

Evidence-Based Vocational Evaluation Recommendations for the Consideration and Consequences of Opioid/Opiate Usage in Forensic Vocational Evaluations

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Treating injuries that result in pain and discomfort can involve a wide range of medical modalities, including the use of pain medication. Evidence-based forensic vocational evaluation must consider all relevant medical factors of disability, including addiction, and measure or determine the specific vocational impact on an individual's ability to engage in competitive work. As such, this article addresses opioid addiction in the context of forensic rehabilitation settings, including case management, forensic consultation, and professional counseling; provides a list of commonly prescribed opioids for pain relief; and, it entails an analysis of case law and court decisions that direct the vocational evaluator in California as an expert. Lastly, the authors also offer methods by which the vocational expert may address side effects of opioids.

Keywords: Opiates, Opioid, Drug Rehabilitation

Pain represents an unfortunate consequence of many trauma-based injuries. However, regrettably, pain medications similarly adversely affect work activities, resulting in poor work performance in terms of cognitive abilities, enactment of job duties, and productivity. Engaging in competitive work activities while using prescription pain medications such as opioids can be significant for someone that is frequently required to operate vehicles or equipment, or minimal for an individual who engages in simple, unskilled employment. Lastly, it is evident that opioids can affect an individual's ability to perform activities of daily living, such as driving, managing family business activities, or engaging in supervisory activities for children.

Evidence-based vocational evaluations utilize objective information, ranging from assessment of medical impairments from a medical evaluation, objective, measureable information from other professionals, e.g., functional capacity evaluations, vocational testing/work sampling, and a situational assessment. In order to complete this assessment, the forensic vocational evaluation must include a specific, definable process that accurately measures the impact of each medical factor of disability—consequences of opioid usage being such a medical factor of disability. Professional opinions offered by an expert witness must be based upon a foundation of medical evidence that accurately reflects an individual's impairments, as well as clinical judgment from a forensic vocational evaluation.

Clinical judgment requires that the final opinion be predicated on valid, reliable and relevant foundation of information and data that are scientifically established through theory and technique building, which has been tested, peer reviewed, and published, with known error rates, and is generally accepted within the professional community. (Blackwell et al., 2005, p. 104)

This article discusses vocational impact, and consequences of medically prescribed opioid and opiate medications for evaluatees treated for chronic pain, in which the opioids are a component of treatment of the injury. Usually, chronic pain represents pain that lasts or recurs for more than 3 to 6 months (Merskey & Bogduk, 1994; Treede et al., 2015). Objectively measuring the vocational impact of opioid usage subsequently represents a vital part of the forensic vocational evaluation process.

Vocational experts are in the unique position of integrating all medical factors of disability and converting them to vocational factors of disability (Commission on Rehabilitation Counselor Certification, 2016). Medical factors of disability are best described as medical/psychological facts extracted from a medical/psychological report performed by an evaluating professional. Medical facts include but are not limited to: physical or psychological testing results, diagnostic information documented by the evaluating physician/psychologist, analysis of subjective factors of disability analyzed and documented by the physician/psychologist, and conclusions or opinions offered by the medical/psychological evaluator. Medication use is also a significant factor found in medical/psychological practitioner documentation, which must be considered by the vocational expert for vocational impact. Unfortunately, in these authors' opinions the vocational impact of opioid usage may be overlooked by the vocational expert and left unmeasured. If the vocational expert does not consider all of the relevant medical information provided, then relevancy of the vocational evaluation comes into question.

The education and training of vocational rehabilitation counselors, vocational evaluators, and vocational experts includes specific coursework in medical aspects of disability and psychosocial aspects of disability. The education provides the vocational expert with knowledge of medical conditions, including etiology, medical treatment, psychological implications, physical implications, and vocational impact of the medical condition. The vocational evaluation is conducted within the parameters of the vocational evaluation process and the vocational expert's analyses regarding medication side effects that influence employability and placeability must be accurately addressed. In this article, the authors offer methods for assessment and documentation that are within the parameters of the evidence-based vocational evaluation.

