

ADMINISTRATIVE ORDER NO. 96-055
EFFECTIVE FEBRUARY 12, 1996

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 001

PROCEDURAL RULES GOVERNING RULEMAKING AND HEARINGS

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EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 001

436-001-0000 Notice of Agency Action Concerning Rules

(1) Except when acting in an emergency to adopt a temporary rule, pursuant to ORS 183.335 the director will give prior notice of the adoption, amendment or repeal of administrative rules, as provided in this rule.

(2) The notice of the proposed action will be published in the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date of the adoption, amendment or repeal of the rule.

(3) Upon request, the division will mail copies of all notices of proposed action to any party making such a request. Such parties may also be added to the division's mailing list.

(4) As a matter of routine practice, depending on the subject matter of the proposed action, copies of the notice will be sent to the following persons and organizations on the division's mailing list, including:

- (a) Workers' compensation insurers;
- (b) Self-insured employers;
- (c) Third-party administrators;
- (d) Insurance adjusters and adjusting firms;
- (e) Workers' compensation attorneys;
- (f) Medical providers and managed care organizations;
- (g) News reporting organizations;
- (h) Vocational rehabilitation organizations;
- (i) Labor unions;
- (j) Employer groups and associations;
- (k) Management-Labor Advisory Committee;
- (l) Employers and employees;
- (m) Oregon Chambers of Commerce;
- (n) State Advisory Council on Occupational Safety and Health ; and
- (o) Other interested parties.

Stat Auth. : ORS 656.704(2), 656.726 (3)
Stats. Implemented: ORS 183.335
Hist: WCB 16-1975, f. & ef. 10-20-75
WCD 4-1977 (Admin) (Temp f. & ef. 11-7-77 ;
WCD 4-1978 (Admin) f. 7 ef. 3-6-78 ;
Renumbered from 436-90-505, 5-1-85 ;
WCD 3-1986 f. & of 5-15-86 ;

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Amended 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

436-001-0001 Authority

These rules are adopted under the director's general rulemaking authority under ORS 656.726 and the director's specific authority and responsibility under ORS chapter 183 and ORS 656.245, 656.248, 656.260, 656.262, 656.268, 656.283, 656.327, 656.385, 656.388, 656.447, and 656.704.

Stat Auth.: ORS 656.704(2), 656.726(3)

Stats. Implemented :ORS Chapter 183, ORS 656.245, 656.248, 656.260, 656.262, 656.268, 656.283, 656.327, 656.385, 656.388, 656.447

Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

Amended 02/12/96 as WCD Admin. Order 96-055 eff. 02/12/96

436-001-0002 Purpose

Stat Auth. :656.726(3)

Stats. Implemented :656.704(2)

Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

Repealed 02/12/96 as WCD Admin. Order 96-055 eff. 02/12/96

436-001-0003 Applicability and Purpose

(1) The rules contained in OAR 436, Division 001 establish procedures governing rulemaking and contested case hearings and carry out the provisions of ORS Chapter 183 and Chapter 656.

(2) These rules apply to all hearing requests received by the director on or after the effective date of these rules.

Stat Auth.: ORS 656.726(3)

Stats. Implemented :ORS 656.704(2) and 183.310 through 183.550

Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92

Amended 02/12/96 as WCD Admin. Order 96-055 eff. 02/12/96

436-001-0004 Definitions

The following definitions apply to these rules unless the context requires otherwise.

(1) "Administrator" means the administrator of the Workers' Compensation Division and designated representative of the director for administration of the division, ORS chapter 656 and OAR chapter 436.

(2) "Delivery" means physical delivery to the division's Salem office or delivery by facsimile transmission.

(3) "Department" means the Department of Consumer and Business Services, the director and all employees.

(4) "Director" means the director of the Department of Consumer and Business Services or the director's designee for the particular contested case matter.

(5) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(6) "Final order" means a final action by the director, expressed in writing.

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(7) "Good cause" means a cause beyond a person's reasonable control.

(8) "Proposed and final order" means an order subject to revision by the director which becomes final unless exceptions are timely filed or the director issues a notice of intent to review the proposed and final order.

(9) "Presiding officer" means a person designated by the director to conduct hearings on the director's behalf.

