

## **EXHIBIT A**

**438-005-0015**

**[Adoption of Attorney General's Model Rules] Unacceptable Conduct**

The Board hereby adopts OAR 137-004-0010, as adopted by the Department of Justice effective January 27, 1986.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 183.341(4)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03

## EXHIBIT B

**438-009-0005**

### **Settlement Stipulations**

- (1) Contested matters arising out of a claim closure may be resolved by the parties at any time after the conclusion of the reconsideration proceeding under ORS 656.268, whether or not a hearing has been requested by a party.
- (2) Any contested matters not arising out of a claim closure may be resolved by the parties at any time, whether or not a hearing has been requested by a party.
- (3) All settlement stipulations that provide for an award of compensation for permanent partial disability **for dates of injury occurring before January 1, 2005** shall recite the body part(s) for which the award(s) is (are) made and shall recite all awards in both degrees and percent of loss. In the event there is any inconsistency between the stated degrees and percent of loss awarded in a settlement stipulation, the stated percent of loss shall be controlling. **For dates of injury occurring on or after January 1, 2005, all settlement stipulations that provide for an award of compensation for permanent disability shall recite the whole person impairment and work disability.**
- (4) For purposes of ORS 656.289(1)-(3), an Administrative Law Judge's order approving a settlement stipulation is a determination of all matters included within the terms of the settlement stipulation.
- (5) All settlement stipulations shall recite whether a claim disposition agreement in the claim has been filed.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.268 & 656.289(1)-(3)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, 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 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08

## EXHIBIT C

**438-009-0020**

### **Claim Disposition Agreements; Form**

Any document filed with the Board for approval by the Administrative Law Judge who mediated the agreement or the Board Members as a claim disposition agreement shall:

(1) Contain the terms, conditions, and information as prescribed by the Board pursuant to OAR 438-009-0022;

(2) Be in a separate document from a disputed claim settlement; and

(3) Include, in prominent or bold-face type, the following paragraph, which shall be located at the conclusion of the document after the signature lines for the parties:

**"THIS AGREEMENT IS IN ACCORDANCE WITH THE TERMS AND CONDITIONS PRESCRIBED BY THE BOARD. SEE ORS 656.236(1). ACCORDINGLY, THIS CLAIM DISPOSITION AGREEMENT IS APPROVED. AN ATTORNEY FEE PAYABLE TO CLAIMANT'S ATTORNEY ACCORDING TO THE TERMS OF THIS AGREEMENT IS ALSO APPROVED.**

**IT IS SO ORDERED.**

**DATED THIS \_\_\_ DAY OF \_\_\_\_\_, [19]20\_\_ .**

**Board Member**

**Board Member**

**NOTICE TO ALL PARTIES: THIS ORDER IS FINAL AND IS NOT SUBJECT TO REVIEW. ORS 656.236(2)."**

(4) If the document filed for approval lacks any of the information required by section (1) of this rule, the Administrative Law Judge who mediated the agreement or the Board may:

(a) Mail a letter notifying the parties that the deficiency must be corrected and that an addendum signed by one or more of the parties or their representatives must be filed in the manner described in the letter within 21 days from the date of the letter; and

(b) In the event that the deficiency is not corrected in the manner and within the time described in subsection (a) of this section, disapprove the proposed agreement as unreasonable as a matter of law under ORS 656.236(1)(a).

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 1-1991(Temp), f. & cert. ef. 3-8-91; WCB 5-1991, f. 8-22-91, cert.

ef. 9-2-91; 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 D

### **438-011-0010**

#### **Applicability**

These rules apply to all cases in which a party or parties request Board review of an order of an Administrative Law Judge pursuant to ORS 656.289, 656.291, 656.295 and 656.307 and to cases in which a party requests a decision of the Board under the third party law, ORS 656.576 [*to*] **through** 656.59[5]6. These rules do not apply to proceedings before the Board on its own motion pursuant to ORS 656.278 and proceedings before the Board after remand from an appellate court.

