

SOUTH DAKOTA STATE MEDICAL ASSOCIATION

Values. Ethics. Advocacy.

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November 9, 2011

James Marsh, Director
SD Department of Labor & Regulation
700 Governors Drive
Pierre, SD 57501

Dear Mr. Marsh:

On behalf of the South Dakota State Medical Association (SDSMA) Council of Physicians, I ask for the South Dakota Department of Labor & Regulation to consider updating SDCL 62-7-39. As written, SDCL 62-7-39 states that when determining partial or permanent disability compensation, an employee, employer, employer's insurer, or self-insured employer shall be permitted to use the results of post-offer base line testing or functional capacity assessment, as utilized by Guidelines to the Evaluation of Permanent Impairment established by the American Medical Association, fourth edition, June 1993, performed during the course of employment, or other medical evidence of impairment for the purpose of determining permanent partial or permanent total disability compensation due to an employee.

Upon considerable evaluation, the SDSMA feels SDCL 62-7-39 should be updated to reflect the use of the AMA Guidelines to the Evaluation of Permanent Impairment, Sixth edition, released in 2007. In development of the Sixth edition, the AMA focused on the following five axioms:

1. Adopt methodology of International Classification of Functioning, Disability and Health (ICF);
2. Make greater use of evidence-based medicine and methodologies;
3. Wherever/whenever evidence-based criteria are lacking, give highest priority to simplicity and ease of application, and follow precedent unless otherwise justified;
4. Stress conceptual and methodological congruity within and between organ system ratings; and
5. Provide rating percentages that are functionally based whenever possible unless/until science supports otherwise.

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As a result, the Sixth edition provides evaluation guidelines that are more consistent in process and result in improved inter-rater reliability. Additionally, the Sixth edition now offers guidelines for raters assessing diagnoses not previously ratable for soft tissue injuries and permanent impairment resulting from mental and behavioral disorders – only impairments for selected well-validated major mental

illness are considered. The Sixth edition guidelines also clearly differentiate between impairment and disability.

As a result of these described changes, the SDSMA believes SDCL 62-7-39 should be updated to reflect the AMA Guidelines to the Evaluation of Permanent Impairment, Sixth edition. In closing, I would offer the assistance of SDSMA staff in answering any questions you may have and thank you for your careful consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "K Murphy MD". The signature is written in a cursive, flowing style.

Karla K. Murphy, MD
President, South Dakota State Medical Association