Alaska Workers' Compensation Appeals Commission

John P. Shannon, Jr., D.C., Appellant, vs. Peter Nelson and State of Alaska, Department of Military and Veterans' Affairs, Appellees.	Final Decision Decision No. 311 August 7, 2025 AWCAC Appeal No. 23-002 AWCB Decision Nos. 23-0058, 24-0039 AWCB Case No. 201509876

Decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 23-0058, issued at Anchorage, Alaska, on October 20, 2023, by southcentral panel members Kyle D. Reding, Chair; Pam Cline, Member for Labor; and Sara Faulkner, Member for Industry; and Final Decision and Order No. 24-0039, issued at Anchorage, Alaska, on July 8, 2024, by southcentral panel members Kyle D. Reding, Chair; and Randy Beltz, Member for Industry.

Appearances: John P. Shannon, Jr., D.C., self-represented appellant; Peter Nelson, non-participating self-represented appellee; Treg R. Taylor, Attorney General, and Justin A. Tapp, Assistant Attorney General, for appellee, State of Alaska, Department of Military and Veterans' Affairs.

Commission proceedings: Appeal filed November 15, 2023; appeal amended July 26, 2024; briefing completed April 14, 2025; oral argument held on May 12, 2025.

Commissioners: Amy M. Steele, Nancy Shaw, Andrew M. Hemenway, Chair.

By: Andrew M. Hemenway, Chair.

1. Introduction.

Peter Nelson injured his neck while working as an employee of the State of Alaska, Department of Military and Veterans' Affairs (DMVA).[1] Mr. Nelson treated with appellant, John P. Shannon, Jr., D.C., and DMVA denied payment for Dr. Shannon's medical service.

[1] R. 57.

Dr. Shannon filed workers' compensation claims for unpaid medical costs relating to an injection of medication and multiple massage treatments.

The Board denied Dr. Shannon's claims, finding that the injection was not reasonable and necessary medical treatment, and that Dr. Shannon had not filed a treatment plan for the massage treatments.[2] Dr. Shannon timely appealed the Board's decisions to the Alaska Workers' Compensation Appeals Commission (Commission),[3] arguing that DMVA failed to file a timely controversion of the injection and that the treatment was appropriate, and that the massage treatment should have been paid because DMVA had entered into a settlement agreement with Mr. Nelson without notice to Dr. Shannon.

Because there is substantial evidence to support the Board's finding that the injection was not reasonable and necessary medical treatment, DMVA's alleged failure to file a timely controversion of that treatment is immaterial: no payment for the injection is due. Because there is substantial evidence to support the Board's finding that Dr. Shannon did not prepare a treatment plan, and Dr. Shannon's right to due process was not violated, the Board correctly ruled that DMVA was not required by law to pay for the massage treatments.

2. Factual background and proceedings.[4]

Mr. Nelson injured his neck on June 22, 2015, while working for DMVA.[5] On February 2, 2019, Mr. Nelson was seen by David Bauer, M.D., for an employer's medical

---

[2] *Shannon v. State of Alaska*, Alaska Workers' Comp. Bd. Dec. No. 23-0058 (Oct. 20, 2023) (*Shannon I*) and *Shannon v. State of Alaska*, Alaska Workers' Comp. Bd. Dec. No. 24-0039 (July 8, 2024) (*Shannon II*).

[3] The Board has issued two prior decisions in this matter which are not on appeal with the Commission: *Peter Nelson v. State of Alaska*, Alaska Workers' Comp. Bd. Dec. No. 21-0092 (Sept. 27, 2021) (*Nelson I*), and *Peter Nelson v. State of Alaska*, Alaska Workers' Comp. Bd. Dec. No. 22-0047 (July 1, 2022) (*Nelson II*).

[4] We make no factual findings. We state the facts as found by the Board, adding context by citation to the record with respect to matters that do not appear to be in dispute.

[5] *Shannon I* at 2 (No. 1); *Shannon II* at 2 (No. 1).

examination (EME).[6] Dr. Bauer concluded that any on-going need for medical treatment was not substantially caused by Mr. Nelson's work injury, but rather was due to age related degenerative changes.[7]

On July 17, 2020, Dr. Shannon administered an injection of a medication, Traumeel, to Mr. Nelson.[8] On September 2, 2020, Dr. Shannon recommended continuing and multiple treatments in the form of massage therapy, with a treatment frequency of two times per week for four weeks and then back to one time per week. His note regarding the massage treatment did not indicate how long Mr. Nelson should receive once per week massage therapy. The note did not address the nature and degree of Mr. Nelson's work injury, the reason for the recommended massage therapy's frequency, or the objectives the treatment was aimed to achieve.[9]

On September 3, 2020, Dr. Shannon filed a claim for the Traumeel injection and for massage treatments provided on June 19, 2020, and July 17, 2020.[10] On October 9, 2020, DMVA controverted the September 3, 2020, claim,[11] asserting that the Traumeel injection was outside the scope of Dr. Shannon's practice as a chiropractor and the June 19, 2020, massage treatment had been paid.[12]

On April 27, 2021, Mr. Nelson was again seen by Dr. Bauer. Dr. Bauer again opined that Mr. Nelson's work injury was not the substantial cause of the need for any medical treatment.[13] He opined that "[m]assage and chiropractic are neither reasonable nor necessary for the long-term treatment of [Mr. Nelson's] neck pain due to the

---

[6] *See* AS 23 30.095(e).

