he could not fill out the additional paperwork at this moment. She said she would let the doctor know. In less than a minute,. she returned with a stiffer tone of voice than what had been friendly up to then. She told William that this doctor was not going to do the exam without the completed form and his appointment would be rescheduled with a different provider and someone would get back to him about that.
> 11. After that, we left, and walked around the parking area, a bit stunned by the experience.
> 12. William returned to the office for copies of the paperwork, and then he left and I left with him. (Affidavit of Service, January 20, 2026; Statement of Judith Conte, January 12, 2026).

15) On February 13, 2026, Employee attended an EME with Dr. Varley. (Varley EME report, February 13, 2026).

16) On April 1, 2026, the Board designee granted Employer's December 19, 2025 petition for a protective order:

> Designee reviewed Employer's 12/1/2026 Petition, 12/1/2026 Controversion, and 12/19/2025 Petition along with Employee's 12/11/2025 Petition and 1/5/2026 Answer. Designee also reviewed Alaska Rule of Evidence 803(6) and finds Katelyn Denner's 12/1/2025 email to be a record produced during the normal course of business and an exception to the hearsay rule under Alaska Rule of Evidence 803(6). Designee finds Employee's request for cross examination of Katelyn Denner to be unnecessary, cumulative, and unduly burdensome. Employer's Medical Examiner's Office Manager authored an email in the regular course of business operations. The email was created contemporaneously with

> the events described or within a reasonable time thereafter. The Office Manager had personal knowledge of, or received information from a person with knowledge of, the matters described in the email. It should be Employer representative's regular practice to retain such emails as part of its case file record. The email was filed in this proceeding as documentary evidence. Employee has not presented compelling evidence to suggest that the email is untrustworthy fabricated, or produced in anticipation of litigation. Alaska Evidence Rule 803(6) provides that records of regularly conducted business activity are not excluded by the hearsay rule when the record is made at or near the time by a person with knowledge and kept in the course of regularly conducted business activity. The Alaska Supreme Court has recognized that business records "fall squarely within the business records exception" and that requiring live testimony to authenticate such records is unnecessary absent a genuine question of trustworthiness. Workers' compensation proceedings are intended to be efficient and to avoid unnecessary evidentiary formalities, including limiting witnesses and avoiding cumulative evidence at prehearing and hearing stages. Employer's 12/19/2025 Petition for Protective Order is granted. If Employee does not agree with today's order, he has two options:
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> 1. File a Petition to Appeal today's discovery order (AS 23.30.108) within 10 days of service of this prehearing conference summary, at which time, the AWCB will review the file at a Written Record Hearing and respond in writing to the Petition advising parties of whether or not the designee abused his discretion by rendering the above order.
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> 2. File a Petition for Reconsideration (8 AAC 45.065) within 10 days of service of this prehearing conference summary, at which time, designee will review the file and respond in writing to the Petition advising parties of whether or not the order has changed. (Prehearing Conference Summary, April 1, 2026).

17) On April 2, 2026, the Division served the April 1, 2026 prehearing conference summary on the parties. (Prehearing Conference Summary Served, April 2, 2026).

18) On April 10, 2026, Employee appealed the April 1, 2026 discovery order, contending the designee abused his discretion by exceeding his authority and failing to correctly apply controlling law. (Petition to Appeal April 1, 2026, Discovery Order, April 10, 2026).

19) On April 14, 2026, the Division served notice of a May 12, 2026 written record hearing and that written arguments must be filed and served no later than five business days before the hearing. (Hearing Notice and Hearing Notice Written Record Served, April 14, 2026).

20) On April 16, 2026, Employer requested the May 12, 2026 written record hearing be cancelled for good cause under 8 AAC 45.074(b)(1)(N) until the hearing issue is identified and the parties agree on a date. It contended the Board scheduled the hearing without holding a

prehearing conference or otherwise notifying the parties of the issues to be addressed in the hearing notice or other correspondence. Employer contended forcing a hearing with unspecified issues would be a violation of due process, resulting in irreparable harm. (Petition, April 16, 2026).

