

EXHIBIT A

438-005-0046

Filing and Service of Documents; Correspondence; Signatures

(1) Filing:

- (a) Except as otherwise provided in these rules, "filing" means the physical delivery of a thing to any permanently staffed office of the Board, or the date of mailing;
- (b) In addition to the procedures otherwise described in these rules, "filing" may also be accomplished in the manner prescribed in OAR 436, division 009 or 010 for filing a request for administrative review with the Director provided that the request involves a dispute that requires a determination of either the compensability of the medical condition for which medical services are proposed or whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability;
- (c) If filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute is accomplished by mailing, it shall be presumed that the request was mailed on the date shown on a receipt for registered or certified mail bearing the stamp of the United States Postal Service showing the date of mailing. If the request is not mailed by registered or certified mail and the request is actually received by the Board after the date for filing, it shall be presumed that the mailing was untimely unless the filing party establishes that the mailing was timely;
- (d) If a settlement stipulation, disputed claim settlement, or claim disposition agreement results from a mediation, "filing" also includes the physical delivery of the settlement stipulation, disputed claim settlement, or claim disposition agreement to the Administrative Law Judge who mediated the settlement or agreement, regardless of location.

(e) *[Filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute]* **The following requests** may be accomplished by electronic mail **(e-mail) pursuant to subsection (f) of this section or by website portal pursuant to subsection (g) of this section**[.]:

(A) Request for hearing;

(B) Request for Board review of an Administrative Law Judge's order;

(C) Request for Board review of a Director's order finding no bona fide medical services dispute;

(D) Request for extension of the briefing schedule under OAR 438-011-0020; or

(E) Request for waiver of the Board's rules under OAR 438-011-0030.

(f) To electronically file [a] the requests [for hearing or Board review] listed in subsection (e) of this section by e-mail, a party shall:

(A) Send an e-mail to: request.wcb@state.or.us; and

(B) Attach an electronic copy of a completed Workers' Compensation Board "Request for Hearing Form," or a completed request for Board review, **or a completed request for extension of the briefing schedule, or a completed request for waiver of the Board's rules**. These attachments must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg).

(C) For purposes of this rule, the date of an electronic filing is determined by the date the Board receives the appropriate completed electronic form which must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg). An electronic filing under subsections **[(d)] (e) and (f)** of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed on that date.

[(f) Except for the documents specified in subsection (c) or (e) of this section, filing of any other thing required to be filed within a prescribed time may be accomplished by mailing by first class mail, postage prepaid. An attorney's certificate that a thing was deposited in the mail on a stated date is proof of mailing on that date. If the thing is not received within the prescribed time and no certificate of mailing is furnished, it shall be presumed that the filing was untimely unless the filing party establishes that the filing was timely;]

(g) To electronically file the requests listed in subsection (e) of this section by website portal, a party shall:

(A) Register as a "user" of the portal at: <https://portal.wcb.oregon.gov>; and

(B) Complete the electronic version of the Workers' Compensation Board "Request for Hearing Form," or complete a request for Board review, or complete a request for extension of a briefing schedule, or complete a request for waiver of the Board's rules.

(C) For the purposes of this rule, the date of a portal filing is determined by the date the Board receives the appropriate portal version of the form.

(D) A portal filing under subsections (e) and (g) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed as of that date.

*[(g)] **(h)** "Filing" includes the submission of any document (other than the exchange of exhibits and indexes under OAR 438-007-0018) to any permanently staffed office of the Board by means of a telephone facsimile communication device (FAX) provided that:*

(A) The document transmitted indicates at the top that it has been delivered by FAX;

(B) The Board's facsimile transmission number is used; and

(C) The Board receives the complete FAX-transmitted document by 11:59 p.m. of a non-holiday, weekday.

(i) Except for the documents specified in subsection (c) or (e) of this section, filing of any other thing required to be filed within a prescribed time may be accomplished by mailing by first class mail, postage prepaid. An attorney's certificate that a thing was deposited in the mail on a stated date is proof of mailing on that date. If the thing is not received within the prescribed time and no certificate of mailing is furnished, it shall be presumed that the filing was untimely unless the filing party establishes that the filing was timely.

