

**REPORT OF THE
BOARD OF COMMERCE ON**

**The Need for Regulating
Private Vocational
Rehabilitation Providers**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 6

**COMMONWEALTH OF VIRGINIA
RICHMOND
1991**



COMMONWEALTH of VIRGINIA

Department of Commerce

Board of Commerce

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October 5, 1990

The Honorable Douglas L. Wilder
Governor of Virginia, and
The General Assembly of Virginia
3rd Floor, State Capitol
Richmond, VA 23219

Dear Governor Wilder and General Assembly of Virginia:

The report transmitted herewith is pursuant to Senate Joint Resolution 55 of the 1990 session of the General Assembly of Virginia. This Resolution requested the Board of Commerce to study the need for regulation of private vocational rehabilitation providers and report its findings and recommendations to the 1991 Session of the General Assembly.

Respectfully submitted,

A handwritten signature in cursive script that reads "W. Randy Wright".

W. Randy Wright
Chairman

WRW/psr

Board of Commerce Report
on the Need for
**Regulating Private Vocational
Rehabilitation Providers**
(Senate Joint Resolution 55)

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Acknowledgements

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VIRGINIA BOARD OF COMMERCE
REPORT ON THE REGULATION OF
PRIVATE VOCATIONAL REHABILITATION PROVIDERS

| | PAGE |
|--|------|
| I. EXECUTIVE SUMMARY | 1 |
| A. Study Overview | 2 |
| B. Key Findings | 2 |
| C. Conclusions | 3 |
| D. Recommendation | 3 |
| II. INTRODUCTION | 4 |
| A. Background and Purpose of this Report | 5 |
| B. Profile of the Occupation | 6 |
| C. Private Vocational Rehabilitation Services | 7 |
| III. KEY ISSUES | 10 |
| A. Limited Statutory Reference to Vocational Rehabilitation | 11 |
| B. Medical Management Versus Vocational Rehabilitation | 12 |
| C. Professional Trade Associations and Credentialing Agencies | 12 |
| D. Harm to the Public Health, Safety and Welfare | 13 |
| IV. INFORMATION GATHERING AND PUBLIC COMMENTS | 15 |
| A. Methodology | 16 |
| B. Questionnaires | 16 |
| C. Public Hearings | 16 |
| D. Written Comments | 17 |
| E. Survey of Vocational Rehabilitation Providers | 17 |
| F. Survey of Other States | 17 |
| G. Survey of Industrial Commissioners and Deputy Commissioners | 18 |

| | PAGE |
|--|------|
| V. SUMMARY | 19 |
| A. Key Findings | 20 |
| B. Conclusions | 22 |
| C. Recommendation | 22 |
| VI. APPENDICES | 23 |
| A. Senate Joint Resolution 55 | |
| B. Public Hearing Participants | |
| C. Cumulative List of Written Comments | |
| D. Survey of Vocational Rehabilitation Providers with Results | |
| E. Survey of Other States with Results | |
| F. Survey of Industrial Commissioners and Deputy Commissioners with Results | |

- I. EXECUTIVE SUMMARY
 - A. Study Overview
 - B. Key Findings
 - C. Conclusions
 - D. Recommendation

I. Executive Summary

A. Study Overview

The Joint Legislative Audit and Review Commission's "Review of the Virginia Department of Workers' Compensation" recommended that the General Assembly initiate further study of private vocational rehabilitation providers in Virginia. Passage of Senate Joint Resolution 55 accomplished that recommendation by requesting the Board of Commerce to study the need for regulating private vocational rehabilitation providers and the type of regulation needed.

The Board of Commerce reviewed, through the means of extensive research, three public hearings, written comments, and surveys, the nature of this occupation and its unregulated effect on public health, safety, and welfare.

The Board of Commerce based its recommendations on an extensive analysis of this information.

B. Key Findings

1. Any person in Virginia can offer services and purport to be a private vocational rehabilitation provider regardless of the nature and extent of academic preparation and employment experience.
2. The definition of vocational rehabilitation is unclear, and the Virginia Workers' Compensation statute does not specifically state the intent or prioritize the expected outcomes of vocational rehabilitation.
3. Although the majority of vocational rehabilitation providers who work with Workers' Compensation claimants appear to provide quality service, there are isolated cases in which claimants were placed in unsuitable employment, or attempts were made to do so, in an effort to terminate the claimants' compensation benefits.
4. Numerous professional associations and national accrediting organizations exist whose certification designations are granted after certain education, training and examination requirements have been met.

5. The majority of the Industrial Commissioners and Deputy Industrial Commissioners who responded to the Board of Commerce survey felt that the public was being harmed by unregulated vocational rehabilitation providers.

C. Conclusions

1. The Board of Commerce agrees with the JLARC recommendation to the General Assembly that the Department of Workers' Compensation (DWC) refine its definition of vocational rehabilitation and clarify the purpose and expected outcome of the vocational rehabilitation services addressed by the statute.
2. The Board of Commerce concludes that members of the public seek, or are referred to, the services of private vocational rehabilitation counselors when they may be in a vulnerable situation. Under these circumstances, the unregulated practice of the occupation can potentially harm or endanger the health, safety and welfare of the public, and clients may need assurance that practitioners have met reasonable and appropriate professional standards.
3. While some practitioners of vocational rehabilitation counseling services may be licensed professional counselors, registered nurses, members of other regulated health care professions, or individuals who have met voluntary credentialing standards, the Board concludes that the majority of providers are not licensed or certified by the Commonwealth, and many may not be credentialed by any recognized certifying agency.

D. Recommendation

The Board of Commerce recommends that the General Assembly amend and clarify the language of the Workers' Compensation Act regarding the purpose of vocational rehabilitation. The Board recommends that the General Assembly consider legislation establishing a registration program, at either the Department of Commerce or at the Department of Health Professions, for a period of two years, for all individuals practicing vocational rehabilitation in Virginia. The legislation should include the authority to receive and evaluate complaints against practitioners. Required registration data should include, but not be limited to, education background and professional employment experience. After the two year registration period, the occupation should be re-evaluated to determine if regulation is warranted, and if so, to what degree.

