

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

American Board of Internal Medicine	:	CIVIL ACTION
	:	
	:	
Plaintiff,	:	
	:	Case No. 10-2680
v.	:	
	:	
Sarah Von Muller, M.D.	:	Jury Trial Demanded
	:	
Defendant.	:	

**DEFENDANT SARAH VON MULLER, M.D.’s ANSWER TO AMENDED COMPLAINT,
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

Defendant Sarah Von Muller, M.D., (“Dr. Von Muller”) files her Answer, Affirmative Defenses and Counterclaims as follows:

ANSWER

Dr. Von Muller expressly reserves the right to plead any and all additional defenses available under the law as discovery progresses.

Dr. Von Muller responds to the individually numbered paragraphs in plaintiff ABIM’s (“ABIM”) amended complaint as follows:

Nature of the Action

1. It is admitted Von Muller purchased materials from Arora Board Review to help her in preparation for the ABIM certifying examination in Gastroenterology and paid money for said materials. It is denied the materials purchased by Dr. Von Muller were copyrighted or stolen. It is denied that Dr. Von Muller knowingly purchased copyrighted materials. It is further denied that Dr.

Von Muller signed multiple confidentiality agreements with ABIM. The remaining averments in this paragraph are denied.

Parties

2. Admitted.

3. Admitted.

Jurisdiction and Venue

4. Admitted.

5. Dr. Von Muller denies the allegations in paragraph 5, but consents to jurisdiction in Pennsylvania.

6. Dr. Von Muller denies the allegations in paragraph 6, but consents to jurisdiction in Pennsylvania.

7. Dr. Von Muller denies the allegations in paragraph 7, but consents to venue in this District.

Facts Common To All Counts

The American Board of Internal Medicine

8. It is admitted ABIM has a self-stated purpose to advance the field of Internal Medicine and the subspecialties of Internal Medicine. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph and, therefore, denies those allegations.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. It is admitted physicians who are first board certified in Internal Medicine, may then, with additional accredited training, become ABIM board certified in Gastroenterology. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph and, therefore, denies those allegations.

The ABIM Certification Examinations in Internal Medicine and Gastroenterology

15. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to whether the certification examinations are “secure” and, therefore, denies that allegation. The remaining allegations in this paragraph are admitted.

16. It is denied that the ABIM certification examinations utilize “confidential, copyrighted questions.” Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph and, therefore, denies those allegations.

17. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations. To the extent the allegations in this paragraph are ABIM’s own conclusions, no response is required from Dr. Von Muller and those allegations are deemed denied.

18. It is denied ABIM repeatedly notifies candidates that certification examinations are copyrighted works owned by ABIM and may not be reproduced. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph and, therefore, denies those allegations.

19. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations.

20. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations.

21. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations.

22. To the extent the allegations in this paragraph constitute conclusions of law, said allegations are denied. Furthermore, Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations on that basis as well.

Development of the Certification Examination in Internal Medicine

23. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations.

24. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations.

25. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations.

26. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations.

27. Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations.

ABIM's Alleged Copyrights in the Examination

28. To the extent the allegations in this paragraph constitute conclusions of law, said allegations are denied. Furthermore, Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations on that basis as well.

29. Dr. Von Muller admits an Exhibit A is attached to the Amended Complaint. To the extent the allegations in this paragraph constitute conclusions of law, said allegations are denied. Furthermore, Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph and, therefore, denies those allegations on that basis as well.

30. To the extent the allegations in this paragraph constitute conclusions of law, said allegations are denied. Furthermore, Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph and, therefore, denies those allegations on that basis as well.

Von Muller's Alleged Unlawful Conduct

31. It is admitted Dr. Von Muller has taken several ABIM certification examinations, for Internal Medicine and Gastroenterology. The remaining allegations are denied as conclusions of law. Furthermore, Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph and, therefore, denies those allegations.

32. It is admitted Dr. Von Muller registered for the November 2008 Gastroenterology examination through the ABIM website. The remaining allegations are denied as conclusions of law. Furthermore, Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph and, therefore, denies those allegations.

33. It is admitted Dr. Von Muller contacted Arora Board Review prior to the November 2008 Gastroenterology examination. Dr. Von Muller denies any other characterization made by ABIM in this paragraph.

