ALASKA WORKERS' COMPENSATION BOARD

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

SABRINA M. MARTINO, Employee, Claimant, v. ALASKA ASPHALT SERVICES, LLC, Employer, and THE OHIO CASUALTY INSURANCE COMPANY, Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 202007450 AWCB Decision No. 26-0072 Filed with AWCB Anchorage, Alaska on September 11, 2026

Sabrina Martino's (Employee) June 3, 2026 [*sic*] petition filed July 7, 2026, appealing from a prehearing conference designee's June 24, 2026 discovery order was heard on the written record on August 12, 2026, in Anchorage, Alaska, a date selected on July 9, 2026. The June 3, 2026 petition gave rise to this hearing. Non-attorney Employee represents herself. Attorney Rebecca Holdiman-Miller represents Alaska Asphalt Services, LLC, and its insurer (Employer). Attorney Robert Bredesen represents himself on a claim for attorney fees and costs. The record closed on August 12, 2026. Employee mis-dated her petition. To avoid redundancy and confusion, hereinafter the "June 3, 2026 [*sic*] petition filed on July 7, 2026," which she filed timely, will be referred to as the June 3, 2026 petition.

ISSUES

Employer contends that the panel's jurisdiction over Employee's June 3, 2026 petition should be withheld because Employer and Employee both sought Alaska Workers' Compensation Appeals Commission (Commission) review of *Martino v. Alaska Asphalt Services*, LLC, AWCB Dec. No 26-0041 (June 15, 2026) (*Martino X*). Employer argues that the issues before the Commission are related to the issues Employee raised in her June 3, 2026 appeal. It contends that this panel's jurisdiction is suspended until the Commission rules on the pending petitions.

Employee did not directly address this issue. She contends Employer's failure to comply with discovery orders has unreasonably delayed her medical treatment. She presumably objects to any delays that would further interfere with her right to obtain medical care for her work injury.

1) Does the panel have jurisdiction to decide Employee's June 3, 2026 petition?

Employee contends that the prehearing designee erred in his June 24, 2026 discovery order by denying her discovery request without first determining whether Employer had actually provided the subject discovery. She contends Employer has not complied with discovery orders, and relevant evidence is still missing. Employee seeks an order requiring Employer to comply with prior discovery orders, or for a remand to the designee for further action.

Employer contends the designee properly found many discovery requests duplicative. It adds that Employee failed to identify discovery that was not provided. Employer argues that the designee correctly rejected Employee's medical "preauthorization" request. It contends the designee's factual findings are supported by the record. Given these positions, it argues Employee's petition appealing the designee's discovery order should be denied.

2) Shall the designee's discovery order be remanded?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions, which highlight the complicated discovery disputes in this case:

1) Employee filed claims for: temporary total disability (TTD); temporary partial disability (TPD); and permanent total disability (PTD); permanent partial impairment (PPI) benefits; medical benefits and related transportation costs; reemployment benefits; penalties for late-paid compensation; unfair or frivolous controversions; authorization for testing and treatment; a cost of living adjustment (COLA); interest; a compensation rate adjustment; and attorney fees and costs. She claims neck and shoulder injuries. (Claims for Workers' Compensation Benefits (or Petitions treated as claims), March 3, 2021 (filed March 15, 2021), August 4, 2021, January 25, 2022, February 13, 2024, March 15, 2024, August 13, 2024, September 13, 2024, March 31, 2025 (filed April 1, 2025), November 11, 2025 (Petition, filed November 12, 2025) and December 12, 2025. (Agency file: Judicial, Party Actions, Claim tabs, accessed August 26, 2026).

2) Employer repeatedly denied Employee's claims for TTD benefits and related penalty; interest; TTD, TPD, PTD, PPI benefits, medical benefits and transportation costs, reemployment benefits, a penalty, interest and attorney fees and costs; an unfair or frivolous controversion; a COLA; and a compensation rate adjustment. (Answer to Employee's Workers' Compensation Claim, March 25, 2021, August 27, 2021, February 15, 2022, March 7, 2024, April 10, 2024, October 9, 2024, March 4, 2025, April 24, 2025, December 19, 2025, and January 5, 2026).

3) Employer controverted Employee's right to benefits, and her claims for TTD benefits, penalties, reemployment benefits, PPI benefits, attorney fees and costs, TPD and PTD benefits, medical benefits and related transportation costs, interest, unfair or frivolous controversions, a COLA, a compensation rate adjustment and interest. (Controversion Notice, March 25, 2021, April 26, 2021, August 27, 2021, February 15, 2022, March 7, 2024, September 9, 2024, October 9, 2024, March 4, 2025, April 24, 2025 (twice), December 19, 2025 and January 5, 2026). Many of Employee's claims have been resolved. Some remain. (Observations).

4) On September 7, 2021, Employer's prior attorney sent Employee's prior lawyer 796 pages in response to that prior attorney's discovery request. Included were all medical records obtained from Joint Base Elmendorf-Richardson (JBER). Employer's attorney's letter stated that only records related to Employee's claim had been filed on Medical Summaries. The attorney also included all pleadings in the attorney's possession, although Employer redacted some additional attached records. (Letter, September 7, 2021).

5) On February 3, 2022, Bredesen wrote to Employer's previous lawyer Stacey Stone stating he had received from Employee's prior attorney Amanda Eklund the records previously provided to her from Employer. Employee then requested the following:

> 1. Copies of all employer records documenting the work injury and/or its reporting. This should include all witness statements and/or statements made by Ms. Martino.
>
> 2. Additional adjuster file materials. Specifically, certain items do not appear to have been produced, or were otherwise incomplete:
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> A) Letters and other correspondence with any IME physician(s)
> B) A payment history itemization. I note that an itemization was previously produced (09/27/20 ER discovery production, at Bates #10-13), but it did not include the dates when payments issued, and presumably could also be updated
> C) ISO reports
>
> 3. Complete copies of all employer files kept for Ms. Martino. This includes but is not limited to the personnel file, payroll file, and any medical file. These records should encompass any family or medical leave, for any reason, regardless of medical condition.
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> 4. Names, addresses, phone numbers, and any medical reports reflecting the opinions of all the physicians you or your client have contacted for this client.
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> 5. Complete copies of any file maintained by an IME physician, except copies of the underlying medical records for Ms. Martino which they reviewed. This request covers any intake forms or questionnaires, examination notes, draft reports, notes made during telephone conversations, emails to or from the physician and/or the physician's office, and all other correspondence. Please also include a current CV for each physician.
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> 6. A complete copy of any file maintained by any medical or nurse case management specialist regarding Ms. Martino.
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> 7. A list of all records custodians to whom your office and/or the adjuster served records requests, with the dates of the requests.
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> 8. Copies of all information obtained with any releases signed by Ms. Martino.
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> 9. Any documentation showing referral of the claim for fraud investigation. If verbally made, the names of the person(s) to whom the claim was referred.

> 10. Copies of any and all surveillance video and or investigative reports generated during this claim. This request is ongoing throughout the employee's claim and information of this nature is expected to be received prior to any employee deposition. (Letter, February 3, 2022).

6) On February 21, 2022, Stone emailed Bredesen in response to his letter regarding discovery redactions. She stated pages 115-127 and 218-214 [*sic*] were redacted under attorney work-product privilege, while pages 153-154 and 158-161 were redacted because they contained information related to insurance reserves. (Stone email, February 21, 2022).

7) On December 29, 2022, Bredesen told Stone he had not received responses to his February 3, 2022 discovery request. He acknowledged having received Employer's responses to Eklund on September 7, 2021, and asked that his request be considered a supplementation request. (Letter, December 29, 2022).

8) On January 30, 2023, Employer responded to Employee's December 29, 2022 discovery letter and summarized its discovery responses to that date: On September 7, 2021, Employer sent Eklund 796 pages of discovery; on February 3, 2022, Bredesen received from Eklund the same 796 pages; Employer responded to Bredesen's February 15, 2022 request on February 21, 2022; and responded to his current December 29, 2022 supplementation request as follows:

> 1. Copies of all employer records documenting the work injury and/or its reporting.
> Employer's response:
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> See Bates stamped records RFP 000797, RFP 000810, RFP 000812, RFP 000815-RFP 000817, and RFP 000829.
>
> 2. Additional adjuster file materials. Specifically, certain items do not appear to have been produced, or were otherwise incomplete:
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> A)Letters and other correspondence with any IME physician(s).
> B) A payment history itemization. I note that an itemization was previously produced (09/27/2020 ER discovery production, at Bates No. 10-13), but it did not include the dates when payments were issued and presumably could also be updated.
> C) ISO reports.
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> Employer's response:
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> A) Chris Vecillio of Premier Medical currently assists Wilbert Pino, MD, in scheduling and managing independent medical evaluations. My assistant spoke with Chris Vecillio on January 26, 2023, and requested a copy of Dr. Pino's file

materials in this matter. Mr. Vecillio advised that if Dr. Pino made handwritten notations at the time of the employee's independent medical evaluation, the information contained in his notations was incorporated into his final report. Therefore, no notations from the evaluation were retained. Additionally, Dr. Pino does not require his examinees to complete intake forms prior to his examinations. Further, because there had been no activity requiring Dr. Pino's involvement since March 4, 2021, records have been discarded.
B) Payment logs, which include issuance dates, have been requested and will be produced upon receipt.
C) ISO reports were previously produced and can be found at Bates numbers RFP 128-147 and RFP 203-217.

3. Complete copies of all employer files kept for Ms. Martino. This includes but is not limited to the personnel file, payroll file and medical file. These records should encompass any family or medical leave for any reason, regardless of medical condition.

Employer's response: Please see response above to request number one stamped RFP 000797 to RFP 000831.

4. Names, addresses, phone numbers, and any medical reports reflecting the opinions of all the physicians you or your client have contacted for this client.

Employer's response: All medical records secured by the employer have been filed by means of Board-required medical summaries. The employee can obtain contact information for those entities in the filed medical records.

5. Complete copies of any file maintained by an IME physician, except copies of the underlying medical records for Ms. Martino which they reviewed. This request covers any intake forms or questionnaires, examination notes, draft reports, notes made during telephone conversations, emails to or from the physician and/or the physician's office, and all other correspondence. Please include a CV for each physician.

Employer's response: See employer's response to No. 2, A. Additionally, a CV for Wilbert Pino, MD, has been requested and will be produced upon receipt.

6. A complete copy of any file maintained by any medical or nurse case management specialist regarding Ms. Martino.

Employer's response: See records Bates stamped RFP 000832-RFP 000836.

7. A list of all records custodians to whom your office and/or the adjuster served records requests, with the dates of requests.

> Employer's response: Objection, work product. Without waiving said objection, as required, all medical records, specific to the employee's claimed conditions, have been filed by means of Board-required medical summary.
>
> 8. Copies of all information obtained with any releases signed by Ms. Martino.
>
> Employer's response: Objection, work product. Without waiving said objection, as required, all medical records, specific to the employee's claimed conditions, have been filed by means of Board-required medical summary.
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> 9. Any documentation showing referral of the claim for fraud investigation. If verbally made, the names of the person(s) to whom the claim was referred.
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> Employer's response: The employer is unaware of any referral for fraud investigation in this matter.
>
> 10. Copies of any and all surveillance video or investigative reports generated during this claim.
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> Employer's response: Objection, relevance, attorney work product, attorney-client privilege. *See Langdon v. Champion*. Without waiving said objections, see previously produced investigation reports, stamped RFP 167 to RFP 202. (Letter, January 30, 2023).

9) On August 10, 2023, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 23-0044 (August 10, 2023) (*Martino IV*) identified issues that Employee contended arose from her work injury with Employer. These included her left shoulder, left cervical spine, left Thoracic Outlet Syndrome (TOS) and possible Complex Regional Pain Syndrome (CRPS). It also found Employee's left shoulder, cervical spine and left TOS were compensable injuries and awarded her associated benefits. (*Martino IV*).

10) On September 17, 2024, Thomas Rosenbaum, MD, neurosurgeon, saw Employee for an employer's medical evaluation (EME). Dr. Rosenbaum listed the medical records he reviewed (but not necessarily all he received) in his report. (Rosenbaum report, September 17, 2024).

11) On September 27, 2024, Bredesen asked Holdiman-Miller to:

> (1) Please supplement the prior responses to my informal discovery requests dated February 3, 2022.
> (2) A payment itemization for all payments made on this claim.
> (3) Please explain why the following medical studies and/or treatments, requested by Vally Medical, have not been authorized:

> a. Routine follow-up visit with her physician. I note that the provider indicated that the adjuster would only authorize a follow-up after the cervical MRI. This meant that Ms. Martino was unable to get her prescriptions refilled prior to the EME trip to Oregon.
> b. Thoracic MRI
> c. Shoulder MRI
> d. Acupuncture therapy
> e. Massage therapy
> f. Physical therapy
>
> (4) Have medical records arrived for Ms. Martino April 16-20 trip? If so, when were they received? Please also file the records on an appropriate Medical Summary.
> (5) Have medical records arrived for Ms. Martino's April 25-27 trip? If so, when were they received? Please also file the records on an appropriate Medical Summary.
> (6) Which physician does Employer/Insurer consider to be the nearest point where adequate services to treat her cervical spine?
> (7) Which physician does Employer/Insurer consider to be the nearest point where adequate services to treat her TOS condition?
> (8) Please provide copies of all communications regarding the recent EME appointment and the appoint that had been scheduled prior to it. This should encompass all communications in any form, electronic, paper, etc. It should encompass communications with the EME physician himself, as well as any company that may have facilitated the appointment (*i.e.*, ExamWorks, etc.). This request also encompasses all communications by any person connected with claim, including the employer, insurer, your firm, etc. Finally, it encompasses all communications with the individual who accompanied Ms. Martino during the trip, as well as the company she worked for. (Letter, September 27, 2024).

12) On September 27, 2024, Employee also petitioned to compel discovery and attached the above-cited September 27, 2024 letter to Holdiman-Miller and other documents indicating that the requested discovery pertained primarily to finding information that would lead to Employee obtaining medical care. Employee also attached a memorandum for the prehearing conference designee's use in ruling on the discovery petition. (Petition, September 27, 2024).

13) Employee's September 27, 2024 memorandum identified her "most urgent requests" for discovery, with a request for an order requiring Employer to respond within 30 days with one exception: (1) identify the nearest point for adequate medical treatment for possible neck surgery and for TOS treatment, within 48 hours; (2) identify the factual basis for Employer's "controversion" of treatment at Vally Medical; (3) provide a current payment itemization; (4) state whether Employer has records not filed on a Medical Summary; and (5) provide records pertaining

to an August 2024 EME trip where Employee was accompanied by Employer's agent. (Employee's Memorandum in Support of Petition to Compel, September 27, 2024).

14) On October 28, 2024, Employer sent additional medical records that it would file that day on medical summaries in response to Employee's supplemental discovery request. It also attached a spreadsheet containing additional paid-to-date amounts and said it would continue to identify documents and information responsive to her request. (Letter, October 28, 2024).

15) On November 14, 2024, the parties appeared before a Board designee. While discussing Employee's September 27, 2024 petition to compel, Holdiman-Miller responded to request (3) and stated that the Act did not require her client to preauthorize treatment, but its understanding was that the adjuster did not refuse to authorize MRIs, acupuncture, massage or medical appointments for Employee at Vally Medical. As for Employee's request (6), Employer stated it considered Jeffrey Roh, MD, (or, perhaps Rowe as stated elsewhere) to be the nearest physician to treat Employee's cervical spine. (Prehearing Conference Summary, November 14, 2024).

