

**UNITED STATES DEPARTMENT OF LABOR**  
**OFFICE OF ADMINISTRATIVE LAW JUDGES**  
**BOSTON, MASSACHUSETTS**

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**Issue Date: 13 June 2023**

**OALJ NO.:** 2021-LDA-03931  
**OWCP NO.:** LS-01411203

*In the Matter of:*

**KWEHANGAANAH (DEZI) BUGABA,**  
*Claimant,*

v.

**SOC-SMG, INC. (SOC, LLC),**  
*Employer,*

*and*

**CNA CASUALTY OF CALIFORNIA,**  
*Carrier,*

*and*

**DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,**  
*Party in Interest.*

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**OALJ NO.:** 2021-LDA-02273  
**OWCP NO.:** LS-02422555

*In the Matter of:*

**JOSEPH SSEKAMATTE,**  
*Claimant,*

v.

**CONSTELLIS GROUP,**  
*Employer,*

*and*

**CONTINENTAL CASUALTY COMPANY (CNA),**  
*Carrier,*  
*and*

**DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,**  
*Party in Interest.*

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**OALJ NO.:** 2021-LDA-02523  
**OWCP NO.:** LS-02327685

*In the Matter of:*

**SAM KAGENDA,**  
*Claimant,*

*v.*

**SOC, LLC,**  
*Employer,*

*and*

**CONTINENTAL CASUALTY COMPANY,**  
*Carrier,*

*and*

**DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,**  
*Party in Interest.*

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**ORDER CONCLUDING ORDER TO SHOW CAUSE PROCEEDINGS AND  
REFERRING MATTER TO CHIEF ADMINISTRATIVE LAW JUDGE**

Each of the above-captioned cases arise under the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. § 901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. § 1651 *et seq.*, and are assigned to me for disposition. Before me is an Order to Show Cause ("OTSC") requiring the law firm representing the claimants in each case, Attorneys Jo Ann Hoffman & Associates, P.A. (hereinafter "the Hoffman Firm"), to address why it filed a nearly identical medical report prepared by the claimants' treating provider, Musuto Bwonya Alex (hereinafter "Alex"), in these three cases, as well as nine additional cases either pending or recently decided by the Boston District Office of the Office of Administrative Law Judges ("OALJ").

For the reasons set forth below, I find that the Hoffman Firm was at least negligent in filing the recycled Alex report in all three cases. In doing so, it violated a fundamental ethical guidepost contained in the American Bar Association's Model Rules of Professional Conduct, the Florida Rules of Professional Conduct, and the Rules of Practice and Procedure for Administrative Hearings before OALJ—the duty to represent a client with diligence, "dedicated to the interests of the client and with zeal in advocacy upon the client's behalf." R. Regulating Fla. Bar 4-1.3 cmt.; *see* Model Rules of Pro. Conduct r. 1.3; 29 C.F.R. § 18.22(c). The Hoffman Firm also violated 29 C.F.R. § 18.35(b)(3) as the factual contentions and conclusions in the recycled Alex report are not supported by the evidentiary record in these three cases and should not have been proffered by the Hoffman Firm. Furthermore, because the recycled Alex report was filed by the Hoffman Firm in what appears to be 94 instances—12 in Boston and 82 across other OALJ districts—I find the content of the Alex report in the three cases pending before me is unreliable, and any evidence proffered by Alex will be given no weight in these cases when they are decided on the merits. Finally, because the ABA Model Rules require a judge to act when confronted with such conduct as found here, I am referring this entire matter to the Chief Administrative Law Judge to conduct any further inquiry he deems appropriate and necessary regarding the Hoffman Firm and treating provider, Musuto Bwonya Alex. Model Code of Jud. Conduct Canon 2.15(D). The remainder of the Order to Show Cause is vacated.

