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and Third-Party Plaintiff Jaime Salas Rushford, M.D.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

AMERICAN BOARD OF INTERNAL)	
MEDICINE,)	
)	
Plaintiff,)	
)	Civil Action
vs.)	
)	2:14-cv-06428-KSH-CLW
JAIME SALAS RUSHFORD, M.D.,)	
)	
Defendant, Counterclaim Plaintiff,)	
and Third-Party Plaintiff,)	
)	
vs.)	
)	
RICHARD BARON, M.D., et al.,)	
)	
Third-Party Defendants.)	
_____)	

CERTIFICATE OF COUNSEL FOR ATTORNEYS' FEES

TO THE HONORABLE COURT:

An award of attorneys' fees and costs is warranted pursuant to FED. R. CIV. P. 37(a)(5) due to the behavior of Plaintiff, Counterclaim Defendant American Board of Internal Medicine ("ABIM"), and Third-Party Defendants Richard Baron, M.D., Christine K. Cassel, M.D., Lynn O. Langdon, Eric S. Holmboe, M.D., David L. Coleman, M.D., Joan M. Feldt, M.D., and Naomi P. O'Grady, M.D. ("ABIM Individuals") (for ease of reference ABIM and the ABIM Individuals will be collectively referred to herein as "ABIM"), in obstructing discovery in this

action. Examples of the bad faith nature of ABIM's responses are highlighted by the fact that information requested that has been known to ABIM regarding the identities of individuals with knowledge of facts involving this case, and still they opted to conceal their identities from Defendant, Counterclaim Plaintiff and Third-Party Plaintiff, Jaime A. "Jimmy" Salas Rushford, M.D. (hereinafter "Dr. Salas" and/or "Defendant"). (See Exhibit. B at p. 2, ABIM's Initial Disclosures, and Exhibit F at p. 6 & 25, ABIM's Supplemental Responses and Objections to Defendant's Interrogatories).

Furthermore, Defendant has requested relevant documentation of ABIM and they have opted not to produce it even though they are the only party in this case with custody and access to virtually all of those documents, which are not covered by any privilege or the like. Such is the case with regards to the material seized by ABIM to certain Dr. Rajender K. Arora as part of an *ex-parte* seizure order that ABIM executed involving the PA Case. *American Board of Internal Medicine v. Arora, et al.*, No. 2:09-05707 (E.D. Pa. 2009). As repeatedly stated, all the requests for production of documents and things demanded of ABIM rely and originate on ABIM's allegations from their very own Complaint. Accordingly, ABIM should be sanctioned for its unreasonable and uncompromising litigation behavior to date and to dissuade it from engaging in such misguided conduct throughout the balance of this litigation.

In support of plaintiff's application for counsel fees and costs, approximately 30 hours were expended in researching and preparing this Motion, Memorandum of Law, and organization of exhibits. My hourly rate as local counsel is \$ 250.00 an hour. The time expended by the *pro hac vices* is the majority of time expended and their fees should, for purposes of this exercise be greater than mine. Thus, the attorney's fees for time expended to date are at least \$ 15,000.00. It is anticipated an additional 4-6 hours in preparing for the oral argumentation hearing, and for travel and argument of the motion, in the amount of \$2,400.00. Accordingly, I respectfully

request that ABIM be directed to reimburse Defendant's counsel by paying him the sum of \$17,400.00 in attorneys' fees and costs spent in the preparation and argument of this motion. Defendant reserves the right to supplement this attorneys' fees request based on additional time to be expended in roundtrip travel to the court and argument of this motion application. Furthermore, and so that it serves ABIM to be dissuaded from future unreasonable and uncompromising litigation behavior throughout the balance of this litigation, an additional amount of \$4,500 should be imposed, for a total amount of \$21,900 in attorneys' fees to be reimbursed to Defendant.

Dated: May 2, 2016

Respectfully submitted,

s/ Andrew L. Schlafly
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