

House Committee on Commerce and Labor
Opposition to House Bill 2059- AMA Guides
Presented by Eric Stafford, Vice President of Government Affairs



Tuesday, January 31, 2017

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber of Commerce. On behalf of the Kansas Chamber and the coalition of organizations listed at the end of this testimony, we appreciate the opportunity to appear today in opposition to HB 2059, which would move Kansas back to the AMA Guides, 4th edition for use when determining the impairment rating of an injured worker.

In 2013, as part of a package of workers compensation act amendments that the Kansas Chamber and partners 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. The delayed implementation was requested by their organization due to the implementation of the affordable care act, not because they had any concerns over the 6th Edition. Attached to our testimony are several letters of support from physicians submitted during the 2013 hearings.

Use of the Guides has been an integral part of our workers compensation system for decades and the move to the 6th Edition was an important step toward recognizing the advances in medicine over the past two decades and the advances in the evaluation of physical impairment. The 4th edition, which the proponents of this bill wish to move back to, is 23 years old and obviously very outdated. It wouldn't make sense to perform surgery on a patient using methods that are 23 years old when medicine has advanced greatly over the past twenty years, so why would it make sense to evaluate the impairment of a worker using a medical guide book that is over twenty years old?

Much of the country has kept pace with medical advancements by adopting the use of the 6th edition. Over twenty states and the federal government currently use the 6th edition as they recognize that it's only common sense and good practice to keep pace with modern medicine.

Those supporting abandoning the 6th Ed. seem to lament the fact that advances in medicine can result in improved outcomes for injured workers and that may have the effect of reducing costs and overall monetary awards.



The Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to do business. The Chamber represents small, medium and large employers all across Kansas.

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 so they can return 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 from attorneys 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 Edition 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 respectfully suggest that you not succumb to the argument over constitutionality. Constitutionality arguments in workers compensation have been and always will remain present as attorneys constantly seek to attack exclusive remedy. As stated previously, the 6th Edition is utilized all over the country and internationally. The 4th Edition, which the proponents of HB 2059 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.**”

HB 2059 takes Kansas backward in our use of medical advancements. We respectfully ask that you do not support HB 2059. Thank you for taking time to hear our comments.

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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,

A handwritten signature in black ink, appearing to read "Christopher R. Brigham".

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

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.

Peter V. Bieri, M.D.
Fellow, American Academy of Disability Evaluating Physicians
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