



**Winter 2003-2004**

Volume 20, No. 3

Official Publication of the  
American Board of  
Vocational Experts

## How Big Is Your Ruler?

**Scott Streater, D.V.S.**

As Vocational Experts (VE's) practicing in the forensic arena, we are under a significant obligation to maintain a consistency in our reports. Our consistency should be the hallmark of our practice and the benchmark of our professionalism. It is the bedrock of our ethical integrity.

Some time after beginning a full time private practice an advertisement appeared in the monthly American Trial Lawyer journal for our state. A colleague called indicating the advertisement's appearance. The ad was requesting any and all reports that attorneys might be willing to send to a particular law firm. After the usual "aren't you worried", responses to his questions, my thoughts went something like this. I was concerned but not overly worried as I was of the belief that past reports would not bring me any grief as I had always utilized the same approach to my reports, i.e., interview, standardized testing, general population norms, and a computerized search of available job titles in and around the client's home area. Substantiating the computer search was an additional search of actual job openings with details recorded by Job Services. Opinions were always based on these factors and basic methods never varied. I could not see how anything other than a lapse of my judgment could come of this and while I did not like the situation, I felt I knew what I had done and could defend my methods.

The potential confrontation that may have been expected never occurred. The case probably simply settled. It was a great relief. I knew what I had done and why I had done it. Because of the standing policy I employ to measure with standardized measures all I could measure, and follow that data for my opinions and conclusions, I knew I would be right. This was years before the *Daubert* decision. *Frye* was the standing basis for testimony, and I was confident that I had more than met that standard.

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## ABVE 2004 SPRING CONFERENCE

**March 19 - 21, 2004**

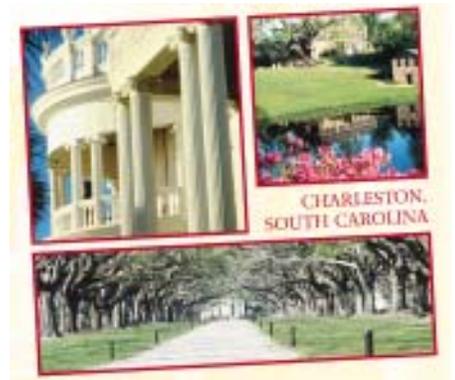
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## President's Message

*By Harold Kulman, ABVE President, 2003–2004*



I hope everyone had a happy holiday. Despite the weather, this is a great time of year, especially when we get together with our family and friends. In addition, I am looking forward to a challenging and prosperous New Year for our organization.

If you missed our St. Thomas Conference, you also missed a time to be with your colleagues in a wonderful, tropical climate. Although the conference was not as well attended, as we would have liked, it provided a stimulating, professional learning experience. The sessions were all very interesting and well presented.

Coming up this Spring, March 19-21, 2004, is our next conference in beautiful, historic, Charleston, South Carolina. We have a great program lined up including a special point-counter point discussion on "The New Worklife" Tables, presented by the Gamboa and Staller Groups. The Spring in Charleston brings great weather, beautiful flowers, and the opening of many historic homes and tours. Great restaurants abound along with many interesting shops. Golf courses are also plentiful and those who have a Naval interest would like the aircraft carrier, Yorktowne which is open for tours. So come and join us this spring in Charleston for an informative program in a great city.

Your board is working hard to promote our professional status across the country. We are considering a budget for our first regional conference sponsored by ABVE and manned by our membership. Attendees would be given continuing education credits for each session completed just as we do at our national conferences. This is a new concept for us and with an initial success may mean more regional conferences.

For a long time, just through attrition, we have been losing members and it has been difficult to replace them. However, your board has addressed this problem and worked out a plan to again increase our membership. For example, this year under our new plan, we have managed to show an increase in membership far above past years. Hopefully, we will be able to continue this effort and our organization will continue to grow. However, it is most important that we grow within the parameters of our policies and by-laws.

Last, but not least, let me say, election time is fast approaching. In fact, by the time you read this message you may have already cast your vote for a board member. I was pleased to see that many members ran for our open positions. This would include those who decided to run for re-election. To speak quite frankly, it is not easy to be a board member. It is hard work and requires a real commitment of time, energy, patience, and personal expense. It can be a battle that some times you win and sometimes you lose, but it is always a goal focused on one's opinion of what is right for our organization. So if you want to get away from your dull life, take a risk, or seek adventure, the next time you hear that board nominations are open, see that your name is proposed.