(2) Service:

(a) A true copy of any thing delivered for filing under these rules shall be simultaneously served personally, by means of a facsimile transmission, by means of e-mail **or website portal** regarding requests *[for hearing or Board review]* filed under OAR 438-005-0046(1)[(d)][**(e), (f), or (g)**], or by mailing by first-class mail, postage prepaid, through the United States Postal Service, to each other party, or to their attorneys. Service by mail is complete upon mailing, service by facsimile transmission is complete upon disconnection following an error-free transmission, and service by e-mail **or website portal** regarding requests *[for hearing or Board review filed]* under 438-005-0046(1)[(d)][**(e), (f), or (g)**] is complete upon successful transmission, provided that the copy is sent in a format readable by the recipient;

(b) Any thing delivered for filing under these rules shall include or have attached thereto either an acknowledgment of service by the person served or proof of service in the form of a certificate executed by the person who made service showing personal delivery, service by means of a facsimile transmission, service by means of e-mail **or website portal** regarding requests *[for hearing or Board review]* filed under OAR 438-005-0046(1)[(d)][**(e), (f), or (g)**], or deposit in the mails together with the names and addresses of the persons served.

(3) Correspondence. All correspondence to the Board shall be captioned with the name of the claimant, the WCB Case number and the insurer or self-insured employer claim number.

Correspondence to the Hearings Division shall also be captioned with the date of the hearing and name of the assigned Administrative Law Judge, if any.

(4) Signatures.

(a) Any thing delivered for filing under these rules shall include the signature of the party or the party's attorney, which may be provided in writing, by facsimile transmission, by electronic scanning, by the website portal, or by other electronic means.

(b) The user name and password required to file a document with the Board by means of the website portal shall constitute the signature of the filer and for any other purpose for which a signature is required.

(c) Except for documents filed under subsection (b) of this section, any document filed by electronic means must include a signature block that includes the printed name of the filer, preceded by an electronic symbol intended to substitute for a signature (such as a scan of the filer's handwritten signature or "s/") in the space where the signature would otherwise appear.

(d) Any order, notice, or any other document issued by an Administrative Law Judge or a Board Member may include his/her signature in writing, by facsimile transmission, by electronic scanning, by the website portal, or by other electronic means permitted under the Board's rules.

(e) Any electronically transmitted signature shall have the same force and effect as an original signature, provided that the electronically transmitted signature is executed or adopted by a person with the intent to sign the document as prescribed in ORS Chapter 84 (Uniform Electronic Transactions Act).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS Chapter 84; ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, cert. ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-1991(Temp), f. 5-24-91, cert. ef. 5-28-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-1999(Temp), f. 9-24-99, cert. ef. 10-23-99 thru 4-14-00; WCB 1-2000, f. 3-29-00, cert. ef. 4-3-00; WCB 1-2007, f. 1-19-07, cert. ef. 3-1-07; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

EXHIBIT B

438-005-0050

Notice of Claim Acceptance and Hearing Rights under ORS 656.262(6)(d)

(1) Every notice of claim acceptance shall include all of the information prescribed by ORS 656.262(6)(b) and OAR 436.

(2) In the event that the insurer or self-insured employer disagrees with all or any portion of a worker's objections to a notice of claim acceptance under ORS 656.262(6)(d), the insurer's or self-insured employer's written response shall specify the reasons for the disagreement, and shall contain a notice, in prominent or bold-face type, as follows:

**"IF YOU DISAGREE WITH THIS DECISION, YOU MAY FILE A [LETTER WITH]
REQUEST FOR HEARING BY ANY OF THE FOLLOWING MEANS: (1) MAIL A
LETTER TO THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE,
SUITE 150, SALEM, OREGON 97302-1280; (2) SEND AN E-MAIL TO:
request.wcb@state.or.us; (3) SEND A FAX TO: 503-373-1600; OR (4) PHYSICAL
DELIVERY OF A LETTER TO A WORKERS' COMPENSATION BOARD OFFICE (IN
SALEM, PORTLAND, EUGENE, OR MEDFORD). YOUR LETTER, E-MAIL, OR FAX
SHOULD STATE THAT YOU WANT A HEARING, YOUR ADDRESS, THE DATE OF
YOUR INJURY, AND YOUR CLAIM NUMBER.**

**"IF YOUR CLAIM QUALIFIES, YOU MAY RECEIVE AN EXPEDITED HEARING
WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR
EMPLOYMENT. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR
CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS
YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE AT
1-800-452-0288 OR THE OMBUDSMAN FOR INJURED WORKERS TOLL FREE AT
1-800-927-1271."**

Stat. Auth.: ORS 656.307, 656.388, 656.593 & 656.726(5)

Stats. Implemented: ORS 656.262(6)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

