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. 26-0080 Filed with AWCB Anchorage, Alaska on October 1, 2026

Sabrina Martino's (Employee) August 8, 2026 petition, filed on August 10, 2026, appealing from a prehearing conference designee's July 29, 2026 discovery order was heard on the written record on September 22, 2026, in Anchorage, Alaska, a date selected on August 21, 2026. To avoid confusion, this decision hereinafter will refer to the focus pleading as the August 8, 2026 petition. The August 8, 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. As a preliminary matter, Employer objected to the panel hearing the petition because the parties had a petition and a cross-petition for review pending before the Alaska Workers' Compensation Appeals Commission (Commission or AWCAC). This decision resolves the preliminary objection and addresses the petition on its merits. The record closed on September 22, 2026.

ISSUES

Employer contends the panel's jurisdiction over Employee's August 8, 2026 petition is suspended because Employer and Employee both asked the AWCAC to review *Martino v. Alaska Asphalt Services*, LLC, AWCB Dec. No 26-0041 (June 15, 2026) (*Martino X*). It argues that the *Martino X* issues before the Commission are related to the issues Employee raised in her August 8, 2026 appeal and contends the panel should withhold its jurisdiction until the AWCAC makes a ruling. Employer also contends *Martino v. Alaska Asphalt Services*, LLC, AWCB Dec. No 26-0072 (September 11, 2026) (*Martino XII*) "already orders information previously produced" and "may impact" a decision on the August 8, 2026 petition "once the orders are complied with." It cites "excessive costs" under AS 23.30.001(1) as an additional reason for this panel to not hear the August 8, 2026 petition until after the AWCAC rules on the petitions before it.

On September 21, 2026, the AWCAC issued an order in this case, which stated in relevant part, "We are not aware of any Alaska precedent holding that proceedings in the superior court, or before an agency, must be held in abeyance upon the filing of a petition for discretionary interlocutory review. Declining to act on pending matters that are not subject to appeal as of right, before the appellate body decides whether to grant review, could disrupt proceedings in the superior court or the agency, as this case aptly demonstrates." *Alaska Asphalt Services, LLC v. Martino*, AWCAC Order on Petition for Review and Cross-Petition for Review (September 21, 2026) (*Martino XIII*). *Martino XIII* denied Employee's cross-petition for review, granted Employer's request for a stay of *Martino X*'s order for a referral to the Division of Insurance, and offered the parties the right to request oral argument before the Commission decided Employer's petition for review on its merits.

1) Does the panel have jurisdiction to decide Employee's August 8, 2026 petition?

Employee contends her "appeal presents one narrow question." Employer represented at the July 16, 2025 hearing (resulting in *Martino v. Alaska Asphalt Services*, LLC, AWCB Dec. No 25-0048 (August 8, 2026) (*Martino VI*)) that it approved Employee to see a "neurologist" "all the way back to 2024." Employee wants to discover, "Where is the authorization supporting that representation?" She argues the prehearing designee erred in his July 29, 2026 discovery order

"by denying production of the specific neurology authorization Employer represented existed where the records relied upon by the designee do not establish such an authorization and, in several respects, affirmatively contradict that conclusion." Employee contends the designee improperly conflated "neurosurgery" with "neurology." Thus, she argues the designee abused his discretion and denied her discovery request based on this error. Employee wants the designee's decision reversed or vacated, and an order "requiring Employer to identify and produce the specific authorization underlying its representation that a neurologist had been approved "all the way back to 2024," including "the authorized provider or facility, date, and Bates or production location if Employer contends it was previously produced." Lastly, if "no such authorization exists, Employer should be required to state that clearly."

Employer contends *res judicata* "applies to the same issues that have been discussed/decided at hearings and in prior decisions," including being "discussed at length during the July 2025 hearing." It argues Employee failed to meet her burden to show the designee abused his discretion. Employer contends Employee "again never identifies which specific documents remain unproduced" or why they "are relevant to any pending issue." It argues Employee has made the same "repeated requests over several years regarding an alleged neurologist evaluation request for preauthorization." Employer is unclear why Employee's request remains "ripe or relevant," since she has already had thoracic outlet syndrome (TOS) surgery. It contends the designee's decision is supported by substantial evidence and was not an abuse of his discretion.

2) Shall the designee's July 29, 2026 discovery order be vacated?

FINDINGS OF FACT

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

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 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 denied Employee's right to benefits and claims for TTD benefits, penalties, reemployment benefits, PPI benefits, attorney fees, costs, TPD and PTD benefits, medical benefits, travel costs, interest, unfair or frivolous controversions, a COLA, and a compensation rate adjustment. (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). Some claims have been resolved; but some remain, *e.g.*, penalties and unfair or frivolous controversions. (Observations).

4) On December 13, 2022, second independent medical examiner (SIME) Floyd Pohlman, MD, orthopedic surgeon, examined Employee. He diagnosed: (1) left TOS, (2) severe cervical foraminal stenosis on the left at C5-6, C6-7, (3) left-shoulder impingement syndrome, and (4) possible Complex Regional Pain Syndrome (CRPS), type II. Dr. Pohlman recommended Employee's physicians evaluate her for CRPS. (Pohlman report, December 13, 2022).

5) On February 22, 2023, Dr. Pohlman recommended a neurologist examine Employee to address her CRPS. (Pohlman report, February 22, 2023).

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

7) On September 27, 2024, Employee petitioned for an order compelling Employer to provide discovery. None of the documents mentioned a "neurology" referral or CRPS. (Petition, September 27, 2024).

8) On December 19, 2024, the parties appeared before a Board designee. The designee set a hearing for February 12, 2025, on the merits of Employee's claims. He also granted Employee's "September 30, 2024" (*sic*) petition to compel discovery. The designee's December 19, 2024 Prehearing Conference Summary does not mention or discuss Employee's CRPS or any referral to a neurologist. (Prehearing Conference Summary, December 19, 2024).

9) 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, in relevant part:

> (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. . . . (Answer to Employee's Discovery Letter Dated 12/17/24, December 23, 2024).

10) On January 3, 2025, Employer provided Employee with additional discovery in response to the designee's December 19, 2024 prehearing conference discovery order: Employer attached Bates-stamped documents 000864-000901 to its letter. None of the attached documents mention a referral to a neurologist. (Letter, January 3, 2025).

11) On February 5, 2025, Employee and Employer stipulated, and a Hearing Officer acting on the Board's behalf approved the stipulation, as follows:

> **STIPULATION FOR BENEFITS, MEDIATION, AND TO CANCEL HEARING**
>
> The parties agree upon certain factual matters and jointly request an order awarding benefits, as well as a continuance of the hearing scheduled for February 12, 2025.
>
> **Stipulation to Cancel Hearing and Mediate**

1. Employee asserts Employer has denied certain claims for preauthorization of medical treatment, as well a claim for preauthorization of out-of-state travel for Employee to treat her cervical spine. Issues to be heard at the February 12, 2025, hearing are medical costs, transportation costs, COLA, interest, penalty, unfair or frivolous controversion, petition for social security offset, petition for mediation, and attorney fees and costs.

