

Regulatory Analysis Form

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(1) Agency

Department of Labor and Industry
Bureau of Workers' Compensation

(2) I.D. Number (Governor's Office Use)

12-68

IRRC Number: 2485

(3) Short Title

Qualifications for vocational experts

(4) PA Code Cite

34 Pa. Code Chapter 123

(5) Agency Contacts & Telephone Numbers

Primary Contact: Eileen Wunsch, Chief, Bureau of
Workers' Compensation, Health Care Services Division
(717) 772-1912

Secondary Contact: John T. Kupchinsky, Director, Bureau of
Workers' Compensation; 717-783-5421

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The Department of Labor and Industry (Department) has drafted this proposed rulemaking to implement the act of December 23, 2003 (P. L. 371, No. 53) (Act 53), which amended the Workers' Compensation Act (WC Act) (77 P.S. §§ 1 - 2626). The Department has amended the qualifications promulgated at 34 Pa. Code § 123.202 (relating to Qualifications) to reflect that such qualifications are the minimum qualifications that an individual must meet in order to perform as a vocational expert under section 306(b)(2) of the WC Act (77 P.S. § 512(2)). The amendments further implement and interpret sections of Act 53 that establish ethical rules and financial interest disclosure standards for vocational experts under the WC Act.

Regulatory Analysis Form

(9) State the Statutory Authority for the regulation and any relevant state or federal court decisions.

These amendments are proposed under the authority provided in sections 401.1 and 435 of the WC Act (77 P. S. §§ 710, 991). In addition, section 306(b)(2) of the WC Act (77 P.S. § 512(2)), as amended by Act 53, specifically authorizes the Department to promulgate regulations establishing minimum qualifications for vocational experts.

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Section 306(b)(2) of the WC Act (77 P.S. § 512(2)) authorizes the Department to promulgate regulations establishing the minimum qualifications for vocational experts.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This rulemaking is proposed to ensure that all parties will have a clear understanding of, and meet the requirements of, section 306(b)(2) of the WC Act (77 P.S. § 512(2)). Further, these amendments ensure that the individuals conducting vocational interviews have the requisite knowledge and skills to provide vocational expert services under the WC Act. It provides guidance for earning power assessments interviews and related workers' compensation proceedings for employees, employers, workers' compensation insurers, workers' compensation judges, attorneys and the Department.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Non-regulation would create uncertainty for workers' compensation practitioners. Moreover, non-regulation would impede the implementation of section 306(b)(2) of the WC Act (77 P.S. § 512(2)), provide uncertainty concerning vocational expert qualifications, and would not impose ethical standards for vocational experts despite the legal requirement for these standards.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Employees, employers, and workers' compensation insurers, workers' compensation judges, attorneys and the Department will benefit from these amendments because the regulation will help ensure more meaningful vocational capacity assessments of injured workers. Further, the regulated community will benefit from the additional certainty provided by these amendments in vocational capacity assessments and workers' compensation proceedings.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The potential adverse effect of the promulgation of these amendments would be limited to those individuals that have not conducted earning power assessments pursuant to 306(b) of the WC Act (77 P.S. § 512(2)) prior to the effective date of these regulations. These individuals may not meet the minimum qualifications established by these amendments which could preclude them from conducting earning power assessment interviews. However, individuals who conducted earning power assessment interviews under section 306(b) of the WC Act (77 P.S. § 512(2)) prior to these amendments, will continue to meet the minimum qualifications.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Vocational experts, employees, employers, workers' compensation insurers, workers' compensation judges and the Department will be required to comply with this regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

On June 11, 2004, the Department held a stakeholder meeting regarding the Act 53 amendments. Testimony was received from Irwin Aronson and David Wildeman, representing the AFL-CIO; and Terry Leslie, representing the Pennsylvania Association of Rehabilitation Professionals. In addition, the Department received written comments from the Pennsylvania Association of Rehabilitative Professionals Administrative Services; the Pennsylvania Trial Lawyers Association; The Insurance Federation of Pennsylvania Inc.; CEC Associates, Inc.; and the Honorable Noah Wenger. The Department has reviewed and considered all comments received.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

No significant costs or savings are anticipated.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

No significant costs or savings are anticipated.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

No significant costs or savings are anticipated.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A					
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A					
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A					

(20a) Explain how the cost estimates listed above were derived.

