





1            Since the compensable work injury in 1993, claimant has treated with three attending  
2 physicians. These are Michael S. Baskin, MD (Orthopedics), Wilbur L.E. Larson, MD  
3 (Neurology), and Scott E. Brown, MD (Physical Medicine). (Exhibits 3, 12, 15 and 32).  
4 Sometime in 1993, claimant moved to California and treated with Dr. Brown in Loma Linda.  
5 (Exhibits 13 and 14). On April 1, 1994, insurer notified claimant that it recognized Dr. Brown as  
6 the current attending physician and that any subsequent change would require approval. (Exhibit  
7 15). Dr. Brown last examined claimant in June 1996 before relocating to Maryland. (Exhibit  
8 21). In January 1997, claimant sought treatment from Thomas A. Curtis, MD (Psychiatry) in  
9 Sherman Oaks, California. (Exhibits 22, 31 and 32).

10            In September 1993, Dr. Larson noted that he and Dr. Baskin had no further treatment to  
11 offer. (Exhibit 11-8). In January 1994, Dr. Larson stated, “(Claimant) offers a complex problem  
12 of pain management that at this time appears to be primarily of psychological origin.”  
13 (Exhibit 11-6).

14            In April 1994, Dr. Brown recommended psychological therapy. (Exhibit 16-3).  
15 On October 31, 1994, Dr. Brown declared claimant’s orthopedic conditions medically stationary,  
16 released claimant to sedentary work and recommended no further orthopedic treatment with the  
17 exception of prescription monitoring. Dr. Brown also stated that claimant was clearly in need of  
18 psychological treatment. (Exhibits 18-1 and 18-11).

19            Claimant first sought treatment from Dr. Curtis on January 4, 1997. Dr. Curtis opined  
20 that claimant’s psychological tests were “massively abnormal.” (Exhibit 22-8).

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24 <sup>1</sup> At the time of claim acceptance, Scott Weitzel was the claims processing agent for Albertson’s Incorporated. The current claims processing agent for Albertson’s is Gates McDonald.

1 In January 1997, Ronald B. Perelman, MD (Orthopedist) examined claimant on referral  
2 from Dr. Curtis. Dr. Perelman opined that nothing could be done orthopedically for claimant and  
3 recommended that claimant's primary treatment be directed by Dr. Curtis. (Exhibit 23-7).

4 On April 28, 1998, David Rich, MD (Neurology) and Michael Marble, MD (Orthopedics)  
5 examined claimant at the insurer's request. The panel noted that claimant had been examined by  
6 numerous independent medical examiners and no objective abnormalities had been identified.  
7 (Exhibit P2-2). The panel opined that claimant suffered no organic orthopedic or neurologic  
8 disease and therefore, recommended no further orthopedic or neurologic treatment. The panel  
9 believed that claimant suffered a psychological problem. (Exhibit P2-7).

10 On April 28, 1998, Ronald N. Turco, MD (Psychiatry) examined claimant at the insurer's  
11 request. Dr. Turco made tentative diagnoses of malingering, factitious disorder, delusional  
12 state, somatoform disorder and significant personality disorder as well as passive aggressive,  
13 passive dependent, narcissistic, histrionic and borderline features. (Exhibit P1-6). Dr. Turco  
14 found no relationship between claimant's psychiatric problems and the 1993 injury. He opined  
15 that since claimant's complaints are physical in nature, an orthopedic surgeon or a neurologist  
16 should assume his primary care. (Exhibit P1-5).

17 On May 28, 1998, insurer notified claimant that it would approve any of four orthopedists  
18 in the Anaheim, California area. (Exhibit 30). On March 17, 2000, the Benefits Section of the  
19 Workers' Compensation Division issued an administrative order approving the change of  
20 attending physician to Dr. Curtis. (Exhibit 33). Insurer appealed.

21 **CONCLUSIONS OF LAW AND REASONING**

22 The director has jurisdiction over medical services disputes not involving causation.  
23 ORS 656.704(3)(a). This is a medical services dispute arising under ORS 656.245. The statute

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1 does not specify a standard of review, and therefore, I review *de novo*. *Archie M. Ulbrich*, 2  
2 WCSR 152 (1997). OAR 436-001-0225(2). The burden of proving any fact or position rests  
3 upon the proponent. ORS 183.450(2). Proof by a preponderance of evidence means that the fact  
4 finder is convinced that the facts asserted are more likely true than false. *Riley Hill General*  
5 *Contractor v. Tandy Corp.*, 303 Or 390 (1987). Insurer, as proponent of the position that the  
6 proposed change of attending physician is not medically justified, bears the burden of presenting  
7 evidence to support its position.

8 ORS 656.005(12)(b) defines the term “attending physician” as:

9 “(b) Except as otherwise provided for workers subject to a  
10 managed care contract, “attending physician” means a doctor or  
11 physician who is primarily responsible for the treatment of a  
12 worker’s compensable condition\*\*\*”

13 Under ORS 656.245(2) an injured worker may choose three attending physicians within  
14 the state of Oregon without approval. However, an injured worker’s choice of a fourth attending  
15 physician or any physician outside the state requires approval by either the insurer or the  
16 director. Since Dr. Curtis practices in California, his status as attending physician requires  
17 approval.

18 The statute is implemented by OAR 436-010-0220. OAR 436-010-0220(7)(a)  
19 provides:

20 “(7) After receipt and review, the director will issue an order  
21 advising whether the change is approved. On a case by case basis  
22 consideration may be given, but is not limited, to the following:

23 “(a) Whether there is medical justification for a change, including  
24 whether the attending physician can provide the type of treatment  
that is appropriate for the workers’ condition.”

