Exhibit "2"

July 24, 2017

Fred H. Bruyns, Policy Analyst/Rules Coordinator
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Re: Proposed Rules Hearing
July 25, 2017
OAR 436-010, Medical Services
OAR 436-030, Claims Closure and Reconsideration
OAR 436-035, Disability Rating Standards

Dear Mr. Bruyns,

I am not able to make the meeting tomorrow, but have some concerns about the overbreadth of the reading and interpretation of *Brown v. SAIF,* 361 Or 241 (2017). The case addressed the definition of "otherwise compensable injury" in the context of a "ceases" denial. The full interpretation of the case indicates that the court considered, not just the definition of "compensable injury," but the statutory authority to issue a "ceases" denial after the claim is accepted. Nothing further was put in front of the court. To read that all benefits for the "compensable injury" are limited to accepted conditions is a reading beyond the issue in the case and the complete analysis of the case.

Furthermore, to read the definition of "compensable injury" for purposes of providing medical services as limited to accepted conditions is contrary to the express language of *Brown.*

In particular, the palliative care rule proposed changes incorrectly limit services to the accepted condition. The Supreme Court in *Brown* was very clear that it was not deciding medical services at issue in the *Carlos-Macias* case. *Brown,* 361 Or at 282. Furthermore, the caselaw stands that the compensability standard for medical services as a material contributing cause is a standard far easier to prove that for compensable injuries. The case of *Mize v. Comcast Corp-AT&T Broadband,* 208 Or App 563 (2006), held that the phrase "caused in material part" is not the same as the material contributing cause standard for compensability. *Id.* at 567. The Court of Appeals has also held that an injured worker does not need to file a new condition claim in order to prove "a condition caused in material part" in order to prove medical services under ORS 656.245. *SAIF v. Martinez,* 219 Or App 182 (2008) (court expressly rejected SAIF's claim that in order to obtain medical services under ORS 656.245 that the worker had to, first, make a new/omitted medical condition claim).

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Thus, the change to the palliative care rules, or any other medical services rules, to be limited to "accepted condition" as opposed to "conditions caused in material part" is contrary to law.

Regarding amendments to ORS 436-035-00-13(2)(a)(C), the department should consider changing the example about "pregnancy" as a basis for apportionment. It is a rare example, and, frankly, demeaning. It may also be medically irrelevant. Not at all stages of pregnancy would a pregnancy impact range of motion or other disability. Further, apportionment is not appropriate, as the doctor is supposed to make findings of *permanent* disability. If range of motion is limited for a temporary condition, then either the doctor should not be opining the disability is permanent or the injured worker should have the option of obtaining a closing examination at a time when the other *temporary* condition has subsided.

My final objection is to *Brown* itself. Regardless of that being a precedential case, on behalf of my clients and injured workers, generally, I object to injured workers having to obtain benefits one condition and one Band-Aid at a time. I suspect that workers' compensation will hit even lower levels before some sense is brought back into this system. In the meantime, I exercise this opportunity to say how injured workers are being so badly treated by the law in this State.

Sincerely,

/s/ Julene M. Quinn

Julene M. Quinn, Attorney at Law

cc: Keith Semple, Attorney at Law
Lou Savage, Director, WCD
Jennifer Flood, Ombudsman for Injured Workers
Art Towers, OTLA