

**SPECIAL MASTERS' RULE 27 DECISION ON
REPORT OF ADVERSE FINDING REGARDING
DRS. KOBERDA, HOPPER, FORD-JOHNSON,
LLOYD, MORGAN, AND SADEK**

1. INTRODUCTION

Under Section 10.3 of the Settlement Agreement and Rule 7(b) of the Rules Governing the Audit of Claims, the Claims Administrator audited Howard & Associates, P.A. and numerous doctors implicated in the firm's conduct. The Special Masters concluded that Howard & Associates "manipulated the medical examination process and medical records with the intent to affect whether Settlement Class Members qualified for Monetary Awards," but reserved decision on various medical providers implicated in that misconduct. Doc. 236357, at 5. In its Audit Report, the Claims Administrator recommended the disqualification and professional reporting of Drs. Jaroslaw Koberda, Laura Hopper, Lawanda Ford-Johnson, Christine Lloyd, Elizabeth Morgan, and Ahmed Sadek.¹

Drs. Koberda, Hopper, Morgan, and Sadek submitted responses pursuant to Rule 20 of the Audit Rules. Doc. 233447; Doc. 233448; Doc. 233446; Doc. 233445; Doc. 233444. Dr. Lloyd did not submit a response. Dr. Ford-Johnson, with counsel, spoke with the Claims Administrator. The NFL Parties filed a single reply in response to the audit of Howard & Associates. Doc. 234464.

We incorporate by reference our Rule 27 Decision concerning Howard & Associates. Objections to a Rule 15 Report of Adverse Finding in Audit must establish "that there is no reasonable basis to support a finding that there has been a misrepresentation, omission or concealment of a material fact made in connection with a Claim by the Settlement Class Member." Audit Rule 28. We also incorporate by reference our understanding of the scope of the Audit process under Rule 3(d) and Rule 28.

We highlight key Claims Administrator findings below and conclude that all but one of the Doctors have not met their burden under Rule 28.

2. DISCUSSION

Rule 28 requires that the Special Masters determine whether the subject of an Audit has "established that there is no reasonable basis to support a finding that there has been a misrepresentation, omission or concealment of a material fact made in connection with a Claim by the Settlement Class Member." Rule 12(c) deems a misrepresented, omitted, or concealed fact "material" to an audit investigation if it "did affect or has any potential to affect" a Claim. This section applies that standard to the investigation findings related to each of the named Doctors.

¹ Regarding physician Dr. Edwardo Williams, nurse Sammantha Barker, and office manager (for Dr. Sadek) Tara Velez, the Claims Administrator recommended no further action, and we make no findings here.

Dr. Jaroslaw Lucas Koberda

Dr. Koberda is a former Qualified MAF Physician and BAP Provider located in Tallahassee, Florida. Doc. 231086, at 7. Beginning in 2016 and continuing until mid-May of 2017—prior to being approved as Qualified MAF Physician—Dr. Koberda performed neurocognitive evaluations for ninety-five Players referred to him by Howard. *Id.* at Ex. 7. The Claims Administrator described Dr. Koberda as Howard’s “go-to person” for neurological assessments during that time. *Id.* at 21.

On January 25, 2017, Dr. Koberda submitted his Network Provider Application, which was approved on May 15, 2017. *Id.* at Ex. 6, 7. Emails obtained during the audit investigation process revealed that Dr. Koberda sent his application to Howard for review (Ex. 73), and that Howard & Associates ultimately prepared a “final” version of Dr. Koberda’s MAF Application for him to file (Ex. 75), following ongoing exchanges regarding the specifics of the application. *Id.* at Ex. 72-83. Howard drafted responses to application questions, being careful “not [to] reference or discuss the current testing efforts of the 150+ players.” *Id.* at Ex. 72. After submitting his application, Dr. Koberda sought Howard’s advice about how to respond to follow-up questions from the Claims Administrator.² *Id.* at 47-48, Ex. 76, 80.

In August 2017, following receipt of the tip that prompted this audit investigation, the Claims Administrator reached out to Dr. Koberda to ask for clarification about the extent of his involvement examining NFL Players associated with the Settlement Program. *Id.* at Ex. 84. Dr. Koberda disclosed his relationship with Howard during a phone call on August 29, 2017, and subsequently sent a letter on September 18, 2017 detailing the examinations he performed based on referrals from Howard and stating that “**none** of these 95 IMEs / neurocognitive evaluations may be submitted” to support a Claim. *Id.* at Ex. 7.

Dr. Koberda voluntarily withdrew from the MAF and BAP Programs on May 19, 2020, citing Covid-19 as a reason. *Id.* at 8. During his time as a Network Provider, Dr. Koberda submitted two Diagnosing Physician Certification Forms with a Qualifying Diagnosis. *Id.* at 8. One Player was represented by Shenag PC, and the Claim was ultimately denied; the other Player was *pro se*, and the Claim was paid. *Id.* at 8 n.18. There are no allegations of misconduct in connection with either Claim.

