



Pamela S. Roberts, Cabinet Secretary
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December 1, 2011

Dr. Karla Murphy
South Dakota State Medical Association
2600 West 49th Street Suite 200
Sioux Falls, SD 57117

Dear Dr. Murphy:

Thank you for sharing SDSMA's information on the impairment guides used in workers' compensation cases. As you may know, the Governor's Workers' Compensation Advisory Council, Chaired by Lt. Governor Matt Michels, meets several times a year to discuss issues such as this one. The Legislature asks the Council to vet any proposals before workers' compensation legislation is recommended.

For your information, the Council called for proposed issues at our August 3, 2011 meeting, received public testimony at our September 28, 2011 meeting, and took final action on all issues submitted at our October 26, 2011 meeting. The 2011 report has been finalized and submitted to the Governor and the Legislature.

While it is too late for us to properly address the impairment guide this year, it is something we will consider during our 2012 meetings. The Council pledges to make a recommendation regarding the change of the worker's compensation impairment guide from the AMA 4th Edition to a newer edition in our 2012 report to the Governor and the Legislature so action can be taken during the 2013 Legislative session.

We hope your association is willing to work through the Council and after that discussion process, see about introducing a bill in 2013. We will provide a copy of your letter to the Council members, and welcome any additional information your association has to offer, whether by written comments, reports, or public testimony. Any comments or reports may be sent to me at the above address.

Thank you again for your time and ideas. We share your interest in looking for ways to make the workers' compensation system work effectively for employers, employees, and providers.

Sincerely,

A handwritten signature in black ink that reads 'Pam Roberts'.

Pamela S. Roberts

Cc: Dean Krogman
vBarb Smith

November 7, 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.

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,

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