the case, for procedural reasons unrelated to the matters discussed above.

Discussion

In *Maconeghy*, the relevant legal question concerned the medical determination of child sexual abuse, which was itself informed by the alleged victim's statements and suggested an expert opinion regarding the credibility of the alleged victim. The majority drew a conservative line in the sand not only by precluding testimony that directly speaks to the credibility of a witness, but also by prohibiting statements that indirectly endorse the veracity of a witness. By this reasoning, expert witnesses must be careful not to encroach on the ultimate legal question, or perhaps to even suggest an opinion about the credibility of a witness.

The majority opinion has two important implications for medical expert witnesses. First, it deliberately narrows its holding to expert testimony relying solely on witness and victim accounts in the absence of other corroborating data (e.g., physical examination results). This appears to be an effort by the court to avoid unduly influencing the jury by not permitting expert conclusions that may (even implicitly) communicate an expert opinion regarding the credibility of other witnesses. Although the pediatrician in this case appropriately qualified the limitations of his findings, he may have considered refraining from providing an ultimate opinion on the question of sexual abuse given the absence of corroborating evidence and the heavy emphasis it necessarily placed on the credibility of the witness. The impact of this restriction on mental health testimony, which relies in large part on parties' statements, remains unclear at this time.

Second, the majority opinion emphasized the importance of expert witnesses operating within the scope of their role to the courts. In so doing, it is critical that we remain aware of our function as advisors to the legal process and not substitute arbiters. Although the pediatrician in this case was undeniably qualified to conduct a sexual abuse evaluation, it was arguably beyond his role to testify, "I really believe strongly that was my medical conclusion that this child was victimized" (*Maconeghy*, p 708). Arguably, this opinion may have been more of a personal one than a medical conclusion based upon the objective implications of the available evidence. The circumstances of this case stress the obligation of medical and mental health experts to ensure that our professional conclusions are justified by the quality of the data upon which we rely.

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Credibility Determinations for Social Security Benefits

Brianne K. Layden, PhD
Fellow in Forensic Psychology

Albert J. Grudzinskas, Jr., JD
Clinical Associate Professor

Law and Psychiatry Program
Department of Psychiatry
University of Massachusetts Medical School
Worcester, MA

Treating Physician Rule Holds Controlling Weight in Credibility Determinations for Disability Insurance Benefits

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Ricky E. Brown sought appellate review of his denial of disability insurance benefits in *Brown v. Commissioner Social Security Administration*, 873 F.3d 251 (4th Cir. (2017)). Mr. Brown allegedly sustained injuries, including both physical and psychological sequelae, after a workplace accident on July 19, 2006. Mr. Brown did not return to work thereafter. His claim was denied by the Commissioner on two occasions (January and October 2009) and, upon Mr. Brown's request for review, was denied by the Administrative Law Judge (ALJ). Mr. Brown brought the case forward for review in the district court of South Carolina, where the case was reversed and remanded. Nevertheless, during the second hearing, the ALJ again denied Mr. Brown's claim, and his request for appeal via the Social Security Administration's Appeals Council was also denied. Mr. Brown brought the case forward as a civil matter to the district court of South Carolina, and the ALJ's second ruling was affirmed. The Fourth Circuit Court of Appeals granted review and reversed and remanded the case.

Facts of the Case

On July 19, 2006, Mr. Brown is alleged to have sustained numerous physical injuries while using a hammer drill at work that resulted in chronic pain and associated problems with his mental health and

emotional functioning. Specifically, after the accident, he reportedly had "chronic pain in his back, left shoulder and arm, and right hip and leg; occasional pain in his left hip; and depression and anxiety" (*Brown*, p 258). Mr. Brown also reported "muscle spasms" that interrupted his sleep and arthritis in his hands. In his claim for disability insurance benefits, Mr. Brown submitted evidence from three physicians and one psychologist that indicated that he had received diagnoses of dysthymia, major depressive disorder, anxiety, and somatoform disorder after the accident. During their determination of Mr. Brown's eligibility for insurance benefits, the ALJ found that his deficiencies were not included within the regulations delineating impairments that would limit an individual's capacity for gainful employment. Further, Mr. Brown underwent a residual functional capacity assessment (FCA) through the ALJ to determine "the most [he could] still do despite [his physical and mental] limitations" (20 C.F.R. § 416.945[a][1](2003)). This FCA determined that Mr. Brown "could lift or carry ten pounds, stand two of eight hours, walk two of eight hours, sit six of eight hours, and frequently handle, finger, and reach overhead" (*Brown*, p 257). The ALJ rejected evidence indicating that Mr. Brown was not capable of performing sedentary tasks because of his impairments and so ruled that, to accommodate deficiencies in his "concentration, persistence, and pace," his tasks should be limited to one to two steps at most (Second ALJ Decision 7).

In their deliberations, the ALJ accorded "little," "limited" and "less than significant" weight to the testimony of Mr. Brown's treating and examining physicians and psychologist (*Brown*, p 266). In contrast, the ALJ favored the opinion of the nontreating expert who had reviewed the medical records, but who had not directly examined Mr. Brown. The nontreating physician disagreed with a diagnosis of somatoform disorder, despite the ALJ's ruling that Mr. Brown, in fact, suffered the effects of this condition. The ALJ nevertheless accepted the nontreating physician's testimony. The nontreating physician also broadly testified that the physical injuries sustained and the resulting conditions were not as severe as Mr. Brown had claimed and cited a few sporadic statements from Mr. Brown's medical records. Of note, the information cited was described as contextual and not reflective of the larger record submitted by Mr. Brown's providers, which indicated rather substantial impairment in his activities of daily living as a result of his workplace injury. The nontreating physician also testified that, absent the physical injuries, the psychological injuries could not credibly be present.

