

BEFORE THE WORKERS' COMPENSATION BOARD OF  
THE STATE OF OREGON

In the Matter of the Adoption of Permanent )  
Amendments to the Rules of Practice and )  
Procedure for Contested Cases under the )  
Workers' Compensation Law, Relating to )  
Adoption of Attorney General's Model )  
Rules (OAR 438-005-0015); Settlement )  
Stipulations (OAR 438-009-0005); Claim )  
Disposition Agreements; Form )  
(OAR 438-009-0020); Applicability )  
(OAR 438-011-0010); Third Party Orders )  
(OAR 438-011-0045); Definitions )  
(OAR 438-012-0001); 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 )  
(OAR 438-012-0020); Notification of )  
Pending Proceedings (OAR 438-012-0031); )  
Temporary Disability Compensation )  
(OAR 438-012-0035); Permanent Disability )  
Compensation (OAR 438-012-0036); )  
Board Will Act Unless Claimant Has Not )  
Exhausted Other Available Remedies )  
(OAR 438-012-0050); Board Review of )  
Insurer Closure (OAR 438-012-0060); )  
Referral of Request for Enforcement of )  
Board's Own Motion Order and Request )  
for Suspension of Temporary Disability )  
Compensation to Hearings Division )  
(OAR 438-012-0062); Request for Board )  
Review (OAR 438-016-0005); Mediator )  
Qualifications (OAR 438-019-0010); )  
Notice of Need for and Appointment of )  
Interpreter (OAR 438-020-0010); Adoption )  
of Attorney General's Model Rules )  
(OAR 438-022-0005). )

WCB ADMIN. ORDER 1-2013  
ORDER OF ADOPTION

1. On November 2, 2012, the Workers' Compensation Board filed a Notice of Proposed Rulemaking Hearing with the Secretary of State, giving notice of its intent to amend permanent rules of practice and procedure relating to the aforementioned rules. Copies of the notice have been electronically provided to the *Oregonian*, the *Associated Press*, and the *Capitol Press*. The notice was published in the Secretary of State's December 2012 *Administrative Rule Bulletin*.

On November 5, 2012, notice of this hearing was posted on the Board's website at: <https://www.oregon.gov/wcb/legal/Pages/laws-and-rules.aspx>. On November 9, 2012, copies of the notice, as well as the proposed rule, were also mailed to all interested parties whose names appear on the Board's mailing list. On November 9, 2012, copies of the notice and the proposed rule were electronically provided to the appropriate legislators. Notice of the hearing was published in the October 2012, November 2012, and December 2012 issues of the Board's News and Case Notes, which were posted on the Board's website in early November 2012, December 2012, and January 2013, respectively. In addition, members of the Workers' Compensation Section of the Oregon State Bar were notified by e-mail about the Board's website posting regarding the aforementioned issues in its News and Case Notes in early November 2012, December 2012, and January 2013.

Thereafter, in accordance with the notice, a public hearing was conducted by Debra L. Young, Staff Attorney, on January 11, 2013 at Salem, Oregon. The record of the public hearing was closed at 5:00 p.m. on January 11, 2013.

2. No testimony was presented at the scheduled hearing. Written comments consisted of the Board's Administrative Rules Coordinator's January 10, 2013 "Statement of Filing/Notice of Procedures" regarding the aforementioned rules. Copies of the transcript of the public hearing and of all written comments received are available for public inspection and copying at the offices of the Board, 2601 25<sup>th</sup> St. SE, Suite 150, Salem, Oregon 97302-1280, during normal working hours from 8:00 a.m. to 5:00 p.m., Monday through Friday.

3. Order of Adoption for Rules (Exhibits A through Q). At its January 31, 2013 public meeting, the Board Members thoroughly reviewed and considered all comments pertaining to the proposed permanent rules. A written summary of the comments is also included in the record.

As part of its comprehensive review of OAR Chapter 438 rules, the Members invited public comment regarding the administrative rules. Several of the public "rule review" comments received concerned proposed changes involving Own Motion, Board review, and various miscellaneous rules. After reviewing those submissions, as well as staff comments, the Members proposed the adoption of several permanent amendments as part of future rulemaking proceedings. Those proposed amendments are included in the current rulemaking proceedings, as addressed below. In addition, the Members appointed an Advisory Committee on "Own Motion/Board Review/Miscellaneous Rules" to provide guidance on the impact various other proposed rule changes would have on the workers' compensation system.<sup>1</sup> After holding a public meeting, the committee issued a report. On October 25, 2012, at a public meeting, the Members reviewed and discussed the committee's report. After doing so, the Members proposed the adoption of permanent amendments.

