DEFENDING BACK PAIN CLAIMS: A MEDICAL & LEGAL PERSPECTIVE

Rich Lenkov

Gary S. Shapiro, MD

8/25/14

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Speakers

Rich Lenkov

Bryce Downey &
Lenkov
(312) 327-0032
(312) 371-2039 (Cell)
rlenkov@bdlfirm.com

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    - Subrogation Basics For Workers' Compensation Professionals
    - Workers Compensation Negotiation Strategies
    - Employment Law Issues Every Workers' Compensation Professional Needs To Know About
    - 10 Illinois Workers' Compensation Cases You Need To Know
    - Ask an Attorney Anything: Your Most Pressing Workers' Compensation Questions ANSWERED
    - Defending Workers' Compensation Psychiatric Claims
    - Defending Wage Differentials And PTD Awards
    - Turning The Tables
    - Defending Repetitive Trauma Claims In Illinois Workers' Compensation
    - Traveling Employees In Illinois Workers' Compensation
    - Illinois vs. Indiana: 5 Key Issues & How Each State Deals With Them
    - AMA Guidelines: A Legal and Medical Perspective
    - Preferred Provider Programs
- **Upcoming Webinars**
    - 9/30/14 @ 10:00 AM CST: "Case Law Update"- Click Here to Register
- **August Workers' Compensation Newsletter**
- **Today's session**
    - Interactive - Please ask questions
    - Special surprise giveaway at the end of the presentation

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My Background

- Medical School
  - Upstate Medical Center @ Syracuse
- Residency
  - Hospital for Special Surgery
- Fellowship
  - Hospital for Special Surgery
  - Children's Hospital San Diego

My Practice

- Adult and Pediatric Spine Surgery since 2003
  - Clinical Assistant Professor at the University of Chicago
  - Spine Consultant Chicago Bears 2005-2007
  - Chairman at NorthShore University Health System
  - Professional Risk Management Committee
- IME
- Impairment Ratings
  - American Academy of Disability Evaluating Physicians
  - Earned CEDIR in the AMA *Guides* Sixth Edition

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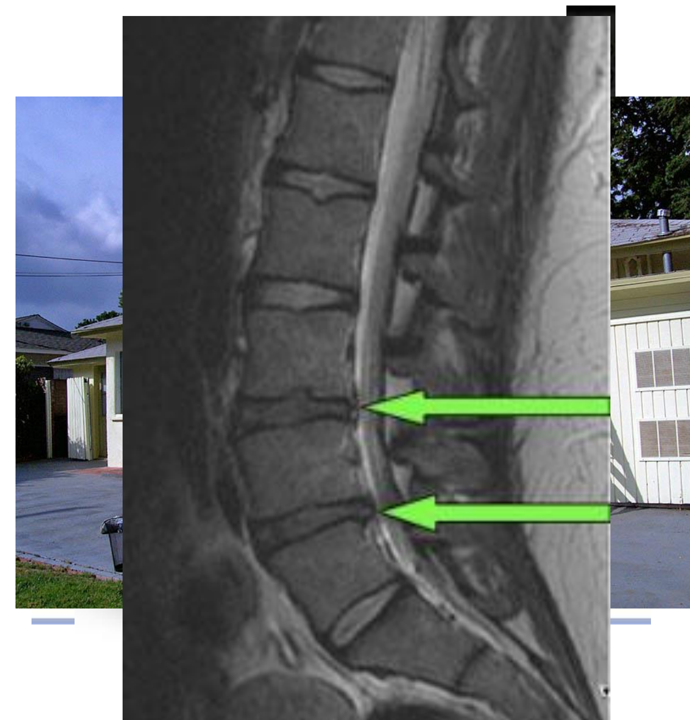
Work Related Lumbar Injuries

- Soft tissue (sprain/strain)
- Herniated disc
- Trauma
- Degenerative disc disease
- Others
  - SI joint pain, facet pain



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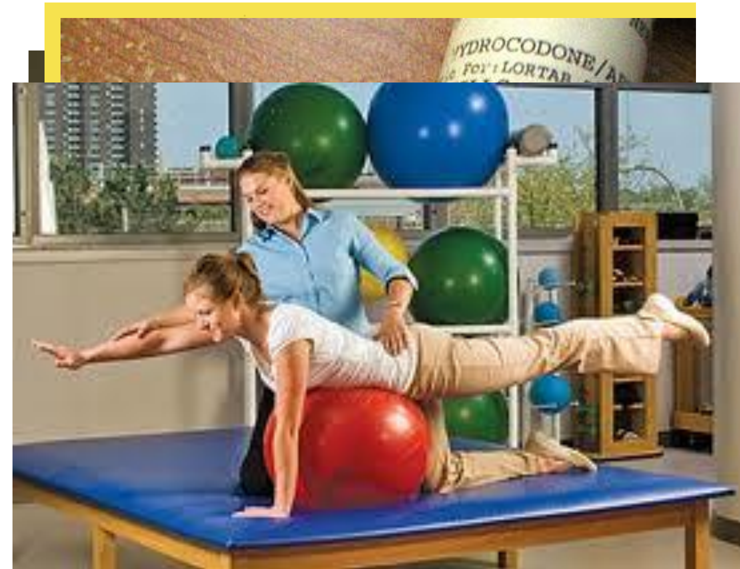
Management of Soft Tissue Injuries

- Medications
  - NSAIDs
  - Tylenol
  - Oral steroids
  - Narcotics
  - Muscle relaxants
- Physical Therapy



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Physical Therapy

- A properly designed, graduate program of exercise activities including range of motion, stretching, isometrics, isokinetics and aerobic conditioning

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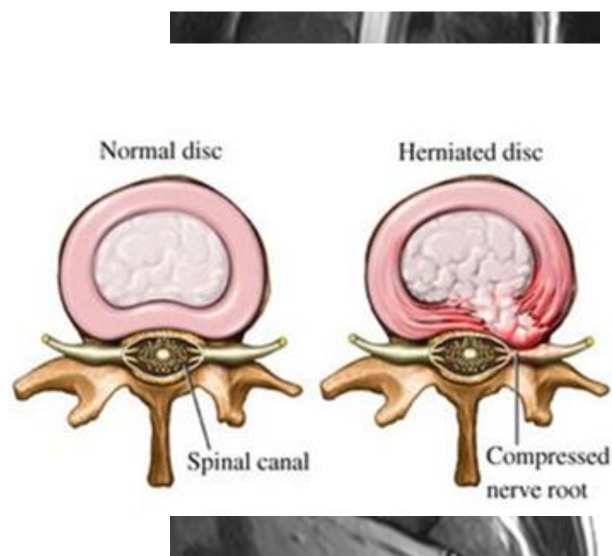
Herniated Disc



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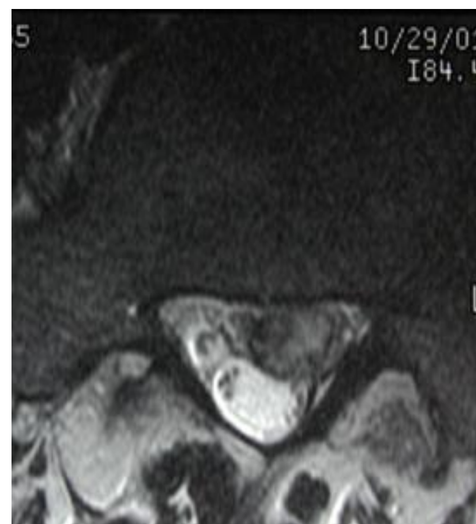
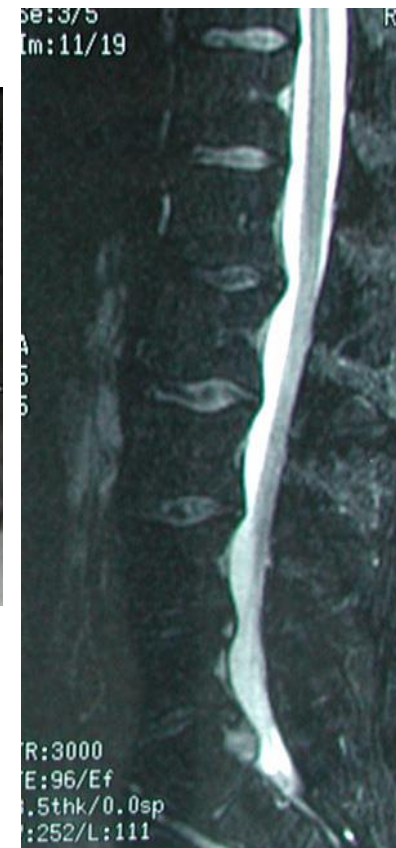
Radocular Pain

- Caused by nerve root compression
- Classically a sharp, lancing pain progressing in a dermatomal pattern
- Pain increased by any activity that increases intraspinal and intradiscal pressures
- L5 and S1 nerve roots most commonly involved





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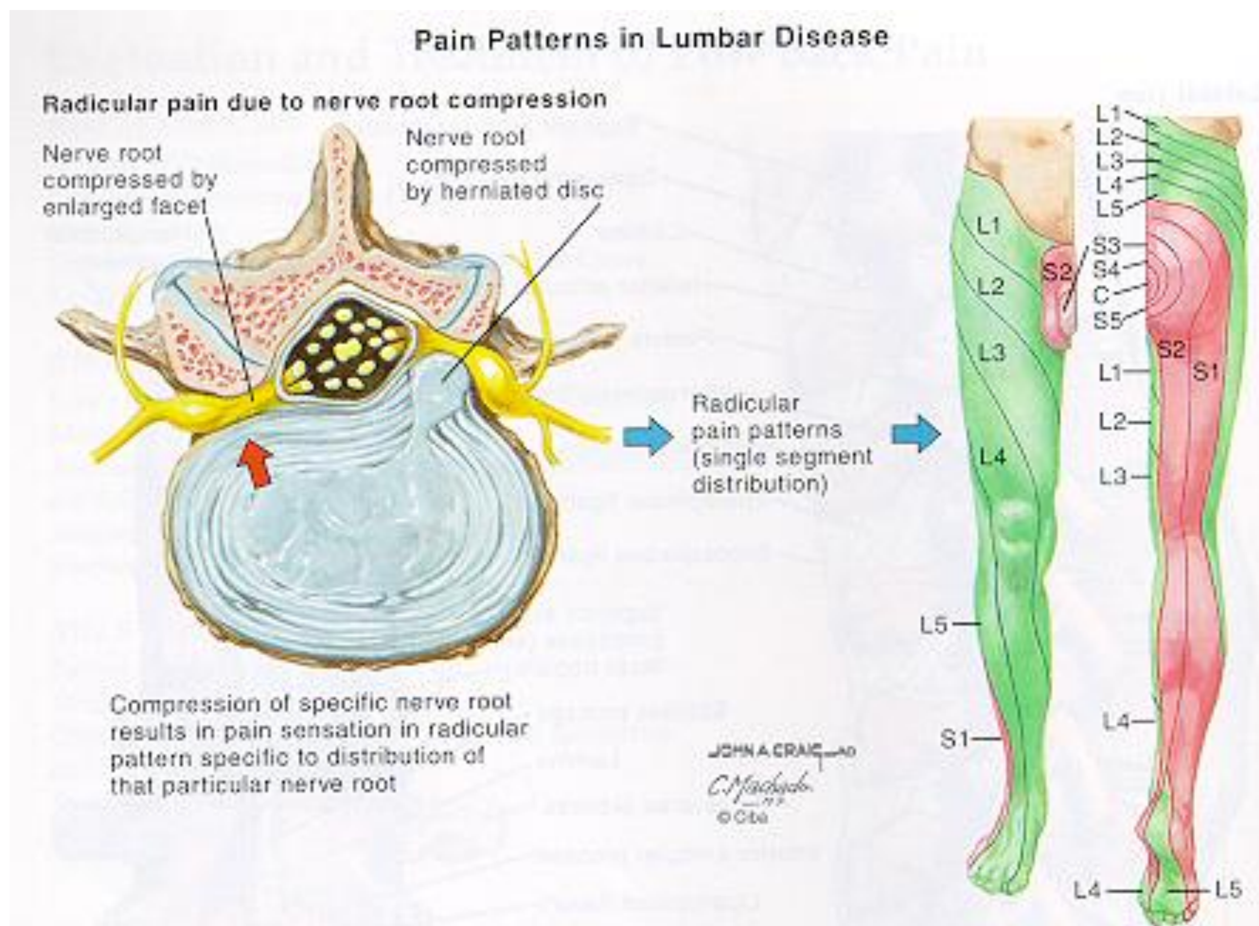