II. INTRODUCTION

- A. Background and Purpose of this Report
- B. Profile of the Occupation
- C. Private Vocational Rehabilitation Services

II. Introduction

A. Background and Purpose of this Report

The 1985 Appropriations Act directed the Joint Legislative Audit and Review Commission (JLARC) to initiate a comprehensive audit and review of the independent agencies of State government.

JLARC's series of reports concluded with the February 1990 release of staff findings and recommendations on the Virginia Workers Compensation Act and the operations of the Department of Workers Compensation.

One of the recommendations set forth in JLARC's report was that the Department of Commerce assess potential need for state regulation of private vocational rehabilitation providers. The 1990 General Assembly responded with the passage of Senate Joint Resolution 55. See Appendix A for a copy of Senate Joint Resolution 55.

Section 54.1-100 of the Code of Virginia (1950, as amended) states that "no regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety, or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means."

Using these requirements set in Section 54.1-100 and Section 54.1-311 of the Code of Virginia, which outlines the degrees of regulation as well as the criteria for determining such degrees, the Board of Commerce began a six month study of this issue. This study included information gathering, a complaint search, surveys to involved and interested parties, three public hearings, and receipt of written comments. This report will serve

to outline the findings of this study and the Board of Commerce's recommendations.

B. Profile of the Occupation

The International Labor Office (ILO) in 1973 adopted a broad definition of rehabilitation: "The restoration of handicapped persons to the fullest physical, mental, social, vocational and economic usefulness of which they are capable." The ILO further defined vocational rehabilitation as the "continuous and coordinated process of rehabilitation which involves the provisions of those vocational services, e.g., vocational guidance, vocational training and selective placement designed to assist a disabled person to secure and retain suitable employment." (George N. Wright, Total Rehabilitation; Boston, MA; Little, Brown and Company, 1980). The Board of Commerce study revealed that the definition of vocational rehabilitation was quite broad, including labor market assessments, vocational evaluation, counseling, job coaching, job development, job placement, on-the-job training, and follow-up. These services are usually designed to return the injured worker to the same job whenever possible or to prepare the injured worker for employment in another occupation.

The Workers Compensation statute for Virginia provides for the Department of Rehabilitative Services (DRS), which is responsible for ensuring that injured workers receive rehabilitative services. It is recognized that the workload for public vocational rehabilitation specialists is such that they cannot provide substantial levels of the services needed. Thus, the use of private vocational rehabilitation services are common, the costs of which are borne by the injured worker's employer or by insurance companies which have vocational rehabilitation consultants on staff.

The Board of Commerce's research revealed that under current law any person, regardless of education and training, could purport to be a vocational rehabilitation provider. The experience and education levels of the 260 vocational rehabilitation providers who completed the survey was quite high, but 60.3% of those responding worked in the public sector. Testimony at the public hearings revealed that some vocational rehabilitation firms employ college graduates no matter what their field of study, give them limited training and expect them to see the injured claimant biweekly, to accompany the claimant to physician appointments and to look for appropriate employment. The Board concluded that the majority of people practicing the occupation in Virginia fall into the following four categories:

1. Licensed professional counselors as defined and licensed by the Board of Health Professions (the survey data revealed that only 8.2% of the 260 respondents were licensed professional counselors).

Licensure is by examination with education (graduate degree) and experience requirements met prior to the examination;

2. Rehabilitative nurses working for an insurance company or in a rehabilitation practice and licensed as a Registered Nurse by the Board of Health Professions;
3. Vocational rehabilitation providers who are unregulated by the State, but who seem to have high levels of appropriate education, experience, and who possess credentials from national accreditation organizations in the field;
4. Vocational rehabilitation providers who are unregulated by the State with minimum levels of education and experience.

These unregulated providers offer services outside the definition of "professional counselor" which in the current regulations for Licensed Professional Counselors in the Commonwealth of Virginia is defined as "a person trained in the counseling and guidance services with an emphasis on individual and group guidance and counseling designed to assist individuals in achieving more effective personal, social, educational and career development and adjustment."

Given the health-related nature of the occupation and the fact that many individuals currently engaged in the practice are already regulants of the Department of Health Professions, the Board of Commerce believes the General Assembly may be inclined to assign any regulatory program for this occupation to that agency, although the Department of Commerce is also adequately structured to accept it.

C. Private Vocational Rehabilitation Services

Private vocational rehabilitation providers either directly provide or arrange for the following services as defined by the Federal Rehabilitative Service Administration, depending on the individual rehabilitant's needs:

1. Evaluation of vocational rehabilitation potential, including diagnostic and related services

2. Counseling, guidance, referral, and placement, including post-employment services necessary to maintain employment.
3. Vocational and other training services, including personal and vocational adjustment, books, and other training materials.
4. Services to family members of eligible individuals when such services are necessary to the rehabilitation of the handicapped individual undergoing services.
5. Coordination of physical and mental restoration services, including, but not limited to, treatment of corrective surgery, hospitalization, therapeutic recreation, prosthetic and orthotic devices, dental services, eyeglasses and visual services, and treatment for mental and emotional disorders.
6. Interpreter services for deaf individuals, and reader services for blind individuals.
7. Rehabilitation teaching services and orientation and mobility services for the blind.
8. Occupational licenses, tools, equipment, and initial stocks and supplies.
9. Transportation in connection with the rendering of any vocational rehabilitation service.
10. Telecommunications, sensory, and other technological aids and devices.
11. Management services for small businesses operated by the severely handicapped.
12. Placement in suitable employment.
13. Post-employment services as necessary.
14. Other goods and services as needed.

In addition to all of the above listed services for vocational rehabilitation, vocational rehabilitation providers may arrange, for independent living rehabilitation clients, these special rehabilitation services:

1. Housing, including appropriate modifications of space used.

2. Therapeutic treatment.
3. Health maintenance.
4. Attendant care.
5. Peer counseling.
6. Recreational activities.
7. Services to children, including the development of communication and other skills.
8. Any preventative services to decrease future needs for rehabilitation services.