(10) The other words and phrases used in OAR 436-001 have the same meaning as given in ORS 183.310, where applicable.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 656.704(2), ORS 183.310 through 183.550
Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 02/12/96 as WCD Admin. Order 96-055 eff. 02/12/96

436-001-0005 Model Rules of Procedure Governing Rulemaking

Pursuant to ORS 656.726(3), and in accordance with ORS 183.341, the director adopts, by reference, OAR chapter 137, Division 01, Attorney General's Model Rules of Procedure under the Administrative Procedures Act, which became effective September 9, 1995, except OAR 137-01-007(2) and (3).

Stat Auth. :ORS 656.726(3)
Stats. Implemented: ORS 183.325 through 183.410 and ORS 656.704 (2)
Hist: Filed 5/15/86 as WCD Admin. Order 3-1986, eff. 5/15/86
Amended 5/22/92 as WCD Admin. Order 9-1992, eff. 5-22-92
Amended 2/12/96 as WCD Admin Order 96-055 eff. 2/12/96

436-001-0007 Designation of Proposed or Final Order

(1) Unless provided otherwise by statute or administrative rule, an order issued by a presiding officer on behalf of the director is a proposed and final order subject to revision by the director.

(2) Any order of suspension or revocation of an insurer's authority to issue guaranty contracts pursuant to ORS 656.447 by the director's designee is a proposed and final order subject to revision by the director.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 656.704(2) and 656.447
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin Order 96-055 eff. 2/12/96

436-001-0008 Model Rules of Procedure in Contested Cases

Pursuant to ORS 656.726(3) and in accordance with ORS 183.341, the director adopts, by reference, OAR chapter 137, Division 03, Attorney General's Model Rules of Procedure under the Administrative Procedures Act that became effective September 9, 1995, except as modified by ORS chapter 656 and these procedural rules.

Stat Auth: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 12/2/91 as WCD Admin. Order 9-1991, eff. 12/2/91 (Temporary)
Filed 11/2/95 as WCD Admin. Order 95-066 eff. 11/1/95 (Temporary)
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

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436-001-0010 Review of Orders Issued Pursuant to ORS 656.447

Stat Auth.: ORS 656.726(7)
Stats. Implemented: ORS 656.704(2) and 656.447
Hist : Filed 1/4/90 as WCD Admin. Order 2-1990, eff. 1/4/90 (Temporary)
Filed 11/27/90 as WCD Admin. Order 29-1990, eff 11/28/90
Amended 5/22/92 as WCD Admin. Order 9-1992, eff 5-22-92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0020 Contested Case Notice

Stat Auth.: ORS 656.726(3)
Stats. Implemented: ORS 183.415 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0030 Role of the Workers' Compensation Division

(1) In any proceeding under these rules, the division is entitled to notice of all matters, copies of all documents and to present evidence, testimony, and argument.

(2) The division may appear and be represented by a contested case representative, assistant attorney general or special assistant attorney general as authorized by the Department of Justice. However, the Department of Justice reserves the right to make legal argument on behalf of the division.

(3) If necessary, the presiding officer shall continue the hearing to allow the presentation of oral or written legal argument by the Department of Justice.

(4) In any proceeding where the director has chosen to be represented, the director's representative shall be served with notice of hearing and all documents provided to and by the parties.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 180.220(2), 180.235, 183.450(7), and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0040 Rights of Parties in Contested Cases

Stat Auth.: ORS 656.726(3)
Stats. Implemented: ORS 183.415 and 656.704(2)
Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0050 Request by a Person to Participate as a Party or Limited Party

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.510 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0060 Request by Agency to Participate as a Party or an Interested Agency

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

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436-001-0070 Decision Without Hearing

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550, and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0080 Place of Hearing

(1) In-person contested case hearings shall be heard in Salem, Oregon, except where the presiding officer authorizes a hearing outside of Salem.

(2) In-person hearings outside of Salem may be authorized subject to the requirements of the presiding officer.

(3) A person desiring an in-person hearing shall make a written request, providing details on numbers of witnesses intended to be called, location desired and reason for an in-person hearing. If an in-person hearing is approved, the person requesting the in-person hearing shall be responsible for coordinating the hearing date between the presiding officer and other parties.

(4) Upon prior arrangement and approval of the presiding officer, a party or witness may appear by telephone.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0090 Postponement and Continuances

(1) The presiding officer may postpone or continue the hearing for good cause or if necessary to develop a complete record.

(2) Request for postponements of a hearing date must be in writing and shall be filed as soon as a conflict in hearing dates is noted, containing the following:

(a) A good cause reason for resetting the hearing date;

(b) Whether the reset is opposed by any other party; and

(c) Three to five reset dates that are mutually agreeable to all parties. The party requesting the reset is responsible for contacting the other parties and arranging reset dates.

