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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Commissioners Gene McCaskill, Melody L. James, and Cynthia C. Dooley

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Appellate Case No. 2026-000329
WCC File No. 1613880

Ivan Moore, Claimant .....Appellant,

v.

Spartanburg Steel, Employer, and Hartford Accident & Indemnity Company, Carrier, c/o Sedgwick Claims Management Services, Inc., ... Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Appellate Panel's January 29, 2026 order is immediately reviewable under S.C. Code Ann. § 1-23-380, where the order denies the only medical treatment recommended for the Claimant while simultaneously finding that he has not reached maximum medical improvement, so that review after a final agency decision would not provide an adequate remedy.

2. Whether the Commission committed an error of law by admitting a medical opinion it found had been obtained in violation of S.C. Code Ann. § 42-15-95, on the ground that the Claimant later deposed the physician, where § 42-15-95(C) provides that opinions obtained in violation of the section "must be excluded" and contains no prejudice or cure provision.

3. Whether the finding that the Claimant's total knee replacement is not causally related to his admitted March 1, 2016 injury is unsupported by substantial evidence and controlled by errors of law, where the only untainted medical opinions of record support compensability, the order's own findings are irreconcilable with that conclusion, and the sole contrary opinion rests on an undocumented interval that its author described as a matter with "no exact answer."

STATEMENT OF THE CASE

This is an appeal from the South Carolina Workers' Compensation Commission in an admitted workers' compensation claim. Appellant Ivan Moore, the Claimant, sustained an injury to his left knee on March 1, 2016, arising out of and in the course of his employment with Respondent Spartanburg Steel. Respondent Hartford Accident & Indemnity Company, c/o Sedgwick Claims Management Services, Inc., is the Carrier. The parties stipulated that the Commission has jurisdiction over the parties and the subject matter, that venue is proper, and that the applicable average weekly wage is $801.52, with a corresponding compensation rate of $534.37. Order of Single Comm'r Beck (May 6, 2025), Stipulations 1–4.

The Claimant commenced the contested proceeding on August 9, 2024, by filing a Form 50 requesting a hearing. The Form 50 requested medical examination and treatment, and additional medical examination and treatment, for the left lower extremity, together with temporary total disability benefits, and alleged that the Claimant had not reached maximum medical improvement. Form 50 (filed Aug. 9, 2024). On September 6, 2024, the Defendants filed a Form 51 in response, admitting that the Claimant injured his left leg and that the parties were subject to the Act, and denying that the Claimant is entitled to additional medical treatment, that he is entitled to temporary disability benefits, and that he sustained permanent disability as a result of the injury. Form 51 (filed Sept. 6, 2024). Claimant submitted a Pre-Hearing Brief on November 12, 2024 and a Supplemental Pre-Hearing Brief on November 22, 2024. Defendants submitted a Pre-Hearing Brief on November 15, 2024.

A hearing was set for November 27, 2024, and was reset to December 19, 2024, to allow the Claimant to provide the Defendants with additional medical records. Beck Order (Statement of the Case). The matter was heard on December 19, 2024, by Single Commissioner T. Scott

Beck, on the pleadings and "the sole issues of whether Claimant's need for a total knee replacement surgery is causally related to his work accident . . . and if Claimant has reached maximum medical improvement." *Id.* The Claimant was the only witness to testify. *Id.* (Evidence of the Case). At the outset of the hearing, the Single Commissioner ruled on two evidentiary objections raised by the Claimant under S.C. Code Ann. § 42-15-95: he sustained the objection to pages 291 and 292 of the Defendants' APA submissions, and those pages were removed from the record; and he overruled the objection to the October 31, 2023 deposition of Dr. Michael Hoenig, which was admitted. Hr'g Tr. p. 4, lines 5–19 (Dec. 19, 2024).

On May 6, 2025, the Single Commissioner issued a Decision and Order. The order concluded that, pursuant to S.C. Code Ann. § 42-15-95, the Claimant's objection to the Defendants' pages 291 through 292 was sustained and those pages excluded, and that the Defendants had improperly contacted the physician in violation of that section; that the Claimant's objection to Dr. Hoenig's deposition was overruled; that the Claimant is not entitled to a left total knee replacement because it is not causally related to the March 1, 2016 work injury; and that the Claimant is not at maximum medical improvement. Beck Order, Findings of Fact 1–8, Conclusions of Law 1–5, and ordering paragraphs.

Both parties sought review by the Appellate Panel. The Claimant filed an Initial Brief on July 25, 2025, seeking a reversal of the finding that Dr. Hoenig's deposition was properly admitted, that the Commissioner erred in affording more weight to Dr. Hoenig's opinion regarding causation than the opinions of Drs. Gerscovich and O'Leary, and that the total knee replacement was not causally-related to the work injury. The Defendants filed an Initial Brief of Cross-Appellants on July 28, 2025, seeking reversal of the finding that the Claimant has not reached maximum medical improvement. Defendants filed a Response Brief on August 8, 2025,

and Claimant filed a Response Brief and Reply Brief on August 11th and August 13th, 2025 respectively.

The Appellate Panel — Commissioners Gene McCaskill, Melody L. James, and Cynthia C. Dooley — heard argument on August 25, 2025. On January 29, 2026, the Appellate Panel issued its Decision and Order affirming and adopting the May 6, 2025, order.

The Claimant served his Notice of Appeal on February 12, 2026. On March 11, 2026, this Court issued an order dismissing the appeal on the grounds that the order on appeal was not a final decision of the Commission and was not immediately appealable. On March 23, 2026, the Claimant filed a Motion to Reinstate. On April 17, 2026, this Court reinstated the appeal and directed "that the parties are directed to include the issue of whether the order is immediately appealable as one of the issues in their respective briefs," and further directed the Appellant to notify the Court upon receipt of the transcript so that the appropriate timelines could be set. Order (reinstating appeal). On July 6, 2026, the time for serving and filing this brief was extended to August 5, 2026.

1. THE JANUARY 29, 2026 ORDER IS IMMEDIATELY REVIEWABLE UNDER S.C. CODE ANN. § 1-23-380 BECAUSE REVIEW AFTER A FINAL AGENCY DECISION WOULD NOT PROVIDE AN ADEQUATE REMEDY.

