

**SPECIAL MASTERS' RULE 27 DECISION ON THE
REPORT OF ADVERSE FINDING REGARDING
HOWARD & ASSOCIATES, P.A., AND RELATED PARTIES**

1. Introduction

Under Section 10.3 of the Settlement Agreement and Rule 7(b) of the Rules Governing Audit of Claims, the Claims Administrator audited Howard & Associates, P.A. Following an intensive investigation, the Claims Administrator concluded that Howard & Associates and related parties had “overwhelmingly” misrepresented, omitted, or concealed material facts in connection with certain Monetary Award Claim Packages. Accordingly, the Claims Administrator referred this Audit to the Special Masters for review and findings pursuant to Section 10.3(i) of the Settlement Agreement. Doc. 231086, at 1, 50-51.

After reviewing the Claims Administrator’s Audit Report and NFL Parties’ Audit Rule 17 Statement of Position, and under Rule 18 of the Audit Rules, the Special Masters accepted the referral of Howard & Associates for further proceedings. The Special Masters directed:

- that the proceedings be expedited to the fullest extent possible;
- that they cover Howard & Associates and all related parties;¹
- that the Claims Administrator immediately provide a summary report detailing the fees and expenses submitted by Howard & Associates in the lien actions between them and Shenaq PC; and
- that the Claims Administrator immediately place into audit all pending Claims, not yet processed or paid, by any Settlement Class Member now or ever represented by Howard & Associates.

Doc. 232071, at 2. Howard & Associates filed several memoranda in response to the Special Masters’ Rule 18 Decision, as Rule 20 permits. Doc. 233441; 233442; 233443; 234583. The NFL Parties filed a single reply. Doc. 234464.

The Special Masters have reviewed the full Record of the Audit Proceeding, considered the responsive memoranda, and now issue this Decision regarding Howard & Associates and its employees.²

¹ Specifically: Timothy Howard, and Howard & Associates employees (former and current) Neil Epstein, Don Reinhard, Ankur Mehta, Linda Bedell, Addys Walker, Brenda Murphy, Erin Murphy, Duante Smith, Chelsea Cook, Kyla DeRobbio, Addernika Walker, Harrison Smith, Jaakan Williams, Orentheal Williams, Zane Herman, Luis Achata, Arian Hernandez, and Cortney Hicks; healthcare providers Jaroslaw Koberda, Edwardo Williams, Sammantha Barker, Laura Hopper, Lawanda Ford-Johnson, Christine Lloyd, Elizabeth Morgan, Ahmed Sadek, and Tara Velez.

² The subject of this Rule 27 Decision is Howard & Associates’ actions and not those of the various healthcare providers implicated in the Audit Report. A separate opinion regarding these parties is forthcoming.

2. Background

2.1. Howard & Associates and the Settlement Program

Howard & Associates initially registered 223 Players with the Settlement Program. Around April 2018, the Shenaq PC law firm assumed representation of over 170 of those 223 Players, leaving 47 represented by Howard & Associates, but the firm has yet to file a claim for any of those Players. Shenaq PC filed claims for 32 of the Players previously represented by Howard & Associates, but then terminated its representation of all 170 Players—including the 32 filed claims—in October 2020. The 170 Players subsequently resumed representation by Howard & Associates.

The Firm currently represents 216 Settlement Class Members, including the 32 Players for whom Shenaq PC filed Monetary Award Claims—of which 21 have been paid, two have been withdrawn, four denied, and the remaining five placed in audit. Each of the 21 Claims that have been paid were based on diagnoses made by doctors who are *not* implicated in the Audit Report. Doc. 231086, at 2-3.

2.2 The Audit Proceedings

In March, April, and August 2017, the Claims Administrator received tips from an informant claiming that Howard & Associates recruited various doctors, demanded revisions to medical reports, and, in some cases, altered or forged reports to support inflated diagnoses. *Id.* at 1-2. In August 2017, the Claims Administrator began auditing Howard & Associates and submitted an Interim Investigation Report to the Special Masters and Parties detailing the allegations, as well as next steps in its investigation. *Id.* at 5, Ex. 3. After almost a year, the Claims Administrator suspended the investigation because it had not received any claims submitted by Howard & Associates. However, it resumed the investigation in June 2019, after Settlement Class Members who had previously been represented by Howard & Associates submitted medical records from time periods when they were clients of the Firm.