2. Employee asserts she has not located a neurosurgeon in Hawaii who will accept Alaska workers' compensation for payment, rendering Employee unable to address her neck condition locally. Employee's current referral is to UCLA for medical treatment, whose physician recommended a neurosurgeon examination for the cervical spine. Vally Medical Center referred Employee to UCLA for a neurosurgeon appointment for the cervical spine, which Employer approved. Employer maintains its approval of UCLA treatment per the prior and current referral for care. Employee has the right to present a new referral for out of state treatment from UCLA to a facility other than UCLA in Alaska, Washington, Oregon, or California. Employer agrees to arrange travel for Employee to address her cervical spine and/or TOS as long as it is provided a 10-day notice of the appointment information. Employee retains her right to make her own travel arrangements and submit receipts for reimbursement, which Employer will process in accordance with the Act and regulations.

3. Employer hereby agrees that the below treatment recommended by Vally Medical Center is currently reasonable and necessary to treat Employee's cervical, shoulder and TOS conditions. Employer has contacted Vally Medical Center to determine what more is needed for the treatment A-H below to continue. Employer authorizes the below treatment recommended by Vally Medical Center relative the 6/30/20 DOI including but not limited to:

A. Ongoing appointments at Vally Medical Center;
B. Currently prescribed medications;
C. Imaging studies of the shoulder, neck, spine and left upper extremity;
D. Lab work;
B. Acupuncture therapy;
F. Massage therapy;
G. Physical Therapy;
H. A cane.

4. Employer retains the right to petition to modify Terms #3 and #4 on reasonableness and necessity grounds. Employer retains its right to controvert benefits and/or modify prior Board D&Os based on new evidence, limited by the terms of this Stipulation and the prior D&Os. Employee retains her right [to] file a claim for benefits. Employee further reserves all rights under the Act, including claims for a COLA adjustment, additional past late-payment penalties, interest, other sanctions, and attorney fees and costs.

5. The claims scheduled for hearing on February 12, 2025, shall be held in abeyance due to the parties' agreement to mediate.

Stipulation to Continue\Hearing

> 6. The parties have agreed to mediation to take place on April 10, 2025, with Janel Wright.
> 7. The parties agree that the pending hearing is unnecessary under the changed circumstances, and jointly request its cancellation pursuant to 8 AAC 45.074. . . .

The approved stipulation does not mention CRPS or a neurologist. (Stipulation for Benefits, Mediation, and to Cancel Hearing, February 5, 2025).

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

13) 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).

14) On May 22, 2025, Employer filed with the Division and served on Employee, but not on Bredesen or Employee's former attorney David Graham, documents Bates-stamped "RFP 000902 to 000911." It attached Hawaii treatment plans and approval requests. There is no approval for a neurologist attached. (Notice of Intent to Rely, May 22, 2025).

15) On June 17, 2025, Employee, Holdiman-Miller and Employee's former attorney Graham appeared telephonically before a Board designee. This was the final prehearing conference before the July 16, 2025 hearing, and identified the 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. (Prehearing Conference Summary, June 17, 2025).

16) 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. There was no approval for a neurologist attached. (Notice of Intent to Rely, June 26, 2025).

17) On July 9, 2025, Employee filed and served her hearing brief for the July 16, 2025 hearing. She requested an order granting and imposing sanctions authorized under AS 23.30.108(c) and the Board's "inherent authority" to impose other sanctions. There was no mention of any neurologist approval. (Employee Sabrina Martino's Hearing Brief, July 9, 2025).

18) 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. It asserted that it had "not denied any benefits and has preauthorized medical treatment" for Employee. There was no mention of any neurologist approval. (Employer's Hearing Brief, July 9, 2025).

19) On July 9, 2025, Bredesen filed a hearing brief in his role as a party whose own claim was joined to Employee's. There was no mention of any neurologist approval. (Attorney's Hearing Brief, July 9, 2025).

20) At hearing on July 16, 2025, adjuster Berni Seever testified about medical authorization forms she had approved for Employee. She spoke with one provider in Hawaii when she was trying to help facilitate that "neurosurgical or neurology evaluation," but that provider would not accept out-of-state cases. Seever recalled signing numerous preauthorization forms in 2023 from Vally Medical. She recalled that UCLA physicians were directing Employee's care effective June 2024. When asked about Bredeson's exhibits F and G, with leading from Holdiman-Miller, Seever testified she did not approve "a certain listing of treatment" because it came from Vally Medical rather than UCLA, Employee's treating physician. Seever said she denied certain authorization requests from Vally Medical by checking the "denied" box but gave no further information on the form regarding why she denied the treatment. She did not identify any approval for Employee to see a neurologist. (Record, July 16, 2025).

21) Employee also testified at the July 16, 2025 hearing, in response to Employer's direct examination, in relevant part:

> Q: What treatment do you allege has been delayed or not -- and/or not received in your workers' compensation case?
> . . . .
>
> A: Yes, I'm sorry. There have been multiple image studies, a neurologist, and surgery.
> . . . .

Q: And is that [surgery] for treatment of your thoracic outlet syndrome?

A: Yes.

Q: And how has it been delayed?

A: The authorization for a shoulder MRI and thoracic MRI have [*sic*] been outright denied, and the neurology has not been responded to.
. . . .

Q: And so the thoracic outlet surgery, that -- is that one waiting an answer?

A: That is awaiting neurology to help me with the CRPS. Before you get the actual request I assume I need to deal with CRPS, which would require the neurologist.

Q: And the neurologist, is that Dr. Roh; is that your understanding?

A: No, Dr. Roh is a neurosurgeon.

Q: And who's the neurologist that you're waiting to see?

A: I have tried to put in requests -- I guess Vally tried to put in requests for a few.

Q: And your understanding is it wasn't approved?

A: Yes, it was not responded to. I -- I know I asked you back in March when I emailed the Board if any treatment plan had been updated or come in, and to my knowledge that one was never responded to. And there have been more submitted that don't have an approved or a deny.
. . . .

Q: And so what I'm trying to determine today is what treatment and what is in the record that you have not received, recommended by your treating doctor, that you need to have. And so is it you need to see a neurologist still?

A: I do need to see a neurologist. That is in my notes from Dr. Gelabert, who is -- to my knowledge a surgeon is not your treating doctor, and I'm confused why some of Vally's treatment plans would be approved and others would not.
. . . .

Q: Is -- who's your treating provider today, Ms. Martino?

A: In limbo right now as far as a -- the treating primary care. I have a surgeon . . . who said I needed to have my CRPS diagnosed by a neurologist.
. . . .

Q: What proof is in the record of any medical care that has not been approved for you?

A: I believe there is a neurologist treatment plan that you did not answer. . . . So --
. . . .

Q: There's in the record in --

A: I'm confused.

Q: -- the -- in the --

A: For --

Q -- discovery that I gave you there's a neurologist approved all the way back to 2024. So the --

A: It's not approved.

