THE TREATING PHYSICIAN RULE IN SOCIAL SECURITY DISABILITY CLAIMS: HISTORICAL DEVELOPMENT FROM 1956 TO 1978

I. INTRODUCTION

This memorandum traces the historical development of the Treating Physician Rule in Social Security disability claims from the inception of the disability insurance program in 1956 through 1978. During this formative period, federal courts developed a consistent judicial doctrine that afforded special weight to the opinions of treating physicians in disability determinations—a doctrine that was subsequently codified by the Social Security Administration ("SSA") in 1991, maintained for twenty-six years, and then abandoned in 2017. The historical record demonstrates that the Treating Physician Rule emerged organically from judicial interpretation of the substantial evidence standard, reflecting fundamental principles of fairness, medical reality, and congressional intent that remain valid despite the 2017 regulatory changes.

Understanding the development of the treating physician rule over time is essential for understanding the rule's use as a tool of federal courts to ensure fair consideration of evidence in disability cases. Indeed, the rule originated as a judicial construct. Charles Terranova, "Somebody Call My Doctor: Repeal of the Treating Physician Rule in Social Security Disability Adjudication," 68 BUFF. L. REV. 931, 945 (2020).

II. BACKGROUND: STATUTORY FRAMEWORK AND EVIDENTIARY STANDARDS

The Social Security Amendments of 1954 added the so-called "disability freeze."[1] *See* 42 U.S.C. § 416(i). Two years later, Congress created a system of cash benefits for persons unable to engage in substantial gainful activity due to medically

[1] The Social Security Amendments of 1954, ch. 1206, § 106(d), 68 Stat. 1080. A disability freeze is when someone could not work or earned low wages due to a disability. This period is excluded from Social Security benefit calculations. *See* POMS DI 10105.005.

determinable physical or mental impairments.[2] The statute directed the Commissioner to "make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter."[3]
Judicial review of these administrative determinations was limited by the substantial evidence standard, requiring courts to determine whether administrative decisions were "supported by substantial evidence."[4] This standard formed the foundation upon which the Treating Physician Rule would develop, as courts reasoned that "an administrative decision which does not consider the opinion of a treating physician is not a decision supported by substantial evidence."[5]

III. HISTORICAL DEVELOPMENT (1956-1978)

The Treating Source Rule was "originally developed by Courts of Appeals as a means to control disability determinations by administrative law judges under the Social Security Act." *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 829 (2003); *see* Charles Terranova, *Somebody Call My Doctor: Repeal of the Treating Physician Rule in Social Security Disability Adjudication*, 68 Buff. L. Rev. 931, 945 (2020); *accord* Richard E. Levy & Robert L. Glicksman, *Agency-Specific Precedents*, 89 TEX. L. REV. 499, 545 (2011) (the rule "derives from the general application of the substantial evidence standard of review-- expert opinions contrary to the agency's conclusion are part of the 'whole record' and cannot be ignored or discounted without adequate reasons).

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[2] The Social Security Amendments of 1956, Pub. L. No. 84-880, § 103(a), 70 Stat. 807, 815 (1956).

[3] 42 U.S.C. § 405(b)(1).

[4] 42 U.S.C. § 405(g).

[5] Charles Terranova, *Somebody Call My Doctor: Repeal of the Treating Physician Rule in Social Security Disability Adjudication*, 68 BUFF. L. REV. 931, 949–50 (2020), (citing *Broadbent v. Harris*, 698 F.2d 407, 412 (10th Cir. 1983) ("In determining the question of *substantiality of evidence*, the reports of physicians who have treated a patient over a period of time or who are consulted for purposes of treatment are given greater weight than are reports of physicians employed and paid by the government ....").

A. EARLY JUDICIAL RECOGNITION (1959-1967)

The Treating Source Rule can be traced to the earliest judicial interpretations of the disability provisions following the 1956 amendments to the Social Security Act.

In *Teeter v. Flemming*, the Seventh Circuit established one of the first building blocks of the Treating Physician Rule, holding that a treating physician's expert opinions were admissible and, when uncontroverted, should be given significant weight in disability determinations. [6] The District Judge found the referee's findings to be without substantial evidential basis where the referee had erred in seeking to form his own medical conclusion as to what constituted physical or mental impairment of long-continued and indefinite duration, disregarding the conclusions of those more expert than he.[7]

The following year, in *Kerner v. Flemming*, the Second Circuit reinforced this approach, emphasizing the importance of according weight to treating physicians' opinions when evaluating disability.[8] The court implicitly recognized that physicians who treated patients over extended periods possessed valuable insights into their functional limitations that deserved judicial deference.[9]

By 1962, the Fourth Circuit in *Underwood v. Ribicoff* established a comprehensive analytical framework for evaluating disability claims that explicitly incorporated treating physicians' opinions as a central element.[10] The court identified four essential factors in disability determinations: (1) objective medical facts from treating or examining physicians; (2) diagnoses and expert medical opinions of treating physicians; (3) subjective evidence of pain and disability; and (4) the claimant's educational background, work history, and age.[11] This framework

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[6] *Teeter v. Flemming*, 270 F.2d 871, 874 (7th Cir. 1959).