16) On December 16, 2024, Bredesen filed documents upon which he intended to rely at hearing. He included Employer's discovery responses from October 28, 2024, October 29, 2024 and November 14, 2024, which included: Holdiman-Miller's October 28, 2024 letter to Bredesen with approximately 20 pages of medical records; a medical payment spreadsheet spanning July 8, 2020 through August 16, 2024; various University of California, Los Angeles (UCLA) medical records from April 2024; several Hawaii treatment plans; a spreadsheet showing payments to Employee spanning from July 3, 2020 through November 9, 2024; a November 14, 2024 email from Holdiman-Miller to Bredesen addressing issues for a prehearing conference scheduled for that date, which included a statement that all medical records received to date had been "paid" and placed on medical summaries; and several emails regarding Employee's expected travel to Portland in September 2024. There were no redactions to any documents attached to this notice. (Notice of Intent to Rely, December 16, 2024).

17) On December 17, 2024, Employee requested or stated: (1) responses to Bredesen's September 27, 2024 informal discovery requests had been ""meager," and Employee had "not received anything." Employee demanded a privilege log "as initially requested in February 2022" spanning all withheld or redacted documents or information from the claim's inception; (2) Employer's recently-provided itemized spreadsheets did not include information regarding when payments had been made. She demanded a complete response; (3) she wanted to know if

Employer had any factual basis to deny authorization for treatment at Vally Medical Center, and alleged such authorization was not forthcoming; (4) Employee understood request (4) had been completed; (5) she demanded Employer file medical records for her April 25-27 trip on medical summaries, noting that Employer's itemization indicated the bill had been paid and the adjuster would not have paid it without medical records; (6) Employer had responded to this request at the November 14, 2024 prehearing conference, so it was resolved; (7) Employee demanded Employer state what physician it considered the nearest point with adequate services to treat her TOS; and (8) she wanted all communications regarding the recent EME appointment and the one prior. Her demand included any communications with the individual who accompanied Employee during her trip and the company for which that person worked. She contended only a single email from a travel agent had been produced:

> Nothing has been provided in terms of communications, invoices, etc. with the EME physicians. In addition, I would like to schedule the deposition of the travel companion, to be conducted as a records deposition as well. . . .

In short, Employee wanted the designee to order Employer to fully respond to requests "#1-3, 5, and 7-8 no later than January 3, 2025," and provide a privilege log by January 17, 2025. (Employee's Memorandum in Support of Petition to Compel, December 18, 2024).

18) On December 19, 2024, the parties appeared at a prehearing conference before a Board designee. Employee requested a discovery order on her September 30, 2024 petition to compel and related December 18, 2024 memo. She also demanded a privilege log explaining any and all withheld documents or redactions, and Employer's responses to questions "1-3, 5, & 7-8" as stated in the September 30, 2024 petition. Employer said it had responded to Employee's September 30, 2024 petition and requested to have until December 23, 2024, to respond to the memo. Employee contended that Employer's production had been "minimal," and did not address all topics. The parties discussed a May 8, 2024 visit Employee had with UCLA and Employee stated the resultant records had not been filed on a Medical Summary. Employer stated it was currently attempting to locate those records and would be filing them on a Medical Summary. (Prehearing Conference Summary, December 19, 2024).

19) At the December 19, 2024 prehearing conference, the designee also reviewed Employee's September 30, 2024 petition to compel and memo, and determined items "4 and 6" were no longer at issue. Therefore, the designee listed remaining requests as follows:

> (1) Please supplement the prior responses to my informal discovery requests dated February 3, 2022.
> (2) A payment itemization for all payments made on this claim.
> (3) Please explain why the following medical studies and/or treatments, requested by Vally Medical, have not been authorized:
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> > a. Routine follow-up visit with her physician. I note that the provider indicated that the adjuster would only authorize a follow-up after the cervical MRI. This meant that Ms. Martino was unable to get her prescriptions refilled prior to the EME trip to Oregon.
> > b. Thoracic MRI
> > c. Shoulder MRI
> > d. Acupuncture therapy
> > e. Massage therapy
> > f. Physical therapy
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> (5) Have medical records arrived for Ms. Martino's April 25-27 trip? If so, when were they received? Please also file the records on an appropriate Medical Summary.
> (7) Which physician does Employer/Insurer consider to be the nearest point where adequate services to treat her TOS condition?
> (8) Please provide copies of all communications regarding the recent EME appointment and the appoint that had been scheduled prior to it. This should encompass all communications in any form, electronic, paper, etc. It should encompass communications with the EME physician himself, as well as any company that may have facilitated the appointment (*i.e.*, ExamWorks, etc.). This request also encompasses all communications by any person connected with claim, including the employer, insurer, your firm, etc. finally, it encompasses all communications with the individual who accompanied Ms. Martino during the trip, as well as the company she worked for.

The designee found these requests "reasonable, relevant, and likely to lead to discoverable information." He granted Employee's September 30, 2024 petition without further analysis. The summary cited the Board's *Granus* decision and implied that the designee had applied a two-step analysis to determine that the above-referenced requests were discoverable. He ordered Employer to respond to the requests by January 3, 2025, and to supply the requested Privilege Log by January 17, 2025. The summary plainly advised all parties that they had 10 days to appeal the designee's discovery order. (Prehearing Conference Summary, December 19, 2024).

20) Employee's agency file contains no evidence that any party appealed the designee's December 19, 2024 prehearing conference discovery order. (Agency file).

21) On December 23, 2024, after the designee had issued his December 19, 2024 discovery order, Employer responded to Employee's September 30, 2024 petition to compel discovery (and expressly to Bredesen's related September 17, 2024 letter):

> (1) The February 2022 discovery request was resolved when the prior D&Os were issued. The discovery issues were relative to a decided WCC and any pursuit now is untimely. Furthermore, the parties stipulated that the only required discovery post-D&O was a yearly accounting of the benefits paid for the agreed upon yearly attorney fee payment. See Attached D&Os and Stipulation. Exhibit 1. Thus, the employer takes the position the pre-D&O discovery request is moot and the employee has no standing to assert a response now based on a new WCC with new issues.
>
> a) Notwithstanding, the employer answered the petition showing how over 800 pages were already produced per the January 2023 response. See Answer to Petition to compel. Exhibit 2.
> b) The current issues per the September 2024 WCC are medical costs, transportation costs, unfair controvert, penalty, interest, attorney fees/costs, past/ongoing COLA, and SS offset petition. Exhibit 3. (WCC and most recent prehearing summary).
> c) All documents relevant to the current hearing issues from the 2024 WCC have been provided and will continue to be supplemented as benefits continue to be paid without controversion. See Attached documents produced to date since September 2024. Exhibit 4.
> d) The employer specifically answered all items in the discovery request again on November 14, 2024. At the prehearing on this date it was noted only #3 and #6 were still at issue, which were also verbally responded to as noted in the summary. See Email dated 11/14/24 and PHC summary from PHC on this date. Exhibit 5.
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> (2) Payment information has been provided and will be supplemented as benefit payments continue without controversion. See Exhibit 3. Further information can be obtained from the Board as the payments are deposited and provided via EDI. Furthermore, TTD payments are not a present issue.
> (3) This was answered per the November 14, 2024, PHC summary and Exhibit 4 that demonstrates preauthorization via form despite no requirement. Exhibit 6.
> (4) All medical records received to date have been placed on the employer's medical summaries.
> (5) This was answered at the 11/14/24 PHC due to the local neurosurgeon referral information in the medical records. The employee was referred to UCLA for medical treatment and the employer previously reimbursed the UCLA medical travel costs without issue. If there is no local neurosurgeon option for the cervical condition, then the current referral to UCLA would remain appropriate.

> (6) The employer previously paid for the referred UCLA testing, treatment, and travel. If the locally designated physician locates a local TOS provider the local referral would be the nearest.
> (7) This information has been provided other than privileged documentation. See Exhibit 4. There is no claim for disability, and TTD and medical benefits continue without controversion. Thus, any additional information and/or deposition of the medical concierge is not relevant or necessary to address the current claim issues. (Answer to Employee's Discovery Letter Dated 12/17/24, December 23, 2024).

22) On December 30, 2024, Employee responded to Employer's October 28, 2024 discovery requests. Relevant to the instant matter, she stated:

> **Request No. 4**: Please provide a detailed list of all evidence you believed to be missing to date after the supplemental discovery is received.
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> **Answer**: Please refer to the Order to Compel dated December 19, 2024, as well as all correspondence and pleadings incident to it. (Letter, December 30, 2024, with attachment).

23) On January 3, 2025, Employer provided Employee with additional discovery in response to the designee's December 19, 2024 prehearing conference discovery order:

> One: Please supplement the prior responses to my (employee's) informal discovery requests dated February 3, 2022.
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> Responses to the employee's discovery request dated February 3, 2022, have been previously produced and are further supplemented in this response.
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> Two: A payment itemization for all payments made on this claim.
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> Previously provided and supplemented with this response.
>
> Three: Please explain why the following medical studies and/or treatments requested by Vally Medical, have not been authorized:
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> a) Routine follow-up visits with her physician.
> b) Thoracic MRI
> c) Shoulder MRI
> d) Acupuncture therapy
> e) Massage therapy
> f) Physical Therapy
>
> Previously answered. Also see supplemented records attached.

> Five: Have medical records arrived for Ms. Martino's April 25-27 trip? If so, when were they received? Please also file the records on an appropriate medical summary.
>
> Yes, these records were received and filed on medical summaries.
>
> Seven: Which physician does Employer/Insurer consider to be the nearest point to obtain adequate services for her TOS condition?
>
> Previously answered.
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> Eight: Please provide copies of all communications regarding the recent EME appointment and the appointment that had been scheduled prior to it.
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> Previously provided and one additional email supplemented with this response.

Employer attached Bates-stamped documents 000864-000901 to its letter. The attachments included: A spreadsheet showing payments to Employee and medical providers beginning July 3, 2020 through January 18, 2025; a separate spreadsheet showing payments made to medical providers beginning July 8, 2020 through December 18, 2024; an October 8, 2024 email from Ryan Longhorn to the adjuster regarding Employee's travel presumably during her EME; numerous Hawaii Workers' Compensation Treatment Plans dated July 24, 2024, and August 2, 2024, either approving fully or approving in-part various treatment, signed by the adjuster; a California Request for Authorization dated March 7, 2024, approving a request, signed by the adjuster; numerous medical records and related fax cover sheets; a California Request for Authorization dated May 1, 2024, approved and signed by the adjuster; additional medical records with related fax cover sheets; and a December 18, 2023 letter from the adjuster to UCLA reconfirming an initial pre-authorization for treatment previously provided on December 7, 2023. (Letter, January 3, 2025, with attachments).

24) On January 21, 2025, Lynne Bell, MD, PhD, performed a medical record review EME. Records Dr. Bell reviewed (but not necessarily all she received) are listed in her 42-page report. (Bell report, January 21, 2025).

25) On January 23, 2025, Employee said she intended to rely on numerous documents at hearing: a payment spreadsheet to providers and Employee spanning from July 3, 2020 through January 5, 2025, showing everything except the payments' dates; a separate payment spreadsheet limited to medical providers showing everything including payments' dates; an email between adjuster Berni

Seever and a representative of the company that provided a travel companion for Employee during her September 2024 trip; and Holdiman-Miller's January 3, 2025 letter to Bredesen with additional discovery responses. (Notice of Intent to Rely, January 23, 2025).

26) On January 23, 2025, Holdiman-Miller advised Bredesen that "we have not sought opinions from her treating medical providers." She continued, "We have only sought information regarding appointments, possible testimony/deposition dates, referrals, treatment status, fee schedule acceptance/payments, medical records and billings, etc. to try and determine if more is needed on either end for her treatment." (Email, January 23, 2025).

27) On January 24, 2025, Holdiman-Miller sent Bredesen Employer's Privilege Log I. The log spanned from November 1, 2019 through March 2021, and identified documents by Bates-stamp, date and a brief description. It included the "attorney-client privilege" and other objections including Employer's position that the information was not reasonably calculated to lead to admissible evidence. Employer noted that some Bates-stamped documents were "blank." (Letter, January 24, 2025).

28) On February 6, 2025, Employee petitioned, "To enforce 12/19/24 discovery order, which Employer has not complied with, and impose sanctions." (Petition, February 6, 2025).

29) On February 10, 2025, Bredesen withdrew as Employee's attorney. (Notice of Withdrawal, February 10, 2025).

30) On February 10, 2025, Bredesen on his own behalf filed his claim for attorney fees and costs. (Claim for Workers' Compensation Benefits, February 10, 2025).

31) On February 14, 2025, Bredesen wrote to Holdiman-Miller to explain with a chart where discovery requests and responses could be found "scattered throughout" the record. He also set forth his position regarding Employer's alleged failure to respond to discovery requests. He alleged, "In short, almost nothing since September 2021 has been produced." This included adjuster's notes, which would include entries for voicemail messages left and received by the adjuster, emails, authorizations for medical treatment and all actions taken on the claim. Bredesen also alleged that no explanation of benefits (EOBs) had been produced documenting what was billed and what was paid. He noted nothing was produced regarding the recent EME evaluations with Oregon Medical Evaluations, Inc., and Employer and its agents did not disclose any in-person, telephonic or Internet conferences with these physicians, drafts reports or any invoices. Bredesen contended that payment information was incomplete and he requested payments to EME

physicians, nurse case managers, private investigators and so forth. He noted, "Nothing has been produced regarding the possibility that Liberty Mutual may have had . . . an in-house physician review the file, as had happened prior to September 2021." Bredesen contended that these responses prohibited Employee from evaluating the file properly. He also sought additional private investigator or surveillance materials. He asserted that "several thousand pages of documents" had been withheld without any basis or timely assertion of a privilege. He noted that the privilege log stopped in September 2021. (Letter, February 14, 2025).

32) On February 27, 2025, Employee, *pro se*, filed a petition dated February 26, 2025, seeking "file preservation of evidence to prevent deletion or discarding." There was no other explanation. (Petition February 26, 2025).

33) On April 1, 2025, Employee *pro se* filed a March 31, 2025 petition requesting "other" relief. On her cover email, Employee stated in relevant part, "But I wanted to assert what I believe are my rights contained in the 12/19/2024 discovery order." Specifically she requested in her petition "adverse inference or other applicable sanctions." Employee added:

> For Board to consider adverse inference or other sanctions it deems appropriate under AS 23.30.108(c), 8 AAC 45.095, AS 23.30.155, AS 23.30.095 and any other relief the Board deems just. (Email; Petition, March 31, 2025).

Later that same day, Employee filed an amended March 31, 2025 petition to change her request from "or" to "and/or." (Email; Petition, March 31, 2025).

34) On April 1, 2025, Employee *pro se* filed and served a document she called an "Answer," dated March 31, 2025, to clarify or explain her petition to preserve evidence:

> I respectfully request the board encourage the employer to provide written confirmation that all documents, including, but not limited to adjuster notes, nurse case manager files, communications with EME providers (all communications in any form including any company that may have facilitated the appointment or any person connected with the claim) in house physician reviews, third party investigative materials, surveillance, payment histories (including dates paid), adjuster notes, EOBs, [and] intake records are preserved in their original form and will remain so for at least seven (7) years or for the duration of any statutory period during which the employer or insurer may have an interest in reopening, modifying or appealing the claim, whichever is longer.

> This measure will promote procedural integrity, preserve the evidentiary record and ensure fairness for all parties going forward. (Employee's Answer to Employer's Opposition of Preservation of Evidence, March 31, 2025).

35) On May 22, 2025, Employer filed with the Workers' Compensation Division (Division) and served on Employee, but not on Bredesen or Employee's then attorney David Graham, all "previously served documents produced" to Employee prior to May 22, 2025, which included 953 pages. (Notice of Intent to Rely, May 22, 2025).

