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Vocational Rehabilitation Benefits Under Louisiana's Workers' Compensation Laws

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Abstract. The purpose of the present article is to examine the role of the Vocational Rehabilitation Counselor (VRC) in the Louisiana Workers' Compensation system (WC). Within Louisiana, VRCs must attain licensure, establishing a general entry framework for VRCs entering the fields, and standards for VRCs continuing to practice in this arena. Moreover, while licensure statues directly who may enter the profession and ultimately practice, additional parameters, specifically La. Rev. Statute 23:1226 directs the practice of rehabilitation counseling. This includes including provision of a return to work hierarchy, directing the steps involved in this process. Over the last 15 years, specific *juris prudence* has moreover offered further directives for daily practices. These steps and further identified protocols are outlined in the present article. Particular programmatic and ethical concerns are presented regarding the practice of rehabilitation counseling within the workers' compensation setting in Louisiana.

Vocational Rehabilitation Counselors (VRC) perform multiple roles in the return-to-work and medical needs assessment process, not only in Louisiana, but also nationwide. As examples, VRCs may assist individuals with spinal cord injuries to identify alternative employment post-accident, identify applicable technology for persons with amputations, or assist elderly individuals to identify "second-career" options according to their transferable skills. Alternatively, VRCs may work in various settings, including state agencies, non-profits, for-profits, and the military. Within private practice in Louisiana VRCs may assist employers, insurance agencies, or Third Party Administrators to not only place workers with disabilities into the workforce following an injury, but also establish post-accident earning capacities, specifically with the Louisiana Workers' Compensation system (WC). The framework for these responsibilities has not been without controversy, with both ethical and procedural challenges addressed through the courts.

Professional Licensure

In order to work as a VRC in the Louisiana's WC system an individual needs to be licensed in the State of Louisiana. Licensure is obtained through the Louisiana Licensed Professional Rehabilitation Counselor Board (LLPVRC). In order to obtain licensure the following criteria must be met: Must have a Master's degree in Rehabilitation Counseling or a related field, be supervised by a licensed rehabilitation counselor (LRC) supervisor for two years, and pass the Certified Rehabilitation Counselor (CRC) examination. An individual must also have at least 15 hours of continuing education hours approved by LLPVRC board every year in order to maintain licensure as a continuing education requirement. If after the 2 years of supervision all criteria are met then an individual is granted full licensure. It is necessary in order to maintain licensure to continue to obtain at least 15 continuing education hours every year (along with paying licensure renewal fees). It is furthermore necessary for VRC to keep up with best practices and changing trends in the profession in order to provide the highest quality rehabilitation counseling services.

It should be noted that Louisiana has a large number of VRCs working in the public rehabilitation sector that are not licensed, moreover, these same individuals are not required to be licensed based on their individualized work duties. Examples of public rehabilitation practices in Louisiana include but are not limited to the following: Volunteers of America (VOA), Louisiana Association of Retarded Citizens (LARC), and Louisiana Rehabilitation Services (LRS). It is projected that LRS represents one of the largest employers of rehabilitation counselors in Louisiana working in the public rehabilitation sector. LRS does not re-

quire counselors to be licensed or certified. It should be noted that not only does LRS employ VRCs as employees, it also employees VRCs as vendors. Vocational evaluations are usually outsourced to VRCs working as vendors for the state. Vocational counselors also work as vendors in other capacities such as work readiness vendors, supported employment vendors, among others.

Employer Choice of Vocational Rehabilitation Counselor

Within the Louisiana compensation statutes, specific standards have been set regarding choice of vocational rehabilitation counselor. If a worker is injured in the course and scope of employment and a VRC is needed to assist with job placement, the employer is granted the opportunity to select or choose the select counselor to provide services. Selection of a counselor is generally granted through marketing or personal selection by an individual adjuster. In exchange, or alternatively, the worker with a disability is able to independently select their treating physician.

La. Rev. Statue 23:1226

Multiple professions have a framework for practice, including physicians, nurses, chiropractors, and others. Standards and protocols direct activities to be completed on a daily basis. Standards may be based on guidance from individual professions, legally-mandated frameworks, or pivotal decisions. One guideline in Louisiana is based on statutes themselves. The framework for vocational rehabilitation within the WC is the vocational return to work hierarchy. The vocational hierarchy not only offers a protocol for the client and vocational counselor, it is explicitly stated in Statue 23: 1226. The authors will discuss each of the steps in the vocational hierarchy and offer brief descriptions of the steps. (Please review the Appendix.)