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

Stats. Implemented: ORS 656.295, ORS 656.307, ORS 656.587 & ORS 656.594

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

## **EXHIBIT E**

**438-011-0045**

### **Third Party Orders**

(1) Any party requesting the Board's resolution of a controversy arising under the third party law, ORS 656.576 [to] through 656.59[5]6, shall petition the Board for relief. The party requesting relief is the petitioner and all other parties are respondents.

(2) The petition shall clearly identify the party seeking relief, shall clearly state the relevant facts and the nature of the dispute and shall specify the relief sought. All relevant evidence shall be attached to the petition. Testimonial evidence shall be by deposition, affidavit or written interrogatories. True copies of the petition and all attachments shall be served on all other parties to the dispute.

(3) The Board shall acknowledge receipt of the petition to all named parties. The respondent(s) shall be allowed 21 days to file evidence and argument in response to the petition. The petitioner shall be allowed 14 days to file a reply argument. The time for filing may be extended by the Board upon motion of a party. The Board will issue its order within a reasonable time after all argument and evidence has been filed.

(4) Settlement documents in civil actions under ORS 656.576 [to] through 656.59[5]6 shall not be submitted to the Board unless there is a dispute requiring resolution by the Board.

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

Stats. Implemented: ORS 656.587 & ORS 656.593

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89

## EXHIBIT F

**438-012-0001**

### **Definitions**

- (1) "Own Motion Board" and "Board" mean the Workers' Compensation Board acting under its authority pursuant to ORS 656.278 and these rules.
- (2) "Own Motion Claim" means:
- (a) A written request, **including such a request related to an injury occurring before January 1, 1966**, by or on behalf of a claimant for temporary disability compensation or claim reopening regarding a worsened condition that has been determined to be compensable and that was initiated after the rights under ORS 656.273 expired (i.e., a "post-aggravation rights" "worsened condition" claim);
- (b) A new medical condition or an omitted medical condition, **including such a condition related to an injury occurring before January 1, 1966**, that is related to an initially accepted claim that has been determined to be compensable and that was initiated after the rights under ORS 656.273 expired (i.e., a "post-aggravation rights" new medical condition or omitted medical condition claim); or
- (c) A written request by or on behalf of a claimant for medical benefits for a compensable injury that occurred before January 1, 1966, unless the injury occurred from August 5, 1959 through December 31, 1965 and resulted in an award of permanent total disability.
- (3) For a "post-aggravation rights" "worsened condition" claim, "determined to be compensable" means:
- (a) The insurer does not dispute compensability of or responsibility for the claim or condition; i.e., the insurer has not issued a denial within the time period prescribed under ORS 656.262 or 656.308(2); or
- (b) An order from an Administrative Law Judge, the Board, or the court has found the claim or condition compensable and the responsibility of the insurer.
- (4) For a "post-aggravation rights" new medical condition or omitted medical condition claim, "determined to be compensable" means:
- (a) The insurer has issued a notice of acceptance under ORS 656.262(7)(a); or
- (b) The insurer's denial under ORS 656.262(7) or 656.308(2) or de facto denial has been set aside by an order from an Administrative Law Judge, the Board, or the court.
- (5) "Own Motion Insurer," "Insurer" and "Paying Agent" mean a guaranty contract insurer or self-insured employer that is or may be responsible for payment of compensation under the provisions of ORS 656.278.
- (6) "Own Motion Order" means an order of the Own Motion Board.
- Stat. Auth.: ORS 656.726(5)
- Stats. Implemented: ORS 656.267(1)(3), 656.278(1) & 656.726(5)
- Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; 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 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

## EXHIBIT G

### **438-012-0020**

#### **Insurer to Process Own Motion Claim: Notice and Contents of Claim; Worsened Condition Claim; "Post-aggravation Rights" New Medical Condition or Omitted Medical Condition Claim; Pre-1966 Injury Claim**

(1) All Own Motion claims, including "post-aggravation rights" new medical condition or omitted medical condition claims, shall first be directed to and processed by the insurer. An Own Motion claim shall be legibly date-stamped on the date it is received by the insurer.