III. KEY ISSUES

- A. Limited Statutory Reference to Vocational Rehabilitation
- B. Medical Management Versus Vocational Rehabilitation
- C. Professional Trade Associations and Credentialing Agencies
- D. Harm to the Public Health, Safety and Welfare

III. Key Issues

A. Limited Statutory Reference to Vocational Rehabilitation

As noted in the JLARC Report, only "vocational rehabilitation training" is specifically identified in Section 65.1-88 of the Code of Virginia. This is somewhat limiting in that vocational rehabilitation involves a wide range of services. Amendments to the statute in 1989 clarified that rehabilitation training shall "take into account the employee's pre-injury job and wage classification; his or her age, aptitude and level of education; the likelihood of success in the new vocation; and the relative cost and benefits to be derived from such services."

In 1988, the Industrial Commission offered its own interpretations of the purposes of vocational rehabilitation, stating that reasonable and necessary vocational rehabilitation has two objectives: "1) to return an injured employee to gainful employment, and 2) to reduce the compensation liability of the employer."

The unclear priority in these two objectives is the very problem of which the Board of Commerce heard testimony. Claimants who do not cooperate with vocational rehabilitation providers can face loss of compensation unless the Industrial Commission rules that such refusal was justified. Although no claimants came forward to tell of such procedures, vocational rehabilitation providers, litigation attorneys, Industrial Commissioners and Deputy Commissioners did testify to such activity. Of the ten Commissioners and Deputy Commissioners who responded to a survey, 80.0% had knowledge of or had witnessed such practices.

Although the Board believes that most vocational rehabilitation specialists provide quality services, the question arises as to who the vocational rehabilitation specialist's client really is - the insurance company, the employer who pays for the services, or the injured employee.

The lack of clear intent and prioritized outcomes expected in vocational rehabilitation efforts makes such services hard to monitor and gives the injured employee little assurance that proper rehabilitation efforts are being taken that are in the employee's best interests.

B. Medical Management Versus Vocational Rehabilitation

The public hearings and written comments brought attention to two groups of practitioners: Registered Nurses and Vocational Rehabilitation Specialists, or Counselors.

While all agree that rehabilitation has become a multi-disciplinary field, many rehabilitation counselors believe that all practitioners should have a degree in counseling, any other degree (such as nursing) notwithstanding. Registered nurses, however, argue that medical coordination or medical management is a vital component of an injured worker's rehabilitation and that professional nurses need to work closely with the attending physician to make sure that the injured person reaches his maximum medical potential of recovery.

The Virginia Association of Rehabilitation Nurses (VARN) points to the fact that rehabilitation nursing is an area of nursing within the occupation, and education and training for entry are included in the curriculum of accredited nursing schools which nurses must complete before becoming licensed by the Virginia Board of Nursing. Again, the definition of vocational rehabilitation poses a problem since plaintiff attorneys may agree that registered nurses should be involved in the medical management of the case or in ascertaining the job limitations that afflict the injured employee, but they do not wish to see such nurses involved in vocational evaluation and counseling, or job placement and training.

C. Professional Trade Associations and Credentialing Agencies

There are several professional trade associations organized to promote the occupation, to educate members on national policy and trends, and to provide codes of ethics and continuing education opportunities. The Virginia Chapters of these associations include:

- * Virginia NARPPS - the National Association of Rehabilitation Professionals in the Private Sector
- * VARN - the Virginia Association of Rehabilitation Nurses
- * Virginia NRA - National Rehabilitation Association
- * Virginia Association of Rehabilitation Counselors
- * Virginia Association of Rehabilitation Facilities

National certification programs have been an outgrowth of these associations. Such certifications are achieved by satisfying specific educational and employment experience requirements and passing the certification examinations.

The following is a list of such recognized certifications:

- Certified Rehabilitation Counselor (CRC)
- Certified Insurance Rehabilitation Specialist (CIRS)
- Certified Vocational Evaluator (CVE)
- Certified Work Adjustment Specialist (CWA)
- Certified Rehabilitation Registered Nurse (CRRN)

While these certifications are recognized by members of the occupation, members of the general public cannot be expected to have knowledge of such credentials when faced with the necessity for choosing, or using, a qualified vocational rehabilitation provider.

D. Harm to the Public Health, Safety and Welfare

Although vocational rehabilitation has been in existence since the 1920's, rapid growth has occurred in the past decade. Some practitioners have seen that there are profits to be made. Economics play a major role when a rehabilitation company can hire a college graduate with no experience instead of a masters degree person with a license as a professional counselor. Unfortunately, the public's interest may not be paramount when services are provided. Some examples of harm presented to the Board of Commerce included:

- A young man with a back problem was referred to a private rehabilitation group. They found him a job at \$3.35 per hour working for a pizza restaurant. Although his physician had set lifting limits at 15 pounds, the employee was responsible for lifting heavy pizza sauce cans. The man was accused of "sabotaging" efforts for vocational rehabilitation and was eventually placed in mental health counseling.
- A state trooper in a small community became disabled. His vocational rehabilitation provider sent him to fast food restaurants to apply for positions. As a well known and highly respected person in his community, he considered it

humiliating to be required to apply for the positions. He was reported as "refusing to cooperate in job placement" and the insurance companies filed for suspension of benefits.

- A woman sustained a rotator cuff (shoulder) tear injury while working. She was an electronics engineer who frequently had to work above her head on electrical components. The rehabilitation case manager arranged for a position in computer repair. The job was not compatible with her limitations and professional capabilities, and she indicated that she was unable to continue. The rehabilitation case manager went to her home after work hours and informed her that if she quit, the case manager would see to it that her benefits would be terminated.

These cases are representative of the abuses which occur; however, the Board did not find such abuses to be widespread. Such cases are indicative of the importance of providing qualified care at a time when an individual is quite vulnerable; of cooperation and consultation with medical providers, and of having proper training and education in the psychological, the medical, and the vocational testing aspects of vocational rehabilitation.

