

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on 06/17/2014 by the

| | |
|---|-------------------------------------|
| Department of Consumer and Business Services, Workers' Compensation Board | 438 |
| Agency and Division | Administrative Rules Chapter Number |
| Karen Burton | (503) 934-0123 |
| Rules Coordinator | Telephone |
| 2601 25th St. SE, Suite 150, Salem, OR 97302 | |
| Address | |

To become effective 09/01/2014 Rulemaking Notice was published in the May 2014 Oregon Bulletin.

RULE CAPTION

Provide for filing/service of any other thing Board makes available for filing by website portal.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

438-005-0046

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 656.726(5)

Other Authority:

Statutes Implemented:

ORS 656.726(5)

RULE SUMMARY

As part of its comprehensive review of OAR Chapter 438 rules, the Board invited public comment, which ultimately resulted in the appointment of an Advisory Committee on Technology. Among other recommendations, the Technology Committee suggested that the Board consider expanding the types of materials that could be electronically filed in the future. After considering this suggestion, the Board proposed to amend OAR 438-005-0046(1) and (2) to provide for website portal filing/service of "any other thing" that it makes available for filing by website portal. The Board proposed such an approach to permit website portal filing/service of additional things as the website portal system is expanded in the future, without the need to amend OAR 438-005-0046(1), (2) to explicitly list each new thing added to the website portal.

