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Functional Capacity Evaluations

Scott Streater, D.V.S.

There is a dearth of Functional Capacity Evaluation systems (FCE's) and thousands of FCE's are being performed every month. I was recently an observer of such an evaluation in an eastern seaboard city. The office was a private practice physical therapy company. The provider was a registered occupational therapist. The office was a modern and fairly impressive office.

The patient was a 51-year-old female with a closed head injury, three cervical disc protrusions and a "reported" left elbow ulna nerve entrapment, which was most probably a rotator cuff problem, which was in the process of being diagnosed by a MRI. The patient was currently in the diagnosis and treatment phase of a worker's compensation case. The case was three years old and has had a rocky history with multiple delays and several false starts, in so far as reemployment is concerned.

The patient was shown into a private office, the door was left open, and seated in a chair in front of the examiner's desk. Initially, the patient was queried regarding personal, accident and injury information. The process, which was to be undertaken, was explained. The patient was told that they would be asked to do various activities that were work related and if the activity was troublesome they were to let the examiner know.

The first activity was a grip strength measure, both left and right side. The second activity was the use of a rubber mechanics hammer where the patient was asked to hit the desk then the seat of the chair in a sequence of motions of about twenty evolutions. The evaluation progressed through a series of activities including lifting a box containing a known weight to a specified height; approximately waist level and then higher to shoulder level. Each activity was cautioned with the statement "let me know if the activity is too much for you."

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ABVE 2004 FALLCONFERENCE

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President's Message

By Harold Kulman, ABVE President, 2003-2004



What a great time we had in Charleston, South Carolina! This was one of our best-attended conferences. Glenn Zimmerman from BTF Enterprises, our management organization, tells me that there were over 120 attendees. Ellen Nagourney is chairing our Fall Conference in Las Vegas, Nevada, and I hear she is putting together a show to rival the Charleston Conference. So if you missed Charleston, here is your chance to make it up in Vegas.

Our new Board members are already hard at work with their respective committees. It was also great to learn that our membership quickly volunteered to help out on these committees. Each new committee is well represented by ABVE members old and new. Phil Spergel, our Continuing Education (CEU) and Ethics chair is developing new standards for the submission of education credits (members need 42 credits every three years to maintain their credentials). He is also assessing how many credits must be from the attendance of ABVE conferences. Of course, the Board must approve all his recommendations. This also holds true for any other committee recommendations.

Scott Streater, our Treasurer and Certifications Chair, is working diligently to develop a written certification process with the assistance from Carolyn Hair at ABVE Headquarters. This includes the Peer Review Process and our attempts to sustain it throughout changes in our leadership during the coming years.

Claude Peacock, our Membership Chair, has been contacting other qualified organizations in order to interest their membership in joining ABVE. One of Claude's committee members, Robert Lychenko, is from Canada and he is looking into Canadian organizations whose members may want to join ABVE.

Our Test Committee is now chaired by Billy J. McCroskey. Billy is presently updating our certification test. Hank Lageman, Past President and past ABVE Test Committee Chairman was recently added to the Test Committee. Billy's short-term goal is to finalize the 2004 edition of the ABVE Exam into Forms 1 and 2 as replacements for the 1998 ABVE Exam. It is planned to be used at the next (Fall, 2004) ABVE conference. The long-term goal of the Committee is to complete a scientific article with statistical analysis, tables and graphs regarding the derivation of the final 2004 Fourth Edition ABVE Exam (Form 1 and Form 2) from the 1998 Exam.

During the last four years there have been policy and procedural changes made by motions at the Board Meetings to change the way in which we manage our organization. Right now, Ron Peterson and knowledgeable Board Members are reviewing our Policies, Procedures, and By-Laws to update them. Cindy Grimley, our Secretary, has accepted the tedious job of going through these changes from past board meetings. When her task is complete, she will give these changes to Ron and he and his committee will then begin the update process.

