

# Recovery & Resolution



Graham Lundberg & Peschel *Founded 1979*

A LEGAL NEWSLETTER FOR  
HEALTH CARE PROFESSIONALS

## Physical Capacity Evaluations:

### Their use in establishing damages in personal injury cases

**P**hysical capacity evaluations are useful to establish damage pertaining to past and future loss of income, diminishment of future earning capacity, and the ability of an injured person to return to gainful occupation after treatment of injury. These evaluations use a systematic method of measuring a patient's ability to perform meaningful tasks to determine their functional capacity or limitations. Physical capacity evaluations (PCE) are therefore also referred to as Functional Capacity Evaluations (FCE). Whatever the designation, they are performed by a select group of qualified occupation or physical therapists, vocational evaluators, psychologists, and exercise physiologists to assist the treating physician, case manager — in the context of Labor and Industries claims — or legal counsel to establish whether a physical disability or limitation exists that may pose an impediment to gainful employment in the future or to establish the loss of income in the past.

A PCE may have multiple

functions: 1) to improve the likelihood that the injured worker will be safe in subsequent task performance, 2) to assist the patient to improve role performance through identification of functional losses so that they may be resolved, and 3) to determine the presence and level of disability so that the patient's case can be resolved. The evaluation of disability is based on the measurement of the functional consequences of impairment in tasks that are pertinent to the particular role — often as a worker with known constellation of expected tasks to be performed in a particular work environment.

A PCE or FCE employs structured performance protocols using test equipment or simulated activities to measure functional performance. The PCE may have different purposes, such as goal setting for planning therapy, measurement of loss-of-performance ability to estimate disability, matching adequacy of a worker's abilities to perform

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*Using the AMA Guidelines to Establish Permanent Impairments of Your Patients' Injuries.*

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# Top Ten List – Attorney Red Flags

**B**elow is a list of GLP's top ten red flags fact scenarios that provide advance notice that your patient may be in need of an attorney. We have found that patients that attempt to handle red flag cases on their own not only put at risk their own claim, but also risk payment of medical care.

**1. Disputed Liability:** Patients that are involved in an accident where issues of fact exist regarding how the accident occurred usually benefit by retaining counsel. For example, a patient that is involved in a four-vehicle rear-end accident may need an attorney to help determine the sequence of events that caused the accident to occur. Insurance carriers for the following drivers may not accept 100% liability and so apportionment of fault is required. An attorney will be required to negotiate with multiple insurance carriers.

**2. Inconsistent Treatment:** Patients that do not obtain consistent care throughout their rehabilitation create questions concerning whether their treatment is reasonable and necessary and related to the trauma-induced event.

**3. Out of State Claims:** Patients that have been involved in an accident arising in a different state

require legal counsel most of the time. Each state may have different statute of limitations and often both Washington and out of state counsel is required. We recently handled a claim where our client was injured in the State of Arizona and our office handled the damages testimony for the Washington treating doctors and local Arizona counsel handled the liability aspect of the case.

**4. On-the-job Injury Claims:** Patients injured at work often have a viable third-party claim. We find that these patients are often injured as a result of the negligence of some person or entity other than their own employer. An extensive fact and liability investigation may be necessary to determine whether they have a right to recover their excess wage loss benefits and pain and suffering damages from the at-fault entity.

**5. Pre-existing Conditions:** Patients that present with a history of similar injuries often find it difficult to get not only their first-party insurance benefits paid, but also the at-fault party insurance carriers to offer fair and reasonable settlement monies. The patient may be entitled to payment of medical bills and compensation for aggravation of a pre-existing condition or for causing a previous dormant condition to become active. The facts of each patient's individual case will determine the proper course to take.

**6. First-Party PIP Benefits Exhausted:** Patients that have ex-

hausted their personal injury protection medical coverage (PIP) will usually benefit from retaining an attorney. An attorney can often find secondary PIP coverage or health insurance to pay the patient's medical bills on a monthly basis. Patients rarely understand the order in which first-party benefits should be paid out.

