

HOW TO GET A REPORT CORRECTED UNDER *THE AMA GUIDES*

1. If you conclude that the doctor's report is wrong under *The AMA Guides*, do the following:



- a. **Write the doctor.** List for the doctor the pages and quotes from *The Guides* which you want him to review. Ask him to review them and advise if he would change his opinion as a result. Ask him what his new opinion would be. And don't forget to "ask for the sale" (*as all salespeople know*). **Ask him to change his rating to the correct rating under *The Guides*.**



**SEE AND USE THE SAMPLE LETTERS
AT THE END OF THIS CHAPTER**

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1) Example:

Dear Doctor Smith,

In your report of _____, you concluded the following:

- a) *Mrs. Bambino has carpal tunnel syndrome in her right wrist.*

You evaluated her 1 month after the carpal tunnel surgery on her right wrist.

You concluded she had reached maximum medical improvement.

You concluded that she had:

Diminished grip strength

Normal monofilaments

Normal two-point discrimination

Normal thumb to middle finger opposition

You have noted that her pre-injury EMG was normal.

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You gave her 35% Upper Extremity Impairment.

b) *Doctor, please review the following attachments from The AMA Guides to the Evaluation of Permanent Impairment [5th Edition] (page references are included):*

(1) *You reached a diagnosis of Carpal Tunnel Syndrome.*

In order to make such a diagnosis, The AMA Guides specifically require the following:

p. 492: "The most frequently encountered entrapment is of the median nerve at the wrist, leading to carpal tunnel syndrome, followed by the ulnar nerve at the wrist."

p. 492: "The diagnosis of ...entrapment/compression neuropathy [carpal tunnel] is based on (1) the history and symptoms; (2) objective clinical signs and findings on detailed examination; and (3) documentation by electromyographic studies."

The EMG here is normal.

Please advise how your diagnosis of carpal tunnel syndrome meets the Requirements of page 492 of the AMA Guides for a positive EMG for such diagnosis? If not, please indicate so.

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- (2) *You concluded that the Patient had reached maximum medical improvement one month after the carpal tunnel surgery.*

p. 493 of The AMA Guides states:

"Postoperatively, a sufficient amount of time for optimal physiologic recovery and rehabilitation should elapse before an individual qualifies for permanent impairment rating should there be residual symptoms or clinical findings....

...even lesions at the wrist may take 6 to 9 months for maximal recovery of nerve function."

Therefore, is your conclusion that the patient is at maximum medical improvement one month after the carpal tunnel surgery consistent with The AMA Guides' specification of 6 to 9 months recovery from surgery for optimal physiologic recovery? If not, please state so.

- (3) *You base your rating on diminished grip strength.*

p. 494 of The Guides states: "In compression neuropathies, additional impairment values are not given for diminished grip strength?" (emphasis added)

Is your rating of the Patient using grip strength consistent with page 494 of The AMA Guides? If not,

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please indicate so.

- (4) *Therefore, after reviewing the quoted passages above, would your conclusions be as follows:*
- (a) *The patient cannot be diagnosed with carpal tunnel syndrome as her EMG is normal per p. 493 of The Guides.*
 - (b) *The patient has not yet reached maximum medical improvement per page 493 of The Guides.*
 - (c) *The use of grip strength for rating this carpal tunnel case is not appropriate under page 494 of The Guides.*
 - (d) *The patient cannot be rated for Carpal Tunnel Syndrome as she does not qualify for such a diagnosis. **Therefore, her rating is 0% WPI.***

OPTIONAL (THE DEPTH CHARGE)



- 5) If I do not hear from you by _____, I will assume that your conclusions are those

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expressed under paragraphs 4 (a), (b), (c), and (d) above and that her correct rating is **0% WPI.**"



- 2) **IF YOU ARE UNCOMFORTABLE WRITING THE DOCTOR, SEND THE REPORT TO PHIL WALKER WHO WILL PREPARE THE LETTER TO THE DOCTOR FOR YOU. (See 1b below.)**



- b. If the doctor will not change his opinion based on your letter, do the following:
- 1) **Send the report to an outside company to advise you if the WPI rating is correct or not. If incorrect, the company will tell you what the correct rating should be and will point out all errors in the doctor's report.**
- a) **Send to Phil Walker at phil@askphilwalker.com.**

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Rate: INITIAL REPORT FREE!

Just email the report to Phil at phil@askphilwalker.com. Attach the report and give:

Patient's name
Date of Birth
Occupation

Turnaround: 3 business days from receipt

See Services and Rates (Chapter 11) for cost of reviewing additional reports.

b) Send to Brigham & Associates.

www.impairment.com

Please check their website for rates.

Dr. Chris Brigham is a personal friend of mine, co-presenter on *The AMA Guides* nationally, and a whiz on *The Guides*. He does an outstanding job!



2) After getting the analysis report from the outside company, send the outside report to the evaluating doctor and ask him if he will change his rating to the correct rating per the outside report.

Give him 30 days to reply.

