

# HIGHLAND PSYCHOLOGICAL SERVICES

311 HIGHLANDER WAY, MANCHESTER, NH 03103-7414  
TEL: (603) 626-0966, FAX: (603) 622-7012

ERIC G. MART, PH.D., ABPP  
LICENSED PSYCHOLOGIST (NH & MA)  
LICENSED PSYCHOLOGIST- DOCTORATE (VT)  
EMART@COMCAST.NET

CRAIG R. THIBAudeau, PSY.D.,  
LICENSED PSYCHOLOGIST  
CRAIG.THIBAudeau@COMCAST.NET

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Keith Knowlton Esq.  
950 N. Mallard St.  
Chandler, AZ 85226

RE: Leanna Roberson (Smith)

Dear Attorney Knowlton:

I am writing to provide you with my expert report in the case of Leanna Roberson (Smith) in preparation for the child protection civil cases which are proceeding in this matter. I will state at the outset that I have not performed evaluations of any of the parties in this matter, and will therefore refrain from giving opinions regarding the mental state of any of these individuals except where such an opinion is sufficiently supported by the available data. Additionally, it should be understood that, generally speaking, Munchausen syndrome by proxy (also referred to as factitious disorder by proxy, fabricated illness and pediatric condition falsification) involves the exaggeration, fabrication or active induction of medical symptoms in an individual (usually a child) by a parent or other guardian/caretaker. In some cases the exaggeration/fabrication/induction may relate to psychological symptoms, but this does not seem to be the case in the current situation. As a consequence, I will leave the discussion of the presence or absence of medical child abuse to the physicians in the case who are knowledgeable about such matters, such as Dr. Newberger. For this reason, my expert opinions and testimony in this case will be primarily related to the psychological evaluations performed by Kathryn Menendez, Ph.D., and Brenda Bursch, Ph.D.

Before discussing the methodological and clinical aspects of these reports, I think it is important to discuss certain general issues in the diagnosis of MSBP. Assuming that MSBP is a valid diagnostic entity (and serious questions have been raised by numerous medical and mental health experts about the validity of this syndrome) it must be understood that an individual cannot have MSBP in the abstract. Probably the most widely accepted definition of this disorder can be found in the *Diagnostic and Statistical Manual-IV-TR* of the American Psychiatric Association. This definition, which is found in an appendix of the manual reserved for diagnoses requiring further study prior to full acceptance, states that the following must be present for a diagnosis of factitious disorder by proxy:

1. A parent knowingly exaggerates, fabricates or induces medical or psychological illness in a person under his or her control, generally a child.
2. The behaviors listed in #1 are undertaken for the secondary gain associated with these actions.

3. These behaviors are not undertaken for any form of obvious external gain.
4. These behaviors are not better explained by another diagnosis.

From a purely logical standpoint, points 2, 3, and 4 are irrelevant if the parent has not exaggerated, fabricated or induced medical or psychological illness in another person. Even if the parent is the kind of person who might obtain secondary gain from fabricating illness in a child, the diagnosis of factitious disorder by proxy cannot be applied to a particular case if criterion 1 has not been proven to the relevant legal standard. I have reviewed Dr. Newberger's report, and he raises very significant questions about whether there has been any fabricated illness or medical child abuse by the mother in this case. Should the court concur with Dr. Newberger, it would clearly be inappropriate to apply such a diagnosis in this case.

Another general issue I have in this case is the question of why licensed psychologists are opining about the presence or absence of MSBP/FDBP in a case involving alleged medical abuse of a child. Standard 2.01 of the Ethical Principles of Psychologists and Code of Conduct (Boundaries of Competence) states:

- (a) Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience.

I am not aware that Drs. Menendez or Bursch have any medical, nursing or other specialized training which would allow them to opine on the presence or absence of MSBP/FDBP in a case primarily involving allegations of medical abuse. If they have decided that specific medical problems do or do not exist, this would seem to be an example of psychological professionals operating outside of their areas of expertise, and if they are relying on the concerns raised by appropriately licensed medical professionals, then their conclusions would seem to be a form of vouching that Ms. Roberson is the kind of person who would engage in such abuse. While such a determination would be the province of the trier of fact, it should be noted that in my experience courts are quite resistant to the admission of this type of testimony. For example, in a case involving allegations of child sexual abuse, it would be very unusual for a court to allow a psychologist to testify that it is unlikely that a father engaged in sexual abuse of his children because his psychological profile does not match that of an abuser, or that an individual is likely to have robbed a bank because he has an antisocial personality disorder.

