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[Bracketed 8 point text is deleted]; **bold/underlined text is added**

EFFECTIVE FEBRUARY 29, 2004

OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 030

CLAIM CLOSURE AND RECONSIDERATION

NOTE: Only adopted, amended, and repealed rules are included in this document:

EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 030

436-030-0002 Purpose of Rules

The purpose of these rules is to provide standards, conditions, procedures and reporting requirements for:

(1) [r]**R**equests for closure by the worker;

(2) [c]**C**laim closure [in accordance with] **under** ORS 656.268(1);

(3) [d]**D**etermining medically stationary status;

(4) [d]**D**etermining temporary disability benefits;

(5) [a]**A**wards of permanent partial disability;

(6) [r]**R**eview and determination of the disabling or nondisabling status of a claim;

(7) [d]**D**etermining permanent total disability awards;

(8) [r]**R**eview for reduction of permanent total disability awards;

(9) [r]**R**eview and determination of prior unscheduled permanent partial disability awards; and

(10) [r]**R**econsideration of notices of closure.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.206, ORS 656.210, ORS 656.212, ORS 656.262, ORS 656.268, ORS 273, ORS 277, ORS 656.325, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80
Renumbered from OAR 436-65-002, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0003 Applicability of Rules

(1) Except as provided in section (3) of this rule, these rules apply to all accepted claims for workers' compensation benefits and all requests for reconsideration received by the department on or after the effective date of these rules.

(2) All orders issued by the division to carry out the statute and these rules are considered an order of the director.

(3) These rules take the place of the rules adopted on January 1, 2001, by Workers' Compensation Division Administrative Order 00-058, and carry out [the provisions of] ORS 656.005, 656.214, 656.262, 656.268, 656.273, 656.277, 656.278, 656.325, and section 22(3), chapter 865, Oregon Laws 2001.

(a) [The provisions of] OAR 436-030-0009, 030-0020, 030-0030, 030-0115 (except section (4)), 030-0125, 030-0135, 030-0145, 030-0155, 030-0165 (except subsection [(9)]**(10)**(b)), 030-

0175**,** and 030-0185 apply to all determinations or claims for workers who become medically stationary after July 1, 1990. For claims in which the worker became medically stationary prior to July 2, 1990 [the provisions of] OAR 436-030-0020, 030-0030, 030-0050 as [contained in] **adopted by** WCD Administrative Order 13-1987 **effective January 1, 1988**[shall] **will** apply.

[(b) The provisions of OAR 436-030-0045 apply to requests for reclassification made on or after January 1, 2002.]

[(c)]**(b)** OAR 436-030-0017(1) applies to all requests for closure made on or after January 1, 2002.

[(d)]**(c)** [The provisions of] OAR 436-030-0055(3)[(c)]**(b), (3)(d)** and (4)(a) apply to all claims with dates of injury on or after [the effective date of these rules,] January 1, 2002.

[(e)]**(d)** [The provisions of] OAR 436-030-0115(4) and 436-030-0165[(9)]**(10)**(b) apply to all claims closed on or after [the effective date of these rules,] January 1, 2002.

(e) The changes to the following rules effective January 1, 2004, apply to all claims closed on or after January 1, 2004: OAR 436-030-0009, 030-0010, 030-0115, 030-0125, 030-0135, 030-0145, 030-0165, and 030-0185.

Stat. Auth.: ORS 656.268 **(ch. 429, OL 2003)**, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.206, ORS 656.210, ORS 656.212, ORS 656.262, ORS 656.268 **(ch. 429, OL 2003)**, ORS 656.273, ORS 656.277, ORS 656.325, ORS 656.726, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313; chapters 349, 350, 377, and 865, Oregon Laws 2001
Hist: Filed 6/30/78 as WCD Admin. Order 8-1978, eff. 7/10/78.
Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80.
Renumbered from OAR 436-65-030, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058 , eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02.
Amended 1/15/02 as WCD Admin. Order 02-051, eff. 1/15/02 (Temp.)
Amended 4/5/02 as WCD Admin. Order 02-054, eff. 4/8/02
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0005 Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Administrator" means the [A]**a**dministrator of the Workers' Compensation Division, Department of Consumer and Business Services, or the administrator's delegate for the matter.

(2) "Authorized Nurse Practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245 (§3, ch. 811, OL 2003) and OAR 436-010.

[(2)]**(3)** "Director" means the [D]**d**irector of the Department of Consumer and Business Services, or the director's delegate for the matter.

[(3)]**(4)** "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

[(4)]**(5)** "Insurer" means the State Accident Insurance Fund, or an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, a self-insured employer or a self-insured employer group.

[(5)]**(6)** "Mailed or Mailing Date," for the purposes of determining timeliness [pursuant to] **under** these rules, means the date a document is postmarked. Requests submitted by electronic transmission (by facsimile or "fax") [shall] **will** be considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests [shall] **will** be considered mailed as of the date stamped or punched in by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, [shall] **will** be considered mailed as of the date of the request.

[(6) "Notice of Classification" means the insurer's written response, to a worker's request, which notifies the worker of the insurer's decision regarding the nondisabling status of a claim.]

(7) "Notice of Closure" means a notice to the worker issued by the insurer to close an accepted disabling claim or to reduce permanent total disability to permanent partial disability.

(8) "Notice of [Classification] **Refusal to Reclassify**" means the insurer's written response, to a worker's request, which notifies the worker of the insurer's decision regarding the nondisabling status of a claim.

[(8)]**(9)** "Reconsideration" means review by the director of an insurer's Notice of Closure .

[(9)]**(10)** "Statutory closure date" means the date the claim [can be] **satisfies the criteria for** clos[ed]**ure** [pursuant to] **under** ORS 656.268(1)(b) and (c).

[(10)]**(11)** "Statutory appeal period" means the time frame for appealing a Notice of Closure or Order on Reconsideration.

[(a) For closures where the worker is medically stationary prior to June 7, 1995, the appeal period is 180 days from the mailing date of the order.]

[(b) For closures where the worker is medically stationary on or after June 7, 1995, the appeal period is 60 days from the date the order is mailed to the worker and to the worker's attorney if the worker is represented. The appeal period for an Order on Reconsideration is 30 days from the mailing date of the order.]

[(c) Former ORS 656.268(1)(a) and (b) became effective June 7, 1995. For workers whose claims are closed pursuant to that statute, the medically stationary date will be at some point in the future after June 7, 1995. Therefore, the appeal period for claims closed pursuant to former ORS 656.268(1)(a) and (b) is 60 days from the date the order is mailed to the worker and to the worker's attorney if the worker is represented.]

[(11)]**(12)** "Worksheet" means a summary of facts used to derive the awards stated in the Notice of Closure.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.005, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 6/30/78 as WCD Admin. Order 8-1978, eff. 7/10/78.
Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80
Amended 12/30/81 as WCD Admin. Order 5-1981, eff. 1/1/82.
Renumbered from OAR 436-65-004, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.

Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058 eff. 01/01/01
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0007 Administrative Review

(1) Dispute [R]**r**esolution [B]**b**efore the director:

(a) Notices of Closure issued by insurers are appealed to the director and processed in accordance with the reconsideration procedures described in OAR 436-030-0115 through OAR 436-030-0185.

(b) Abating, withdrawing or amending an Order on Reconsideration: The director may abate, withdraw, and/or amend the Order on Reconsideration until [a hearing is requested or] the Order is final by operation of law.

(c) Notices of [Classification] **Refusal to Reclassify** issued by insurers are appealable by the worker to the director [in accordance with] **under** ORS 656.273 and 656.277. A worker need not be represented in the administrative review process to make a request for review of the insurer's classification decision.

(A) The worker's request for review must be made to the director no later than the 60th day after the date the Notice of [Classification] **Refusal to Reclassify** is mailed.

(B) The insurer [shall] **must** provide the director with the complete medical record used and all other relevant documents within 14 days of notification by the director of the request for review. The insurer may be subject to penalties under OAR 436-030-0580 for failure to provide the claim documents in a timely manner. The worker may also submit, within the same 14 days, any additional evidence the worker wishes the director to consider.

(C) When providing information to the director, the submitting party [shall] **must** also provide copies to all other parties at the same time.

(D) After receiving the relevant documents, the director will issue an order. The parties will have 30 days from the date of the order to appeal to the Hearings Division of the Workers' Compensation Board.

(E) The director may reconsider, abate, or withdraw any order before a hearing on that order has been requested and before the order becomes final by operation of law.

(2) Cases brought before the Hearings Division of the Workers' Compensation Board:

(a) Orders on Reconsideration [and Director's Review of Claim Classification] are appealable to the Hearings Division of the Workers' Compensation Board as follows:

(A) The party must send the request for hearing in writing to the Hearings Division in accordance with ORS 656.283 and the rules of procedure adopted by the Workers' Compensation Board.

(B) [Pursuant to] **Under** OAR 436-030-0145[(2)]**(1)(b)** for claims medically stationary on or after June 7, 1995, for the purpose of filing such appeal, the time [shall] **will** be 30 days from the mailing date of the Order.

(C) [Pursuant to] **Under** OAR 436-030-0145(1)**(a)** for claims medically stationary before June 7, 1995, for the purpose of filing such appeal, the time required to complete the reconsideration proceeding [shall] **will** not be included in the time limit. The request for hearing must be filed within the statutory appeal period.

(b) A party may request a hearing before the Hearings Division of the Workers' Compensation Board on any other action taken [pursuant to] **under** these rules where a worker's right to compensation or the amount thereof is directly an issue [in accordance with the provisions of] **under** ORS Chapter 656.

(3) Contested Case Hearings of Sanctions and Civil Penalties: Under ORS 656.7[04]**40 (§9, ch. 170, OL 2003)**, any party aggrieved by a proposed order or proposed assessment of a civil penalty issued by the director [pursuant to] **under** ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division as follows:

(a) The party must send the request for hearing in writing to the director within [20 calendar days] **60 days** after [service of] **the mailing date of** the **proposed** order or [notice of] assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The Workers' Compensation Division [shall] **will** forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(c) An Administrative Law Judge from the Hearings Division, acting on behalf of the director, [shall] **will** conduct the hearing in accordance with ORS 656.740 and ORS Chapter 183.

(4) Director's Administrative Review of other actions: Except as covered under sections (1) through (3) of this rule, any party seeking an action or decision by the director or aggrieved by an action taken by any other party [pursuant to] **under** these rules, may request administrative review by the director as follows:

(a) The party must send the request in writing to the director within 90 days of the disputed action and must specify the grounds upon which the action is taken, unless the director determines that there was good cause for delay or that substantial injustice may result otherwise.

(b) The director may require and allow such evidence as it deems appropriate to complete the review.

