

Comparison of a Consensus Methodology for Evaluating Employability and Earning Capacity by the CA-IARP DFEC Work Group with Published, Peer-Reviewed Methodologies

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This article provides a comparison of a consensus methodology for evaluating employability and earning capacity prepared by the California Chapter of the International Association of Rehabilitation Professionals' (CA-IARP) Diminished Future Earning Capacity (DFEC) Work Group vocational experts with methodologies presented in published, peer-reviewed professional journal articles and other publications. In this context, consensus methodology means the methodology that was developed and agreed upon by CA-IARP DFEC Work Group vocational experts. The consensus methodology by CA-IARP DFEC Work Group vocational experts is presented first and is followed by a review of peer-reviewed methodologies published in professional journals and texts over the past 15 years. Issues related to educational qualifications and ethics for vocational experts are also discussed. Implications for practice are provided both in terms of general applications for vocational evaluations in multiple jurisdictions and venues as well as those specific to California workers' compensation regarding the evaluation of diminished employability and diminished future earning capacity.

In the spring of 2009, 19 vocational experts met as part of a grassroots effort that was later sponsored by the California Chapter of the International Association of Rehabilitation Professionals to develop a methodology for evaluating employability and earning capacity that could be followed by vocational experts and consumers of their services in multiple judicial venues, such as personal injury, medical malpractice, employment law, family law, workers' compensation, and others. The methodology was also developed for use in vocational evaluations related to *Wanda Ogilvie v. City and County of San Francisco* (2009, February 3), commonly referred to as *Ogilvie I*. Issues related to the professional qualifications of a vocational expert and ethics were also addressed. The results of these activities were published in White Paper: IARP-DFEC Work Group (White Paper) (Austin et al., 2009a). An addendum (Austin et al., 2009b) was added to the White Paper later in 2009 regarding guidelines for addressing the nature and scope of a

long-term loss of income evaluation under *Ogilvie I* and *Wanda Ogilvie v. City and County of San Francisco* (2009, September 3), commonly referred to as *Ogilvie II*. The present article develops further the original work of the White Paper: IARP – DFEC Work Group by comparing the consensus methodology for evaluating employability and earning capacity developed by the CA-IARP DFEC Work Group with methodologies that have been published in peer-reviewed professional journals and other publications over the past 15 years.

It is anticipated that the outcome of this comparative analysis of methodologies will be informative and useful to vocational experts, judges, attorneys, and other consumers of their services in various judicial venues and geographic jurisdictions throughout the United States. The results are also expected to have specific application to the evaluation of diminished employability and diminished future earning capacity in the

California workers' compensation system in relation Labor Code sections 4660 and 4662 and court decisions such as *Ogilvie v. WCAB* and *City and County of San Francisco v. WCAB* (2011), commonly referred to as *Ogilvie III*. The comparative analysis of methodologies is also expected to be particularly useful in the development of a vocational expert fee schedule in California as mandated by California Assembly Bill 1168 (AB 1168) and California Labor Code section 5307.7 (Bae, 2012).

The White Paper provided the following recommendations for an evaluation of employability:

- a. An interview that includes review of work, medical and educational background, psychosocial data, activities of daily living, and other relevant information
- b. Assessment of existing employment related skills and abilities
- c. Consideration of the current physical and/or mental limitations as established in medical and psychiatric records and as presented by the evaluatee
- d. Transferable skills analysis
- e. Vocational testing, if necessary to determine the evaluatee's employability
- f. Occupational and labor market research
- g. Identification of factors that may delay, prevent, or enhance employability
- h. Consideration of additional services that may enhance employability when appropriate
- i. Other factors as determined by the expert

Specific components of an earning capacity evaluation were described as follows:

- a. Develop opinions on past and future earning capacity, based on the outcome of the employability evaluation
- b. Complete wage and benefit research
- c. Sources of wage and benefit research are:
 - 1) W-2 forms, Social Security Administration records, and other authenticated records
 - 2) California Employment Development Department
 - 3) U.S. Department of Labor and Bureau of Labor Statistics
 - 4) Other publicly available and statistically reliable published wage and benefit data
 - 5) As required, labor market sampling, research, and relevant contacts with employers, unions, schools and/or organizations to verify wage and benefit data
- d. Apply the most appropriate diminished future earning capacity or loss of earning capacity

method for comparing pre-injury and post-injury earning capacity.