As noted above, Rule 28 asks if there has been a misrepresentation, omission, or concealment of a material fact made in connection with a Claim—where “Claim,” per Rule 3(d), means “any Claim Package (or portion of a Claim Package) submitted or that may be submitted to

² After receiving Dr. Koberda’s application, the Claims Administrator contacted Dr. Koberda to ask if the “Players he examined came to him independently or if any were referred to him by attorneys as part of any kind of litigation.” *Id.* at 47. Dr. Koberda reached out to Howard for advice about how to respond, *Id.* at 47, Ex. 76, and eventually responded with the following language, suggested by Howard: “As noted in my attachment, [REDACTED] was seen in this office but was referred to us by another doctor. The psychiatric hospital treatment for the NFL player was not for litigation. As a result, I have seen former NFL players referred to my office both by other medical providers as well as represented by attorneys.” *Id.* at 48, Ex. 80.

the Claims Administrator.” Unlike the other Doctors discussed in this Decision, the audit investigation did not reveal evidence that Dr. Koberda manipulated or fabricated information in connection with any of the ninety-five neurological examinations he performed prior to becoming a Qualified MAF Physician.

The available email correspondence between Howard and Dr. Koberda does not indicate that Dr. Koberda was a participant in Howard’s operation of manipulating records; to the contrary, there is evidence that suggests Dr. Koberda resisted directions from Howard to improperly modify medical records.³ Dr. Koberda was not included on any of the emails that Howard sent to a group of recipients (including other named Doctors) providing instructions about how to draft or modify medical records.⁴ And an email exchange between Howard and Dr. Hopper—but *not* Dr. Koberda—indicates that for at least one Player, medical records were “updated” (or, at a minimum, added to) *after* Dr. Koberda’s signature had been obtained but without his knowledge.⁵

Consistent with this evidence, the Claims Administrator did not charge Dr. Koberda with participating in the fraudulent modification of medical documentation, but instead asserted that “Dr. Koberda engaged with Howard & Associates to prepare, and then communicate, untruthful information to the Settlement Program in an attempt to become a Qualified MAF Physician and

³ For example, in an email exchange from September 2016, Dr. Koberda wrote, “Any change in cognitive status requires separate full evaluation with conclusion of decline in time not just simple correction on paper.” *Id.* at Ex. 38, 39. Howard forwarded that email to members of his staff with the message: “Going forward we will need to have all CDRs in the 2.0 or moderate range so that we don’t have these issues with Dr. Koberda.” *Id.*

⁴ Specifically, Howard addressed the following topics:

- sharing the Special Master Rule 28 Audit Decision on Dr. Serina Hoover, with subject line “Please Review to Avoid Issues” (*Id.* at Ex. 24);
- directing providers to name “Dr. Lloyd, who has the required board certification,” as the primary neuropsychologist on evaluations, and to ensure that all medical records show that “there is no current employment” for any Player, because “if there is any employment, the claim will be denied” (*Id.* at Ex. 26, 32);
- directing providers to “get the dates adjusted on all of Dr. Sadek’s reports so that they are well past the time frames of the testing and the clinical assessment by Dr. Sadek” (*Id.* at Ex. 31);
- asking Dr. Sadek and his office manager for update on upload status of medical records to the Claims Portal, including status of a “corrected version” of a neuropsychological report (*Id.* at Ex. 35) (email sent by a Howard & Associates employee);
- providing a “working draft report” for a specific Player that reflected a number of “updates,” and explaining that further modifications could be made to the document (*Id.* at Ex. 40);
- addressing, in part, the creation of templates for both neuropsychological and neurological reports (*Id.* at Ex. 41);
- providing an “updated report” for a specific Player, noting that changes were made to conform with the MAF Physician Manual but the “content is the same” (*Id.* at Ex. 42);
- providing a copy of a “working draft report” for a specific Player “for your [Drs. Sadek, Morgan, and Lloyd’s] use” (*Id.* at Ex. 43).

Dr. Koberda was not a recipient on any of these group email threads.

⁵ In the email exchange, Howard wrote: “Dr. Hopper, are we able to update [REDACTED]’s report to address these concerns, or to do an addendum to the report to resolve them? I will forward a copy of the [REDACTED] final packet signed by Dr. Koberda, and let’s see if we can provide an addendum promptly to address these ‘conjecture’ critiques.” *Id.* at Ex. 65. There is no evidence that suggests Dr. Koberda was made aware of any changes.