36) On May 22, 2025, Employer filed with the Division and served on Employee, but not on Bredesen or Graham, documents Bates-stamped "RFP 000902 to 000911." It attached Hawaii treatment plans and approval requests. (Notice of Intent to Rely, May 22, 2025).

37) On May 22, 2025, Employee, while represented by Graham, nonetheless filed a *pro se* petition for a protective order "to strike any records from file Employee did not sign a release for." There was no further explanation. (Petition, May 22, 2025).

38) On June 17, 2025, Employee, Holdiman-Miller and Employee's then attorney Graham appeared telephonically before a Board designee. This was the final prehearing conference before the July 16, 2025 hearing, and identified the ultimate issues for that hearing:

> (1) Past and ongoing COLA
> (2) Employer's 9/26/2024 petition for a Social Security offset
> (3) Employee's 2/6/2025 petition to enforce the designee's 12/19/2024 discovery order and for sanctions -- Including Employee's 4/1/2025 petition for further sanctions
> (4) Employee's 2/27/2025 petition to preserve evidence
> (5) Employee's 3/25/2025 petition for additional time to request a hearing on 1/25/2022 WCC
> (6) Employee's 5/8/2025 petition to accept limited entry of appearance -- David Graham -Parties' disagreement regarding service of discovery on Bredesen and Graham
> (7) Employee's 5/22/2025 petition to strike any records for which Employee did not sign releases

Regarding Employee's May 22, 2025 petition to strike records for which Employee did not sign a release, the designee suggested that "Employee provide a list of the records she feels should be stricken." Employee stated she objected to all records "not related to her work injury" and contended she was never given records Employer intended to use at hearing. She acknowledged that she had signed releases for her shoulder but Employer had gathered records relating to her

"entire body going back to the date of her birth." Employee stated she had "some records" but did not know that she had all. Therefore, Employee contended she could not "identify the records that need to be stricken." (Prehearing Conference Summary, June 17, 2025).

39) On June 18, 2025, Employer filed with the Division and served on Employee, but not on Bredesen or Graham, documents upon which it intended to rely at hearing: a June 18, 2025 letter from Holdiman-Miller to Employee; Employer's Privilege Log II; and "supplemental file materials" Bates-stamped "000912 to 001054." Employer provided this in response to Employee's May 19, 2025 discovery request. The Privilege Log II covered privileges from the adjuster's file spanning from July 7, 2020 through May 22, 2025. The attached adjuster's notes, which purport to bring the production of those up to date, spanned from July 6, 2020 through May 14, 2025. Employer redacted entries on specific dates: September 19, 2024; January 21, 2021; and April 3, 2025. On the updated payment spreadsheet for medical providers, which is document "001040," there are two line items redacted; these items appear between an entry for Healthlift Pharmacy for January 17, 2025, and another entry for Healthlift Pharmacy from February 13, 2025, suggesting that the redacted providers' services occurred on or between those dates. However, the only item dated September 19, 2024, on the "Medical Cost Summary List," is a $12,810 payment to "Eaze Medical Solutions." Employer also provided June 2025 emails between Employee, Holdiman-Miller and Graham, as well as nurse case manager documents, which look like those previously produced. (Notice of Intent to Rely, June 18, 2025; observations).

40) On June 26, 2025, Employer filed and served on Graham and Employee, but not on Bredesen, documents upon which it intended to rely at hearing. It attached: a variety of Employee's more recent medical records; signed releases; a Prehearing Conference Summary; a letter to Employee's former attorney Eklund including 796 pages of discovery [not viewable to the panel as the documents were on a compact disc, attached as a photocopy of the disc]; Employer's December 23, 2024 "answer" to Employee's December 17, 2024 discovery letter; another copy of Privilege Log I; Dr. Pino's *curriculum vitae*; a spreadsheet showing payments to Employee from July 3, 2020 through October 27, 2024; Employer's October 28, 2024 letter to Bredesen; a Hawaii Workers' Compensation Treatment Plan, neither approved nor denied and unsigned by the adjuster; Employer's January 30, 2023 letter to Bredesen regarding previously provided discovery to Eklund, and Employer's supplemental responses; Employee's initial injury report; Dr. Bell's EME report; Employee's May 17, 2022 deposition transcript; Employer's October 28, 2024

discovery request; Employee's December 30, 2024 response to Employer's October 28, 2024 discovery request, with the Hawaii Real Property Tax Bill attached; and the May 13, 2024 SSD Notice of Award. (Notice of Intent to Rely, June 26, 2025).

41) On June 26, 2025, Employee filed and served on Holdiman-Miller and Bredesen documents upon which she intended to rely at hearing. The attached 48 pages included: 2020-2021 emails and texts between Employee and her adjuster addressing primarily check issues and EME scheduling; medical records for Employee's recent examinations; 2025 emails between Holdiman-Miller and Bredesen regarding attorney fees; Holdiman-Miller's 2025 response to a discovery request from Bredesen; 2025 emails between Employee and her treating physician at Vally Medical; Bredesen's November 14, 2024 letter to Holdiman-Miller regarding *ex parte* communication allegations; his similar January 23, 2025 letter; a document regarding "metadata"; various treatment plans; negotiation emails and letters between Bredesen and Holdiman-Miller; and Stone's September 7, 2021 letter to Eklund providing the 796 page response to Eklund's discovery request, which included Employee's entire JBER medical file. Notably, many documents included a notation that PDFs were attached, but the filing contains no active links, so the panel cannot review any attachments. (Notice of Intent to Rely, June 26, 2025).

42) On July 9, 2025, Employee filed and served her hearing brief. She contended that, despite the designee's discovery order, Employee had encountered a "pattern of willful obstruction, obfuscation, delay, and bad faith action from the defendants." Employee relied on the "evidence presented at hearing," to prove the alleged discovery abuses. Having alleged discovery abuses, Employee requested an order granting and imposing the "full extent" of sanctions authorized under AS 23.30.108(c) and the Board's "inherent authority" to impose other sanctions. She contended sanctions were "essential to uphold the integrity and purpose" of the entire workers' compensation system. (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

43) Employee's hearing brief listed all issues set for hearing, but included issues not scheduled for the June 24, 2025 hearing. Specifically, the following discussed in her brief were not issues set for hearing: Employee's January 25, 2022 claim for "medical" and "transportation costs"; a February 13, 2024 unfair controversion allegation; an unspecified penalty; interest; and Employer's alleged failure to preauthorize treatment. (Employee Sabrina Martino's Hearing Brief, July 9, 2025; Prehearing Conference Summary, June 17, 2025).

44) Addressing her February 6, 2025 petition for sanctions, Employee argued Employer deliberately violated the designee's December 19, 2024 order to produce "certain discovery." She contended Employer "willfully failed and refused to provide the discovery ordered." Employee relied on Civil Rule 37(b), 8 AAC 45.054(e), and two Alaska Supreme Court opinions. She alleged Employer's "willful delay, obstruction, and misconduct within the discovery process," and alleged Employer thought itself "above the law." She contended that without sanctions, Employer would continue to "spit in the face of the law." Employee noted that many claimants had been "struck with sanctions" for "discovery misconduct." She found no case where a defendant had been sanctioned. Employee argued both parties should be held to the same discovery standard. She concluded "under these facts," dismissing Employer's defenses "appears to be the most appropriate sanction." (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

45) Employee contended she had been unable to obtain all facts relevant to her claims including full disclosure of "all contacts" between the defendants and her treating physicians, Employer's hired physicians, and all payment records and "other relevant information." As a result, she argued she had been unable to prepare her present claims for hearing. This included not just her claims on their merits, but her request to preserve evidence, for more time to request a hearing on her January 25, 2022 claim, to strike records that exceeded the scope of signed releases, "among others," as well as Employer's petition for a Social Security offset. Moreover, Employee requested an order holding in abeyance all her claims and aforementioned petitions until Employer produced all discovery previously ordered, and any new discovery necessitated thereafter. (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

46) On July 9, 2025, Employer filed and served its hearing brief on Employee and Graham but not on Bredesen. Its brief correctly listed the issues for hearing as set forth in the June 17, 2025 Prehearing Conference Summary. On Employee's February 6, 2025 petition to enforce the designee's December 19, 2024 discovery order and for sanctions, and her April 1, 2025 petition for further sanctions, Employer argued that Employee and Bredesen created a "huge unfounded, irrelevant discovery issue" because there were no current disputes over her medical treatment or ongoing benefits. Yet, on September 30, 2024, she filed a petition to compel discovery and a related memo on December 18, 2024. Employer contended that it responded to Employee's December 17, 2024 discovery letter two days later, on December 19, 2024, the same day the designee addressed the motion to compel at a prehearing conference. It argued that Employer had

also sent Employee an updated privilege log and provided additional discovery in January 2025. Employer's primary argument was that it provided this discovery even though there were no matters in dispute because Employer had complied with *Martino IV*. It asserted that it had "not denied any benefits and has preauthorized medical treatment" for Employee. Therefore, it argued that no additional evidence is relevant and likely to lead to admissible evidence on any issues, because there were at that time no issues other than a COLA and an Social Security offset. Thus, Employer sought an order denying the petition to compel and request for sanctions. (Employer's Hearing Brief, July 9, 2025).

47) On July 9, 2025, Bredesen filed a hearing brief in his role as a party whose own claim was joined to Employee's. He correctly set forth issues scheduled for hearing. On page 15, he offered argument on the evidence preservation issue, declaring that 3 AAC 26.030 required various persons to preserve case-related documents. (Attorney's Hearing Brief, July 9, 2025).

48) Regarding Employee's February 26, 2025 petition to preserve evidence, Employer contended that there was no evidence deadline, all discovery petitions had been adequately answered, and all evidence Employer filed with the Division was intact, so there was no action the Board should take on this petition. (Employer's Hearing Brief, July 9, 2025).

49) Lastly, Employer asked for an order denying Employee's May 22, 2025 petition to strike records for which Employee did not sign medical releases. It argued it has the right to investigate all causes of her disability to determine if PTD benefits are warranted. Employer agreed it had the burden to prove employability in a PTD claim. Thus, Employer contended that all documents filed with the Division to date are relevant and should remain in the record until the matter is resolved. (Employer's Hearing Brief, July 9, 2025).

50) Employer again provided Employee with "Privilege Log I." This addressed partially redacted materials from discovery Employer had previously provided. Employer described this information as attorney-client privileged material from the adjuster's file or log notes, including amounts of the insurer's reserves for this case, several pages from Employer's workers' compensation insurance policy, which Employer objected to as not reasonably calculated to lead to admissible evidence, and numerous blank pages, on grounds that they were blank. (Privilege Log I, pgs. 1-2, Exhibit 25 to Employer's Hearing Brief, July 9, 2025).

51) At hearing on July 16, 2025, Employer's then-current adjuster Seever testified she had been an adjuster for 43 years and had been adjusting Employee's case since 2023. She explained the

insurer's claims note system, which documents all contacts. This would include contacts with anyone related to a case. These contacts are saved in the note system and after 24 hours they cannot be changed. Medical providers can also drop records directly into her system. Once the records are in the system they cannot be deleted. Phone calls and emails are also dropped into the file. After *Martino IV* issued, Seever had discussions with medical facilities, but not physicians, about billing issues. Seever had no discussion with physicians or their offices regarding treatment. She never spoke to a physician at UCLA about Employee's care. All contacts would be in her notes. (Record, July 16, 2025).

52) Seever also testified that her system generates spreadsheets. Employee objected to Seever's testimony on grounds Employer could not present evidence that it did not produce as the designee had directed. Graham said he had looked at the prior "six months of adjuster's notes" and many were redacted. Because they were redacted, Graham argued that Employee could not establish or be specific as to what was missing and Graham was "learning new things" through Seever's testimony. In other words, Employee objected to admission of any evidence at hearing that Employer had previously redacted. He added that all redactions were supposedly justified by an attorney-client privilege, and the information to which Seever was testifying at hearing did not involve attorney-client privilege issues. Holdiman-Miller advised that she made redactions to the adjuster's notes, not Seever. She argued that without identifying the redactions in question, Employer could not identify if the redacted material came under a justifiable privilege. The panel reserved judgment on this objection. (Record, July 16, 2025).

53) Seever testified that near the end of June 2025, she sent additional records to Holdiman-Miller's office in response to discovery. (Record, July 16, 2025).

54) On cross-examination, Seever testified that her attorney redacts records; she does not. She had not seen the redactions, but was aware that they would generally relate to the attorney-client privilege. Seever produced all claim notes in her file to her attorney but she does not know what was produced or not produced. (Record, July 16, 2025).

55) Seever testified she had no direct contact with EME Drs. Bell or Rosenbaum. She may have had contact with their offices for scheduling. Seever affirmed that payments to providers are documented. She had no knowledge why any payments to medical providers on spreadsheets would be redacted, and she would be surprised if they were. (Record, July 16, 2025).

56) Seever could not recall if she retained ExamWorks as an EME company in this case. She clarified that the system-generated spreadsheets contain all medical payments for medical care, prescriptions, and whatever treatment is rendered and paid for. It does not include payments to EME arrangers or providers. EME physicians are paid and coded in a different category based on agreements with employers that require the employers to pay the EME charges directly. When asked to clarify if payments made to EME providers are not included in the insurer's claim file system for this case, Seever did not directly answer the question but stated, "No, those were not requested. We provided all of the treatment and medical payment records." However, EME payments do show up in a payment history generated by their system. If Employee wanted to request those payments, she would have asked to ask for "an expense payment history," which would include significant redactions because that part of her system also includes legal costs. However, as Seever reviewed her expense page live at hearing, she testified that any payment made to ExamWorks would not show up in it, because ExamWorks "bulk bills." If requested, Seever could contact ExamWorks for that information. Seever could not recall the nurse case manager in this case. Holdiman-Miller stated that Paradigm was the nurse case manager company and Bernie Farrell was the nurse case manager. Seever testified that Paradigm also bulk-bills so payments made to that company also did not appear on the requested discovery. However, she clarified there was one 2021 payment to ExamWorks for $3,900. (Record, July 16, 2025).

57) On re-direct, Seever testified that if Employee had questions about communications regarding Employee's pharmacy card, she would have to ask Optum, the company that sent the card out. Seever only recommended the card, and Optum sent it out. (Record, July 16, 2025).

58) In response to the designated chair's question, Seever testified that she had not consulted with any EME physician whose name does not appear in Employee's agency file, or obtained an oral or written opinion from that physician in this case. Likewise, she was not aware that any other person on Employer's side had done so. (Record, July 16, 2025).

59) At hearing, Employee agreed she had received "lots of records" as discovery from Employer, but complained that it was redacted. She mentioned that "things that were previously available are now redacted." Employee did not identify these documents. When asked what she thought was missing from her medical records that would affect her medical treatment, Employee stated "communications" between the adjuster and her doctors at Vally Medical "would be the biggest," along with an ExamWorks form, payment spreadsheets and nurse case manager materials.

Employee conceded that she did not know what contact there may have been with EME physicians. Employee made a vague reference to instructions to "delete anything that is not applicable." She added, "There are so many things that are being hidden." When Employer specifically asked what she was trying to get from her request for additional discovery, and what it could do to assist in her quest, Employee stated she wanted to see how "you are influencing my doctors." Employee wanted payment records to her physicians to determine, "Are they getting paid?" When reminded that the adjuster had testified at hearing that there was no influence exerted on her physicians, and her providers' bills were paid, Employee was unsatisfied, stating "I do not know that I have all of it." (Record, July 16, 2025).