e. Report the findings

The addendum to the White Paper later in 2009 provided guidelines to address the nature and scope of a long-term loss of income evaluation under *Ogilvie I* and *II*. The recommended methodology was outlined as including the following:

- a. Review medical records and wage data
- b. Review information regarding the worker
- c. Analyze long term loss of income
- d. *Ogilvie I & II* assessment
- e. Consider training, if appropriate

The next section of this article will provide a literature review regarding published, peer-reviewed and a few related methodologies for evaluating employability and earning capacity. This will be followed by a comparison of the various components of the published methodologies with the components of the consensus methodology outlined in the White Paper.

Literature Review

The first article reviewed in this section is by Toppino and Boyd (1996) where they described a vocational expert foundation and methodology for a wage loss analysis. Their methodology includes the following components:

- a. Medical reports and consultations
- b. Medical restrictions
- c. Functional capacities
- d. A vocational diagnostic interview
- e. Formal educational level
- f. Current level of aptitudinal functioning
- g. Transferable skills assessment
- h. Age
- i. Wage and benefit projections
- j. Loss calculations

Cohen and Yankowski (1997, Summer) described the following procedural steps that are typically used by vocational experts in personal injury vocational analysis:

- a. Review of records
- b. Job analysis
- c. Personal interview
- d. Vocational testing
- e. Transferable skills analysis
- f. Reasonable accommodation recommendations
- g. Labor market assessment
- h. Vocational plan recommendations

- i. Analysis of lost and future earning capacity
- j. Analysis of job search activities

In addition, Cohen and Yankowski described how the results of a work tolerance evaluation and a physical capacity assessment can be used in a forensic vocational evaluation.

Dillman (1998), an economist, described the vocational expert's role in personal injury cases as follows:

The vocational portion of the analytical process involves the determination of the number, type, and wage levels of jobs an individual would have been capable of performing without the particular limitations (which are the focus of the litigation) and the number, type, and wage level of jobs capable of being performed given the limitations. Appraisal of the individual's ability to compete in the open labor market is also an essential element in the vocational role. Job availability, the selection ratio (i.e., ratio of the number of available jobs to the number seeking the jobs), as well as employer attitudes toward hiring an individual with the specific limitations, are all vocational considerations and often form a foundation for the economic analysis.

The vocational role will determine the extent of the client's residual earning capacity, if any. The process of establishing this capacity may be quite complex, however, as a number of significant factors must be considered and interrelated. . . (p. 20)

Dillman described an impairment to earning capacity equation as follows:

$$\text{Impairment to Earning Capacity} = f(L, P, T, C)$$

Where:

L = Reduction in labor market access

P = Reduction in the average pay for the residual jobs

T = Reduction in worklife or hours available for work

C = Reduction in the ability to compete – increase in rate of unemployment (p. 20)

Toppino and Agrusa (2000) described 6 factors that they had identified as "essential methods in reliably establishing employability and post-incident mitigation earning capacity" (p. 60). The 6 factors include:

- a. The medical record
- b. Workers' compensation and/or Social Security records
- c. Data from work tolerance physical capacities testing and psychometric testing
- d. Demographic factors, including age, gender, and education

- e. Transferable skills analysis
- f. Private labor market survey data

Weed (Weed & Field, 2001) outlined the *RAPEL Method*, a process for evaluating employability and earning capacity, as addressing the following:

- a. Rehabilitation plan
- b. Access to the labor market
- c. Placeability
- d. Earnings capacity
- e. Labor force participation

Van de Bittner (2003) described a 9-step *LeBoeuf* Evaluation Process that can be used to develop vocational evidence to combine with medical evidence in establishing an accurate permanent disability rating. The 9-step process includes the following:

- a. Medical records review
- b. Review of school, work and vocational rehabilitation records
- c. Interview and test the injured worker
- d. Review deposition transcripts and videotapes
- e. Evaluate self-initiated return to work efforts
- f. Complete a transferable skills analysis
- g. Determine vocational feasibility
- h. Analyze employability
 - 1) Labor market access
 - a) Medical labor market access
 - b) Vocational labor market access and placeability
 - 2) Labor market survey
 - i. Reporting

Berg (2003) presented a methodology to standardize assessments by vocational experts in appeals regarding permanent and total disability determinations before the Washington Board of Industrial Insurance Appeals. The Leeper Evaluation Methodology was developed and includes the following components:

- a. Record review
- b. In-person interview
- c. Psychometric testing
- d. Transferable skills analysis
- e. Determination of likely ability to benefit
- f. Labor market survey
- g. Employability determination
- h. Special re-employment issues such as age, geographic location, etc.
- i. Job analysis
- j. Re-employment efforts

k. Written report

Bakkenson (2003) described how vocational experts assist in the determination of an employee's loss of earning capacity in workers' compensation claims in Arizona involving permanent partial disability and temporary partial disability. Components of a loss of earning capacity assessment can include:

- a. Job analysis
- b. Employability determination
- c. Transferable skills analysis
- d. Special re-employment issues such as age, transportation, geographic location, etc.
- e. Earning capacity analysis
- f. Labor market survey
- g. Wage data
- h. Reporting

Hultine (2003) outlined a process for determining loss of earning capacity and rehabilitation planning in workers' compensation cases in Nebraska. Evaluation components include:

- a. Earning capacity analysis
- b. Written report
- c. Ability to seek work
- d. Ability to hold a job
- e. Capacity to perform tasks assigned
- f. Wages
- g. Special re-employment issues, such as age, geographic location, etc.
- h. Transferable skills analysis
- i. Labor market access

Johnston and Growick (2003b) described how vocational experts develop an opinion regarding a claimant's employability based on the impact of non-medical factors on work potential. An employability assessment is completed for each claimant scheduled for a hearing regarding permanent and total disability. The following components are included in an employability assessment:

- a. File review
- b. Possible phone contact
- c. Special re-employment issues, such as age, education, etc.
- d. Potential for retraining
- e. Transferable skills analysis
- f. Labor market research
- g. Motivation to return to work
- h. Review of test results
- i. Written report

Spitznagel and Cody (2003) described the various components included in an evaluation by a vocational expert in workers' compensation in Florida, as follows:

- a. Review of records
- b. Vocational diagnostic interview
- c. Written evaluation plan
- d. Testing
- e. Transferable skills analysis
- f. Labor market survey/job analysis
- g. Written report
- h. Assessment of loss of earning capacity

Williams, Dunn, Bast, and Giesen (2006) identified factors that contribute to vocational rehabilitation assessment of earning capacity. Examples of important variables in developing employability opinions include:

- a. Physical demands of work
- b. Workers' actual history of performance of job and/or tasks
- c. Specific vocational preparation (SVP)
- d. Number and/or percentage of job title matches found that require judgment to identify from the results of an automated TSA process (pre-incident or post-incident or both)
- e. Aptitude
- f. Degree of transferability of skills (relative)
- g. Workers' actual history of job-related choices
- h. Number and/or percentage of available job openings that relate to job title matches identified in a TSA process
- i. Labor market trends/projections

Van de Bittner (2006) developed the Workers' Compensation Earning Capacity Formula (WCEC Formula) to be used in the calculation of diminished future earning capacity. The formula was described as follows:

$$DFEC = f(WLE) \times \left[\frac{PRE - POST}{PRE} \right]$$

Where:

DFEC = diminished future earning capacity

WLE = worklife expectancy

PRE = pre-injury earning capacity

POST = post-injury earning capacity

f = function of

The following steps are completed in determining diminished future earning capacity:

- a. Clarify worklife expectancy

- b. Establish pre-injury earning capacity
- c. Calculate post-injury earning capacity
- d. Calculate future earning capacity
- e. Calculate the impact of any additional disability factors on FEC

Hall (2006) described his Stepwise Estimate of Diminished Earning Capacity (SEDEC) method that includes the following steps:

- a. Determine average past earnings and convert to hourly rate
- b. Determine single job and/or pool of jobs that most reasonably offer greatest employment potential to worker
- c. Calculate median entry-level hourly wage for job or pool of jobs
- d. Calculate median expected wage (within 3-5 years experience) for a single job or a pool of jobs
- e. Determine pre-injury worklife or pre-injury work period to be considered
- f. Consider potential loss due to reduced worklife
- g. Calculate loss scenarios using SEDEC formula
- h. Develop alternative scenarios to consider the impact of receiving vocational rehabilitation, job accommodations, training, etc.