BAP Provider.” *Id.* at 6. The question is whether Dr. Koberda’s misrepresentations, omissions, and concealments concerning his MAF Application were material in accordance with Rule 12—that is, if they were “made in connection with a Claim by the Settlement Class Member.”

We conclude that Dr. Koberda’s actions do not meet the materiality standard. For a misrepresentation, omission, or concealment of fact to meet this standard, the *specific fact in question* must, at a minimum, have the *potential* to affect whether a Player could qualify for a Monetary Award.⁶ Applying this standard, Dr. Koberda’s effort to conceal his involvement with the Settlement Program prior to becoming a Qualified MAF Physician was not “in connection with a Claim” or any potential or future Claim. That is, Dr. Koberda’s failure to accurately list the number of exams he performed and how those Players came to him does not bear on whether any Player’s Claim Package (already submitted or that *may* be submitted) satisfied the Settlement’s requirements.⁷

We condemn Dr. Koberda’s lack of forthrightness in his initial application. But Dr. Koberda did not participate in manipulating medical records for actual or potential Claim Packages. Nor are there allegations of misconduct after the time that Dr. Koberda became a Qualified MAF Physician. And Dr. Koberda is no longer a Network Provider: he is not working in the Settlement today and there is no evidence that he plans to do so in the future. We therefore find it unnecessary to decide if a doctor who misrepresents information on an application for participation in the Settlement may continue to serve. We conclude only that Dr. Koberda did not misrepresent, omit, or conceal a material fact in connection with a Claim or any future claim: his disqualification is not indicated.

⁶ Rule 12(c) deems a misrepresented, omitted, or concealed fact “material” to an audit investigation if it “did affect or has any potential to affect whether the Settlement Class Member qualifies for a Monetary Award, Supplemental Monetary Award or Derivative Claimant Award and/or the amount of such award in favor of the Settlement Class Member under the provisions of the Settlement Agreement.”

⁷ In the related Rule 27 Decision concerning Howard & Associates, we explained how the facts misrepresented, omitted, and concealed by Howard & Associates directly affected whether potential Claim Packages fulfilled the Settlement’s requirements, and therefore squarely fall within the applicable standard:

Howard & Associates misrepresented, omitted, and concealed material facts in connection with Claims that may have been submitted to the Claims Administrator. In fact, it is precisely *material facts* that Howard & Associates went to tremendous lengths to alter. The facts here show that Howard & Associates directed doctors to falsely report Players’ CDR scores and functional impairment, changed provider names and evaluation dates on medical records such that the reports wrongly appeared to have been performed by doctors with the certifications required by the Settlement, and fabricated medical records in their entirety, each a material breach of the Settlement’s requirements.

Special Masters’ Rule 27 Decision on Howard & Associates and Related Parties (June 22, 2021), https://www.nflconcussionsettlement.com/Docs/howard_associates_sm.pdf.

Dr. Laura Hopper

Dr. Hopper is a neuropsychologist based in San Diego, California. Doc. 231086, at 16. Dr. Hopper evaluated thirty-three of Howard's clients for the Settlement. Before providing diagnoses, she met with only two of those Players personally. For the remaining thirty-one, she received raw data from Dr. Edwardo Williams, or from Howard & Associates, and wrote reports without examining the Players herself. *Id.* at 17. An AAP Consultant further noted that Dr. Hopper was not legally allowed to examine Howard's clients in Florida because she did not hold a Florida license. *Id.* at 44.

Dr. Hopper also engaged in discussions with Howard about changes to medical reports. *Id.* at 20. The Claims Administrator observed—and the email exhibits support—that “Dr. Hopper appeared to be a willing and contributing participant of the process.” *Id.* at 20, Ex. 50, 65, 66. She strategized with Howard about how to re-administer testing to cure performance validity issues. *Id.* at 20, Ex. 67, 68, 69.

Dr. Lawanda Ford-Johnson

Dr. Ford-Johnson is a clinical psychologist based in Tampa and St. Petersburg, Florida. Doc. 231086, at 9-10. She prepared neuropsychological testing reports for Players represented by Howard & Associates from around August 2016 to September 2017. *Id.* at Ex. 1. Dr. Ford-Johnson did not personally examine many of the Players for whom she prepared reports; the Claims Administrator believes that she received raw data from Dr. Williams and prepared the reports without examining Players herself. *Id.* at 20. As a result, many of her reports are based on medical records created by another provider—although the reports do not identify that information. *Id.* at 46. Dr. Ford-Johnson also participated in discussions with Howard concerning changes to medical reports. *Id.* at 46, Ex. 30.

Most notably, the Claims Administrator found that Dr. Ford-Johnson's reports were “the product of careful ‘cherry-picking’ by an author with an intent to present a narrative of impairment.” *Id.* at 34. There were also instances where Dr. Ford-Johnson's reports “mischaracterize[d] information gathered from collateral informants.” *Id.* at 35.