60) On August 8, 2025, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 25-0048 (August 8, 2025) (*Martino VI*) addressed, among other things, Employee's February 6, 2025 petition to enforce the designee's December 19, 2024 discovery order, and for sanctions, as well as her April 1, 2025 petition for further sanctions, her February 27, 2025 petition to preserve evidence and her May 22, 2025 petition to strike any medical records from her file for which Employee did not sign a medical record release. *Martino VI* stated:

> Employee's February 6, 2025 petition to enforce the designee's December 19, 2024 discovery order, and for sanctions, and its March 31, 2025 petition filed on April 1, 2025 (and referred to as her April 1, 2025 petition) for further sanctions, are her primary issues. The February 6, 2025 petition Bredesen filed contended that Employer failed to comply with the designee's December 19, 2024 discovery order; she requested unspecified sanctions. Employee's "April 1, 2025" petition asked the panel to consider "adverse inference" or other sanctions under AS 23.30.095, §.108(c), and §.155, 8 AAC 45.095 and "any other relief" it deems just.
>
> Bredesen's July 9, 2025 brief did not address this issue, nor did he address it during his short attendance at hearing. Employee's brief promised to rely at [*sic*] "the evidence presented at hearing," but she did not offer any evidence, other than minimal testimony from Employee. Her brief relied on §.108(c) not in respect to discovery violations and sanctions but as support for her allegation that Employer has obstructed her right to receive compensation and medical care for her injuries. But that issue is not before this panel at this hearing. The issues are governed by the June 17, 2025 Prehearing Conference Summary, which includes the two petitions to enforce discovery orders and provide for related sanctions. 8 AAC 45.065(c); 8 AAC 45.070(g).
>
> Employee apparently also mistakenly believes that her claim for medical benefits and related transportation costs are issues for the instant hearing and decision. They are not because they were not listed as issues on the controlling June 17, 2024

Prehearing Conference Summary. An unfair controversion, a penalty and interest are similarly not decided here because they were not listed as issues for this hearing. Employee's request to require Employer to preauthorize medical treatment is also not an issue set for hearing. 8 AAC 45.065(c); 8 AAC 45.070(g).

Employee's October 22, 2024 brief that Bredesen filed in support of her September 27, 2024 petition to compel discovery laid the groundwork for the prehearing conference designee's December 19, 2024 discovery order. In that brief, Employee narrowed what she wanted: (1) identify the nearest point from adequate medical treatment for possible neck surgery and for TOS treatment, within 48 hours; (2) identify the factual basis for Employer's "controversion" of medical treatment at Vally Medical Center; (3) provide a current payment itemization; (4) state whether Employer has records not filed on a Medical Summary; and (5) provide records pertaining to an August 2024 EME trip where Employee was accompanied by Employer's agent.

(1) *The nearest point for adequate medical care*: Employer at the November 14, 2024 prehearing conference identified "local" Hawaii surgeon Dr. Roh (sometimes spelled Rowe) as the nearest physician to treat Employee's neck. The context suggested that the parties at the prehearing conference understood where this physician was located. On December 23, 2024, in its "answer" to Employee's discovery letter, Employer stated UCLA would be the nearest place to treat Employee's TOS if her UCLA treating physician referred her to a local provider. Employer satisfied that discovery order. Employee should follow up with her physicians regarding these treatments. There is no basis for a sanction here. If in fact Hawaii surgeon Dr. Roh does not accept Alaska workers' compensation cases, that is not Employer's fault. She will have to have her attending physician, whoever that now may be, refer her to the nearest provider for her cervical care. Employer is required to pay for medical services, not to arrange for them. *Richard*.

(2) *The factual basis for Employer's controversion of medical treatment at Vally Medical Center*: The panel found no relevant controversion in Employee's agency file after *Martino IV*. At the November 14, 2024 prehearing conference, Employer's representative stated that although in Employer's view "pre-authorization" was not legally required, it did not refuse to authorize treatment and Holdiman-Miller was going to inquire about what prevented Employee from receiving treatment she needed from her treating physician at Vally Medical. Thereafter, the record is replete with Hawaii treatment plan authorizations signed by Seever. Apparently, Employee contends that Employer has "controverted-in-fact" her medical care with this provider. While that issue is not before the panel at this hearing, and can be raised later when the remaining merits of her various claims are heard, Employer has responded to this discovery request and related order. In short, Employer's response was that it did not controvert medical treatment at Vally Medical. It is not clear what additional

"factual basis" Employer could provide. There is no basis for a sanction here either.

(3) *Provide a current payment itemization*: Employer has repeatedly and consistently updated its payment itemizations. At hearing, this issue seems to have morphed to some extent under Graham's representation, which results in additional analysis, below.

(4) *State whether Employer has records not filed on a Medical Summary*: Employer has repeatedly stated it has no medical records that it has not filed on a Medical Summary. The only exception were some JBER records it obtained that Employer thought did not pertain to this case. It is not unusual for defense counsel to not file medical records on medical summaries that deal with personal, unrelated medical issues, so long as those records are sent to the worker or their counsel. On September 7, 2021, Stone sent all JBER records to Employee's attorney and advised that she had not put some on a Medical Summary. If Employee wants those other JBER records placed on medical summaries, she may file them herself on a Medical Summary. There was no evidence Employer failed to comply with this discovery order, assuming it was part of the designee's December 19, 2024 discovery order. No basis for a sanction exists here.

(5) *Provide records pertaining to an August 2024 EME trip where Employee was accompanied by Employer's agent*: The panel presumes this refers to Dr. Rosenbaum's September 17, 2024 EME. On December 23, 2024, Employer advised Employee that this information had been provided, other than privileged portions. The panel located documents from the concierge as set forth in the factual findings above. Employee has not identified any specific information not already provided in respect to this "August 2024 EME trip." The panel perceives no basis to order more on this point or for a discovery sanction.

However, as noted above, at hearing the discovery issues morphed and expanded to some extent. Thus, more analysis is required to make sure this decision covers all possible discovery issues. Employee's July 9, 2025 hearing brief does address its allegation that Employer deliberately violated a discovery order and "refused to provide the discovery ordered." Employee's hearing brief is confusing and conclusory. It makes compelling arguments about why obeying discovery orders is critical and why equally-applied sanctions are important -- which no one disputes. But it fails to identify clearly what from the December 19, 2024 discovery order Employee claims Employer failed to provide. Employee states she has not been able to obtain full disclosure of all contact between Employer and its insurer and her treating physicians and EME doctors, all payment records or complete itemizations and "other relevant information."

Nevertheless, even though Employee's brief and argument at hearing did not enlighten the panel with adequate specificity as to what exactly Employer has failed

to produce, she (1) requested that all further proceedings including her own petitions be held in abeyance until all allegedly "improperly withheld discovery" has been produced, and (2) jumped to her conclusion that, "Under these facts, dismissing defendant's defenses appears to be the most appropriate sanction." The panel is left to determine on its own what "these facts" are. This effort is akin to trying to put together a 5,000-piece jigsaw puzzle without the box in which it came with the picture showing what the completed puzzle is supposed to look like.

To be clear, Employee's current discovery petitions and sanction requests are not a "discovery dispute" that came before this panel "for a review of a determination" by the prehearing conference designee under §.108(c). By comparison and contrast, the designee at the December 19, 2024 prehearing conference entered his discovery order and no one sought review. Therefore, the "designee's discovery order" was and "is final." 8 AAC 45.065(a)(10), (d), (h). This panel has no authority to change, modify or overrule the December 19, 2024 discovery order. All this panel can do here is determine whether Employer "refuse[d] to comply" with the discovery order, and if so, it may "impose appropriate sanctions" including but not limited to dismissing Employer's "petition, or defense" under §.108(c). The designee ordered Employer to produce:

> *(1) . . . [A] supplement [to] the prior responses to [Employee's] informal discovery requests dated February 3, 2022*: Employee's June 26, 2025 evidence filing did not help in determining whether Employer refused to comply with discovery order *(1)*. The 48 attached pages include little that supports her position. For example, Stone's September 7, 2021 letter to Eklund shows Employer provided 796 pages in response to Eklund's discovery request, which included the entire JBER medical file for Employee even though Stone said Employer had only filed records on medical summaries that related to her claim. Holdiman-Miller's 2025 response to a discovery request from Bredesen is evidence that Employer updated its responses. Leading up to the instant hearing, Employer's June Notices of Intent to Rely provided additional discovery.

In late June 2025, Seever sent records to Holdiman-Miller's office to supplement Employer's discovery responses. At hearing, Graham said he was "learning new things" through Seever's testimony that he "never heard before." He used that statement to justify an order compelling more discovery. However, Graham never specified what these "new things" were. Based on Graham's statement, Employee objected to admission of any evidence at hearing that Employer had previously redacted. He added that all redactions were supposedly justified by an attorney-client privilege, and the information to which Seever was testifying at hearing did not involve attorney-client privileged issues. Holdiman-Miller and Seever stated that Holdiman-Miller made the recent redactions, not Seever. Employer argued that unless Employee identified the redactions in question, it could not address her objections. Employer has a point; Employee's objections were vague; they did not help the panel understand her position.

Seever had not seen the redactions, but was aware that they would generally relate to the attorney-client privilege. She produced all claim notes in her file to her attorney but she does not know what was ultimately produced or not produced. Neither does this panel. Seever's testimony on this point was credible. AS 23.30.122; *Smith*.

In short, after poring over this huge agency file, the panel found reference in the December 19, 2024 Prehearing Conference Summary to a May 8, 2024 visit Employee allegedly had with UCLA Health, which she contended had not been filed on a Medical Summary. This statement is the only reference to that alleged visit. A discovery order does not require a party to obtain information it does not have. Moreover, on December 19, 2024, Employer only stated it would attempt to locate and file any May 8, 2024 UCLA records as soon as possible. Producing it was not part of the designee's discovery order. If Employer does not have this record, nothing prevents Employee from requesting it from UCLA Health. But to the issue at hand, Employee has not explained how Employer not obtaining this record would violate the discovery order or justify dismissing Employer's defenses, especially since the record if it exists is available to any party who requests it with a valid release. There is no evidence Employer "refused to comply" under §.108(c), and no basis on which to sanction Employer under §.108(c).

Medical records Employer provided to its EME physician's pops up as a disputed issue in several places in the agency file. To the extent EME physicians discarded the records, that is their business practice and this panel has no jurisdiction to order them to do otherwise. If Employee contends that Employer must produce the exact medical records it provided to the EME physicians, that is a valid request. Again, this panel cannot overrule the designee's discovery order, under §.065(h). However, it is difficult to discern exactly what is included in the designee's order. Likewise, it is unclear as to Dr. Pino's EME how those records would be relevant at this point. 8 AAC 45.065(c); 8 AAC 45.070(g). But since Employer did not appeal the designee's discovery order, and the exact medical records Employer sent to Dr. Pino have been discussed as not yet being provided, and the panel found no evidence in the agency file that they were, Employer will be ordered to provide to Employee a copy of the exact records it provided to Dr. Pino.

Likewise, although Drs. Rosenbaum and Bell's reports are currently inadmissible as evidence because Employee asserted her right to cross-examine them, the panel cannot discern if Employer ever provided to Employee the exact medical records it sent to those EME physicians. To clarify, there is a difference between randomly filing and serving Employee's medical records on medical summaries over several years, versus sending selected (*i.e.*, perhaps limited) medical records to an EME physician. In other words, were Employee to review every Medical Summary filed in this case, she would undoubtedly cast her eyes on all medical records Employer sent to its EME physicians, eventually. But this exercise would not identify the precise records Employer sent to the physicians for the EMEs.

Experience shows it would be highly unusual for an attorney not to keep a copy of everything it sent to a physician. *Rogers & Babler*. Consequently, since Employer did not appeal the designee's discovery order, and this issue has arisen in various documents in this file, Employer will also be ordered to provide an exact copy of medical records it sent to Drs. Rosenbaum and Bell. Again, and as an aside, although the panel did not rely on Drs. Rosenbaum's and Bell's EME reports in this decision, it noted that both reports listed the records each physician reviewed. Because it is not clear if records sent to the EMEs are included in the designee's order, Employer's failure to provide them in the form directed here does not form a basis to sanction it under §.108(c).

Employee also contended she has not been able to obtain full disclosure of all contact between Employer and its insurer vis-à-vis her treating physicians and EME doctors, or all payment records or complete itemizations. As to Employee's "contact" contention, Seever credibly stated she never contacted Employee's treating physicians directly, but only contacted their office staff for administrative purposes. Likewise, she credibly testified that she had no direct communication with Drs. Rosenbaum or Bell. AS 23.30.122; *Smith*. She may have been involved in scheduling. Employee did not explain how this information supported her position at hearing. She failed to present evidence or argument adequate to inform the panel what discovery was missing in this regard, or to form a basis to sanction Employer under §.108(c).

Employee's payment records contention is more nuanced. Seever affirmed that all payments to Employee's treating physicians are documented. She had no knowledge why any payments to Employee's medical providers on spreadsheets Seever provided, which her system generates, would be redacted and she would be surprised if any were. Yet, two payments to someone were in fact redacted on a medical payment spreadsheet.

Employer's Privilege Log II and June 18, 2025 "Medical Cost Summary List" are confusing at best. Seever also testified that no EME payments would appear on the same spreadsheet as payments to Employee's treating providers on the "Medical Cost Summary List." She said EME payments are kept in a different file, which she said Employee did not request. Nevertheless, on Privilege Log II, addressing document "001040," which is the "Medical Cost Summary List," Holdiman-Miller asserted attorney-client privilege on three entries: September 19, 2024, January 21, 2025 and April 3, 2025. It appears Holdiman-Miller neglected to redact the entry for "Eaze Medical Solutions" for services rendered between September 15, 2024 and September 19, 2024, totaling $12,810. The September 19, 2024 date corresponds to Dr. Rosenbaum's EME visit and report. Since Seever testified there should be no redactions on the "Medical Cost Summary List," there should be no reason for Holdiman-Miller to have redacted two entries, which apparently relate to January 21, 2025 and April 3, 2025. Therefore, given the designee's discovery order, Employer will be directed to reveal to Employee the redacted portions on Privilege Log II as reflected on the June 18, 2025 "Medical Cost Summary List."

Next, Seever could not recall if she retained ExamWorks as an EME company in this case. She clarified that the system-generated spreadsheets contained all payments for "medical care" but did not include payments to EME arrangers or providers. However, her testimony clarified that there was one 2021 payment to ExamWorks in Employee's file for $3,900. There was no further explanation regarding this payment, and it is not clear why Seever would not recall if she retained ExamWorks as an EME in this case, but nevertheless paid it $3,900. This issue relates to the documents Employee completed at Dr. Pino's office and photographed, discussed elsewhere in this decision. The forms reference ExamWorks, and list Dr. Pino as the examiner, but his March 4, 2021 EME report on its face does not identify any affiliation with ExamWorks.

When asked at hearing to clarify if payments made to EME providers were not included in the insurer's claim file system for this case, Seever did not directly answer that question, implied in the affirmative, but stated, "No, those were not requested. We provided all of the treatment and medical payment records." This may be a semantics issue; an EME physician does not provide "medical care" to the patient but simply provides an opinion to the party that hired that physician. But on February 14, 2025, Bredesen explicitly requested EME payment records. His request could not have been much clearer. The Act states Employer "may not make more than one change in the employer's choice of a physician" without Employee's consent. AS 23.30.095(e). Without adequate discovery on this question, neither Employee nor this panel will ever know what role ExamWorks played, if any, in this case. There may well be a simple explanation.

