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Vancouver, the Fall Gathering Place

By Richard Carlin, Conference Co-Chair

The eighty-six attendees at the ABVE conference in Vancouver, British Columbia on October 5-8 were treated to excellent weather, informative and interesting speakers and excellent accommodations.

Vancouver, which can be rainy and overcast, put on its best face. We all enjoyed blue skies, vistas of the North shore mountains, and Burrard inlet which was active as ever with the Seabus ferry scurrying between the city and North Vancouver while the sea planes were landing in the waters off shore. The Hyatt Regency Hotel provided excellent service and space for our meetings. The staff was very helpful and the restaurants provided some delicious meals. Those who signed up and attended the dinner at the *Aqua Riva* on Friday evening had a wonderful time. Also on the social agenda were the President's Reception and a luncheon sponsored with exhibitors.

The first day was kicked off with two Value Added Workshops. Michael Graham, PhD, and Hank Langman, MS, conducted a workshop to teach the "newer" forensic professional how to market and set up a forensic business. The second Value Added workshop featured Jan Lowe, MS, and Cynthia Grimley, MS, who provided some new approaches for the evaluation of forensic cases using the McCroskey Vocational Quotient system. This workshop focused on the development of the McCroskey program and the application of its components for vocational analysis and testimony.

For the main conference program, Co-chair Izabela Schultz lined up a full selection of speakers from Canada and the United States to speak on topics ranging from chronic pain to minority issues in rehabilitation. Some traveled to Vancouver from as far away as Manitoba (one of those "prairie" provinces of Canada) and also Nevada.

Michael Lewandowski, PhD, presented the keynote speech. He examined the role of assessment and treatment of pain of individuals as used in litigation. Note was made not only of medical intervention's role in the return of individuals to the workplace, but also the need to focus on psychosocial issues and their significance in disability.

Chronic pain was also an issue dealt with by Eileen Cook and Gregory Feehan, PhD. They presented a picture of an integrated vocational model. Differences in pain programs were outlined and the importance of having various disciplines represented to help people cope with their pain was noted as especially helpful when there is an attempt to return to work after a prolonged absence.

Interesting presentations on neurological and psychological topics were presented by William Koch, PhD, who provided information about the characteristics, causes and consequences of PTSD while Brenda Kosaka, PhD, offered detailed information on the impact of seizures upon vocational rehabilitation. Dr. Peter McLean offered some helpful information on return to work for individuals suffering



Conference chairperson, Izabela Schultz; Richard Carlin with President Hank Logeman, and President Elect, Michael Graham.

from depression and/or anxiety. Strategies were noted to differ, but each, if applied effectively, can make the transition back to the work place occur more smoothly.

According to studies noted by Grant Iverson, PhD, mild traumatic brain injury is depicted as almost impossible to differentiate from chronic pain or depression when based on self-reported, non-specific problems. It was shown that early intervention can result in a reduction of perceived symptoms and can make return to work efforts more successful.

Craig Pinder, PhD, provided an organizational psychologist's perspective on work motivation theory and the difficulty in developing instruments for effective measurement. Expectations appear to influence outcomes. Goal setting tenets were provided.

Diane Dewitt, PhD, provided us with an opportunity to see how she has modified the use of transferable skills analyses to include feelings and values that an individual has relative to one's own strengths and weaknesses. This process was noted as being helpful in identifying residual capacity for work when post injury status requires an individual to change occupations from their pre-injury status.

Minority issues were addressed by Amritpal Singh Shergill, PhD, registered psychologist, and Palbinder Kaur Shergill, LLB, a lawyer. The pitfalls of not considering cultural or ethnic factors when performing assessments or working with disabled workers were outlined. This topic was packed with helpful information that was difficult to cover in the allotted time period.

Izabela Schultz, PhD, provided closure to our conference by presenting a detailed study *in progress* on the difficulties involved in developing a measurement instrument for psychological impairment.

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

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President's Message

By Hank Lageman

Greetings from the Great Northwest.