[7] *Shannon I* at 2 (No. 2); *Shannon II* at 2-3 (No. 3). R. 80-103.

[8] *Shannon I* at 2 (No. 3); *Shannon II* at 3 (No. 6). R. 4316-17.

[9] *Shannon I* at 3 (No. 5); *Shannon II* at 3 (No. 7). R. 4318.

[10] *Shannon I* at 3 (No. 6); *Shannon II* at 3 (No. 8). The claim is dated August 31, 2020; it was marked as filed on September 3, 2020. R. 550.

[11] *Shannon II* at 3 (No. 7). R. 194. *Shannon I* incorrectly dates the controversion as October 10, 2020. *Shannon I* at 3 (No. 7).

[12] *Shannon I* at 3 (No. 7); *Shannon II* at 3-4 (No. 9). R. 194-95.

[13] R. 256.

occupational injury"; he found no medical necessity for Traumeel injections, as he was "unable to find any scientific evidence that [such treatment] would have any change to the natural history of Mr. Nelson's condition."[14] On June 23, 2021, DMVA controverted payment for the Traumeel injection and all chiropractic and massage treatment, relying on Dr. Bauer's April 27, 2021, opinion.[15]

Dr. Shannon filed updated claims for massage treatments on July 30, October 14, and November 29, 2021, ultimately identifying as unpaid a total of 43 massage therapy treatments between April 29, 2021, and September 30, 2021.[16] DMVA answered the updated claims on August 25, November 3, and December 22, 2021, respectively, and denied payment, relying on its controversion of June 23, 2021.[17]

On February 8, 2022, Mr. Nelson was seen by Dr. Jon Scarpino, M.D. for a second independent medical examination (SIME).[18] Dr. Scarpino found that Traumeel "is a homeopathic medication" and that there was no indication for the use of Traumeel in Mr. Nelson's case.[19] Dr. Scarpino subsequently opined that massage therapy could be useful to "address the [work] injury or its consequences" by providing "temporary improvement in his symptomatology."[20] He said Mr. Nelson's pain could be managed

---

[14] *Shannon I* at 4 (No. 10); *Shannon II* at 4 (No. 10). R. 257.

[15] R. 212.

[16] *Shannon I* at 4-5 (Nos. 11, 13, 16); *Shannon II* at 4 (Nos. 11, 13). R. 1009, 1011, 1038-39, 1046. The claim filed on November 29, 2021, is dated November 23, 2021. DMVA, in answering this claim, referenced the date the claim was served by the Board, December 2, 2021. Dr. Shannon's hearing brief asserts there were a total of 49 unpaid massage treatments, dating between July 17, 2020, to October 1, 2020, and again beginning April 29, 2021. R. 1989.

[17] *Shannon I* at 4-5 (Nos. 12, 15, 18); *Shannon II* at 4 (Nos. 12, 14). R. 1038-39, 1046.

[18] *See* AS 23.30.095(k). R. 4560-4631.

[19] *Shannon I* at 5 (No. 20); *Shannon II* at 4-5 (No. 16). R. 4630.

[20] *Shannon I* at 5 (No. 21). R. 4642.

with consistent, routine massage therapy and it was likely Mr. Nelson could return to light duty work.[21]

On April 29, 2022, using language identical to that used in its June 23, 2021, controversion, DMVA controverted medical benefits related to chiropractic and massage treatment and Traumeel injections, again relying on Dr. Bauer's April 27, 2021, opinion.[22] On May 9, 2022, DMVA amended its answer to Dr. Shannon's November 29, 2021, claim by adding the failure to file a written treatment plan as an additional ground for denial of payment for the massage treatments.[23]

On August 11, 2022, the Board approved a settlement agreement that had been submitted by DMVA and Mr. Nelson, which was "intended to resolve any claim for injuries or aggravation arising from employment with [DMVA]."[24] DMVA agreed to "[w]ithdraw the existing controversion for massage therapy; . . . [p]ay for the Employee's future weekly massage (myofascial release) therapy sessions provided by a therapist in Palmer or Wasilla; [and p]ay for any reasonable and necessary care [for specifically identified conditions] . . . not covered by Transcarent insurance, including . . . massage therapy. . . ."[25] The agreement states:

> This Compromise and Release is neither intended to, nor does it, waive the right of any medical provider to make its own claim against the employer for medical benefits provided to the Employee before or after the date of this agreement. At the same time, the employer does not waive its right to contest such claims.[26]

On September 8, 2023, after the supreme court ruled on a claim by Dr. Shannon in another case that the "scope of practice" defense was outside the Board's jurisdiction,[27]

---

21 *Shannon I* at 5 (No. 21). R. 4642.

22 *Shannon I* at 6 (No. 22); *Shannon II* at 5 (No. 17). R. 297.

23 *Shannon I* at 6 (No. 25); *Shannon II* at 5 (No. 18). R. 1181-86.

24 R. 1416. *See Shannon I* at 6-7 (No. 29); R. 1419, 1422-23, 1428.

25 R. 1388-89.

26 *Shannon I* at 6-7 (No. 29); R. 1401-14.