(3) A telephone request for postponement may be made if a written request would not provide adequate notice to the parties provided the requestor includes all parties in a conference call with the presiding officer. A party who agrees to a reset and waives participation or is not available need not be included with leave from the presiding officer provided the requestor notifies and requests leave from the presiding officer prior to the conference call.

(4) When a postponement is allowed under subsection (3), the requestor is responsible for notifying any party that was not included in the telephone conference call.

(5) Should a continuance be needed, the presiding officer will schedule additional hearing dates at the close of proceedings.

Stat Auth.: ORS 656.726(3)

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Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0100 Pre-hearing Conference

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0110 Consolidation or Separation

(1) The presiding officer may consolidate cases in which there are common parties or common issues of law and fact.

(2) The presiding officer may separate cases which will promote efficient disposition of the matters.

Stat Auth. :ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.508 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0120 Motions

(1) Unless otherwise agreed by the parties and approved by the presiding officer, pre-hearing and post-hearing motions shall be filed in writing. Motions shall contain a clear and plain statement of the relief sought.

(2) The other parties shall have five days from the date of service of the motion, or such greater or lesser time as the presiding officer may allow, to file a response to the motion.

(3) Unless otherwise allowed by the hearing officer, pre-hearing motions shall be filed at least days prior to hearing and post hearing motions within 14 days after the close of the hearing.

Stat Auth.: ORS 656.726(3)
Stats. Implemented: ORS 183.310 through 183.550, 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0130 Discovery

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff.2/12/96

436-001-0140 Subpoenas

(1) The attendance and testimony of witnesses, and the production of documents or physical evidence under the witnesses' control or possession, may be compelled by subpoena.

(2) Subpoenas to appear at hearing may be issued by the director, the presiding officer, other designees of the director, or the attorney of the party in whose behalf the witnesses are required to appear.

(3) If the hearing is by telephone, the witness shall provide on the subpoena return form the place and telephone number that he or she can be reached at the time of hearing. The party

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who subpoenaed the witness shall provide that information to the presiding officer no later than two days before hearing.

(4) Witnesses appearing by subpoena, unless a party, or an officer or employee of the department, shall be paid the fees and mileage required by ORS 44.415(2) by the party who subpoenas them, other than employers, their officers and representatives subpoenaed by the director.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0150 Change of Presiding Officer

(1) If the presiding officer has a potential conflict of interest as defined in ORS 244.020, the presiding officer shall withdraw from the case or advise the parties of the nature of the conflict.

(2) Any party may request by motion that the presiding officer be removed from a case on the grounds of personal bias or conflict of interest by filing with the director promptly upon discovery of the alleged facts, an affidavit which sets forth the grounds for disqualification.

(3) The presiding officer may withdraw if the presiding officer believes the motion has merit.

(4) If the director finds the request for disqualification is filed with due diligence, and the supporting affidavit is sufficient on its face, the director shall either disqualify the presiding officer and assign another presiding officer to the case, or order a hearing on the allegation in the affidavit.

(5) If the director does not disqualify the presiding officer, the director shall state the grounds and so rule on the record.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550, 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0155 Manner of Filing

(1) Requests for hearing, motions and hearing papers may be filed by mail or delivered to the division.

(2) A facsimile transmission shall constitute a valid filing, provided:

(a) The document transmitted indicates at the top that it has been delivered by FAX and the division facsimile transmission number used;

(b) The original of the document is simultaneously mailed to the director or assigned presiding officer, with a copy of the original confirmation of receipt and a certificate of service listing the parties served; and

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(c) The parties are simultaneously mailed a copy of the original hearing request with a copy of the original confirmation of receipt and certificate of service.

(3) The date of service of a filing by facsimile transmission is the date of transmission.

(4) As used in this rule, "facsimile transmission" means any method of transmitting images or printed matter by electronic means.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist: Filed 2/12/96 as WCD Admin. Order 96-055 eff. ?/12/96

436-001-0160 Extension of Time for Filing

Requests for extension of time for filing documents. must be received on or before the date on which the document is due, unless otherwise allowed by the presiding officer.

