ALASKA WORKERS' COMPENSATION BOARD

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

GREGORY THOMAS GUERRISSI, Employee, Claimant, v. STATE OF ALASKA, DEPARTMENT TRANSPORTATION Self Insured Employer, Defendant.	INTERLOCUTORY DECISION AND ORDER ON RECONSIDERATION AWCB Case No. 201902745 AWCB Decision No. 21-0024 Filed with AWCB Anchorage, Alaska on March 16, 2021.

Employer's December 14, 2020 petition for reconsideration was heard on the written record on February 17, 2021 in Anchorage, AK, a date selected on January 22, 2021. Attorney Keenan Powell represented Gregory Guerrissi (Employee). Assistant Attorney General Adam Franklin represented the State of Alaska, Department of Transportation (Employer). A second independent medical evaluation (SIME) was ordered in *Guerrissi v. State of Alaska*, AWCB Decision No. 20-0013 (March 16, 2020) (*Guerrissi I*). *Guerrissi v. State of Alaska*, AWCB Decision No. 20-0109, (December 4, 2020) (Guerrissi II) granted in part and denied in part Employee's petition to strike medical records unrelated to his work injury from the SIME binders. *Guerrissi II* awarded Employee partial attorney fees based on his prevailing in part on his petition to strike medical records. The record closed at the hearing's conclusion on February 17, 2021.

ISSUE

Employer contends the attorney fee award in *Guerrissi II* should be reconsidered because the Board failed to follow the Alaska Supreme Court decisions in *Adamson v. University of Alaska*, 819 P.2d 886 (Alaska 1991), *Childs v. Copper Valley Electrical Association*, 860 P.2d 1184 (Alaska 1993) and *Sulkosky v. Morrison-Knudsen*, 919 P.2d 158 (Alaska 1996).

Employee contends Employer's argument that attorney fees may only be awarded following a final decision on a claim is not supported by statute, regulation or case law.

Should Guerrissi II's attorney fees award be reconsidered?

FINDINGS OF FACT

All facts and factual conclusions from *Guerrissi II* are incorporated herein by reference. A preponderance of the evidence establishes the following additional facts and factual conclusions:

1) *Guerrissi II* was issued December 4, 2020, making the following order concerning attorney fees:

> 4) Employer shall pay $4,000.00 in attorney fees.

(*Guerrissi II* at 20).

2) On December 14, 2020, Employer timely filed a reconsideration petition for only *Guerrissi II* order four above.

3) On December 31, 2020 *Guerrissi v. State of Alaska*, AWCB Decision No. 20-0120 (*Guerrissi III*) was issued granting reconsideration of *Guerrissi II* on the attorney fee issue only and directing the parties to file memorandums presenting their positions no later than January 22, 2021. (*Guerrissi III* at 4.)

PRINCIPLES OF LAW

AS 01.05.006. Adoption of Alaska Statutes; notes, headings and references not law.

> The bulk formal revision of the laws of Alaska which was authorized by AS 24.20.070 and prepared under the direction of the Alaska Legislative Council and published by The Michie Company, legal publishers, of Charlottesville, Virginia, and titled "Alaska Statutes," as set out in the 47 titles of the Alaska Statutes, but not including the table of contents, indexes, citations to Alaska Compiled Laws Annotated, 1949, and session laws, chapter, article, section, subsection, and paragraph headings, annotations, collateral references, notes, and decisions, is adopted and enacted as the general and permanent law of Alaska.

In *DeNuptiis v. Unocal Corp*., 63 P.3d 272 (Alaska 2003) the Court found the Board had erred in applying a clear and convincing standard of proof to an employer's claim for reimbursement of benefits based on fraud under AS 23.30.250(b), which is entitled "[P]enalties for fraudulent or misleading acts; damages in civil actions." The Court stated the standard of proof in administrative hearings is the preponderance of the evidence, and, citing AS 01.05.006, although the caption of AS 23.30.250(b) mentions "penalties," captions are not part of the statute and no penalties are in fact assessed. The only remedy under AS 23.30.250(b) is restitution and reimbursement. (Id. at 280.)