Owings (2007) provided an earning capacity assessment methodology based on the rehabilitation counseling process. This process consists of the following steps:

- a. Reviewing medical, educational, employment and other records
- b. Interview with the evaluatee
- c. Administer necessary and appropriate vocational tests
- d. Determine suitable employment options from an analysis of the records, interview information, test results, etc.
- e. Discuss presently available job alternatives via education, wages, etc.
- f. Outline a plan of action to achieve the job goal

Field (2008) described relevant factors in estimating earning capacity and loss. The following steps were suggested in the Practical Approach:

- a. Following a review of the case records, develop a preinjury assessment of earning capacity. Identify a preinjury base wage (not necessarily wage at time of injury) by identifying jobs and wages that best represent the claimant's functional capacity.
- b. Identify a postinjury base wage by identifying jobs and wages that best represent the claimant's residual functional capacity.

- c. Estimate the difference between the preinjury earnings capacity and the postinjury earnings capacity.
- d. Estimate the remaining work life of the claimant.
- e. Calculate a range of economic loss by multiplying the difference from pre to post earnings capacity by the work life remaining.
- f. If not qualified, refer to an economist for adjustment to present value. The economist's general method can serve as a guide and blueprint for the rehabilitation professional. Resources to be used might include the following:

- A computerized job matching program to expedite the job identification process. (optional – see website).
- Either the DOT or the O*NET for describing occupations.
- The on-line CareerInfoNET database for wages and numbers of jobs in a local economy, or the CPS data generated by BLS, or ACS (see website).
- The BLS Worklife Tables

Hankins (2009) explained that evaluating a plaintiff's employment and earning potential "includes, but is not necessarily limited to, a review of medically and vocationally relevant records, an investigation of prior earnings history, a vocational assessment, consideration of demographic factors affecting employment, a transferable skills analysis and a LMA analysis" (p. 82).

Tracy and Wallace (2010) described the elements of a vocational examination process in family law cases as including:

- a. A face-to-face interview with a vocational expert
- b. Vocational testing which includes assessment of interests, aptitudes, and abilities
- c. Assessment of abilities through transferable skills analysis and occupational research
- d. Research of the labor market to determine employment opportunities available and suited to the party, as well as the general state of the national and local labor market
- e. Comprehensive report

Van de Bittner and Toyofuku (2010) described 3 types of *Ogilvie* analyses that complied with *Ogilvie I* and *Ogilvie II*. An *Ogilvie* analysis report format was provided. Claims for permanent and total (100%) disability were also discussed.

Shahnasarian (2011) described the processes that form the basis of an assessment of earning capacity as including the following:

- a. Reviewing relevant records, such as employment, academic, earnings, medical, psychological, job

search, military, criminal, tax returns, standardized test data, Social Security Administration records, and depositions of various parties

- b. Performing a subject examination, including a clinical interview and the administration of standardized tests
- c. Conducting labor market and related research
- d. Consulting with other experts and collateral sources of information, if necessary

Robinson, Pomeranz, and Young (2012) described a set of construct domains and variables to consider when assessing an individual's vocational earning capacity in a forensic setting. The most significant construct domains are as follows:

- Medical – functional capacity
- Labor market sampling information
- Medical – history and treatment
- Household activities
- Past work experience – variables specific to the job
- Education – general variables
- Past work experience – variables specific to the employee
- Worklife participation
- Behavioral health
- Rehabilitation planning and services
- Job acquisition and maintenance
- Activities of daily living
- Economic
- Language skills
- Military service experience
- Transportation
- Transferable skills
- Professional resources
- Education – higher education (college)
- Past work experience – variables specific to the employer
- Psychometric measurement
- Education – vocational and apprenticeship
- Labor market statistical information
- Financial
- Socioeconomic
- Legal jurisdiction
- Avocational activities
- Education – compulsory (K-12)
- Cultural

Robinson and Pomeranz (2011) described core analyses necessary in the Vocational and Rehabilitation Assessment Model (VRAM) as follows:

- a. Psychometric measurement
- b. Analysis of future medical care needs
- c. Transferable skills analysis
- d. Analysis of employability
- e. Analysis of placeability
- f. Analysis of earning capacity
- g. Analysis of worklife participation
- h. Rehabilitation planning and services
- i. Final opinion formulation

This completes the presentation of the components of published, peer-reviewed methodologies for evaluating employability and earning capacity. The next section will include a comparison of the general evaluation methodologies from the literature review with the consensus methodology by the CA-IARP DFEC Work Group as described in the White Paper.

