

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

American Board of Internal Medicine  
(ABIM),

Plaintiff,

vs.

Jaime A. "Jimmy" Salas Rushford, M.D.,

Defendant.

Civil Action No. 14-cv-06428-KSH-CLW

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**DEFENDANT'S FIRST SET OF REQUESTS FOR ADMISSION**

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Defendant, Dr. Jaime A. Salas Rushford, through his undersigned counsel, and, pursuant to Federal Rules of Civil Procedure 26 and 36 and Local Rule 36.1, serves this first request for admission on Plaintiff, the American Board of Internal Medicine (ABIM):

**Instructions**

1. The following instructions, definitions, and interrogatories, and any other discovery requests served on You by Defendant, should be construed as being within their legally allowed scope. If any request, instruction or definition is deemed by You to be outside that scope, You should interpret it, if at all possible, as being within that scope and Your explained interpretation, and the reason for its need, shall be included in Your response.
2. All words in this set of Requests for Admission and in any other discovery requests served on You by Defendant shall have the meaning explained in the section on Definitions, along with any meaning generally given to them in the English lan-  
{0518-3269/00395853-1}

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guage that results either in an admission or in the most detailed explanation for denial possible.

3. Any instruction or definition not found in a particular discovery request but found in another discovery request, and which is not incompatible with the particular discovery request, should be deemed supplemental to the instructions and definitions in the particular discovery request.
4. These requests for admission cover all information or documents within Your knowledge or control or that you can readily obtain, regardless of where it is or they are located, or which has/have been or should be within Your knowledge or control, regardless of whether or not it/they actually presently is/are. Please note that the word 'Your' is defined in the section on Definitions and should be interpreted expansively.
5. If You contend that any request for admission seeks privileged information please state so with particularity. If that privilege refers to a document, please provide a redacted copy of that document if such redaction does not render the document completely redacted and, in any case, identify the document, state its subject matter or the subject matter of the redacted portion, state and explain the privilege claimed, identify any persons who have seen the document or to whom it was sent, and, if a redacted copy is not produced, state the length of the document.
6. If any request cannot be admitted in full, please admit it to the extent possible and explain why full admission is not possible. This includes making estimates and approximations and stating that You are doing so.

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7. Federal Rule of Civil Procedure 36(a)(4) requires that You make a reasonable inquiry into each request.
8. Each item requested to be admitted shall be deemed admitted for purposes of this Action unless, within 30 days of service, You serve on us a written answer or objection addressed to the matter and signed by your attorney, unless a different time is ordered by the Court.
9. If You plan to request additional time to comply with any part or with the whole of this or any other discovery request, please inform us as soon as You become aware of the reason for such a need.
10. These requests, and any others served by Defendant on You, shall be considered continuing to the extent allowed by F.R.Civ.P. 26(e).

### **Definitions**

1. The terms "ABIM", "You", "Your" and "Plaintiff" shall mean the American Board of Internal Medicine and/or, any persons or entities who at any material times were, are, or have been its directors, officials, agents, employees, members, independent contractors, assignees, volunteers, trustees, legal representatives, and any others similar to those, including the secretaries and assistants of any of the above, regardless of where they work or worked. It shall also mean any divisions, affiliates, parent and subsidiaries of the American Board of Internal Medicine and any other corporations or business entities controlled, wholly or substantially, directly or through agents or appointees, by the American Board of Internal Medicine or its Board of Directors. It specifically includes the ABIM Foundation. It also includes any person or entity with which any of the above has entered into any contract to take over any

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duties or activities that in the regular course of business are or should be normally performed by or on behalf of any of the above and which is related in any way to the American Board of Internal Medicine, to Defendant, or to the issues raised by any party in this Action and/or which may reasonably lead to information or evidence related to those including, for example, issues related to testing, to certification or to Dr. Arora. It further includes any board, committee, commission, and/or working group created, composed or controlled by any of the above and which is related in any way to the American Board of Internal Medicine, to Defendant, or to the issues raised by any party in this Action and/or which may reasonably lead to information or evidence related to those, including, for example, issues related to testing, to certification or to Dr. Arora. Finally, it includes any entities to which any of the above have the right to nominate or appoint directors or officers to represent ABIM or the ABIM Foundation or any of their divisions or groups.

2. The terms "Defendant" and "Dr. Salas Rushford" shall mean Dr. Jaime A. Salas Rushford and/or his agents, employees or legal representatives.
3. The terms "Dr. Arora", "Arora Board Review", "ABR" and "the Arora Course" shall mean, unless otherwise limited in the particular request, Dr. Rajender K. Arora and/or Arora Board Review and their directors, officials, agents, employees, members, independent contractors, assignees, volunteers, legal representatives, and any others similar to those, including the secretaries and assistants of any of the above, regardless of where they work or worked, and the courses which they offered or any materials they produced.

