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MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

September 7, 2005

Honorable Stephen M. Schmerin, Secretary  
Department of Labor and Industry  
1700 Labor and Industry Building  
Harrisburg, PA 17120

Re: Regulation #12-68 (IRRC #2485)  
Department of Labor and Industry  
Qualifications for Vocational Experts

Dear Secretary Schmerin:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Kaufman", is written over a horizontal line.

Kim Kaufman  
Executive Director

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Enclosure

cc: Honorable Joseph B. Scarnati, III, Chairman, Senate Labor and Industry Committee  
Honorable Christine M. Tartaglione, Minority Chairman, Senate Labor and Industry Committee  
Honorable Bob Allen, Majority Chairman, House Labor Relations Committee  
Honorable Robert E. Belfanti, Jr., Democratic Chairman, House Labor Relations Committee

# Comments of the Independent Regulatory Review Commission

on

## Department of Labor and Industry Regulation #12-68 (IRRC #2485)

### Qualifications for Vocational Experts

September 7, 2005

We submit for your consideration the following comments on the proposed rulemaking published in the July 9, 2005 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Labor and Industry to respond to all comments received from us or any other source.

#### **1. Section 123.201b. Definitions. – Clarity.**

##### *Financial interest, Subsection (ii)*

This subsection uses the term “employment relationship,” whereas Subsections (i) and (iii) use the terms “employs the vocational expert” and “employing the vocational expert.” If the phrase “employment relationship” is intended to include circumstances other than the employment of the vocational expert by the insurer, the Department should clarify that intent.

#### **2. Section 123.202a. Qualifications for vocational experts under Act 53 of 2003. – Protection of the public welfare; Feasibility; Reasonableness.**

##### *Subsection (a)(1)*

Under this subsection, a vocational expert is qualified if he or she possesses a professional counselor license. Although the list of professional counselor examinations in 49 Pa. Code Section 49.11 includes the “Certified Rehabilitation Counselor (CRC) Examination given by CRCC,” it also includes other examinations that do not appear to be relevant to vocational experts, such as the “Art Therapy Credentials Board (ATCB) Certification Examination given by ATCB” and the “Advanced Alcohol & Other Drug Abuse Counselor Examination given by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse Inc.” The Department should review 49 Pa. Code Section 49.11 and narrow the scope of examinations the Department finds acceptable for a vocational expert.

##### *Subsection (a)(2)*

Under this subsection, a person holding a bachelors degree must also have either certification by a professional organization or one year’s experience. A person who is certified by a professional organization is accountable to that organization. How will a person with one year’s experience

be held accountable for their actions? Why is the option for a lower level of accountability provided?

**3. Section 123.204. Conduct of expert witness. – Reasonableness.**

*Code of Professional Ethics for Rehabilitation Counselors*

Section 123.201 states that the “act's requirements for compliance with the Code of Professional Ethics for Rehabilitation Counselors . . . are also contained in this subchapter.” However, we did not find any further reference to the Code of Professional Ethics for Rehabilitation Counselors (Code of Ethics). We agree with the Insurance Federation of Pennsylvania, Inc. that a specific reference to the Code of Ethics should be added to Section 123.204.

*Subsection (a)*

The disclosure required by this subsection is needed for the workers' compensation judge to make a compliance determination under Section 123.203(c). Therefore, we recommend that the regulation require this disclosure to be in writing.

This subsection does not specify when disclosure must be made to the employee. The Pennsylvania Workers' Compensation Judges' Association commented that a time frame is needed so a judge can determine compliance with Section 123.203(c). We agree and recommend that the Department add language addressing the time frame for disclosure to the appropriate section of its regulations.

*Subsection (b)*

This subsection requires documentation of the interview, but does not state what must be done with the documentation. Commentators questioned whether the employee gets a copy and when. An employee who undergoes this assessment has a vested interest in the outcome regardless of whether the outcome was in the employee's favor or the insurer's favor. The Department should add the requirement, in the appropriate section of its regulations, that the employee be given a copy of the vocational expert's report within a specific, reasonable time frame.