Why is this relevant and important? Employer's choice of a §.095(e) physician is made by having "a physician . . . selected by the employer give an oral or written opinion and advice after examining . . . the employee's medical records, or an oral or written summary of the employee's medical records. . . ." 8 AAC 45.082(b)(3). In response to the designated chair's question at hearing, Seever testified that she had not consulted with any EME physician whose name does not appear in this agency file, and from whom she obtained an oral or written opinion. Likewise, she was not aware that any other person on Employer's side had done so. Hypothetically, if Employer or its agent (*i.e.*, adjuster, nurse case manager, attorney, paralegal, etc.) called a physician and gave an oral summary of Employee's facts, or digitally sent to a physician that information, or sent a physician her medical records and sought a medical opinion and obtained one, even if just orally, that could constitute Employer's change of physician under §.082(b)(3).

This regulation §.082(b)(3) was implemented in part to provide transparency and to prevent shadow "doctor-shopping." Under §§.095(e) and .082(b)(3) if Employer through its agent sought a medical opinion from an undisclosed physician, that undisclosed physician could legally constitute Employer's "choice of physician." If so, any subsequent "change" to additional, disclosed EME physicians could be unlawful. If in that case after hearing a panel found Employer made an unlawful

change in physician in violation of §.095(e) that could result in the panel not considering opinions from any subsequent EME physicians in this case that violated §§.095(e) and .082(c). Employer, in this hypothetical, would be left with the undisclosed EME physician's opinion as its most recent medical expert opinion. This may affect its reliance on disclosed EME physicians, which in turn could affect Employee's pending claims for PTD benefits, medical care, unfair or frivolous controversion, a penalty, interest, fees and costs.

Given the above analysis, Seever's testimony regarding ExamWorks, its role in this case and her $3,900 payment to it is confusing. Seever's statement that she would be "surprised" if a medical payment was redacted on a payment spreadsheet, further raises suspicion as to why two entries were, in fact, redacted. Moreover, on January 30, 2023, Stone wrote to Bredesen in response to his December 29, 2022 informal discovery requests. In response to his request (4) for names, addresses, and phone numbers for all physicians Stone or her clients had contacted regarding Employee, Stone advised Bredesen that all medical records had been filed and served on medical summaries. But Stone did not address Bredesen's request for names, addresses and phone numbers of any physicians Stone or her client "contacted" in Employee's case. A hypothetical "shadow" medical expert would fall into this "contacted" category. This may be where Employee is heading with this request. Therefore, Employer will be directed to disclose the names, addresses and phone numbers for any physician it or its agents contacted for an opinion about Employee.

Employee also requested payment dates for payments shown on Employer's spreadsheet. As far as the panel can determine, while Employer provided updated payment spreadsheets, none of those disclose the payment dates to the various providers. Again, though relevance of this information is unclear, since Employer did not appeal from the designee's discovery order, Employer will be directed to divulge to Employee payment dates, amounts and providers paid in a comprehensive payment spreadsheet showing payments to her treating providers.

If Employee wanted to request EME payments, she would have had to ask for "an Expense Payment History," which Seever testified would include significant redactions because that part of her system also includes legal costs. It is unclear why Employee's request for, "A payment itemization for all payments made on this claim," would not be understood by a reasonable person to include payments made to an EME physician. Likewise, as noted above, Bredesen expressly requested payment information to EME physicians. It is not clear if Bredesen's request was passed on to Seever. As Seever reviewed her expense page live at the hearing, she testified that any payment made to ExamWorks would not show up in it, because ExamWorks "bulk bills." If requested, Seever would contact ExamWorks for that information. If Employee wants to know how much Employer paid to its EME physicians, she may request the "Expense Payment History" report. There is no basis here for sanctions against Employer or its insurer, as Seever apparently misunderstood Employee's request was limited to medical providers, not EMEs, or she was unaware that Bredesen had made an explicit request for payments to EMEs.

Seever could not recall the nurse case manager's name. Holdiman-Miller stated that Paradigm was the nurse case manager company and Bernie Farrell was the nurse case manager. Seever agreed and testified that Paradigm also bulk-bills so payments made to it also did not appear on the requested discovery. Employer provided Farrell's documents; if Employee wants to know how much Employer paid Farrell, she can request the "Expense Payment History." There is no evidence supporting an argument that any non-privileged information is lacking. There is no evidence Employer violated the discovery order here and no basis for sanctions.

On re-direct, Seever testified that if Employee had questions about communications regarding Employee's pharmacy card, she would have to ask Optum, the company that sent the card out. Seever only recommended the card, and Optum sent it out. Seever's credible testimony on this point demonstrates that Employer and its agents have no further information to offer regarding the pharmacy card. AS 23.30.122; *Smith*. There is no basis for sanctions here.

On February 14, 2025, Bredesen asserted that "several thousand pages of documents" had been withheld without any basis or timely privilege declared. He further argued that the privilege log stopped in September 2021. It is unclear why Bredesen believed "thousands" of pages had been withheld. Employee presented no evidence of that. Employer has now updated and provided Employee with Privilege Log II. Thus, it has not refused to comply with the designee's order, and there is no basis here for sanctioning Employer either.

> *(2) A payment itemization for all payments made on this claim*: This has been addressed in part, above. Employer repeatedly updated its payment spreadsheets. Seever testified that her system generates these spreadsheets.

At this point in Seever's hearing testimony, Employee objected under §.054(d) on grounds that Employer could not present at hearing evidence that it did not produce as directed. Graham stated that he had looked at the prior "six months of adjuster's notes" and many were redacted. That statement confirms Graham had the last six months of the adjuster's notes. The fact they were redacted does not suggest a discovery order violation. The evidence also shows that Employer provided Privilege Log II on June 18, 2025. Because some notes were redacted, Employee contended she could not specify what discovery was missing. With one exception, Employee failed to convince the panel why she suspected discovery was still missing. The exception is redactions on the June 18, 2025 "Medical Cost Summary List."

> *(3) Please explain why the following medical studies and/or treatments, requested by Vally Medical, have not been authorized*:
>
> > a. Routine follow-up visit with her physician. I note that the provider indicated that the adjuster would only authorize a follow-up after the

cervical MRI. This meant that Ms. Martino was unable to get her prescriptions refilled prior to the EME trip to Oregon.
b. Thoracic MRI
c. Shoulder MRI
d. Acupuncture therapy
e. Massage therapy
f. Physical therapy

This request is a variation of the original request Employee made for the "factual basis" underpinning Employer's alleged "controversion" of this same treatment. The discussion from *(2)* on page 69 above, is incorporated here by reference.

(5) Have medical records arrived for Ms. Martino's April 25-27 trip? If so, when were they received? Please also file the records on an appropriate Medical Summary:

Since this issue was brought up at the December 19, 2024 prehearing conference, the panel presumes that the "April 25-27 trip" refers to 2024. On December 23, 2024, Employer filed and served a Medical Summary on which it attached 14 pages from UCLA Health where Employee was treating for her work injury. It appears Employer filed these medical records on a Medical Summary, and this discovery order issue is now resolved. There is no indication Employer "refused to comply" with this part of the designee's December 19, 2024 discovery order under § .108(c). There is no reason on this issue to sanction Employer.

(7) Which physician does Employer/Insurer consider to be the nearest point [with] adequate services to treat her TOS condition: On December 23, 2024, in response Employer stated:

The employer previously paid for the referred UCLA testing, treatment, and travel. If the locally designated physician locates a local TOS provider the local referral would be the nearest.

Employer cannot "select" Employee's physician without risking that it will run afoul of §.095(e) and regulation §.082(b)(3) once Employee sees that physician and the physician gives an "opinion and advice" after examining her. There is no evidence Employer "refused to comply" with this part of the designee's December 19, 2024 discovery order. Its response was adequate. There is no basis on this issue to sanction Employer.

(8) Please provide copies of all communications regarding the recent EME appointment and the appoint that had been scheduled prior to it. This should encompass all communications in any form, electronic, paper, etc. It should encompass communications with the EME physician himself, as well as any company that may have facilitated the appointment (i.e., ExamWorks, etc.). This request also encompasses all communications by any person connected with

> *claim, including the employer, insurer, your firm, etc. finally, it encompasses all communications with the individual who accompanied Ms. Martino during the trip, as well as the company she worked for*:
>
> Seever's hearing testimony while addressing mostly irrelevant issues, was helpful on this issue to some extent. She testified that the insurer's claim note system documented all contacts with anyone in respect to this case, and after 24 hours, the entries could not be changed or deleted. Seever credibly testified that she has had no contact with Employee's attending physicians and only contacted their office staff regarding billing or to obtain records. Phone calls and emails are also dropped into the file. Since *Martino IV* issued, Seever had no direct conversations with medical providers. She discussed administrative issues with medical staff, but not physicians. Seever had no discussion with physicians regarding treatment. Seever further testified she had no contact with Employee's physicians or with EME physicians Bell or Rosenbaum. She may have had some contact with EME offices for scheduling. AS 23.30.122; *Smith*.
>
> Employee provided no evidence suggesting that any other person on Employer's side had any contact with EME physicians, or that there is any additional evidence from the concierge who traveled with Employee to Dr. Rosenbaum's visit that was not already produced. Employer responded to this discovery request. Without more, the panel cannot find that Employer violated the designee's December 19, 2024 discovery order. Without such a finding, it likewise cannot order any sanctions.
>
> Lastly, Employee expressed concern that she could find no instance where an employer has ever been sanctioned for a discovery violation. Her research should have shown that employees who are sanctioned for discovery violations are given at least three opportunities to remedy their failure or refusal to provide discovery before litigating-ending sanctions are levied upon them. Here, so far as the panel can discern from this huge, convoluted file, Employer has ultimately complied with the designee's December 19, 2024 discovery order. If it fails to comply with the order set forth in this decision, Employee may again petition for sanctions. There is no justification in fact or in law to justify the ultimate sanction -- dismissing Employer's defenses -- under the facts as analyzed here. Thus, Employee's request for an order compelling additional discovery and for sanctions will be denied. (*Martino VI*).

61) On November 28, 2025, Employee petitioned for a protective order striking "all mental health records, gynecological, colonoscopy, family history, any other nonwork injury." She asserted that she had filed no mental health claim and her psychotherapy notes were protected by the Health Insurance Portability and Accountability Act (HIPAA). Employee wanted the order to require separate authorization to require those records, which she claimed to have never given, and to strike, seal and prohibit their further use. (Petition, November 28, 2025).

62) On December 15, 2025, Employee sought an order compelling discovery, and for sanctions. She cited "Board ordered 12/19/24 & 8/8/25" discovery, and alleged noncompliance with Board decisions "23-0044 & 25-0048" (*Martino IV* and *Martino VI*, respectively). (Petition, December 13, 2025).

63) On December 16, 2025, the parties attended a prehearing conference. The designee ordered Employee to sign, date and return five unaltered discovery releases to Employer within 20 days. (Prehearing Conference Summary, December 16, 2025).

64) On December 29, 2025, Employee appealed the designee's December 16, 2025 discovery order. She sought an order protecting her from providing any further discovery until Employer complied with what Employee considered unfulfilled prior requests for discovery from her. (Petition, December 29, 2025).

65) On February 27, 2026, *Martino v. Alaska Asphalt Services*, LLC, AWCB Dec. No 26-0019 (February 27, 2026) (*Martino VIII*) denied Employee's December 29, 2025 petition and ordered her to sign, date and return to Employer five subject releases within 10 days from the decision's date. *Martino VIII* also expressly prohibited Employer's agents from contacting Employee's physicians' offices without giving her at least 10 days' notice, except for inquiries concerning billing exchanges, medical records requests and authorization responses. (*Martino VIII*).

66) On March 9, 2026, Employee petitioned to recover "all information" not related to her work injury and to prevent further dissemination. She also asked to compel discovery orders "12-19-24 & 8-8-25" and to force Employer to comply with these orders. (Petition, March 9, 2026).

67) On March 16, 2026, Employee petitioned the Board to reconsider *Martino VIII*. (Petition, March 16, 2026).

68) On March 24, 2026, *Martino v. Alaska Asphalt Services*, LLC, AWCB Dec. No 26-0024 (March 24, 2026) (*Martino IX*) denied Employee's March 16, 2026 petition to reconsider *Martino VIII*. (*Martino IX).*

69) On March 26, 2026, the parties appeared before a Board designee for a prehearing conference. Rather than addressing Employee's March 9, 2026 discovery petition, the designee at Employee's request, added the March 9, 2026 petition as an issue for a May 12, 2026 hearing. (Prehearing Conference Summary, March 26, 2026).

70) On April 15, 2026, Employee petitioned the Commission to review *Martino VIII* and *IX*. (Petition for Review, April 15, 2026).

71) On May 7, 2026, the designee issued an amended Prehearing Conference Summary. Among the issues listed for the May 12, 2026 hearing was Employee's March 9, 2026 petition to compel and for a protective order. (Prehearing Conference Summary, May 7, 2026).

72) On May 12, 2026, *Martino v. Alaska Asphalt Services*, LLC, AWCB Dec. No 26-0041 (June 15, 2026) (*Martino X*) heard, and on June 15, 2026 decided, Employee's (1) December 12, 2025 petition, which the Division had treated as a "claim" for reimbursement of medical costs; (2) her December 15, 2025 Petition to Compel and for Sanctions; (3) her November 11, 2025 (incorrectly dated "2026") Petition for Referral to the Division of Insurance; (4) November 11, 2025 Petition for Sanctions; (5) her November 11, 2025 petition to discover "all communications" and EOB forms; (6) her November 11, 2025 petition, treated as a "claim," for past-due TTD benefits; (7) Employer's November 20, 2025 petition to dismiss four Employee petitions, (8) its November 20, 2025 Petition for a Pre-Litigation Screening Order; (9) Employee's February 25, 2026 Petition to Compel; (10) her March 9, 2026 Petition to Compel and for Protective Order; and (11) her March 23, 2026 Petition for Sanctions. *Martino X* denied Employee's December 12, 2025, February 25, 2026 and March 23, 2026 petitions as moot. It granted Employee's November 11, 2025 Petition for a Referral to the Division of Insurance. *Martino X* denied Employee's November 11, 2025 petition ("claim") for TTD benefits and related penalties and interest. It granted in part and denied in part Employer's November 20, 2025 petition to dismiss Employee's November 11, 2025 petition. *Martino X* denied Employer's November 20, 2025 Petition for a Pre-Litigation Screening Order. Lastly, it remanded to the Board's designee Employee's March 9, 2026 Petition for Protective Order and to Compel Discovery, because the designee had never addressed the discovery issues raised in that petition. (*Martino X*).

73) *Martino X* entered the following legal conclusions and order:

CONCLUSIONS OF LAW

1) The oral order accepting Employer's untimely brief was correct.
2) The oral order disallowing Employee to call Holdiman-Miller or the adjuster as witnesses was correct.
3) The panel does have jurisdiction to hear and decide some issues before it.
4) Employee's December 12, 2025, February 25, 2026 and March 23, 2026 petitions will be denied as moot.
5) Employee's November 11, 2025 petition for a referral to the Division of Insurance will be granted.

6) Employee's November 11, 2025 petition ("claim") for TTD benefits and related penalties and interest will be denied. Alternately, Employer's November 20, 2025 petition to dismiss will be granted in part.
7) Employer's November 20, 2025 petition for a pre-litigation screening order will be denied.
8) Employee's March 9, 2026 petition for a protective order and to compel discovery will be remanded to the designee for a discovery order.

ORDER

1) Employer's brief is accepted as filed.
2) Employee's December 12, 2025, February 25, 2026 and March 23, 2026 petitions are denied as moot.
3) Employee's November 11, 2025 petition for a referral to the Division of Insurance is granted in accordance with this decision.
4) Employee's November 11, 2025 petition ("claim") for TTD benefits and related penalties and interest is denied.
5) Alternately, Employer's November 20, 2025 petition to dismiss is granted in part in accordance with this decision.
6) Employer's November 20, 2025 petition for a pre-litigation screening order is denied.
7) Employee's March 9, 2026 petition for a protective order and to compel discovery is remanded to the designee for a discovery order. The designee is directed to withhold his jurisdiction to review and address this March 9, 2026 "discovery matter" until the Commission rules on the pending petition before it. (*Martino X* at 62-63).