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3) **If the doctor will not change his opinion:**



a) **DEPOSE THE DOCTOR (SEE "HOW TO DEPOSE A DOCTOR UNDER THE AMA GUIDES" BELOW.**

Use your own attorney, or

Use **Phil Walker just for the deposition**
(like using a surgeon.)

**Rate: \$500 for review of file and
telephone deposition of
doctor.**

**Then, return the file to your attorney
for settlement or trial.**

The deposition can lead to only 3 results. Each one will help you get the correct rating:

- (1) **The evaluating doctor changes the rating to the correct one under *The AMA Guides*.**
- (2) **The evaluating doctor becomes incredibly vague in testimony and does not answer the questions. (Think Bill Clinton in**

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the Monica Lewinsky deposition.)

Then, move to Strike the Report and testimony as Non-Responsive to the Questions Asked.

- (3) **Dr. says he does not agree with *The AMA Guides*.**

WONDERFUL!

THE MOMENT THE DOCTOR SAYS THIS, HIS REPORT IS NO LONGER FOLLOWING *THE AMA GUIDES*.

***IN CALIFORNIA*, FILE A MOTION TO DISMISS HIS REPORT AS NOT SUBSTANTIAL MEDICAL EVIDENCE BECAUSE, IN CALIFORNIA, FOR A REPORT TO BE "SUSTANTIAL MEDICAL EVIDENCE," IT MUST APPLY THE LAW OF CALIFORNIA CORRECTLY. *THE AMA GUIDES* ARE NOW THE LAW OF CALIFORNIA FOR RATING PERMANENT IMPAIRMENT AND, THEREBY PERMANENT DISABILITY.**

***IN FEDERAL COURTS*, FILE A *DAUBERT* CHALLENGE.**

***IN STATES OTHER THAN CALIFORNIA*, FILE A MOTION TO HAVE THE REPORT DISMISSED AS NOT CONSISTENT WITH THE LAW.**

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- b) ***IN CALIFORNIA***, schedule the matter for Trial. Have the judge issue Formal Rating Instructions to the State (DEU) Rater.
- a. You will get a formal DEU Rating.



- b. If that appears to be **WRONG, SCHEDULE THE CROSS-EXAMINATION OF THE RATING SPECIALIST. SUBPOENA THE DEU RATER TO APPEAR.**
- 1) Have this done by your attorney. Consider having an Expert testify on your behalf. Phil Walker will do that.

RATE: \$350 PER HOUR FOR TESTIMONY AND PREPARATION
 - 2) Or, have the cross examination done by Phil Walker. (Please see Contact Information throughout this book.)



THE KEY TO SUCCESS:

This is the moment to strike!

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In any conflict, you must find your opponent's weak point--his Achilles heel--and then strike it over and over again until he is crippled and begging for mercy (Find the Achilles heel and then ram a nail into it over and over again until his is lying on the ground and pleading for the conflict to be over.)

The moment in an AMA case when you have found your opponent's Achilles' heel is when you have shown the doctor's rating is wrong under *The AMA Guides* and let the Attorney see he may have no evidence to support his case. (It's hard to win a case with no evidence!)

This is the moment to propose settlement!

DO NOT WAIT FOR A JUDGE TO MAKE A RULING ON THE EVIDENCE. (Many judges are not law-oriented but "results-oriented" and will do anything they can to permit the evidence to come in.) So, don't wait for them to rule because the ruling may well go against you and necessitate an appeal.

Rather, extend a settlement offer to the Plaintiff's Attorney based on the correct rating. Give the Plaintiff's Attorney a limited time to respond.

If he does not respond in that time, file the papers to set the matter for Trial. Tell him you will take the case all the way through the appellate process if you are unable to settle based on the correct rating. And, if need be, do not hesitate to start the trial and swear the witnesses in. (*I can't tell you how many times I've seen this work. The Plaintiff Attorney often thinks you are bluffing and not prepared for trial. When he sees you are prepared and ready to go, his bluff has been called and he is often ready to settle the case.*)

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II. APPEAL

2. HOW TO DEPOSE A DOCTOR UNDER *THE AMA GUIDES*



1. Introduction

- a. Name
- b. Business Address and How Long at Location
- c. Prior Business Addresses
- d. Nature of Practice
 - 1) Treatment v. Medical-legal evaluations
 - 2) Plaintiff/Applicant v. Defense/Insurer Percentages

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- 3) AME's
 - 4) QME
 - 5) Certification for QME
- e. Educational Background
- 1) College
 - 2) Medical School
 - 3) Internship
 - 4) Residency
 - 5) Honors
 - 6) Post-Residency Study
 - 7) Continuing Education
- f. Board Certification
- 1) In what field
 - 2) When granted
- g. Training in Work Comp
- 1) Seminars? (Ask to see training materials)
 - 2) Number of Hours per year
 - 3) How many work comp evaluations in career?
- h. Complaints or Lawsuits for Malpractice

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- 1) Ever filed?
 - 2) How many?
 - 3) Get names of parties
 - 4) Nature of claim
 - 5) Result
- i. Discipline by any Medical Board
- 1) Ever?
 - 2) Nature of matter
 - 3) Result
2. AMA Guides
- a. When did you first begin using the Guides?
 - b. What training have you had?
 - 1) Where?
 - 2) How many hours?
 - 3) What did it involve?
 - 4) Who were the trainers?
 - 5) Can I see the training materials?
 - c. How many evaluations have you done under *The AMA Guides*?