Return-to-Work with Same Employer in the Same Position

Step1 is the most desirable outcome, which is to *return the injured worker to the same employer in the same pre-injury position.* This is most likely possible if the relationship between the employer and the injured worker was been positively maintained since the injury. As the injured worker will most likely earn the same pre-injury wages, then there will most probably be no loss of wages. Step 1 perhaps may represent the lowest cost for provision of vocational rehabilitation service, as the vocational counselor is not required to perform time-consuming job analyses or labor market surveys, but rather costs are limited to coordination of return to work in the same position. Most recently, claims adjusters and rehabilitation nurse have performed these duties, thus, occasionally limiting the role of counselors in this initial process. This procedurally and potentially brings into question whether claims adjusters and rehab nurses are practicing beyond the scope of their practice. This question may be addressed through positional statements presented in the literature, statutes offering limitations of practice, public sentiment, or self-regulation within individual practices.

Return to Work with Same Employer in Modified Duty

Step 2 in the vocational hierarchy is to *return the injured worker to the same employer in a modified position.* Again, the post injury relationship between the injured worker and the employer represents a key element in this step. If alternative employment can be offered with a continued amicable relationship between employer and employee, then the likelihood of job success or placement will be higher than later steps in the hierarchy, such as job placement in the open labor market. However, if the relationship is strained and the employer is only interested in rendering a position to minimize their exposure, then the likelihood of successful placement will be minimized. By getting workers back to work quickly after an injury, insurance costs, such as exposure, will most probably be reduced, perhaps offering a valuable incentive to return injured workers to the workforce quickly after injury.

Several steps are necessary in order to coordinate step 2 in the vocational hierarchy. First, the VRC must confirm from the physician that maximum medical improvement has been reached. Second, the counselor must obtain work restrictions from the physician. After these steps are complete then the counselor must obtain a job analysis of the modified position and present it to the physician for review and approval. Once the physician has approved the modified job then the counselor must coordinate the injured workers return to work. This consists of making sure the injured worker knows his job duties and the employer does not deviate from the job analysis descriptors. Particular emphasis should be placed on assuring that the injured worker knows about the modified job opening, including when to show up for work, considering the benefits can be cut if the injured worker refuses or fails to show up for the modified duty.

Several caveats are necessary when implementing Step 2. The vocational counselor must ensure that he/she has obtained an accurate job analysis. It is also necessary to make sure that the injured worker can perform the modified job based on their education and skills (training or certifications may be needed). It is important that the employer does not veer from the job analysis and descriptors. If the employer does vary from the job duties, then the counselor must assure

that the physician approves the changed or modified duties to assure that re-injury does not occur. It is also important to recognize that the injured worker may be deconditoned and may have some psychological overlay from being out of work. There may be a psychological adjustment period, which may be an additional component in the return to work process.

Return to Work in Open Labor Market

Step 3 in the vocational hierarchy is to *return the injured worker to work in the open labor market.* This step most often represents the greatest allotment of time and resources on behalf of the VRC. Related expenses will include time to identity positions, preparation of job analyses, and communication with the injured worker and /or their attorney regarding job openings, and participation in physician conferences in order to get positions approved. Because of the steps needed to accomplish this goal in addition to the costs, counselors may be encouraged to coordinate return to work with pre-injury employer in order to avoid this step, particularly Steps 1 and 2.

An important component of this step is the assessment of transferable skills and matching the transferable skills to jobs in the open labor market. There is indeed an ethical and procedural challenge when identifying jobs that simply may be utilized by an insurance adjuster to modify benefits versus positions that offer vocational integrity and quality placeability. Placeability refers to the actual ability of someone to obtain a position in comparison to others that may apply for same position. Vocational counselors must be cautioned about identifying jobs solely for the purpose of cutting benefits without considering actual placeability.