Q: -- record shows that this -- there -- it is approved, and it's in the discovery that was provided to you. So I'm trying to determine --

A: Can you --

Q: -- with the testimony today what the insurance carrier has done to interfere, delay, or deny your treatment.

A: Could you tell me who it was approved, who you guys approved?

Q: Yeah. I think it was Dr. Roh, it looks like. Let me tell you the date.

A: Dr. Roh --

Q: If I can find it.

A: -- is not a neurologist. (Record, July 16, 2025).

22) In Employer's closing argument at the July 16, 2025 hearing, Holdiman-Miller stated, in reference to the neurology treatment issue, "The care's been approved. It will be approved." Employer asserted that nothing its insurer did "has prevented her from seeking care." Employer also argued that "no evidence" supported "any lack of response" on its part. It blamed any treatment delay on Employee. (Record, July 16, 2025).

23) On August 8, 2025, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 25-0048 (August 8, 2025) (*Martino VI*) decided seven issues from the July 16, 2025 hearing. Notwithstanding Employee's testimony and arguments about a neurologist, *Martino VI* did not address her December 29, 2025 petition to "compel production of neurology approval represented by Rebecca Miller on the record of 7/16/25 hearing 2:47-2:54 of audio," because that petition did not yet exist and the issue was not before the Board. (*Martino VI*).

24) 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 Employer's noncompliance with Board decisions "23-0044 & 25-0048," which are *Martino IV* and *Martino VI*, respectively. (Petition, December 15, 2025; observations).

25) On December 16, 2025, the parties appeared before a Board designee for a discovery prehearing conference to address Employer's request for updated medical record releases:

> **Discussion**s:
>
> . . . Ms. Martino further explained that Ms. Seever did not respond to multiple Neurological treatment plans related to her CRPS. . . . Ms. Martino requested that the AWCB investigate Employer representative(s) for Unfair Claims Practices under AS 21.36.125 & AS 23.30.155(h).

The designee granted Employer's petition compelling Employee to sign updated medical releases. While Employee mentioned the "Neurological treatment plans" for CRPS in passing, the designee did not enter a related discovery order because that issue was not before him. (Prehearing Conference Summary, December 16, 2025; observations).

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

27) On December 29, 2025, in a separate document Employee petitioned to compel Employer to produce the "neurology approval represented by Rebecca Miller on the record of 7/16/25 hearing 2:47 -- 2:54 of audio." (Petition, December 29, 2025).

28) 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 appealing from the designee's December 16, 2025 discovery order and entered another order. *Martino VIII*

did not discuss or otherwise decide the issue raised in Employee's December 29, 2025 petition to compel Employer to produce the "neurology approval represented by Rebecca Miller on the record of 7/16/25 hearing 2:47 – 2:54 of audio," because the Employee's related December 29, 2025 petition was not before the prehearing conference designee on December 16, 2025, and was not yet decided at the prehearing conference level. (*Martino VIII*).

29) On March 9, 2026, Employee petitioned for a protective order, and to compel discovery. She sought, "To recover & prevent further dissemination of all information unrelated to work injury & compel discovery orders 12-19-24 & 8-8-25 to employer are complied with." (Petition, March 9, 2026).

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

31) 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* did not discuss or otherwise decide the issue raised in Employee's December 29, 2025 petition to compel Employer to produce the "neurology approval represented by Rebecca Miller on the record of 7/16/25 hearing 2:47 – 2:54 of audio," because it had not yet been decided at the prehearing conference level. (*Martino IX).*

32) On March 26, 2026, the parties appeared before a Board designee for a prehearing conference. Rather than addressing Employee's March 9, 2026 or December 29, 2025 discovery petitions, the designee at Employee's request added the March 9, 2026 petition as an issue for a May 12, 2026 Board hearing. (Prehearing Conference Summary, March 26, 2026).

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

34) On May 7, 2026, the designee issued an amended Prehearing Conference Summary. Among the issues listed for the May 12, 2026 Board hearing was Employee's March 9, 2026 petition to compel and for a protective order. Her December 29, 2025 petition about the neurologist approval was not set for hearing. (Prehearing Conference Summary, May 7, 2026).

35) At hearing on May 12, 2026, the parties and the hearing chair spoke about the "neurology" authorization issue. (Record, May 12, 2026). The following discussions occurred while the parties and the chair were discussing what issues could or could not be heard, considering Employee's pending April 15, 2026 Petition for Review before the Commission:

Employee: . . . I hate to bring this up, but I did put it in my brief, I did bring it to the attention of the prehearing officer, and it was discussed with -- with Ms. Miller at prehearings, and that was I had filed a petition to compel that she provide me with the authorization for a neurologist that she has repeatedly asserted both at the July 17, 2025 hearing and at prehearings exists. I -- I would like to -- the petition to compel be heard today. It is apparently not -- at the prehearing we had -- Ms. Miller said it was an issue for hearing, so she is aware of this issue. And I provided the audio of that prehearing where she made that assertion, and it is noted in my brief where that can be found.

The chair: Okay, so are you asserting that there's another petition that is not listed on the May 7, 2026 prehearing conference summary that should be heard today? Is that what I'm getting from what you just said?

A: There was, yes, a petition to compel the neurology authorization, and if I could have a moment I could look that up.
. . . .

Q: Okay, let's see. Well, I can tell you as a general proposition the prehearing conference summary controls the issues for the hearing. And these issues are already super complicated, so if it's not on this prehearing conference summary for May 7, 2026, we're not going to hear it unless Ms. Holdiman Miller agrees to it.

Holdiman-Miller: No, I think I only briefed what was on the summary.

Q: Pardon me?

Holdiman-Miller: I only briefed what was on the summary, so no, I won't agree to that today.

A: Okay. You know, Ms. Martino, as you probably know working on this case for about six years now, parties have a right to object to the prehearing conference summary. It's printed on the bottom of each summary you have 10 days to say, "hey, you left something out," or if there is something that's left out you could actually ask for another prehearing and get that issue added, okay, before a hearing.

So given that Ms. Holdiman Miller doesn't agree to it, we're not going to entertain anything that's not on this prehearing conference summary.
. . . .

A: I -- I do agree they approved the surgery. But I'm wondering, like for the authorization that I requested Ms. Miller said, and it's recorded and I did produce it as evidence and noted in this hearing brief, she asserted that it was an issue for hearing. So, all it is, is to compel the authorization for neurology she asserts on the tribunal exists.

That's all -- I just want to say that she did say it was an issue for hearing at the prehearing, and I provided that recording to the Board.
. . . .

Q: Okay. Holy cow, this is so slow. December 29, here we go. Okay, and then just for the record, the cover email says:

> My informal 12/17/25 request for Ms. Miller to produce the neurology approval she asserted existed since 2024 and was in the 1/27/25 notes was unsuccessful, so I am submitting this petition. Audio of her assertion from the hearing is at approximately 2:47, 2:54, and petition's dated 12/29/25, it's "other," compel production of neurology approval.

Okay, you're talking about, like a piece of paper, I take it, right? Okay.

A: Yes.