EXHIBIT C

438-005-0055

Notice of Claim Denial and Hearing Rights

(1) Except for a denial issued under ORS 656.262(15), in addition to the requirements of 656.262, the notice of denial shall specify the factual and legal reasons for denial; and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL YOU MUST FILE A [LETTER WITH] REQUEST FOR HEARING BY ANY OF THE FOLLOWING MEANS: (1) MAIL A LETTER TO THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280; (2) SEND AN E-MAIL TO: request.wcb@state.or.us; (3) SEND A FAX TO: 503-373-1600; OR (4) PHYSICAL DELIVERY OF A LETTER TO A WORKERS' COMPENSATION BOARD OFFICE (IN SALEM, PORTLAND, EUGENE, OR MEDFORD). YOUR LETTER, E-MAIL, OR FAX MUST STATE THAT YOU WANT A HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE.

"IF YOUR CLAIM QUALIFIES, YOU MAY RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES.

"IF YOU MAKE A TIMELY REQUEST FOR HEARING ON A DENIAL OF COMPENSABILITY OF YOUR CLAIM AS REQUIRED BY ORS 656.319(1)(a) THAT IS BASED ON ONE OR MORE REPORTS OF EXAMINATIONS CONDUCTED AT THE REQUEST OF THE INSURER OR SELF-INSURED EMPLOYER UNDER ORS 656.325(1)(a) AND YOUR ATTENDING PHYSICIAN DOES NOT CONCUR WITH THE REPORT OR REPORTS, YOU MAY REQUEST AN EXAMINATION TO BE CONDUCTED BY A PHYSICIAN SELECTED BY THE DIRECTOR. THE COST OF THE EXAMINATION AND THE EXAMINATION REPORT SHALL BE PAID BY THE INSURER OR SELF-INSURED EMPLOYER.

"IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE AT 1-800-452-0288 OR THE OMBUDSMAN FOR INJURED WORKERS TOLL FREE AT 1-800-927-1271."

(2) If an insurer or self-insured employer intends to deny a claim under ORS 656.262(15) because of a worker's failure to cooperate in the investigation of the claim, in addition to the requirements of 656.262, the notice of denial shall specify the factual and legal reasons for denial, and shall contain a notice, in prominent or bold-face type, as follows:

"IF YOU THINK THIS DENIAL IS NOT RIGHT, WITHIN 60 DAYS AFTER THE MAILING OF THIS DENIAL YOU MUST FILE A [LETTER WITH] REQUEST FOR HEARING BY ANY OF THE FOLLOWING MEANS: (1) MAIL A LETTER TO THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280; (2) SEND AN E-MAIL TO: request.wcb@state.or.us; (3) SEND A FAX TO: 503-373-1600; OR (4) PHYSICAL DELIVERY OF A LETTER TO A WORKERS' COMPENSATION BOARD OFFICE (IN SALEM, PORTLAND, EUGENE,

OR MEDFORD). YOUR LETTER, E-MAIL, OR FAX MUST STATE THAT YOU WANT AN EXPEDITED HEARING, YOUR ADDRESS AND THE DATE OF YOUR ACCIDENT IF YOU KNOW THE DATE.

"YOU WILL RECEIVE AN EXPEDITED HEARING WITHIN 30 DAYS. YOUR REQUEST CANNOT, BY LAW, AFFECT YOUR EMPLOYMENT. IF YOU DO NOT FILE A REQUEST WITHIN 60 DAYS, YOU WILL LOSE ANY RIGHT YOU MAY HAVE TO COMPENSATION UNLESS YOU CAN SHOW GOOD CAUSE FOR DELAY BEYOND 60 DAYS. AFTER 180 DAYS ALL YOUR RIGHTS WILL BE LOST. YOU MAY BE REPRESENTED BY AN ATTORNEY OF YOUR CHOICE AT NO COST TO YOU FOR ATTORNEY FEES. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION DIVISION TOLL FREE AT 1-800-452-0288 OR THE OMBUDSMAN FOR INJURED WORKERS TOLL FREE AT 1-800-927-1271."

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.262(6), 656.262(15)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10

EXHIBIT D

438-005-0070

Request for Hearing

Proceedings before the Hearings Division are begun by filing a request for hearing meeting the requirements of ORS 656.283 **and OAR 438-005-0046**. The request for hearing should be on a form prescribed by the Board. A request by an insurer or self-insured employer should also recite whether payment of compensation has been or will be stayed under 656.313. In addition to the information required by 656.283[(3)]**(2)**, the person requesting a hearing should include the person's full name, the name of the injured worker if different from that of the person requesting the hearing, [*the injured worker's social security account number*,] the date of the injury or exposure, the name of the employer and its insurer, if any, and the claim number. A copy of the request should be [*mailed to*] **served on** the insurer, self-insured employer, claimant, or if represented, claimant's counsel.