(c) A director's order will be issued and will specify if the order is final or if it may be appealed.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313 **, (§9, ch. 170, OL 2003)**
Stats. Implemented: ORS 656.268, ORS 656.277, ORS 656.726, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313, and chapter 350, Oregon Laws 2001
Hist: Filed 06/30/78 as WCD Admin. Order 8-1978, eff. 07/10/78.
Amended 03/20/80 as WCD Admin. Order 4-1980, eff. 04/01/80.
Renumbered from OAR 436-65-998, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 01/01/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Renumbered from OAR 436-030-0020.
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.

Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0009 Appeals of Notices of Closure

If the worker **or insurer** disagrees with a Notice of Closure and the worker was determined medically stationary after July 1, 1990, or the worker is not medically stationary and the claim is closed [pursuant to] **under** ORS 656.268(1)**(b) or (c) (ch. 429, OL 2003)**, the worker **or insurer** must first request a reconsideration by the director [pursuant to] **under** these rules. [An insurer may not request reconsideration of its own Notice of Closure.] If the worker was determined medically stationary on or before July 1, 1990, WCD Admin. Order 13-1987 rules apply.

Stat. Auth.: ORS 656.268 **(ch. 429, OL 2003)**, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268 **(ch. 429, OL 2003)**, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Renumbered from OAR 436-030-0020.
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0010 Director Responsibility

(1) The director, when requested by a worker, is responsible for[:

(a)] reviewing the disabling/nondisabling status of a claim.[; and

(b)]**(2) The director, when requested by a worker or insurer, is responsible for** conducting the reconsideration proceeding when the worker **or insurer** is dissatisfied with a Notice of Closure, and assessing penalties and attorney fees where appropriate.

[(2)]**(3)** Applicable to these rules, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.206, ORS 656.210, ORS 656.212, ORS 656.214, ORS 656.268, ORS 656.277, ORS 656.325, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 2/6/75 as WCB Admin. Order 5-1975, eff. 2/26/75.
Amended 6/30/78 as WCD Admin. Order 8-1978, eff. 7/10/78.
Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80.
Amended 12/30/81 as WCD Admin. Order 5-1981, eff. 1/1/82.
Renumbered from OAR 436-65-005, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0015 Insurer Responsibility

(1) When an insurer issues a Notice of Closure, the insurer is responsible for:

(a) Providing the director, the parties, and the worker's attorney if the worker is represented, a copy of the Notice of Closure, a copy of the worksheet upon which the Notice is based, a completed "Insurer Notice of Closure Summary" and an Updated Notice of Acceptance at Closure that specifies which conditions are compensable, as prescribed in section (2) of this rule;

(b) Maintaining a copy of the worksheet and records upon which the Notice of Closure is based in its claim file for audit purposes [in accordance to] **under** OAR 436-050; and

(c) Providing the Updated Notice of Acceptance at Closure in a timely manner. For purposes of this rule, a timely Updated Notice of Acceptance at Closure [shall] **must** be issued no sooner than the date the claim qualified for closure, or 30 days prior to claim closure (whichever occurs closer to actual closure), but not later than the mailing date of the closure. The Updated Notice of Acceptance at Closure [shall] **must** contain the following title, information and language:

(A) [t]**T**itle: "Updated Notice of Acceptance at Closure";

(B) [i]**I**nformation: all compensable conditions that have been accepted, even if the accepted condition was ordered by litigation and is under appeal; however, any conditions under appeal must be specifically identified;

(C) [l]**L**anguage, in bold print:

> **"Notice to Worker: This notice restates and includes all prior acceptances for the current claim opening only, but does not include conditions which have been denied. The insurer or self-insured employer is not required to pay any disability compensation for any condition specifically identified as under appeal unless and until the condition is found to be compensable after all litigation is complete. These are the only conditions considered at the time of claim closure. If you believe a condition has been incorrectly omitted from this notice, or this notice is otherwise deficient, you must communicate the specific objection to the insurer in writing.";**

(d) The insurer or self-insured employer is not required to pay any disability compensation for any condition under appeal and specifically identified as such, unless and until the condition is found to be compensable after all litigation is complete.

(e) In the event an omission or error requires a corrected updated notice of acceptance at closure, the word "CORRECTED" [shall] **must** appear in capital letters adjacent to the word "updated".

(f) In the event that the "initial notice of acceptance" is the same as the "updated notice of acceptance at closure," both titles [shall] **must** appear near the top of the document.

(2) Copies of Notices of Refusal to Close [shall] **must** be mailed to the director and the parties, and to the worker's attorney, if the worker is represented.

(3) In claims involving unscheduled injuries to, or disease of, body parts or conditions [pursuant to] **under** OAR 436-035-0330 through 436-035-0450, the insurer [shall] **must** consider the worker's work history and education including:

(a) The worker's level of education; and

(b) The worker's work history [pursuant to] **under** OAR 436-035-0300 and 436-035-0310 including the job at injury and work history for five years preceding the Notice of Closure with dates or period of time spent at each position.

(4) The insurer [shall] **must** consider any other records or information pertinent to claim determination prior to issuing a Notice of Closure.

(5) The insurer [shall] **must** notify the worker and the worker's attorney, if the worker is represented, in writing, when the insurer receives information that the worker's claim qualifies for closure [pursuant to] **under** these rules.

(a) The insurer must send the written notice within three working days from the date the insurer receives the information, unless the claim has already been closed.

(b) The notice must advise the worker of his or her impending claim closure and that any time loss disability payments will end soon.

(c) The insurer must, within 14 days, provide the worker's attorney the same documents relied upon for claim closure.

(6) The insurer [shall] **must** not issue a Notice of Closure on an accepted nondisabling claim. Notices of Closure issued by the insurer in violation of this rule are void and without legal effect. Medically stationary status in nondisabling claims may be documented by the attending physician's statement of medically stationary status.

[(7) Failure to meet the requirements and timeframes of this rule may result in civil penalties pursuant to OAR 436-030-0580.]

[(8)]**(7)** When a condition is accepted after a closure **and the claim has been reopened under ORS 656.262**, the insurer [shall] **must** issue a Notice of Closure, considering only the newly accepted condition.

[(9)]**(8)** Denials issued [pursuant to] **under** ORS 656.262(7)(b), must clearly identify the phrase "major contributing cause" in the text of the denial.

[(10)]**(9)** When a claim is closed where a designation of paying agent order (ORS 656.307) has been issued and the responsibility issue is not final by operation of law, the insurer processing the claim at the time of closure [shall] **must** send copies of the closure notice to the worker, the worker's attorney if the worker is represented, the director, and all parties involved in the responsibility issue.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.331, ORS 656.726, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313, and chapter 377, Oregon Laws 2001
Hist: Amended and Renumbered 11/18/94 from 436-030-0020 and 030 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0017 Requests for Claim Closure by the Worker

(1) A worker may request closure from the insurer. The insurer [shall respond] **must issue a Notice of Closure or Notice of Refusal to Close** within 10 days of receipt of a written request.

(2) If an insurer issues a notice of refusal to close the claim, the notice [shall] **must** be identified in capital letters as a "NOTICE OF REFUSAL TO CLOSE" and [shall] **must** include the following information and appeal language:

(a) [n]**N**ame of the worker;

(b) [d]**D**ate of injury;

(c) [i]**I**nsurer's claim number;

(d) [m]**M**ailing date of the notice;

(e) [t]**T**he accepted and denied conditions;

(f) [r]**R**ationale for the insurer's decision; and

(g) [t]**T**he following language, in bold print:

"If you disagree with this Notice of Refusal to Close your claim, you must file a letter of disagreement with the Workers' Compensation Board within sixty (60) days from the date of this notice. Your letter must state that you want a hearing, note your address and the date of your accident, if you know the date. You must mail your letter of disagreement to the Workers' Compensation Board, [INSURER: Insert current address of Workers' Compensation Board here]. If your claim qualifies and you request it, you may receive an expedited hearing (within 30 days). Your request cannot, by law, affect your employment. If you do not file your letter of disagreement within sixty (60) days from the date of this notice, your hearing will be denied as the appeal time has passed. You may be represented by an attorney if you so choose."

(3) If the worker disagrees with the Notice of Refusal to Close, the worker may request a hearing from the Workers' Compensation Board.

[(4) Failure by the insurer to meet the requirements of this rule may result in civil penalties against the insurer pursuant to OAR 436-030-0580.]

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.319, ORS 656.726, ORS 656.745, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313, and chapter 349, Oregon Laws 2001
Hist: Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff/ 1/1/02
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0020 Requirements for Claim Closure

(1) **Provided the worker is not enrolled and actively engaged in training,** [T]**t**he insurer [shall] **must** issue a Notice of Closure on an accepted disabling claim within 14 days when:

(a) [m]**M**edical information **establishes there is sufficient information to determine the extent of permanent disability under ORS 656.245(2)(b)(B), and** indicates the worker's compensable condition is medically stationary [and there is sufficient information to determine the extent of permanent disability];

(b) [t]**T**he accepted injury/condition is no longer the major contributing cause of the worker's combined or consequential condition(s), a major contributing cause denial has been issued, **and** there is sufficient information to determine the extent of permanent disability [and the worker is not enrolled and actively engaged in training];

(c) [t]**T**he worker fails to seek medical treatment for 30 days for reasons within the worker's control and the worker has been notified of pending actions in accordance with these rules; or

(d) [t]**T**he worker fails to attend a mandatory closing examination for reasons within the worker's control and the worker has been notified of pending action(s) in accordance with these rules.

(2) For purposes of determining the extent of disability, "sufficient information" requires the following:

(a) [a]**A** closing medical examination and report when there is a reasonable expectation of loss of use or function, changes in the worker's physical abilities, or permanent impairment attributable to the accepted condition(s) based on evidence in the record or the physician's opinion. The closing medical examination report [shall] **must** describe in detail all measurements and findings regarding any permanent impairment, residuals or limitations attributable to the accepted condition(s) [pursuant to] **under** OAR 436-010-**0**280 and OAR 436-035; or

(b) [a]**A** physician's written statement that clearly indicates there is no permanent impairment, residuals or limitations attributable to the accepted condition(s), and there is no reasonable expectation, based on evidence in the record, of loss of use or function, changes in the worker's physical abilities, or permanent impairment attributable to the accepted condition(s). If the physician indicates there is no impairment, but the record reveals otherwise, a closing examination and report [pursuant to] **under** (a) of this section is required.

