

**ADMINISTRATIVE ORDER NO. 25-1990
EFFECTIVE JANUARY 1, 1991**

**OREGON DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 55**

CERTIFICATION OF CLAIMS EXAMINERS

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EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 55

436-55-001 Authority for Rules

These rules are promulgated under the Director's authority pursuant to ORS 656.726 and Section 52, Chapter 2, Oregon Laws 1990, Special Session.

Hist: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91

436-55-002 Purpose of Rules

The purpose of these rules is to establish the requirements for the certification of workers' compensation claims examiners and programs pursuant to ORS Chapter 656.

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436-55-003 Applicability of Rules

(1) These rules are effective January 1, 1991, and apply to all persons processing workers' compensation claims, and any person or program providing training to claims examiners in ORS Chapter 656 and Oregon Administrative Rules promulgated by the Director pursuant to that chapter, for the purpose of obtaining or maintaining certification.

(2) These rules carry out the provisions of Section 52, Chapter 2, Oregon Laws 1990, Special Session.

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436-55-005 Definitions

Except where the context requires otherwise, these rules are governed by the following definitions:

(1) "Board" means the Workers' Compensation Board of the Department of Insurance and Finance.

(2) "Claims examiner" means anyone who has primary responsibility for decision making or benefit determination in a claim. This would include those who decide compensability of new claims or aggravations, calculate benefits, authorize payments, or who represent employers by direct contact with the Department or Board. This definition does not include attorneys representing employers before the Department or Board, or those who primarily perform clerical functions.

(3) "Claims Examiner Trainee" means a person hired by an insurance company, self-insured employer or claims adjusting service company to decide compensability of new claims or aggravations, calculate benefits, or authorize payments, who does not have a current certification as a claims examiner. Such a person may have no previous experience as an Oregon Workers' Compensation claims examiner, or have experience as an Oregon Workers' Compensation claims examiner but not within the last twelve months. A claims examiner trainee must work under the direct supervision of a certified claims examiner.

(4) "Department" means the Department of Insurance and Finance.

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(5) "Director" means the Director of the Department of Insurance and Finance or the Director's delegate.

(6) "Division" means the Workers' Compensation Division of the Department of Insurance and Finance.

(7) Insurer means a guaranty contract insurer, an employer that has been certified under ORS 656.430 who directly administers claims, or a service company who administers claims for a guaranty contract insurer or an employer who has been certified under ORS 656.430.

(8) "Process Claims" means the receipt and review of, and payment of compensation on, workers' claims.

(9) "Temporary Claims Examiner" means a person hired by an insurance company, self insured employer or service company to decide compensability of new claims or aggravations, calculate benefits, or authorize payments in Oregon workers' compensation claims for up to 90 days in any 12 month period, and who works under the direct supervision of a certified claims examiner.

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436-55-008 Administrative Review

(1) Any party as defined by ORS 656.005(20) aggrieved by a proposed order or proposed assessment of civil penalty of the Director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting said hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within twenty (20) days of receipt by the aggrieved person of notice of the proposed order or assessment. No hearing shall be granted unless the request is received by the administrator within said twenty (20) days of receipt of notice.

(2) Any party as described in section (1) aggrieved by an action or order of the Director or division pursuant to these rules, other than as described in section (1), where such action or order qualifies for review by hearing before the Director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review shall be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the action or order is contested and is received by the administrator within thirty (30) days of the action or from the date of mailing or other service of an order.

(b) The hearing shall be conducted by the Director or the Director's designee.

(c) Any order in a contested case issued by another person on behalf of the Director is a

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proposed order subject to revision by the Director. The Director may allow objections to the proposed order to be filed for the Director's consideration within thirty (30) days of issuance of the proposed order.

(3) Any party described in section (1) aggrieved by an action taken pursuant to these rules by another person, except as described in sections (1) and (2) above, may request administrative review by the division on behalf of the Director. The process for administrative review of such matters shall be as follows:

(a) The request for administrative review shall be made in writing to the administrative review shall be made in writing to the administrator of the Workers' Compensation Division within ninety (90) days of the action. No administrative review shall be granted unless the request specifies the grounds upon which the action is contested and is received by the administrator within ninety (90) days of the contested action unless the Director or his designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) The review, including whether the request is timely and appropriate, may be conducted by the administrator, or the administrator's designee, on behalf of the Director.

