

THE ORTHOPEDIC WORKERS COMP MEDICAL LEGAL REPORT

The Upper Extremity

George W. Balfour, M.D.

COA QME COURSE APRIL 2010



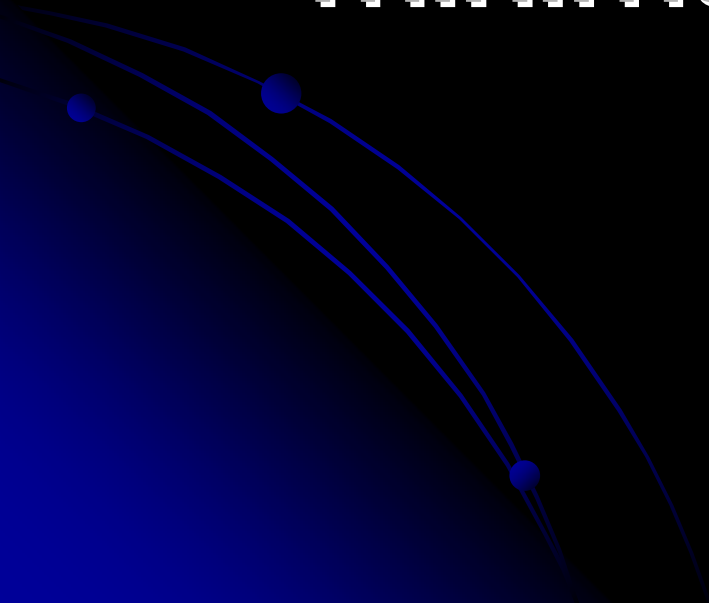
There 3 levels to the medical legal report

1) The minimal legally required components

2) The usual components of a medical consultation

3) The unique components of a Workers Compensation legal report.

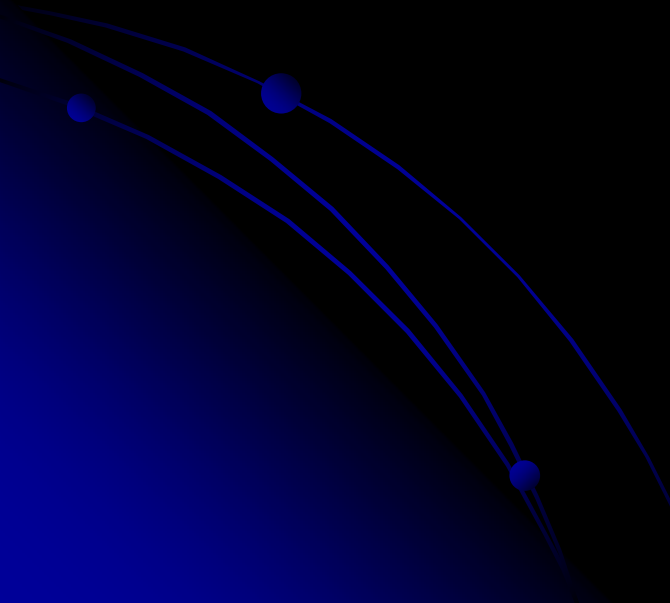
**There is a long list of
legal elements
that must be present for
minimal consideration.**



ESSENTIAL ELEMENTS

- DOCTOR'S IDENTIFICATION
- **George W. Balfour, M.D.**
- Surgery of the Hand and Upper Extremity
- Diplomat of the American Board of Orthopaedic Surgery
- Certificate of Added Qualifications in Surgery of the Hand
- Master of Modesty

INSURANCE COMP INFO

- State Compensation Insurance Fund
 - P.O. Box xxxx
 - Alice In Wonderland Park, CA 99999
 - ATTN: Red Queen
- 

PATIENT INFO

- **EMPLOYEE:** XXXXXXXX, BARBARA
- **Social Security Number:** 111-11-1111
- **Employer:** California State Park and Recreation
- **Date of Injury:** May 23, 20xx
- **Date of Service:** September 4, 2007
- **LOCATION, STATE, COUNTY**
- **Claim Number:** TY 123456
- **Occupation:** Adult Film Actress
- **Our Account Number:** 56789