(3) When determining disability, the insurer [shall] **must**:

(a) [a]**A**pply OAR 436-030-0034 regarding major contributing cause denials, worker's failure to seek treatment, and worker's failure to attend a mandatory examination;

(b) [a]**A**pply OAR 436-030-0035 regarding medically stationary status;

(c) [a]**A**pply OAR 436-030-0036 regarding temporary disability;

(d) [a]**A**pply OAR 436-030-0020, 436-030-0038, and 436-030-0066 regarding permanent partial disability;

(e) [a]**A**pply OAR 436-030-0055 and 436-030-0065 regarding permanent total disability and review of permanent total disability; and

(f) [p]**P**repare a summary worksheet**, "Notice of Closure Worksheet", Form 440-2807 (Form 2807),** which contains all the information[, and is in the form and format, prescribed] **described** by bulletin of the director.

(4) The **"**Notice of Closure**", Form 440-1644 (Form 1644),** [shall be] **is** effective the date it is mailed to the worker and to the worker's attorney if the worker is represented, regardless of the date on the Notice itself. The notice [shall] **must** be in the form and format that the director prescribes by bulletin. The notice [shall] **must** include[, but need not be limited to,] the following:

(a) The worker's name, address, and claim identification information;

[(a)]**(b)** [t]**T**he appropriate dollar value of any permanent disability based on the statutory value for the degree;

[(b)]**(c)** [t]**T**he body part(s) awarded disability, coded to the table of body part codes as prescribed by the director, the percentage of loss, and the number of degrees that loss represents;

[(c)]**(d)** [i]**I**f there is no permanent disability award for this Notice of Closure, a statement to that effect;

[(d)]**(e)** [t]**T**he duration of temporary total and temporary partial disability compensation;

[(e)]**(f)** [t]**T**he date the Notice was mailed;

[(f)]**(g)** [t]**T**he medically stationary date or the date the claim statutorily qualifies for closure [pursuant to] **under** OAR 436-030-0035 or 436-030-0034, respectively;

[(g)]**(h)** [t]**T**he **date the** worker's aggravation rights **end**;

[(h)]**(i)** [t]**T**he worker's appeal rights;

[(i)]**(j)** [t]**T**he right of the worker to consult with the Ombudsman for Injured Workers;

[(j)]**(k)** [t]**T**he rate schedule (dollars per degree) at which permanent disability, if any, will be paid based on date of injury; [and]

[(k)]**(l)** [t]**T**he worker's return to work status[.]**; and**

(m) A general statement that the insurer has the authority to recover an overpayment.

(5) The Notice of Closure [shall] **must** be accompanied by the following:

(a) [t]**T**he brochure "Understanding Claim Closure and Your Rights"; [and]

(b) A copy of the summary worksheet containing information and findings which result in the data appearing on the Notice of Closure; and

[(b)]**(c)** [a]**A** cover letter that:

(A) [e]**E**xplains why the claim has been closed;

(B) [l]**L**ists and describes enclosed documents; and

(C) [n]**N**otifies the worker about the end of temporary disability benefits, if any, and the anticipated start of permanent disability benefits, if any.

(6) A copy of the Notice of Closure [shall] **must** be mailed to each of the following persons at the same time, with each copy clearly identifying the intended recipient:

(a) [t]**T**he worker;

(b) [t]**T**he employer;

(c) [t]**T**he director; and

(d) [t]**T**he worker's attorney, if the worker is represented.

(7) The worker's copy of the Notice of Closure [shall] **must** be mailed by both regular mail and certified mail return receipt requested.

(8) An insurer may use electronically produced Notice of Closure forms if consistent with the form and format prescribed by the director.

[(9) An insurer who fails to comply with section (6) of this rule may be assessed a civil penalty pursuant to OAR 436-030-0580.]

[(10) These rules do not prohibit an insurer from rescinding or correcting its Notice of Closure or Notice of Refusal to Close prior to the expiration of the appeal period for that Notice and prior to receipt of a request for reconsideration of the Notice of Closure by the director. A Notice of Closure shall be corrected or rescinded when:]

[(a) the insurer has been instructed to correct or rescind a Notice of Closure in the course of a department audit of insurer claim files; or]

[(b) the director has instructed the insurer to correct a Notice of Closure because it did not contain the information required by section (4) of this rule.]

[(11) Requests for reconsideration of a corrected Notice of Closure must be received within the statutory appeal period for the Corrected Notice of Closure. Requests for reconsideration of a Corrected Notice of Closure must be limited to those areas changed by the corrected Notice.]

[(12)]**(9)** Insurers may allow adjustments of benefits awarded to the worker [pursuant to] **under** the documentation requirements of OAR 436-060-0170 for the following purposes:

(a) To recover payments for permanent disability which were made prematurely;

(b) To recover overpayments for temporary disability; and

(c) To recover overpayments for other than temporary disability such as prepaid travel expenses where travel was not completed, prescription reimbursements or other benefits payable under ORS 656.001 to 656.794.

[(13)]**(10)** The insurer may allow overpayments made on a claim with the same insurer to be deducted from compensation to which the worker is entitled but has not yet been paid.

[(14)]**(11)** If after claim closure, the worker became enrolled and actively engaged in an approved training program [pursuant to] **under** OAR 436-120:

(a) Unscheduled permanent disability [shall] **must** be redetermined by the insurer when the worker has ended training and the worker's condition is medically stationary or the claim otherwise qualifies for closure in accordance with these rules.

(b) If the worker has remained medically stationary throughout training and the closing examination is six months or older, a current medical examination will be required for redetermination unless the worker's attending physician provides a written statement that there has been no change in the worker's accepted condition since the previous closing examination.

(c) No redetermination of permanent disability [shall] **will** be made for a scheduled condition or a scheduled direct medical sequela if the worker became medically stationary on or after June 7, 1995. The scheduled permanent disability [shall] **must** remain unchanged from the last award of compensation in that claim.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.210, ORS 656.212, ORS 656.214, ORS 656.268, ORS 656.270, ORS 656.726, ORS 656.745, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80.
Amended 12/30/81 as WCD Admin. Order 5-1981, eff. 1/1/82.
Renumbered from OAR 436-65-006, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0023 Correcting and Rescinding Notices of Closure

(1) An insurer may rescind or correct its Notice of Closure prior to the expiration of the appeal period for that Notice and prior to or on the same day that the director receives a request for reconsideration of the Notice of Closure.

(2) The form, format, and completion of the Correcting and Rescinding Notices of Closure are the same as those of the Notice of Closure except that, to correct a Notice of Closure, a Form 440-1644c (Form 1644c) must be used and, to rescind a Notice of Closure, a Form 440-1644r (Form 1644r) must be used.

(3) The "Date of closure (mailing date)" on the Correcting or Rescinding Notice of Closure must be the date the correction or rescission is mailed. The mailing date of the Notice of Closure being rescinded or corrected must be identified within the body of the Correcting or Rescinding Notice of Closure.

(4) The worker's copy of the Correcting and Rescinding Notices of Closure must be mailed by both regular mail and certified mail return receipt requested, consistent with OAR 436-030-0020(6) and (7).

(5) Rescinding Notices of Closure, Form 1644r, are used to rescind the Notice of Closure and return the claim to open status. Examples of appropriate uses of Rescinding Notices of Closure include: the worker was not medically stationary at the time the Notice of Closure was issued; the closure was otherwise premature; to grant PPD when the Notice of Closure being rescinded granted TTD only.

(6) The Rescinding Notice of Closure must:

(a) Advise the worker that the claim remains open and no aggravation rights end date has been established, if it is rescinding the first closure of the claim;

(b) Initiate a 60-day appeal period during which any request for reconsideration must be received by the director;

(c) Explain the reason for the action being taken; and

(d) Be distributed and mailed to the parties consistent with these rules.

(7) When a Notice of Closure granting only timeloss has been issued, if the insurer determines the worker's medically stationary status is unchanged and the worker is entitled to an award of permanent disability, the insurer must use a Notice of Closure, Form 1644, to rescind and reissue the closure. In such cases, the Notice of Closure must:

(a) Contain all required information consistent with these rules;

(b) Bear the heading "Rescind and Reissue;

(c) Explain the reason the action being taken;

(d) Identify the permanent disability award being granted consistent with OAR 436-030 and 436-035;,

(e) Establish a new 60-day appeal period;

(f) Set a new aggravation rights end date if the Notice of Closure being rescinded is the first closure of the claim; and

(g) Be distributed and mailed to the parties consistent with these rules.

(8) Correcting Notices of Closure, Form 1644c, are used to correct errors or omissions and do not change the closure status or the action taken by the Notice of Closure being corrected. Correcting Notices of Closure must not be used to grant permanent disability in claims where the Notice of Closure being corrected did not include an award of permanent disability. Examples of appropriate uses of Correcting Notices of Closure include: permanent disability award computation errors (dollars, degrees, percentages); the "mailing date" was incorrect; return-to-work status errors or omissions; incorrect/incomplete statement of temporary disability.

(9) A Correcting Notice of Closure must:

(a) Be issued when the director has instructed the insurer to do so because the Notice of Closure did not contain the information required by OAR 436-030-0020(4);

(b) Not be used to add a new condition to the claim closure, rate a new condition not considered in the Notice of Closure being corrected, or rescind a Notice of Closure;

(c) State only the information being corrected on the Notice of Closure and the basis for the correction in the body of the order;

(d) Not change the appeal period for the Notice of Closure being corrected; and

(e) Initiate a new 60-day appeal period during which any request for reconsideration must be received, but only for those items being corrected.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.210, ORS 656.212, ORS 656.214, ORS 656.268, ORS 656.270, ORS 656.726, ORS 656.745, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: **Adopted 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04**

436-030-0034 Claim Closure When the Worker is Not Medically Stationary

(1) [A claim may] **The insurer must** [be] close[d] [by the insurer] **a claim if a** [when the] worker [is not medically stationary and when the worker has not sought medical care for a period in excess of] **fails to seek treatment for more than** 30 days[,] without the instruction or approval of the attending physician **or authorized nurse practitioner. In order to close a claim under this rule, the insurer must send the worker written notification by certified mail that the claim will be closed unless the worker establishes within 14 days that the worker has resumed treatment by attending or scheduling a new appointment, or that the** [, for] reasons **for not treating were outside** [within] the worker's control**.**[; and]

[(a) The insurer has notified the worker after the close of that 30-day period, by certified letter, that claim closure may result for failure to seek medical treatment for a period of 30 days. The notification letter shall inform the worker of the worker's responsibility to seek medical treatment in a timely manner, and [shall] inform the worker of the consequences for failing to do so, including claim closure.]

[(b) Workers shall be given 14 days from the mailing date to respond to the notification letter before any further action is taken by the insurer towards claim closure.]