21) On April 24, 2026, Employee opposed Employer's April 17, 2026 petition to cancel the May 12, 2026 written record hearing. He contended Employer was provided ample notice that the hearing was scheduled as a result of Employee's petition appealing the designee's April 1, 2026 discovery order as the April 1, 2026 prehearing conference summary stated it would be scheduled if Employee filed a petition appealing the order. Employee contended there was no violation of due process because Employer had actual notice and time to prepare for the written record hearing. He contended delaying the hearing would cause greater harm to Employee. Employee requested Employer's April 17, 2026 petition be denied. (Opposition to Employer Petition to Cancel Hearing, April 24, 2026).

22) On May 5, 2026, Employee filed a hearing brief contending he completed the Employee Verification Form and the form provided by Employer to support its controversion was labeled with an incorrect name for the injured worker and the physician. He contended Employer did not include the two pages of the medical questionnaire he did not complete to its controversion. Employee contended he did not complete the two pages of the medical questionnaire as it was not provided to him before the appointment and he could not reach his attorney and office staff initially told him he did not have to complete them and he was willing to proceed with the evaluation and have the EME physician ask any question. He contended an EME was completed with Dr. Varley on February 13, 2026, and he completed the five-page form. Employee argued Denner's November 25, 2025 email is not trustworthy because it merely described the forms as "important paperwork." He contended the designee's discovery order was an abuse of discretion because Employer failed to lay any foundation for its admissibility and the designee lacked authority to render the decision on the admissibility of evidence. Employee requested the designee's order be reversed and his request for cross-examination be reinstated. (Hearing Brief, May 5, 2026).

23) On May 5, 2026, Employer filed a hearing brief contending the designee properly concluded Denner's communication was a routine record and fell under an exception to the evidentiary rules excluding hearsay and that Employee did not have a right to cross-examine Denner. It

contended Denner was not acting as a witness, she was simply providing notification that the exam could not be completed and the reasons why she did not witness any interactions herself between Employee and the front desk staff. Employer contended a "generalized sample of the paperwork" Employee refused to complete was included with its controversion notices. It contended the designee properly found the emails were produced during the normal course of business and noted the emails were "created contemporaneously with the events described or within a reasonable time thereafter" and Denner had "personal knowledge of or received information from a person with knowledge of, the matters described." Employer contended Employee did not present compelling evidence to suggest the email was untrustworthy, fabricated, or produced in anticipation of litigation and that requiring live testimony to authenticate such records is unnecessary absent a genuine question of trustworthiness. It contended the parties were not notified of the issues within the requirements of the Act, although it acknowledged confusion over the issue was unlikely because the Board's representative notified the parties of the issue by an informal teleconference on April 28, 2026. Employer contended that if the briefing of one of the parties indicates a misunderstanding or misstates the issues, the hearing should be cancelled or continued until formal, written notice can be provided as a prehearing conference in accordance with "8 AAC 45.071(g)." It acknowledged the emails at issue would be considered hearsay and, consequently, would be inadmissible under the Alaska Rules of Evidence if an exception did not apply. Employer contended the fact that another individual was listed on the sample verification form as the examinee and physician is immaterial. Employer contended the emails were not sent in anticipation of litigation but were interactions between a service provider and a customer and Denner did nothing more than provide customer service in the normal course of her job as Lead Office Assistant. It contended there was no indication of any kind that Denner intended or even contemplated her communications would be used in litigation and Employee relied on the fact that they were ultimately used for litigation to argue the emails were sent in anticipation of litigation. Employer contended all elements of Rule 803(6) are met, specifically that Denner's December 1, 2025 email contains accounts that would satisfy elements four and five as the information was acquired through normal business procedures of staff members reporting to the Lead Office Assistant and that supervisor notified their client, Employer, of the incomplete examination and

steps for proceeding. (Employer's Hearing Brief in Opposition to Employee's 4/10/2026 Petition to Appeal 4/1/2026 Discovery Order, May 5, 2026).

