Exhibit **H**

PREFERENCE FOR 6TH EDITION OF THE GUIDES

I support the use of the 6th edition of the *AMA Guides to the Evaluation of Permanent Impairment* as a guide for determining extent of permanent impairment in Iowa for the following reasons.

I. Bases for Evaluating the 6th Edition

The assessment of extent of permanent impairment, as opposed to disability, is a medical one. The 6th edition represents the current consensus opinion of physicians who are experts in the various specialty areas covered by the *Guides*. Unless the physicians selected to participate in the process of developing the 6th edition were not qualified, the process used to generate the 6th edition was less scientific or thorough as compared to the processes used for prior editions, or the physician participants were motivated by improper purpose, I believe we should defer to the physicians' judgment as to what the current *Guides* should be. I do not believe we have sufficient evidence to prove that any of those potential detractors existed in the development of the 6th edition. The Preface of the 6th edition describes in detail the process used in developing the *Guides*. That process included invitations to state medical associations and national medical specialty societies to nominate experts to serve in the various roles involved in the process and a tiered peer review process. The process used to develop the 6th edition appears to have been no less fair or scientific than that used for prior editions. Additionally, various editors and contributors to the 6th edition who addressed our Task Force endorsed laudable motives toward producing a reliable, unbiased rating system. They also convincingly denied there was any agenda to systematically change impairment ratings in general.

While the 5th edition and prior editions were also based on consensus medical opinions, they do not reflect the most current consensus of expert medical opinions and thus are not the preferable *Guides.* Ongoing scientific study relating to the nature and causes of various conditions results in frequently changing well-accepted medical knowledge. Workers' compensation determinations that are based on medical knowledge, such as the nature and extent of permanent impairment, should be based on the most current well-accepted views of medical experts. This basis on current scientific knowledge is a major reason for the confidence of participants in the Iowa workers' compensation system in the fairness and consistency of awards.

How the *Guides* are applied in our workers' compensation cases with respect to the determination of extent of permanent disability to be awarded, on the other hand, is a legal determination. In industrial disability cases, extent of permanent impairment is just one of many factors to be considered. Even in scheduled member cases, evidence other than the medical impairment rating is properly considered. *See Miller v. Lauridsen Foods, Inc.,* 525 N.W.2d 417, 421 (Iowa 1994). If a particular rating under the *Guides* is found to not fairly represent the extent of permanent disability in a particular case, the solution is not to condemn the *Guides*, but to award benefits based on all the evidence the Iowa Workers' Compensation Commissioner finds relevant. If we were to evaluate the *Guides* based on non-medical judgments regarding the effect of particular ratings on awards, we would be unfairly evaluating the *Guides* and confusing the role of the *Guides* in our legal system.

The fact that ratings for particular conditions in the most recent edition of the Guides are higher or lower than ratings in a prior edition has not been the basis for discarding the most recent edition of the *Guides* in Iowa previously and should not be the basis for deciding whether to discard the 6th edition unless the reasons for the changes are improper. I am not aware of any impropriety in the reasons for the changes in ratings in the 6th edition. Experts who addressed the Task Force indicated that the effect of the 6th edition as opposed to the 5th on ratings overall, on the broad spectrum of conditions assessed, has not been determined. Those experts who had performed some study of the issue indicated some conditions have higher ratings, some have lower ratings, and many have stayed the same. Unless there was a compelling reason for changing a particular rating from what it had been in the 5th edition, no change was made in the 6th edition. In situations where there have been changes in ratings, logical explanations have been offered: e.g., improvements in surgical technique and materials have led to improved results from joint replacements, ratings for spinal fusions under the 5th edition were increased disproportionately high as compared to the 4th edition and the 6th edition sought to correct that, and there were inconsistencies between chapters in rating the same loss of function.

II. Favorable Features

The 6th edition uses diagnosis as the primary criterion for assessing permanent impairment in the chapters used most often in workers' compensation cases: chapters 15-17, which concern the upper extremity, lower extremity, and spine. Prior editions attempted to determine extent of impairment for those areas of the body based to a large degree on measurements of loss of range of motion and strength. There has been criticism of that model, including lack of interrater and intrarater reliability, i.e., different physicians had different measurements and the same physician had different measurements at different times; the lack of normative data for the particular patient; the variety of conditions that might produce the same functional loss; and the opportunity for the patient to manipulate test results. The primary advantage of using diagnosis as the primary criterion is it promotes less variability with ratings and, as a result, greater predicatability of ratings and less litigation concerning ratings. Although there will be conflicting diagnoses in particular cases, that is likely to occur less often than conflicting measurements of range of motion and strength. The 6th edition is also potentially easier for physicians to apply as one of their normal tasks in treating patients is to diagnose conditions, while measuring range of motion or strength in a precise, standardized manner often is not. It also provides opportunity for more scientifically based ratings because it decreases the error rate for ratings and the diagnoses on which it relies are often supported by a higher level of clinical evidence than consensus opinion.

