

# **Exhibit B**

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October 23, 2015

**VIA EMAIL**

Ms. Melanie A. Miller, Esq.  
Member, Intellectual Property Department  
Cozen O'Connor  
One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103

Re: **American Board of Internal Medicine v. Jamie Salas Rushford, M.D.**  
**No. 2:14-cv-06428-KSH-CLW**

Dear Ms. Miller:

We received your email of October 22 in which you state as Dr. Rajender K. Arora's counsel that he will not comply with our subpoena, neither to produce documents nor to testify at deposition. We respectfully request that you reconsider your position and not force us to seek the Court's authority to compel your client to comply. We are frankly astonished that, after having had his reputation internationally besmirched by ABIM over the last six years, Dr. Arora would take a position that only serves to protect ABIM's interests. We are willing to accommodate reasonable requests for additional time.

Dr. Arora and his former business, Arora Board Review (ABR), are expressly mentioned in no fewer than sixteen paragraphs of ABIM's Complaint against Dr. Salas Rushford. ABIM's 2009-2010 case against Dr. Arora and the settlement agreement reached to end it are expressly relied upon in the Complaint. Dr. Arora is in fact stated to be the sender or recipient of each and every one of the allegedly infringing acts. ABIM's probable very early notice (through several possible means) about the content of the Unusual Board Review course is part of Dr. Salas

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Rushford's defense and counterclaims. In addition, Dr. Arora and ABR's advertising, representations, and professional reputation during the time Dr. Salas Rushford was one of his review students, are all important parts of the counterclaims that Dr. Salas Rushford is asserting against ABIM. These are some, but not all, of the reasons why Dr. Arora's testimony and the documents we have requested are very clearly relevant to the facts of the case, and the parties' respective claims and defenses.

Furthermore, your objection of undue burden is surprising and tenuous because your law firm represented Dr. Arora in the case ABIM brought against him in Pennsylvania (USDC E.D.P.A. Civil Action no. 2:09-cv-05707-JCJ) in which you made an appearance as counsel according to the docket. The complaint by ABIM in that matter has significant factual overlaps with the above-referenced matter. That matter lasted over six (6) months and included two separate settlement conferences with Judge Rueter on May 7 and May 12, 2010. Your firm must have investigated the allegations of the ABIM complaint in that case to effectively represent Dr. Arora and lead to the settlement in June 2010. Therefore, it is very likely that your office and/or Dr. Arora still have within your possession, custody or control many of the documents that are subject to the subpoena. Moreover, some of the requested documents are clearly related to taxable income and Dr. Arora must have kept those records, at least for the last ten years.

You state that ABIM has some of the emails requested, but you cannot certify what ABIM has or does not have. And, in any case, Dr. Arora, not ABIM, is the original source of the documents we seek. We are in fact looking for inconsistencies in the data, among other things. And, the emails are only a fraction of what we requested. Furthermore, that is not an excuse not to testify because ABIM certainly does not possess Dr. Arora's recollections.

You are correct in stating that Dr. Arora is not a party to the case, he is only a fact witness, at this time. He is also not an expert witness; therefore he is not entitled to the compensation you request. We will of course pay for costs as provided in the Federal Rules of Civil Procedure.

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If, as you state, he does not have certain documents, he can state so as per the instructions in the subpoena. That is not an issue. But he should state so following the rules, not in an email from counsel.

As to anything that is subject to the attorney-client privilege, that claim does not invalidate the subpoena and documents that are privileged must be identified in a privilege log with sufficient information for the requesting party to determine the validity of the privilege claims.

Lastly, we remind you that subpoenas issued by attorneys carry the Court's authority. We therefore expect compliance, although we reiterate that we are willing to accommodate reasonable requests for time. We will be in contact on Monday to discuss a sensible schedule for compliance. You may of course contact us at any time for that purpose.

Very truly yours,

/s/ Marco A. Gonzalez, Jr.  
Marco A. Gonzalez, Jr., Esq. (036001991)  
Nicoll Davis & Spinella LLP

/s/ Guillermo L. Mena-Irizarry  
Guillermo L. Mena, Esq.  
(admitted *pro hac vice*)  
Attorneys for Defendant

cc: Roberto Rivera-Soto, Esq. (via email)