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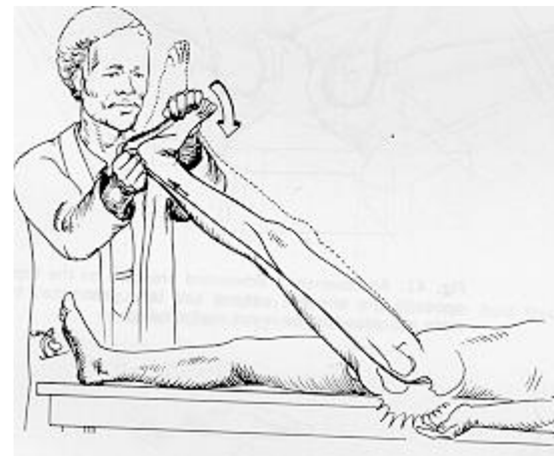
Lumbar Herniated Disc: Tension Sign

- Straight Leg Raise (SLR or Lasègue Test)



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Non-Surgical Treatment

- Analgesics/Anti-Inflammatory Agents
  - ASA, acetomenophin, NSAIDs are equally effective
- Medrol Dosepak
  - Extremely effective
- Muscle Relaxants
- Narcotics
- Physical Therapy

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Epidural Steroids

- Very few well designed prospective randomized studies
- Do not change the natural history of the disease
- Common to have 1 or 2 injections
  - Must have >50% relief to have 3rd injection

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Non Surgical Treatment

- 85% success rate within 6-12 weeks

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Lumbar Disc Herniation

Indications for Surgical Treatment

- Absolute
  - Cauda equina syndrome
  - Progressive neurologic deficit
  - Intractable Pain
- Relative
  - Persistent pain that compromises ability to function
  - Failure of 6-12 weeks of conservative care

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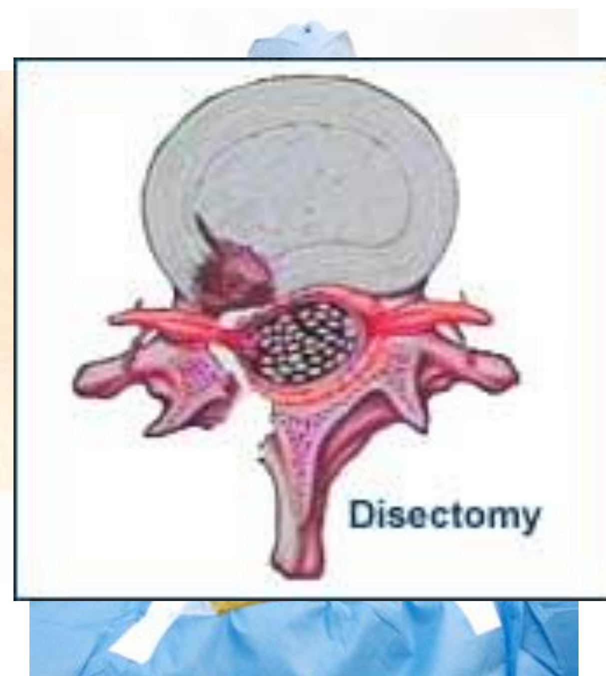
Lumbar HNP: Surgical Options

- **Microdiscectomy**
- Laminectomy and discectomy
- Laser spine surgery
- Endoscopic discectomy



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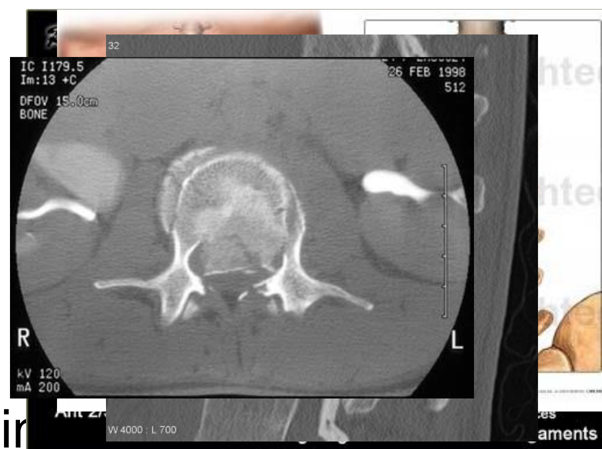
Trauma

- High energy axial load to the spine
  - T/L Spine at highest risk
- Often associated injuries
  - Head, chest, abdominal injuries
  - Extremity injuries
- Denis Classification system
  - Retropulsion of bone with 2 and 3 column in



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Lumbar HNP: Surgical Options

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- Laminectomy and discectomy
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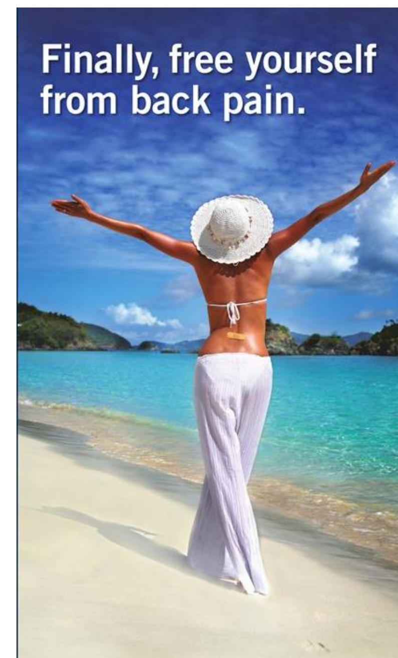

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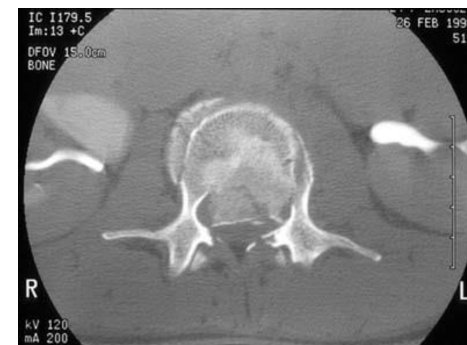
Trauma



- High energy axial load to the spine
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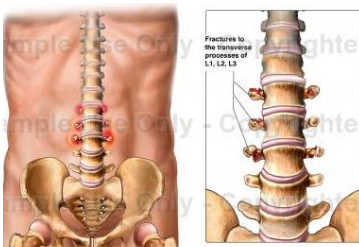

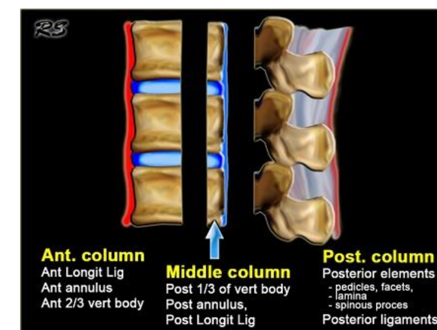

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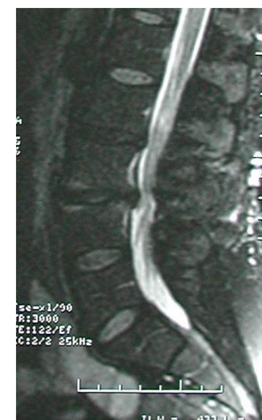
Degenerative Disc Disease

- Younger patient population
- Mainstay of treatment is **nonoperative**
  - Too many fusions being performed
  - Data shows better results with PT, NSAIDS, comprehensive pain management



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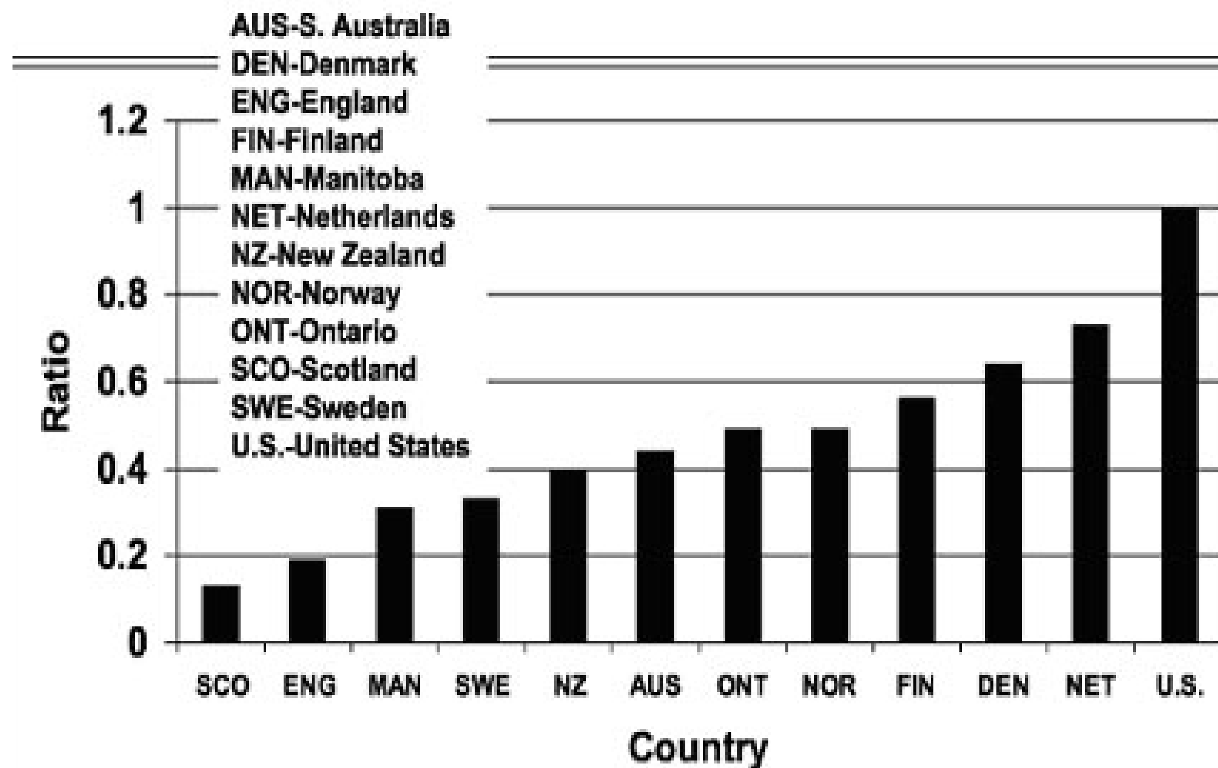
Utilization of Spinal Instrumentation Procedures in the U.S.



