

JCJ

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

1

AMERICAN BOARD OF INTERNAL  
MEDICINE,

(FILED UNDER SEAL)

Plaintiff,

CIVIL ACTION

v.

09-5707

RAJENDER K. ARORA, ARORA BOARD  
REVIEW, ANISE KACHADOURIAN and JOHN  
DOES 1-50,

Defendants.

COMPLAINT

FILED

Plaintiff, the American Board of Internal Medicine ("ABIM"), by its attorneys, as  
and for its Complaint against Defendants, Rajender K. Arora ("Arora"), Arora Board Review  
("ABR"), Anise Kachadourian ("Kachadourian") and John Does 1-50 (hereinafter collectively  
referred to as "Defendants"), alleges as follows:

DEC 02 2009  
MICHAEL E. KLINZ, Clerk  
By: [Signature] Dep. Clerk

NATURE OF THE ACTION

1. Defendant Arora, proprietor of a test-prep course for the Certifying Examination in Internal Medicine ("Examination"), stole, copied and disseminated approximately 1,000 of ABIM's secure copyrighted Examination items to course attendees seeking Board Certification in Internal Medicine. Defendant Arora unlawfully obtained ABIM's secure Examination items by mobilizing course attendees to divulge the contents of the Examination to Defendants in knowing violation of the copyright notice and confidentiality agreement to which every Examination candidate must agree. Defendant Arora further unlawfully obtained ABIM's secure Examination items by personally taking and failing the Examination seven times and through ABR's assistant, Defendant Kachadourian, who has taken

and failed the Examination ten times. ABIM is seeking monetary and injunctive relief arising from Defendant's knowing and willful copyright infringement, theft of trade secrets, breach of contract, intentional interference with contractual relations and civil conspiracy.

### **PARTIES**

2. Plaintiff, American Board of Internal Medicine, is an Iowa non-profit corporation, with its principal place of business at 510 Walnut Street, Suite 1700, Philadelphia, Pennsylvania 19106.

3. Defendant Rajender K. Arora, M.D. resides at 389 East Mount Pleasant Avenue, Livingston, New Jersey, and is a citizen of New Jersey. Arora holds a New Jersey medical license.

4. Defendant Anise Kachadourian, M.D. resides at 13 Forest Place, Towaco, New Jersey, and is a citizen of New Jersey. Kachadourian holds a New Jersey medical license.

5. Defendant Arora Board Review, on information and belief, is a sole proprietorship operated and owned by Arora. Arora Board Review's principal place of business, as advertised to the public at [www.aroraboardreview.com](http://www.aroraboardreview.com), is 389 East Mount Pleasant Avenue, Livingston, New Jersey, the residence of Defendant Arora.

6. Defendants John Does 1-50, are presently unknown individual physicians residing in unknown locations who were candidates for Board Certification in Internal Medicine and sat for the Examination.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367, and pursuant to the doctrine of supplemental jurisdiction.

8. This Court has personal jurisdiction over ABR because ABR regularly transacts business with residents of the Commonwealth of Pennsylvania, maintains an interactive

website at [www.aroraboardreview.com](http://www.aroraboardreview.com) ("ABR Website") that solicits business from residents of the Commonwealth of Pennsylvania over the Internet, and utilized the ABR Website to copy and display ABIM's copyrighted and secret Examination items to residents of the Commonwealth of Pennsylvania.

9. This Court has personal jurisdiction over Defendant Arora because, as the sole proprietor of ABR, he regularly transacts business with residents of the Commonwealth of Pennsylvania and he operates and controls the ABR Website that regularly solicits business from residents of the Commonwealth of Pennsylvania over the Internet. Alternatively, this Court has personal jurisdiction over Defendant Arora because he directed tortious conduct to the Commonwealth of Pennsylvania by utilizing the ABR Website to copy and display ABIM's copyrighted and secret Examination items to residents of the Commonwealth of Pennsylvania, intentionally interfering with contracts entered into between Board Candidates and ABIM, willfully stealing the trade secrets of ABIM, and by violating his own confidentiality agreement entered into with ABIM, which is headquartered in Pennsylvania.