34. It is admitted the quoted text was contained in an email from Dr. Rajender K. Arora. It is denied Dr. Arora had or promised to send actual examination questions. Dr. Von Muller denies plaintiff's characterization of the text from the email.

35. It is admitted Dr. Von Muller purchased material from Dr. Arora. It is admitted Exhibit B of the amended complaint contains emails between Dr. Arora and Dr. Von Muller. The remaining allegations are denied as conclusions of law. Furthermore, Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph and, therefore, denies those allegations.

36. It is admitted Dr. Von Muller took the November, 2008 Gastroenterology examination. The remaining allegations are denied as conclusions of law. Furthermore, Dr. Von Muller lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph and, therefore denies those allegations.

37. It is admitted the quoted text was contained in an email sent by Dr. Von Muller. It is denied Dr. Von Muller had or promised to send actual examination questions. Dr. Von Muller denies ABIM's characterization of the text from the email.

38. It is admitted the quoted text was contained in emails sent by Dr. Von Muller and Dr. Arora. It is denied Dr. Von Muller had or promised to send actual examination questions. Dr. Von Muller denies plaintiff's characterization of the text from the emails.

39. It is admitted that, approximately ten months after sitting for the November, 2008, ABIM gastroenterology examination, Dr. Von Muller sent questions to Dr. Arora, but the questions were not reproduced ABIM examination questions.

40. To the extent the allegations in this paragraph constitute conclusions of law, they are denied. It is specifically denied the material Dr. Von Muller sent to Dr. Arora were substantially similar to ABIM Gastroenterology examination questions.

41. It is admitted the quoted text was contained in email sent by Dr. Arora. Dr. Von Muller denies ABIM's characterization of the text from the email.

Count I
Copyright Infringement

42. Dr. Von Muller hereby incorporates its above answers to the allegations of Paragraphs 1-41.

43. Dr. Von Muller denies the allegations in paragraph 43.

44. Dr. Von Muller denies the allegations in paragraph 44.

45. Dr. Von Muller denies the allegations in paragraph 45

46. Dr. Von Muller denies the allegations in paragraph 46

47. Dr. Von Muller denies the allegations in paragraph 47.

Count II
Misappropriation of Trade Secrets

48. Dr. Von Muller hereby incorporates its above answers to the allegations of Paragraphs 1-47.

49. It is admitted ABIM's certification examinations attempt to ask questions comprised of scientific and technical information used for evaluating the competency of a candidate for board certification in the fields of Internal Medicine and its subspecialties. As Dr. Von Muller has only sat

for two types of ABIM examinations, she lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph and, therefore denies those allegations. It is denied that those questions are not commonly known or available to the public.

50. Dr. Von Muller denies the allegations in paragraph 50.

51. Dr. Von Muller denies the allegations in paragraph 51.

52. Dr. Von Muller denies the allegations in paragraph 52.

53. Dr. Von Muller denies the allegations in paragraph 53.

54. Dr. Von Muller denies the allegations in paragraph 54.

55. Dr. Von Muller denies the allegations in paragraph 55.

**Count III
Breach of Contract**

56. Dr. Von Muller hereby incorporates its above answers to the allegations of Paragraphs 1-55.

57. Dr. Von Muller denies the allegations in paragraph 57.

58. Dr. Von Muller denies the allegations in paragraph 58.

59. Dr. Von Muller denies the allegations in paragraph 59.

60. Dr. Von Muller denies the allegations in paragraph 60.

Prayer for Relief

WHEREFORE, having fully answered plaintiff's amended complaint, Dr. Von Muller prays that:

- a. ABIM's amended complaint be dismissed with prejudice;
- b. ABIM be awarded no damages;
- c. ABIM's requests for injunctive relief be denied;

- d. Dr. Von Muller be awarded her costs and fees, including reasonable attorneys' fees incurred to defend this action; and
- e. Dr. Von Muller be awarded such other relief as the Court deems appropriate.