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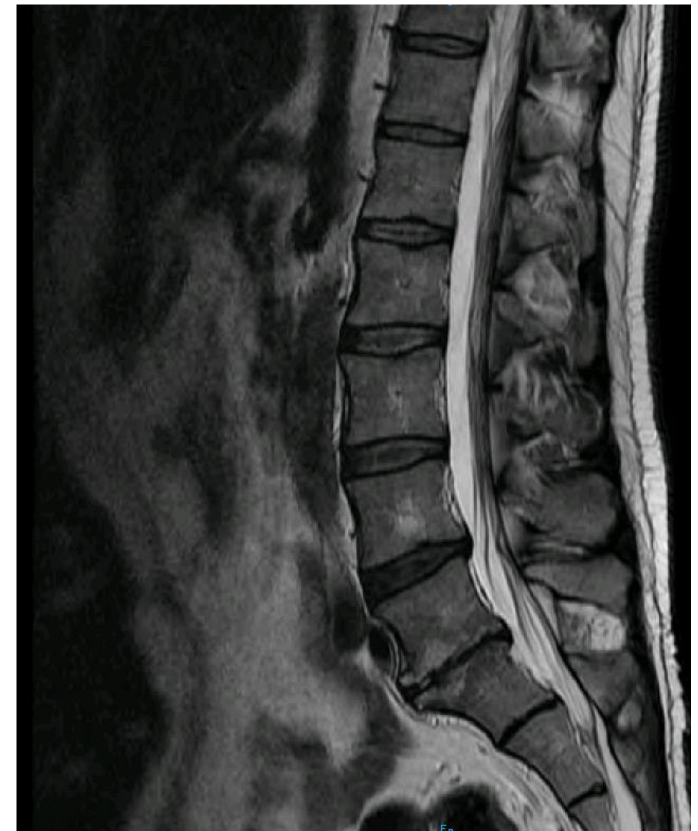
Disco genic Pain

- Definition
  - Axial midline LBP
  - No radicular sx
  - Pain attributable to arthritic disc



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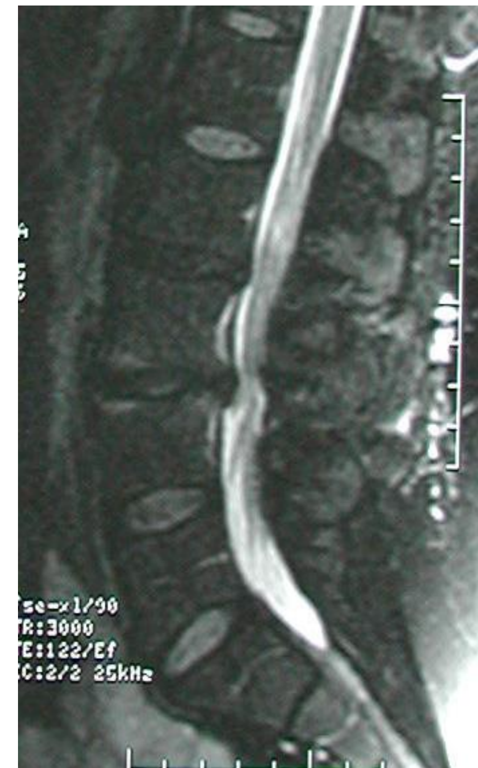
Pain Generators

- Muscular
- Facet joint
- Visceral
- Sacroiliac joint
- Less common: tumor, infection, inflammatory arthritis



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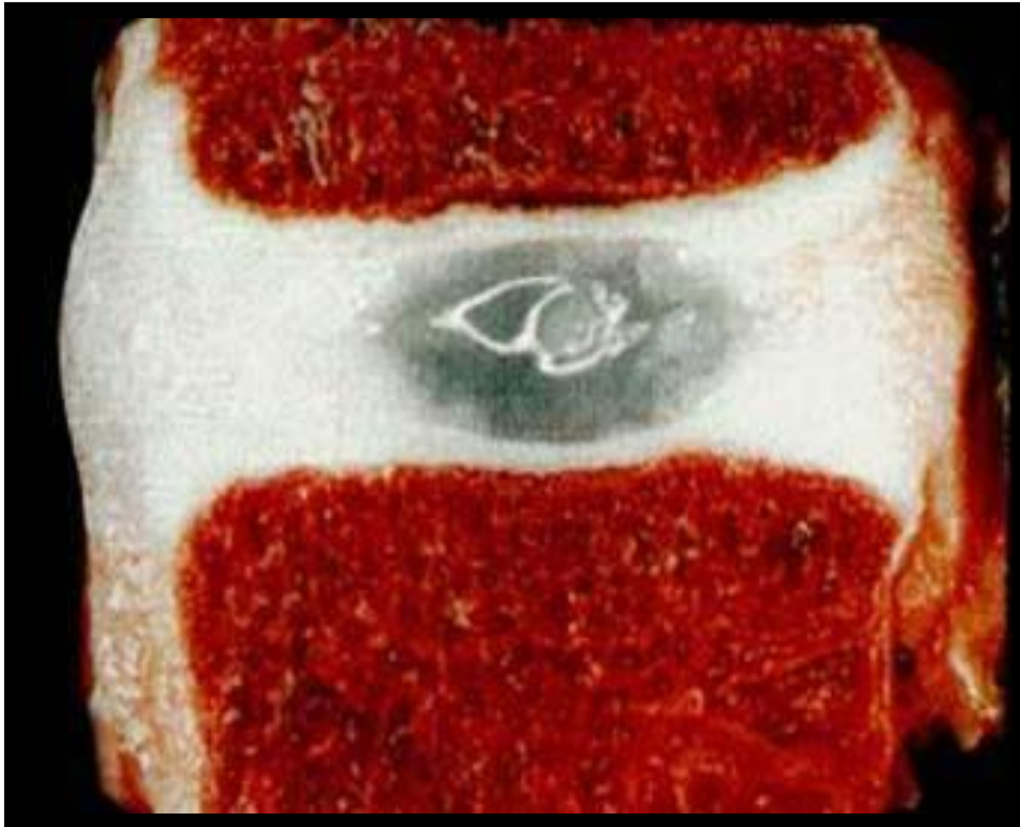

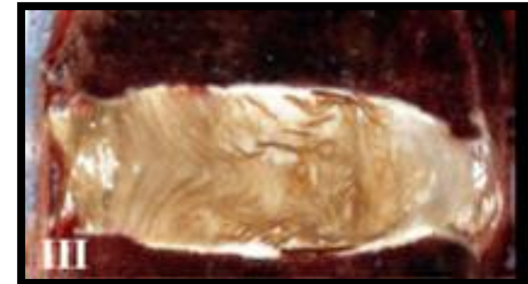

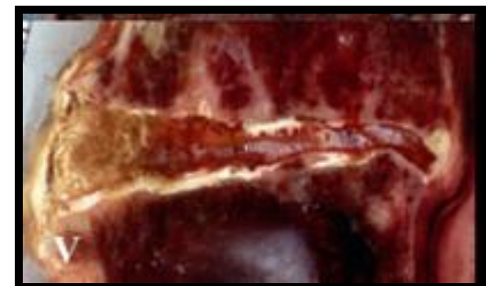

Healthy Lumbar Intervertebral Disc

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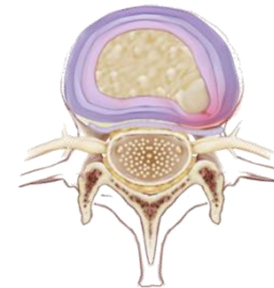
Prevalence of Degenerated and Herniated Discs

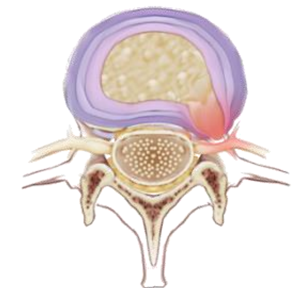
- MRI - Overly sensitive
  - 98% had DDD > 60 years old
  - False positive imaging in up to 25%
  - Bulging discs
    - Increases with age
    - Only 36% 20-80 year olds had normal discs at all levels

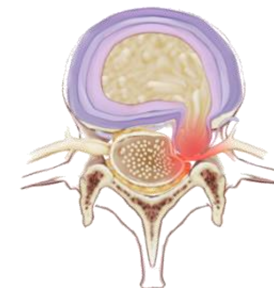
Jensen et al., *NEJM 331,* 1994.

Bulging

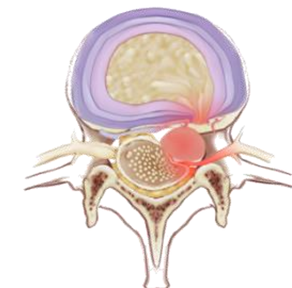


Protrusion





Extrusion



Sequestered

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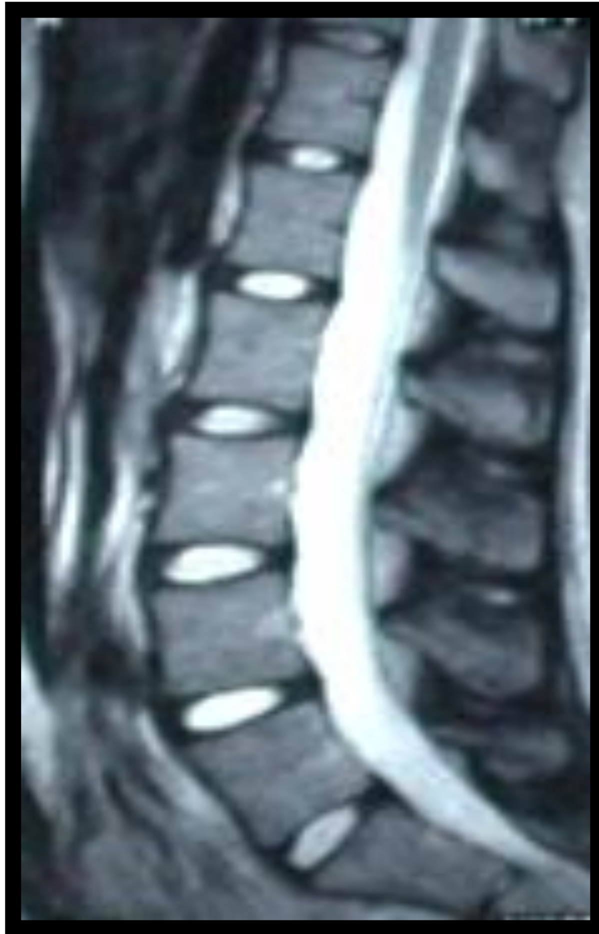

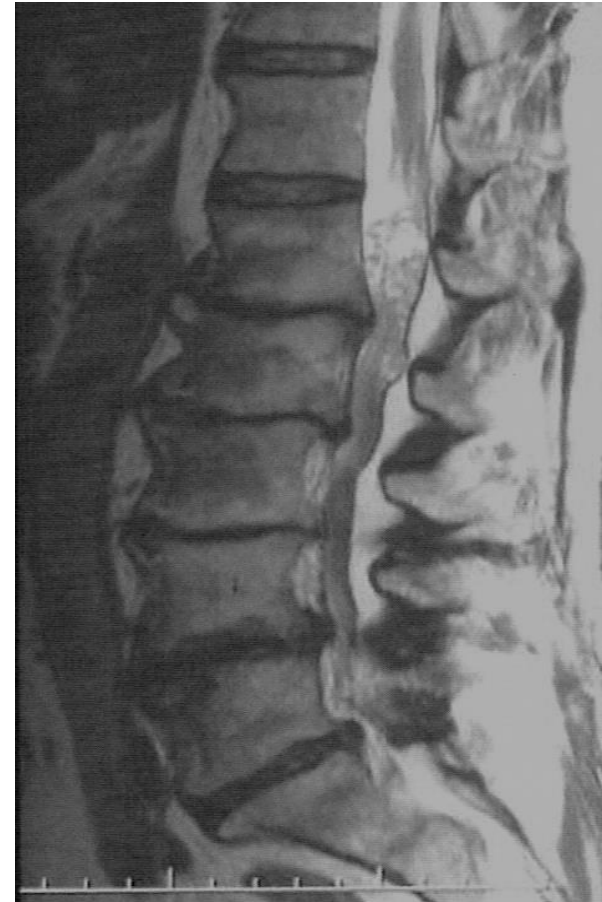

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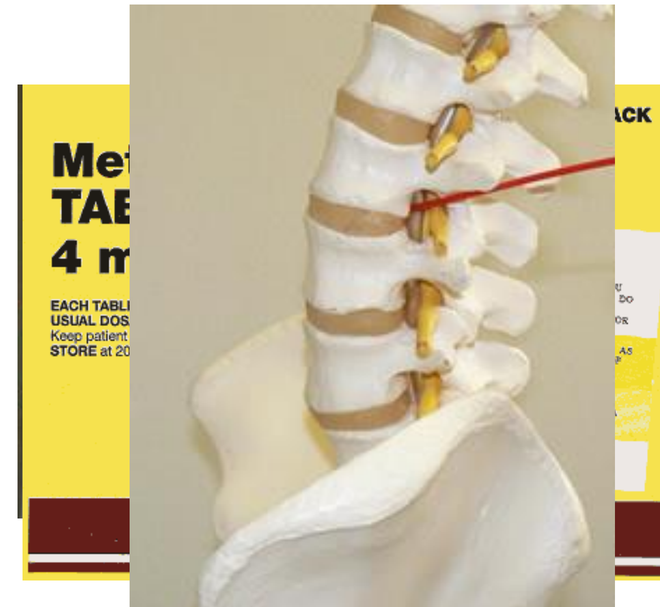
Management