Standard of Review

This issue is briefed at the Court's direction: in reinstating the appeal, the Court ordered that "the parties are directed to include the issue of whether the order is immediately appealable as one of the issues in their respective briefs." Order (reinstating appeal). Whether an order is immediately reviewable under § 1-23-380 is a question of law, and this Court reviews questions of law de novo, as it has resolved this issue before under the framework of Davis v. S.C. Dep't of Corrections, 444 S.C. 138, 906 S.E.2d 569 (2024), and Hilton v. Flakeboard America Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016).

Facts Relevant to This Issue

The procedural facts are brief. The January 29, 2026 Appellate Panel order — adopting the Single Commissioner's May 6, 2025 order verbatim — did two things at once: it denied the total knee replacement, the only treatment recommended and the only relief sought, and it found that "Claimant is not at maximum medical improvement for his left knee." Beck Order, Findings of Fact 5, 8; ordering paragraphs (denying the replacement "and" ordering "that Claimant is not at maximum medical improvement"); Panel Order (Jan. 29, 2026). Claimant served his notice of appeal on February 12, 2026. This Court dismissed the appeal on March 11, 2026. On Claimant's petition, the Court reinstated it on April 17, 2026, and directed the parties to brief whether the Order is immediately appealable. Order (reinstating appeal).

The underlying timeline is not brief, and it matters. Mr. Moore was injured on March 1, 2016 — more than ten years ago. He treated with the carrier's authorized physician for seven

years and thirty-nine injections. Ultimately, the injections failed, and the treating physician referred him for a knee replacement on September 1, 2023, recording that Mr. Moore was "fairly miserable and really cannot enjoy life." Beck Order p. 8; Hoenig Dep. p. 29, lines 1–13 (Clt. APA p. 228; Def. APA p. 276). The hearing occurred December 19, 2024; the denial issued May 6, 2025; the Panel affirmed January 29, 2026. Mr. Moore remains today without the surgery every physician of record agrees he needs, and without any determination that his claim has reached an end.

Argument

A. The governing framework: § 1-23-380 permits immediate review where a later appeal is not an adequate remedy, decided case by case — and the inquiry may reach the merits.

Section 1-23-380 provides that "[a] preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." S.C. Code Ann. § 1-23-380. In Davis, the Supreme Court's most recent statement of the review process for workers' compensation claims, the Court reaffirmed that "'whether an intermediate action or ruling is immediately reviewable is to be decided on a case-by-case basis, i.e., whether a review of the final decision would not provide an adequate remedy,'" and that "an examination of the underlying merits of the ruling may be necessary to determine the adequacy of the remedy after a later appeal and whether immediate review should be afforded." Davis, 444 S.C. at 155 (quoting Hilton, 418 S.C. at 249, 791 S.E.2d at 721, and citing id. at 247, 791 S.E.2d at 720). Hilton itself is the model: "Determining whether review of the final agency decision would give Hilton an adequate remedy requires us to reach the underlying merits of the Commission's order, and since we conclude that the order cannot stand,

we vacate . . . ." Hilton, 418 S.C. at 247, 791 S.E.2d at 720. Claimant accordingly assumes, for purposes of this issue, that the January 29, 2026 order is interlocutory, and demonstrates that a later appeal cannot remedy what it does.

B. The order creates a structural deadlock that no appeal from a "final" decision can remedy — as Defendants' own briefing below recognized.

The order's two operative rulings point in opposite directions. Mr. Moore is not at maximum medical improvement — a finding supported by every physician of record, including Dr. Hoenig, who "never again placed Claimant at maximum medical improvement" after 2016. Beck Order, Findings of Fact 6–8. A claimant short of maximum medical improvement is, by definition, still in need of treatment directed at his compensable condition. Yet the same order denies the only treatment any physician has recommended. There is therefore no path from this order to a lawful final decision: the claim cannot be closed (Mr. Moore is not at maximum medical improvement) and it cannot move forward (the only forward step has been denied). The "final agency decision" from which § 1-23-380 contemplates an eventual appeal is not delayed — it is structurally foreclosed.

Defendants' own cross-appeal briefing to the Appellate Panel made this precise point. Attacking the not-at-MMI finding, Defendants argued that such a ruling "would also implicitly require Defendants to provide further evaluation for additional treatment and/or the actual provision of treatment until MMI is attained," and that "[s]uch a ruling would invalidate the Single Commissioner's findings that Claimant is not entitled to the only additional medical treatment requested by Claimant: knee replacement surgery." Defs.' Cross-Appeal Br. to Appellate Panel (July 28, 2025) p. 8. Both sides, in other words, have told the Commission that the order's two halves cannot coexist. The Panel affirmed both halves anyway. An order that its

own defenders describe as self-invalidating is precisely the kind of ruling whose errors, if left standing, "could continue to impact the Commission's view of the status of [the] claim upon remand." Davis, 444 S.C. at 156.

What the deadlock withholds is not procedure but the benefit itself. Davis explains that an "award" in workers' compensation "is implicitly defined…to mean an award of monetary compensation or other benefits (such as medical treatment) that are available under South Carolina's workers' compensation laws…." 444 S.C. at 158. The thing the January 29, 2026 order takes from Mr. Moore — today, and for every day appellate review is deferred — is medical treatment: a knee replacement for a man his own treating physician recorded as "fairly miserable," unable to "enjoy life," with a knee that "gives out and locks up." Hoenig Dep. p. 29, lines 1–13 (Clt. APA p. 228; Def. APA p. 276). A later appeal can reverse an order; it cannot restore years lived without the surgery. That is the definition of an inadequate remedy.

C. The delay independently establishes inadequacy.

Immediate review is also proper where delay itself defeats the remedy. In Russell v. Wal-Mart Stores, Inc., the Supreme Court held "the commission's unreasonable delay in making a final decision leaves Russell without an adequate remedy on appeal from a final decision under section 1-23-380," and that "the appellate panel's remand order is immediately appealable." 426 S.C. 281, 290–91, 826 S.E.2d 863, 867 (2019), quoted in Davis, 444 S.C. at 156, and in id. at 164 (Few, J., concurring). Davis condemned "protracted" proceedings that produce "a complete shut-down of the claims process," observing that this "defeats the ostensible purpose of the workers' compensation statutory scheme — to provide a streamlined process for considering employee injury claims and rendering timely compensation in exchange for employees giving up the right to sue their employers for damages in a court of law." 444 S.C. at 156.