IV. INFORMATION GATHERING AND PUBLIC COMMENTS

- A. Methodology
- B. Questionnaires
- C. Public Hearings
- D. Written Comments
- E. Survey of Vocational Rehabilitation Providers
- F. Survey of Other States
- G. Survey of Industrial Commissioners and Deputy Commissioners

IV. Information Gathering and Public Comment

A. Methodology

Section 54.1-311 of the Code of Virginia requires that the Board of Commerce conduct an extensive review of an occupation to determine the proper degree of regulation, if any, that should be implemented. The following section outlines the means by which the Board of Commerce compiled information about the occupation and complaints and abuses which have or may occur.

B. Questionnaires

Board of Commerce staff circulated a questionnaire to several of the professional trade associations listed in Section III, C. The questionnaire was based on the criteria for regulation as outlined in Sections 54.1-100 and 54.1-311 of the Code of Virginia. The Virginia Association of Rehabilitation Nurses and the Virginia Chapter of the National Association of Rehabilitation Professionals in the Private Sector responded to the questionnaire with insight into the occupation and their views on state regulation.

C. Public Hearings

Three public hearings were conducted by the Board of Commerce to gather information about the vocational rehabilitation industry and complaints relating to the occupation. Hearings were well attended in Richmond on May 24, 1990; in Falls Church on June 1, 1990; and in Roanoke on June 11, 1990. Representatives from the National Association of Rehabilitation Professionals in the Private Sector presented testimony supporting a one year registration of vocational rehabilitation providers. Information to be gathered should include, but not be limited to, education, employment history, professional association membership(s), and certifications. The Virginia Chapter of NARPPS supports such a system to identify the members of the occupation before attempting to implement a certification program.

Testimony was also presented by the Virginia Trial Lawyers Association, by Deputy Industrial Commissioners, by members of Virginia Association of Rehabilitation Nurses, and by numerous public and private vocational rehabilitation providers. See Appendix B for a listing of the public hearing participants.

D. Written Comments

Public hearing notices also requested that written comments be submitted in lieu of testimony. The Board received numerous written comments which are listed as Appendix C.

The written comments provided limited examples of public harm and abuses within the private rehabilitation sector. Comments also supported the previously expressed differences of opinion on the role of registered nurses and the role of rehabilitation counselors in the rehabilitation process.

E. Survey of Vocational Rehabilitation Providers

Membership lists from the Virginia Chapter of the National Rehabilitation Association, Virginia Association of Rehabilitation Nurses, and the Association of Rehabilitation Professionals in the Private Sector were used in circulating surveys to members of the occupation. Board of Commerce staff sent 763 surveys, and 260 completed surveys were returned. See Appendix D for a copy of survey and responses.

A majority (75.7%) of the respondents believe that private vocational rehabilitation providers should be regulated by the state, but 60.3% of those responding worked in the public sector.

The level of education of those responding was quite high, with 24.7% having a baccalaureate degree; 62.2% achieving a masters degree; and 4.1% meeting doctorate requirements.

The responding practitioners did not profess knowledge of widespread practices by vocational rehabilitation providers whose efforts were primarily designed to force claimants off compensation. Only 5.6% saw such practices "regularly"; 16.9% "often"; 39.7% "seldom"; and 31.8% "never".

However, the responses to question #11, which requested benefits for or reasons against regulation, included numerous responses regarding the need to eliminate pressures from insurance companies to place the claimant in a job.

F. Survey of Other States

Section 54.1-311 of the Code of Virginia requires that the Board of Commerce determine the number of states which have regulatory programs similar to that being considered.

Twenty three of the 42 states identified for the survey returned completed surveys. Of those responding, 29.2% regulate vocational rehabilitation providers, with 16.7% describing such regulation as "registration"; 33.3% as "certification"; and 50.0% as "licensure".

The states with a regulatory program in place were queried about the level of complaints against regulants. Three-fourths of those states responded that they received more than 100 complaints last year. See Appendix E for a copy of the survey and responses.

G. Survey of Industrial Commissioners and Deputy Commissioners

The Industrial Commission is staffed by a Chairman, two Commissioners, one Chief Deputy Commissioner and ten Deputy Commissioners. A survey was sent to each of these individuals and twelve of the fourteen responded. A majority (83.3%) had witnessed practices by vocational rehabilitation providers whose rehabilitation efforts were primarily designed to force claimants off compensation. A majority (75%) of the responding Commissioners also believe that the public is being harmed by vocational rehabilitation providers and 66.6% believe regulation of the occupation would eliminate most of the problems they identified. Statutory changes in the workers compensation law were also favored (91.6%) as a means of eliminating additional problems in this field. Appendix F is a copy of the survey and the responses.

V. SUMMARY

A. Key Findings

B. Conclusions

C. Recommendation

V. Summary

A. Key Findings

The Board of Commerce, upon completing its research and reviewing the information obtained through the public hearings and written comments, summarized their findings as follows:

1. Any person in Virginia can offer services and purport to be a private vocational rehabilitation provider regardless of the nature and extent of academic preparation and employment experience.
2. The definition of vocational rehabilitation is unclear, and the Virginia Workers' Compensation statute does not specifically state the intent or prioritize the expected outcomes of vocational rehabilitation.
3. Although the majority of vocational rehabilitation providers who work with Workers' Compensation claimants appear to provide quality service, there are isolated cases in which claimants were placed in unsuitable employment, or attempts were made to do so, in an effort to terminate the claimants' compensation benefits.
4. Numerous professional associations and national accrediting organizations exist whose certification designations are granted after certain education, training and examination requirements have been met.
5. The majority of the Industrial Commissioners and Deputy Industrial Commissioners who responded to the Board of Commerce survey felt that the public was being harmed by unregulated vocational rehabilitation providers. Such findings lead the Board of Commerce to determine whether regulation is required. Section 54.1-100 of the Code of Virginia states that "**no regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:**
 1. The unregulated practice of the profession or occupation can harm or endanger the health, safety and welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument."