Your ABVE Board continues on a fast track forward in assisting the membership to stay on the cutting edge of their practice.

The Vancouver, BC Conference was a success and will add about \$10,000 to the ABVE Treasury. Our membership is holding at about 320 members and the success of our conferences is vitally important for the financial success of ABVE. We received very positive feedback from those in attendance (see Co-Conference Chair Review for additional information)

IARP & ABVE Interaction: As many of you know IARP (formally NARPPS) has selected BTF as its management company. This is seen as a great opportunity for both organizations to mutually benefit from this association. We anticipate more sharing and communication between both organizations. This has already started with ABVE being invited to have a session at the Miami Florida conference in May and mutual advertising in each other's publications as a trade. The IARP forensic section and our President-elect Mike Graham are also looking at mutual interests and how to work together.

The Bylaws are approaching the final write-up with a vote by the Board scheduled by the end of the year followed by ratification of the membership. The revised Policies/procedures will closely follow the Bylaws for a Board vote and ratification by the membership. With the revisions, the membership has a more active role in reviewing and ratifying the documents.

The Research Committee is conducting the first research efforts lead by Board Member Ron Peterson. We are asking that you please take a few minutes and respond to this questionnaire returning it directly to Ron Peterson. (Enclosed as an insert with this newsletter)

Remember your 3-year CEU Requirements: By now you all should have received your 2001 invoices. Along with the invoice, you received a current status on the CEU's that ABVE has recorded for you. March 31st 2001 closes out the 3-year continuing education cycle and your need to have 42 *Continuing Education Units* must be met by that time. Those attending our March San Diego conference will receive at least 14 CEU's for the conference with a possible 3-4 additional for the pre-conference.

Membership Reinstatement: We have had a number of experts who have allowed their membership to lapse over the years while continuing to work in the field. At the same time more regulatory bodies are increasing the demand for quality control and are requiring service providers to be certified in the areas they are providing services.

For example, the State of Washington is requiring all providers to be CRC, ABVE or CDMS in order to provide services. (See Information for the Work Place) This increased demand for certification that has peer-review and testing as a part of certification has caused a number of former ABVE professionals to request reinstatement. Based upon these increased requests the Board has unanimously agreed to develop a method of re-certification. We are putting the final touches on our reinstatement policy and the Board should have it in place by the end of the year as well.

ABVE List Serve: Our list serve is up and running as an additional communication tool to assist our members. The listserv provides a forum for ABVE members to contact other members, to ask questions, seek advice, or solicit responses to general inquiries using the one address "http://www.ihwy.com/mailman/listinfo/abve" President-elect Mike Graham will be overseeing the list-serve until March when he becomes President. The following is a quick reminder for listserv etiquette, especially important for those who have not been involved in a list serve.

Feel free to e-mail any of the directors or me at pres@abve.org with your suggestions or comments. Have a great end of the year and we look forward to seeing many of you in San Diego in March.

Guidelines for Use of the ABVE Listserv

- Use the listserv only for association business-related matter.
- Consider carefully when to "reply to all" or when to reply to only the person who sent the original message. Not all replies should go to "All." Check your e-mailer to make certain it isn't set to default to "Reply to All" so that you control this function.
- Do not send attachments of any kind.
- Do not use the listserv for commercial advertisements of any kind.
- Protect the privacy of the listserv.
- Always identify yourself when sending an e-mail message.
- The listserv address is NOT to be placed in your e-mailer's address book.
- To unsubscribe, address a message to ABVE-request@ihwy.com with "Unsubscribe" in the Subject line.



Information for the Work Place

By Cynthia P. Grimley, MS
ABVE Diplomate

Change of Expert Rules of Evidence Takes Effect December 1, 2000

The new amendments to the Federal Rules of Evidence by the Judicial Conference Advisory Committee on Evidence are to be put into effect December 1, 2000. Rules 702 and 703 are especially important.