PRINCIPLES OF LAW

> **AS 23.30.001. Legislative intent.** It is the intent of the legislature that
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> (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers who are subject to the provisions of this chapter;
> . . . .
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> (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, 533-34 (Alaska 1987).

> **AS 23.30.095. Medical treatments, services, and examinations.**
> . . . .
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> (e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. . . . If an employee refuses to submit to an examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. . . .

> **AS 23.30.108. Prehearings on discovery matters**. . . .
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> (b) If a petition seeking a protective order is filed, the board shall set a prehearing within 21 days after the filing date of the petition. At a prehearing conducted by the board's designee, the board's designee has the authority to resolve disputes concerning the written authority. If the board or the board's designee orders delivery of the written authority and if the employee refuses to deliver it within 10

> days after being ordered to do so, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board, or the court determining an action brought for the recovery of damages under this chapter, determines that good cause existed for the refusal to provide the written authority.
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> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. . . . If a discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. . . . The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.

Parties have a constitutional right to defend against claims or petitions. *Granus v. Fell*, AWCB Dec. No. 99-0016 (January 20, 1999). A thorough investigation allows parties to verify information provided by the opposing party, effectively litigate disputed issues and detect fraud. *Id*. Information inadmissible at a civil trial may be discoverable in a workers' compensation case if it is reasonably calculated to lead to relevant facts. *Id*. *Granus* provided a two-step analysis to determine if information was discoverable: (1) The first step is to identify matters in dispute; this requires the designee to, at a minimum, review both the claims (which generally state the issues from the injured worker's perspective) and the answers and controversions (which generally state the issues from the employer's perspective). (2) The second step is to decide (*i.e*., analyze) whether the information sought is relevant; or in other words, is it "reasonably calculated" to lead to admissible facts that will tend to make a disputed issue, identified in step one, more or less likely.

The first step in determining whether information sought to be released is relevant is to analyze what matters are "at issue" or in dispute in the case. This is done by primarily looking to the parties' pleadings and the prehearing conference summaries to ascertain the specific benefits Employee is claiming, and defenses Employer has raised to these claims. Second, the elements which must be proven to establish Employee's entitlement to each benefit claimed and the elements of any affirmative defense Employer asserts are reviewed to determine what propositions are the subject of proof or refutation. It is also necessary to review the available

evidence to determine if there are specific material facts in dispute and whether the information being sought may be relevant to cross-examine a potential witness. *Weseman v. Dairy Queen of Anchorage, Inc.,* AWCB Dec. No. 90-0027 (February 23, 1990).

In the next step it must be decided whether the information sought is relevant for discovery purposes; that is, whether it is reasonably "calculated" to lead to facts that will have any tendency to make a question at issue in the case more or less likely. In other words, information is relevant for discovery purposes, if it is reasonably "calculated" to lead to facts that are relevant for evidentiary purposes. In interpreting the meaning of "relevant" in discovery, *Schwab v. Hooper Electric*, AWCB Dec. No. 87-0322 (December 11, 1987) stated:

> We believe that the use of the word 'relevant' in this context should not be construed as imposing a burden on the party seeking the information to prove beforehand, that the information sought in its investigation of a claim is relevant evidence which meets the test of admissibility in court. In many cases the party seeking information has no way of knowing what the evidence will be, until an opportunity to review it has been provided
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> **AS 23.30.110. Procedure on claims.** . . . .
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> (c) The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board. . . .
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> **AS 23.30.115. Attendance and fees of witnesses**. . . . [B]ut the testimony of a witness may be taken by deposition or interrogatories in accordance with the rules of Civil Procedure. . . .
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> **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. . . .