(c) In the course of said review the person conducting the review may request or allow such input or information from the parties as he or she deems to be helpful.

(d) The determination by the person conducting the review will specify whether the determination constitutes a final order or whether an aggrieved party may request a contested case hearing before the Director pursuant to ORS 183.310.

(e) Any request for a contested case hearing before the Director regarding a review determination made pursuant to this section must comply with the procedures provided in section (2) above.

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436-55-010 Access to Division Certification Records

(1) The Department rules on Access of Public Records, Fees for Record Search and Copies of Public Records are found in OAR 440-005.

(2) Any person has a right to inspect non-exempt public records. The statutory right to "inspect" encompasses a right to examine original records. It does not include a right to request blind searches for records not known to exist.

(3) Pursuant to ORS 192.430 and OAR 440-05-015(1) the Director, as custodian of public records, makes the following restrictions and precautions to protect the integrity of certification records and prevent interference with the regular discharge of the Department's duties. A request to inspect or obtain copies of certification records or information from certification records shall be in writing or in person, and shall include:

(a) The name, address and telephone number of the requestor, unless the Director prescribes otherwise;

(b) A specific identification of the needed public record, or the type and format of the needed information; and

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(c) The number of copies required.

(4) For employment purposes, any party trying to determine whether a person is certified to process workers' compensation claims pursuant to these rules is exempt from making a written request.

(5) Payment of fees shall be made in advance unless later payment is approved by the Director.

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436-55-020 Initial Certification Program Requirements

(1) To become and remain a certified program, any course of training to prepare persons to process worker's compensation claims must provide instruction on the requirements of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the Director pursuant to that chapter.

(2) Each program shall provide, or require each person in the program to obtain, a copy of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the Director pursuant to that chapter.

(3) Within 30 days of completion of a training program, the trainer shall submit to the division a list of persons with their social security numbers, who satisfactorily completed the program as defined in the course outline.

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436-55-030 Continuing Education Programs

(1) Any party may provide continuing education in the form of a seminar, workshop, association meeting, forum, or similar course, if it meets the requirements of these rules and has been approved for certification.

(2) Applications for certification of continuing education shall be in the form and format prescribed by the Director and shall indicate the number of hours that will be dedicated to providing training as described in OAR 436-55-020. Credit for continuing education will only be given for the number of hours specified for training purposes.

(3) Within 30 days of completion of continuing education, the trainer shall submit a list of persons with their social security numbers, who satisfactorily completed the continuing education.

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436-55-040 Application for Certification of Program and/or Continuing Education

(1) Any person, including insurers, may provide a certified training program to instruct persons in ORS Chapter 656 and the rules promulgated by the Director pursuant to that chapter, if the program meets all of the requirements in these rules. A training program completed between January 1, 1990 and January 1, 1991, which included at least 8 hours of training on the content of SB 1197, may receive retroactive certification if the program meets all of the requirements in these rules.

(2) Applications for certification shall be in the form and format prescribed by the

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Director.

(3) Programs shall be certified for a period of two years. Whenever the legislature amends ORS Chapter 656, or the Director promulgates rules, amended curriculae may be required to be submitted to ensure they correctly reflect the changes in the law and rules. Failure to do so will result in suspension of program certification pursuant to OAR 436-55-040.

(4) If an application for certification is disapproved, it may be resubmitted to Compliance Section at any time within one year after the initial rejection. If rejected a third time, a new application for certification may not be made until after one year has passed from the date of the third rejection.

(5) The division is not required to consider any information beyond that submitted with the application.

(6) An application will be reviewed promptly by the division, and the applicant notified of the results of the review within 30 days. If the application is incomplete, it will not be reviewed and will be returned. If the application is not complete when resubmitted, the application will be rejected.

(7) If any application is found to contain any material misrepresentation, it will be rejected. Any further applications will be rejected without review.