Stat Auth.: ORS 656.726(3)
Stats. Implemented: ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0170 Duties and Powers of the Presiding Officer

The presiding officer shall conduct a fair and impartial hearing, and avoid delay. The presiding officer has authority to:

- (1) Issue subpoenas;
- (2) Authorize depositions to be taken, or the production of documents or other potential evidence;
- (3) Hold conferences to settle the case or simplify issues ;
- (4) Dispose of procedural requests, motions and similar matters;
- (5) Administer oaths and affirmations;
- (6) Rule upon offers of evidence;
- (7) Regulate the course of the hearing and exclude persons from the hearing ;
- (8) Require a party to state their position on any issue and the legal basis for that position;
- (9) Order a party to produce a witness or other evidence;
- (10) Call and examine any party or witness;
- (11) Close and reopen the hearing record as the needs of justice require; and
- (12) Take any other action necessary, in the presiding officer's reasonable judgment, for a full and fair disposition of the case.

Stat Auth. :ORS 656.726(3)
Stats. Implemented :OR 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

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436-001-0180 Conducting a Contested Case Hearing

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0185 Telephone Hearings

(1) Hearings shall be by telephone, unless the presiding officer determines that the circumstances warrant otherwise. The presiding officer will notify the parties what factors will be considered in determining if an in-person hearing is warranted.

(2) Notwithstanding subsection (1), nothing in this rule precludes the presiding officer from allowing some parties or witnesses to attend by telephone while others attend in person.

(3) The presiding officer shall make an audio record of any telephone hearing.

(4) Prior to commencement of an evidentiary hearing that is held by telephone, each party and the division shall provide to all other parties, presiding officer and to the division copies of documentary evidence that it will seek to introduce into the record.

(5) Nothing in this rule precludes any party or the division from seeking to introduce documentary evidence in addition to evidence described in subsection (4) during the telephone hearing and the presiding officer shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the presiding officer, the division and to the other parties, the hearing may be continued upon the request of any party or the division for sufficient time to allow the party or the division to obtain and review the evidence.

(6) As used in this rule, "telephone" means any two-way electronic communication device for found reproduction or transmission over a distance.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0190 Evidence

Stat Auth. : ORS 656.726(3)
Stats Implemented : ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0195 Medical Evidence

The following medical evidence, as defined in OAR 436-010-0008(14)(c), does not constitute "new medical evidence" and, if relevant, shall be admitted in a contested case.

(1) Supplemental cross-examination of medical professionals whose reports or work products are included in the medical evidence gathered by the director's staff provided the scope of the cross-examination deals with events occurring on or before the date the director's record was closed.

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(2) Supplemental reports, corrections and clarifications by medical professionals whose reports or work products are in the medical evidence gathered by the director's staff provided the scope of the additional items deals with events occurring on or before the date the director's record was closed.

(3) Supplemental cross-examination of those providing data under subsection (2)(a) provided the scope of the cross-examination is limited to what is provided under subsection (2)(a).

(4) Relevant testimony by the injured worker.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 656.260, 656.327, and 656.704(2)
Hist: Filed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0200 Failure to Appear

Stat Auth. :ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0210 Record and Transcript of Hearing

(1) A verbatim record shall be made of the hearing, including all motions, rulings and testimony. The record shall be made by audio tape or hearing reporter, at the discretion of the presiding officer.

(2) At any time before the decision becomes final, the presiding officer or director may order a full or partial transcript of the record.

(3) At any time before the reporter's notes or recordings of the hearing are destroyed, any party may order a transcript at that party's expense.

(4) Audio tapes, reporters' notes or records of a hearing may be destroyed six months after final disposition of the case.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0220 Burden of Proof

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0225 Scope of review/limitations on the record

(1) The scope of review shall be de novo unless otherwise prescribed by statute or administrative rule.

(2) Medical treatment disputes arising under ORS 656.327 shall be reviewed pursuant to the substantial evidence standard. In such disputes no new medical evidence or medical issues, as defined by OAR 436-001-0195, shall be admitted at the contested hearing.

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(3) Medical treatment disputes arising within a managed care organization certified under ORS 656.260 shall be reviewed pursuant to the substantial evidence standard. In such disputes, no new medical evidence or medical issues, as defined by OAR 436-001-0195, shall be admitted at the contested case hearing.

(4) Vocational assistance disputes arising under ORS 656.340 shall be reviewed pursuant to the limited scope of review in ORS 656.283. In such disputes, only evidence presented at the administrative review or evidence offered at hearing which is probative as to the four bases for modification of the director's administrative order in ORS 656.283 shall be admitted.

