

BEFORE THE WORKERS' COMPENSATION BOARD OF  
THE STATE OF OREGON

In the Matter of the Adoption of Permanent )	
Amendments to the Rules of Practice and )	
Procedure for Contested Cases under the )	WCB ADMIN. ORDER 1-2014
Workers' Compensation Law, Relating )	ORDER OF ADOPTION
to Filing and Service of Documents; )	
Correspondence (OAR 438-005-0046). )	

1. On March 31, 2014, the Workers' Compensation Board filed a Notice of Proposed Rulemaking Hearing with the Secretary of State, giving notice of its intent to amend permanent rules of practice and procedure relating to the aforementioned rule. Copies of the notice have been electronically provided to the *Oregonian*, the *Associated Press*, and the *Capitol Press*. The notice was published in the Secretary of State's May 2014 *Administrative Rule Bulletin*.

On April 4, 2014, notice of this hearing was posted on the Board's website at: <https://www.oregon.gov/wcb/legal/Pages/laws-and-rules.aspx>. On April 7, 2014, copies of the notice, as well as the proposed rule, were also mailed to all interested parties whose names appear on the Board's mailing list. On May 23, 2014, copies of the notice and the proposed rule were electronically provided to the appropriate legislators. Notice of the hearing was published in the March 2014 issue of the Board's News and Case Notes, which was posted on the Board's website in early April 2014. In addition, members of the Workers' Compensation Section of the Oregon State Bar were notified by e-mail about the Board's website posting regarding the aforementioned issues in its News and Case Notes on April 11, 2014.

Thereafter, in accordance with the notice, a public hearing was conducted by Debra L. Young, Staff Attorney, on May 30, 2014 at Salem, Oregon. The record of the public hearing was closed at 5:00 p.m. on May 30, 2014.

2. No testimony was presented at the scheduled hearing. Written comments consisted of the Board's Administrative Rules Coordinator's May 23, 2014 "Statement of Filing/Notice of Procedures" regarding the aforementioned rule. Copies of the transcript of the public hearing and of all written comments received are available for public inspection and copying at the offices of the Board, 2601 25<sup>th</sup> St. SE, Suite 150, Salem, Oregon 97302-1280, during normal working hours from 8:00 a.m. to 5:00 p.m., Monday through Friday.

3. Order of Adoption for Rules (Exhibit A). At its June 17, 2014 public meeting, the Board Members thoroughly reviewed and considered all comments pertaining to the proposed permanent rules. A written summary of the comments is also included in the record.

As part of its comprehensive review of OAR Chapter 438 rules, the Board invited public comment regarding any potential rule revisions. Thereafter, the Board appointed an Advisory Committee on Technology to provide guidance on the impact any proposed "technology-related"

rule changes would have on the workers' compensation system.<sup>1</sup> After considering the committee's March 2, 2012 report and public comment, the Board, in part, provided for website portal filing/service concerning the following actions: (1) requests for hearing; (2) requests for Board review of an Administrative Law Judge's (ALJ's) order; (3) requests for Board review of a Director's order finding no bona fide medical services dispute; (4) requests for extension of the briefing schedule under OAR 438-011-0020; (5) requests for waiver of the Board's rules under OAR 438-011-0030; and (6) responses to issues under OAR 438-006-0036. *See* OAR 438-005-0046(1), (2); WCB Admin. Order 1-2012, eff. 11/1/2012; WCB Admin. Order 2-2013, eff. 4/1/2014.

The Technology Committee also recommended that the Board make it a priority to expand the number of materials that could be electronically filed; *e.g.*, the filing of settlement documents. At a public meeting on March 20, 2014, the Board returned to this recommendation and proposed to amend OAR 438-005-0046(1) and (2) to provide for website portal filing/service of "any other thing" that it makes available for filing by website portal. The Board considered that such an approach would permit website portal filing/service of additional things as the website portal system is expanded in the future, without the need to amend OAR 438-005-0046(1), (2) to explicitly list each new thing added to the website portal. Accordingly, the Members proposed to amend OAR 438-005-0046(1), (2) to enact those changes.

Consistent with the committee's recommendations, the Members' intention is to provide an electronic "filing/service" system to the extent possible without creating additional expenses on the agency or the parties. In particular, the present goal is to enhance the parties'/ practitioners' use (for purposes of "filing" and "service" under the Board's rules) of the Board's website portal.

