

Secretary of State
Certificate and Order for Filing

PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on October 11, 2016 by the
Date prior to or same as filing date

Department of Consumer & Business Services/Workers' Compensation Board	Chapter 438	
Agency and Division	Administrative Rules Chapter Number	
Karen Burton	2601 25 th St. SE, Ste. 150, Salem, OR 97302-1280	(503)934-0123
Rules Coordinator	Address	Telephone

to become effective November 1, 2016. Rulemaking Notice was published in the September 1, 2016 *Oregon Bulletin*.
Date upon filing or later Month and Year

RULE CAPTION

Amending OAR 438-015 regarding assessed and out-of-compensation attorney fees, and timely payment.

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

RULEMAKING ACTION

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

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

ADOPT:

AMEND: OAR 438-015-0005; OAR 438-015-0010; OAR 438-015-0040; OAR 438-015-0050; OAR 438-015-0052;
OAR 438-015-0055; OAR 438-015-0080; OAR 438-015-0082

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 656.307; ORS 656.388; ORS 656.388(4); ORS 656.593; ORS 656.726(5)

Other Auth.:

Stats. Implemented: ORS 656.236(4); ORS 656.267(3); ORS 656.278(1); ORS 656.289(4); ORS 656.307; ORS 656.308;
ORS 656.382; ORS 656.383; ORS 656.386; ORS 656.388; ORS 656.593; ORS 656.726(5).

RULE SUMMARY

Amend Division 015 rules concerning attorney fees under the Workers' Compensation Law as follows: (1) amend OAR 438-015-0005(4) to delete the phrase "by an attorney" from the definition of "attorney fee" legal services; (2) amend OAR 438-015-0010(4)(a) to add the phrase "for legal services" to the "time devoted to the case" factor in the determining a reasonable attorney fee; (3) amend OAR 438-015-0010(4)(g) to add the phrase "and the contingent nature of the practice" to the "risk in a particular case that an attorney's efforts may go uncompensated" factor in the determining a reasonable attorney fee; (4) amend OAR 438-015-0040(1) and (2), respectively, to remove the out-of-compensation attorney fee cap on permanent partial disability (PPD) increases at a hearing, and to increase the out-of-compensation attorney fee cap to \$20,000 on permanent total disability (PTD) awards at hearing; (5) amend OAR 438-015-0050(1) to increase the "threshold/soft cap" attorney fee to 25 percent of the first \$50,000 of proceeds from a Disputed Claim Settlement (DCS), plus 10 percent of the settlement proceeds in excess of \$50,000; (6) amend OAR 438-015-0052(1) to) to increase the "threshold/soft cap" attorney fee to 25 percent of the first \$50,000 of proceeds from a Claim Disposition Agreement (CDA), plus 10 percent of the settlement proceeds in excess of \$50,000; (7) amend OAR 438-015-0055(2) and (3), respectively, to remove the out-of-compensation attorney fee cap on PPD awards on Board review, and to increase the out-of-compensation attorney fee cap to \$30,000 on PTD increases on Board review; (8) amend OAR 438-015-0080(1) and (2) to remove the cap on out-of-compensation attorney fee awards relating to increased temporary disability awards in Own Motion cases; and (9) amend OAR 438-015-0082(2) to make an assessed attorney fee payable within 14 days of the date the order authorizing the fee becomes final.



Holly J. Somers

Printed name

10/13/16

Date

Note: Permanent rulemakings must be submitted by the 15th day of the month to be included in the next month's *Oregon Bulletin* and online *OAR Compilation* updates.