

EARNINGS CAPACITY ASSESSMENT: Methodologies and Ethical Issues

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Vancouver
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EARNINGS CAPACITY ABVE

WHY ATTEND AND PAY ATTENTION?

EARNINGS CAPACITY ABVE

LISTS YOU WANT TO BE ON:

- LAWYER REFERRAL
- WORKERS COMP PROVIDER
- SS VE
- INSURANCE LTD
- SPEAKERS LIST
- GOOD PERSON LISTS

EARNINGS CAPACITY ABOVE

Disciplinary Actions Taken

Against Licensees

Social Workers:
Thomas ... (LSW) Record Keeping, **Revised**
Jennifer ... (LSW) **Records Review** - **Supervision and training**
Marc ... (LSW) **Improper Renewal/Audit**, **Revoked**
Teona ... (LSW) Record Keeping, Reprimand
Curtis ... (LSW) Sexual harassment, **Suspension** and training
Michelle... (LSW) Boundaries, **4 year suspension**,
Robin ... (LSW) Improper **Renewal/Surrender of license**
Audi ... (SWA) Improper Renewal/Audit, **Revoked**
Julie ... (LSW) Records, Reprimand
Michelle ... (LSW) Improper Renewal/Audit, **Revoked**

Counselors:
Abbey ... (LPC) Records/competency, **Revoked**
Nancy ... (LPC) Improper Renewal/Audit, **Revoked**

EARNINGS CAPACITY ABOVE

Overview

- Methodology
- Ethical issues
- Report formatting examples
- Group participation
- Questions/summary
- Follow up

EARNINGS CAPACITY ABOVE

- METHODOLOGY
 - RECORDS REVIEW
 - INTERVIEW
 - TESTING
 - TSA/LMA
 - REPORT PREP

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METHODOLOGY

Expert opinions should be based on sound methodology and empirical data. Experts do not advocate for, or attempt to preserve the interests of, the person being evaluated, an attorney or any other party in the legal matter. Experts use their unique specialized knowledge and skills to analyze the empirical data, to generate hypotheses, test their validity against the facts and to use their skilled clinical judgment to express opinions that reflect on the issues at hand. (Data source: ABVE Code of Ethics)

EARNINGS CAPACITY ABVE

- **METHODOLOGY**
 - **RECORDS REVIEW**
 - All records
 - Engagement letter/contract
 - Weighting of data
 - Causality
 - Case example

EARNINGS CAPACITY ABVE

- **METHODOLOGY**
 - **INTERVIEW**
 - **PURPOSE**
 - DISCUSS LIMITATIONS/BENEFITS
 - CRC PROFESSIONAL DISCLOSURE
 - REPORTED/DOCUMENTED FUNCTIONAL LIMITATIONS
 - PSY ISSUES
 - WORK HISTORY
 - EDUCATION/TRAINING
 - SOCIAL/ECONOMIC
 - PRE/TRAUMA
 - VOCATIONAL GOALS
 - TESTING

EARNINGS CAPACITY ABVE

- **METHODOLOGY**
 - **TESTING**
 - ACHIEVEMENT, APTITUDE, INTEREST, OTHER
 - **ISSUES**
 - PROFESSIONAL DISCLOSURE
 - VIDEO/AUDIO RECORDING
 - OTHERS PRESENT
 - **VIDEO/RECORDING TEST SECURITY/"COPIED"**
 - COMPROMISE TEST
 - COPYRIGHT LAW
 - NORMED W/OUT OTHERS PRESENT
 - **PAR LETTER**

EARNINGS CAPACITY ABVE


- **METHODOLOGY**
 - **ANALYSIS**
 - TSA
 - TEST RESULTS
 - JOBS
 - LMA
 - EARNINGS

EARNINGS CAPACITY ABVE

- **METHODOLOGY**
 - **REPORT**
 - REFLECT METHODOLOGY
 - REPORT DATA
 - SHOW ANALYSIS
 - CONCLUSIONS

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ELEPHANT IN THE ROOM



AGENDA

TRUTH

EARNINGS CAPACITY ABVE

The vocational expert witness' role is to provide assistance to the trier of fact in identifying the effect of injury or other event on an individual's capacity to work, earn money and/or to maintain a quality of life.(Data source: ABVE Code of Ethics)

EARNINGS CAPACITY ABVE

- ALTERNATIVE METHODOLOGIES
 - VARM; ROBINSON / POMERANZ
 - ECAF-2; SHANASARIASN
 - WORK LIFE EXPECTANCY; GAMBOA
 - OTHER

