

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION

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**Certification of Claims Examiners  
Oregon Administrative Rules  
Chapter 436, Division 055**

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[Bracketed 8 point text is deleted]; **bold/underlined text is added**

**Effective January 1, 2006**

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
CERTIFICATION OF CLAIMS EXAMINERS**

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**EXHIBIT "A"  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 055**

**436-055-0001 Authority for Rules**

These rules are promulgated under the director's authority pursuant to ORS 656.726 and 656.780.

**Stat. Auth.:** ORS 656.726(3)(a) and ORS 656.780(1)  
**Hist:** Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91  
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94

**436-055-0002 Purpose of Rules**

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

**Stat. Auth.:** ORS 656.780(1)  
**Hist:** Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91  
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94  
Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

**436-055-0003 Applicability of Rules**

(1) These rules apply to the certification of all workers' compensation claims examiners on or after the effective date of these rules.

(2) The certification of any workers' compensation claims examiner valid on December 31, 1999 shall continue without expiration until December 31, 2000. However, this provision does not shorten any two year certification period.

(3) Any claims examiner certified on October 22, 1999, with a renewal date between October 23, 1999 and December 31, 1999, may present records to the insurer for renewal. The claims examiner's certification period shall be renewed for two years upon verification that the certified claims examiner met the continuing education requirements under the rules in effect on the date renewal was due, however no course taken after October 22, 1999 needs to be certified.

(4) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

**Stat. Auth.:** ORS 656.780  
**Hist:** Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91  
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94  
Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

**436-055-0005 Definitions**

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

(1) "Claims examiner" means anyone who has primary responsibility for decision making or benefit determination in a claim. This includes 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

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functions.

(2) "Claims Examiner Trainee" means a person hired by an insurance company, self-insured employer or third party administrator to decide compensability of new claims or aggravations, calculate benefits, or authorize payments, who works under the direct supervision of a certified claims examiner.

(3) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(4) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state ; an assigned claims agent selected by the director under ORS 656.054; an employer certified under ORS 656.430 that meets the qualifications of a self-insured employer under ORS 656.407; or a third party administrator.

(5) "Party" includes anyone listed in ORS 656.005(21) and a third party administrator.

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

(7) "Temporary Claims Examiner" means a person with at least two years of prior claims processing experience 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, who works under the direct supervision of a certified claims examiner.

(8) "Third party administrator" means a service company who processes claims for an insurer or self-insurer under the conditions prescribed in ORS 731.475(3) and ORS 656.455(1).

**Stat. Auth.:** ORS 656.726(3)(a)

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

Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94

Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

**436-055-0008      Administrative Review**

(1) Any party aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 (section 9, chapter 170, Oregon Laws 2003). The request for hearing must be mailed or delivered to the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(2) Any party aggrieved by an action or order of the director pursuant to these rules, other than as described in section (1), where such action or order qualifies for review by hearing 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). Any party may request a contested case hearing as follows:

(a) The request for hearing must be mailed or delivered to the Administrator of the

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Workers' Compensation Division within 60 days of the action, the date of mailing, or other service of an order. The request must specify the grounds upon which the action or order is contested.

(b) The hearing shall be conducted by an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

(3) Any person aggrieved by an action taken pursuant to these rules by another person, except as described in sections (1) and (2), may request administrative review by the director as follows:

(a) The request for administrative review must be mailed or delivered to the Administrator of the Workers' Compensation Division within 90 days of the action. The request must specify the grounds upon which the action is contested.

(b) The review will be conducted by the director.

(c) The director will review the relevant information submitted by all parties.

(d) The director will issue an administrative order that specifies whether the determination constitutes a final order or whether an aggrieved party may request a contested case hearing before an Administrative Law Judge of the Office of Administrative Hearings pursuant to ORS 183.310 and the procedures provided in section (2).

**Stat. Auth.:** ORS 656.735(5) through (7); ORS 656.745(4); ORS 656.726(4)

**Stats. Implemented:** ORS 656.740 (section 9, chapter 170, Oregon Laws 2003), ORS 183.310 through 183.550, ORS 656.726

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

Amended 12/21/99 As WCD Admin. Order 99-063, eff. 01/01/00

Amended 12/3/03 as WCD Admin. Order 03-073, eff. 1/1/04

#### **436-055-0070 Certification of Claims Examiners**

(1) Claims examiners shall be certified by the insurer upon satisfactory completion of an examination which demonstrates the individual's:

**(a)** [f]Familiarity with the workers' compensation statutes[.];

**(b)** A[a]bility to navigate the administrative rules found in this chapter[, and];

**(c)** C[c]apability to perform claim processing activities[.]; **and**

**(d) For examinations on or after July 1, 2006, understanding of activities related to interactions with independent medical examination providers.**

[(a)]**(2)** Any person taking an examination may use a copy of ORS Chapter 656 and the Oregon Administrative Rules during the examination.

[(b)]**(3)** A passing score on an examination shall be 80 percent or greater.

[(c)]**(4)** Any examination completed through dishonest or fraudulent means shall be considered invalid.

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[(2)]**(5)** Certification will be for a three-year period. The certification date shall be the date of the examination.