27 *See Dep't of Health and Soc. Servs. vs. White*, 529 P.3d 534 (Alaska 2023).

DMVA withdrew its October 9, 2020, controversion to the Traumeel injection (based on the "scope of practice" defense) and replaced it with a controversion based on the opinions of Drs. Bauer and Scarpino that the injection was not reasonable or necessary.[28]

At the hearing on September 20, 2023, Dr. Shannon identified 49 massage therapy visits that were unpaid.[29] On October 20, 2023, the Board denied Dr. Shannon's claim for payment of the Traumeel injection, on the ground that the injection was not reasonable or necessary.[30] It denied Dr. Shannon's claim for payment of massage treatment for failure to provide a conforming treatment plan as required by AS 23.30.095(c).[31] Following a further hearing on April 18, 2024,[32] the Board again denied payment for the Traumeel injection.[33] Dr. Shannon appeals.

3. Issues on appeal.

On appeal, Dr. Shannon argues that the Board erred in finding that the Traumeel injection was not reasonable and necessary because at the time the injection was provided, DMVA did not have a medical opinion that it was inappropriate, rather, it denied payment pursuant to an explanation of benefits (EOB) (which is not a valid form of controversion under applicable law)[34] on the ground (since found erroneous by the Alaska Supreme Court)[35] that providing such injections was outside the authorized scope of Dr. Shannon's chiropractic practice[36] and only afterwards obtained a medical opinion

---

[28] *Shannon I* at 13 (No. 40); *Shannon II* at 5 (No. 24). R. 2112.

[29] *Shannon I* at 13-15 (Nos. 41, 42). R. 1987 – 2087.

[30] *Shannon I* at 21-22.

[31] *Shannon I* at 22-24.

[32] Dr. Shannon appealed *Shannon I*, and we remanded the case to the Board for additional proceedings. R. 9807-10. *Sua Sponte* Order Returning Jurisdiction to the Alaska Workers' Compensation Board, March 15, 2024.

[33] *Shannon II* at 12-14.

[34] Appellant's Brief at 1-2 (No. 6), 20-21. *See* AS 23.30.155(d); 8 AAC 45.182(a).

[35] *See Dep't of Health and Soc. Servs. vs. White*, 529 P.3d 534 (Alaska 2023).

[36] Appellant's Brief at 1-2, 16 (Nos. 1, 2), 17 (No. 4).

(which he argues was improperly admitted into evidence)[37] to support a controversion (which was untimely).[38] He argues that the Board should have provided payment for the massage treatments because he was not provided notice of the meetings in which Mr. Nelson and DMVA reached a settlement agreement regarding those treatments.[39]

4. Standard of review.

The Board's findings of fact are upheld by the Commission if the Board's findings are supported by substantial evidence in light of the record as a whole.[40] Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[41] "The question of whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law."[42] The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make and is, thus, conclusive. This is true even if the evidence is conflicting or susceptible to contrary conclusions.[43]

On questions of law and procedure, the Commission does not defer to the Board's conclusions, but exercises its independent judgment.[44]

5. Discussion.

a. Traumeel injection.

Dr. Shannon's objections to the Board's decision regarding the Traumeel injection rest on his contention that DMVA did not file a timely controversion on a valid ground for

---

37 Appellant's Brief at 2 (No. 6), 18 (No. 6).

38 Appellant's Brief at 2 (No. 4), 17-18 (No. 4), 20-23.

39 Appellant's Brief at 17 (No. 3), 18 (No. 5), 24-27.

40 AS 23.30.128(b).

41 *See, e.g., Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

42 *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054 at 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P. 2d 1187, 1188-1189 (Alaska 1984).

43 AS 23.30.122.

44 AS 23.30.128(b).

non-payment, asserting that the Board "ignored" the fact that the controversions of October 20, 2020, and September 8, 2023, were filed long after the date on which the employer was required to file a notice of controversion.[45] He argues that DMVA initially denied payment based on an EOB, rather than by a notice of controversion filed in compliance with applicable law.[46] DMVA's October 20, 2020, notice of controversion was, he argues, (a) untimely[47] and (b) based on the "scope of practice" defense, which was subsequently determined not to be a valid ground for controversion.[48] DMVA's September 8, 2023, notice of controversion, based on the "not reasonable and necessary" defense was, he argues, (a) untimely[49] and (b) supported by a medical opinion that should not have been admitted into evidence.[50]

We turn first to Dr. Shannon's objection that the EOB and the October 9, 2020, notice of controversion based on the "scope of practice" defense should be disregarded. We agree, as does DMVA, and as did the Board: the "scope of practice" defense is invalid (although it had a reasonable basis at the time the controversion was filed), the EOB is not a notice of controversion, and the October 9, 2020, notice of controversion was untimely (and moreover was withdrawn by the September 8, 2023, controversion). DMVA did not rely on the EOB or on the "scope of practice" defense and controversion at the hearing, and the Board did not deny payment based on either of them. The EOB and the untimely October 20, 2020, controversion do not state valid grounds for denying compensation for payment of the Traumeel injection.