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4. The terms "Action", the "above captioned litigation", "the instant case," and "the case at bar" shall mean American Board of Internal Medicine v. Jaime A. Salas Rushford, MD, Civil Action No. 14-cv-06428-KSH-CLW, in the United States District Court for the District of New Jersey and any pleadings, documents or allegations presented therein.
5. The terms "Puerto Rico Action", and "the Puerto Rico case" shall mean American Board of Internal Medicine v. Jaime A. Salas Rushford, MD, Civil Action No. 3:15-cv-01016-JAG in the United States District Court for the District of Puerto Rico and any pleadings or allegations presented therein.
6. The "Affordable Healthcare Act" is the Act of Congress of March 23, 2010, contained in Public Law 111-148, 124 Stat. 364.
7. The terms "any", "all" and "each" shall be construed interchangeably to result in the most expansive response or production possible.
8. The terms "and" and "or" shall be construed interchangeably to result in the most expansive response or production possible.
9. The terms "person" and "persons" shall mean natural persons and legal persons and any partnership, association, group organization or business entity composed by either or both and shall be construed in the singular and plural.
10. "Computer" shall include any of the following: desktop computers, laptop computers, netbooks, personal computers, workstations, on-site or off-site backup systems, cloud storage, external hard drives, thumb/USB/flash drives, personal digital assistants, smartphones, cellphones, tablets, and any other devices similar or analogous to those.

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11. The terms "document" and "documents" shall include writings, drawings, graphs, charts, programming, photographs, recordings, images, communications and any other form of data or data compilations, which have been created, produced or stored in any medium from which information can be obtained. When referring to electronically created or stored documents, it shall include the properties and metadata of all versions of the document. A draft or non-identical copy, including with regard to metadata, properties and format, is a different document.
12. The term "recording" or "recordings" includes audio recordings and video or cinematographic recordings, or any akin to those, whether or not they include audio.
13. The terms "communication" and "communications" shall refer to any transmittal or exchange of data, information, art, documents, facts, inquiries or any sort of meaning or content, whether done personally or through any means, including oral, electronic, written, typed, printed, or signaled.
14. When referring to a document, the terms "create" and "created" shall include any action in any medium by which any draft, original, copy, display, derivative or compilation of the document came into being.
15. The terms "meeting" and "meetings" shall include sessions, gatherings, assemblies, conferences, sittings, hearings, seminars, summits, consultations and conventions, along with any other akin occurrence.
16. The terms "contract" and "contracts" shall include agreements, memoranda, settlements and understandings, including oral or done through whatever medium.
17. When referring to works made for hire, as defined in 17 U.S.C. § 101, or to joint works, or collective works, or any other work not wholly created by one natural

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person acting alone, the terms “author” and “authors” extend to any person who actually contributed to the creation of the work to any degree enough that the work would not be completely identical to what it is if his or her contribution were subtracted from it or were not to have occurred, without regard to whether a substitute person would have hypothetically made the same contribution. This includes any drafters, researchers, editors, correctors, fact checkers, consulted experts, revisers, updaters, quality assurers, blueprint proposers, blueprint approvers, item developers, and any staff members or assistants any of them had available to them who actually did all or part of their work. In the specific case of ABIM Examinations, it includes all the members of the ABIM Exam Committee for that particular test (for example, in the case of the Internal Medicine Board Exam, this refers to the ABIM Internal Medicine Board Exam Committee), and any persons assisting them, at any point in which the test or any part of it was drafted, created, edited or revised in any way.

18. The terms “content” and “copyrighted content” extend to derivative works, compilations and drafts, in whatever form, and regardless of their author, extent or reason for use, and to any programming related to any of those. The terms also include any sources from which all or any part of the content was taken, quoted or copied or which served as inspiration for said content, unless the particular source is explicitly cited in the final work.
19. The terms “ABIM Examination” shall mean any ABIM Certification or Maintenance of Certification Examination and their content and programming.