Because the statute makes most rules of civil procedure and evidence inapplicable, the scope of evidence admissible in administrative hearings is broader than is allowed in civil courts generally. Under relaxed evidence rules, discovery should be at least as liberal as in a civil

action and the relevancy standards should be at least as broad. *Schwab v. Hooper Electric*, AWCB Dec. No 87322 (December 11, 1987). The statute gives the workers' compensation board wide latitude in making its investigations and in conducting its hearings and authorizes it to receive and consider not only hearsay testimony, but any kind of evidence that may throw light on a claim pending before it. *Cook v. Alaska Workmen's Compensation Board.*, 476 P.2d 29 (Alaska 1970).

> **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. In addition, the parties may agree or, upon a party's petition, the board or designee will exercise discretion and direct that the deposition testimony of a witness be taken by telephone conference call. The party seeking to introduce a witness' testimony by deposition shall pay the initial cost of the deposition.

> **8 AAC 45.065. Prehearings.** (a) After a claim or petition has been filed, a party may file a written request for a prehearing, and the board or designee will schedule a prehearing. Even if a claim, petition, or request for prehearing has not been filed, the board or its designee will exercise discretion directing the parties or their representatives to appear for a prehearing. At the prehearing, the board or designee will exercise discretion in making determinations on
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> (6) the relevance of information requested under AS 23.30.107(a) and AS 23.30.108;
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> (10) discovery requests; . . .
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> (c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.
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> (h) Notwithstanding the provisions of (d) of this section, a party may appeal a discovery order entered by a board designee under AS 23.30.108 by filing with the board a petition in accordance with 8 AAC 45.050 that sets out the grounds for the appeal. Unless a petition is filed under this subsection no later than 10 days after service of a board designee's discovery order, a board designee's discovery order is final.

The legislature gave the Board designee authority and responsibility to decide all discovery issues at the prehearing conference level, with the right of both parties to seek Board review. *Smith v. CSK Auto, Inc.*, AWCAC Dec. No. 002 (January 27, 2006).

> **8 AAC 45.070. Hearings.** (a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). A hearing may be adjourned, postponed, or continued from time to time and from place to place at the discretion of the board or its designee, and in accordance with this chapter.
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> (b) Except as provided in (1) of this subsection and 8 AAC 45.074(c), a hearing will not be scheduled unless a claim or petition has been filed, an affidavit of readiness for hearing has been filed and that affidavit is not returned by the board or the board's designee, and the affidavit is not the basis for scheduling a hearing that is cancelled or continued under 8 AAC 45.074(b). The board has available an Affidavit of Readiness for Hearing form that a party may complete and file. The board or the board's designee will return an affidavit of readiness for hearing and a hearing will not be set if the affidavit lacks proof of service upon all other parties, or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing. A party may request a hearing by using the following procedures:
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> . . . .
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> (8) if the board or the board's designee determines a hearing should be scheduled even though a party has not filed an affidavit of readiness for hearing, the board or the board's designee will give notice of the hearing in accordance with AS 23.30.110 and 8 AAC 45.060(e).
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> (g) Except when the board or its designee determines that unusual and extenuating circumstances exist, the prehearing summary, if a prehearing was conducted and if applicable, governs the issues and the course of the hearing.
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> **8 AAC 45.090. Additional examination.**
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> (g) If an employee does not attend an examination . . .
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> (1) the employer will pay the physician's fee, if any, for the missed examination; and
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> (2) upon petition by a party and after a hearing, the board will determine whether good cause existed for the employee not attending the examination; in determining whether good cause existed, the board will consider when

notice was given that the employee would not attend, the reason for not attending, the willfulness of the conduct, any extenuating circumstances, and any other relevant facts for missing the examination; if the board finds

(A) good cause for not attending the examination did not exist, the employee's compensation will be reduced . . . to reimburse the employer the physician's fee and other expenses for the unattended examination; or

(B) good cause for not attending the examination did exist, the physician's fee and other expenses for the unattended examination is the employer's responsibility.

8 AAC 45.120. Evidence. (a) Witnesses at a hearing shall testify under oath or affirmation. The board will, in its discretion, examine witnesses and will allow all parties present an opportunity to do so. . . .
. . . .