## **BACKGROUND**

On December 22, 2022, I issued the original OTSC in these three captioned cases. The need for this order came about as I was reviewing the evidence presented in the Joseph Ssekamate case. Claimant submitted a typed medical report from Alex as part of Claimant's Exhibit 1 in that case. As I read the report, it seemed remarkably similar to other reports from Alex submitted by the Hoffman Firm. Looking at two cases I recently decided (*Kiggundu v. SOC-SMG, INC.*, 2021-LDA-02148 (ALJ Mar. 10, 2022) & *Mutungu v. SOC, LLC*, 2021-LDA-00199 (ALJ Feb. 9, 2022)), I was alarmed to find that Alex's report was virtually identical in all three cases. I went on to see whether the report appeared in other cases I had pending before me, and again, found the virtually identical, recycled Alex report was submitted as evidence in the two additional cases contained in the caption of this order. This report has now appeared in five of my cases.

In the OTSC, I detailed the existence of the recycled Alex report in my five cases and in seven additional cases assigned to other Boston judges. I explained in the OTSC that it is hard to fathom how Alex's description of the claimants' symptoms, their complaints, the traumatic events each experienced abroad, the history of symptom onset, and the physical observations Alex made of each claimant during his exam was substantively identical in all cases, including typographical errors. Simply put, I asked the Hoffman Firm to explain why it filed a medical report that is, for all intents and purposes, a recycled carbon copy in 12 separate, unrelated claims that were either pending or recently decided by the Boston District Office. The OTSC only pertains to the three cases currently pending before me, and it indicated I was considering the following sanctions: striking the Alex report, dismissing all claims with prejudice, and permanently barring Alex from presenting evidence before me in future cases.

On January 9, 2023, the Hoffman Firm filed a response to the OTSC ("Cl. Resp. OTSC"). Counsel for Respondents<sup>1</sup> in these matters also filed a response to the OTSC the same day ("Er./Cr. Resp. OTSC"). Subsequently, on January 13, 2023, the Hoffman Firm filed an Objection and Motion to Strike Employer/Carrier Exhibits A-C in Response to Order to Show Cause ("Cl. Mot.

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<sup>1</sup> Counsel for Respondents from both Brown Sims, P.C. and Thomas Quinn LLP prepared and submitted a joint response to the OTSC.

to Strike”), and on January 20, 2023, Respondents filed a Response to the Claimants’ Objection and Motion to Strike Exhibits A-C in Response to Order to Show Cause (“Resp. to Mot. to Strike”). On January 24, 2023, the Hoffman Firm sought leave to file a surreply to Respondents’ January 20, 2023, response. On January 25, 2023, by email order I denied the Hoffman Firm’s request to file the surreply.

Because the Hoffman Firm failed to address the main question raised in the OTSC (i.e. why it filed a recycled medical report in 12 unrelated cases), on January 26, 2023, I required the Hoffman Firm to file a Supplemental Response to the OTSC (“Supp. Resp. Order”) focusing on its own conduct in these three proceedings. The Supp. Resp. Order also required the Respondents to update the chart they included in their original response to the OTSC. The chart included a list of 83 additional cases where the Alex report was submitted into evidence by the Hoffman Firm in cases involving the Carrier, Continental Insurance Company. Er./Cr. Resp. OTSC at 4-8. The Respondents indicated in footnote 3 of its response that the chart included “the OWCP and OALJ case numbers, counsel for Claimant, and a citation to the corresponding reports . . . .” Er./Cr. Resp. OTSC at 4 (emphasis added). The chart originally submitted did not contain “counsel for Claimant” information, so the Supp. Resp. Order required Respondents to amend their chart to provide that information, along with the assigned ALJ for each case.

On February 15, 2023, the Hoffman Firm filed its supplemental response to the OTSC, and on February 15, 2023, the Respondents filed their supplemental response. The Respondents’ Supplemental Response did contain an amended chart of 82 cases pending outside the Boston District where the recycled Alex report appears, along with counsel for the Claimant and assigned ALJ.<sup>2</sup> Er./Cr. Supp. Resp. OTSC at 4 n.2 & Exhibit A1. On March 1, 2023, the Director of the Office of Workers’ Compensation Programs also filed a position statement. While this constitutes the majority of the written submissions regarding the OTSC, I also note that on March 9, 2023, I issued an order denying the Hoffman Firm’s motion to disqualify me from presiding over these

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<sup>2</sup> The Respondents originally identified 83 cases in addition to the 12 cases mentioned in my OTSC. Subsequently, in their Supplemental Response filed on February 15, 2023, they indicated that the list of 83 cases inadvertently included one of the 12 cases within the original OTSC. Correcting the error results in an additional 82 cases where the Alex report appears across OALJ. See Er./Cr. Supp. Resp. OTSC at 4 n.2.

cases. That order provided some clarity and additional context to these OTSC proceedings, and it is incorporated herein by reference.

