



1 13). On May 19, 1997, claimant sought medical treatment from Dr. Stryker who practiced at the  
2 Medical and Dental Center. (Exs. 2 and 12). Dr. Stryker prescribed Flexeril and Naprosyn.  
(Ex. 2-1).

3 On May 24, 1997, claimant reported to the emergency room complaining of low back  
4 pain and lower extremity edema. Claimant was advised to discontinue use of Naprosyn and to  
5 schedule a follow-up appointment with the Medical and Dental Center. (Ex. 10). Claimant  
6 sought no further treatment with Dr. Stryker for the low back condition. (Ex. 17).

7 On June 17, 1997, Dr. Stryker, acting as attending physician, signed an 827 "First  
8 Medical Report" form. He indicated that claimant had been released to regular work on May 22,  
9 1997. (Ex. 12).

10 On July 24, 1997, insurer accepted a nondisabling claim for a sacral contusion without  
11 coccyx fracture. (Ex. 14). Insurer did not close the claim.

12 On December 15, 1997, claimant sought treatment from Barry Sears DC. Claimant  
13 indicated to Dr. Sears that she had suffered a work injury six months earlier and that she had  
14 received medical treatment elsewhere. (Ex. 17-1). Dr. Sears rendered thirty-two chiropractic  
15 treatments from December 15, 1997 through April 8, 1998. (Ex. 17). On April 13, 1998, Dr.  
16 Sears declared claimant's condition medically stationary. (Ex. 17-21).

17 On January 14, 1998, Dr. Sears wrote to Hugh Stelson M.D. indicating that he had treated  
18 claimant for one month and requesting that Dr. Stelson assume the role of attending physician  
19 and refer claimant back to Dr. Sears for further chiropractic treatment. (Ex. 19). On January 16,  
20 1998, Dr. Stelson examined claimant and referred her to Dr. Sears for eight additional  
21 chiropractic treatments. (Ex. 20).

22 On January 29, 1998, insurer notified claimant that she was enrolled in Providence  
23 Vantage Managed Care Organization (MCO) and that she could treat with MCO-listed medical  
24 providers who comply with MCO requirements. (Ex. 21). On February 12, 1998, the MCO  
wrote to Dr. Sears indicating that Dr. Stryker was listed as claimant's attending physician, that  
the accepted condition was medically stationary, the claim was closed and that Dr. Stryker's  
authorization was needed for palliative treatment. The MCO advised Dr. Sears that if he chose  
to treat claimant, he should either seek authorization for palliative treatment from Dr. Stryker or  
assume the role of attending physician by filing an 829 form and request authorization from the  
MCO before commencing palliative treatment. (Ex. 22). Dr. Sears is listed as an MCO panel  
provider. (Exs. 26 and 28). The MCO requires its medical providers to comply with applicable  
Oregon Administrative Rules. (Ex. 36).

25 On May 1, 1998, insurer denied payment of Dr. Sears' bills on grounds that he failed to  
26 obtain authorization for palliative treatment from claimant's attending physician, Dr. Stryker.  
(Ex. 25).

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1 **CONCLUSIONS OF LAW AND REASONING**

2 Jurisdiction over medical service disputes not involving compensability lies with the  
3 Director of the Workers' Compensation Division. ORS 656.245(6) and ORS 656.704.<sup>1</sup>  
4 Since ORS 656.245 does not specify a standard of review, I review *de novo*. *Archie M. Ulrich*, 2  
WCSR 152 (1997). OAR 436-001-0225(1).

5 The burden of proving any fact or position falls upon the proponent. ORS 183.450(2).  
6 As petitioner, insurer bears the burden of proving by a preponderance of evidence that it is not  
7 liable for payment of the chiropractic treatment Dr. Sears rendered to claimant during the period  
in question. *See Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of contrary  
legislation, the standard of proof in administrative hearings is preponderance of evidence.)

8 In the administrative order, the Medical Review Unit (MRU) found that because the  
9 nondisabling claim was not closed, Dr. Sears was authorized to treat claimant under ORS  
656.005(12)(b)(B) and OAR 436-010-0005(1)(c). MRU next found that claimant did not choose  
10 Dr. Stryker as her attending physician but she did choose Dr. Sears. MRU found that Dr. Sears  
assumed the role of attending physician even though he did not file an 829 form with the insurer.  
11 MRU also found that under the MCO contract, insurer was liable for a 60-day period of Dr.  
Sears' treatment. MRU pointed out that the insurer had failed to notify claimant of the manner in  
12 which she may receive palliative care and therefore, claimant could not be expected to comply  
with the requirements for obtaining palliative care. Finally, MRU found that Dr. Sears'  
treatment was curative and not palliative and therefore, pre-authorization was not required.