See you in Charleston.

The American Board of Vocational Experts, never has and currently does not endorse the use of any specific tests, test batteries, or commercial products.

## Letter From the Editor

**Cynthia Grimley, MS**  
**Newsletter, Editor**

Dear Members:

This newsletter comes at a time when you are being asked to renew your membership to ABVE if you have not already done so. There are several articles of interest in this issue to remind us of the importance of how valuable our ABVE certification is for our professionalism. If you have not submitted your renewal please do so today.

A special thank you to Susan and Gene Van de Bittner for submitting many great photos from the St. Thomas conference. In fact some are printed in this newsletter.

Just a reminder that the newsletter is being sent to most of you via email and it is very important that you keep BTF updated of any email address changes.

You will need Adobe Acrobat reader to view the PDF format. The feedback of this format continues to be favorable. If you have any problems receiving your newsletter electronically please let BTF know immediately. Those members who do not have email will still continue to receive their newsletter by mail.

I continue to look for members to assist me on a committee for the newsletter and have had some members express an interest in helping. A special welcome is noted for Jenipher Gaffney who is the most recent addition to the newsletter committee. There is always room for more!!! I would like to see members contribute items such as book reviews, or any other areas that may be of interest to our forensic community. If a committee could be formed to assist with the contribution of such items then these can be distributed via email on a monthly basis, in between the regular newsletter publications.

Please contact me if you are interested in serving on the newsletter committee. I can be reached at 803-765-1513 or CPGRIMLEY@AOL.COM.

## Test Maintenance Committee

**Stephanie Sleister, PhD**  
**Chairperson**

The Test Committee consists of the following individuals: Stephanie Sleister, Jeff Lucas, Ellen Nagourney and Billy McCroskey

There were four people who took the certification examination in St. Thomas. By the time the newsletter is published, the tests should be scored and the copies will be sent to Billy McCroskey for continued standardization.

Kudos, kudos and more kudos to Billy McCroskey for his outstanding work on the test curriculum CD. When he presented the CD to the St. Thomas crowd, there were 20-people who stayed during the lunch hour to review it. The curriculum has all of the competencies covered in the ABVE Certification Examination with sample questions, pertinent articles, glossary and a bibliography.

We need additional items on the glossary, psychological testing and vocational testing to add to the curriculum. Jeff Lucas is working on the glossary and Ellen Nagourney is working on the testing information. Ellen Nagourney has also developed a very handy format for submitting test questions. She will be working on this form and the form will be sent to prospective conference speakers to obtain additional and timely future test questions.

Once the CD is completed, it will be offered for sale to members or those interested in taking the certification examination. They will also have the option of taking the test preparation course offered at the seminars or if they are so inclined, they can purchase both items.

## Welcome to the Following New Members

Congratulations to the following new members, who have applied for membership, upgraded their status or reinstated their membership. Welcome to all!

William Earl Thompson, Diplomat  
Jeff Malmuth, Diplomat  
Richard Hall, Diplomat  
Betty Hale, Fellow  
Cloie Petgrave, Diplomat  
Julie Sawyer-Little, Fellow  
Gail Maron, Fellow  
Patricia Costantini, Diplomat  
Grace Rafael, Fellow  
Jane Hall, Fellow  
Mary Ciddio, Diplomat  
Greg Benson Henderson, Associate  
Sean Fitzgerald, Associate  
Joseph Torres, Associate  
Lisa Porter, Associate  
James Ryan, Associate  
Ruthe Hannigan, Associate  
Michael Boissevain, Associate  
Peter Lento, Associate  
Jack Greene, Associate  
James Earhart, Associate  
Ed Kurata, Associate  
Bruce Brawner, Associate  
Elizabeth Bauer, Associate  
Patricia Anctil, Associate  
Jeannie Salck, Associate  
Edward Suchodolski, Associate  
Vincent Pellegrino, Associate  
Cindy Delgado, Associate  
Keith Glynn, Associate  
Gale Gibson, Associate  
Sharon Ringenberg, Associate  
Leslie Tuttle, Associate  
Mindell Woehr, Associate  
Lisa Anderson, Associate  
Stephanie Emirzian, Associate  
Howard Caston, Associate  
Terrance Walsh, Associate  
Kathleen Young, Associate  
Russ Gurley, Associate  
Dennis Helffenstein, Associate

# Certification, Its Continued Value and Substance

By Lindette L. Mayer Ph.D.