EARNINGS CAPACITY ABVE

- ROBINSON & POMERANZ-VRAM
- The Vocational and Rehabilitation Assessment Model (VRAM) is an empirically derived structural model of vocational and rehabilitation assessment in a legal forensic setting. The structured presentation of VRAM is useful for visualizing the relationship and interaction of construct domains.
-

EARNINGS CAPACITY ABVE

VARM

- RECORDS REVIEW
- REHABILITATION INTERVIEW
- LABOR MARKET RESEARCH & INQUIRY
- REHABILITATION ANALYSIS AND OPINION FOUNDATION
- PSYCHOMETRIC MEASUREMENT
- FUTURE MEDICAL CARE NEEDS
- TSA
- EMPLOYABILITY/ PLACABILITY
- WAGE EARNINGS CAPACITY
- WORK LIFE PARTICIPATION

EARNINGS CAPACITY ABVE

STRENGTHS

- COVERS TRADITIONAL AREAS OF ASSESSMENTS
- PROVIDES METRICS AND SPECIFIC OUTCOMES
- DOCUMENTATION & REFERENCES FOR OPINIONS
- IS CONSISTENT WITH ABVE AND OTHER ETHICS
- HOLDS UP UNDER CROSS EXAMINATION

WEAKNESSES

- COMPLEX
- LENGTHY
- TIME CONSUMING

EARNINGS CAPACITY ABVE

- **ECAF-2; SHAHANASARIAN**
 - PREMORBID AND POST INCIDENT FACTORS
 - DRIVER ITEMS & INHIBITOR ITEMS
 - ECAF-2 RATING FORM
 - ANALYSIS USING TWO GRAPHS

EARNINGS CAPACITY ABVE

ECAF-2; SHAHANASARIAN

- 4 item rating scale
 - Inhibitor items
 - » E.g.. Phase of career development, prognosis, need for retraining
 - Driver items
 - » E.g. Earnings history, career motivation, cognition.

EARNINGS CAPACITY ABVE

- **ECAF-2; SHAHANASARIAN**
- **STRENGTHS**
 - METRICS
 - SOME OBJECTIVE INFORMATION BASED E.G.. TESTING
 - RESEARCHED AND REFERENCES
 - GREAT COUNSELING TOOL/REHABILITATION TOOL
- **WEAKNESSES**
 - SUBJECTIVE METRICS
 - RATING SCORES DIVERT FROM OPINION IN TESTIMONY
 - WEIGHTING ISSUES OF CRITERIA; E.G. MOTIVATION
 - ONE FACTOR COULD ELIMINATE ALL JOBS AND EARNING CAPACITY
 - ACADEMIC

EARNINGS CAPACITY ABOVE

WORK LIFE EXPECTANCY; GAMBOA

- ACS; AMERICAN COMMUNITY SURVEY
- CPS; CURRENT POPULATION SURVEY
- CONVERSION TABLES BASED ON DEMOGRAPHICS

FACTORS INCLUDE;

- SEVERE DISABILITY, MOBILITY DISABILITY, COGNITIVE DISABILITY
- STRATIFIED BY AGE, EDUCATION
- COMPUTE WORK LIFE EXPECTANCY USING TABLES AND THE CENSUS BUREAU DEFINITION OF DISABILITY

EARNINGS CAPACITY ABOVE

WORK LIFE EXPECTANCY; GAMBOA

- STRENGTHS:
 - USES GOVERNMENT DATA
 - PROVIDES METRICS
 - NARRATIVE IS BRIEF AND TO THE POINT
- WEAKNESSES
 - NO TSA
 - NOT DISABILITY SPECIFIC
 - POST NARRATIVE IS COMPLEX AND NOT RELATED TO CASE
 - DEPERSONALIZED
 - LITTLE SEGWAY FROM DISABILITY TO SPECIFIC FUNCTIONAL CAPACITIES
 - DATA BASE IS VERY BROAD AND NOT APPLICABLE TO A SPECIFIC CASE

EARNINGS CAPACITY ABOVE

- ALTERNATIVE METHODOLOGIES
 - RAPEL
 - DEUTSCH/SAWYER MODEL
 - LABOR MARKET ACCESS
 - DILLMAN'S LOSS OF EARNING CAPACITY
 - MCCROSKEY VOCATIONAL QUOTIENT SYSTEM
 - REHABILITATION CASE ANALYSIS METHOD
 - ECONOMIC FOUNDATIONS OF EARNING CAPACITY

