January 28, 2019

Steven Markowitz, MD. Dr., Phd.
Chair
Advisory Board on Toxic Substances and Worker Health
U.S. Department of Labor
Office of Workers' Compensation Programs
Room S–3522
200 Constitution Ave. NW.,
Washington, DC 20210.

Subject: Request to add agenda item to Spring, 2019 meeting

Dear Dr. Markowitz:

The Alliance of Nuclear Worker Advocacy Groups (ANWAG) supports the Advisory Board on Toxic Substances and Worker Health's (ABTSWH) position that a review of reports provided by industrial hygienists, staff physicians and consulting physicians of the Department of Labor (DOL) to ensure that such reports are of the highest quality, objective, and consistent. Congress conveyed this responsibility to this board and this review should not be usurped by DOL.

It has come to our attentions that DOL's Division of Energy Employees Occupational Illness Compensation (DEEOIC) changed their policy regarding assigning impairment ratings for Pulmonary Disease. This policy is not published on DEEOIC's website. It is our understanding that this policy was issued only to DEEOIC's contract medical consultants (CMC), not to private practice Impairment Specialists.

However, an authorized representative (AR) provided ANWAG with an email from DEEOIC with an explanation of this change in policy as well as an opinion offered by Dr. Christopher Armstrong, DEEOIC Medical Director. The AR has given ANWAG permission to share this communication. Dr. Armstrong's opinion contained in that email is below,

> In my professional medical opinion, the impairment rating by Dr. XXXX, **WAS NOT** performed in accordance with *AMA Guides™ to the Evaluation of Permanent Impairment, Fifth Edition; Federal (EEOICP) Procedure Manual;* and *Physician's Reference Manual.*

(1) It was inappropriate for Dr. XXXX to combine the WPI rating of Mr. XXXX's respiratory impairment due to beryllium sensitivity and chronic beryllium disease with the WPI rating of his respiratory impairment due to asthma.

Pursuant to *Federal (EEOICP) Procedure Manual*, Chapter 21, Paragraph 4.d.(1), impairment ratings for claimants under the EEOICPA are determined using *AMA Guides™, Fifth Edition.* According to *AMA Guides™*, Section 5.4d, "Pulmonary function tests (PFT) , performed on standardized equipment with validated administration techniques, provide the framework for evaluation of respiratory system impairment." When determining a whole person impairment (WPI) rating for the respiratory system of a claimant with asthma, the Office of Workers' Compensation Programs asks physicians to consider the effect of asthma on the claimant's ability to perform activities of daily living when selecting the percentage of impairment within the appropriate class on Table 5-12 on Page 107 of *AMA Guides™*--even if asthma is not an accepted condition. This is to avoid apportionment and ensure that the claimant's respiratory impairment is fully rated. *Federal (EEOICP) Procedure Manual*, Chapter 21, Paragraph 4.d.(4)(a) is germane.

While an impairment rating for asthma can be determined using the techniques described in Section 5.5 together with Tables 5-9 and 5-10 on Page 104 when asthma is the claimant's only respiratory impairment and PFT results are not available--pulmonary function tests "provide the framework for evaluation of respiratory system impairment." Where an impairment rating based on PFT results and Table 5-12 is available, it should be used. Impairment ratings for asthma should neither be added nor combined with those for other respiratory system impairments. Adding is only used when rating upper and lower extremity impairments; combining two or more WPI ratings for a claimant's respiratory system yields a spuriously high impairment rating.

(2) It was inappropriate for Dr. XXXX to include her estimate of metabolic equivalents (METS) in her application of Table 5-12 on Page 107 of *AMA Guides™* when determining Mr. XXXX's level of respiratory system impairment.

Mr. XXXX's medical records do not include results of cardiopulmonary exercise testing. His exercise capacity (Vo_2max) or metabolic equivalents (METS) is unknown.

No medical advice or treatment was provided in the course of this record review. No physician-patient relationship was established, nor should one be implied. I base my expert medical opinion on the document provided; I reserve the right to amend my opinion should additional information become available.

The above involved a terminal patient who was on a breathing assist device full time. A copy of the entire email is available upon request.

This unpublicized policy change has confused ARs and the board-certified impairment physicians they work with. They question whether this is an accurate interpretation of the *AMA Guides™ to the Evaluation of Permanent Impairment, Fifth Edition* (Guides). The addition of asthma component has been in practice by CMCs for several years.

It is ANWAG's opinion that ABTSWH should evaluate whether Dr. Armstrong's interpretation of the Guides is accurate and correct. We respectfully request that ABTSWH consider adding this issue to the agenda for the meeting to be held in the Spring of 2019 or by a teleconference meeting held before then.

Sincerely,

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