AFFIRMATIVE DEFENSES

1. ABIM's amended complaint fails to state a claim against Dr. Von Muller upon which relief can be granted.
2. Some or all of the claims set forth in ABIM's amended complaint are barred, in whole or in part, by the applicable statute of limitations.
3. ABIM's claims are barred by the doctrine of waiver.
4. ABIM's claims are barred by the equitable doctrine of laches.
5. ABIM's claims are barred by the equitable doctrine of estoppel.
6. ABIM has failed to mitigate its damages.
7. Any alleged injury suffered by ABIM did not result from and was not proximately caused by any act or omission, or any wrongful conduct on the part of Dr. Von Muller.
8. ABIM's claims are barred by the doctrine of accord and satisfaction.
9. ABIM's claims are barred by res judicata.
10. Any copyrights alleged by ABIM are invalid.
11. ABIM's alleged trade secrets are not valid, including because they were already in the public domain.

COUNTERCLAIMS AND DEMAND FOR JURY TRIAL

Defendant Sarah Von Muller, M.D., (“Dr. Von Muller”) hereby files her counterclaims and jury demand thereon against counterclaim defendant American Board of Internal Medicine (“ABIM”) and the other counterclaim defendants as follows:

Jurisdiction and Venue

1. This Court has federal question jurisdiction under 28 U.S.C. §§1331 and 1338. The Court also has diversity jurisdiction under 28 U.S.C. §1332 in that there is complete diversity between Dr. Von Muller and ABIM and the other counterclaim defendants. The Court also has supplemental jurisdiction under 28 U.S.C. §1367 as to state law claims.

2. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391 and § 1400 because ABIM and the other counterclaim defendants reside, transact business, are found, and/or have agents in this District, or because a substantial part of the events giving rise to Dr. Von Muller’s claims occurred in this District.

3. This Court has personal jurisdiction over ABIM and the other counterclaim defendants because, *inter alia*, ABIM and the other counterclaim defendants: (a) reside in Pennsylvania; (b) transact business throughout the United States, including in this District; (c) provide services throughout the United States, including in this District; (d) have substantial contacts with the United States, including in this District; and/or (e) engaged in unlawful acts in this District.

The Parties

4. Plaintiff ABIM is an Iowa non-profit corporation, having corporate headquarters at 510 Walnut Street, Suite 1700, Philadelphia, Pennsylvania 19106.

5. Defendant Dr. Von Muller is a medical doctor with a residence at 5262 Oak Leaf Drive, Tulsa, Oklahoma 74131.

6. Upon information and belief, counterclaim defendant Christine K. Cassel, M.D. is President and Chief Executive Officer for ABIM.

7. Upon information and belief, counterclaim defendant Lynn O. Langdon, M.S. is Senior Vice President and Chief Information Officer for ABIM.

8. Upon information and belief, counterclaim defendant Eric S. Holmboe, M.D. is Senior Vice President and Chief Medical Officer for ABIM, and has an office at 143 Church St, Phoenixville, PA 19460.

9. ABIM, Christine Cassel, Lynn Langdon and Eric Holmboe will be collectively referred to as "Counterclaim Defendants."

Statement of Facts

10. Dr. Von Muller is a medical doctor specializing in the field of Gastroenterology.

11. Dr. Von Muller was awarded her medical degree from the University of Oklahoma in 1991. She also received a masters degree in Biostatistics and Epidemiology from the University of Oklahoma in 1992.

12. During the years 1991 through 1995, Dr. Von Muller completed three residency trainings in the University of Oklahoma for Internal Medicine and Family Practice.

13. In 1998, Dr. Von Muller completed a fellowship in Gastroenterology at The John Hopkins Bayview Medical Center. In 1999, Dr. Von Muller completed an advanced fellowship in

Gastroenterology/Hepatology/Liver Transplantation at The John Hopkins University, School of Medicine.

14. Dr. Von Muller is a member of many medical associations and societies, including without limitation, The John Hopkins University, School of Medicine-Postdoctoral Association, American College of Gastroenterology, American Medical Association and Oklahoma State Medical Association.

15. Dr. Von Muller also has written many research articles and received many honors during her medical career.

16. In 1999, Dr. Von Muller passed the ABIM's examination in Internal Medicine and became certified in that area.

17. Upon certification in Internal Medicine, Dr. Von Muller became eligible to sit for the ABIM examination for Gastroenterology. Dr. Von Muller took and passed that examination in November 2008. Dr. Von Muller is currently certified in Gastroenterology.

