Workers' Compensation Board
Tuesday, May 12, 2026
10 a.m.

MEETING MINUTES

In-Person/By Zoom Staff: Joy Dougherty, Board Chair
Kate Caldwell, Board Member
Melissa Douglas, Board Member
Roger Ousey, Board Member
Moisés Ceja, Board Member
Kerry Anderson, Project Manager
Jacqueline Jacobson, Presiding Administrative Law Judge
Lauren Eldridge, Managing Attorney
Heidi Havercroft, Senior Staff Attorney
Christina Alston, WCB Budget and Policy Analyst
Katelyn Crowe, Transcription Coordinator
Autumn Blake, Board Review Coordinator
Rolando Mata, WCB Information Systems Coordinator

In-Person/By Zoom Attendees:

Julene Quinn, Quinn & Heus LLC
Theodore Heus, Quinn & Heus LLC
Aaron Clingerman, Dunn & Roy PC
Elaine Schooler, SAIF Corporation
Ivo Trummer, SAIF Corporation
Keith Semple, Johnson Johnson Lucas et al
Amanda Waibel, Reinisch Wilson PC
Kevin Anderson, SBH Legal

Call to Order

Chair Dougherty called the meeting to order. The public and Workers' Compensation Board (WCB) staff members participated in the meeting by Zoom and in person in the Salem office.

Roll Call

Katelyn Crowe, Transcription Coordinator, took roll, reflected in the attendee list above.

Approval of Agenda and Order of Business

Chair Dougherty asked for a motion to approve the agenda and order of business. Member Caldwell moved for approval of the agenda and order of business. Member Ousey seconded. The Members voted as follows: Dougherty, aye; Ousey, aye; Ceja, aye; Caldwell, aye; Douglas, aye. Motion passed; 5-0.

Approval of Past Minutes

Chair Dougherty asked for a motion to approve the March 19, 2026, meeting minutes. Member Douglas moved for approval of minutes from the March 19, 2026, meeting. Member Caldwell seconded. The

Members voted as follows: Dougherty, aye; Ousey, aye; Ceja, aye; Caldwell, aye; Douglas, aye. Motion passed; 5-0.

Division Reports/Updates

There was no report from the Hearings Division, Administrative Services Division, or WCB IT Division.

Managing Attorney Lauren Eldridge had a staffing update for Board Review. Katelyn Crowe, Transcription Coordinator, is back from maternity leave.

New Business

Consideration of draft proposed rule amendments related to OAR 438-015-0019 "Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute"

At the March 19, 2026, Board meeting, the Board directed WCB staff to prepare draft amendments to OAR 438-015-0019 "Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill." Managing Attorney Eldridge came forward to discuss the May 5th, 2026, memorandum, which provided alternative drafts of proposed amendments to the rule. The specific amendments requested were the following: (1) make use of the Board's "Cost Bill" Form mandatory; (2) extend the time frame for the claimant to submit the cost bill from 30 days to 60 days; (3) Allow the claimant's attorney to sign the cost bill form; and (4) alternate drafts, one referring to costs "paid," the other leaving reference to costs "incurred." The alternative drafts are exhibited in the May 5th memorandum as Exhibit A and Exhibit B.

Exhibit A incorporates amendments 1-3 and also changes the term "incurred" to "paid." It was noted that when reviewing this rule that the definition of attorney is defined as "member of the Oregon State Bar." In 2025, the legislature, through Senate Bill 166, changed the term "member of the Oregon State Bar" to "licensee of the Oregon State Bar" throughout the Oregon Revised Statutes. However, Managing Attorney Eldridge recommended against making that change to OAR 438-015-0005 right now, because there are other Board rules that reference "member of the Oregon State Bar." Her recommendation would be to make those changes to all of the Board rules as a statutory minor correction at a later time. Exhibit B incorporates amendments 1-3 and retains the current language "incurred."

Additionally at the March 19th Board meeting, the Board did not vote on the advisory committee's recommendation that the cost form bill be submitted to the insurer as a separate submission. The Board will need to make a decision on that recommendation at today's meeting.

Board Chair Dougherty opened the floor up for public comment, starting with those in-person. Elaine Schooler came forward on behalf of SAIF Corporation. SAIF supports the recommendation that the cost bill form be required and documentation of the cost be provided. They also agree with changing the term "incurred" to "paid." Ms. Schooler noted that insurers would be in a difficult situation if claimants or their attorneys are requesting reimbursement of costs that have not actually been paid. This situation raises the question of what is the duty on claimant or their counsel to return funds reimbursed by the insurer that they never actually paid? "Incurred" creates ambiguity amongst parties, whereas "paid" sets a clear standard for parties to follow. It's SAIF's position that claimants or their counsel have, at minimum, 120 days to be billed and pay a provider; often times there are continuances for closing the record that would allow even more time for claimants to be billed and pay a provider.