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<sup>1</sup> The Board's Managing Attorney, Roger Pearson, served as the facilitator for the committee, Jennifer Flood, Ombudsman for Injured Workers, served on the committee, as did the following practitioners: Sally Curey and Keith Semple. The Members extend to the committee their grateful appreciation for their valuable participation in this endeavor.

For the reasons explained in the Board's November 2, 2012 Statement of Need (incorporated by this reference), as well as those explained below, the Members have reached the following conclusions regarding the proposed amendments and rules, which are contained in Exhibits A through Q (attached and incorporated by this reference).

#### OAR 438-005-0015

This rule is titled "Adoption of Attorney General's Model Rules" and provides: "The Board hereby adopts OAR 137-004-0010, as adopted by the Department of Justice effective January 27, 1986." In turn, OAR 137-004-0010 is titled "Unacceptable Conduct" and provides: "A presiding officer may expel a person from an agency proceeding if that person engages in conduct that disrupts the proceeding."

Given the title and subject matter of the Department of Justice rule adopted by OAR 438-005-0015, the Members proposed to change the title of its rule to "Unacceptable Conduct."

At the rulemaking hearing, no comments were received regarding this proposed amendment.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit A and incorporated by this reference.

#### OAR 438-009-0005(3)

Section (3) prescribes the manner in which to recite permanent disability awards in "settlement stipulations," but it refers only to "permanent partial disability," which is available for dates of injury occurring before January 1, 2005. In order to expand this rule to include whole person impairment and work disability, which are available for dates of injury occurring on or after January 1, 2005, the Members proposed amending section (3) as follows:

"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.**"

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit B and incorporated by this reference.

OAR 438-009-0020(3)

Section (3) provides specific language for a “notice” paragraph must be included at the conclusion of the claim disposition agreement (CDA). However, that language references the year as “19\_\_.” The Members proposed to change that year reference to “20\_\_.”

At the rulemaking hearing, no comments were received regarding this proposed amendment.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit C and incorporated by this reference.

OAR 438-011-0010

This rule addresses the applicability of Division 011 rules, which concern Board review and third party law. In referring to third party law, the rule identifies “ORS 656.576 to 656.595.” However, the statutory scheme regarding third party law extends through ORS 656.596. The Members proposed to change the phrase as follows: “ORS 656.576 [to] **through** 656.59[5]**6.**”

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit D and incorporated by this reference.

OAR 438-011-0045(1), (4)

This rule provides for third party orders. As with OAR 438-011-0010, sections (1) and (4) of this rule refer to ORS 656.576 to 656.595.” Yet, as previously discussed, the statutory “third party law” scheme extends through ORS 656.596. Consequently, consistent with the reasoning expressed above, the Members proposed amending the phrases in sections (1) and (4) as follows: “ORS 656.576 [to] **through** 656.59[5]**6.**”

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit E and incorporated by this reference.

OAR 438-012-0001(2) / OAR 438-012-0020(5)

OAR 438-012-0001 provides the definitions for Division 012 rules, which concern the Board's Own Motion jurisdiction. There is no difference between "post-aggravation rights" "worsened condition" claims and new/omitted medical condition claims related to injuries occurring before or after 1966. However, OAR 438-012-0001(2)(a) and (2)(b), which define "Own Motion claims" for "post-aggravation rights" "worsened condition" and new/omitted medical condition claims, respectively, do not reference injuries occurring before 1966. Instead, such pre-1966 injury claims are referenced in OAR 438-012-0020. OAR 438-012-0020(3) and (4) provide when an insurer is deemed to have notice of "post-aggravation rights" "worsened condition" claims and new/omitted medical condition claims, whereas subsections (5)(c) and (5)(d) provide for such notice regarding "pre-1966 injury" claims for "post-aggravation rights" "worsened conditions" and new/omitted medical conditions.