Q: So --

A: If you listen to the audio you'll hear the whole spiel. She asserted there was an approval. There is none on the record, so I was asking for the production of that.

They tried to assert that I have been delaying my care, and neurology was one of the things needed to be gone over before I could have the surgery, yet there was never any approval of an authorization. Ms. Miller asserted at the hearing that there was, but I don't see it anywhere in the file.

When I asked her about it at the hearing she referred to adjuster log notes, not an approval. But she continues to assert there's an approval, and I just wanted to find this approval, where it might be.

Q: Okay. So that is as well an issue for the board -- designee, excuse me, at a prehearing conference. So, you can ask for a prehearing conference and ask the designee to address that as a discovery issue. Okay? But since it's not listed on the prehearing conference summary as an issue for today, we're not going to consider it.

I would note that it's not just for the parties' benefit, but it's also for the board members' benefit that we know what the issues are so we can prep up on those issues, and I had never heard of that one until this moment when you brought it up.
. . . .

But, you know -- yeah, but ultimately if you feel like you have a problem with any kind of discovery, then, you know, obviously you tried informally first and someone's not cooperating with you, then you file a petition to compel. That issue is then addressed at the prehearing conference level, and then if you don't like -- a

party -- I shouldn't say you, could be either party, doesn't like what the designee orders, then they can appeal that and we will hear that issue on appeal of discovery order.
. . . .

A: It's just like there's this perpetual way for them to delay benefits, and then try to turn it against me like Ms. Miller did at the last hearing, asserting that there was a neurology approval. And when I asked her about it she referenced an adjuster log note.

It's either on RFP 917 or 918, and it's in my brief where you can find it in the audio of the July 2025 hearing, but she was conflating that note to be neurology, when it was actually a note for Dr. Roh, who is a neurolo -- or neurosurgeon. And I had just told her Dr. Roh was a neurosurgeon, and if you read RFP 18 -- it's in my brief, Exhibit 10, and it says FUPC to Hilo Neuro, Dr. Roh's office, Lisa, message left requesting return call from Lisa or the office manager. And Ms. Miller was trying to say that is the approval.

Well, that's not an approval. It's an adjuster log note.

It references a neurosurgeon who I had just told her Dr. Roh was a neurosurgeon moments before her assertion that that was related to the neurology approval, and then she said it was for Hilo Neurology. I did a Google search live at the hearing, and no such place exists. So, I'm unable to get this alleged approval.
. . . .

So, I feel, and I don't know if there's a statute that this should be reported to the Division of Insurance for unfair claim handling practice. If I would have known that there was that treatment plan or if I would have known why they wouldn't approve this or that or why this wasn't being answered, we wouldn't have all of these hearings, we wouldn't have all of these petitions and prehearings, and I might have been able to receive medical care years ago, months ago, a long time ago. I wouldn't be still waiting, still fighting, still coming here before the Board right now.
. . . .

Q: Okay. So let me just -- if I could maybe summarize what I think I heard, correct me if I'm wrong, so bringing this back to .155(o), are you arguing that there's an unfair frivolous controversion-in-fact?

A: Yes. I would -- there has been.

Q: Okay. And is there more than one or is there just one?

A: Well, I guess that depends on if you want to count each unanswered treatment plan as one or if you just want to group them all, and I would have to go through and count to give you a number. (Record, May 12, 2026).

36) On June 9, 2026, Employee filed a request for a protective order, to compel discovery and for sanctions against Employer for allegedly disobeying Board discovery orders. She did not discuss the request to discover the neurology approval. (Petition for Sanctions and Disclosure of Provider Communications, June 9, 2026).

37) On June 15, 2026, *Martino v. Alaska Asphalt Services*, LLC, AWCB Dec. No 26-0041 (June 15, 2026) (*Martino X*) decided the issues that were set for hearing on May 12, 2026. It did not decide Employee's December 29, 2025 petition to produce the "neurology approval represented by Rebecca Miller on the record of 7/16/25 hearing 2:47 – 2:54 of audio," because that issue was not set for hearing. *Martino X* remanded Employee's March 9, 2026 Petition for Protective Order and to Compel Discovery to the Board's designee, because the designee had never addressed the discovery issues raised in the March 9, 2026 petition as §.108(c) requires. (*Martino X*).

38) 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).

39) 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*).

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

> 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 . . . her treatment [had been] delayed, and Employer is non-compliant with multiple Board Orders. All allegations that were denied by Employer representative. . . . (Prehearing Conference Summary, June 24, 2026).

41) 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 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 evidence in the agency file. (Petition, June 3, 2026).

42) On July 16, 2026, Employer answered Employee's June 9, 2026 petition. It did not discuss the neurology authorization issue. (Opposition to Petition for Sanctions, July 16, 2026).

43) On July 29, 2026, the parties attended a prehearing conference. The conference summary records the following relevant discussions:

> **Discussion:**
> . . . .
>
> Employee requested that Designee issue a discovery order regarding her 12/29/2025 Petition to Compel Production of a Neurology Approval. Employee argued that Employer representative has referenced the sought-after Neurology Approval on numerous occasions utilizing the same to infer that Employee is responsible for delayed Neurological treatment. Employee played an audio recording of the 7/25/2025 Hearing which resulted in the 8/25/2025 D&O #25-0054. Employer referenced a 2/25/2025 Board Approved Stipulation as well as a 11/5/2024 Referral to Dr. Roh and a 7/2/2024 Authorization for Treatment at UCLA for Employee's spine which included Neurology. Employee argued that Dr. Roh is a Neurosurgeon and not a Neurologist and the Authorization for Treatment at UCLA resulted in Employee being told by UCLA physicians to seek out a Neurologist in Hawaii.
>
> Designee reviewed the 2/12/2025 Board Approved Stipulation to Cancel Hearing and Mediate as well as D&O # 25-0054 along with Employee's 12/29/2025 Petition to Compel. The 2/12/2025 Board Approved Stipulation refers to Employer's approval of treatment at UCLA and Valley Medical Center for treatment of Employee's cervical spine, shoulder, and TOS conditions. While D&O #25-0054 primarily deals with the passing of attorney Graham, Designee notes that D&O #25-0054 also addresses the denial of Employee's 2/6/2025 and 4/1/2025 Discovery Petitions as well as the denial of Employee's 2/27/2025 Discovery Petition. These Discovery Petitions appear to, at least in part, address the Employer's authorization for treatment at UCLA and Valley Medical Center. It is apparent to Designee that Employee's Neurologic care was approved by Employer on at least 3 separate occasions (UCLA, Valley Medical Center, and Dr. Roh). It is also apparent to Designee that these approvals have been produced and litigated at length. Employee's 12/29/2025 Petition to Compel Production of additional Neurology Approvals is denied. Further, parties appeared to argue semantics and the differentiation between a Neurologist and a Neurosurgeon with Employee arguing that a Neurosurgeon is not a Neurologist. A quick google search indicated to Designee that difference comes down to training. "Neurologists complete medical school and a residency in neurology, while neurosurgeons undergo additional surgical training after their neurology residency." It is Designee's opinion that an authorization of care by a Neurosurgeon is, in fact, an authorization of care by a Neurologist. . . .
>
> **Action:**
> . . . .

