ALASKA WORKERS' COMPENSATION BOARD

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

GREG WEAVER, Employee, Applicant, v. ARCTEC ALASKA, Employer, and ARCTIC SLOPE REGIONAL CORP., Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201320030 AWCB Decision No. 14-0154 Filed with AWCB Fairbanks, Alaska on December 2, 2014

Greg Weaver's (Employee) June 17, 2014 Petition to Exclude January 9, 2014 report was heard on October 16, 2014, in Fairbanks, Alaska. The hearing date was selected on August 5, 2014. Michael Jensen represented Employee, who appeared and testified. Nora Barlow represented Arctec Alaska and Arctic Slope Regional Corporation (Employer). Tracy Davis, RN testified by telephone. The record was held open to receive RN Davis' billing notes, which were filed October 30, 2014. The record closed when the panel next met and deliberated, on November 6, 2014.

ISSUE

Employee contends Employer exceeded its one allowable change of physician under AS 23.30.095(e) and therefore Dr. Marble's January 9, 2014 EME report should be stricken from the record. Employer contends neither nurse case manager Tracy Davis nor Shawn Johnston, MD

are employer-selected physicians, and therefore there has been no excessive change of employer physician.

Should Dr. Marble's January 9, 2014 report be excluded because Employer exceeded its one allowable change of physician?

FINDINGS OF FACT

The following findings of fact and factual conclusions are established by a preponderance of the evidence:

1) On July 23, 2013, Employee reported he "woke up that morning with back pain that got worse the next day. The previous several days were spent shoveling, erecting scaffold and pushing a wheelbarrow." (Report of Occupational Injury or Illness, July 23, 2013).

2) On July 26, 2013, Employee saw Joyce Restad, DO.[1] Dr. Restad diagnosed low back pain, prescribed pain medications, and advised Employee to follow-up if his pain did not improve. (Dr. Restad report, July 26, 2013).

3) On July 29, 2013, Employee returned to Dr. Restad, complaining of continued pain. Dr. Restad ordered an MRI, which revealed mild degenerative disk changes and moderate stenosis at L5-S1. (Dr. Restad report, July 29, 2013; MRI Report, August 2, 2013).

4) In early August, 2013, Employer's adjuster Lynn Palazzotto requested nurse case management services from Tracy Davis, RN. (MMI Progress notes, undated).

5) On August 7, 2013, RN Davis sent an update to Lynn Palazzotto:

> Meeting with Mr. Weaver on Tuesday, August 13, 2013 at 10:00 am in his home.
>
> He did share that his doctor referred him to Dr. Grissom for ESI. (Also please note that Dr. Grissom thinks just about everyone needs a spinal cord stimulator – we will need to keep our eyes on that). Apparently his appt. with Dr. Grissom's PA is this Friday. (I have a conflict and cannot attend).

(RN Davis email to L. Palazzotto, August 7, 2013).

6) On August 9, 2013, Employee underwent an initial assessment at the Algone Interventional Pain Clinic. Pain medications were prescribed and a series of epidural steroid injections was ordered. (Algone chart note, August 9, 2013).

7) On August 13, 2013, Employee saw Joyce Restad, DO. Dr. Restad noted:

[1] Dr. Restad was formerly Dr. Haley, but will be referred to as Dr. Restad throughout for clarity's sake.

> Mr. Weaver is here today accompanied by, and at the request of: Tracy Davis, Certified Case Manager. He presented 7/26/13, after experiencing an over use injury 7/23/13 at work…. He was referred to Algone Pain Center, they have scheduled a series of 3 epidural steroid injections. The case manager things this plan is aggressive, and requests a second opinion. The patient seems to be neutral about this….
>
> He was frustrated not knowing what was wrong with his back, now he is somewhat frustrated deciding a course of treatment….
>
> His work schedule involves doing hard labor in the remote bush for months at a time. I am not confident that he will be able to do this, although he is improved somewhat in the last 3 weeks. Recommendations on activity level would be appreciated. Of concern in addition to the stenosis, and the remote work environment, are the multiple falls that occurred after the injury. This has improved. I will agree to a second opinion. Contradictory to what I was informed earlier, light duty at the office is an option. I have recommended light duty, with no heavy lifting (more than 20#).

(Dr. Restad report, August 16, 2013).