WHO DID WHAT AND WHO HELPED

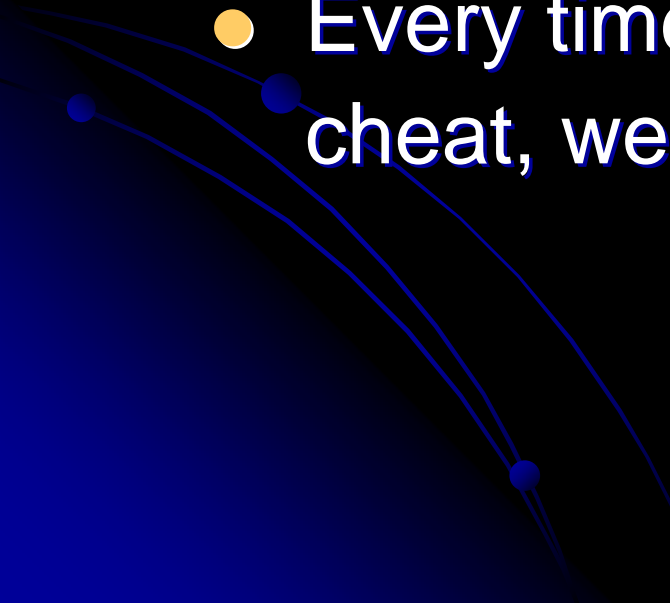
- YOUR NAME, WHAT YOU DID
- EMPLOYEES, WHAT THEY DID
- TIME REQUIRED
- OTHER SERVICES, I.E. RESEARCH
- REPORT PREPARATION DOES NOT COUNT !!!!!

STATEMENT THAT THIS IS YOUR WORK


- **DISCLOSURE STATEMENT**

- The entire history, the review of medical records, if any, the physical examination and the interpretation of any diagnostic studies were done by me. I also dictated this report, which was transcribed by my transcription service. Walter Vasquez, Certified Radiology Technician, assisted with the examination.
- I hereby certify that this report represents that the work of this examiner and my staff in the manner described and expresses exclusively, my professional findings and conclusions on the matter discussed.
- I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information I have indicated that I have received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and except as noted herein, that I believe it to be true.
- Pursuant to Labor Code Section 5703 and 5307A 1, I declare under penalty of perjury that I have not violated Labor Code Section 139.3 and that I have not offered, delivered, received, or accepted any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration whether in the form of money or otherwise as compensation or inducement for any referred examination or evaluation.

REASON FOR DISCLOSURE STATEMENT

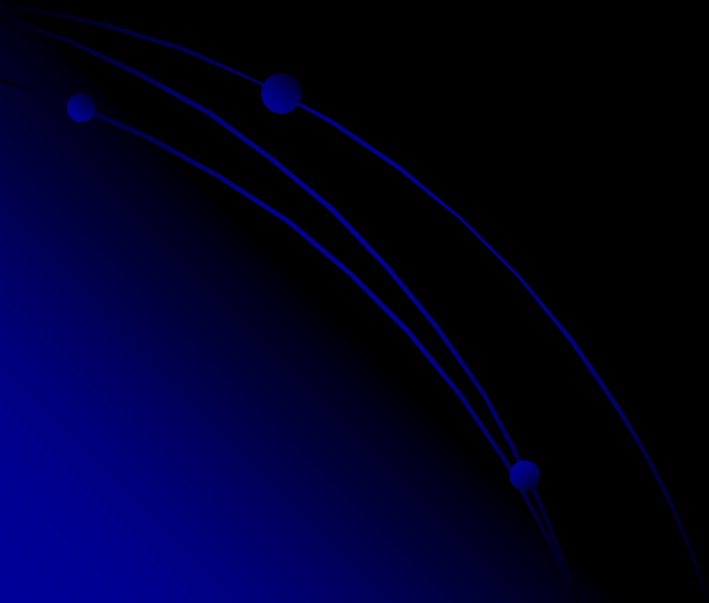
- There have been cases of people hiring others to do the examination and reports.
 - Every time someone finds a way to cheat, we all have to pay the price.
- 

Special Inclusions and Statements

- If a panel QME:
 - report you have explained the QME process.
 - report if the patient had a fair choice of 3 doctors.
 - report if the patient had his/her medical records.
- 

DEU forms 100, 101

- If not included they can refuse to pay you.