> **AS 23.30.008. Powers and duties of the commission**. (a) The commission shall be the exclusive and final authority for the hearing and determination of all questions of law and fact arising under this chapter in those matters that have been appealed to the commission, except for an appeal to the Alaska Supreme Court…. 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.
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> **AS 23.30.108. Prehearings on Discovery Matters; Objections to Requests for Release of Information; Sanctions for Noncompliance.**
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> (d) If the employee files a petition seeking a protective order to recover medical and rehabilitation information that has been provided but is not related to the employee's injury, and the board or the board's designee grants the protective order, the board or the board's designee granting the protective order shall direct the division, the board, the commission, and the parties to return to the employee, as soon as practicable following the issuance of the protective order, all medical

> and rehabilitation information, including copies, in their possession that is unrelated to the employee's injury under the protective order.
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> **AS 23.30.145. Attorney fees.**
> (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.
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> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

The board may base its decision on not only direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

Wise Mechanical Contractors v. Bignell, 718 P.2d 971, 974-75 (Alaska 1986), held attorney fees should be reasonable and fully compensatory, considering the contingency nature of representing injured workers, in order to ensure adequate representation. In *Bignell*, the Court required consideration of a "contingency factor" in awarding fees to employees' attorneys in workers' compensation cases, recognizing attorneys only receive fee awards when they prevail on a claim. *Id*. at 973. The Court instructed the Board to consider the nature, length, and complexity of

services performed, the resistance of the employer, and the benefits resulting from the services obtained, when determining reasonable attorney fees for the successful prosecution of a claim. *Id*. at 973, 975.

Rusch v. Southeast Alaska Regional Health Consortium, 453 P.3d 784 (Alaska 2019), stated the AS 23.30.120 presumption does not apply to attorney fee amounts or reasonableness. The Court emphasized the importance of fully compensatory fees and the concern for encouraging an employee bar. The Court found the Board should consider "the benefits resulting from the services" of the attorney in awarding fees. *Id*. at 797. It further held the Board must consider all factors set out in Alaska Rule of Professional Conduct 1.5(a) when determining a reasonable attorney fee and either make findings related to each factor or explain why that factor is not relevant. *Rusch* held attorney fee reasonableness is not a factual finding but is a discretionary exercise.

In *Adamson v. University of Alaska*, 819 P.2d 886 (Alaska 1991), the employee's attorney was successful in obtaining a second hearing before the Board, which was lost on the merits. The employee was ultimately successful on appeal to the Supreme Court. The Court denied employee's appeal of the Board denial of her claim for attorney fees for her success in obtaining the second hearing and interpreted AS 23.30.145(b) to mean the employee must be successful on the claim itself, not on the collateral issue of obtaining a second hearing. The Court did remand the attorney fees issue because the employee's appeal to the Supreme Court of her claim for chiropractic care was successful. *Id*.

In *Childs v. Copper Valley Elec. Ass'n*, 860 P.2d 1184 (Alaska 1993), the employee sought workers' compensation benefits for a breathing disorder caused by work-related smoke inhalation. The employer controverted temporary total disability benefits (TTD) and the employee had to file a claim to recover those benefits. Although the employer voluntarily paid the TTD after the employee filed the claim, the Court found the payment the equivalent of a Board award because the efforts of the employee's counsel were instrumental in inducing it. The Court thus determined the Board should have awarded attorney fees on the amount of the voluntary payment. However, the employee also argued he should be awarded full attorney fees

on his whole claim as he prevailed before the superior court on the question of assessing a penalty on belated TTD payments, even though he lost on most of his other issues. The Court found AS 23.30.145(b) directs a fee award to a "successful" claimant and employee must succeed on the claim itself and not the collateral issue of a penalty.

In *Sulkosky v. Morrison-Knudson*, 919 P.2d 158 (Alaska 1996), the employee sought review of a Board order modifying his status from permanently totally disabled to permanently partially disabled and denying his request for attorney fees. Sulkosky was successful in obtaining the release of surveillance materials before the hearing, but did not prevail on his continued entitlement to PTD. The subject of the surveillance materials was the employee's continued entitlement to PTD. The Court found Sulkosky had only prevailed on an interlocutory discovery dispute and was not entitled to attorney fees.