(c) Each party has the following rights at hearing:
(1) to call and examine witnesses;

(2) to introduce exhibits;

(3) to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination;

(4) to impeach any witness regardless of which party first called the witness to testify; and

(5) to rebut contrary evidence.
. . . .

(e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible 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 any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. . . .

(f) Any document, including a compensation report, controversion notice, claim, application for adjustment of claim, request for a conference, affidavit of readiness for hearing, petition, answer, or a prehearing summary, 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. . . .
>
> (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; or
>
> (3) the document is a report of an examination performed by a physician chosen by the board under AS 23.30.095(k) or AS 23.30.110(g).
>
> **8 AAC 45.900. Definitions.** (a) In this chapter
> . . . .
>
> (2) "board" means
>
> (A) a hearing officer under 8 AAC 45.071; or
>
> (B) any single three-member panel, or a quorum thereof, of the Alaska Workers' Compensation Board; . . .
>
> **AS 44.62.570. Scope of Review**. . . .
>
> (b) . . . Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

An agency's failure to apply controlling law may be an abuse of discretion. *Manthey v. Collier*, 367 P.2d 884 (Alaska 1962). A designee's decision on discovery matters must be upheld, absent "an abuse of discretion." *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985).

> **Alaska Rules of Evidence**. . . .

. . . .

Rule 801. Definitions. The following definitions apply under this article:

(a) **Statement.** A statement is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) **Declarant.** A declarant is a person who makes a statement.

(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.
. . . .

Rule 803. Hearsay Exceptions -- Availability of Declarant Immaterial. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
. . . .

(6) Business records. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of the preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes . . . profession, occupation, and calling of every kind, whether or not conducted for profit. . . .

Rule 805. Hearsay Within Hearsay. Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

ANALYSIS

Should the designee's April 1, 2026 discovery order be affirmed?

Employee appealed the designee's April 1, 2026 decision granting Employer's request for a protective order. *Id.*; 8 AAC 45.065(h). He contends the designee abused his discretion granting Employer's protective order. Employee contends his request to cross examine Katelyn Denner is relevant to his claim and should be authorized.

This is an appeal from a designee's discovery order and must be decided solely on the written record. AS 23.30.108(c). The panel must then affirm the designee's discovery orders absent "an abuse of discretion." *Id.* The parties may "present" evidence at the prehearing conference that includes oral argument, claims, answers, controversions, petitions, responsive pleadings, and prehearing briefs that set for the evidence and argument the parties intend to make at the prehearing conference. Therefore, it is critical the designee's prehearing conference summary set forth the evidence and argument upon which each party relied, and the designee's legal analysis related to the discovery dispute.

Information is relevant for discovery purposes if it is reasonably calculated to lead to facts that will have any tendency to make a question at issue in the case more or less likely. *Granus*. The first step in determining whether information sought is relevant is to analyze what matters are "at issue" or in dispute. AS 23.30.135(a); *Weseman*. The parties' pleadings and the prehearing conference summaries assist in ascertaining the specific benefits Employee is claiming, and Employer's defenses to these claims. *Id*. Employee filed a claim on September 12, 2025 for PPI benefits, medical costs, transportation costs, penalty, and attorney fees and costs.

For a discovery request to be reasonably calculated to lead to admissible evidence, it must be based on a deliberate and purposeful design and that design must be both reasonable and articulable. There must be a reasonable nexus between the information Employee seeks and a material issue in his case. In the second step, Employee must demonstrate the information he seeks is relevant, meaning it is reasonably calculated to lead to facts that will make any question at issue more or less likely. *Schwab*.