(2) An Own Motion claim shall contain sufficient information to identify the claimant and the claim.

(3) An insurer is deemed to have notice of an Own Motion claim for a "post-aggravation rights" worsened condition when one of the following documents is submitted to the insurer by or on behalf of the claimant:

(a) A written request for temporary disability compensation or claim reopening regarding a worsened condition that has been determined to be compensable as defined under OAR 438-012-0001(3) and that was initiated after the rights under ORS 656.273 expired; or

(b) Any document submitted to the insurer after the expiration of aggravation rights regarding a worsened condition that has been determined to be compensable as defined under OAR 438-012-0001(3) that reasonably notifies the insurer that the compensable injury results in the claimant's inability to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work.

(4) An insurer is deemed to have notice of a "post-aggravation rights" new medical condition or omitted medical condition claim when the insurer receives from the claimant any document that clearly requests formal written acceptance of a new medical condition or an omitted medical condition initiated after expiration of aggravation rights under ORS 656.273 as required by ORS 656.267 and that claim has been determined to be compensable as defined under OAR 438-012-0001(4).

(5) Except as provided in section (7) of this rule, an insurer is deemed to have notice of an Own Motion claim for medical benefits [*and/or temporary disability compensation*] relating to a compensable injury that occurred before January 1, 1966, when one of the following documents is submitted to the insurer by or on behalf of the claimant:

(a) A written request for medical benefits relating to the compensable injury; **or**

(b) Any document that reasonably notifies the insurer that the claimant is seeking medical benefits for the compensable injury[;].

*[(c) A written request for temporary disability compensation or claim reopening regarding a worsening of an injury occurring before January 1, 1966 that has been determined to be compensable as defined under OAR 438-012-0001(3); or*

*(d) Any document regarding a worsening of an injury occurring before January 1, 1966 that has been determined to be compensable as defined under OAR 438-012-0001(3) that reasonably notifies the insurer that the compensable injury results in the inability of the claimant to work and requires surgery or hospitalization or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work.]*

(6) An insurer is deemed to have notice of a "post-aggravation rights" new medical condition or omitted medical condition claim related to a compensable injury that occurred before January 1, 1966, when the insurer receives from the claimant any document that clearly requests formal

written acceptance of a new medical condition or an omitted medical condition initiated after expiration of aggravation rights under ORS 656.273 as required by ORS 656.267 and that claim has been determined to be compensable as defined under OAR 438-012-0001(4).

(7) An Own Motion claim for medical benefits does not include a claim for medical benefits relating to a compensable injury that occurred from August 5, 1959 through December 31, 1965 and resulted in an award of permanent total disability. Such claims shall be processed as a claim for medical services under ORS 656.245.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented.: ORS 656.278(2) & 656.726(5)

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

ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert.

ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04;

WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06



## EXHIBIT H

### **438-012-0031**

#### **Notification of Pending Proceedings**

Parties to an Own Motion proceeding shall notify the Board of any pending proceeding involving a contested case under ORS 656.283 [*to 656.295*] **through 656.298**, 656.307, or 656.308, an arbitration or mediation proceeding under ORS 656.307, **a managed care dispute resolution review process**, or a Director's medical review under ORS 656.245, 656.260, or 656.327. The parties shall also specify the issues raised in that proceeding.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(5)

Stats. Implemented: ORS 656.278(1) & ORS 656.726(5)

Hist.: WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96

## EXHIBIT I

### **438-012-0035**

#### **Temporary Disability Compensation**

(1) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant's condition becomes medically stationary in those cases where:

