

# KTLA

Kansas Trial Lawyers Association

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To: Representative Les Mason, Chairperson  
Members of the House Commerce, Labor & Economic Development Committee

From: Jeff K. Cooper, Attorney at Law

Date: January 31, 2017

Re: HB 2059 Concerning workers compensation; relating to medical guides for the determination of permanent impairment (SUPPORT)

The Kansas Trial Lawyers (KTLA) is a professional association of trial lawyers with members across the state. KTLA strongly supports passage of HB 2059 to reverse the mandate requiring the use of the American Medical Association's *Evaluation of Functional Permanent Impairment Guide*, 6<sup>th</sup> Edition and to return to the 4<sup>th</sup> Edition of the *Guides*.

The degree of permanent disability and the money paid to an injured worker for permanent damage caused by a workplace injury is based on the impairment ratings found in the *AMA Guides*. The numbers from the *Guides* determine how the injury affects a permanently physically damaged worker. The numbers from the *Guides* determine how the worker's permanent damage affects Kansas' overall economic health. If the workers are not adequately protected by workers compensation, taxpayers will end up paying for public assistance, welfare, social security, and other benefits for permanently injured workers. On behalf of workers all over the state of Kansas, we would request that you consider the following:

1. There has **NEVER** been an agreement by the parties involved in the workers compensation system to use the 6<sup>th</sup> Edition of the *Guides*. In fact, during the negotiations in 2011, **everyone** including representatives from employers, insurance carriers, Chamber of Commerce, SHERM, and the KSIA **agreed** to continue use of the 4<sup>th</sup> Edition.

2. Newest **does not** mean the best. If newest was the best, why didn't we ever utilize the 5<sup>th</sup> Edition of the *AMA Guides* which was published in 2000? Most states in the area **do not** use the 6<sup>th</sup> Edition. Arkansas, Alabama, Indiana and others use the 4<sup>th</sup> Edition. Colorado uses the 3<sup>rd</sup> Edition, Revised. Nebraska uses the 5<sup>th</sup> Edition. Missouri does not use any edition of the *AMA Guides*. Iowa uses the 5<sup>th</sup> Edition. The Oklahoma Supreme Court recently held that at least part of the 6<sup>th</sup> Edition was unconstitutional.

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3. The 4<sup>th</sup> Edition looks at the ability to work as one of the factors in determining the numbers for impairment. The 6<sup>th</sup> Edition does not look at work as a factor in determining impairment. Since we are clearly looking at work injuries, shouldn't we consider how an injury affects an individual's ability to work?

4. The 6<sup>th</sup> Edition drastically reduces the numbers for a rating of impairment. The reductions are not based on any studies, nor are they based on any scientific basis, nor any empirical data, nor logic for that matter. The reductions in the 6<sup>th</sup> Edition are arbitrarily based on clearly biased evaluators that worked for employers and insurance carriers.

John F. Burton, a scholar on the nation's workers compensation system, challenged the *AMA Guides* 6<sup>th</sup> Edition as not being "evidenced based." He told the New York State Workers Compensation Board that the basis for the *AMA Guides* is "hokum." New York, Kentucky and Iowa have considered and specifically rejected use of the 6<sup>th</sup> Edition.

5. The 6<sup>th</sup> Edition is unfair to injured workers. A good example is the oral testimony you will hear from Howard Johnson. Mr. Johnson had a two-level fusion to his neck with plate and screws resulting from a work injury. The impairment rating for a two-level neck fusion with plates and screws if done in 2014 and rated under the 4<sup>th</sup> Edition of the *Guides* is 25%. Mr. Johnson had the same exact procedure done in 2015 with the same plate and screws, and under the 6<sup>th</sup> Edition of the *Guides* the impairment rating is 6%. Dr. Hess testified that the procedure was the same and has been the same medical procedure for many, many years, and that nothing had changed except the number of the book used.

6. The 6<sup>th</sup> Edition is based on World Health Order (WHO standards) not Kansas standards. Enough said.

7. The 6<sup>th</sup> Edition as currently being used in Kansas raises significant constitutional questions. At least one member of the Workers Compensation Appeals Board has indicated his belief that the use of the 6<sup>th</sup> Edition is unconstitutional. It is expected that case will be ultimately decided by the Supreme Court, and if the Supreme Court agrees employers will be subjected to civil liability for work-related injuries.

In conclusion, use of the 6<sup>th</sup> Edition has a disastrous effect on the Kansas workers compensation system. On behalf of the Kansas Trial Lawyers Association, I respectfully request that the Committee recommend HB 2059 favorable for passage.

  
Jeff K. Cooper, Attorney at Law