

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

In the Matter of the Amendment of:

OAR chapter 436

) SUMMARY OF
) TESTIMONY AND
) AGENCY RESPONSES

This document summarizes the significant data, views, and arguments contained in the hearing record. The purpose of this summary is to create a record of the agency's conclusions about the major issues raised. Exact copies of the written testimony are attached to this summary.

The proposed amendment to the rules was announced in the Secretary of State's *Oregon Bulletin* dated May 1, 2022. A public hearing was not scheduled. The record was held open for written comment through May 24, 2022.

Testimony list:

Exhibit	Testifying
<u>1</u>	Kathy Kaczmarek RN
<u>2</u>	Darrin Boyce, NWRC of SMART Sheet Metal Workers #16
<u>3</u>	Jenny Strickland
<u>4</u>	Nicole McMerrick
<u>5</u>	Heidi Prokop
<u>6</u>	Scott Strickland, MLAC NWRC of SMART Sheet Metal Workers #16

Testimony: OAR chapter 436 (multiple divisions)

Exhibit 1

"I am a SHE and proud of it. You can be a he or she or whatever but you have no right to take SHE away from ME! If you're not proud of your personal pronoun simply adopt one you are proud of. I am no more comfortable being call a THEY/THEIR/THEM then I would be an IT. I find it offensive and vulgar. I have always respected my transgendered friends and observed their preferred pronoun, and they have respected mine. Why does anyone feel that taking away my femininity and PERSONAL pronoun is ok?

"Additionally I refuse to document a single person as a they in medical records. Seven years from now when I do to court to discuss my report I don't want to have to explain why I discussed an individual as a group, additionally it becomes very muddy when personal pronouns are made generic."

Response: Thank you for your testimony. We agree with your position regarding how you should be addressed personally. However, the workers' compensation rules are applicable to everyone – to men and to women and to those who identify as nonbinary. We also agree that there is potential ambiguity in using pronouns that often refer to more than one person.

Therefore, where “they” or “them” might have caused confusion, we have eliminated the pronouns and simply repeated “the worker,” “the physician,” etc. Regardless, these revisions will not affect your documentation in medical records. The rules will be adopted as proposed*.

Testimony: OAR chapter 436 (multiple divisions)

Exhibit 2

“I wanted to comment on the proposed changes to amending gender specific language regarding chapter 436. As a resident of Oregon, member of our community, labor leader, and father of a transgender teenager I am in support of such a change. I believe it aligns with Oregon values to encourage inclusion! Thank you for making the change!”

Response: Thank you for your testimony. The rules will be adopted as proposed*.

Testimony: OAR chapter 436 (multiple divisions)

Exhibit 3

“I would like to show my support to the proposed amendments to OAR Chapter 436, replacing gender-specific pronouns. As somebody that had been injured on the job, I know it can be scary and worker's deserve their identity to be respected while they are navigating the already stressful process of filing worker's comp claims and recovering medically. Thank you for proposing these changes.”

Response: Thank you for your testimony. The rules will be adopted as proposed*.

Testimony: OAR chapter 436 (multiple divisions)

Exhibit 4

“I fully support the proposed amendments to OAR chapter 436. It is important to treat injured workers and their healthcare providers with the respect and dignity that they are owed. This is a great step in making sure that all people are supported by the Worker's Compensation Division.”

Response: Thank you for your testimony. The rules will be adopted as proposed*.

Testimony: OAR chapter 436 (multiple divisions)

Exhibit 5

“As a healthcare professional, I support the amendment to OAR chapter 436. Everyone deserves dignity and respect, especially when they are going through a tough time medically. This is a fantastic amendment to make sure that all people are supported by the Worker's Compensation Division.”

Response: Thank you for your testimony. The rules will be adopted as proposed*.

Testimony: OAR chapter 436 (multiple divisions)

Exhibit 6

“I am writing to express my full support for the proposed changes to OAR 436. As a "medically stationary" worker, I can attest to the difficulty, trauma, and complexity of the workers' comp system. My experiences were difficult enough as a cisgender male with professional English fluency, and I can only imagine the additional difficulties and complications that would arise for people who may identify in a way that doesn't stack society's odds in their favor. As a union member, I pride myself on standing with the great diversity of workers, their families, and their communities that work hard and overcome too often insurmountable odds to thrive and bring beauty and prosperity to our great state. The least that we can do is allow and empower them to introduce themselves and identify as they choose, while acknowledging the confluence of events that led to their injury and need for community support during their interactions with the workers' compensation system. These changes are a small but important step to recognizing and

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respecting the journey that each individual human being lives, and I therefore fully support them. I appreciate all that the division does to support workers, providers, and others in the workers' compensation system in Oregon."