The audit investigation continued until November 2020, following which the Claims Administrator issued a Rule 15 Audit Report. It concluded that Howard & Associates:

- edited and/or drafted medical records with the purpose to affect whether the Settlement Class Members qualify for a Monetary Award;
- instructed medical providers, including Qualified MAF Physicians and BAP Providers, to misrepresent material information in medical records for the Settlement Program;
- engaged in discussions with numerous healthcare providers about changes to Players' medical reports, and provided instructions to the providers about what the medical reports should include;

- directed a physician³ to omit material facts from the Network Provider Application and communicate untruthful information to become a (now former) Qualified MAF Physician and BAP Provider; and
- presented inflated costs for reimbursement in a lien dispute before the Court.

Id. at 6-7. The Claims Administrator deemed these actions to be material. *Id.* at 49-50.

The full outline of these facts is contained in detail in the 51-page Rule 15 Report and its 600+ pages of exhibits, including emails from Howard & Associates that the firm submitted in a lien dispute before the Court.

2.3 **Findings of Fact**

The Special Masters, considering the Record, adopt the factual findings of the Claims Administrator. We highlight the following facts here as illustrative.

1. Twenty-two Settlement Class Members submitted records believed to be compiled, at least in part, by Howard & Associates as part of a current or former Claim Package. *Id.* at 14-15, Ex. 9.
2. Howard & Associates maintained a OneDrive folder that contained 143 neuropsychological reports, all in a similar Microsoft Word format and many with overlapping language and grammatical errors.⁴ *Id.* at 19, 30-36, Ex. 48. Eighty percent of these reports included a Qualifying Diagnosis, a rate that is dramatically higher than typically observed by the Program. *Id.* at 21, 30.
3. Howard & Associates engaged in a process of “continuous edits and changes passed from the doctors and testers to the law firm” to modify medical reports so that they would meet the Settlement’s Qualifying Diagnosis thresholds. *Id.* at 19-23.
 - a. A former Howard & Associates employee alleged that Howard personally altered testing data within Settlement Class Members’ medical reports. *Id.* at 39, Ex. 57. Howard & Associates offered no credible rebuttal to this allegation.
 - b. Howard & Associates asked Drs. Hopper, Sadek, and Morgan to make revisions to their medical reports. *Id.* at 20, 22. Howard himself requested that Drs. Sadek and Morgan edit dates and provider names on their reports. *Id.* at 26-27, Ex. 31, 32. He requested that Dr. Sadek place Dr. Lloyd’s name—whom he believed held the proper board certification required by the Program—on his reports, even though Dr. Lloyd claimed not to have personally examined any Settlement Class Members

³ The Claims Administrator referred to this physician, Dr. Koberda, as Howard’s “go-to person” for neurological reports. *Id.* at 21. However, within a month of becoming a Qualified MAF Physician and BAP Provider, Dr. Koberda received an email from the tipster outlining the alleged fraud that Howard was perpetrating. Howard’s relationship with Dr. Koberda fell apart shortly thereafter—leading Howard to turn his attention to other physicians.

⁴ Howard & Associates argues that the OneDrive folder (which the firm submitted as evidence to the Court evaluating their lien dispute with Shenaq PC), as well as the medical reports they drafted were analogous to a mock trial or “dry run,” done for educational purposes only. Doc. 233441, at 6. We do not credit this explanation, for which Howard & Associates offered no credible evidence.

for the Program. *Id.* at 18, 26, Ex. 32. He also instructed Drs. Sadek and Morgan as to what information they should include in their reports. *Id.* at 27, Ex. 33.