This claim is in its eleventh year. The injury is admitted; the carrier authorized and paid for seven years of treatment; the surgical referral is now nearly three years old; and the administrative process has produced an order that, by its own terms, resolves nothing — Mr. Moore is left neither treated nor at an end point from which permanency can be assessed. Requiring him to litigate his claim to some future "final" decision — through a remand loop that both parties have told the Commission is internally invalid — before this Court may address the errors that created the loop is exactly the protraction Davis and Russell refuse to require.

D. The merits confirm the inadequacy — and the Court may consider them for this purpose.

Finally, Davis and Hilton authorize this Court to examine the merits in assessing the adequacy of a later remedy. Davis, 444 S.C. at 155; Hilton, 418 S.C. at 247, 791 S.E.2d at 720. That examination shortens the analysis here: as set out in Issue II, the denial rests on a medical opinion that the Commission itself found was obtained in violation of S.C. Code Ann. § 42-15-95 — an opinion the statute commands "must be excluded" — and Defendants conceded on the record that without it "the commissioner would have been bound by the only other opinions in the case," both of which support compensability. Panel Hr'g Tr. p. 14, lines 3–9 (Aug. 25, 2025). As in Hilton, the order cannot stand; and an order that cannot stand should not be permitted to govern a claimant's medical care for the additional years a remand cycle would consume.

One caveat for completeness. Defendants may renew their attack on the not-at-maximum-medical-improvement finding in this Court. That attack fails for the reasons the Panel implicitly recognized — all three physicians, including Dr. Hoenig, support the finding, Beck Order, Findings of Fact 6–8 — but it changes nothing here in any event: this Court reviews the order as issued, and the order as issued creates the deadlock described above.

2. THE COMMISSION COMMITTED AN ERROR OF LAW BY ADMITTING THE MEDICAL OPINION IT FOUND WAS OBTAINED IN VIOLATION OF S.C. CODE ANN. § 42-15-95, BECAUSE SUBSECTION (C) COMMANDS THAT OPINIONS SO OBTAINED "MUST BE EXCLUDED" AND CONTAINS NO PREJUDICE OR CURE PROVISION.

Standard of Review

This issue presents a question of statutory construction, and it is reviewed for error of law with no deference owed to the Commission. Under S.C. Code Ann. § 1-23-380, this Court may reverse a Commission decision affected by an error of law. An agency's interpretation of a statute "will not be sustained if it contradicts a statute's plain language." Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 149, 694 S.E.2d 525, 530–31 (2010); accord Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) ("where, as here, the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation").

The General Assembly recently codified this rule and expressly abrogated any contrary deference to an agency's construction of a statute: "In interpreting a statute or regulation, the court shall not defer to the agency's interpretation of the statute or regulation and instead shall interpret the statute or regulation de novo." S.C. Code Ann. § 1-23-380(5)(b), as amended by Act No. 251, § 5, 2026 S.C. Acts (eff. June 30, 2026). In any event, the result is the same under either formulation.

The question here is not whether the Commission weighed evidence reasonably. It is whether the Commission possessed any discretion to weigh the evidence at all. Section 42-15-

95(C) answers that question: it withdrew the Commission's discretion over opinions obtained in violation of the statute, so the only question before this Court is what the statute means.

Facts Relevant to This Issue

Ivan Moore injured his left knee on March 1, 2016, in an admitted work accident. For the next seven years, Dr. Michael Hoenig was his authorized treating physician. Appellate Panel Decision & Order (Jan. 29, 2026) (adopting Order of Single Comm'r Beck (May 6, 2025)). On September 1, 2023, Dr. Hoenig's own office dictation recorded osteoarthritis of the left knee and the need for knee replacement surgery. Clt. APA p. 228.

On September 29, 2023, the carrier's claims administrator sent Dr. Hoenig a letter and "medical questionnaire" directly, without providing a copy to Mr. Moore or his counsel. Hoenig Dep. p. 31, lines 7-10 (Def. APA p. 278). The questionnaire supplied the answer it sought: it asked Dr. Hoenig to indicate whether Mr. Moore's left knee condition was causally related to the 2016 work injury "or whether he has experienced a natural progression of a personal health condition," and Dr. Hoenig "checked the line that says, 'Natural progression of personal health condition.'" Hoenig Dep. p. 32, lines 11–19 (Def. APA p. 279). Dr. Hoenig completed and signed the questionnaire on or about October 3, 2023. Hoenig Dep. p. 31, lines 14-16 (Def. APA p. 278).

The phrase "natural progression" appears nowhere in eight years of treating records; it entered this case through the carrier's questionnaire. Claimant's counsel first saw the questionnaire on the morning of Dr. Hoenig's deposition — twenty-nine days after it was sent. Hoenig Dep. p. 30, lines 20–21 ("I didn't see it until ten o'clock this morning.") (Def. APA p. 277). Dr. Hoenig, for his part, had "no idea" whether Mr. Moore was copied on the correspondence, did not know whether its contents were communicated to Mr. Moore before it

was sent, and had "no idea" whether Mr. Moore was ever given a copy of his response. Hoenig Dep. p. 31, line 17–p. 32, line 6 (Def. APA pp. 278–79).

Confronted with an adverse litigation opinion procured from his client's own treating physician, counsel did the only responsible thing: he deposed Dr. Hoenig on October 31, 2023, to establish how the opinion was obtained and to test it. The parties stipulated that "all objections are reserved until the time of trial, except as to the form of the question." Hoenig Dep. p. 4, lines 2–5 (Def. APA p. 251). In the deposition, Dr. Hoenig repeated the questionnaire's opinion — while conceding it was "very much a gray area," that there was "no exact answer," and that his "two or three years" natural-progression cutoff was his "typical thought" rather than anything documented in Mr. Moore's records. Hoenig Dep. p. 37, lines 19–24 (Def. APA p. 284).

It was Defendants — not Claimant — who placed the deposition in evidence, submitting it as pages 248 through 290 of their APAs on November 15, 2024. Def. APA pp. 243, 248–90. The questionnaire itself was attached to that deposition as Claimant's Exhibit 1 and appeared at pages 291 and 292 of Defendants' APA. At the December 19, 2024, hearing, the Single Commissioner sustained Claimant's objection to those two pages "assert[ed] [as] violative of 42-15-95, paragraph C," and ordered them "removed and returned to Defense counsel" — but overruled Claimant's objection to the deposition containing the identical opinion, reasoning that Claimant's counsel "noticed and conducted that deposition" and that excluding matters "initiated by Claimant counsel" was not "the intent of 42-15-95, subsection C." Hr'g Tr. p. 4, lines 5–19 (Dec. 19, 2024).

