

JCJ

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

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AMERICAN BOARD OF INTERNAL
MEDICINE,

(FILED UNDER SEAL)

Plaintiff,

CIVIL ACTION

v.

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

Defendants.

FILED
DEC 02 2009
MICHAEL E. KUNZ, Clerk
By SL Dep. Clerk

**TEMPORARY RESTRAINING ORDER, SEIZURE AND IMPOUNDMENT ORDER,
ORDER SETTING BOND, ORDER TO FILE DOCUMENTS UNDER SEAL, AND
ORDER SETTING PRELIMINARY INJUNCTION HEARING**

AND NOW THIS 2nd day of December, 2009, on Motion for Order to File

Documents Under Seal, Ex Parte Temporary Restraining Order, Seizure and Impoundment
Order, Order Setting Bond, Order Setting Preliminary Injunction Hearing and Supporting
Memorandum of Law of Plaintiff American Board of Internal Medicine ("Plaintiff" or "ABIM"),
and upon consideration of Plaintiff's Motion, the Declarations of Christine K. Cassel, M.D.,
Rebecca Baranowski and A. Benjamin Mannes, and argument of counsel, the Court finds and
concludes as follows:

FINDINGS AND CONCLUSIONS

1. Plaintiff has submitted true and correct copies of its Certificates of Copyright
Registration and/or proof of registration for its copyrighted work, Certifying Examination in
Internal Medicine for the years 1986-2007, along with the Declaration of Rebecca Baranowski,

establishing that Plaintiff is the owner of all copyrights in and to the Certifying Examination in Internal Medicine (“Copyrighted Work”).

2. The declarations filed in support of Plaintiff’s motion for a temporary restraining order show that Defendants Rajender K. Arora, Anise Kachadourian, and Arora Board Review (collectively “Defendants”) are, without authorization, creating, reproducing, copying, distributing, offering for sale, selling and/or publicly displaying examination questions and answer choices and related materials (collectively the “Infringing Test-Prep Materials”) that infringe Plaintiff’s copyright in the Copyrighted Work.

3. Plaintiff is likely to succeed in showing that Defendants’ unauthorized creation, reproduction, copying, distribution, offering for sale, sale and/or public display of the Infringing Test-Prep Materials infringes Plaintiff’s copyright in the Copyrighted Work in violation of the Copyright Act.

4. Plaintiff is suffering immediate irreparable injury as a result of Defendants’ unauthorized creation, reproduction, copying, distribution, offering for sale, sale and/or public display of Defendants’ Infringing Test-Prep Materials. Plaintiff will continue to suffer irreparable injury if this Order is not issued and if the seizure of Defendants’ Infringing Test-Prep Materials and other evidence of Defendants’ infringement of Plaintiff’s Copyrighted Work is not ordered.

5. It is impractical to give notice to the Defendants prior to the issuance of this Order because of the likelihood that, if Defendants are given such notice, Defendants will secret, hide, remove, destroy or otherwise dispose of Defendants’ Infringing Test-Prep Materials, as well as the business records and other evidence of Defendants’ Infringement, including evidence of infringing conduct by presently unidentified persons.

6. Plaintiff has demonstrated one location at which Defendants appear to be holding, secreting, offering for sale, selling and/or publicly displaying Defendants' Infringing Test-Prep Materials and the records and materials related thereto.

7. The potential harm that may be caused to the legitimate interests of Defendants by the Court granting this Order does not outweigh the harm to Plaintiff from the Court denying this Order and is not sufficient to preclude the Court from issuing this Order.

8. The equities in this matter weigh heavily in favor of Plaintiff and the issuance of this Order.

9. The public interest embodied in the Copyright Act will be furthered by issuance of this Order.

TEMPORARY RESTRAINING ORDER

IT IS THEREFORE ORDERED that Defendants Dr. Rajender K. Arora, Dr. Anise Kachadourian, and Arora Board Review along with their officers, agents, employees, servants, attorneys and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are immediately and temporarily restrained and enjoined from:

1. Creating, reproducing, copying, distributing, offering for sale, selling and/or publicly displaying any materials of any kind and in any medium that infringe Plaintiff's copyright in the Copyrighted Work;

2. Removing, destroying, or otherwise disposing of any business records, electronic information and/or data stored on or in all CPUs, servers, computers, PDAs, Blackberrys, and/or cell phones, software, computers, or documents relating to the receipt, creation, reconstruction,

reproduction, copying, distribution, offering for sale, sale and/or public display of products or services, including without limitation, examination questions, displays, booklets and other packaging, printed graphics, promotional and advertising materials, and all other items or products not authorized by ABIM and which infringe Plaintiff's copyright in the Copyrighted Work;

3. Shipping, delivering, distributing, returning or otherwise disposing of, in any manner, products or inventory not authorized by ABIM, and which infringe Plaintiff's copyright in the Copyrighted Work;

