KSIA

KANSAS SELF-INSURERS ASSOCIATION

SERVING THE WORKERS' COMPENSATION NEEDS OF KANSAS EMPLOYERS SINCE 1994

TESTIMONY

TO: HOUSE COMMERCE COMMITTEE

FROM: TONY ANDERSEN, DIRECTOR
KANSAS SELF INSURERS ASSOCIATION

RE: SB 187

DATE: MARCH 14, 2013

Chairman Kleeb, members of the committee, thank you for the opportunity to testify today. My name is Tony Andersen, and I am an attorney with McAnany Van Cleave and Phillips. I am appearing today on behalf of the Kansas Self Insurers Association (KSIA). I am on the Board of KSIA. KSIA represents both public and private employers who self-insure for workers compensation, as well as group funded pools. KSIA strongly supports SB 187.

There are several issues with the current selection and retention processes for workers compensation Administrative Law Judges (ALJs) and Board of Appeal members. These are addressed by SB 187.

First, the current selection process is left to representatives of two groups that do not represent the majority of Kansans. On one side is the AFL-CIO and on the other is the Kansas Chamber. While working in good faith, these groups often find themselves polarized in their views. SB187 would increase the participants in the selection process that share a wider range of views and represent more Kansans affected by the workers compensation system.

Second, with only two organizations involved in the process, only absolute agreement between the two permits any appointment. Thus, a qualified candidate can be excluded by one side or the other for any number of reasons or no reason at all. This can lead to appointment of not the best qualified, but the least objectionable or least well known candidate. With more participants in the process under SB 187, well-qualified candidates should fare better in the selection process.

Third, the current system lacks any security of reappointment for an ALJ or Board member. Judges and Board members are appointed to four year terms. At the end of their term, the ALJ or Board member reapplies for their position. SB 187 creates a mechanism for reappointment. This creates some security for judges and Board members and removes a disincentive to those who would consider serving.

Finally, the financial impact of workers compensation decisions is enormous, and has a direct impact on both employers and employees. It is imperative that we have highly qualified applicants who want to serve in these positions and a process that pulls the most skilled applicants from that pool of candidates. SB 187 accomplishes that objective by increasing the compensation for Judges to make the positions more attractive to potential applicants. This increase is paid entirely by assessments on employers and

carriers, requiring no money from the State's general fund. Even though this additional cost will be borne by the likes of KSIA's members, KSIA believes this investment is a small price to pay for high quality candidates.

KSIA believes the Kansas workers compensation system will be greatly strengthened by the changes contained in SB 187. KSIA is excited about the opportunity to be a part of the selection process and helping ensure that Kansas workers compensation laws are interpreted by a high quality slate of ALJs and Board of Appeal members.

Thank you for the opportunity to appear in support of SB 187. I'll be happy to stand for questions at the appropriate time.

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The Hand Center
ORTHOPAEDICS OF THE HAND & UPPER EXTREMITY

To: Members of the Kansas Legislature

Brief Overview of AMA *Guides* to the Evaluation of Permanent Impairment, Sixth Edition

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Disclaimer: I have been a contributor to the AMA *Guides* 4th, 5th, and 6th edition and I am on the editorial staff of the AMA *Guides* Newsletter. I am a volunteer faculty member for many professional organizations that teach how to use the AMA Guides (for example AADEP, AAOS, ACOEM, ODG) and I am an author and editor of books and materials for which I receive a royalty. I do not receive any direct royalty from the sales of the AMA Impairment *Guides* or the Newsletter. This overview is partially based on materials made available to me through my work with the AMA and are used with the AMA's permission.