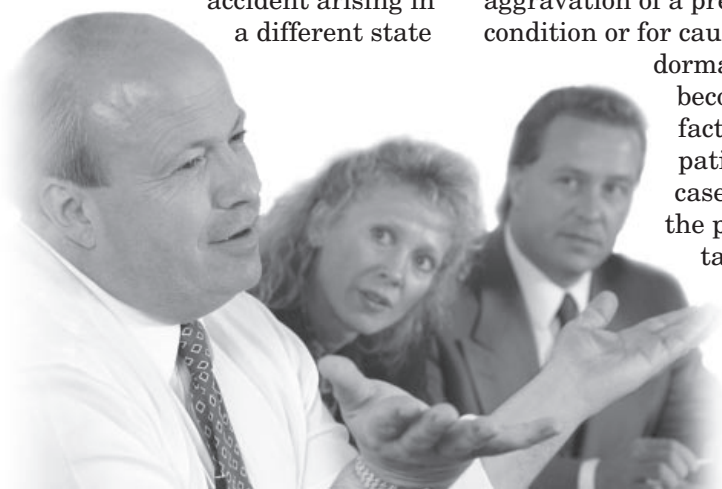
**7. IME Request:** Patients that are in the middle of their treatment and healing stages of their claim often are requested by various insurance carriers to attend an "Independent Medical Examination." Patients duties, rights and obligations to attend these types of examinations vary depending upon whether their insurance carrier is either a first or third-party carrier. Whether a patient should attend such an examination is determined on a case by case basis.

**8. Multiple Traumas:** Patients that present for treatment and have been involved in two or more trauma-induced events, usually will require counsel to help apportion their injuries between each separate accident.

**9. Injured Passengers:** Passengers in a motor vehicle accident often require an attorney to assist with priority of first-party payment of benefits and to investigate conflicts of interest.

**10. Absence of Objective Findings:** Patients that present with one or more normal diagnostic imaging studies often require an attorney to summarize and help document their injury claims.

If you have patients with any of these red flags, we are happy to help answer their questions and set up a free legal consultation at one of our satellite locations.



## Physical Capacity Evaluations, continued

essential functions of a proposed job placement, matching of a patient's functional capacity to the demands of an occupational classification, or matching the patient's functional capacity to the demands of competitive employment.

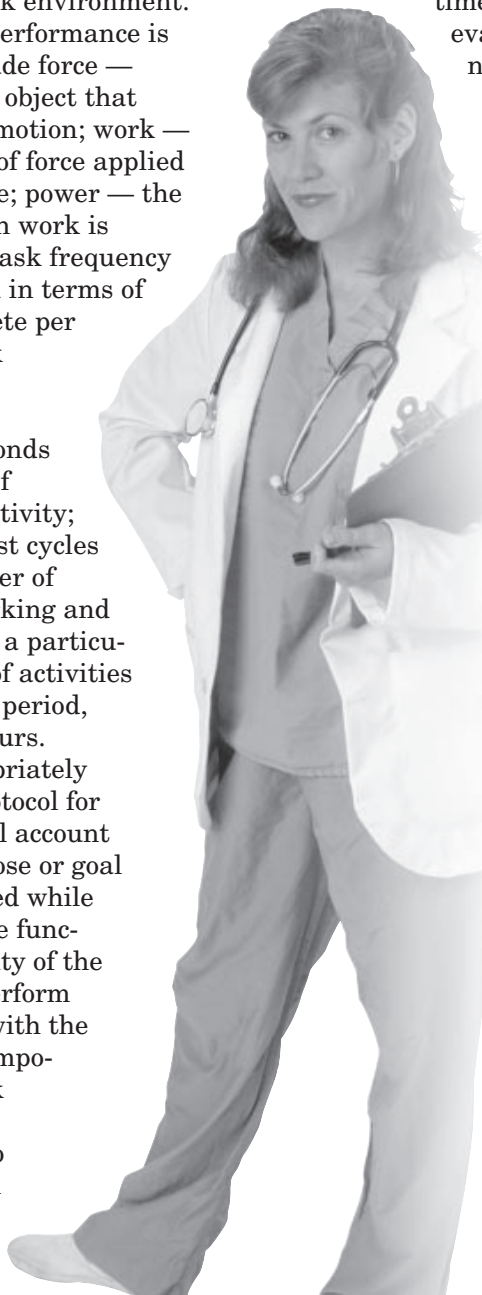
Any testing protocol for a PCE will keep in mind the basic components of work demand and the interaction of the patient in a complex work environment. Thus, task performance is seen to include force — action on an object that changes its motion; work — the product of force applied over distance; power — the rate at which work is performed; task frequency — measured in terms of units complete per minute; task duration — measured in terms of seconds or minutes of sustained activity; and work-rest cycles — the number of minutes working and resting with a particular pattern of activities during a set period, often two hours.

An appropriately designed protocol for any PCE will account for the purpose or goal to be achieved while assessing the functional capacity of the patient to perform the testing with the foregoing components of task performance present. Also important in each assessment are the three

coincident domains of function: cardiovascular/metabolic; biomechanical, and psychophysical.

