

# MEMORANDUM

October 31, 2005

To: Fred Bruyns, Rules Hearing Officer

From: Robert Hamre, Manager  
Investigations and Sanctions Unit *Robert Hamre*

Subject: Proposed OAR 436-060-0135

On September 29, 2005, the Oregon Supreme Court ruled on the case of Marvin E. Lewis. The ruling reversed a Court of Appeals decision that allowed the insurer to deny the claim due to the injured worker's noncooperation in an independent medical examination (IME). The Supreme Court concluded that only the sanction of suspension under ORS 656.325(1)(a), not the sanction of claim denial under ORS 656.262(13) and (14), applies to a claimant's noncooperation in an IME.

Proposed OAR 436-060-0135(5) describes the sanction of claim denial under ORS 656.262 as noted above, and it prescribes the notification language that insurers must send to injured workers for whom the insurer has scheduled an IME. The Workers' Compensation Division supports amending proposed OAR 436-060-0135 to delete section (5) in its entirety, in order to remain consistent with the ruling of the Court.

Proposed OAR 436-060-0135(6) also contains language that exclusively applies to sanctions for noncooperation in an IME, and we support the deletion of that language as well, as noted in the attached document.

Proposed OAR 436-060-0135(3) contains a reference to proposed section (5). This can be eliminated if section (5) is deleted as recommended, and the attached document also reflects this change.

Pursuant to the ruling in the Lewis case, the administrative rules applying to the sanctions available to insurers under ORS 656.325(1)(a) are contained in proposed rule OAR 436-060-0095, which we recommend remain as proposed.

EXHIBIT

3