To simplify these rules and yet retain the understanding that "pre-1966 injury" claims are not limited to medical services and can include "post-aggravation rights" "worsened condition" claims and new/omitted medical condition claims, the Members proposed to: (1) amend the definition of "Own Motion claim" in OAR 438-012-0001(2)(a) and (2)(b) to specify that "worsened condition" claims and new/omitted medical condition claims include pre-1966 injuries; and (2) remove the separate "notice" reference to such pre-1966 claims in OAR 438-012-0020(5)(c) and (5)(d).

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibits F and G and incorporated by this reference.

OAR 438-012-0031

This rule requires that parties to an Own Motion proceeding notify the Board of pending proceedings and lists such proceedings requiring notification. The current version of the rule refers to the following contested case proceedings: "ORS 656.283 to 656.295." Yet, ORS 656.298 pertains to judicial review of Board orders, which can include Own Motion orders. *See* ORS 656.278(4). Thus, the Members proposed changing the reference to contested case proceedings as follows: "ORS 656.283 through ORS 656.298." In addition, consistent with OAR 438-012-0050(1)(c), the Members have decided to add a reference to "a managed care dispute resolution review process."

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit H and incorporated by this reference.

OAR 438-012-0035(4)

This rule concerns temporary disability compensation in an Own Motion claim. As currently drafted, section (4) provides for timely payment of “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.”

Consistent with Workers’ Compensation Division (WCD) rule OAR 436-060-0150(f), the Members proposed adopting language that would provide that an insurer must pay temporary disability compensation awarded by an Own Motion Notice of Closure within 14 days from the date of the notice. Such language clarifies a carrier’s obligations regarding temporary disability compensation awarded by an Own Motion Notice of Closure. *See Vernon W. Miller*, 59 Van Natta 1647, *recons*, 59 Van Natta 2142 (2007) (no penalty assessed because carrier’s failure to pay temporary disability compensation within 14 days of Own Motion Notice of Closure not unreasonable in absence of applicable rule). Therefore, the Members proposed adopting the following language as subsection (4)(c): **“The date of an Own Motion Notice of Closure that finds the worker entitled to temporary disability.”**

In addition, when considering penalty assessments regarding the timely payment of temporary disability benefits, the Board has applied OAR 436-060-0150(5)(h), which provides that: (1) the timely payment of temporary disability means that payment has been made no later than 14 days after the date of any “litigation” authorizing “retroactive” temporary disability becomes final; *i.e.*, within 44 days from the date of its issuance; and (2) temporary disability accruing from the date of the “order” (“prospective” temporary disability) shall begin no later than 14 days after the date of the order. *Lynn E. Hilsendager*, 55 Van Natta 2728, 2729 (2003); *Christopher L. Camara*, 50 Van Natta 355 (1998); *Larry P. Karr*, 48 Van Natta 2183, 2184 (1996).

The Members considered that codification of this case law would provide clarity and consistency to the workers’ compensation system. Therefore, the Members proposed adopting the following language as subsection (4)(d): **“(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 14th day after the date of the order.”**

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit I and incorporated by this reference.

OAR 438-012-0036(3)

This rule addresses permanent disability compensation for “post-aggravation rights” new/omitted medical condition claims. The current rule has no provision for timely payment of permanent disability.

Consistent with OAR 436-060-0150(7) and after allowing for the difference in claim processing under ORS 656.268 and ORS 656.278, the Members proposed to add the following section (3) to provide for payment of permanent disability benefits:

**“(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.”**

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit J and incorporated by this reference.

OAR 438-012-0050(1)

Section (1)(b) provides, in part, that the Board will act unless the claimant has not exhausted other available remedies, including when the claimant’s condition is the subject of a “contested case under ORS 656.283 to 656.298[.]” Yet, ORS 656.298 pertains to judicial review of Board orders, which can include Own Motion orders. *See* ORS 656.278(4). Thus, the Members proposed changing the reference to contested case proceedings as follows: “ORS 656.283 through ORS 656.298.” This proposed change is consistent with the above adopted change regarding OAR 438-012-0031.

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit K and incorporated by this reference.

OAR 438-012-0060(1), (3), (6), (7), (8), (9), (10)

Section (1) of the rule provides the requirements for the request for Board review, and begins as follows: “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* include, but is not limited to the following information[.]” (Emphasis added). Consistent with OAR 438-011-0005(2) (which addresses requests for Board review of Administrative Law Judge’s (ALJ’s) orders), the Members propose replacing the second “shall” in the above-quoted language with “should.”