- Medication
  - NSAIDs
  - Steroids
  - Muscle relaxers
  - Anti-anxiolytics
  - Narcotics
- Steroid injections
  - Epidurals
  - Nerve root blocks
  - Facet joint blocks



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Surgery for Disco genic Back Pain

- Surgical indications debatable
- Discography controversial
- Approach
  - Anterior
  - Anterior/Posterior
  - Posterior
- Results unpredictable

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Selection Criteria

- Age
- Preoperative medical condition
- Smoking
- Psychosocial status
- Support system
- Preoperative opiate use
- Obesity
- Employment status (WC)

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IME and Impairment Rating: Definitions

- Impairment: a significant deviation, loss, or loss of use of a body structure or body function
- Disability: activity limitations and/or participation restrictions in an individual with a health condition, disorder, or disease
  - Example: loss of toe in a ballerina vs. a construction worker

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Independent Medical Examination

- Doctor who has not previously been involved in a person’s care examines an individual as an expert
- May be conducted at request of employer or insurance carrier
- No doctor/patient relationship
  - Cannot offer treatment

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Independent Medical Examination (cont')

- Important to review entire medical file and document prior medical treatment
- Perform history and physical exam
- Review radiologic studies
- Need to give unbiased, factually based opinion
- Determine causation
  - Legal Probability

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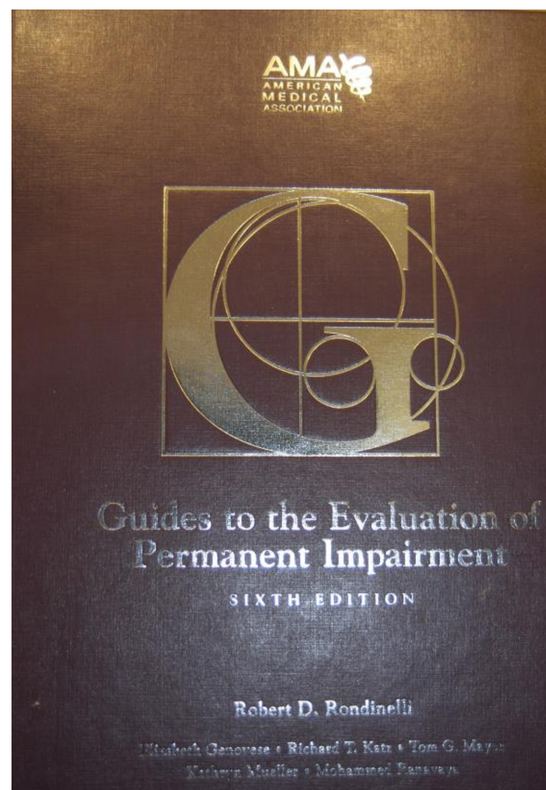
Impairment Rating



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Impairment Rating

- Consensus-derived percentage estimate loss of activity reflecting severity for a given health condition, and the degree of associated limitations in terms of ADLs

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Impairment Rating

- Determine if individual is at MMI
- Perform H&P
- Establish the reliable diagnosis for each region of the spine to be rated
- Use appropriate grid to determine class
- Use grade modifiers to adjust from default “C”
- Determine numeric value to IR

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Impairment Rating

TABLE 17-4 Lumbar Spine Regional Grid: Spine Impairments

Lumbar Spine Regional Grid

CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RATING (WPI %)	0	1%–9%	10%–14%	15%–24%	25%–33%
SOFT TISSUE AND NON-SPECIFIC CONDITIONS					
Non-specific chronic, or chronic recurrent low back pain (also known as: chronic sprain/strain, symptomatic degenerative disc disease, facet joint pain, SI joint dysfunction, etc)	0 Documented history of sprain/strain-type injury, now **resolved, or occasional complaints of back pain with no objective findings** on examination	1 2 3 3 Documented history of sprain/strain type injury with continued complaints of **axial and/or non-verifiable radicular complaints** and similar findings on multiple occasions (see Sec. 17.2, General Considerations)			
MOTION SEGMENT LESIONS					
Intervertebral disk herniation and/or AOMSI[a] *Note:* AOMSI includes instability (specifically as defined in the *Guides*), arthrodesis, failed arthrodesis, dynamic stabilization or arthroplasty, or combinations of those in multiple-level conditions	0 Imaging findings of intervertebral disk herniation without a history of clinically correlating radicular symptoms	5 6 7 8 9 Intervertebral disk herniation(s) or documented AOMSI, at a **single level or multiple levels** with medically documented findings; with or without surgery *and* for disk herniation(s) with documented **resolved radiculopathy or nonverifiable radicular complaints at clinically appropriate level(s)**, present at the time of examination[a]	10 11 12 13 14 Intervertebral disk herniation or AOMSI **at a single level** with medically documented findings; with or without surgery *and* with documented **residual radiculopathy at the clinically appropriate level** present at the time of examination *(see Physical Examination adjustment grid in Table 17-7 to grade radiculopathy)*	15 17 19 21 23 Intervertebral disk herniations or AOMSI **at multiple levels**, with medically documented findings; with or without surgery *and* with documented **residual radiculopathy at a single clinically appropriate level** present at the time of examination *(see Table 17-7 to grade radiculopathy)*	25 27 29 31 33 Intervertebral disk herniations and/or AOMSI, **at multiple levels**, with medically documented findings; with or without surgery *and* with documented signs of **residual bilateral or multiple-level radiculopathy at the clinically appropriate levels** present at the time of examination *(see Table 17-7 to grade radiculopathy)*
Pseudarthrosis *Note:* Only applies after spinal surgery intended for fusion with resultant documented motion (not necessarily AOMSI by definition provided in footnote) with consistent radiographic findings or hardware failure; with or without surgery to repair	0	5 6 7 8 9 Pseudarthrosis (post surgery) at a **single level or multiple levels** with medically documented findings *and* with documented **resolved radiculopathy or non-verifiable radicular complaints** at the clinically appropriate level(s) present at the time of examination	10 11 12 13 14 Pseudarthrosis (post surgery) at a **single level** with medically documented findings may have documented signs of **radiculopathy at the clinically appropriate level** present at the time of examination *(see Table 17-7 to grade radiculopathy)*	15 17 19 21 23 Pseudarthrosis (post surgery) at a **multiple levels** with medically documented findings may have documented **radiculopathy at a single clinically appropriate level** present at the time of examination *(see Table 17-7 to grade radiculopathy)*	25 27 29 31 33 Pseudarthrosis (post surgery) at a **multiple levels** with medically documented findings may have documented signs of **bilateral or multiple level radiculopathy at the clinically appropriate levels** present at the time of examination *(see Table 17-7 to grade radiculopathy)*

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IR: Grade Modifiers

Functional History Adjustment: Spine

Functional History Factor	Grade Modifier 0	Grade Modifier 1	Grade Modifier 2	Grade Modifier 3	Grade Modifier 4
Activity	Asymptomatic; problem resolved; inconsistent symptoms	Pain; symptoms with strenuous/ vigorous activity	Pain; symptoms with normal activity	Pain; symptoms with less-than-normal activity (minimal activity)	Pain; symptoms at rest, limited to sedentary activity
PDQ or alternative validated functional assessment, scaled appropriately	No disability PDQ 0	Mild disability PDQ 0–70	Moderate disability PDQ 71–100	Severe disability PDQ 101–130	Extreme disability PDQ 131–150

Note: PDQ indicates Pain Disability Questionnaire.

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IR: Grade Modifiers (cont')

TABLE 17-7

Physical Examination Adjustment: Spine

Physical Examination Factor	Grade Modifier 0	Grade Modifier 1	Grade Modifier 2	Grade Modifier 3	Grade Modifier 4
Lumbar Neural Tension Signs	Negative straight leg raising test for radicular pain or invalid examination		Positive straight leg raising test, with reproducible radicular pain at 35°–70°		
Cervical Compression/ Foraminal Compression	Negative cervical compression/ foraminal compression		Positive cervical compression/foraminal compression (Spurling's test) with reproducible radicular pain		
Reflexes	Normal and symmetrical		New and asymmetrical abnormality consistent with other radicular findings (ie, differentiate between old and new changes)		
Atrophy UE LE	 <1 cm <1 cm	 1.0–1.9 cm 1.0–1.9 cm	 2.0–2.9 cm 2.0–2.9 cm	 3.0–3.5 cm 3.0–3.5 cm	 >3.5 cm >3.5 cm
Sensory Deficit	No loss of sensibility, abnormal sensation, or pain	Diminished light touch (with or without minimal abnormal sensations or pain) in a clinically appropriate distribution, that is forgotten during activity	Diminished light touch (with some abnormal sensations or slight pain) in a clinically appropriate distribution, that interferes with some activities	Decreased protective sensibility (with abnormal sensations or moderate pain in a clinically appropriate distribution) that may prevent some activities	Absent superficial pain and tactile sensibility or absent protective sensibility (abnormal sensations, or severe pain) that prevents all activity
Motor Strength	Normal Active movement against gravity with full resistance (5/5)	Active movement against gravity and some resistance (4/5)	Active movement against gravity only, without resistance (3/5)	Active movement with gravity eliminated (2/5)	Slight contraction and no movement or no contraction (0–1/5)

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Soft Tissue Injuries, DDD, Facet Pain, SI Joint Dysfunction

TABLE 17-4 Lumbar Spine Regional Grid: Spine Impairments

Lumbar Spine Regional Grid

CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RATING (WPI %)	0	1%–9%	10%–14%	15%–24%	25%–33%
SOFT TISSUE AND NON-SPECIFIC CONDITIONS					
Non-specific chronic, or chronic recurrent low back pain (also known as: chronic sprain/strain, symptomatic degenerative disc disease, facet joint pain, SI joint dysfunction, etc)	0 Documented history of sprain/strain-type injury, now **resolved, or occasional complaints of back pain with no objective findings** on examination	1 2 3 3 Documented history of sprain/strain type injury with continued complaints of **axial and/or non-verifiable radicular complaints** and similar findings on multiple occasions (see Sec. 17.2, General Considerations)			
MOTION SEGMENT LESIONS					
Intervertebral disk herniation and/or AOMSI[a] *Note:* AOMSI includes instability (specifically	0 Imaging findings of intervertebral disk herniation without a history of	5 6 7 8 9 Intervertebral disk herniation(s) or documented AOMSI, **at a single level or multiple levels** with medi-	10 11 12 13 14 Intervertebral disk herniation or AOMSI **at a single level** with medically documented findings; with or with-	15 17 19 21 23 Intervertebral disk herniations or AOMSI **at multiple levels**, with medically documented findings; with or	25 27 29 31 33 Intervertebral disk herniations and/or AOMSI, **at multiple levels**, with medically documented findings; with or

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Case #1- JM

History

- 22 year old female, 95 lbs
- Employed as a nursing assistant in skilled nursing facility
- Lifting 250 lb. patient
- Acute onset of LBP
- Development of bilateral leg pain R>L over next 10 days

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Clinical Course

- Taken off work by PCP
- NSAIDS, Medrol Dosepak, pain meds
- PT for 6 weeks
- ESI X 2

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Initial Consultation

- Continued severe pain in bilateral LE, subtle urinary changes
- PE: weakness in bilateral S1 distribution
  - Unable to single leg heel raise bilaterally
  - Markedly + SLR bilaterally