---

45 Appellant's Brief at 2 (No. 4), 17-18 (No. 4).

46 Appellant's Brief at 1, 20. *See* AS 23.30.155(a), (d); 8 AAC 45.182(a).

47 Appellant's Brief at 17 (No. 2), 22, 25.

48 Appellant's Brief at 1-2, 16-17 (Nos. 1, 2, 4), 20-21.

49 Appellant's Brief at 17 (No. 4).

50 Appellant's Brief at 17-18 (Nos. 4, 6).

We turn next to the September 8, 2023, controversion. We agree with Dr. Shannon that the September 8, 2023, controversion was untimely.[51] But there appears to be a fundamental misunderstanding of applicable law on Dr. Shannon's part. It appears to be his view that if DMVA failed to file a timely controversion, he is entitled to payment and, in addition (or, perhaps, in lieu of payment) to a 25% penalty.[52] This is not the law, however. The failure to file a timely notice of controversion does not mean that the employer's liability for payment is established, nor does it mean that a penalty is owed. Failure to file a timely notice of controversion simply means that the employer will be liable for a penalty *if* it is ultimately found to owe the payment.[53] At the hearing in this case, the initial question for the Board was whether the payment was owed, without

---

[51] DMVA argues that it filed a timely controversion of Traumeel injections, based on a "not reasonable and necessary" defense, on March 12, 2019. Appellant's Br. at 14-15. *See* R. 78. That controversion rests on Dr. Bauer's opinion that Mr. Nelson's symptoms were not work-related, an issue which has never been adjudicated. The Board's decisions are based on Dr. Bauer's and Dr. Scarpino's opinions that Traumeel is a homeopathic substance without a proven medical benefit. The March 12, 2019, notice of controversion, filed before the injection was administered, did not assert the defense that DMVA asserted in its subsequent controversions or at the hearing.

[52] *See*, Appellant's Brief at 22 ("This is due just because the bill was not timely paid or controverted."); at 26 ("Dr. Shannon asserted not only his bill, but also assert the 25% penalty that would be due without an award because the employer failed to controvert the payment of the Massage therapy.") Sept. 20, 2023, Hr'g Tr. at 5:1-4 ("[T]he fact that . . . no controversion was ever filed . . . or was filed late on this case, means I should be paid on it."); at 29:22-24 ("[T]he fact that there was no controversion timely filed in this, under the rules means I get paid.").

[53] *Bauder v. Alaska Airlines*, 52 P.3d 166, 176 (Alaska 2002) ("When an employer neither timely pays nor controverts a claim for compensation, AS 23.30.155(e) imposes a 25% penalty to be paid 'at the same time as, and in addition to' the unpaid compensation. Thus, the failure to controvert compensation within 21 days does not bar the employer from later filing a controversion nor does it mean that the [liability] is established. Instead, failure to file a controversion within 21 days results in a 25% penalty under AS 23.30.155(e) if the employer is ultimately found liable for the disputed compensation.").

regard to whether it was timely controverted.[54] Only if DMVA had been found liable for payment would an untimely controversion mean that a penalty was due.

Because the absence of a timely notice of controversion does not establish liability for payment, Dr. Shannon's objections based on timeliness[55] are immaterial. The only objection to the Traumeel injection that he has raised which needs to be considered is that in finding the injection "not reasonable and necessary", the Board improperly admitted into evidence a medical opinion of Dr. Bauer.[56]

As a preliminary matter, we note that, notwithstanding Dr. Shannon's focus on Dr. Bauer's opinion, the Board also relied on the medical opinion of its own independent medical examiner, Dr. Scarpino, that there was no medical indication for the Traumeel injection.[57] That opinion was sufficient to support a finding by the Board that the treatment was not reasonable and necessary, quite independently from Dr. Bauer.

To the extent that Dr. Shannon argues that the Board gave too much weight to Dr. Bauer's opinion, we are compelled by law to reject Dr. Shannon's argument, because "[a] finding by the board concerning the weight to be accorded a witness's testimony,

---

[54] *See State, Dep't of Health and Soc. Servs. v. United Physical Therapy*, Alaska Workers' Comp. App. Comm'n Dec. No. 270 at 17 (Oct. 11, 2019) ("Before the Board could decide on payment, interest, and penalty, the Board . . . was required to determine if the treatment . . . was compensable. Only then could it address when the invoices were sent . . . , when payment was made . . . , whether payment was due . . . , and whether the controversion protected [the employer] from a penalty for any late payments."), *affirmed sub nom. Alaska Comm'n for Human Rights v. United Physical Therapy*, 484 P.3d 599 (Alaska 2021).

[55] In addition to objecting to the untimely controversions, Dr. Shannon argues that Dr. Bauer's opinion should be disregarded because it was obtained only after DMVA realized that the "scope of practice" defense "was not going to work." Appellant's Brief at 17 (No. 4). But the timing of the opinion is immaterial, for the same reason that the timing of the controversion is immaterial: at the Board hearing, as ground for non-payment DMVA was not limited to the grounds (much less the evidence) cited in a timely controversion.

[56] Appellant's Brief at 18 (No. 6).