Member Ousey asked Ms. Schooler if claimant's attorney is supposed to eat the cost if the bill isn't received in time. Ms. Schooler responded that the Board and the parties will have to determine what the process is if a cost bill form is received late. It was discussed by the advisory committee that most providers bill timely, but it raises the question if the Board should create a rule for how to handle untimely submissions. Member Ousey mentioned that in his experience as a claimants' attorney he has always returned reimbursements to insurers that he was not entitled to, but is SAIF concerned that if a worker is paid in advance for a cost that is never actually billed, that they won't give back the reimbursement from SAIF? Ms. Schooler responded that that scenario was discussed by the advisory committee; it would put both sides in a difficult position. She mentioned that typically the cost of a conference call with a provider is agreed to upfront, and with timekeeping that that bill can be paid without actually receiving a bill from the provider. Based on personal experience Member Ousey has found that providers can bill for time in addition to the upfront cost of conference. Sometimes these bills are received years after a service takes place. He asked whether we are building any guardrails into the process to address these types of scenarios where the cost of the bill can't easily be determined. Ms. Schooler acknowledged that determining these costs is a challenge; however, in her experience she tracked the time she was on the phone with a medical provider and regularly audited her files to make sure her notes matched up with the invoice. In the event that a bill is received years later, the onus is on the attorney to regularly audit their files to make sure all of the costs they have been reimbursed for have actually been paid. Ms. Schooler added that currently the rule does not address the duty of paying back the insurer for a reimbursed cost that claimant or their counsel did not actually pay. She mentioned that the advisory committee discussed that these types of situations do happen. Member Ousey responded that the ability to question the bill being paid is more theoretical than real, because workers' compensation parties are beholden to these doctors and their opinions. Ms. Schooler concluded that claimants' side is entitled to be reimbursed for a cost that was paid and that medical providers have an obligation to bill. If a provider does not bill, then it's not a cost.

Member Douglas then asked Ms. Schooler for her definition of "paid" and "incurred." Ms. Schooler answered that "paid" is to submit payment for a service. Per Webster's Online Dictionary, "incurred" is to become liable or subject to.

Member Dougherty asked if there are any potential unintended consequences from changing this language in other areas, for example, a stipulation. Ms. Schooler responded that in the case of a disputed claims settlement (DCS) often claimants' attorneys waive costs to divert more funds to their clients. In regards to a stipulation, specifically, it is not subject to the cost bill process because the cost bill process is for prevailing at hearing. One would assume that costs have been paid in a stipulation; however, the cost bill form does not currently address that scenario, but there doesn't seem an interest in adding that to the form.

Member Caldwell asked if an attorney was reimbursed for a cost they didn't actually pay, wouldn't not returning the funds to the insurer violate Oregon State Bar's (OSB) rules of professional conduct and be an ethics violation? Ms. Schooler responded that she can't speak on behalf of OSB, but having a certification that aligns with payment of the costs eliminates risk on both sides.

Member Douglas asked if Ms. Schooler's definition of "paid" means billed, meaning can payment happen in the absence of a bill? For example, can an attorney pay a provider after concluding a conference call and pay them for that conference without actually receiving a bill? Ms. Schooler responded that claimants' attorneys could potentially do that, but it doesn't prevent the provider from billing additional amounts.

Chair Dougherty then opened the floor up for public comment for those attending online. Kevin Anderson from SBH Legal provided comment. He supports the comments made by Ms. Schooler. A lot of the concerns surrounding cost reimbursements have not been concerns in the past because the limit was lower. But with the limits going up and continuing to go up, their clients share similar concerns to SAIF about reimbursing costs that weren't actually paid by the claimant or their attorney. His firm supports changing the language from "incurred" to "paid."

Julene Quinn from Quinn and Heus provided comment. Ms. Quinn appreciated the policy discussion. As an appellate attorney, she questions the basis to narrow ORS 656.386(2). ORS 656.386(2) does not limit reimbursement of costs to include proof of payment. Overall, she foresees this rule narrowing the statute, and that is something that must be done by the legislature. Ms. Quinn read ORS 656.386(2) into the record. She noted that if a claimant incurs a cost for a doctor's conference, but hasn't yet been billed, that is considered claimant's reasonable cost. If the Board makes the change to the term "paid" they are narrowing the statute, where they cannot. Ms. Quinn also wanted to clarify that an attorney cannot waive costs for their client in a DCS in order to get their client more money. Claimants are always liable for them and it's not something an attorney can waive in a settlement. Technically, they are always liable. Ethically, she is under the impression that attorneys have to return reimbursement they are not entitled to. Ms. Quinn asked the rhetorical question of whether claimants' attorneys not returning funds they aren't billed for is a problem. Through her experience and connections, she hasn't heard that this is problem. She is curious if SAIF has lost money from claimants or their counsel not returning costs they aren't entitled to. She doesn't find it necessary to change "incurred" if there isn't an issue with claimant or their counsel keeping funds they aren't entitled to.

