



KANSAS SELF-INSURERS ASSOCIATION
SERVING THE WORKERS' COMPENSATION NEEDS OF KANSAS EMPLOYERS SINCE 1994

TO: SENATE COMMERCE COMMITTEE

FROM: MARK WALLS
KANSAS SELF-INSURERS ASSOCIATION (KSIA)

RE: SB 167

DATE: FEBRUARY 18, 2015

Chairwoman Lynn, members of the Committee, thank you for the opportunity to appear today. My name is Mark Walls. I am Vice President of Communications & Strategic Analysis For Safety National. Safety National is a specialty workers compensation insurance company that provides excess insurance for 35% of the self-insured's in the country. I have been involved in the workers' compensation industry for over 25 years and my role requires that I closely monitor emerging workers' compensation trends around the nation. I am also a frequent contributor to industry educational conferences and news publications.

I am here today on behalf of the Kansas Self Insurers Association (KSIA). KSIA represents employers, both public and private, who are largely self-insured for workers compensation in the state of Kansas. On behalf of KSIA, I am here to urge you to vote "no" on SB 167. The AMA 6th edition represents the current standard for evaluating permanent impairment. It is used by over 20 states and the Federal government. The AMA 6th edition represented a significant improvement over prior editions in that it focuses on evidenced-based medical standards and objective measurements of impairment at maximum medical improvement. Broken bones heal. Knee and shoulder surgeries usually restore full pre-injury strength and range of motion. Unlike prior editions which focused more on the diagnosis, the AMA 6th edition recognizes that the goal of medical treatment is to restore function and that if the treatment is successful there should be little to no permanent impairment.

The AMA 6th edition also allows for ratable impairment for conditions that result in functional deficits that were not ratable under prior editions. This makes the AMA 6th edition the most complete and comprehensive standard available for determining permanent impairment. There are those that argue that the 6th edition results in unfairly lower impairment for injured workers. As physicians who were involved in drafting the AMA 6th edition guidelines will testify, such an allegation is not only untrue, it is preposterous. The AMA 6th edition guidelines provides an impartial evaluation based on objective measures and it is not slanted in any way against injured workers and to imply this has no basis in fact. Certainly there are some injured workers who will receive lower impairment ratings under the AMA 6th edition compared to the

4th edition. But there are also injured workers who will receive higher ratings under the 6th edition, especially those who have significant physical limitations. A study published in 2010 showed that overall, there is no statistically significant difference between average whole person impairment ratings when comparing the 6th edition to the 4th edition. The focus of the AMA 6th edition is object measurements of impairment. Those with more physical limitations receive higher impairment than those with less physical limitations. This should be the goal when gauging permanent physical impairment.

Medical treatment advances over time as do the AMA impairment guidelines. The 4th edition of the AMA guidelines was published in 1993. Would you want your physician utilizing a standard of care that is over 20 years old when there is more current information available based on the latest medical science?

Finally, although this is not stated in the bill, the motivation for this proposed change is based on the fear that the change to the AMA 6th edition could result in litigation challenging the exclusive remedy of the workers' compensation system. This fear is based on a single case that emerged last year from a court in Miami-Dade County Florida. This is known in the workers' compensation industry as the Padgett case. The Judge in the Padgett case ruled that reforms to the Florida workers compensation system that lowered benefits and increased thresholds of compensability for injuries undermined the "grand bargain" of workers' compensation to the point where it was no longer constitutional. The Florida Attorney General's office was not properly served on the original case, so they had no opportunity to appear and defend the constitutionality of the workers' compensation statutes. This case is on appeal, and it is given little chance of being upheld in the higher state courts.

Trial lawyers are always looking for ways around the exclusive remedy protections of the workers' compensation system, and the Padgett case represents the latest strategy. While I do feel it is likely we will see similar litigation in other states, this litigation will focus on benefit levels and thresholds of compensability, not the impartial impairment rating guidelines issued by the AMA. Rolling back to the AMA 4th edition will not prevent such litigation in Kansas. In summary, injured workers' in Kansas deserve to be evaluated based on the most current medical standards available. The AMA 6th edition is that most current standard. It represents the most complete and accurate method available for evaluating permanent impairment. Rolling back to a standard of care that is 20 years-old is not only unfair to injured workers in Kansas, but it will not accomplish the goal of those drafting this legislation and prevent court challenges to the exclusive remedy of workers' compensation.

I would like to thank the Committee for the opportunity to appear before you today. I would be happy to stand for questions at the appropriate time. Thank you.