- (a) The Own Motion claim for temporary disability compensation is filed after the aggravation rights under ORS 656.273 expired;
- (b) There is a worsened condition that has been determined to be compensable as defined under OAR 438-012-0001(3) and that results in the inability of the worker to work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work; and
- (c) The claimant qualifies as a "worker" pursuant to ORS 656.005(30). "Worker" does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(2) The insurer may pay temporary disability compensation in accordance with the provisions of ORS 656.210, 656.212(2) and 656.262(4) from the time the attending physician authorizes temporary disability compensation for the hospitalization, surgery, or other curative treatment until the claimant's condition becomes medically stationary in those cases where:

- (a) A new medical condition or an omitted medical condition claim has been determined to be compensable as defined under OAR 438-012-0001(4) and was initiated after the aggravation rights under ORS 656.273 expired; and
- (b) The claimant qualifies as a "worker" pursuant to ORS 656.005(30). "Worker" does not include a person who has withdrawn from the work force during the period for which such benefits are sought.

(3) The claimant is deemed to be in the work force if:

- (a) The claimant is engaged in regular employment;
- (b) The claimant, although not employed, is willing to work and is making reasonable efforts to obtain employment; or
- (c) The claimant is willing to work, but the claimant is not employed, and the claimant is not making reasonable efforts to obtain employment because such efforts would be futile as a result of the effects of the compensable injury.

(4) The insurer shall make the first payment of temporary disability compensation in accordance with ORS 656.210, 656.212(2) and 656.262(4) within 14 days from:

- (a) The date of an order of the Board reopening the claim; [or]
- (b) The date the insurer voluntarily reopened the claim[.];

**(c) The date of an Own Motion Notice of Closure that finds the worker entitled to temporary disability; or**

**(d) The date any litigation order authorizing retroactive temporary disability becomes final. Temporary disability accruing from the date of the order must begin no later than the 14<sup>th</sup> day after the date of the order.**

(5) Temporary disability compensation shall be paid until one of the following events first occurs:

- (a) The claimant is medically stationary pursuant to ORS 656.005(17);
- (b) The claim is closed pursuant to OAR 438-012-0055;

(c) A claim disposition agreement is submitted to the Board pursuant to ORS 656.236(1), unless the claim disposition agreement provides for the continued payment of temporary disability compensation; or

(d) Termination of such benefits is authorized by the terms of ORS 656.268(4)(a) through (d).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.005(30), 656.262(4), 656.268(4), 656.278(1) & (2) & 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 8-1990(Temp), f. 8-23-90, cert. ef. 9-15-90;

WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert.

ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97;

WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03;

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 J

### **438-012-0036**

#### **Permanent Disability Compensation**

(1) Where a new medical condition or an omitted medical condition claim has been determined to be compensable as defined under OAR 438-012-0001(4) and the claim was initiated after the aggravation rights under ORS 656.273 expired, the insurer may provide any permanent disability benefits to which the claimant is entitled under application of the Standards adopted by the Director under 656.726 when the insurer closes the claim pursuant to OAR 438-012-0055.

(2) Pursuant to ORS 656.278(2)(d), an insurer may include permanent disability benefits for additional impairment to an injured body part that has previously been the basis of a permanent partial disability award, but only to the extent that the permanent partial disability rating exceeds the permanent partial disability rated by the prior award or awards.

**(3) Permanent disability pursuant to section (1) of this rule must be paid no later than the 30th day after:**

**(a) The date of an Own Motion notice of claim closure;**

**(b) The date of any litigation order which orders payment of permanent total disability. Permanent total benefits accruing from the date of the order must begin no later than the 30th day after the date of the order;**

**(c) The date any litigation order authorizing permanent disability becomes final; or**

**(d) The date a claim disposition is disapproved by the Board or Administrative Law Judge, if permanent disability benefits are otherwise due.**

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1), 656.278(2) & 656.726(5)

Hist.: WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

## EXHIBIT K

### **438-012-0050**

#### **Board Will Act Unless Claimant Has Not Exhausted Other Available Remedies**

(1) The Board will act promptly upon a request for relief under the provisions of ORS 656.278 and these rules unless:

(a) The claimant has available administrative remedies under the provisions of ORS 656.273;

(b) The claimant's condition is the subject of a contested case under ORS 656.283 [*to*] **through** 656.298, 656.307 or 656.308, or an arbitration or mediation proceeding under 656.307; or

(c) The claimant's request for payment of temporary disability compensation is based on surgery or hospitalization or other curative treatment prescribed in lieu of hospitalization that is necessary to enable the claimant to return to work that is the subject of either a managed care dispute resolution review process or a Director's medical review under ORS 656.245, 656.260 or 656.327.