Within the protocol of identifying jobs in the open labor market several criteria must be met. The injured worker must be able to perform the job based on a transferable skills analysis and physician restrictions, and the job must still be available once the physician approves the position. If the position is not approved or the injured worker does not know about the job opening when the position is still available then it cannot be used to establish supplemental insurance benefits. Supplemental earning benefits represent residual earnings owed to a worker after determination of wage earning capacity through labor market surveys.

Correct and accurate information for jobs identified through labor market surveys is vital along several continuums. The physician must have the correct information to render an opinion on the appropriateness of a position. The injured worker must have the correct information to critically evaluate whether or not they apply for the job. Most importantly, the vocational counselor places their reputation at risk if benefits are modified based on an inaccurate labor market survey or if an injured worker gets hurt in the position due to an inaccurate job description in a job analysis.

While databases such as indeed.com and careerbuilder.com can be utilized to complete labor market surveys, it would be strongly encouraged for vocational counselors to make direct contact with employers considering the relative importance of labor market surveys. Oftentimes, employers may be unwilling to offer any information, which leads to the quandary of whether to abandon the job lead completely or utilize other resources beyond the employer for the job analysis. The others resources may include the following: O*NET, *Occupational Outlook Handbook,* Bureau of Labor Statistics, etc. The resources can be valuable in obtaining job descriptions and wage information. Caution should be used in regards to the *Dictionary of Occupational Titles* as a soul source of job information as it was last revised in 1991. Moreover, dependence on the *Dictionary* as single source of physical requirements would be discouraged, considering the wide range of physical requirements across jobs with similar titles.

It is common practice for vocational counselors to utilize job developers. Caution should be taken when utilizing job developers are there are no set standards of qualifications for job developers. The accuracy of the information obtained by job developers must be questioned. It is best, if they must be utilized, to have them only identify job openings and leave the job analysis including contacting the employers to the vocational counselor. Furthermore, the vocational counselor must be cautioned against using *ex parte* communication as a basis for labor market surveys.

On-the-Job Training

Step 4 in the vocational hierarchy is *on-the-job training.* This consists of assisting the injured worker in finding a new occupation wherein they can be trained to do the job duties on the job. Examples of this may include placing someone as a plumber's helper, welder's helper, or pest control trainee. The goal is to have the injured worker taught the skills on the job and then be able to maintain that employment once they are trained. The hope is that this will lead to long term placeability in the new vocational field.

Retraining Less Than 52 Weeks

Retraining less than 52 weeks is step 5. This step will cost the insurance company additional money (aside from vocational rehabilitation costs), but this step is necessary if the pre-injury employer is not willing to take the injured worker back and job placement efforts in the open labor market have failed. Retraining for strictly sedentary/light duty occupations may be desirable as many injured workers have obtained

physical injuries that often limit them from performing their pre-injury occupations which are often heavy duty. Some examples of retraining programs under 52 weeks include but are not limited to the following: Medical Insurance & Coding Specialist, Phlebotomy Technician, Business Office Administration, and Automotive Repair.

Retraining More Than 52 Weeks

Step 6 of the vocational hierarchy is *retraining more than 52 weeks*. If the injured worker has not been able to return to his pre-injury employer or obtain employment in the open labor market, retraining more than 52 weeks may be an option. These types of training programs usually require a certain level of academic aptitude in order to be a success. Again, this option will be more costly to the insurance company but may be appropriate in some cases. For example, an injured worker who is paraplegic and performed heavy duty occupations pre-injury will most likely need a post-injury sedentary occupation. Formal training for more professional sedentary jobs may lead to more appropriate long-term employment (assuming they possess the necessary academic/intellectual aptitudes).

Self-Employment

Self-employment is the 7th and last Step in the vocational hierarchy. This step comes in to play most often in rural communities with few job openings. An injured worker with specialized skills that would warrant self employment is important in step 7. It is important to note that many businesses fail. The probability of short-term and long-term success must be accessed before moving forward with step 7.

Juris Prudence and Significant Decisions Directing Daily Practice

The following legal precedents are noted for their importance to the field of rehabilitation counseling in WC in Louisiana: *Maxie*, *Livings*, and *Banks* decisions. A brief description is offered for each of the aforementioned cases.

Loniel Maxie vs. Brown Industries, Inc.