10. This Court has personal jurisdiction over Kachadourian because she directed tortious conduct to the Commonwealth of Pennsylvania by willfully infringing ABIM's copyrighted Examination, intentionally interfering with contracts entered into between Board Candidates and ABIM, willfully stealing the trade secrets of ABIM, and violating her own confidentiality agreement entered into with ABIM, which is headquartered in Pennsylvania.

11. This Court has personal jurisdiction over John Does 1-50 because each of them directed tortious conduct to the Commonwealth of Pennsylvania by willfully infringing ABIM's copyrighted Examination, willfully stealing the trade secrets of ABIM, and violating their own confidentiality agreements with ABIM, which is headquartered in Pennsylvania.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

**FACTS COMMON TO ALL COUNTS**

**The American Board of Internal Medicine**

13. Established in 1936, ABIM is an independent, not-for-profit, 501(c)(3)-qualified corporation dedicated to the advancement of excellence in the field of internal medicine and the subspecialties of internal medicine.

14. Certification by ABIM is an internationally recognized marker of physician quality for patients, hospitals and other medical care providers. The designation of a physician as “Board Certified” by ABIM means that the physician has demonstrated – to the medical community and the public – that the physician has the clinical judgment, skills and attitudes essential for the delivery of excellent patient care.

15. Patients, hospitals and other medical care providers trust that physicians who have earned Board Certification from ABIM will provide the highest quality of medical care in their designated specialties.

16. Many hospitals require physicians of internal medicine to be Board Certified in order to have admitting privileges. Many health plans require Board Certification for contracting or eligibility to participate as a physician of internal medicine or the subspecialties in preferred networks.

17. Board Certified physicians often receive higher levels of compensation than non-certified physicians practicing in the same specialties.

18. ABIM grants Board Certification in Internal Medicine to physicians who: 1) successfully complete three years of accredited, post-graduate training in internal medicine and its subspecialties; 2) meet the other requirements for certification; and 3) then pass a secure, proctored, computer-based examination in Internal Medicine.

19. Physicians who are first Board Certified in Internal Medicine, may then, with additional accredited training, become Board Certified by ABIM in one or more of the following subspecialties: Adolescent Medicine, Advanced Heart Failure & Transplant Cardiology, Cardiovascular Disease, Gastroenterology, Pulmonary Disease, Endocrinology, Diabetes & Metabolism, Hematology, Infectious Disease, Nephrology, Rheumatology, Medical Oncology, Critical Care Medicine, Geriatric Medicine, Clinical Cardiac Electrophysiology, Sports Medicine; Interventional Cardiology, Transplant Hepatology, Sleep Medicine, and Hospice and Palliative Medicine.

**The ABIM Certification Examination in Internal Medicine**

20. Certification in Internal Medicine requires the physician to pass a secure, computer-based examination administered at testing centers nationwide and abroad (the “Examination”). The Certification Examination is administered in one day over approximately ten hours.

21. The ABIM Certification Examinations are “secure” examinations, using confidential, copyrighted questions not disclosed to anyone except those taking the Examination and those involved in creating the Examination.

22. Advance knowledge by a candidate of the content of an Examination question, such as knowledge of question fact patterns, specific question subject matter and potential answers, provides the candidate an unearned advantage that subverts the integrity of the Examination and may permit unqualified physicians to achieve Board Certification.

23. ABIM repeatedly notifies candidates for Board Certification that the Examination is a copyrighted work owned by ABIM and may not be reproduced. In addition, at the time the Examination is administered, Candidates are required to read and electronically sign

ABIM's Pledge of Honesty as displayed on their computer screens before they can begin the Examination. The Pledge of Honesty provides:

I, [candidate's name], pledge that I will not give or receive aid in this Examination. I will not disclose, copy, or reproduce any portion of the material contained in this Examination. I pledge to comply with the instructions of proctors and with all rules of this Examination. I confirm that the information provided in my application to the Board is true and correct.

\* \* \* \*

I, [candidate's name], agree to the above statements and agree to be legally bound by the rules and policies of the American Board of Internal Medicine.

Following the Pledge of Honesty, the computer displays the following text: "By selecting the Next (N) button, you will be accepting these terms (You will now proceed to the Examination). If you do not accept these terms, raise your hand to notify the test administrator now. (You will not be permitted to proceed to the Examination)."