The May 6, 2025 order memorialized both rulings, expressly finding that "Defendants improperly contacted the physician in violation of S.C. Code Ann. § 42-15-95," and denied the recommended total knee replacement in reliance on Dr. Hoenig's opinion. Beck Order, Findings

of Fact 2–5, Conclusions of Law 1–4. The Appellate Panel affirmed, adopting the order verbatim. Panel Order (Jan. 29, 2026).

At the Panel hearing, Defendants' counsel told the Panel exactly what the tainted opinion was worth:

> If Mr. Moore had not taken the deposition in an attempt to change Dr. Hoenig's opinion, then the only opinion would be the opinion that was excluded. In other words, there would be no opinion and the commissioner would have been bound by the only other opinions in the case.

Panel Hr'g Tr. p. 14, lines 3–9 (Aug. 25, 2025). The "only other opinions in the case" belong to Dr. James O'Leary and Dr. Daniel Gerscovich, and both support compensability: Dr. O'Leary found Mr. Moore's symptoms related to the work injury, found him not at maximum medical improvement, and recommended the knee replacement, Clt. APA p. 234; Dr. Gerscovich — Dr. Hoenig's own partner — found end-stage arthritis aggravated by the March 1, 2016 work injury and concluded Mr. Moore "would not be a candidate" for the replacement absent the work injury, Clt. APA p. 238. Defendants have therefore conceded, on the record, that the unlawfully obtained opinion decided this case.

Argument

A. Section 42-15-95(C) withdrew the Commission's discretion. The only question is what the statute means.

Section 42-15-95(B) permits a treating physician to discuss an employee's medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments with the carrier or employer without the employee's consent — but only on conditions. The employee "must be" (1) notified of the communication in a timely fashion and permitted to attend and participate, with notification "prior to the actual discussion or communication" where

the provider knows it will occur; (2) advised of the nature of the communication before it occurs; and (3) "provided with a copy of the written questions at the same time the questions are submitted to the health care provider," together with "a copy of the response by the health care provider." S.C. Code Ann. § 42-15-95(B)(1)–(3). A questionnaire transmitted directly to the physician, with no contemporaneous copy to the employee or his counsel, violates subsection (B)(3) on its face. Here the violation is not merely facial; the Commission found it, Beck Order, Conclusion of Law 1, and Defendants have never disputed it.

The General Assembly did not leave the consequence of a violation to the tribunal's judgment. It supplied the remedy itself:

> (C) Any discussions, communications, medical reports, or opinions obtained in violation of this section must be excluded from any proceedings under the provisions of this title.

S.C. Code Ann. § 42-15-95(C). Three features of that sentence decide this appeal. First, it is mandatory: "must be excluded" is a command directed at the tribunal, not a grant of discretion. Second, it contains no prejudice qualifier: nothing in the section conditions exclusion on a showing of harm, and nothing permits cure. Third, the legislature performed the balancing itself. The General Assembly weighed the interests and selected a categorical exclusionary rule. A tribunal that engrafts a prejudice condition or a cure mechanism is not filling a statutory gap — it is overriding a legislative choice.

B. The Commission excluded the document but admitted the opinion — reading the word "opinions" out of the statute.

The Commission's two rulings cannot coexist with the statutory text. It excluded the questionnaire — the paper — as "violative of 42-15-95, paragraph C." Hr'g Tr. p. 4, lines 5–10 (Dec. 19, 2024). But subsection (C) does not exclude only documents. It excludes "discussions,

communications, medical reports, *or opinions*" obtained in violation of the section. The opinion — that Mr. Moore's condition reflects the "natural progression of a personal health condition" — was obtained on October 3, 2023, through the unlawful questionnaire. The deposition four weeks later did not generate a new opinion; Dr. Hoenig read the questionnaire's question into the record and confirmed he had "checked the line." Hoenig Dep. p. 32, lines 11–19 (Def. APA p. 279). By excluding the vehicle while admitting the cargo, the Commission gave the words "or opinions" no work to do at all.

South Carolina law forbids that result. "When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning." Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578 (2000) (citing Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970)); accord City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997). The same rule bars subtraction: a construction under which "or opinions" can never operate — because any excluded opinion may be revived by having the physician repeat it under oath — deletes words the General Assembly wrote, and reads a restoration mechanism into a statute that contains none.

C. In the same 2007 Act, the General Assembly wrote a prejudice qualifier into § 42-15-20 — twice — and wrote none into § 42-15-95(C).

The legislature knows how to write a prejudice escape hatch, and it demonstrated as much three sections away, in the same chapter, in the same act. Both § 42-15-20 and § 42-15-95 took their present form in 2007 Act No. 111 — § 42-15-20 through Part I, § 25, and § 42-15-95 through Part I, § 29, both effective July 1, 2007. In § 42-15-20(B), untimely notice of an accident is excused only where "the commission is satisfied that the employer has not been prejudiced

thereby"; in § 42-15-20(C), the repetitive-trauma provision, the standard is "not . . . unduly prejudiced thereby." S.C. Code Ann. § 42-15-20(B), (C). Section 42-15-95(C), enacted by the same General Assembly in the same act, contains no qualifier of any kind.

That contrast is dispositive under settled canons. Where a requirement "is included in one phrase but not in the other," the omission "implies it should not be read into the other"; had the General Assembly intended the requirement, "it would have said so." State v. Leopard, 349 S.C. 467, 472, 563 S.E.2d 342 (Ct. App. 2002); accord Scholtec v. Estate of Reeves, 327 S.C. 551, 559, 490 S.E.2d 603 (Ct. App. 1997) (where the legislature extended a provision elsewhere in the same act, its absence from the subsection at issue "is significant"). Claimant does not ask the canon to carry the argument; the text does that. The canon merely confirms that the omission of a prejudice element from § 42-15-95(C) was a choice, not an oversight. See State v. Leopard, 349 S.C. 467, 472-73, 563 S.E.2d 342 (Ct. App. 2002) (*expressio unius* is an aid to construction to be used with care — which is precisely how it is used here).

