

EXHIBIT A

438-005-0035

Board Policy

(1) It is the policy of the Board to expedite claim adjudication and amicably dispose of controversies. In accordance with ORS 656.012(3), these rules shall be interpreted in an impartial and balanced manner. The overriding principle is substantial justice.

(2) With respect to postponement or continuance of hearings **under OAR 438-006-0081 and OAR 438-006-0091**, substantial justice requires consideration of the relative financial hardship of the parties.

(3) The unrepresented party shall not be held strictly accountable for failure to comply with these rules. Any individual who undertakes to represent a party in proceedings under these rules shall be required to comply with these rules.

(4) It is the policy of the Board to promote the full and complete disclosure of a party's specific position concerning the issues raised and relief requested in a specification of issues under OAR 438-006-0031 and in a response under OAR 438-006-0036. However, it is not the intent of this policy to create binding admissions on behalf of any party, but to clarify the scope of the matters to be litigated.

(5) The Board recognizes the complexity of disputed claims and the time limitations concerning the scheduling and litigation process for such claims. Consistent with this recognition, as factual, medical, and legal aspects of disputed issues evolve, the amendment of issues, relief requested, theories, and defenses may be allowed as prescribed in OAR 438-006-0031(2) and OAR 438-006-0036(2).

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

Stats. Implemented: ORS 656.012(2)

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

EXHIBIT B

438-005-0046

Filing and Service of Documents; Correspondence

(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) The following [*requests*] **things** 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; **or**

(F) Response to issues under OAR 438-006-0036.

(f) To electronically file the requests 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[.], **or a completed Board "Response to Issues Form."** 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 (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.

(g) To electronically file the [*requests*] **things** 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[.], **or complete a Board “Response to Issues Form.”**

(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.

(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 **or responses** filed under OAR 438-005-0046(1)(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 under 438-005-0046(1)(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 filed under OAR 438-005-0046(1)(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 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; WCB 1-2012, f. 8-22-12, cert. ef. 11-1-12

EXHIBIT C

438-006-0020

Acknowledgment; Notice of Conference and Hearing in Ordinary Hearing Process

The Hearings Division shall, by mail, acknowledge receipt of a request for hearing. Such acknowledgment may include notice of date for an informal prehearing conference pursuant to OAR 438-006-0062 or notice of hearing date. The hearing shall be scheduled for a date that is within 90 days of the request for hearing and not less than 60 days after mailing of a notice of hearing date **subject to the exceptions prescribed in ORS 656.283(4)(b)**.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.283(4), (5)(a)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 6-1990(Temp), f. 4-24-90, cert. ef. 4-25-90; 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 2-2007, f. 12-11-07, cert. ef. 1-1-08

EXHIBIT D

438-006-0031

Specification of Issues

(1) Consistent with the Board's policy described in OAR 438-005-0035, the request for hearing under OAR 438-005-0070 filed with the Board shall include *[Not later than 15 days after the first disclosure of documents under OAR 438-007-0015, the party who requested the hearing shall]*, on a form prescribed by the Board, *[file with the Board and simultaneously mail copies to all other parties]* a specific listing of all issues to be raised at the hearing and all relief requested.

(2) Consistent with the Board's policy described in OAR 438-005-0035, [A] amendments may [shall] be [freely] allowed, subject to a motion by an adverse party for a postponement under OAR 438-006-0081 or a continuance under OAR 438-006-0091 *[up to the date of the hearing]*. If, during the hearing, the evidence supports an issue or issues not previously raised, the Administrative Law Judge may allow the issue(s) to be raised during the hearing. In such a situation, the Administrative Law Judge may continue the hearing *[upon motion of an adverse party]* pursuant to OAR 438-006-0091.