Opioids and Opiates

Opioids assist in the relief of pain primarily by binding to and subsequently blocking certain receptors located in the brain and spinal cord (Noble et al., 2010; Opium.com, 2017). Opiates or opiate drugs originate from naturally occurring alkaloids found in the opium poppy plant. Opiates include but are not limited to Heroin, Morphine, Opium, Orapavine, Thebaine, Codeine, sufentanil, and buprenorphine. Opioids, on the other hand, are synthetic drugs that produce opiate-effects. For example, commonly prescribed opioids include oxymorphone, Lortab, Hydrocodone (Norco), Oxycontin, MS Contin, Duragesic, Demerol, Oxycodone, Fentanyl, Methadone, Percodan, and Percocet. Hydromorphone uses morphine as a natural alkaloid. Oxymorphone uses Thebaine as a natural alkaloid. Oxycodone uses Thebaine, and Hydrocodone uses codeine. Pain may be medically treated with prescriptive opioids or opiates. Both opiates and opioids relieve pain and both act the same in the body (Opium, 2017).

It is unlikely that a vocational expert will encounter an overdosed evaluatee; however, in the interest of safety, the following is offered. In a worst-case scenario, the patient experiences an overdose, suggestive of the following:

... is mainly manifested by depressed mental status, decreased respiratory rate and tidal volume, decreased bowel sounds, and papillary constriction. Hypotension may also accompany opioid intoxication. Patients may exhibit ataxia and audible snoring prior to more severe consequences, including collapse and death. If untreated, opioid overdose can lead to hypothermia, coma, seizure, head trauma, aspiration pneumonia, and rhabdomyolysis (breakdown of muscle tissue). Suppression of respiratory drive is one of the most serious complications, as it is most likely to lead to death.

Other major adverse effects include myocardial infarction, hypotension, allergic reactions, impaired executive function, sleep apnea, and death (California Department of Industrial Relations, 2014, 14–16).

Side effects are numerous, and not everyone taking prescription opioids experiences all of them. Some side effects may have no impact on employability; however, opioids may have adverse side effects that impair work performance. Side-effects of opioids include tolerance, physical dependence, increased sensitivity to pain, constipation, convulsions, dizziness, faintness, lightheadedness when getting up suddenly from lying or sitting position, irregular breathing (fast, slow, or shallow), drowsiness, sedation, vomiting, hyperhydrosis, xerostomia (dry mouth), nausea, dyspepsia, headache, fatigue, lethargy, blurred vision, pinpoint pupils, relaxed or calm feeling, unusual weakness, confusion, difficulty breathing, pale or blue lips, fingernails, or skin, hives, fast or slow heart rate, stiff muscles, itching, high blood pressure, and urinary retention (Drugs.com, 2017; Noble et al., 2010). Other side effects may include suicidal ideation, wrinkled skin, sunken eyes, agitation, behavioral changes, back pain, cough or hoarseness, fever or chills, lower back or side pain, painful or difficult urination, runny nose, sneezing, stomach pain, sour stomach, discouragement, feeling sad or empty, heartburn, indigestion, irritability, loss of interest or pleasure, muscle spasms, pain in arms or legs, tingling of the hands or feet, impaired concentration, forgetfulness, clumsiness, tinnitus, crying, delusions of persecution, mistrust, suspiciousness, or combativeness, difficulty swallowing, difficulty walking, double vision, bloating, feelings of constant movement of self or surroundings, loss of balance, decreased sexual ability, desire, drive or performance, low body temperature, overactive reflexes, hallucinations, sensations of spinning, shivering, slurred speech, sneeziness, swelling of feet or lower legs, trouble speaking, unusual weight gain or loss, stuffy nose, trouble sleeping, diarrhea, feeling of warmth or heat, change in the ability to see colors (especially blue or yellow), cold/clammy skin, loss of appetite, erythema (flushing or redness of the skin – especially on the face and neck, chest wall rigidity, pruritus (severe itching of the skin), and sweating (Centers for Disease Control and Prevention, 2016; Drugs.com, 2017; Warner, Chen, & Makuc, 2009).