Any potential costs associated with these amendments are insignificant and not quantifiable.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Workers' Comp. Administration Fund	\$ 51,422,033.00	\$ 52,551,198.00	\$ 49,441,420.00 (as of 8/5/04; closing in 10/04)	\$ 55,000,000.00 (appropriation for year)

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects and costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Act 53 permitted the Department to establish regulations relating to the qualifications of vocational experts under section 306(b) of the WC Act (77 P.S. § 512 (2)). Non-regulatory alternatives cannot create a legally enforceable standard, and therefore, were not considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered because the Department considers the current amendments as the most appropriate and reasonable method for effectuating a proper program for carrying out the WC Act's earning power assessment interview provisions.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no comparable federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Comparison to other states' provisions is impractical because statutory requirements and systems differ substantially from state to state.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

These amendments revise the qualification standards found in 34 Pa. Code § 123.202 (relating to Qualifications), and amend 34 Pa. Code §§ 123.201 (relating to Purpose) and 123.203 (relating to Credibility determinations). The statement of policy contained in 34 Pa. Code § 123.201a shall be repealed upon promulgation of the final-form rulemaking.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Currently, the Department does not anticipate that any other meetings will be scheduled.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The Department does not anticipate any changes in existing reporting, record keeping, or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There is no need for special provisions.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The proposed regulations will be effective when published in the *Pennsylvania Bulletin* as final-form regulations. These regulations will require no new licenses, permits or approvals.

(31) Provide the schedule for continual review of the regulation.

The Department will continue to monitor the impact and effectiveness of the regulations. Changes to the Act and subsequent court decisions may lead to amendment of the regulations.

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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**
(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

2485

<p>Copy below is hereby approved as to form and legality. <i>[Signature]</i></p> <p>BY: <i>[Signature]</i> DEPUTY ATTORNEY GENERAL JUN 08 2005 DATE OF APPROVAL</p> <p>Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p align="center">Department of Labor & Industry (AGENCY)</p> <p>DOCUMENT / FISCAL NOTE NO. 12-68</p> <p>DATE OF ADOPTION: <i>[Signature]</i> BY: Stephen M. Schmerin TITLE: Secretary (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or independent agencies. <i>[Signature]</i></p> <p>BY: <i>[Signature]</i> 5.13.05 DATE OF APPROVAL</p> <p>(Executive Deputy General Counsel)</p> <p>Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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PROPOSED RULEMAKING

34 PA. CODE CHAPTER 123

Qualifications for Vocational Experts

PROPOSED RULEMAKING

Title 34. LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY [34 PA. CODE CH. 123]

QUALIFICATIONS FOR VOCATIONAL EXPERTS

The Department of Labor and Industry, Bureau of Workers' Compensation (Department), proposes to amend Chapter 123 (relating to general provisions of Act 53 of 2003) to read as set forth in Annex A, to provide guidance regarding the act of December 23, 2003 (P. L. 371, No. 53) (Act 53), which amended the Workers' Compensation Act (act) (77 P. S. §§ 1-2626), and to implement Act 53's provisions. Specifically, Act 53 contains amendments to section 306(b) of the act (77 P.S. § 512(2)). The Department also proposes to repeal its statement of policy found in 34 Pa. Code § 123.201a with these amendments.

Statutory Authority

These amendments are proposed under the authority provided in sections 401.1 and 435 of the act (77 P. S. §§ 710 and 991). Additionally, section 306(b) of the act (77 P.S. § 512(2)) specifically authorizes the Department to promulgate regulations establishing the minimum qualifications for vocational experts.

Background

On December 23, 2003, Governor Edward G. Rendell signed Act 53 into law. Act 53 amended section 306(b)(2) of the act (77 P.S. § 512(2)). Before its amendment, section 306(b)(2) of the act provided a means for insurers to assess an employee's earning power through an interview "by an expert approved by the department and selected by the insurer." The passage of Act 53 has eliminated the requirement that the Department approve these experts. Instead, Act 53 permits insurers to select an expert "who meets the minimum qualifications established by the Department through regulation."