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Alaska Supreme Court discussed how and under which statute attorney's fees may be awarded in workers' compensation cases. A controversion (actual or in fact) is required for the Board to award fees under AS 23.30.145(a). "In order for an employer to be liable for attorney's fees under AS 23.30.145(a), it must take some action in opposition to the employee's claim after the claim is filed." *Id*. at 152. "The first element for an award of fees under subsection .145(b) is that the employer "otherwise resisted payment of benefits." *Id*. at 153. The second element is that the claimant "employed an attorney in the successful prosecution of the claim." *Id*.

In *Cavitt v. D&D Services*, AWCAC Decision No. 17-0109 (May 4, 2018), Cavitt appealed the Board's decision, which had awarded reduced fees of $500.00 as employee had only prevailed on his claim for interest and a Board order he was entitled to TTD until medically stable. He lost on his claims for unfair and frivolous controversion, penalty and a compensation rate adjustment. On appeal, the Alaska Workers' Compensation Appeals Commission (Commission) for the most part affirmed the Board's decision, but also decided the Board had awarded insufficient attorney fees. The Commission found the Board had undervalued the overall services of the attorney and the importance of the TTD order and remanded the attorney fee issue to the Board, stating additional fees were owed for prevailing on the TTD issue. The Commission awarded Cavitt

$6,000.00 in attorney fees for winning on a significant issue on appeal and finding "an order of the Board, even one without providing any additional tangible benefits, has significant value," which justifies an attorney fee award. *Id*. at 9.

In *D&D Services v. Cavitt*, 444 P.3d 165 (Alaska 2019), the employer appealed the Commission's award of attorney fees on the basis the award was too much. The employer contended the employee had won only on his claim for interest and request for a Board order he was entitled to TTD until medically stable, but lost every other issue on his Commission appeal. The Court found the employee had won on "a significant issue" and was thus a successful party. *Id*. at 170.

The Commission has awarded attorney fees on a dispute concerning an SIME petition. *Gillion v. North West Co. Int.l*, AWCAC Decision No. 253 (August 28, 2018). Both Gillion and the employer had agreed an SIME was necessary, but did not agree on the SIME form. Resolution of the dispute was necessary before the SIME could go forward. The Board eventually decided two separate forms were the equivalent of a single form, but incorrectly decided Gillion was not entitled to attorney fees as he did not prevail on getting his requested language included on the form. The Commission found Gillion did prevail when the Board ordered the SIME process to move forward, which could not have taken place without Gillion seeking a Board decision. Therefore it found Gillion should be awarded attorney fees for the work in obtaining the ordered SIME. *Id*. at 11.

The Board has awarded attorney fees in cases where an employer unsuccessfully resisted an SIME. *See, e.g., Stepanoff v. Bristol Bay Native Corp.*, AWCB Decision No. 09-0041 (February 26, 2009); Fees are also awarded when an employee is successful in requests for review of reemployment benefit eligibility cases because the preservation of reemployment benefits over the employer's resistance, is a benefit. *See Carroll v. City of Fort Yukon*, Dec. 12-0176 (October 8, 2012); and *Bruketta v. Encore Mechanical, Inc*., Dec. 19-0096 (September 23, 2019).

Trans-World Investments v. Drobny, 554 P.2d 1148 (Alaska 1976) held that filing a personal injury lawsuit waived physician-patient privilege only to health and medical records relevant to the matters

the plaintiff puts at issue. *Langdon v. Champion*, 745 P.2d 1371 (Alaska 1987) held filing a personal injury lawsuit not only waived physician-patient privilege, but mandated a plaintiff allow *ex parte* contact between defense counsel and the treating physician. *Id*.

However, *Langdon* was overruled in *Harrold-Jones v. Drury*, 422 P.3d 568 (Alaska 2018). *Harrold-Jones* considered how the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), which established medical privacy standards, affected Alaska personal injury case law allowing a defendant *ex parte* contact with a plaintiff's doctors as a method of informal discovery. The Court concluded although federal law did not preempt existing Alaska case law, the Court should overrule its case law because "its foundations have been eroded by a cultural shift in views on medical privacy and new federal procedural requirements undermining the use of *ex parte* contact as an informal discovery measure." *Id*. at 569. *Harrold-Jones* held that without voluntary agreement a defendant may not make *ex parte* contact with a plaintiff's treating physicians without a court order, which should only be issued in extraordinary circumstances. *Id*.