[7] *Id.*

[8] *Kerner v. Flemming*, 283 F.2d 916, 921–22 (2d Cir. 1960).

[9] *Id.*

[10] *Underwood v. Ribicoff*, 298 F.2d 850, 851–52 (4th Cir. 1962).

[11] *Id.* at 851.

explicitly positioned treating physicians' opinions as a cornerstone of proper disability evaluation. The court concluded that the expert medical opinion of treating or examining physicians on these subsidiary questions of fact will, in most cases, be essential in determining with respect to a particular individual the severity of an objectively determinable physical impairment.[12]

Two years later, in *Bates v. Celebrezze,* the court emphasized that treating physicians' opinions on the severity of impairments should not be disregarded unless substantial contrary evidence exists.[13] This reinforced the growing judicial recognition that treating physicians occupied a privileged position in assessing disability.

In 1965, the Sixth Circuit found that:

> 'When a claimant comes forth with evidence of serious physical impairment, the record must contain evidence on which the denial of the claim may be based; and where there is uncontroverted medical testimony that the applicant is unable to engage in any substantial gainful activity, it is the duty of the Secretary of Health, Education, and Welfare to award him the relief requested, assuming that all other qualifications are met. *Davis v. Celebrezze*, 213 F.Supp. 477 (D.C.Tex.); *Williams v. Celebrezze*, 228 F.Supp. 627 (D.C.Ky.); *Jarvis v. Ribicoff*, 312 F.2d 707 (C.A. 6).' Miracle v. Celebrezze, supra at 378.[14]

Shortly thereafter, the Sixth Circuit stated:

> 'Where a Hearing Examiner has received expert opinions on the issue of a claimant's ability to work and they are not repudiated in any respect by substantial evidence, an adverse decision should be

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[12] *Id.* at 851; *see Stallins v. Celebrezze*, 227 F. Supp. 138 (W.D. Ky. 1964); *Pope v. Celebrezze,* 209 F. Supp. 392 (W.D.N.C. 1962); *Laird v. Ribicoff,* 207 F. Supp. 668 (W.D.S.C. 1962).

[13] *Bates v. Celebrezze*, 234 F. Supp. 349, 353 (W.D.S.C. 1964) ("Consideration should properly be given to the fact that the doctors who felt that plaintiff was not substantially disabled were not his treating physicians").

[14] *Miracle v. Celebrezze*, 351 F.2d 361 (6th Cir. 1965).

set aside as based on suspicion and speculation.' *Colwell v. Gardner, supra* at 73.[15]

B. ESTABLISHMENT OF BINDING EFFECT (1967-1972)

By the late 1960s, courts began to articulate more forcefully the binding nature of treating physicians' opinions absent substantial contradictory evidence.

In 1967, the Fourth Circuit emphasized that the weight of treating physicians' opinions absent substantial contrary evidence created a presumption for the treating physician's assessment, stating:

> The expert medical opinion of treating or examining physicians on these subsidiary questions of fact will in most cases be essential in determining with respect to a particular individual the severity of an objectively determinable physical impairment.[16]

Relying extensively on *Ribicoff, supra,* the court observed:

> In the instant case the opinion evidence supplied by one in the best position to furnish it— Dr. Bartley— substantiated Miss Hayes' claim that she is disabled within the meaning of the Act. Dr. Glendy's opinion is at odds with this evidence. We reach the conclusion that, in view of the opinion evidence as to the existence of a disability, combined with the overwhelming medical facts, the uncontradicted subjective evidence, and claimant's vocational background, the opinion of a doctor who never examined or treated the claimant cannot serve as substantial evidence to support the Secretary's finding. Indeed, Dr. Glendy admitted upon cross-examination that he was 'sure a family physician is always more familiar with a patient than one that is just looking at the objective evidence we have on paper.'[17]

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[15] *Colwell v. Gardner*, 386 F.2d 56 (6th Cir. 1967).

[16] *Hayes v. Gardner*, 376 F.2d 517, 520 (4th Cir. 1967).

[17] *Id.* at 520–21 (footnotes omitted).

The court reinforced the necessity of explicit justification for rejecting treating physician reports.