It is important for the vocational evaluator to be aware of possible adverse reactions that might impair work performance. For example, central nervous system depressants, including muscle relaxants (Soma or Flexeril) anti-histamines, benzodiazepines (Xanax or Valium), hypnotics (Ambien or Lunesta), other opioids, and alcohol, should not be used simultaneously with opioids and should be discontinued before prescribing opioid medication. Patients should be cautioned by medical practitioners about the potential adverse effects of opioids, including impact on alertness. Driving and operation of heavy equipment should be discouraged while on these medications (California Department of Industrial Relations, 2014, 14–16).

Physician's Role

Treating physicians may document side effects of opioids in medical reports, including observed behavior. Diagnostic studies (including mental testing), objective factors of disability, subjective factors of disability, and observations provide information about the impact of opioid medications on physical and behavioral activities of daily living. Physicians usually also report work restrictions and work limitations. A work restriction is a risk that the physician recommends not be taken; a work limitation is an activity that cannot be performed. The vocational evaluator relies on the physician's findings and determinations. If opioid side effects interfere with the required workers' compensation findings and determinations made by the physician, then the vocational expert must base vocational factors on medical factors. For example, if the opioids are causing additional "benign" pain as a side effect, then it may be difficult for the physician to determine the actual impact of the injury versus the impact of the opioid in determination of subjective factors of disability, causation, apportionment, work restrictions/limitations, impairment rating, and disability status (Barth, 2011). It is conceivable that later with the discontinuance of the opioid, these factors may change. Regardless, the vocational evaluator is required to abide by the determinations of the physician(s).

Forensic Vocational Expert's Role in the Vocational Evaluation Process

As a vocational evaluator, the role of the forensic vocational expert is to analyze all relevant medical factors of disability, convert those medical factors to vocational factors of disability using source information such as the *AMA Guides*, medical resources, and vocational resources such as the *Dictionary of Occupational Titles* and/or *O*NET Online*. Source documents allow the vocational expert to provide a factual basis for the vocational analysis. The vocational expert may utilize the vocational evaluation process that can include but is not limited to clinical interview, standardized vocational testing, work sampling, and situational assessment (Power, 2013). It is important to ensure accurate collection of data from the vocational evaluation in terms of selecting vocational testing and formalizing the situational assessment. Vocational test selection is based upon the measurement needs of the vocational expert and the functional parameters of the evaluatee (academic skills, cognitive abilities, nature of disability, etc.). The situational assessment is based upon specific measurement goals relevant to anticipated work levels such as Sedentary, Light, or Medium Work. Measurement goals must be specific and structured sufficiently to conform to the criterion-referenced measurement objectives. Situational assessments for forensic vocational evaluations need a clinical environment and a vocational evaluator skilled in developing a criterion-referenced program.

In *Frye v. United States*, admissibility of an expert's scientific testimony was determined to be based on whether or not the method by which that evidence was obtained was generally accepted by experts in the particular field to which it belongs. Then, in 1993, the Supreme Court of the United States upheld Rule 702 of the Federal Rules of Evidence (FRE).

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise (*Daubert v. Merrell Dow Pharmaceuticals*, 1993).

Importantly, medication taken to treat a condition may itself cause an impairment. Impairments caused by the medication are ratable (Kingdon, 2011). Compensable consequence is well established in California case law. For example, regarding the effects of medication:

The employer is liable under workers compensation for a right shoulder injury sustained in a fall at home, clearly not working at the time, as the fall resulted from medication taken for a prior industrial spine injury (*City of Manteca vs. WCAB*, 2007)

Opioid medication treatment for pain, if a consequence of an industrial injury, may necessitate a situational assessment to more clearly identify and define the vocational impact of medication side-effects. Vocational experts, who engage in evidence-based vocational evaluations, are expected to have training and knowledge in medical aspects of disabilities and psychosocial aspects of disabilities. Combined with their knowledge and expertise in the world of work, they therefore may present as experts based on knowledge and expertise.

