PBK & associates P.A.

10127 Leavenworth Road
Kansas City, Kansas 66109
913-894-1143 • fax: 913-894-4055

Licensed in Kansas & Missouri

P. Brent Koprivica, M.D., M.P.H.

WORKERS' COMPENSATION SENATE BILL 167
DELIVERED FEB. 18, 2015 SENATE COMMERCE COMMITTEE

My name is P. Brent Koprivica, and I am a medical doctor licensed to practice medicine in the States of Kansas and Missouri. Attached to my written testimony is a copy of my Curriculum Vitae. I have been involved in treating and evaluating workers' compensation patients for 30 years. Originally, I was involved in a hands-on treating practice working with many employers and most insurance companies while I operated a series of industrial clinics in the Greater Kansas City area. Since 1992, my practice has consisted on performing independent evaluations in workers' compensation claims. I am board-certified by the American Board of Emergency Medicine and am certified by the American Academy of Disability Evaluating Physicians and the American Board of Independent Medical Examiners. Many consider me to be one of the leading experts in Kansas regarding the *American Medical Association Guides to the Evaluation of Permanent Impairment* (*AMA Guides*). The Department of Labor asked me to speak on the topic of the *AMA Guides* at the most recent annual Kansas workers' compensation seminar.

I have used the *AMA Guides 4th Edition* for 20-plus years. I have exhaustively studied the *AMA Guides 6th Edition*. I recently attended a seminar presented by AADEP on the *AMA Guides 6th Edition*. Additionally, I have a working knowledge of Kansas workers' compensation and that includes topics such as the prevailing factor test and work disability thresholds in order to obtain work disability.

My opinion regarding the *AMA Guides 6th Edition* is that it has so arbitrarily changed the calibration as to how permanent impairment is assigned to make it an unacceptable means to assign such impairment. The general concept behind the *AMA Guides* in general is to standardize impairment ratings. It is intended to make it easier for clinicians to reach impairment values. The *AMA Guides 4th Edition*, in particular, established DRE in addition to the range of motion model. The *AMA Guides 4th Edition* has worked remarkably well. The *4th Edition* gives doctors multiple ways to assign impairment depending upon the particular injury. Although the goal is to standardize impairment ratings, up until now, the AMA has recognized that it is impossible to put all injured persons in one box because we deal with young versus old, men versus women, in-shape versus otherwise, laborers versus white-collar. The *AMA Guides 4th Edition* allowed the evaluating doctor to use their own experience and clinical judgment in reaching their overall opinion regarding permanent impairment within the structure of the *AMA Guides 4th Edition* guidelines.

Since the sweeping legislative changes of 2011, I have seen a noticeable decrease in my Kansas independent evaluations. Since 2011, aggravations of pre-existing conditions are no longer compensable. Injuries that occur that are considered activities of daily living, even though the activity occurred while the injured worker was on the job doing his employer's work, are no longer compensable. Also, since 2011, the work injury has to be the prevailing factor causing the injury, need for treatment **AND** resultant disability or that injury, even if it occurred on the job, is not compensable in Kansas. After 2011, many injuries that have always been compensable in Kansas workers' compensation are no longer compensable. Since 2011, injured workers must also prove a permanent impairment greater than 7.5% before they even qualify for a wage loss or work disability claim. In short, since 2011, it has become much more difficult, and in some cases impossible, for injured workers in Kansas to qualify for benefits under the Kansas Workers' Compensation Act.

Now, the *AMA Guides 6th Edition* comes along and, without any science to back it up, drastically changes the calibration as to how values are assigned in cases that are still considered compensable. For several impairments, the *AMA Guides 6th Edition,* only allow for the assignment of permanent impairment once in a person's lifetime, effectively eliminating a remedy altogether. The *AMA Guides 6th Edition* also removes any human judgment or independent thinking on the part of the doctor which, in turn, completely dehumanizes the injured worker. Let me try and explain these drastic changes in a way I think you will understand by going through some examples of the most common injuries I see in my evaluating practice.