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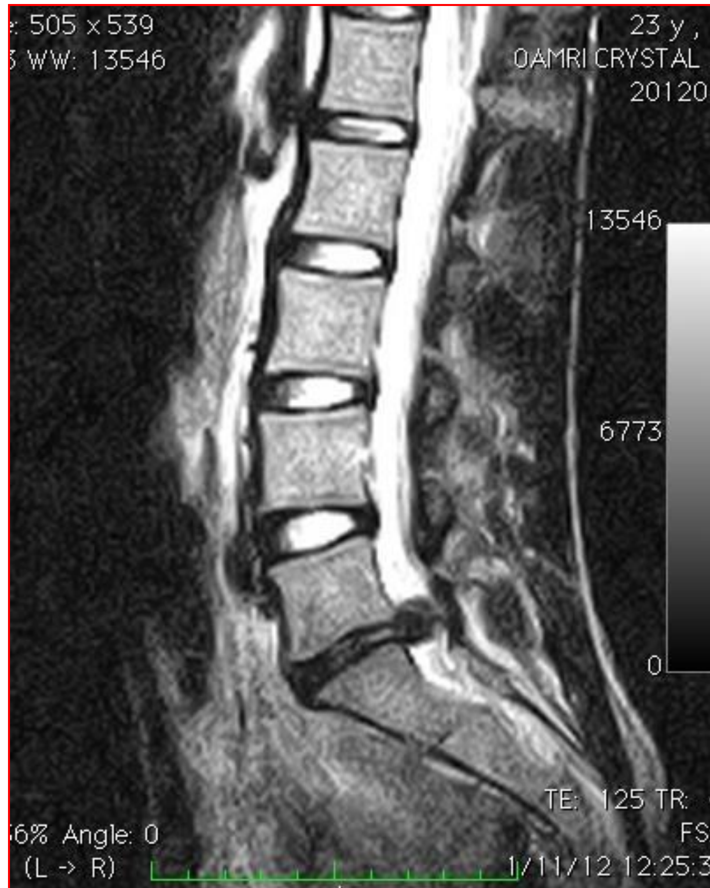

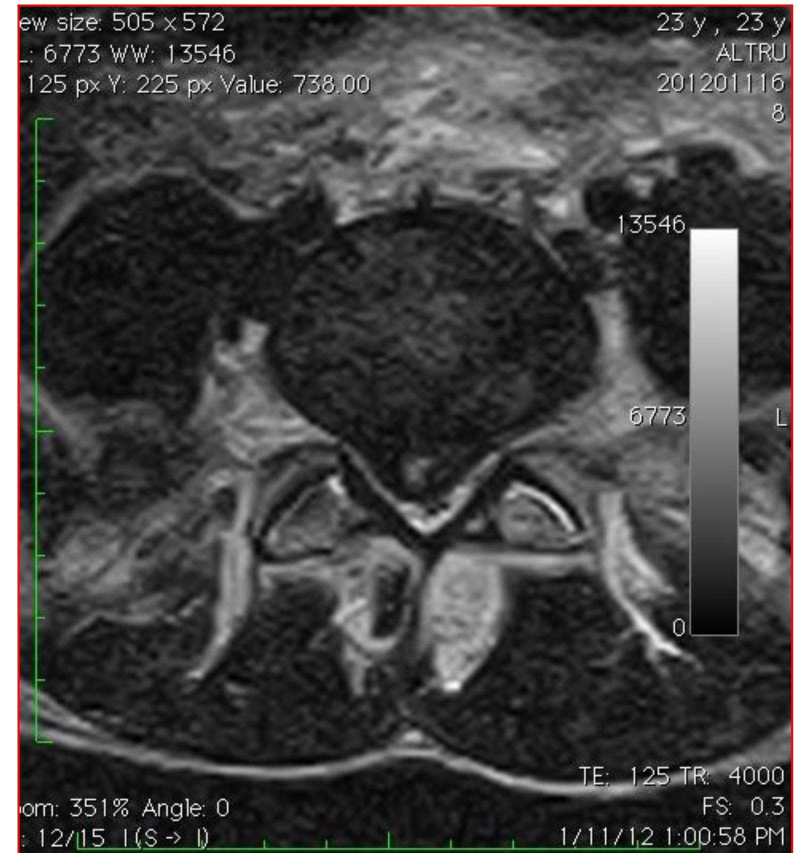

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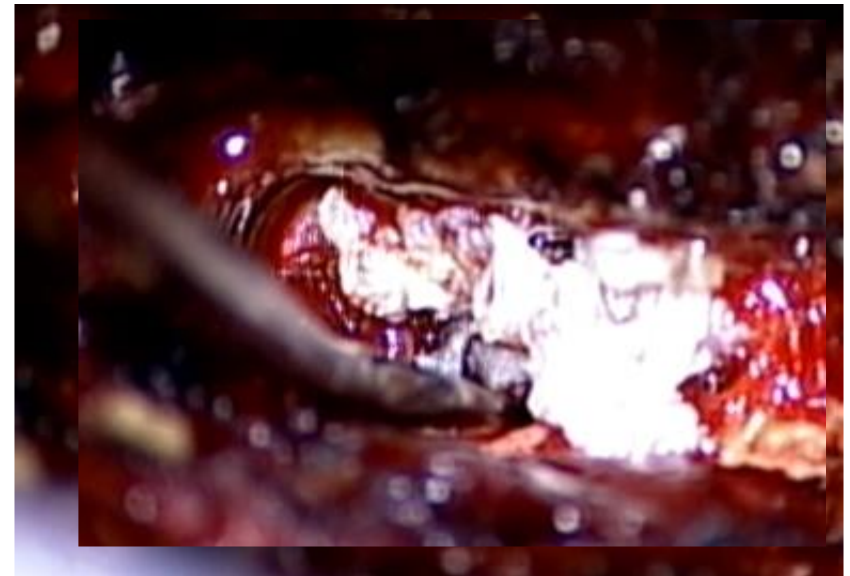
Surgery

- Right L5/S1 microdiscectomy
  - Outpatient procedure



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Clinical Course

- Complete resolution of leg pain
- Post-op physical therapy
- RTW with 20 Lb lifting restrictions at 2 weeks
- Advanced to full duty without restrictions by 6 weeks
- MMI at 3 months

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	examination				
MOTION SEGMENT LESIONS					
Intervertebral disk herniation and/or AOMSI[a] *Note:* AOMSI includes instability (specifically as defined in the *Guides*), arthrodesis, failed arthrodesis, dynamic stabilization or arthroplasty, or combinations of those in multiple-level conditions	0 Imaging findings of intervertebral disk herniation without a history of clinically correlating radicular symptoms	5 6 7 8 9 Intervertebral disk herniation(s) or documented AOMSI, at a **single level or multiple levels** with medically documented findings; with or without surgery ***and*** for disk herniation(s) with documented **resolved radiculopathy or nonverifiable radicular complaints at clinically appropriate level(s)**, present at the time of examination[a]	10 11 12 13 14 Intervertebral disk herniation or AOMSI **at a single level** with medically documented findings; with or without surgery ***and*** with documented **residual radiculopathy at the clinically appropriate level** present at the time of examination *(see Physical Examination adjustment grid in Table 17-7 to grade radiculopathy)*	15 17 19 21 23 Intervertebral disk herniations or AOMSI **at multiple levels**, with medically documented findings; with or without surgery ***and*** with documented **residual radiculopathy at a single clinically appropriate level** present at the time of examination *(see Table 17-7 to grade radiculopathy)*	25 27 29 31 33 Intervertebral disk herniations and/or AOMSI, **at multiple levels**, with medically documented findings; with or without surgery ***and*** with documented signs of **residual bilateral or multiple-level radiculopathy at the clinically appropriate levels** present at the time of examination *(see Table 17-7 to grade radiculopathy)*

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Case #2- LZ

History

- 34 year old male construction worker
- Fell 15 feet
- Trauma team
- Severe mid-lumbar pain
- Left quadriceps pain, weakness

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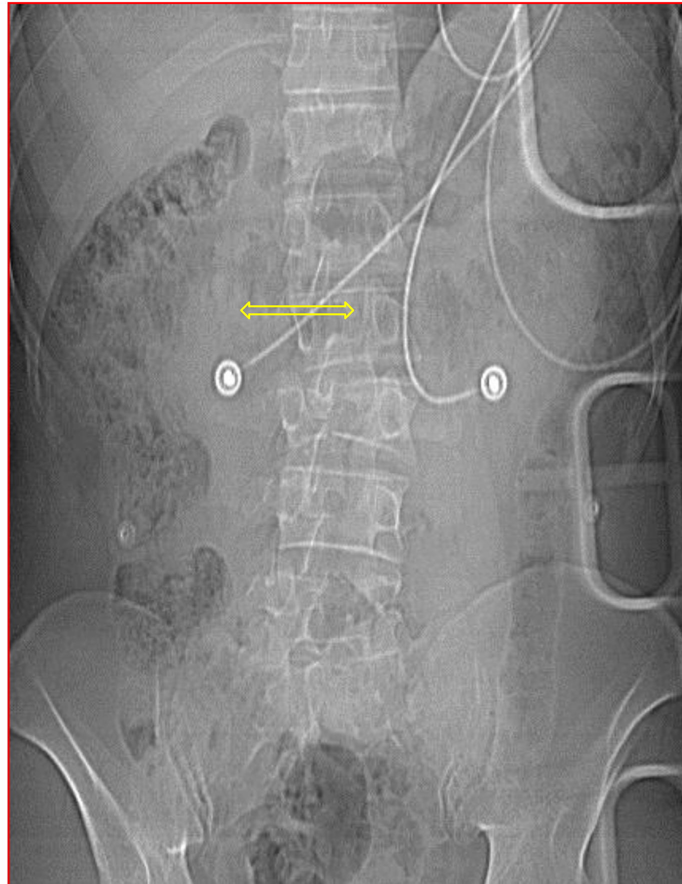

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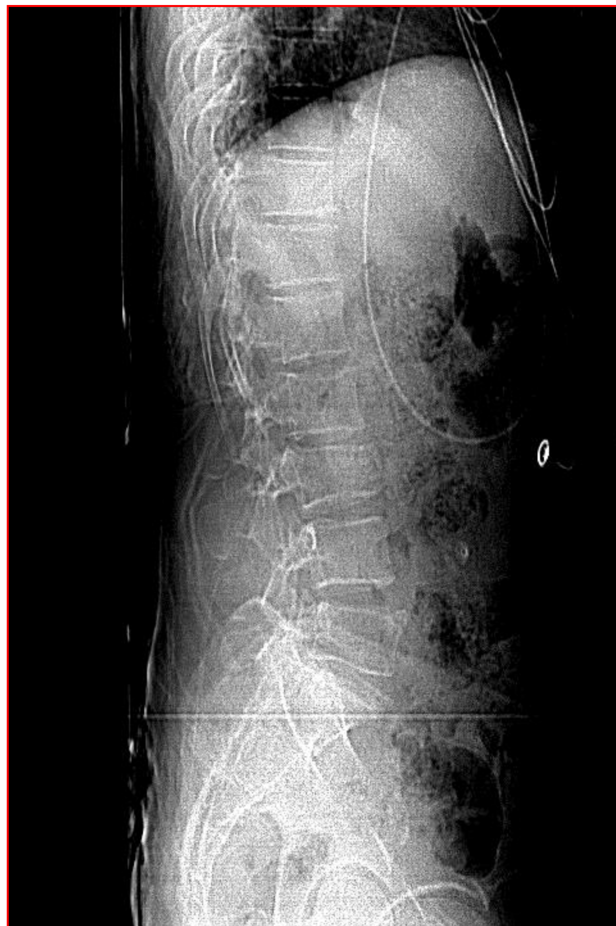