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436-55-050 Loss of Certification of Program and/or Continuing Education

(1) A program certification may be suspended for a period of up to 90 days when:

(a) Amended curriculum is not submitted pursuant to OAR 436-55-030 (3).

(b) Curriculum described in the application upon which certification was granted is not maintained.

(c) A list of persons who have satisfactorily completed a program is not submitted within 30 days.

(d) A copy of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the Director pursuant to that chapter, as required by OAR 436-55-020 (2), is not obtained by each person.

(2) A program certification may be revoked for a period prescribed by the Director when:

(a) Problems which led to a suspension under subsection (1) are not corrected.

(b) The program is found to be misrepresented to any person.

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436-55-060 Fees

The fee for issuing the claims examiner certification shall be as follows:

(1) The initial claims examiner certification fee shall be \$25.00.

(2) The claims examiner certification renewal fee shall be \$15.00.

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(3) The examination fee will be \$15.00.

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436-55-070 Certification of Claims Examiners

(1) Pursuant to Section 52, Chapter 2, Oregon Laws 1990, Special Session, persons with more than one year of workers' compensation claims examination experience on January 1, 1991, shall be certified by the Director as claims examiners without having to undergo the certification program for claims examiners. To qualify for certification in this manner, a person shall:

(a) Have one year of experience processing Oregon workers' compensation claims.

(b) Maintain a current copy of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the Director pursuant to that chapter.

(c) Submit a completed application to the Division with a fee pursuant to OAR 436-55-060 (1).

(d) Apply for certification prior to January 1, 1992.

(2) Persons with less than one year of Oregon workers' compensation claims examination experience on January 1, 1991, shall have until January 1, 1992, to:

(a) Satisfactorily complete a certification program; or

(b) Pass the appropriate examination; and

(c) Submit a completed application for certification with the Director.

(3) Claims Examiner Trainees, as defined in OAR 436-55-005, may work without certification for a period not exceeding twelve months.

(4) Notwithstanding sections (1) and (2), claims examiners shall be certified after satisfactorily completing a certified program or passing an examination prescribed by the Director pursuant to 436-55-080. An application for certification shall be filed with the division accompanied by a fee pursuant to 436-55-060 (1).

(5) Certification will be for a two year period.

(6) A certification shall be renewed by providing verification of 24 hours of certified continuing education, and submitting a fee pursuant to 436-55-060 (2). At least eight of the 24 hours of continuing education shall provide instruction in statutes and rules, which have changed since the last certification, unless otherwise prescribed by the Director.

(7) An individual, who plans and conducts a certified continuing education training, will be considered to have completed that same training for the purpose of meeting the continuing education requirements. An individual may apply a maximum of 12 hours of training functions to meeting the requirements during each certification period.

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436-55-080 Examinations

(1) Certification examinations for claims examiner will be developed and administered by the Workers' Compensation Division.

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(2) Any person desiring to receive a claims examiner certification by examination shall make application to the division. The application shall include name, address, Social Security number, date of birth and a statement verifying that the applicant has a copy of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the Director pursuant to that chapter. The fee pursuant to OAR 436-55-060 is due at the time of examination.

(3) The Director shall give examinations at such times and places within the state as the Director deems necessary to reasonably serve the interests of all concerned. The examination shall be given at least once every six months in Salem, if applications for examination are pending.

(4) Any person taking an examination may use a copy of ORS Chapter 656 and the Oregon Administrative Rules promulgated by the Director pursuant to that chapter during the examination.

(5) A passing score on an examination shall be 80 percent or greater.

(6) Certification will be denied if it is determined that a person used dishonest or fraudulent means to complete an examination.

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436-55-090 Loss of Individual Certification

The Director may suspend or revoke a person's certification if the Director finds the person misrepresented the one year of claims examination experience required for automatic certification pursuant to OAR 436-55-080.

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436-55-100 Insurer Requirements

(1) Insurers shall only employ claims examiners who are certified or that qualify as a claims examiner trainee or a temporary claims examiner.

(2) Insurers are required to maintain a list of persons processing workers' compensation claims. The list shall be subject to inspection by the Director. The Director may require submission of such lists in lieu of on-site inspection.