(2) The Board may postpone its review of the merits of the claimant's request for relief if the available remedies set forth in section (1) of this rule could affect the Board's authority to award compensation under the provisions of ORS 656.278.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1) & 656.726(5)

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

ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02;

WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

## EXHIBIT L

### **438-012-0060**

#### **Board Review of Insurer Closure; Referral for Medical Arbiter Evaluation**

(1) The request for Board review of the insurer's claim closure pursuant to OAR 438-012-0055 shall be in writing, signed by the claimant or the claimant's attorney, and [*shall*] **should** include, but is not limited to, the following information:

(a) The claimant's name and mailing address;

(b) A statement that Board review is requested, and the reason(s) for the request for review; reasons for requesting review may include, but are not limited to:

(A) Disagreement with the medically stationary determination;

(B) Disagreement with the temporary disability compensation awarded, including rate of payment and/or dates awarded; and/or

(C) Disagreement with permanent disability compensation awarded, if the claim was reopened for a "post-aggravation rights" new medical condition claim and/or omitted medical condition claim. If the claimant disagrees with the impairment used in rating of the claimant's permanent disability for such a claim, the claimant may request appointment of a medical arbiter;

(c) The name of the insurer; and

(d) A copy of the Notice of Closure (Form 2066).

(2) To be considered, the request must be filed with the Board within 60 days after the mailing date of the notice of closure, or within 180 days after the mailing date if the claimant establishes good cause for the failure to file the request within 60 days after the mailing date. The Board shall notify all parties that review has been requested.

(3) Within 14 days after notification from the Board that a review has been requested, the insurer shall submit to the Board and to the claimant [*and the claimant's attorney, if any,*] **or, if represented, to the claimant's attorney** legible copies of all evidence that pertains to the claimant's compensable condition at the time of closure, including any evidence relating to permanent disability. Such evidence should be marked as exhibits, arranged in chronological order, and accompanied by an exhibit list. The insurer may also submit written arguments at this time, with copies to the claimant or the claimant's attorney, if any.

(4) The claimant may submit additional evidence and written argument to the Board, with copies to the insurer or its attorney, if any. To be considered, such evidence and argument must be submitted within 21 days from the date the insurer mails the evidence pursuant to section (3) of this rule.

(5) No additional written argument may be submitted unless authorized by the Board.

**(6) After the claimant requests Board review of a Notice of Closure of a "post-aggravation rights" new medical condition(s) or omitted medical condition(s) claim issued under OAR 438-012-0055, the Board may refer the claim to the Director for appointment of a medical arbiter to evaluate permanent disability attributable to the claimant's "post-aggravation rights" new medical condition(s) or omitted medical condition(s) if:**

**(a) The claimant objects to the impairment findings used to rate impairment regarding the "post-aggravation rights" new medical condition(s) or omitted medical condition(s) and requests appointment of a medical arbiter;**

**(b) The issue of permanent disability rating regarding the "post-aggravation rights" new medical condition(s) or omitted medical condition(s) is raised and the Board determines that insufficient medical information is available to determine disability; or**

**(c) The insurer objects to the impairment findings used to rate impairment regarding the “post-aggravation rights” new medical condition(s) or omitted medical condition(s) and requests appointment of a medical arbiter.**

[(6)](7) The Board may refer a matter to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.

[(7)](8) The Board may refer a disagreement regarding the rating of the claimant's permanent disability for a "post-aggravation rights" new or omitted medical condition to the Workers' Compensation Division for an evaluation and recommendation based on the record presented to the Board.