The Board of Commerce finds that some private vocational rehabilitation providers are offering services for which they may not be adequately trained and therefore present a potential threat to public health and welfare. The cases of such harm presented to the Board raise concerns as to the need for state regulation.

2. **"The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor";**

The Board of Commerce finds this occupation to be distinguished from ordinary work and labor in that it is characterized as a people-helping profession that should be prepared for through education and training in areas related to vocational rehabilitation.

3. **"The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurance of initial and continuing professional and occupational ability"; and**

The Board of Commerce sees this occupation as multi-disciplinary in nature and therefore includes the use of information in medicine, psychology, tests and measurements, counseling, social work, occupational training and many other related areas. As a result, the Board finds that the public needs and will benefit by some minimum assurances of professional ability.

4. **"The public is not effectively protected by other means".**

Current regulations for Licensed Professional Counselors in the Commonwealth of Virginia define "Professional Counselor" as a "person trained in counseling and guidance services with an emphasis on individual and group guidance and counseling designed to assist individuals in achieving more effective personal, social, educational and career development and adjustment." While some members of the private vocational rehabilitation sector have met the education, experience and examination requirements for licensure, numerous providers are practicing vocational rehabilitation outside the definition of professional counseling. The Board of Commerce, therefore, feels it is important first to identify all practitioners in the field, and that this can best be achieved through a process of registration.

B. Conclusions

1. The Board of Commerce agrees with the JLARC recommendation to the General Assembly that the Department of Workers' Compensation (DWC) refine its definition of vocational rehabilitation and clarify the purpose and expected outcome of the vocational rehabilitation services addressed by the statute.
2. The Board of Commerce concludes that members of the public seek, or are referred to, the services of private vocational rehabilitation counselors when they may be in a vulnerable situation. Under these circumstances, the unregulated practice of the occupation can potentially harm or endanger the health, safety and welfare of the public, and clients may need assurance that practitioners have met reasonable and appropriate professional standards.
3. While some practitioners of vocational rehabilitation counseling services may be licensed professional counselors, registered nurses, members of other regulated health care professions, or individuals who have met voluntary credentialing standards, the Board concludes that the majority of providers are not licensed or certified by the Commonwealth, and many may not be credentialed by any recognized certifying agency.

C. Recommendation

The Board of Commerce recommends that the General Assembly amend and clarify the language of the Workers' Compensation Act regarding the purpose of vocational rehabilitation. The Board recommends that the General Assembly consider legislation establishing a registration program, at either the Department of Commerce or at the Department of Health Professions, for a period of two years, for all individuals practicing vocational rehabilitation in Virginia. The legislation should include the authority to receive and evaluate complaints against practitioners. Required registration data should include, but not be limited to, education background and professional employment experience. After the two year registration period, the occupation should be re-evaluated to determine if regulation is warranted, and if so, to what degree.

VI. APPENDICES

- A. Senate Joint Resolution 55
- B. Public Hearing Participants
- C. Cumulative List of Written Comments
- D. Survey of Vocational Rehabilitation Providers with Results
- E. Survey of Other States with Results
- F. Survey of Industrial Commissioners and Deputy Commissioners with Results

SENATE JOINT RESOLUTION NO. 55

Requesting the Board of Commerce to study the need for regulation of private vocational rehabilitation providers in Virginia.

Agreed to by the Senate, February 8, 1990
Agreed to by the House of Delegates, March 7, 1990

WHEREAS, private vocational rehabilitation providers assist persons needing vocational evaluation and job counseling, placement, and training; and

WHEREAS, persons receiving workers' compensation benefits may be required to receive vocational rehabilitation services at the direction of the Industrial Commission or they may have their benefits suspended; and

WHEREAS, questions have been raised regarding whether all private vocational rehabilitation providers are effective in rehabilitating injured persons; and

WHEREAS, vocational rehabilitation appears to be the only "helping profession" not regulated in Virginia; and

WHEREAS, the Joint Legislative Audit and Review Commission recommended that the need for regulating private vocational rehabilitation providers be studied; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Board of Commerce is hereby requested to study the need for regulating private vocational rehabilitation providers in Virginia and the type of regulation needed; and, be it

RESOLVED FURTHER, That the Board of Commerce is also requested to report its findings and recommendations to the Governor and the General Assembly by November 1, 1990, as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

APPENDIX B

Public Hearing ParticipantsRichmond, May 24, 1990

| <u>Speaker</u> | <u>Affiliation</u> | <u>Position</u> |
|-------------------|---|--|
| George Moore | National Association of Rehabilitation Professionals in the Private Sector (NARPPS) | Supports one-year registration, then certification program. |
| Robert MacBeth | Rutter & Montagna | Supports licensing of vocational rehabilitation providers, but opposes licensing of vocational rehabilitation nurses. |
| Tracie Lamas | Richmond Goodwill Industries | Supports registration which accepts as certification the employees of vocational rehabilitation facilities which are certified by the state. |
| Mary Gombosh | Mary Gombosh, LTD, Consultant | The occupation is multi-disciplinary, and roles of the case manager and registered nurse are essential. |
| Barbara Byers | Rehabilitation Counselor | Need to demand the most highly trained counselors to provide services. |
| Carri Chapman | Licensed Professional Counselor | Supports regulation. |
| Debra Bohoneky | Central Virginia Association of Rehabilitation Nurses | Supports registration nurses' involvement in vocational rehabilitation. |
| Betty E. Killette | Rehabilitation Management Corp. | Nurses are licensed already and have been practicing vocational rehabilitation for years. |

| <u>Speaker</u> | <u>Affiliation</u> | <u>Position</u> |
|------------------|--------------------|---|
| Margaret Rehpelz | NARPPS | Supports nurses' involvement in vocational rehabilitation. |
| Pat Kimbrough | Fortis Corp. | Nurses play an important role in the rehabilitation team in other states. |