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20. The phrases "ABIM Examinations whose copyright protection is at issue in this Action", "works whose copyright protection is at issue in this Action", "works over which You claim ownership and copyright protection in this Action," or any similar phrases, mean all the works listed in paragraph no. 29 of the Complaint, or in whatever paragraph if the Complaint is amended, and to any programming related to any of those. If the Complaint were amended to remove any works, those removed works would regardless remain within the scope of the meaning for discovery purposes.
21. The terms "test preparation company" and "test preparation companies" refers to any person or entities that publish any material or offer any courses or meetings related in any way to any candidates' studying or preparation to take any ABIM Examination, as well as their directors, officials, agents, employees, members, independent contractors, assignees, volunteers, predecessors or successors in interest, legal representatives, and any others similar to those, including the secretaries and assistants of any of the above, regardless of where they work or worked.
22. When referring to ABIM Examination questions and content, the word "leaked" and other similar terms, mean any and all questions or content that ABIM has ever alleged were taken or has ever believed have been taken by anyone from any of its Examinations and then revealed, copied, sent, disseminated or published, by whatever means and in whatever place, to or by whoever took the question or any third party, for their own use or for anyone else's.
23. When referring to ABIM Examination questions and content, the term "going live", and similar phrases, means the moment at which the particular question or content

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first appeared to any candidate or test taker, or was eligible to appear to any candidate or test taker, or became available to any printers, programmers, or testing center or company or any person holding, proctoring, offering, supervising, collecting, protecting and/or monitoring any ABIM Examination, located anywhere.

24. The phrase "Pledge of Honesty" means the complete document, and any programming related to that document, of the text cited at paragraphs nos. 19-21 of the Complaint, inclusive.

25. When asked, using any wording, to identify or state the identity of anyone or anything, the words "identify" and "identity" shall include the following, as applicable:

a. If referring to a natural person: the person's name; any other name, nickname or alias by which the person is or has been known; present or last known address; any address the person had at any material times; known electronic addresses, presently and at any material times; known telephone numbers, presently and at any material times; date and place of birth; driver's license number and State of issue; marital status and full name of spouse (if any); highest academic degree; and employer and position or occupation, presently and at any material times, and length or period of time in which they occupied or have occupied the particular position. If the person is a minor, then it shall also include the same information about the minor's parents or legal guardians.

b. If referring to a legal person (corporation or the like): the full name; the state of incorporation or recognition; present or last known address; any address the person had at any material times; known contact electronic ad-

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addresses; known electronic addresses at any material times; known contact telephone numbers.

- c. If referring to any business entity, group or association that, for any reason, cannot sue and be sued or cannot be served with summons or subpoena independently of another person: the full name; present or last known address; any address the entity, group or association had at any material times; known contact electronic addresses; known contact telephone numbers; the identity or identities its members and of any persons required to also be sued or served with summons or subpoena.
- d. If referring to a computer: the type of computer; the brand name and model number sufficient to identify and differentiate it; any telephone or PIN numbers associated with the computer; the present or last known location of the computer; and the identity of the present or last known custodian of the computer.
- e. If referring to a document or part of a document: the name or title of the document; the date of the document, or dates if its effectiveness differs from its date of creation; the type of document regarding its content (i.e. a letter); the type of document regarding its medium or format (i.e. a PDF); the file name of the document if it is different from its title; the stated author or authors; all other known drafters or actual authors that are not apparent from the document itself; the authority, if any, under which the document was created, enacted or registered; the owner (if different from the author or authors); the addressee if any; any and all filing or identifying numbers or

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codes associated with the document; a summary of the substance of the content; the page, paragraph or location within the document if only identifying part of a document; and the identity of the present or last known custodian and/or location of the document.

- f. If referring to an oral, signaled or in any way unavailable communication: the date, time and place where the communication took place and/or means by which it was made; the identity of the persons communicating; the identity of the recipients or intended recipients of the communication; the identity of any document related in any way to the communication or its content; the identity of any carriers or transmitters of the communication; the identity of any computers used for the communication; the substance or content of the communication.
- g. If referring to a physical location: the name of the building and/or development (if any); the full physical address of the location; the full mailing address of the location; the specific floor and/or office or room, if any; the telephone number of the location; any known geo-referencing coordinates or marks of the location if the location cannot be reasonably found with the addresses alone; any other known identifying registry numbers or codes of the location; the identity of the owner or occupant of the location; if the owner or occupant is not a natural person, the identity of the natural person who serves as the location's custodian or who may be found there.
- h. If referring to an electronic location: the identity of the owner of the location; the identity, if known, of the computer; the full relevant path in the di-

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rectory structure of the computer, including the identity of any files; any known usernames, passwords and/or codes necessary to access the location which can be made available or the identity of those with such knowledge; any known means, addresses and information necessary to remotely access the location; if the owner is not a natural person, the identity of the natural person who serves as the location's custodian or administrator.