D. A mandatory command leaves the Commission without discretion, and the Act's remedial purpose forecloses a construction that unmakes the remedy.

When Title 42 speaks in mandatory terms, the Commission must obey. In Martin v. Rapid Plumbing, this Court held that because "[t]he language of section 42-9-260(G) is mandatory," the "appellate panel did not have discretion" to soften the statutory consequence. 369 S.C. 278, 290, 631 S.E.2d 547 (Ct. App. 2006). In Hudson v. Lancaster Convalescent Center, the Supreme Court affirmed that § 42-9-90's penalty is mandatory notwithstanding the equities urged by the carrier. 407 S.C. 112, 754 S.E.2d 486 (2014). And the Commission's "authority is defined by law, not by consent." James v. Anne's Inc., 390 S.C. 188, 199, 701 S.E.2d 730, 735 (2010). "Must be excluded" is as mandatory as statutory language comes.

The construction adopted below also cannot be squared with the Act's purpose. The workers' compensation law "should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results." Cokeley v. Robert Lee, Inc., 197 S.C. 157, 169, 14 S.E.2d 889, 894 (1941). Section 42-15-95(B) is an employee-protective notice regime: it is the price the legislature attached to the direct access it granted carriers to treating physicians. Cf. Brown v. Bi-Lo, 354 S.C. at 440–41, 581 S.E.2d at 838–39 (construing the prior version of § 42-15-95 and holding that carriers seeking information beyond existing records must proceed through "approved methods of discovery" or with the claimant's permission). Subsection (C) is the enforcement mechanism that makes the regime real. A construction under which the carrier violates the statute, obtains the opinion it drafted, and keeps the opinion anyway reduces subsection (C) to ceremony. As the Supreme Court reasoned in rejecting a construction that would strip statutory deadlines of consequence: "[T]here would be no purpose in establishing deadlines if failure to meet them was of no consequence." TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471 (1998) (internal quotation marks omitted). There would equally be no purpose in commanding exclusion if the excluded opinion walks back in through the next available door.

E. The "Claimant noticed the deposition" rationale fails on the statute, on the record, and on the rules of procedure.

The Single Commissioner overruled the deposition objection because Claimant's counsel "noticed and conducted that deposition," reasoning that § 42-15-95(C) was not intended "to exclude those matters that were initiated by Claimant counsel." Hr'g Tr. p. 4, lines 11–19 (Dec. 19, 2024). That rationale fails four times over.

First, the statute turns on how the opinion was obtained, not on who later elicited it under oath. Subsection (C) excludes opinions "obtained in violation of this section." The opinion was obtained when the carrier's unlawful questionnaire produced it — September 29 to October 3, 2023. Nothing that happened on October 31 changed its provenance. The deposition did not create a second, independent opinion; it recorded the physician reading the first one back. Hoenig Dep. p. 32, lines 11–19 (Def. APA p. 279). On Defendants' contrary theory, the words "or opinions" could never operate: every excluded opinion could be resurrected simply by noticing the physician's deposition. The statute contains no restoration mechanism.

Second, it was Defendants who put the deposition in evidence, and under Rule 32(c), SCRCP, the deponent is the witness of the party who introduces the deposition. "[A] party does not make a person his own witness for any purpose by taking his deposition"; rather, "the deponent becomes the witness of the party introducing the deposition." Scoggins v. McClellion, 321 S.C. 264, 270, 468 S.E.2d 12, 15 (Ct. App. 1995) (applying Rule 32(c), SCRCP). Claimant took the deposition; Defendants introduced it, at pages 248 through 290 of their own APAs. Def. APA pp. 243, 248–90. The "claimant-initiated" rationale thus fails on its own procedural premise: the evidence the Commission admitted was Defendants' evidence, offered by the party that committed the violation, to benefit from the violation.

Third, taking the deposition was mitigation, not consent — and the record forecloses any waiver theory. The parties stipulated that "all objections are reserved until the time of trial, except as to the form of the question." Hoenig Dep. p. 4, lines 2–5 (Def. APA p. 251). Counsel then lodged the § 42-15-95 objection before the Single Commissioner, obtained a ruling, and pressed the issue to the Appellate Panel, where it was the lead question argued. Hr'g Tr. p. 4, lines 5–19 (Dec. 19, 2024); Panel Hr'g Tr. (Aug. 25, 2025) passim. A claimant confronted with

an unlawfully procured adverse opinion from his own treating physician cannot safely leave it unexamined; deposing the physician to establish the violation and test the opinion is the diligence competent representation demands. The only consent § 42-15-95 could recognize is consent to the communication or to admission — and none was ever given. Converting compelled diligence into forfeiture would mean the statute protects only the claimant whose lawyer does nothing.

Fourth, the deposition is not an independent source of the opinion; it is the direct product of the violation. Here there is no independent source. The "natural progression" opinion appears nowhere in eight years of treating records; it was authored by the carrier, presented to the physician with a line to check, and checked. Hoenig Dep. p. 32, lines 11–19 (Def. APA p. 279). But for the questionnaire, there was no adverse opinion to depose about — a point Defendants themselves made to the Panel: without the deposition, "there would be no opinion and the commissioner would have been bound by the only other opinions in the case." Panel Hr'g Tr. p. 14, lines 3–9 (Aug. 25, 2025). The causal chain runs in one direction, and it begins with the violation. Depositions are, of course, an approved discovery channel, see Brown v. Bi-Lo, 354 S.C. at 440, 581 S.E.2d at 838–39; S.C. Code Ann. § 42-3-160 — but the permissibility of the *procedure* says nothing about the provenance of the *opinion* elicited through it. Section 42-15-95(C) excludes tainted opinions, not merely tainted paper.

The exclusionary principle is familiar: evidence "must be excluded if it would not have come to light but for the illegal actions . . . and the evidence has been obtained by the exploitation of that illegality," though evidence "obtained from a lawful source independent of the illegal conduct" remains admissible. State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996).

F. A prejudice or cure gloss would rewrite the statute — and would make the statute worse than no statute at all.

Where the governing text supplies no prejudice element, a court has no authority to manufacture one. Prejudice requirements are not ambient background principles courts may sprinkle onto statutes; they exist where legislatures put them. The General Assembly put two in § 42-15-20 and none in § 42-15-95(C).