Stat. Auth.: ORS 656.726(5)

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

Hist.: WCB 3-1987(Temp), f. 8-27-87, ef. 9-15-87; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03

EXHIBIT E

438-006-0036

Response

(1) Consistent with the Board's policy described in OAR 438-005-0035 and subject to OAR 438-006-0045(2), [N]not later than [15] **21** days after [receiving the listing of issues and other information required by OAR 438-006-0031] **the issuance of the Board's Notice of Hearing under OAR 438-006-0020,** a party defending against a request for hearing shall, on a form prescribed by the Board, file **with the Board** and simultaneously [mail] **serve** copies [to] **on** all other parties a response specifying the respondent's position on the issues raised and relief requested and any additional issues raised and relief requested by the respondent.

(2) Consistent with the Board's policy described in OAR 438-005-0035, [A]amendments **may** [shall] be [freely] allowed, **subject to a motion by an adverse party for a postponement under OAR 438-006-0081 or a continuance under OAR 438-006-0091** [up to the date of the hearing]. If, during the hearing, the evidence supports an issue or issues not previously raised, the Administrative Law Judge may allow the issue(s) to be raised during the hearing. In such a situation, the Administrative Law Judge may continue the hearing [upon motion of an adverse party] pursuant to OAR 438-006-0091.

Stat. Auth.: ORS 656.726(5)

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

Hist.: WCB 3-1987(Temp), f. 8-27-87, ef. 9-15-87; WCB 5-1987, f. 12-18-87, ef. 1-1-88;

WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03

EXHIBIT F

438-006-0045

Motions, Arguments

(1) Except for motions under section (2) of this rule, [U]nless otherwise agreed among the parties and the Administrative Law Judge, pre or post hearing motions shall be filed in writing and copies shall be simultaneously served on all parties or their attorneys.

(2) A party may file a motion for clarification of the issues raised and relief requested by any party in a specification of issues under OAR 438-006-0031 or a response under OAR 438-006-0036.

(3) A motion under section (2) of this rule shall be denied, unless the moving party files a certificate verifying a good faith effort to confer in an attempt to clarify the issues raised and relief requested.

(4) In resolving a motion for clarification under section (2) of this rule, the Administrative Law Judge shall consider the Board's policy described in OAR 438-005-0035.

(5) Failure of a party to reasonably respond to a clarification request may be grounds for a postponement under OAR 438-006-0081 or a continuance under OAR 438-006-0091.

(6) Unless otherwise ordered by the Administrative Law Judge, ten days after filing shall be allowed for written response to a motion.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.307, ORS 656.388, ORS 656.593 & ORS 656.726(5)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89

EXHIBIT G

438-006-0062

Prehearing Conference

(1) **In accordance with ORS 656.726(5)**, [A]an informal prehearing conference may be held by the Hearings Division [*as provided by, and for the purposes stated in, ORS 656.726(5).*] **to:**

(a) Expedite claim adjudication;

(b) Amicably dispose of controversies, if possible;

(c) Narrow issues; and

(d) Simplify the method of proof at hearings.

(2) **Unless otherwise agreed among the parties and the Administrative Law Judge**, [T]the parties shall be given not less than ten days notice of the date of the conference.

[*(3) At the conference, any party may participate in the conference with or without an attorney.*

(4) If a party is represented by counsel at the conference, a client representative with settlement authority (claimant, employer or claims examiner, as applicable) must attend the conference with counsel, or be available by telephone during that time.

(5) The Administrative Law Judge who conducts a prehearing conference on the merits shall not conduct the hearing on the matter over objection by any party.]