18. Dr. Von Muller has severe dyslexia and, therefore, has great difficulty reading. In order to read words, Dr. Von Muller has to read the words aloud. For this reason, she was required to take the November, 2008 ABIM examination in a room by herself and was videotaped during the entire examination. Dr. Von Muller was searched prior to the examination and was not permitted to exit the room during the examination period. There was a guard placed outside her examination room.

19. As admitted by ABIM in paragraphs 9-12 of its amended complaint, ABIM's designation of "Board Certified" confers many benefits on the doctors that earn this distinction. "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.” See ABIM’s amended complaint ¶10.

20. As also admitted by ABIM, “[m]any hospitals require physicians of internal medicine to be Board Certified in order to have admitting privileges.” ABIM’s amended complaint ¶11. Many health plans also require ABIM’s Board Certification. *Id.*

21. As also admitted by ABIM, “Board Certified physicians often receive higher levels of compensation than non-certified physicians practicing in the same specialties.” ABIM’s amended complaint ¶12.

22. No other organization provides a comparable board certification to physicians in Internal Medicine and its subspecialties and, therefore, ABIM has a virtual monopoly on board certification of physicians in Internal Medicine and its subspecialties. Dr. Von Muller’s field of Gastroenterology is a subspecialty of Internal Medicine.

23. Physicians such as Dr. Von Muller require hospital operating privileges in order to be able use hospital facilities for their patients. Furthermore, hospital privileges and the affiliation with a hospital that comes with it, allow doctors to receive patient referrals from the hospitals.

24. Although ABIM accreditation is not technically required for a doctor to be able to practice medicine, such accreditation is, at the very least, clearly very important to a doctor’s career. As a practical matter, many doctors cannot practice medicine without ABIM’s accreditation.

25. Dr. Von Muller is affiliated with two hospitals, St. Francis Hospital South and SouthCrest Hospital, both of which are located in Tulsa, Oklahoma. Both hospitals require that their doctors with privilege status maintain Board Certification.

26. On June 8, 2010, Dr. Von Muller received a letter from counterclaim defendant Lynn O. Langdon, Senior Vice President and Chief Operating Officer of ABIM, informing Dr. Von Muller that ABIM had suspended her Gastroenterology Board Certification. A true and correct copy of Ms. Langdon's letter is attached hereto and marked as Exhibit "A."

27. According to Ms. Langdon's letter, ABIM suspended Dr. Von Muller's Gastroenterology accreditation based on certain information it found from a raid of the home of Dr. Arora. Even though it could very easily have done so, ABIM never made any attempt to contact Dr. Von Muller to question her about the information it found in Dr. Arora's home.

28. At approximately the same time of its June 8, 2010 letter, ABIM changed Dr. Von Muller's Board Certification status to "suspended." This change was noted on ABIM's website, www.abim.org, where it could be viewed by the public, hospitals, other physicians and health insurance companies.

29. ABIM also filed a lawsuit against Dr. Von Muller based on the information it obtained from Dr. Arora's house, which it did not further investigate or corroborate with Dr. Von Muller.

30. Not content with this form of publically tarnishing Dr. Von Muller's professional reputation, counterclaim defendant Dr. Christine K. Cassell, President and Chief Executive Officer of ABIM, took the extraordinary step of contacting *The Wall Street Journal* to inform them of ABIM's accusations against Dr. Von Muller and other doctors. A true and correct copy of *The Wall Street Journal* article is attached hereto and marked as Exhibit "B." The article's headline reads "Medical Board Says MDs Cheated." In the article, Dr. Cassell is quoted as saying "even

kids know cheating is wrong” implying that Dr. Von Muller and the other four doctors mentioned in the article, as well as 134 other doctors, are “cheaters.”

31. Based on information and belief, the Counterclaim Defendants went yet further in their defamation campaign and emailed copies of *The Wall Street Journal* article to many, if not all, residency programs in the U.S. Attached hereto as Exhibit “C” is a copy of the email sent by counterclaim defendant Eric S. Holmboe, M.D., Senior Vice President and Chief Medical Officer of ABIM, to residency programs in the U.S.

32. *The Wall Street Journal* article unfairly states that Dr. Von Muller and other doctors cheated on their ABIM examinations.