8) On August 20, 2013, Dr. Restad referred Employee to Shawn Johnston, MD for evaluation. (Dr. Restad referral, August 20, 2013).

9) On August 21, 2013, Employee saw Dr. Johnston for an initial evaluation. Dr. Johnston recommended physical therapy and noted if Employee did not improve he would consider lumbar medial branch blocks. Dr. Johnston placed Employee on light duty work. (Dr. Johnston report, August 21, 2013).

10) On August 23, 2013, RN Davis issued a status report, which reads in part:

> Incidentally, Dr. Grissom personally contacted me on 08/22/13 to discuss the recommendations for the ESI injections. He stated that he recommends aggressive treatment in order to return Mr. Weaver back to work as soon as possible. I discussed my concern with Dr. Grissom that three ESI injections were scheduled in the absence of radicular pain. Dr. Grissom stated, "If those don't work that gives us good information. We schedule three in a row so as not to delay treatment if they work." Dr. Grissom stated "you can tell him where to go, that is fine." I reminded Dr. Grissom that I do not direct medical care and that it is entirely Mr. Weaver's choice where he chooses to treat. I further advised Dr. Grissom that Mr. Weaver has chosen to move forward with conservative treatment at this time and will not be moving forward with the ESI injections. Dr. Grissom verbalized understanding….
>
> By obtaining a second opinion with Dr. Johnston, we have saved approximately $15,000 towards the cost of ESI injections as recommended by Dr. Grissom's PA-C at only two weeks post-injury….

(RN Davis status report, August 23, 2013).

11) Employee underwent a series of physical therapy treatments, with minimal improvement. Employee later began a work-hardening program, which was not effective, and returned to physical therapy. (PT notes, September – December 2013).

12) On September 13, 2013, RN Davis sent an update to Lynn Palazzotto:

> He said he gets good relief for the afternoon after therapy. The "stretching" (traction) has really helped. By the next morning however, he feels as if he is back to square one. He does not feel as if the anti-inflammatory has been helpful. He has taken it consistently and only missed about one dose. I suggested he try going without it over the weekend and take note of any worsening of his symptoms. He stated he will try it and we will re-group on Monday.
>
> He stated that "absolutely" he is doing his home exercises every day.
>
> I am inclined to think that we are going to end up with an injection – but at least we have an appropriate diagnosis through Dr. Johnston.

(RN Davis email to L. Palazzotto, September 13, 2013).

13) On October 4, 2013, Dr. Johnston referred Employee to Thomas DeSalvo, DC, for lumbar traction (IDD) therapy, as physical therapy had not reduced Employee's pain. (Dr. Johnston report and referral, October 4, 2013).

14) On October 4, 2013, RN Davis sent an update to Lynn Palazzotto:

> Greg saw Dr. Johnston today in follow up. He is reporting that the traction in therapy has been the most helpful for him in alleviating his pain. With that being said, he arrived today looking VERY stiff. He says he has been under a lot of stress, worried about his job, worried about getting things done around his house before winter etc. We discussed (again) the relationship of stress and tension to tight muscles/ pain etc.
>
> Dr. Johnston told Greg that he feels all of his pain is muscular in nature. He wants him to have formal ID (intradiscal decompression distraction) at D.C. DeSalvo's office in Wasilla. He is a chiropractor. I told Greg under no certain terms is anything to be done other than the IDD and formal therapy….

(RN Davis email to L. Palazzotto, October 4, 2013)(emphasis in original).

15) On November 7, 2013, nurse case manager Tracy Davis, RN, emailed Employer's adjuster Lynn Palazzotto:

> Greg contacted me yesterday upset that he was released to full duty work. He stated that he does not think he can do full duty work and there "should have been better

> communication." I REMINDED Mr. Weaver that we discussed at length with him about entering into a work hardening program vs. trial return to regular duty work and he CHOSE to be released to full duty work….
>
> I personally contacted Excel yesterday and confirmed that they do have a [work hardening program] but it does not seem to be as structured with specific dates etc. for increasing hours. She stated that the patients attend five days per week and start out at one hour per day and increase as tolerated. I have relayed this information to Dr. Johnston's assistant and requested that if Dr. Johnston is still willing to write for the program that he outline specific parameters of the program… so that we do not run into a situation where is attending five days a week and then three months later he's only up to four or five hours per day.
>
> I will let you know what I find out once Dr. Johnston's assistant contacts me about my request.