Stat Auth.: ORS 656.726(3)
 Stats. Implemented : ORS 656.260, 656.283, 656.327, 656.704(2)
 Hist : Filed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0230 Official Notice

Stat Auth.: ORS 656.726(3)
 Stats. Implemented : ORS 183.310 through 183.550 and 656.704(2)
 Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
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436-001-0240 Exhibits and Exchange of Exhibits

(1) In cases where the director is required by statute to create a record sufficient for review, including ORS 656.260, 656.327 and 656.283, the division will provide the parties and the presiding officer legible copies of all documents that were relied upon in the underlying administrative review, together with an index. The index shall include a description of each document, author, number of pages and date of the document. The documents shall be arranged in chronological order and designated by capital letters, in the lower right corner of each page, beginning with the document of earliest date. Pagination of multiple-page documents shall be designated by the capital letter followed by the page number. For example, page two of document two shall be designated as "WCD/DRS Exhibit # A, page 2 of 4."

(a) Not less than ten days before the hearing, or within five days of receipt of the division's document index and documents, whichever is later, the petitioner(s) shall provide the other parties and the presiding officer legible copies of any additional documents that they will offer at hearing. The additional documents shall be marked and accompanied by a supplemental document index, in chronological order and preceded by a "p" and a number. For example, the second page of the petitioner's first exhibit chronologically should be marked as "p1-2"

(b) Not less than five days before the hearing, the respondent(s)/cross-petitioner(s) shall provide to the other parties and the presiding officer legible copies of any additional documents that they will offer at hearing in the same manner as provided by the petitioner(s), except the additional documents by the respondent (s) shall be preceded by a "r" and a number. For example, the second page of the respondent's first exhibit chronologically shall be marked as "rl-2."

(2) In all other cases where the director is not required to provide a record sufficient for review, including but not limited to ORS 656.262(11) and ORS 656.245(2), the petitioner shall provide to the other parties, the division and the presiding officer, not later than 15 days before the hearing legible copies of all documents that are relevant and material to the matters in dispute

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at hearing, together with an index. The index shall include the document numbers, description of each document, author, number of pages and date of the document. The documents shall be arranged chronologically and numbered, in Arabic numerals, in the lower right hand corner of each page, beginning with the earliest document. The numbers shall be preceded by the designation of "Ex.," and pagination of multiple-page documents shall be designated by a hyphen followed by the page number. For example, page two of document two shall be designated "Ex 2-2."

(a) Not less than 10 days before the hearing, or within 5 days of receipt of the petitioner's document index and documents, whichever is later, the respondent shall provide to the parties, the division and the presiding officer legible copies of any additional documents that are relevant and material to the matters in dispute. The additional documents shall be marked and accompanied by a supplemental document index, prepared in the same manner as the petitioner's documents and index and numbered to coincide in chronological order with the petitioner's documents. Letter subdesignations shall be used to ensure chronological numbering. For example, a document which is chronologically between documents six and seven of the petitioner's documents shall be designated "Ex. 6A."

(b) Not less than 5 days before the hearing, or immediately following receipt of the petitioner's and respondent's document index and documents, whichever is later, the division shall provide to the parties, and the presiding officer legible copies of any additional documents that are relevant and material to the matters in dispute. The additional documents shall be marked and accompanied by a supplemental document index, prepared in the same manner as the petitioner's documents and index and numbered to coincide in chronological order with the petitioner's documents. Letter subdesignations shall be used to ensure chronological numbering. For example, a document which is chronologically between documents six and seven of the petitioner's documents shall be designated "Ex. 6A."

(3) Before the hearing, the parties shall delete from their indexes and packets of documents those documents which are cumulative, or which no party can in good faith represent to be relevant and material to the issues, and the revised indexes and packets of documents shall be submitted to the presiding officer. For compliance with this rule, it is sufficient for the parties to mark neatly through the index description of the documents not being offered in evidence with ink, and to remove the corresponding documents from the packets submitted to the presiding officer.

(4) All exhibits, whether or not admitted into evidence, shall be part of the record in the case.

(5) At the discretion of the presiding officer, to accompany the record, an accurate description or photograph of an object or real evidence may be substituted for such object or real evidence. The party offering such evidence shall be responsible for providing the description or photograph, and for retaining custody of the object until the case is closed.