13 Insurer contends that claimant designated Dr. Stryker as her attending physician and did  
14 not subsequently designate Dr. Sears. Insurer further contends that because Dr. Sears failed to  
file an 829 form, it is not liable for any medical treatment Dr. Sears rendered either before or  
15 after claimant became enrolled in the MCO.

16 Claimant contends that Dr. Sears treated claimant according to the 30 day/12 visit rule  
prescribed in ORS 656.005(12)(b)(B). Furthermore, claimant contends that Dr. Sears was not  
17 required to seek authorization of palliative care because the accepted condition had not been  
declared medically stationary, the claim had not been closed and because Dr. Sears' treatment  
18 was curative. Finally, claimant contends that Dr. Sears was authorized to render treatment after  
January 29, 1998 when claimant became an MCO member because he is an MCO panel  
19 provider.

20 Attending Physician: December 15, 1998 through January 28, 1998

21 Claimant began treating with Dr. Sears on December 15, 1998. She became enrolled in  
the MCO on January 29, 1998.

22  
23 <sup>1</sup> Claimant has not completed an MCO dispute resolution process as required by OAR 435-015-0110. However, the  
24 MCO requires only that panel providers comply with Oregon Administrative Rules and maintains no separate  
dispute resolution process to resolve disputes involving rule compliance. (Ex. 36).

1 Under ORS 656.245, an insurer is obligated to provide medical services related to a  
2 compensable injury for so long as the nature of the injury or process of recovery requires. This  
3 obligation continues for the life of the injured worker. OAR 436-010-0220(2) provides that all  
4 reimbursable medical services must be authorized by the injured worker’s attending physician.  
5 ORS 656.005(12) defines the terms “doctor” or “physician” and “attending physician.”

6 ORS 656.005(12)(a) provides:

7 “Doctor” or “physician” means a person duly licensed to  
8 practice one or more of the healing arts in any country or in any  
9 state territory or possession of the United States within the  
10 limits of the license of the licentiate.”

11 ORS 656.005(12)(b)(B) provides:

12 “Except as otherwise provided for workers subject to a managed  
13 care contract, “attending physician” means a doctor or physician  
14 who is primarily responsible for the treatment of a worker’s  
15 compensable injury and who is:

16 “(B) For a period of 30 days from the date of the first visit on the  
17 initial claim or for 12 visits, whichever first occurs, a doctor or  
18 physician licensed by the State Board of Chiropractic Examiners  
19 for the State of Oregon or a similarly licensed doctor or physician  
20 in any country or in any state, territory or possession of the United  
21 States.”

22 OAR 436-010-0005(19) defines the term “initial claim” as

23 “\*\*\*the first open period on the claim immediately following the  
24 original filing of the occupational injury or disease claim until the  
worker is first declared to be medically stationary by an attending  
physician. For nondisabling claims, the “initial claim” means the  
first period of medical treatment immediately following the original  
filing of the occupational injury or disease claim ending when the  
attending physician does not anticipate further improvement or need  
for medical treatment, or there is an absence of treatment for an  
extended period.”

25 Under Oregon law, a chiropractor is allowed to serve as attending physician and to render  
26 treatment without referral from a medical doctor only for a limited period, *i.e.* for 30 days or  
27 twelve visits during the initial claim period immediately following filing of the original claim.  
28 For a nondisabling claim, the initial claim period when a chiropractor may assume the role of  
29 attending physician terminates when there is an absence of treatment for an extended period.  
30 Here, the original injury occurred on May 15, 1997. Claimant treated with Dr. Stryker in one

1 appointment, two days after the injury occurred. Nine days after the injury, claimant sought  
2 treatment for the compensable condition at the emergency room. Claimant sought no further  
3 medical treatment until she saw Dr. Sears on December 15, 1997, seven months later.

3 I find that seven months constitutes an “extended period” within the meaning of OAR  
4 436-010-0005(19). Since there was an absence of medical treatment for an extended period, the  
5 initial claim period expired before claimant sought treatment with Dr. Sears. Therefore, Dr.  
6 Sears was not authorized to serve as attending physician under ORS 656.005(12)(b)(B).  
7 Accordingly, the services Dr. Sears rendered from December 15, 1998 until January 29, 1998  
8 when claimant became enrolled in the MCO are not reimbursable.

6 I agree with Dr. Sears’ argument that an injured worker cannot be expected to  
7 comprehend the complexities of the Oregon workers’ compensation system. In contrast, the  
8 onus is upon a medical provider who accepts injured workers as patients and who requests  
9 reimbursement to be informed and to apply current workers’ compensation requirements. In  
10 1995, the Oregon legislature amended ORS 656.005(12)(b)(B) by inserting the term “initial” to  
11 modify the term “claim.” The amended statute allows chiropractors to act as attending  
12 physicians only during the initial claim period. Here, claimant sought treatment from Dr. Sears  
13 seven months after the work injury. She indicated that she had received medical treatment  
14 elsewhere and that she had returned to regular work. These factors should have triggered Dr.  
15 Sears’ awareness that he was not authorized to treat under ORS 656.005(12)(b)(B).