- **DWC QME/AME Report Checklist**

- 1. Summary form (for AME and QME)
- 2. DEU form 100 is included (unrepresented QME)
- 3. DEU form 101 is included (with comments for unrepresented worker)
- 4. Date of examination
- 5. Location of examination
- 6. Statement that the physician actually performed the examination
- 7. Time spent fact to face with the injured worker
- 8. History of the present injury or illness
- 9. Job duties
- 10. Present complaints
- 11. Prior medical history, including injuries, conditions and residuals
- 12. Findings of the exam, including laboratory or diagnostic test results
- 13. Listing of material reviewed or relied upon to prepare the report
- 14. Diagnosis
- 15. Factors of disability: subjective, objective, work restrictions and estimate of loss of pre-injury capacity

- 16. Opinion of whether permanent and stationary
- 17. Cause of the disability (work caused/work contributed)
- 18. Medical determination of eligibility for vocational rehabilitation
- 19. Treatment indicated, including continued and future treatment
- 20. Apportionment of disability, if any
- 21. Reasons for opinions
- 22. If psychiatric problem, determination of percent of total disability from work
- 23. Disclose the name and qualifications of anyone who assisted with the report
- 24. Mandatory declaration in its entirety:
 - "I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true."
- 25. Statement about LC §139.3 (proprietary interest, etc.)
- 26. Original signature of the physician, date of signature and county where it was signed.

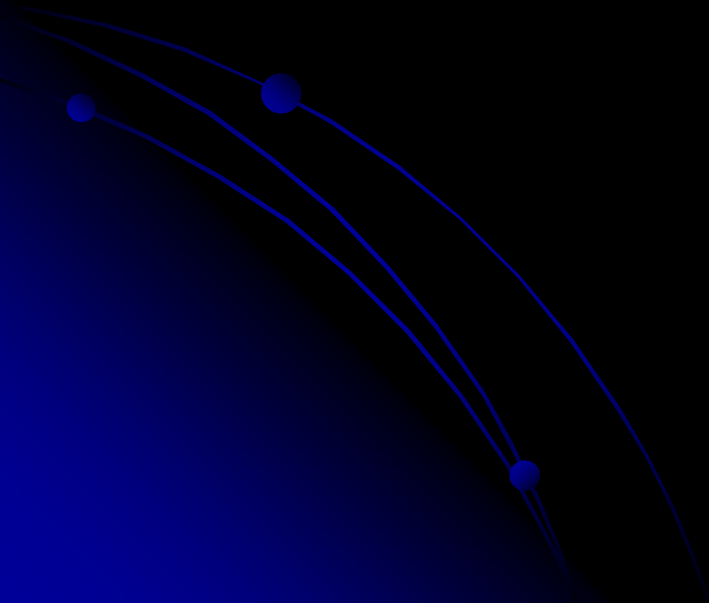
9/13/07

Special Considerations

- If you are doing AME exams the opposing attorneys will want several areas at least minimally explored:
 - Sleep
 - GI
 - **ANYTHING** that might expand their case, or refute their opposing side's case.

Remember

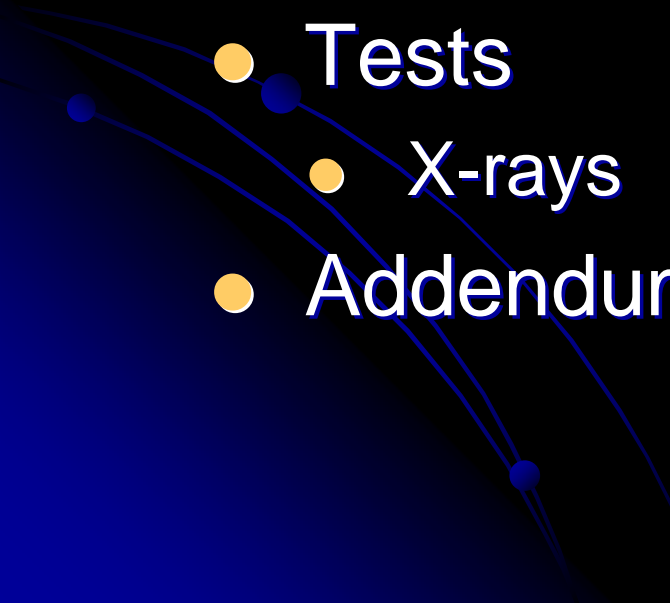
As an AME or QME your job is to be as neutral , fair , and honest as you can.