The amendment pertaining to *Rule 702* does not note differences between scientific and other forms of expert testimony. The amendment underscores the premise that expert testimony should not be treated more permissively if it is considered to be "outside the realm of science." Once again, the trial judge will consider expert testimony to be "properly grounded, well reasoned, and not speculative before it can be admitted." Moreover, if there exists a "well accepted body of learning and experience in the expert's field, then the expert's testimony must be grounded in that learning and experience to be reliable and the expert must explain how the conclusion is so grounded." It is also understood that if the expert relies solely or primarily on experience, the expert witness must explain to the court how the experience leads to the conclusion proffered. Clarification is lent to the role of the gatekeeper as it applies not only to the methodology employed by the expert, but also to the facts of the case under consideration. This places the responsibilities for determining the reliability of the expert's testimony with the trial court.

The amendment of *Rule 703* reflects upon the facts or data in the case upon which an expert bases an opinion or inference "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinion or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial impact."

The foregoing amendment has been purported to be designed to clarify that just because *Rule 703* previously allowed an opinion based on facts not in evidence or even on facts which might not even be admissible if offered at trial as long as such information dealt with the type of information on which similar experts would rely in making non-litigation-oriented professional judgments, a shift has taken place in attempting to move away from the admissibility of the facts upon which an expert's opinion was based, to the reliability of

these facts as determined by the profession in arriving at profession judgments independent of litigation. Thus, just because an opinion may be based on inadmissible evidence or facts not in evidence, it cannot be assumed that the underlying information is therefore admissible. This particular amendment to *Rule 703* only applies to the "proponent" of certain evidence. "The opponent or contestant may freely inquire into the underlying facts upon which an expert's conclusion is based." (Submitted by Lindette L. Mayer, Ph.D.)

ABVE Credentials in Washington State

In the last ABVE newsletter, I authored a brief update on what's happening in the "other" Washington on Vocational Rehabilitation rules, laws and credentials. On 10/31/00 I attended an all day conference from Labor and Industries, State of Washington to better understand the impact of the new Washington Administrative Code (WAC) driven vocational rehabilitation system including serious changes in credential requirements. The final WAC is in place on 12/1/00 with a full transition by 6/1/2001.

Washington State is one of the five or so remaining monolithic industrial insurance systems and has had vocational contracts in place for about 14-years. Those that had contracts had access to the 75% of workers compensation injured workers. The other 25% is self-insured, typically large fortune 100 and 500 corporations.

WAC 296-19A-210 is a new section for qualifications required effective 12/1/00. Included as the only recognized credentials are CRC, CDMS or ABVE. (No exceptions). Indeed, only CRC and ABVE with Masters are allowed for a new "billing code" and referral for Forensic cases. They pay 120% of the fee scheduled also. These assignments are for clients with high degrees of difficulty, have been in the system a long time or may be litigated or pension eligible.

Key changes include the allowance for current VRC's with either a BA or MA degree and experience to continue without a CRC/CDMS/ABVE for a 6-year period only. I see this as a type of modified, provisional grandfathering. All new VRC's effective 12/1/00, must have the credentials. If you move here, bring your credentials in good standing! Internships continue to be available under a qualified supervisor. They bill about 15% less in rates. Fees will be capitated also after 6/1/01, however, the rates are not nearly as extreme as California's. Technically, the fee maximum for all services possible is nearly fifteen thousand per client. The ultimate goal is to refer clients based on "performance ratings" by VRC and firms. The rating follows the VRC. Criteria is cost, time for services, outcome, complexity and if the "provider conformed to the department rules and accepted standards of good practice."

For more information, inspect the Labor & Industries website: <http://www.lni.gov/hsa/vocational.htm>
(Submitted by John Berg, M.Ed)

And Yet...Another Daubert Challenge for a VE

Carmelita Elcock v. KMART Corporation,
Appellant
NO. 98-7472

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

December 7, 1999, Argued
October 10, 2000, Filed

PRIOR HISTORY: On Appeal From the District Court of the Virgin Islands. (D.C. Civ. No. 1996/28 F). District Judge: Honorable Raymond L. Finch, Chief Judge.