[57] *Shannon I* at 22; *Shannon II* at 13.

including medical testimony and reports, is conclusive. . . ."[58] Thus we cannot overrule the Board's finding giving more weight to Dr. Bauer's opinion, and to that of Dr. Scarpino, than to that of Dr. Shannon.[59] We similarly reject Dr. Shannon's objections that (a) Dr. Bauer has a financial interest in denying claims,[60] and that (b) there is "no information that Dr. Bauer received complete or written instructions from the adjuster or attorney[,]"[61] as these objections go the weight to be afforded to Dr. Bauer's opinions.

Beyond arguing that the Board gave too much weight to Dr. Bauer's opinion, however, Dr. Shannon offers a variety of reasons why the Board ought not to have entertained Dr. Bauer's opinion at all, and that it was improperly admitted into evidence. He asserts that it was improper for the Board to admit that opinion because it was not relevant to the "scope of practice" defense,[62] but, as we have explained,[63] DMVA did not rely on the "scope of practice" defense at the hearing, nor does it on appeal. He also asserts that the admission of evidence that the injection was not medically reasonable and necessary was contrary to 8 AAC 45.070(g), which states that absent "unusual and extenuating circumstances . . . , the prehearing summary . . . governs the issues and the course of the hearing."[64]

---

58 AS 23.30.122.

59 *Shannon I* at 22; *Shannon II* at 13.

60 Appellant's Brief at 17 ("The ime doctor in this case, Dr. Bauer has a financial incentive to make the claims not reasonable or necessary because he is paid by the employer and department of law to cover their interest and make disputes."). Of course, Dr. Shannon, himself, has a financial incentive in this case. We do not see that that the Board erred in accepting Dr. Bauer's opinion, which was consistent with the Board's own expert, Dr. Scarpino.

61 Appellant's Brief at 18 (No. 6).

62 Appellant's Brief at 18 (No. 6).

63 *Supra*, at 8.

64 *See* Appellant's Brief at 17-18 (Nos. 4, 6). *See also* 8 AAC 45.065(c). *See generally*, *Alcan Elec. and Eng'g, Inc. v. Redi Elec., Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 112 (2009).

There were two prehearing summaries relevant to the September 23, 2023, hearing. The first, dated April 21, 2023, anticipated a hearing scheduled for June 23, 2023, and identified the issue for hearing as "Medical Provider's 11/29/21 Claim: Medical Costs ($10,208), Unfair or Frivolous Controversion, and Penalty."[65] The second, dated July 11, 2023, states the identical issue, except that the amount of the claim is updated to $13,210.56.[66] Neither of the prehearing summaries makes any reference to the "not reasonable and necessary" defense. But neither do they make any reference to the "scope of practice" defense. The issue they identify is the medical provider's claim of November 29, 2021, and the Alaska Supreme Court has ruled that a prehearing summary identifying the merits of a claim for compensation as an issue for hearing is adequate notice that the substantive elements of compensability, including whether treatment is reasonable and necessary, are at issue in the hearing.[67]

In any event, to the extent that Dr. Shannon's objection is based on an alleged lack of notice that the "not reasonable and necessary" defense would be an issue at the hearing, he was provided ample notice of that issue. It was first raised in Dr. Bauer's EME report of April 27, 2021, and was first controverted on that basis in DMVA's June 23, 2021, notice of controversion. The settlement agreement states that the controversion of massage therapy is withdrawn, but makes no reference to the controversion of the Traumeel injection. Absent any evidence that the June 23, 2021, controversion of the Traumeel injection, based on an alleged lack of therapeutic value, was withdrawn, and given the reference to that defense in subsequent controversions dated April 29, 2022, and September 8, 2023, and in DMVA's hearing brief dated September 12, 2023,

---

[65] R. 8405. At a prehearing conference on May 31, 2023, the scheduled hearing date was cancelled. R. 8516-21.

[66] R. 8536. Both summaries also identify as issues Dr. Shannon's claim for a penalty and a finding that the controversions were unfair or frivolous. The latter point is not addressed in his brief, and we deem it waived.

[67] *See Alaska State Comm'n for Human Rights v. United Physical Therapy*, 484 P.3d 599, 607 (Alaska 2021).

Dr. Shannon had adequate notice that the issue would be addressed in the scheduled hearing.[68]

It certainly appears that Dr. Shannon did not anticipate that the "not reasonable and necessary" defense would be litigated at the hearing. Dr. Shannon's prehearing brief identified the issue before the Board as the "scope of practice" defense,[69] and makes no mention at all of the "not reasonable and necessary" defense. Prior to the hearing, Dr. Shannon filed a motion to quash the September 8, 2023, controversion, arguing that it was untimely, and at the hearing he argued that because the controversion was late, the "not reasonable and necessary" defense it cited should not be heard at all: that defense was, as he put it, "time barred" because it had not been asserted in a timely controversion.[70] But the first controversion citing that defense was the June 21, 2021, controversion, not the September 8, 2023, controversion Dr. Shannon asserted was untimely. In any event, as we have explained,[71] the absence of a timely controversion does not establish liability for payment. At the hearing, Dr. Shannon made the additional argument that the "not reasonable and necessary" defense should not be heard because Dr. Bauer was not available for cross-examination,[72] but because Dr. Shannon did not file a request for cross-examination, he waived his right to cross-examine Dr. Bauer.[73]

b. Massage treatments.