33. Based on information and belief, the Counterclaim Defendants erroneously stated on the ABIM website and in *The Wall Street Journal* article that Dr. Von Muller and the other physicians had been suspended, despite knowing that ABIM's bylaws, policies and procedures precluded ABIM from suspending the physicians until they had been afforded due process, which consisted of a three-level appeal process.

34. Based on information and belief, by acting as described above, Dr. Cassel, Ms. Langdon and Dr. Holboe’s have acted outside the scope of their employment with ABIM and have acted based on personal motives.

35. Dr. Von Muller obtains new patient referrals from various sources, including St. Francis Hospital South and SouthCrest Hospital. She also obtains referrals from other doctors. New patients also contact Dr. Von Muller directly after researching doctors on the Internet.

36. The Counterclaim Defendants knew their actions to suspend Dr. Von Muller and then publicize the suspension through the Internet and *The Wall Street Journal* would have a

devastating effect on Dr. Von Muller's career and medical practice and the careers and medical practices of other doctors.

37. Since ABIM publicized its unilateral suspension of Dr. Von Muller's Gastroenterology certification, Dr. Von Muller's business has dramatically declined. In total, Dr. Von Muller's gross revenue is approximately \$229,000 down for the time period June-September, 2010, as compared to June-September, 2009.

38. Apparently realizing it had denied due process to Dr. Von Muller and other doctors by suspending them without any warning or any opportunity for the doctors to present evidence, on or about June 23, 2010, the Counterclaim Defendants back-pedaled and changed Dr. Von Mullin and other doctor's status from "suspended" to "suspension recommended/appeal pending." Dr. Von Muller herself never actually had to file for the appeal. The Counterclaim Defendants, on their own, decided to change the status to "appeal pending."

39. Based on information and belief, *The Wall Street Journal* never wrote a follow-up article to report that the ABIM had changed the status of the suspended doctors, including Dr. Von Muller, from suspended to suspension recommended.

40. Based on information and belief, having seen the initial "suspension" posting by ABIM on its website, on July 30, 2010, St. Francis Hospital South contacted Dr. Von Muller and advised it intended to revoke her privileges because ABIM had suspended her Gastroenterology Certification.

41. Dr. Von Muller's ability to provide medical services has been and continues to be severely impaired by the Counterclaim Defendants' campaign to defame her reputation as a medical doctor.

42. By suspending and/or attempting to suspend Dr. Von Muller's certification and actually and/or attempting to suspend or revoke the certifications of only 138 other physicians certified by ABIM, the Counterclaim Defendants are providing an unfair business advantage to those physicians whose certifications are not being attacked by ABIM.

43. Based on information and belief, some of the physicians not being attacked by ABIM may be members of ABIM.

44. By unfairly attempting to "thin out" the number of doctors with ABIM certifications, based on information and belief, the Counterclaim Defendants' actions also have the effect of making an ABIM certification even more valuable, thereby increasing the amount that ABIM can charge physicians to sit for its certification examinations.

Count I
Declaratory Relief of Copyright Non-Infringement
Dr. Von Muller v. ABIM

45. The foregoing allegations are repeated and realleged as if fully set forth herein.

46. ABIM is currently accusing Dr. Von Muller of copyright infringement.

47. An actual controversy exists between ABIM and Dr. Von Muller with respect to the non-infringement of copyright.

48. Dr. Von Muller has not infringed ABIM's copyright.

49. Dr. Von Muller, therefore, is entitled to declaratory relief stating she has not infringed ABIM's copyrights.

Count II
Declaratory Relief of Non-Misappropriation of Trade Secrets
Dr. Von Muller v. ABIM

50. The foregoing allegations are repeated and realleged as if fully set forth herein.

51. ABIM is currently accusing Dr. Von Muller of misappropriation of trade secrets.

52. An actual controversy exists between ABIM and Dr. Von Muller with respect to the non-misappropriation of trade secrets.

53. Dr. Von Muller has not misappropriated ABIM's trade secrets, if ABIM even has any trade secrets.

54. Dr. Von Muller, therefore, is entitled to declaratory relief stating she has not misappropriated ABIM's trade secrets.