Stat. Auth.: ORS 656.726(4) & ORS 654.025(2)

Stats. Implemented: ORS 656.283(1)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95

EXHIBIT E

438-007-0015

Entitlement to Claims Information -- Disclosure Requirements

(1) With respect to a claim for workers' compensation benefits and as used in this section, references to the insurer and the claimant include persons acting on their behalf, and references to the insurer include the self-insured employer, claims processing agents and assigned claims processing agents for non-complying employers.

(2) Documents pertaining to claims are obtained by mailing **or delivering** a copy of the Request for Hearing, or a written demand accompanied by an attorney retention agreement or medical information release, to the insurer. Within 15 days of said mailing **or delivering**, the insurer shall furnish the claimant and other insurers, without cost, originals or legible copies of all medical and vocational reports and other documents pertaining to the claim(s) as specified below.

(3) Upon written demand by the insurer, the claimant shall within 15 days of the mailing **or delivering** of the demand, furnish to the insurer, without cost, originals or legible copies of all medical and vocational reports and other documents pertaining to the claim(s) as specified below, which the claimant did not receive from the insurer (or self-insured employer) making the demand. In cases involving multiple insurers, an insurer shall seek discovery in accordance with section (9) of this rule.

(4) Documents acquired after the initial exchanges shall be provided to the insurer(s) and the claimant within seven days after the disclosing party's receipt of the documents.

(5) For the purpose of this rule, "documents pertaining to the claim(s)" or any variation thereof means documents and recordings, whether written or electronic or in any other form, which consist of the following items applicable to the workers' compensation claim:

- (a) Medical and vocational reports, including any correspondence to and from the medical and vocational experts who provide the reports or who agree to testify on behalf of the party sending correspondence;
- (b) Official forms and notices required by ORS Chapter 656, the Workers' Compensation Division or the Workers' Compensation Board, as they relate to the claim(s);
- (c) Investigative statements, including a party's statement, and investigative summaries;
- (d) Correspondence to and from the Workers' Compensation Division and the Workers' Compensation Board; and
- (e) Upon specific request, records of all compensation paid, payroll records, records or statements of wages earned by the claimant, and copies of bills from medical and vocational service providers rendering treatment or services to the claimant.

(6) After the disclosure required by this rule, either the claimant or the insurer may request further specific discovery of other factual documents relevant and material to an issue raised by the Request for Hearing or the Response thereto, or any other issue which thereafter arises and is subject to the jurisdiction of the Workers' Compensation Board.

(7) Notwithstanding any other provision of this section, the following documents pertaining to the claim(s) are not discoverable:

- (a) Material protected under the attorney/client privilege as defined in Oregon Rules of Evidence ORS 40.225 Rule 503;
- (b) Material which is the work product of any attorney, except that correspondence and any inclusions sent to a medical or vocational expert who writes a report that is otherwise subject to disclosure under these rules or who agrees to testify at the request of the corresponding party shall be discoverable under subsection (5)(a) of this rule;

(c) Material reflecting the mental impressions, case value or merit, plans or thought processes of the claimant or insurer;

(d) Material protected by ORS 656.260; and

(e) Material protected from disclosure under OAR 438-007-0017 (impeachment).

(8) It is the express policy of the Board to promote the full and complete discovery of all relevant facts and expert opinion bearing on a claim being litigated before the Hearings Division, consistent with the right of each party to due process of law. Failure to comply with this rule, if found to be unreasonable or unjustified, may result in the imposition of penalties and attorney fees, exclusion of evidence, continuance of a hearing (subject to OAR 438-006-0091), and/or dismissal of a request for hearing.

(9) When a new party is joined into existing litigation, the disclosure of discoverable documents and the exhibit list shall be made available to the new party by the insurer with the lowest WCB case number. This disclosure shall be made as soon as reasonable but no later than 15 days from the insurer's receipt of notice of the joinder of the new party.