The therapist or evaluator's role is to design the protocol and measure the activity in terms of reducing the activity to a numerical rating compared to a normative scale. Each test may use different instruments or devices to measure a specific repetitive task, movement or endurance over time. The skill of the evaluator to reduce the numerical ratings to comprehensible, usable information to give an attending physician, case manager, or legal counsel a guide to functional impairment is critical.

The use of PCE's then, are often most valuable when the purpose of the testing is clear, the information sought and the potential work performance contemplated is sufficiently described to the evaluation, and the data is validated based on true effort by the patient to perform the tasks assigned. Once a report is prepared it may become an objective compilation of a patient's functional disability allowing the physician or therapist to assign an impairment rating in conjunction with the American Medical Association's Guides to the Evaluation of Permanent Impairment.



## FREE SEMINARS

Graham Lundberg & Peschel welcomes you and your office staff to attend a **FREE** Educational Seminar.

What You Need To Know About...

### Using the AMA Guidelines...

to establish permanent impairments of your patients' injuries.

Thursday, **September 12**  
**Bellevue** — Best Western's Bellevue Inn

Wednesday, **September 18**  
**Tacoma** — Clifton's Restaurant

Thursday, **September 19**  
**Federal Way** — Best Western Executel

Thursday, **September 26**  
**Port Orchard** — Tweten's Lighthouse

Thursday, **October 3**  
**Tukwila** — Best Western of Southcenter

Wednesday, **October 9**  
**Puyallup** — Best Western's Park Plaza

Wednesday, **October 16**  
**Lakewood** — Lakewold Gardens

Call Celine at 206-957-2522 or register at [www.glpattorneys.com](http://www.glpattorneys.com)

- All Seminars: 12:30 – 2 pm
- Complimentary Lunch Will Be Served!
- This Seminar is for Doctors, Therapists and their Staff!
- Doctors of Chiropractic Earn Continuing Education credit





*Attorneys at Law*

**W**e are a team of legal professionals working together to advocate for the injured while being recognized in the community for providing the highest level of service.

**Our Attorneys**

John Graham  
 Scott F. Lundberg  
 Brian J. Peschel  
 Kenneth B. Golden  
 Cydney Campbell Webster  
 Sean A. Ayres  
 Kenneth Barry Dore  
 John Webber  
 \*John Williams  
 Rodney G. Zerr  
 Angela DeWig – Intern  
 Tara Eubanks – Intern  
 Brett Hill – Intern  
 \*admitted in Ohio only

**Our Paralegals**

Patricia Clanton  
 Patti Cryder  
 Kimberly Cutting  
 Johnnie Dano  
 Kathleen Gottlieb  
 Judy Hanson  
 Lora Harris  
 Grace Stephens  
 Heather Webb

**Our Administration**

Arlene Bolger  
 Tamara Briggie

**Administration, cont.**

Diane Daniel  
 Thelma James  
 Brian Jones  
 Heather Kelly  
 Debbie Lee  
 Martha McDonald  
 Becky Moilanen  
 Tina Mulcahy  
 Lucinda Pieczatkowski  
 Tom Reger  
 April Stonebreaker  
 Celine Vogler

**CONVENIENTLY LOCATED**

For the convenience of your personal injury patients, we offer several meeting locations throughout Puget Sound and Peninsula communities. Attorney consultations are encouraged and always free.

- Auburn . . . . . 253-931-1111**
- Bellevue . . . . . 425-827-1111**
- Burien . . . . . 206-241-1708**
- Everett . . . . . 425-252-1111**
- Federal Way . . 253-946-1111**
- Gig Harbor . . . 253-853-5005**
- Lakewood . . . . 253-274-1111**
- Lynnwood . . . . 425-775-1111**
- Marysville . . . . 360-658-1111**
- Port Orchard . 360-876-5005**
- Puyallup . . . . . 253-845-1112**
- Renton . . . . . 425-235-1111**
- Seattle . . . . . 206-448-1992**
- Tacoma . . . . . 253-627-7701**

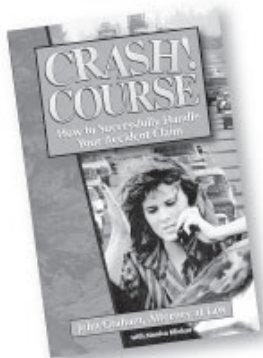
*Or Call Toll Free*

North Puget Sound area including King & Snohomish Counties  
**800-422-4610**

South Puget Sound area including Pierce, Kitsap & Thurston Counties  
**800-273-5005**

or visit us online...  
[www.glpattorneys.com](http://www.glpattorneys.com)

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