The *Maxie* decision refers to *Loniel Maxie vs. Brown Industries, Inc.* In this case the rehabilitation counselor failed to properly consider transportation as a component of the vocational plan, failed to properly identify jobs within the vocational profile of the client, failed to do any vocational testing, and the labor market survey failed to provide evidence of post-injury wage earning capacity for the client. The following standards of care initiatives were set forth as a result of this case; transportation must be a vital component of any vocational rehabilitation plan, rural educational resources must be researched and accessed to increase client employability, community linkages are necessary to identify job openings due to the difficulty of indentifying rural labor markets, completing a complete vocational profile including testing is always necessary, and on-the-job training, retraining, and self-employment must be considered as viable vocational options. The workers compensation judge ruled that Mr. Maxie did not receive any meaningful vocational rehabilitation services and was therefore eligible for continued rehabilitation services and continuation of temporary total disability benefits. Mr. Maxie was also awarded unpaid past compensation benefits, back medical costs, and payment of attorney's fees. The WC judge went as far as to call the rehabilitation efforts "sham rehabilitation."

Agnes Livings vs. Langston Companies

The *Livings* decision refers to *Agnes Livings vs. Langston Companies*. The WC judge noted that the VRC erroneously calculated physical capabilities of the job to be rendered to employee and failed to maintain adequate contact with the client in order for the client to be involved in the rehabilitation plan. The following standards of care initiatives were set forth as a result of this case; onsite contact with employers is necessary to afford quality assessments and onsite contact with clients is necessary in order to render quality rehabilitation services. The WC judge awarded the plaintiff for reimbursement of medical expenses, underpayment of compensation, and additional attorney's fees as it found the insurance company to be arbitrary and capricious in payment of medical bills.

Aaron Banks, Jr. vs. Industrial Roofing & Sheet Metal Works, Inc

The *Banks* decision refers to *Aaron Banks, Jr. vs. Industrial Roofing & Sheet Metal Works, Inc*. In this case the rehabilitation counselor failed to disseminate information about job openings in a timely manner for worker to apply for the openings. The vocational counselor also failed to properly document references for wage information for jobs identified through labor market surveys. The following standards of care initiatives were set forth as a result of this case: Counselors must provide time-link between jobs identified and information disseminated to the injured worker and if employers are unwilling to give wage information then other reputable resources such as O*NET and the Department of Labor must be utilized or the job should not be used. The Court found that Mr. Banks to be entitled to additional Supplemental Earnings Benefits. Because the court concluded that the termination of the Banks' benefits was not arbitrary, capricious, or without probable cause, he was not entitled to recover attorney fees. The WC judge re-

duced Mr. Bank's benefits by 50% for each week since the date that he refused rehabilitation services. The following guidelines were set forth during this case to resolve uncertainty among the courts of appeal, which state that a VRC must prove (1) the existence of a suitable job within claimant's physical capabilities and within claimant's or the employer's community or reasonable geographic region;(2) the amount of wages that an employee with claimant's experience and training can be expected to earn in that job; ?and?3) an actual position available for that particular job at the time that the claimant received notification of the job's existence. By "suitable job," the VRC must demonstrate that an injured worker is not only physically capable of performing a position or job, but the job must also that fall within the limits of claimant's age, experience, and education, unless, of course, the employer or potential employer is willing to provide any additional necessary training or education.

Other legal precedents of noted importance include *Crain Brothers, Inc v. Richard* and *Hargrave v. State of Louisiana*. In both of these cases the plaintiff and the plaintiff attorney demanded that the vocational counselor hired by the defense sign a contract forwarded by the plaintiff attorney, agreeing to certain conditions before providing vocational rehabilitation services. The vocational counselor refused to sign the contract in both of these cases. The WC judge in the Crain case ruled that the vocational counselor sign the contract. In the Hargrave case, the WC judge upheld 6 out of the 10 imposed restrictions in the contract. Later the Louisiana Supreme Court reversed the judge's decisions citing that 12:1226 does not require a vocational counselor to sign a contract prior to providing vocational rehabilitation services.

Current Daily Challenges Facing the VRC in this System

The authors will now discuss some of the ongoing issues and challenges for the VRC working in the Louisiana WC system. Up front, the issues are not met with consensus across VRCs across the state. Moreover, interpretation from an ethical standpoint may vary across counselors. Ideas presented within the current article are offered as opinions by the present authors. Others are encouraged to offer responses, rebuttals, or additional articles in response to the present article. Moreover, it is recognized that these challenges are presented as a global measure or observation, submissions towards specific cases may vary pertaining to applicability or ethical frameworks.