(2) [When a worker fails to seek treatment for a period in excess of 30 days, t] **T**he date the claim qualifies for closure**, when a worker fails to seek treatment for a period in excess of 30 days,** [shall be] **is** the latest (most chronologically recent) of the following which occurs prior to the closure:

(a) 30 days from the last treatment provided or authorized by the attending physician **or authorized nurse practitioner**;

(b) [t]**T**he date the **worker failed to attend a follow-up visit that was recommended by the** attending physician **or authorized nurse practitioner** [recommended a follow-up visit] and [the worker failed to attend] for reasons within the worker's control;

(c) [t]**T**he date the worker returns to or is released to regular work if it is after the last examination date; or

(d) [t]**T**he [date the insurer receives, prior to the] 14th day after the [notification letter was sent by certified mail, a written response from the worker regarding the notification letter and failure to treat] **notice required in section (1) of this rule, or if the worker responds within that 14 day period, the date of the response if it fails to establish that the worker has resumed treatment or that the reasons for not treating were outside the worker's control**.

(3) A claim [may] **must** be closed when the worker is not medically stationary, and the worker fails to attend a mandatory closing examination for reasons within the worker's control, and

(a) The insurer has notified the worker, by certified letter, at least 10 days prior to the mandatory examination, that claim closure [may] **will** result for failure to attend a mandatory

closing examination. The notification letter [shall] **must** inform the worker of the worker's responsibility to attend the mandatory closing examination and of the consequences for failing to do so**, including but not limited to claim closure and the possible loss or reduction of a disability award**.

(b) Workers have 7 days from the date of exam to demonstrate good cause for failing to attend, before any further action is taken by the insurer toward claim closure.

(c) Where the worker fails to attend a mandatory closing examination for reasons within the worker's control, the date the claim qualifies for closure [shall be] **is** the date of the failed mandatory closing examination.

(d) Where a closing exam has been scheduled between a worker and attending physician directly, insurers may close [pursuant to] **under** (1) of this section.

(4) A claim may be closed when the worker is not medically stationary, and a major contributing cause denial has been issued **on an accepted combined condition**.

(a) The major contributing cause denial [shall] **must** inform the worker that claim closure may result from the issuance of the denial and **provide all** other information required by these rules.

(b) When a "major contributing cause" denial has been issued **following the acceptance of a combined condition**, the date the claim qualifies for closure [shall be] **is** the date the insurer receives sufficient information to determine the extent of any permanent disability [pursuant to] **under** OAR 436-035-0007(5) and 436-030-0020(2) or the date of the denial, whichever is later.

(5) [The attending physician shall be copied on all notification and denial letters applicable to this rule.

(6)] When [(1), (2) or (3)] **any two of the above** occur concurrently, the earliest date the claim qualifies for closure [shall be] **is** used to close the claim and noted on the notice.

(6) The attending physician or authorized nurse practitioner must be copied on all notification and denial letters applicable to this rule.

(7) When **the director has issued** a suspension order, [pursuant to] **under** OAR 436-060-0095 and OAR 436-060-0105, [has been issued by the Department,] the date the claim qualifies for closure is the date of the suspension order.

(8) When a worker fails to seek treatment with an attending physician as defined by ORS 656.005[(12)] **or authorized nurse practitioner**, the claim [may] **must** be closed [pursuant to] **under** sections (1) and (2) of this rule. All notices must clearly identify the reason for the closure is because of failure to treat with an attending physician **or authorized nurse practitioner**.

Stat. Auth.: ORS 656.262, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
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Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0035 Determining Medically Stationary Status

(1) A worker's compensable condition [shall be determined to be] **is** medically stationary when the attending physician**, authorized nurse practitioner,** or a preponderance of medical opinion declares the worker either "medically stationary," "medically stable," or uses other language meaning the same thing.

(2) When there is a conflict in the medical opinions as to whether or not a worker's compensable condition is medically stationary, more weight [shall be] **is** given to medical opinions that are based on the most accurate history, on the most objective findings, on sound medical principles, and clear and concise reasoning.

(3) Where there is not a preponderance of medical opinion stating a worker's compensable condition is or is not medically stationary, deference [shall] **will** generally be given to the opinion of the attending physician. However, in cases where expert analysis is important, deference [shall be] **is** given to the opinion of the physician with the greatest expertise in, and understanding of, the worker's condition.

(4) When there is a conflict as to the date upon which a worker's compensable condition became medically stationary, the following conditions [shall] govern the determination of the medically stationary date. The date a worker is medically stationary is the earliest date that a preponderance is established [pursuant to] **under** sections (1) and (2) of this rule. The date of the examination, not the date of the report, controls the medically stationary date.

(5) The insurer [shall] **must** request the attending physician's concurrence or comments when the attending physician arranges, or refers the worker for, a closing examination with another physician to determine the extent of impairment, or when the insurer refers a worker for an insurer medical examination. A concurrence with another physician's report is an agreement in every particular, including the medically stationary impression and date, unless the physician expressly states to the contrary and explains the reasons for disagreement. Concurrence [shall] **can** not be presumed in the absence of the attending physician's response.

(6) A worker is medically stationary on the date of the examination when so specified by a physician. When a specific date is not indicated, a worker is presumed medically stationary on the date of the last examination, prior to the date of the medically stationary opinion. Physician projected medically stationary dates cannot be used to establish a medically stationary date.

(7) If the worker is incarcerated or confined in some other manner and unable to freely seek medical treatment, the insurer [shall] **must** arrange for medical examinations to be completed at the facility where the worker is located or at some other location accessible to the worker.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90 (temp.).
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Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0036 Determining Temporary Disability

(1) Temporary disability [shall] **must** be determined [pursuant to] **under** ORS Chapter 656, OAR 436-060 and this rule, less time worked. Beginning and ending dates of each authorized period of temporary total disability and temporary partial disability [shall] **must** be noted on the Notice of Closure, as well as the statements "Less time worked" and "Temporary disability was determined in accordance with the law."

(2) Except as provided for in section (3) of this rule and ORS 656.268(9), a worker is not entitled to any award for temporary disability for any period of time in which the worker is medically stationary.

(3) Awards of temporary disability [shall] **must** include the day the worker is medically stationary or the date the claim otherwise qualifies for closure, unless temporary disability is not authorized for another reason at that time.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.005, ORS 656.160, ORS 656.210, ORS 656.212, ORS 656.236, ORS 656.245, ORS 656. 262, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90 (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0038 Permanent Partial Disability

The standards developed [pursuant to] **under** ORS 656.726(4) and contained in OAR 436-035 [shall] **must** be applied when evaluating a worker's permanent partial disability.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.214, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
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Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0045 Disabling/Nondisabling Reporting Requirements and Change in Status Determinations

[(1) When the insurer determines that a nondisabling injury has become disabling, the insurer shall submit to the director an "Insurer's Report," Form 440-1502, indicating a change in status within 21 days from the date of the determination of classification. A notice of change of status to disabling and/or a Notice of Classification in accordance with subsection (2) of this rule shall be sent to the director, the worker, and to the worker's attorney if the worker is represented, explaining the change in status. If the claim qualifies for closure, the insurer shall close the claim in accordance with ORS 656.268(5).]

[(2) When a claim has been classified as nondisabling for less than one year after the date of acceptance, a worker who believes the claim was or has become disabling may request reclassification by the insurer.]

[(a) The worker may seek reclassification by submitting a written request for review

to the insurer.]

[(b) Within 14 days of the worker's request, the insurer shall review the claim and

notify the worker of the decision by mailing a Notice of Classification to the worker and the worker's attorney if the worker is represented.]

[(c) The insurer's Notice of Classification must include the following statement, in bold print:]

["If you disagree with this Notice of Classification, you must appeal by contacting the Workers' Compensation Division within sixty (60) days of the mailing of this notice, or you will lose your right to appeal. The address and telephone number of the Workers' Compensation Division are: [INSURER: Insert current address and telephone number of the Workers' Compensation Division, Appellate Review Unit, here.]."]

[(d) A worker dissatisfied with the decision in the Notice of Classification may appeal to the director within 60 days of the mailing date of the Notice.]

[(e) The appeal must be accompanied by copies of the worker's request for reclassification and the insurer's Notice of Classification in response.]

[(3) When a claim has been classified as nondisabling for at least one year after the date of acceptance, a worker who believes the claim was or has become disabling may submit a claim for aggravation.]

[(4) Failure of the insurer or self-insured employer to respond timely to a request may result in penalties pursuant to OAR 436-030-0580.]

[(5) A claim is disabling if any of the following conditions apply:]

[(a) temporary disability is due and payable;]

[(b) the worker is medically stationary within one year of the date of injury and the worker will be entitled to an award of permanent disability; or]

[(c) the worker is not medically stationary, but there is a reasonable expectation that the worker will be entitled to an award of permanent disability when the worker does become medically stationary.]

[(6) Examples of when temporary disability is due and payable as in subsection (5)(a) of this rule include:]

[(a) when the worker is released to and doing a modified job at reduced wages from the job at injury; or]

[(b) when the modified job the worker is released to and/or has been doing for the same wage as the job at injury no longer exists or a job offer is withdrawn for reasons including termination of temporary employment, layoff, or plant closure.]

[(7) For claims that are reclassified, the aggravation rights begin with the first valid closure. For claims that are not reclassified, the aggravation rights continue to run from the date of injury.]

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.210, ORS 656.212, ORS 656.214, ORS 656.262, ORS 656.268, ORS 656.273, ORS 656.277, ORS 656.745, ORS 656.726, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313, and chapter 350, Oregon Laws 2001

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Amended as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
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Amended and renumbered to OAR 436-060-0018, 2/17/04 as WCD Admin. Orders 04-051 & 04-052, eff. 2/29/04

436-030-0055 Determining Permanent Total Disability

(1) A worker is permanently and totally disabled if permanently incapacitated from regularly performing work in a suitable and gainful occupation. For the purpose of this rule and OAR 436-030-0065:

(a) "Incapacitated from regularly performing work" means that the worker does not have the necessary physical and mental capacity and the work skills to perform work **on a regular basis. Employment in a sheltered workshop is not considered regular employment unless this was the worker's job at the time of injury**.

(b) "Suitable occupation" means those occupations that exist in a theoretically normal labor market, within a reasonable geographic distance, for which a worker has the training or experience, and abilities to realistically perform the job duties, with or without rehabilitation.

(c) "Gainful occupation" means those types of general occupations that pay wages equivalent to, or greater than, the state mandated hourly minimum wage. Those types of general occupations that pay on a commission or piece-work basis, as opposed to a wage or salary basis, may not be "gainful employment" depending upon the facts of the individual situation.

(d) "Work skills" means those skills acquired through experience or training that are necessary to gain and adequately perform skilled, semi-skilled or unskilled occupations. Unskilled types of general occupations require no specific skills that would be acquired through experience or training to be able to gain and adequately perform the unskilled occupation. Every worker has the necessary work skills to gain and adequately perform unskilled types of general occupations with a reasonable period of orientation.