(RN Davis email to L. Palazzotto, November 7, 2013)(emphasis in original).

16) On November 8, 2013, Dr. Johnston prescribed a work hardening program, specifying "2 hrs the first 2 wks, 4 hrs next 2 weeks, 6hrs next 2 weeks, 8 hrs last 2 weeks. Any ?s please call Dr. Johnston's office." (November 8, 2013).

17) On December 10, 2013, Dr. Johnson discontinued the work hardening program and recommended Employee resume physical therapy. (Dr. Johnston note to Excel Physical Therapy, December 10, 2013).

18) That same day, Dr. Johnston wrote a chart note:

> Greg has reported intolerance of the work hardening program at 2hrs a day, at this time he should discontinue the program. He may consider physical therapy or a steroid injection to address his pain complaints. Additionally it is recommended he have an IME.

(Dr. Johnston chart note, December 10, 2013).

19) On December 19, 2013, RN Davis sent Employee a letter:

> I have scheduled an Independent Medical Examination at the request of Lynn Palazzotto, Worker's Compensation Unit Supervisor with ASRC. The purpose of the evaluation is to formally assess your current complaints and disability related to your workers' compensation claim…. This is a mandatory appointment, so please make arrangements to attend as scheduled. This appointment has been made in compliance with Alaskan Statutes…. **Failure to attend may jeopardize future compensation benefits.**

(RN Davis letter to Employee, December 19, 2013)(emphasis in original).

20) On January 2, 2014, RN Davis emailed adjuster Lynn Palazzotto:

> Greg tells me that he is getting worse, not better. Has been attending PT (previously stated that this was more helpful than work hardening, but he is getting worse by his own report). Continues to deny leg pain or paresthesias. Pain remains concentrated in the low back and hips. States he did read the packet that he was given by Dr. Johnston, but still is not sure he wants to move forward with them. Stated that he "wants to see the oldest back doctor in town for the tried and true methods." I have advised Mr. Weaver that back injuries are difficult and stress can really play a role in getting better and making pain worse. States he is starting to sell personal items to pay his mortgage. When asked how the stress was at home (referring to wife) he stated that it is not getting any better. I didn't push the subject with him.
>
> He is most comfortable with waiting for the IME report before making any further treatment decisions.

(RN Davis email to L. Palazzotto, January 2, 2014).

21) On January 9, 2014, Employee underwent an employers' medical evaluation (EME) by Stephen Marble, MD. Dr. Marble diagnosed multilevel lumbar degenerative disc disease, greatest at L5-S1, preexisting the work injury. As no specific mechanism of injury was described, Dr. Marble opined any work event was symptomatic exacerbation of the preexisting disc disease. Dr. Marble opined the work injury is not the substantial cause of Employee's disability or need for medical treatment. (Dr. Marble EME report, January 9, 2014).

22) On January 30, 2014, Employer filed a controversion notice, denying all benefits, based on Dr. Marble's report. (Controversion Notice, January 24, 2014).

23) On February 3, 2014, RN Tracy Davis, nurse case manager, wrote to Dr. Johnston and asked him to comment on Dr. Marble's January 9, 2014 EME report. Dr. Johnston responded that he concurred with Dr. Marble's report in full. (RN Davis letter to Dr. Johnston, February 3, 2014).

11) On February 21, 2014, Employee filed a workers' compensation claim, seeking temporary total disability (TTD) benefits, temporary partial disability (TPD) benefits, permanent total disability benefits (PTD), finding of unfair or frivolous controversion, medical costs, transportation, interest, attorney's fees and costs, and a second independent medical evaluation (SIME). (Claim, February 19, 2014).

12) On March 10, 2014, Employer filed its answer to Employee's claim, denying all claimed benefits. (Answer, March 8, 2014).

13) On June 18, 2014, Dr. Restad issued a letter. The type-written portion reads:

> I evaluated Mr. Gregory Weaver on August 16, 2013 at the request of nurse case manager, Tracy Davis, RN. Mr. Weaver was accompanied by Tracy Davis, RN.