Section (3) provides, in part: “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*, legible copies of all evidence that pertains to the claimant’s condition at the time of closure, including any evidence relating to permanent disability.” (Emphasis added). The Members propose changing the highlighted language to the following: “or, if represented, to the claimant’s attorney”. This proposed change is consistent with other Board rules that require notice/information be provided to the claimant’s attorney, if represented; *e.g.*, OAR 438-005-0070, OAR 438-006-0115(2)(c), (3)(c).

The Members propose adding a new section (6) that would list all the circumstances where a medical arbiter evaluation may be available, including the availability of such an evaluation at the request of the carrier or the Own Motion Board, provided that the claimant requested review of an Own Motion Notice of Closure and disagreed with the impairment rating used in rating permanent disability. These proposed amendments would codify existing case law and would provide parties with this information in one specific, accessible administrative rule. *See James G. Earnest*, 58 Van Natta 2226, 2234-35 (2006) (if a claimant requests review of the Own Motion closure notice and a carrier objects to impairment findings, appointment of a medical arbiter is authorized); *Michael P. Hannen*, 55 Van Natta 1508, 1517 (2003) (Board may refer a claim to the Director for appointment of a medical arbiter if record is insufficient to determine disability); *Edward A. Miranda*, 55 Van Natta 784, 793-94 (2003) (if a claimant objects to the findings used to rate impairment for new/omitted medical condition and requests appointment of a medical arbiter, Board authorized to refer claim to Director for appointment of medical arbiter).

Accordingly, the Members propose the following language for this new section (6):<sup>2</sup>

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<sup>2</sup> The language in subsection (6)(b) (“the issue of permanent disability rating regarding ‘post-aggravation rights’ new and/or omitted medical conditions is raised”) is consistent with *Hannen*, 55 Van Natta at 1517.



**“(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.”**

This proposed new section (6) will require renumbering the remaining sections of the rule. Finally, the Members propose to add the following highlighted change to the title of OAR 438-012-0060: **Board Review of Insurer Closure; Referral for Medical Arbiter Evaluation**. This proposed title change will provide notice of the location of rules regarding the requirements for “Medical Arbiter” referral.

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper.<sup>3</sup> Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit L and incorporated by this reference.

#### OAR 438-012-0062

Section (2) authorized the Board to refer requests for suspension of temporary disability compensation to the Hearings Division for an evidentiary hearing and recommended findings of fact and conclusions. Yet, as a result of *Jordan v. SAIF*, 343 Or 208 (2007), the Board lacks authority to consider “suspension” disputes regarding Own Motion claims. Therefore, the Members proposed deleting section (2) and deleting from the title of this rule the reference to such “suspension” request referrals to the Hearings Division. Finally, this proposed deletion of section (2) will result in renumbering the remaining section.

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<sup>3</sup> The Board did not adopt as an amended rule proposed section (7), which would have prohibited a claimant from withdrawing a request for review after the issuance of a medical arbiter report without the carrier’s agreement. After considering the proposed amendment, a majority of the Members (Chair Herman, Member Weddell, and Member Lanning) declined to adopt the amendment. Members Langer and Lowell voted to adopt the proposed amendment.

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit M and incorporated by this reference.

#### OAR 438-016-0005(1)

Section (1) of the rule provides: “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).” This provision does not refer to OAR 438-005-0046(1)(e), (1)(f), or (1)(g), which describe filing by e-mail, FAX, and mail of a Director’s order finding no bona fide medical services dispute, as well as the affect of an attorney’s certificate of mailing. Under such circumstances, the Members proposed that the citation in OAR 438-016-0005(1) be changed to “OAR 438-005-0046(1),” without reference to any subsections.

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit N and incorporated by this reference.

#### OAR 438-019-0010(2)

This rule provides “mediator qualifications.” Section (2) of the rule provides that “Such training described in section (1) of this rule shall address the following areas *as outlined in OAR 718-040-0040(3)*” and proceeds to list eight areas of training. (Emphasis added). Yet, the Dispute Resolution Commission, as well as its administrative rules (chapter 718), have been suspended. Under such circumstances, the Members proposed deleting the above highlighted language from the rule.

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit O and incorporated by this reference.