Overall, I also believe the advantages outweigh the disadvantages of consideration of loss of function in activities of daily living as a small part of the rating process under the 6th edition. The goal of the 6th and prior editions of the *Guides* has been to assess the loss of ability to perform activities of daily living. The most direct way of doing so is to consider the effect of the condition on activities of daily living. Concern has been expressed that including functional loss as a modifier in determining the rating invades the province of the Workers' Compensation Commissioner to determine disability, as opposed to impairment. The functional loss evaluated, however, is related to activities of daily living as opposed to solely workplace activities. Additionally, in scheduled member cases, consideration of functional loss is preferable because it will more closely reflect loss of use, which is the criterion for determining extent of permanent partial disability in scheduled member cases. Probably a higher percentage of scheduled member

cases than non-scheduled member cases are not litigated. A more accurate impairment rating is thus especially important in those cases. Additional concern has been expressed that questionnaires described in chapters 15-17 of the 6th edition to help determine loss of function of activities of daily living will be misunderstood by minority group patients because of language problems or cultural differences. This is a legitimate concern, but one that can be ameliorated with interpreters and cultural sensitivity in the selection of particular questions to ask. Additionally, the 6th edition does not mandate use of particular questionnaires in those chapters.

Another advantage of the 6th edition is it includes systems for numerically rating some well-recognized conditions, such as epicondylitis and various mental disorders, that are not included in prior editions. The Task Force recommends that the Iowa Workers' Compensation Commissioner consider developing a rating system either by rule or legislation for recognized medical conditions that are not rated under the 5th edition. The 6th edition already provides such a system that was developed in a manner designed to avoid bias and reflect the consensus of medical experts drawn from national and international pools. It would be difficult to formulate a better process for developing a medical impairment rating system and certainly a better process at a low cost. I do not believe there is convincing rationale for adopting only the parts of the 6th edition that address well-recognized conditions not rated in the 5th edition as opposed to the whole 6th edition, however.

III. Concern Regarding Difficulty of Learning to Use the 6th Edition

An admitted cause for concern is the time required of physicians to learn how to use the 6th edition. The experts who addressed the Task Force recommended training, but, as I recall, stopped short of advocating mandatory training. Although this difficulty of learning how to use the 6th edition is a concern, in my opinion it does not justify discarding the 6th edition. Experts have reported that, once the methodology is learned, it facilitates easier ratings throughout various organ systems because the methodology is fairly uniform throughout the various organ systems. As one of the experts who addressed the Task Force stated, while the learning curve is steep, once on the plateau, it is fairly easy. Additionally, the greater need for training reflects the greater specificity of methods for assessing ratings, and that specificity serves the greater goal of consistency and reliability of ratings. Moreover, there is some evidence of a high rate of error in applying the 5th edition and so I suspect that a greater degree of training would have been beneficial before the use of that edition as well.

IV. The Errata Problem

At the time of writing this report, 52 pages of errata have been published. The main content of the book has not been invalidated by the recent errata. Most of the changes appear to be clarifications of wording, although there are also more significant changes, which may affect particular impairment ratings. A lengthy errata followed previous editions of the *Guides* as well, but not as long as that following the 6th edition. According to information presented to the Task Force, the increased extent of errata was probably the result of the major changes contained in the 6th edition, creating disagreements and more difficulties developing consensus. Additionally, insufficient time was allowed for diligent review of the final product. While the errata demands extra time for those determining and evaluating impairment ratings, in my opinion, they do not justify "throwing the baby out with the bathwater" and discarding the 6th Edition altogether.

V. Delaying Adoption of the 6th Edition

I am not inclined to favor waiting to adopt use of the 6th edition in the hopes that future research comparing ratings under the 5th and 6th editions will show whether interrater reliability is increased or ratings are more fair or valid under the 6th edition. While we are waiting, we will not be using the most current consensus expert medical opinions regarding impairment. Additionally, I believe there is little question that the 6th edition will foster greater interrater reliability. Once the appropriate diagnosis is determined, there is little room for variation in the numerical rating. Finally, I believe, whether the particular numerical rating accurately reflects the degree of impairment is not amenable to scientific study in any high level way, such as by randomized, controlled study. One reason for that is the actual impairment sought to be measured is not capable of objective definition. Another reason is the number of variables that affect extent of impairment. Moreover, even if an objective definition of impairment of some sort were fashioned and the many variables controlled, it would be difficult to track patients after the rating to see if the rating accurately reflected the degree of impairment.

I do support delaying use of the 6th edition until it is reasonably clear that no further significant changes will be published, however. Currently, it is unknown if there will be additional errata, according to information provided by Robert Rondinelli, MD, PhD, Medical Editor of the 6th Edition. Such a delay would avoid application in a particular workers' compensation case of an impairment rating that is later determined to have been incorrect as a result of additional errata.

By Sara J. Sersland, attorney