My approach to this . . .

- Talk to various attorneys (but never about a specific case).
- Find out what the current buzz topics are and make a point of asking those questions.
- I personally don't go past asking the questions:
 - ADL questionnaire
 - Quickdash scores
 - Epworth sleep score questionnaire.
- More than that violates my long history of conservative reporting.

Elements of the report itself

- History of present illness
 - Past medical history
 - Review of systems
 - Physical examination
 - Tests
 - X-rays
 - Addendums
- 

Physical Examination and Detailed Musculoskeletal Examination

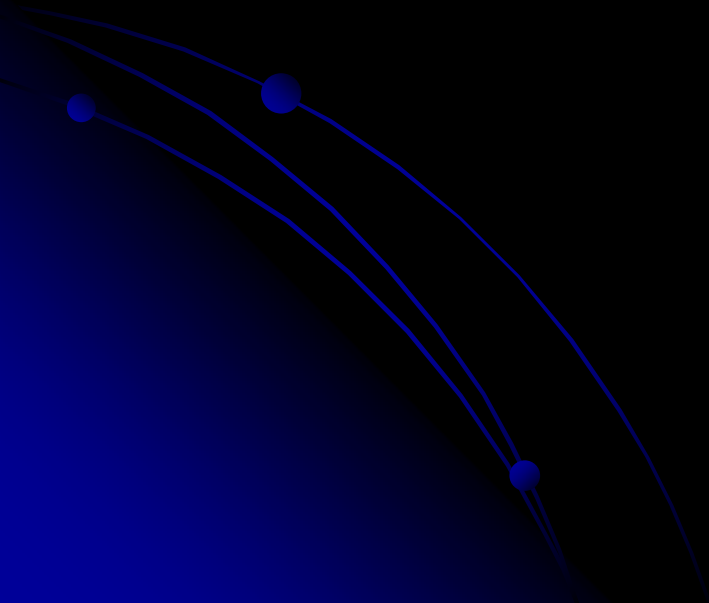
- Include inspection, palpation, ROM, sensation, neurologic, exam.
- Consistency of the examination.
- Credibility, if an issue.
- Note if the patient is particularly either not credible and very credible.

Diagnosis

- Make the diagnoses as you believe them to be.
- Pain is a diagnosis.
- Normal examination is a diagnosis.
- Don't make any diagnosis you can't logically support.
- **Be sure your report supports your diagnostic conclusions and say why it does.**

For AME and QME reports

- It pays to re-read the reports a few days after you prepared them to be sure they still make sense to you.



Required conclusions

- AOE/COE Is this work related? Why?
 - You must have an opinion. “I don’t know” is not acceptable even if you don’t know. As Herb Stark told me, “that’s what they pay you for.”
- P & S / MMI
- Causation
- Apportionment
- Work restrictions

