

**FINDINGS AND REMEDIES OF THE SPECIAL MASTERS**  
**PURSUANT TO SECTION 10.3(i) REGARDING SEVEN 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 seven Monetary Award Claims that relied on neuropsychological testing Dr. August Dolan-Henderson performed. This Audit included reviews of records, interviews with relevant individuals, and consultation with an Appeals Advisory Panel Consultant. The Claims Administrator concluded that Dr. Dolan-Henderson misrepresented information submitted to the Program in connection with the seven Monetary Award Claims.

On March 14, 2018, the Claims Administrator referred these seven Monetary Award Claims to the Special Masters for review and findings in accordance with Section 10.3(i) of the Settlement Agreement. The Claims Administrator also notified Settlement Class Members of the referral. Three Settlement Class Members withdrew their claims 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 issues these findings and remedies for the remaining claims.

**II. FACTUAL BACKGROUND.**

The Claims Administrator began auditing Dr. Dolan-Henderson after finding that two versions of a neuropsychological report that he prepared for a player for the same evaluation contained conflicting information. These two reports listed the same assessment date, report date, signature date, and player background and history, but the testing battery described was different. For two tests listed in both test batteries, the player's scores differed in the two reports. In addition, in one report, Dr. Dolan-Henderson referred to the player by the wrong name.

The Claims Administrator contacted the player's lawyer and Dr. Dolan-Henderson to ask why two versions of the same report were included with the claim and received two different explanations. The player's lawyer submitted a written statement from Dr. Dolan-Henderson saying the reports differed because the second version was reformatted to conform with the Settlement Agreement. The Claims Administrator later interviewed Dr. Dolan-Henderson over the phone. He stated that the two reports were not for the same person. He said he realized his mistake of using another person's test scores in the original report, which prompted him to issue the revised report and that he notified the player's lawyer of the error and instructed that only the second report should be used.

After receiving conflicting explanations for the two versions of the same report, the Claims Administrator requested input from two Appeals Advisory Panel Consultants regarding whether either explanation adequately addressed the concerns identified in the Audit. They found neither explanation to be credible and instead indicated that they would not accept either report or any report prepared by Dr. Dolan-Henderson as valid because of the concern that test results in a report may not belong to the player named in the report and be otherwise unreliable.

The Claims Administrator then reviewed all seven claims supported by neuropsychological testing from Dr. Dolan-Henderson. During this analysis, the Claims Administrator identified a second player whose file contained two versions of the same report from Dr. Dolan-Henderson with conflicting information. These differing reports display some of the same issues previously identified: both have the same report date but provide different test batteries. For one test listed in both test batteries, the player's scores in the two reports are different.

The Claims Administrator identified that the claim file of a third player contained two different neuropsychological reports: the first prepared by Dr. Dolan-Henderson with testing done on July 21, 2015, and the second prepared by another neuropsychologist with testing on May 6, 2016. The player performed markedly better on the May 6, 2016 testing than he did on the 2015 testing administered by Dr. Dolan-Henderson. The Claims Administrator requested input from an Appeals Advisory Panel Consultant about whether there could be a reasonable explanation for the improvement reflected in the May 6, 2016 testing. The Appeal Advisory Panel Consultant noted that even accounting for "practice effects," that is, the expected improvement in scores after repeated exposure to neuropsychological testing, the extreme improvement demonstrated by the May 6, 2016 testing would discredit a finding of impairment for the player. The Appeals Advisory Panel Consultant also expressed concern that, given the conflicting reports submitted for the two other players, the testing from Dr. Dolan-Henderson may not contain results belonging to the player and felt it would be unacceptable to rely upon Dr. Dolan-Henderson's report.

Based on Dr. Dolan-Henderson's inconsistent explanations to the firm and to the Claims Administrator regarding the differing versions of reports for a player and the statements from the Appeals Advisory Panel Consultants after their review of Dr. Dolan-Henderson's testing that they could not accept any report prepared by Dr. Dolan-Henderson as reliable, the Claims Administrator concluded that there was a reasonable basis to support a finding that Dr. Dolan-Henderson misrepresented or concealed the results of his testing for the players he evaluated. The Claims Administrator issued Notices of Referral to Special Masters of Adverse Audit Report to the affected players on April 12, 2018.

No player affected by the Adverse Audit Report for Dr. Dolan-Henderson submitted an Opening Memorandum to address or challenge the Claims Administrator's findings. Neither Co-Lead Class Counsel nor Counsel for the NFL Parties submitted a Reply Memorandum addressing the Adverse Audit Report.

### **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.

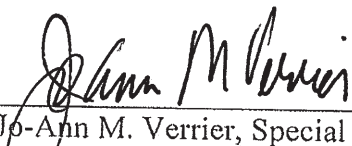
Upon review, the Special Masters find that claims relying on Dr. Dolan-Henderson's testing include a misrepresentation, omission, or concealment of material fact and that Dr. Dolan-Henderson's testing results do not meet the standard of care required for a Monetary Award under the Settlement Agreement. Specifically, Dr. Dolan-Henderson created two versions of a neuropsychological report purportedly for the same evaluation, but the versions contained conflicting information. He did this for two different players subject to the Claims Administrator's Adverse Audit Report. When questioned about the conflicting information for one player, Dr. Dolan-Henderson provided two different, irreconcilable explanations. Based on these facts, the Special Masters conclude that Dr. Dolan-Henderson misrepresented either the results of his neuropsychological testing or the reason(s) for his creation of two versions of testing results for the same player.

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

- 1. Disqualification of Dr. Dolan-Henderson:** Dr. Dolan-Henderson is disqualified from participation in the Program. Any Monetary Award Claim that relies on neuropsychological testing performed by Dr. Dolan-Henderson is disallowed and no claims may be submitted in reliance on his testing or opinions.
- 2. Disposition of Monetary Award Claims Relying on Dr. Dolan-Henderson's Evaluations:** The Claims Administrator will deny without prejudice any Monetary Award Claim that relies on evaluation, testing or opinions performed or rendered by Dr. Dolan-Henderson. Those Settlement Class Members whose Monetary Award Claims rely on neuropsychological testing by Dr. Dolan-Henderson 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. Dolan-Henderson or a physician relying on his testing 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. Dolan-Henderson's evaluation.

  
Wendell E. Pritchett, Special Master

Date: 8/29/18

  
Jo-Ann M. Verrier, Special Master

Date: 8/29/18