An evidentiary hearing on the OTSC was scheduled to commence on March 15, 2023. On March 9, 2023, I held a pretrial conference on the OTSC, and Brian Tannenbaum, Esq., entered his appearance on behalf of the Hoffman Firm for these OTSC proceedings. *See* March 9, 2023, Pretrial Conf. Call Tr. (“TR”) 5-8. Attorney Tannenbaum indicated that he serves as ethics counsel to the Hoffman Firm. TR 11-12. After a lengthy colloquy during the March 9, 2023, conference, the evidentiary hearing was cancelled, and a date was set for the Hoffman Firm to advise me whether it wished to file any additional written argument before I ruled on the OTSC. TR 34-35 & 38-39. On March 10, 2023, the Hoffman Firm notified me via email that it did not wish to file any additional written argument on the OTSC. During the March 9, 2023, conference, I also attended to some housekeeping matters and ruled on two pending motions connected to the OTSC: (1) I granted Respondents’ motion to quash a subpoena that was served on them by the Hoffman Firm, without objection; and (2) I denied the Hoffman Firm’s motion to strike the Respondents’ Supplemental Response to the OTSC and the exhibits attached thereto. TR 36-38.

## **DISCUSSION:**

### **1. The Alex Report**

The OTSC details the concerns raised by the Alex report in 12 cases before the Boston District. The OTSC demonstrates that in all 12 cases, the Alex report stated each claimant presented with: “complaints of sleep, sweating, palpitations, constant headaches, having constant worries/fear, isolating himself from people, very unstable with anger outburst, frightened, difficult to concentrate, feeling sad and hopeless, feeling loss of interest in the pleasurable activities, night mares [sic], flashbacks, feeling upset and negative feelings, tension and intrusive thoughts.” OTSC at 3-4. He observed that each claimant “[a]ppeared of his age, he looks scared, was restless, sensitive to noise out of the clinical room and kept checking through the window” and “[had] hyperventilation’s [sic], complained of disagreement with his wife due to poor libido.” *Id.* at 4. Alex further stated for all 12 claimants “at times he finds himself hitting children,” and “[d]oes not want to hear noise hence he keeps alone in the hose [sic].” *Id.* The typo “hose” is repeated in nine

of the 12 reports. *Id.* He remarkably stated that each claimant had the same experience: “during his employment in Iraq he witnessed people who died in the war, he could see dead bodies of people who died of bomb blasts and have been disturbing him ever since he came back.” *Id.* There are other similarities in the recycled Alex report detailed in the OTSC that I will not quote here but incorporate by reference for purposes of this decision.

This OTSC process started with my discovery of the recycled report in three of my cases. However, as the OTSC process evolved, it became apparent that the recycled Alex report had been filed by the Hoffman Firm outside the Boston District in 82 additional cases. *See* Er./Cr. Resp. OTSC at 4-8; Er./Cr. Supp. Resp. OTSC at 4 n.2 & Exhibit A1. It is incomprehensible that the Hoffman Firm did not discover this problem prior to my OTSC, after filing the report at least 94 times. There was a tsunami of red flags that the firm ignored, including Alex’s description of identical symptoms, complaints, and traumatic events; each claimant looking out the examining room window, witnessing dead bodies, hitting children, and having spousal problems because of poor libido; and identical typos in each report. Below is a chart demonstrating the material inconsistencies between the recycled Alex report and the evidence in each of my five cases. Had the Hoffman Firm bothered to look at the evidence in each case, it could only have concluded that the recycled Alex report created irreconcilable differences requiring further investigation before submission to the tribunal.