4. Removing or covering up any of the Infringing Test-Prep Materials in Defendants' possession and from disposing of, in any manner, goods from which Defendants have removed or covered up the Infringing Test-Prep Materials;

5. Erasing, deleting, modifying or altering in any way the electronic information and/or data stored on or in all CPUs, servers, computers, PDAs, Blackberrys, and/or cell phones located on the premises and copied by Plaintiff pursuant to Paragraph 8(c) of the within Seizure Order;

6. Directly or indirectly contacting, communicating with or otherwise warning any customer, distributor, supplier, agent, employee, partner, investor, co-conspirator or confederate of Defendants as to the existence of this lawsuit prior to the hearing on Plaintiff's motion for Preliminary Injunction; this shall not, however, prevent or hinder Defendants from retaining legal counsel to represent them in this action; and

7. Attempting, causing or assisting any of the above-described acts.

SEIZURE AND IMPOUNDMENT ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Marshal of the United States District Court for the Eastern District of Pennsylvania and the Marshal of the United States District Court for the District of New Jersey and generally any Marshal of the United States and/or other law enforcement personnel, together with Plaintiff's counsel and Plaintiff's representative under the supervision of such law enforcement personnel, shall forthwith take all necessary steps to accomplish the following:

8. Enter (a) Arora Board Review's and Dr. Rajender K. Arora's premises, located at [REDACTED]; (b) all other location(s) that Arora Board Review and/or Dr. Arora discloses; and (c) all other locations where Infringing Test-Prep Materials may be found, forthwith, to:

- a. Search for, seize, secure, remove and impound all Infringing Test-Prep Materials, and all other items that infringe or relate to the infringement of Plaintiff's copyright in the Copyrighted Work;
- b. Search for, seize, secure, remove and impound all documents, papers, computer disks, CDs, external hard drives, zip drives, thumb or flash drives, electronic storage devices, tapes and all other things documenting or reflecting the creation, reproduction, copying, reconstruction, purchase, sale, printing, distribution, or receipt of information, materials, merchandise, goods, or other items that infringe or relate to the infringement of Plaintiff's copyright in the Copyrighted Work, including without limitation, all business records that may be found;
- c. Search for, seize, secure, impound and make true and correct digital copies of all electronic information and data stored on or in all CPUs, servers, computers, PDAs, Blackberrys, and/or cell phones documenting or reflecting the creation,

reproduction, copying, reconstruction, purchase, sale, printing, distribution, or receipt of information, materials, merchandise, goods, or other items that infringe or relate to the infringement of Plaintiff's copyright in the Copyrighted Work, including without limitation, all business records that may be found. The hardware devices described in this paragraph shall not be removed from the premises;

- d. Search for, seize, secure, remove and impound all hard copy and electronic correspondence with customers of Arora Board Review that relates to the infringement of Plaintiff's copyright in the Copyrighted Work;
- e. Search for, seize, secure, remove and impound all displays and other packaging, printed graphics, promotional and advertising materials, and all other information, materials, merchandise, goods, or other items in Defendants' possession, custody or control that infringe or relate to the infringement of Plaintiff's copyright in the Copyrighted Work;
- f. Search for, seize, secure, remove and impound all hard copy and electronic information identifying all sales and/or customers of Arora Board Review, including but not limited to the identity, address, telephone number, and e-mail address of all customers that purchased goods and/or services from Arora Board Review;
- g. Search for, seize, secure, remove and impound all hard copy and electronic information concerning any method of payment and funds received from customers of Arora Board Review and all other items that infringe or relate to infringement of Plaintiff's copyright in the Copyrighted Work, including without

limitation, bank statements, bank deposits, check ledger, Western Union documents, money transfers and/or PayPal account documents;

- h. Search for, seize, secure, remove and impound all hard copy and electronic information identifying any passwords, encryption and/or user names necessary to access any electronic information related to Defendants' activities in infringing Plaintiff's copyright in the Copyrighted Work; and
- i. Search for, seize, secure, remove and impound all hard copy and electronic media of any type containing video and/or audio recordings that infringe or relate to the infringement of Plaintiff's copyright in the Copyrighted Work.

IT IS FURTHER ORDERED that the United States Marshal shall employ whatever force is reasonably necessary under the circumstances to effectuate the terms of this Order, including but not limited to, using a lock smith, asking the landlord to unlock the premises and/or breaking open and/or forcibly entering the residential and/or commercial premises owned and/or leased and/or occupied by Defendants and all other locations to be searched, and to inspect their contents, including without limitation, the contents of all rooms closets, cabinets, vehicles, containers and/or desks or documents located on the premises, whether locked or unlocked.

