THE KANSAS CHAMBER
UNITED FOR BUSINESS

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Testimony before Senate Commerce Committee
SB 167 – concerning workers compensation
Presented by Mike O'Neal – Kansas Chamber CEO

Feb. 18, 2015

Madam Chairman and members of the Committee

On behalf of the **Kansas Chamber** and its hundreds of members, large and small, I appreciate the opportunity to appear today **in opposition** to SB 167, a proposal that would unravel, before it's even had a chance to be implemented, an important update to our method of fairly and accurately determining impairment of function in workers compensation cases. Joining us on this testimony are business partners **Adecco, SHRM, Lenexa Chamber of Commerce, WIBA, Kansas Restaurant & Hospitality Association and the Overland Park Chamber of Commerce.**

In 2013, as part of a package of workers compensation act amendments that the Kansas Chamber and business partners strongly supported, the Legislature approved moving to the American Medical Association (AMA) *Guides for Evaluation of Permanent Impairment, Sixth Edition,* the most updated version of the Guides. Kansas uses the Guides as a means of providing a consistent method of evaluation by the medical professionals involved in the workers compensation system in the state. The Legislature made the move to the 6th Edition, effective Jan. 1, 2015, after hearing from the medical experts in the area of evaluation of permanent impairment. I've attached testimony from three of the medical experts who provided testimony at the time the 6th Ed. was adopted. Since passage of the update, Kansas doctors involved in the workers compensation system have converted to the 6th Ed and are utilizing the new edition as of Jan. 1.

During the time I practiced law, a period spanning some 35 years, I practiced extensively in the area of workers compensation law. I represented both employers and injured workers, primarily employers. As a legislator, I was the author of the workers compensation reforms passed in 1993 and assisted with shepherding the updated reforms passed in 2011. Use of the Guides has been an integral part of our workers compensation system for decades and the move to the 6th Ed. is an important step toward recognizing the advances in medicine over the past two decades and the advances in the evaluation of physical impairment.

Proponents of abandoning the 6th Ed. before it has even been used in a single case, seem to lament the fact that advances in medicine and improved outcomes for injured workers may have the effect of reducing costs and overall monetary awards. They forget or ignore that the promise of workers compensation is that it creates a no-fault system of wage loss replacement and optimal medical care for injured workers to the end that they are restored, to the extent possible, to their ability to return to

their prior employment or employment within their physical abilities. Although attorneys are motivated to maximize monetary awards, employers and doctors are motivated to provide the best medical care to injured workers and achieve the best physical outcomes for those employees. Motivated workers will always place a higher priority on care that restores their ability to work. Proposing to abandon the most recent state-of-the-art method of determining impairment, a determination reserved exclusively to those who are the experts in providing medical care to injured workers, because of a fear that good medical outcomes may reduce overall lump sum awards, is bad public policy and exhibits sadly misplaced priorities.

While focusing, predictably, on cases where the proponents claim awards may be reduced, they fail to acknowledge that the 6th Ed. actually expands the ability to assign impairment ratings in some cases. As Dr. Melhorn points out: **" [p]revious editions did not provide methods for rating some commonly occurring workplace conditions in the upper limb, such as trigger digit, TFCC tear, and elbow epicondylitis. Previous editions provided limited methods for lower extremity strains, tendonitis."** According to the AMA, where impairment ratings will see some reductions in this edition are in the area of joint replacements, due to much improved functional results following surgery. Ratings will tend to increase in the area of soft tissue injuries that didn't have any rating criteria previously, but which, nevertheless, result in demonstrable impairment of function.

We acknowledge that the proponents attempt to reduce the effect of using the outdated ratings guide by raising the impairment threshold to qualify for a permanent partial general disability award. However, the logic is still flawed. Why adjust this impairment provision as a way of justifying an outdated methodology for determining impairment?

We respectfully suggest that you not succumb to the argument over constitutionality. Constitutionality arguments are a dime a dozen. Not one case has been decided under the new 6th Edition. The 6th Edition is utilized all over the country and internationally. There is no current Kansas case in controversy that even remotely suggests that the current law is flawed. The 6th Edition has been around since 2007. The 4th Edition, which the proponents of SB 167 say they prefer, is over 20 years old and is woefully outdated. As Dr. Brigham notes: **"Physicians should not practice medicine using outdated textbooks representing information that is no longer accurate; the same applies to the assessment of impairment."**

SB 167 is the wrong policy at the wrong time. At best it is premature to draw conclusions about something that has not even had the opportunity to be implemented and applied as intended. Please do not advance SB 167.

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March 15, 2013

Hon. Marvin Kleeb
Chairman
Commerce, Labor and Economic Development Committee
Kansas House of Representatives
Room 286-N
State Capitol
Topeka, Kansas 66612

Subject: Support for the Adoption of the AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition.

Dear Chairman Kleeb:

This letter is in strong support for the use of the current best standard for defining impairment, the AMA *Guides to the Evaluation of Permanent Impairment,* Sixth Edition. The Fourth and Fifth Editions are outdated and were based on approaches that do not reflect best practices. Physicians should not practice medicine using outdated textbooks representing information that no longer is accurate; the same applies to the assessment of impairment. The Sixth Edition reflects an improved approach to evaluating impairment, based on concepts used in the International Classification of Functioning, Disability and Health (World Health Organization).

Our universal experience is that the Sixth Edition is much easier to learn since it is based on a consistent and well-designed framework, there is less ambiguity, and the error rate is less. This was confirmed by defense and plaintiff counsel last week when I spoke at the annual Workers Compensation Conference of the Idaho State Bar Association.

I have been advised that a Director of the Kansas Association for Justice incorrectly named me as a physician who opposed the use of the Sixth Edition; this was blatantly false. Attached are articles that you may find of value. I encourage Kansas to follow the path of other states and the federal government and make use of the current standard, the Sixth Edition.

Sincerely,

Christopher R. Brigham, MD, MMS, FACOEM, FAADEP, CEDIR, CIME
Editor-in-Chief, AMA *Guides Newsletter*
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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

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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