(6) At hearing, the presiding officer may, at his or her discretion, allow admission of evidence not declared. In the exercise of discretion, the presiding officer shall determine whether the party that failed to provide discovery offers a satisfactory reason for having failed to do so or

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whether excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the presiding officer admits evidence which was not disclosed, the presiding officer may grant a continuance to allow an opportunity to respond.

Stat Auth.: ORS 656.726(3)
Stats. Implemented: ORS 183.310 through 183.550, 656.260, 656.327, 656.283 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0250 Ex Parte Communication

Stat Auth.: ORS 656.726(3)
Stats. Implemented: ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0260 Unacceptable Conduct

(1) Contested case hearings before the director are not public meetings and are not open to the public, except with the consent of the parties or as authorized by the presiding officer.

(2) The presiding officer may expel a person from a contested case hearing if that person disrupts the proceeding.

(3) The presiding officer may prohibit broadcasting, television, sound or video recording and the taking of photographs of proceedings in the hearing room. These prohibitions, in the presiding officer's discretion, may be applied to areas immediately adjacent to the hearing room where the activities may interrupt or interfere with entry or exit from the hearing room and distract or disturb the proceedings or interfere with the conduct of the hearing.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Amended 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0265 Attorney Fees

(1) In cases where the director is authorized to assess a reasonable attorney fee by statute, the following factors shall be considered :

- (a) The time devoted to the case;
- (b) The complexity of the issue(s) involved;
- (c) The value of the interest involved;
- (d) The nature of the proceedings;
- (e) The benefit secured for the claimant;
- (f) The risk in a particular case that an attorney's efforts may go uncompensated ;
- (g) The assertion of frivolous issues or defenses; and
- (h) Any other relevant consideration deemed appropriate by the administrative law judge.

(2) If the attorney representing a claimant is instrumental in obtaining a settlement of the dispute, after a hearing request is filed but prior to the director's decision, the presiding officer or

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director may, where authorized by law, approve an assessed fee agreed to by the parties or may assess a fee considering the factors set forth in subsection (1).

(3) Attorney fees shall be authorized only for services if an executed attorney retainer agreement and statement of services has been filed.

(4) Once the attorney fee has been assessed, the opposing parties may file written exceptions to the fee pursuant to OAR 436-001-0275.

(5) Pursuant to ORS 656.388, attorney fees for services rendered before a managed care organization and before the director's administrative review, including services before the managed care organization and director's administrative review on remand from a contested case hearing request, are not allowed.

Stat Auth.: ORS 656.726(3)
Stats. Implemented: ORS 656.385, 656.388 and 656.704(2)
Hist: Filed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0270 Preliminary Orders; Finality of Decisions

Stat Auth.: ORS 656.726(3)
Stats. Implemented: ORS 656.315(1) and 656.704(2)
Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

436-001-0275 Proposed and Final Orders, Filing Exceptions

(1) When the division serves a proposed and final order on the parties, the division shall at the same time or at a later date notify the parties:

(a) That written exceptions must be filed within 30 days of the date of service of the proposed and final order in order to be considered by the division; and

(b) When and in what form argument may be made to the administrator who will render the final order.

(c) That written responses by other parties must be filed within 20 days of service of the exceptions and a reply, if any, must be filed within 10 days of service of the responses.

(2) If no exceptions are filed the proposed and final order becomes final 30 days after the date of service of the order, subject to subsection (4).

(3) If exceptions are filed, the administrator may adopt the proposed order or prepare a new order.

(4) Nothing in this rule prohibits the staff of a non-party agency from commenting on the proposed order or the administrator from revising the proposed and final order, even if no exceptions are filed by the parties.

(5) "Date of service" means the date of mailing or delivery.

Stat Auth.: ORS 656.726(3)
Stats. Implemented :ORS 183.310 through 183.550 and 656.704(2)
Hist: Filed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

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436-001-0280 Final Orders

Slat Auth.: ORS 656.726(3)
Stats. Implemented : ORS 183.310 through 183.550 and 656.704(2)
Hist : Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
Repealed 2/12/96 as WCD Admin. Order 96-055 eff. 2/12/96

**436-001-0290 Immediate Suspension or Refusal to Renew a License, Notice of
Opportunity for Hearing, Service**

Stat Auth.: ORS 656.726(3)
Stats. Implemented : ORS 183.310 through 183.550 and 656.704(2)
Hist: Filed 5/22/92 as WCD Admin. Order 9-1992, eff. 5/25/92
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