(e) A "reasonable geographic distance" means either of the following unless the worker is medically precluded from commuting:

(A) The area within a 50-mile radius of [claimant's] **the worker's** place of residence at the time of:

(i) [t]**T**he original injury;

(ii) [claimant's] **The worker's** last gainful employment;

(iii) [i]**I**nsurer's determination; or

(iv) [r]**R**econsideration by the director.

(B) The area in which a reasonable and prudent uninjured and unemployed person, possessing the same physical capacities, mental capacities, work skills and financial obligations as [claimant] **the worker** does at the time of his rating of disability, would go to seek work.

(f) "Types of general occupations" means groups of jobs which **actually** exist in a [theoretically] normal labor market, and share similar vocational purpose, skills, duties, physical circumstances, goals, and mental aptitudes. It does not refer to any specific job or place of employment for which a job or job opening [currently] **may** exist[s] **in the future**.

(g) "[Theoretically n] **N**ormal labor market" means a labor market that is undistorted by such factors as local business booms and slumps or extremes of the normal cycle of economic activity or technology trends in the long-term labor market.

(h) "Withdrawn from the workforce" means a worker who is not employed, is not willing to be employed, or although willing to be employed is not making reasonable efforts to find employment, unless such efforts would be futile. The receipt of retirement benefits does not establish a worker has withdrawn from the workforce.

(2) **All** [D]**d**isability which existed before the injury [shall] **must** be included in determining permanent total disability.

(3) In order for a worker to be determined permanently and totally disabled, a worker must:

(a) [p]**P**rove permanent and total disability;

(b) Be willing to seek regular and gainful employment;

[(b)]**(c)** [m]**M**ake reasonable effort to find work at a suitable and gainful occupation or actively participate in a vocational assistance program, unless medical or vocational findings, including the residuals of the compensable injury, make such efforts futile; and

[(c)]**(d)** [n]**N**ot have withdrawn from the workforce during the period for which benefits are being sought [and be willing to seek regular and gainful employment].

(4) A worker retaining some residual functional capacity and not medically permanently and totally disabled must prove:

(a) [t]**T**he worker has not withdrawn from the workforce for the period for which benefits are being sought;

(b) [i]**I**nability to regularly perform work at a gainful and suitable occupation; and

(c) [t]**T**he futility of seeking work if [claimant] **the worker** has not made reasonable work search efforts by competent written vocational testimony. Competent written vocational testimony is that which is available at the time of closure or reconsideration and comes from the opinions of persons fully certified by the State of Oregon to render vocational services. [It does not include opinions by claimants, physicians or others not certified.]

(5) Notices of Closure and Orders on Reconsideration which grant permanent total disability [shall] **must** notify the worker that:

(a) The claim [shall] **must** be reexamined by the insurer at least once every two years, and may be reviewed more often if the insurer chooses.

(b) The insurer may require the worker to provide a sworn statement of the worker's gross annual income for the preceding year. The worker [shall] **must** make the statement on a form provided by the insurer in accordance with the requirements under section (6) of this rule.

(6) If asked to provide a statement under subsection (5)(b) of this rule, the worker is allowed 30 days to respond. Such statements are subject to the following:

(a) If the worker fails to provide the requested statement, the director may suspend the worker's permanent total disability benefits. Benefits [shall] **must** be resumed when the statement is provided. Benefits not paid for the period the statement was withheld [shall] **must** be recoverable for no more than one year from the date of suspension.

(b) If the worker provides a report which is false, incomplete or inaccurate, the insurer [shall] **must** investigate. The investigation may result in suspension of permanent total disability benefits.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.005, ORS 656.206, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, 1999 OR Laws Chapter 313, and chapter 865, Oregon Laws 2001
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Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0065 Review of Permanent Total Disability Awards

(1) The insurer [shall] **must** reexamine each permanent total disability claim **at least once** every two years or when requested to do so by the director to [see] **determine** if the worker is capable of regularly performing a suitable and gainful occupation. [Reexamination of a PTD claim may be performed by the insurer whenever the insurer considers it necessary.] The insurer [shall] **must** notify the worker and the worker's attorney if the worker is represented whenever the insurer intends to reexamine the worker's [PTD] **permanent total disability** status. [Once an insurer has obtained the statutory three medical examinations for an open period and wants an additional medical examination on a PTD claim more frequently than every two years, the insurer is required to notify and request authorization from the director for the additional medical examination.] Workers who fail to cooperate with the reexamination may have benefits suspended [until such time as the worker cooperates with the reexamination] **under OAR 436-060-0095**.

(2) Any decision by the insurer to reduce permanent total disability [shall] **must** be communicated in writing to the worker, and to the worker's attorney if the worker is represented, and accompanied by documentation supporting the insurer's decision. That documentation [shall] **must** include: medical reports, including sufficient information necessary to determine the extent of permanent partial disability, vocational and/or investigation reports (including visual records, if available) which demonstrate the worker's ability to regularly perform a suitable and gainful occupation, and all other applicable evidence.

(3) An award of permanent total disability for scheduled injuries before July 1, 1975, [shall] **must** be considered for reduction only when the insurer has evidence that the medical condition has improved.

(4) Except for section (3) of this rule, an award of permanent total disability [shall] **may** be [considered for reduction] **reduced** only when the insurer has **a preponderance of** evidence that the worker is regularly working at a suitable and gainful occupation or is **currently** capable of doing so. **Preexisting disability must be included in redetermination of the worker's permanent total disability status.**

(5) When the insurer reduces a permanent total disability claim, the insurer [shall] **must**, based upon sufficient information to determine the extent of permanent partial disability, issue a Notice of Closure which reduces the permanent total disability and awards permanent partial disability, if any.

(6) Any party to the claim who does not agree with the Notice of Closure may, within the statutory period, appeal the order [pursuant to] **under** OAR 436-030-0007(1)(a). **Appeal is to the Hearings Division for workers that were medically stationary on or before July 1, 1990.**

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.206, ORS 656.214, ORS 656.268, ORS 656.283, ORS 656.319, ORS 656.325, ORS 656.331, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
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Amended 1/17/92 as WCD Admin Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0066 Review of Prior Unscheduled Permanent Partial Disability Awards

(1) An award for unscheduled permanent partial disability is subject to periodic examination and adjustment [pursuant to] **under** ORS 656.268 and 656.325 and in accordance with the following conditions:

(a) Requests for review and adjustment [shall] **must** be made in writing to the Workers' Compensation Division.

(b) The party requesting review of permanent disability [shall] **must** send a copy of the request to all other affected parties at the time the request is made. The worker may submit any information in rebuttal.

(c) All pertinent medical, vocational, and other applicable evidence [shall] **must** be submitted with the request, including sufficient information to determine the extent of permanent partial disability. The request must state the basis for the request and provide supporting evidence. If the director finds that the worker has failed to accept treatment as provided in this rule, the director [shall] **will** make any necessary adjustments [pursuant to] **under** OAR 436-035-0270 through 436-035-0450.

(d) The basis for the request for adjustment in the disability award [shall] **must** be failure of the worker to make a reasonable effort to reduce the disability and be so stated in the request for adjustment.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.325, ORS 656.331, ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
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Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0115 Reconsideration of Notices of Closure

(1) A worker **or insurer** may request reconsideration of a Notice of Closure by mailing or delivering the request to the director within the statutory appeal period as defined in OAR 436-030-0005[(5)]**(6)** and [(9)] **030-0145(1)**. The reconsideration proceeding begins [upon receipt of the request] **as described in OAR 436-030-0145(2).**

(2) For the purpose of these rules, "reconsideration proceeding" means the procedure established to reconsider a Notice of Closure and does not include personal appearances by any of the parties to the claim or their representatives, unless requested by the director. All information to correct or clarify the record and any medical evidence regarding the worker's condition as of the time of claim closure that should have been but was not submitted by the attending physician **or authorized nurse practitioner** at the time of claim closure and all supporting documentation must be presented during the reconsideration proceeding. When the reconsideration proceeding is postponed because the worker's condition is not medically stationary under OAR 436-030-0165[(9)]**(10)**, medical evidence submitted may address the worker's condition after claim closure as long as the evidence satisfies the conditions of OAR 436-030-0145(3).

(3) All parties have an opportunity to submit documents to the record regarding the worker's status at the time of claim closure. Other factual information and written argument may be submitted for incorporation into the record [pursuant to] **under** ORS 656.268(6) within the time frames outlined in OAR 436-030-0145. Such information may include, but is not limited to, responses to the documentation and written arguments, written statements and sworn affidavits from the parties.

(4) The worker may submit a deposition to the reconsideration record subject to ORS 656.268(6) and the following:

(a) The deposition must be limited to the testimony and cross-examination of a worker about the worker's condition at the time of claim closure.

(b) The deposition must be arranged by the worker and held during the reconsideration proceeding time frame unless a good cause reason is established. If a good cause reason is established, the time frame for holding the deposition may be extended but [shall] **must** not extend beyond 30 days from the date of the Order on Reconsideration. The deposition must be held at a time and place that permits the insurer or self-insured employer the opportunity to cross-examine the worker.

(c) The insurer or self-insured employer must, within 30 days of receiving a bill for the deposition, pay the fee of the court reporter and the costs for the original transcript and its copies. An original transcript of the deposition [shall] **must** be sent to the department and each party [shall] **must** be sent a copy of the transcript.

(d) If the transcript is not completed and presented to the department prior to the deadline for issuing an Order on Reconsideration, the Order on Reconsideration may not be postponed to receive a deposition under this rule and the order will be issued based on the evidence in the record. However, the transcript may be received as evidence at a hearing for an appeal of the Order on Reconsideration.

(5) Only one reconsideration proceeding may be completed on each Notice of Closure and the director will do a complete review of that notice. Once the reconsideration proceeding is initiated**,** [by the worker, the insurer must raise] any additional issues **must be raised and further evidence submitted** [and submit any evidence for review by the director] within the time frames allowed for processing the reconsideration request. When the director requires additional information to complete the record, the reconsideration proceeding may be postponed [pursuant to] **under** ORS 656.268(6).

Stat. Auth.: ORS 656.726, 1999 OR Laws Chapter 313, and section 12 (6)(a)(A), chapter 865, Oregon Laws 2001
Stats. Implemented: ORS 656.268, 1999 OR Laws Chapter 313, and section 12 (6)(a)(A), chapter 865, Oregon Laws 2001
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Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
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Amended 8/23/95 as WCD Admin. Order 95-059, eff. 8/23/95 (temp).
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01.
Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0125 Reconsideration Form and Format

(1) A request for reconsideration may be in the form and format the director provides by bulletin. A reconsideration request should include at least the following:

(a) [w]**W**orker's name;

(b) [d]**D**ate of injury;

(c) [d]**D**ate of the closure being appealed;

(d) [a]**A**ny specific issues [the worker wishes to raise] regarding the Notice of Closure;

(e) [t]**T**he name of the worker's attorney;

(f) [t]**T**he name of the insurer's attorney;

(g) [a]**A**ny special language needs;

(h) [w]**W**hether there is disagreement with the specific impairment findings used to determine permanent disability at the time of claim closure;

(i) [a]**A**ny information and documentation deemed necessary to correct or clarify any part of the claim record [the worker] believe[s]**d** to be erroneous; and

(j) [a]**A**ny medical evidence that should have been but was not submitted at the time of the claim closure including clarification or correction of the medical record based on the examination(s) at, before, or pertaining to claim closure**.**

[(2) The reconsideration proceeding begins with the director's receipt of the request for reconsideration. The director will send a letter of acknowledgment to all parties notifying them a request has been received and the proceeding has begun.]