Falls Church, June 1, 1990

| <u>Speaker</u> | <u>Affiliation</u> | <u>Position</u> |
|-------------------|--|---|
| Mark Peters | National Association of Rehabilitation Professionals in the Private Sector | Supports registration for one year, then certification. |
| Michael Heaviside | Ashcraft and Gerel & the Virginia Trial Lawyers Assoc. | Harm occurs because some vocational rehabilitation providers have no training in the field. |
| Debbie Moreau | Private Rehabilitation Provider | Insurance claims people too often dictate the direction for rehabilitation. |
| Dennis Hart | Virginia Task Force, Objective Functional Resources | Important to have valid measures of function to protect injured worker. |
| Lane Hall | Crawford & Co., H & R | Supports registration of professionals first. |
| Kathy Sampeck | | Supports licensure and certification. |
| Tony Bird | Vocational Rehabilitation Provider | Vocational rehabilitation is too often controlled by insurance carriers. |
| Jack McKay | | Need to educate claims adjusters and insurance companies regarding the law. |
| Frank Mozza | | Supports certification. |
| Diane Davis | | Supports NARPPS' position. |

| <u>Speaker</u> | <u>Affiliation</u> | <u>Position</u> |
|----------------|--|--|
| Roy Woodruff | Board of Professional Counselors | Uncertain about the level of regulation needed, but must make sure that confusion is not created with this and the licensure program through the Board of Professional Counselors. |
| John Coleman | Slenker, Brandt, Jennings & Johnston | Some form of regulation is necessary. |
| Eamon McEvilly | Virginia Department of Rehabilitative Services | Supports some form of regulation. |

Roanoke, June 11, 1990

| <u>Speaker</u> | <u>Affiliation</u> | <u>Position</u> |
|----------------|---|---|
| John Newman | Vocational Rehabilitation | Supports NARPPS |
| June McMenamin | Rehabilitation Nurse | Supports medical case management. |
| Richard Thomas | Rider, Thomas, Cleaveland Ferris & Eakin | Abuses do occur in efforts to return employee to work; advocates certification. |
| Mark Hileman | | Supports some degree of regulation, but concern that requirements not be too stringent. |
| Claudia Resick | Vocational Consultant | Problems are with the Workers Compensation law, not rehab providers. |
| John Costa | Deputy Commissioner, Virginia Industrial Commission | Supports minimal regulation. |
| Susan Raymond | | Regulation may not eliminate problem. |

SUMMARY OF WRITTEN COMMENTS
SENATE JOINT RESOLUTION 55

Virgil R. May, III, May Rehab and Therapy Services - Cites example of abuse and questions competency of involved practitioners.

Trudy R. Koslow, MED, CRC, Rehabilitation Counselor
Sharon D. Bunger, MS, CRC, NCC, Rehabilitative Services & Vocational Placement, Inc. - Definition of certified vocational rehabilitation provider should not include nurses, only counselors.

Michael E. Mares, Mayor's Committee on the Handicapped - Minimum education and experience requirements should be set with special consideration for handicapped individuals working in volunteer settings. Disciplinary procedures and continuing education requirements should be mandated. Also feels grandfathering provision would be important.

Helen Steibel, RN, Sinsabaugh, Steibel - Rehabilitative nurse is essential to the process. Workers Compensation Act needs revision and clarification.

June McMenamin, RN, BSN, CIRS, June Taylor McMenamin Rehab Services - Nurses are currently regulated and medical case management is crucial to the rehab process.

Kathleen Gonzalez, RN; Nancy A. Kemether, RN; Melanie McCarthy, RN, BSN; Carol Wilson, RN; Connie Davis, RN; FORTIS - Support registration; nurses are important to this multi-disciplinary process. Certifying commissions already have a code of ethics and governing bodies to regulate the profession.

Richard D. Morrison, PhD, Executive Director, Board of Health Professions - Submitted copies of the statutes and regulations governing licenses of professional counselors, etc., plus written comments and recommendations following the first draft report for Board review.

Dennis L. Hart, PhD, Assessment Center Technology - Submitted draft guidelines from the Task Force on Objective Functional Measurements.

Michael W. Heaviside, Ashcraft and Gerel - Vocational Rehabilitation unfortunately becomes forensic rehabilitation, with goal of immediate job placement and minimization of an insurance carrier's exposure rather than maximizing injured worker's potential for re-entry into work place. Supports licensing with disciplinary mechanism for recourse.

Pat Verser, MS, CRC, Rehabilitation Management Corporation - Support NARPP's position of registration and then certification from one of five national certification organizations. Supports nurse's role.

Patricia H. Bulifant, RN, CIRS, Associated Rehabilitative Consultants - Supports some monitoring. Registry period is essential. Process is multi-disciplinary one and involves social, medical and vocational issues.

Barbara K. Byers, MA, CRC, CVE, Atlantic Rehabilitative Services - Strongly supports regulation. At a minimum, the regulations should require counselors to meet qualifications required by U.S. Department of Labor, Office of Worker's Compensation.

SUMMARY OF WRITTEN COMMENTS
SENATE JOINT RESOLUTION 55

Keith C. Wright, Department of Rehabilitation Counseling, VCU - Vocational Rehabilitation services necessitates a broader knowledge base than medical management by RN's. Recommends certification as a CRC or CIRS.

V. Harper Newman, Department of Rehabilitative Services; Chris Lambruscatti, MS, CRC, The Counseling Center; Susan M. Riggs, MS, LPC, The Counseling Center; Charlotte L. Faris, MS, LPC, The Counseling Center - Recommends regulation at least at the certification level to protect the public.

Eamon P. McEvelly, CRC, Rehab Counselor - Supports regulation at least at the certification level for public and private counselors.

Marc Cooper, CRC, LPC, OccuSystems of Hampton Roads, Inc. - Given the minimal conditions as required by the current Workers Comp. law, sees no reason for additional regulations governing the practice. Existing regulations should be enforced more closely and Workers Compensation law should be changed.