One doesn't have to note the standards of *Daubert* and *Kumho* that are increasingly being demanded in the forensic arena, nor does one have to note this to ABVE members that have been attuned to the implementation of the essence of these cases in both the Federal and State judicial arenas since their arrival in litigation. ABVE immediately focused on the substantive issues of the *Daubert* and *Kumho* "express". The organization's attention to the significance of these decisions was recognized immediately and was readily acknowledged in early presentations at ABVE conferences and early issues of the journal. Acceptance of *Daubert* and *Kumho* as a reality was a "given" for members of ABVE since the essence of these decisions rests on a more solid basis for expert opinion; therefore, hoisting "verification" by the "scientific" demands of the courts whose demands have been ignored, hooted or debated by some. Today these decisions remain more than a minor part of the landscape in presenting expert testimony and those practicing in every professional area must stand the scrutiny of increasing demands of the litigious arena. However, the arrival of increasing scrutiny of expert testimony does not diminish or exclude the value of a credential.

Credentialing focuses on a process for assigning specific requirements in a scope of practice. In this instance for the vocational expert, emphasis is on the basis of their training, qualifications, experience and current practice within the ABVE organizational context. Inclusive within this context are the facilities and support systems, which the organization's funds provide. Credentialing aims to educate the "stakeholders" (lawyers, judges, the courts, employer," etc.), who are re-

questing your expertise, the "value" or "foundation" of your expertise. Keep in mind that you are marketing yourself continuously and "marketing" is not a dirty word. We do it all the time in some way or another but hopefully and mostly by our expertise. Putting credentialing in its complete context, the consumer of the vocational expert's services benefit from credentialing. They are assured, that at the very least, the vocational expert has the basic knowledge and competence to perform required tasks. It benefits the attorney, judge, etc. that at least a minimum of competence is available to perform the requested tasks of those requesting their services or expertise. Credentialing is designed to (1) ensure quality of practice, (2) management of risk and (3) endorses an individual's competence to perform in a specific area of practice.

There is a process in credentialing. Basically, it can be summarized in four steps, i.e.,

- (1) Verification of training, qualifications, experience and registration status [Establishment of minimum standards in credentialing for VEs].
- (2) Determining the scope of practice within the ABVE organization.
- (3) Ongoing review of credentialing (Data collection to monitor practice and accumulate information for ongoing credentials and, in some instances, recredentialing).
- (4) Review and redefinition of a practitioner's scope of the practice.

There are also benefits of credentialing that need to be noted:

**\*\*** Field-generated and defined rather than an outside profession group defining, developing and implementing for the area of expertise, e.g., ABVE is a multidisciplinary group of professionals, i.e., economists, psychologists, academic specialists, rehabilitationalists, and those of other disciplines who have honed their skills in the areas of the forensic vocational expert arena.

**\*\*** Recognition and credibility within the field (noted by (1) standards of certification, education, and education specific area of studies relevant to vocational expert demands, work history, and the inclusion of a certification exam and additional certification requirements - plus "on-going" requirements of continuing education for certified members) - This is Not Certification by Payment of Membership Dues. [Assuming at the very least that basic qualifications exist.]

**\*\*** Identification with a group whose common area is in the forensic arena noted particularly in the exposure and expertise of a group of multidisciplinary individuals working in concert in honing and sharing skills and expertise.

**\*\*** Mobility in the field; e.g., Evaluation and earning capacity determinations.

One may hold both licensures and certifications in various areas. It is certainly a more substantive basis for one to work toward certification in an area and grow thus creating or maintaining the substance of one's foundational expertise based on at least a standard with continued education through organizational, academic and practice knowledge accumulated in daily encounters with the substantive material necessary to maintain professional expertise.

Maybe one of the better questions to ask in light of the foregoing: Better to have a credential than not?? Offering a little analogy that I believe may have been put across by Socrates (I can be corrected if wrong). e.g., Is it better to believe in a higher power than not? The most practical answer may be: Better to believe, thus if a higher power exists, one has everything to gain. If not, one has nothing to lose. This may appear to be a touch cynical to some but it is really just plain pragmatism and in today's litigious arena, a necessity.