Under AS 23.30.095(c), a provider of treatments in excess of the frequency standards established by the Board must, within 14 days, provide the employee and the employer with a written treatment plan, that "must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments." The Board has further required a finding that the "treatments improved or are likely to improve the

---

68 R. 2097-98.

69 R. 1988.

70 Hr'g Tr. at 4:17 – 5:6.

71 *Supra*, at 9.

72 Hr'g Tr. at 30:2-6, 35:17 – 36:1.

73 8 AAC 45.052(c)(5).

employee's conditions."[74] Dr. Shannon's brief does not assert that the Board erred in its finding that he failed to file a treatment plan as required by law, and there is substantial evidence to support the Board's finding in that regard.[75] Rather than challenging the factual basis for the Board's decisions, Dr. Shannon argues that the Board should have provided payment for the massage treatments for a reason unrelated to his failure to file a treatment plan, namely that he was not notified of the meetings leading to the settlement agreement regarding those treatments.[76]

We turn first to Dr. Shannon's argument that the failure to provide notice to him of the proposed settlement and meetings relating to it was a violation of his right to due process of law. In *Barrington*, the supreme court ruled that "when . . . a settlement is intended to pay for or compromise past medical expenses without requiring payment directly to the providers, the board must provide notice and an opportunity to be heard to providers whose claims will be extinguished by the settlement."[77] Because the settlement in this case preserved Dr. Shannon's right to assert his claim, there was no violation of his due process right.

We turn next to two other points mentioned by Dr. Shannon, namely that he should be paid because DMVA agreed to pay other providers,[78] and because it withdrew the existing controversion of massage treatments he had provided.[79]

---

[74] 8 AAC 45.082(g)(2).

[75] Asked at the hearing if he had furnished such a plan, Dr. Shannon stated, "I have no idea." Hr'g Tr. at 52:16. He added, "[M]y notes are my treatment plan." *Id.* at 52:17-18. His notes, as the Board found, do not contain all the information required by law. *See generally*, *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 858-862 (Alaska 2010); *Grove v. Alaska Constr. & Erectors*, 948 P.2d 454, 457-58 (Alaska 1997).

[76] Appellant's Brief at 17, 18, 24-27.

[77] *Barrington v. Alaska Commc'n Sys. Group, Inc.*, 198 P.3d 1122, 1131 (Alaska 2009).

[78] Dr. Shannon's brief asserts that DMVA acted in bad faith by agreeing to pay other providers, but not him. *See* Appellant's Brief at 23, 27.

[79] Dr. Shannon did not expressly argue on appeal that by withdrawing the controversion, DMVA effectively agreed to pay him. However, he did raise the issue

Dr. Shannon's brief asserts that DMVA paid for massage treatment by other providers, and that the failure to pay him for massage treatments was in bad faith. There is no evidence of bad faith. Dr. Shannon speculates that he was treated differently than other providers in retaliation for his success in defeating the "scope of practice" defense. But that other providers were paid, and Dr. Shannon was not, does not mean that Dr. Shannon was treated unfairly or differently from other providers. The Board denied payment to Dr. Shannon because he failed to provide a treatment plan, and there is no evidence that any other provider failed to file a treatment plan if one was required. Dr. Shannon's failure to file a treatment plan distinguishes his case from the other providers.

As for the withdrawal of the existing controversion, as we have previously pointed out, the absence of a controversion does not establish liability for payment, nor does it mean that an employer may not subsequently controvert payment.[80] For this reason, as a matter of law DMVA's withdrawal of the existing controversion of prior treatments did not preclude it from filing a controversion of those treatments in the future, or from denying payment for them in an answer to a claim (as DMVA did in this case): the withdrawal of a controversion is not, in itself, equivalent to a promise to pay for the treatment in question. The most that might be said is that, even though the withdrawal of the controversion did not create a *statutory* obligation to pay for previously provided treatments, in this case the settlement agreement created a *contractual* obligation to pay for them.

Whether the settlement agreement created a contractual obligation on DMVA's part to pay Dr. Shannon for the massage treatments he had previously provided to Mr. Nelson is a question of contractual interpretation which the Board did not address.

---

before the Board and adverted to it in his appeal brief. *See* Hr'g Tr. at 7:24 – 8:2, 8:14-17; Appellant's Br. at 25.

[80] *Supra*, at 9, n. 47. *Bauder v. Alaska Airlines*, 52 P.3d 166, 176 (Alaska 2002) ("[T]he failure to controvert compensation within 21 days does not bar the employer from later filing a controversion nor does it mean that the [liability] is established.").

To the extent that Dr. Shannon asserts a contractual right to payment, he is, at best, a third-party creditor-beneficiary of the contract between DMVA and Mr. Nelson. To establish a contractual right to payment as a third-party creditor-beneficiary, the beneficiary (Dr. Shannon) must provide objective evidence that it was the promisee's (Mr. Nelson's) intent that the promisor (DMVA) make payment to the beneficiary.[81] There is no such evidence. Absent any objective evidence that Mr. Nelson intended the settlement agreement to create an obligation on DMVA's part to pay Dr. Shannon for treatments previously provided, there is no basis on the current record to interpret the agreement as Dr. Shannon does.[82]

6. Conclusion and order.

There is substantial evidence to support the Board's factual findings that Dr. Shannon did not file a treatment plan as required by law, and that the Traumeel injection was not reasonable and necessary medical treatment. Accordingly, no payment for those treatments is due under applicable law, and Dr. Shannon did not provide objective evidence to support a contractual claim. Because no payment is due, DMVA is not liable for a penalty. The Board's decisions are AFFIRMED.