(10) Any dispute under this rule regarding whether something is discoverable, in whole or in part, will be resolved by the assigned Administrative Law Judge or the designee of the Presiding Administrative Law Judge.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.307 & ORS 656.726(5)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; Suspended by WCB 3-1987(Temp), f. 8-27-87, ef. 9-15-87; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-1997, f. 12-12-97, cert. ef. 3-1-98; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03

EXHIBIT F

438-009-0015

Notice of Settlement; Submission of Documents

- (1) The party that requested the hearing shall promptly notify the Presiding Administrative Law Judge, or his or her delegate, when a case is settled in whole or in part.
- (2) The party that requested Board review shall promptly notify the Board's Closing and Appeals Division in writing when a case is settled in whole or in part.
- (3) The Presiding Administrative Law Judge, or his or her delegate, may require written notice of settlement as a condition of cancellation of a scheduled hearing.
- (4) With the consent of the assigned Administrative Law Judge, the parties may enter a settlement on the oral record at the time and place scheduled for the hearing. With the exception of a disputed claim settlement, the Administrative Law Judge may enter an order reciting and approving the settlement in such cases, without the submission of documents by the parties. With the consent of the parties, the official oral record, including the Administrative Law Judge's approval, which is subject to transcription if necessary, is sufficient authority for the payment of settlement amounts in advance of the formal written order.
- (5) Notwithstanding OAR 438-005-0046(1)(d), in all cases settled by disputed claim settlement or written stipulation of the parties, *[the original and one legible copy of]* the settlement document shall be mailed or delivered to the Administrative Law Judge or the Board for approval. If the disputed claim settlement or written stipulation pertains to the resolution of disputes pending before both the Hearings Division and the Board, the settlement document shall recite the issues resolved by the Opinion and Order that is pending before the Board. If the disputed claim settlement or written stipulation is mailed or delivered to the Hearings Division for approval and the agreement either formally or effectively modifies a dispute which is pending before the Board, the disputed claim settlement or stipulation shall be submitted in a format to provide for both Hearings Division and Board approval.
- (6) Unless a party has filed prior written notice with the Hearings Division or the Board that the party wants an exhibit returned to them, all exhibits (with the exception of exhibit lists) may be discarded from the record following:
 - (a) Administrative Law Judge or Board approval of a settlement stipulation or disputed claim settlement;
 - (b) An Administrative Law Judge order dismissing a party's hearing request in response to that party's withdrawal of the request; or
 - (c) A Board order dismissing a party's request for Board review in response to that party's withdrawal of the request for Board review.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236, ORS 656.289(4) & ORS 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04

EXHIBIT G

438-009-0022

Required Information in a Claim Disposition Agreement

(1) If a claim disposition agreement involves more than one claim, the disposition shall contain all of the information required by this rule for each claim including a separate first page of the claim disposition agreement as set forth in section (3) of this rule.

(2) The insurer/self-insured employer shall provide the claimant information explaining claim dispositions in a separate enclosure accompanying the proposed claim disposition agreement. The Board shall prescribe by a bulletin the specific form and format for the enclosure. If the claimant does not read or comprehend English, or is otherwise unable to understand written language, the insurer/self-insured employer shall provide this information in a language or other manner which ensures the worker understands the meaning of the disposition.

(3) The first page of the claim disposition agreement shall include, but not be limited to, the following information:

- (a) The worker's name;
- (b) The case number assigned to the claim by the Board, if any;
- (c) The insurer's/self-insured employer's claim number;
- (d) The date of the compensable injury or disease;
- (e) The file number assigned to the claim by the Workers' Compensation Division, if known;
- (f) The name of the insurer/self-insured employer;
- (g) Specific identification of all benefits, rights and insurer/self-insured employer obligations under Workers' Compensation Law which are released by the agreement;
- (h) The total attorney fee, if any, to be paid to claimant's attorney;
- (i) The total amount (excluding attorney fee) to be paid to the claimant; and
- (j) A statement indicating whether or not the parties are waiving the "30-day" approval period of ORS 656.236(1)(a)(C) as permitted by 656.236(1)(b).

(4) The claim disposition agreement shall also contain, but not be limited to, the following:

- (a) Identification of the accepted conditions that are the subject of the disposition;
- (b) The date of the first claim closure, if any;
- (c) The amount of any permanent disability award(s), if any;
- (d) Whether the worker has ever been able to return to the work force following the industrial injury or occupational disease;
- (e) The worker's age, highest education level, and the extent of vocational training (or in the event that the worker is deceased, the age, highest education level, and the extent of vocational training of the worker's beneficiaries);
- (f) A list of occupations that the worker has performed (or in the event that the worker is deceased, a list of occupations that each of the deceased worker's beneficiaries has performed);
- (g) That the worker has been provided the informational enclosure prescribed by bulletin pursuant to section (2) of this rule (attachment of the informational enclosure to the parties' claim disposition agreement is not required, unless the enclosure is expressly incorporated into the agreement); and
- (h) The following notice in prominent or bold face type, which shall either be included in the claim disposition agreement or incorporated by reference into the agreement:

"NOTICE TO CLAIMANT: UNLESS YOU ARE REPRESENTED BY AN ATTORNEY AND YOUR CLAIM DISPOSITION AGREEMENT INCLUDES A PROVISION WHICH WAIVES THE 30-DAY "COOLING OFF" PERIOD, YOU WILL RECEIVE A NOTICE

FROM THE WORKERS' COMPENSATION BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT TELLING YOU THE DATE THIS AGREEMENT WAS RECEIVED BY THEM FOR APPROVAL. YOU HAVE 30 DAYS FROM THE DATE THE BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT RECEIVES THE AGREEMENT TO REJECT THE AGREEMENT, BY TELLING THE BOARD OR THE ADMINISTRATIVE LAW JUDGE WHO MEDIATED THE AGREEMENT IN WRITING. DURING THE 30 DAYS ALL OTHER PROCEEDINGS AND PAYMENT OBLIGATIONS OF THE INSURER/SELF-INSURED EMPLOYER, EXCEPT FOR MEDICAL SERVICES, ARE STAYED ON YOUR CLAIM. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY DISCUSS THIS AGREEMENT WITH THE BOARD IN PERSON WITHOUT FEE OR CHARGE. TO CONTACT THE BOARD, WRITE OR CALL: WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM, OREGON 97302-1280, TELEPHONE: (503) 378-3308, TOLL-FREE AT 1-877-311-8061, 8:00 TO 5:00, MONDAY THROUGH FRIDAY.

"YOU MAY ALSO DISCUSS THIS AGREEMENT WITH THE [WORKERS' COMPENSATION] OMBUDSMAN FOR INJURED WORKERS, WITHOUT FEE OR CHARGE. TO CONTACT THE OMBUDSMAN, WRITE OR CALL: [WORKERS' COMPENSATION] OMBUDSMAN FOR INJURED WORKERS, LABOR & INDUSTRIES BUILDING, 350 WINTER STREET NE, SALEM, OR 97310, TELEPHONE: [(503) 378-3351,] TOLL-FREE AT 1-800-927-1271, 8:00 TO 5:00, MONDAY THROUGH FRIDAY.

"YOU MAY ALSO CALL THE WORKERS' COMPENSATION DIVISION'S INJURED WORKER HOTLINE, TOLL-FREE [IN OREGON,] AT 1-800-452-0288."

Stat. Auth.: ORS 656.726(5)

Stats Implemented: ORS 656.236

Hist.: WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

EXHIBIT H

438-009-0025

Claim Disposition Agreements; Processing

(1) The parties shall file [*an original and one legible copy of*] the claim disposition agreement with the Board for approval by the Administrative Law Judge who mediated the agreement or the Board Members. Any claim disposition agreement may be filed in accordance with OAR 438-005-0046(1)(a) and (1)(d). The [*original*] claim disposition agreement shall be retained in the Board's file and a copy [*shall*] **will** be [*conformed and distributed to*] **provided for** the Director's **claim file**.

(2) Any claim disposition agreement filed under section (1) of this rule, shall be deemed to have been submitted as of the date the agreement is received by the Administrative Law Judge who mediated the agreement or the Board. All times to be calculated shall be calculated from the date of receipt of the agreement by the Administrative Law Judge who mediated the agreement or the Board.

(3) A request by an unrepresented claimant to meet with the Board must be made to the Board not more than 30 days after the Board's receipt of a claim disposition agreement, but need not be in any particular form; verbal requests will be accepted.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236

Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-1993, f. 9-9-93, cert. ef. 12-1-93; WDB 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 1-1999, f. 8-24-99, cert. ef. 11-1-99; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

EXHIBIT I

438-009-0028

[Postcard Announcing] Announcement of CDA Approval Order

(1) Except as provided in section (2) of this rule, the announcement that a Claim Disposition Agreement has received approval by the Administrative Law Judge who mediated the agreement or the Board may be provided in the following manner:

(a) For registered users, notification will be provided through the Board's website portal (<https://www.portal.wcb.oregon.gov>);

(b) The announcement of the order approving a Claim Disposition Agreement will be posted on the Board's website, which shall constitute notice of the approval of the agreement to the party and the party's attorney; or

(c) By postcards as prescribed in sections (3) and (4) of this rule.