74) On June 9, 2026, Employee filed and served a request for a protective order, to compel discovery and for sanctions against Employer for allegedly disobeying Board discovery orders. (Petition, June 9, 2026). Employee attached a memorandum stating that Employer had violated *Martino VIII*'s order that any Employer communication with her physicians must occur with at least 10 days' notice to Employee, with three stated exceptions. She also attached a June 8, 2026 facsimile on Liberty Mutual letterhead from nurse case manager Amanda Navarro to Samer Ghostine, MD, at UCLA Health Calabasas Specialty Care. Navarro attached to the cover sheet a letter stating Employer was "working to settle" Employee's case and needed Dr. Ghostine's medical opinions on cervical spine treatment requirements, on an attached form, for a Medicare Set-Aside Allocation (MSA). Employee contended she had no notice or knowledge of this document at the time it was sent. She requested sanctions against Employer for violating *Martino VIII*, and wanted to compel Employer to produce a host of similar documents to determine if the

June 8, 2026 letter was an "isolated incident." (Petition for Sanctions and Disclosure of Provider Communications, June 9, 2026).

75) On June 15, 2026, Division staff noted a prehearing conference was already scheduled for June 24, 2026, and did not set another prehearing conference on Employee's June 9, 2026 petition. (Agency file: Judicial, Party Actions, Petition tabs, accessed September 10, 2026).

76) On July 16, 2026, Employer answered Employee's June 9, 2026 petition and admitted it had contacted Employee's physician, but argued it was "harmless error." It contended the contact was made to establish an MSA, and not for "claim handling." (Opposition to Petition for Sanctions, July 16, 2026).

77) On June 17, 2026, the Commission in *Martino v. Alaska Asphalt Services*, LLC, AWCAC Order on Petition for Review (June 17, 2026) (*Martino XI*) denied Employee's April 15, 2026 Petition for Review of *Martino VIII* and *IX*. (*Martino XI*).

78) On June 24, 2026, the parties attended a prehearing conference on discovery:

> Employer representative confirmed that Employee's claim remains open and billable with no controversion in effect. Employee disagreed stating that there may be no controversion in writing but "controversions-in-fact" do exist. Employee further stated that her privacy rights have been violated, her treatment delayed, and Employer is non-compliant with multiple Board Orders. All allegations that were denied by Employer representative. Parties did agree that no discovery releases were currently at issue.
>
> Designee confirmed the Alaska Workers Compensation Appeals Commission's denial of Employee's 3/16/2026 Petition for Reconsideration of D&O #26-0019 [and] the Alaska Workers Compensation Board's remand of Employee's 3/9/2026 Petition to Designee for an Order (D&O #26-0041). Employee noted her interpretation of D&O #26-0041 stating that all issues set for the 5/12/2026 Hearing were remanded back to Designee for individual Orders. Designee explained that while some of the issues set for the 5/12/2026 Hearing were outside the scope of his authority and some of the issues were addressed in the D&O, others could be seen as duplicative to Employee's 3/9/2026 and 5/19/2026 Petitions. As such, Designee elected to make every effort today to issue Orders addressing Employee's multiple discovery and procedural Petitions in this case.
>
> . . . .
>
> Per D&O # 26-0041 and Employee's request, Designee reviewed Employee's 11/11/2025 Petition to Compel Provider Communications and E.O.B. copies and Employee's 3/9/2026 Petition for Protective Order and to Compel Discovery along with Employer's 12/1/2025 Answer to Employee's 11/11/2025 Petitions and

Employer's 3/27/2026 Answer to Employee's 3/9/2026 Petition and issues the following Order:

[1] Regarding Employee's 11/11/2025 Petition to Compel Provider Communications and E.O.B. copies, Designee finds the Petition to be duplicative, overburdensome, and antagonistic given Employee's open and billable claim status. Also, the issue appears to have already been litigated and addressed in the Board's prior D&Os to include the 8/10/2025 Final Decision and Order. It is also apparent to Designee that Employe is unclear as to what discovery has and has not been provided as well as what purpose said discovery will serve towards her claim for Workers Compensation benefits. Employee's 11/11/2025 Petition to Compel Provider Communications and E.O.B. copies is denied. . . .

. . . .

[2] Regarding Employee's 3/9/2026 Petition to Compel and Petition for Protective Order. Employee's reason for filing is "to recover and prevent further dissemination of all information unrelated to work injury and compel discovery orders". In her oral argument Employee repeatedly referred to unrelated medical and mental health information that is not present in the AWCB file but referenced in certain Employer Medical Evaluator's (EME) reports. Employee confirmed that it is unknown what exactly this information is and where exactly it is located. Employee further argued that Employer is not complying with multiple AWCB discovery orders stating that she cannot tell what records have been obtained, where they have gone, what has been sent to physicians, and what is being hidden from the record. Employer representative argued that these discovery issues have been addressed by the Board on multiple occasions and employer has complied with all discovery orders. The employer asserted that employee's continued, duplicative petitions to compel discovery are frivolous and without merit. In regards to the employee's request to "recover and prevent further dissemination of all information unrelated to work injury," the employer is unable to adequately respond when the employee provides no cites to documentation or identification of what records she asserts are unrelated and seeks to recover. The employer does not know what records the employee is referencing and will need to know this information to adequately answer. If the employee believes certain records are unrelated and should be recovered, she should provide an itemized list of same along with her position in [*sic*] regarding relevance. Designee finds the Petition to be duplicative, overburdensome, and antagonistic given Employee's open and billable claim status. Also, the issue appears to have already been litigated and addressed in the Board's prior D&Os to include the 8/10/2025 Final Decision and Order. Employee's 3/9/2026 Petition to Compel and Petition for Protective Order is denied. . . .

. . . .

[3] Designee reviewed Employee's 5/18/2026 Petition to Compel Discovery along with Employer's 6/5/2026 Answer to the same and issues the following Order. Employee's Petition to Compel references 4 discovery requests:

1. The name, address, telephone number, and current contact information for the current insurance adjuster assigned to this claim. On March 26, 2026, Employee requested updated adjuster information from opposing counsel but has not received it. Employee also requests that the Employer/Insurer be ordered to promptly notify Employee of any future change in adjuster and provide updated contact information sufficient for service of subpoenas and communications relate to this claim.

Employer argues that this information was provided to the employee via mail directly from the adjuster.

Designee finds Employee's discovery request #1 to be standard, relevant, and necessary for the continued administration of Employee's open and billable claim. Employee's discovery request #1 is granted. Employer representative is ordered to again provide Employee with the name, address, and telephone number for the current insurance adjuster assigned to her claim, in writing, and within 20 days of receipt of this prehearing conference summary.

2. A response regarding whether the Employer/Insurer will authorize and approve treatment through the Veterans Administration, as previously requested by Employee.

Employer argues that Employee's claim is open and billable and that pre-authorization is not required. There is a Board order allowing her to obtain treatment and she should treat and have the bills submitted to the carrier.

Designee finds Employee's discovery request #2 to be nonstandard and irregular. AS 23.30.095(a) requires employers to furnish medical treatment that is reasonable and necessary for the process of recovery from a compensable injury. The employee bears the burden of proving entitlement to benefits under the Act. The AWCB possesses only those powers granted by statute. The Alaska Workers' Compensation Act contains no express statutory authority requiring employers to provide preauthorization of medical treatment. The statutory scheme contemplates payment of medical expenses after treatment is provided and billed, subject to the employer's right to controvert compensability, reasonableness, necessity, or causal relationship. The Workers Compensation Appeals Commission has cautioned against imposing a preauthorization requirement not found in the Act. AWCB regulations similarly address compensability and payment of medical treatment but do not create a general right to prospective authorization of future treatment. Nothing in this decision prevents the employee from obtaining treatment recommended by her treating physician. Likewise, nothing in this decision precludes the employee from later seeking payment or reimbursement if a dispute arises concerning treatment that has actually been rendered. Employee's discovery request #2 is denied.

> 3. Responses to Employee's interrogatories served on June 4, 2025, and again on September 24, 2025, which remain unanswered.

Employer argues that it has complied with all discovery and that no additional information is due the employee. Further, while the employer may not have responses directly to the interrogatories, it has provided all relevant and responsive information, complied with Board Orders on discovery, and no additional information or disclosure is due.

Designee finds Employee's discovery request #3 to be duplicative, overburdensome, and antagonistic given Employee's open and billable claim status. Designee reviewed all 22 of Employee's 9/24/2025 Interrogatories and none appear relevant to any issue presently before the AWCB. AS 23.30.107 permits discovery concerning matters relevant to the subject matter involved in the pending action. Discovery in workers' compensation proceedings is generally liberal; however, it is not unlimited. The Board has consistently held that discovery must bear a logical relationship to disputed issues and must be reasonably calculated to lead to admissible evidence. Information that is speculative, collateral, cumulative, or unrelated to matters in dispute is not discoverable merely because it is requested. The Board possesses broad discretion to manage discovery and to protect parties from unnecessary burden, expense, delay, or harassment. Employee's 9/24/2025 Interrogatories lack demonstrated relevance. Employee's discovery request #3 is denied.

> 4.To the extent issues, discovery matters, or testimony raised in the May 12, 2026 hearing were not fully addressed or completed, Employee requests that the Board compel any remaining outstanding discovery and responses necessary for a full and fair adjudication of the issues raised at hearing.

Employer argues that discovery issues have been addressed by the Board on multiple occasions. It is and has bene the employer's position that it has complied with all discovery orders. The employer asserts the employee's continued, duplicative petitions to compel discovery are frivolous and without merit.

Designee finds Employee's discovery request #4 to be duplicative, overburdensome, and antagonistic given Employee's open and billable claim status. It does not appear by the review of request #4 that Employee is even aware of what outstanding discovery remains. AS 23.30.107 permits discovery concerning matters relevant to the subject matter involved in the pending action. Discovery in workers' compensation proceedings is generally liberal; however, it is not unlimited. The Board has consistently held that discovery must bear a logical relationship to disputed issues and must be reasonably calculated to lead to admissible evidence.

Information that is speculative, collateral, cumulative, or unrelated to matters in dispute is not discoverable merely because it is requested. The Board possesses

> broad discretion to manage discovery and to protect parties from unnecessary burden, expense, delay, or harassment. Employee's discovery request #4 is denied.
> . . .

The designee also cited the Board's *Granus* two-step analysis, below, case law and applicable statutes, including AS 23.30.107 and 108. He wrote, summarizing *Granus*:

> 1. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.
> 2. The information sought appears reasonably calculated to lead to the discovery of admissible evidence. (Prehearing Conference Summary, June 24, 2026).

79) There is no evidence that the designee or any party recorded the June 24, 2026 prehearing conference. (Agency file).

80) On June 25, 2026, the Division served the June 24, 2026 Prehearing Conference Summary on the parties by first-class mail at their record addresses, and served Employee by email, at her email address of record, at her request. (Prehearing Conference Summary, June 24, 2026).

81) On July 7, 2026, in a pleading dated June 3, 2026, Employee timely filed a petition appealing from the designee's June 24, 2026 discovery order. In an attached memorandum dated July 3, 2026, she also sought modifications or amendments to the conference summary. She contended:

> At the June 24, 2026 prehearing, Employee identified specific categories of outstanding discovery, including Rosenbaum records, Explanation of Benefits, payment dates, comprehensive payment accounting, EME-related records, provider communications, interrogatory responses, and materials previously ordered or previously requested. Rather than determining whether Employer had produced those materials or complied with prior Board orders, the rulings focused on the manner in which Employee presented the requests. Even if the requests could have been organized differently, Employee identified the specific categories of information that remained outstanding, yet the underlying question of Employer's compliance with the Board's prior discovery orders was never addressed.
>
> The requested discovery is neither speculative nor collateral. EOBs, payment records, payment dates, provider communications, treatment-authorization records, and related claim-handling materials bear directly on issues presently disputed, including Employer's compliance with prior Board orders, statutory interest and penalties, payment compliance under D&O 23-0044, asserted Social Security offsets, alleged TTD overpayments and recoupment, and delayed or denied treatment. These are ordinary claim records maintained by Employer and are reasonably calculated to lead to admissible evidence.

By denying the requests as duplicative, overburdensome, antagonistic, speculative, or insufficiently specific without first determining whether Employer complied with existing discovery orders, the designee elevated form over substance, misapplied the undue-burden standard, and created substantial unfair prejudice by leaving the underlying compliance issues unresolved while effectively foreclosing further review of the same requests. The rulings allow Employer to rely on its own payment, medical, and claim-handling records while preventing Employee from obtaining the records necessary to test their accuracy, completeness, and legal sufficiency.

The designee also erred by adopting Employer's position that preauthorization is not required without addressing Employee's actual request. Employee was not seeking blanket preauthorization for unknown future care. Employee sought confirmation whether Employer would authorize or controvert treatment recommended by her providers, including treatment through the VA. D&O 26-0041 recognized that medical care is compensation under the Act and that Employer must promptly furnish recommended treatment or controvert it. Doing nothing is not an appropriate response.

Employee's request is not hypothetical. Because Employer repeatedly delayed, denied, or failed to timely respond to recommended treatment over an extended period -- including delays that postponed surgery for well over a year and delayed other recommended care for years -- Employee was compelled to again, obtain treatment through the Veterans Administration when available or, at other times, to forgo recommended care altogether. Those circumstances illustrate the practical significance of the requested discovery concerning treatment authorization, provider communications, and claim handling because those records bear directly on whether Employer complied with its obligations under the Act.

At the March 26, 2026 prehearing, the designee advised Employee that he could not compel the requested discovery or impose sanctions because those issues required Board determination at hearing. By the June 24, 2026 prehearing, the requested discovery remained outstanding. Rather than determining whether Employer had complied with the Board's prior discovery orders, the designee denied the requested relief based upon the manner in which Employee presented the requests. As a result, the underlying question of Employer's compliance with the Board's discovery orders remains unresolved while the ordered discovery remains unproduced.

Reconsideration is warranted because the rulings rested on incorrect factual premises, failed to enforce prior Board orders, denied relevant foundational discovery, and rewarded continuing noncompliance while impairing Employee's ability to present her claims (footnote, listing discovery requests and orders by date, omitted).

Specifically, the designee abused his discretion by:

- **Elevating form over substance** by focusing on the manner in which Employee presented her requests rather than determining whether Employer had complied with prior Board orders. Employee repeatedly identified the specific discovery still outstanding, including at the June 24, 2026 prehearing.

Misapplying the undue-burden standard by treating requests for ordinary claim-handling records -- including EOBs, payment dates, payment accounting, provider communications, treatment-authorization records, and other previously ordered materials -- as unduly burdensome without first determining whether Employer had produced them. These records are foundational to the issues presently before the Board and are reasonably calculated to lead to admissible evidence.

- **Creating unfair prejudice** by permitting Employer to possess and rely upon its own payment, medical, and claim-handling records while preventing Employee from obtaining the very records necessary to test their accuracy, completeness, compliance with prior Board orders, and legal sufficiency, thereby substantially impairing Employee's ability to present her claims.

- **Rewarding continued noncompliance** by declining to determine whether Employer complied with multiple prior Board discovery orders and effectively relieving Employer of its continuing obligation to produce previously ordered discovery.

- **Denying relevant discovery without first determining compliance** by refusing to compel production before deciding whether the previously ordered materials -- including Rosenbaum and other EME records, payment dates, comprehensive payment accounting, and related claim-handling records as described in Robert Bredesen's February 14, 2025 letter (which Employee referenced at the prehearing) -- had in fact been produced.