<b>Bugaba v. SOC-SMG, Inc. (SOC, LLC) et al., 2021-LDA-03931</b>	
<i>Claimant’s Deposition (7/27/22) (JX-1)</i>	<i>Alex Report (6/8/2021) (JX-6)</i>
Claimant testified that he was 53 years old as of the 7/27/22 deposition. JX-1 at 7.	Alex reported that Claimant was 50 years old as of the 6/8/21 report (one year prior to deposition). JX-6 at 12.
Claimant testified that he lives in Buliisa in Bugana Village. JX-1 at 9.	Alex wrote: “Location: Mengo – Kampala.” JX-6 at 12.
Claimant described his relationship with his siblings as follows: “It’s okay. We don’t have any bad relationships.” JX-1 at 11.	Alex wrote: “Relationship with eight siblings is poor.” JX-6 at 13.
Claimant testified that he has been separated from his wife since 2017. JX-1 at 12-14. He does not have a bad relationship with his five adult children. <i>Id.</i> He lives with his daughter and her husband. <i>Id.</i> at 9. Two	According to Alex: “He reports having difficulty in interacting with people at home, excessive anger and at times <b>he finds himself hitting children</b> . . . . [H]e regrets living with people who do not understand him and at times becomes aggressive

children live with their mother, and two live independently. <i>Id.</i> at 14-15.	towards his spouse. He also complains of having reduced sexual desire which is causing a lot of misunderstanding in his marriage.” JX-6 at 13.
Claimant testified that he started experiencing psychological symptoms in 2009 and stopped working with SOC in October 2010. JX-1 at 27-28, 75.	Alex reported that Claimant returned to Uganda in 2011, and his symptoms began “about two months after he returned from Iraq i.e., Symptoms started in 2011.” JX-6 at 12-13. Alex later contradicted himself, stating that Claimant had symptoms while still in Iraq. <i>Id.</i> at 13.
Claimant testified to psychological symptoms of anger, sleeping difficulties, nightmares, and low appetite. JX-1 at 49. He did not mention hallucinations, suicidal thoughts, chest pain, back aches, or heart palpitations.	Alex reported symptoms including “seeing people coming to attack him and his colleagues and hearing gun shots, and voices instructing him to run,” chest pain, back pain, heart palpitations, and suicidal ideation. JX-6 at 12-13.
<b>Ssekamatte v. Constellis Group et al., 2021-LDA-02273</b>	
<i>Claimant’s Deposition (1/4/22) (JX 10)</i>	<i>Alex Report (7/24/21) (CX-1)</i>
Claimant testified that he has lived in Kyamusoke Village, Kalungu, Masaka District, since 2019. JX-10 at 3.	Alex wrote: “Location: Munyonyo, Makindye.” CX-1 at 10.
Claimant testified that his flashbacks did not begin until 2019. JX-10 at 13.	Alex reported that Claimant’s flashbacks began at the time he returned home from Iraq. CX-1 at 10.
Claimant did not mention hallucinations, chest pain, backache, or palpitations of the heart.	Alex’s reported symptoms included “seeing people coming to attack him and his colleagues and hearing gun shots, and voices instructing him to run.” CX-1 at 10. He also reported back pain, chest pain, and “palpitations and pain in the heart.” <i>Id.</i> at 11.
Claimant denied suicidal thoughts. JX-10 at 15.	Alex wrote that Claimant had suicidal thoughts since 2020, without any suicide attempts. CX-1 at 11. Alex later contradicted himself, stating that Claimant attempted suicide twice. <i>Id.</i>
Claimant testified that his relationship with his children is “actually very good” and there are “no issues.” JX-10 at 4.	Alex wrote: “He has difficulty in interacting with people at home, excessive anger and at times he <b>finds himself hitting his children.</b> ” CX-1 at 11.