Your President also remains active maintaining contact with the Board and answering the many telephone calls, e-mails, and letters he receives every day from Board members, ABVE Headquarters staff, the general membership, and other organizations. Interesting questions are always popping up. For example, people wanted to know if we would: be interested in becoming a certifying body for a new state law; be willing to sponsor a conference; trade public relation tables and information at conferences with other vocational/rehabilitation organizations; work with a new organization; lobby with other agencies for changes in the Social Security Law; and speak on panels at other conferences. All this information is reviewed by your President and passed onto the Board for decision-making. It keeps us all busy.

Well, I certainly hope that everyone has a happy and healthy summer. Keep up the good work for ABVE and I hope that I will see you all at the Fall Conference in Las Vegas.

Letter From the Editor

Cynthia Grimley, MS
Newsletter, Editor

Dear Members:

Just a reminder that the newsletter is being sent to most of you via email and it is very important that you keep ABVE Headquarters 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 ABVE Headquarters 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. 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.

Fall 2004 Conference

By Ellen Nagourney, MS
Conference Committee

The ABVE Fall 2004 Conference will be held in Las Vegas from October 1st to 3rd. This is a conference you won't want to miss! Plan to attend the pre-conference value added activities and stay through Sunday at noon. As an added bonus, there will be a California Regional Conference that will take place concurrent with the value-added session on Friday morning, October 1st. This is sure to be a success since well known Attorneys Susan and Leonard Silberman have agreed to speak on the new changes of the updated California Worker's Compensation Laws. Susan Silberman feels that certified ABVE members are in the right place to continue to do work under the new changes.

There's something for everyone at this conference. The value-added session on the morning of Friday, October 1st will be conducted by Bob Lancaster and will address "Growing Your Practice." Mr. Lancaster is one of the most successful vocational entrepreneurs in the industry. This will be a much different perspective from what has been offered at our past conferences.

Several of the planned topics for the sessions will be on O*Net, expert fees, FCE validity, a legal update, a mock trial, job analyses, divorce, and psychological issues. Many of the sessions will either be hands on or interactive.

Come for the professional development and stay for the fun at night. In addition to the President's Reception, we plan to offer at least one optional group entertainment activity. Look for the conference brochure in the coming month as well as updates on the ABVE web site.

The Journal of Forensic Vocational Analysis

Bruce Growick, PhD, Editor
Craig Johnston, MS, Asst Editor

The most recent edition of ABVE's Journal of Forensic Vocational Analysis (Volume 6, Number 2), an issue devoted to the Use of Vocational Experts in Workers' Compensation (WC) across the United States, was disseminated to members in March. ABVE-member Gene Van de Bittner of California edited this Special Issue of JFVA, and it examined how VEs are utilized in determining permanent and total disability (PTD) in six states (California, Florida, Ohio, Nebraska, Arizona, and Washington). Recognizing that some states are considering legislation to review the use of vocational testimony in workers' compensation, the editors of JFVA thought it would be beneficial to identify states facing such scrutiny, and highlight their system of decision-making. The result is an excellent review and discussion of the value of vocational expertise in the PTD process in WC, from which our field should benefit.

The editors of JFVA are currently working on three other issues for publication, two Special Issues and a general one. The first Special Issue is about the training and education of vocational experts. This issue will examine advanced training techniques for vocational experts, and take a look at how academic institutions are preparing graduates for work as experts in vocational forensics. The editors for this Special Issue are Joe Havranak of Bowling Green State University, and Marty Brodwin of California State University in LA.

The second Special Issue is an examination of functional capacity evaluations. This issue will examine how vocational experts interpret FCEs, what goes into an FCE, and the admissibility of such reports in courtroom testimony. Finally, a general issue should also be forthcoming in the near future.

If you would like to submit a paper for publication, or would like to discuss a potential topic for a special issue, please contact us.

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

Maximum effort was to ten pounds and the examiner mentioned the patient's verbal responses to the activity, which were groans when weights and heights became stressful.

The examination continued with a step test, stepping on and off a small step stool. This activity produced some dizziness and was terminated, to prevent the patient from falling, before the evolution was complete. There was a line walking sequence, a stair climbing sequence, a push and pull activity with a cart. Further examination included the placement of pegs in holes with both hands. All in all, the examination covered about two hours with several rest breaks. I have not covered all of the activities for the sake of the length of this article. The examiner was exceedingly friendly, accepting in a passive manner and tolerant of the efforts produced indicating that it was perfectly all right. Some activities that were incomplete seemed not to be a problem. The examiner indicated she would average individual efforts to compensate for the incomplete sequences and to fulfill the requirements of the exam even though the patient could not complete the tasks provided.