The practical consequences of the contrary rule confirm the point. Under the construction adopted below, a carrier that violates § 42-15-95 faces no consequence whatever: it sends the improper questionnaire, obtains the opinion it drafted, and — once the claimant's lawyer investigates — keeps the opinion anyway. Exclusion of the paper becomes ceremonial. Worse, the rule affirmatively penalizes competent representation: it forces claimant's counsel to choose between investigating the tainted opinion (and thereby, on the Commission's theory, laundering it into evidence) and leaving it unexamined to preserve the statutory objection. Additionally, it prices the statute's protection by the claimant's resources — the claimant who cannot afford to depose the physician is stuck with the tainted opinion, and now the claimant who can afford it is stuck with it too. A construction that produces results this incongruous cannot stand: courts reject a reading "so plainly absurd that it could not possibly have been intended by the Legislature." S.C. State Bd. of Dental Examiners v. Breeland, 208 S.C. 469, 480, 38 S.E.2d 644, 650 (1946); accord Hodges, 341 S.C. at 87. Here it is the Commission's construction — not the plain one — that produces the absurdity, and the plain one that avoids "incongruous or harsh results." Cokeley, 197 S.C. at 169, 14 S.E.2d at 894.

G. In the alternative: even under a prejudice framework, reversal is required, because Defendants conceded the tainted opinion was outcome-determinative.

Section 42-15-95(C) needs no prejudice inquiry, and the Court should not import one. But if the Court were to evaluate prejudice — for example, under § 1-23-380's instruction that a reviewing court may reverse where substantial rights have been prejudiced by an error of law — the record here answers the question in Claimant's favor, in Defendants' own words.

The tainted opinion was not one voice in a crowded field. It was the sole basis for the causation denial: the order rested Findings 3 through 5 on Dr. Hoenig's opinion, expressly crediting it over the only other two opinions of record. Beck Order, Findings of Fact 3–5, Conclusions of Law 3–4. And Defendants told the Panel that without it, "the commissioner would have been bound by the only other opinions in the case" — Dr. O'Leary's and Dr. Gerscovich's, both of which support compensability. Panel Hr'g Tr. p. 14, lines 3–9 (Aug. 25, 2025); Clt. APA pp. 234, 238. An error is prejudicial when it decides the case. This one, by concession, did.

Nor can Claimant's diligence be weighed against him in any prejudice calculus. The objection was specific, contemporaneous, and pressed at every level — reserved by stipulation at the deposition, lodged and ruled upon before the Single Commissioner, and argued as the lead issue to the Panel. Hoenig Dep. p. 4, lines 2–5; Hr'g Tr. p. 4, lines 5–19 (Dec. 19, 2024). A framework in which the act of investigating the violation extinguishes the remedy for the violation is not a prejudice standard; it is a trap.

3. THE FINDING THAT THE TOTAL KNEE REPLACEMENT IS NOT CAUSALLY RELATED TO THE ADMITTED MARCH 1, 2016 INJURY IS UNSUPPORTED BY SUBSTANTIAL EVIDENCE AND CONTROLLED BY ERRORS OF LAW — AND THE ERRONEOUS ADMISSION OF THE TAINTED OPINION CANNOT BE DEEMED HARMLESS.

Standard of Review

The Commission is the fact-finder, and its factual findings must be affirmed if supported by substantial evidence — "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," something "less than the weight of the evidence." Lark v. Bi-Lo, Inc., 276 S.C. 130, 135–36, 276 S.E.2d 304, 307 (1981), quoted in Hoxit v. Michelin Tire Corp., 304 S.C. 461, 463-64, 405 S.E.2d 407, 408-9 (1991). Claimant does not ask this Court to reweigh conflicting evidence. But the deference owed to findings has limits: "if all the evidence points to one conclusion or the Commission's findings 'are based on surmise, speculation or conjecture, then the issue becomes one of law for the court.'" Clemmons v. Lowe's Home Ctrs., Inc.-Harbison, 420 S.C. 282, 288, 803 S.E.2d 268, 271 (2017) (quoting Polk v. E.I. duPont de Nemours Co., 250 S.C. 468, 475, 158 S.E.2d 765, 768 (1968)); accord Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010) (reversing where the underlying facts were undisputed and the Commission's findings were unsupported by substantial evidence). And "the court may reverse…a decision if substantial rights of appellant have been prejudiced because…decisions are:…(c) affected by other error of law; (d) clearly erroneous in view of the reliable probative, and substantial evidence on the whole records…." S.C. Code Ann. § 1-23-380.

Facts Relevant to This Issue

The facts set out under Issue II are incorporated here. The treatment history matters, so it bears stating in the order's own words and figures. Dr. Hoenig released Mr. Moore at maximum medical improvement on September 13, 2016, with a 10% impairment rating, listing only "cortisone injections intermittently" as future medical treatment on his Form 14B. Beck Order p. 2 (Statement of the Case); Def. APA pp. 243–47. Mr. Moore then "continued to treat with Dr. Hoenig for left knee injections from November 1, 2016, through July 25, 2023," undergoing "a

total of 39 injections." Beck Order p. 7; Clt. APA pp. 29–221. The treatment escalated — from cortisone to serial viscosupplementation, each round sought and approved through workers' compensation. Hoenig Dep. pp. 16–17, 28 (Def. APA pp. 263–64, 275). Dr. Hoenig confirmed that, to his knowledge, every bit of that treatment, "from, you know, May 2016 up until now, has all been paid by the carrier." Hoenig Dep. p. 28, lines 5–9 (Def. APA p. 275).

By September 1, 2023, the injections were "helping less and less"; Dr. Hoenig's own office note, read into his deposition, records that Mr. Moore was "fairly miserable and really cannot enjoy life," could not walk long distances, and that his knee "gives out and locks up." Hoenig Dep. p. 29, lines 1–11 (Def. APA p. 276). On that date Dr. Hoenig referred Mr. Moore for consideration of a left total knee replacement. Beck Order p. 8; Hoenig Dep. pp. 28–29 (Def. APA pp. 275–76).

