

OREGON STATE BAR
Legislative Proposal

RE: Workers Compensation Board amendment to “Own Motion” Jurisdiction

FROM: OSB Workers Compensation Section

Legislative Contact: Steve Cotton
Phone: 1 (503) 373-8242
E-mail: stecot@saif.com

Chris Moore
Phone: 1 (541) 484-7022
E-mail: chrmo@malagon.com

This bill would amend ORS 656.267, 656.278, and 656.298.

1. PROBLEM PRESENTED

As a consequence of recent Board decisions regarding new and omitted medical condition claims a great deal of confusion has been created. The Board has decided that they have original jurisdiction over these claims rather than the Workers Compensation Board hearings division. Litigation of these cases has become difficult and confusing. Additionally, current law prohibits appeal of Board decisions made under ORS 656.278 except in a few instances. This creates the potential for the Board to interpret statute and no party has a right to appeal.

2. SOLUTION

Amend ORS 656.278, and 656.267 to make it clear that responsibility for acceptance or denial of a new or omitted medical condition claims is a matter of claims processing and rests with the insurer or self-insured employer. The proposed amendments would also make it clear that if the insurer self-insured employer issued a denial that claimant would have the right to request the hearing and litigate that hearing before the Workers Compensation Board hearings division in the same manner as if the claim were not covered by ORS 656.278. We also propose to amend ORS 656.298 to make explicit that a party may appeal any decision that the Workers Compensation board makes under ORS 656.278.

3. PUBLIC POLICY IMPLICATION

The litigation of own motion claims that involve new or omitted medical conditions would be greatly simplified, and made identical to the litigation of new or omitted medical condition claims for injured workers whose claims have not yet reached own motion status. Decisions made by the Workers Compensation Board under ORS 656.278 would be subject to the same level of review as any other decision by the Workers Compensation Board.