If a physician documents prescription opioids and indicates that side effects are present, then the vocational expert may confirm by clinical interview and behavioral observation of the evaluatee during the vocational evaluation. It is recommended that the vocational evaluator utilize the situational assessment method as a measurement tool. This process uses a "criterion referenced" methodology to measure vocational impact of opioid usage. Thus, the work environment, and range of exertional demands are identified. For example, the vocational evaluator may simulate a Sedentary Work day to observe the evaluatee over an extended period. The simulated sedentary workday, consists of the interview and vocational testing for 5-6 hours. Vocational evaluators are trained in behavioral observations, as well as documentation of their observations. As indicated, the situational assessment is designed to use the criterion-referenced method of measuring behavior based upon the evaluatee's ability to meet functional criteria relevant to structured work performance. Documentation consists of observations of work performance, pain-related behavior, and subjective responses to each of the components. The vocational evaluator must compare and corroborate the analyses and conclusions documented by the physician, including any additional observations that might be to opioid related pain

behavior or loss of functional ability. Whether medically corroborated or not, inappropriate work-related behavioral observations should be documented by the vocational evaluator.

The vocational evaluator converts medical factors of disability into vocational factors of disability by comparing behavioral observations of the evaluatee with objective findings of the medical providers and evaluators. Evidence-based vocational evaluations are scientific. (Stein, 2002). In the case of opioid usage, there can be vocational impact that will adversely affect performance on the job in terms of behavior, judgment, and ability to sustain concentration at a level that meets competitive work demands. By measuring cognitive functioning with vocational testing and work performance with situational assessment, the vocational expert can establish a “thread” of consistent data that connects medical factors of disability to vocational factors of disability.

Measurement tools used in the vocational evaluation process provide a “snapshot” of an individual’s ability to perform. Thus, the vocational expert considers a continuum of information commencing with medical evaluations through the completion of the vocational evaluation. That continuum of information or “thread” allows the vocational expert to identify consistency of medical and vocational information to ensure accuracy of outcome and conclusions. Whether the behavior and/or vocational performance of the evaluatee affects employability and/or placeability is the sole determination of the vocational expert. If the evaluatee presents behavior and performance suggestive of opioid side effects, it is the vocational expert’s determination of vocational impact for employability at the competitive work level.

The vocational expert may have medical documentation that addresses the side effects of opioid medications experienced by the evaluatee; however, this is not always the case. (Authors’ note: In forensic settings, the person undergoing the evaluation is considered the evaluatee since there is no client-counselor relationship. For a discussion on this issue, see Barros-Bailey et al., 2008.) At times, the physician will merely indicated opioid medications are being prescribed, without consideration or discussion of side effects.

(In the authors’ experience, pain management specialists, internists, neurologists, psychiatrists, and psychologists often provide more detail about consequences of side effects; however, each specialist generally does not deviate from professional parameters. For example, a prescribing orthopedist may defer to a pain management specialist for details about the side effects of opioids.)

The vocational expert compares the essential job duties of a particular job in relationship to the adverse side-effects experienced by the evaluatee. During the clinical interview process by the vocational expert, there should be a discussion of medications being taken, including dosage, frequency, and time of day. The evaluatee is asked to indicate the medications taken immediately before the evaluation and at any time during the evaluation. The evaluatee is asked to identify vocationally related side-effects, if they are aware of any. It is generally accepted that many consumers of opioids believe that they are functioning normally, that is *sans* side-effects.