(2) For unrepresented claimants, the announcement that a Claim Disposition Agreement has received approval by the Administrative Law Judge who mediated the agreement or the Board shall be provided by postcards as prescribed in sections (3) and (4) of this rule.

[(1)](3) With the exception of a Claim Disposition Agreement described in section (2) of this rule, [T]he parties [shall] may also file self-addressed "Announcement of CDA Approval Order" postcards which shall be mailed by the Administrative Law Judge who mediated the agreement or the Board to all parties and their attorneys if the claim disposition agreement is approved. The Administrative Law Judge who mediated the agreement may also physically deliver the postcards to all parties and their attorneys as provided in OAR 438-009-0030(6).

[(2)] (4) The postcard, which shall be in a form prescribed by the Board, shall provide the following information:

(a) The claimant's name;

(b) The claim number; and

(c) Blank spaces for the Administrative Law Judge who mediated the agreement or the Board to insert:

(A) The CDA case number; and

(B) The date when the claim disposition agreement was approved.

[(3)] (5) If an insufficient number of postcards is filed by the parties or if any postcard lacks the information set forth in section [(2)] (4) of this rule, the Administrative Law Judge who mediated the agreement or the Board may follow the procedures described in OAR 438-009-0020(4).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236

Hist.: WCB 2-1993, f. 9-9-93, cert. ef. 12-1-93; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95;

WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

EXHIBIT J

438-009-0030

Claim Disposition Agreements; Stay of Other Proceedings; Payment of Proceeds

(1) Notwithstanding OAR 438-006-0081, 438-006-0091, 438-011-0020 and 438-011-0025, the receipt of a claim disposition agreement by the Administrative Law Judge who mediated the agreement or the Board shall suspend all other proceedings before the Board and the Hearings Division until completion of action upon the agreement, except that the Board shall accept and file requests for hearing and Board review for purposes of establishing jurisdiction.

(2) In those cases where the claimant is unrepresented or the claim disposition agreement does not include a provision in which the parties waive their "30-day" rights to seek disapproval, the Administrative Law Judge who mediated the agreement or the Board shall notify the parties and the Director of the receipt of a claim disposition agreement.

(3) In all cases, the Administrative Law Judge who mediated the agreement or the Board shall notify the Director of the receipt of a claim disposition agreement.

(4) In cases in which a party has requested judicial review of an order of the Board and such judicial review is pending on the date the Board receives the claim disposition agreement, the Administrative Law Judge who mediated the agreement or the Board shall notify the State Court Administrator of the receipt of the agreement.

(5) In the event that the Administrative Law Judge who mediated the agreement or the Board Members issue a separate written decision, **the Administrative Law Judge or the Board will provide a copy of the decision for the Director's claim file, and** copies of that decision approving or disapproving a claim disposition agreement shall be mailed to parties[,] **and** their attorneys[, *and the Director*].

(6) Except as otherwise provided in section (5) of this rule, the signature of the Administrative Law who mediated the agreement or two Board Members on a claim disposition agreement shall constitute a final order approving the disposition under ORS 656.236(1). Notice of this approval shall be accomplished **in the manner provided in OAR 438-009-0028.** [either:

(a) By the Administrative Law Judge who mediated the agreement or the Board mailing the postcards filed pursuant to OAR 438-009-0028 to the parties and their attorneys; or

(b) By physical delivery of the postcards filed pursuant to OAR 438-009-0028 to the parties and their attorneys by the Administrative Law Judge who mediated the agreement.]

(7) Payment of the disposition shall be made no later than the 14th day after notice of its approval has been mailed or delivered under Section (5) or (6) of this rule to the parties, unless otherwise stated in the agreement.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.236

Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-1993, f. 9-9-93, cert. ef. 12-1-93; WCB 2-1995, f. 11-13-96, cert. ef. 1-1-96; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

EXHIBIT K

438-011-0005

Request for Board Review

- (1) The time for and manner of filing a request for Board review of a Administrative Law Judge's order are set forth in ORS 656.289, [and] 656.295, and **OAR 438-005-0046**.
- (2) Copies of a request for Board review of an Administrative Law Judge's order shall be simultaneously *[mailed to]* **served on** all parties *[who appeared at the hearing]* **to the proceeding** and to their attorneys, if represented by an attorney.
- (3) The request should recite the name of the claimant, the WCB case number, the identity of the party requesting review and should contain a brief statement of the reason review is requested.
- (4) The request should also recite whether payment of compensation will be stayed under ORS 656.313.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.289(3) & ORS 656.295(1)(2)

Hist.: WCB 4-1986, f. 10-8-86, ef. 11-1-86; WCB 5-1987, f. 12-18-87, ef. 1-1-88;

WCB 2-1991(Temp), f. 3-28-91, cert. ef. 4-8-91; WCB 5-1991, f. 8-22-91, cert. ef. 9-2-91

EXHIBIT L

438-011-0020

Briefs and Other Documents

(1) Filing of briefs is not jurisdictional; however, the Board views briefs as a significant aid to the review process. Briefs submitted for consideration by the Board shall comply with this section.