24. At the conclusion of the Examination, each candidate's computer screen displays the following message:

**PLEASE NOTE:** In the Pledge of Honesty that you agreed to at the beginning of this Examination, you pledged that you "will not disclose, copy, or reproduce any portion of the material contained in this Examination."

In fairness to all candidates, and to help ensure the integrity of the certification process, we want to remind everyone that sharing information about Examination content violates the confidentiality agreement all Certification and Maintenance of Certification candidates make with the ABIM in that Pledge of Honesty. As always, the ABIM will impose severe penalties on any candidate involved in efforts to provide specific Examination question content to others. These penalties may include invalidation of Examination results, prohibition from retaking the Examination, and revocation of certification.

25. The agreements set forth in paragraphs 23 and 24 above constitute an enforceable confidentiality agreement between each and every candidate for Board Certification and ABIM to keep the contents of the Examination a secret. The confidentiality agreement that each candidate enters with ABIM is continuing and permanent.

**Development of the Certification Examination in Internal Medicine**

26. ABIM develops its Examination questions through a rigorous and costly process. A Test Committee (“Committee”), comprised of physicians from across the United States who are leaders in their fields of medicine and medical education, develops the Examination items. Members of the Committee meet in person two or three times a year to write and evaluate new questions. All Committee members sign agreements with ABIM confirming that ABIM is the copyright owner of all works contributed to or created by the member.

27. The Committee employs a “stepwise” procedure to create new questions. First, the Committee defines a general examination blueprint of areas within internal medicine to be tested. The Committee identifies cognitive tasks, such as diagnosis or treatment, and cognitive abilities, such as clinical judgment, to be tested for each area. Committee members write new questions and evaluate draft questions at a meeting in which the questions are read aloud, one by one. The Committee decides by consensus opinion to either: (1) accept the questions for further consideration, (2) revise them at the meeting, (3) assign them to individual test Committee members for extensive revision or (4) reject them. Once a question is accepted, it is pre-tested (used in Examinations but not counted) to assure that it has appropriate measurement characteristics.

28. ABIM maintains an “item bank” of “live” questions from which it can select to create an Examination. Some Examination items are reused and appear on multiple

Examinations, especially those that demonstrate repeatedly, through statistical analysis, to be an excellent assessment of the specific subject matter.

29. ABIM must regularly update and re-pretest questions in the live pool to keep them current, and it must also retire questions from its item bank on an ongoing basis when it determines, based on evolving scientific developments in the field of internal medicine, that the questions are no longer current, relevant or fair and are no longer amenable to revision.

30. ABIM strives to create or replace approximately 300 new Examination questions each year in order to replenish its item bank and to ensure that its Examination reflects current and evolving scientific developments in the field of internal medicine. ABIM must pretest more than 500 questions in order to be left with 300 usable questions at the end of the year that meet its rigorous criteria for inclusion as live Examination questions.

**ABIM's Copyrights in the Examinations**

31. The Examination is a work made for hire within the meaning of Section 101 of the Copyright Act, and as such was owned and controlled in the first instance by ABIM.

32. ABIM has complied in all respects with the Copyright Act by making all necessary filings with the Register of Copyrights in order to secure the exclusive rights and privileges in and to the copyright in the Examination. ABIM registers each annual Examination with the United States Copyright Office, in accordance with the procedures for secure tests pursuant to 37 C.F.R. § 202.20. ABIM has received Certificates of Registration from the Register of Copyrights for its secure Examinations dating back to 1986 as follows:

| <b><u>Date of Examination</u></b> | <b><u>Registration Number</u></b> |
|-----------------------------------|-----------------------------------|
| 2007                              | TX 6-871-423<br>TX 6-871-490      |
| 2006                              | TX 6-448-309<br>TX 6-448-312      |