Three physicians addressed causation. Dr. O'Leary — after reviewing the August 10, 2023 MRI, the treating records, and Dr. Hoenig's deposition — opined that Mr. Moore "is not at maximum medical improvement, he never reached a plateau, and his current symptoms are related to his March 1, 2016, work injury," and recommended the total knee arthroplasty. Beck Order p. 9; Clt. APA pp. 231–34. Dr. Gerscovich — Dr. Hoenig's partner at Carolina Orthopaedic & Neurosurgical Associates — diagnosed end-stage arthritis aggravated by the 2016 work injury and concluded Mr. Moore would not be a candidate for the replacement had the work injury not occurred. Clt. APA pp. 235–42 (opinion at p. 238). Dr. Hoenig, in the deposition, conceded the work injury "aggravated it, exacerbated it," and "[m]ade it worse," Hoenig Dep. p. 33, lines 2–9 (Def. APA p. 280), but opined — tracking the questionnaire — that the need for the replacement reflects natural progression, on the theory that a work aggravation puts a patient on "a different pathway" for only "about a year or two" before he returns to the natural course. Hoenig Dep. p.

39, lines 10–20 (Def. APA p. 286). Asked to locate the moment Mr. Moore's condition stopped being the work aggravation and became natural progression, he answered: "Again, I think this is very much a gray area. There's no exact answer. . . . My typical thought is that, after two or three years, then roughly, that's when his arthritis would have naturally progressed to this point." Hoenig Dep. p. 37, lines 19–24 (Def. APA p. 284).

The order credited Dr. Hoenig over both other physicians because he "has treated Claimant exclusively since his date of injury and continuing for the next eight years, putting him in the best position to determine a causal relationship over two independent medical evaluations conducted eight years after the injury," and found the replacement not causally related. Beck Order, Findings of Fact 3–5. The same order found that Dr. Hoenig "continued to treat Claimant for nearly seven years with some treatment that exceeded the future medical treatment listed on his completed Form 14B," that Dr. Hoenig "never again placed Claimant at maximum medical improvement following the initial release," and that "Claimant is not at maximum medical improvement for his left knee." Beck Order, Findings of Fact 6–8. The Appellate Panel adopted the order verbatim. Panel Order (Jan. 29, 2026).

Argument

A. Aggravation of a pre-existing condition is compensable unless the condition is due solely to natural progression — and Dr. Hoenig himself concedes the aggravation.

South Carolina's rule is settled: "a condition is compensable unless it is due solely to the natural progression of a pre-existing condition," and "[i]t is no defense that the accident, standing alone, would not have caused the claimant's condition, because the employer takes the employee as it finds him or her." Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 437, 458 S.E.2d 76, 80 (Ct. App. 1994) (citing Brown v. R.L. Jordan Oil Co., 291 S.C. 272, 275, 353 S.E.2d 280, 282

(1987)). A "latent or quiescent" condition that a work injury "aggravated, accelerated or activated" is compensable. Glover v. Columbia Hosp. of Richland Cnty., 236 S.C. 410, 419-20, 114 S.E.2d 565, 569 (1960).

The aggravation itself is not in dispute. Dr. Gerscovich found it. Clt. APA p. 238. Dr. O'Leary found the current symptoms related to the injury. Clt. APA p. 234. Dr. Hoenig conceded it under oath: the pre-existing cartilage damage "was stuff that was already there and then the work injury aggravated it, exacerbated it," and "[m]ade it worse." Hoenig Dep. p. 33, lines 1–9 (Def. APA p. 280). Under Mullinax, that concession frames the only question the Commission was permitted to ask: whether Mr. Moore's need for the replacement is due *solely* to natural progression — with the aggravation contributing nothing. The denial can stand only if substantial evidence answers that question yes.

B. The only evidence supporting the denial is a single opinion that rests on surmise and is contradicted by the physician's own treatment record.

The sole support for the "solely natural progression" finding is Dr. Hoenig's litigation opinion. That opinion cannot bear the weight, for three reasons.

It is surmise by its author's own description. Asked to identify when the compensable aggravation ended and natural progression took over — the dispositive fact — Dr. Hoenig answered that the question is "very much a gray area," that "[t]here's no exact answer," and that "two or three years" was his "typical thought" about patients generally, not a finding about this patient. Hoenig Dep. p. 37, lines 14–24 (Def. APA p. 284); see also id. p. 39, lines 9–24 (Def. APA p. 286) (describing the "year or two" theory in terms of what happens to "someone" with arthritis). A typical thought about a gray area with no exact answer is not expert opinion or testimony stated to a reasonable degree of medical certainty, and findings resting on it are "based

on surmise, speculation or conjecture," Clemmons, 420 S.C. at 288, 803 S.E.2d at 271. The order invoked Jeffers v. Manetta Mills, 190 S.C. 435, 3 S.E.2d 489 (1939), for the proposition that an award "must be based upon something more than surmise or conjecture." Beck Order, Conclusion of Law 3. So must a denial — and Jeffers itself *affirmed* an award built on circumstantial evidence and logical inference. Jeffers, 190 S.C. at 441-42, 3 S.E.2d at 491-92. The standard the order quoted condemns the finding it made.

It is contradicted by eight years of the same physician's conduct. On Dr. Hoenig's "two or three years" theory, the work aggravation exhausted itself by roughly 2018 or 2019. Yet Dr. Hoenig treated the left knee as a workers' compensation injury through July 25, 2023 — thirty-nine injections, escalating from cortisone to serial viscosupplementation, each round submitted to and approved by the carrier, all of it carrier-paid "as far as [he] know[s]." Beck Order pp. 6-8 (39 injections; treatment through July 25, 2023); Hoenig Dep. pp. 15–17, 27–28 (Def. APA pp. 262–64, 274–75). The order itself found this treatment "exceeded" the Form 14B's projection. Beck Order, Finding of Fact 6. Nothing in the treating records marks the day the condition changed character; the "natural progression" framing appears in this case for the first time in the carrier's September 29, 2023 questionnaire — written by the adjuster, presented with a line to check, and checked. Hoenig Dep. p. 32, lines 11–19 (Def. APA p. 279). An opinion built on a foundation supplied by the party that commissioned it, and contradicted by its author's own contemporaneous conduct, deserves little weight on any view of the record. Cf. Brunson v. American Koyo Bearings, 395 S.C. 450, 457, 718 S.E.2d 755, 759 (Ct. App. 2011) (opinion resting on an incomplete and inaccurate foundation properly discounted).

It proves aggravation even as it denies compensability. Dr. Hoenig's pathway metaphor concedes the legal point: the work injury put Mr. Moore "on a different pathway."

