

**FINDINGS AND REMEDIES OF THE SPECIAL MASTERS
PURSUANT TO SECTION 10.3(i) REGARDING 48 MONETARY AWARD CLAIMS**

I. INTRODUCTION.

Pursuant to Section 10.3 of the Settlement Agreement and Rule 7(b) of the Rules Governing Audit of Claims (the “Audit Rules”), the Claims Administrator audited 48 Monetary Award Claims supported by diagnoses from Dr. Ena Andrews. This Audit included the review of relevant records, interviews, and consultation with an Appeals Advisory Panel Member. The Claims Administrator concluded that Dr. Andrews misrepresented, omitted, or concealed material facts in connection with the 48 Monetary Award Claim Packages.

Accordingly, on February 23, 2018, the Claims Administrator referred these 48 Monetary Award Claims to the Special Masters for review and findings pursuant to Section 10.3(i) of the Settlement Agreement. The Claims Administrator also notified Settlement Class Members of the referral. One Settlement Class Member withdrew his claim following the Claims Administrator’s referral to the Special Masters under Section 10.3 of the Settlement Agreement. The Special Masters reviewed the Record of the Audit Proceeding and issue these findings and remedies for the remaining claims.

II. REVIEW OF FACTS.

Dr. Andrews signed Diagnosing Physician Certification Forms for 48 Monetary Award Claim Packages that have been submitted to the Settlement Program. All 48 claims are from players who are, or were, represented by the law firm of Smith & Stallworth. Of these, 36 are Qualifying Diagnoses of Alzheimer’s and the remaining 12 are Level 1.5 Neurocognitive Impairment diagnoses.

The Claims Administrator began auditing Dr. Andrews after several Appeals Advisory Panel (“AAP”) Members raised concerns about the claims supported by her diagnoses. Specifically, the AAP Members: (1) questioned her experience in diagnosing diseases of aging, such as Alzheimer’s, when she specializes as a pediatric neurologist; (2) noted incomplete histories taken; (3) found functional symptoms that did not match the diagnoses; and (4) said that she failed to exclude other contributing causes.

A. Claims Administrator’s Review and Findings.

After reviewing all 48 Monetary Award Claim Packages, the Claims Administrator found that:

1. For 29 claims, the neuropsychologist testing was performed on the same day as the neurological exam and diagnosis.
2. For nine claims, the neuropsychologist report was dated after the diagnosis was rendered.

3. For ten claims, neuropsychological testing occurred approximately six months to one year before Dr. Andrews' exam.
4. In at least 12 instances, Dr. Andrews examined two players on the same day, and on one day she evaluated and diagnosed three: on 3/14/16, Dr. Andrews met and diagnosed three players at her office. These players also underwent neuropsychological testing at The Neuropsychiatric Institute on the same day.

The Claims Administrator found these facts concerning: could Dr. Andrews have received and fully evaluated the neuropsychological testing results when testing occurred on the same day as or subsequent to her evaluation and diagnosis dates? The Claims Administrator was also concerned that Dr. Andrews made statements in her affidavits in support of the claims that did not reflect that neuropsychological testing occurred approximately six months to one year before Dr. Andrews' exam. Specifically, Dr. Andrews noted in each affidavit that she had "requested neuropsychological testing which was conducted contemporaneously with my assessment..." and that "test scores [she] relied upon resulted as a consequence of [her] request..."

The Claims Administrator identified several instances of repetitive information in Dr. Andrews' reports. Specifically, the Claims Administrator identified six different groups of players where each player had identical vital signs as each of the other players in that group. The largest group consisted of ten players who reportedly had the same blood pressure, pulse rate, and respiration rate at the time of their evaluations with Dr. Andrews. During an interview with Dr. Andrews, the Claims Administrator questioned whether these repetitive vitals could have resulted from the use of a template and inadvertent transfer of information from one player to another. Dr. Andrews denied that such inadvertent transfer could have occurred and stated that every report was specific to each player.