Charlie W. Suttentfield, MS, Washington Pain and Rehabilitation Center - Supports regulation; at a minimum, mandatory professional certification should be required. (Submitted by Delegate Alan E. Mayer.)

Richard Strauss, M.ED., CRC, LPC, Vocational Rehabilitation Consultant - Supports general licensure (LPC designation) for all voc rehab providers.

Carri Chapman, MS, CRC, CVE, LPC, Counselor - Favors regulation at least as stringent as those of the Office of Workers Compensation Programs with strict enforcement. Does not support involvement of nurses in rehabilitation unless so trained.

Phillip A. Black, LPC, CRC, Commonwealth Support Systems, Inc. - Supports regulation with vocational testing, career guidance, selective job placement and follow-up services.

William C. Aver, Jr., MS, VE, Riverside Rehabilitation Institute - Private rehab companies are more concerned about contracts with insurance company than with the injured employee. There should be regulation of rehab companies and the providers (different levels of education and experience being required for various types of work performed).

Herbert W. Park, III, MD., Medical College of Virginia - Concur with the need for regulation of vocational rehab providers with clear areas (testing, evaluation, rehabilitation, placement). Recommend licensure of all vocational rehabilitation agencies.

APPENDIX D

Surveys Sent = 763
Surveys Returned = 260

Return to:

Debra Vought
Department of Commerce
3600 West Broad Street
Richmond, VA 23230

VOCATIONAL REHABILITATION PROVIDERS

1. How many years have you been employed as a vocational rehabilitation provider? (Please circle your response)

| | | | | |
|-------------|--------------|---------------|---------------|---------|
| 17.6% | 18.7% | 39.3% | 21.7% | 2.6% |
| 1 - 5 years | 5 - 10 years | 10 - 20 years | over 20 years | missing |

2. Please check the highest level of education you have achieved:

4.9% high school graduate

24.7% college graduate

62.2% masters degree

4.1% doctorate

3. Please identify the association(s) of which you are a member:

78.7% Virginia Rehabilitation Association

20.2% National Association of Rehabilitation
Professionals in the Private Sector

10.5% Virginia Association of Rehabilitation Nurses

28.8% Virginia Rehabilitation Counseling Association

35.2% others, please list

4. Do you work in the public or private sector?

60.3% public

40.1% private

VOCATIONAL REHABILITATION PROVIDERS
(continued)

5.(A) What certifications do you hold from national certifying agencies?

5.(B) Which of these certifications required an examination?

6. Do you hold a license as a Professional Counselor in the Commonwealth of Virginia?

| | | |
|------|-------|---------|
| 8.2% | 89.1% | 2.6% |
| yes | no | missing |

7. How often have you witnessed practices by vocational rehabilitation providers whose rehabilitation efforts were primarily designed to force claimants off compensation?

| | | | | |
|-------|--------|-------|-----------|---------|
| 31.8% | 39.7% | 16.9% | 5.6% | 6.0% |
| never | seldom | often | regularly | missing |

8. How often have you been made aware of practices by insurance companies to pressure vocational rehabilitation providers into forcing claimants off compensation?

| | | | | |
|-------|--------|-------|-----------|---------|
| 23.2% | 36.7% | 27.0% | 6.7% | 6.4% |
| never | seldom | often | regularly | missing |

9. What percentage of workers compensation claimants intentionally thwart efforts for vocational rehabilitation?

| | | | | | |
|---------|----------|----------|----------|-----------|---------|
| 20.6% | 29.6% | 19.1% | 7.9% | 3.0% | 19.9% |
| 0 - 10% | 10 - 25% | 25 - 50% | 50 - 75% | 75 - 100% | missing |

VOCATIONAL REHABILITATION PROVIDERS
(continued)

10. Do you believe that private vocational rehabilitation providers should be regulated by the state?

| | | |
|-------|-------|---------|
| 75.7% | 17.6% | 6.4% |
| yes | no | missing |

11. If yes, do you believe such regulation is necessary to protect the public?

| | | |
|-------|-------|---------|
| 70.8% | 12.4% | 16.9% |
| yes | no | missing |

12. If yes to question #11, please list benefits that regulation would accomplish, or if no to question #11, list reasons not to regulate private vocational rehabilitation providers.

| <u>Yes</u> | <u>No</u> |
|---|--|
| - Regulation would identify and eliminate incompetent providers | - Adequate regulation by Industrial Commission |
| - Provide recognition of the profession | - Adequate regulation through professional associations |
| - Better services would be provided to the claimants | - Unfair since the state is competing with the private enterprises for business |
| - Regulation okay but change in workers compensation law is even more important | - Can't legislate ethics |
| - Help assure that minimum competency has been met | - The process for becoming a Licensed Professional Counselor is burdensome already |
| - Prevent further injury from occurring when employees are improperly placed | - Insurance industry needs to be regulated |
| - Help to eliminate pressure from legal profession and insurance industry | - Register them with Industrial Commission |

- | <u>Yes</u> | <u>No</u> |
|--|--|
| - Help eliminate red tape and bureaucracy | - Regulations could kill creativity and ingenuity in the field |
| - Help eliminate relationship between insurance and private rehab | - Little evidence of abuse in present system |
| - Help eliminate RNs from practicing vocational rehabilitation for which they are not properly trained | - Create additional expense that will be passed on to the consumer |
| - Would increase public utilization | |
| - Encourage cooperation between private and public | |

APPENDIX E

Return to:

Surveys Sent = 42
Surveys Returned = 23

Debra Vought
Department of Commerce
3600 West Broad Street
Richmond, VA 23230

**SURVEY OF OTHER STATES
(Vocational Rehabilitation)**

1. Does your state regulate vocational rehabilitation providers?
(Please circle response)

| | | |
|-------|-------|---------|
| 29.2% | 66.7% | 4.2% |
| yes | no | missing |

If no, please return the survey.

2. What category best describes the regulatory program for vocational rehabilitation providers in your state?

16.7% a) registration - any person may engage in the occupation, but that person submits certain information to the appropriate authorities.

