

January 27, 2017

Honorable Chairman Les Mason  
House Commerce, Labor, & Economic Development Committee  
Room 112-N Kansas Statehouse  
Topeka, Kansas 66612

RE: HB 2059 AMA Guides—Proponent

Dear Chairman Mason and Members of the House Commerce, Labor & Economic Development Committee,

I am an attorney in Wichita and have represented claimants in Kansas workers compensation cases for 32 years. I am submitting written testimony in favor of HB 2059. Enactment of the mandate to use the 6<sup>th</sup> Edition of the AMA Guides was a huge step backward for injured Kansas workers, and one that I have opposed since the Legislature first considered it and passed it in 2013. One of the biggest problems with the AMA 6<sup>th</sup> is that it discredits and denigrates treating physician opinions and recommendations of a patient's medical care needs and disability:

“Although treating physicians may perform impairment ratings on their patients, it is recognized that these are not independent and therefore may be subject to greater scrutiny. Performing an impairment evaluation requires considerable medical expertise and judgment. Thorough, complete and accurate reporting by the rating physician affords the best opportunity to communicate details of the impairment, and its impact, if any, on the patient, in a forum acceptable to other medical professionals and interested parties, such as claims professionals, attorneys and adjudicators.” AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition, p. 23.

The AMA 6<sup>th</sup> Edition thus suggests an impairment evaluator unfamiliar with the patient's case is more competent than a treating physician, implying treating physicians lack the requisite medical expertise and judgement to accurately perform an impairment rating evaluation. This relegates the treating doctor, who knows the impaired patient's medical history and conditions, to some kind of inferior expert status. I strongly disagree with the premise that evaluations performed by a hired rating physician will result in more valid, reliable ratings than a treating doctor.

Impairment rating physicians are not independent; their services are paid for by interested parties. Impairment rating physicians as recommended by the AMA 6<sup>th</sup> Edition see the worker for a one-time visit only for the purposes of performing the impairment rating evaluation, issuing a report and getting paid well for their services.

It is ridiculous to assert that the opinion and evaluation by the doctor that has been treating the patient and who best knows the patient's case is not thorough and complete. Rather, the treating doctor's rating by an expert with first hand knowledge of the case should be viewed as much more accurate than a report by a doctor who sees the patient once for an hour or so.

The AMA 6<sup>th</sup> Edition is extremely complicated and difficult to understand and use. It is 634 pages long, and promotes litigation by encouraging each party to ignore the treating physician and hire their own “independent” impairment evaluator trained in the use of the 6<sup>th</sup> Edition. When faced with two different “independent” impairment rating reports from each party under the 6<sup>th</sup> Edition, the administrative law judges feel compelled to appoint a third IME doctor from the director's list of approved “neutral” IME doctors, who may or may not decide to review the case. The 6<sup>th</sup> Edition is a

Honorable Chairman Les Mason  
January 27, 2017  
Page Two (2)

book primarily benefitting its authors because multiple "independent" impairment rating reports are generated, resulting in more sales of this book with more "independent" rating physicians paid to rate more folks using the 6<sup>th</sup> Edition.

My observation is that treating doctors are discouraged from working with the present Kansas workers compensation system because the AMA 6<sup>th</sup> Edition results in three "independent" experts being hired for diagnoses, for deciding what injuries are related to the work accident, occupational disease or repetitive overuse work conditions, and for deciding what impairment rating should be provided.

At the last workers compensation seminar I attended after the 6<sup>th</sup> Edition AMA Guides went into effect, I was on a panel with a workers compensation defense attorney, and a doctor. The defense attorney did a spur of the moment audience survey of insurance company adjusters, medical care providers, workers compensation defense attorneys and claimant's attorneys in attendance. He asked us from the dais:

"Who here thinks the AMA 6<sup>th</sup> Edition Guides are fair? Raise your hands."

Nobody's hand went up.

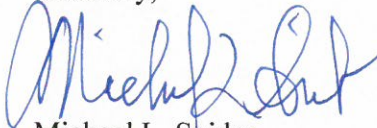
The AMA 6<sup>th</sup> Edition has resulted in a systematic lengthening of the time it takes to resolve a workers compensation case, the scheduling of multiple pre-hearing settlement conferences, and provides a litigiously expensive guarantee that at least three medical experts, or more, will be used to obtain an impairment rating and future treatment recommendations in most of these cases before they can be resolved.

Before adoption of the AMA 6<sup>th</sup> Edition, reasonable lawyers for each side resolved many workers compensation cases without litigation and untoward expense when a fair impairment rating was issued by a treating physician under the AMA's 4<sup>th</sup> Edition, which has tables easy to use and is 359 pages long.

In addition to passing HB 2059 and returning Kansas to the AMA 4<sup>th</sup>, I strongly support legislation that would permit employees a choice of health care provider for treatment of workplace injuries, which would further streamline workers compensation case resolution.

Thank you for considering my testimony, and I respectfully request that the Committee pass HB 2059.

Sincerely,



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