Identification of "Client" and "Customer"

It is important that vocational counselor recognize the difference between their "client" and their "customer". If hired by the insurance company, i.e. the customer, the counselor must remember that the injured worker is the client. Licensed Rehabilitation Counselors must maintain moral and ethical standards of behavior. VRCs must remember to take a step back and consider from a personal perspective about how he/she would want a family member treated if they were to end up in the position of an injured worker. It is assumed that the VRC would themselves desire to be treated with dignity and respect, especially while navigating through the worker's compensation system that is often an unfamiliar track. The authors again refer to placing emphasis on placeability rather than just identifying jobs solely for the purpose of cutting benefits. Vocational counselors should always maintain independent decision making capabilities regardless of the payer of services. When conducting labor market surveys and performing job analyses it is vital to obtain accurate information as incorrect information could cause someone's benefits to be erroneously cut when needed or may be the cause of placing someone in a position that could cause them further injury. Considering lack of availability of some information during a labor market survey it is occasionally necessary to abandon job leads. Establishing guidelines for the utilization of job developers could eliminate some of the acquiring (through labor market surveys) and dissemination (giving to physician to approve and then the injured worked if approved) of inaccurate information. Once accurate information has been obtained and approved by the physician it must be provided to the injured worker and/or plaintiff attorney in enough time for them to apply for the job (prepare resume, cover letter, plan for interview, etc). In identifying jobs in labor market surveys counselors should note the date of the deadline to apply and keep in mind that the position must still be approved by the physician and then given to injured worker.

Early Involvement of the Worker with a Disability

Quality rehabilitation efforts should attempt to involve the injured worker in the rehabilitation process/plan to the maximum extent possible. Obtaining access to the client early in the rehabilitation process is critical and should be initiated as soon as possible. The client's involvement and active participation prospectively may greatly increase the possibly of job placement. There is a fine line to tread regarding following the vocational hierarchy and providing consumer choice. Vocational counselors need to explain the vocational hierarchy to their clients, especially if the client does not have an attorney and therefore may be unfamiliar with the steps in the hierarchy. Counselors must explain that the ultimate goal of worker's compensation is to return the injured worker to workforce as quickly as possible with the minimum

amount of retraining. Counselors should emphasize the aspects of the steps in the hierarchy such as returning to the same employer. Examples may include building a solid resume/work history by showing longevity with an employer, building up paid sick/annual leave, adding to a pension, etc as benefits of staying with one employer. If job placement is not possible without retraining then counselors could emphasize the positive aspects of on-the-job training. Examples may include learning a new occupation while earning wages, learning a new occupation that may be more physically appropriate and therefore able to be held long term as they age.

Considering Placeability for Jobs Identified through Labor Market Survey

Multiple times in the present report the concept of "placeability" has been discussed. In isolation, a job lead does not dictate that someone can be placed in a position. Intangible worker-based features such as temperaments and "typical" worker in a position must be considered when completing labor market surveys. As an example, a displaced welder most probably would not be appropriately placed as a Customer Service Representative for a jewelry store. Similarly, an elderly lady with strong religious convictions would not be appropriately placed as a Cashier in an adult movie location. Just because a job is available, does not mean that someone may be appropriately placed, or even have access to a job. A qualitative judgment must be made whether the job is appropriate not based on just availability and the fact that entry-level requirements are minimal, but rather the likelihood that someone may be competitive placed or gain access to the position itself. If the worker may not actually have access to the position, then the counselor has the risk or challenge of offering the job as an actual job prospect that the injured worker may be successfully placed versus simple identification of a job to reduce or eliminate a worker's benefits.