Information provided by the evaluatee, while helpful, is a subjective complaint and not considered evidence-based. Subjective disability, however, is the physician’s assessment of the injured workers’ pain based on medical evaluation and documenting the appropriate terminology. Subjective disability, sometimes referred to as “subjective factors of disability”, is regarded as evidence-based information. Physicians document Subjective Factors of Disability following California Department of Industrial Relations, Chapter 4.5. Division of Workers’ Compensation, Subchapter 1. Administrative Director—Administrative Rules. Disabilities, Description of, §9727:

Subjective Disability should be identified by:

- A description of the activity, which produces the disability.
- The duration of the disability.
- The activities that are precluded and those which can be performed with the disability.
- The means necessary for relief. The terms shown below are presumed to mean the following:
- A severe pain would preclude the activity precipitating the pain.

- A moderate pain could be tolerated, but would cause marked handicap in the performance of the activity precipitating the pain.
- A slight pain could be tolerated, but would cause some handicap in the performance of the activity precipitating the pain.
- A minimal (mild) pain would constitute an annoyance, but causing no handicap in the performance of the particular activity, would be considered as nonratable permanent disability.
- This section shall not apply to any permanent disability evaluations performed pursuant to the permanent disability rating schedule adopted on or after January 1, 2005.

While this rule is time limited, it provides an excellent guide for the vocational expert to provide a substantial rationale for vocational factors of disability as presented by the evaluatee with substantiation of medical records. The *AMA Guides* provide the vocational expert methods based on careful observation of the evaluatee.

The vocational evaluator is advised to make behavioral observations immediately before, during, and possibly immediately after the evaluation. The vocational expert may converse with the evaluatee before the appointment and should note any communication issues that may be related to opioid usage. (The authors suggests observation of the evaluatee as he or she exits their vehicle and enters the office and/or when departing the evaluation. These are times when observation of ambulatory behavior and use of mobility devices or reliance on others are unobtrusive and candid.)

Determination of Pain

Opioids are provided by the physician to reduce or eliminate pain, and, admittedly, pain is subjective (Cocchiarella & Andersson, 2015). Again, pain is influenced by a combination of biological, psychological, and social factors and requires a comprehensive approach to prevention and management (*DWC Chronic Pain Medical Treatment Guidelines*, 2009; Institute of Medicine, 2011). Based on the authors' experience, some evaluatees will report complete absence of pain after taking opioids; however, many will report some reduction or no reduction at all. During the interview, the authors recommend that the evaluatee be asked about the pain experienced as the evaluation progresses. It is also recommended that if the evaluatee is vague about specific pain, he or she be offered a written pain scale to rate the pain.

Of course, it is important to define the levels on the chosen pain scale to the evaluatee before asking for his or her pain rating. Chronic pain connection expert, Karen Lee Richards, provides information about how to use the pain scale effectively (Richards, 2009). This may help the evaluator understand and document a more precise impact of pain.

As a cautionary note, some evaluatees may not exhibit pain-related behavior as defined by the *AMA Guides*. For example, the authors have noted that many peace officers, prison guards, security guards, and others in safety occupations feel vulnerable to people in custody if they exhibit any pain-related behavior. Other employees may be wary of exhibiting pain to the employer for fear of termination or social ostracism.

When the medical reports do not provide information about opioid side effects, except for the name of the opioid, and when the physician does not provide work restrictions/limitations, the vocational evaluator may feel a need to identify restrictions/limitations based on identified opioid side effects. Resist the urge! It is not the role of the vocational expert to identify a work restriction or limitation; however, the evaluator is at liberty to identify pain-related behavior congruent with the physician. The vocational expert may also identify behavior that may have origins in side effects of opioids, so long as it is clearly identified as a possibility, not a medical diagnosis.

Opioids and Executive Function

Executive function is a set of mental processes that helps us get things done. It allows us to plan and organize and to link our experiences to the present. Executive function is sometimes described as the CEO of the brain – in charge of making sure things be done.