4. Tim Howard instructed Drs. Sadek and Morgan to misrepresent Settlement Class Members' employment statuses by falsely classifying them as being unemployed in their CDR and neuropsychological reports. *Id.* at 24, Ex. 26. As Howard explained in an email to these doctors and several employees, "Note, if there is any employment, the claim will be denied." *Id.* at 24. He also instructed Howard & Associates employees to review medical reports for "errors" listing Settlement Class Members as being employed. *Id.* at 25, Ex. 28.
5. Tim Howard suggested modifying at least two CDR score reports sent to him by Dr. Ford-Johnson without additional in-person evaluation of the Settlement Class Member. *Id.* at 26, Ex. 30. He also instructed Howard & Associates employees to have all score reports reflect a blanket CDR score of 2. *Id.* at 28, Ex. 39. CDR score reports found in the OneDrive folder selectively included information from the CDR assessment that would be most favorable to a Settlement Class Member's Claim, while omitting factors from the CDR that would show lack of impairment. *Id.* at 34-36.
6. Howard & Associates instructed Dr. Sadek through Ms. Velez on what materials to submit as part of Settlement Class Members' Claim Packages and asked that Ms. Velez send medical reports to Howard & Associates for review before submission. *Id.* at 27-28, Ex. 34, 35.
7. Tim Howard sent "working draft report[s]" for Settlement Class Members in Microsoft Word format addressing Drs. Sadek, Lloyd, and Morgan, as well as several Howard & Associates employees with instructions to make "any changes . . . for any updates on the testing." *Id.* at 28-29, Ex. 40, 43. In a subsequent email, he referred to the updated report as a "template for future clients going forward." *Id.* at 29, Ex. 42.
8. Howard & Associates employees exchanged draft medical reports internally. *Id.* at 29-30, Ex. 44, 45, 46, 47.
9. Howard & Associates facilitated several Settlement Class Members' medical examinations, which were conducted at Howard & Associates' office, rather than a healthcare facility. *Id.* at 38, Ex. 55.
10. In a sample of 10 reports taken from the OneDrive folder that Howard & Associates submitted in their lien dispute, several contained "clear misinterpretations" of data. For example, Settlement Class Members had consistently failed embedded validity indicators but the reports indicated that they had passed. At least one report was entirely fabricated. *Id.* at 38-39, Ex. 56.
11. Tim Howard facilitated Dr. Koberda's application to become a Qualified MAF Physician by personally dictating the information Dr. Koberda gave to the Settlement Program during and after the application process, at times instructing Dr. Koberda to omit certain information pertaining to his examination of Howard & Associates' clients. *Id.* at 46-49, Ex. 6, 72-84.
12. Howard & Associates submitted materially inflated costs to the Court when seeking reimbursement for examinations and services rendered by Ms. Barker, American Health Imaging, and possibly Dr. Koberda. *Id.* at 39-41, Ex. 58, 59.
13. In the Fall of 2020, the Claims Administrator received notice that a new firm, Collins & Truett, had requested access to the Portal. That firm employs a former employee of

Howard & Associates and has a relationship with Mr. Howard himself. Most of the Settlement Class Members currently represented by Collins & Truett were previously represented by Howard & Associates.

3. Conclusions and Remedies

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.” Upon thorough review, the Special Masters find that there is compelling evidence to support a finding that the owner and employees of Howard & Associates misrepresented, omitted, or concealed material facts in submitting Claims to the Program. Specifically, the Special Masters find that the owner and employees of Howard & Associates manipulated the medical examination process and medical records with the intent to affect whether Settlement Class Members qualified for Monetary Awards.⁵

Howard & Associates maintains that there is no reasonable basis to reach that conclusion. In part, their argument rests on the assertion that no Claims were ever submitted by them on behalf of any Settlement Class Members. Admitting that the Claim Packages they compiled were neither compliant nor sufficient for submission, the Firm argues that these failures are why they did not submit those Claims. Doc. 233441, at 6-9; Doc. 233442, at 6-7. Thus, in essence, Howard & Associates argues that its behavior—even if otherwise wrongful—did not materially affect the Settlement Program.

We do not agree.

First, the plain language of both the Settlement Agreement and the Audit Rules makes clear that the audit process is in no way limited to already-submitted Claims. The Settlement states that the Claims Administrator must “establish and implement procedures to *detect and prevent fraudulent submissions* to, and payments of fraudulent claims from, the Monetary Award Fund.” Settlement Agreement, Section 10.3 (emphasis added).⁶ Prevention inherently requires proactive

⁵ Given the pervasive nature of the conduct of Howard & Associates, and the absence of any individual objections that satisfy the Rule 28 burden of exculpating particular Howard & Associates employees, our discussion describes the practices of the firm as fairly representing all of the individual employees.

⁶ That mandate to prevent fraud continues in Section 10.4, which reads:

The Claims Administrator, in consultation with Co-Lead Class Counsel and Counsel for the NFL Parties, will also establish system-wide processes to detect and prevent fraud, including, without limitation, . . . alteration of documents, questionable signatures, duplicative documents submitted on claims, the number of claims from similar addresses or supported by the same physician or office of physicians, data metrics indicating patterns of fraudulent submissions, and such other attributes of claim submissions that create a reasonable suspicion of fraud.”