For the reasons explained in the Board's March 31, 2014 Statement of Need (incorporated by this reference), as well as those explained below, the Members have reached the following conclusions regarding the proposed amendments, which are contained in Exhibit A (attached and incorporated by this reference).<sup>2</sup>

#### OAR 438-005-0046

OAR 438-005-0046 currently permits website portal filing/service of the following items: (1) requests for hearing; (2) requests for Board review of an ALJ's order; (3) requests for Board review of a Director's order finding no bona fide medical services dispute; (4) requests for extension of the briefing schedule under OAR 438-011-0020; (5) requests for waiver of the Board's rules under OAR 438-011-0030; and (6) effective April 1,

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<sup>1</sup> Administrative Law Judge (ALJ) Joy Dougherty served as the facilitator for the committee. The following practitioners also were members of the committee: Robert Guarrasi, Robert Kinney, Nancy Marque, and Rebecca Watkins. The Members continue to extend their grateful appreciation to the committee for their valuable participation in this endeavor.

<sup>2</sup> Following issuance of the Board's March 31, 2014 Statement of Need, former Board Members Langer's and Lowell's terms expired. Thereafter, Sally Anne Curey and Judy L. Johnson became members of the Board and have participated in the deliberations leading to the adoption of this rule.

2014, responses to issues under OAR 438-006-0036. See OAR 438-005-0046(1), (2); WCB Admin. Order 1-2012, eff. 11/1/2012; WCB Admin. Order 2-2013, eff. 4/1/2014.

The Members proposed amending the rule to allow the filing/service of other materials through the use of its website portal (once that system is enhanced to allow such actions). The Members proposed to accomplish this amendment by providing for website portal filing/service of “any other thing that the Board makes available for filing by website portal.” In this way, the Members reasoned that it will not be necessary to amend the rule each time the website portal is enhanced to provide for filing of additional documents. These proposed amendments are designed to provide an additional, convenient means to file/serve settlement documents, in addition to other documents, that may become part of an enhanced website portal in the future.

To achieve this objective, the following amendments are necessary. Amendment to subsection (e) of section (1) is proposed to address only filing of things by electronic mail (e-mail), deleting reference to filing things “by website portal pursuant to subsection (g) of this section.” A new subsection (g) will be adopted to provide for the “things that may be filed by website portal pursuant to subsection (h) of this section.” That list of things includes all actions described in subsection (e) of section (1); *i.e.*, all of the things that may be filed by e-mail, and the “[f]iling of any other thing that the Board makes available for filing by website portal.” See Subparagraphs (1)(g)(A), (1)(g)(B).

These aforementioned proposed changes to the filing rule also result in renumbering current subsection (g) as (h) in section (1) and amending the references to various subsections accordingly in sections (1) (filing) and (2) (service). This new subsection (h) of section (1) provides for electronically filing by website portal of the things listed in the new subsection (g) of this section. A new subparagraph (1)(h)(C) is added to provide that website portal filing of things under subparagraph (1)(g)(B) requires completion of the “appropriate items on the website portal.” These proposed changes result in redesignating current subparagraphs (g)(C) and (g)(D) of section (1) as (h)(D) and (h)(E), respectively. In addition, current subsections (h) and (i) of section (1) are redesignated as (i) and (j), respectively. Finally, the Members also proposed amending subsections (a) and (b) of section (2) to include reference to service by means of e-mail or website portal regarding “requests, responses, or any other thing.”

At the rulemaking hearing, no comments were received regarding these proposed amendments. At its June 17, 2014 public meeting, the Members approved these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit A and incorporated by this reference.

4. Under the authority granted by ORS 656.726(5), the Board finds that:
  - a. All applicable rulemaking procedures have been followed; and

b. The rules being adopted are reasonable, necessary and proper.

**PURSUANT TO THE AMERICANS WITH DISABILITIES ACT GUIDELINES, ALTERNATIVE FORMAT COPIES OF THE RULES WILL BE MADE AVAILABLE TO QUALIFIED INDIVIDUALS UPON REQUEST TO THE BOARD.**

Consequently, in accordance with its Notice of Proposed Rulemaking, the Board adopts the attached amendments, as set forth in Exhibit "A" incorporated herein by this reference, as permanent amendments of the Workers' Compensation Board, to become effective September 1, 2014. The rule is applicable as follows:

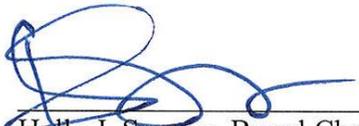
Amendments to OAR 438-005-0046 apply to all cases and matters that involve requests for hearing or Board review that are filed or served on or after September 1, 2014.

The Board further orders that a certified copy of the adopted rule be filed with the Secretary of State and that a copy of the Order of Adoption and the adopted rule with revision marks be filed with the Legislative Counsel within 10 days after filing with the Secretary of State as required by ORS 183.715.

Dated this 20<sup>th</sup> day of June, 2014.

**WORKERS' COMPENSATION BOARD**

by:

  
Holly J. Somers, Board Chair

  
Sally Anne Curey, Board Member

  
Judy L. Johnson, Board Member

  
Steve Lanning, Board Member

  
Margaret E. Weddell, Board Member