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Thank you for allowing me to testify.

My name is Anne Rosenthal. I am Board Certified in both Orthopaedic Surgery and Hand Surgery. I have been practicing in the Kansas City area since 1999. I was the Director of Hand and Upper extremity at Rockhill Orthopaedics, PC, from 1999 through 2014. The majority of my practice was Workmen's Compensation cases. Since 2015, I am solely performing medical legal consultations. I perform Independent Medical Evaluations that are court ordered, requested by the defense attorneys and adjusters, and requested by claimant's attorneys. I believe that I am in a unique position to see multiple facets of this issue.

I am well versed in both the Fourth Edition and the Sixth Edition of the AMA *Guides to the Evaluation of Permanent Impairment*. The Fourth Edition was published in 1993 and the Sixth Edition in 2008, so yes the Sixth Edition is newer. However, there has been no advance in medicine from 1993 to 2008 to justify the significant lowering of the impairment ratings. The Sixth Edition of the *Guides to the Evaluation of Permanent Impairment* does not result in a fair assessment of impairment of the injured worker.

Under the Sixth Edition, the doctor is no longer allowed to use expertise, experience and judgement in order to assign an impairment rating. The Sixth Edition of the Guides has removed the ability to adjust a rating based on each case.

The authors of the Sixth Edition claim that their intention is to simplify the rating process, but it has done just the opposite. It is much more onerous. And they admit that the process described is still far from perfect with respect to defining impairment or the complexities of human function.

Furthermore, the authors of the Sixth Edition will tout the fact that they have included many more diagnoses in the newest edition, but the default value for nearly all of these diagnoses, even those requiring surgery, is zero percent permanent partial impairment. So while they have included many more diagnoses, it is spelled out the book that the injured worker shoulder get a zero percent. Under the Fourth Edition, I could use my judgement and assign a rating that best fit the injury and current function but now I can no longer use my medical judgement based on decades of practice and I have to assign a zero percent.

The some other egregious examples are seen with carpal tunnel syndrome, cubital tunnel syndrome and rotator cuff tears. Please note that I when I site the highest rating under the Sixth Edition, it is very difficult due to the new formula to reach that highest level and most of the time the rating is at the default value or lower.

Severe carpal tunnel syndrome was rated at 40 percent under the Fourth Edition

Severe carpal tunnel syndrome is rated at 9 percent at the very worst under the Sixth Edition. And the most common rating for a carpal tunnel syndrome under the Sixth Edition once one has gone through the computations, is 5 percent. There has been no advance in medicine that would justify that significant lowering of the impairment. The worker can be left with a hand that has no feeling in the thumb, index, long and part of the ring finger, which can be a career ending event, and only get a 5 percent upper extremity impairment rating.

Severe cubital tunnel syndrome can result in essentially complete loss of function of a hand and was rated at 50 percent under the Fourth Edition. Under the Sixth Edition, the very worst that it can be rated is at 9 percent with the default of 8 percent. There has been no advance in medicine that would justify that significant lowering of the impairment. The worker can be left with a hand that has no fine motor function which can be a career ending event, and only get a 8 percent upper extremity impairment rating.

Rotator cuff pathology is another area where the Sixth Edition has had a very negative impact.

More often than not, a rotator cuff tear does not happen in isolation. This shoulder will frequently have other diagnoses such as biceps tendonitis or a tear and/or a labral tear. Under the Sixth Edition, we are forbidden to use multiple diagnoses in the rating process. A 7 percent impairment rating based on the worst case with a rotator cuff tear does not adequately describe the impairment of a shoulder with a rotator cuff tear, labral tear and biceps tendon tear. Under the Fourth Edition, the rating would be from 20 to 25 percent, if not higher depending on their final function and what surgery they had.

This is specifically noted in the Sixth Edition that “if a patient has 2 significant diagnoses, for instance, rotator cuff tear and biceps tendonitis, the examiner shoulder use the diagnosis with the highest impairment rating for the impairment calculation. If an examiner is routinely using multiple diagnoses without objective supporting data, the validity and reliability of the evaluation may be questioned.”

Another common scenario is a worker sustaining another rotator cuff tear in a shoulder which has already had a rotator cuff tear repaired. For a rotator cuff tear, the maximum impairment is 7 percent and this impairment can only be given once in an individual’s lifetime. If this worker sustains a second rotator cuff tear, the rating under the Sixth Edition is a zero. This rotator cuff tear, even if massive and irreparable, which would render this worker permanently disabled, would be rated a zero percent.

All of these scenarios can result in a worker that has lost the ability to work but due to the artificially low rating according to the Sixth Edition of *The Guides*, this worker’s rating does not meet the 7.6 percent whole person impairment that would result in work disability.

I try to look objectively and see how it impacts the worker. Depending on what they do, it may have a huge impact. All of the above scenarios in a worker with no transferable skills and be a work ending event

I believe that the Sixth Edition of the *Guides to the Evaluation of Permanent Impairment* has been very detrimental to the injured worker. As more and more claimants' attorneys are no longer taking Kansas Worker's Compensation cases, injured workers are having difficulty hiring an attorney to represent them. The injured worker then is left without representation if their care is denied.

There is no remedy or an inadequate remedy at best for the injured worker.

Thank you for your time and consideration.

Sincerely,

Anne R. Rosenthal, M.D.

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EDUCATION:

FELLOWSHIP:

1995 Hand and Upper Extremity Fellowship
Department of Orthopaedic Surgery
Massachusetts General Hospital
Harvard University
Boston, Massachusetts
January, 1995 - December, 1995

RESIDENCY:

1990-1994 Hospital of the University of Pennsylvania
Resident, Orthopaedic Surgery
June, 1990 - June, 1994

INTERNSHIP:

1989-1990 Hospital of the University of Pennsylvania
Intern, General Surgery
June, 1989 - June, 1990

1985-1989 Northwestern University Medical School, Chicago, Illinois
Honors Program in Medical Education
Doctor of Medicine
September, 1985 - June, 1989

1983-1985 Northwestern University, Evanston, Illinois
Honors Program in Medical Education
Bachelor of Science in Medicine
September, 1983, - June, 1985

PRIOR EMPLOYMENT:

Director of Hand and Upper Extremity Surgery
Rockhill Orthopaedic Specialists
120 NE Saint Luke's Boulevard, Suite 200
Lee's Summit, Missouri 64086
July, 1999 - September, 2014

Solo, private practice
Deaconess Nashoba Hospital
Ayer, Massachusetts
January, 1996, - June, 1999

FACULTY APPOINTMENTS:

Teaching Assistant
Department of Gross Anatomy
Northwestern University Medical School
1988 - 1989

Assistant Clinical Instructor
Department of General Surgery
University of Pennsylvania
1989 - 1990

Assistant Clinical Instructor
Department of Orthopaedic Surgery
University of Pennsylvania
1990 - 1994

Assistant in Orthopaedic Surgery
Department of Orthopaedic Surgery
Massachusetts General Hospital
Harvard Medical School
1995

Associate Staff
Department of Surgery
Deaconess Nashoba Hopsital
1996 - 1999

CERTIFICATIONS:

Certificate of Added Qualification, Hand Surgery 2000
American Board of Orthopaedic Surgery - 1998
National Board Diplomate - 1990