

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO.: 5:20-cv-384**

THEODORE W. JAMES,
Plaintiff

v.

THE WYANOKE GROUP, INC.,
Defendant

COMPLAINT

Introduction

1. Plaintiff Theodore W. James (“Dr. James”) seeks from this Court a declaratory judgment and injunction under the Copyright Act, on account of improper assertions of copyright infringement, and accompanying threats of litigation, made against him by The Wyanoke Group, Inc. (“Wyanoke”).

2. Dr. James is a physician certified in internal medicine with a subspecialty in gastroenterology, and with additional background in computer science, who has a substantial and demonstrated expertise in the creation of easy-to-understand guides for clinicians.

3. The claim arises from Dr. James’ publication of QUANTUM BOARD REVIEW, a study guide for physicians who desire to take and pass the Gastroenterology Certification Examination, and his posting of that guide on the Internet. Wyanoke claims to own or control the copyrights in a book entitled ACING THE GI BOARD EXAM, and has asserted that Dr. James’ guide infringes those copyrights.

4. The dispute involves material of questionable creativity, originality, and ownership that is a miniscule part of the over-200-page book in which Wyanoke claims rights. Even if the material in question were protected by copyright, and even if Wyanoke were entitled

to assert such copyrights, the use thereof is protected by the Copyright Act and the Constitution, including the statutory right of “fair use” set forth in 17 U.S.C. § 107.

5. Because Dr. James’ publications do not infringe the rights of Wyanoke and are protected by fair use, Dr. James brings this action to clarify the rights of the parties and to refute the defendant’s assertions of copyright infringement.

6. All allegations of each paragraph of this Complaint are incorporated into each Count thereof, as though fully set out therein.

Parties

7. Dr. James maintains a home in, and is a permanent resident of, Orange County, North Carolina.

8. Wyanoke is a corporation organized in New Jersey that has sought and been granted authority to do business in North Carolina. Wyanoke has a registered office and business address in North Carolina at 160 Mine Lake Ct, Suite 200, Raleigh, NC. Its registered agent for service of process in North Carolina is CT Corporation System.

JURISDICTION AND VENUE

9. This action arises under the copyright laws of the United States, 17 U.S.C. §§ 101 *et seq.*

10. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

11. Wyanoke is properly subject to the *in personam* jurisdiction of North Carolina courts, including this Court, because Wyanoke issued threats and allegations of copyright infringement to Dr. James in this State, threatened harm to Dr. James in this State, and on information and belief conducts regular business in this State and district. Inter alia,

Wyanoke admits to exercising control over the sales of books—including those on which it bases its copyright claims—and controlling an interactive website advertising and selling copies of those books and works based on them, all to customers in North Carolina and elsewhere.

12. Venue for this action is proper under 28 U.S.C. §1391(b).

FACTUAL ALLEGATIONS

13. Dr. James received his medical degree from the Medical University of South Carolina in 2013, where he served as president of his medical school class and graduated with honors. He also earned a Master of Science degree in Clinical Research from the University of North Carolina Gillings School of Global Public Health.

14. Dr. James completed residency training in internal medicine at the Johns Hopkins Hospital in Baltimore, Maryland. While serving there, he spearheaded a variety of applied research projects dedicated to improving patient safety and clinical outcomes, most notably among patients with gastrointestinal and liver diseases. He also was instrumental in converting a training guide for residents—Johns Hopkins’ “Osler Medicine Survival Guide”—into a modern-day app for Android and iOS devices that now is used not only by residents at Johns Hopkins but also by Johns Hopkins nurse practitioners and physician assistants in addition to medical students and clinicians at other hospitals in the U.S. and abroad, giving them quick access to critical information written and organized in a readily accessible format.

15. After completing his residency at Johns Hopkins, Dr. James accepted and completed a fellowship in gastroenterology at the University of North Carolina (UNC).

16. Dr. James has served as a Clinical Instructor of Medicine at UNC and as an instructor for UNC’s Clinical Epidemiology course, and was chosen by the UNC School of Medicine Class of 2019 to be inducted into the Alpha Omega Alpha Medical Honor Society.

17. Dr. James is an author or co-author on 50 publications listed with the National Institutes of Health's PubMed index, and also has published numerous short articles giving quick guides to patient care for clinicians, primarily in the field of internal medicine and with a focus on gastroenterology.

The Genesis and Publication of QUANTUM BOARD REVIEW

18. Earlier this year, Dr. James suffered the heart-wrenching experience all parents dread: the death of a child. His son Owen was born with Down's Syndrome, and although many children with Down's grow up to lead healthy and productive lives, Dr. James' child was not among them. Owen died on February 4, 2020.