This non-exhaustive list, detailing examples of the precise type of illicit activity that the Settlement aims to prevent, has a remarkable degree of overlap with the facts about Howard & Associates’ actions as detailed in the Claims Administrator’s report.

measures. The core goal of the Agreement’s Audit provisions and associated Rules is to impede efforts to defraud the Settlement—and, as the actions of Howard & Associates make clear, extensively fraudulent activity can take place before a Claim has been submitted.

Turning to the Audit Rules, Rule 3(d) states that:

‘Claim’ means any Claim Package (or portion of a Claim Package) submitted *or that may be submitted* to the Claims Administrator seeking or relating to a Monetary Award or Supplemental Monetary Award, or a Derivative Claim Package (or any portion of a Derivative Claim Package) submitted *or that may be submitted* to the Claims Administrator seeking a Derivative Claimant Award. (Emphasis added.)

And 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.

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.

Further, the premise of Howard & Associates’ argument—that the firm never successfully submitted a Claim—is inaccurate. Although Howard & Associates is not the named attorney on any Claim Packages, it has worked on Claims submitted to the Settlement and has been paid as a result of work done in connection with those Claims.⁷ Tim Howard testified that he controlled Claims without being the named attorney on the Registration form.⁸ And the Firm has asserted

⁷ Shenaq PC has filed Claims for thirty-two of the Settlement Class Members previously represented by Howard & Associates, and twenty-one of those Claims have been paid. Moreover, the co-counsel agreement between Howard & Associates and Shenaq PC provided that Shenaq was to handle day-to-day management of Claims, but that the distribution of Settlement proceeds and reimbursement of expenses would be split between Howard & Associates and Shenaq after Claims were filed. This split would be based on Howard & Associates’ duties, which included handling day-to-day client questions, and reimbursement for Shenaq’s out-of-pocket expenses. Doc. 231086, Ex. 14; Amended and Restated Co-Counsel Agreement, at 2-4. Howard & Associates has continued to be paid for Claims that Shenaq filed—an arrangement which may continue to this day.

⁸ One example is especially illustrative: the ██████████ (SPID 100014059) lien dispute. This is a case where a Claim Package was nominally submitted by Shenaq PC and determined to be eligible for a Diagnosis of Parkinson’s, leading to an award of over \$1.5 million. At a lien hearing in July 2020, Howard argued at length that he was involved intensely in ██████████’s Claim from December 2016 until ██████████ terminated his representation in September 2019. Indeed, Howard stated that his firm covered ██████████’s costs and travel expenses and that Shenaq paid for “nothing.” Howard even asserted that Howard & Associates still represented ██████████ through Mr. Shenaq, and that “but for us there is no Amir Shenaq involved in this process.” Doc. 231086, at 41-42, Ex. 27, 61, 62. As a result of this lien, and Howard’s testimony, Magistrate Judge Strawbridge, without having the benefit of the facts

liens (that is, entitlement to a share of money, if the Program grants an Award) in at least nineteen different cases.⁹

Furthermore, Howard & Associates' fraudulent actions are not limited to the preparation of Claim Packages and the submission of them through associated counsel: the Firm engaged in a process of perpetuating misinformation to secure a physician's qualification as a MAF Physician and BAP Provider. Individual Claims aside, this fact would be enough on its own to find that the Firm had materially and adversely impacted the Settlement Program.

As the facts above demonstrate, Howard & Associates engaged in a wide-ranging, long-standing, and brazen pattern and practice of manufacturing evidence for submission to the Settlement Program. It drew multiple professionals into its scheme. And it submitted Claims to the Program—and sought reimbursement for that work—during the very time that this behavior was ongoing. There is a factual basis for a finding of misrepresentation, omission, or concealment of material facts in connection with both Claims submitted, and Claims not yet submitted, to the Settlement Program.

And the problem continues. Howard has more recently undertaken a relationship with a new firm, Collins & Truett, which has submitted multiple Claims to the Settlement, and intends to submit more. Importantly, Mr. Epstein—a former employee of Howard & Associates, who was an instrumental participant in the Firm's undertakings—is now an employee of Collins & Truett, and emailed the Claims Administrator in August 2020 stating that he is the “NFL Concussion law firm contact” for the firm. *Id.* at 4. Thus, the Program faces the likelihood of an additional wave of Claims touched by Howard & Associates.