Stat. Auth.: ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, and 1999 OR Laws Chapter 313
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)

Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0135 Reconsideration Procedure

(1) If the director assists the worker in completing the request for reconsideration, the director will notify the worker that the proceeding may result in an increase, decrease, or no change in entitlement to benefits.

[(1)]**(2)** [When] **Upon starting the reconsideration proceeding ,** [requesting reconsideration of a Notice of Closure,] **the director will send the parties a letter of acknowledgement which includes:**

(a) The proceeding's start date;

(b) The timelines for submitting additional information to be included in the record;

(c) A certification that the letter has been mailed to the listed parties; and

(d) The last date an Order on Reconsideration can be issued or the proceeding postponed, and the status of the request if the director fails to issue an Order on Reconsideration or postponement under the time limits specified in ORS 656.268.

[(a) A worker may ask the director for assistance in completing the request for reconsideration. The director will notify the worker the proceeding may result in an increase or a decrease in entitlement to benefits.]

[(b) After receipt of the request, the director will notify all parties of the date of the request and of the timelines for submitting additional information to be included in the record. The acknowledgment letter shall include a certification that the letter has been mailed to the listed parties. The acknowledgment letter will notify the parties of the last date an Order on Reconsideration can be issued or the proceeding postponed, and the status of the request if the director fails to issue an Order on Reconsideration or postponement pursuant to the time limits specified in ORS 656.268(6).]

(3) The insurer must furnish, to the director and the worker or the worker's attorney, within 10 working days from the beginning of the reconsideration proceeding, all documents pertaining to the claim.

[(c)]**(4)** The request for reconsideration and all other information submitted to the director by any party during the reconsideration process must be copied to all interested parties. Failure to comply with this requirement [will] **may** result in the information not being included as part of the record on reconsideration. The director may assist a worker in meeting this requirement.

(5) The director will issue an order rescinding a notice of closure when the director finds, upon reconsideration:

(a) The claim was closed prematurely because the worker's accepted condition(s) was not medically stationary and the claim did not qualify for closure under ORS 656.268(1)(a); or

(b) The claim was not closed according to the requirements of these rules and ORS 656.268(1)(b) or (c).

[(d) When a party does not discover until after the reconsideration order has issued that additional documents were not provided by the opposing party in accordance with this rule, the Order on Reconsideration may be abated and withdrawn to give the party an opportunity to respond to the new information.]

[(2) The insurer shall furnish within 10 working days of the beginning of the reconsideration proceeding all documents pertaining to the claim that have not been previously submitted to the director and the worker or the worker's representative. The insurer may be subject to penalties under OAR 436-030-0175 for failure to provide the claim documents in a timely manner.]

[(3)]**(6)** When a worker has **requested and cashed** [received] a lump sum payment, [pursuant to] **under** ORS 656.230, of an award granted by a Notice of Closure, the director [shall] **will** not consider the adequacy of that award in a reconsideration proceeding.

[(4) The director will issue an order rescinding the Notice of Closure when the director finds, upon reconsideration:]

[(a) the claim was closed prematurely because the worker's accepted condition was not medically stationary and the claim did not qualify for closure pursuant to ORS 656.268(1)(a); or]

[(b) the claim was not closed in accordance with the requirements of ORS 656.268(1)(b) and (c) and OAR 436-030-0020.]

[(5)]**(7)** When a new condition is accepted after a prior claim closure, and the newly accepted condition is subsequently closed, the director and the parties may mutually agree to consolidate requests for review of the closures into one reconsideration proceeding, provided the director has jurisdiction and neither of the closures have become final by operation of law.

[(6)]**(8)** The reconsideration order [shall] **will** address issues raised by the parties and [shall] **will** address compensation as follows:

(a) Compensation reduced in a reconsideration order [shall] **will** be "in lieu of" any compensation awarded by the Notice of Closure.

(b) Additional compensation awarded in a reconsideration order [shall] **will** be "in addition to" any compensation awarded by the Notice of Closure. The reconsideration order may award total compensation due less any compensation previously ordered.

(c) Any compensation affirmed in a reconsideration order [shall] **will** be so stated.

(d) The dollar rate per degree of disability [shall] **will** be listed.

[(7)]**(9)** A copy of the reconsideration order will be sent to the worker, employer(s), insurer(s), worker's attorney if the worker is represented, and the insurer's attorney(s), if the insurer is represented.

(10) When a party does not discover until after the reconsideration order has been issued that additional documents were not provided by the opposing party, in accordance with this rule, the Order on Reconsideration may be abated and withdrawn to give the party an opportunity to respond to the new information.

Stat. Auth.: ORS 656.726, and 1999 OR Laws Chapter 313
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Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
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436-030-0145 Reconsideration Time Frames and Postponements

(1) Statutory time frames for appealing a Notice of Closure:

[(1)]**(a)** For claims with a medically stationary date prior to June 7, 1995, the **appeal period is 180 days from the claim closure. The** time required to complete the reconsideration proceeding pursuant to this rule [shall] **must** not be included in the 180 days from the mailing date of the Notice of Closure to request a hearing.

[(a)]**(A)** The 180-day time limit will be tolled upon receipt of the request for reconsideration from the mailing date of the request for reconsideration until the reconsideration request is either dismissed or an Order on Reconsideration is issued.

[(b)]**(B)** The 180-day time limit will not be tolled when a request for reconsideration is withdrawn [pursuant to] **under** OAR 436-030-0185.

[(2)]**(b)** For claims with a medically stationary date, or date the claim statutorily qualifies for closure, on or after June 7, 1995, a request for reconsideration [shall] **must** be mailed within 60 days of the mailing date of the Notice of Closure. A request for hearing must be made within 30 days of the mailing date of the Order on Reconsideration.

(c) For claims closed on or after January 1, 2004, the insurer's request for reconsideration is limited to the findings used to rate impairment and must be mailed within seven days of the mailing date of the Notice of Closure.

(2) The reconsideration proceeding begins upon;

(a) The director's receipt of the worker's request for reconsideration, if the insurer has not previously requested reconsideration consistent with subsection (1)(c) of this rule; or

(b) The 61st day after the closure of the claim, if the insurer has requested reconsideration consistent with subsection (1)(c) of this rule; unless the director receives, within the appeal time frames in section (1) of this rule, a request for reconsideration or a statement by the worker instructing the director to start the reconsideration proceeding.

(3) Ten working days after the date the reconsideration proceeding begins, the reconsideration request and all other appropriate information submitted by the parties [shall] **will** become part of the record used in the reconsideration proceeding. [The insurer may be subject to penalties under OAR 436-030-0175 for failure to provide the claim documents within ten working days without good cause.]

(a) Evidence received or issues raised subsequent to the tenth working day deadline will be considered in the reconsideration proceeding to the extent practicable.

(b) Upon review of the record the director may request, in accordance with ORS 656.268(6), any additional information deemed necessary for the reconsideration and set appropriate time frames for response.

[(c) When the reconsideration proceeding has been postponed in accordance with OAR 436-030-0165(9) because the worker's condition is not medically stationary, interim medical information that may be helpful to the director and the medical arbiter in assessing and describing the impairment due to the compensable condition(s) may be submitted at the time the parties notify the director that the medical arbiter can be scheduled. The director will determine whether the interim medical information is consistent with the provisions of ORS 656.268(6) and (7).]

(d) Except as provided in section [(4)]**(5) and (6)** of this rule, the director will either mail an Order on Reconsideration within 18 working days from the date the reconsideration proceeding begins or notify the parties that the reconsideration proceeding is postponed for not more than 60 additional days in accordance with the provisions of ORS 656.268(6).

(4) Medical arbiter panel requests must be received by the department within the ten (10) working day time frame beginning on the date the reconsideration proceeding starts.

[(4)]**(5)** [Pursuant to ORS 656.268(7), w]**W**hen the director provides notice the worker failed to attend the medical arbiter examination without good cause or failed to cooperate with the arbiter examination and suspends benefits, **under ORS 656.268(7),** the reconsideration proceeding will be postponed for up to 60 additional days from the date the director determines and provides notice, to allow completion of the arbiter process.

(6) When the reconsideration proceeding has been stayed, the director will notify the parties that it has been stayed for one of the following reasons:

[(5)]**(a)** [Pursuant to ORS 656.726(4)(f), the reconsideration proceeding may be stayed t] **T**o determine whether temporary rules amending "the standards" are required to properly rate the worker's impairment**, under ORS 656.726(4)(f);** [The director will notify the parties that the proceeding has been stayed for this purpose.]

(b) The parties consent to postponing the reconsideration proceeding, under ORS 656.268(7)(i)(B), when the medical arbiter examination is not medically appropriate because the worker's medical condition is not stationary; or

[(6)]**(c)** When a Claim Disposition Agreement (CDA) is filed with the Workers' Compensation Board, the reconsideration proceeding is stayed until the CDA is either approved by a final order of the Board or the Board sets aside the disposition. [The director will notify the parties that the proceeding has been stayed for this purpose.]

(7) If the director fails to mail an Order on Reconsideration or a Notice of Postponement [pursuant to] **under** the time frames specified in ORS 656.268[(6)], the reconsideration request is automatically deemed denied. The parties may immediately thereafter proceed as though the director had issued an Order on Reconsideration affirming the Notice of Closure. [In accordance with] **Under** section (1) of this rule, the counting of the 180-day time limit for requesting a hearing under former ORS 656.268(6)(b) [shall] **will** resume on the date after the director should have issued an Order on Reconsideration.

(8) Notwithstanding any other provision regarding the reconsideration proceeding, the director may extend nonstatutory time frames to allow the parties sufficient time to present evidence and address their issues and concerns.

Stat. Auth.: ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268 **(ch. 429, OL 2003)**, 656.726, and 1999 OR Laws Chapter 313
Hist: Filed 6/30/78 as WCD Admin. Order 8-1978, eff. 7/10/78.
Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80.
Renumbered from OAR 436-65-100, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.

Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0155 Reconsideration Record

(1) The record for the reconsideration proceeding [shall] include**s** all documents and other material relied upon in issuing the Order on Reconsideration as well as any additional material submitted by the parties, but not considered in the reconsideration proceeding. The record [shall be] **is** maintained in the Workers' Compensation Division's claim file and [shall] consist**s** of all documents and material received and date stamped by the director prior to the issuance of the Order on Reconsideration**, unless the document(s) is an exact duplicate of what is in the file then the director is not required to retain the duplicate document(s)**.

(2) Except as noted below, the medical record submitted by the director for arbiter review will consist of all medical documents and medical material produced by the claim under reconsideration, provided the information is allowable under ORS 656.268.

(a) The director [will] **may** not submit non-medical information, [handwritten] nursing notes, or [handwritten] physical therapy treatment notes to the arbiter unless:

(A) [a]**A** party requests the director to submit those specific materials to the arbiter;

(B) [t]**T**he party identifies and provides the director with specific dates of those materials requested to be submitted; and

(C) [t]**T**he materials otherwise meet the requirements of this rule.

(b) All medical documents and other medical materials not submitted by the director to the medical arbiter will be stamped in the lower right hand corner "not sent to arbiter".

(3) When any surveillance videotape obtained prior to closure has been submitted to physician(s) involved in the evaluation or treatment of the worker, it must be provided for arbiter review. All written materials previously forwarded to physician(s) along with the surveillance videotape, such as investigator field notes, summary or narrative reports, and cover letters, must also be submitted. Surveillance videotape must be labeled according to the date(s) and total time of the recording(s).

[(3)]**(4)** When reconsideration is requested, the insurer is required to provide the director and the other party(ies) with a copy of all documents contained in the record at claim closure. Any information the director adds to the record, such as the medical arbiter report, will be copied to all parties. Responses of the parties to the medical arbiter report [shall] **will** be included in the record if received prior to completion of the reconsideration proceeding.

[(4)]**(5)** Since all parties will have a complete copy of the record at reconsideration prior to the issuance of a reconsideration order, additional certified copies of the record will be made at a charge to the requesting party.

[(5)]**(6)** When a hearing is scheduled following the appeal of a reconsideration order and the parties or the administrative law judge requests the director to provide the record at reconsideration, either the original claim file or a certified copy of the claim file will be delivered

to the Hearings Division two days prior to the hearing. The original claim file [shall] **must** be returned to the director within two days after the hearing.

Stat. Auth.: ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268(6), and 1999 OR Laws Chapter 313
Hist: Filed 6/30/78 as WCD Admin. Order 8-1978, eff. 7/10/78.
Amended 3/20/80 as WCD Admin. Order 4-1980, eff. 4/1/80.
Renumbered from OAR 436-65-100, May 1985.
Amended 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0165 Medical Arbiter Examination Process

(1) When a worker **or insurer** requests reconsideration and disagrees with the impairment findings used in rating the worker's disability at the time of claim closure, the director [shall] **will** refer the claim to a medical arbiter or panel of arbiters.

(a) When the director determines that sufficient medical information is not available to rate disability, the director may refer the claim to a medical arbiter or panel of arbiters.

(b) The director will notify the parties within 18 working days from the date the reconsideration proceeding begins that a medical arbiter review will be scheduled.

[(c) The costs related to record review, examinations, tests and reports of the medical arbiter shall be paid pursuant to OAR 436-009-0015, 436-009-0040, and 436-009-0070.]

(2) The director [shall] **will** select a medical arbiter physician or a panel of physicians in accordance with ORS 656.268(7)(d). [Arbiters or panel members shall not include any medical service providers whose examination or treatment is the subject of the review.]

(a) Any party that objects to a physician on the basis that the physician is not qualified under ORS 656.005(12)(b) must notify the director prior to the examination of the specific objection. If the director determines that the physician is not qualified to be a medical arbiter on the specific case, an examination will be scheduled with a different physician. All costs related to the completion of the medical arbiter process in this rule [shall] **must** be paid by the insurer.

(b) When the worker resides outside the state of Oregon, a medical arbiter examination may be scheduled out-of-state with a physician who is licensed within that state to provide medical services in the same manner as required by ORS 656.268(7).

(c) Arbiters or panel members will not include any medical service providers whose examination or treatment is the subject of the review.

(3) When the director has determined a claim qualifies for medical arbiter deselection, a list of appropriate physicians will be faxed or sent by overnight mail to the parties.

(a) Each party may eliminate one physician from the list by crossing out the physician's name.

(b) The parties may agree to one physician from the list by responding in writing. The parties must also deselect one physician from the list in case the agreed upon physician is unavailable.

(c) All responses must be signed and received by the director within three (3) business days. No further opportunity will be given for the parties to provide input regarding the arbiter deselection process once the three (3) business day period has expired. No further attempts at deselection will be made when continuing the arbiter deselection process is not practical.

[(3) The medical arbiter or panel of medical arbiters shall perform a record review or examine the worker as requested by the director and perform such tests as may be reasonable and necessary to establish the worker's impairment. The director shall provide notice of the examination of the worker to all parties.

(a) Any issues the parties wish the medical arbiter or panel of medical arbiters to address must be submitted to the director within 10 working days after the date the reconsideration proceeding begins. Issues shall not be submitted to the medical arbiter or panel of medical arbiters directly by the parties. Only issues appropriate to the reconsideration proceeding will be submitted by the director to the medical arbiter or panel of medical arbiters.

(b) The medical arbiter or panel of medical arbiters shall address all questions raised by the director in the report.

(c) The director shall instruct the medical arbiter to provide copies of the arbiter report to the director, the worker or the worker's attorney, and the insurer(s) within five (5) working days after completion of the arbiter review. The cost of providing copies of such additional reports shall be reimbursed according to OAR 436-009-0070 and shall be paid by the insurer.]

(4) The director [shall] **will** notify the parties of the time and place of the medical arbiter examination. This notice [shall] **will** also inform the worker that failure to attend the medical arbiter examination or to cooperate with the medical arbiter will result in suspension of all disability benefits effective on the date of the examination unless the worker establishes a "good cause" reason for missing the examination or for not cooperating with the arbiter. The appointment letter [shall] **will** instruct the worker to call the director within 24 hours after failing to attend the examination to provide any "good cause" reason for missing the exam.

(a) Notice of the examination [shall] **will** be considered adequate notice if the appointment letter is mailed to the last known address of the worker and to the worker's attorney if the worker is represented.

(b) For the purposes of this rule, non-cooperation includes, but is not limited to, refusal to complete any reasonable action necessary to evaluate the worker's impairment. However, it does not include circumstances such as a worker's inability to carry out any part of the examination due to excessive pain or when the physician reports the findings as medically invalid.

(c) Failure of the worker to respond within the time frames outlined in statute for completion of the reconsideration proceeding may be considered a failure to establish "good cause."

(5) If a worker misses the medical arbiter examination, the director [shall] **will** determine whether or not there was a "good cause" reason for missing the examination.

(6) Upon determination that there was not a "good cause" reason for missing the examination, or that the worker failed to cooperate with the arbiter, the director will**:** [issue a notice to

the worker that disability benefits are suspended and that the reconsideration proceeding is postponed up to an additional 60 days. A rescheduled examination will be made for the worker to complete the medical arbiter review within the additional 60-day postponement period.]

(a) [i]**I**ssue a notice to the worker that disability benefits are suspended and that the reconsideration proceeding is postponed up to an additional 60 days, and

(b) [r]**R**eschedule[d] **an** examination [will be made] for the worker to complete the medical arbiter review within the additional 60-day postponement period.

(7) As addressed in the Order on Reconsideration, the suspension will be lifted if any of the following occurred during the additional 60-day postponement period:

(a) The worker established a "good cause" reason for missing or failing to cooperate with the examination;

(b) The request for reconsideration was withdrawn by the worker; or

(c) The worker attended and cooperated with a rescheduled arbiter examination.

(8) If none of the events which end the suspension **under** [pursuant to sub]section (7) of this rule occurred prior to the expiration of the 60-day additional postponement, the director [shall] **will** complete the reconsideration proceeding [pursuant to] **under** ORS 656.268(7) and the Order on Reconsideration will order the suspension of benefits to remain in effect.

(9) The medical arbiter or panel of medical arbiters must perform a record review or examine the worker as requested by the director and perform such tests as may be reasonable and necessary to establish the worker's impairment. The director will provide notice of the examination of the worker to all parties.

(a) The parties must submit any issues they wish the medical arbiter or panel of medical arbiters to address within 10 working days after the date the reconsideration proceeding begins. The parties must not submit issues directly to the medical arbiter or panel of medical arbiters. The director will only submit issues appropriate to the reconsideration proceeding to the medical arbiter or panel of medical arbiters.

(b) The medical arbiter or panel of medical arbiters must address all questions raised by the director in the report.

(c) The director will instruct the medical arbiter to provide copies of the arbiter report to the director, the worker or the worker's attorney, and the insurer(s) within five (5) working days after completion of the arbiter review. The cost of providing copies of such additional reports must be reimbursed according to OAR 436-009-0070 and must be paid by the insurer.

[(9)]**(10)** When [a medical arbiter examination is not medically appropriate because] the worker's medical condition is not stationary **on reconsideration which may result in difficulties in obtaining findings of impairment** [and impairment cannot be accurately evaluated] by the **arbiter** [physician], the director will**, where appropriate,** send a letter to the parties requesting consent to postpone the reconsideration proceeding.

(a) If the parties agree to the postponement, the reconsideration proceeding will be postponed until the **medical record reflects the** worker's condition has **stabilized sufficiently**

[medically resolved] to allow for examination **to obtain the impairment findings**. The parties must notify the director when it is appropriate to schedule the medical arbiter examination **and provide the necessary medical records when requested**. **Interim medical information that may be helpful to the director and the medical arbiter in assessing and describing the impairment due to the compensable condition(s) may be submitted at the time the parties notify the director that the medical arbiter exam can be scheduled. The director will determine whether the interim medical information is consistent with the provisions of ORS 656.268(6) and (7).**

(b) If [the parties do not agree to the] postponement **is not appropriate**, at the director's discretion either a medical arbiter examination or a medical arbiter record review may be obtained, or the director may issue an Order on Reconsideration based on the record available at claim closure and other evidence submitted in accordance with ORS 656.268(6).

(11) All costs related to record review, examinations, tests, and reports of the medical arbiter must be paid under OAR 436-009-0015, 436-009-0040, and 436-009-0070.

Stat. Auth.: ORS 656.726, 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, 1999 OR Laws Chapter 313, and chapter 349, Oregon Laws 2001
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
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Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 8/23/95 as WCD Admin. Order 95-059, eff. 8/23/95 (temp).
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
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Amended 11/16/01 as WCD Admin. Order 01-060, eff. 1/1/02
Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0175 Fees and Penalties within the Reconsideration Proceeding

(1) An insurer failing to provide information or documentation as set forth in OAR 436-030-0135, 0145 and 0165 may be assessed civil penalties [pursuant to] **under** OAR 436-030-0580. Failure to comply with the requirements set forth in OAR 436-030-0135, 0145 and 0165 may also be grounds for extending the reconsideration proceeding [pursuant to] **under** ORS 656.268(6).

