

**PROFESSIONAL REHABILITATION SERVICES, LTD.**

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March 10, 2016

B. Michele Sumara, Attorney at Law  
Hawks Quindel  
222 E. Erie Street, Suite 210  
P.O. Box 442  
Milwaukee, WI 53201

Re: Dr. Sabina Burton

Dear Attorney B. Sumara:

Thank you for your recent correspondence regarding my evaluation of Dr. Sabina L. Burton. You have asked that I review a motion *in limine* regarding my evaluation of Dr. Burton. I reviewed the motion that is dated March 4, 2016. The motion questions whether the findings and conclusions discussed in my report regarding Dr. Burton, dated 7/31/15, are based on sufficient facts, data, reliable principals, and methodology. The motion indicates that for an individual to render an expert opinion, they must be an expert in the subject matter they intend to offer testimony in. If they are experts in the field, the motion indicates they believe that the testimony has to be reliable based on scientific theory that may be subjected to peer review, publication, and generally accepted in the scientific (or professional) community.

As you know, Dr. Burton was referred to me for an evaluation to assess vocational impairment and loss of earning capacity. That analysis related to her claim of discrimination and retaliation in the work place.

I have worked as a vocational rehabilitation counselor since completing Master degree level training at the University of Wisconsin-Madison in 1988. Vocational

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rehabilitation counselors are recognized within the vocational/employment field and the courts as experts who are qualified to perform earning capacity assessments. The rehabilitation process includes an extensive assessment of an individuals' assets, limitations, and preferences in the context of various labor market characteristics and information. My undergraduate and graduate training at the University of Wisconsin Madison provided key foundational building blocks to understanding the vocational rehabilitation process and developing skills necessary to assess vocational potential and earning capacity. My graduate degree program was CORE accredited (counselor and rehabilitation education). It included coursework on the counseling theory, career counseling, occupational information, labor market information, job placement, psychometric testing, vocational evaluation, and other vocational rehabilitation relevant coursework. It also included practical experiences in job development, vocational case management, vocational assessment, and generally, vocational counseling. My training and experience has prepared me to evaluate people from all occupational backgrounds, not just the ones I have personally worked in.

After graduating from the University of Wisconsin-Madison, I have worked as a vocational rehabilitation counselor. A significant focus in my practice has been on the evaluation of vocational potential and various earning capacity issues. I have been asked to address those issues by professionals in the field of rehabilitation, psychology, medicine, and the legal community. I have received referrals from attorneys, employers, insurance companies, the Wisconsin Division of Vocational Rehabilitation (DVR), the court (court commissioners), educators, psychologists, physicians, and have had self-referrals. Typical issues addressed in those evaluations revolve around vocational potential and earning capacity. In many cases, the specific issue is a loss of earning capacity brought about by a specific event like an injury, termination, failure to hire, or other similar occurrences. Over the last 28 years I have conducted over 4,000 to 5,000 such vocational evaluations. I have experience counseling and evaluating people for many occupational groups (including academia). I have written nearly as many reports. I have been accepted as an expert and have testified in state court, federal court, administrative hearings, and mediation/arbitrations.

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I am a certified rehabilitation counselor (CRC). To hold that credential, one must have a combination of education and experience. Currently, educational requirements include a Master degree in rehabilitation or a closely related field. Certified rehabilitation counselors practice in many environments including vocational evaluation or forensic environments where they perform loss of earning capacity evaluations. I have held that credential continuously from 1991 to the present.

I am also a licensed professional counselor (LPC). The state of Wisconsin requires that anyone practicing as a counselor hold that credential. Similar to the CRC, a Master degree plus experience is required. I meet the requirements to work and practice as a rehabilitation counselor in the state of Wisconsin.

In addition to my educational background and experience, I have been active in professional development within my field. Over the years, I have completed the required continuing educational for multiple licenses and/or certifications. I have also been an active member of various professional groups. I have held statewide elected offices in the Wisconsin Rehabilitation Association and the Wisconsin Rehabilitation Counselor Association. I had been the statewide president for both groups. In each case, I was elected by my peers to hold those offices. Many of those peers were other rehabilitation counselors and/or vocational evaluators. I have also held similar positions at the national level.