Comparison of Published, Peer-reviewed Evaluation Methodologies with the CA-IARP DFEC Work Group Consensus Methodology

Table 1 initially outlines the components of the consensus methodology developed by the CA-IARP DFEC Work Group as presented in the White Paper. This is followed by a listing of the various components of an evaluation of employability and earning capacity from the 21 published, peer-reviewed and related methodologies described in the Literature Review section above.

At a glance, Table 1 depicts the comprehensive nature of the consensus methodology presented by the CA-IARP DFEC Work Group. One also readily sees the comprehensive nature of nearly all of the published, peer-reviewed methodologies. Therefore, the most significant outcome from the comparison of the methodologies is the consistency between the California consensus methodology and the published, peer-reviewed methodologies. For example, 100% of the published, peer-reviewed, and related methodologies included a record review and consideration of a plaintiff's or applicant's education and work history. In addition, 95% included a consideration of labor market access, labor market research, or labor market survey results. Ninety-one percent included a transferable skills analysis. Eighty-six percent included rehabilitation plan or return to work options and a comparison of pre-incident with post-incident wages or earning capacity. Another 77% included an interview and testing of the plaintiff or applicant and an assessment of placeability. In addition, 73% considered age

Table 1
Components of an Evaluation of Employability and Earning Capacity

	Rec. Rev.	Int.	Ed.	Wrk.	Test	TSA	Voc. Feas.	LMA	Age/ WLE	Sp. Re.	Plan/ RTW Op.	Plc.	JP	WC	Rpt.
White Paper (2009)	x	x	x	x	if needed	x		x	x	x	x	x		x	x
1. Toppino & Boyd (1996)	x	x	x	x	x	x			x		x			x	x
2. Cohen & Yankowski (1997, Summer)	x	x	x	x	x	x		x		x			x	x	x
3. Dillman (1998)	x		x	x				x			x	x		x	x
4. Toppino & Agrusa (2000)	x		x	x	x	x		x	x					x	x
5. Weed & Field (2012)	x	x	x	x	x	x		x	x		x	x		x	x
6. Van de Bittner (2003)	x	x	x	x	x	x	x	x			x	x	x		x
7. Berg (2003)	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
8. Bakkenson (2003)	x		x	x		x		x	x	x	x	x		x	x
9. Hultine (2003)	x		x	x		x		x	x	x	x	x		x	x
10. Johnston & Growick (2003b)	x	x	x	x	x	x	x	x	x	x	x	x			x
11. Spitznagel & Cody (2003)	x	x	x	x	x	x	x	x	x	x	x	x		x	x
12. Williams, Dunn, Bast, & Giesen (2006)	x	x	x	x	x	x		x		x	x	x		x	x
13. Van de Bittner (2006)	x	x	x	x	x	x		x	x	x	x	x		x	x
14. Hall (2006)	x	x	x	x	x	x		x	x	x	x	x		x	x
15. Owings (2007)	x	x	x	x	x	x		x	x	x	x	x		x	x
16. Field (2008)	x		x	x		x		x	x		x	x		x	x
17. Hankins (2009)	x	x	x	x	x	x		x	x	x	x	x		x	x
18. Tracy & Wallace (2010)	x	x	x	x	x	x		x			x	x			x
19. Van de Bittner & Toyofuku (2010)	x	x	x	x	if needed	x		x	x	x	x	x	x	x	x
20. Shahnasarian (2011)	x	x	x	x	x			x						x	x
21. Robinson, Pomeranz, & Young (2012)	x	x	x	x	x	x		x	x	x	x	x		x	x
22. Robinson & Pomeranz (2011)	x	x	x	x	x	x		x	x		x	x		x	x
Total	22	17	22	22	17	20	4	21	16	13	19	17	4	19	22
Percent	100	77	100	100	77	91	19	95	73	59	86	77	19	86	100

Note. Rec. Rev. = Record review; Int. = Interview; Test = Testing; Ed. = Education; Wrk. = Work history; TSA = Transferable skills analysis; Voc. Feas. = Vocational feasibility analysis; LMA = Labor market access, labor market research, labor market survey; Age/WLE = Age/Worklife expectancy; Sp. Re. = Special reemployment issues; Plan/RTW Opt. = Rehabilitation plan/return to work options; Plc. = Placeability; JP = Analysis of job placement or return to work efforts; WC = Wage or earning capacity comparison; RPT = Written report

or worklife expectancy issues. Finally, 19% of the methodologies addressed vocational feasibility and an analysis of post-incident return to work efforts.