Executive function helps people:

- Manage time
- Pay attention and switch focus
- Plan and organize
- Remember details
- Do things based on experience
- People with executive function problems may have difficulty planning or managing time, evaluating ideas, finishing work on time, or keeping track of multiple things at once. They may have trouble telling a story or relaying details in an organized way (American Psychiatric Association, 2017, p. 1).

For a more detailed discussion of executive functions, see *Executive Functions*, as referenced in Diamond, 2013.

During the vocational evaluation there may be issues with fatigue and concentration. The authors have noted that frequently the evaluatee using opioids reports having had to read test questions several times to grasp the meaning and answer the question. Patterns of test answers may appear erratic and fluctuate on progressively more difficult tests. This is most frequently seen when mistakes are made on easier questions or there is a lack of correlation of missed questions with the progressive difficulty of the test. Sometimes the evaluatee will lose place on the answer sheet even by as much as a column of responses. On arithmetic problems, opioid users frequently make simple errors by a misplaced decimal point, answering one number off, or misidentifying the function symbol, i.e., plus for a minus.

When the vocational evaluator selects tests to utilize in the evaluation, part of the choice is based on the evaluatee's education and employment. The expert endeavors to match the testing level to the expected level of performance of the evaluatee. When there is an obvious discrepancy between prior education and employment and test scores, the vocational evaluator may opine that there was interference from pain and/or medications, if there is no other medically documented confounding factor. Sometimes the test scores vary in relationship with the time that the medication was taken based on when the medication takes effect. This awareness does not give license to the vocational expert to document a "work restriction." However, it does give the vocational evaluator an opportunity to identify an evaluation discrepancy and to suggest the source of the discrepancy. For example, an arithmetic teacher, who is taking opioids, may have impaired performance on a basic arithmetic test or a mechanic may perform below expectations on a mechanical aptitude test.

Workplace Safety

One of the most important issues faced by employer and employee alike is workplace safety.

Employees taking opioids (even if not addicted) could pose a safety risk to themselves and other employees, depending on the kind of work they do. The behavior of someone on opioids can be similar to that of someone who has been drinking. Jobs that involve working from heights, being on construction sites and driving are among those that cannot be safely performed while on opioids. An employer might choose to have a policy preventing employees from performing these kinds of tasks while taking drugs, like opioids, that can diminish alertness. State laws differ on employee drug testing, and additional legal issues such as compliance with the *Americans with Disabilities Act* can come into play, so it's wise to consult legal counsel before instituting this type of policy. (*SFM Simply Work Comp*, 2017, p.1)

Amenability to Vocational Rehabilitation

The role of the vocational expert is to determine whether opioid medications preclude employment in the job(s) previously held within the last 15 years, whether there are transferable skills to other occupations and in California whether the employee is amenable to vocational rehabilitation (LeBoeuf, 1983). The expert must determine essential job duties of the previously held job and determine if opioid side effects prevent appropriate work performance and safety. Obviously, if the employer's policy precludes anyone who uses opioids, the decision is already completed. If the transferable skills analysis yields jobs that may initially seem reasonable, then each must be analyzed by the vocational expert for the impact of opioid side effects, or any medication on appropriate work performance and safety.

Finally, amenability to vocational rehabilitation must be determined. The authors recommend the *LeBoeuf* Analysis (*LeBoeuf v. Workers' Compensation Appeals Board* 1983, California Supreme Court; Robinson, 2014). Just as retraining may increase a worker's ability to compete in the labor market, a determination that he or she cannot be retrained for any suitable gainful employment may adversely affect a worker's overall ability to compete. Accordingly, that factor should be considered in any determination of a permanent disability rating.