OAR 438-020-0010(1)

This rule concerns the notice of need for and appointment of an interpreter. Section (1) provides:

“(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. [“ISC” is defined as “Interpreter Services Coordinator” in OAR 438-020-0001(3)]. Postal notification or FAX is preferred, although telephonic notification will be accepted. Notification *shall* contain: \* \* \*” (Emphasis added).

The Members proposed to replace the second “shall” (highlighted above) with “should,” which would indicate that the listed “notification” information is requested, rather than required. This change would eliminate a potential “jurisdictional/validity” argument if a request for appointment of an interpreter lacked all specified “notification” information.

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit P and incorporated by this reference.

OAR 438-022-0005

This rule “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.” (Emphasis added). The Members proposed to change the highlighted year to “2008” to reflect the most current Attorney General’s Model Rules for Rulemaking, which were adopted effective January 1, 2008.

At the rulemaking hearing, no comments were received regarding these proposed amendments.

The Members find for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed rule is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule as a permanent rule, contained in Exhibit Q and incorporated by this reference.

4. Under the authority granted by ORS 656.726(5), the Board finds that:

- a. All applicable rulemaking procedures have been followed; and
- b. The rules being adopted are reasonable, necessary and proper.

**PURSUANT TO THE AMERICANS WITH DISABILITIES ACT GUIDELINES,  
ALTERNATIVE FORMAT COPIES OF THE RULES WILL BE MADE AVAILABLE  
TO QUALIFIED INDIVIDUALS UPON REQUEST TO THE BOARD.**

Consequently, in accordance with its Notice of Proposed Rulemaking, the Board adopts the attached rules, as set forth in Exhibits "A" through "Q" incorporated herein by this reference, as permanent rules of the Workers' Compensation Board, to become effective April 1, 2013. The amendments are applicable as follows:

Amendments to OAR 438-005-0015 apply to all cases pending before the Hearings Division or the Board on or after April 1, 2013.

Amendments to OAR 438-009-0005 apply to all settlement stipulations filed on or after April 1, 2013.

Amendments to OAR 438-009-0020 apply to all claim disposition agreements filed on or after April 1, 2013.

Amendments to OAR 438-011-0010 and OAR 438-011-0045 apply to all cases in which a party requests Board review of an ALJ's order or Board resolution of a controversy arising under third party law on or after April 1, 2013.

Amendments to OAR 438-012-0031, OAR 438-012-0050, and OAR 438-012-0062 apply to all Own Motion cases pending before the Board on or after April 1, 2013.

Amendments to OAR 438-012-0035 and OAR 438-012-0036 apply to all Own Motion claims closed by Own Motion Notice of Closure, or any Board Own Motion Order Reviewing Carrier Closure issued, on or after April 1, 2013.

Amendments to OAR 438-012-0060 apply to all Own Motion claims closed by an Own Motion Notice of Closure on or after April 1, 2013.

Amendments to OAR 438-012-0001 and OAR 438-012-0020 apply to all Own Motion claims filed or initiated on or after April 1, 2013.

Amendments to OAR 438-0016-0005 apply to all requests for Board review of a Director's order finding no bona fide medical services dispute filed on or after April 1, 2013.

Amendments to OAR 438-019-0010 apply to all requests for a mediator submitted on or after April 1, 2013.

Amendments to OAR 438-020-0010 apply to all requests for an interpreter made on or after April 1, 2013.

Amendments to OAR 438-022-0005 apply to all rulemaking actions initiated on or after April 1, 2013.

The Board further orders that notice of this Order of Adoption, along with a certified copy of the amended rules, be filed with the Secretary of State and that a copy of the aforementioned notice and amended rules be filed with the Legislative Counsel within 10 days after filing with the Secretary of State as required by ORS 183.715.

Dated this 11<sup>th</sup> day of February, 2013.

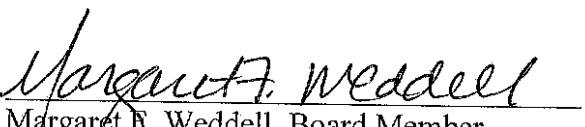
**WORKERS' COMPENSATION BOARD**

by:   
Abigail L. Herman, Board Chair

  
Vera Langer, Board Member

  
Steve Lanning, Board Member

  
Greig Lowell, Board Member

  
Margaret F. Weddell, Board Member