## **Information For the Work Place**

**Submitted by:**  
**Jenipher S. Gaffney, MA**

A colleague told me about this article recently, and I read it today. (<http://www.entrepreneur.com/article/0,4621,312256-1,00.html>). *Staying Alive*, by Joshua Kurlantzick, *Entrepreneur Magazine*, January 2004. Although it is related to workers compensation reform, it contains many interesting points about rising costs of insurance due to the aging of the workforce and the managed health care crisis. It prompted a considerable amount of thought on my part, and I decided to share my thoughts with you.

When I talk with colleagues around the country I am hearing similar things about declining referrals, requirements to be more "credentialed" and increasing demands to do more but bill less, and to work within shorter time frames. This seems true not only in the worker's compensation realm, but that often is the focal point.

In Washington, we are in the midst of a workers compensation crisis, and as usual (in my opinion, anyway) the finger of blame is pointed at vocational rehabilitation costs, despite the fact that this is a minor part of the budget. A year ago, the Washington State Department of Labor

and Industries proposed a 40.5 percent increase in rates for workers compensation premiums. That was eventually decreased to a 29 percent increase after a series of public hearings. This year our premiums are increasing 19.4%.

Oregon passed legislation to reform workers compensation in 1987, and that has resulted in a 90% decline in vocational rehabilitation referrals, according to statistics from the state agency that oversees this program. Some of this decrease is due to the compromise and release settlement option adopted in that reform. Other states likely have similar "war stories" to tell.

Many agencies dealing with disability compensation have a history of periodically changing the eligibility requirements to limit financial loss, so none of this is news to any of us.

Washington Labor & Industry is currently surveying all counselors to determine if we would still accept vocational referrals if the payment to vocational providers is changed from billable hours to an outcome based payment. The initial data I have seen looks very like the Ticket to Work payment options.

Additionally, Washington intends to pilot a study this year to determine whether workers compensation clients can be served equally well or better if referred to the local workforce development centers for plans and placement services. This is creating great controversy in view of the fact that legislation was passed a couple of years ago to require that all VRC's in the state (working with the injured worker population, that is) possess a CRC, ABVE or CDMS certification by a certain deadline. The WorkSource employees are not being held to that same standard.

Counselors in our state are monitored by the state agency for performance — an elaborate system of calculating a score has been developed to assess each VRC's performance, and future referrals are dependent upon maintaining a good score (in theory, anyway).

One clear result of this, of course, is an increase in litigation. I receive routine referrals from attorneys representing injured workers appealing their claim closure. The rehabilitation work I see in files now is very different from that which I would have seen in files a few years ago, and many of these cases should have been resolved through the vocational rehabilitation process. The heavy emphasis on statistics and outcomes and performance has created an environment where doing the work right the first time takes a back row seat to identifying "successful outcomes".

In expert witness work for Social Security, I frequently see applicants who were "rehabbed" and are now applying for SSDI. Since I live on the border between Washington and Oregon, I see individuals from both states in SS hearings. The Oregon applicants seem to include more people who have been through the workers compensation system (Oregon WC law provides for a compromise and release settlement, Washington does not, although this is being proposed to the legislature). It appears in many cases that the worker has spent the settlement money and is then in need of subsistence income from alternative sources. I have no doubt that if Washington passes similar legislation, we will see more of the same in this state.

For me, many of these issues raise concerns over professional ethics. When counselors are asked to do more, charge less, and the "system" pays only for desired outcomes vs. actual work performed, quality and service delivery to the client and/or customer suffers. Not that we can't be more cost effective or efficient, but this often goes beyond a matter of "trimming the fat." Our work product is being scrutinized more than ever before. I certainly don't have answers to all of the problems, but believe that now, more than ever, we need to concentrate on providing professional, ethical and responsible services to our clients and customers. Maintaining our credentials and certification continues to be a key focus to our professionalism and in serving our referral sources, whoever they may be.

Some experts are of the belief that measurement is not all that important. I am uncertain what they mean by that. You rarely get into trouble with testimony if there is consistent case handling with standardized measurement. In a recent discussion of measurement with another forensic practitioner, a statement was made regarding the Dictionary of Occupational Titles (DOT) and its age and dated descriptions and capacities. The 4<sup>th</sup> Edition is dated and jobs have moved on changing the capacities contained in them. At this point of time, we have only the O'NET, which is already in flux and currently the alternative 5<sup>th</sup> edition of the DOT that has been formulated by a private developer and is up to date and a valid basis for descriptions and capacities. This offering is an accurate step forward even eliminating some of the indwelling errors found in the 4<sup>th</sup> edition of the DOT. But this is not the point. It is not the DOT that is so important. It is the measurement system used to formulate it. That system is not outdated. It is like a one-foot ruler, good in 1977 or in 2004. It is this basis which we perusing and utilizing to produce our findings, draw our opinions, and formulate our conclusions.