The ALJ determined that Mr. Brown was unable to return to work in his previous position as a millwright and maintenance worker; however, he was not deemed unable to work altogether. Indeed, the judge stated that he could engage in "unskilled sedentary work, such as a packer, assembler, inspector, or surveillance monitor" (*Brown*, p 257). The ALJ reasoned that his purported symptoms were in contrast with his activities of daily living, as recounted in Mr. Brown's testimony and in the testimony and records of his providers (i.e., that Mr. Brown was "cooking, driving, doing laundry, collecting coins, attending church and shopping" as well as "work-[ing] around his house," repairing his automobile and "exercising" (*Brown*, p 263, citing Second ALJ Decision 10-11)).

Ruling and Reasoning

The Fourth Circuit Court of Appeals held that the ALJ gave greater weight to the nontreating physician's opinion in the absence of: 1) a "high-quality explanation for the opinion and a significant amount of substantiating evidence, particularly medical signs and laboratory findings" (*Brown*, p 268); 2) consistent evidence across expert opinions and available records; and 3) specific expertise of the nontreating physician in the field supporting his opinion. The Fourth Circuit also found that the ALJ ignored the limits and quality of Mr. Brown's functional activities and appeared to focus on their mere presence as indicators of functional daily living. Further, the ALJ failed to establish a clear nexus between the presence of these functional activities and his ability to sustain full-time gainful employment. Regarding the ALJ's assertion that Mr. Brown's symptoms and testimony were inconsistent with available evidence, the Fourth Circuit found no "accurate and logical bridge" (*Brown*, p 270) supporting this position and held that Mr. Brown's testimony was, in fact, supported by the records submitted to this court. Finally, the Fourth Circuit Court of Appeals found that the ALJ erred in his reliance on his own "lay opinions" regarding the relevance of Mr. Brown's functioning in certain areas (e.g., sitting for extended periods of time during the hearing) to his work-related abilities

in place of the expertise of medical professionals (*Brown*, p 271). In light of these opinions, the Fourth Circuit Court of Appeals reversed and remanded the case.

Discussion

The Fourth Circuit decision focused heavily on the ALJ's RFC determination in its analysis and ruling, with particular emphasis placed on the ALJ's failure to adhere to regulations dictating that the controlling weight goes to the opinions of treating providers. This court appeared to reject the notion that a physician restricted to reviewing records, rather than treating the patient, would provide a more knowledgeable opinion of the form and extent of an individual's mental and medical illnesses. This ruling is consistent with best practices in psychology and psychiatry more generally, as well as the Specialty Guidelines for Forensic Psychologists (see Guideline 9.03; American Psychological Association (APA) Specialty Guidelines for Forensic Psychology (2013)) and Ethical Guidelines for Forensic Psychiatrists (see Guideline IV; American Academy of Psychiatry and the Law (AAPL) Ethics Guidelines for the Practice of Forensic Psychiatry (2005)). Specifically, the APA and AAPL have recognized the limitations of opinions provided by experts who have restricted their assessments to records and have not directly evaluated clients. Further, according to these guidelines, the specific limitations of these opinions should be clearly stated by the experts providing the opinion so that the audience is aware and in a better position to appreciate potential problems. This court also highlighted that the record did not clearly establish the nontreating physician's expertise in areas in which he was forming an opinion, despite having devalued a treating physician's opinion for this very reason. Again, the APA and AAPL Guidelines are clear that experts should limit their opinions to areas in which they have established competence. When these limitations are made clear in expert testimony, the courts are, perhaps, in a better position to determine which testimony should be accorded the greatest weight. Finally, the Fourth Circuit's ruling provides another perspective on the debate over dual roles for evaluators, particularly when the evaluator is the treating clinician. The tension between maintaining the integrity of the clinical perspective and the law's search for best evidence is illustrated in this decision.

The second most significant determinant in this court's decision to vacate and remand the case is its finding that the ALJ accepted the expert opinion that was most consistent with his own findings, rather than accepting the opinions that were reflective of, and consistent with, the totality of available data submitted to the court. In doing so, this court found that the ALJ failed to draw clear, reasonable associations between the available data and his decision to deny benefits. In sum, the failure to give the appropriate weight to the treating physicians' opinions, along with the lack of a clear nexus drawn between the data and the ALJ's ruling, led this court to vacate and remand the case for further litigation.

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Dangerousness Standards for Insanity Acquittee

J. Christopher Buckley, MD
Resident in Psychiatry

Brannon Wiedemann, MD
Fellow in Forensic Psychiatry

D. Clay Kelly, MD
Associate Professor of Psychiatry

Department of Psychiatry and Behavioral Sciences
Tulane University School of Medicine
New Orleans, LA

The Fifth Circuit Court of Appeals Denies *Habeas* Relief and Allows Continued Confinement of an Insanity Acquittee Based on "Potential" Dangerousness

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In *Poree v. Collins*, 866 F.3d 235 (5th Cir. 2017), Carlos Poree sought federal *habeas* relief under 28 U.S.C. § 2254 after a district court's denial of his petition for conditional release to the community and subsequent appealability denials within the Louisiana court system. He then filed for a federal writ of *habeas corpus* challenging the "fact" of his confinement. A federal district court denied his appeal. Mr. Poree appealed to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit Court of Appeals accepted his *writ* and considered whether the state district court had erred in denying the petition for conditional release.