CIRCULAR LETTER NO. 279

MASSACHUSETTS DEPARTMENT OF INDUSTRIAL ACCIDENTS
OFFICE OF EDUCATION AND VOCATIONAL REHABILITATION

TO: ALL INTERESTED PERSONS SERVING AS LEGAL REPRESENTATIVES TO PARTIES IN PROCEEDINGS BEFORE THE INDUSTRIAL ACCIDENT BOARD

RE: OEVR CONSENTS TO LUMP SUM SETTLEMENTS

DATE: JULY 1, 1995

Please be advised that 452 CMR 4.10 provides that a request for consent of the Office of Education and Vocational Rehabilitation (OEVR) to a proposed lump sum settlement in a matter where OEVR has determined suitability for vocational rehabilitation services requires submission of a letter to OEVR **two weeks** in advance of the lump sum settlement proceeding. This requirement, along with other pertinent information, has been previously publicized by this office by the attached memorandum which was first issued on February 1, 1993 and subsequently re-issued August 24, 1994.

The letter is to be directed to the attention of the OEVR Director and must properly identify the case, including the date and region of the lump sum settlement conference. The letter must also set out the reason(s) why consent is to be granted. In considering the granting of consent to settle, OEVR will continue to be guided by its mission of promoting the restoration of injured employees to suitable employment.

If the insurer has agreed to provide further vocational rehabilitation services pursuant to an Individualized Written Rehabilitation Plan (IWRP), this agreement should also be incorporated into the lump sum settlement by reference in the narrative of the settlement document. However, regardless of whether an employee intends to pursue vocational rehabilitation services, any alleged waiver by the employee of such rights is inconsistent with the statute and should not appear on any documentation of the lump sum agreement.

So that OEVR may be able to service all parties effectively and professionally, every effort will be made to adhere to these requirements.

Up-to-date information regarding the status of lump sum suitability determinations and departmental records of liens can be obtained by contacting the Disability Analyst supervisor at (617) 727-4900 ext. 268.

PROCEDURE FOR LUMP SUM
INTERACTION WITH O.E.V.R.

PART A

As long as an employee has been **deemed suitable** by the Office of
Education and Vocational Rehabilitation (O.E.V.R.) he/she is
considered active and will need consent from the Director of
O.E.V.R. to lump sum the case.

Please submit a letter at least <u>2 weeks</u> prior to lump sum
conference which includes the following information:

1. Employees name.
2. DIA Board number.
3. Date of lump sum conference.
4. Region of lump sum conference.
5. Reason(s) as to why a review for consent is being requested.
   To state that your client simply wants to settle is not
   sufficient.

The Director of OEVR determines if a consent is warranted on
a case by case basis.

NOTE: Your can confirm the status of VR with the Disability
Analyst at the DIA prior to the Lump sum conference.

PART B

A written consent from O.E.V.R. is not required as a precedent to
the validity of the lump sum agreement if the following apply:
1. No Determination has been made with respect to employee's
   suitability for VR pursuant to §30G.
2. The employee has been found <u>not suitable</u> by O.E.V.R. pursuant
   to §30G.
3. The employee has returned to continuous employment for a
   period of six or more months.
4. Employee has completed an approved rehabilitation plan (IWRP)

ADDENDUM TO LUMP SUM APPROVAL

THIS FORM MUST BE COMPLETED FOR THE LUMP SUM PAPERS TO BE COMPLETE
FOR ALL INJURIES AFTER NOVEMBER 1, 1986.

IF PART A above applies you must have the signature of the
O.E.V.R. Director on the VR consent form or an administrative
judge/administrative law judge can override by order or decision.

If PART B above applies you need only check the proper box,
confirmed by OEVR, and have claimant, claimant's counsel and
insurer's counsel signatures and addresses.