The Commission has also recognized the public policy of increased protection of an individual's privacy rights. In *Home Depot v. James Holt*, AWCAC Dec. No. 261 (May 28, 2019), the employee, relying on *Harrold-Jones*, filed a petition to prevent the employer from conducting *ex parte* communication with his treating physician. The petition was denied by the designee, but this decision was reversed and the protective order granted by the Board. When the employer petitioned for review, the Commission, after considering HIPAA, the treatment of the employee's privacy rights under the Act, and the *Harrold-Jones* decision, ruled once a controversion is filed, the employee is entitled to protection and *ex parte* communication with the employee's treating physician would no longer be allowed. *Id*. at 11. In *Millar v. Young Life*, AWCAC Dec. No. 281 (June 3, 2020), the employee sought a compensation rate adjustment. When the employer sought *ex parte* medical releases, the employee filed a petition against signing those releases. When the Board denied the petition on the basis the employer had not controverted benefits and the claim only involved a compensation rate adjustment, so that the Commission decision in *Home Depot v. James Holt* did not apply, the employee filed a petition for review. The Commission reversed the Board's decision stating although the employer's

controversion addressed only the compensation rate issue, it still placed the matter into litigation. The Commission also questioned why the employer would need "essentially unfettered" access to the employee's physicians to defend a claim for a compensation rate adjustment. *Millar* at 4.

> **AS 44.62.540. Reconsideration.**
> (a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. To be considered by the agency, a petition for reconsideration must be filed with the agency within 15 days after delivery or mailing of the decision. The power to order reconsideration expires 30 days after the delivery or mailing of a decision to the respondent. If no action is taken on a petition within he time allowed for ordering reconsideration, the petition is considered denied.

ANALYSIS

Should Guerrissi II's attorney fees award be reconsidered?

To decide this issue, six sub-issues must first be analyzed. First, whether AS 23.30.145 prohibits attorney fee awards when an employee prevails on an interlocutory issue. Second, whether any Alaska Supreme Court precedent bars an award of attorney fees when an employee prevails on an interlocutory issue. Third, whether a petition for an SIME is a "collateral issue" to Employee's claim. Fourth, whether *Guerrssi II* involved a discovery dispute. Fifth, the analysis will examine if there is precedent to award attorney fees for prevailing in an SIME dispute. Finally, whether protection of an employee's right to privacy is a benefit will be analyzed.

a) Does AS 23.30.145(b) prohibit the attorney fee award in an interlocutory decision?

AS 23.30.045(b) provides "if the employee has employed an attorney in the successful prosecution of the claim, the board shall make an award of reasonable attorney fees." While Employer contends the plain language of this statute does not allow an attorney fee award in an interlocutory decision, Employee correctly maintains there is nothing in the statute that requires a final decision before the board's order of an attorney fee award. Successful prosecution of a claim can include many disputes prior to reaching a decision on a claim's merits. *Rogers & Babler.*

b) Is the attorney fee award in *Guerrissi II* prohibited by the Supreme Court case law in *Adamson*, *Childs*, or *Sulkosky*?

Employer contends *Adamson*, *Childs* and *Sulkosky* prevent the award of attorney fees in interlocutory decisions. However, Employee contends each of these cases is distinguishable from the instant case, as none of them holds an award of fees can only be made after a final decision.

The Court stated the language in AS 23.30.145(b) made it clear the employee must be successful on the claim itself, not a collateral issue. *Adamson* at 895. In *Adamson*, the employee was successful in obtaining a hearing. However, the main subject of the case was new benefits, which he lost on the merits. The Court found he was not entitled to fees based on his success in obtaining the hearing, which was a collateral issue. Obtaining the hearing was secondary to obtaining the new benefits and therefore "collateral," which is defined as "a question not directly connected with the matter in dispute." Blacks Law Dictionary, 11th ed. 2019, or "accompanying, auxiliary, additional, secondary, or aside from the main subject." Webster's Unabridged Dictionary, Second Edition, copyright 2001. *Adamson* did not discuss interlocutory awards. Adamson had attempted to parse out fees associated with obtaining a hearing from the hearing itself, whereas AS 23.30.145(b) authorizes an award for a prosecution that results in success.

In *Childs*, the Court held the employee was not entitled to attorney fees on appeal where although he prevailed on the issues of penalty and interest, he lost on TTD and medical benefits. The instant case is distinguishable; *Childs* involved an appeal in which the bulk of issues were lost. Childs was not an order addressing fees in an interlocutory decision. In addition *Childs* held an award of penalties and interest was "collateral" to the main case, and therefore did not warrant an attorney fee award. *Id*.