33.3% b) certification - any person may practice the occupation, but only those who have met certain educational and/or experience requirements may use the title "Certified Vocational Rehabilitation Provider".

50.0% c) licensure - a person is prohibited from engaging in the occupation without meeting certain educational and/or experience requirements and obtaining a license.

3. Does your state's regulatory program require passage of an examination?

| | | |
|------|-------|-----------|
| 4.2% | 12.5% | 12.5% |
| yes | no | uncertain |

4. Does your state's regulatory program accept passage of an examination given by a professional association and/or certifying agency in lieu of a state administered examination? If yes, please list those examinations accepted.

| | |
|-------|------|
| 12.5% | 4.2% |
| yes | no |

**SURVEY OF OTHER STATES
(Vocational Rehabilitation)**

5. Did your state have a registration program prior to any certification/licensing program?

| | | | |
|-------|------|-----------|---------|
| 12.5% | 0.0% | 0.0% | 87.5% |
| yes | no | uncertain | missing |

6. If a regulatory program is in place, what was the total number of complaints against vocational rehabilitation providers in your state last year?

| | | | |
|--------|---------|----------|----------|
| 12.5% | 4.2% | 8.3% | 75.0% |
| 1 - 25 | 26 - 50 | 51 - 100 | over 100 |

7. What percentage of these complaints resulted in disciplinary action against the licensee?

| | | | | |
|---------|----------|----------|-----------|--------------|
| 0 - 25% | 26 - 50% | 51 - 75% | 76 - 100% | 100% missing |
|---------|----------|----------|-----------|--------------|

8. Was your state's regulatory program created in response to public demand for assurance of a level of competence by vocational rehabilitation providers?

| | | | |
|-----|----|-----------|--------------|
| yes | no | uncertain | 100% missing |
|-----|----|-----------|--------------|

9. Please identify any problems you have encountered with a regulatory program for vocational rehabilitation providers?

No comments provided.

APPENDIX F

Return to:

Surveys Sent: 14
Surveys Returned: 12

Debra L. Vought
Department of Commerce
3600 West Broad Street
Richmond, VA 23230

SURVEY OF INDUSTRIAL COMMISSIONERS
AND DEPUTY COMMISSIONERS

1. Have you witnessed practices by vocational rehabilitation providers whose rehabilitation efforts were primarily designed to force claimants off compensation? (circle one)

| | |
|-------|-------|
| 83.3% | 16.6% |
| yes | no |

2. If yes, please describe the frequency with which you see such practices?

| | | | | |
|--------|--------------|------------|------------|---------|
| 0% | 66.6% | 8.3% | 8.3% | 16.8% |
| rarely | occasionally | frequently | constantly | missing |

3. How often have you been made aware of practices by insurance companies to pressure vocational rehabilitation providers into forcing claimants off compensation?

| | | | |
|-------|--------|-------|-----------|
| 25% | 33.3% | 41.6% | 0% |
| never | seldom | often | regularly |

4. Do you believe that the public is being harmed by vocational rehabilitation providers?

| | |
|-----|-----|
| 75% | 25% |
| yes | no |

5. Identify the most frequent abuses you have seen in the past year by vocational rehabilitation providers:

- Claimants are sent to interview for jobs inappropriate to their training, experience, and education in an attempt to terminate compensation benefits.
- Rehabilitation companies often attempt to direct a claimant's medical care even though the law does not permit them to.

**SURVEY OF INDUSTRIAL COMMISSIONERS
AND DEPUTY COMMISSIONERS**
(continued)

- Rehabilitation providers sometimes incorrectly describe the job duties to the doctors who then approve the job as within the claimant's physical capacity.
- Private vendors are often more interested in making money than in restoring workers to the job force.
- "Job searches" are called rehabilitation.
- The manner and methods used tends to irritate claimants and their attorneys.
- Consultants go beyond the mere filing of reports summarizing the events and actually solicit the medical reports and letters from potential employers corroborating the results of interviews or the non-appearance at interviews.
- Consultants appear to involve themselves in medical management by arranging for examinations by outside doctors.
- Improper advice is given to injured employees regarding requirements of the Workers Compensation Act.
- Intimidation of disabled employee; demanding more information than required.
- Interference with medical treatment.

6. Do you believe regulation of vocational rehabilitation providers would eliminate most of these problems?

| | | |
|-------|-------|---------|
| 66.6% | 16.6% | 16.8% |
| yes | no | missing |

7. Would statutory changes in the workers compensation law eliminate some of these problems?

| | | |
|-------|----|-----------|
| 91.6% | 0% | 8.3% |
| yes | no | uncertain |

8. Please offer any comments and/or suggestions for the Board of Commerce on the need for regulating vocational rehabilitation providers:

- Supports regulation; supports attempt to separate the provision of vocational rehabilitation services from the control of the insurance carrier.

**SURVEY OF INDUSTRIAL COMMISSIONERS
AND DEPUTY COMMISSIONERS**
(continued)

- Prohibit rehabilitation companies from communicating with the claimants' medical care providers except in writing with copies to claimant and his/her attorney.
- Need definition of vocational rehabilitation provider.
- Needs to be training and certification.
- Require all carriers and Virginia employees to support and utilize the services of the state's Department of Rehabilitative Services.
- Test should be both Virginia specific and multi-state.
- The statutory authority given the Industrial Commission is seldom enforced. There is confusion between selective employment statute (65.1-63) and the vocational rehabilitation statute (65.1-88). Clarification is needed.
- The public is not harmed in the majority of cases involving use of vocational rehabilitation providers. Far more often, we see non-cooperative claimants.
- There should be very strict provisions concerning the identity of the rehabilitation consultants' client - the injured worker or the insurance company.
- Virginia Department of Rehabilitative Services should be involved in screening.
- The judicial resolution of disputed cases under the present system seems to work fairly well. More thought and care might be provoked in vocational rehabilitation providers and insurers if they were liable for the employee's costs and attorneys' fees in these cases where they do not prevail.