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## BOARD NEWS

### Proposed Amendments to OAR 438-015-0019 "Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute"

At its May 12, 2026, public meeting, the Board voted to propose amendments to OAR 438-015-0019 "Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute" to revise submission requirements of cost bills for reasonable expenses and costs when a claimant finally prevails against a denial under ORS 656.386(1).

#### Summary of the proposed changes:

- Extend the timeframe to submit the cost bill from 30 days to 60 days.
- Make use of the Board's form mandatory.
- Require the form to be submitted separately.
- Allow the claimant's attorney to sign the form on the claimant's behalf.

Notice of the proposed rule amendments and rulemaking hearing will be distributed to those parties who have signed up to receive notice [electronically](#) or under [OAR 438-022-0010](#).

## CASE NOTES

### PREMATURE CLOSURE: Carrier Not in Strict Compliance with Administrative Closure Rule; Claimant Entitled to "268(5)(f)" Penalty

### ATTORNEY FEES: Assessed Fees Awardable Under "382(1)" and "382(2)"

*Alejandro Ortega*, 78 Van Natta 214 (April 7, 2026). Concluding that the carrier failed to comply with the requirements for administrative claim closure, the Board (1) upheld an Order on Reconsideration that set aside a carrier's 2023 Notice of Closure as premature and (2) awarded penalties and attorney fees for the carrier's unreasonable closure. Under OAR 436-030-0034(1) and (2), a carrier cannot administratively close a claim unless it provides certain notice to the worker.

Applying *Nataliya Shmigel*, 76 Van Natta 528, 532 (2024), the Board found that the carrier did not provide notice that strictly complied with OAR 436-030-

0034(1) or (2) because its letter did not inform the claimant that (1) the reason for closure was his failure to treat with an authorized health care provider; or (2) he could prevent the closure by establishing within 14 days that his reasons for not treating were outside his control. Accordingly, the Board found that the closure was premature.

The Board awarded a penalty under ORS 656.268(5)(f) and related attorney fee under ORS 656.382(1), finding that the language of the rule is unambiguous and does not allow for more than one interpretation. Therefore, it determined that the carrier's failure to comply with the rule was unreasonable.

### PREMATURE CLOSURE: Medically Stationary Date Limited to 60 Days Before Determination - ORS 656.268(1)(a)

*Andrew Venetucci*, 78 Van Natta 251 (April 17, 2026) (en banc). Applying the applicability clause for the 2022 amendment to ORS 656.268(1)(a), the Board held that the amendment applied because the claim existed on January 1, 2024, and the medically stationary date dispute was not finally determined before January 1, 2024.

Analyzing the text, context, legislative history, and the Workers' Compensation Division's interpretation of ORS 656.268(1)(a), the Board determined that, if an attending physician determines a worker to be medically stationary more than 60 days before the date of the determination, ORS 656.268(1)(a) does not invalidate the determination, but reduces the amount of time the physician can backdate the medically stationary date to 60 days. Applying ORS 656.268(1)(a) to the facts of this case, the Board found that, because the attending physician had determined the claimant to be medically stationary more than 60 before the physician's determination, the medically stationary date was 60 days before the date of the determination. Based on that medically stationary date, the Board concluded that the claimant was entitled to additional temporary disability benefits.

Members Ousey and Ceja dissented. They would have found that the carrier did not have sufficient information to close the claim because the claimant did not have an attending physician at the time of claim closure. Additionally, they would have interpreted ORS 656.268(1)(a) to mean that an attending physician's medically stationary date determination is not valid if it is more than 60 days before the date of the determination.

## **APPELLATE DECISIONS UPDATE**

### COMBINED CONDITION: Board Order Upholding "Ceases" Denial Supported by Substantial Evidence and Reason

*Mooney v. Legacy Health*, 349 Or App 36 (April 29, 2026). The Court of Appeals affirmed the Board's order in *Mark S. Mooney*, 75 Van Natta 563

(2023), that upheld the carrier's denial of the claimant's combined condition. Analyzing ORS 656.005(7)(a)(B), ORS 656.266, and ORS 656.268(1), the court found that the carrier had met its burden to establish that the "otherwise compensable injury" was no longer the major contributing cause of the claimant's disability or need for treatment of the combined condition. Citing *Caren v. Providence Health System Oregon*, 365 Or 466, 486 (2019), the court determined that the carrier was entitled to apportion benefits between the accepted condition and denied combined condition after issuing its "ceases" denial and that the Board had not erred when it declined to account for the apportionment in addressing the propriety of the denial.

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## APPELLATE DECISIONS COURT OF APPEALS

### PERMANENT IMPAIRMENT EXTENT: Board Order Not Supported by Substantial Evidence and Reason

*Dean v. Multnomah County*, 349 Or App 10 (April 29, 2026). The Court of Appeals reversed a Board order that did not award permanent disability benefits. Analyzing *Guild v. SAIF*, 291 Or App 793 (2018), *Armstrong v. Asten-Hill Co.*, 90 Or App 200 (1988), and *Minor v. SAIF*, 290 Or App 537 (2018), the court found that the Board's order relied on a medical arbiter panel's causation analysis that conflicted with the established scope of the claimant's accepted occupational disease condition and did not explain the inconsistency. Accordingly, the court remanded the case to the Board.