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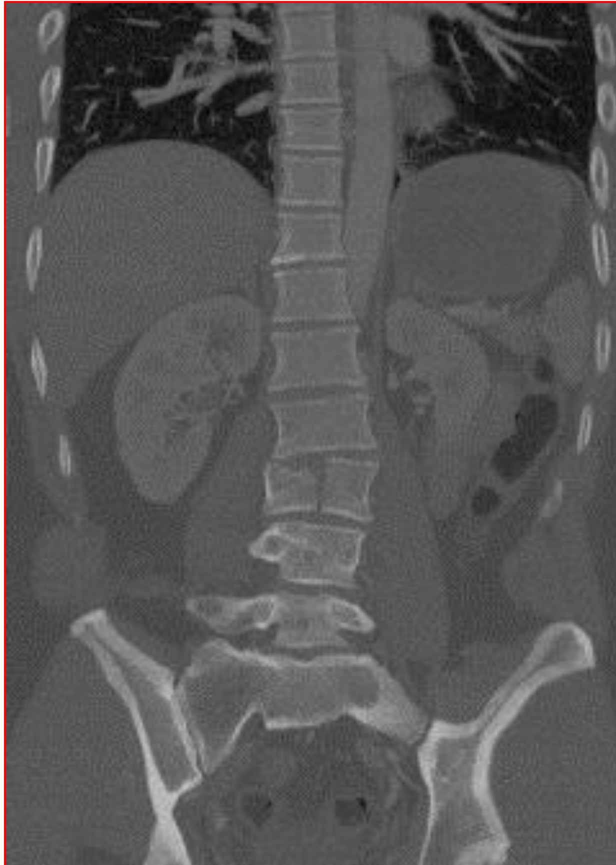

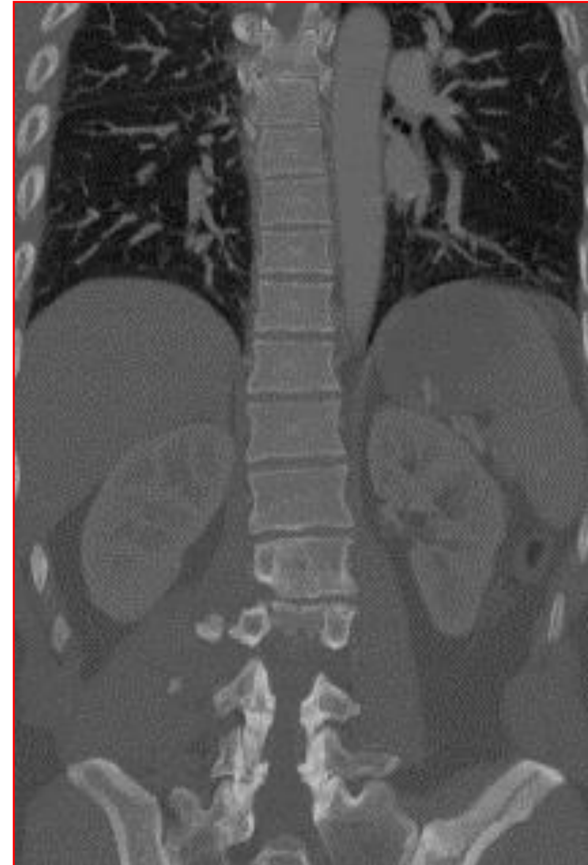

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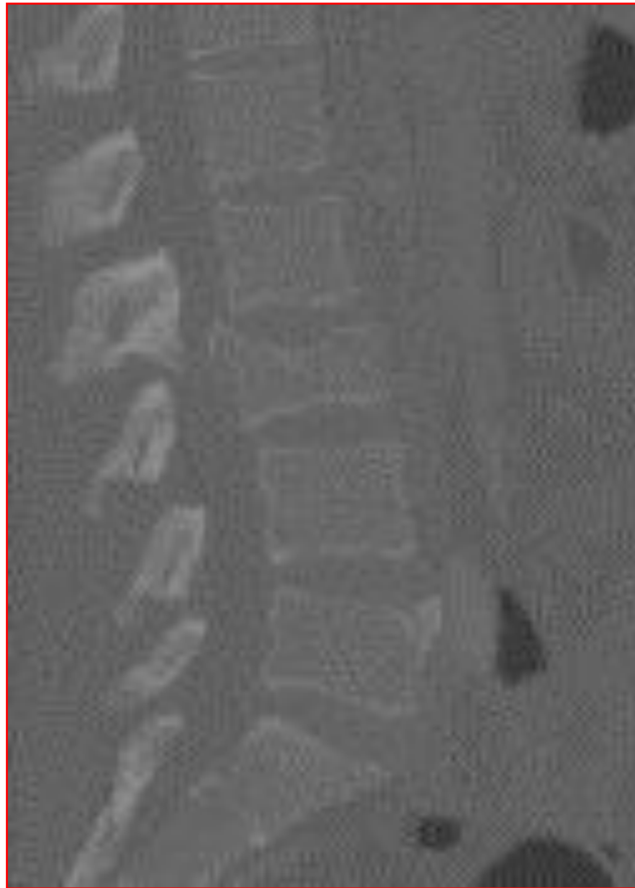

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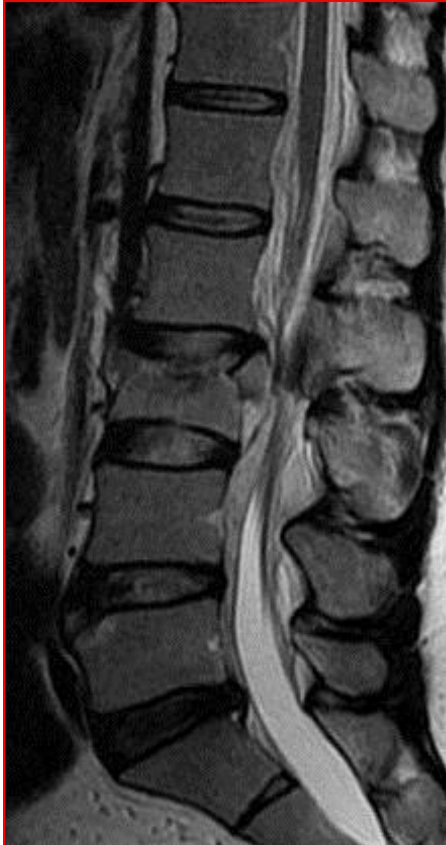

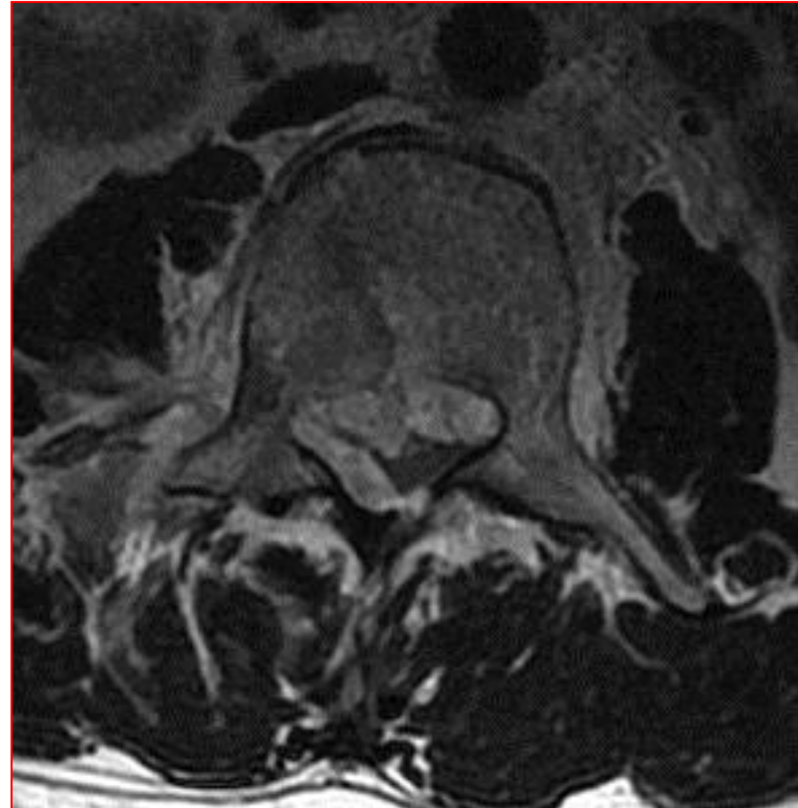

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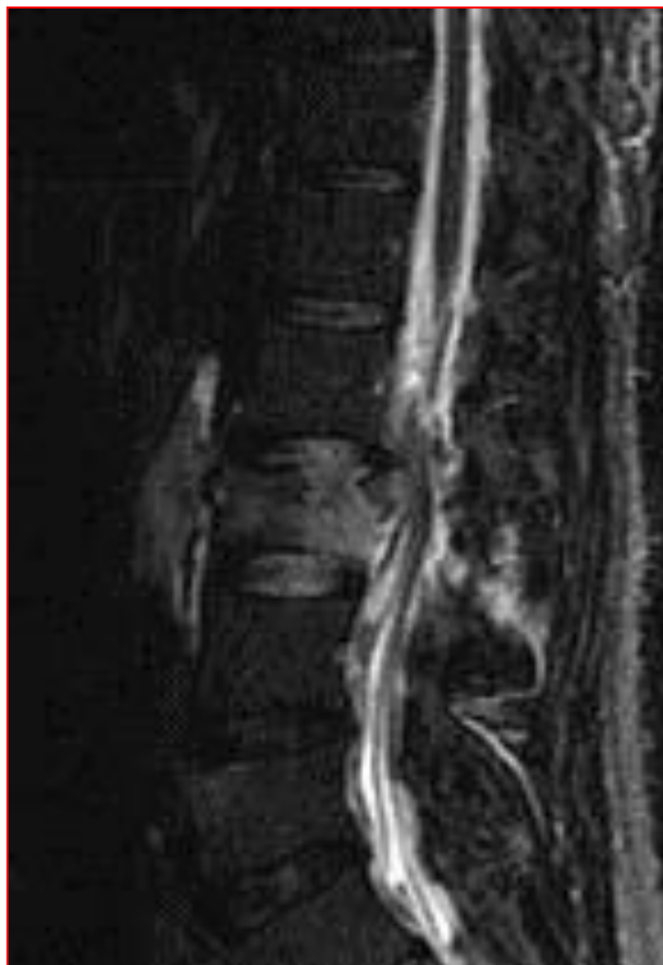

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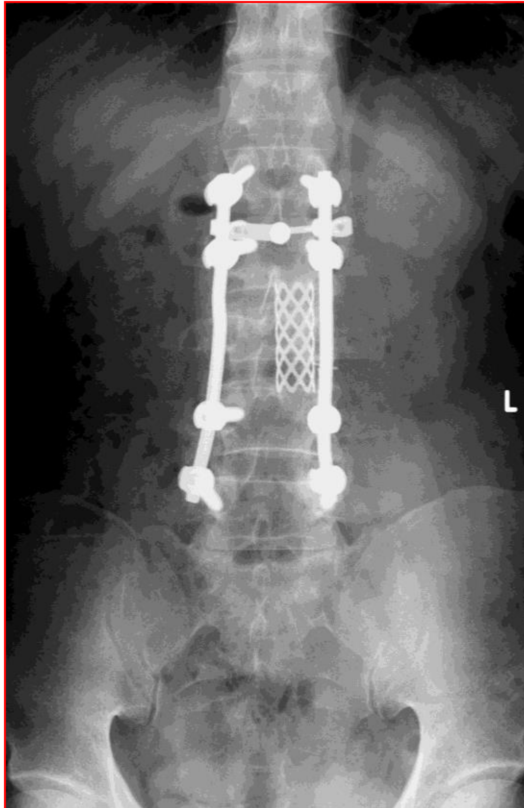