- i. If referring to any other thing: the type of thing; its brand name, model or other type of identifying number, name, and/or marking sufficient to identify and differentiate it; the present or last known location of the thing; a summary or general description of its content if any; the identity of the thing's owner; and the identity of the present or last known custodian of the thing.
- j. If referring to a document or thing that has been destroyed, discarded, lost, or is otherwise unavailable, provide the applicable identifying information as instructed above and also provide: the date, manner and reason for and of destruction, discard or loss; the person or persons who authorized and carried out the destruction or discard; the date You became aware that the document or thing was unavailable if different from its date of destruction, discard or loss; identify and produce true and exact copies of any complaint, report, grievance or claim, or any document similar to those, filed with the Police or any other relevant government authority and with any insurance company, adjuster or provider in relation to the loss or destruction of the document or thing; the identity of any other document related in any way to

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the discarded, destroyed, lost or otherwise unavailable document or to its content.

**Requests for Admission**

1. Admit that the Pledge of Honesty has not appeared on all ABIM Examinations given since 1986.
2. Admit that Dr. Salas Rushford did not violate the Pledge of Honesty.
3. Admit that on or before 2009, ABIM had never published a copy, or any part, of the Pledge of Honesty or made it available to candidates before the day each one took the ABIM Examination.
4. Admit that, on or before 2009, ABIM did not provide candidate test takers with an electronic or paper copy of the Pledge of Honesty when or after they finished the examination.
5. Admit that Dr. Salas Rushford did not have any prior access to any of the questions that actually appeared on the ABIM Examination that he personally took on August 20, 2009.
6. Admit that Dr. Salas Rushford did not reveal any questions or content that he saw when he took the ABIM Examination on August 20, 2009.
7. Admit that, all other things being equal, being an ABIM Certified physician does not in any way mean that a person is a better physician when compared to one who is not ABIM Certified.
8. Admit that ABIM Certification is not essential to recognition as a specialist.
9. Admit that Dr. Salas Rushford did not attend the "weekend crash course" held by Dr. Arora in Livingston, New Jersey.

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10. Admit that Dr. Rebecca S. Lipner does not have any personal knowledge about anything that occurred on the course held by Dr. Arora in the City University of New York on May 2009.
11. Admit that Dr. Rebecca S. Lipner has no personal knowledge about anything that occurred on any course held by Dr. Arora.
12. Admit that Dr. Arora offered and advertised his ABIM Examination review course publicly since 1989.
13. Admit that Dr. Rajender K. Arora was, personally, an ABIM Certified physician at all points between December 2008 and August 2009, inclusive.
14. Admit that Dr. Rajender K. Arora was, personally, an ABIM Certified physician at all points between December 1989 and August 2009, inclusive.
15. Admit that all persons ABIM has instituted actions against in any court with regard to its copyrights in its Examination have been immigrants, minorities and/or women.
16. Admit that there are non-Hispanic white men that ABIM is aware infringed on ABIM's copyrights over its Examinations and who ABIM has never sued for copyright infringement.
17. Admit that there are non-Hispanic white men that ABIM is aware possess or possessed copies not previously explicitly authorized by ABIM of any or all or part of any ABIM Examination and who ABIM has never sued for copyright infringement.
18. Admit that there are non-Hispanic white men that ABIM is aware violated its Policies and Procedures in some way and whose Certification ABIM has not revoked.

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19. Admit that there are non-Hispanic white men that ABIM is aware violated its Policies and Procedures in some way and whose Certification ABIM has not suspended.
20. Admit that there are non-Hispanic white men that ABIM is aware violated its Policies and Procedures in some way and whose Certification ABIM has not recommended for revocation.
21. Admit that Dr. Jaime A. Salas Rushford is a Hispanic of Puerto Rican descent.
22. Admit that Dr. Monica Mukherjee is an Asian American of Indian descent.
23. Admit that Dr. Anastassia Todor is an immigrant to the United States who was born and raised in Russia.
24. Admit that Dr. Pedram Salehi is of Iranian and/or Persian descent.
25. Admit that Dr. Fredrick Oni is an African American of Nigerian descent.
26. Admit that Dr. Rajender K. Arora is an Asian American immigrant to the United States who was born and raised in India.
27. Admit that Dr. Anise A. Kachadourian is of Armenian descent.
28. Admit that there exist test preparation companies that ABIM is aware possess or possessed copies not previously explicitly authorized by ABIM of any or all or part of any ABIM Examination and who ABIM has never sued for copyright infringement.
29. Admit that ABIM has never had a CEO who has not been white.
30. Admit that, at all points, at least 90% of the members of ABIM's Board of Directors have been white.