Considering Vocational Integrity for Jobs Identified through Labor Market Survey

Two frameworks may be used when establishing employability through labor market surveys: Identifying jobs to establish supplemental earnings benefits versus maximizing post-injury employability and integrity for an injured worker. Upfront, it is the authors' opinion that all jobs and positions have value, intrinsically and monetarily. However, some positions may offer under employment for some workers. As an example, the second author once responded to a vocational workup that suggested a Registered Nurse could be appropriately placed as a Pizza Delivery Driver following an injury. Indeed, the Registered Nurse had the necessary transferable skills to perform the job duties of a Pizza Delivery Driver, but the medical knowledge, professional licensure, temperament, and Specific Vocational Preparation of the Registered Nurse was ignored under the context that "some job" or "any job" had to be identified in order to establish supplemental earning benefits. In this context the Counselor veer away from the responsibility to the worker with a disability to provide effective and efficient job placement decision, and more towards a sense of responsibility to the insurance carrier to identify a position in order to cut or eliminate benefits. Admittedly, judgment of vocational integrity represents a subjective decision. Perhaps, Specific Vocational Preparation, SOC code ranges, or GOE code ranges may be compared to minimize this subjective judgment.

Sincerity of the Employer toward Modified Duty

Based on experiences of the second author, pre-injury employers have varied widely regarding their sincerity towards rendering modified duty for a worker with a disability. In some circumstances there is a mutual level of respect on behalf of both the worker with a disability and the employer. In one circumstance, a worker was a skilled tractor –track mechanic, repairing tracks on a tractor, representing a set of essential skills of financial value to the employer. Similarly, the worker earned significant wages for his set of skills (approximately $45,000 annually). While the worker needed to return to work to earn pre-injury wages, the employer similarly was losing revenue, as the employer only had one employee to perform this task. Three days after the date of accident the employer, coupled with the employee, sought modified job duty. Completion of a modified job analysis, followed by physician approval of the modified position, and then job placement were accomplished within less than 10 days. On the other hand, the second author set up modified job duties for a Cashier, with the employer firing the worker with a disability for a small infraction (i.e., using a store cup for a fountain drink) in a convenience store. In these two circumstances, the relationships between the employers and the workers with disabilities varied greatly.

Actions to Compare or Contradict the Treating Physician

The insurance carrier may select a specified VRC, and the injured worker may choose their own treating physician. If a treating physician recommends surgery or a therapeutic intervention, such as physical therapy, the insurance carrier can obtain a second medical opinion. Furthermore, if the treating physician and second medical opinion disagree, a state-based alternative opinion, termed independent

medical opinion or examination, may be scheduled. During this process the VRC may assists the insurance carrier to schedule the second medical opinion, such as forwarding medical records, x-rays, or other actions. In the interim, perhaps in select circumstances, surgery may be delayed while the second medical opinion and/or independent medical examination, oftentimes at detriment to the worker with a disability. Admittedly and justifiably, these processes are allowed by law, allowing the insurance carrier and similarly the employer to attain information (i.e., need for surgery or rehabilitation services) in order to protect their interests, or reduce the cost of their claim. However, the role of the VRC in this procedural process may at times be prospectively questionable. If a worker with a disability is in pain, pain perhaps may be minimize or reduced through surgery, and the counselor facilitates a process to perhaps continue or facilitate pain, is the counselor indeed advancing the vocational potential for a worker with a disability, or very simply inducing harm for a worker with a disability to the potential advantage of a carrier or their customer? These actions may be questionable within an ethical framework, leaving the counselor with a difficult decision to render.

Conclusions

Vocational Rehabilitation Counselors have an important role in the return of workers with disabilities to the workforce following accidents that occur in the course and scope of employment. Several guidelines direct not only whether counselors may perform these services and serve as expert witness in WC cases, but also direct the daily activities of Counselors themselves. Daily activities are directed by both statutes themselves and juris prudence. Considering the context that vocational rehabilitation services are provided in Louisiana, specifically employer-driven choice of Counselor, coupled with the payer source being the insurance company or Third Party Administrator paying the Counselor, difficult business and ethical decisions are made by the Counselor on a daily basis. It is recommended that job placement decisions, coupled with assess of post-injury wage earning capacity, are directed by quality placement of the worker in the workforce, as opposed to simple establishment of supplemental earnings benefits without reality of placement for the worker.

Appendix

23: 1226. Rehabilitation of Injured Employees

When an employee has suffered an injury covered by this Chapter which precludes the employee from earning wages equal to wages earned prior to the injury, the employee shall be entitled to prompt rehabilitation services. Early referral is critical to the vocational rehabilitation process and should be initiated as soon as possible. Vocational rehabilitation services shall be provided by a licensed professional vocational rehabilitation counselor, and all such services provided shall be compliant with the *Code of Professional Ethics for Licensed Rehabilitation Counselors* as established by R.S. 37:3441 et seq.