Date: August 7, 2025 Alaska Workers' Compensation Appeals Commission

Signed
Amy M. Steele, Appeals Commissioner

Signed
Andrew M. Hemenway, Chair

---

[81] *See Rathke v. Corrections Corp. of America*, 153 P.3d 303, 310 (2007); *Bush v. Elkins*, 345 P.3d 1245, 1252 (Alaska 2015).

[82] The dissent argues that we should remand the case for additional proceedings to determine the parties' intent. But to the extent Dr. Shannon raised an issue regarding his contractual rights under the settlement agreement, it was his obligation to provide evidence to support his interpretation and he did not. Insofar as he did not adequately assert a contractual right to payment, we do not see that it was plain error for the Board not to have addressed that issue. *See Fred Meyer, Inc. v. Updike*, Alaska Workers' Comp. App. Comm'n Dec. No. 120 at 7-8 (Oct. 29, 2009).

Nancy Shaw, Appeals Commissioner, dissenting.

The Commission has addressed two separate issues having to do with payment to a medical services provider for treatment provided to an injured worker. One has to do with an injection of Traumeel. I concur with the majority in its disposition of the appeal on the employer's obligation to pay the provider for this service. The second service, massage treatment administered by a chiropractic practice, raises questions that I would resolve differently. With respect to the obligation of the employer to pay for chiropractic massage services, I dissent.

Appellant, Dr. John P. Shannon, Jr., provided chiropractic massage services to an injured worker, Peter Nelson, on 43 occasions between April 29, 2021, and September 30, 2021.[83] On June 23, 2021, the employer controverted the claim for massage treatment and chiropractic adjustments on grounds that these treatments were not reasonable or necessary.[84] On April 29, 2022, DMVA again denied medical benefits related to massage treatment as not reasonable or necessary.[85] On May 9, 2022, DMVA amended its answer to Dr. Shannon's claim on grounds that Dr. Shannon did not file a treatment plan, the treatment plan exceeded the statutory guidelines under 8 AAC 45.082(f) and the massage/chiropractic treatment was not reasonable or medically necessary.[86]

On August 4-8, 2022, DMVA and Mr. Nelson executed a Compromise and Release agreement (C&R), in which DMVA agreed to withdraw the controversion for massage therapy.[87]

> To resolve all past, present, or future disputes between parties with respect to compensation rate or compensation for disability, DMVA of Alaska will:
>
> . . . .

---

[83] *Shannon I* at 5 (No. 16). Claimant contended there were 49 massage therapy visits that were unpaid; (*Id*. at 15, No. 42); Appellant's Brief at 14.

[84] R. 212-13.

[85] R. 296-98; *Shannon I* at 6 (No. 22.)

[86] *Shannon I* at 6 (No. 25). R. 1181-86.

[87] *Shannon I* at 6 (No. 29). Subsequently, the employer filed a controversion (R. 324-26) but it did not address the massage therapy claim.

2. withdraw the existing controversion for massage therapy.

3. pay for the Employee's future weekly massage (myofascial release) therapy sessions provided by a therapist in Palmer or Wasilla;[88]

The record includes a Motion for Summary Judgment filed under the Board case number dated September 13, 2023, in which Dr. Shannon stated he received a copy of the C&R sometime after April or May 2023 and only then learned that DMVA had agreed to withdraw the controversion for massage therapy. In the motion, he argued that Mr. Moxley, then representing DMVA, "can't relitigate the entire claim, raise new issues and file new untimely controversion notices."[89] DMVA responded to Dr. Shannon's argument that DMVA had agreed to withdraw the controversion for massage therapy, in its Hearing Brief filed with the Board, dated September 12, 2023, in this fashion:

> Claimant suggests that the C&R Agreement's terms about massage therapy are evidence of the medical necessity of massage therapy. However, the settlement was a resolution of disputes, not an admission of liabilities, and the C&R Agreement stated that the settlement was not an "admission of liability" and that the Agreement itself "may not be used as evidence of liability in any other claim . . ."
>
> Further, the C&R Agreement did not require Employer to pay for past massage therapy . . . ; it only required such action as necessary for Employee to receive *future* Employer-furnished massage therapy free of hindrances. The Board has stated that "[c]ontinuing to pay a benefit after that specific benefit has been controverted constitutes a withdrawal of that portion of the controversion. Thus, Employer complied with the terms of the C&R Agreement, which required Employer to "withdraw the existing controversion for massage therapy" and to pay for *future* massage therapy, by paying for that future massage therapy.
>
> Even if Employer fully, formally withdrew the June 23, 2021, *Controversion Notice* following the settlement with Employee, Employer's continued refusal to pay was a controversion in fact, and that controversion in fact was fair and non-frivolous because, as explained in this *Brief,* no payment was ever due for the massage therapy in question. (Footnotes omitted.)[90]

---

88 R. 1388.

89 R. 2109.

90 R. 2101-02.

The Board issued a decision on October 20, 2023. It concluded that "past chiropractic massage therapy is not compensable" because "claimant did not submit a conforming treatment plan."[91] The Board did not address the employer's agreement, in the C&R document, to withdraw its controversion of Dr. Shannon's bills for massage therapy.[92]

Dr. Shannon briefly raised the issue of the settlement agreement in his brief on appeal to the Commission:

> The Employee's Settlement Agreement:
>
> The employee's compromise and agreement #2 PP 5 states that the employer retracted the controversion notice for the massage therapy.[93]

This was Dr. Shannon's entire treatment of the subject.