Insurer objects to a psychiatrist serving as claimant’s attending physician and contends  
that an orthopedist should assume the role instead. In support of its position, insurer argues that

1 Dr. Curtis, as a psychiatrist cannot provide the type of treatment that is appropriate for claimant's  
2 condition. Insurer further argues that the original injury involved the left ankle and that the  
3 underlying medical condition is physical and orthopedic in nature. Insurer also argues that at the  
4 most recent independent medical examination, claimant listed his chief complaints as physical  
5 problems. Insurer asserts that an orthopedic physician should be approved as attending physician  
6 and a psychiatrist may serve as a consulting physician. Finally, insurer argues that Dr. Curtis  
7 failed to submit an 829 "Change of Attending Physician" form timely as required by OAR 436-  
8 010-0240(17).

9 In contrast, claimant contends that Dr. Curtis, a psychiatrist, can provide appropriate  
10 treatment and should be approved as attending physician. In support of his position, claimant  
11 points out that the insurer has accepted psychiatric conditions and has been ordered to accept the  
12 current psychiatric condition. Claimant also argues that no further orthopedic treatment is  
13 recommended while the medical evidence shows that claimant is in need of psychiatric  
14 treatment. Finally, claimant argues that even if Dr. Curtis failed to provide an 829 form timely,  
15 he is not prohibited from serving as attending physician.

16 The director applied OAR 436-010-0220(7)(a) in *Evonne J. Gibson*, 2 WCSR 626 (1997)  
17 and 3 WCSR 87 (1998). In *Gibson*, the accepted conditions were acute lumbar strain and  
18 contusion of the left buttocks. The current attending physician specialized in physical medicine.  
19 Claimant sought approval to change the attending physician to a surgeon. The ALJ concluded  
20 that the change was medically justified by medical evidence showing that the surgeon might be  
21 able to provide appropriate treatment that the physical medicine practitioner could not provide.

22 Here, the medical evidence indicates that claimant's underlying medical problem is  
23 psychiatric and not physical. The medical evidence also indicates that claimant's physical  
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1 conditions resolved years ago, but that claimant suffers an ongoing need for psychiatric  
2 treatment.

3 In October 1994, Dr. Brown declared claimant's physical conditions medically  
4 stationary, and recommended no further orthopedic treatment. No physician has recommended  
5 further orthopedic treatment since that time. Moreover, in January 1997, Dr. Perelman opined  
6 that no orthopedic treatment was necessary. Similarly, in April 1998, Drs. Rich and Marble  
7 recommended no orthopedic treatment.

8 On the other hand, the medical record is consistent on the point that claimant is in need of  
9 psychiatric treatment. As early as January 1994, Dr. Larson identified claimant's main problem  
10 as psychological in nature. In April, 1994, Dr. Baskin joined Dr. Larson in recommending  
11 psychological therapy.

12 In January 1997, when claimant first sought psychiatric treatment from Dr. Curtis, the  
13 physical conditions had been declared medically stationary three years earlier. Dr. Curtis  
14 identified psychological abnormalities and opined that psychological treatment was necessary.

15 Drs. Larson, Brown, Perelman and Curtis have all recommended psychiatric treatment for  
16 claimant. Drs. Rich and Marble agree that claimant suffers a psychological problem. Dr. Turco  
17 tentatively diagnosed a list of psychiatric disorders, but questioned the causal connection to the  
18 1993 work injury. However, the law of the case was established in previous litigation and  
19 dictates that claimant's current psychiatric condition is compensable. Based on the evidence, I  
20 conclude that Dr. Curtis, as a psychiatrist can provide appropriate medical treatment for  
21 claimant's condition. Accordingly, the medical evidence establishes that there is medical  
22 justification for changing claimant's attending physician to Dr. Curtis.

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**ATTORNEY FEES**

Claimant has prevailed in a contested case hearing and is entitled to a reasonable fee. ORS 656.385(1). On July 12, 2000, claimant’s attorney submitted a statement of services requesting a fee in the amount of \$1,200.00. Considering the factors listed in OAR 436-001-0265, \$1,200.00 is a reasonable fee for claimant’s attorney’s services in this case.

**ORDER**

IT IS HEREBY ORDERED that:

1. The change of attending physician to Thomas A. Curtis, MD (Psychiatrist) is approved.
2. Insurer shall pay claimant’s attorney a fee of \$1,200.00.

DATED this \_\_\_\_\_ day of September, 2000.

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Catherine P. Coburn, Hearing Judge  
Hearing Officer Panel

1 **NOTICE OF REVIEW AND APPEAL RIGHTS**

2 As provided in ORS 183.460, the parties are entitled to file written exceptions, including  
3 argument, to this Proposed and Final Contested Case Hearing Order. The exceptions must  
4 be served on the parties and filed with the Administrator of the Workers' Compensation  
5 Division at the address set forth below within 30 days following the date of service of this  
6 order. Written responses to exceptions must be filed within 20 days of service of the  
7 exceptions. Replies, if desired, must be filed within 10 days of service of the response.

8 If no exceptions are filed, this order shall become final upon expiration of 30 days following  
9 the date of service on the parties.

10 After this order becomes final, you are entitled to judicial review pursuant to the  
11 provisions of ORS 183.480. Judicial review may be obtained by filing a petition with the  
12 Court of Appeals within 60 days from the date that this order becomes final.

13 Mail any exceptions and a copy of any petition for judicial review to:

14 **Technical Coordinator, Policy Section**  
15 **Workers' Compensation Division**  
16 **Department of Consumer and Business Services**  
17 **350 Winter Street NE, Rm. 27**  
18 **Salem, OR 97301-3879**