It is interesting to note that the patient had not completed the diagnostic and treatment phase of their compensation program. This is in spite of nearly a two and one half year time period since the injury.

The report, which followed, was the most interesting part of the entire process. There was no mention of the method of assessment. In the background data portion of the report, all very factual as to person, place of injury, and no list of injuries or present level of treatment was given. There had been an adverse medical examination by a neurologist some months before. Examination by this physician yielded a "prolonged post concussive syndrome with a cervical strain and a left C-8 radiculopathy with a left leg numbness

of unknown etiology. Medications included Ibuprofen, Neurotin and Paxil." This was no complete inventory of the medications in use or the listed impairments as defined by her treating physicians.

In fact, there were other medical reports from the treating physicians, which included: mild traumatic brain injury, post concussive syndrome, balance disorder, mixed (cervical, central, and labyrinth) post-traumatic visual symptoms, neurolinguistic changes, sleep disorder, central auditory processing disorder, hyper-reflexic right lower extremity, with possible hypothyroidism and partial seizure disorder and concerns about attention deficit. There are a host of listed visual deficits along with concerns about a frozen left scapula.

The amazing part of this entire sequence of events was the fact that a functional capacity evaluation was ordered at all. One injury was undiagnosed and treatment was still ongoing. A second interesting aspect was the evaluator apparently only had the examining neurologist's medical appraisal. A third concern was the method in which the measures were taken. A total lack of standardized method was a looming concern. If the patient was unable to complete a sequence, that should have been noted. Averaging results to allow the examiner to complete the sequence is a breach of any protocol of assessment. The patient left the examination feeling positive about the efforts generated, trying the best to exert even beyond their capacity to perform. The parting remark from the examiner was "you are a person who really enjoys a challenge." Yet on the final report were all manners of contrasting remarks that inferred sub-maximal effort and potential ulterior motives for these less than maximum efforts. Since a polygraph was not an aspect of this assessment the foundation for these observations would have to be classed in the personal opinion category! The end product of this highly suspect assessment was the less than objective outcomes that had no standardized distribution to apply their outcomes against.

Questionable efforts to quantify residual ability such as these do not resolve the question, "What is this client's work capacity?" Contrary to producing an objective outcome that clarifies capacity, it throws doubt on an already turbid situation. Unfortunately, because of a lack of professional knowledge and questionable ethical behavior in this arena, often confusion is the only outcome, as objectively measured outcomes are either unknown or unavailable or impossible to achieve with this method of very loose assessment placing a great burden on the court.

Objective testing and measurement methods are designed to answer questions and clarify issues. The efforts should be objectively based and aid the decision makers to guide the future of the client and assist them in their role of administering their programs. This examination did nothing to further this end.

To find out more about Functional Capacity Evaluations and to determine their successful use in worker capacity, be sure to attend the Las Vegas ABVE Conference. This area of forensic vocational practice will be a featured event.

Information For the Workplace

If you haven't already seen it, the *Journal of Occupational Rehabilitation*, 13:4, December, 2003 is completely devoted to Functional Capacity Evaluation analysis/critique/validity/reliability issues.

One may acquire it from Kluwer Academic Publishers. Their order dept email is orderdept@wkap.nl Phone is: 31 78 657 6000. They also give a US number:

781-871-6600. It cost about US \$25 with shipping and handling.

Submitted by:

Kent Jayne

Test Maintenance Committee

Billy J McCroskey, PhD
Chairperson

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Chronbach's Alpha for the 1998 ABVE 3rd edition Test has been re-calculated to be 0.90, when all N=335 ABVE Examinees were used (as opposed to the original N of 229 upon which the current norms were based).