Dr. Christine Lloyd and Dr. Elizabeth Morgan

Dr. Lloyd and Dr. Morgan are neuropsychologists who jointly prepared neuropsychological reports for Players represented by Howard from around June 2017 to February 2018. *Id.* at Ex. 1. Overall, there is limited information available in the Audit Report pertaining to Dr. Lloyd and Dr. Morgan. They prepared neuropsychological reports for two tests in the testing battery and then incorporated their findings, without indicating what they were doing, into already edited reports authored by Drs. Williams, Hopper, and Ford-Johnson. *Id.* at 22. Dr. Lloyd never personally examined any of the Players for whom she signed reports. *Id.* at 18. Dr. Morgan received emails from Howard providing instructions and discussing changes to reports, though it is unclear if Dr.

Morgan heeded Howard's instructions to engage in misrepresentations of report data. *Id.* at 46, Ex. 31, 32.

Dr. Ahmed Sadek

Dr. Sadek is a Qualified MAF Physician and BAP provider in Orlando, Florida. *Id.* at 11. Dr. Sadek evaluated thirty-eight of Howard's clients from July to October 2017. *Id.* at 16. Emails obtained during the audit investigation reveal that Dr. Sadek received instructions from Howard & Associates to modify medical records to satisfy the Settlement's injury requirements, including changing dates, falsely including the name of a provider with the credentials required by the Settlement, and reporting that Players are unemployed due to cognitive limitations. *Id.* at 42; *see also supra* note 4. Additionally, there is evidence that Dr. Sadek was provided with a template to use for his reports, and that he was instructed on which records should be uploaded to the Claims Portal ("only upload reports") and which records to omit ("[n]o testing materials"). *Id.* at 42, Ex. 34, 35.

Additionally, the Claims Administrator concluded that Dr. Sadek misrepresented his relationship with Howard & Associates to the Settlement Program. *Id.* at 42. When asked directly, Dr. Sadek stated that no law firm had given him instructions or asked him to edit reports. *Id.* at 42. The Audit revealed this to be plainly untrue. *Id.*; *see also supra* note 4. In addressing any misrepresentations in communications with the Settlement Program about his relationship with Howard, Dr. Sadek said that any misrepresentations were unintentional and the result of failing to recall minor details nearly two years after the events. Doc. 233444, at 11.

The Claims Administrator ultimately observed that "[t]he extent of Dr. Sadek's involvement in the questionable activity is unclear" partly because "much of Dr. Sadek's opinion rested on the neuropsychological report from Drs. Lloyd and Morgan, a document which had been manipulated by the firm over time." Doc. 231086, at 22. It is further unclear whether, or to what extent, Dr. Sadek misrepresented, omitted, and/or concealed material facts in his neurological reports.

But proof of the full extent of Dr. Sadek's involvement is not necessary for us to make a determination. The available evidence demonstrates that Dr. Sadek actively participated in the deliberate and fraudulent manipulation of medical records for potential Claim Packages. Even if he did not misrepresent findings from the neurological examinations he performed, he knowingly incorporated neuropsychological testing results—one of the required injury criteria—that had been fraudulently altered to meet the Settlement's requirements. This plainly constitutes a material misrepresentation in connection with a potential Claim Package.

3. CONCLUSIONS AND REMEDIES

Upon review, the Special Masters find that, except for Dr. Koberda, the named providers have not established that there is no reasonable basis to support a finding that they misrepresented, omitted, or concealed material facts in preparing portions of Claim Packages, including in medical

reports and in communications with the Settlement Program. The actions of these doctors, including complacency in a blatant effort to perpetrate fraud, enabled Howard & Associates in its “wide-ranging, long-standing, and brazen pattern and practice of manufacturing evidence for submission to the Settlement Program.” Doc. 236357, at 7.

Accordingly, pursuant to Section 10.3 of the Settlement Agreement and Audit Rule 27, the Special Masters direct the following remedies:

- A. Disqualification of Named Providers.** Drs. Laura Hopper, Lawanda Ford-Johnson, Christine Lloyd, Elizabeth Morgan, and Ahmed Sadek are permanently disqualified from participation in the Settlement Program.
- B. Referral to Professional Boards:** With respect to Drs. Hopper and Ford-Johnson, given the evidence of misrepresentation, omission, or concealment of material facts in connection with player evaluations and communications with the Settlement Program, the Claims Administrator shall refer them, with the assistance of the AAP Members and Consultants, to their respective professional boards. The Claims Administrator shall make no such referral in the case of Drs. Koberda, Lloyd, Morgan or Sadek.

Date: September 14, 2021



David A. Hoffman, Special Master



Jo-Ann M. Verrier, Special Master