> Employee's 12/29/2025 Petition to Compel Production of a Neurology Approval is Denied. . . . (Prehearing Conference Summary, July 29, 2026).

44) On July 30, 2026, Employer petitioned the Commission to review *Martino X*. (Petition for Review, July 30, 2026).

45) On July 30, 2026, according to *Martino XIII*, Employee filed a cross-petition for review with the Commission. Employee's cross-petition does not appear in the Division's file because she did not file a copy with the Division. (*Martino XIII*; observations).

46) On August 10, 2026, in her August 8, 2026 petition, Employee appealed the designee's July 29, 2026 discovery order to the Board. (Petition, August 8, 2026).

47) On September 11, 2026, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 26-0072 (September 11, 2026) (*Martino XII*), decided Employee's June 3, 2026 appeal, filed on July 7, 2026, from the designee's June 24, 2026 discovery order. *Martino XII* did not cite Employee's December 29, 2025 petition to compel Employer to produce the "neurology approval represented by Rebecca Miller on the record of 7/16/25 hearing 2:47 – 2:54 of audio," and did not decide her December 29, 2025 petition because it was not an issue set for hearing. (*Martino XII*).

48) On September 15, 2026, Employee filed her brief for the September 22, 2026 written record hearing on her August 8, 2026 petition appealing from the designee's July 29, 2026 discovery order. Employee said the issue presented was, "Whether the designee abused his discretion by denying production of the specific neurology authorization employer represented existed where the records relied upon by the designee do not establish such an authorization and, in several respects, affirmatively contradict that conclusion." She wanted the designee to require Employer to produce the document that Employer's representative at the July 16, 2025 hearing said existed, which was "there is a neurologist approved all the way back to 2024." Employee contended none of the documents upon which the designee relied to come to his July 29, 2026 discovery order supported his decision. She was not requesting authorization for treatment during the July 29, 2026 prehearing conference but rather was simply asking Employer to present evidence of authorization to a neurologist that Employer represented existed. Employee objected to the designee's Internet search and his opinion that a neurosurgeon was the same thing as a neurologist, and authorization of care by a neurosurgeon was the same as authorization for care by a neurologist. She argued that no previous decision by a designee or the Board adjudicated production of the represented neurologist authorization. Employee contended that the fact she or

Employer made representations during hearings about a neurologist referral "did not transform the existence or production of the supporting authorization into an adjudicated issue." She argued that "a discovery ruling cannot cure the absence of one document by redefining a different document as that document." Employee added:

> The practical consequence is substantial. More than two years after neurological evaluation was first requested, employee still cannot obtain a clear answer as to whether the authorization employer represented existed was ever actually issued, to whom, or when. . . .

Employee noted that Employer blamed her for not making an appointment with a neurologist. She argued that it took more than a year for her to see a neurologist through the Veterans Administration. Employee contended the panel need not determine in this decision why Employer made the representation at the July 15, 2025 hearing, or whether it was intentional. The Board "need only require evidentiary accountability." Employee asked the Board to reverse or vacate the designee's July 29, 2026 denial of her December 29, 2025 petition to compel production of the neurologist approval and order Employer to identify and produce the specific authorization underlying its representation that a neurologist had been approved "all the way back to 2024." If no such authorization exists, "the employer should be required to state that clearly." Alternatively, she requested a remand for the designee to make a broader inquiry and analysis. (Employee's Written Argument for September 22, 2026 Hearing, in Support of Appeal of July 29, 2026 Discovery Order, September 15, 2026).

49) On September 15, 2026, Employer filed its hearing brief for the September 22, 2026 written record hearing. As a preliminary issue, Employer argued that the Board cannot hear Employee's appeal due to the pending petition and cross-petition for review, and *Martino XII*. Employer contended repeated hearings on "ongoing, duplicative issues are unreasonable, unfair, and should be denied due to excessive costs." It argued that at a minimum the hearing should "be stayed pending orders from [*Martino XII*] and the Appeal Commission." Employer asked the Board to refrain from issuing a decision "due to preauthorization issues" currently before the Commission. It further contended that *res judicata* applied because the "neurologist issue was discussed at length during the July 2025 hearing." It contended "the same issue" is now before the Commission and "cannot be simultaneously ruled on by the Board." Alternatively, Employer contended if the Board moved forward and decided Employee's petition, it should deny it because she failed to

establish the designee abused his discretion under §.108(c). Employer alleged Employee "again never identifies which specific documents remain unproduced," or why they are relevant to any pending issue. It referred to Employee's request as the "alleged neurologist evaluation request for preauthorization." Employer argued that the designee found evidence "in the file" to support his order, which was noted in Employer's "Commission filing," which it attached to its brief as an exhibit. Moreover, Employer contended that Employee failed to identify a specific form from Vally Medical for a specific neurologist approval or authorization request. It argued that the first noted name of a neurologist referral was in a March 2025 Vally Medical record -- Dr. Kaminskas. Employer questioned why the neurologist referral would remain ripe or relevant since Employee has already undergone "TOS surgery." It argued that the designee reviewed the file, "considered years of records and pleadings," and correctly denied Employee's petition. Employer sought an order affirming the designee's July 29, 2026 discovery order and denying Employee's petition to appeal. (Employer's Hearing Brief, September 15, 2026).

50) On September 21, 2026, the Commission in *Martino XIII* granted Employer's petition for review in part, staying *Martino X*'s referral to the Division of Insurance pending further order by the Commission. It offered the parties an opportunity for oral argument on Employer's petition before ruling on its merits. *Martino XIII* denied Employee's cross-petition for review in its entirety. *Martino XIII* stated, in relevant part:

> [42] . . . We are not aware of any Alaska precedent holding that proceedings in the superior court, or before an agency, must be held in abeyance upon the filing of a petition for discretionary interlocutory review. Declining to act on pending matters that are not subject to appeal as of right, before the appellate body decides whether to grant discretionary review, could disrupt proceedings in the superior court or the agency, as this case aptly demonstrates. *Martino XIII* at 9-10, n. 42.

51) Experience teaches that neurosurgeons perform surgery, for example, to treat structural issues like traumatic brain injuries, or cervical disc issues involving tight spaces near nerve structures in the spine that could be injured by lesser-trained surgeons. By contrast, neurologists treat nerve conditions medically, generally non-surgically, with medication and therapy. (Experience; observations).

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's (Act) 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." *Id.* at 533-34.

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 23.30.008. Powers and duties of the commission.** (a) . . . On any matter taken to the commission, the decision of the commission is final and conclusive, unless appealed to the Alaska Supreme Court, and shall stand in lieu of the order of the board from which the appeal was taken. Unless reversed by the Alaska Supreme Court, decisions of the commission have the force of legal precedent.