(3) Insurers may be subject to civil penalty under OAR 436-55-110 in the following circumstances:

(a) Failing to maintain the list required by this rule.

(b) Failing to report as may be required pursuant to this rule.

(c) Misrepresenting any information to a worker, employer or the Director related to the certifications of its employees.

(d) Hiring claims examiners who are not certified or do not qualify as a claims examiner trainee or a temporary claims examiner.

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436-55-110 Assessment of Civil Penalties

(1) Pursuant to ORS 656.745 the Director shall assess a civil penalty against an insurer

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which fails to comply with these rules.

(2) Pursuant to ORS 656.447 the Director may suspend or revoke the authorization of an insurer to issue guaranty contracts if the insurer repeatedly or intentionally fails to comply with these rules or orders of the Director issued pursuant to ORS Chapter 656 and these rules.

(3) The following penalty schedule shall be applied when the Director finds the insurer has failed to comply with these rules:

(a) \$1,000 per claims examiner who is not certified or does not qualify as a claims examiner trainee or a temporary claims examiner.

(b) \$1,000 per incident for misrepresenting any information to a worker, employer or the Director related to the certifications of employees. Subsequent incidents within a one year period will result in a \$2,000 penalty.

(4) The following penalty schedule may be applied when the Director finds the insurer has failed to comply with these rules:

(b) Up to \$500 for failing to maintain the list required by this rule.

(c) Up to \$500 for failing to report as required pursuant to this rule.

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436-55-120 Suspension and Revocation of Authorization to Issue Guaranty Contracts

(1) Pursuant to ORS 656.447, the Director may suspend or revoke the insurer's authority to issue guaranty contracts upon a determination that the insurer has failed to comply with its obligations under such contract or that it has failed to comply with the rules or orders of the Director.

(2) For the purpose of this rule:

(a) "Suspension" and its variations means a stopping by the Director of the insurer's authority to issue new guaranty contracts for a specified period of time.

(b) "Revocation" and its variations means a permanent revocation by the Director of an insurer's authority to issue guaranty contracts.

(c) "Show-cause hearing" means an informal meeting with the Director or designee in which the insurer shall be provided an opportunity to be heard and present evidence regarding any proposed orders by the Director to suspend or revoke an insurer's authority to issue guaranty contracts.

(3) Suspension or revocation under this rule will not be made until the insurer has been given notice and the opportunity to be heard through a show-cause hearing before the Director and "show cause" why it should be permitted to continue to issue guaranty contracts.

(4) A show-cause hearing may be held at any time the Director finds that an insurer has failed to comply with its obligations under a guaranty contract or that it failed to comply with rules or orders of the Director.

(5) Following a show-cause hearing, the Director may rescind the proposed order if the insurer establishes to the Director's satisfaction its ability and commitment to comply with ORS

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Chapter 656 and these rules.

(6) A suspension may be in effect for a period of up to 18 months. A suspended insurer may continue to serve existing accounts and renew any existing policy, unless the policy lapses or is canceled during the period of suspension.

(7) After 12 months of the suspension has elapsed, the division may audit the performance of the insurer. If the insurer is in compliance, the administrator may request the Director to lift the suspension before the 18 months has elapsed. If the insurer is not in compliance, the administrator may request the Director revoke the insurer's authority to issue guaranty contracts.

(8) When an insurer's authority to issue guaranty contracts has been revoked, the insurer may serve an existing account only until the policy lapses, is canceled or until the next renewal date, whichever first occurs.

(9) After a revocation of an insurer's authority to issue guaranty contracts has been in effect for five (5) years or longer, it may petition the Director to restore its authority by submitting a plan in the form prescribed by the Director, demonstrating its ability and commitment to comply with the workers' compensation law, these rules and orders of the Director.

(10) Appeal of proposed and final orders of suspension and revocation issued under this rule may be made as provided in OAR 436-55-008.

(11) Any order of suspension or revocation issued by a referee or other person pursuant to ORS 656.447 and this rule is a preliminary order subject to revision by the Director.

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