Also in 1967, the Southern District of Indiana synthesized earlier precedent to firmly establish that "the expert opinions of plaintiff's treating physicians as to plaintiff's disability and inability to engage in any substantial, gainful employment are binding upon the referee if not controverted by substantial evidence to the contrary."[18] The court cited both *Teeter* and *Kerner* supporting this proposition, demonstrating the continuity and development of the treating physician doctrine.

The Sixth Circuit in *Branham v. Gardner* addressed the weight afforded to treating physicians' opinions in cases involving psychoneurosis and cardiac impairments.[19] The court was explicit: "The expert opinions of treating physicians as to the existence of a disability are binding on the fact-finder unless contradicted by substantial evidence to the contrary."[20] This clear statement solidified the rule that treating physicians' opinions could not be easily dismissed by administrative fact-finders.

In *Whitson v. Finch*, the Sixth Circuit specifically highlighted treating physicians' unique longitudinal perspective, finding it particularly valuable in chronic or progressive conditions.[21] The court noted:

'The evidence of physicians who have been treating a patient over a long period of time and who state that he is totally incapacitated, is substantial evidence as compared with the evidence of physicians who have examined appellant on only one occasion, and whose reports are inconclusive, fragmentary, uncertain, and not contradictions of unqualified evidence that the patient is totally and

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[18] *Walker v. Gardner*, 266 F. Supp. 998, 1002 (S.D. Ind. 1967) (citing *Teeter* and *Kerner*).

[19] *Branham v. Gardner*, 383 F.2d 614, 617 (6th Cir. 1967).

[20] *Id.* at 630.

[21] *Whitson v. Finch*, 437 F.2d 728, 732 (6th Cir. 1971).

permanently disabled.[22]

The court established a benchmark for evaluating treating physician opinions that recognized their special insight into the claimant's condition over time.

The Second Circuit's decision in *Gold v. Sec. of HEW* cemented the treating physician rule as a cornerstone of disability adjudication.[23] The court emphatically endorsed earlier precedent establishing that "the expert opinions of plaintiff's treating physicians as to plaintiff's disability...are binding upon the referee if not controverted by substantial evidence to the contrary."[24] This decision, frequently cited in subsequent cases, provided clear direction that treating physician opinions should receive controlling weight absent substantial contradiction.

C. REFINEMENT AND SOLIDIFICATION (1973-1978)

During the mid-1970s, courts continued to refine and strengthen the Treating Physician Rule while addressing specific applications and limitations.

The Fourth Circuit in *Wyatt v. Weinberger* reinforced that treating physicians' opinions are binding unless substantial evidence to the contrary exists, cementing the treating physician's central role in adjudicating disability claims.[25] This decision emphasized that the cumulative weight of medical evidence, particularly from treating sources, formed the foundation of a proper disability determination.

By 1978, the Second Circuit's seminal decision in *Bastien v. Califano* articulated the principle that "the expert opinions of a treating physician as to the existence of a disability are binding on the fact-finder unless contradicted by substantial

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[22] *Id.*

[23] *Gold v. Sec'y of Health, Ed. & Welfare*, 463 F.2d 38, 42 (2d Cir. 1972).

[24] *Id.*, (citing *Teeter*, *Kerner*, and *Walker*).

[25] *Wyatt v. Weinberger*, 519 F.2d 1285, 1289 (4th Cir. 1975). The court in *Wyatt* did not say so expressly; the Second Circuit, however, has interpreted *Wyatt* that way. *Bastien v. Califano*, 572 F.2d 908, 912 (2d Cir. 1978).

evidence to the contrary."[26] The court explained that treating physicians' opinions deserved this deference because they reflected "an expert judgment based on a continuing observation of the patient's condition over a prolonged period of time."[27] The court emphasized that contemporaneous medical evidence that contradicted the treating physician's opinions represented a "serious deficiency in the record." [28] This decision solidified the foundation upon which the Treating Physician Rule would continue to develop in subsequent decades, ultimately leading to its formal codification by the SSA in 1991.

V. CONCLUSION

The historical development of the Treating Physician Rule from 1956 to 1978 reveals a consistent judicial commitment to ensuring that disability determinations properly weighed the opinions of treating physicians with longitudinal knowledge of claimants' conditions. This commitment stemmed from the courts' duty to ensure that the SSA's disability determinations were supported by substantial evidence—a statutory mandate that remains unchanged.

The judicial origins of the Treating Physician Rule demonstrate that it was not an arbitrary judicial creation, but rather a carefully reasoned application of the substantial evidence standard that recognized medical realities and fairness considerations. The rule emerged organically from the earliest judicial interpretations of the Social Security Act's disability provisions and was consistently reinforced across circuit courts before ultimately being codified into regulation.

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[26] *Id.*, (citing *Gold, Branham, and Wyatt*).

[27] *Id.* at 912.

[28] *Id.* at 912.