|      |              |
|------|--------------|
|      | TX 6-448-313 |
|      | TX 6-466-582 |
| 2005 | TX 6-294-231 |
|      | TX 6-294-232 |
|      | TX 6-297-408 |
| 2004 | TX 6-024-205 |
|      | TX 6-024-211 |
|      | TX 6-024-216 |
|      | TX 6-024-217 |
|      | TX 6-024-218 |
|      | TX 6-103-387 |
| 2003 | TX 5-909-592 |
|      | TX 5-909-593 |
|      | TX 5-909-594 |
|      | TX 5-909-595 |
|      | TX 5-758-889 |
|      | TX 5-977-745 |
| 2002 | TX 5-606-398 |
|      | TX 5-609-628 |
|      | TX 5-758-872 |
| 2001 | TX 5-460-006 |
|      | TX 5-533-624 |
|      | TX 5-609-812 |
| 2000 | TX 5-533-627 |
|      | TX 5-541-436 |
|      | TX 5-609-777 |
| 1999 | TX 5-541-448 |
|      | TX 5-589-108 |
| 1998 | TX 5-556-061 |
|      | TX 5-556-070 |
| 1997 | TX 5-556-060 |
| 1996 | TX 5-609-629 |
| 1995 | TX 4-117-619 |
| 1994 | TX 4-117-620 |

|      |              |
|------|--------------|
| 1993 | TX 3-807-867 |
| 1992 | TX 4-117-616 |
| 1991 | TX 3-315-723 |
| 1990 | TX 3-058-141 |
| 1989 | TX 2-744-671 |
| 1988 | TX 2-466-916 |
| 1987 | TX 2-212-160 |
| 1986 | TX 2-175-312 |

True and correct copies of the above Certificates of Registration and/or proof of Registration are attached hereto as Exhibit A.

33. At no time has ABIM authorized Defendants or any third party to make any use or adaptation of ABIM's copyrighted, secure Examination questions.

**Arora Board Review**

34. Arora Board Review ("ABR") is, on information and belief, a for-profit business based at Arora's private residence that sells test-preparation courses and materials solely for the ABIM Board Certification Examinations.

35. Arora began his career by taking and failing the Examination seven times. After finally passing the Examination on his eighth attempt, he took an additional ten ABIM examinations in three subspecialties (again failing several of these repeatedly), including a recertification examination that was not required under ABIM's maintenance of certification rules.

36. ABR is, on information and belief, a sole proprietorship operated by Arora with the assistance of several of his family members.

37. Arora's son, Pavan Arora, is identified as the "Technical Director" for ABR and the designated technical contact for ABR's website, [www.aroraboardreview.com](http://www.aroraboardreview.com). Pavan Arora has fifteen years of software development and technology management experience, and is presently subject to a permanent injunction arising from intellectual property infringement on the Internet.

38. ABR offers five different Examination test-prep products: (1) Unusual Board Review - a board review course (\$1095), (2) Crash Course - a three day weekend cram session for certification (\$695), (3) Recertification Course (\$1495), (4) Newsletter (\$295/12 issues), and (5) Flashcards (\$100). ABR's Board Certification review courses are offered in the late Spring and Summer, shortly before the ABIM Internal Medicine Examination cycle.

39. Over 400 Board Certification candidates attended ABR's review courses for the most recent ABIM Examination.

**ABR Disseminated Substantially Similar Copies of ABIM's Secure, Copyrighted Examination Items on its Website**

40. ABR advertises and offers its test-prep products on the Internet to doctors throughout the world who are studying to pass the Examination at the website [www.aroraboardreview.com](http://www.aroraboardreview.com) ("ABR Website").

41. To market ABR's services to potential customers, Arora placed a "practice" examination on the ABR Website consisting of sixty questions simulating one module of the ABIM Examination. ABR's practice examination was timed and the questions appeared one by one on the screen just as they do for the ABIM Examination.

42. Of the 60 ABR "practice" questions, at least 55 of the ABR questions were substantially similar to ABIM Examination items. ABR copied every facet of the ABIM Examination items, including purely creative non-substantive elements and incorrect answers.

**Defendants' Ongoing Conspiracy to Infringe ABIM's Copyrighted Examination and to Steal ABIM's Trade Secrets in the Examination**

43. To further determine how ABR obtained ABIM's confidential copyrighted Examination, ABIM sent one of its employees to ABR's next review course, the Unusual Board Review, given in May 2009.

44. Approximately 350 Board Certification candidates attended the six day ABR review course entitled "Unusual Board Review." ABR held the review course in a lecture hall at CUNY Graduate Center. The course consisted of a question and answer format with Defendant Arora and an unnamed assistant (subsequently identified by ABIM as Defendant Kachadourian), taking turns reading practice questions aloud from the daily handout and going over the answer choices with the audience.

