

EXHIBIT 'A'

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES WORKERS' COMPENSATION DIVISION

OREGON ADMINISTRATIVE RULES CHAPTER 436, DIVISION 060

CLAIMS ADMINISTRATION

Medical Examinations; Suspension of Compensation and Notice to Worker

436-060-0095 (1) The Division will suspend compensation by order under conditions set forth in this rule. The worker shall have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension when the worker refuses or fails to submit to, or otherwise obstructs, a medical examination reasonably requested by the insurer or the Director. Compensation will be suspended until the examination has been completed. The conditions of the examination shall be consistent with conditions described in OAR 436-010-0100. Any action of a friend or family member which obstructs the examination shall be considered an obstruction of the examination by the worker for the purpose of this rule. The Division may determine whether special circumstances exist that would not warrant suspension of compensation for failure to attend or obstruction of the examination.

(2) The Division will consider requests to authorize suspension of benefits on accepted claims, deferred claims and on denied claims in which the worker has appealed the insurer's denial.

(3) A worker shall submit to medical examinations reasonably requested by the insurer or the Director. No more than three separate medical examinations may be requested by the insurer during each open period of a claim, except as provided under OAR 436-010. Examinations after the worker's claim is closed are subject to limitations in ORS 656.268(7). A claim for aggravation permits a new series of three medical examinations.

(4) The insurer may contract with a third party to schedule insurer requested medical examinations. If the third party notifies the worker of a scheduled examination on behalf of the insurer, the appointment notice is required to be sent on the insurer's stationery and must conform with the requirements of OAR 436-060-0095(5).

(5) If an examination is scheduled by the insurer or by another party at the request of the insurer, the worker and the worker's attorney shall be notified in writing of the scheduled medical examination at least 10 days prior to the examination. The notice sent for each appointment, including those which have been rescheduled, shall contain the following:

- (a) The name of the examiner or facility;
- (b) A specific statement of the purpose for the examination and identification of the medical specialties of the examiners;
- (c) The date, time and place of the examination;

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(d) The first and last name of the attending physician and verification that the attending physician was informed of the examination by, at least, a copy of the appointment notice, or a statement that there is no attending physician, whichever is appropriate;

(e) If applicable, confirmation that the Director has approved the examination;

(f) That the reasonable cost of public transportation or use of a private vehicle will be reimbursed and that, when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed. A request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement shall be made in sufficient time to ensure a timely appearance;

(g) That an amount will be paid equivalent to net lost wages for the period during which it is necessary to be absent from work to attend the medical examination if benefits are not received under ORS 656.210(4) during the absence; and

(h) The following notice in prominent or bold face type:

“You must attend this examination. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the examination. If you fail to attend or fail to cooperate, or do not have a good reason for not attending, your compensation benefits may be suspended in accordance with the workers’ compensation law and rules, ORS 656.325 and OAR 436-060.”

(6) Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Resources, Children’s Services Division, comply with this rule.

(7) If the worker fails to attend or cooperate in a medical examination required to determine the nature or need for further treatment, without reasonable cause, any further treatment shall be suspended until the worker cooperates.

(8) The request for suspension shall be sent to the Division. A copy of the request shall be sent simultaneously to the worker and the worker’s attorney by registered or certified mail or by personal service as for a summons. The request shall include the following information:

(a) That the insurer requests suspension of benefits pursuant to ORS 656.325 and OAR 436-060-0095;

(b) What specific actions of the worker prompted the request;

(c) The dates of any prior insurer medical examinations the worker has attended in the current open period of the claim and the names of the examining physicians or facilities, or a statement that there have been no prior examinations, whichever is appropriate;

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(d) A copy of any approvals given by the Director, or a statement that no approvals have been given, whichever is appropriate;

(e) Any reasons given by the worker for failing to comply, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;

(f) The date and with whom failure to comply was verified;

(g) A copy of the letter required in section (5);

(h) Any other information which supports the request; and

(i) One of the following notices in prominent or bold face type:

For Accepted Claims:

“Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers’ Compensation Division, 350 Winter Street NE, Salem, Oregon [97310] 97301-3879. Your letter must be mailed within 10 days of the date of this request. If the Division authorizes suspension of your compensation and you do not submit to a medical examination of our choice or show us a good reason why you cannot be examined, we will [request the Workers’ Compensation Division to] close your claim.”