Summary
The Sixth Edition of the **AMA *Guides* to the Evaluation of Permanent Impairment** (*Guides*) provides a step forward in our understanding of impairment and disability. Criticisms of previous editions were address by the authors in the Sixth Edition. The Sixth Edition allows for rating conditions that could not be clearly and accurately rated previously using the Fifth or earlier Editions. Each new edition reflects an increased understanding of the science and the improvements from appropriate medical or surgical treatment. The Sixth Edition is not perfect. As the Sixth Edition is used, additional questions and concerns will develop. The AMA has developed a supplement to the AMA *Guides*, the AMA *Guides* Newsletter that is published 6 times per year. The AMA *Guides* Newsletter is used by the AMA to address these questions and concerns and help physicians consistently and appropriately used the *Guides*. Articles in the Newsletter are then used to improve future editions. The *Guides* Newsletter should be considered an integral part of the AMA *Guides*.

Introduction

The American Medical Association's *AMA Guides to the Evaluation of Permanent Impairment (AMA Guides)* are the recognized international standard for assessing impairment. The Sixth

Edition,[1] published in 2007, introduced new approaches to medical ratings of permanent impairment (PI), a key component in determining permanent impairment and partial disability awards (PPD) for workers' compensation (WC) and other benefit programs. Attached is a listing of "Who uses the AMA Guides™ Sixth Edition".

ICF Model

In 2001, the World Health Organization (WHO) published the *International Classification of Functioning, Disability and Health (ICF)*[2] to replace the earlier and outdated *International Classification of Impairments, Disabilities and Handicaps (ICIDH)*.[3] This new system of classification of disease and disability embodies the biopsychosocial model of disease and depicts the interactive relationship and potential determinants of disability for any individual with a health condition, disorder, or disease.

The ICF recognizes that the normal state for individuals includes a range of variability in *body functions and body structures*, and that individuals also exhibit a normal range of variance in their ability to execute an *activity* (task or action within their personal sphere) and *participation* (involvement in life situations.) The ICF defines *impairments* as problems in body function or structure such as a significant deviation or loss from normal; *activity limitations* are difficulties an individual may have in executing activities and *participation restrictions* are problems an individual may experience in their involvement in life situations.

The Sixth Edition has adopted the ICF terminology, definitions, and conceptual framework for disablement to replace the ICIDH terminology of earlier editions. They define *impairment rating* as a "consensus-derived percentage estimate of loss of activity reflecting severity for a given health condition and the degree of associated limitations in terms of Activities of Daily Living (ADLs)". In so doing, they are promoting metrics specific to the medical (eg, anatomical, physiological) aspects of organ system pathology and disease and to their potential effects on basic human functioning (ie mobility and basic self-care).

Five changes to the new *AMA Guides Sixth Edition*

Periodic advances in medical and surgical care and associated improvements in functional outcomes with treatment of disabling conditions need to be taken into account when developing and maintaining impairment rating guidelines. Furthermore, criticisms of earlier editions of the *AMA Guides* remain largely unanswered and inadequately addressed by the Fifth Edition and earlier editions of the *AMA Guides*. See, for example, the following unanswered criticisms[2]:

- "Confusing, inconsistent, and antiquated terminology of disablement."
- "Inadequate evidence-base."
- "Ratings fail to reflect perceived or actual loss of function."
- "Validity and reliability of ratings remains questionable."
- "Lack of internal consistency."

In addition, the Fifth Edition has major inadequacies in its own right. These included gross inconsistencies across organ systems in terms of methodology, magnitude of ratings, treatment

outcomes, number of rating classes, and even whether or not to rate impairment at all. The problem of how to rate mental and behavioral disorders was left unresolved in the Fifth and earlier editions. There is a general consensus that pain ratings were poorly handled in the Fifth edition. There was lack of attention to activities of daily living (ADLs) although their measurement is implied as part of the AMA definition of impairment rating – this is particularly problematic in the musculoskeletal organ systems (Spine, Upper, and Lower Extremity), which comprise the majority of conditions towards which the *AMA Guides* is typically applied.[3]

The Sixth Edition maintained a focus upon and inclusion of the four essential elements of physician evaluation and reporting about their patients as follows:

- What is the clinical problem (diagnosis)?
- What difficulty does the patient report (symptoms, functional loss)?
- What are the examination findings?
- What are the results of clinical studies?