Qualifications of a Vocational Expert

The White Paper provided recommended education, certification, and other qualifications of a vocational rehabilitation expert. The qualifications of a vocational rehabilitation expert are greater than those of a rehabilitation counselor, job placement counselor, return to work coordinator, or other direct service provider. The recommended qualifications of a vocational rehabilitation expert in the White Paper will be compared with recommended or required qualifications described in published, peer-reviewed professional journal articles and related publications, as summarized in Table 2 below. The White Paper recommended qualifications of a vocational rehabilitation expert are:

- 1) Graduate degree in vocational rehabilitation, the behavioral sciences, human services or a related field;
- 2) Specialized training in the area of vocational rehabilitation as it relates to forensics;
- 3) Certification as a Certified Rehabilitation Counselor (CRC), with no additional experience or Certified Disability Management Specialist (CDMS) and 3 years of experience. Both certifications require passage of a national certification examination, adherence to a code of ethics, continuing education requirements, and a peer review process (certifications are awarded and monitored by the Commission on Rehabilitation Counselor Certification and the Certification of Disability Management Specialists Commission respectively);
- 4) Vocational Rehabilitation Experts have the knowledge, skill, experience, training and education to provide opinions and testimony regarding the effects of impairments and disabilities on employability and earning capacity;
- 5) Membership in relevant professional organizations or associations. (pp. 147–148)

In terms of qualifications of a vocational expert, Weed and Field noted in the fourth edition of the *Rehabilitation Consultant's Handbook* (2012), "One qualification that generally supersedes other qualifications for expert status is the attainment of a terminal degree or doctorate in a vocationally related area such as guidance and counseling, vocational counseling, and/or vocational rehabilitation counseling" (p. 32). They also recommended relevant professional work experience, professional association membership, knowledge of the current professional literature, and national certification (p. 32).

Johnston and Growick (2003a) summarized their research regarding the qualifications of a vocational expert, as follows:

To be considered qualified as a VE, the expert should possess some combination of the following: graduate degrees in behavioral science or vocational rehabilitation related fields, specialized training in vocational rehabilitation, professional licensure and certifications administered by recognized rehabilitation groups, demonstrated evidence of expertise via teaching, lectures or publication, association with professional organizations, (Blackwell, 1992; Machovec, 1987; Williams & Reavy, 1993), work experience including vocational assessment, job analysis, and job placement, familiarity with current literature (Havranek, 1997), knowledge of vocational tests, references and resources, and skills allowing one to accurately convey information in depositions, hearings, and trials (Blackwell, 1992). Additionally, the expert should adhere to an ethical code. The ethical codes within the various professional rehabilitation organizations have in common several important traits. It is essential for the expert to identify accurately qualifications, emotionally distance themselves from the referral source, refrain from basing fees on trial outcome, accurately report and represent facts, and maintain levels of confidentiality that protects the clients from unnecessary harm. (Johnston & Klein, 2001) (p. 37)

Berg (2003) reported that, "The vocational rehabilitation counselor assigned must have a master's degree and a certified rehabilitation counselor or American Board of Vocational Experts credential to receive forensic referrals from the state fund" (p. 93). Johnston and Growick (2003b) reported that Employability Assessors retained by the Ohio Industrial Commission are required to, among other things:

Possess a minimum of a Master's Degree in Rehabilitation, Education, Psychology, or related field; Have five years experience in vocational rehabilitation services; Be certified by the American Board of Vocational Experts (ABVE), or be a Certified Vocational Evaluator (CVE), Certified Rehabilitation Counselor (CRC), or Certified Insurance Rehabilitation Specialist (CIRS). . . (p. 115)

Hultine (2003) reported that according to Nebraska Workers' Compensation law:

Under Rule 40, the Court may certify a Nebraska Vocational Rehabilitation Counselor (NVRC), if they have completed a Master's degree in Rehabilitation Counseling or a Master's degree in a related field with experience. Recently, the court has simply stated that if the American Board of Vocational Experts (ABVE) has certified an individual as a Vocational Expert (VE), or the Commission on Rehabilitation Counselor Certification has recog-

nized an individual as a Certified Rehabilitation Counselor (CRC), those professionals are then qualified to complete LOEC's (loss of earning capacity evaluations). (p. 107)

Van de Bittner (2006) suggested that referring parties consider the minimum requirements for certification as a vocational expert by the American Board of Vocational Experts (ABVE) when retaining a vocational expert. Certification as a vocational expert by ABVE requires a Master's degree or a doctorate in human services or a related field plus 3 years of vocational expert experience at the Fellow level and 7 years of vocational expert experience at the Diplomate level.

Shahnasarian (2011) reported that:

Vocational experts should hold a graduate degree – preferably a doctorate – in rehabilitation counseling, psychology, or an allied discipline. Other credentials that help qualify practitioners include a state license to practice psychology or mental health counseling, and certification as a rehabilitation counselor, vocational evaluator, or career counselor. (p. 6)

The California Family Code has established minimum qualifications for vocational training counselors who conduct vocational expert evaluations in marriage dissolution matters. Family Code section 4331(e) (Retrieved on 1/9/12) states:

A vocational training counselor (vocational expert) shall have at least the following qualifications:

- a. A master's degree in the behavioral sciences
- b. Be qualified to administer and interpret inventories for assessing career potential.
- c. Demonstrated ability in interviewing clients and assessing marketable skills with understanding

of age constraints, physical and mental health, previous education and experience, and time and geographic mobility constraints.

- d. Knowledge of current employment conditions, job market, and wages in the indicated geographic area.
- e. Knowledge of education and training programs in the area with costs and time plans for these programs.

In summary, the White Paper (Austin et al., 2009a) recommended a graduate degree in vocational rehabilitation, the behavioral sciences, human services, or a related field as well as national certification such as designation as a Certified Rehabilitation Counselor by the Commission on Rehabilitation Counselor Certification. When comparing the recommended qualifications in the White Paper with those listed in the 8 published, peer-reviewed professional journals and related texts, it is interesting to note that 100% recommended or required a Master's degree or doctorate in vocational rehabilitation or a related field. Four out of 8, or 50%, recommended or required certification as a vocational expert at the Fellow or Diplomate level by the American Board of Vocational Experts. Six out of 8, or 75%, required designation as a Certified Rehabilitation Counselor by the Commission on Rehabilitation Counselor Certification.

Ethics and Vocational Experts

The White Paper (Austin et al., 2009a) noted that vocational experts should abide by the code of ethics associated with their professional certification (p. 148). Johnston and Growick (2003a, 2003b) reported that a vocational expert should adhere to a code of ethics and

Table 2
Qualifications of a Vocational Expert

Article or Text	Masters or Doctorate	ABVE certification	CRCC certification
White Paper (2009)	x		x
1. Weed & Field (2012)	x		x
2. Johnston & Growick (2003a)	x		x
3. Berg (2003)	x	x	x
4. Johnston & Growick (2003b)	x	x	x
5. Hultine (2003)	x	x	x
6. Van de Bittner (2006)	x	x	
7. Shahnasarian (2011)	x		x
8. California Family Code (2005)	x		
Total	7	4	6
Percent	100%	50%	75%

follow the principles contained therein. Van de Bittner (2006) commented on the need for vocational experts to abide by codes of ethics with respect to financial conflicts. The Code of Ethics by the American Board of Vocational Experts (2011) and the Code of Professional Ethics for Rehabilitation Counselors by the Commission on Rehabilitation Counselor Certification (2010) each apply to the evaluation of employability and earning capacity.

Summary and Recommendations

A consensus methodology for evaluating employability and earning capacity by the CA-IARP DFEC Work Group was found to be quite consistent with published, peer-reviewed methodologies. The results of this comparative analysis provide further support to vocational experts as they evaluate employability and earning capacity in a variety of judicial venues and geographic jurisdictions. In addition, the recommended minimum education and certification qualifications in the White Paper were found to be consistent with those recommended in peer-reviewed articles and related publications. The White Paper education and certification qualifications were also found to be consistent with those required by several states regarding vocational expert services. Finally, research for this article revealed consistency between the White Paper recommendation regarding professional ethics with those in peer-reviewed articles published in professional journals.

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