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.726(5) & ORS 656.283(9)

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 1-1994, f. 11-1-94, cert. ef. 1-1-95; WCB 3-2001, f. 11-14-01, cert.

ef. 1-1-02

EXHIBIT H

438-006-0075

Expedited Remedy for Failure to Pay Temporary Disability

(1) **The claimant may file with the Hearings Division with copies to the insurer, a motion supported by affidavit asserting the failure to receive such compensation** [I]f it is alleged that the self-insured employer or insurer has terminated temporary disability compensation without:

(a) [t]The attending physician advising the worker and documenting in writing that the worker is released to return to regular employment; or

(b) [t]The injured worker's actual return to regular or modified employment; or

(c) [t]The attending physician advising the worker and documenting in writing that the worker is released to return to modified employment, when such employment has been offered in writing to the worker and the worker fails to begin such employment; or

(d) [a]Any other event that causes temporary disability benefits to be lawfully suspended, withheld or terminated under ORS 656.262(4) or other provisions under chapter 656; or

(e) [t]The issuance of a determination order or notice of closure; or

(f) [a]Authorization of the Board or the Director[, *the claimant may file with the Hearings Division with copies to the insurer, a motion supported by affidavit asserting the failure to receive such compensation*].

(2) If the Hearings Division determines that the amount in controversy is less than \$1,000, the case shall be referred to the Expedited Claims Service under the provisions of Division 013 of these rules;

(3) If the matter cannot be resolved by referral to the Expedited Claims Service, the Hearings Division shall immediately upon receipt of the motion and affidavit issue an Order requiring the self-insured employer or insurer to show cause within 15 days why said compensation has not been provided to the claimant. The show cause order shall contain notice of the date, time and place of the show cause hearing. Within 10 days after the close of the record, the Administrative Law Judge shall enter an order denying or granting temporary disability compensation and awarding penalties and attorney fees when appropriate.

Stat. Auth.: ORS 656.726(5), ORS 656.291(4)

Stats. Implemented: ORS 656.262(4), ORS 656.291 & ORS 656.726(5)

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 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03

EXHIBIT I

438-006-0105

[Deferred Hearings

A hearing may be deferred until a time specified in the order of deferral if:

- (1) The primary issue is unscheduled permanent disability and the claimant is entitled to temporary disability compensation under an Authorized Training Program, except where there is an interruption of compensation or upon a showing of good cause;*
- (2) Consolidation with a pending hearing under OAR 438-005-0065(1) cannot be accomplished prior to the time scheduled for the pending hearing; or*
- (3) The claimant has made a claim that the Administrative Law Judge finds should be resolved with the pending hearing and the insurer or self-insured employer will not be allowed the full time for processing of the new claim under the provisions of ORS 656.262 prior to the time scheduled for the pending hearing.]*

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.726(5) & ORS 656.268(8)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90

EXHIBIT J

438-007-0005

Medical and Vocational and Other Documentary Evidence

(1) [*Statutory references: Medical reports as evidence, ORS 656.310(2); vocational reports, 656.287.*]

(2)] To avoid unnecessary delay and expense medical evidence should be presented in the form of written reports and should include:

- (a) History of the injury or disease;
- (b) Pertinent medical history;
- (c) Present complaints;
- (d) All sources of history and complaints;
- (e) Date of examination;
- (f) Findings on examination;
- (g) Impairment of physical or mental function including loss of reserve capacity;
- (h) Restrictions of activities, such as lifting, bending, twisting, sitting, standing and repetitive use;
- (i) Cause of the impairment and opinion whether the impairment is all or in part work related;
- (j) Medical treatment indicated;
- (k) Likelihood of permanent impairment and opinion whether the condition is likely to change; and
- (l) The reason for the opinion.

[(3)] **(2)** The insurer or self-insured employer may subpoena the claimant's attending or consulting physician(s) and vocational expert(s) for cross-examination. Medical, surgical, hospital and vocational reports offered by the insurer or self-insured employer will also be accepted as prima facie evidence provided the insurer or self-insured employer agrees to produce the medical and vocational expert(s) for cross-examination upon request of the claimant. The reports of any medical or vocational expert who has refused to make herself or himself available for cross-examination shall be excluded from the record unless good cause is shown why such evidence should be received. The cost of cross-examination of any medical or vocational expert(s) under this section shall be paid by the insurer or self-insured employer.