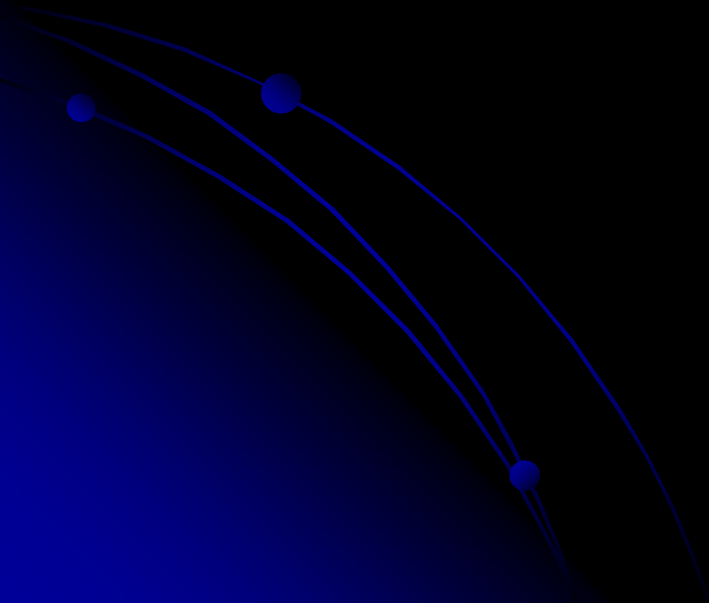
Rating / AMA Guides

Chapter 16

- Based originally on the work of Al Swanson.
- I once tried to ask him about the system.
- He answered over his shoulder as he walked away. I have no idea what he said.
- Even the 5th Edition Upper Extremity chapter still reflects Dr Swanson's biases.

The earliest version of the guides

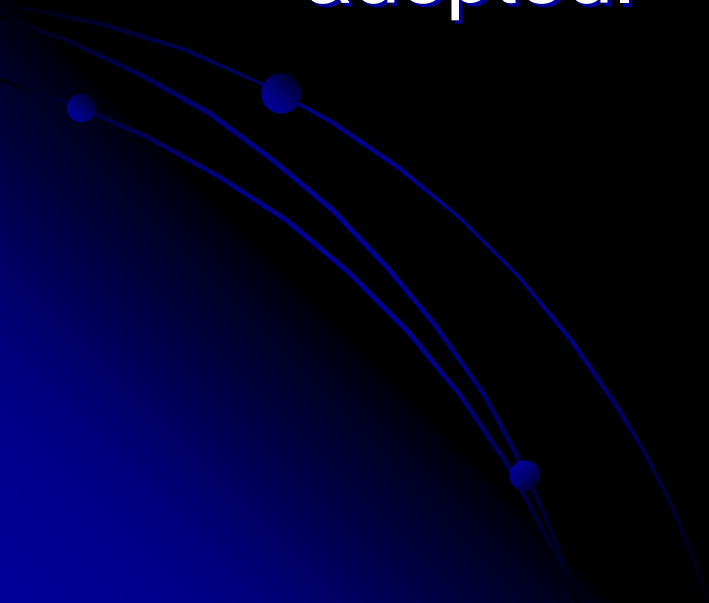
- Feb 15th 1958 JAMA
- Upper extremity contribution from
- The ASSH/AAOS
- Alfred Swanson chairman.



So what if Al Swanson wrote the first version of the upper extremity chapter ?

- Understand that His practice was mostly Rheumatoid Arthritis
- You can use this prejudice to weigh or alter your rating
- You want to get in to his and the chapter committee's heads. That is were the latitude can be found

If you hate the 5th Edition,
try reading the 6th.

- Fortunately, the 6th edition is not used in California and is not likely to be adopted.
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Basic Principles of the 5th Edition Upper Extremity chapter


- 1) Amputations are rated by length
 - a) Quality of the stump does not count
 - b) Neuromas can be rated
 - c) Sensory level if greater than the bony level can be added
 - d) How about cosmetic impairment?
- Chapter 8

2) Range of motion

3) Measure grip

Loss of fdp makes a significant contribution to grip

Most joint injury is rated by the ROM

- But you can rate instability
 - including “occult”
 - at the shoulder
 - Medial – lateral laxity by physical examination
- 

Peripheral nerves

Estimate the degree of sensory impairment
multiply by the value of that nerves sensory
value Table 16-15

Estimate the degree of motor impairment
multiply by the motor value of the nerve
and then add the two results

Tables 16-10, 16-11, 16-15.