Claimant testified that he did not visit traditional healers because of his religious beliefs. JX-10 at 11.	Alex reported that Claimant sought both traditional and spiritual healing. CX-1 at 11.
<b>Kagenda v. SOC, LLC et al., 2021-LDA-02523</b>	
<i>Claimant's Deposition (10/26/21) (JX-1)</i>	<i>Alex Report (7/25/21) (JX-6)</i>
Claimant testified that he has lived in Kyakahinda Village, Kibiito Municipality, Bunyangababu, for the past 25 years. JX-1 at 9.	Alex wrote: "Location: Nansana." JX-6 at 11.
Claimant testified that he separated from his wife in 2016. JX-1 at 12. Since 2016, his daughters have lived with his sister, and he only sees them once per month. <i>Id.</i> at 13-14. He lives with his cousin. <i>Id.</i> at 10.	Alex wrote: "[D]ifficulty in interacting with people at home, <b>excessive anger and at times he finds himself hitting children.</b> . . . [H]e regrets living with people who do not understand him and at times becomes aggressive towards his spouse. He also complains of having reduced sexual desire which is causing a lot of misunderstanding in his marriage." JX-6 at 13.
Claimant reported symptoms of nightmares, fear, confusion, reduced concentration, anger, stress, and headaches. JX-1 at 70-71. Claimant denied any additional symptoms. <i>Id.</i>	Alex reported symptoms including back pain, chest pain, heart palpitations, and "seeing people coming to attack him and his colleagues and hearing gun shots, and voices instructing him to run." JX-6 at 11-12.
<b>Mutungu v. SOC, LLC et al., 2021-LDA-00199 (Decided on 2/9/2022)</b>	
<i>Claimant's Deposition (8/26/21) (EX-1)</i>	<i>Alex Report (1/7/21) (CX-3)</i>
Claimant testified that he resides in Bubaale Village, Mbarara City. EX-1 at 7.	Alex wrote: "Location: Lungujja." CX-3 at 7.
Claimant testified that he lives with his aunt. EX-1 at 8, 10. He is separated from his wife. <i>Id.</i> His children currently live with his wife, and he sees them once per month. <i>Id.</i>	Alex wrote: "[D]ifficulty in interacting with people at home, excessive anger and <b>at times he finds himself hitting children.</b> . . . [H]e regrets living with people who do not understand him and at times becomes aggressive towards his spouse. He also complains of having reduced sexual desire which is causing a lot of misunderstanding in his marriage." CX-3 at 8.
Claimant testified that he has never used drugs and was hospitalized once for psychological symptoms. EX-1 at 51, 62.	Alex reported that Claimant attempted suicide three times by drug overdose and was hospitalized for drug overdose. CX-3 at 8. Alex later stated in "Past Psychiatric

	History” – “First episode and index to hospital.” <i>Id.</i>
Claimant testified that his symptoms were anger and irritability, social isolation, poor communication with others, poor sleep, nightmares, anxiety, poor appetite, panic attacks, easily startled, flashbacks, pain in his eyes, weakness, and poor memory. EX-1 at 40, 62. He did not mention suicidal thoughts or attempts, hallucinations, or physical symptoms except for poor eyesight.	Alex reported suicidal thoughts with three suicide attempts, and hallucinations, including “seeing people coming to attack him,” “voices instructing him to run” and “feel[ing] small insects scrolling on his skin.” CX-3 at 7. Alex also reported symptoms of backaches, chest aches, and heart palpitations. <i>Id.</i> at 8.
<b>Kiggundu v. SOC-SMG, Inc. et al., 2021-LDA-02148 (Decided on 3/10/2022)</b>	
<i>Claimant’s Deposition (11/30/21) (JX-1)</i>	<i>Alex Report (7/7/21) (JX-9)</i>
Claimant testified that he was 42 years old at the time of his deposition. JX-1 at 7.	Alex reported Claimant’s age as 49. JX-9 at 3.
Claimant testified that he currently lives alone; he separated from wife in 2015 and has one adult child that does not live with him. JX-1 at 10-13, 53.	Alex reported that Claimant had <b>two</b> children and wrote: “He reports having difficulty in interacting with people at home, excessive anger and <b>at times he finds himself hitting children</b> . . . [H]e regrets living with people who do not understand him and at times becomes aggressive towards his spouse. He also complains of having reduced sexual desire which is causing a lot of misunderstanding in his marriage.” JX-9 at 4.
Claimant did not testify to seeing dead bodies and only stated that he saw injured soldiers arriving back on base. JX-1 at 68.	Alex reported that Kiggundu witnessed dead bodies. JX-9 at 2.
Claimant testified that his psychological symptoms were sleep difficulties, flashbacks, nightmares, anxiety, social isolation, and headaches. JX-1 at 48.	Alex reported that Claimant experienced “seeing people coming to attack him,” and “voices instructing him to run.” JX-9 at 3. He also reported symptoms of suicidal thoughts, backaches, chest aches, and heart palpitations. <i>Id.</i>
Claimant testified that he started treatment with Alex following a one-week hospitalization for severe psychological symptoms. JX-1 at 58, 59.	Under “past psychiatric history,” Alex noted “first episode and index to hospital.” JX-9 at 4.