The goal of rehabilitation services is to return a disabled worker to work, with a minimum of retraining, as soon as possible after an injury occurs. If the employee is unable to earn wages equal to wages earned prior to the injury, the first appropriate option among the following must be chosen for the worker:

- Return to the same position.
- Return to a modified position.
- Return to a related occupation suited to the claimant's education and marketable transferable skills.
- On-the-job training.
- Short-term retraining program of less than fifty-two weeks.
- Long-term retraining program of more than fifty-two weeks, but not more than two years.
- Self-employment.

Whenever possible, employment in a worker's local job pool must be considered and selected prior to consideration of employment in a worker's statewide job pool.

The employer shall be responsible for the selection of a licensed professional vocational rehabilitation counselor to evaluate and assist the employee in his job placement or vocational training. It shall be the responsibility of the licensed professional vocational rehabilitation counselor to meet with the worker as soon as possible after vocational ú services are requested, and to develop a rehabilitation plan. The rehabilitation plan shall be developed with the worker and must contain the following:

(1) The agreed upon vocational goal of the rehabilitation service.
(2) The actual plan to obtain that goal.
(3) The cost of the rehabilitation plan.
(4) The signature of both parties establishing that the plan was approved.

Should the employer refuse to provide these services, or a dispute arises concerning the work of the vocational counselor, the employee may file a claim with the office to review the need for such services or the quality of services being provided. The procedure for hearing such claims shall be expedited as provided in R.S. 23:1124.

An employee shall have no right of action against a vocational counselor for tort damages related to the performance of vocational services unless and until he

has exhausted the administrative remedy provided for in Subparagraph (a) of this Paragraph. The running of prescription shall be suspended during the pendency of the administrative proceedings provided for in this Paragraph.

The expedited procedure shall also be made available to the employer to require the employee 's cooperation in the rehabilitation process. Refusal to accept rehabilitation as deemed necessary by the workers' compensation judge shall result in a fifty percent reduction in weekly compensation, including supplemental earnings benefits pursuant to R.S. 23: 1221(3), for each week of the period of refusal.

Prior to the workers' compensation judge adjudicating an injured employee to be permanently and totally disabled, the workers' compensation judge shall determine whether there is reasonable probability that, with appropriate training or education, the injured employee may be rehabilitated to the extent that such employee can achieve suitable gainful employment and whether it is in the best interest of such individual to undertake such training or education. If the workers' compensation judge determines that such training or education is appropriate, the employer or insurer shall be responsible for the costs of the training or education.

When it appears that a retraining program is necessary and desirable to restore the injured employee to suitable gainful employment, the employee shall be entitled to a reasonable and proper retraining program for an appropriate period of time pursuant to Subparagraphs B(l)(a) and (b). However, no employer or insurer shall be precluded from continuing such retraining beyond such period on a voluntary basis. An injured employee must request and begin retraining within two years from the date of the termination of temporary total disability as determined by the treating physician. If a retraining program requires residence at or near the facility or institution and away from the employee's customary residence, reasonable cost of board, lodging, or travel shall be borne by the employer or insurer. A retraining program shall be performed at facilities within the state when such facilities are available.

Editor's Notes: This article has offered a framework for the practice of vocational rehabilitation in Louisiana. It is hopeful that both supportive submissions confirming the afore-mentioned roles discussed in the present article, alongside rebuttal submissions, offering an alternative viewpoint are similarly submitted to the Rehabilitation Professional. Moreover, it is a goal that authors from other states offer their viewpoint of the role of vocational rehabilitation counselors in specific workers' compensation settings. Lastly, it is a goal that workers with disabilities receive quality services to prompt re-employment following injury, and, moreover, placement is facilitated by rehabilitation counselors following accepted standards of care for the benefit of the worker with a disability. It is a further goal that the present article has heuristic value. That is, further discussions of the VRC in WC systems across states will begin, offering a framework for consistency of practice, meeting both standards of practice, but also identification of potential error rates, both components within the Daubert issue.

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