LeBoeuf evaluation process steps are as follows:

1. Review medical records for treatment course, medications, and medically derived medical or occupational limitations.
2. Review school, employment, and vocational rehabilitation records to determine past skills, licenses, certificates, work performance and level of commitment.
3. Review deposition transcripts and videotapes.
4. Interview and test the injured worker measuring ability, aptitude, achievement, dexterity, and vocational interest. If the injured worker fails to interview and test, use the records to develop a work profile, including aptitude, acquired work skills, and relevancy of skills as they relate to current and future work options.
5. Evaluate self-initiated efforts to return to work to determine motivation, orientation toward work, and credibility of vocational rehabilitation efforts. Obtain job search logs and other records of seeking employment. Evaluate barriers to employment, such as transportation, child care role, and family support.
6. Complete transferable skills analysis using a scientifically based computer program. Double check the computer assessment manually.
7. Determine vocational feasibility. Address "the individual's ability to benefit from vocational rehabilitation services when considering all medical and vocational information" (Van de Bittner, 2003, p. 83). This is justification for a VR plan. The State of California requires analysis of the following at a minimum:
 - Perception of physical capacities.
 - Medical issues.
 - Financial issues.
 - Dependent care issues.
 - Transportation issues.
 - Legal issues.
 - Family issues.
 - Perception of current ability to benefit from participation in vocational rehabilitation.
 - Interest in continued participation in vocational rehabilitation.
 - Readiness for employment.

Analyze employability. Two steps:

1. Evaluate medical and vocational Labor Market Access (LMA). Medical LMA involves identifying jobs in the labor market with duties consistent with medical limitations as documented by treating and consulting providers. In the event of a conflict, an LMA should be addressed for each medically limiting scenario. Vocational LMA begins with the medical opinions, but is moderated by vocational evidence, such as: employment history, psychometric test results, transferable skills, personal presentation, demonstrated ability to perform work-like activities, the effects of pain and medication, outward signs of disability, hiring policies and the requirements of employers, and the injured worker's ability to benefit from vocational rehabilitation services.
2. Perform a Labor Market Survey (LMS) by contacting employers, recruiters, newspapers, and online postings to see if job openings actually exist for compatible occupations based on the residual functional capacity profile as provided by the physicians. An LMS may not be needed in every case, but will be needed if done for the defense attorney. It may also be needed for rebuttal.

Report the findings. A formal written report may not be needed, so the evaluator should carefully document opinions in case notes for use in testimony," as presented in Robinson, 2014, pp. 42–43.

Opioid Usage Legal Considerations

Federal regulations state:

49 CFR §391.41 Physical qualifications for drivers.

(b) A person is physically qualified to drive a commercial motor vehicle if that person (12)(i) does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug.

(ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in §382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle, and has no current clinical diagnosis of alcoholism (*Federal Motor Carrier Safety Administration*, 2017).

California's Vehicle Code follows the federal U. S. Department of Transportation (DOT) laws. The DOT proposed amending its drug-testing regulation to add four opioids (hydrocodone, hydromorphone, oxycodone, and oxycodone to its drug-testing panel.

California Driving law states:

ARTICLE 2. Offenses Involving Alcohol and Drugs [23152 - 23229.1]. (Article 2 added by Stats. 1981, Ch. 940, Sec. 32.)

(c) It is unlawful for a person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a narcotic treatment program approved pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code.

(f) It is unlawful for a person who is under the influence of any drug to drive a vehicle.

(g) It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle, as reported in California Department of Transportation, 2017.

Performance restrictions accompany prescription opioid medications when given to the patient. Those restrictions may include driving, operation of dangerous moving machinery, and important decision-making. Physicians may also require a contract between provider and patient that delineates specific behaviors required of the patient.

The *AMA Guides* (Talmage, Melhorn, & Hyman, 2011) offer a cautionary to prescribing doctors, "... physicians will need to stay current on the legal issues in their local jurisdiction. It may be wise to document an assessment of apparent driving ability and a warning about driving while impaired in the medical record when potentially problematic medications are prescribed."