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31. Admit that ABIM is the largest of the 24 member boards that of the American Board of Medical Specialties (ABMS).
32. Admit that ABIM controls one or more seats on the Board of Directors of the American Board of Medical Specialties (ABMS).
33. Admit that the Accreditation Council for Continuing Medical Education (ACCME) has been one of only nine associate members of the American Board of Medical Specialties (ABMS) since 2004.
34. Admit that the American Board of Medical Specialties (ABMS) is one of only seven member and founding organizations of the Accreditation Council for Continuing Medical Education (ACCME).
35. Admit that those the seven member organizations of the Accreditation Council for Continuing Medical Education (ACCME) are responsible for nominating individuals to the Board of Directors, for providing input into ACCME's strategic directions, and for oversight of ACCME actions and bylaws changes.
36. Admit that the mission of the Accreditation Council for Continuing Medical Education (ACCME) is "the identification, development, and promotion of standards for quality continuing medical education (CME) utilized by physicians in their maintenance of competence and incorporation of new knowledge to improve quality medical care for patients and their communities."
37. Admit that all the accredited CME generated by a provider within the ACCME system (i.e., ACCME-accredited CME) meets the same requirements and standards.
38. Admit that the accreditor is the only difference between ACCME-accredited providers and state medical society accredited providers.

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39. Admit that all the accredited CME events, activities or courses presented by AC-CME-accredited providers and state medical society accredited providers are AC-CME-accredited CME, and all ACCME-accredited CME is required to meet the same ACCME requirements.
40. Admit that, at all material times, the Medical Society of the State of New York is and was recognized by the Accreditation Council for Continuing Medical Education (ACCME) as an accreditor and that it can and could accredit organizations to provide ACCME-accredited CME in the state of New York and in contiguous states.
41. Admit that the Lincoln Medical and Mental Health Center, in Bronx, NY is a full service medical center and teaching hospital affiliated with the Weill Cornell Medical College of Cornell University for the purpose of continuing medical education and the referral of tertiary/quaternary patients.
42. Admit that the Lincoln Medical and Mental Health Center runs, and at all material times has run, a residency program in Internal Medicine accredited by the Accreditation Council for Graduate Medical Education.
43. Admit that the Lincoln Medical and Mental Health Center was accredited by the Medical Society of the State of New York as a Continuing Medical Education Provider Organization to provide ACCME-approved CME at all times between 2006 until the moment this Action was filed in October 2014.
44. Admit that the Lincoln Medical and Mental Health Center sponsored or was a joint provider for Continuing Medical Education Credits of the ABIM Examination Review Course taught by Dr. Arora in the City University of New York on May 2009.

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45. Admit that the ABIM Examination review course taught by Dr. Arora, that Dr. Salas Rushford attended, in the City University of New York on May 2009 was ACCME-accredited for 42 American Medical Association/Physician's Recognition Award™ (AMA/PRE™) Category 1 Continuing Medical Education Credits.
46. Admit that AMA/PRE™ Category 1 CME Credits are recognized as satisfying all required quality standards in CME by the respective governmental medical licensing authorities of the Commonwealth of Puerto Rico, the State of Florida, the State of New York, and the State of North Carolina.
47. Admit that ABIM has engaged in lobbying activities as defined by the Glossary of Form 990 of the Internal Revenue Service (IRS).
48. Admit that ABIM lobbied Congress, or any Member of Congress, to include its Maintenance of Certification Program as one of the quality measures for physicians on the Affordable Healthcare Act.
49. Admit that ABIM lobbied Congress, or any Member of Congress, to include its Maintenance of Certification Program as one of the quality measures for physicians on the Affordable Healthcare Act specifically through an amendment to Section 1848(k)(4) of the Social Security Act, 42 U.S.C. § 1395w-4(k)(4), which is contained in Sec. 3002(c)(1) of the Affordable Healthcare Act.
50. Admit that ABIM lobbied Congress, or any Member of Congress, to include its Maintenance of Certification Program as one of the quality measures for physicians on the Affordable Healthcare Act specifically through an amendment to Section 1848(m) of the Social Security Act, 42 U.S.C. § 1395w-4(m), which is contained in Sec. 10327 of the Affordable Healthcare Act.