> **AS 23.30.095. Medical treatments, services, and examinations**. . . .
>
> (d) If at any time during the period the employee unreasonably refuses to submit to medical or surgical treatment, the board may by order suspend the payment of further compensation while the refusal continues, and no compensation may be paid

> at any time during the period of suspension, unless the circumstances justified the refusal.
>
> **AS 23.30.108. Prehearings on discovery matters**. . . .
>
> (c) . . . 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 decision by the board on a discovery dispute shall be made within 30 days. The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.
>
> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

The Board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

Shafer v. Universal Health Services, Inc., AWCB Dec. No. 14-0010 (January 31, 2014) selected an SIME panel with "a neurologist, with adequate experience in CRPS. . . ." Likewise, *Sheeley v. Alaska Heart Institute, LLC*, AWCB Dec. No. 14-0055 (April 18, 2014) stated:

> The primary issues in dispute are diagnosis and causation of Employee's continuing pain complaints: Does Employee suffer from complex regional pain syndrome, or CRPS, and if so, were the March 22, 2010 work injury and subsequent shoulder surgeries the substantial cause of her CRPS? . . . According to EME physicians Dr. Thompson, an orthopedic surgeon, and Dr. Frank, a neurosurgeon, these questions are best answered by a neurologist. . . .

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.

A "substantial evidence" standard is applied to review Board designees' discovery orders. A designee's decision on discovery matters must be upheld, absent "an abuse of discretion." *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985).

The Commission in *Foreman v. Northstar Construction Management*, AWCAC Dec. No. 316 (September 23, 2026) while addressing the Board's jurisdiction, distinguished between Alaska Supreme Court case precedent addressing "final decisions" on "appeal," and "interlocutory decisions" on "petition for review." *Foreman* held that filing a petition for review with the Commission does not automatically vest jurisdiction in the AWCAC over the matters raised in the petition. "The filing of the petition vests in the appellate body the discretion to exercise jurisdiction over those matters. Only if the appellate body grants the petition does it obtain jurisdiction to decide them." Unless a party asks the Board or the Commission to stay proceedings before the Board with respect to a matter raised in a petition for review to the Commission, Board proceedings relating to those matters are unaffected "unless and until the Commission grants the petition." *Foreman* at 4-5. *Foreman* implied that if the Commission grants review, proceedings before the Board related to the matter petitioned for review are affected.

ANALYSIS

1) Does the panel have jurisdiction to decide Employee's August 8, 2026 petition?

Martino X, from which Employer and Employee both petitioned the Commission to review, was an interlocutory decision. Since *Martino X* was not a "final" decision, the AWCAC had discretion to consider Employer's and Employee's petitions. *Foreman*. The Commission exercised its discretion in *Martino XIII* and granted Employer's petition in part and denied Employee's cross-petition in its entirety. *Martino XIII* at footnote 42 stated with respect to jurisdiction:

> We are not aware of any Alaska precedent holding that proceedings in the superior court, or before an agency, must be held in abeyance upon the filing of a petition for discretionary interlocutory review. Declining to act on pending matters that are not subject to appeal as of right, before the appellate body decides whether to grant discretionary review, could disrupt proceedings in the superior court or the agency, as this case aptly demonstrates.

Pursuant to footnote 42 in *Martino XIII*, this panel could have jurisdiction to decide Employee's August 8, 2026 appeal from the designee's July 29, 2026 discovery order. However, *Foreman* stated that the mere filing of a petition does not vest in the appellate body discretion to exercise jurisdiction over the matters raised in the petition. Only if the appellate body grants the petition, "does it obtain jurisdiction to decide them." *Foreman* is precedent under AS 23.30.008(a). Here, the Commission in *Martino XIII* granted Employer's petition and offered the parties an opportunity for oral argument before the Commission decides the petition on its merits.

In this context, Employer challenged this panel's jurisdiction to decide Employee's August 8, 2026 appeal from the designee's July 29, 2026 discovery order. Given Employer's challenge, the panel reads *Martino XIII* and *Foreman* to require it to determine whether it has jurisdiction to decide Employee's August 8, 2026 petition.

Employer contends this panel cannot continue to decide issues "currently before" the Commission such as "preauthorization" issues "intermingled" with discovery of "preauthorization requests/responses." It argues repeated hearings on "duplicative issues" are unreasonable, unfair and an excessive cost under §.001(1). Employer states, "At a minimum, the hearings/additional decisions should be stayed pending orders from the most recent D&O and the Appeal Commission." Employer's brief includes a request for a stay even though Employer did not petition for one. This decision will address the stay request.

(A) There is no basis for a stay.

The issue in the instant written record hearing is not "duplicative." There is no evidence that a panel has ever addressed Employee's December 29, 2025 discovery request, or the subject of that request. A panel could not have done so because under §.108(c) the discovery issue must be first addressed by a designee at a prehearing conference before Employee could perfect an appeal, as she did after the designee's July 29, 2026 discovery order.

Employee's August 8, 2026 petition is not seeking "preauthorization" for any treatment. This is a discovery appeal. Employee seeks documents confirming a preauthorization statement Employer's attorney made at hearing on July 16, 2025, that "there's a neurologist approved all the

way back to 2024." Since a hearing panel has not considered this discovery request and could not hear it under §.108(c) until after the designee had issued an order on the "discovery matter" and Employee made her appeal, this issue could not be an issue in Employer's pending petition before the Commission. This is true notwithstanding any discussions or arguments made regarding this purported "approval," or statements made in prior hearings, or made in any briefing before the Commission. Employee, or anyone else, "discussing" an issue does not mean it was raised, heard and decided. Moreover, §.108(c) states the panel "shall" decide an appeal from a designee's decision within 30 days. Thus, in this case there is no reason for a stay, and by contrast, §.108(c) is a statutory mandate for this panel to proceed promptly in deciding Employee's appeal. *Martino XII*'s order for a comprehensive discovery prehearing conference in 60 days does not abrogate this panel's statutory duty to decide Employee's pending appeals from the designee's discovery orders. Employer's request in its brief for a stay will be denied.

(B) Res judicata does not apply to this issue.

Employer also argues that *res judicata* applies because the "neurologist issue was discussed at length during the July 2025 hearing." It cites this fact as another issue before the Commission, which cannot "be simultaneously ruled on" by this panel. But "discussion" does not equate to "decision." More importantly, any remaining issues pending before the Commission are Employer's, not Employee's, because *Martino XIII* denied Employee's cross-petition for review in its entirety. Thus, she has no issues currently pending before the Commission.

Martino XIII identified the two issues Employer raised for the Commission's review: (1) whether *Martino X* erred in considering Employee's request for a referral to the Division of Insurance, and (2) whether *Martino X*'s findings (presumably related to issue (1)) are supported by substantial evidence. Neither of Employer's remaining issues before the AWCAC include Employee's December 29, 2025 discovery request. Moreover, the record from the July 16, 2025 and May 12, 2026 hearings demonstrates that while Employee raised the "neurologist" approval issue numerous times, the designated chair explained that the issue was not set for hearing and advised Employee how to have that issue heard at a prehearing conference. *Res judicata* does not apply and the panel has jurisdiction to decide Employee's August 8, 2026 petition. *Martino XIII*; *Foreman*.