In *Sulkosky* the employee won a discovery dispute. He was successful in obtaining surveillance videos which were evidence in his disability claim. However, he lost his claim for disability and the attorney fee award at issue was following a final hearing on the merits, not an interlocutory issue. *Id*. Although the Court stated the employee prevailed on an interlocutory discovery issue, obtaining the surveillance videos, he lost on the merits of his case.

In *Sulkosky*, as in *Adamson*, the employee attempted to parse out a procedure inherent in prosecuting his claim, obtaining discovery. A petition to protect Guerrissi's privacy rights is not an incidental benefit to his claim and cannot be prosecuted in the claim procedure. It requires a separate petition and is a separate action. In addition, the discovery dispute in *Sulkosky* did not involve the protection of the employee's valuable privacy rights.

c) Is a petition for an SIME a "collateral issue" in an employee's claim?

An SIME is a separate proceeding from an employee's claim, and not a procedure that needs to be accomplished in every claim. This is demonstrated by the statutes and regulations, which are particular to it and separate from a claim. Therefore the successful prosecution of an SIME petition is not a "collateral issue," but a separate proceeding for which an employee is entitled to payment of attorney fees. *Gillion.*

d) Did *Guerirssi II* involve a discovery dispute?

Employer and Employee disagree on the nature of the dispute addressed in *Guerrissi II.* Employer contends it was a discovery dispute and Employee contends it did not involve a discovery dispute. The protection of Employee's privacy rights is not incidental or secondary to his claim and a petition to strike cannot be prosecuted in the claim procedure. Protecting privacy rights requires a separate petition, which is prosecuted in a separate action. Although *Guerrissi II* relied on AS 23.30.108(d) to strike the irrelevant medical records from the SIME binder, that does not make the dispute a discovery dispute. AS 01.05.006; *DeNupitis*. The protections offered in AS 23.30.108(d), are contained in this statute section because it is typically through the discovery process that irrelevant records are obtained. *Rogers & Babler.* Employee prevailed, over Employer's resistance, on his petition to protect the privacy of his medical records irrelevant to his work injury, thereby receiving a valuable benefit.

Furthermore, *Guerrissi II*, since it involved a dispute concerning the medical records to be included in the SIME binders, can be construed as an SIME dispute.

e) Is there precedent that supports an attorney fee award in an SIME dispute?

There is case law which does support an attorney fee award in an SIME dispute. The Commission's decisions establish precedent that must be followed. AS 23.30.008.

In *Gillion v. the North West Company*, AWCAC Dec. No. 253 (August 28, 2018), the employee had obtained a Board order to proceed with the SIME despite the fact the parties had not signed the same form. However, the Board declined to award fees. The Commission held the employee had prevailed by obtaining an order to proceed with the SIME, should be awarded fees and remanded to the Board. *Id*. The *Gillion* case is similar to the instant case. In *Guerrissi II*, Employee had already obtained a Board order for an SIME against Employer's opposition, but a dispute arose over the records contained in the SIME binder. Employee filed a petition to strike records unrelated to the work injury to protect Employee's right to privacy. Employer opposed the petition, but Employee prevailed at hearing, his privacy rights were protected and the SIME was ordered to proceed with the irrelevant records removed from the SIME binders. *Gillion* establishes the precedent Employee is entitled to an award of fees for successful prosecution of an SIME dispute. *Gillion; Harnish*.

f) Is protection of an employee's privacy rights a benefit?

Employer contends Employee did not receive any benefit from the successful prosecution of his petition to remove irrelevant medical records from the SIME binders. Employee contends the protection of his right to privacy is not a discovery issue, but a valuable, albeit intangible, benefit. Intangible benefits which support an award of fees include: 1) Obtaining a Board order for an SIME when employer refused to sign the SIME form, thus moving the case along. *Gillion.* 2) Obtaining a Board order for ongoing TTD. *Cavitt*. 3) Successful pursuit of fees. *D&D Services*. And 4) preservation of reemployment benefits. *Bruketta*.