The Claims Administrator also identified repetitive language across all of Dr. Andrews' reports. In one instance, the Claims Administrator noted that the reports for two players are nearly identical to each other, despite a 35-year age difference between the two players. The report for one player contains 76 sentences while the report for the second player contains 72 sentences. Fifty-four sentences (over 70% of each report) are identical between the reports while several additional sentences contain very similar language. The Impression sections of the reports, where Dr. Andrews lists her diagnoses for the players, are completely identical except for one word where Dr. Andrews diagnoses one player with "Headaches".

B. AAP Member Review and Findings.

The Claims Administrator asked an AAP Member to review all claims supported by evaluations from Dr. Andrews. The reviewing AAP Member did not find qualifying diagnoses in any of the claims submitted on the basis of Dr. Andrews' evaluations. The AAP Member pointed to several factors of concern as to Dr. Andrews' diagnoses:

1. In the AAP Member's opinion, the percentage of claims noting a finding of Alzheimer's Disease, with a mean age of 46.25, is exceptional and does not comport

with the research (the AAP Member referred to research by McKee and colleagues identifying Alzheimer's type pathology (neuritic plaques) in only 27% of 51 autopsy-confirmed Chronic Traumatic Encephalopathy cases with ages of death from 23-80 (Journal of Neuropathology & Experimental Neurology, 2009; 68:709–735)).

2. The AAP Member noted a lack of variability in the "Impression" section of notes made by Dr. Andrews across player files, and that these notes omitted potential non-Alzheimer's contributors to cognitive impairment even when these are documented elsewhere.
3. In three cases, Dr. Andrews noted mutually exclusive diagnoses of "Neurocognitive Disorder, level 1.5" and "Mild Neurocognitive Disorder due to Probable Alzheimer's Disease" since the Injury Definition for Level 1.5 disorder represents "early dementia" and "Mild Neurocognitive Disorder" which exclude dementia-level functional losses.
4. The AAP Member found that Dr. Andrews' notes do not address other conditions that might contribute to diagnoses and do not identify critical information about deficits.

C. Review of Medical Records from Other Providers.

The Claims Administrator issued Notices of Audit of Claim to every player for which Dr. Andrews provided a Qualifying Diagnosis. In the Notice, the Claims Administrator followed standard procedure as outlined in the Settlement Agreement and requested the players to provide the name and contact information for every health care provider they saw within the past five years and sign a HIPAA Authorization Form to allow the Claims Administrator to request records directly from the providers. The Claims Administrator issued these Notices in June through September 2017, at least six months after Dr. Andrews made her last Qualifying Diagnosis on December 29, 2016.

Eight players, despite receiving a diagnosis from Dr. Andrews (five of Alzheimer's Disease), responded to the Notices by stating that, within the last five years, they had either: (a) not seen any healthcare providers other than Dr. Andrews and the other providers associated with their claim in the Program; or (b) seen only non-relevant healthcare providers (e.g., a dentist or optometrist) in addition to Dr. Andrews and the other providers associated with their claim in the Program.

The Claims Administrator obtained and reviewed additional medical records from the last five years for 29 players. These showed:

1. **Medical Records After the Qualifying Diagnosis Do Not Mention Dr. Andrews' Diagnosis.** The Claims Administrator received medical records from 17 players' doctors for visits that occurred after the date when Dr. Andrews made her Qualifying Diagnosis, yet none of those records referenced her Qualifying Diagnosis, despite the fact that Dr. Andrews diagnosed 15 of these players with Alzheimer's Disease.

2. **The Only Medical Records are from Before the Qualifying Diagnosis, and Do Not Corroborate Dr. Andrews' Diagnosis.** The Claims Administrator received medical records from ten players' doctors for visits that occurred before Dr. Andrews' Qualifying Diagnosis. Six players did not seek medical attention for two or more years before the Qualifying Diagnosis and none of the ten had any records for treatment following Dr. Andrews' diagnoses.