19. In memory of his child, Dr. James wanted to establish a scholarship through a nonprofit organization known as Ruby's Rainbow that provides scholarships to children with Down's Syndrome who are on the cusp of adulthood, allowing them to enroll or continue enrollment in programs that will enhance their lives. More information about Ruby's Rainbow is published on its website at <https://rubysrainbow.org>.

20. To help fund the scholarship, and as a therapeutic outlet for his own grief, Dr. James wrote QUANTUM BOARD REVIEW—a “quick review” guide for physicians hoping to become board-certified in gastroenterology. As he explained at the beginning of his own guide, this was a deliberate choice:

When I was a fellow and began to assemble my board review armamentarium, I noticed that there are essentially two types of books available currently: clinical vignette-based which provides a lot of information about a narrow range of subjects, and overly comprehensive material that attempts to teach you the entire field of gastroenterology. It is my belief that board review is not the time to learn all of GI, ...

This guide is far from comprehensive ... The goal of this book is to provide the highest yield subject matter in a digestible format.

He dedicated the book to his wife and all three of his children, including his deceased son.

21. Upon completion, QUANTUM BOARD REVIEW was a compact distillation (just over 100 pages) of facts—the facts that in Dr. James’ opinion would be most important for a test-taker to review and recall when taking the certification exam.

22. Both in its short length and in its fact-based approach, QUANTUM BOARD REVIEW was substantially different from the Wyanoke publication, which was one of the “vignette” style publications that Dr. James had chosen not to emulate. The Wyanoke book was built around more than 170 “vignettes” describing problems encountered by particular patients and another 200 short diagnostic vignette-style “self-test” questions. No vignettes, and no self-test questions, appeared in Dr. James’ guide.

23. Dr. James published his guide online and began offering it for sale on May 1, 2020.

Conflicting Claims of Infringement: May 8 – June 3, 2020

24. On or about May 8, 2020, Dr. James was contacted by the person whom Wyanoke lists as the author or, in some editions, an author, of ACING THE GI BOARD EXAM. That person sent Dr. James a series of eleven images that he claimed were infringed by the materials in Dr. James’ guide, implying that his own rights were infringed by Dr. James’ guide. Indeed, Dr. James was left with the clear impression that this individual claimed to be the copyright owner of the books published by Wyanoke and these cited materials, even though upon examination, Wyanoke’s book asserts that this individual “has no financial or proprietary interest in the materials presented herein.”

25. Although Dr. James later learned that the May 8 allegations were not well-founded, at the time, he was under extraordinary stress. His son recently had died, and he was grieving tremendously as a result of that death, which had occurred in the very hospital in which he still was attempting to provide services. At the same time, he was providing medical care and risking exposure to the COVID-19 virus on a daily basis for himself and his wife and his

remaining young children. After unsuccessful attempts over an approximately two-day period at establishing what he had hoped would be productive discussion with this individual, Dr. James decided he could devote no more time or energy to dealing with him. As a result, he chose to cease all distribution and promotion of QUANTUM BOARD REVIEW.

26. Dr. James shut down his website and sold the last copy of his guide on May 9, 2020, assuming this would end the matter. It did not.

27. Instead, Dr. James learned on May 11, 2020 from UNC that someone, who on information and belief was the same individual who had sent the initial claim to him, had made substantially identical claims of copyright infringement against Dr. James to Dr. James' fellowship employer UNC, and upon information and belief, demanded that UNC take action against Dr. James. Instead of disclosing to Dr. James that copyright infringement had been alleged, UNC informed Dr. James only that claims had been made against him alleging "workplace conduct issues" and "disruptive or inappropriate behavior complaints" and indicated that it was "obligated to conduct a thorough and comprehensive investigation" into the same. Dr. James was interviewed on May 14, 2020, and shown the same set of slides that had been sent to him by the individual listed as Wyanoke's author, and asked to discuss whether he believed he had infringed the author's rights.

28. On May 18, 2020, UNC demanded that Dr. James remove content from the Internet, in response to the information provided by the same individual who is listed as Wyanoke's author, On this same day, Dr. James received an email from a California hospital, alleging that it owned the copyrights in material allegedly incorporated into Dr. James' guide, consisting of a course entitled ACING THE GI BOARD EXAM (the "Course"), and that its copyrights were infringed. It turned out that the California hospital's claims were based on the work of the same individual who had sent the original infringement claims and whom UNC had implied was the owner of the Course.

29. After the interview by UNC on May 14, the accusatory email from UNC on May 18, and the letter from the California hospital received that same day, Dr. James became even more distraught. On May 9, he had discontinued publication of what he had intended to be a memorial to his son, expecting to gain peace with the individual who had initially contacted him, only to now be facing what seemed to be a continuing barrage of additional claims—claims that he knew in his heart were unfounded. He had no emotional capacity and energy remaining to fight UNC, the author, and now the California hospital.