[(3)]**(6)** [A c]Certification shall be renewed at any time during the certification period by providing verification [that]**of completion of 24 hours of training during the current certification period, to include at least:**

**(a)** [has been completed within the current certification period. At least 4 of the 24]**Four** hours of training [shall be related to changes in]**on the** workers' compensation statutes, administrative rules, and case law since the last certification[.]; **and**

**(b) For renewals on or after January 1, 2007, three hours of training related to interactions with independent medical examination providers.**

[(4)]**(7)** Training may be provided in the form of a seminar, workshop, association meeting, forum, correspondence, video or similar course. It may include any of the following subjects:

(a) Medical case management including, but not be limited to, medical terminology, basic human anatomy and interpreting medical reports.

(b) Communication skills including, but not be limited to, courses in ethics, mediation, negotiation and dealing with angry people.

(c) Instruction dealing specifically with the processing of Oregon workers' compensation claims.

Statutory authority: ORS 656.726

Statutes implemented: ORS 656.780(1)

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

Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94

Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

**Amended 12/5/05 as WCD Admin. Order 05-076, eff. 1/1/06**

**436-055-0085 Training for Interactions with Independent Medical Examination Providers**

**(1) Any training provided pursuant to 436-055-0070 or OAR 436-055-0100(4) relating to independent medical examination provider interaction must first be approved by the director.**

**(2) To be approved, a training curriculum must incorporate the following components:**

**(a) Appropriate and ethical communication with independent medical examination providers;**

**(b) Insurers' rights and responsibilities;**

**(c) Injured workers' rights and responsibilities;**

**(d) Independent medical examination providers' standards of conduct requirement;**

**(e) IME complaint process and investigations by WCD; and**

**(f) Training specific to the requirements of ORS 656.325 and OAR 436-010.**

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**(3) Any person may develop training and receive approval by the director by submitting an application in a format prescribed by the director. The application must describe the training content that meets the criteria in section (2) of this rule, and specify the number of training hours for that topic.**

**(4) The director's approval will remain in effect until the content or number of hours of training change. At that time, the person will be required to resubmit an application that meets the requirements of sections (2) and (3) of this rule.**

**(5) The division will review an application and notify the applicant of the results within 30 days of receipt of the application. The division will reject incomplete applications.**

**(6) If an application is rejected or disapproved, the applicant will be notified of the reasons. The application may be resubmitted when the reasons for the rejection or disapproval have been corrected.**

**(7) The director will maintain a registry of approved training curricula.**

Statutory authority: ORS 656.726

Statutes Implemented: Oregon Laws chapter 675, section 3; ORS 656.780(1)

History: Filed 12/5/05 as WCD Admin. Order 05-076, eff. 1/1/06

#### **436-055-0100 Insurer Duties**

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

(a) A claims examiner trainee must work under the direct supervision of a certified claims examiner, and may work for up to 12 months in this status. An individual is limited to one 12-month period as a claims examiner trainee.

(b) A temporary claims examiner must have at least two years prior claims processing experience and work under the direct supervision of a certified claims examiner. An individual may work for up to 90 days in any 12-month period as a temporary claims examiner.

(2) Insurers shall maintain a list of certified claims examiners who are employed by the insurer or who process claims for the insurer, claims examiner trainees and temporary claims examiners, and keep records sufficient to verify their certification and training. The list and records shall be subject to inspection by the director. The director may require submission of such lists and records in lieu of on-site inspection.

(3) [The] Insurers may issue an initial certification or renewal for any individual pursuant to the standards set in OAR 436-055-0070.

**(4) Insurers must ensure that training related to interactions with independent medical examination providers is provided for certified claims examiners in their employ.**

[(4)] **(5)** [The] Insurers shall not misrepresent any information to a worker, employer or the director related to the certifications of its employees.

[(5)] **(6)** Within 14 days of the termination of employment or upon receipt of a written request of a certified claims examiner, [the] **an** insurer shall provide the certified claims examiner

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a complete copy of all records verifying the most recent acknowledgement of certification and any subsequent training.

[(6)] **(7)** [The] Insurers shall retain records verifying the certification and renewal of certified claims examiners who are employed by the insurer or who process claims for the insurer for six years from its most recent acknowledgement of current certification.

Statutory authority: ORS 656.726  
Statutes implemented: ORS 656.780(1) and (2)  
History: Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91  
Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00  
**Amended 12/5/05 as WCD Admin. Order 05-076, eff. 1/1/06**

**436-055-0110      Assessment of Civil Penalties**

(1) Pursuant to ORS 656.745 the director may assess a civil penalty against an insurer 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) Pursuant to ORS 656.780 the director may assess a civil penalty against an insurer that fails to maintain or produce certification and training records or that employs anyone other than certified workers' compensation claims examiner to process workers' compensation claims. The insurer shall be subject to a penalty of not more than \$2000 per violation. Each violation, or each day a violation continues, shall be considered a separate violation.

**Stat. Auth.:** ORS 656.447(1)(a); ORS 656.745(2)(b); ORS 656.780(3)  
**Hist:** Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91  
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94  
Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00

**436-055-0120      Service of Orders**

(1) When the director imposes a sanction or assesses a penalty under the provisions of OAR 436-055-0110, the order, including a notice of the party's appeal rights, shall be served on the party.

(2) The director shall serve the order by delivering a copy to the party in the manner provided by Oregon Rules of Civil Procedure 7D, or by sending a copy to the party by certified mail with return receipt.

**Stat. Auth.:** ORS 656.740  
**Stats. Implemented:**  
**Hist:** Filed 11/30/90 as WCD Admin. Order 25-1990, eff. 1/1/91  
Amended 7/14/94 as WCD Admin. Order 94-054, eff. 9/1/94  
Amended 12/21/99 as WCD Admin. Order 99-063, eff. 01/01/00