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- 1) Had them reviewed by outside source to see if correct?
 - 2) Why not?
 - 3) Do you know whether or not your opinions were correct?
 - 4) How do you know?
 - 5) Do you know the current error rate in ratings under *The AMA Guides* in California?
 - 6) Can you be sure your rating is correct? How?
- d. What have you read on the AMA Guides?
- 1) The Guides themselves
 - How much?
 - What parts?
 - Chapter 1: Principles?
 - Chapter 2: What needs to be in reports under the Guides and how to do the physical examination?
 - Chapter 18: The chapter on pain which explains the theory of the Guides
 - Have you read the chapter on the body part(s) we are addressing today? How many times?
 - 2) Casebook?
 - 3) AMA Guides Newsletter (do you subscribe)?

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4) *Lawyer's Guide to the AMA Guides and California Workers' Compensation*

5) *Understanding the AMA Guides in Workers' Compensation by Steve Babitsky?*

6) Why not?

7) Do you use any software in doing your evaluations?

What software?

How much training have you had?

Have you ever calibrated that software against *The AMA Guides*?

Why not?

How do you know the software is doing the calculations correctly? Ever had it reviewed by another source?

8) Have you written anything on *The AMA Guides*, published anything?

9) Ever been deposed regarding *The AMA Guides*?

How many times?

In what cases?

Result of the depositions?

3. The Instant Case

a. How did you come to see this patient?

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- b. How many reports have you rendered?
(Make sure you have all reports.)
- c. Did you dictate the reports?
- d. After the dictation was done, did you review the report to ensure it was accurate before it went out?
- e. Then, always start with the typos and clear errors in dates and names in the report.

Q. Are you sure you checked this before it went out? If you did, how did those typos/errors remain in here?

Q. Are there other errors in your report?

- f. How did the patient injure himself?
- g. Patient's course after injury. (Go through all of the medical treatment.) [Point out any inconsistencies in the test results or medical reports. Q. Did you find that inconsistency significant? Did you mention that in your report? Where? If not, why not? Why didn't you mention that?] Be sure and check all measurements in all reports which are the same ones to be used for the AMA evaluation.

- h. Exam
 - 1) How did you do it? Did you follow the exam specified in the AMA Guides? Show me the page you followed. (Then, go through the exam step by step to ensure that it complies with *The AMA Guides*)
 - 2) What findings did you get on exam?
 - 3) Did you consider those significant?

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4) What were you to look for or do to perform the AMA impairment evaluation? Please point out the page.

Did you do it?

5) What measurements did you take? How many times? Did they meet the consistency requirements? What are the consistency requirements? Of those measurements, which one did you use for rating purposes?

i. Calculation of Impairment Rating

1) Go page by page through the AMA Guides checking the impairment rating

2) What page told you how to do the physical exam?

3) Did you do it that way? (Go through each step of the physical exam)

4) What page told you how to do the rating?

5) Did you do it that way? (Go through each step of the rating)

j. The Principles of the Guides (See Chapter 7 of *This Book*)

1) The Four Great Principles

a) Objective Factors of Disability

b) Subjective without Objective = 0.

c) The Maximum Add-On for Pain is 3% WPI.

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d) The AMA Guides are based on SCIENCE.

Therefore, 4 ratings are 0:

- Fibromyalgia
- Myofascial pain syndrome
- Thoracic outlet syndrome
- Lateral or medial epicondylitis (tennis elbow) without a surgery

2) The 14 Lesser Principles

- a) Impairment
- b) Maximum medical improvement
- c) Who can perform an impairment evaluation
- d) Impairment produces 2 things
- e) Normal
- f) Impairment percentages
- g) Activities of Daily Living
- h) Work
- i) Impairment ratings are not intended for use as direct determinants of work ability
- j) Whole Person Impairment Scale

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- k) Disability
 - l) Combined Values Chart
 - m) Subjective Complaints
 - n) Causation
 - o) Apportionment
 - p) Aggravation
 - q) Reproducibility
- 3) The Chapter 2 Principles
- a) What needs to be included in reports under the Guides
 - b) Use of Consistency Tests
- 4) Checklist 3: Attacking and Defending Reports under the AMA Guides
- a) Training
 - b) Experience in working with Guides
 - c) Materials reviewed
 - d) Reports include all elements?
 - e) Doctor's Bias
 - f) Steps of evaluation per Guides

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- g) Correct area of Guides for rating
 - h) Pain
 - i) Name of Book
 - j) Specificity--Did he identify the charts and tables he used?
- k. Need for reevaluation? Why? How soon can you get the patient in?
- l. Scheduled to go to any further trainings under *The Guides*?
- 1) When?
 - 2) By whom?

SAMPLE LETTERS TO DOCTORS TO CORRECT REPORTS

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**PLEASE SEE AND USE
THE LETTERS AT THE END
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