EARNINGS CAPACITY ABOVE

- REPORT FORMAT 1
 - PURPOSE
 - METHODOLOGY
 - SUMMARY OF INTERVIEW
 - DOCUMENTS REVIEWED
 - BACKGROUND INFO; DEMOGRAPHICS
 - WORK HISTORY / EARNINGS HISTORY
 - MEDICAL/PSYCHOLOGICAL
 - TSA
 - LMA
 - OPINION

EARNINGS CAPACITY ABOVE

- REPORT FORMAT 2:
 - Introduction (clinical interview)
 - ADL
 - Mental Health
 - Education/training
 - Career development
 - Testing results
 - Summary & impression

EARNINGS CAPACITY ABOVE

- REPORT FORMAT 3
 - Summary of loss of earnings
 - Demographics
 - List of complaints
 - Case comments; medial diagnosis
 - Pre/post injury earnings capacity
 - Disability/no disability table
 - Actual earnings table
 - 30-40 page rational/methodology
 - » Daubert
 - » Government definitions of disability/statistics
 - » ACS (American Community Survey)
 - » CPS (Current Population Survey)
 - » Validity/reliability
 - » Other

EARNINGS CAPACITY ABVE

- REPORT FORMAT 4
 - TESTS ADMINISTERED
 - DOCUMENTS REVIEWED
 - BACKGROUND AND BEHAVIORAL OBSERVATIONS
 - TEST RESULTS
 - CONCLUSIONS AND RECOMMENDATIONS

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Be sensitive to individual differences of the persons being evaluated in reference to the selection, utilization and interpretation of assessment instruments.

(Data source; ABVE Code of Ethics)

EARNINGS CAPACITY ABVE

Objectivity

- Using objective data prior to opinion.
- No inductive reasoning.
- Example-TBI opinion/diagnosis.
- Consider opposing viewpoints

EARNINGS CAPACITY ABVE

ABVE CODE: Competency

- Obligated to maintain competency-education and supervised experience.
- Must be up-to-date on medical and assistive device technology as well as software.
- Cannot misrepresent areas of expertise.
- Examples: economic analysis by VE;
- ignoring adverse medical/vocational/psychological opinions

EARNINGS CAPACITY ABVE

ABVE CODE: Confidentiality

- Safeguard information.
- Recognize right to privacy.
- Release of information.
- Professional disclosure form.
- Suggestion: at least 3 protected data storage
- Suggestion: encryption, multiple & complex passwords.
- Example: theft of laptop or computer.
- Example: family law case without release.

EARNINGS CAPACITY ABVE

Multicultural and diversity issues

- Become aware of selfie bias.
- No discrimination on age, race, culture, etc.
- Interpreter issues: suggested solutions.
- Duty to warn if a cultural conflict.

EARNINGS CAPACITY ABVE

Appropriate role

- Provider and coordinator of appropriate services.
- Professional disclosure form assist in defining role.
- Conflict resolution and face-to-face contacts.
- Examples: recommending and/or placement in an unsafe work environment.

COMMUNICATIONS CAPACITY ABVE

Social advocacy

- Advocacy concerning disability rights, community integration etc.
- Must remain up-to-date on litigation and legislation trends within the field.
- Example: a change in licensure law concerning documentation/record-keeping could result in suspension of licensure.
- Suggestion: attention and seminars and visit listserv and other electronic communications.

EARNINGS CAPACITY ABVE

Electronic communication

- EARNINGS apply not only to verbal interview interaction with clients but all electronic communication such as emails, messaging, Facebook etc.
- Example: plan left in door screen.
- Copyrighted documents.
- Professional disclosure and release forms.
- Unauthorized access to clients electronic communication or social media.

EARNINGS CAPACITY ABOVE

Electronic communication(continued)




- Exception to review of claimants social media.
- Informed consent to access electronic communication.
- All electronic communications are considered part of the clients file.
- Suggestions: password protect, multiple backups including financial records.

EARNINGS CAPACITY ABOVE



- GROUP PROJECT
- ROLES
- CASE



EARNINGS CAPACITY ABOVE GROUP EXERCISE


- 45 year old female
- HS GED + Cosmetology 
- Hit by truck in MVA 
- Reports this caused: ADHD, back pain, knee pain, & Fibromyalgia
- Meds cause nausea/sleep problems
- Testing
 - Aptitude: below average aptitudes; especially spatial, form.
 - Achievement: 5th grade level all areas.
- Work history: Cosmetology & packer
- Prior earnings \$10,100 year average
- Stipulates to no income based on earnings capacity
- FCE; less than sedentary wk.
- Treating physician total disabled. 
- Her vocational expert. Not able to work.