12 Even if Dr. Sears qualified as an attending physician, his services would not be  
13 reimbursable because he failed to comply with the mandatory requirements of OAR 436-010-  
14 0220(1).

14 OAR 436-010-0220(1) provides:

15 “A newly selected attending physician or a referral physician who  
16 becomes primarily responsible for the worker’s care, **shall** notify  
17 the insurer not later than five days after the date of change or first  
18 treatment, using Form 829 (Change of Attending Physician). This  
19 form should be completed and submitted only when the previous  
20 attending physician is no longer primarily responsible for the  
21 worker’s care.” (Emphasis provided.)

19 I find that claimant designated Dr. Stryker as her first attending physician. The identity  
20 of an attending physician is a question of fact. *Rosemarie Guerra*, 3 WCSR 1 (1998). Claimant  
21 listed Dr. Stryker as her attending physician on the 801 claim form and sought treatment with  
22 him following the injury. Dr. Stryker signed the 827 First Medical Report as the attending  
23 physician and released claimant to regular work. Since Dr. Stryker was the first attending  
24 physician, if claimant intended to select Dr. Sears as a new attending physician, Dr. Sears was  
25 required to notify the insurer by filing an 829 form.

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2 Having adopted OAR 436-010-0220(1), the agency is not free to ignore it. *Aetna*  
3 *Casualty & Surety Co.*, 139 Or App 283 (1996). The rule is mandatory. It requires a new  
4 attending physician to file an 829 form with the insurer within five days of the change or the first  
5 treatment.

6  
7 Again, I agree with Dr. Sears's argument that an injured worker should not be expected  
8 to comprehend the intricacies of the Oregon workers' compensation system. In contrast, the  
9 medical provider who accepts injured workers as patients and seeks reimbursement is  
10 responsible for complying with the law.

11  
12 The underlying purpose of OAR 436-010-0220(1) is to protect the injured worker.  
13 Requiring a new attending physician to notify the insurer of a change in status fosters the injured  
14 worker's right to choose a medical provider. Also, clear and timely communication between the  
15 medical provider and the insurer facilitates orderly claims processing and timely provision of  
16 benefits to the injured worker. For example, by rendering treatment without notifying the  
17 insurer, Dr. Sears exposed his patient to potential liability for unpaid medical services. Under  
18 OAR 436-009-0015(1) an injured worker is liable for medical services if he seeks treatment for  
19 conditions not related to the accepted compensable injury. Because Dr. Sears failed to  
20 correspond with the insurer, he did not know what medical condition had been accepted. He  
21 rendered treatment without knowing whether the treatment was directed toward an accepted  
22 medical condition or whether the treatment would be covered by the claim.

23 MCO: January 29, 1998 through April 8, 1998

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25 Claimant became enrolled in the MCO on January 29, 1998 and continued treating with  
26 Dr. Sears through April 8, 1998.

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28 ORS 656.245(2)(b)(A) provides:

29 "A medical service provider who is not a member of a managed  
30 care organization is subject to the following provisions:

31 "A medical service provider who is not qualified to be an  
32 attending physician may provide compensable medical service to  
33 an injured worker for a period of 30 days from the date of injury  
34 or occupational disease or for 12 visits, whichever first occurs,  
35 without the authorization of an attending physician. Thereafter,  
36 medical service provided to an injured worker without the written  
37 authorization of an attending physician is not compensable."

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39 OAR 436-010-0210(2) provides:

40 "Authorized primary care physicians may provide medical services  
41 to injured workers subject to the terms and conditions of the  
42 governing MCO."

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Dr. Sears is listed as an MCO medical provider. However, in order to obtain reimbursement, the MCO requires its medical providers to comply with Oregon statutes and administrative rules. Dr. Sears rendered treatment outside the authority of ORS 656.005(12)(b)(B) and ORS 656.245(2)(b) and he failed to comply with the mandatory requirements of OAR 436-010-0220(1). Therefore, he is entitled to no reimbursement for services rendered from January 29, 1998 through April 8, 1998.

Attorney Fees

Claimant has not prevailed. Therefore, claimant's attorney is not entitled to a fee. ORS 656.385(1).

**ORDER**

IT IS HEREBY ORDERED that:

1. The Administrative Order dated June 1, 2000 is reversed.

DATED this \_\_\_\_ day of November, 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**