Act 53 further amended section 306(b)(2) of the act by providing that vocational experts "shall comply with the Code of Professional Ethics for Rehabilitation Counselors pertaining to the conduct of expert witnesses." Act 53 also added section 306(b)(2.1) to the act (77 P.S. § 512(2.1)), which provides that an insurer must disclose to the employee prior to his referral to an earning power assessment interview, any financial interest that the insurer has in the person or entity that will conduct the earning power assessment interview.

Purpose

This proposed rulemaking implements Act 53. It provides guidance to Bureau staff, workers' compensation insurance carriers, self-insured employers, employees, workers' compensation judges, workers' compensation practitioners and other interested parties concerning the qualifications and role of vocational experts in workers' compensation proceedings under sections 306(b) and 449 of the act (77 P.S. §§ 512(2), 1000.5). Other than in instances where a workers' compensation judge has determined that a vocational expert or insurer has failed to comply with sections 123.204 (relating to conduct of expert witness) and section 123.205 (relating to financial interest disclosure), these amendments are not intended to restrict or limit the authority that workers' compensation judges currently possess.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation.

On June 11, 2004, the Department held a stakeholder meeting regarding the Act 53 amendments. Testimony was received from Irwin Aronson and David Wildeman, representing the AFL-CIO; and Terry Leslie, representing the Pennsylvania Association of Rehabilitation Professionals. In addition, the Department received written comments from the Pennsylvania Association of Rehabilitative Professionals Administrative Services, the Pennsylvania Trial Lawyers Association, The Insurance Federation of Pennsylvania Inc., CEC Associates, Inc., and the Honorable Noah W. Wenger, Senate of Pennsylvania. The Department has reviewed and considered all comments received.

Summary of Proposed Rulemaking

The minimum qualifications set forth in this proposed rulemaking are the minimum qualifications specified in Act 53.

§ 123.201. Purpose.

This section amends the regulation to reflect the passage of Act 53 and to clarify that Act 53 no longer requires Departmental approval of vocational experts that wish to conduct earning power assessment interviews.

§ 123.201a. Effect of Act 53 regarding qualifications of vocational experts-statement of policy.

The statement of policy is repealed and replaced with this amendment.

§ 123.201b. Definitions.

The amendments contain a new section which defines the terms "financial interest" and "insurer". The definition of "financial interest" is necessary to implement Act 53's financial interest disclosure requirements under section 306(b)(2.1) of the act (77 P.S. 512(2.1)). The definition of "insurer" is necessary to explain the scope of the disclosure requirements under section 123.205 (relating to financial interest disclosure). A "financial interest" is an interest equated with money or its equivalent, and includes any of the following: an ownership interest in

the entity which employs the vocational expert; a present or former employment relationship between the vocational expert and the insurer making the referral; a managerial, fiduciary or controlling interest in the vocational expert or entity employing the vocational expert; or, a contractual or referral arrangement that would require or allow the insurer to provide compensation or other consideration based upon the vocational expert's opinion or outcome of the vocational expert's earning power assessment interview.

An insurer is any of the following: a workers' compensation insurance carrier; the State Workers' Insurance Fund; an employer authorized by the Department to self-insure its workers' compensation liability under section 305 of the act (77 P.S. § 501); or, a group of employers authorized by the Department to act as a self-insurance fund under section 802 of the act (77 P.S. § 1036.2).

§ 123.202. Qualifications for current vocational experts under Act 57 of 1996.

This section provides that individuals, who have previously performed as vocational experts in workers' compensation proceedings prior to the promulgation of these amendments, remain able to perform as vocational experts under the previous qualification standards set forth in 34 Pa. Code § 123.202. Further, these individuals are approved to conduct earning power assessment interviews under section 449 of the act (77 P.S. § 1000.5).

§ 123.202a. Qualifications for vocational experts under Act 53 of 2003.

This proposed rulemaking defines the minimum qualifications for individuals who have not previously performed as vocational experts prior to the effective date of these regulations. Individuals who have not performed as vocational experts prior to this amendment must satisfy new minimum qualifications in order to be a vocational expert under the act. Specifically, these individuals must possess a current license in good standing as a Licensed Professional Counselor, or hold a Bachelor's or post-graduate degree in rehabilitation or a related counseling field, and 1) be certified by a nationally recognized professional organization; or 2) have one year's experience in vocational analysis, evaluation and testing, placement of individuals with disabilities, and analyzing labor market information and occupational trends. These changes to the minimum qualifications are intended to more accurately reflect the knowledge and skill required to provide quality vocational expert services under the act. Further, these individuals are approved to conduct earning power assessment interviews under section 449 of the act (77 P.S. § 1000.5).