For Deferred or Denied Claims:

“Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers’ Compensation Division, 350 Winter Street NE, Salem, Oregon [97310] 97301-3879. Your letter must be mailed within 10 days of the date of this request. If the Division grants this request and you do not submit to a medical examination of our choice or show us a good reason why you cannot be examined, you will not be paid compensation for the period of time during which you did not submit to an examination if your claim is accepted in the future.”

(9) If the Division consents to suspend compensation, the suspension shall be effective from the date the worker fails to attend an examination or such other date the Division deems appropriate until the date the worker undergoes an examination scheduled by the insurer or Director. Any delay in requesting consent for suspension may result in authorization being denied or the date of authorization being modified.

(10) The insurer shall assist the worker in meeting requirements necessary for the resumption of compensation payments. When the worker has undergone the examination, the insurer shall verify the worker’s participation and reinstate compensation effective the date of the worker’s compliance.

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(11) If the worker makes no effort to reinstate compensation in an accepted claim within 60 days of the date of the consent order, the insurer shall [submit a request for an administrative order of closure to the Division] **close the claim pursuant to OAR 436-030-0034.**

(12) If the Division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. Failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(13) Notwithstanding the requirements for examinations scheduled pursuant to OAR 436-030-0165, if an examination is scheduled by the Director, the insurer will notify the worker and the worker's attorney in writing as required in section (5) of this rule, except the notice in section (5)(h) shall be replaced with the following notice, in prominent or bold face type:

“You must attend this examination. If you fail to attend or fail to cooperate, your compensation benefits shall be suspended by the insurer without further notice as of the date of the examination. If you have a valid explanation justifying your actions, you must contact the Division immediately.”

(14) The Division may also take the following actions in regard to the suspension of compensation:

- (a) Modify or set aside the order of consent before or after filing of a request for hearing.
- (b) Order payment of compensation previously suspended where the Division finds the suspension to have been made in error.
- (c) Reevaluate the necessity of continuing a suspension.

(15) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

Stat. Auth: ORS 656.325, ORS 656.704 and ORS 656.726(4)

Stat. Imptd: ORS 656.325, ORS 656.704 and ORS 656.726(4)

Hist: Filed 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90

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Amended and Renumbered from OAR 436-60-085(1)(2)(4) 8/11/94 as WCD Admin. Order 94-055, eff. 8/28/94

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Amended 12/22/00 as WCD Admin. Order 00-060, eff. 1/1/01.

Suspension of Compensation for Insanitary or Injurious Practices, Refusal of Treatment or Failure to Participate in Rehabilitation; Reduction of Benefits

436-060-0105 (1) The Division will suspend compensation by order under conditions set forth in this rule. The worker shall have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension when the worker commits insanitary or injurious acts which imperil

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or retard recovery; refuses to submit to medical or surgical treatment reasonably required to promote recovery; or fails or refuses to participate in a physical rehabilitation program.