Count III
Declaratory Relief of No Breach of Contract
Dr. Von Muller v. ABIM

55. The foregoing allegations are repeated and realleged as if fully set forth herein.

56. ABIM is currently accusing Dr. Von Muller of breach of contract.

57. An actual controversy exists between ABIM and Dr. Von Muller with respect to the alleged breach of contract.

58. Dr. Von Muller has not breached any contract with ABIM, if ABIM even has any contract with Dr. Von Muller.

59. Dr. Von Muller, therefore, is entitled to declaratory relief stating she has not breached any contract with ABIM.

Count IV
Suspension of ABIM Board Certification Without Due Process
Dr. Von Muller v. ABIM, Cassel, Langdon and Holmboe

60. The foregoing allegations are repeated and realleged as if fully set forth herein.

61. Dr. Von Muller's ABIM Board Certification in Gastroenterology is a valuable property right that she properly and painstakingly earned.

62. On or about June 8, 2010, ABIM suspended Dr. Von Muller's Board Certification in Gastroenterology. This action was taken by Counterclaim Defendants without any prior notice.

Counterclaim Defendants made no attempt prior to the suspension to provide Dr. Von Muller with an opportunity to be heard or provide evidence.

63. By reason of this suspension, Dr. Von Muller was denied the privileges of Board Certification.

64. On or about June 23, 2010, Counterclaim Defendants unilaterally changed Dr. Von Muller and other doctors' certification status from "Not Certified" and "Suspended" to "Suspension Recommended" with the comment "Under Appeal – Suspension is not final."

65. The Counterclaim Defendants have not indicated when they will provide Dr. Von Muller with a hearing to determine when and if it will ever fully restore Dr. Von Muller's Board Certification.

66. Despite Counterclaim Defendants' back-pedaling, Dr. Von Muller's status as "Not Certified"/"Suspended" and now "Suspension Recommended" has tarnished her reputation in the medical community and damaged her property rights in her ABIM Board Certification.

67. On information and belief, Counterclaim Defendants' actions have been willful and deliberate.

Count V

Tortious Interference with Actual and Prospective Business Relationship

Dr. Von Muller v. ABIM, Cassel, Langdon and Holmboe

68. The foregoing allegations are repeated and realleged as if fully set forth herein.

69. Counterclaim Defendants' actions described herein constitute tortious interference with actual and prospective business relationship.

70. Counterclaim Defendants acted maliciously and wantonly in interfering with Dr. Von Muller's business relationships with St. Francis Hospital South, SouthCrest Hospital, other physicians, her patients and/or her potential patients.

71. Dr. Von Muller has sustained financial harm to her medical practice as a result of Counterclaim Defendants' actions.

**Count VI
Commercial Disparagement**

Dr. Von Muller v. ABIM, Cassel, Langdon and Holmboe

72. The foregoing allegations are repeated and realleged as if fully set forth herein.

73. Counterclaim Defendants made false statements of fact or stated incorrect statements of opinion about Dr. Von Muller as described herein knowing that the false or incorrect statements would cause pecuniary loss to Dr. Von Muller.

74. Counterclaim Defendants acted maliciously and wantonly in commercially disparaging Dr. Von Muller.

75. Dr. Von Muller has sustained financial harm to her medical practice as a result of ABIM's actions, including, without limitation, a loss of approximately \$229,000 in revenue, which loss continues to increase.

**Count VII
Defamation**

Dr. Von Muller v. ABIM, Cassel, Langdon and Holmboe

76. The foregoing allegations are repeated and realleged as if fully set forth herein.

77. Counterclaim Defendants intentionally made false statements of fact or stated incorrect statements of opinion about Dr. Von Muller as described herein knowing the false or incorrect statements would cause damage to Dr. Von Muller's reputation.

78. Counterclaim Defendants acted maliciously and wantonly to defame Dr. Von Muller.

79. Dr. Von Muller has sustained harm to her reputation and the reputation of her medical services as a result of ABIM's actions.

Count VIII

False Light

Dr. Von Muller v. ABIM, Cassel, Langdon and Holmboe

80. The foregoing allegations are repeated and realleged as if fully set forth herein.

81. Counterclaim Defendants intentionally made false statements of fact or stated incorrect statements of opinion about Dr. Von Muller as described herein knowing that the false or incorrect statements would be highly offensive to Dr. Von Muller.