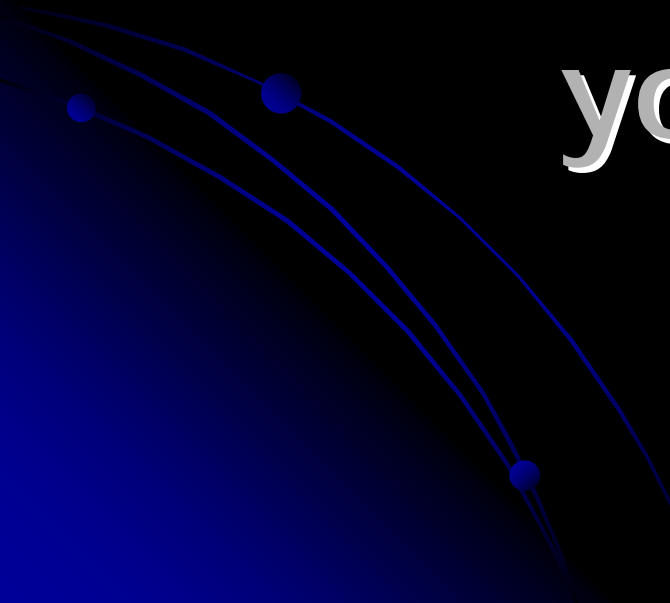
Rate Neuropathy

- Table 16-10, 16-11, 16-15
 - very badly written
- Most of the time you end up with grade 4 motor and sensory defects.
- Semmes Weinstein testing
- The therapist does it. They spend a full hour doing a more detailed job.

Sensory and motor testing is imprecise

- The guides say that a hand after a carpal tunnel release is worth 3% of the whole person
- Reason. The difference between zero deficit and 10-15% deficit is hard to measure. (I assume that there is never 100% motor or sensory recovery) The hidden assumption is that normal is never obtained. (see page 495)

**When rating nerves,
be sure your
physical exam
substantiates
your rating.**



Commonly Missed Sections

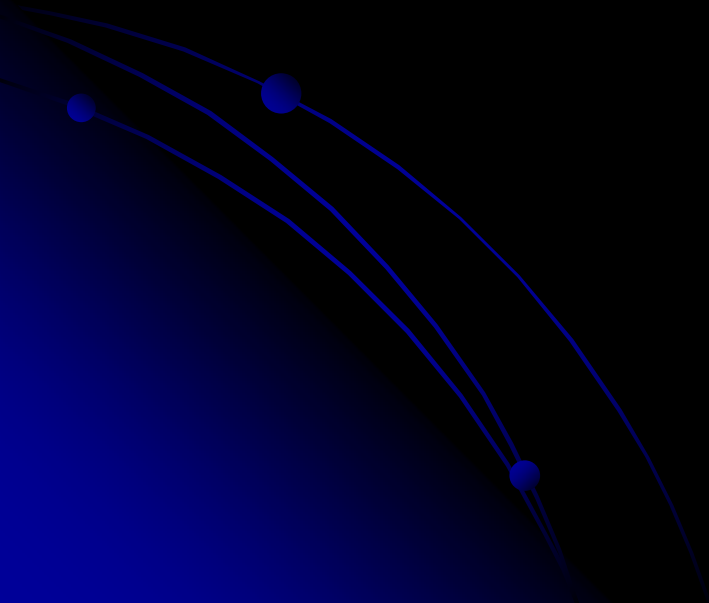
- Pages 500-516
- Synovial hypertrophy (thank you Al Swanson)
T 16-19
- Digital deviation or rotation table 16-20,21 (and deformity?)
- Subluxation 16-22
- Passive medial lateral instability T 16-23
- Carpal instability patterns T 15-23
x-ray measurements
- T 16-26 shoulder instability
- Arthroplasty T 16-27 independent of result
- T 16-28 intrinsic tightness
- T 16-30 edc subluxations (Swanson)

Manual joint testing

- T 16-23 ,16- 24
- These tables are based on physical examination only
- useful for gamekeepers thumb , cmc joint of thumb injury, or wrist laxity.
- Can only be disputed by another physical examination.