(2) The insurer shall demand in writing the worker either immediately cease actions which imperil or retard recovery or immediately begin to change the inappropriate behavior and participate in activities needed to help the worker recover from the injury. Such actions include insanitary or injurious practices, refusing essential medical or surgical treatment, or failing to participate in a physical rehabilitation program. Each time the insurer sends such a notice to the worker, the written demand shall contain the following information, and a copy shall be sent simultaneously to the worker's attorney:

- (a) A description of the unacceptable actions;
- (b) Why such conduct is inappropriate;
- (c) The date by which the inappropriate actions must stop, or the date by which compliance is expected; and,
- (d) The following notice of the consequences should the worker fail to correct the problem, in prominent or bold face type:

“If you continue to do insanitary or injurious acts beyond the date in this letter, or fail to consent to the medical or surgical treatment which we believe is needed to help you recover from your injury, or fail to participate in physical rehabilitation needed to help you recover as much as possible from your injury, then we will request the suspension of your workers' compensation benefits. In addition, you may also have any permanent disability award reduced in accordance with ORS 656.325 and OAR 436-060.”

(3) For the purposes of this rule, failure or refusal to accept medical treatment means the worker fails or refuses to remain under a physician's care or abide by a treatment regimen. A treatment regimen includes, but is not limited to a prescribed diet, exercise program, medication or other activity prescribed by the physician which is designed to help the worker reach maximum recovery and become medically stationary.

(4) The insurer shall verify whether the worker complied with the request for cooperation on the date specified in section (2). If the worker initially agrees to comply, or complies and then refuses or fails to continue doing so, the insurer is not required to send further notice before requesting suspension of compensation.

(5) The request for suspension shall be sent to the Division. A copy of the request shall be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request shall include the following information:

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(a) That the request for suspension is made in accordance with ORS 656.325 and OAR 436-060-0105;

(b) A description of the actions of the worker which prompted the request, including whether such actions continue;

(c) Any reasons offered by the worker to explain the behavior, or a statement that the worker has not provided any reasons, whichever is appropriate;

(d) How, when and with whom the worker's failure or refusal was verified. Any delay in obtaining confirmation or in requesting consent for suspension of compensation may result in authorization being denied or the date of authorization being modified by the date of actual confirmation or the date the request is received by the Division;

(e) A copy of the letter required in section (2);

(f) Any other relevant information; and

(g) The following notice in prominent or bold face type:

“Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers’ Compensation Division, 350 Winter Street NE, Salem, Oregon [97310] 97301-3879. Your letter must be mailed within 10 days of the date of this request. If the Division authorizes suspension of your compensation and you do not correct your unacceptable actions or show us a good reason why they should be considered acceptable, we will [request the Workers’ Compensation Division to] close your claim.”

(6) If the Division concurs with the request, it shall issue an order suspending compensation from a date established under section (5) until the worker complies with the insurer's request for cooperation. Where the worker is suspended for a pattern of noncooperation, the Division may require the worker to demonstrate cooperation before restoring compensation.

(7) The insurer shall monitor the claim to determine if and when the worker complies with the insurer's requests. When cooperation resumes, payment of compensation shall resume effective the date cooperation was resumed.

(8) The insurer shall make all reasonable efforts to assist the worker to restore benefits when the worker demonstrates the willingness to make such efforts.

(9) If the worker makes no effort to reinstate benefits within 60 days of the date of the consent order, the insurer shall [submit a request for an administrative order of closure to the Division] **close the claim pursuant to OAR 436-030-0034**.

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(10) If the Division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(11) The Division may also take the following actions in regard to the suspension of compensation:

- (a) Modify or set aside the order of consent before or after filing of a request for hearing.
- (b) Order payment of compensation previously suspended where the Division finds the suspension to have been made in error.
- (c) Reevaluate the necessity of continuing a suspension.

(12) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

(13) The Director may reduce any benefits awarded the worker under ORS 656.268 when the worker has unreasonably failed to follow medical advice, or failed to participate in a physical rehabilitation or vocational assistance program prescribed for the worker under ORS chapter 656 and OAR chapter 436. Such benefits shall be reduced by the amount of the increased disability reasonably attributable to the worker's failure to cooperate.

Stat. Auth: ORS 656.325, ORS 656.704 and ORS 656.726(4)

Stat. Impltd: ORS 656.325, ORS 656.704 and ORS 656.726(4)

Hist: Filed 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90
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