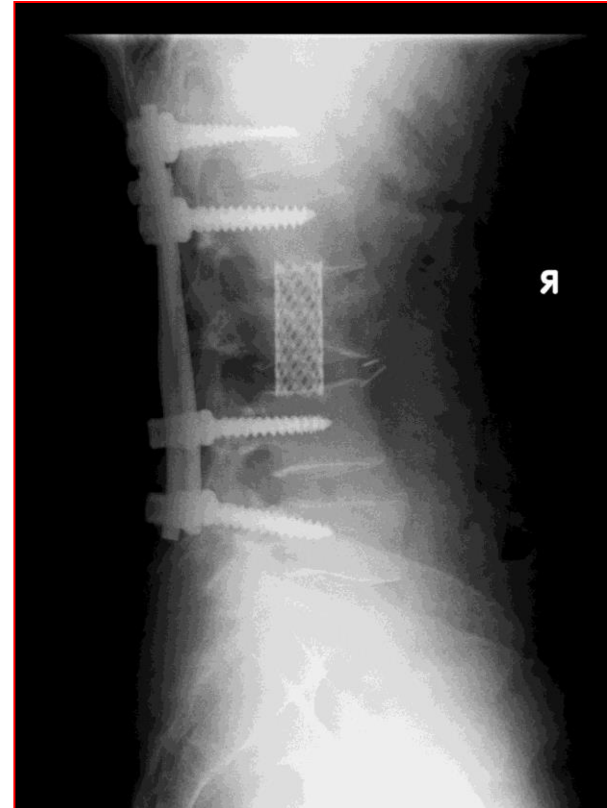

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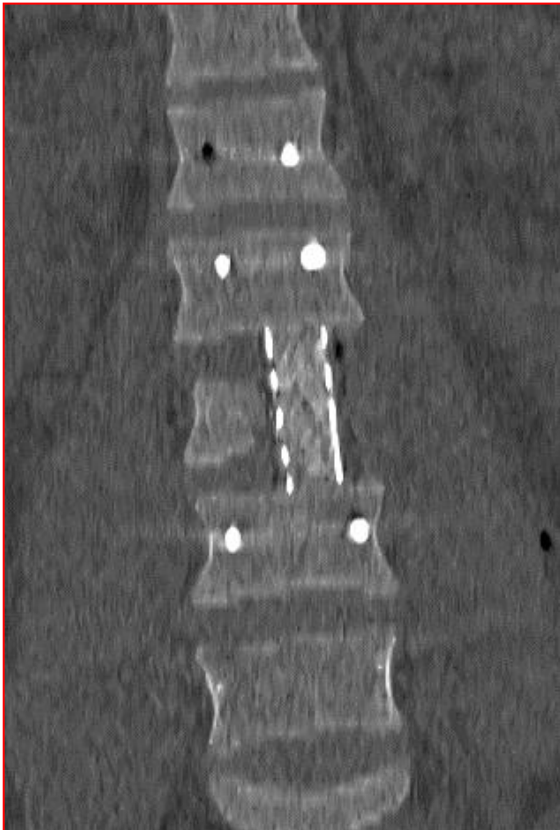

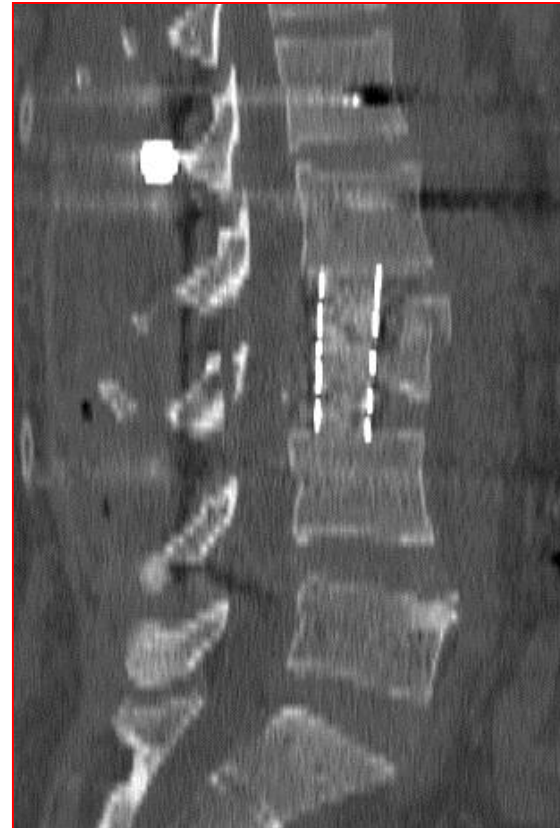

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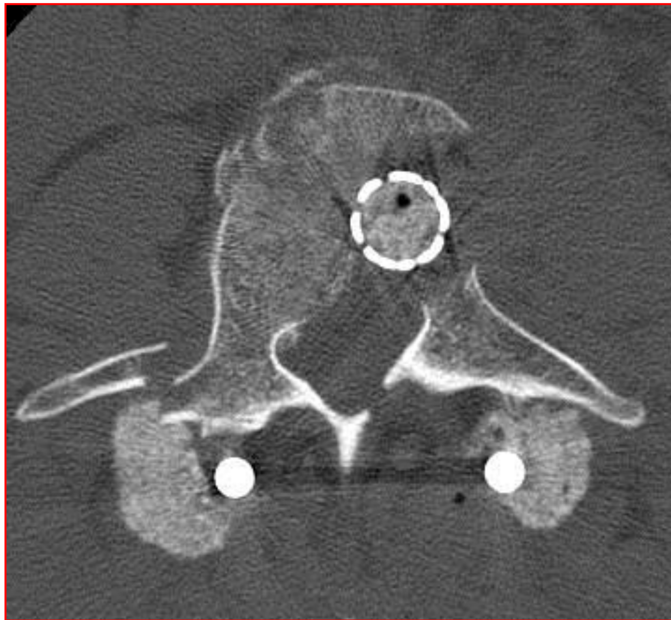

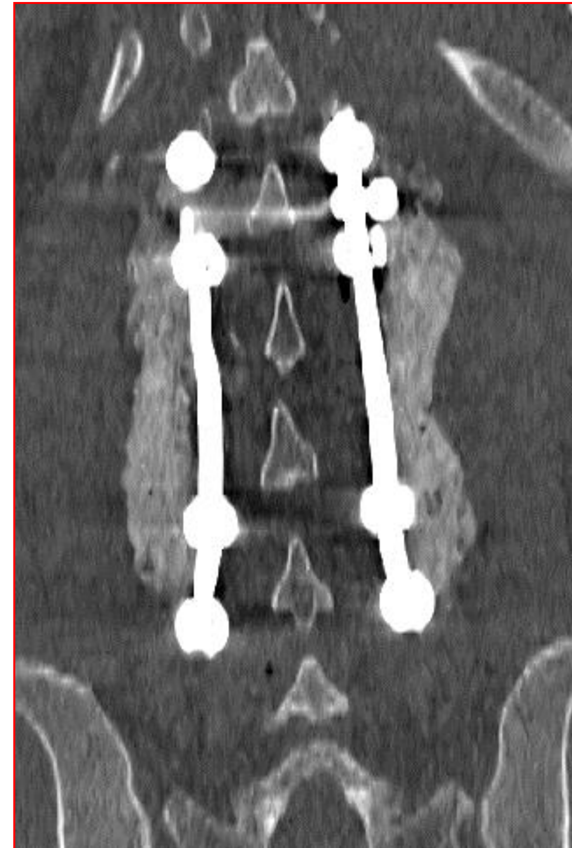

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Clinical Course

- 6 weeks rigid LSO
- PT, work conditioning
- RTW light duty at 3 months
- MMI at 9 months
- FCE: Valid, Full effort
  - Medium Lifting Capacity
- Vocational retraining
- 2 year f/u: c/o mild LBP, tx with NSAIDS

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...mbar Spine Regional Grid: Spine Impairments

CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RATING (WPI %)	0	1%–9%	10%–14%	15%–24%	25%–33%
FRACTURES/DISLOCATIONS OF THE SPINE					
Fractures of 1 or more vertebral bodies including compression fractures, fracture of posterior element (pedicle, lamina, articular process, transverse process) *and* burst fracture	0	5 6 7 8 9 **Single- or multiple-level fractures with <25% compression** of any vertebral body; with or without retropulsion; with or without pedicle and/or posterior element fracture Healed, with or without surgery *(includes vertebroplasty or kyphoplasty)* ***and*** may have documented resolved radiculopathy at clinically appropriate level(s) or documented nonverifiable radicular complaints (without radiculopathy) at clinically appropriate level(s), present at the time of examination with signs of cauda equina syndrome: use Chapter 13 to calculate additional impairment	10 11 12 13 14 **Single- or multiple-level fractures with 25%–50% compression** of any vertebral body; with or without retropulsion; pedicle and/or posterior element fracture Healed, with or without surgery *(including vertebroplasty or kyphoplasty)* with or without residual deformity ***and*** may have documented **radiculopathy at the clinically appropriate level** present at the time of examination *(see Table 17-7 to grade radiculopathy)* with signs of cauda equina syndrome: use Chapter 13 to calculate additional impairment	15 17 19 21 23 **Single- or multiple-level fractures** with >50% compression of any vertebral body; with or without retropulsion into the canal; pedicle and/or posterior element fracture Healed, with or without surgery *(including vertebroplasty or kyphoplasty)* with or without residual deformity ***and*** may have **significant radiculopathy at a single clinically appropriate level** present at the time of examination *(see Table 17-7 to grade radiculopathy)* with signs of cauda equina syndrome: use Chapter 13 to calculate additional impairment	25 27 29 31 33 **Single- or multiple-level fractures with >50% compression** of any vertebral body; with or without retropulsion; pedicle and/or posterior element fracture Healed, with or without surgery *(including vertebroplasty or kyphoplasty)* with or without residual deformity ***and*** may have **significant radiculopathy bilaterally or at multiple clinically appropriate levels** present at the time of examination *(see Table 17-7 to grade radiculopathy)* with signs of cauda equina syndrome: use Chapter 13 to calculate additional impairment

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Conditions Of The Spine

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Spine & Back Conditions

Your spine is a delicate and vital part of your body. In addition to bones and muscles that perform important functions, the spinal cord contains nerves, blood vessels that support the function of your entire body. Spine and back injuries should be taken seriously. Prompt diagnosis and treatment will help prevent serious future consequences. Learn more about your condition below, or find the location nearest you to get professional, caring help with your back or spine problems.

Conditions of the Spine

Cervical Radiculopathy
A Cervical Radiculopathy occurs when the nerve roots in the neck are pinched or compressed interfering with movement and feeling in the arms or hands.

Degenerative Disc Disease
Degenerative Disc Disease involves the weakening of one or more discs in the spine. This condition is usually the result of age or overuse.

Scoliosis
Scoliosis is characterized by a curve that forms in the spine. This condition can be caused by degenerative bone diseases, however, in most cases the cause is unknown.

Spinal Stenosis

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- Hand & Wrist
- Spine & Neck
- Hip
- Knee & Leg
- Foot & Ankle

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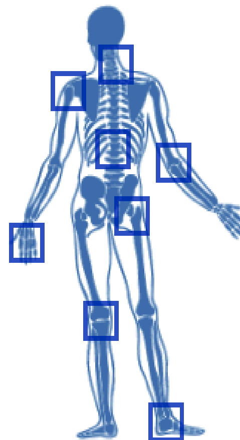

In Focus

Fall Back Into the Groove

For many of us, the fall season is like the start of the new year. Those lazy days of summer are over and that "back-to-school" zing is in the air. As we tackle our busier fall schedules, here are some health and safety tips to help us keep the season running smoothly.

In the News

Visit the AAOS News Bureau

Metal-on-Metal Hip Replacements

August 2011 Update: Ongoing reports in the media may heighten concerns among patients about joint replacements using metal-on-metal bearing devices. Any concerns — before or after surgery — should be addressed with your orthopaedic surgeon. Nearly 400,000 hip replacement surgeries are performed each year, and the overwhelming majority are uneventful procedures that restore mobility and enhance quality of life for patients.

In July 2011, the American Joint Replacement Registry (AJRR) completed its pilot data collection program and is now preparing strategies to begin collecting data nationally. Patients will benefit from a joint registry database because it will:

- Track implant devices and enable the initial procedure to be linked to subsequent events
- Enable patients to access their own

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Legal Perspective

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Poll 1

Which of the following is a correct statement regarding lumbar IMEs in Illinois?