Employee also requested amendments or modifications to the prehearing conference summary:

Page 9 states that Employee "repeatedly referred to unrelated medical and mental health information that is not present in the AWCB file." That is not what Employee argued. Employee's position was that the letter to Dr. Bell (pp. 9-28) contained in Employer's September 5, 2025 Notice of Filing appears to reference medical and mental health materials that are not contained within the document production Employer identified as having been provided to Dr. Bell. As a result, Employee is unable to determine whether Dr. Bell reviewed additional undisclosed records or whether Employer's production is incomplete. The same concern remains regarding any materials provided to Dr. Rosenbaum, ExamWorks, Treasure State Occupational Health, OMAC, Eaze Medical Solutions, One Call, or any other evaluator or vendor, because Employer has not fully produced those materials. Consequently, Employee is unable to determine what medical records or private health information have been disclosed, to whom they have been disclosed,

> whether those disclosures were complete or accurate, and whether they complied with applicable laws, Board orders and discovery obligations.
>
> Also at the prehearing Employee requested that the designee compel the Neurology authorization. During the July 2025 hearing, Employer repeatedly questioned Employee regarding why she had not obtained neurological treatment, whether she contacted providers, and what efforts she made to schedule care, while simultaneously representing that a neurology authorization already existed ("since 2024") within Employer's discovery and was "in the record." Employee consistently testified that the neurology treatment plan had never been responded to, that she had not received a neurology authorization, and that the physician identified by Employer was not a neurologist. Despite those representations, the authorization itself has never been identified or produced.

In short, Employee contended the designee simply accepted Employer's statement that it had complied with all discovery orders and had provided all requested discovery. She argued that this presumption, based solely on Employer's statements, was not supported by any evidence in the agency file. (Petition, June 3, 2026).

82) On July 30, 2026, Employer petitioned the Commission to review *Martino X*. Its petition alleged that *Martino X* contains "both legal and factual errors regarding hearing issues, unfair and frivolous controversion findings, Division of Insurance referral and preauthorization." Employer took issue with factual findings in *Martino X*, regarding Employer's obligation to either pay or controvert benefits being used as a basis for *Martino X* finding an unfair or frivolous controversion. It also contended that *Martino X* decided issues not set for hearing and thus violated Employer's due process rights. Moreover, Employer argued that *Martino X* improperly "reopened" *Martino II* and *IV* when it relied on findings from those decisions to later make a referral to the Division of Insurance, at Employee's request, for an unfair or frivolous controversion. (Petition for Review, July 30, 2026).

83) According to the Commission's clerk, on July 30, 2026, Employee filed something with the Commission regarding her own petition for review, which does not appear in the Division's Adjudication Section's file because it was not filed with the Division. Therefore, it is unclear on what grounds Employee petitioned or cross-petition the Commission. The Board generally does not consider evidence filed after the hearing record closes. (Agency file; Commission Clerk's Docket Notice-Petition for Review and Cross-Petition for Review, July 31, 2026; experience).

PRINCIPLES OF LAW

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

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

The Alaska Workers' Compensation Act (Act) has a liberal humanitarian purpose. *Burgess Construction Co. v. Lindley*, 504 P.2d 1023, 1025 (Alaska 1972). The purpose is to provide workers with a simple and speedy remedy to compensate them for work injuries. *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 531 (Alaska 1987). The Board may base its decision on testimony, other evidence, the Board's "experience, judgment, observations, unique or peculiar facts of the case and inferences drawn from all of the above." *Rogers & Babler*, 747 P.2d 528, at 533-34 (Alaska 1987). In *Richard v. Fireman's Fund*, 384 P.2d 445, 449 (Alaska 1963), the Alaska Supreme Court said:

> We hold to the view that a workmen's compensation board or commission owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law.

In *Bohlmann v. Alaska Construction & Engineering*, 205 P.3d 316, 319-21 (Alaska 2009), the Alaska Supreme Court addressed this same issue and said:

> A central issue inherent to Bohlmann's appeal is the extent to which the board must inform a *pro se* claimant of the steps he must follow to preserve his claim. . . .
>
> In *Richard* . . . we held that the board must assist claimants by advising them of the important facts of their case and instructing them how to pursue their right to compensation. We have not considered the extent of the board's duty to advise claimants. . . .

Parties have a constitutional right to prove or 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 an opponent, effectively litigate 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) Identify matters in dispute, which 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) Decide (*i.e.*, analyze) whether the information sought is "relevant"; or in other words, whether it is "reasonably calculated" to lead to admissible facts that will tend to make a disputed issue, identified in step (1), more or less likely.

> **AS 23.30.108. Prehearings on discovery matters**. . . .
>
> (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 party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. 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. . . .
>
> **AS 23.30.110. Procedure on claims**. (a) . . . the board may hear and determine all questions in respect to the claim. . . .

Fischback & Moore of Alaska v. Lynn, 407 P.2d 174, 176 (Alaska 1965) stated the general rule that "when an order of an administrative agency is appealed to a court, the agency's power and authority in relation to the matter is suspended as to questions raised by the appeal." The exercise of administrative jurisdiction in ordering further medical examination and treatment while the case was pending in the superior court was not inconsistent with the proper exercise of the court's jurisdiction, because the Board's action did not interfere or conflict with the exercise of the court's jurisdiction over the case. *Id.* at 177.

Noey v. Bledsoe, 978 P.2d 1264, 1275 (Alaska 1999), addressing a trial court's jurisdiction when a case is on appeal stated, cited the exception to *Lynn*'s general rule:

> Moreover, even if all facts were as Noey alleged, the trial court would not have been deprived of jurisdiction to hear the contract dispute in this case. Alaska Appellate Rule 203 divests trial courts of jurisdiction over "proceedings on appeal

> . . . in the appellate court[.]" Because this interpleader action was not the "proceeding on appeal" in *DEC*, the appeal in *DE*C could have had no effect on the superior court's jurisdiction to hear the interpleader trial, even if *DEC* conceivably might have impacted this case.

In *Doyon Drilling, Inc. v. Whitaker*, AWCAC Dec. No. 006 (March 2, 2006), the Commission in a case where an employer appealed an order continuing TTD benefits, addressed the Board's right to exercise its concurrent jurisdiction. *Whitaker* noted *Lynn* did not say that an appeal suspends "all" Board jurisdiction in a case. The Board could exercise concurrent jurisdiction when it would not "conflict with the proper exercise of the court's jurisdiction. If there would be no conflict, then there would be no obstacle to the administrative agency exercising a continuing jurisdiction *that may be conferred upon it by law*" (emphasis in original). In *Whitaker*, the question on appeal was whether the employee was entitled to continuing TTD compensation. The Board addressing the same issue would conflict with the proper exercise of the court's jurisdiction, so the Board could not hear that same issue. *Id.* at 4.

Meili v. Sterling Assisted Living, AWCB Dec. No. 20-0030 (May 15, 2020) held the Board could hear and decide the employee's request for additional attorney fees and costs, post-appeal of a Board decision that was favorable to her, because "deciding this new issue now does not conflict with the commission's jurisdiction, [and] it is a quicker and more efficient use of administrative and party resources and will save all parties money."

The Alaska Administrative Procedure Act (APA) states in relevant part:

> **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 properly may be an abuse of discretion. *Manthey v. Collier*, 367 P.2d 884 (Alaska 1962). A substantial evidence standard is applied to review the Board's designee's discovery determinations. A designee's decision on releases and other discovery matters must be upheld, absent "an abuse of discretion." *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985).

ANALYSIS

1) Does the panel have jurisdiction to decide Employee's June 3, 2026 petition?

The sole issue set for hearing on the written record is Employee's June 3, 2026 petition, filed on July 7, 2026, appealing from the prehearing conference designee's June 24, 2026 discovery order. As a preliminary issue, Employer in its hearing brief contended this panel should withhold jurisdiction because both parties have petitioned the Commission to review *Martino X*.

This panel has authority to hear and decide all issues in this case, under AS 23.30.110(a). However, the panel's authority has limits. *Lynn* and *Noey* set forth the general rule, and the exception to the general rule, respectively, regarding concurrent jurisdiction between this panel and the Commission. The general rule is that "when an order of administrative agency" is appealed, the agency's power and authority in relation to the matter "is suspended as to questions raised by the appeal." This panel perceives no difference, in respect to jurisdiction, between an appeal to the superior court and a petition for review to the Commission. Thus, the *Lynn* and *Noey* rules should apply to workers' compensation cases. *Noey* distinguished an administrative agency's authority to exercise its jurisdiction over other parts of a case when the action before a panel was not the "proceeding on appeal." In such circumstances, an appeal or a petition for review does not suspend "all" panel jurisdiction in an employee's case. *Whitaker*; *Meili*.

The designee in his June 24, 2026 Prehearing Conference Summary decided (1) Employee's November 11, 2025 Petition To Compel Provider Communications and EOB copies, (2) her March 9, 2026 Petition for Protective Order and to Compel Discovery, and (3) her May 18, 2026 Petition to Compel Discovery. The designee denied Employee's November 11, 2025 and March 9, 2026 petitions in their entireties, granted part #1 of Employee's May 18, 2026 petition, and denied parts #2 - #4, as discussed below.

By comparison and contrast, the parties petitioned and apparently cross-petitioned the Commission to review *Martino X*. *Martino X* addressed, and resolved to the extent it could, the eight issues presented at the May 12, 2026 hearing. *Martino X*'s legal conclusions and order included:

CONCLUSIONS OF LAW

1) The oral order accepting Employer's untimely brief was correct.
2) The oral order disallowing Employee to call Holdiman-Miller or the adjuster as witnesses was correct.
3) The panel does have jurisdiction to hear and decide some issues before it.
4) Employee's December 12, 2025, February 25, 2026 and March 23, 2026 petitions will be denied as moot.
5) Employee's November 11, 2025 petition for a referral to the Division of Insurance will be granted.
6) Employee's November 11, 2025 petition ("claim") for TTD benefits and related penalties and interest will be denied. Alternately, Employer's November 20, 2025 petition to dismiss will be granted in part.
7) Employer's November 20, 2025 petition for a pre-litigation screening order will be denied.
8) Employee's March 9, 2026 petition for a protective order and to compel discovery will be remanded to the designee for a discovery order.

ORDER

1) Employer's brief is accepted as filed.
2) Employee's December 12, 2025, February 25, 2026 and March 23, 2026 petitions are denied as moot.
3) Employee's November 11, 2025 petition for a referral to the Division of Insurance is granted in accordance with this decision.
4) Employee's November 11, 2025 petition ("claim") for TTD benefits and related penalties and interest is denied.
5) Alternately, Employer's November 20, 2025 petition to dismiss is granted in part in accordance with this decision.
6) Employer's November 20, 2025 petition for a pre-litigation screening order is denied.
7) Employee's March 9, 2026 petition for a protective order and to compel discovery is remanded to the designee for a discovery order. The designee is directed to withhold his jurisdiction to review and address this March 9, 2026 "discovery matter" until the Commission rules on the pending petition before it.

In the following discussion, *Martino X* will be reviewed vis-à-vis Employee's June 3, 2026 petition to see if the panel's exercise of its jurisdiction would run afoul of *Lynn*, *Noey* or *Whitaker*:

(1) Employee's November 11, 2025 Petition To Compel Provider Communications and EOB copies.

Martino X expressly withheld its jurisdiction over Employee's November 11, 2025 Petition to Compel Provider Communications and EOB Copies until after the Commission ruled on

Employee's April 15, 2026 petition for review of *Martino VIII*. *Martino X* did so because Employee's briefing before the Commission in her April 15, 2026 petition for review argued issues similar to those raised in her November 11, 2025 petition. The panel in *Martino X* did not want to inadvertently interfere with jurisdiction the Commission could exercise over those issues. On June 17, 2026, the Commission in *Martino XI* denied Employee's April 15, 2016 petition.

After *Martino XI* issued, the prehearing conference designee revisited Employee's November 11, 2025 Petition to Compel Provider Communications and EOB Copies, and denied it on June 24, 2026. There is no right under the Act to a direct petition for review to the Commission from the designee's June 24, 2026 discovery decision. By contrast, this panel has jurisdiction "*conferred upon it by law*" under AS 23.30.108(c) to hear and decide promptly, Employee's June 3, 2026 petition appealing from the prehearing conference designee's June 24, 2026 discovery order. *Whitaker* (italics in original).

(2) Employee's March 9, 2026 Petition for Protective Order and to Compel Discovery.

Martino X expressly remanded Employee's March 9, 2026 Petition for Protective Order and to Compel Discovery to the prehearing conference designee for an initial discovery ruling because it had never been ruled upon at the prehearing conference level. As *Martino X* remanded that petition to the designee, *Martino X* never decided it. Thus, there should be no reason for the Commission to consider Employee's March 9, 2026 petition either. The March 9, 2026 petition is not the "proceeding on appeal" before the Commission and the instant decision would not "conflict with the proper exercise" of the Commission's jurisdiction. Thus, this panel also has jurisdiction over this part of Employee's June 3, 2026 petition.

(3) Employee's May 18, 2026 Petition to Compel Discovery.

The designee granted Employee's request #1 in her May 18, 2026 Petition to Compel Discovery requesting contact information for the adjuster. That does not appear to be an issue in the current petition for review before the Commission. The designee denied Employee's request #2, which requested a response to whether Employer would authorize treatment through the Veteran's Administration. Employer raised the "preauthorization" question in its pending petition for review before the Commission. However, for discovery purposes, Employer has already answered request

#2, and the answer was effectively, "no." Thus, this panel's exercise of its jurisdiction over this "preauthorization" issue will not interfere with any action the Commission may take on the pending petition for review. Likewise, the designee denied Employee's requests #3 and #4, which relate to her interrogatories, and left-over items from the May 12, 2026 hearing. He found all requests in both #3 and #4 irrelevant to any issues remaining in this case. Those requests do not appear to be included in the "proceeding on appeal" to the Commission either. This panel also has jurisdiction over this part of Employee's June 3, 2026 petition.

Neither party appears to have included the designee's June 24, 2026 discovery decision as an issue for their petition or cross-petition for review to the Commission. Thus, there should be no reason for the Commission to consider it. The June 24, 2026 discovery decision is not the "proceeding on appeal" before the Commission, and the instant decision would not "conflict with the proper exercise" of the Commission's jurisdiction. *Lynn*, *Noey*, *Whitaker*. This panel has jurisdiction over Employee's June 3, 2026 petition, under §.108(c). Employer's request for this panel to withhold jurisdiction over Employee's June 3, 2026 petition will be denied.

2) Shall the designee's discovery order be remanded?

Employee contends that the prehearing conference designee erred or abused his discretion in his June 24, 2026 discovery order by simply accepting Employer's statement that it had fully complied with all prior discovery orders, without determining if Employer's statements were accurate and without analyzing evidence. She claims Employer has not complied with all discovery orders. Employee argues that this decision should order compliance. Alternatively, she contends that if the record is not adequate for this panel to make a reasoned decision, it should remand the matter to the designee for further action. Employer contends the designee's discovery decision is supported by the record and he made no error in his discovery determinations. It argues that Employee is simply rehashing all the discovery requests she made previously. These summarized positions frame the issue for this written-record hearing.