In order to address the above mentioned criticisms directly, the *AMA Guides* Sixth Edition embraced five axioms of change delimited below:

- Adopt the terminology and biopsychosocial model of disablement of the *International Classification of Functioning, Disability and Health (ICF)*[2] to replace the outdated terminology of the *International Classification of Impairments, Disabilities and Handicaps (ICIDH),*[3] which is imbedded in the Fifth and earlier editions of the *AMA Guides.*
- Functional (ADL-based) assessment is introduced into impairment ratings in general. The Sixth Edition has adopted an ADL-based functional history and ordinal measures of ADL assessment as important modifiers of impairment ratings where applicable, and for musculoskeletal organ systems in particular.
- Changes were needed to promote internal consistency. In response, Sixth Edition has adopted a uniform ICF-based template utilizing five functionally-based impairment classes across all organ systems.
- There is increased emphasis upon the diagnosis-based approach to impairment ratings, and for musculoskeletal organ systems in particular, whereby a broader array of diagnoses are available, buttressed by a higher resolution of diagnostic criteria to choose from. This enables the impairment classes to be defined more precisely with improved resolution of impairment grades within a given impairment class, thereby promoting transparency and ostensibly improving the reliability and reproducibility of the ratings themselves.
- It remains difficult to promote an improved evidence base in support of the magnitude of the rating percentages themselves, given the limited research actually done on this topic. In fact, the impairment percentages currently in use are largely driven by consensus and historical precedent. Rather, by moving towards an increased emphasis on diagnosis-based rating

criteria, the AMA has enabled the ongoing advancement of the evidence-based foundation for these diagnostic criteria over time.

Diagnosis-based impairment (DBI) methodology simplifies rating for most conditions

The DBI methodology adopted for *AMA Guides* Sixth Edition is an outgrowth of the diagnosis-related estimate (DRE) approach of earlier editions with important additions and changes, which are evident in the musculoskeletal organ system in particular. To illustrate, using the musculoskeletal organ system, a uniform platform now has been adopted which applies a template (grid) with five columns for functionally-based impairment classes (classes 0 – 4) patterned after the ICF. Whereas all organ systems can potentially be viewed within this scheme, not all conditions within a given organ system will qualify for the higher class ratings. Accordingly, the conditions are hierarchically arranged under the left most column headings according to rows beginning with the least severe ratable conditions at the top and ending with potentially the most severe ratable conditions at the bottom (eg, soft tissue conditions at the top, followed by muscle and tendon traumas, followed by ligament, bone, and joint conditions.)

Previous editions did not provide methods for rating some commonly occurring workplace conditions in the upper limb such as trigger digit, wrist ganglion, TFCC tear, and elbow epicondylitis. Previous editions provided limited methods for lower extremity strains, tendonitis. Previous editions for the spine did not take into account improved outcomes with newer surgical techniques.

Implications to adoption/continued use of the *AMA Guides* Sixth

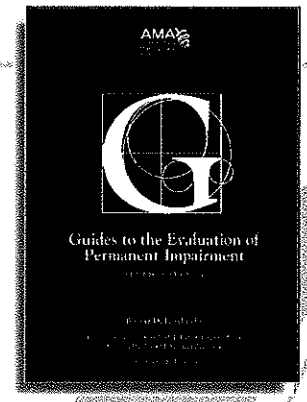
Physician feedback on the Sixth Edition has generally been positive since there is a consistent approach to assessing impairment based on a more contemporary framework. There is a learning curve for physicians to use the 6th edition, which may require additional training, but once familiar with the approach, the methodology is consistent for all chapters which results in improved intra- and inter-rater reliability.

