

210 Lake Drive East, Suite 200  
Cherry Hill, NJ 08002-1163  
TEL 856.761.3400  
FAX 856.761.1020  
www.ballardspahr.com

Roberto A. Rivera-Soto  
Direct: 856.761.3416  
riverasotor@ballardspahr.com

VIA ELECTRONIC MAIL

May 27, 2016

Andrew L. Schlafly, Esq.  
939 Old Chester Rd.  
Far Hills, New Jersey 07931

Re: ***AM. BD. OF INTERNAL MED. V. JAIME SALAS RUSHFORD, M.D.***  
Civil Action No. 2:14-cv-06428-KSH-CLW  
United States District Court for the District of New Jersey

Dear Mr. Schlafly:

This firm represents plaintiff/counterclaim defendant the American Board of Internal Medicine 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. (collectively, "ABIM") in the above referenced case.

At 9:17 p.m. yesterday, we received an electronic notice of filing in respect of the motion for a protective order filed by defendant Jaime A. Salas Rushford, M.D.; that motion seeks to quash the notice of deposition that requires that defendant produce documents on or before May 26, 2016 and appear for deposition on May 31, 2016, the fact discovery deadline in this case. Consistent with his failure to address the question to date, that motion makes no mention of defendant's non-compliance with his *Rule 26* discovery obligations in respect of his counterclaims/third-party complaint.

Putting aside, for the moment, the fatal procedural defect that defendant's motion for a protective order lacks either a return date or a request that it be considered on short notice, *see generally L. Civ.R. 7.1*, it is self-evident that the filing of a motion for a protective order does not automatically grant the relief requested, even on an interim basis. *See Mitsui & Co. (U.S.A.), Inc. v. Puerto Rico Water Resources Authority*, 93 F.R.D. 62, 67 (D.P.R. 1981) (holding that "[protective] order must be obtained before the date set for the discovery" (emphasis supplied)). *See also United States v. Portland Cement Co.*, 338 F.2d 798, 803 (10th Cir. 1964), *cert. denied*, 389 U.S. 975 (1967) (holding that issuance of protective order "must precede the taking of the depositions"). And, substantively, defendant's motion for a protective order lacks the good cause required of that application; ABIM will address that point and others more fully once a proper schedule is set based on a properly noticed return date.

A PA Limited Liability Partnership | John Bernard Kearney, Managing Partner

Andrew L. Schlafly, Esq.  
May 27, 2016  
Page 2

In sum, please take notice that defendant's last-minute motion for a protective order does nothing to avoid or otherwise modify defendant's obligation to appear for deposition on May 31, 2016 or to produce documents in accordance with the notice of deposition. Moreover, defendant has yet to address his unexplained failure to comply with his *Rule 26(a)* initial disclosures obligations in respect of his counterclaims and third-party claims.

The deposition remains as scheduled; defendant's choice in failing to appear is at his own risk. Therefore, we expect confirmation from you, by noon today, of (a) whether defendant will appear at the deposition noticed for May 31, 2016 and (b) when we may expect the documents requested in the notice of deposition along with defendant's long-overdue *Rule 26(a)* counterclaim/third-party complaint initial disclosures.

Very truly yours,

**BALLARD SPAHR LLP**

By:



Roberto A. Rivera-Soto