> At this evaluation, Tracy Davis, RN, stated that The Algone Center's recommendation for epidural steroid injections was too aggressive. She stated that physical therapy should be attempted first. She wanted a second opinion about the injections. She recommended Dr. Shawn Johnston for provide (sic) this second opinion. Pursuant to her request, I provided this referral to Dr. Johnston on August 20, 2013. Also, pursuant to RN Davis' request, I did not recommend the injections. Absent RN Davis' recommendations and direction, I would not have referred Mr. Weaver for a second opinion to Dr. Johnston.

Dr. Restad hand-wrote the following on the letter:

> Tracy Davis stated that "of course you're the doctor… But don't you think that's too aggressive?" Dr. Johnston has a more conservative approach. With my patient's permission, I requested a second opinion from Dr. Johnston.

(Dr. Restad letter, June 18, 2014).

14) On June 19, 2014, Employee filed his petition to exclude Dr. Marble's January 9, 2014 report on the basis Employer exceeded its one allowable change of physician. (Employee's Petition, June 17, 2014).

15) Employee testified about his course of medical treatment and his interactions with RN Davis. Employee first met RN Davis between his first visit with Dr. Restad and the referral to the Algone Center. RN Davis told him she was there to guide him and advise him and to delineate methods of care. At Algone they had recommended epidural injections, but RN Davis said injections cost $15,000.00 and "suggested we try something less expensive." She then made an appointment with Dr. Restad. She "dressed down" Dr. Restad and asked why she referred Employee for shots. Dr. Restad clarified she had referred Employee for pain management. RN Davis asked Dr. Restad for a referral to Dr. Johnston. Employee testified RN Davis had a doctor in mind and said he had a more conservative approach. Employee testified he learned "after the fact" RN Davis had already made an appointment with Dr. Johnston. Employee testified he was "not informed of my rights and I was unclear about what I was supposed to do." Employee contends RN Davis failed to tell him he did not have to see Dr. Johnston and failed to tell Dr. Restad she did not have to refer Employee to Dr. Johnston. Employee testified Dr. Restad was "caught off guard" and that RN Davis was "very unprofessional."

16) Employee testified RN Davis attended every appointment with Dr. Johnston and that RN Davis and Dr. Johnston "have a close relationship outside the office" and "would talk about personal stuff unrelated to work or medical treatment." Employee stated RN Davis would make

suggestions and Dr. Johnston would "go along with it." Employee learned he was being evaluated by Dr. Marble by a letter from MMI. Employee testified RN Davis called it a second opinion, and Employee thought it was another treating physician.

17) Employee testified he was fearful of the epidural injections and that he was concerned about possible infections and the side effects, but clarified he "was not terrified." He testified at his deposition he did not want the injections because he is fearful of a "needle near my spinal cord." Employee wished he had received the epidural injections "a lot earlier," but testified at hearing RN Davis did not force him not to have the injections. At some point Dr. Grissom called Employee and told him he would not have administered all three injections at once but would have spread them out, and the plan was not as aggressive as his PA had suggested. Employee testified at hearing RN Davis believed three injections only two weeks apart was aggressive. He further testified he "didn't know any better than to go along with Dr. Johnston's suggestions," and told him "that's fine." Employee testified he was "looking to" RN Davis and felt her primary role was to educate him. He felt he was being led in certain directions and RN Davis and Dr. Johnston were "orchestrating my care." Employee independently researched medical treatment options on the internet and repeatedly told RN Davis he "didn't know what to do," but he never told her he disagreed with her suggestions. Nonetheless, he believes "absolutely 100% without a doubt" RN Davis "steered my medical care." (Employee).

18) RN Davis testified about her work as a nurse case manager and her involvement with Employee's medical care. She earned her B.A. in nursing in 1986 and worked as a hospital nurse for ten years. She then became a nurse case manager. She described her position as one of an objective third party helping facilitate medical care in a timely and appropriate manner to help employees get better and return to work. She educates injured workers on their diagnosis and treatment options. She never tells injured works what medical care they have to have and believes that would be absolutely inappropriate. She views herself as a "patient advocate" to help people get better. She is employed by the employer and she has "to keep costs in mind," but "you have to spend money to get care and you can't always be thinking about the costs." She believes when treating orthopedic injuries, patients and their doctors should choose conservative treatment first, and when that fails go to more aggressive therapy.