There were no additional comments from online attendees.

Chair Dougherty asked for any final public comments. Ms. Schooler provided a few additional thoughts. She noted that the statute does not use the word "incur" or "incurred." The current rule, as it is written, is not in alignment with statute. Before that statute existed, the costs would have been billed to the client. When the statute went into effect it shifted that cost burden to the insurer when the claimant prevails. Ms. Schooler concluded that if that same situation existed it would be costs paid that were reimbursed.

There were no further questions or public comments. Public comment closed.

Chair Dougherty opened the floor for Board Member discussion. Member Douglas took the position of not having an explicit definition of "costs" in the rule. She thinks it can be assumed that "costs" are "paid costs." She would not like to limit the statute.

Chair Dougherty then shifted the discussion to the topic of submitting the cost bill form as an individual submission, as recommended by the advisory committee. Member Douglas would have liked to honor what the advisory committee agreed to in their recommendation of submitting the cost form as a separate submission. Member Ousey agreed with Member Douglas and the advisory committee on submitting the cost bill form as a separate submission (*i.e.*, not in a discovery submission or other correspondence). He didn't want to go too far into the semantics of the word "insurer" because sometimes there is a dispute on whether "insurer" also refers to defense counsel. Chair Dougherty addressed the idea of transmitting via email submission, stating that the individual form can be sent as an attachment to the appropriate destination for reimbursement. Member Ousey asked if the Board needed to outline the methods of submission in the rule. Managing Attorney Eldridge responded that currently the rule says "submitted" and "submitted" is not defined. With the current language, that could be any form of submission as long as it's an individual submission. Member Ousey moved to use the Board's cost bill form as an individual submission. Member Caldwell was hesitant to include specific language in the rule that details the method of submission, given how quickly technology advances. To avoid future rulemaking changes, she would advise against defining "submission" given how frequently that word is used. Chair Dougherty assured that the rule wouldn't get too specific when it came to the method of submission.

Chair Dougherty opened the discussion to the topic of "paid" versus "incurred." Member Caldwell's position was that attorneys have an ethical obligation to not keep money that they aren't entitled to. It would seem duplicative and unnecessary to make an amendment to this rule when OSB's code of conduct addresses this concern. As for a scenario with a *pro se* claimant keeping funds, insurers can verify with providers what was billed. If this isn't currently a problem she did not find it necessary to change language from "incurred" to "paid." Overall, Member Caldwell supported Exhibit B. Member Ceja also supported Exhibit B. He too agreed that if the term "incurred" versus "paid" doesn't currently present an issue, there is no need to change it. Chair Dougherty was in agreement with the comments in leaving the language as is. Member Douglas had one additional comment regarding the language. She would prefer to use the word "shall" instead of "must." There was discussion on whether statutes say "shall," or "must" and if there was a recent change enacted by the legislature that made it consistent. Member Douglas stated if the legislature preferred "must" instead of "shall" she would agree to use it.

Managing Attorney Eldridge outlined the next steps for the Board regarding the proposed rule changes. The Board would need to formally propose the changes, consistent with Exhibit B. WCB staff would send the proposed changes to the Secretary of State for publication in the June 1 Bulletin. There would be a rulemaking hearing to allow for additional public comment. All comments from the hearing would be brought back to the Board for discussion, likely at the September Board meeting. Chair Dougherty asked if there is any flexibility with the filing, given the need to research whether the statutes say "shall" or "must." Managing Attorney Eldridge responded that there is and that WCB staff can prepare a memorandum for the Board addressing that question.

Chair Dougherty asked for a motion. Member Caldwell moved to approve amendments to OAR 438-015-0019 consistent with Exhibit B, as referenced in the May 5, 2026, memorandum. Also, she moved to approve the advisory committee's recommendation that the use of the "Cost Bill" Form be mandatory. Member Ceja seconded. Dougherty, aye; Ousey, aye; Ceja, aye; Caldwell, aye; Douglas, aye. Motion passed; 5-0.

Managing Attorney Eldridge confirmed that the definitional rule and cost bill rule stay as is. Chair Dougherty asked at what point the Board needs to determine a date of effectiveness? Managing Attorney Eldridge responded that it won't be determined until after adoption.

General Public Comment

Chair Dougherty asked for general comments. There were none from the public. Member Douglas asked if the Board could gather data on the increased cost limit. Chair Dougherty said the Board can contemplate that discussion at a later meeting.

Announcements

None.

Adjournment

Chair Dougherty asked for a motion to adjourn. Member Caldwell moved to adjourn. Member Ousey seconded. The Members voted as follows: Dougherty, aye; Ousey, aye; Ceja, aye; Caldwell, aye; Douglas, aye. Motion passed; 5-0. Meeting was adjourned.