EARNINGS CAPACITY ABOVE
GROUP EXERCISE
PREPARE CASE PRESENTATION



EARNINGS CAPACITY ABOVE

- TRIAL



EARNINGS CAPACITY ABOVE

RESEARCH PROPOSAL



EARNINGS CAPACITY ABOVE

DATA ANALYSIS
 BVR, VA, W/COMP, FED DIB, SSA
 RTW
 DISABILITY
 DEMOGRAPHIC
 SOURCE OF FUNDING?
 GRANT
 PAID STAFF
 OTHER

EARNINGS CAPACITY ABOVE

APPENDIX AND REFERENCES

EARNINGS CAPACITY ABOVE

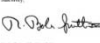
PAIR Psychological Assessment Resources, Inc.
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 www.pairpsych.com

Dear Customer,

I am writing in response to your request about a third party who desires to be present and/or take part in psychological evaluation, including the administration of standardized tests. According to the prevailing standards in professional settings in the test publishing community, this request is likely to constitute a violation of test security, according to the ethical code promulgated by the American Psychological Association, as well as leading to potential violation of copyright law. A video tape allows for review but normally is to be "spoiled" which is specifically prohibited by copyright law.

It is also apparent that the presence of a third party may result in assessment scores that do not truly and unambiguously reflect a third party present. As I am sure you are well aware, the data that are collected for use in developing and/or collecting under contract "high-stakes" conditions. Any time our devices have these conditions, such as having a third party present during test administration or taking of the test administration records, the test is not being administered as the test is substantially made easier as it is administered in the assessment group. Thus, resulting scores may be inaccurate and subject to manipulation. Consequently, I strongly recommend that the test be administered under the same conditions that were used when the respective data were collected to ensure the accuracy of the scores obtained.

I appreciate your cooperation with regard to this issue. If I can be of any further help, please let me know.

Sincerely,

 R. Bob Smith, PhD
 Chairman and CEO

EARNINGS CAPACITY ABVE

ABVE CODE OF ETHICS

- Conflict of interest
- Exploitative or detrimental relationships.
- Lack of objectivity.
- Lack of competency.
- Confidentiality.
- Multicultural/diversity problems.
- Appropriate role for the practitioner..
- Social advocacy..
- Electronics communication

EARNINGS CAPACITY ABVE

CDMS FORENSIC SECTION

- SECTION 3 – Provision of Services to Organizational Clients
- RPC 3.01 – Forensic Evaluation
- When providing forensic evaluations for an individual or organization, the primary obligation of certifiants shall be to produce objective findings and opinions that can be substantiated based on information and techniques appropriate to the evaluation, and as required by applicable case law within the appropriate jurisdiction, which may include assessment of the individual and/or review of records. Certifiants shall define the limits of their reports or testimony, especially when an assessment of the individual has not been conducted.

EARNINGS CAPACITY ABVE

- CRC REHABILITATION COUNSELOR FORENSIC COMPETENCY AND CONDUCT:
 - Objectivity
 - Qualification
 - Avoid harmful relationships
 - Conflict of interest
 - Validity of resources
 - Foundation of knowledge
 - Duty to confirm information

EARNINGS CAPACITY ABVE

References

- **Robinson, Rick, H.,** ed; *Foundational of CAPACITY Vocational Rehabilitation*, (2014), Springer.
- ABVE Code of Professional Ethics
- CRC Desk Reference on Professional Ethics
- **Robinson, Rick & Pomeranz, Jamie;** The Vocational and Rehabilitation Assessment Model (VRAM): Introduction of an Empirically Derived Model of Forensic Vocational and Rehabilitation Assessment; *The Rehabilitation Professional* 19(4), pp. 91-104, 2012
- **Field, T, and Sink, J.,** *The vocational Expert.* Athens, Ga; Elliott & Fitzpatrick, 1981
- **Havaronek, J, Field, T., Grimes, J. W.;** *Vocational Assessment: Evaluating Employment Potential*, Athens, GA: Elliott & Fitzpatrick Inc. 2001.
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EARNINGS CAPACITY ABVE

