



Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services
Workers' Compensation Division
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Judy Johnson, Attorney at Law
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Subject: Request for rulemaking to declare the RS-4i® non-compensable

Dear Ms. Johnson:

This is to notify you that the Workers' Compensation Division will not take further rulemaking action on your petition, dated October 29, 2004, to declare interferential stimulation, marketed as the RS-4i®, non-compensable. You proposed the exclusion under ORS 656.245(3) and OAR 436-010-0300 on the grounds that this treatment is unscientific, has not been proven to be effective, and is experimental. As an alternative, you requested that reimbursement for this treatment be limited to that allowed for transcutaneous electrical nerve stimulation (TENS).

In accordance with ORS 183.390 and OAR 137-001-0070, the division entered into rulemaking and also requested public comment on the petition. At the May 20, 2005 meeting of the Medical Advisory Committee, the manufacturer of the RS-4i®, RS Medical, testified that their device has two unrelated modalities, interferential stimulation and neuromuscular stimulation. Your petition did not contend that neuromuscular stimulation, as a modality, should be excluded from compensability.

The division considered the second part of the petition, the alternative that reimbursement for the RS-4i® be limited to that allowed for TENS. ORS chapter 656 does not provide the director authority to limit prices based on efficacy. ORS 656.248 requires the director to adopt medical fee schedules and lists the resources that may be used to establish the fee schedules. These resources do not provide any basis for setting fees based on relative efficacy of treatments.

By separate notice, the Workers' Compensation Division has denied your petition to declare all forms of interferential stimulation non-compensable. Therefore, there is no longer any basis to move forward with rulemaking on the RS-4i®.

If you disagree with this decision you may request a contested case hearing before the Office of Administrative Hearings. Your request must be in writing, specify the reasons you disagree with this decision, and mailed or delivered to the Workers' Compensation Division within 30 calendar days from the date of this letter. Send your request to the Technical Coordinator, Policy Section, Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem OR 97309-0405.

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

CC: RS Medical
File