References

1. *American Medical Association: Guides to the Evaluation of Permanent Impairment,* Sixth Edition. Chicago, American Medical Association, 2007.
2. World Health Organization. *International Classification of Functioning, Disability and Health: ICF.* Geneva, Switzerland, World Health Organization, 2001.
3. World Health Organization. *International Classification of Impairments, Disabilities and Handicaps: A Manual of Classification Relating to the Consequences of Disease.* Geneva, Switzerland, World Health Organization, 1980.
4. Spieler EA, Barth PS, Burton JF, et al. Recommendations to guide revision of the Guides to the Evaluation of Permanent Impairment. *JAMA.* 2000;283(4):519-23.
5. American Medical Association. *Guides to the Evaluation of Permanent Impairment,* Fifth Edition. Chicago, American Medical Association, 2000.

American Medical Association. Available at: www.ama-assn.org
American Academy of Orthopedic Surgeons. Available at: www.aaos.org
American Academy of Disability Evaluating Physicians. Available at: www.aadep.org.
American College of Occupational and Environmental Medicine. Available at: www.acoem.org

Who uses the AMA Guides™ Sixth Edition?



United States of America
Alaska
Arizona
Illinois
Louisiana
Mississippi
Montana
New Mexico
North Dakota
Pennsylvania
Rhode Island
Tennessee
Wyoming
Puerto Rico

Connecticut
(*AMA Guides Sixth* can be used, but is not required)

Indiana
(*AMA Guides Sixth* can be used, but is not required)

The Department of Labor's Division of Federal Employees' Compensation

Legislation that requires the Guides Sixth:
Federal Employees Compensation Act
Longshore and Harbor Workers' Compensation Act

Canadian provinces
Alberta
British Columbia
Manitoba
New Brunswick
Newfoundland and Labrador
Nova Scotia
Ontario
Price Edward Island
Quebec

Canadian territories
Northwest Territories
Nunavut
Yukon

International
Australia
Hong Kong
Korea
New Zealand
South Africa
The Netherlands

The *Guides to the Evaluation of Permanent Impairment* is used in workers' compensation systems, federal systems, automobile casualty and personal injury cases. Please contact your local jurisdiction to learn more about how the AMA Guides™ should be used to evaluate impairment in such cases.

AMA
AMERICAN MEDICAL ASSOCIATION

February 7, 2013

Members of the Kansas Legislature

I have been informed of a move to adopt the AMA Guides to the Evaluation of Permanent Impairment, 6th Edition (AMA 6th) as the standard for impairment ratings in Kansas workers compensation cases, supplanting AMA 4th. If this is so, I wish to support such a change.

My professional experience consists exclusively of independent medical evaluations over the last twenty years, supported by board-certification in disability evaluation, with cases mostly limited to Kansas jurisdiction. During this period the law required first the use of AMA 3rd Ed Rev, and currently the AMA 4th, in use since 1993. The AMA has since published AMA 5th and AMA 6th. I have used the first two references extensively for over ten thousand independent medical evaluations, the majority at the request of our administrative law judges for neutral independent evaluations, and have contributed, at the request of the AMA, from an academic standpoint to the finished products of AMA 5th and AMA 6th as a recognized Reviewer in the preface to each edition. While I claim no particular genius in disability evaluation, I doubt there are more than a handful of Kansas doctors more experienced in issuing impairment ratings under the AMA Guides.

The AMA 6th represents a good-faith effort by a large group of physicians to bring disability evaluation into the modern era of evidence-based medicine and outcomes, concepts that are utilized extensively in the new Affordable Care Act, and are widely considered to be the hallmarks of a new emphasis in modern medicine. After twenty years, it only makes sense for disability evaluation, as a professional discipline, to be on a level playing field. We constantly strive for consistency, simplicity (when possible), ability to reproduce results by different evaluators presented with the same clinical data, and, most importantly, results that make sense to our administrative, judicial, and legal colleagues.

I believe adoption of the AMA Guides 6th Ed will help us greatly toward these goals.

Thank you for your indulgence.

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