Response: Thank you for your testimony. The rules will be adopted as proposed*.

*Adoption of gender-neutral wording in OAR 436-035, "Disability Rating Standards," will be deferred until temporary disability standards are replaced later this year.

Dated this 13th day of June, 2022.
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BRUYNS Fred H * DCBS

From: Kathy Kaczmarek <kkaczmarek@pacblu.com>
Sent: Friday, April 22, 2022 2:30 PM
To: DCBS WCD Policy * DCBS
Subject: Replacement of gender-specific pronouns

I am a SHE and proud of it. You can be a he or she or whatever but you have no right to take SHE away from ME! If you're not proud of your personal pronoun simply adopt one you are proud of. I am no more comfortable being call a THEY/THEIR/THEM then I would be an IT. I find it offensive and vulgar. I have always respected my transgendered friends and observed their preferred pronoun, and they have respected mine. Why does anyone feel that taking away my femininity and PERSONAL pronoun is ok?

Additionally I refuse to document a single person as a they in medical records. Seven years from now when I do to court to discuss my report I don't want to have to explain why I discussed an individual as a group, additionally it becomes very muddy when personal pronouns are made generic.

Kathy Kaczmarek RN

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BRUYNS Fred H * DCBS

From: Darrin Boyce <dboyce@smw16.org>
Sent: Tuesday, May 24, 2022 3:27 PM
To: DCBS WCD Policy * DCBS
Subject: Replacement of gender-specific pronouns

Hello,

I wanted to comment on the proposed changes to amending gender specific language regarding chapter 436. As a resident of Oregon, member of our community, labor leader, and father of a transgender teenager I am in support of such a change. I believe it aligns with Oregon values to encourage inclusion! Thank you for making the change!

Darrin Boyce

Organizer
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***NWRC of SMART
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BRUYNS Fred H * DCBS

From: Jenny Strickland <jennystrickland503@gmail.com>
Sent: Tuesday, May 24, 2022 6:44 PM
To: DCBS WCD Policy * DCBS
Subject: OAR Chapter 436

To whom it may concern,

I would like to show my support to the proposed amendments to OAR Chapter 436, replacing gender-specific pronouns. As somebody that had been injured on the job, I know it can be scary and worker's deserve their identity to be respected while they are navigating the already stressful process of filing worker's comp claims and recovering medically. Thank you for proposing these changes.

Sincerely,

Jenny Strickland

BRUYNS Fred H * DCBS

From: Comcast Email <nicole_mcmerrick@comcast.net>
Sent: Tuesday, May 24, 2022 7:18 PM
To: DCBS WCD Policy * DCBS
Subject: OAR CH 436

To Whom It May Concern,

I fully support the proposed amendments to OAR chapter 436. It is important to treat injured workers and their healthcare providers with the respect and dignity that they are owed. This is a great step in making sure that all people are supported by the Worker's Compensation Division.

Thank you,
Nicole McMerrick

Sent from my iPhone

BRUYNS Fred H * DCBS

From: Heidi Prokop <heidi@prokopmail.net>
Sent: Tuesday, May 24, 2022 7:30 PM
To: DCBS WCD Policy * DCBS
Subject: OAR Chapter 436 Amendment

Hello there,

As a healthcare professional, I support the amendment to OAR chapter 436. Everyone deserves dignity and respect, especially when they are going through a tough time medically. This is a fantastic amendment to make sure that all people are supported by the Worker's Compensation Division.

Thank you,
-Heidi Prokop
Estacada, OR

BRUYNS Fred H * DCBS

From: Scott <scottjd503@gmail.com>
Sent: Tuesday, May 24, 2022 8:00 PM
To: DCBS WCD Policy * DCBS
Subject: Comment on Proposed Replacement of Gender-Specific Pronouns

Hello,

I am writing to express my full support for the proposed changes to OAR 436. As a "medically stationary" worker, I can attest to the difficulty, trauma, and complexity of the workers' comp system. My experiences were difficult enough as a cisgender male with professional English fluency, and I can only imagine the additional difficulties and complications that would arise for people who may identify in a way that doesn't stack society's odds in their favor. As a union member, I pride myself on standing with the great diversity of workers, their families, and their communities that work hard and overcome too often insurmountable odds to thrive and bring beauty and prosperity to our great state. The least that we can do is allow and empower them to introduce themselves and identify as they choose, while acknowledging the confluence of events that led to their injury and need for community support during their interactions with the workers' compensation system. These changes are a small but important step to recognizing and respecting the journey that each individual human being lives, and I therefore fully support them. I appreciate all that the division does to support workers, providers, and others in the workers' compensation system in Oregon.

Respectfully,

Scott Strickland (he/him)