Hoenig Dep. p. 39, lines 9–20 (Def. APA p. 286). Under Mullinax and Glover, a work injury that accelerates a pre-existing condition's course is compensable; the employer takes the employee as it finds him. The only work Dr. Hoenig's opinion does is to guess — in gray-area, no-exact-answer terms — at when the acceleration stopped mattering. The statute requires more than a guess, and the treatment record refutes this one.

C. The order's own findings contradict its conclusion.

The order found that Dr. Hoenig treated the left knee for nearly seven years beyond his Form 14B projection, never re-placed Mr. Moore at maximum medical improvement, and that Mr. Moore "is not at maximum medical improvement for his left knee." Beck Order, Findings of Fact 6–8. Those findings cannot be reconciled with Findings 3 through 5, which hold the only recommended remaining treatment — the replacement Dr. Hoenig himself referred Mr. Moore for on September 1, 2023 — unrelated to the injury. If the compensable injury resolved into pure natural progression years ago, there is nothing left of it for Mr. Moore to reach maximum medical improvement *from*. If, as the order found, he has not reached maximum medical improvement for the left knee, then the compensable injury is still producing his condition — and the only treatment on the table addresses it. The Act contemplates exactly this situation: an employer may be required to furnish treatment beyond the ten-week period where it "will tend to lessen the period of disability." S.C. Code Ann. § 42-15-60; see Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). An order denying the only disability-lessening treatment while simultaneously holding the claimant short of maximum medical improvement is internally incoherent and inconsistent, and incoherent and inconsistent findings cannot constitute substantial evidence for anything.

D. The deference framework does not save the finding.

Claimant acknowledges the framework Defendants will invoke. The Commission determines the weight and credit of expert testimony, and "while medical testimony is entitled to great respect, the fact finder may disregard it if there is other competent evidence in the record." Sharpe v. Case Produce, Inc., 336 S.C. 154, 160 (1999) (quoting Tiller v. Nat'l Health Care Ctr., 334 S.C. 333, 340, 513 S.E.2d 843, 846 (1999)); see also Holcombe v. Dan River Mills, 286 S.C. 223, 225, 333 S.E.2d 338, 340 (Ct. App. 1985) (conflicting evidence is for the Commission). But every case in that line presupposes a genuine conflict among competent evidence. Sharpe itself illustrates the difference: there, lay testimony supported a finding that the claimant had *staged* the accident — an evidentiary basis independent of, and contradicting, the medical proof. Sharpe, 336 S.C. at 160. Here there is no staging evidence, no lay contradiction, and no competing account of the injury. There is a unanimous body of untainted evidence — two specialist opinions and seven years of the treating physician's own carrier-billed conduct — against one litigation opinion whose author calls it a gray-area guess and whose foundation was authored by the adjuster.

Nor does treating-physician deference carry the denial. Deference to a treating physician presupposes that the opinion reflects the treatment. Here the treating physician's *treatment-record* opinions — seven years of causally-billed care, escalating interventions approved by the carrier, and his own September 1, 2023 referral for the replacement — all corroborate Claimant; only his *litigation* opinion, procured through the statutory violation addressed in Issue II, points the other way. Finally, the specialist evaluations the order discounted as "independent medical evaluations conducted eight years after the injury," Beck Order, Finding of Fact 3, include the evaluation of Dr. Gerscovich — Dr. Hoenig's own partner, at the same practice, with the same records. This is the Clemmons/Pierre posture, not the Sharpe posture: on the competent,

untainted evidence, all of it points one way. Clemmons, 420 S.C. at 289, 803 S.E.2d at 271 ("All the medical evidence in the record points to only one conclusion . . . .").

E. For the same reasons, the erroneous admission of the tainted opinion cannot be deemed harmless — Defendants have conceded it decided the case.

Issues II and III converge here. If the Court holds, as it should, that § 42-15-95(C) required exclusion of Dr. Hoenig's opinion, no harmless-error principle can preserve the award. An opinion the General Assembly commands excluded cannot itself supply the substantial evidence sustaining the very ruling its admission produced; otherwise the exclusionary command could never result in reversal, and the statute would be unenforceable on appeal precisely when its violation mattered most.

The record forecloses harmlessness in any event. Strip the tainted opinion and what remains is unanimous: Dr. O'Leary (not at maximum medical improvement; never plateaued; symptoms related; replacement recommended), Dr. Gerscovich (aggravation; no replacement but for the injury), and seven years of authorized, carrier-paid treatment culminating in the treating physician's own referral for the surgery. Clt. APA pp. 231–42; Beck Order p. 9. Defendants said it themselves: without the deposition, "there would be no opinion and the commissioner would have been bound by the only other opinions in the case." Panel Hr'g Tr. p. 14, lines 3–9 (Aug. 25, 2025). An error is harmless when the result would have been the same without it. By Defendants' own account, the result would have been the opposite.

The remedy follows from the record. Where a procedurally tainted input was decisive, the prejudice "can be cured only by remanding." Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (1967). But this record supports more: with the tainted opinion excluded, "all the evidence points to one conclusion," and causation "becomes one of law for the

court." Clemmons, 420 S.C. at 288, 803 S.E.2d at 271. The Court should reverse, hold the deposition opinion excluded under § 42-15-95(C), hold on the remaining record that the total knee replacement is causally related to the March 1, 2016 injury, and remand for entry of an order awarding the surgery and attendant benefits. In the alternative, the Court should reverse and remand for a new determination on an untainted record. Green, 250 S.C. at 64, 156 S.E.2d at 321.

CONCLUSION

For the foregoing reasons, Appellant Ivan Moore respectfully requests that this Court:

(1) Hold that the Appellate Panel's January 29, 2026 order is immediately reviewable under S.C. Code Ann. § 1-23-380;

(2) Reverse the Appellate Panel's Decision and Order of January 29, 2026;

(3) Hold that the opinion of Dr. Michael Hoenig contained in his October 31, 2023 deposition must be excluded under S.C. Code Ann. § 42-15-95(C);

(4) Hold on the remaining record that the Claimant's left total knee arthroplasty is causally related to his admitted March 1, 2016 injury, and remand to the Commission for entry of an order awarding that treatment and attendant benefits; and

(5) In the alternative, reverse and remand for a new determination on a record from which the excluded opinion has been removed.

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