This is just a small sample, limited to the five cases before me, of the inconsistencies between the evidentiary records and the Alex report, and Respondents identify a multitude of other instances where Alex's report does not accurately reflect what is stated in the record. Er./Cr. Supp. Resp. OTSC at 17-20. Not only is the recycled Alex report unreliable on its face given that it is substantively the same for each claimant, it is completely undermined when considering each claimant's contrary deposition testimony.

## **2. The Hoffman Firm's Actions**

During the March 9, 2023, conference, I tried to discern how the Hoffman Firm landed on this sticky wicket. I conclude that the evidence before me does not rise to the level of establishing that the firm's conduct was willful or part of a greater scheme amounting to a fraud on the court. It is more in line with the concepts of mistake, negligence, and ignorance of its duty to the tribunal and its clients. It appears the volume of its case load in this arena may have overwhelmed the firm. TR 22. I reach these conclusions based on the totality of the record, including my discussions with counsel during the March 9, 2023, conference.<sup>3</sup>

During the conference, I started by asking Attorney Tannenbaum, "can we agree . . . the recycled Alex report appears in 94 different instances based on the record I have today?" TR 11. Counsel responded:

[H]ypothetically, obviously there's only two answers to your question, if that's your limited question.

The first answer is, hypothetically, the firm knew about it 94 times and therefore committed fraud and was hoping nobody would find out about it. I can tell you that's not the answer.

The other answer is more problematic. The other answer is kind of like saying I didn't know there was a bullet in the gun. How did you not know there was a bullet in the gun? I can't really explain, but if I were to say that the firm did not know that 94 times they were filing the same exact report, you would say, well, prove it. And again, I'm in a difficult situation as counsel to say, well, I can't really prove that. All I can say is as an officer of the court, the firm was not aware that this was going on until it was brought to their attention.

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<sup>3</sup> During my back and forth with Attorney Tannenbaum, we had a robust discussion about what likely occurred here. I do not take any of his statements as an admission against his client's interests.

...

I'm in a difficult situation because I can say as a representative of the firm that this is not a firm that engages in intentional fraud. They did not sit down with Alex and say here's what we're going to do and hopefully no one will ever find out. That side of the equation is just never going to be borne out.

The other side of the equation is likely what the answer is. It just is negligence, not intentional, but I don't know how we prove that.

...

But other than proof that this was intentional fraud, there's only step two in my estimation, that this was not fraud, this was negligence, and I think that gets treated differently.

TR 12-15.

In looking at the substance of the recycled Alex report, Attorney Tannenbaum suggested that it is important to question whether the information Alex placed in his reports was actually true. TR 18. He explained:

So in this case, I think there is a question as to whether in these 94 cases -- and I understand we're here for three -- what do these Claimants have to say about what's in that report. Obviously, I'm not going to say with a straight face that every single one of them has the same exact symptoms or complaints or whatever, and obviously this doctor has some answering to do about what he did in these reports, but the next step is the lawyers' conduct in filing them, and I think before a decision is made that the lawyer breached a duty -- and I know we're probably not going to get there because all these cases don't go to litigation -- is what do these Claimants have to say about what's in that report. Maybe of the 94, a bunch of them are actually, they're the same thing. I don't know, but what I'm saying is I think that's an important step before determining that all of these reports are problematic. And I get that the fact that 94 are the same is something to be concerned about, but I think that's more for the doctor than it is for the lawyers.