Cervical Spine
"Successful" Fusion Surgery

Solid Fusion Without Instability

AMA Guides 4th Edition
per Table 73, p. 110
DRE III or IV

15% - 25% BAW

40% - 76% Reduction

AMA Guides 6th Edition
per Table 17-2, p. 564
Class I

Default = 6% BAW

Cervical Spine
"Failed" Fusion Surgery

Fusion Not Solid (Hardware Failure)

AMA Guides 4th Edition
per Table 73, p. 110
DRE IV

25% BAW

AMA Guides 6th Edition
per Table 17-2, p. 564
Class I

Default = 6% BAW

76% Reduction

Carpal Tunnel Syndrome
Median Nerve Entrapment – Wrist
Moderate Severity – Treated Surgically

AMA Guides 4th Edition
per Table 16, p. 57

20% Upper Extremity

AMA Guides 6th Edition
per Table 15-23, p. 449

Default=5% Upper Extremity

75% Reduction

If Bilateral Injury
Converted to a BAW

AMA Guides 4th Edition
23% BAW

AMA Guides 6th Edition
6% BAW

74% Reduction

NOTE: Per *AMA Guides 6th Edition* Table 15-3 p. 395 impairment for pain post acute injury or surgery, crush injuries, tendinitis, or de Quervain's disease, compensation can be awarded only once in an injured workers lifetime.

Cubital Tunnel Syndrome
Ulnar Nerve Entrapment – Elbow
Treated Surgically

Moderate Severity

AMA Guides 4th Edition
per Table 16, p. 57

30% Upper Extremity

AMA Guides 6th Edition
per Table 15-23, p. 449

Default=5% Upper Extremity

83% Reduction

NOTE: Per *AMA Guides 6th Edition* Table 15-4 p. 399 impairment for epicondylitis, compensation can be awarded only once in an injured workers lifetime.

If Bilateral Injury
Converted to BAW

AMA Guides 4th Edition
per Table 16, p. 57

33% BAW

AMA Guides 6th Edition
per Table 15-23, p. 449

6% BAW

82% Reduction

Lumbar Spine
"Successful" Fusion Surgery
for Spondylolisthesis w/Radiculopathy (resolved)

AMA Guides 4th Edition
per Table 72, p. 110
DRE III, IV or V

10% - 25% BAW

AMA Guides 6th Edition
per Table 17-4, p. 570

Default = 7%

30% - 72% Reduction

"Failed" Fusion Surgery
for Spondylolisthesis w/Radiculopathy (resolved)

AMA Guides 4th Edition
per Table 72, p. 110
DRE IV - V

20% - 25% BAW

AMA Guides 6th Edition
per Table 17-4, p. 570

Default = 7%

65% - 72% Reduction

Shoulder
Partial Rotator Cuff Tear First Time
With Distal Clavicle Resection

AMA Guides 4th Edition
per Table 27, p. 61

10% - 25% Upper Extremity

AMA Guides 6th Edition
Residual Loss, Functional
With Normal Motion
per Table 15-5, p. 402

3% Upper Extremity

70% - 88% Reduction

NOTE per *AMA Guides 6th Edition*
Sec. 15.2e, p. 390
"In the shoulder, it is not uncommon for rotator cuff tears, a superior labrum from posterior (SLAP) lesion or other labral lesions, and biceps tendon pathology to all be present simultaneously. The evaluator is expected to choose the most significant diagnosis and to rate only that diagnosis."

Recurrent Partial Thickness
Rotator Cuff Tear Treated Surgically w/Distal Clavicle

AMA Guides 4th Edition
per Table 27, p. 61
(Section 3.1)

10% - 20% Upper Extremity

AMA Guides 6th Edition
per Table 15-5, p. 402

0%

100% Reduction

NOTE: Per *AMA Guides 6th Edition* Table 15-5 pgs. 402-404 impairment for full or partial thickness rotator cuff tears (surgically repaired), tendinitis, and impingement syndrome, compensation can be awarded only once in an injured workers lifetime.

Ankle
Trimalleolar Fracture
Treated Surgically w/Open Reduction and Internal Fixation
With Mild Motion Deficits and/or Mild Malalignment

AMA Guides 4th Edition
per Table 64, p. 86

20% Lower Ext.