A party's request to cross-examine a medical record's author is known as a "*Smallwood*" objection. 8 AAC 45.900(a)(11); *Smallwood*. This issue has a long legal history. A "*Smallwood*" objection is "an objection to the introduction into evidence of written medical reports in place of direct testimony by a physician." *Brown-Kinard.* The seminal *Smallwood* decision found "the statutory right to cross-examine is absolute and applicable" to these agency hearings; see also *Schoen*. *Smallwood* recommended agency procedures to "fill the [then]-present procedural void relating to medical reports and the right of cross-examination." In

response, agency amendments to 8 AAC 45.052(c) and 8 AAC 45.120(f)-(j) provided for notice and the opportunity for cross-examination; the former for medical records and the latter for non-medical records. No adopted regulation has ever shifted cross-examination costs to the party seeking to introduce evidence. Technical rules do not apply in these proceedings except as otherwise stated in applicable regulations. 8 AAC 45.120(e). These proceedings are supposed to be as "summary and simple" as possible. AS 23.30.005(h).

The procedure for submitting medical reports as evidence and requesting the opportunity to cross-examine the author of a medical report is outlined in 8 AAC 45.052(c). This regulation and 8 AAC 45.120(h) for non-medical evidence allow for admission over a request for cross-examination if the documents in question are admissible under Alaska evidence rules. The objecting party can still cross-examine the author at its own expense. The regulations adequately protect the parties' absolute right to cross-examination. *Shoen*; *Smallwood*.

Katelyn Denner's email from December 1, 2025 articulated Employee refused to complete necessary paperwork resulting in his EME appointment being cancelled based on information Denner received from the EME physician's office. Employee contends these emails were not "business records" and are subject to cross examination. Employer argued Denner's emails were in response to information she received from the EME physician's office and should be considered a business record under the evidence rules.

In the first step of the *Granus* analysis the designee identified issues in dispute to be Employee's claims for medical benefits as well as pleadings filed by the Employee. The designee in the second step determined that Employee's request to order Employer to present Denner for cross-examination to be unnecessary, cumulative, and unduly burdensome. The designee noted Employee failed to present evidence the email was untrustworthy, fabricated, or produced in anticipation of litigation. Understandably, Employee is frustrated by the cancellation of the EME appointment but it is unclear as to how ordering the Employer to pay for Denner's cross examination will aid Employee in securing any of the benefits he has claimed. The designee did not abuse his discretion in granting Employer's request for a protective order against producing Denner for cross examination.

Employee has not waived its right to cross-examine Denner; he does not have to. The records are admissible under the "Business Records" exception; alternatively, they are admissible under the catch-all "Other exceptions" rule. A panel may still rely on the emails and Employee still has the right to question Denner at his own cost. *Frazier*; *Jensen*; *Cedeno*; *Geister*. Denner's role as a coordinator for ExamWorks and the information she received regarding the EME appointment being cancelled are not unusual in her job coordinating EME appointments. Employee's contentions regarding mislabeled paperwork were articulated to the designee at the prehearing. However, the designee noted Denner prepared her email based on information she received from the EME physician's office, and he did not find a genuine question of untrustworthiness or lack of credibility from Denner in relaying the information she received.

What this issue is really about is who has to pay for Employee's right to cross-examine Denner. Neither Employer nor this decision can abrogate Employee's right to depose or otherwise cross-examine Denner. However, as stated in *Smallwood*, "the better reasoned, and weight of, authority is to the effect that the right of cross-examination does not carry a price tag." Employee has the right to depose and cross-examine Denner at his own expense. *Geister*. The designee's April 1, 2026 order granting Employer's request for a protective order against producing Denner for cross-examination will be affirmed.

CONCLUSION OF LAW

The designee's April 1, 2026 order will be affirmed.

ORDER

1) The designee's April 1, 2025 prehearing conference order is affirmed.
2) Employer's December 19, 2025 Petition for Protective Order is granted.

Dated in Anchorage, Alaska on May 28, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kyle Reding, Designated Chair

/s/
Sara Faulkner, 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 William C. Seccareccia, employee / claimant v. Circle Plumbing & Heating, Inc, employer; Alaska National Insurance Company, insurer / defendants; Case No. 202409972; 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 May 28, 2026.

/s/
Rosie Ambrose, Workers' Compensation Technician