TR 18-19. In trying to answer whether finding Alex at fault somehow absolves the Hoffman Firm of any accountability, Tannenbaum responded:

So when you say do we still have a problem here, yeah, we have a problem here. I mean, we have 94 reports that have questionable credibility here, and I think it first goes to the doctor and then it goes to what were the lawyers doing, and I think if

we can't get to, well, we have evidence that this was a concerted fraud effort, then it's, okay, well, somebody made a mistake here. Somebody wasn't paying attention, what do we do about that.

I say we look at the lawyers and say, well, what's the lawyers' history here, what is their normal practice. Is this something that's going to be back again, is this something we've had a problem with before? And that's when I go to the issue of this is the first time these lawyers have been confronted with this kind of an issue, we have no proof of a knowing or intentional act, we can pretty much say it was probably just people not paying attention, so what do we do?

TR 23-24.

While my discussions with Attorney Tannenbaum are certainly not evidence or admissions by the Hoffman Firm, they do illuminate the inescapable conclusion as to why this happened—mistake, lack of attention, or neglect. We know in my five cases (two decided and three pending), the narrative contained in the recycled Alex report is contradicted by the claimants' deposition testimony. To Tannenbaum's point, these reports are of questionable credibility. Who should have known this in the first instance? The Hoffman Firm. The firm should know the essential facts that make up each case and should have uncovered these glaring inconsistencies. They should have questioned the recycled Alex report long before the OTSC. Accepting Tannenbaum's proffer that the Hoffman Firm did not act intentionally or pursuant to a scheme to defraud the tribunal, the only other reasonable explanation is mistake, lack of attention, or neglect, all of which are synonyms for dropping the ball.

### **3. Applicable Rules and Regulations**

Part 18 of the OALJ Rules of Procedure govern who can appear as a representative before us and what conduct is required of that representative. *See* 29 C.F.R. § 18.22. It is elementary that an administrative agency which has the power to admit attorneys to practice before it also has the authority to discipline attorneys for unprofessional conduct. *Phipps v. Wilson*, 186 F.2d 748, 751 (7th Cir. 1951); *In re Rhodes*, 370 F.2d 411, 413 (8th Cir. 1967).

The OTSC proceeding is being conducted pursuant to 29 C.F.R. § 18.35. That rule is akin to Rule 11 under the Federal Rules of Civil Procedure. The OTSC process I instituted herein is explicitly authorized under Section 18.35(c)(3). The rule states that a judge "may order a

representative, law firm, or party to show cause why conduct specifically described in the order has not violated paragraph (b) of this section.” Paragraph (b) provides that:

By presenting to the judge a written motion or other paper – whether by signing, filing, submitting, or later advocating it – the representative . . . certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

. . .

(2) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .

29 C.F.R. § 18.35(b). The nature of sanctions for violations of the rule include, but are not limited to, striking all or part of the offending document and referring counsel’s misconduct to the appropriate licensing authority. 29 C.F.R. § 18.35(c)(4). Allowing a document to remain in the record but giving it no weight and referring counsel (or the firm) to the Chief Administrative Law Judge are similar to the sanctions defined and are arguably a degree or two below the severity of those listed.

In addition to Rule 18.35, attorneys have a duty to represent clients with diligence and zeal. Rule 18.22(c) states:

A representative must be diligent, prompt, and forthright when dealing with parties, representatives and the judge, and act in a manner that furthers the efficient, fair and orderly conduct of the proceeding. An attorney representative must adhere to the applicable rules of conduct for the jurisdiction(s) in which the attorney is admitted to practice.

29 C.F.R. § 18.22(c). The Hoffman Firm is located in Florida, and the applicable professional rule of conduct states: “A lawyer shall act with reasonable diligence and promptness in representing a client.” R. Regulating Fla. Bar 4-1.3. The comment to Rule 4-1.3 elaborates that “[a] lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf. . . .” and “[a] lawyer’s workload must be controlled so that each matter

can be handled competently.” *Id.* These tenets are adopted verbatim from the American Bar Association’s Model Rules. *See* Model Rules of Pro. Conduct r. 1.3 & cmt.