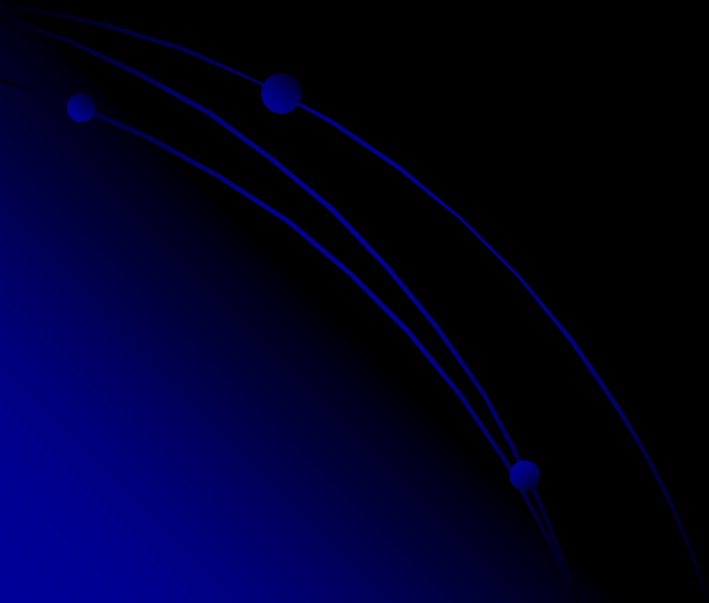
Dequervain's

- Is a constrictive tenosynovitis
- You can use t 16-29 and stay within the 4 corners of chapter 16

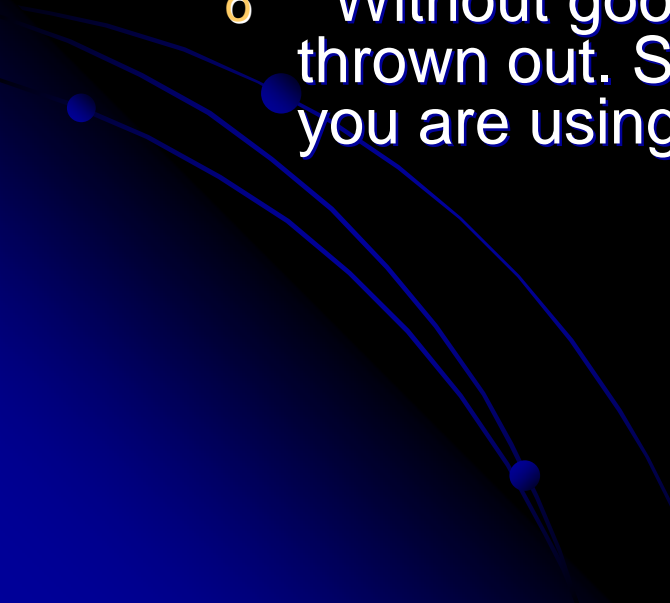


disfigurement


- Section 8.1
- ugly scars or nails
- Have you ever noted a patient hide their hand because of its appearance?



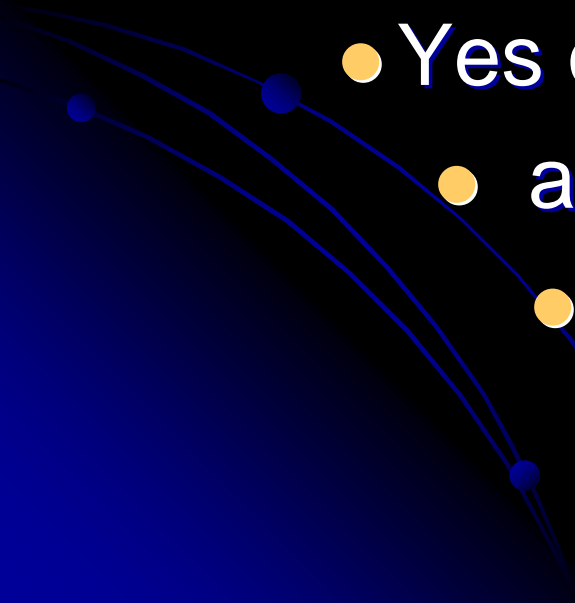
Strength 16.8

- Manual testing
 - There are specific numbers for the shoulder
 - Jamar
 - Pinch meter
 - You must give a good reason for using this section .
 - Without good justification, strength rate will be thrown out. So always add a sentence or two on why you are using strength.
- 


Certain diagnoses are not ratable and are specifically excluded

- Tennis elbow
 - “Over use” syndrome
 - Fibromyalgia
- 

Conclusions

- P and S
 - Yes or No
 - and why
 - Future Medical Care
 - Yes or No
 - and why
 - immediately or in the more distant future
- 


Conclusions

- Causation LC 4663
 - Industrial vs. non-industrial and why.
 - How much from each source and why.
- 

Make a point of explaining or justifying everything you think the lawyers might question.