In 2010, the legislature amended the Act to streamline and improve discovery in workers' compensation cases. Discovery rulings are determined by a prehearing conference designee empowered to make decisions before the parties appear at a merits hearing. AS 23.30.108(c)

makes it clear that all "evidence or argument" a party wants the designee to consider on a discovery dispute or matter must be presented to the designee at the prehearing conference where the discovery order is addressed. Therefore, a prudent practitioner or self-represented party should present their evidence and arguments in written form to the designee before the prehearing conference at which those arguments and evidence will be presented to the designee. This is often done by attaching the factual and legal bases for the party's request for an order compelling discovery (for example, to the petition). The petition results in a prehearing conference. Parties can expound upon their evidence and arguments at the prehearing conference. But once the prehearing conference designee issues his or her discovery order in the Prehearing Conference Summary, it is too late to raise additional arguments or present additional evidence.

Under §.108(c), if a discovery dispute comes before a panel for review of a designee's discovery order, the panel "may not consider any evidence or argument that was not presented" to the designee. This is a hard and fast rule. The designee in this case addressed three Employee petitions on June 24, 2026:

> *(1) Employee's November 11, 2025 Petition to Compel Provider Communications and EOB copies.*

The prehearing designee gave two reasons for denying Employee's November 11, 2025 Petition to Compel Provider Communications and EOB Copies. First, he found the request "duplicative, overburdensome, and antagonistic given Employee's open and billable claim status." Second, he found the issue appeared "to have already been litigated and addressed" in *Martino VI*.

First, it is not clear why the designee thought Employee's "open and billable" claim status affected the discovery she requested in her November 11, 2025 petition. The designee's decision lacks any further analysis or explanation. He did not discuss Employee's remaining claims or Employer's defenses, or explain how "provider Communications and E.O.B. copies" could, or could not, lead to admissible evidence at a hearing on any remaining issues or defenses. *Granus.* This was an abuse of discretion. *Manthey*; AS 44.62.570.

Second, the designee also stated, without specific citations, it "appeared" that *Martino VI* had already decided "provider Communications and EOB copies." But issues in *Martino VI* were:

> (1) Shall Employee's request for a COLA [cost-of-living adjustment] be granted?
> (2) Shall Employer's request for an SSD [Social Security disability] offset be granted?
> (3) Shall Employee's February 6, 2025 and April 1, 2025 petitions be denied?
> (4) Shall Employee's February 27, 2025 petition to preserve evidence be denied?
> (5) Shall Employee's March 25, 2025 petition for additional time to request a hearing on January 25, 2022 claim be denied?
> (6) Shall Employee's May 8, 2025 petition to accept Graham's limited appearance be granted?
> (7) Shall Employee's May 22, 2025 petition to strike medical records that exceed or medical releases be denied? (*Martino VI*).

Clearly, *Martino VI* issues (1), (2), (5), and (6) did not involve a discovery request or order. Issue (3) refers to Employee's February 6, 2025 petition to enforce the designee's December 19, 2024 discovery order, and for sanctions, and Employee's misidentified "April 1, 2025" petition for further sanctions. Her February 6, 2025 petition contended Employer failed to comply with the designee's December 19, 2024 discovery order, while her "April 1, 2025" petition asked the panel to consider "adverse inferences" as a sanction. *Martino VI* found that Employee's brief did not address these issues nor did she address them at hearing. In other words, the evidence presented at the *Martino VI* hearing did not appropriately address the issues set for that hearing.

Martino VI further addressed Employee's specified discovery requests, including (1) the nearest point where Employer thought she could obtain adequate medical treatment for possible neck surgery and TOS; (2) the factual bases for Employer's "controversion" of medical treatment at Vally Medical Center; (3) a current payment itemization; (4) if Employer had medical records not filed on a Medical Summary; and (5) a request for records pertaining to her August 2024 EME trip where she was accompanied by Employer's agent.

Martino VI found Employer had complied and satisfied the five referenced discovery requests and there was no basis for a sanction. It also found Employee's discovery issues had "morphed," so it addressed other implied requests. It noted Employee failed to identify clearly what from the December 19, 2024 discovery order she claimed Employer failed to provide. *Martino VI* likened

the panel's task akin to trying to put together a "5000-piece jigsaw puzzle without the box in which it came with the picture showing with the completed puzzle is supposed to look like." It found neither party appealed from the December 19, 2024 prehearing conference discovery order and it was "final." *Martino VI* said all it could do was determine if Employer had failed or refused to comply with the order, and if so, impose appropriate sanctions. It reviewed the December 19, 2024 discovery order and ultimately denied in part and granted in part Employee's February 6, 2025 and "April 1, 2025" petitions, as follows:

Martino VI ordered Employer to provide Employee a copy of the exact medical records it had provided to three EME physicians. Based on credible testimony from adjuster Bernie Seever, *Martino VI* found that Seever had only contacted Employee's attending physicians' offices for administrative purposes and never had direct communication with her physicians or with EME doctors. It further found that Employee "failed to present evidence or argument adequate to inform the panel what discovery was missing in this regard." To a minimal extent, these findings addressed "Provider Communications."

Martino VI also found confusion and inappropriate redactions on Employer's Privilege Log II and ordered Employer to reveal to Employee the redacted portions on that document. It also ordered Employer to disclose the names, addresses and phone numbers for any physician it or its agents contacted for an opinion about Employee. *Martino VI* directed Employer to divulge to Employee payment dates, amounts and providers paid, in a comprehensive payment spreadsheet showing payments to her treating providers. In short, *Martino VI*, except for the above, could find no evidence that Employer had violated the designee's December 19, 2024 discovery order. So far, the designee's December 19, 2024 discovery order and *Martino VI* had addressed only the adjuster's verbal "Provider Communications" with treating and EME physicians, but not other "communications" and did not address EOBs at all.

Martino VI issue (4) regarding "preserving evidence" referred to evidence purportedly discarded at an EME's office. The decision denied Employee's request for an order requiring non-parties, over whom this panel has no jurisdiction, to retain or preserve evidence.

Martino VI issue (7) dealt with "any records" Employee did not want in her file and for which she did not sign a medical record release. She focused primarily on medical records. *Martino VI* noted, "The designee at the June 17, 2025 prehearing conference suggested Employee provide a list of records she argues should be stricken. Employee did not take that advice." It was not clear to the panel at the *Martino VI* hearing whether Employee wanted to recover certain medical records or was simply angry that her providers may have released records exceeding the scope of her signed releases. Ultimately, *Martino VI* concluded in relevant part:

> ORDER
>
> . . . .
> 5) Employee's February 6, 2025 and April 1, 2025 discovery petitions are denied, except for the following discovery orders which are granted and ordered to occur within 30 days:
>
> a) Employer is ordered to provide to Employee a copy of the exact medical records it provided to Dr. Pino.
> b) Employer is ordered to provide to Employee a copy of the exact medical records it sent to Drs. Rosenbaum and Bell.
> c) Employer is ordered to reveal to Employee the redacted portions on Privilege Log II as reflected on the June 18, 2025 "Medical Costs Summary List."
> d) Employer is ordered to disclose to Employee the names, addresses and phone numbers for any physician it or its agents contacted to obtain an opinion regarding her.
> e) Employer is ordered to provide to Employee payment dates, amounts and providers paid in a comprehensive payment spreadsheet showing payments to her medical providers.
>
> 6) Employee's February 6, 2025 and "April 1, 2025" sanction petitions are denied.
> 7) Employee's February 27, 2025 petition to preserve evidence is denied.
> . . . .
>
> 10) Employee's May 22, 2025 petition to strike medical records that exceed her medical releases is denied. (*Martino VI*).

Other than addressing the adjuster's verbal contact with medical office staff, *Martino VI* did not address EOBs or any other form of "Provider Communications" Employer or its agents may have had with Employee's medical providers or its EME physicians. Thus, it is unclear why the prehearing conference designee on June 24, 2026, determined that "Provider Communications"

and EOBs were previously decided in *Martino VI*. The designee's decision was not supported by substantial evidence and he abused his discretion in that regard. *Sheehan*; AS 44.62.570.

Moreover, the bigger problem with the designee's determination is that according to Employee, the designee missed the point of her argument. Employee contends that she did not receive from Employer all discovery Employer was previously ordered to provide. She maintains that the designee erred or abused his discretion by simply accepting Employer's word that it had "complied with all discovery orders" without requiring proof of how or when Employer complied. Employee has a point; "argument" is not "evidence." That rule applies to Employee as well.

(2) Employee's March 9, 2026 Petition for Protective Order and to Compel Discovery.

The stated reason for Employee's March 9, 2026 Petition to Compel and Petition for Protective Order was to "recover and prevent further dissemination of all information unrelated to work injury and compel discovery orders." The prehearing conference designee in his June 24, 2026 Prehearing Conference Summary said Employee repeatedly referred to unrelated medical and mental health information that is not present in the agency file but is allegedly referenced in EME reports. This request was slightly different than a request to "recover" irrelevant medical records from Employee's agency file. The latter records would be identifiable. She also stated it was "unknown what exactly this information is or where exactly it is located." Employer argued at the prehearing conference that not only had these issues been ruled on before, but Employer was also unable to adequately respond to Employee's request because she provided no citations or documentation of what records she asserted are unrelated and sought to recover.

The designee found Employee's March 9, 2026 Petition for Protective Order and to Compel Discovery was also "duplicative, overburdensome, and antagonistic given Employee's open and billable claim status." He also cited specifically to "the issue" having already been litigated in *Martino VI*. Consequently, the designee denied Employee's March 9, 2026 Petition for Protective Order and to Compel Discovery. Again, the designee did not explain why an "open and billable" claim would affect Employee's right to discovery or affect evidence relevant to her remaining claims and Employer's defenses. His analysis did not comply with *Granus*.

As noted in the previous section, *Martino VI* denied the specified discovery petitions, and expressly denied Employee's May 22, 2025 petition to strike medical records that exceeded the scope of medical releases. The instant panel found little in *Martino VI* that corresponds to Employee's March 9, 2026 Petition for Protective Order and to Compel Discovery.

(3) Employee's May 18, 2026 Petition to Compel Discovery.

The designee granted Employee's request #1. He denied her requests #2 through #4. Employee's request #2 wanted an answer to the question whether Employer would authorize treatment through the Veterans Administration. At the June 24, 2026 prehearing conference, Employer stated, "pre-authorization is not required." This panel takes that response as a "no." Thus, the discovery question has been answered and request #2 from Employee's May 18, 2026 petition to compel discovery is resolved. Whether the response is legally effective remains to be determined.

As for Employee's requests #3 and #4, there are problems both with the parties' "evidence or argument" and with the designee's analysis. First, as stated above, the prehearing conference is the place for parties to present "any evidence or argument" for the designee's consideration, under §.108(c). Both parties to this case undoubtedly know their respective positions inside and out. The prehearing conference designee, and this panel, know relatively little about the parties' "evidence or argument" supporting or detracting from their positions. The legislature in §.108(c) used "evidence" and "argument" as two different concepts. Employee arguing that Employer has not provided all required discovery, or Employer arguing that it has, does not assist the designee or this panel in determining if either position is correct. Both parties need to provide "evidence" at the discovery prehearing conference to support their arguments.

The Act requires this process to be summary, simple, quick and efficient. It seeks to provide benefits quickly, if entitlement exists. AS 23.30.001(1); *Lindley*; *Rogers & Babler*. For these reasons, and because this decision found the designee abused his discretion, this matter will be remanded to the prehearing conference designee to conduct another prehearing conference to address any and all outstanding discovery issues. This decision will also give Employee additional guidance under *Richard* and *Bohlmann*. The burden will be on Employee to do the following with respect to the discovery prehearing conference that will be ordered in this decision:

- Review her previous discovery requests.
- Make a list of all prehearing discovery requests she believes remain outstanding, or have not been fulfilled completely.
- Specify each such request by request date and by specific information or documents she contends Employer has failed to answer or provide; general "categories" of documents is not sufficient.
- Explain why she believes such missing information or documents exist, and why she believes Employer has failed to properly respond to a request, or produce a document.
- For all identified information or documents, state how in her opinion the requested information or document is likely to lead to admissible evidence at hearing, and identify the pending issue or defense to which this information or documents would apply.
- File with the Division and serve on Employer, a copy of all evidence and any arguments she wants the designee to consider at the discovery prehearing conference, at least 20 days prior to the discovery prehearing conference.
- At the discovery prehearing conference, Employee may add additional evidence or argument not included in her written filing, including responding to Employer's evidence or arguments.

The burden will be on Employer to do the following with respect to the discovery prehearing conference that will be ordered in this decision:

- Review Employee's above-referenced list of all prehearing discovery requests she believes remain outstanding, or have not been fulfilled completely.
- Respond to each request by indicating the specific method and date on which Employer contends it answered or otherwise satisfied each request; a general statement that Employer "has complied with all discovery orders" is not sufficient.
- If Employer contends that a prior decision and order in this case, or a un-appealed prehearing conference discovery order has already resolved the discovery issue, Employer will identify the decision and order, or un-appealed prehearing conference discovery order, by date and page number.
- If Employer objects to providing information or documents, it will make a specific objection and explain why the request is objectionable.
- File with the Division and serve on Employee, a copy of all evidence and any arguments it wants the designee to consider at the discovery prehearing conference, at least 10 days prior to the discovery prehearing conference.
- At the discovery prehearing conference, Employer may add additional evidence or argument not included in its written filing, including responding to Employee's evidence or arguments.

The burden will be on the prehearing conference designee to do the following, before and at the discovery prehearing conference, and in the Prehearing Conference Summary:

- Record the prehearing conference.
- Identify all issues remaining for a merits hearing, and all related defenses.

- Review all parties' discovery prehearing filings made in conformance with the above directions.
- Allow each party at the prehearing conference to explain their positions on the remaining discovery disputes.
- Summarize the parties' respective evidence and arguments on those discovery disputes in the Prehearing Conference Summary.
- Determine from the evidence and arguments provided whether Employer has satisfied Employee's discovery requests, and all previous discovery orders.
- Perform a *Granus* discovery analysis on any requested discovery the designee determines has not been already fulfilled.
- Take the matter under advisement and include the *Granus* discovery analysis, and clear discovery orders, in the resulting Prehearing Conference Summary.

As a party in this case, Bredesen may also participate in this process if he chooses. Division staff will be directed to notice a discovery prehearing conference addressing this decision and order, to be held approximately 60 days from this decision's date.

Additionally, Employee who is not an attorney and is self-represented is advised to be clear and specific when explaining her requests. *Richard*; *Bohlmann*. For example, she has requested to "recover" medical records not related to her claim. That request was previously denied. However, she currently makes a similar request for what appears to be "unknown" medical records that she may think exist, based on her review of an EME report. Employee is directed to clearly state what she is requesting in this regard. Likewise, the panel is aware of EOBs related to health insurance. Health insurers provide patients with EOBs to show what the health insurer has paid, not paid, and why. Apart from seeing EOBs occasionally filed in these cases to show that an injured worker's health insurer has paid work-related medical bills, the panel is not familiar with EOBs existing as part of the workers' compensation adjusting process. Work-related medical bills in these cases are limited by the Alaska Workers' Compensation Medical Fee Schedule. Insurance adjusters hire third-party companies to adjust work-related medical bills under the fee schedule, and those companies send the providers an Explanation of Reduction (EOR). Employee is directed to state precisely what she requests in this regard.

CONCLUSIONS OF LAW

1) The panel has jurisdiction to decide Employee's June 3, 2026 petition.
2) The designee's discovery order will be remanded.

ORDER

1) This matter is remanded to the designee for further action in accordance with this decision and order.

2) The Division will notice the parties for a discovery prehearing conference to be held in approximately 60 days, to enable the parties to comply with the requirements of this decision and order.

Dated in Anchorage, Alaska on September 11, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Randy Beltz, 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 Sabrina M. Martino, employee / claimant v. Alaska Asphalt Services, LLC, employer; The Ohio Casualty Insurance Company, insurer / defendants; Case No. 202007450; 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 September 11, 2026.

/s/
Rochelle Comer, Workers' Compensation Officer I