To improve test security, we are revising the 2004 4th Edition ABVE Exam to include Alternate Form Tests based on the 1998 ed. Original Test Questions (TQs 1-138) which will be split evenly between the Alternate Forms. Two Initial Alternate Form Tests have been constructed and statistically analyzed. Results: Split-half Reliability falls in the *High Range of Reliability* (i.e., Pearson=.90; Spearman=.90; Guttman=.90), while Chronbach's Alpha falls in the *Moderate Range of Reliability* (i.e., 0.82).

The remaining N=32 Test Questions which have been under evaluation for inclusion in the 2004, 4th Edition ABVE Exam (items 139 to 170) will be added to the ABVE Alternate Form Tests.

Other acceptable Test Questions from selected (current and past) members of the ABVE Test Committee over the past 6 years, will be evenly split and added to the two Alternate Forms of

the 2004 4th Edition ABVE Exam (Form 1 and Form 2).

Short-Term Goal: Finalize the 2004, 4th Edition ABVE Exam (Form 1 and Form 2) as replacements for the 1998 ABVE Exam for use at the next (Fall, 2004) ABVE Conference.

Long-Term Goal: Complete a scientific article with statistical analysis, tables, and graphs regarding the derivation of the final 2004 4th Edition ABVE Exam (Form 1 and Form 2).

Continuing Education Committee

Philip Spergel, EdD
Chairperson

Members of the Committee

Philip Spergel, EdD, Chairperson

Estelle R. Hutchinson, MS, MBA

Benson Hecker, PhD

Mark Lukas, EdD

The Committee continues to receive and review requests for CEUs. The Chairperson of the Continuing Education Committee received a request from Lisa Lacky, I.A.R.P. Account Manager, to approve 28 CEUs for their 2004 Annual Conference. This was to include one (1) hour of credit for each poster presentation as well as three (3) hours of credit to be applied for Ethics requirement. To date, the Board of Directors of A.B.V.E. has not set a policy for how many Ethics credits will be required for the three-year CEUs' period. Hopefully, this will be accomplished in the near future.

Also, the Board of Directors will have to arrive at the number of credits that will be permitted to be applied to the three-year CEUs (total of 48) that will be accepted for courses, seminars, institutes and other programs outside of the A.B.V.E.'s Annual Conferences.

Ethics Committee

Philip Spergel, EdD
Chairperson

Members of the Committee

Philip Spergel, EdD

Francis Thomas, PhD

Rosalyn Pierce, MA

Ellyn L. Gamburg, EdD

Those requiring a copy of the ABVE Code of Ethics should make the request to ABVE Headquarters, Carolyn Hair, Account Manager, 3540 Soquel Avenue, Suite "A", Santa Cruz, CA 95062, phone 831-464-4090, fax 831-576-1417, e-mail address: abve@abve.net.

The Ethics committee has also developed a procedure for adjudicating complaints/violations and the appropriate disciplinary response, depending on the nature and severity of the violation.

Although the Board of Directors must approve this procedure before it can be distributed to the membership, those attending the Spring A.B.V.E. Conference 2004 in Charleston, South Carolina received copies of this document for review. In the future, the Committee will also propose to the Board of Directors, the number of Ethic CEUs that should be included in the three-year period as a requirement. Also, the Committee will propose to the Board of Directors that an Ethics presentation be included in our Spring and Fall Conferences to assist the membership in satisfying the agreed-upon requirements.

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

Future ABVE Conferences

Mark Your Calendars Now!

Fall 2004 – Las Vegas, NV

October 1 -3, 2004

Alexis Park Resort

Hotel Rate: \$ 129.00 Single/Double

Reservation Number (800) 582-2228

Spring 2005–New Orleans, LA

March 18 - 20, 2005

Hotel Monteleone

Hotel Rate: \$ 169.00 Single/Double

Reservation Number (800) 535-9595

Fall 2005 – San Francisco, CA

Dates To be Determined

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!

Sean Fitzgerald, Fellow

Russ Gurley, Fellow

Thomas Dale, Diplomate

Howard Caston, Diplomate

Lisa Porter, Fellow

Judy Brookover, Diplomate

Sonya Mocariski, Associate

Terry Cordray, Associate

Bruce Brawner, Associate

Lori Allison, Associate

Debra Clark, Associate