82. Counterclaim Defendants acted maliciously and wantonly to cause harm to Dr. Von Muller.

83. Dr. Von Muller has been highly offended as a result of Counterclaim Defendants' actions.

Count IX

Unfair Competition and False Advertising under the Lanham Act

Dr. Von Muller v. ABIM, Cassel, Langdon and Holmboe

84. The foregoing allegations are repeated and realleged as if fully set forth herein.

85. The Counterclaim Defendants' actions described herein constitute unfair competition and false advertising under the Lanham Act.

86. The Counterclaim Defendants' actions were done with the intent, purpose and effect of procuring an unfair competitive advantage over Dr. Von Muller.

87. The Counterclaim Defendants' unlawful actions against Dr. Von Muller and other physicians provide an unfair competitive advantage to the Counterclaim Defendants and those physicians ABIM has certified in Gastroenterology whose certifications it is not attempting to suspend or revoke.

88. Dr. Von Muller has sustained irreparable harm to her business, reputation, and goodwill, and, unless the Counterclaim Defendants are enjoined and restrained by this Court,

Counterclaim Defendants will continue in the activities alleged herein and as a result thereof, Dr. Von Muller will continue to sustain irreparable harm to her business, reputation and goodwill.

89. Dr. Von Muller has no adequate remedy at law.

90. The Counterclaim Defendants' acts have been willful and/or with a wanton and reckless disregard for Dr. Von Muller's rights.

COUNT X

Common Law Unfair Competition

Dr. Von Muller v. ABIM, Cassel, Langdon and Holmboe

91. The foregoing allegations are repeated and realleged as if fully set forth herein.

92. The Counterclaim Defendants' actions described herein constitute common law unfair competition.

93. The Counterclaim Defendants' actions were done with the intent, purpose and effect of procuring an unfair competitive advantage over Dr. Von Muller.

94. The Counterclaim Defendants' unlawful actions against Dr. Von Muller and other physicians provide an unfair competitive advantage to the Counterclaim Defendants and those physicians ABIM has certified in Gastroenterology whose certifications it is not attempting to suspend or revoke.

95. Dr. Von Muller has sustained irreparable harm to her business, reputation, and goodwill, and, unless Counterclaim Defendants are enjoined and restrained by this Court, Counterclaim Defendants will continue in the activities alleged herein and as a result thereof, Dr. Von Muller will continue to sustain irreparable harm to her business, reputation and goodwill.

96. Dr. Von Muller has no adequate remedy at law.

97. The Counterclaim Defendants' acts have been willful and/or with a wanton and reckless disregard for Dr. Von Muller's rights.

COUNT XI
Civil Conspiracy

Dr. Von Muller v. ABIM, Cassel, Langdon and Holmboe

98. The foregoing allegations are repeated and realleged as if fully set forth herein.

99. As described herein, Counterclaim Defendants engaged in a conspiracy to intentionally bring harm to Dr. Von Muller and took steps in furtherance of this conspiracy.

100. Dr. Von Muller has been damaged as a direct and proximate result of this conspiracy.

WHEREFORE, Dr. Von Muller prays for the following relief:

a) A declaration that ABIM's copyrights, if any, have not been infringed by Dr. Von Muller, ABIM's trade secrets, if any, have not been misappropriated by Dr. Von Muller, and that Dr. Von Muller has not breached any contract with ABIM;

b) Entry of a preliminary and permanent injunction requiring that Counterclaim Defendants immediately restore Dr. Von Muller's certification status to "Certified" and remove any reference to a suspension or suspension recommendation, and further, that Counterclaim Defendants immediately contact all residency programs and any other parties it sent the aforementioned *The Wall Street Journal* article to and advise them that Dr. Von Muller never cheated or did anything improper on an ABIM examination and that her Gastroenterology certification status is "Certified."

c) Compensatory damages for all injuries Dr. Von Muller has suffered, enhanced damages as provided by law, and punitive damages, together with prejudgment interest accrued thereon;

d) Award costs, disbursements and interest.

e) Award attorneys fees.

f) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted

/FrankAMazzeo/

Frank A. Mazzeo, Esquire

Joseph M. Konieczny, Esquire

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CERTIFICATE OF SERVICE

I, Frank A. Mazzeo, Esquire certify a true and correct copy of the foregoing Answer to Complaint, Affirmative Defenses and Counterclaims was served this date via e-mail/electronic filing upon the following counsel:

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Dated: October 15, 2010