30. The California hospital offered to release Dr. James from all alleged copyright liability if he would admit that he used material from the hospital's Course, post an apology for using work from the hospital's Course without giving credit to the hospital, and would ask anyone who had purchased a copy of his own Quantum Guide to destroy it. Specific language to accomplish this was provided to him.

31. The hospital in turn provided a contractual assurance to Dr. James that it was “the owner of the copyrights and all right, title and interest in and to the materials displayed and distributed in connection with the Course,” and it released Dr. James from all potential liability for any infringements associated with that material.

32. Believing that this would in fact dispose of all the allegations that had been made, and without fully appreciating the ramifications or taking time to sufficiently investigate and fully consider the requests, Dr. James consented to the requests made of him, signed the agreement with the hospital on June 3, 2020, and posted the requested apologies and statements—a decision he now regrets although he has fully complied with all terms of the agreement.

Wyanoke's Subsequent Allegations and Threats

33. Less than two weeks after Dr. James signed the agreement with the California hospital that claimed to own all rights in the Course, Defendant Wyanoke sent Dr. James a letter,

at his professional and personal addresses in North Carolina, accusing him of copyright infringement by virtue of his publication of QUANTUM BOARD REVIEW, and claiming rights that are inconsistent with those allegedly owned by the California hospital and originally raised by the author who implied the images belonged to him.

34. The Wyanoke correspondence asserts that Dr. James' study guide—which by this time had not been advertised or sold by Dr. James in over a month—infringes copyrights in at least four books sold by a company that Wyanoke controls (the “Asserted Publications”):

- i. Brennan Spiegel, *Acing the GI Board Exam: The Ultimate Crunch-Time Resource* (2015);
- ii. Brennan Spiegel & Hetal Karsan, *Acing the IBD Questions on the GI Board Exam: The Ultimate Crunch-Time Resource* (2014);
- iii. Brennan Spiegel & Hetal Karsan, *Acing the Hepatology Questions on the GI Board Exam: The Ultimate Crunch-Time Resource* (2012); and
- iv. Brennan Spiegel & Hetal Karsan, *Acing the Pancreaticobiliary Questions on the GI Board Exam: The Ultimate Crunch-Time Resource* (2018).

35. The letter states that the Asserted Publications are sold on the Internet and elsewhere, including from an interactive website. There, the Asserted Publications are offered for sale both as standalone books and (in an updated form) by subscription to purchasers located in this district, this State, and elsewhere.

36. The letter claims that the Asserted Publications are “protected by registered and unregistered...copyrights owned or controlled by The Wyanoke Group.”

37. The letter claims that Dr. James' publication of QUANTUM BOARD REVIEW is “a clear infringement” of these alleged copyrights, and demands that Dr. James give an accounting to Wyanoke of all income received from his review guide.

38. The letter orders Dr. James to notify “all visitors” to his website, and all “followers on social media” that his Quantum Board Review incorporated the content of the

books published “without permission and in violation of copyright laws.” The letter orders Dr. James to direct all visitors to his website, and all of his social media followers, to go to a website controlled by Wyanoke, “in order to access this content in the future.”

39. The letter threatens that if Dr. James does not comply with its demands, “formal steps” will be taken against Dr. James, including “instituting a legal proceeding against you for, among other things, ... copyright infringement.”

40. The letter threatens that such a lawsuit would “seek a judgment awarding ... damages, attorneys’ fees, costs, an accounting, and a preliminary and/or permanent injunction.”

Baseless Claims

41. Wyanoke’s letter to Dr. James enclosed a “comparison chart” that contained three specific instances of alleged infringement. Each of the three was a table of medical data, containing factual information in a very abbreviated format, and none of which comprised significant creative content.

42. Wyanoke’s correspondence asserted that there are additional infringements in “text and graphics.” An examination of Wyanoke’s works has located no viable claims of infringement to “text and graphics.” When Dr. James’ counsel asked Wyanoke to elaborate as to what additional “text and graphics” allegedly were appropriated, Wyanoke was unable or unwilling to do so.

43. Dr. James did not unlawfully copy or derive the asserted tables from Wyanoke’s Asserted Publications nor did he unlawfully copy or derive any “text and graphics” of his own publication from Wyanoke’s Asserted Publications.

44. Further, these tables were part of the Course which was the subject of Dr. James’ settlement agreement with the California hospital and on information and belief, the same is true as to all of the purportedly copied “text and graphics” that Wyanoke refused to identify when asked to do so. They are among the materials as to which the hospital asserted it owned all

copyrights, and as to whose use the hospital already has provided a full release. If the hospital's contractual assurance was correct, then it is not possible that Wyanoke has any rights in this material, or in any other material from the Course that appears in Dr. James' work, that are capable of assertion.