§ 123.203. Role of workers' compensation judges.

This section provides that the workers' compensation judge will determine whether a vocational expert meets the minimum requirements under section 306(b) of the act. (77 P.S. § 512(2)). Workers' compensation judges are empowered to make determinations on a vocational expert's bias and objectivity. However, if the vocational expert has not complied with § 123.204 (relating to conduct of expert witness) or the insurer has not complied with the requirements of § 123.205 (relating to financial interest disclosure), the workers' compensation judge is not permitted to consider the results of the earning power assessment interview.

§ 123.204. Conduct of expert witness.

This provision implements Act 53's requirement that a vocational expert comply with the *Code of Professional Ethics for Rehabilitation Counselors* (Code). The Department intends that the standards it has developed are the only criteria required for compliance with the Code. This section provides that a vocational expert is required to disclose to the claimant the role or limits of their relationship. Moreover, the provision states that the vocational expert must generate written documentation, in the form of case notes or a report, of the vocational expert's involvement in the litigation and conclusions from the earning power assessment interview.

§ 123.205. Financial interest disclosure.

Pursuant to section 306(b)(2.1) of the act, if an insurer intends to refer an employee for an earning power assessment interview to a person or entity with whom the insurer has a financial interest, the insurer must disclose that financial interest to the employee prior to the referral. However, this provision further provides that the mere payment of the cost of a vocational interview will not, of itself, be deemed a financial interest requiring disclosure. For the purposes of this section, a third-party administrator or other entity that performs services for an insurer is also considered an insurer.

Affected Persons

The persons affected by these amendments are employees, self-insured employers, workers' compensation insurance carriers, workers' compensation judges, workers' compensation practitioners and individuals who wish to serve as vocational experts under the act.

Fiscal Impact

There is no significant fiscal impact associated with this proposed rulemaking.

Reporting, Recordkeeping and Paperwork Requirements

The Department does not anticipate any changes in existing reporting, recordkeeping or other paperwork requirements.

Effective Date

This proposed rulemaking will take effect when published as a final-form rulemaking in the *Pennsylvania Bulletin*.

Sunset Date

A sunset date is not appropriate for these regulations. However, the Department will continue to monitor the impact and effectiveness of the regulation.

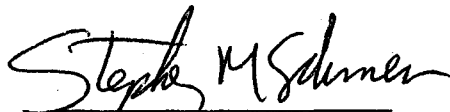
Public Comment and Contact Person

Interested parties may submit written comments, recommendations or objections to the proposed rulemaking to Eileen K. Wunsch, Chief, Health Care Services Division, Bureau of Workers' Compensation, P.O. Box 15121, Harrisburg, PA 17105, within 30 days of the publication of the proposed rule-making in the *Pennsylvania Bulletin*. The proposed rulemaking will also be available on the Department's home page at www.dli.state.pa.us. Written comments received by the Department may be made available to the public.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 27, 2005, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Committee on Labor and Industry and the House Labor Relations Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking to the Department within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed regulations, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.



Stephen M. Schmerin
Secretary

FISCAL NOTE: 12-68

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VIII. BUREAU OF WORKERS' COMPENSATION

CHAPTER 123. GENERAL PROVISIONS – PART II

PROPOSED RULEMAKING

Subchapter C. QUALIFICATIONS FOR VOCATIONAL EXPERTS

§ 123.201. Purpose.

This subchapter implements and interprets provisions of the act which [require] permit the Department to [approve] establish qualifications for vocational experts who will conduct earning power assessment interviews under sections 306 (b)[(2)] and 449 of the act (77 P.S. §§ 512 [b](2) and 1000.5). The act's requirements for compliance with the Code of Professional Ethics for Rehabilitation Counselors and financial interest disclosure are also contained in this subchapter. [The experts contemplated by this subchapter are vocational evaluators.]

§ 123.201a. [Effect of Act 53 regarding qualifications of vocational experts—statement of policy.

