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Board Certified in Orthopedic Surgery

May 22, 2006

John L. Shilts  
Administrator  
Workers' Compensation Division  
350 Winter Street N.E., Room 27  
Salem, Oregon 97301-3879

RE: Written Testimony on OAR Chapter 436

Dear Mr. Shilts and Mr. Bruyns:

Please accept the following testimony for consideration of a rule change in OAR Chapter 436 regarding the dispensing of generic medications to injured workers by their treating physicians.

Please review the following material in support of this proposed removal of the statement.

### **PRODUCING THE BEST OUTCOMES**

The most important player in any workers' compensation case is the treating physician. There are studies that show that those physicians who are most experienced in the care of injured workers produce the best outcomes

Occupational medicine and occupational specialty physicians are unique provider groups that require special consideration because of the positive economic impact they have on the care of injured workers. **They are highly skilled at avoiding the pitfalls which result in over-utilization, increased administrative costs, higher rates of disability and impairment, higher rates of litigation, and overall increased medical costs**

Discounted fee schedules and discriminating against physicians in reimbursement arrangements for usual and customary, necessary medical and surgical services, has never been proven to reduce the overall medical costs of a workers' compensation claim.

Oregon's Occupational Physicians and Specialists feel that providing the largest spectrum of services possible to the worker in a single location (one stop shopping) is important in reducing the apprehension and confusion surrounding the workers' perception of the treating environment.

**EXHIBIT**  
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Everything in the ORS and OAR point to the attending physician as the decision maker and provider of comprehensive medical care to injured workers.

In the area of pharmacy, ORS 689.515 and 656.245 clearly give the attending physician the authority to dispense generic drugs to injured workers.

## **PROVISION OF PRESCRIPTION MEDICINES**

For similar reasons noted above relating to the “one stop shopping” concept and its beneficial effects on the care of injured workers, the following comments are offered on the provision of generic medications to injured workers by physicians.

Workers in the state of Oregon have the right to choose their physician provider (within the confines of any MCO contract requirements) and certain providers are licensed to dispense medications to their patients.

Under the OAR providers who are licensed to dispense generic medications in accordance with their practices must be paid similarly regardless of profession.

OAR 436-010 indicates clearly that a “medical service provider” means a person duly licensed to practice one or more of the healing arts. It also states that a “medical service” would include drugs and medicine.

It is usual and customary for insurers in the State of Oregon to pay for generic medicines dispensed from a physicians’ clinic in accordance with the fee schedule outline in OAR 436-009. The majority of workers’ compensation insurance carriers reimburse physicians for this service.

The current rule change would eliminate the only contradictory statement in all the rules and regulations relating to the provision of medications to injured workers which appears in OAR 436-010(6).

It will insure a “level playing field” for reimbursement among all carriers and eliminate fee disputes and/or the uneven provision of service to injured workers.

Speaking for myself and every other occupational specialist I have discussed this with over the past months, we strongly support this needed rule change as a step towards insuring that injured workers in our state will receive the proper medications directly from their physicians. This will facilitate educating the patient in the use of these medicines and insuring their compliance with treatment (most often with professional foreign language interpreters present). A pharmacist is skilled in explaining dosage and side effects but can’t explain to the worker the specific reasons why it is important to their recovery to take the medicine.

It will eliminate confusion, concern, and financial risk for the patient.

#### REIMBURSEMENT:

Medical providers should be paid according to OAR 436-009-0090 and not be required to be price competitive with pharmacy benefit managers (PBMs) under any circumstances. The pricing structure under which a small business (like a medical clinic) functions is vastly different from the high volume discounting of PBMs and would preclude the ability of the provider to support generic dispensing.

I have been asked by several of my occupational physician colleagues to advise the committee that even when workers are told to go to a certain large retail pharmacy to receive medicines that they have been told they must pay cash for their medicines. Either they do not get the medicines, or they experience denied or extremely delayed repayment from the carrier.

If the provider has a contracted discount for medical services in place with an MCO, the same discount should be applied to the provision of generic drugs to workers enrolled in the MCO.

The purpose of the rule change should be to assure the simplest, easiest access to medical services by the injured worker at a cost consistent with OAR 436-009-0090 and existing provider/ MCO relationships.

#### ABUSE POTENTIAL:

In conversations with MCO personnel and occupational physicians, there is a valid concern for the potential abuse of this rule by it's over zealous application by providers whose practice patterns might lead to over prescribing . We propose that the application of this rule be limited to Category 3 narcotics (Hydrocodone/APAP, Codeine/ APAP) and below, muscle relaxants, anti-inflammatories, antibiotics, and non-narcotic analgesics.

Medical providers should not be permitted to dispense Category 2 narcotics such as Oxycodone, Oxycontin, Meperidine, or MS Contin, from their offices.

I believe the changes proposed for OAR 436-010-230 will have a very positive impact on reducing the costs to the workers' compensation system.

Any negative impact on PBM programs will be more than offset by improved outcomes in medical treatment, time loss, and impairment by providing a supportive and efficient method of meeting the needs of the injured workers.

Those of us who specialize in the care of injured workers understand the benefits of the "one stop shopping" concept and its mitigating effect on the adverse outcomes in workers' compensation claims.

Eliminating the ambiguity from this rule would likely impact only those few physicians in Oregon who do the highest volume of injured-worker care. The possibility of large numbers of physicians providing unregulated services would not be a factor.

Thank you for considering these issues.

Sincerely,

*John Di Paola, M.D.*

Orthopedic Surgeon

(Electronic signature – reviewed)

cc: Fred Bruyns, Rules Coordinator, P.O. Box 14480 Salem, Oregon 97309-0405

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