45. The written outlines for the course contained hundreds of practice questions, many of which were substantially similar to ABIM Examination items.

46. Arora repeatedly boasted throughout the course that the ABR practice questions were really ABIM Examination items obtained from previous Board Certification candidates and implored his attendees to email questions to him immediately following the ABIM Examination:

When people send me the questions, there is a good part and a bad part. The good part is that you know exactly now what they're asking, all right? . . . I can only give you what I am given, and this is the way it is.

The moral of the story is – send me questions. . . . Email me right after the exam.

47. Arora even explained how Board Certification candidates meet Arora in his white Mercedes during the Examination lunch break (where Arora provides lunch) and

divulge the copyrighted and confidential Examination items to Arora by speaking into his recording device.

48. ABIM continued its investigation by having an ABIM employee attend ABR's next review course, "Crash Course," which was given in August 2009.

49. Approximately 75 physicians attended the three day ABR review course entitled "Crash Course." ABR held the review course at Defendant Arora's personal residence in Livingston, New Jersey.

50. The written materials for the Crash Course were essentially a condensed version of the written outline from the Unusual Board Review course with one notable exception – the directive on the last page of the outline:

Last year's candidates have helped you  
You must help the next year's candidates.  
(Through Arora Board Review)  
**Call/write/email soon after the examination (973) 994-3203**  
**boardreview@comcast.net**

51. The Crash Course followed the same format as the Unusual Board Review, with Arora and his still unnamed assistant (Defendant Kachadourian) taking turns reading practice questions aloud from the written outline and going over the answers with the audience. Like the prior course, Arora repeatedly declared that he created his materials by copying actual ABIM Examination items and he and Kachadourian asked course participants to send questions to him after the ABIM Examination. For example, Arora stated:

I don't make these questions; they have been taken from people who took the examination. Hopefully you will send us questions next year.

That's another board question – everything we do here is, has been on the Board really. Which one you get I don't know. This is it, this is all – their database, basically is this.

It's very easy to pass this exam if you simply know what they ask. Right? So that's what I'm doing. I don't know medicine. I'm just telling you what they ask; and you just do that. That's the end of the story.

I'm showing you the right axilla. In the exam question, they have left axilla. That's the truth. They told me, I wrote it down. I hope you will send me the questions like that, so I can then add to it. That's how we collect – this is all collected material.

52. Also, like the prior course, Arora frequently used non-substantive original and creative expression of ABIM's Examination items to cue the correct Examination answer for course participants:

You see glare in the exam question, the answer is cataracts. That was for the first time asked last year. There is no other question with glare, really.

The moment you read the sentence, 'awakened by an alarm clock,' the answer to the question is 'family history of sudden death.' Answer is family history of sudden death. In other words, awakened by alarm clock equals family history of sudden death.

53. ABIM's original and creative Examination items, copied and distributed in this manner, are useless to measure the skill and judgment of a physician who is seeking Board Certification.

54. The written course outlines provided by ABR to review course participants contained at least 100 questions that were substantially similar to copyrighted ABIM Examination items.

55. Additionally, the ABR written course materials and teaching methods disclosed the secret content of approximately 900 of ABIM's secure and confidential Examination items, requiring ABIM to permanently remove these questions from its Examination item bank.

**Defendant Kachadourian's Unlawful Conduct**

56. After identifying Defendant Arora's unnamed assistant as Dr. Anise Kachadourian, ABIM learned that Defendant Kachadourian had previously taken and failed the Examination nine times and was again scheduled to take the Examination in August 2009.

57. Also, Kachadourian had requested and received American with Disabilities Act accommodation for the Examination, which provided Kachadourian with double the normal time to take the Examination and a private examination room.

58. ABIM arranged for surveillance on Defendant Kachadourian at the Examination testing center, as permitted by ABIM's agreement with Board Certification candidates.

59. Surveillance showed that Kachadourian repeatedly left the test center building during unscheduled breaks to access her vehicle in the parking lot, where she reviewed printed material, frantically wrote what appeared to be examination questions on notepads, made telephone calls and typed into her cell phone/PDA device. All of this conduct violates ABIM's rules and policies governing the Examination.

