

Secretary of State  
Certificate and Order for Filing

**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on January 31, 2013 by the  
Date prior to or same as filing date

Department of Consumer & Business Services/Workers' Compensation Board Chapter 438  
Agency and Division Administrative Rules Chapter Number

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to become effective April 1, 2013. Rulemaking Notice was published in the December 2012 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

OAR Chapter 438 provisions regarding Own Motion, Board review, and miscellaneous concepts.

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:** OAR 438-005-0015; OAR 438-009-0005; OAR 438-009-0020; OAR 438-011-0010; OAR 438-011-0045;  
OAR 438-012-0001; OAR 438-012-0020; OAR 438-012-0031; OAR 438-012-0035; OAR 438-012-0036; OAR 438-012-0050;  
OAR 438-012-0060; OAR 438-012-0062; OAR 438-016-0005; OAR 438-019-0010; OAR 438-020-0010; OAR 438-022-0005.

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

**Stat. Auth.:** ORS 656.726(5)

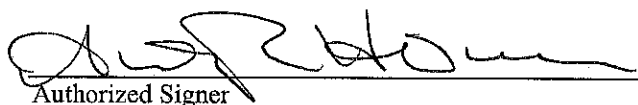
**Other Auth.:**

**Stats. Implemented:** ORS 45.273; ORS 45.275; ORS 45.285; ORS 45.288; ORS 183.341(4); ORS 656.005(30);  
ORS 656.012(2)(b); ORS 656.236; ORS 656.262(4); ORS 656.267(1), (3); ORS 656.268; ORS 656.278(1), (2), (6);  
ORS 656.283(1), (9); ORS 656.289(1)-(4); ORS 656.295; ORS 656.307; ORS 656.327(1)(b); ORS 656.587; ORS 656.593;  
ORS 656.594; ORS 656.726(5).

**RULE SUMMARY**

After considering comments to its Notice of Rulemaking Hearing regarding proposed amendments to its Own Motion, Board review, and miscellaneous rules, the Board proposed to: (1) amend OAR 438-005-0015 to change the title to "Unacceptable Conduct"; (2) amend OAR 438-009-0005(3) to identify permanent disability benefits in stipulations that award permanent disability regarding dates of injury occurring before January 1, 2005 (permanent partial disability) and those occurring on and after January 1, 2005 (whole person impairment and work disability); (3) amend OAR 438-009-0020(3) to update the year reference to "20\_\_"; (4) amend OAR 438-011-0010 and OAR 438-011-0045(1), (4) to identify third party law as extending from "ORS 656.576 through 656.596"; (5) amend OAR 438-012-0001(2) to specify that "post-aggravation rights" "worsened condition" claims and new/omitted

medical condition claims include such claims related to pre-1966 injuries; (6) amend OAR 438-012-0020(5) to delete the separate "notice" reference to pre-1966 injuries regarding "post-aggravation rights" "worsened condition" claims and new/omitted medical condition claims; (7) amend OAR 438-012-0031 to include contested cases under "ORS 656.283 through 656.298" and "a managed care disputed resolution review process" among the pending proceedings about which parties to an Own Motion proceeding are required to notify the Board; (8) amend OAR 438-012-0035(4) to add provisions for timely payment of temporary disability compensation awarded in an Own Motion Notice of Closure and in a litigation order; (9) amend OAR 438-012-0036(3) to add provisions for timely payment of permanent disability compensation; (10) amend OAR 438-012-0050(1) to identify contested cases under "ORS 656.283 through 656.298"; (11) amend OAR 438-012-0060(1), (3), and (6), respectively, to change in section (1) the directive from "shall" to "should" regarding the list of information to be provided when requesting Board review of an Own Motion Notice of Closure, to change in section (3) the reference to a claimant's attorney to "or, if represented, to the claimant's attorney," to add new section (6) to list all the circumstances where a medical arbiter evaluation may be available for a "post-aggravation rights" new/omitted medical condition claim, and to change the title of the rule to include "Referral for Medical Arbiter Evaluation," and to renumber the remaining sections of the rule; (12) amend OAR 438-012-0062 to delete section (2), which authorized the Board to refer requests for suspension of temporary disability compensation to the Hearings Division for an evidentiary hearing; (13) amend OAR 438-016-0005(1) to change the citation in that rule to "OAR 438-005-0046(1)," in order to include all filing methods; (14) amend OAR 438-019-0010(2) to delete an obsolete reference to "OAR 718-040-0040(3)"; (15) amend OAR 438-020-0010(1) to change the directive from "shall" to "should" regarding the list of information to be provided in the notification of the need for appointment of an interpreter; and (16) amend OAR 438-022-0005 to reflect the most current Attorney General's Model Rules for Rulemaking, which were adopted effective January 1, 2008.



Abigail L. Herman  
Printed name

2/11/13  
Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005