

**TO: HOUSE COMMITTEE ON COMMERCE,
LABOR AND ECONOMIC DEVELOPMENT**

**FROM: VINCE BURNETT
KANSAS SELF-INSURERS ASSOCIATION (KSIA)**

DATE: January 31, 2017

RE: HB 2059

Chairman Mason and Members of the Committee:

Thank you for the opportunity to appear today. My name is Vince Burnett and I am a senior law partner at McDonald Tinker PA. My legal practice has focused on workers compensation law for nearly 30 years. I am here today on behalf of the Kansas Self-Insurers Association (KSIA). KSIA represents workers compensation self-insured employers throughout the State of Kansas.

On behalf of the KSIA, I highly recommend the Committee vote against HB 2059. HB 2059 seeks to amend the version of the American Medical Association Guides that applies to the Kansas Workers Compensation Act from the Sixth Edition to the Fourth Edition. Regressing from the Sixth Edition to the Fourth Edition would be a mistake.

The Fourth Edition was published in 1993—twenty-four years ago. At that time, Joan Finney was Kansas' Governor, Bill Graves was the Secretary of State and Bill Clinton was in his first year of presidency. In 2000, the American Medical Association published the Fifth Edition of their Guides. Kansas never adopted it. Seven years later, the AMA Guides Sixth Edition was published. In 2013, Kansas adopted the Sixth Edition and established its inception date as January 1, 2015.

Since being published, the Sixth Edition has become the most widely adopted version of the AMA Guides throughout the country. In fact, it has been adopted by the Federal Workers Compensation Act, the Longshore and Harbor Workers Compensation Act and more than 20 states. Many of these states have constitutional provisions similar to Section 18 of the Kansas Constitution Bill of Rights, which guarantees a remedy for personal injuries. Only six states continue to follow the Fourth Edition—a number that diminishes nearly every legislative year.

An injured employee's workers compensation award should be indicative of the permanent damage caused by his or her workplace accident. Regardless the area of law, a correlation generally exists between a wrong and a remedy. An individual paralyzed in a car accident is entitled to higher damages than an individual bruised in a car accident. Criminal sentencing guidelines impose a greater penalty upon a murderer than an assailant. Workers compensation awards should not be an exception. Injured workers should receive an award indicative of the permanent damage sustained in a workplace injury.

But the Fourth Edition often permits permanent impairment ratings regardless of whether an injured worker actually sustains permanent damage as a result of a workplace injury. Under the Fourth Edition, an injured worker can receive an impairment rating simply because he or she underwent surgery, even if the surgery was wholly successful and no permanent damage remained thereafter.

The American Medical Association drafted the Sixth Edition to correct errors in the Fourth and Fifth Editions. Ultimately, it published the Sixth Edition to provide a comprehensive, reliable, unbiased and evidence-based rating system. Rather than simply assigning a rating based upon a medical procedure, the Sixth Edition considers an injured worker's medical history, physical examination results and clinical study findings. Further, the Sixth Edition takes into account the actual permanent damage a worker sustains after undergoing treatment: If treatment is successful, the employee's impairment rating is lower; if treatment is ineffective, the employee's impairment rating is higher.

The Sixth Edition's alleged assault on impairment ratings is not supported by objective evidence. In 2016, Dr. Christopher Brigham presented an impairment rating case study to attendees of Pennsylvania's Workers Compensation Conference. Experienced examiners under the Fourth Edition, Fifth Edition and Sixth Edition compared 200 cases and assigned ratings under each edition of the AMA Guides. Notably, ratings for shoulder, wrist, ankle, foot, cervical spine, thoracic spine and neurological injuries were higher under the Sixth Edition. Impairment ratings for hand injuries remained the same. Ratings for elbow, knee and lumbar spine injuries decreased. Additionally, the Sixth Edition allows for ratable impairment for conditions not previously ratable under prior editions. While some injuries have received lower impairment ratings, suggesting that this occurs across the board is misguided.

Last, the Sixth Edition does not unconstitutionally deprive an injured worker of a remedy. Litigation on this issue has occurred in other states. No appellate court has found the Sixth Edition deprives an injured worker of a remedy.

In reality, injuries heal. The practice of medicine is light years ahead of where it was in 1993. As medicine has improved, doctors treat patients more effectively. When patients receive better treatment, they experience better results. Better treatment results can lead to lower impairment ratings. The State of Kansas should utilize the version of the AMA Guides that is most up-to-date and reflects the current state of medicine—the Sixth Edition.

I thank the Committee for the opportunity to appear before you today. I would be happy to answer any questions you may have. Thank you.