(a) The Department adopts this section so that all parties will have a clear understanding of their rights and obligations under section 306(b) of the act (77 P. S. § 512). This does not constitute a rule or regulation and is temporary. The Department intends to promulgate regulations on this topic.

(b) The minimum qualifications in § 123.202 (relating to qualifications) are the minimum qualifications established by the Department for vocational experts as specified in Act 53 of 2003 (P. L. 371, No. 53)(Act 53) which amended section 306(b) of the act, effective December 23, 2003.]

(Reserved).

§ 123.201b. Definitions.

The following terms, when used in this subchapter, have the following meaning:

Financial interest – An interest equated with money or its equivalent, and includes any of the following:

- (a) An ownership interest in the entity which employs the vocational expert.
- (b) A present or former employment relationship between the vocational expert and the insurer making the referral.
- (c) A managerial, fiduciary or controlling interest in the vocational expert or entity employing the vocational expert.
- (d) A contractual or referral arrangement that would require or allow the insurer to provide compensation or other consideration based upon the vocational expert's opinion or outcome of the vocational expert's earning power assessment interview.

Insurer – An insurer is any of the following:

- (a) A workers' compensation insurance carrier.
- (b) The State Workers' Insurance Fund of the Department.
- (c) An employer authorized by the Department to self-insure its workers' compensation liability under section 305 of the act (77 P.S. § 501).
- (d) A group of employers authorized by the Department to act as a self-insurance fund under section 802 of the act (77 P.S. § 1036.2).

§ 123.202. Qualifications for current vocational experts under Act 57 of 1996.

(a) [To be an expert approved by the Department] This section applies to individuals who, before (the effective date of these amendments), conducted [for the purpose of conducting] earning power assessment interviews [, the individual shall possess a minimum of one of] under section 306(b) of the act (77 P.S. § 512(2)). These individuals continue to meet the qualifications established under section 306(b) if they possess the following:

(1) A minimum of one of the following:

[1](i) Both of the following:

[i](A) Certification by one of the following Nationally recognized professional organizations:

[A](I) The American Board of Vocational Experts.

[B](II) The Commission on Rehabilitation Counselor Certification.

[C](III) The Commission on Disability Management Specialists Certification.

[D](IV) The National Board of Certified Counselors.

[E](V) Other Nationally recognized professional organizations, [approved] published by the Department in the *Pennsylvania Bulletin*.

[ii](B) One year experience in analyzing labor market information and conditions, industrial and occupational trends, with primary duties providing actual vocational rehabilitation services, which include the following:

[A](I) Job seeking skills.

[B](II) Job development.

[C](III) Job analysis.

[D](IV) Career exploration.

[E](V) Placement of individuals with disabilities.

[F](VI) Vocational testing and assessment.

(2) Certification by a Nationally recognized professional organization specified in subparagraph [(1)](i)(A) under the direct supervision of an individual possessing the criteria in paragraph (1)(i).

(3) Possession of a Bachelor's degree or a valid license issued by the Department of State's Bureau of Professional and Occupational Affairs, as long as the individual is under the direct supervision of an individual possessing the criteria in paragraph (1)(i).

(4) At least 5 years experience primarily in the workers' compensation field prior to August 23, 1996, as a vocational evaluator, with experience in analyzing labor market information and conditions, industrial and occupational trends, with primary duties providing actual vocational rehabilitation services, which include, but are not limited to, the following:

(i) Job seeking skills.

- (ii) Job development.
- (iii) Job analysis.
- (iv) Career exploration.
- (v) Placement of individuals with disabilities.

(b) Individuals meeting the minimum qualifications under subsection (a) are approved to conduct earning power assessment interviews under section 449 of the act (77 P.S. § 1000.5).

§ 123.202a. Qualifications for vocational experts under Act 53 of 2003.

(a) This section applies to individuals who, before (the effective date of these amendments), have not conducted earning power assessment interviews under section 306(b) of the act (77 P.S. § 512(2)). These individuals meet the qualifications established under section 306(b) if they possess one of the following:

(1) A current license, in good standing, as a Licensed Professional Counselor under the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P.S. §§ 1901-1920.2).

(2) A Bachelor's or post-graduate degree in rehabilitation or a related counseling field and one of the following:

(i) Certification by any of the following Nationally recognized professional organizations:

(A) The American Board of Vocational Experts.