This is what ABVE is all about: An additional measure to insure that the members of ABVE are of a standard that can be relied upon and the certification offered by this organization provides a continuing standard that can be relied upon. Less than qualified experts in our unique organization should not dilute this concept.

Anyone desiring additional sets, single copies or individual articles of either the *Monograph Series* or the *Journal Series*\* should contact Headquarters: <mailto:abvehq@btfenterprises.com>  
Telephone: (831) 464-4890  
Fax: (831) 464-4881  
<http://www.abve.net>

## **The Journal of Forensic Vocational Analysis**

### **Guidelines for Book Reviews in Special Issues**

**Bruce Growick, Editor**  
**Craig Johnston, Assistant Editor**

Special Issues of The Journal of Forensic Vocational Analysis (JFVA) are organized around a single theme and feature multiple perspectives and scholarly, yet accessible, discussions of current and future concerns of interest to today's forensic vocational experts. In meeting this goal, the editors invite readers to submit reviews of books as they relate to one of our upcoming Special Issues. We ask that you review a book as long as it (a) merits critical evaluation, (b) has been published in the last few years (ie, is relatively current), and (c) is related to an upcoming JFVA theme. Guidelines (both style and content) for reviewing books for JFVA are posted on our website ([www.abve.net](http://www.abve.net)), and can be accessed by referring to the link journal.

#### **BOOK REVIEWS** **for Upcoming Special Issues of JFVA**

**Winter, 2003 Issue** —Workers Compensation: The Role of the Vocational Experts in Disability Determination in Workers' Compensation.

Edited by Gene Van de Bittner, Ph.D., this upcoming special issue of the Journal of Forensic Vocational Analysis will address the use of vocational expert testimony in workers' compensation matters. Specifically, the special issue will address how, when, and why vocational experts are called upon to develop vocational opinions and the circumstances under which they provide testimony in workers' compensation proceedings. This special issue of the journal addresses the use of vocational testimony in at least five representative state workers' compensation systems.

**Spring, 2004 Issue** —Training and Education in Vocational Forensics.

Edited by Joseph Havranek, Ph.D. (of Bowling Green Univ.), and Martin Brodwin, Ph.D. (of Calif. State Univ.-LA), this issue examines the roles and functions of and the training needs of Vocational Experts required achieving competency. Recruiting manuscripts from a balance of practitioners and educators, this issue seeks to identify the major duties of vocational experts and to generate discussion towards development of higher education curriculum in the field. This Special Issue will be of value to those individuals who conduct training, or are undergoing training in our field.

**Fall, 2004 Issue**—The Use of FCEs in Vocational Forensics.

The ability of an individual to sustain employment following physical and/or mental loss is a central concern of the vocational expert. Relying on the opinion of medical personnel, the vocational expert is able to identify the plaintiff's physical and/or mental capacities, and render an opinion on employability. Understanding how to interpret a Functional Capacity Evaluation (FCE), including what factors medical experts consider, how an FCE is conducted, the reliability of such evaluations, and how a medical opinion is transferred into a vocational opinion are vital to vocational practitioners. This issue seeks to provide clarity on this critical component of the process of determining loss of earning capacity.

### **Journal Guidelines Available**

Those interested in submitting manuscripts for *The Journal of Forensic Vocational Assessment* can request specific guidelines from:  
Bruce Growick  
Phone: 614-292-8463.  
[mailto:growick.1@osu.edu](mailto:mailto:growick.1@osu.edu)

# Future ABOVE Conferences

**Mark Your Calendars Now!**

**Spring 2004 – Charleston, South Carolina  
March 19-21, 2004**

DoubleTree Suites  
Hotel Rate: \$ 179.00 Single/Double  
Reservation Number 1-877-408-8733

Knowledge Enhancement Seminar- March 18 from 8:00-11:30am, test following

**Fall 2004 – Las Vegas, Nevada  
Dates To Be Determined**



## Fun In The Sun!

*Fall 2003 Conference Re-Cap, St. Thomas, US Virgin Island*