19) When RN Davis first met with Employee she discussed in detail his social history, injury, previous surgical treatment and medical history. Employee told her Dr. Restad had referred him to

Dr. Grissom's PA and injections were scheduled. Employee told her he was "very worried and concerned" about the injections. I suggested we meet with Dr. Restad to discuss his concerns and consider a second opinion "because he needs to have choices." At the care conference, RN Davis asked Dr. Restad if a second opinion was warranted, and "she and Employee thought that was a good idea." RN Davis asked Dr. Restad if she knew Dr. Johnston and she said she liked him and wrote the referral. Employee did not object at any time. RN Davis testified Employee "looked to me and wanted my advice." She testified "absolutely not do I feel I can tell a doctor what to do, but my job is to question and clarify and provide information so the doctor and patient can make decisions." She always tells patients "it is your choice what you do with your body."

20) Employee initially requested to be released to work, but then changed his mind and elected to participate in a work hardening program. The program was not effective, as Employee found it too painful, and Dr. Johnston suggested an independent evaluation "to see if there was something we were missing." RN Davis discussed the EME with Employee. She explained to him the insurer has the right to an opinion from a doctor of their choice, as she explains to every patient when she schedules an EME.

21) When asked about her relationship with Dr. Johnston, RN Davis stated, "I have been in this business for 20 years. Dr. Johnston and I have come into contact professionally over the years. I have suggested him as a conservative doctor over the years. But I don't tell him what to do."

22) When asked about the epidural steroid injections, RN Davis testified if Employee had still wanted the injections, he could have had them, but Employee was fearful and told her he wanted to see "the oldest and most experienced back doctor in town." RN Davis does not believe she directed Employee's medical care. However, she testified Employee was not an active participant in his treatment, and was unsure what he was supposed to do. He looked to her for advice and I told him "I can't tell you what to do, but these are your choices." (Davis).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
>
> (1) This chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. . . .

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-534 (Alaska 1987).

> **AS 23.30.095. Medical Treatments, Services, and Examinations.**
> (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician to provide all medical and related benefits. The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians. Upon procuring the services of a physician, the injured employee shall give proper notification of the selection to the employer within a reasonable time after first being treated. Notice of a change in the attending physician shall be given before the change.
> …
> (e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. The employer may not make more than one change in the employer's choice of a physician or surgeon without the written consent of the employee. Referral to a specialist by the employer's physician is not considered a change in physicians. An examination requested by the employer not less than 14 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board. Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination. Facts relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to

> recover damages against an employer who is subject to the compensation provisions of this chapter….
> …
> (i) Interference by a person with the selection by an injured employee of an authorized physician to treat the employee, or the improper influencing or attempt by a person to influence a medical opinion of a physician who has treated or examined an injured employee is a misdemeanor.
> …

In *McCall v. BP America, Inc.,* AWCB Decision No. 11-0124 (August 22, 2011), the board noted:

> Medical management is a valuable tool in the workers' compensation arena. It serves the dual function of assisting employees with managing complex medical conditions and reins in costs of treatment for employers. It is not uncommon for these companies to have physicians involved in the formation, management, and operations.

Nonetheless, *McCall* held the physician hired by the employer to serve as a "medical case manager" in that case was an EME physician for purposes of AS 23.30.095(e) because he was brought into the case to "provide recommendations for [the employee's] further care." While *McCall* was careful not to call "any medical management company with a physician on the payroll" an EME, it held when the medical case manager referred the employee to a specific treatment, "a line was crossed where the services provided by [the medical management company] were no longer medical management but rather an attempt to steer Employee's medical care."

> **8 AAC 45.082. Medical treatment** ....
> ...
> (c) If, after a hearing, the board finds a party made an unlawful change of physician in violation of AS 23.30.095(a) or (e) or this section, the board will not consider the reports, opinions, or testimony of the physician in any form, in any proceeding, or for any purpose. If, after a hearing, the board finds an employee made an unlawful change of physician, the board may refuse to order payment by the employer.

ANALYSIS

Should Dr. Marble's January 9, 2014 report be excluded because Employer exceeded its one allowable change of physician?