- It never fails that the lawyers find something to argue about that you never anticipated.
- The less you leave for them to question, the less depositions you will have to do and the more exams they will send you.
- Remember, they really don't want to take your deposition any more than you want to be deposed.

Substantial Medical Evidence

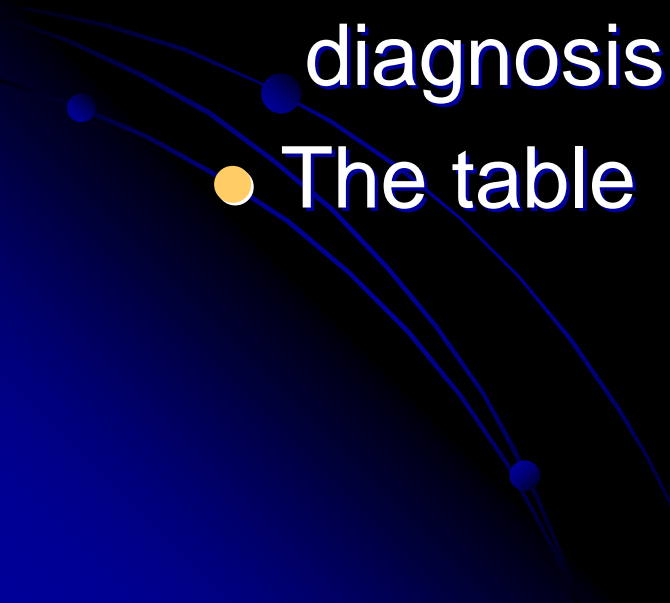
- Means a report that is complete
 - Logical
 - Persuasive
 - Makes sense
 - Internally consistent
 - Just be as honest as possible.
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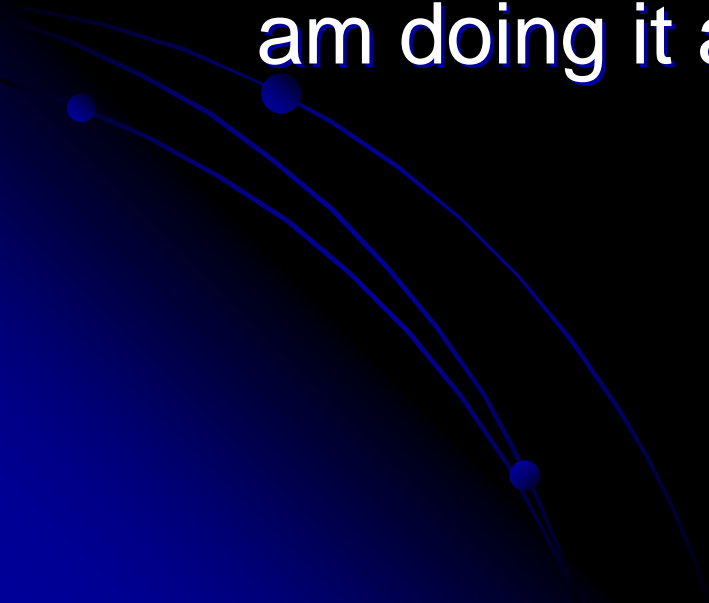
How has my approach changed from 1/1/2005 to today?

1) Rating software

- Trying to do Chapter 16 without good software is a nightmare.
- Going from % of digit . . .
 - to % of hand . . .
 - to % of UE . . .
 - to % of WP . . .
- Just invites error.

Other Errors

- Not at least mentioning other issues, i.e. sleep.
 - Using the pain section.
 - Appropriate and inappropriate diagnosis of CRPS. Table 16-15
 - The table gives diagnostic criteria.
- 

- More inclusion of special sections.
 - Better understanding of Ic 4663.
 - ADL questionnaire attached to report.
 - Sleep questionnaire attached to report.
 - Quickdash score. Not required, but I am doing it anyway.
- 

Independent /certified raters

This is a service sold to the carriers.

There is no place in the LC for this service in
California



- Only if you read this report into the record does it count. Other wise it never happened
- I write “ I have received the opinion of the certified rater. It has no place in the Ca system. Thank you. “ I bill \$\$\$.\$\$

The carrier has now paid twice for nothing.

Have you ever seen one of these opinions raise a rating?

Have you ever seen a worker obtain this service? How is this fair?