2) Shall the designee's July 29, 2026 discovery order be vacated?

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). An opposing party can attach evidence and arguments to its answer. 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 should a party disagree with the discovery order and appeal.

In his July 29, 2026 discovery order, the designee stated he reviewed three documents, and associated petitions listed in one of them. He concluded, "It is apparent to Designee that Employee's Neurologic care was approved by Employer on at least 3 separate occasions (UCLA, Valley Medical Center, and Dr. Roh). It is also apparent to Designee that these approvals have been produced and litigated at length. Employee's 12/29/2025 Petition to Compel Production of additional Neurology Approvals is denied."

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.

(A) Substantial evidence does not support the designee's July 29, 2026 order.

In his July 29, 2026 discovery order, the designee cited the documents he reviewed and upon which he relied to deny Employee's December 29, 2025 petition to compel production of what he called the "Neurology Approvals." These included, in the order the designee listed:

(1)The designee "reviewed the 2/12/2025 Board Approved Stipulation to Cancel Hearing and Mediate. . . ." The designee found, "The 2/12/2025 Board Approved Stipulation refers to Employer's approval of treatment at UCLA and Valley [*sic*] Medical Center for treatment of Employee's cervical spine, shoulder, and TOS conditions." However, the February 12, 2025 stipulation includes the following, relevant statements:

> . . . Employee's current referral is to UCLA for medical treatment, whose physician recommended a neurosurgeon examination for the cervical spine. Vally Medical Center referred Employee to UCLA for a neurosurgeon appointment for the cervical spine, which Employer approved. Employer maintains its approval of UCLA treatment per the prior and current referral for care. . . .

If Employee had requested production of "Neurology Approvals." the designee's order may have been supported by substantial evidence, because "Neurology Approvals" is vague enough to include approvals for Employee to see a "neurosurgeon." But Employee wants Employer to produce the "neurologist" approval its attorney said existed "since 2024." The stipulation makes no mention of approval for Employee to see a "neurologist." It says Employer approved Employee to see a "neurosurgeon," but does not address Employee's request for documents showing Employer approved her to see a "neurologist." Unless a "neurologist" and a "neurosurgeon" are the "same thing," the February 12, 2025 stipulation and order is not substantial evidence supporting the designee's July 29, 2026 discovery order. AS 44.62.570(b); *Sheehan*.

(2)The designee reviewed "D&O # 25-0054," which is *Martino VII*. *Martino VII* addressed, as the designee stated in his discovery order, Employee's former attorney David Graham's untimely passing, and her request for a stay on *Martino VI*'s effective date so she could petition for reconsideration or seek AWCAC review. Nothing in *Martino VII* decided Employee's request for Employer to produce documents supporting Employer's statement at hearing on July 16, 2025, that Employer had "a neurologist approved all the way back to 2024." Thus, *Martino VII* does not provide substantial evidence supporting the designee's July 29, 2026 discovery order. AS 44.62.570(b); *Sheehan*.

(3) Included in his review of *Martino VII*, the designee cited denials of Employee's February 6, 2025, February 27, 2025, and March 31, 2025 (filed April 1, 2025) petitions as bases to deny

Employee's December 29, 2025 petition to compel Employer to produce evidence of "a neurologist approved all the way back to 2024." But *Martino VII* just listed orders from *Martino VI*, which included Employee's denied February 6, 2025, February 27, 2025, and March 31, 2025 discovery petitions. This decision will examine each denied petition:

a) Employee's February 6, 2025 petition sought an order enforcing the designee's December 19, 2024 discovery order. The December 19, 2024 discovery order did not include an order regarding Employer producing evidence that it had approved a neurologist appointment. Employer's lawyer did not even make the "all the way back to 2024" statement until the July 16, 2025 hearing. The December 19, 2024 discovery order did not mention or discuss Employee's CRPS or a referral to a "neurologist." Employer stated in its December 23, 2024 answer to Employee's discovery letter that it had approved a "neurosurgeon option for the cervical condition," and it also responded to treatment for Employee's TOS. But Employee testified she needs a neurologist for her CRPS, as SIME Dr. Pohlman endorsed back in 2022. *Martino VII*'s reference to Employee's denied February 6, 2025 petition is not substantial evidence supporting the designee's July 29, 2026 discovery order. AS 44.62.570(b); *Sheehan*.

b) Employee's denied February 27, 2025 petition sought an order to preserve evidence. It had nothing to do with producing evidence of a "neurologist" approval. Moreover, the February 27, 2025 petition also came months before Employer's counsel made the "all the way back to 2024" statement at the July 16, 2025 hearing. AS 44.62.570(b); *Sheehan*.

c) Likewise, Employee's denied March 31, 2025 petition, filed on April 1, 2025, requested an order for an adverse inference and other sanctions against Employer for alleged discovery violations. It does not mention or address Employee's request for Employer to produce evidence that it approved a "neurologist" appointment. Like the other two denied petitions upon which the designee relied, the March 31, 2025 petition came months before the "all the way back to 2024" statement made at the July 16, 2025 hearing. The designee's determination that these three discovery-related petitions "appear to, at least in part, addressed the employer's authorization for treatment" that would include approval for a "neurologist" appointment, is not supported by substantial evidence. AS 44.62.570(b); *Sheehan*.

Martino VII has no bearing on Employee's request for Employer to produce evidence that it approved a request for Employee to see a neurologist "all the way back to 2024," or at any other time. *Martino VII* and the denied petitions cited in it are not substantial evidence supporting the designee's July 29, 2026 discovery order. AS 44.62.570(b); *Sheehan*.

Nothing in *Martino VI* is substantial evidence supporting the designee's July 29, 2026 discovery order either. *Martino VI* addressed Employee's request for a COLA, Employer's request for an Social Security offset, Employee's request for an order seeking enforcement of the designee's December 19, 2024 discovery order and imposing dismissal sanctions under her February 6, 2025 and March 31, 2025 petitions, Employee's petition to preserve evidence, her petition for additional time to request a hearing on her January 25, 2022 claim, Employee's petition regarding Graham's limited appearance and her petition to strike medical records that exceeded her medical releases. AS 44.62.570(b); *Sheehan*.

(4) The designee also reviewed "Employee's 12/29/2025 Petition to Compel." Employee's December 29, 2025 petition to compel included a cover email. The email stated:

> My informal 12/17/25 request for Ms. Miller to produce the neurology approval she asserted existed since 2024 and was in the 1/27/25 notes was unsuccessful so I am submitting this petition. Audio of her assertion from the hearing is at approximately 2:47-2:54.

The December 29, 2025 petition states, "Compel production of neurology approval represented by Rebecca Miller on the record of 7/16/25 hearing 2:47-2:54 of audio." The cover email and the attached petition stated exactly what Employee was requesting. It belies Employer's argument that Employee "again never identifies which specific documents remain unproduced." Her request could not be clearer. Employee wants Employer to produce the approval documents that Employer said exist. Employee's December 29, 2025 petition to compel is not substantial evidence supporting the designee's July 29, 2026 discovery order. AS 44.62.570(b); *Sheehan*.

