8.08 HEALTH CARE PROVIDER MALPRACTICE – EXPERT ADVISORY PANELS

Prior to trial, a panel of medical experts considered this case and reported its findings. The report, [together with (concurring) (dissenting) (concurring and dissenting) opinion(s)] has been introduced as evidence. In making your decision in this case you should consider and evaluate this evidence in the same manner as any other expert testimony.

# Use Note

This instruction should be used when all or a part of the report of an expert advisory panel is admitted into evidence.

# Comment

AS 09.55.536(e) permits the admission of the advisory panel’s report to the same extent as oral testimony by the person or persons preparing it. Thus, the report may be supported or refuted by either party. The same section also requires that the jury be instructed that the report shall be considered and evaluated in the same manner as any other expert testimony. See generally Kendall v. State Div. Of Corrections, 692 P.2d 953, 955 (Alaska 1984) (expert panel report properly considered as evidence for purposes of summary judgment). The statute also provides that the court shall delete any portion of the report that would not be admissible because of lack of foundation for opinion testimony, or otherwise.