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51. Admit that, between the year 2000 and the present, ABIM has engaged in direct lobbying communications as defined by the Instructions for either Parts II-A or II-B of Schedule-C of IRS Form 900.
52. Admit that, between the year 2000 and the present, ABIM has incurred in lobbying expenditures as defined by the Instructions for any part of Schedule-C of IRS Form 900.
53. Admit that from 2009 through 2014, ABIM paid \$390,000, or a materially similar or greater amount, to Mehlman Vogel Castagnetti, a lobbying firm.
54. Admit that, between the year 1990 and the present, ABIM has lobbied the Centers for Medicare and Medicaid Services (CMS).
55. Admit that before becoming CEO of ABIM and the ABIM Foundation, Dr. Richard Baron was the Director of the Seamless Care Models Group of the Centers for Medicare and Medicaid Services (CMS).
56. Admit that, among other duties, the Seamless Care Models Group focused on the implementation of accountable care organizations (ACOs).
57. Admit that Dr. Salas Rushford was born in San Juan, Puerto Rico and graduated with high honors from Colegio San Ignacio de Loyola high school in San Juan in 1997.
58. Admit that Dr. Salas Rushford was admitted in 1997 to the prestigious "Grupo de los Cien" (Group of the Hundred) of the Department of Natural Sciences of the University of Puerto Rico (UPR), Rio Piedras Campus.
59. Admit that Dr. Salas Rushford obtained his bachelor's degree in Natural Sciences with high honors from the UPR on December 1999.

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60. Admit that Dr. Salas Rushford enrolled in 2000 at the UPR School of Medicine and obtained his Doctorate of Medicine, also with honors, from that institution in 2004.
61. Admit that Dr. Salas Rushford did his internship at the General Surgery Program at St. Vincent's Manhattan Hospital in New York, New York from 2004 to 2005.
62. Admit that Dr. Salas Rushford did his second year residency at the General Surgery Program at St. Vincent's Manhattan Hospital in New York, New York from 2005 to 2006.
63. Admit that Dr. Salas Rushford received excellent evaluations for his work in St. Vincent's.
64. Admit that Dr. Salas Rushford had to change his residency program because St. Vincent's filed for bankruptcy and closed the program.
65. Admit that Dr. Salas Rushford then started his residency in Internal Medicine at Cabrini Medical Center in New York, New York from July 2006 to February 2008.
66. Admit that Dr. Salas Rushford received excellent evaluations for his work at Cabrini Medical Center.
67. Admit that Dr. Salas Rushford returned to Puerto Rico because Cabrini Medical Center also declared bankruptcy and had to close its training and clinical programs.
68. Admit that Dr. Salas Rushford then enrolled at the San Juan City Hospital located in San Juan, Puerto Rico on February 2008 where he completed his residency in Internal Medicine in April 2009.
69. Admit that practicing physicians are required to be licensed by the state in which they practice.
70. Admit that state licensing agencies ("state medical boards") are subject to the sub-

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stantive and procedural "due process" and "equal protection" clauses in all actions, including disciplinary proceedings.

71. Admit that being sanctioned or disciplined by one of these state licensing agencies is devastating to a physician's practice, reputation, and economic livelihood because it bars physicians from obtaining required medical privileges, as well as malpractice insurance.
72. Admit that a doctor's state medical license is a valuable property right of the physician which cannot be sanctioned or removed by mere arbitrary or capricious action of the state agency.
73. Admit that Board Certification by the member boards of ABMD has become a practical necessity for the practice of medicine.
74. Admit that ABIM owes its certified physicians a duty of fair play, contractual due process and substantial justice.
75. Admit that ABIM owes its certified physicians a duty to act in a substantively rational and procedurally fair manner.
76. Admit that, for a procedure to be fair, it must include adequate notice and a real and genuine opportunity to be heard by an impartial and unbiased person or panel prior any negative action being finalized.
77. Admit that procedures are deemed arbitrary when they are substantively unreasonable, internally irregular, or procedurally unfair, and/or are based on false allegations or are created or improvised along the way.
78. Admit that arbitrary procedures for dispute resolution established unilaterally by one of the two contractual parties constitute egregious breaches of contract and of

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the duty of good faith.

79. Admit that in December 2008, Dr. Salas Rushford, while a resident of the Commonwealth of Puerto Rico and using a computer in Puerto Rico, registered online to take the ABIM Examination to be held in Puerto Rico.
80. Admit that Dr. Salas Rushford paid for the ABIM Examination with a credit card registered with a billing address of San Juan, Puerto Rico from funds located in San Juan, Puerto Rico.
81. Admit that on December 2008 ABIM authorized Dr. Salas Rushford to take the ABIM Examination which would be held on August 20, 2009.
82. Admit that from the point in which ABIM authorized Dr. Salas Rushford to take the ABIM Examination onward, the relationship between ABIM and Dr. Salas Rushford has been of a contractual nature.
83. Admit that ABIM does not have any document of a contractual nature, to which ABIM and Dr. Salas Rushford are both parties, that bears Dr. Salas Rushford's signature.
84. Admit that on December 2008 the document titled ABIM Policies and Procedures for Certification dated October 2008 was the latest published version of the ABIM Policies and Procedures for Certification.
85. Admit that ABIM did not provide Dr. Salas Rushford before August 2009 with a copy of the ABIM Policies and Procedures for Certification dated October 2008.
86. Admit that ABIM did not provide Dr. Salas Rushford at any time before October 2014 with a copy of the ABIM Policies and Procedures for Certification dated October 2008.