[(4)] **(3)** To avoid unnecessary cost and delay, the Board encourages the use of written interrogatories or depositions to secure medical or vocational expert testimony.

[(5)] **(4)** The Administrative Law Judge may appoint a medical or vocational expert to examine the claimant and to file a report with the Administrative Law Judge. The parties may also agree in advance to be bound by such expert's findings. The cost of examination and reports under this rule shall be paid by the insurer.

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

Stats. Implemented: ORS 656.287 & ORS 656.310(2)

Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 1-1987, f. 3-4-87, ef. 4-15-87; WCD 2-1987(Temp), f. 4-13-87, ef. 4-15-87; WCB 4-1987, f. 11-6-87, ef. 11-16-87; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1997, f. 3-20-97, cert. ef. 7-1-97

EXHIBIT K

438-007-0018

Exchange and Admission of Exhibits at Hearing

(1) Not later than 28 days before the hearing, the insurer or self-insured employer shall provide the claimant and other insurer or self-insured employer legible copies of all documents that are relevant and material to the matters in dispute in the hearing, together with an index. The index shall include the document numbers, description of each document, author, number of pages and date of the document. The documents shall be arranged in chronological order and numbered, in Arabic numerals, in the lower right corner of each page, beginning with the document of earliest date. The numbers shall be preceded by the designation "Ex," and pagination of multiple-page documents shall be designated by a hyphen followed by the page number. For example, page two of document two shall be designated "Ex 2-2." A physician's chart notes constitute a multi-page document to the extent that the date of each individual chart note is subsequent to the date of the preceding exhibit and is earlier than the date of the next exhibit. However, for deposition transcripts, only the cover page of the deposition need be numbered; i.e., "Ex. 3."

(2) Not less than 14 days before the hearing, or within seven days of receipt of the insurer document index and documents, whichever is later, the claimant shall provide the insurer(s) or self-insured employer(s) legible copies of any additional documents that are relevant and material to the matters in dispute in the hearing. The additional documents shall be marked and accompanied by a supplemental document index, prepared in the same manner as the insurer documents and index and numbered to coincide in chronological order with the insurer's documents. Letter subdesignations shall be used to ensure chronological numbering. For example, a document which is chronologically between documents six and seven of the insurer documents shall be designated "Ex 6A."

(3) Before or at the hearing, the parties shall delete from their indexes and packets of documents those documents which are cumulative, or which no party can in good faith represent to be relevant and material to the issues, and the revised indexes and packets of documents shall be submitted to the Administrative Law Judge. For compliance with this rule, it is sufficient for the parties to mark neatly through the index description of the documents not being offered in evidence with ink, and to remove the corresponding documents from the packets submitted to the Administrative Law Judge.

(4) **Filing of the documents described in section (1) shall not establish that:**

(a) The insurer or self-insured employer is the sponsor for each of these documents for purposes of admission into the evidentiary record; or

(b) The claimant is automatically entitled to cross-examine the author of any document filed by the insurer or self-insured employer under section (1).

(5) Subject to ORS 656.287(1), at the hearing the Administrative Law Judge may in his or her discretion allow admission of additional medical reports or other documentary evidence not disclosed as required by OAR 438-007-0015. In the exercise of this discretion, the Administrative Law Judge shall determine whether material prejudice has resulted from the timing of the disclosure and, if so, whether there is good cause for the failure to timely disclose that outweighs any prejudice to the other party or parties. Following a finding of material prejudice, the Administrative Law Judge may exclude a document or continue the hearing for such action as is appropriate to cure the material prejudice caused by the late disclosure of the document.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 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 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2003, f. 2-21-03, cert. ef. 5-1-03