Furthermore, when a judge becomes aware of information indicating a substantial likelihood that an attorney has committed a violation of the Rules of Professional Conduct, the judge **is required** to take appropriate action. *See* Model Code of Jud. Conduct Canon 2.15(D). As the comments to Canon 2.15 indicate, a judge’s course of action is not optional. “Ignoring or denying known misconduct among . . . members of the legal profession undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system.” *Id.* at cmt. 1; *see* Code of Conduct for U.S. Judges Canon 3(B)(6) (“A judge should take appropriate action upon receipt of reliable information indicating the likelihood . . . that a lawyer violated applicable rules of professional conduct.”).

#### **4. Conclusions**

The conduct of the Hoffman Firm as described herein runs afoul of 29 C.F.R. § 18.35(b). By filing the recycled Alex report, the Hoffman Firm certified that it made a reasonable inquiry under the circumstances and determined that the factual contentions in the report had evidentiary support. Given the plethora of red flags regarding the report, it is clear that no inquiry was conducted, let alone an “inquiry reasonable under the circumstances.” The factual statements in the recycled report were duplicated in multiple cases the Hoffman Firm was working on, typographical errors and all, and in the cases pending before me, the factual contentions were not supported by the evidentiary record. In many respects, they were contradicted by the claimants’ own deposition testimony.

By failing to read the recycled Alex report and be at least marginally schooled in the facts of the cases they were prosecuting, the Hoffman Firm breached its duty to act with reasonable diligence and promptness in representing its clients as required by the Rules of Professional Conduct and 29 C.F.R. § 18.22(c). The appearance of the recycled Alex report in the cases pending before me actually harmed the firm’s clients. The report contradicts the claimants’ testimony, and the striking similarities contained in the recycled report should have been very concerning to the Hoffman Firm, as it is a clear indication that the report may be unreliable. As a result of these oversights, these claimants will not have competent medical evidence to support their alleged

psychological injuries, and the contradictions raised between their testimony and the recycled report creates challenging credibility questions. While the workload at the Hoffman Firm may be substantial, that cannot excuse what happened. As noted, the rules also require lawyers to control their workload so matters can be handled competently. Any such excuse merely strengthens the conclusion that a duty was breached in these cases.

The repercussions for dropping the ball one time versus five times or twelve times, or perhaps ninety-four time, certainly varies. In deciding the applicable remedial path, I am focused on my five cases (two decided and three pending) and in making the referral to the Chief Administrative Law Judge, I acknowledge the broader scope of the problem as borne out by these OTSC proceedings. The evidence presented in connection with these OTSC proceedings implicates a vast number of cases outside my jurisdiction, and I find that the Chief Judge is in a better position to conduct further inquiry and consider the global ramifications, if any, associated with the Alex report and the conduct of the Hoffman Firm in submitting this report in at least 94 cases. In the same vein, the additional concerns raised by Respondents in their Supplemental Response, pertaining to the purported treatment with Alex at the Uganda-Friendship Hospital more generally, go beyond the scope of my OTSC proceeding, and are more aptly raised before the Chief Judge. Er./Cr. Supp. Resp. at 8-15. My findings herein were developed on a limited evidentiary record and pertain only to the conduct of the Hoffman Firm in the five cases before me. I refer this matter to the Chief Judge to proceed as he deems appropriate on matters involving the Alex report and the conduct of the Hoffman Firm surrounding the filing of the report in any and all cases within OALJ.

### **ORDER**

While this journey has been unpleasant, the integrity of our judicial system necessitated this path. For the foregoing reasons, it is HEREBY ORDERED that:

1. The recycled Alex report filed by the Hoffman Firm in the above captioned cases is unreliable and not credible. Any evidence proffered by Alex in these proceedings will be given no weight when a decision on the merits is rendered;
2. The Hoffman Firm, in submitting and relying on the Alex report in the five cases before me, violated its obligations under 29 C.F.R. §§ 18.35(b) and 18.22(c), as well as Rule 4-1.3 of the Florida Rules of Professional Conduct;



3. This entire matter is referred to the Chief Administrative Law Judge to conduct any further investigation and or inquiry as he deems appropriate and necessary regarding the Hoffman Firm and treating provider, Musuto Bwonya Alex; and
4. The remainder of the Order to Show Cause is Vacated.

**SO ORDERED.**

**JONATHAN C. CALIANOS**  
District Chief Administrative Law Judge

Boston, Massachusetts