I have given presentations at statewide conferences and national meetings. I frequently give lectures at the University of Wisconsin-Madison in the graduate rehabilitation counselor program. I regularly supervise their students in practical and internship experiences. A significant component of the presentations that I give and the training I provide for graduate students is the vocational rehabilitation process and vocational evaluations including loss of earning capacity evaluation. I am regularly asked by the University of Wisconsin-Madison to provide supervision and training to rehabilitation counseling students related to the type of evaluation I conducted in this case.

In the March 4, 2016 motion *in limine*, the general requirement that a witness may be an expert in the subject matter he intends to offer testimony on is discussed. As noted above, I have worked in the vocational rehabilitation field since 1988. I have been regarded as an expert in the field by my peers, other professionals, and the courts. My background providing expert testimony has been in matters specifically related to the type of question relevant in this case. Hundreds of times over the past 25 plus years, I have given courtroom testimony regarding a vocational impairment or diminished ability to earn.

The 3/04/16 motion *in limine* goes on to discuss the logical requirements. The methodology I used when I evaluated Dr. Burton was consistent with that used by me in thousands of other cases as well as that utilized by other individuals who perform loss of earning capacity evaluations and related work. It is the methodology that is consistent with my graduate level rehabilitation counselor training at the University of Wisconsin-Madison, as well as the type of training that would have been provided in other similar institutions across the country. It included an evaluation of an individual's vocational assets, limitations, preferences, and other important characteristics in the context of labor market conditions and specific questions or issues. While each case that a vocational counselor or evaluator considers is individual and unique, the general protocol and methodology includes consideration of important background factors.

There is not one formula or recipe for completing a loss of earning capacity analysis. As discussed above, there is a general process and protocol. However, the specific question in each case is individual. Each person's impact and experience is at least slightly different. The accepted process typically includes a vocational diagnostic interview. That interview allows the examiner to obtain important background and worker trait information from the evaluatee. Information regarding their education, social background, residence, work history, skill development, and other important areas are discovered. The individual's place in their unique career track is identified. The vocational interview is one source of information that allows the examiner to obtain information regarding vocational assets and limitations.

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Document review is also commonly part of the loss of earning capacity evaluation process. Again, the specific documents necessary are as unique and individual as each case is. They may include variable amounts of information regarding an individual's education, background, historical earnings, medical status, and the specific issues at hand for each case.

Information from record review and the vocational interview are collected and compared to the requirements of the labor market. The examiner relies on his/her training, background, and various sources of labor market information to identify the individual's potential placement in one or more specific occupational groups and their placement along the earning continuum inside each group. That information, along with the experience and interpretative skills of the evaluator becomes the final analysis portion of the loss of earning capacity assessment.

The process discussed above is generally described in various writings within the field of rehabilitation counseling and economics. It has been laid out in books and other writings by various authors including Weed, Field, Robinson, and Owings, among others. It is the process that was utilized in this case. My report dated 7/31/15 documents the clinical interview completed and the documents reviewed. It goes through the various factors and characteristics associated with Dr. Burton's education, work history, and skill development. It discusses her earnings and her career track. It also includes a discussion of labor market information and earnings of others in her relatively small niche within the larger labor market.

The 3/04/16 motion *in limine* generally discusses expert testimony. They cite cases that have set the precedence that the expert needs to establish their expertise and ability to testify in a given field. With the education and experiential characteristics discussed above, I have evaluated thousands of cases over my career and have been recognized as an expert in vocational matters and loss of earning capacity issues like the ones that question in the Burton matter. The process and methodology previously employed by me and my peers in the field was followed in this case. My report describes the various characteristics, facts, and factors that have an impact on

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Dr. Burton's vocational prospects and earning potential. In the vocational rehabilitation field, those factors and characteristics, along with labor market information (also discussed in my report) are the data that needs to be considered when evaluating loss of earning capacity. The definition of those data points is again, consistent with various writings and textbooks and the rehabilitation literature. It is also consistent with standards set forth by administrative bodies including the Wisconsin Administrative Court, when discussing earning capacity analysis in the context of Workers Compensation matters. There is consistency regarding the definition of those subjects and a description of characteristics or data that should be considered. A challenge regarding the value, type, or weight of data considered is different than a methodological challenge. The accepted and necessary methodology and data collection associated with earning capacity evaluations was completed during this evaluation.

Thank you for allowing me to review this information. Please feel free to contact me if you have any questions or if you require additional information.

Sincerely,

  
Kevin L. Schutz, M.S., LPC   
Vocational Rehabilitation Counselor  
(Wisconsin License #2600)

KLS/smc