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87. Admit that, between May 2012 and July 2014, Dr. Salas Rushford requested that ABIM provide him with a copy of the ABIM Policies and Procedures for Certification dated October 2008.
88. Admit that, between May 2012 and July 2014, Dr. Salas Rushford requested that ABIM provide him with a copy of the ABIM Policies and Procedures for Certification in effect on December 2008 when he registered for the ABIM Examination.
89. Admit that as a result of Dr. Salas Rushford's request that ABIM provide him with a copy of the ABIM Policies and Procedures for Certification in effect on December 2008 when he registered for the ABIM Examination, ABIM provided him with a copy of the ABIM Policies and Procedures for Certification dated August 2009.
90. Admit that the ABIM Policies and Procedures for Certification dated August 2009 were not in effect at the time Dr. Salas Rushford sat for the examination on August 20, 2009.
91. Admit that the widely disseminated advertising literature of the six-day ABIM Examination Review Course offered by Arora Board Review stated that the course relied principally on discussion of board-type questions.
92. Admit that Dr. Rajender K. Arora is an internist, gastroenterologist, and geriatrist and in 2008 and 2009 was a fellow of the American College of Physicians and of the American College of Gastroenterology.
93. Admit that ABIM works directly and personally with the program directors of all Internal Medicine residency programs approved by the Accreditation Council for Graduate Medical Education.
94. Admit that, while Dr. Salas Rushford was there, the residency and education pro-

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gram of the San Juan City Hospital was accredited by the Accreditation Council for Graduate Medical Education.

95. Admit that the ABR course held in May 2009 at the City University of New York was attended by approximately 350 physicians from around the United States.
96. Admit that, by May 2009, Dr. Arora's practice of asking participants to inform him of how well his review course helped them pass the test *after* taking of the ABIM Examination had been going on publicly for many years and was commonly known among internists.
97. Admit that in 2008 and 2009 the ABR review course was a highly recommended review course among directors, professors and attending physicians at teaching hospitals.
98. Admit that Dr. Salas Rushford never discussed the ABIM Examination with Dr. Arora after Dr. Salas Rushford took it.
99. Admit that You did not inform Dr. Salas Rushford of Your claims against Dr. Arora until May 8, 2012.
100. Admit that ABIM did not disclose publicly its claims against Dr. Arora until January 5, 2010.
101. Admit that Dr. Salas Rushford was a first responder to the crisis in Haiti after the earthquake of January 12, 2010.
102. Admit that Dr. Salas Rushford has never been reprimanded or disciplined by any state medical licensing agency.
103. Admit that the seizure of ABR materials pursuant to the court order in the case of *ABIM v. Arora*, No. 2:09-05707 (E.D.Pa.), was executed on December 7, 2009.

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104. During the Arora Course, Dr. Arora stated that he welcomed students to discuss issues with him at any time, and, for said purposes, made one contact e-mail address and one phone number available to all attendees.
105. Admit that it is customary and accepted, and in some cases required, that resident internists participate in study groups for the ABIM Examination.
106. Admit that ABIM works closely with the program directors of all Internal Medicine residency programs.
107. Admit that ABIM that Dr. Salas Rushford is not the original creator of the attachments to the e-mails attached as Exhibits D, E and F in the Complaint.
108. Admit that ABIM that Dr. Salas Rushford is not the original creator of the attachments to the e-mails referred to in paragraph no. 46 of the Complaint.
109. Admit that ABIM knows the identities of the original creators of all the attachments to the e-mails referenced in the Complaint.
110. Dr. Salas Rushford took the ABIM Examination in a Pearson Testing Center in the Commonwealth of Puerto Rico on August 20, 2009.
111. Admit that Dr. Salas Rushford has never been involved in any disciplinary proceeding or medical misconduct proceedings in any state or the Commonwealth of Puerto Rico.
112. Admit that Dr. Salas Rushford has been honored by the Senate and House of Representatives of the Commonwealth of Puerto Rico.
113. Admit that Dr. Christine K. Cassel was Chairwoman of the ABIM Board of Directors between 1995 and 1996.
114. Admit that Dr. Christine K. Cassel was the President and CEO of the American

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College of Physicians (ACP) from 1996 to 1997.