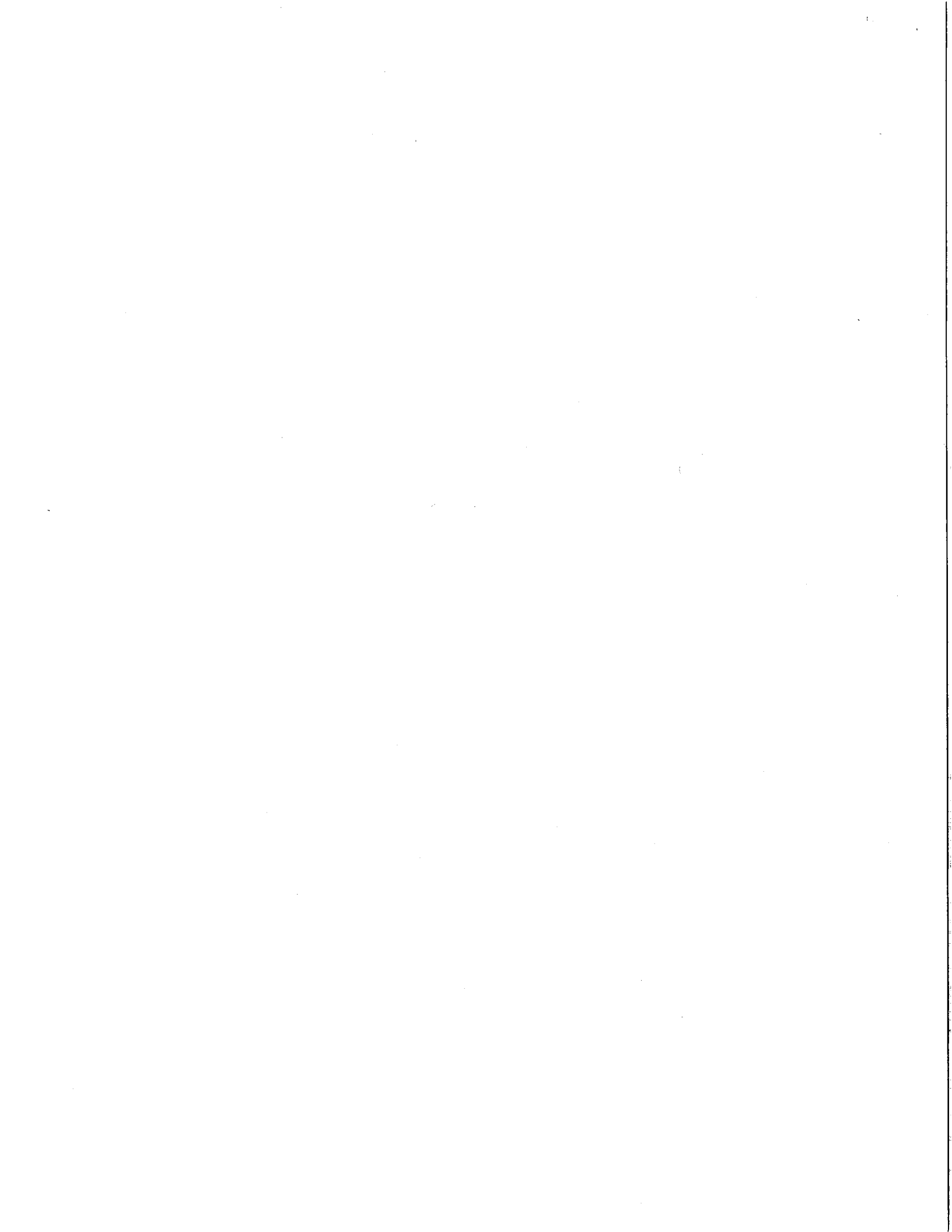
Karen Burton

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Rules Coordinator Name

Email Address

WCB 1-2014



Authorization Page

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PERMANENT ADMINISTRATIVE RULES

Department of Consumer and Business Services,
Workers' Compensation Board

438

Agency and Division

Administrative Rules Chapter Number

Karen Burton

karen.burton@state.or.us

Rules Coordinator

Email Address

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06/17/2014

Adopted on

Effective date

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Holly J. Somers

6/20/14

Authorized Signer

Printed Name

Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

438-005-0046

Filing and Service of Documents; Correspondence

(1) Filing:

- (a) Except as otherwise provided in these rules, "filing" means the physical delivery of a thing to any permanently staffed office of the Board, or the date of mailing;
- (b) In addition to the procedures otherwise described in these rules, "filing" may also be accomplished in the manner prescribed in OAR 436, division 009 or 010 for filing a request for administrative review with the Director provided that the request involves a dispute that requires a determination of either the compensability of the medical condition for which medical services are proposed or whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability;
- (c) If filing of a request for hearing or Board review of either an Administrative Law Judge's order or a Director's order finding no bona fide medical services dispute is accomplished by mailing, it shall be presumed that the request was mailed on the date shown on a receipt for registered or certified mail bearing the stamp of the United States Postal Service showing the date of mailing. If the request is not mailed by registered or certified mail and the request is actually received by the Board after the date for filing, it shall be presumed that the mailing was untimely unless the filing party establishes that the mailing was timely;
- (d) If a settlement stipulation, disputed claim settlement, or claim disposition agreement results from a mediation, "filing" also includes the physical delivery of the settlement stipulation, disputed claim settlement, or claim disposition agreement to the Administrative Law Judge who mediated the settlement or agreement, regardless of location.
- (e) The following things may be filed by electronic mail (e-mail) pursuant to subsection (f) of this section:
 - (A) Request for hearing;
 - (B) Request for Board review of an Administrative Law Judge's order;
 - (C) Request for Board review of a Director's order finding no bona fide medical services dispute;
 - (D) Request for extension of the briefing schedule under OAR 438-011-0020;
 - (E) Request for waiver of the Board's rules under OAR 438-011-0030; or
 - (F) Response to issues under OAR 438-006-0036.
- (f) To electronically file the requests listed in subsection (e) of this section by e-mail, a party shall:
 - (A) Send an e-mail to: request.wcb@state.or.us; and
 - (B) Attach an electronic copy of a completed Workers' Compensation Board "Request for Hearing Form," or a completed request for Board review, or a completed request for extension of the briefing schedule, or a completed request for waiver of the Board's rules, or a completed Board "Response to Issues Form." These attachments must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg).
 - (C) For purposes of this rule, the date of an electronic filing is determined by the date the Board receives the appropriate completed electronic form which must be in a format of Microsoft Word 2000® (.doc, .txt, .rtf), Adobe Reader® (.pdf), or formats that can be viewed in Internet Explorer® (.tif, .jpg). An electronic filing under subsections (e) and (f) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed on that date.
- (g) The following things may be filed by website portal pursuant to subsection (h) of this section:
 - (A) All actions described in subsection (e) of this section; and
 - (B) Filing of any other thing that the Board makes available for filing by website portal.
- (h) To electronically file the things listed in subsection (g) of this section by website portal, a party shall:
 - (A) Register as a "user" of the portal at: <https://portal.wcb.oregon.gov>; and
 - (B) For subparagraph (g)(A) of this section, as appropriate, complete the electronic version of the Workers' Compensation Board "Request for Hearing Form," or complete a request for Board review, or complete a request for extension of a briefing schedule, or complete a request for waiver of the Board's rules, or complete a Board "Response to Issues Form"; or
 - (C) For subparagraph (g)(B) of this section, complete the appropriate items on the website portal.
 - (D) For the purposes of this rule, the date of a portal filing is determined by the date the Board receives the appropriate portal version of the form.
 - (E) A portal filing under subsections (g) and (h) of this section received by the Board by 11:59 p.m. of a non-holiday, weekday is filed as of that date.
- (i) "Filing" includes the submission of any document (other than the exchange of exhibits and indexes under OAR 438-007-0018) to any permanently staffed office of the Board by means of a telephone facsimile communication device (FAX) provided that:

- (A) The document transmitted indicates at the top that it has been delivered by FAX;
- (B) The Board's facsimile transmission number is used; and
- (C) The Board receives the complete FAX-transmitted document by 11:59 p.m. of a non-holiday, weekday.
- (j) Except for the documents specified in subsections (c), (e), or (g) of this section, filing of any other thing required to be filed within a prescribed time may be accomplished by mailing by first class mail, postage prepaid. An attorney's certificate that a thing was deposited in the mail on a stated date is proof of mailing on that date. If the thing is not received within the prescribed time and no certificate of mailing is furnished, it shall be presumed that the filing was untimely unless the filing party establishes that the filing was timely.

(2) Service:

(a) A true copy of any thing delivered for filing under these rules shall be simultaneously served personally, by means of a facsimile transmission, by means of e-mail or website portal regarding requests, responses, or any other thing filed under OAR 438-005-0046(1)(e), (f), (g), or (h), or by mailing by first-class mail, postage prepaid, through the United States Postal Service, to each other party, or to their attorneys. Service by mail is complete upon mailing, service by facsimile transmission is complete upon disconnection following an error-free transmission, and service by e-mail or website portal regarding requests, responses, or any other thing filed under OAR 438-005-0046(1)(e), (f), (g), or (h), is complete upon successful transmission, provided that the copy is sent in a format readable by the recipient;

(b) Any thing delivered for filing under these rules shall include or have attached thereto either an acknowledgment of service by the person served or proof of service in the form of a certificate executed by the person who made service showing personal delivery, service by means of a facsimile transmission, service by means of e-mail or website portal regarding requests, responses, or any other thing filed under OAR 438-005-0046(1)(e), (f), (g), or (h), or deposit in the mails together with the names and addresses of the persons served.

(3) Correspondence. All correspondence to the Board shall be captioned with the name of the claimant, the WCB Case number and the insurer or self-insured employer claim number. Correspondence to the Hearings Division shall also be captioned with the date of the hearing and name of the assigned Administrative Law Judge, if any.

(4) Signatures.

(a) Any thing delivered for filing under these rules shall include the signature of the party or the party's attorney, which may be provided in writing, by facsimile transmission, by electronic scanning, by the website portal, or by other electronic means.

(b) The user name and password required to file a document with the Board by means of the website portal shall constitute the signature of the filer and for any other purpose for which a signature is required.

(c) Except for documents filed under subsection (b) of this section, any document filed by electronic means must include a signature block that includes the printed name of the filer, preceded by an electronic symbol intended to substitute for a signature (such as a scan of the filer's handwritten signature or "s/") in the space where the signature would otherwise appear.

(d) Any order, notice, or any other document issued by an Administrative Law Judge or a Board Member may include his/her signature in writing, by facsimile transmission, by electronic scanning, by the website portal, or by other electronic means permitted under the Board's rules.

(e) Any electronically transmitted signature shall have the same force and effect as an original signature, provided that the electronically transmitted signature is executed or adopted by a person with the intent to sign the document as prescribed in ORS Chapter 84 (Uniform Electronic Transactions Act).

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 656.726(5)