As analyzed above, none of those documents provide substantial evidence supporting the designee's discovery order, because none of them address Employer's production of written authority approving Employee to see a "neurologist." AS 44.62.570(b); *Sheehan*.

(B) A neurologist is not the same specialty as a neurosurgeon.

This designee's second basis for his analysis was his Google search made during the prehearing conference. The designee stated his Google research disclosed that Employee's petition and the parties' related discovery dispute were based on "semantics." He found no significant difference between a "neurologist" and a "neurosurgeon." The designee concluded that in his opinion, "an authorization of care by a Neurosurgeon is, in fact, an authorization of care by a Neurologist." The designee's statement implies that the designee recognized Employer had not produced evidence of its stated approval for Employee to see a "neurologist" but had responded to her discovery request because it produced authorizations for her to see a "neurosurgeon."

But the agency file does not provide substantial evidence supporting that conclusion either. SIME Dr. Pohlman referred Employee specifically to a "neurologist" for a CRPS evaluation. Dr. Pohlman would know what physician specialty evaluates and treats CRPS. His opinion and knowledge are credible. AS 23.30.122; *Smith*. Agency decisions have also noted that "neurologists" normally treat injured workers with CRPS. The panel also takes official notice from its experience that neurologists medically manage chronic nervous system conditions, like CRPS. *Shafer*; *Sheeley*. Neurosurgeons perform surgery, for example, to treat structural issues like traumatic brain injuries, or cervical disc surgeries involving tight spaces near nerve structures in the spine that could be injured by less trained surgeons. *Rogers & Babler*.

According to the July 29, 2026 Prehearing Conference Summary, Employer's only argument and evidence raised at the discovery prehearing conference was, "Employer referenced a 2/25/2025 Board Approved Stipulation as well as a 11/5/2024 Referral to Dr. Roh and a 7/2/2024 Authorization for Treatment at UCLA for Employee's spine which included Neurology." There is no answer from Employer to Employee's December 29, 2025 petition found in Employee's Division's file. As already analyzed in this decision, a "neurologist" is not the same specialty as a "neurosurgeon." The documents upon which Employer relied at the July 29, 2026 discovery prehearing conference were all directed to a "neurosurgeon," not a "neurologist," notwithstanding Employer's argument to the contrary.

Without a prehearing conference recording, a transcript, or a more detailed account of Employer's evidence and argument at the discovery prehearing, the panel's inquiry should end here under §.108(c). But Employer's brief for the instant hearing cites to Exhibit 3, which is a copy of it July 30, 2026 Petition for Review of *Martino X* to the AWCAC. The designee could not have had Employer's petition to the Commission and its attachments to review, because the petition is dated the day after the December 29, 2026 prehearing conference. In any event, that briefing has nothing to do with Employee's December 29, 2025 petition to compel discovery. However, in its brief for this hearing Employer argued Employee already had TOS surgery and questioned why her December 29, 2025 discovery request was still relevant. The panel will address relevance.

(C) Employee's December 29, 2025 discovery request remains relevant.

Employee has pending claims for, among other things, penalties and an unfair or frivolous controversion. Employee testified at the May 12, 2026 hearing:

> Q: Okay. So let me just -- if I could maybe summarize what I think I heard, correct me if I'm wrong, so bringing this back to .155(o), are you arguing that there's an unfair frivolous controversion-in-fact?
>
> A: Yes. I would -- there has been.

Employer's representation that it had approved Employee to see a "neurologist" to evaluate and treat her CRPS "all the way back to 2024," if proven untrue, could be relevant, admissible evidence on Employee's claims for a penalty and an unfair or frivolous controversion-in-fact. Penalties and unfair or frivolous controversion remain "matters in dispute." Existence of the requested discovery, or evidence that the documents do not exist, is relevant evidence directly addressing the matters in dispute. *Granus*.

Moreover, Employer argued that Employee "could treat," and blamed Employee for any delays in her treatment. Employer's argument implies that Employee is not mitigating her damages by failure to treat promptly. If the requested authorization for Employee to see a neurologist exists "all the way back to 2024," and Employer produces it, Employer could argue more formally that Employee has "unreasonably" failed to submit to medical treatment under AS 23.30.095(d).

Under §.095(d), Employer could seek an order suspending Employee's benefits. The approvals are relevant to Employer's current argument blaming Employee for treatment delays.

That Employee had TOS surgery is not relevant to her request to see a neurologist for her CRPS. Given this analysis, even if Employee has obtained CRPS treatment from the Veteran's Administration, having CRPS treatment would not moot her request for the approval documents Employer stated existed, because that discovery request is separate and distinct from treatment, and clearly relevant to her un-adjudicated claims for penalties and an unfair or frivolous controversion-in-fact.

Based on the above analyses, the designee's July 29, 2026 discovery order is not supported by substantial evidence. Because it is not supported by substantial evidence, the designee's "abuse of discretion is established" under AS 44.62.570(b). Employee's August 8, 2026 petition appealing from the designee's July 29, 2026 discovery order will be granted. The designee's July 29, 2026 discovery order will vacated. Employer will be ordered to produce all evidence that Employer approved Employee to see a neurologist "all the way back to 2024." It will be ordered to produce all evidence of any other approvals Employer made for Employee to see a neurologist. Employer will be ordered to produce, file with the Division and serve these documents on all parties by no later than October 15, 2026. If Employer contends it has already produced, filed and served these documents on all parties, it will be ordered to identify the authorized provider or facility, date of approval, and Bates stamp location of each document. If Employer after due diligence determines there are no such approvals, it will be directed to so state and to file its response with the Division and serve on all parties by no later than October 15, 2026.

CONCLUSIONS OF LAW

1) The panel has jurisdiction to decide Employee's August 8, 2026 petition.
2) The designee's July 29, 2026 discovery order shall be vacated.

ORDER

1) Employee's August 8, 2026 petition appealing from the designee's July 29, 2026 discovery order is granted.

2) The designee's July 29, 2026 discovery order is vacated.

3) Employer is ordered to produce all evidence that Employer approved Employee to see a neurologist "all the way back to 2024."

4) Employer is ordered to produce all evidence of all other approvals Employer made for Employee to see a neurologist.

5) Employer is ordered to produce, file with the Division, and serve documents identified in order (3) and (4) above on all parties by no later than October 15, 2026.

6) If Employer contends it has already produced, filed with the Division and served the documents identified in order (3) and (4) above on all parties, it is ordered to identify the authorized provider or facility, date of approval, and Bates stamp location of each document by no later than October 15, 2026.

7) If Employer, after due diligence, determines there are no such documents identified in order (3) and (4) above, it is ordered to so state, and file its response with the Division and serve it on all parties by no later than October 15, 2026.

Dated in Anchorage, Alaska on October 1, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Brian Zematis, Member

PETITION FOR REVIEW

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

or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of 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 October 1, 2026.

/s/
Lorvin Uddipa, Workers' Compensation Technician