

Written Testimony

House Committee on Commerce, Labor, and Development

Re: House Bill 2059 - Support
January 31, 2017

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Thank you and good afternoon to the members of the Committee. I am pleased to be here today to discuss House Bill 2059 and the necessity of returning to the fourth edition of the AMA Guides. My name is Harold Hess. As a background, I am a board-certified neurological surgeon who has been in practice since 1988. I am fellowship trained in spinal surgery and limit my practice to only spinal surgery. In addition, I am an innovator in the field of spinal surgery and currently hold approximately 40 patents in the U.S. and worldwide for spinal and orthopedic implantable devices. For some time now, in addition to a full schedule of treating patients, I have also been providing impairment ratings and evaluations at the request of attorneys for both insurance carriers and injured workers, as well as administrative law judges.

There are many problems with the Sixth Edition, but perhaps the most significant is that the Sixth Edition no longer allows physicians to consider an injured person's ability to work—that is, their capacity for things like lifting, carrying, bending, or constant standing and walking. Under the Sixth Edition, physicians are only allowed to consider the injured person's "activities of daily living," which includes things such as bathing, eating, and sleeping. Whether or not one can perform those basic activities usually has a minimal relationship to whether or not they can do a full forty-hour work week. Under the Fourth Edition, doctors were encouraged to assess the injured person's ability to return to work—which is clearly more logical in the context of workers compensation.

Given these problems with the Sixth Edition, the esteemed Members of this Committee may wonder why it was written at all. In 2008, Iowa established a legislative task force to assess whether or not they should adopt the Sixth Edition themselves. One of the members of that task force concluded that, based on the testimony of doctors and editors that presented to them, "the chief advantages behind the switch to the ICF model [newly adopted in the Sixth Edition, which uses World Health Organization standards] are obtaining funding for research, and the fact that the use of a world-wide approach may allow the AMA to sell its book overseas."¹ In short, there is no medical basis for this switch to a new method—rather, it was made for commercial reasons. It should be noted that in 2008, Iowa refused to use the Sixth Edition.

¹ 2008 Iowa AMA Guides Task Force Report, Report of Member Matthew Dake, p. 5, available at <http://www.iowaworkcomp.gov/sites/authoring.iowadivisionofworkcomp.gov/files/dakereport.pdf>

To help you understand just how arbitrary this change was, I would like to provide you with a recent example from my practice. Recently, my patient underwent a two-level cervical fusion caused by a work injury. I was later requested, by the insurance company, to provide an impairment rating for the gentleman. Under the Sixth Edition parameters, he received a six percent rating. While it is true that he has less pain and symptoms now than he did before the surgery, due to the fusion, he's lost between fifteen and thirty percent of the range of motion in his neck. There is also a significant, increased chance he will require a further surgery when the discs adjacent to the fusion start to degenerate more rapidly. To be clear, he will have a metal plate holding his neck together for the rest of his life. For all this, a six percent rating is unfairly low.

Under the Fourth Edition of the AMA Guides, for the same surgery, with the same outcome, that individual would have received a twenty-five percent rating, which much more accurately reflects his actual level of impairment. Doing cervical surgery has not really changed in the last twenty years: the surgeries, procedures, and outcomes are still roughly the same. There is no rational basis for the same injury being given a twenty-five percent in 2014, but only a six percent in 2015.

Another major problem with the Sixth Edition is the overly-complicated and entirely new rating system it has introduced. This new rating system requires many more steps, references, and potentially pages of explanation and justification compared to the prior system. Due to the hurdle of learning a new system, and also just how unnecessarily complex this system is, I anticipate that the already small percentage of doctors willing to do evaluations or ratings of injured workers will decline even further. The doctors that do remain and are willing to do impairment ratings under the Sixth Edition will likely see the quality of their ratings decline because of how much more burdensome the new requirements of the Sixth Edition are.

Considering all these problems with the Sixth Edition, it is clear to me that Kansas needs to return to the Fourth Edition of the AMA Guides. There was no clear, medically-based, reason to adopt the Sixth Edition in the first place. It is plain common sense, as a doctor who still evaluates injured workers, that I am able to consider the injured workers' ability to work when I make those ratings. Thank you for listening to my concerns, and I again would like to encourage all the members of this committee to support House Bill 2059.

Harold Hess, M.D.
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1/26/17
Date