Employee contends Employer has exceeded its one allowable change of physician, per AS 23.30.095(e). Specifically, Employee contends Employer's first selection was RN Tracy Davis, who Employer hired to provide nurse case management services to Employee. Employee contends Employer's second selection was Dr. Johnston, whom Employee contends RN Davis selected without a written referral. Employee contends Employer made an excessive change when it selected Dr. Marble, who completed an EME on January 9, 2014.

Employee contends RN Davis should be considered an employer physician and count toward Employer's one allowable change of physician. RN Davis credibly testified her role as a nurse case manager in workers' compensation claims is as an objective third party helping facilitate medical care in a timely and appropriate manner to help employees get better and return to work. She educates injured workers on their diagnosis and treatment options. Employee testified RN Davis told him she was there to "guide him and advise him and to delineate methods of care." He further testified he was "looking to" RN Davis and felt her primary role was to educate him. As a nurse case manager, RN Davis reports her interactions with patients and their providers to the adjuster handling each employee's claim. Review of RN Davis' status reports and case notes, as well as testimony at hearing reveals she acted in this capacity in Employee's case. She kept in regular telephone contact with Employee and helped him to coordinate appointments with his providers. She accompanied Employee to appointments and asked clarifying questions of his providers. She scheduled an EME appointment as directed by the adjuster and provided medical opinions to the adjuster concerning Employee's care.

In her capacity as a nurse case manager, RN Davis walks a fine line, balancing the sometimes competing interests of cost containment and patient advocacy. The panel takes note of two instances in particular in which RN Davis came dangerously close to directing Employee's medical treatment. In her September 13, 2013 note to the adjuster, RN Davis mentioned she had suggested Employee stop taking his anti-inflammatory medications over the weekend to gauge his symptoms. Again, in her October 4, 2013 update, RN Davis noted she informed Employee "under no certain terms is anything to be done other than the IDD and formal therapy" when he saw Dr. DeSalvo. Nonetheless, assessing the totality of the evidence in the record and presented at hearing, the panel does not find RN Davis attempted to persuade Employee or his treating physicians to undergo a

particular treatment regimen, or to "steer Employee's medical care." She made suggestions, which Employee and his treating providers sometimes accepted. Employee himself testified he was unsure about which course of treatment to take and that he looked to RN Davis for guidance. He was afraid of the epidural steroid injections and never objected to either RN Davis' or Dr. Johnston's recommendations until Dr. Johnston reviewed and concurred with Dr. Marble's report. RN Davis did not improperly influence Employee's treating physician, nor did she steer Employee's medical care. RN Davis was not an EME physician and does not count toward Employer's one allowable change of physician.

Likewise, Dr. Johnston is not an employer-selected physician. Both RN Davis and Employee testified neither RN Davis nor the adjuster forced Employee to treat with Dr. Johnston, and while Dr. Restad wrote in her June 2014 letter she would not have referred Employee to Dr. Johnston absent RN Davis' suggestion, there is no evidence Dr. Restad was pressured to make the referral or that Employee objected to the referral at any time. In fact, the evidence shows Employee never objected to Dr. Johnston's treatment in any way until he agreed with Dr. Marble's January 9, 2014 report.

Dr. Marble conducted a properly noticed EME, which Employee attended on January 9, 2014. Dr. Marble is considered Employer's first physician selection per AS 23.30.095(e). Employer has not yet used its one allowable change of physician. Employer has not violated AS 3.30.095(e). Dr. Marble's report will remain in the record.

CONCLUSION OF LAW

Employer has not exceeded its one allowable change of physician. Dr. Marble's January 9, 2014 report will not be excluded.

ORDER

Employee's June 17, 2014 Petition to exclude Dr. Marble's January 9, 2014 report is DENIED.

Dated in Fairbanks, Alaska on December 2, 2014.

ALASKA WORKERS' COMPENSATION BOARD

/s/_____
Amanda Eklund
Designated Chair

/s/_____
Sarah Lefebvre, Member

/s/_____
Lake Williams, Member

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.

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.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of GREG WEAVER, Employee/applicant v. ARCTEC ALASKA, and ARCTIC SLOPE REGIONAL CORPORATION, Insurer/defendants; Case No. 201320030; dated and filed in the office of the Alaska Workers' Compensation Board in Fairbanks, Alaska, and served upon the parties on December 2, 2014.

/s/_____
Darren Lawson
Office Assistant II