DISPOSITION: Judgment of the District Court affirmed in part and reversed in part, and case remanded for a new trial on the issue of damages.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant corporation appealed from the judgment of the United States District Court for the District of the Virgin Islands entered on a jury verdict in favor of plaintiff for personal injuries and economic loss suffered by plaintiff as the result of a slip and fall at defendant's store.

OVERVIEW: Defendant corporation challenged certain evidentiary rulings relating to plaintiff's proof of damages, and challenged the jury's damage award as excessive. The court held that the district court had not abused its discretion either in qualifying one of plaintiff's witnesses (witness), a psychologist, as an expert, or in limiting the scope of cross examination concerning that witness' prior acts of criminal misconduct, but that it had abused its discretion by not holding a *Daubert* hearing prior to receipt of the witness' testimony on the issue of plaintiff's vocational rehabilitation, finding that defendant had raised serious questions regarding the witness' methods as a vocational rehabilitationist, and that the *Daubert* factors should be applied when testing the reliability of a non-scientific method. The court further found that it could not conclude the flaws in plaintiff's evidence of economic damages had not affected the jury's determination of plaintiff's non-economic damages, that defendant conceded the issue of liability, that it did not need to reach defendant's *remittitur* argument, and that a new trial should be had on the entire issue of damages.

OUTCOME: The court affirmed in part, reversed in part and remanded for a new trial on the issue damages, holding that while defendant had conceded its liability, the trial court had abused its discretion in not holding a *Daubert* hearing with respect to the vocational rehabilitation expertise of one of plaintiff's expert witnesses. (Submitted by Cynthia P. Grimley, MS)

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eFax.com is a leading provider of Internet messaging solutions. It will provide you with a unique telephone number so you can have a fast and easy way to receive faxes and voicemail—whether you're on the road, at the office, or working from home. eFax Free allows to you receive messages by email or receive wireless notification, for **FREE**. eFax Plus is another service, which is a convenient way to send faxes. No need to print and manually fax a document anymore. No need to be tied to the location of your fax machine. You don't even have to own a fax machine. With eFax Plus you can fax documents right from your computer, receive wireless message notification and forward messages from your internet-enabled phone. eFax Plus is \$4.95 per month billed quarterly. For more information go to www.efax.com. (Submitted by Cynthia P. Grimley, MS)

Conference Pictures on ABVE Web Site

Be sure to visit the ABVE Web Site at <http://www.abve.org> to see the pictures of the Fall Conference in Vancouver.

Treasurer's Report

By Al Walker

During the ABVE Board meetings at the Vancouver conference, the proposed budget for 2001 was developed utilizing the current year to date 2000 figures. Long time board members commented on how easy the QuickBooks format was to follow in comparison to previous years. In summary, the year to date budget was within all spending allowances and the fall conference did better than expected. The proposed 2001 budget is projected to break even for the year. A good turn out at the San Diego conference and with increased applications for membership would keep us in the black. As ABVE continues to become adopted as a required certification in various states, our membership will increase to make us a stronger and more viable certifying organization.

Welcome to the Following New Members

Marsha Hajduk, Diplomat
Jan Lowe, Diplomat
Sherry Browning, Diplomat
Dean Venter, Fellow
Dave Utley, Fellow
Norman Johnson, Fellow
Catherine Chandick, Fellow
Susan Green, Fellow
Angelica Greene, Associate
Graeme Mitson, Associate
Curtis Stoelting, Associate

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<http://www.abve.org>

*Charges vary widely depending upon selection.

Future ABVE Conferences

San Diego, CA—Spring 2001

March 23–25, 2001

Conference Chair—Janice Wexler

Williamsburg, VA—Fall 2001

September 14–16, 2001

Conference Chairpersons—Scott Streater & Larry Sinsabaugh

Journal Guidelines Available

Those interested in submitting manuscripts for *The Journal of Forensic Vocational Assessment* can request specific guidelines from:

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