EXHIBIT L

438-007-0020

Subpoenas; Witness Fees

- (1) Whenever a party has requested a hearing, a subpoena may be issued to compel:
 - (a) Attendance and testimony at a hearing; or
 - (b) The production of documentary or physical evidence under a witness' control at or before a hearing.
- (2) Subpoenas may be issued by an Administrative Law Judge or the attorney of record of a party. Upon request, the Hearings Division shall provide blank subpoenas.
- (3) Subpoenas issued on behalf of a party may be served by the party or the party's representative. Service may be made in person or by certified mail or other mail that provides for a receipt signed by the recipient.
- (4) Subpoenas shall be served far enough in advance of an appearance to allow the witness or party a reasonable time to comply with the subpoena or to file an objection.
- (5) Witness fees and mileage shall be provided at the time the subpoena is served, in the amount provided for in civil actions.
- (6) "Individually identifiable health information," as defined in ORCP 55(H)(1)(a), may be obtained through a subpoena under the following procedures:
 - (a) At the time a subpoena for individually identifiable health information is issued, the party issuing the subpoena must serve a copy of the subpoena to the party or the attorney for the party whose individually identifiable health information is being subpoenaed. Such service shall be as provided in section (3) above.
 - (b) The subpoena shall provide notice to the person or the person's attorney, if represented, whose individually identifiable health information is being subpoenaed of the extent of the information being sought, and shall describe the procedure for submitting a timely objection to the disclosure of such information. The subpoena shall include the following in prominent or boldface type:

"IF YOU OPPOSE THE DISCLOSURE OF THE INFORMATION INCLUDED IN THIS SUBPOENA, YOU MUST FILE A WRITTEN OBJECTION, WITH THE WORKERS' COMPENSATION BOARD, 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280. YOUR OBJECTION MUST BE FILED WITHIN SEVEN (7) CALENDAR DAYS OF THE MAILING DATE OF THIS NOTICE, AND MUST STATE THAT YOU OBJECT TO THE RELEASE OF THE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION, THE BASIS FOR YOUR OBJECTION, YOUR ADDRESS, AND THE DATE OF YOUR INJURY IF YOU KNOW THE DATE. A COPY OF YOUR LETTER MUST ALSO BE PROVIDED SIMULTANEOUSLY TO THE RECIPIENT OF THE SUBPOENA, AS WELL AS TO THE PARTY ISSUING THE SUBPOENA. IF YOU HAVE QUESTIONS YOU MAY CALL THE WORKERS' COMPENSATION BOARD AT (503) 378-3308 OR TOLL-FREE [IN OREGON] AT 1-877-311-8061 [OR, IN SALEM OR FROM OUTSIDE OREGON, AT (503) 378-3308], OR THE [OMBUDSMAN'S OFFICE AT (503) 378-3351, OR] OMBUDSMAN FOR INJURED WORKERS TOLL-FREE[,] AT 1-[(800)]-927-1271."
 - (c) The subpoena must also contain the following certification: "I certify that I mailed a copy of this subpoena to [the person or the person's attorney, if represented] at [address] on [date] by certified mail return receipt requested."

(d) "File," as used in this section, has the same meaning as OAR 438-005-0046.

(e) If the person whose individually identifiable health information is being subpoenaed does not timely object or waives any objection, the recipient of the subpoena shall comply with the subpoena.

(f) If the recipient of the subpoena receives a timely objection from the party whose individually identifiable health information is being subpoenaed, the recipient shall comply with the subpoena by mailing the information sought to the Workers' Compensation Board, at 2601 25TH STREET SE, SUITE 150, SALEM OREGON 97302-1280.

(g) If the person whose individually identifiable health information is being subpoenaed timely objects, an expedited pre-hearing conference will be conducted under the provisions of ORS 656.283.

(h) A party who receives information under this section is required to disclose that information under OAR 438-007-0015.

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.283(8), 656.724(4) & 656.726(2)(c)

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; WCB 1-2005, f. 6-29-05, cert. ef. 9-1-05

EXHIBIT M

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 _____, 20__ .

Board Member **or Administrative Law Judge who mediated the agreement**

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; WCB 1-2013, f. 2-11-13, cert. ef. 4-1-13