AMA Guides 6th Edition
per Table 16-2, p. 503

Default=10% Lower Ext.

50% Reduction

A potential concern raised by proponents of the *AMA Guides 6th Edition* would be the potential inadequacy of the *AMA Guides 4th Edition* in addressing all impairments. It is true that the *AMA Guides 6th Edition* does specifically identify additional impairments that are not specifically addressed in the *AMA Guides 4th Edition*. However, in fact, other than identifying the specific diagnosis in the *AMA Guides 6th Edition*, the practical experience from using the *AMA Guides 4th Edition* is that these non-stated diagnoses can be addressed.

> (*AMA Guides 4th Edition*, p. 3) "It should be understood that the Guides does not and cannot provide answers about every type and degree of impairment…"
>
> "The physician's judgment and his or her experience, training, skill, and thoroughness in examining the patient and applying the findings to Guides criteria will be factors in estimating the degree of the patient's impairment. These attributes compose part of the 'art' of medicine…"

Examples comparing *AMA Guides 4th Edition* and *AMA Guides 6th Edition* regarding this issue.

Surgically Treated Lateral Epicondylitis (Tennis Elbow)

AMA Guides 4th Edition
per Table 34, p. 65

10% - 20%

AMA Guides 6th Edition
per Table 15-4, p. 399

Default=5% Upper Extremity

50% - 75% Reduction

Bilateral Upper Ext. Involvement w/Surgeries
12% - 23% BAW

6% Whole Person

50% - 74% Reduction

Surgically Treated Trigger Finger

AMA Guides 4th Edition	*AMA Guides 6th Edition*
per Table 29, p. 63	per Table 15-2, p. 392
20% - 60% Digit	Default=6% Digit

70% - 90% Reduction

As previously indicated, the examples I just gave you are common injuries I see in my Kansas evaluations. The arbitrary reduction in the disability ratings by the *AMA Guides 6th Edition* compared to values assigned in the *AMA Guides 4th Edition* range from a 50% to 100% decrease with the average across-the-board reduction equaling 72%! Let me repeat that, without any science to support this drastic reduction, the *AMA Guides 6th Edition* reduces the average impairment rating by 72%! No one with any credibility can tell you that these drastic reductions in impairment values are due to advances in medicine. The patients that I see that have injured themselves and have required neck, back, shoulder, elbow, wrist, knee, ankle, etc… and required surgery or otherwise, recover at the same rate and to the approximate same levels as similar patients from 30+ ago. If someone has a better, or worse result that usually expected, the *AMA Guides 4th Edition* allowed rating doctors to take that abnormal result into consideration. However, the *AMA Guides 6th Edition* does not!

If that is not enough, in none of the examples that I gave you would the injured worker's impairment under the *AMA Guides 6th Edition* calculations reach the minimum threshold for a wage loss or work disability claim as established pursuant to the 2011 changes. **NONE** of them! That means the injured worker, who still qualifies for Kansas workers' compensation since 2011, will receive a 72% reduction in their impairment rating and those workers with back and neck surgeries, even back and neck fusion surgeries and open bilateral carpal tunnel surgeries, will not reach the threshold for work disability. What that means is, if restrictions are placed on their activities, which in the examples listed above are likely, these injured workers will lose their jobs, lose their livelihood and receive 72% less benefits under the *AMA Guides 6th Edition* and not qualify for a wage-loss claim because they fail to meet the 2011 established threshold. In short, it will become virtually impossible for even significantly injured workers to qualify for wage loss or work disability claims, and their functional impairments will be reduced to 28 cents on-the-dollar due to the *AMA Guides 6th Edition*.

In my opinion, such a result is unconscionable. The end result is that the *AMA Guides 6th Edition* has left injured workers with, at its best, a grossly inadequate remedy for their compensable work injuries and, at its worst, no remedy at all. From someone who has used the *AMA Guides* for 20-plus years and has been evaluating work injuries for 30 years, I urge this Committee to do the right thing to correct this devastating problem and pass Senate Bill 167.