(B) The Commission on Rehabilitation Counselor Certification.

(C) The Commission on Disability Management Specialists Certification.

(D) The National Board of Certified Counselors.

(E) Other Nationally recognized professional organizations, published by the Department in the *Pennsylvania Bulletin*.

(ii) One year's experience in vocational analysis, evaluation and testing, placement of individuals with disabilities, and analyzing labor market information and occupational trends.

(b) Individuals meeting the minimum qualifications under subsection (a) are approved to conduct earning power assessment interviews under section 449 of the act (77 P.S. § 1000.5).

§ 123.203. [Credibility determinations] Role of workers' compensation judges.

[Credibility determinations relating to the experts contemplated by this subchapter are within the province of the workers' compensation judge.]

(a) A workers' compensation judge will determine whether a vocational expert meets the minimum qualifications established in sections 123.202 (relating to qualifications for current vocational experts under Act 57 of 1996) and 123.202a (relating to qualifications for vocational experts under Act 53 of 2003).

(b) Except for subsection (c), this subchapter shall not limit a workers' compensation judge's other statutory or regulatory authority and the ability to determine a vocational expert's bias or objectivity.

(c) A workers' compensation judge may not consider the results of an earning power assessment interview if the vocational expert has not complied with section 123.204 (relating to conduct of expert witness) or if the insurer has not complied with the requirements of section 123.205 (relating to financial interest disclosure).

§ 123.204. Conduct of expert witness.

(a) A vocational expert who conducts an earning power assessment interview on an insurer's behalf shall disclose to the employe the role and limits of the vocational expert's relationship with the insurer.

(b) A vocational expert who conducts an earning power assessment interview on an insurer's behalf shall generate written documentation, in the form of case notes or in a report, as to the expert's involvement in the litigation and conclusions from the interview.

§ 123.205. Financial interest disclosure.

(a) For the purposes of this section, a third-party administrator or another entity that performs services on behalf of an insurer, as specified in section 441(c) of the act (77 P.S. § 997(c)), is an insurer.

(b) Before an insurer refers an employe for an earning power assessment interview, the insurer shall disclose to the employe, under section 306 (b)(2.1) of the act (77 P.S. § 512(2.1), any financial interest the insurer has with the person or entity conducting the earning power assessment interview.

(c) The insurer is not required to disclose under this section the mere payment of the vocational interview's cost, without receipt of some other additional form of consideration.



THE SECRETARY
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www.dli.state.pa.us

June 27, 2005

The Honorable John R. McGinley, Esquire
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

**Re: Proposed Rulemaking
Department of Labor & Industry
Vocational Experts, No. 12-68**

Dear Chairman McGinley:

Enclosed please find a regulatory package consisting of a face sheet, preamble, annex and regulatory analysis form prepared by the Department of Labor and Industry for this proposed rulemaking. This proposed rulemaking concerns qualifications for vocational experts in workers' compensation proceedings and establishes ethical rules and financial interest disclosure requirements.


The proposed rulemaking will amend the Pennsylvania Code (34 Pa. Code, Chapter 123).

Written comments, suggestions or questions should be directed to Eileen K. Wunsch, Chief, Health Care Services Division, Bureau of Workers' Compensation, P.O. Box 15121, Harrisburg, PA 15121 (Telephone: 717-783-5421; Fax: 717-772-0342; Email: ewunsch@state.pa.us)

Proposed Rulemaking
Vocational Experts, No. 12-68
Page 2

The Department's staff will provide your staff with any assistance required to facilitate your review of this proposal.

Sincerely,



Stephen M. Schmerin

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 12-68
 SUBJECT: Qualifications for Vocational Experts
 AGENCY: DEPARTMENT OF LABOR & INDUSTRY

TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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 DEPARTMENT OF LABOR & INDUSTRY

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6-27-05	<i>Steve A. Webb</i>	HOUSE COMMITTEE ON LABOR RELATIONS
6-27-05	<i>Burton Sykes</i>	
6/27/05	<i>David J. Kim</i>	SENATE COMMITTEE ON LABOR & INDUSTRY
6/27/05	<i>Kathy Benton</i>	
6/24/05	<i>E. Page</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
6/27/05	<i>Margie Garas</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)