The audit process has amassed compelling factual evidence that Howard & Associates engaged in behavior that has significant implications for the integrity and fair administration of the Settlement Program as a whole. Certainly, neither the firm nor any of its employees has met the Rule 28 burden of establishing 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.”

On that basis, to prevent future wrongdoing and to ensure this behavior did not and will not implicate any Claims, and pursuant to Section 10.3 of the Settlement Agreement and Audit Rule 27, the Special Masters direct the following remedies:

A. Disqualification of Howard & Associates and its Employees: Tim Howard, Neil Epstein, Don Reinhard, Ankur Mehta, Linda Bedell, Addys Walker, Brenda Murphy, Erin Murphy, Duante Smith, Chelsea Cook, Kyla DeRobbio,

uncovered in this Audit, recommended that Howard & Associates be paid \$258,698.56. *Id.*, Ex. 14. The payment is currently in abeyance.

⁹ These nineteen cases represent the minimum number of submitted Claims in the Settlement that the Firm and its proxies have worked on: there may be (and likely are) additional Claims where Howard & Associates have worked on the Claim Package but have not yet filed a lien.

Addernika Walker, Harrison Smith, Jaakan Williams, Orentheal Williams, Zane Herman, Luis Achata, Arian Hernandez, and Cortney Hicks are permanently disqualified from participation in the Settlement Program, as is Howard & Associates itself.

- i. Any Monetary Award Claim currently under review that was submitted by a Settlement Class Member who is currently represented by any of the individuals or entities named in the paragraph above is denied without prejudice to the Retired Player's ability to file a subsequent claim with new representation.
- ii. "[P]articipation in the Settlement Program" means that such individuals may not play any role in recruiting Settlement Class Members, in preparing Claims for submission, or in working on the adjudication of those Claims in the Appeals Process.
- iii. The Claims Administrator shall directly notify any Claimant represented by Howard & Associates and its Employees of the results of this Audit, share with them this Decision, and shall consult with Class Counsel about what options, if any, to offer those Claimants.
- iv. The Claims Administrator shall transmit a copy of this Decision, as well as the underlying Audit Report, to Magistrate Judge David Strawbridge, who is hearing all lien matters.

B. Referral to Federal Authorities: Given the substantial amount of resources dedicated to this Audit Proceeding, including significant financial costs to both the NFL Parties and the Claims Administrator, the Claims Administrator will share this Decision, along with the full Record of the Audit Proceeding, with federal criminal authorities.

C. Particular Claim Files: Any Claims by Settlement Class Members who were at any time represented by Howard & Associates (including its employees) shall be audited, whether those Claims are currently pending or submitted in the future. The Claims Administrator shall certify to the Special Masters, before releasing each Claim from audit, that there is no indication or evidence that any material from Howard & Associates affected its disposition.

D. Notice and Reporting For All Registered Counsel: The Claims Administrator shall make this Decision accessible to the public and shall distribute it to every attorney currently connected to the Program, so that they are aware of its findings and requirements. Any firm registered with the Program that has any financial or contractual or referral arrangement with Tim Howard, or with any former employees of Howard & Associates, must identify these arrangements and then assure the Claims Administrator that it has taken affirmative steps to ensure that those individuals will not participate in Program-related business. The Claims Administrator shall develop a process by which all participating firms can certify their compliance with this step.

Failure to participate in this process in good faith shall be the basis for disqualification from the Program.

E. Additional Investigation: Given the apparent connection between Collins & Truett and Tim Howard, the Claims Administrator shall investigate the relationship between the two firms and Collins & Truett's current representation of Settlement Class Members in the Program.

F. Judgment As To Medical Professionals: The Special Masters reserve judgment on any objections to the Audit Report raised by medical professionals Jaroslaw Koberda, Edwardo Williams, Sammantha Barker, Laura Hopper, Lawanda Ford-Johnson, Christine Lloyd, Elizabeth Morgan, Ahmed Sadek, and Tara Velez. The names of these medical professionals shall be redacted from the public version of this Decision until further notice.



David A. Hoffman, Special Master



Jo-Ann M. Verrier, Special Master

Dated June 22, 2021