A. Only Respondents can get IMEs
B. You can only get 1 IME
C. It has to be done within 3 months of trial
D. The doctor can't opine on necessity of medical care
E. The doctor has to be board certified in orthopedic surgery

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Answer

D. The doctor can't opine on necessity of medical care

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Recent Commission Decisions (Pre-AMA)

- *Erik Brown*, *Petitioner*, (I.W.C.C. 5/30/14)
  - DOA: 4/12/07
  - Petitioner was a 26 year old manufacturing worker
  - Sciatic nerve injury with continued subjective complaints after an engine struck him in the lower back, knocking him down to the ground
  - 7.5% person as a whole
- *Garabed Damarjian, Petitioner*, (I.W.C.C. 5/27/14)
  - DOA: 1/31/09
  - Petitioner was a 61 year old bridge operator
  - Petitioner fell down stairs that lead to the bridge house where he works
  - Sacral coccyx contusion and left-sided radicular symptoms
  - MRI showed disc degeneration at L3-L4
  - Petitioner returned to work full duty, but continued to experience low back pain and numbness and continues taking over-the-counter medication
  - 3% person as a whole

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Recent Commission Decisions

- *Ruthelma Attig, Petitioner*, (I.W.C.C. 5/5/14)
  - DOA: 12/6/10
  - 65 year old teacher's aide
  - Injured when a student collided with her in the school hallway
  - Lumbosacral spondylosis without myelopathy
  - Series of epidural steroid injections and two radiofrequency denervation procedures
  - 7.5% person as a whole
- *Daiszenia Allotey*, *Petitioner,* (I.W.C.C. 5/1/14)
  - DOA: 3/21/05
  - 50 year old phlebtomotist
  - Injured while assisting a patient into a recliner, felt a pop in her back
  - Low and mid back strain/sprain
  - Petitioner underwent two epidural steroid injections, physical therapy, and a period of restricted duty
  - 5% person as a whole

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Recent Commission Decisions

- *Joshua Hoback, Petitioner*, (I.W.C.C. 5/27/14)
  - DOA: 2/28/11
  - 31 year old roof bolter
  - Undisputed accident when Petitioner tripped over a hose and landed on the ground on his hands and knees.
  - Petitioner experienced low back pain, weakness of his right leg and right foot pain/numbness
  - L4-L5 left-sided herniated disc
  - Epidural injection and L4-L5 microdiscectormy on the left side
  - Petitioner experienced full resolution of lower extremity pain and near resolution of low back pain following surgery and returned to work without restrictions
  - Significant history of previous lower back injury, pain, and treatment and pre-existing disc herniation
  - Commission affirmed award of 20% person as a whole

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AMA Guidelines

- 2011 Amendments:
  - For injuries occurring on or after 9/1/11, permanent partial disability ("PPD") shall be established using the following criteria
  - Impairment Rating—shall include professional appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with injury; and any other measurements that establish the nature and extent of impairment
    - Currently, the 6th Edition of the "Guides to the Evaluation of Permanent Impairment" shall be used to determine the level of impairment

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AMA Guidelines

- In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
  1. reported level of impairment pursuant to subsection (a);
  2. occupation of the injured employee
  3. age of the employee at the time of the injury
  4. employee's future earning capacity
  5. evidence of disability corroborated by treating medical records
  - **No single enumerated factor shall be the sole determinant of disability**

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Recent Commission Decisions (Post-AMA)

- *Marque Smart, Petitioner,* (I.W.C.C. 5/20/14)
  - DOA: 1/11/12
  - 40 year old warehouse order selector
  - While lifting boxes weighing 90-95 lbs., Petitioner experienced sharp pain in his lower back
  - L4-L5 central disk herniation, L3-L5 spinal stenosis
  - L3, L4, L5 laminectomy with bilateral facetectomy and foraminotom and left-sided L4-5 microscopic discectomy
  - Work conditioning indicated Petitioner could return to his previous position, at the heavy physical demand level
  - 25% person as a whole
  - Dissent: Neither party submitted impairment evaluation into evidence
  - Therefore, under the plan language of the revised legislation, the arbitrator did not have the authority to determine permanent partial disability because one of the five required factors was not available for consideration
    - Emphasizes the need for clarification by the Appellate Court or General Assembly

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Recent Commission Decisions

- *Terry Powell, Petitioner,* (I.W.C.C. 6/3/14)
  - DOA: 6/20/13
  - 65 year old factory worker
  - While removing a 40-50 lb. part from a lathe, Petitioner felt sharp pain in his low back while twisting his torso to place the part on a skid
  - Previous treatment for back pain
  - Right-sided extreme lateral L3-L4 microdiscectomy with intraoperative microscopy; right-sided L3 and L4 hemilaminectomies with bilateral medial facetectomies and foraminotomies with microdissection; and right-sided L4 and L5 hemilaminectomies with bilateral medial facetectomies and foraminotomies with microdissection
  - Petitioner returned to work full duty, but was giving a mechanical hoist to use when lifting parts in excess of 10 lbs
  - Petitioner continued to experience low back and leg pain
  - Petitioner declined to pursue a recommended L2-5 redo decompression and stabilization
  - Instead, Petitioner decided to manage his back pain with medication until retirement.
  - 30% person as a whole
  - No discussion or mention of AMA impairment rating

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Recent Commission Decisions

- *William Reed, Petitioner, (*I.W.C.C. 4/1/14)
  - DOA: 6/20/12
  - 31 year old correctional officer
  - Injured while breaking up a fight between inmates
  - Aggravation of a pre-existing low back condition
  - MRI revealed an annular tear at L4-5 which was increased in size when compared to a 2010 MRI and a central disc bulge at L5-S1
  - Physical therapy, returned to work full duty
  - Continued complaints of low back pain
  - Neither Respondent or Petitioner submitted an AMA impairment rating
  - 4% person as a whole
- *David Young, Petitioner, (I.W.C.C. 12/13/13)*
  - DOA: 9/16/11
  - 52 year old forklift driver
  - Injured lower back while getting onto a forklift
  - Significant history of prior back problems and treatment
  - MRI reflected disc herniation and evidence of radiculopathy
  - On the date of the accident, Petitioner was recovering from a previous back surgery
  - A revision surgery was required as a result of the 9/16/11 accident. Petitioner resigned after being approved for SSDI
  - AMA Impairment Rating: 11%
  - Award: 27.5% person as a whole

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Hypothetical Case

- Kim is a 35 year old housekeeper who was injured while throwing large garbage bags, weighing 30-35 lbs. each, into a dumpster
- On 5/1/14, Kim experienced immediate sharp pain in her low back
- Kim reported the incident and went to the emergency room
- Kim is referred to Dr. West, a neurosurgeon who performs a L4-L5, L5-S1 microdiscectomy
- Kim had a total of 12 weeks lost time
- Kim returned to full duty work 6 months after surgery.
- Dr. Jenner, Respondent's IME, found 2% disability

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Poll 2

What will the IWCC award Kim?

A. 0%
B. 2%
C. 10%
D. 15%

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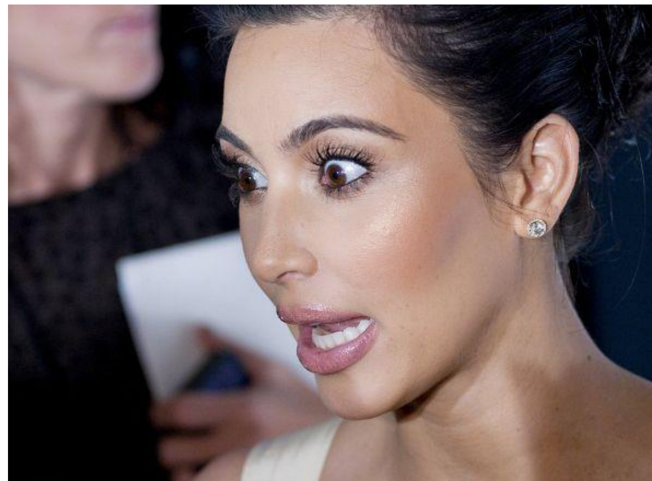
Answer



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Giveaway

- Type your answer into the question box
- The first person to answer correctly wins

Frankies Deep Tissue Hammer Massager

- 2-speed massager
- 14-inch handle is easy to hold and operate
- Durable plastic construction
- Treats consistent pain or physical injury

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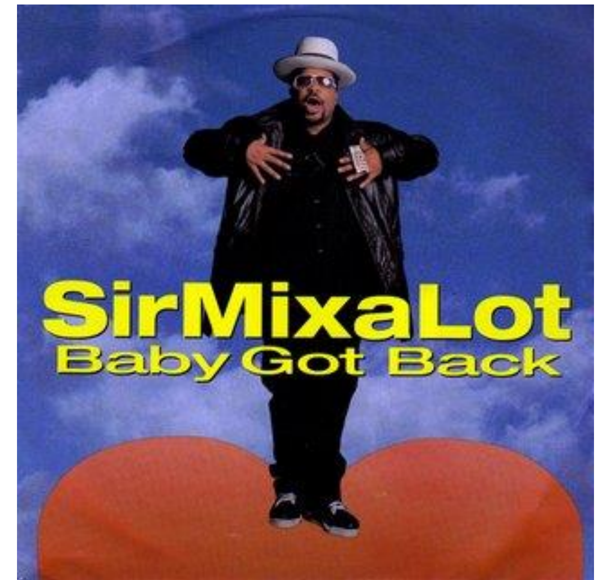
Giveaway

- Sir Mix-a-Lot is best known for his 1992 album Mack Daddy and its Grammy Award-winning single "Baby Got Back."
- Name any other Sir Mix-a-Lot song



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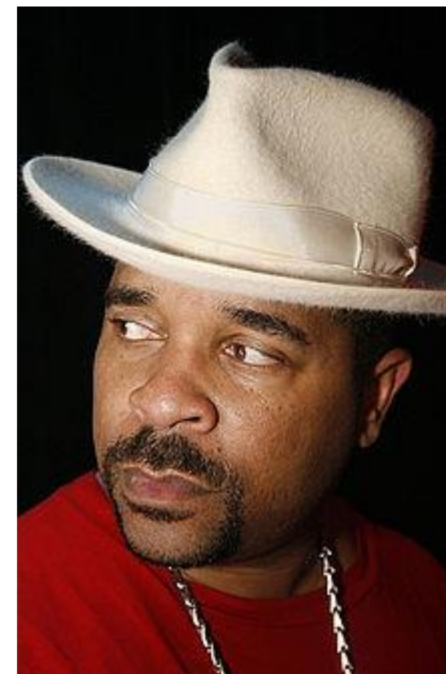
Giveaway

A Rapper's Reputation
Aintsta
Attack On The Stars
Baby Got Back
Baby Got Back (Bass Remix)
Baby Got Jack (Adam Sandler Remix)
Bark Like U Want It
Beepers
Big Johnson
Bremelo
Buckin' M Horse
Buttermilk Biscuits
Cake Boy
Chief Boot Knocka
Don't Call Me Da Da
F The Bs
Freak Momma
Game Don't Get Old
Gortex
Hip Hop Soldier
I Check My Bank
I Got Game
I Like Big Butts
I Like Bug Butts (Baby Got Back)
I'll Roll You Up
I'm Your New God
Iron Man
Jump On It
Lead Yo Horse
Let It Beaounce
Lockjaw
Mack Daddy
Man U Luv Ta Hate
Monster Mack
My Bad Side
My Hooptie
My Posse's On Broadway
Nasty Dog
National Anthem
No Holds Barred
One Time's Got No Case
Put 'em On The Glass
Ride
Rippin'
Seattle Ain't Bullshittin'
Seminar
Sleepin Wit My Fonk
Something About My Benzo
Sprung On The Cat
Square Dance Rap
Suburbian Nightmare
Swap Meet Louie
Swass
Take My Stash
Testarosa
The (Peek-a-boo) Game
The Boss Is Back
The Jack Back
What's Real
You Can Have Her
You Can't Slip



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Bonus Giveaway

Name each one of Kim's Kardashian's siblings in order of age

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Answer

1. Kylie

2. Kendall

3. Rob

4. Khloe

5. Kourtney

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Questions & Answers

Rich Lenkov
Bryce Downey & Lenkov
(312) 327-0032
(312) 371-2039 (Cell)
rlenkov@bdlfirm.com

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  - Workers Compensation Negotiation Strategies
  - Employment Law Issues Every Workers' Compensation Professional Needs To Know About
  - 10 Illinois Workers' Compensation Cases You Need To Know
  - Ask an Attorney Anything: Your Most Pressing Workers' Compensation Questions ANSWERED
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  - Interactive - Please ask questions
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