(2) The party requesting Board review shall file its appellant's brief to the Board within 21 days after the date of [*mailing of the transcript of record to the parties*] **the Board's "Notice of Briefing.** Respondent(s) shall file its (their) brief(s) within 21 days after the date of [*mailing*] **briefing** of the appellant's brief. Any party who has filed a cross-request for review shall include its cross-appellant's opening brief as a part of its respondent's brief. An appellant may file a reply and/or cross-respondent's brief within 14 days after the date of [*mailing*] **briefing** of the respondent's and/or cross-appellant's brief. Any party who has not filed a request for review may file a cross-respondent's brief within 14 days after the date of [*mailing*] **briefing** of the cross-appellant's brief. A cross-appellant may file a cross-reply brief within 14 days of the [*mailing*] **briefing** date of a cross-respondent's brief. Unless otherwise authorized by the Board, no other briefs will be considered.

(3) Extensions of time for filing of briefs will be allowed only on written request filed **pursuant to OAR 438-005-0046(1)** no later than the date the brief is due. A statement whether opposing counsel (or a party if the party is not represented by counsel) objects to, concurs in or has no comment regarding the extension of time requested shall be furnished in all cases. Briefing extensions will not be allowed unless the Board finds that extraordinary circumstances beyond the control of the party requesting the extension justify the extension.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.295(5) & 656.726(4)

Hist.: WCB 4-1986, f. 10-8-86, ef. 11-1-86; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 4-1990(Temp), f. 4-13-90, cert. ef. 4-30-90; WCB 10-1990(Temp), f. 10-25-90, cert. ef. 10-27-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1993, f. 5-19-93, cert. ef. 6-1-93; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

EXHIBIT M

438-012-0016

Communication with Board and Parties in Own Motion Cases

A copy of any document in an Own Motion proceeding, including correspondence, directed to the Board or to a party in the claim shall be simultaneously mailed **or delivered** to all other parties involved in the claim or, if a party is currently represented by an attorney, to the party's attorney.

Stat. Auth.: ORS 656.278(1) & ORS 656.726(4)

Stats. Implemented: ORS 656.278(1) & ORS 656.726(4)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96

EXHIBIT N

438-020-0010

Notice of Need for and Appointment of Interpreter

(1) When a party or a party's attorney determines that an interpreter is needed, the attorney, or an unrepresented claimant, shall immediately notify the Hearings Division's ISC. [Postal
n]Notification **is preferred by means of the Board's website portal**

(https://portal.wcb.oregon.gov), website Online Services page (www.wcb.oregon.gov), mail, or FAX [is preferred], although telephonic notification will be accepted. Notification shall contain:

- (a) The claimant's name;
- (b) The WCB case number;
- (c) The insurer claim number;
- (d) The date, time and location of the hearing;
- (e) The assigned ALJ; and
- (f) The specific interpretation needs, such as the language and dialect, the need for multiple interpreters and the anticipated length of the proceeding if it is reasonably expected to last more than two hours;

(2) The ISC, another designee of the assigned ALJ, or the assigned ALJ will appoint a certified or qualified interpreter and promptly notify the parties, or their representatives, of the name of the appointed interpreter.

(3) If there is an objection to the appointed interpreter, the objecting party shall communicate the objection to the assigned ALJ within a reasonable time.

(4) If, after the appointment of an interpreter, a proceeding is postponed or continued for reasons other than, and not including, an objection to or dissatisfaction with an appointed interpreter, it shall be presumed that the parties have no objection to the use of an interpreter previously appointed for the case and to whom no objection was made within a reasonable time after such appointment.

Stat. Auth.: ORS 656.726(5) & ORS 183.310 -- ORS 183.400

Stats. Implemented: ORS 656.726(5), ORS 45.273, ORS 45.275, ORS 45.285 & ORS 45.288

Hist.: WCB 2-2001, f. 4-12-01, cert. ef. 7-1-01