60. Defendant Kachadourian, despite being an assistant for the ABR review course, failed the August 2009 Examination.

**John Does 1-50**

61. Based upon Arora's oral and written statements, a presently unknown number of past and/or present candidates for Board Certification have complied with the requests of Defendants Arora and Kachadourian to provide secure, copyrighted Examination content to Arora for further dissemination.

62. The identities of the past and/or present Board Candidates who provided secure Examination content to Arora and/or his employees or agents are presently unknown to ABIM and are therefore referred to as John Does 1-50.

**COUNT I**  
**COPYRIGHT INFRINGEMENT**  
**(ALL DEFENDANTS)**

63. ABIM hereby incorporates by reference paragraphs 1 through 62 of its Complaint as though fully set forth herein.

64. The Examination is an original work copyrightable under 17 U.S.C. § 102. As lawful owner of the copyrights, ABIM is entitled to, inter alia, the exclusive rights to do and to authorize the reproduction, distribution, display of and the preparation of derivative works based on the copyrighted work. 17 U.S.C. § 106.

65. Defendants' unauthorized copying, distribution and display of and creation of derivative works based on the Examination in interstate commerce constitutes an actual and threatened infringement of ABIM's copyrights.

66. The foregoing conduct on the part of Defendants constitutes willful copyright infringement in violation of the Copyright Act, 17 U.S.C. § 101 et seq.

67. By reason of the foregoing acts of copyright infringement and threatened continued copyright infringement by Defendants, ABIM has sustained and, if Defendants are not enjoined, will continue to sustain substantial damages.

68. Further, by reason of Defendants' copyright infringement and threatened continued copyright infringement, ABIM has sustained, and if Defendants' acts are not enjoined, will continue to sustain irreparable harm for which no adequate remedy at law exists.

**COUNT II**  
**MISAPPROPRIATION OF TRADE SECRETS**  
**(ALL DEFENDANTS)**

69. ABIM hereby incorporates by reference paragraphs 1 through 68 of its Complaint as though fully set forth herein.

70. The ABIM Examinations are questions and answers comprised of scientific and technical information used for evaluating the competency of a candidate for Board Certification in the field of internal medicine, which are not commonly known by or available to the public.

71. The ABIM Examination items derive economic and evaluative value from not being generally known and not being readily ascertainable by proper means. ABIM exercises reasonable measures to maintain the secrecy of the ABIM Examination items.

72. Each and every candidate for Board Certification in Internal Medicine, including Defendants Arora, Kachadourian, and John Does 1-50, enters a permanent confidentiality agreement with ABIM before taking the Examination that imposes upon them a continuing duty to keep the contents of the Examination a secret.

73. Defendants knowingly, willfully and maliciously breached their duty to ABIM under their confidentiality agreements not to disclose, copy or distribute secure Examination content.

74. Defendants Arora and Kachadourian knowingly, willfully and maliciously solicited and induced Board Candidates to breach their duty to ABIM by memorizing, copying and distributing secure Examination content and providing the secure content to ABR, Arora and Kachadourian.

75. Defendants' copying of ABIM Examination items, either by themselves or through third parties solicited by them, is a theft and an inducement of a breach of a confidential relationship between Board Certification candidates taking the Examination and ABIM.

76. The foregoing acts of Defendants constitute willful and malicious misappropriation of ABIM's trade secrets under 12 Pa. C.S.A. § 5302 - 5304.

77. As a direct and proximate result of Defendants' willful and malicious theft of trade secrets, ABIM has sustained and, if Defendants are not enjoined, will continue to sustain substantial damages.

78. Further, by reason of Defendants' theft of ABIM's trade secrets, ABIM has sustained, and if Defendants' acts are not enjoined, will continue to sustain irreparable harm for which no adequate remedy at law exists.

**COUNT III**  
**BREACH OF CONTRACT**  
**(ARORA, KACHADOURIAN AND JOHN DOES 1-50)**

79. ABIM hereby incorporates by reference paragraphs 1 through 68 of its Complaint as though fully set forth herein.

80. Each and every candidate for Board Certification in Internal Medicine, including Defendants Arora, Kachadourian, and John Does 1-50, enters a permanent confidentiality agreement with ABIM before taking the Examination that imposes upon them a continuing duty to keep the contents of the Examination a secret.