IT IS FURTHER ORDERED that anyone interfering with the execution of this Order is subject to arrest by the United States Marshal and/or his representative.

IT IS FURTHER ORDERED that the American Board of Internal Medicine, on whose behalf the Court issues this Order, will account completely for all property seized pursuant to this Order and shall compile a written inventory of all such property and shall provide a copy to the U.S. Marshal, who shall include such a copy with his return to the Court.

IT IS FURTHER ORDERED that the American Board of Internal Medicine, on whose behalf the Court issues this Order, or its attorneys, will act as substitute custodian of any and all property seized pursuant to this Order pending further orders of this Court, and shall be made available for inventory or inspection by any party, or any party's counsel, during normal business hours.

IT IS FURTHER ORDERED that the search, seizure and sequestration ordered herein may be photographed and/or recorded by video and/or audio by Plaintiff's counsel and/or its representatives for the purpose of authenticating and assisting in the obtaining of evidence and to prevent any controversy regarding the activities and events occurring during said search, seizure, and/or sequestration.

IT IS FURTHER ORDERED that the Marshal of the United States District Court for the Eastern District of Pennsylvania and the Marshal of the United States District Court for the District of New Jersey and generally any Marshal of the United States and/or other law enforcement personnel, shall serve upon Defendants a copy of this Seizure and Impoundment Order, and the documents and tangible items upon which said Order is based, as recited in such Order, by delivering the same to each Defendant personally if they can be found within the District where this Order is executed, or if they cannot be found within the District, to any agent of said Defendant, or to the person from whom the items are taken, or if said Defendant cannot be found and if no such agent of Defendant can be found, then by leaving such copies at the usual place of business or at the residence of said Defendant, or of any agent of said Defendant, or at the place where such items are found, with any person of suitable age and discretion; and that prompt return of such service, seizure or attempted seizure be made to this Court.

IT IS FURTHER ORDERED that the Marshal of the United States District Court for the Eastern District of Pennsylvania and the Marshal of the United States District Court for the District of New Jersey and generally any Marshal of the United States and/or other law enforcement personnel, shall make repeated seizures, or attempted seizures of said items upon being advised by counsel for Plaintiff that new and additional infringing items and/or related materials have been located and/or places in the possession, custody or control of any Defendant, or any agent of any Defendant.

IT IS FURTHER ORDERED that Plaintiff's agents or representatives shall promptly inspect all items seized, and if any items are found to be authorized products that do not infringe Plaintiff's Copyrighted Work, such items are to be returned to Defendants within ten (10) business (non-weekend or holiday days) days after the date that this Order is executed by the United States Marshal.

IT IS FURTHER ORDERED that the American Board of Internal Medicine shall hold harmless the U.S. Marshals Service and its employees from any and all claims, asserted in any court or tribunal, arising from any acts, incidents, or occurrences in connection with the seizure and possession of the Defendants' property, including any third party claims.

ORDER SETTING BOND

IT IS FURTHER ORDERED that this Order shall be granted on the condition that an undertaking in the sum of \$ 10,000.00 shall be filed by Plaintiff, or its sureties or authorized representatives, to make good such damages, not to exceed such sum, as may be sustained by Defendants if they are found to have been wrongfully restrained or their goods are found to have been wrongfully seized or impounded.

ORDER TO FILE DOCUMENTS UNDER SEAL

IT IS FURTHER ORDERED that all documents in this case shall be filed and remain under seal until all Defendants have been served with copies of the Complaint and all related documents, including without limitation, this Order.

ORDER SETTING PRELIMINARY INJUNCTION HEARING

A hearing on Plaintiff's Motion for Preliminary Injunction is set for 10:00 o'clock A.m. on the 23rd day of December, 2009 to be held before the United States District Court for the Eastern District of Pennsylvania in Courtroom 174, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106, at which time and place the Defendants are directed to show cause why Plaintiff's request for a preliminary injunction as contained in its Complaint shall not be granted. This Temporary Restraining Order shall expire at that time unless it is further extended by Order of this Court.

Defendants are hereby put on notice that failure to attend the preliminary injunction hearing shall result in the immediate issuance of a preliminary injunction, which shall be deemed to take effect immediately upon the expiration or dissolution of this Temporary Restraining Order, and shall extend during the pendency of this litigation the same injunctive relief previously granted by this Temporary Restraining Order. Defendants are further notified that they shall be deemed to have actual notice of the issuance and terms of such preliminary injunction, and that any act by the Defendants, or any one of them, in violation of any of its terms may be considered and prosecuted as contempt of this Court.

ENTERED AND ORDERED THIS 2nd day of December, 2009 at 10 o'clock

P.m.

ENTERED

DEC 02 2009

CLERK OF COURT

J. Curtis Byrne
UNITED STATES DISTRICT JUDGE

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12/16/09 copies mailed to Counsel