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- **Caston, H. L. & Watson, A. L.;** Vocational assessment and rehabilitation outcomes, *Rehabilitation Counseling Bulletin*, 43 (1), 61-66 1990
- **The Ticket to Work** is a vocational rehabilitation program of assistance for individuals receiving Social Security disability; www.socialsecurity.gov
- **Faulk, Gregory, K.;** Economic evaluation of earnings capacity loss in personal injury cases: issues for forensic economist and implications for vocational evaluators, *The Journal of Forensic Vocational Analysis*, V 15, #2, 35-39; 2014
- **Shahnasarian, Michael,** *Assessment of Earnings Capacity*, Second edition Tucson, Arizona; Lawyers & Judges 2004
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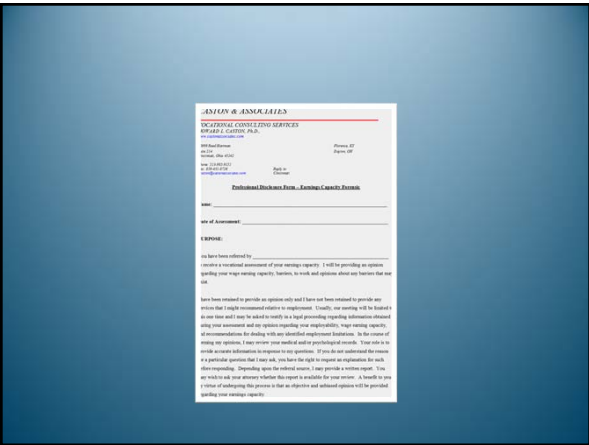
EARNINGS CAPACITY ABVE

- **Stevenson v S & S Partnership, et al** Baltimore City 24-C-11-008722
- CDMS code of ethics
- CRC Code of ethics

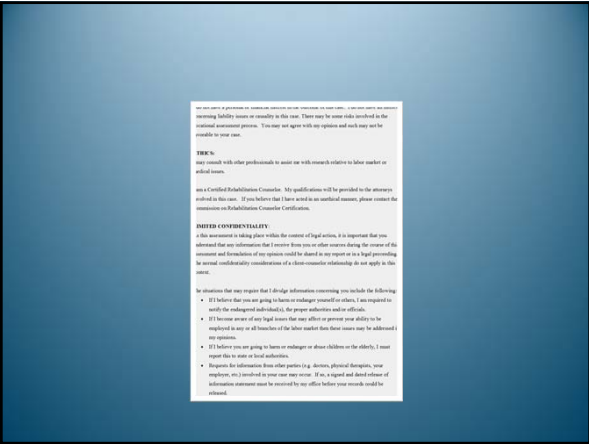
METHODOLOGY:

-
- The general procedures for conducting a vocational assessment of earnings capacity consist of a review of background information, a vocational interview, testing if appropriate, an analysis of work history, an analysis of transferable skills from the work history and education and labor market information. The process begins with the collection of vocationally relevant background information. A determination of occupations that can be performed by this individual is made. If this individual is employable, labor market data from the Department of Labor is reviewed to determine average salaries that exist in the occupations that can be performed. Salaries of job openings are considered if available. Prior earnings may be given consideration and can reflect what an individual would be expected to earn based on actual earnings. The marketability of the skills and abilities are also considered. Based on findings of this analysis opinions are rendered concerning earnings capacity if this individual is able to engage in employment. If there are medical or psychological issues, they are considered in forming an opinion of earnings capacity. The purpose of this procedure is to determine skills acquired from prior work that could be used or transferred to other similar jobs that could be performed using those skills. An analysis of the transferability of skills is the accepted standard procedure in the vocational assessment of individuals. If an individual is established in a career that is consistent with the education and prior work experience, it is not necessary to perform an analysis of transferable skills and examine alternate jobs.
- 1 Weed Roger O. and Field, Timothy P. *Rehabilitation Consultant's Handbook*; Athens, GA, Elliott & Fitzpatrick, 2001.
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- 3 Horner, S. & Sternick, F., *The Valuation of Earnings Capacity: Definition, Measurement and Evidence*; *Journal of Forensic Economics*, 12 (1979), pp. 23-32.
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• In some instances, an e-service is used to assist in a project or assignment, some information in your file may be released.
 • If you are a minor or not your own legal guardian, then the information in your file may be available to your legal guardian or advisor.
 • There may be risks of compromise from electronic communications that are beyond my control.

EMPHASIS

The following topics have been reviewed with you and you need to acknowledge an understanding of this process.

- My risks and responsibilities
- Limitations on what I can do
- Your risks and responsibilities
- Legal issues affecting services
- Confidentiality and limitations regarding confidentiality
- Frequency and length of service
- Risks and benefits involved with this agreement
- Risks associated with electronic communication
- Potential of any preceding testimony in a court setting regarding your case
- Penalty provisions and release policies

When _____
 Signature (Typed) _____
 received with this individual on _____
 Signature of Rehabilitation Counselor _____
 Printed Name of Rehabilitation Counselor _____