[(8)](9) The Board shall issue its order within a reasonable time after receipt of all evidence and argument from the parties and any recommendations from the Hearings Division or the Workers' Compensation Division.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.278(1) & (6) & 656.726(5)

Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert. ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04; WCB 3-2005, f. 11-15-05, cert. ef. 1-1-06

## EXHIBIT M

**438-012-0062**

**Referral of Request for Enforcement of Board's Own Motion Order [*and Request for Suspension of Temporary Disability Compensation*] to Hearings Division**

(1) The Board may refer a request to enforce an Own Motion order to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.

*[(2) The Board may refer a request for suspension of temporary disability compensation under OAR 438-012-0035(6) to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions.]*

~~[(3)]~~**(2)** The Board shall issue its order within a reasonable time after receipt of all evidence and argument from the parties and any recommendations from the Hearings Division.

Stat. Auth.: ORS 654.025(2) & ORS 656.726(5)

Stats. Implemented: ORS 656.278(1) & ORS 656.726(5)

Hist.: WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 1-1994, f. 11-1-94, cert. ef. 1-1-95, cert.

ef. 1-1-95; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03



## EXHIBIT N

### **438-016-0005**

#### **Request for Board Review**

(1) A request for Board review of a Director's order finding no bona fide medical services dispute shall be filed in accordance with OAR 438-005-0046(1)[(a) or (b)].

(2) Copies of a request for Board review of the Director's order should be simultaneously mailed to the Director, all parties to the Director's order, and to their attorneys, if represented by an attorney. The request should recite the name of the claimant, the identity of the party requesting review and contain a brief statement of the reason review is requested. However, the failure to comply with this section shall not be cause for dismissal of the request for review.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.327(1)(b) & ORS 656.726(5)

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

## EXHIBIT O

### **438-019-0010**

#### **Mediator Qualifications**

(1) A mediator shall have completed at least 30 hours of basic mediation training and hold a certificate demonstrating such training.

(2) Such training described in section (1) of this rule shall address the following areas[ *as outlined in OAR 718-040-0040(3)*]:

(a) Active listening, empathy and validation;

(b) Sensitivity to and awareness of cross-cultural issues;

(c) Maintaining neutrality;

(d) Identifying and reframing interests and issues;

(e) Establishing trust and respect;

(f) Using techniques to achieve agreement and settlement, including creating a climate conducive to resolution, identifying options, working toward agreement, and reaching consensus;

(g) Shaping and writing agreements; and

(h) Ethical standards for mediator conduct adopted by state and national organizations.

Stat. Auth: ORS 656.726(5)

Stats. Implemented: ORS 656.012(2)(b), 656.283(1) & (9) & 656.289(4)

Hist.: WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97

## EXHIBIT P

### **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. Notification is preferred by means of the Board's website portal (<https://portal.wcb.oregon.gov>), website Online Services page ([www.wcb.oregon.gov](http://www.wcb.oregon.gov)), mail, or FAX, although telephonic notification will be accepted. Notification [*shall*] **should** 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) & 183.310 - 183.400

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

Hist.: WCB 1-2001, f. 4-12-01, cert. ef. 7-1-01; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96;

WCB 1-2012, f. 8-22-12, cert. ef. 11-1-12

## **EXHIBIT Q**

**438-022-0005**

### **Adoption of Attorney General's Model Rules**

To the extent that the following rules are applicable to the Workers' Compensation Law (Chapter 656), the Board hereby adopts by reference OAR 137-001-0005 through 137-001-0100 (Attorney General's Model Rules for Rulemaking), as adopted by the Department of Justice effective January 1, [2006]**2008**.

Stat. Auth.: ORS 656.726(5) & 654.025(2)

Stats. Implemented: ORS 183.341(4)

Hist.: WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03; WCB 1-2004, f. 6-23-04 cert. ef. 9-1-04;

WCB 1-2007, f. 1-19-07, cert. ef. 3-1-07