In its brief to the Commission, DMVA identified the issue on appeal related to payment for massage therapy as whether DMVA submitted substantial evidence to rebut the presumption of compensability.[94] In this venue, it did not argue that Dr. Shannon had failed to file a treatment plan or that the massage therapy administered by Dr. Shannon exceeded frequency standards. Addressing the terms of the C&R, DMVA, in this forum, argued that the C&R allowed providers generally to directly file claims against DMVA without taking up the specific agreement to withdraw the controversions for massage therapy.

> On August 8, 2022, Employer, Employee and Employee's counsel entered into a Partial Compromise & Release agreement, to which Appellant was not a party. This Compromise & Release Agreement, signed by all parties, contained language that specifically did not waive the ability of any medical provider to file its own claim against the Employer for medical benefits provided to the Employee before or after the date of the agreement.[95]

---

91 *Shannon I* at 24 (Conclusions (2) and (3)).

92 *Shannon I.*

93 Statement of Appellants Opening Brief at 25.

94 Brief of Appellee at 3.

95 Brief of Appellee at 6-7. This statement, in similar form and without elaboration or discussion of the withdrawal of the controversion, appears in the brief on page 16 also.

DMVA said nothing about its specific agreement to withdraw the controversion of Dr. Shannon's claims for massage therapy, a service that Dr. Shannon had provided that, up to that point, DMVA had refused to pay for.

The short version of the problem raised in this appeal is that the provider filed a claim, the employer controverted the claim, and *then*, in a comprehensive negotiated settlement of the outstanding disputes in the case, DMVA agreed to withdraw its controversions of Dr. Shannon's claims, arguably abandoning all objections and agreeing to pay the claims. But even after signing the agreement and securing the approval of the Board to its terms, DMVA has persisted in refusing to pay the claims.

When confronted with the terms of the C&R, DMVA has variously argued, but not before the Commission, that its refusal to pay Dr. Shannon's bills for massage therapy after signing the agreement are based on its interpretation of the wording to mean that it agreed only to pay *future* bills for massage therapy (implausible because it both agreed to withdraw the outstanding controversions which were specific to Dr. Shannon's bills for past services and, in separate numbered items, to pay for future massage bills for services provided in Palmer or Wasilla (presumably services provided by practitioners other than Dr. Shannon), that its failure to pay was a "controversion in fact" and that the agreement left open the option of the provider to pursue payment directly (meaning that it could refuse to pay regardless of the terms of the C&R approved by the Board). DMVA's best argument is that, while it agreed to withdraw its controversion of Dr. Shannon's massage treatment, it had its fingers crossed behind its back: it agreed to withdraw the controversion, committing to the injured worker to pay Dr. Shannon's bills, while planning to persist in not paying Dr. Shannon.[96]

It can't be said that the medical service provider, Dr. Shannon, effectively raised and argued DMVA's contractual withdrawal of objections to paying his bill before the

---

[96] The majority is of the view that it would be acceptable for an employer to withdraw a controversion and then to file a new controversion on different grounds. I don't disagree. This is, in fact, what occurred with respect to the injection administered by Dr. Shannon. But, with respect to Dr. Shannon's massage therapy treatments, the employer's options were constrained by a C&R approved by the Board.

Board or on appeal. But he did say something about it, and DMVA recognized in its brief that the issue had been raised. Even so, the Commission is not in a position to make findings and draw the proper legal conclusions about the meaning of the terms of the C&R because the parties did not develop relevant facts below or present arguments about the implications of the language of the C&R in proceedings before the Commission, and the Board did not address it. But, because the interpretation of DMVA's withdrawal of the controversions is dispositive of Dr. Shannon's claims for payment for massage therapy, in this unusual case I would remand the question to the Board with directions to take evidence and receive argument on the issue of whether the language of the C&R required it to pay Dr. Shannon.

Date: August 7, 2025

Signed
Nancy Shaw, Appeals Commissioner

APPEAL PROCEDURES

This is a final Commission decision. It may be appealed to the Alaska Supreme Court pursuant to AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the Alaska Supreme Court must be filed not later than 30 days after the date shown in the Commission's Certificate of Distribution below.

If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*:

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

CERTIFICATE OF DISTRIBUTION

I certify that on **9/9/25** a copy of this Final Decision No. 311 was emailed to: J. Shannon, J. Tapp, and P. Nelson.

Signed
K. Morrison, Appeals Commission Clerk

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Decision No. 311 issued in the matter of *John P. Shannon, Jr., D.C. v. Peter Nelson and State of Alaska, Department of Military and Veterans' Affairs*, AWCAC Appeal No. 23-002, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on August 7, 2025.

Date: *September 9, 2025*

Signed
K. Morrison, Appeals Commission Clerk