(2) If upon reconsideration of a Notice of Closure there is an increase of 25 percent or more in the amount of permanent disability compensation from that awarded by the Notice of Closure, and the worker is found to be at least 20 percent permanently disabled, the insurer [shall] **will** be ordered to pay the worker a penalty equal to 25 percent of the increased amount of permanent disability compensation. If an increase in compensation results from the promulgation of a temporary emergency rule, penalties will not be assessed. For claims with medically stationary dates or statutory closure dates on or after June 7, 1995, if the increase in compensation results from new information obtained through a medical arbiter examination, the penalty [shall] **will** not be assessed.

(3) For the purpose of section (2) of this rule, a worker who receives a total sum of 64 degrees of scheduled or unscheduled disability or a combination thereof, [shall] **will** be found to be at least 20 percent disabled. As an illustration, a worker who receives 20 percent disability of a great toe (3.6 degrees) is not considered 20 percent permanently disabled because the great toe

is only a portion of the whole person. A worker who is 100 percent permanently disabled is entitled to 320 degrees of disability. A worker who receives 64 degrees (20 percent of 320 degrees), whether scheduled, unscheduled or a combination thereof, [shall] **will** be considered the equivalent of at least 20 percent permanently disabled for the purposes of this rule.

(4) Attorney fees may only be authorized when a Request for Reconsideration is submitted by an attorney representing a worker or the attorney provides documentation of representation, and a valid signed retainer agreement has been filed with the director. The reconsideration order [shall] **will** order the insurer to pay the attorney 10 percent out of any additional compensation awarded but not more than the maximum attorney fee allowed in OAR 438-015-0040(1) and (2) and OAR 438-015-0045, effective February 1, 1999. "Additional compensation" includes an increase in a permanent or temporary disability award.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.268
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92
Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 8/23/95 as WCD Admin. Order 95-059, eff. 8/23/95 (temp).
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 4/28/99 as WCD Admin. Order 99-054, eff. 4/28/99
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0185 Reconsideration: Settlements and Withdrawals

(1) Contested matters arising out of a claim closure may be resolved by mutual agreement of the parties at any time after the claim has been closed under ORS 656.268 but before that claim closure has become final by operation of law. If the parties have reached such an agreement prior to the completion of the reconsideration proceeding, the parties [shall] **must** submit the stipulation agreement to the director for approval as part of the reconsideration proceeding. The Stipulation for review at the reconsideration proceeding must:

(a) [a]**A**ddress only issues that pertain to a claim closure and cannot include any issues of compensability;

(b) [l]**L**ist the body part(s) for which any award is made and [shall] recite all disability awarded in both degrees and percent of loss when permanent partial disability is part of the stipulated agreement. In the event there is any inconsistency between the stated degrees and percent of loss awarded in any stipulated agreement, the stated percent of loss [shall be] **will** controll[ing].

(2) The director [shall] **will** review the Stipulation and issue an order within 18 working days from receipt of the Stipulation by the director. Stipulations approved by the director are not appealable.

(3) When the stipulated agreement does not expressly resolve all issues relating to the claim closure, the Order on Reconsideration will include the Stipulation as well as a substantial determination of all remaining issues. In these claims, the 18 working day time frame may be postponed in the same manner as any reconsideration proceeding.

(4) If the Stipulation is not approved, the reconsideration proceeding will be postponed to allow the parties to:

(a) [a]**A**ddress the disapproval, and/or

(b) [t]**T**o request that the director issue an Order on Reconsideration addressing the substantive issues.

(5) When the parties desire to enter into a stipulated agreement to resolve disputed issues relating to the claim closure but are unable to reach an agreement, the parties may request the assistance of the director to mediate an agreement.

(6) When the parties desire to enter a stipulated agreement that addresses issues including all matters being reconsidered as well as issues not before the reconsideration proceeding, and the parties do not want a reconsideration on the merits of the claim closure, they may advise the director of their resolution and request the director enter an Order on Reconsideration affirming the Notice of Closure. The request for an affirming order must be made prior to the date an Order on Reconsideration is issued and in accordance with the following procedure:

(a) A written request for an affirming reconsideration order must be made by certified mail and be signed by both parties or their representatives. The written request must also state that the parties waive their right to an arbiter review, and that all matters subject to the mandatory reconsideration process have been resolved. A copy of the proposed stipulated agreement must accompany the request.

(b) After the affirming Order on Reconsideration has issued, the parties will submit their stipulation to a referee of the Hearings Division, Workers' Compensation Board, for approval in accordance with the provisions of ORS 656.289 and the Board's rules of practice and procedure.

(c) An Order on Reconsideration issued [pursuant to] **under** this rule is final and is subject to review [pursuant to] **under** ORS 656.283.

(d) This provision does not apply to Claims Disposition Agreements filed [pursuant to] **under** ORS 656.236.

(7) A worker requesting a reconsideration may withdraw the request for reconsideration if no additional information has been submitted by the other party(ies)**,** [and] no medical arbiter exam has occurred**, and the insurer has not requested reconsideration under OAR 436-030-0145**. If additional information has been submitted by the other party(ies), [or] a medical arbiter exam has occurred, **or the insurer has requested reconsideration,** the reconsideration request will not be dismissed unless all parties agree. [When appropriate, an order dismissing the reconsideration will be issued.]

(8) If the insurer has requested reconsideration, either the worker or the insurer may initiate the withdrawal request but both must agree to the withdrawal.

(9) The director will issue an order dismissing the reconsideration under section (7) and (8) of this rule, when appropriate.

Stat. Auth.: ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268(6), and 1999 OR Laws Chapter 313
Hist: Filed 6/18/90 as WCD Admin. Order 7-1990, eff. 7/1/90, (temp.).
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Amended 8/20/91 as WCD Admin. Order 6-1991, eff. 9/01/91 (temp.).
Amended 1/17/92 as WCD Admin. Order 5-1992, eff. 2/20/92

Amended and renumbered from OAR 436-030-0050, 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
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Amended 12/12/03 as WCD Admin. Order 03-063, eff. 1/1/04 (Temp.)
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0575 Audits

(1) Notices of Closure issued by insurers and supporting documentation including, but not limited to, the worksheet upon which the Notice of Closure is based, [shall] **will** be subject to periodic audit by the director. Supporting documentation and records [shall] **must** be maintained in accordance with OAR 436-050.

(2) The director reserves the right to visit the worksite to determine compliance with these rules.

Stat. Auth.: ORS 656.268, ORS 656.726, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.455, ORS 656.726, ORS 656.750, and 1999 OR Laws Chapter 313
Hist: Filed 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

436-030-0580 Penalties and Sanctions

(1) [Pursuant to] **Under** ORS 656.745, the director or designee may assess a civil penalty against an employer or insurer who fails to comply with the rules and orders of the director regarding reports or other requirements necessary to carry out the purposes of the Workers' Compensation Law.

(2) An insurer or medical service provider failing to meet the requirements set forth in [OAR 436-030-0015, 436-030-0017, 436-030-0020, 436-030-0038, 436-030-0045, and 436-030-0125 through 436-030-0185] **these rules** may be assessed a civil penalty.

(3) [Pursuant to] **Under** OAR 436-010-0340, the director may impose sanctions for any medical service provider where the insurer can provide sufficient documentation to substantiate lack of cooperation. The medical service provider will be sent a warning letter about possible penalties and the reporting requirements. Failure by the medical service provider to submit the requested information within the specified period may result in civil penalties.

(4) Sufficient documentation to substantiate lack of cooperation by the medical service provider includes:

(a) [c]**C**opies of letters to the medical service provider;

(b) [m]**M**emos to the claim file of follow-up phone calls and/or the lack of response;

(c) [l]**L**etters from the medical service provider indicating a lack of cooperation; or

(d) [m]**M**edical reports received by the insurer, after adequate instruction by the insurer or the director, which do not supply the requested information or which supply information that is not consistent with the Disability Rating Standards in OAR 436-035.

(5) In arriving at the amount of penalty, the director or designee may assess a penalty of up to $2,000 for each violation or $10,000 in the aggregate for all violations in any three-month period.

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313

Stats. Implemented: ORS 656.268, ORS 656.726, ORS 656.745, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Hist: Filed 12/17/87 as WCD Admin. Order 13-1987, eff. 1/1/88.
Amended 12/10/90 as WCD Admin. Order 33-1990, eff. 12/26/90.
Amended 1/17/92 as WCD Admin Order 5-1992, eff. 2/20/92.
Amended 11/18/94 as WCD Admin. Order 94-059, eff. 1/1/95.
Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Amended 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04

[436-030-0581 Issuance/Service of Penalty Orders

(1) When a penalty is assessed as provided in OAR 436-030-0580, the director or designee shall serve an order on the party with a notice of the party's appeal rights provided under ORS 656.704.

(2) The Order shall be served by:

(a) mailing a copy of the Order to the party by certified mail return receipt requested. If the employer is a corporation, the certified mail may be addressed to any one of the persons named in Rule 7 of Oregon Rules of Civil Procedure subsection (D)(3)(b)(i); or

(b) delivering a copy to the party in the manner provided by Rule 7 of Oregon Rules of Civil Procedure, subsection (D)(2).

(3) Orders issued in accordance with these rules shall contain the following notice in bold print:

"If you disagree with this Order, you are entitled to a hearing as provided by ORS 656.704(2), OAR 436-030-0007, and the contested case provisions of the Administrative Procedures Act (ORS Chapter 183). You must request a hearing in writing within sixty (60) days of the date you receive this notice. Your request must be mailed to the Department of Consumer and Business Services, Workers' Compensation Division, [INSERT CURRENT ADDRESS HERE]. You will be notified of the time and place of hearing. If you request a hearing, you will be given information on procedures, right of representation, and the rights of parties relating to the conduct of the hearing. If you fail to request a hearing within sixty (60) days, this Order will become final."]

Stat. Auth.: ORS 656.268, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
Stats. Implemented: ORS 656.268, ORS 656.704, ORS 656.726, 1995 OR Laws Chapter 332, and 1999 OR Laws Chapter 313
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Amended 2/14/96 as WCD Admin. Order 96-052, eff. 2/17/96.
Amended 12/22/97 as WCD Admin. Order 97-065, eff. 1/15/98.
Amended 11/13/00 as WCD Admin. Order 00-058, eff. 01/01/01
Repealed 2/17/04 as WCD Admin. Order 04-052, eff. 2/29/04