This brings me to the next general issue related to the work of Drs. Menendez and Bursch in this case. It should be understood that there is a difference between empirical research and other types of investigative research. Empirical research involves the use of matched population samples and control of extraneous factors to the extent possible. To give an example, it has been suggested by some writers on the subject of MSBP/FDBP that the mothers of hospitalized children who are perpetrating medical abuse spend excessive amounts of time at the child's bedside. In order to prove this scientifically, it would be necessary to find a population of mothers with hospitalized children alleged to have similar medical problems, identify those who are actually exaggerating, fabricating or inducing illness, and then compare the mean time spent by these parents at their children's bedside with the mean time spent by parents not thought to

have engaged in medical child abuse. It should further be noted that even if differences were found which reached the conventional level of statistical significance (.05) and were unlikely to have occurred by chance, the amount of overlap between the two groups might limit the clinical significance of the difference found. This is not to suggest that all papers and articles by mental health professionals must be empirical in nature; all research begins with observation and reviews of the literature, and speculative pieces are perfectly acceptable. However, there is a difference between using such speculation when the stakes are high (as in a child protection case) and using well-established data backed by empirical research. At a minimum, when psychologists are utilizing preliminary data in a forensic setting, there is an affirmative obligation to inform the court of the limitations of the data relied upon.

This brings me to specific concerns I have regarding the psychological evaluations performed by Drs. Menendez and Bursch. I will consider Dr. Menendez's report, dated 11/19/08 first. In addition to the report, I was provided with the raw data from her evaluation. Dr. Menendez administered the MMPI-2 to Ms. Roberson. She describes the administration of the test as producing a valid profile. However, a review of the profile indicates that Ms. Roberson obtained a T-score of 83 on the L scale, which is a measure of defensiveness. The MMPI-2 manual characterizes this elevation as very high and notes that profiles with this type of elevation are "probably invalid." The Bender-Gestalt was also administered, as were projective drawings and a parenting questionnaire that contains a section of incomplete sentences. It should be noted that none of the tests administered has been shown in the scholarly literature to have any association with a diagnosis of MSBP/FDBP. As a consequence, it is not clear how the results of Dr. Menendez's assessment led to a diagnosis of "R/O Munchausen by Proxy Disorder." The New Hampshire Supreme Court, in the case of *State v. Cressy*, noted that there must be a logical nexus between the data relied on by the expert and conclusions that the expert draws. In reviewing Dr. Menendez's report and data, I cannot see how the material she generated in her assessment can logically lead to a conclusion, even tentatively, that Ms. Roberson may have MSBP. One possibility is that Dr. Menendez simply relied upon information provided by the child protective workers in the case, in which case her report provides no new information to the court.

With regard to Dr. Bursch's report, I would reiterate my concerns regarding the appropriateness of a psychologist making determinations about a child's medical treatment. A review of medical records by mental health professionals may be necessary in an assessment of this type to provide context. However, offering opinions regarding such issues as the origin of the air in Chaunell's shunt, the likely cause of her comas, whether diagnostic procedures were justified, and whether some of Chaunell's health problems were iatrogenic appears to me to be clearly beyond the competence of non-medical mental health professionals.

A further concern is the fact that Dr. Bursch's report focuses almost completely on situations in which she believes tests were unnecessary or procedures unwarranted, but there is virtually no reference to the situations in which Ms. Roberson was correct or when there was a bona fide medical problem underlying Chaunell's symptoms. While I understand that some of the facts related to Chaunell's history are in dispute, Dr. Newberger had little difficulty finding multiple examples of situations in which Ms. Roberson made appropriate judgments regarding

her daughter's health and interacted appropriately with medical personnel. Further, while Dr. Bursch details what she believes are discrepancies between the medical records and Ms. Roberson's reports, she either did not notice the discrepancies in the accounts of medical personnel or did not choose to include them in her report. Overall, there appears to be a problem with confirmatory bias in her report.

Finally, Dr. Bursch provisionally diagnosed Ms. Roberson with Asperger's disorder, R/O pervasive developmental disorder, NOS, delusional disorder, persecutory type; R/O schizophrenia, paranoid type, and factitious disorder not otherwise specified (provisional) as well as R/O personality disorder not otherwise specified, mixed (paranoid personality disorder; obsessive compulsive personality disorder). I am concerned that these are very serious diagnoses that appear to have been made on the basis of insufficient data. Dr. Bursch did not employ any of the instruments that are commonly utilized in the assessment of autistic spectrum disorders, nor did she use any instruments such as the MMPI-2 (other than the invalid protocol produced by Dr. Menendez), the PAI, or other well validated instruments for assessing psychopathology or cognitive deficits. Again, there appears to be a lack of logical nexus between the data she developed and the conclusion she drew about Ms. Roberson.

I would be willing to testify about the bases of my conclusions in this case. Please feel free to contact me if you have questions or require further information.

Sincerely,

*Eric Mart, Ph.D.*

Eric G. Mart, Ph.D., ABPP (Forensic)  
Licensed Psychologist

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