81. Knowing of their duty of confidentiality to ABIM, Arora, Kachadourian and John Does 1-50 copied, reproduced, distributed, published and/or displayed secure and confidential ABIM Examination items, or derivations thereof, for their own benefit, without permission or authorization from ABIM.

82. Arora, Kachadourian and John Does 1-50 breached their duty to ABIM under their confidentiality agreements not to disclose, copy or distribute secure Examination content.

83. As a direct and proximate result of Arora's, Kachadourian's and John Does 1-50's breaches of contract, ABIM has been damaged in an amount exceeding \$75,000.

**COUNT IV**  
**CIVIL CONSPIRACY TO COMMIT THEFT OF TRADE SECRETS**  
**(ARORA, KACHADOURIAN AND JOHN DOES 1-50)**

84. ABIM hereby incorporates by reference paragraphs 1 through 83 of its Complaint as though fully set forth herein.

85. Arora, Kachadourian and John Does 1-50 acted with a common purpose to commit theft of trade secrets, an unlawful act, upon ABIM.

86. Defendants knowingly, willfully and maliciously committed overt acts in furtherance of the common purpose, as described herein.

87. As a direct and proximate result of Defendants' civil conspiracy, ABIM has been damaged in an amount exceeding \$75,000.

**COUNT V**  
**INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**  
**(ABR, ARORA AND KACHADOURIAN)**

88. ABIM hereby incorporates by reference paragraphs 1 through 87 of its Complaint as though fully set forth herein.

89. All candidates for Board Certification in Internal Medicine are required to enter a confidentiality agreement with ABIM that requires them not to disclose in any manner any part of the content of the ABIM Examination in Internal Medicine.

90. ABR, Arora and Kachadourian intended to harm ABIM when they induced and solicited Board Certification candidates to breach their confidentiality agreements

with ABIM by copying, disclosing and communicating secure Examination content to Defendants ABR, Arora and/or Kachadourian.

91. Board Candidates with valid, binding confidentiality agreements with ABIM breached their agreements by disclosing ABIM's confidential Examination items to Defendants ABR, Arora and/or Kachadourian in violation of the terms of their confidentiality agreements.

92. Defendants ABR, Arora and Kachadourian had no privilege or justification for interfering with ABIM's contractual relations with Board Candidates.

93. As a direct and proximate result of ABR's, Arora's and Kachadourian's intentional interference with ABIM's contractual relations with Board Candidates, ABIM has been damaged in an amount exceeding \$75,000.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

(a) A preliminary and permanent injunction prohibiting and enjoining Defendants, their officers, directors, agents, servants, employees, subsidiaries, affiliates, assigns and licensees and anyone in active concert or participation with any of them from further copying, duplicating, distributing, displaying, advertising, selling, adapting, publishing, reproducing, preparing derivative works based on, renting, leasing, offering or otherwise transferring or communicating in any manner, orally or in written, printed, audio, electronic, photographic, machine-readable, or other form, including but not limited to any publication on the Internet, or communication to any agent, representative, employee, member, person or affiliate, or in written or downloadable electronic materials, ABIM's copyrighted Examination;

(b) An Order impounding in unencrypted, plain text format all copies of all Examination items, workbooks, software, simulated exams and other materials that are used by the Defendants and that contain Examination items or other materials that infringe ABIM's copyrighted Examination; and

(c) An order for the destruction of all infringing copies of materials that include all or any part of any copyrighted ABIM Examination or any ABIM materials derived from such Examination items;

(d) Award the Plaintiff:

(i) All gains, profits and advantages derived from Defendants' wrongful acts;

(ii) Awarding compensatory damages in an amount to be proven at trial or applicable statutory damages;

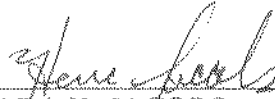
(iii) The costs and disbursements of this action;

(iv) An award of reasonable attorneys' fees;

(v) An aware of punitive damages; and

(vi) Such other relief as the Court deems just and proper.

**BALLARD SPAHR LLP**



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Dated: December 2, 2009

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*American Board of Internal Medicine*