115. Admit that Dr. Christine K. Cassel was President and CEO of ABIM between 2003 and 2013.

116. Admit that the ACP has published the work titled Medical Knowledge Self-Assessment Program (MKSAP) since 1967.

117. Admit that the MKSAP is a study guide for the ABIM Examination in Internal Medicine that contains hundreds of board-like questions.

118. Admit that, to any person who has not taken, authored or had access to the ABIM Examination in Internal Medicine, the questions contained in the Medical Knowledge Self-Assessment Program (MKSAP) are indistinguishable from those that could be contained in the ABIM Examination in Internal Medicine, because their nature, topics and form resembles those of the question in the ABIM Examination in Internal Medicine.

119. Admit that the reason that the MKSAP is successful is precisely that the questions published within each of its editions resemble or resembled those in the ABIM Examination in Internal Medicine that was offered on dates close to the publishing of the particular edition.

120. Admit that some of the actual authors of the questions in the MKSAP are also the actual authors of all or some or part of the questions in the ABIM Examination.

121. Admit that, to any person who has not taken, authored or had access to the ABIM Examination in Internal Medicine, the questions contained in the all the materials provided to review takers by ABR are indistinguishable from those that could be contained in the ABIM Examination in Internal Medicine, because their nature,

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topics and form resembles those of the question in the ABIM Examination in Internal Medicine.

122. Admit that, on or before August 2009, ABIM never published or informed publicly that it re-used questions in its Examinations from year to year.
123. Admit that ABIM had knowledge of potential problems with the Arora Course before Dr. Salas Rushford took it and never warned him or any other physician of the potential issues before they took the course.
124. Admit that, even after sending a person to the ABR course in May 2009 and gathering evidence there, ABIM did not inform any of its candidates who were scheduled to take the ABIM Examination on August 2009 of the problems with the ABR course.
125. Admit that on or after May 2009, ABIM had enough evidence against ABR to request the seizure order that it finally requested against ABR in December 2009.
126. Admit that ABIM could have warned candidate physicians who took the ABR course of the problems with the ABR course before they took the ABIM Examination on August 2009 without jeopardizing its case against ABR.
127. Admit that Jimmy is Dr. Salas Rushford's nickname.
128. Admit that Jimmy is a common nickname for men named Jaime in Puerto Rico.
129. Admit that Dr. Salas Rushford used the padrinojr@yahoo.com e-mail address since 1997.
130. Admit that the Salas Rushford family composed of Dr. Salas Rushford (then a high school and college student), his brother Mr. Jose M. Salas Rushford (also then a student) and their parents, Ms. Catherine Rushford Padilla, Esq., and Mr. Jaime A.

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Salas Soler, Esq., registered and used from the mid 1990's to the early 2000's the e-mail address godfat@prtc.net as their family e-mail address.

131. Admit that, when he was in high school and college (between 1996 and early 2000), Dr. Salas Rushford also owned and used the e-mail address godfatherjr@hotmail.com.

132. Admit that Dr. Salas Rushford used the padrinojr@yahoo.com e-mail address to correspond with persons other than Dr. Arora.

133. Admit that Dr. Salas Rushford used the padrinojr@yahoo.com e-mail address as his main e-mail address from 1998 to 2004.

134. Admit that Dr. Salas Rushford created the jsalasmd@yahoo.com e-mail address on or about the time he graduated from Medical School in 2004.

135. Admit that Dr. Salas Rushford still heavily used the padrinojr@yahoo.com e-mail address between 2004 and 2008.

136. Admit that Dr. Salas Rushford used "padrinojr" as his username when registering with the Federation of State Medical Boards (FSMB) on August 11, 2006.

137. Admit that ABIM never asked Dr. Arora, at any time, through depositions, interrogatories or any other means, who the owner of the padrinojr@yahoo.com account was.

138. Admit that, in reference to what is stated in paragraph no. 45 of the Complaint, Dr. Salas Rushford never "ticked" the questions that were in his exam.

139. Admit that ABIM has no evidence to support its contention, contained in paragraph no. 38 of the Complaint, that Dr. Salas Rushford recorded ABIM Examination in-

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formation in his handwritten notes during a lengthy telephone conversation with a colleague on August 12, 2009.

140. Admit that ABIM has no information or evidence that Dr. Salas Rushford had a lengthy telephone conversation with anyone on August 12, 2009.

141. Admit that all the documents provided by Dr. Salas Rushford to You in response to any Discovery request are authentic.

Dated: October 14, 2015

/s/ Guillermo L. Mena-Irizarry  
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/s/ Marco A. Gonzalez, Jr.  
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