An order of the Board, even one not providing any additional tangible benefits, may have significant value which justifies an attorney fee award. *Cavitt* at 9. A patient's right to privacy in medical records not related to his injury has long been recognized in Alaska. In 1976, the Court held filing a personal injury lawsuit waived the physician-patient privilege only to health

and medical records relevant to the matters the plaintiff put at issue. *Drobny*. In 1987, the Court held the filing of a personal injury lawsuit not only waived physician-patient privilege but also mandated a plaintiff allow *ex parte* contact between defense counsel and the treating physician. *Langdon*. However, an individual's right to privacy in his medical records has received increased recognition and protection in recent years. In 2010, with the enactment of AS 23.30.108(d) and (e), an employee was provided the right to petition to remove medical or rehabilitation information that has been provided to the Board but is not related to the employee's injury. In 2018, the Court held the passage of HIPAA "embodied a cultural shift in how medical privacy is viewed and has created a new procedural framework for sharing medical information in litigation." *Harrold-Jones* at 575. Because Congress's enactment of HIPAA constituted changed conditions, the Court overruled its prior decision in *Langdon*, which had allowed general approval of defense *ex parte* contacts with a plaintiff's treating physician. The Court also noted other courts' views that *ex parte* contact undermined the fiduciary relationship between a treating physician and the patient. *Id*. at 577. *Harrold-Jones* held absent an agreement between the parties, medical discovery should be through formal discovery rather than *ex parte* contact. *Id*.

Following the *Harrold-Jones* decision, in 2019 the Commission also recognized the public policy of increased protection of an individual's privacy rights. Once a controversion is filed in a workers' compensation case, the employer may not have *ex parte* contact with the employee's treating physician without prior notice to the employee, giving the employee a chance to object. *Home Depot v. James Holt.* In 2020 the Commission found the employer's controversion did not have to be a controversion of medical benefits, but that a controversion on any issue placed the matter in litigation and required prior notice to the employee of the employer's intent to have *ex parte* contact with the treating physician. *Millar* at 4.

The Alaska State legislature, the Court and the Commission have all recognized the value, and importance of an individual's right to privacy in his or her medical information and have increased the protection of those rights. A successful petition to protect an employee's right to privacy in medical records unrelated to his work injury is a significant issue and results in a valuable benefit to the employee.

Neither statute nor case law prohibits the attorney fee award in *Guerrissi II*. However, there is precedent for an attorney fee award in an SIME dispute where employee's attorney was successful in obtaining an order causing an SIME to move forward. *Gillion*. Further, the Alaska Supreme Court, Commission and Board case law all have expanded the definition of the benefits to an employee which will justify an attorney fee award. *Cavitt; D&D Services; Gillion; Bruketta*. The importance of fully compensatory fees and the concern for encouraging an employee bar and has been emphasized and when fees are awarded under AS 23.30.145(b) "the benefits resulting from the services" must be considered. *Rusch*. The importance and value of protecting an individual's right to privacy in medical records has evolved, and been increasingly recognized, valued and addressed. AS 23.30.108(d) and (e); *Harrold-Jones; Home Depot v. James Holt; Millar.*

The successful prosecution of the petition to protect Employee's right to privacy in his medical records unrelated to his work injury resulted in a valuable order on a significant issue and conferred an important benefit to him. Employee's petition to protect his privacy rights, whether construed as an SIME dispute or a separate petition and a separate action from his claim, is not a collateral issue in his claim. Employee's attorney is entitled to an award of attorney fees on her successful prosecution of the petition and *Guerrissi II* will not be reconsidered.

CONCLUSIONS OF LAW

1) *Guerrissi II*'s attorney fee award should not be reconsidered.

ORDER

1) Employer's petition for reconsideration of the attorney fees awarded in *Guerrissi II* is denied.
2) Employer shall pay Employee's attorney $4,000.00 in attorney fees, which will be due on the date this decision and order is issued. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

Dated in Anchorage, Alaska on March 16, 2021.

ALASKA WORKERS' COMPENSATION BOARD

/s/_____
Judith DeMarsh, Designated Chair

/s/_____
Sara Faulkner, Member

/s/_____
Nancy Shaw, 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 GREGORY THOMAS GUERRISSI, employee / claimant v. STATE OF ALASKA, self-insured employer / defendant; Case No. 201902745; 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 March 16, 2021.

/s/_____
Nenita Farmer, Office Assistant