One player's medical records from a neuropsychologist showed that the player underwent neuropsychological testing on January 11, 2016 and January 18, 2016; his results were found normal in all tested domains. The doctor found signs of mild cognitive deficiencies and recommended that the player follow-up with his neurologist in three to five years. Two months later, on March 17, 2016, Dr. Andrews diagnosed the player with Level 1.5 Neurocognitive Impairment.

Another player's records contain information from a psychological exam on January 21, 2015. The doctor diagnosed, among other things, Mild Neurocognitive Disorder, Unspecified. Approximately six months later, Dr. Andrews diagnosed the player with Alzheimer's Disease. After this player became *pro se*, he contacted the Claims Administrator with questions about the Audit. He told the Claims Administrator that he fired his lawyer because he had not seen any records from his visit to Dr. Andrews and stated that, despite a diagnosis of Alzheimer's Disease, he had not been told what his diagnosis was.

3. **Recent Records Mention Neurocognitive Impairment but do not Support Diagnoses.** Medical records obtained by the Claims Administrator for two players do mention neurocognitive issues. Medical records for the first player, from the NFL Player Benefits Office, report a neurological evaluation and diagnosis in March 2016 of mild cognitive impairment; Dr. Andrews diagnosed Level 1.5 Neurocognitive Impairment on March 8, 2016. One player submitted records from a family medicine practitioner noting that the player reported that "he had been told that he had early signs of Parkinson's and possibly early dementia due to concussions from playing football." These cases were sent to an AAP Member for review. The AAP Member concluded that neither of these records support Dr. Andrews' diagnoses, or any Qualifying Diagnosis, for the players.

III. CONCLUSION AND REMEDIES.

Under Section 10.3(i) of the Settlement Agreement, the Special Masters' review and findings may include the following relief, without limitation: (a) denial of the claim in the event of fraud; (b) additional audits of claims from the same law firm or physician (if applicable), including those already paid; (c) referral of the attorney or physician (if applicable) to the appropriate disciplinary boards; (d) referral to federal authorities; (e) disqualification of the attorney, physician and/or Settlement Class Member from further participation in the Class Action Settlement; and/or (f) if a law firm is found by the Claims Administrator to have

submitted more than one fraudulent submission on behalf of Settlement Class Members, claim submissions by that law firm will no longer be accepted, and attorneys' fees paid to the firm by the Settlement Class Member will be forfeited and paid to the Settlement Trust for transfer by the Trustee into the Monetary Award Fund.

Upon review, the Special Masters find that claims relying on Dr. Andrews' diagnoses may be based on misrepresentations, omissions, and/or concealment of material facts.

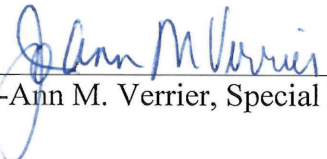
Accordingly, and pursuant to Section 10.3 of the Settlement Agreement, the Special Masters order these remedies:

- A. Disqualification of Dr. Andrews:** Dr. Andrews is disqualified from participation in the Program. Any Monetary Award Claim that relies on an evaluation performed by, or a diagnosis made by, Dr. Andrews is disallowed, and no claims may be submitted in reliance on her evaluations or opinions.

- B. Disposition of Monetary Award Claims Relying on Dr. Andrews' Evaluations:** The Claims Administrator will deny without prejudice any Monetary Award Claim that relies on evaluation, testing or opinions performed or rendered by Dr. Andrews. Those Settlement Class Members whose Monetary Award Claims rely on a diagnosis from Dr. Andrews may seek a new evaluation through the Baseline Assessment Program, if they are eligible to participate in the BAP, or from a Qualified MAF Physician. If the original Qualifying Diagnosis reached by Dr. Andrews is confirmed by the Qualified MAF Physician or the BAP Provider, the diagnosis date may be dated retroactively to match the date of the original Qualifying Diagnosis asserted in the Monetary Award Claim that relied on Dr. Andrews' evaluation.


Wendell E. Pritchett, Special Master

Date: 10/25/18


Jo-Ann M. Verrier, Special Master

Date: Oct 25, 2018