Vocational Expert Clinical Judgment

Vocational expertise is drawn in part from clinical judgment. Clinical judgment may incorporate such activities as direct observation, diagnosis (vocational evaluation and assessment), dispassionate (objective) and analytical observations, discerning and comparing (evaluating and synthesizing varieties of information), in order to assert a proposition (opinion) about the client. This model is not unlike a medical model, which requires much of the same experience, and knowledge based activities requiring judgment, albeit based on as many objective findings as reasonable. Science, and the scientific method, is not relevant in all cases – particularly in the social science domain. In the areas of client services (clinical practice) and forensic rehabilitation consulting, clinical judgment on the part of the professional combined with technical data is an equally appropriate application in the forensic arena as in the practitioners daily clinical work with clients (Blackwell, et al. 2005).

Summary and Conclusions

The vocational expert's role is to identify vocational factors of disability by translating medical factors of disability. Medical providers identify medications and may identify side effects or at least medically probable side effects. During the vocational evaluation, the vocational expert has the opportunity to verify what the medical provider has identified; however, an even greater opportunity exists to demonstrate expertise in identifying vocational factors of disability, as follows:

- Fatigue—drowsiness, non-verbal body language, oral expressions of tiredness, and a desire to sleep.
- Memory impairment—difficulty remembering details about personal history, especially in relationship to education or employment. Inability to remember family members and friends' names. Problems with word finding.
- Executive function loss—unexpected results on vocational testing compared to education and employment history, such as difficulties answering definitions of words for someone who has a bachelor's degree in English or inability performing basic arithmetic equations for someone who was a bookkeeper.
- Irregular test results—failure to correctly answer simpler questions in an irregular pattern, especially if questions that are more difficult are answered correctly. Inability to complete timed tests in the allotted time.
- Tangential interview responses—failure to answer the specific question being asked.
- Meandering discourse—initiating topics with the interviewer that is personal or irrelevant.
- Subjective complaints—headaches, blurred vision, weakness, suicidal ideation, repeated complaints of pain or tingling sensations or muscle spasms, or any of the other side-effects identified above.
- General irritability—unusual complaints expressed to vocational evaluator.
- Overall sadness—loss of interest in pleasurable activity.
- Falling and clumsiness—unrelated to the identified physical impairment.
- Delusions—feelings of persecution, complaints of loss of contact with friends and family.
- Spouse input—spousal identification of behaviors of the evaluatee that may appear to be medication side-effects.

- Tinnitus—complaints of inability to hear due to noise that is not heard by others.
- Crying—crying bouts not associated with a specific personal memory.
- Vision—complaints about not being able to read even with corrective lens. Double vision.
- Restroom—frequent trips to the restroom.
- Speech—slurred speech or difficulty speaking.

In many cases, the vocational expert will be corroborating the observations made by the medical practitioner; however, in some cases vocationally-related behavioral observations can be based on reasonable vocational probability.

The following recommendations are also presented:

- Encourage attorneys to address physicians about presenting information regarding the impact of prescribed medications.
- It may come to pass that you will be the only expert who identifies what appear to be side-effects of medications. Report your observations. While it is not the place of the vocational expert to identify medical work restrictions, it is imperative that the expert identify vocational work restrictions if they can be supported by evidence, such as clinical interview, behavioral observation, and/or vocational testing results.
- If the vocational expert is presented with an opportunity to speak with employers, then discussion of the impact of opioids side-effects and reasonable accommodations may be in order.
- It appears that there is a potential for workers' compensation cases to be delayed by confusion regarding the impact of opioids on pain and executive function. Based on the article referenced above (Barth, 2011), the authors recommend that medication management be addressed by pain management specialists with the goal of weaning completely off of opioids and any narcotic medications.

There is a dearth of research literature that addresses the relationship between medication side effects and employment. It appears that even with mild side effects, some jobs may be performed safely and effectively. On the other hand, some of the side effects may jeopardize workplace safety, which is unacceptable. The vocational expert, with appropriate medical facts, may help the employer determine appropriate, productive, and safe employment. Within the research, it is recommended that language regarding employment of persons taking prescriptive opioid medication be considered in workers' compensation legislation. Extreme caution is necessary to negotiate prudent consideration of workplace safety and reasonable work performance without overreaction in either direction.

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