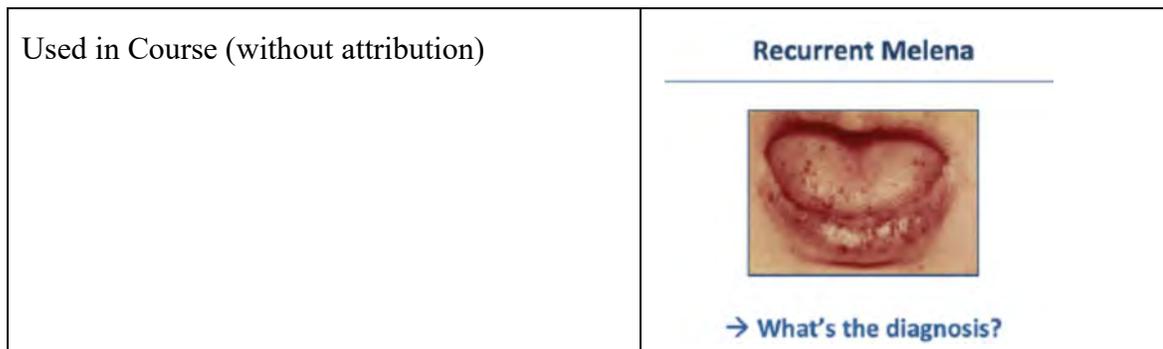
Fair Use and Absence of Attribution

45. It is common practice, and fair use, to incorporate *de minimis* quantities of third-party works without attribution into relatively informal, non-academic publications such as the Asserted Publications, the Course, and QUANTUM BOARD REVIEW. This is particularly true for tables and similar factual works, although even photographs are frequently included without attribution.

46. These standard practices are exemplified by the manner in which the Course and the Asserted Publications were themselves prepared and published because both the Course and the Asserted Publications are, on information and belief, replete with unattributed third-party works.

47. By way of example, the following materials contained no attribution to any third party at the time they were, to the best of Dr. James' knowledge, displayed in the Course and/or included in one or more of the Asserted Publications. Nonetheless, it is clear from a search of published literature that these same materials originated from third-party sources, as indicated below:

a. "Recurrent Melena"



<p>Previously published in Abramson, Neil, <i>Iron Deficiency Anemia: What's the Cause?</i>, AM FAM PHYSICIAN. 1998 Sep 1;58(3):761-762. See, https://www.aafp.org/afp/1998/0901/p761.html</p>	<p>Iron Deficiency Anemia: What's the Cause?</p> <p><small>View/Print Figure</small></p> 
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b. "Lots of Blebs"

<p>Used in Course (without attribution)</p>	
<p>Previously published in Jonas, Eduard, <i>Multiple Round Elevations in the Sigmoid and Descending Colon</i>, MEDSCAPE. 2001 Dec 6. See, https://www.medscape.com/viewarticle/405489</p>	

c. "Flushing and Dermatographism"

<p>Used in Course (without attribution)</p>	
<p>Previously published in "jZimbies" (pseudonym), <i>Thought I'd share my skin disorder, Dermatographic urticaria (Skin Writing)</i>, IMGUR. 2013 Jun 30. See, https://imgur.com/gallery/vMnDuGN</p>	

d. Anatomy of Esophagus – *Dysphagia Lusoria*

<p>Used in Course (without attribution)</p>	
<p>Previously published in Janssen, M. et al; <i>Dysphagia lusoria: clinical aspects, manometric findings, diagnosis, and therapy.</i> THE AMERICAN JOURNAL OF GASTROENTEROLOGY, 2000 Jun 1; 95(6): 1411-6.</p>	

e. Spectrum of achalasia

<p>Used in Course (without attribution)</p>	
<p>Previously published in Kahrilas, PJ et al; <i>The spectrum of achalasia: lessons from studies of pathophysiology and high-resolution manometry.</i> GASTROENTEROLOGY, 2013 Nov. 1; 145(5): 954-65.</p>	

f. Boorhave's Syndrome

<p>Used in Course (without attribution)</p>	
<p>Previously published in Herring, William, <i>Boorhave's Syndrome, Case of the Week (Slide 20 of 131), in Learning Radiology: Recognizing the Basics</i>, LEARNINGRADIOLOGY.COM, See, http://www.learningradiology.com/images/cas eoftheweekimages/cowgallerypages/cow39.html</p>	

g. Chaga's Disease (Romana Eye)

<p>Used in Course (without attribution)</p>	<p>What is the Name of the "Swollen Eye" Sign in Chagas?</p> 
<p>Previously published in Moorhouse, A., <i>The Fight for Recognition: Chagas' Disease Meets Controversy</i>, J. YOUNG INVESTIGATORS. 8 May 2005. See, https://www.jyi.org/2005-may/2017/11/8/the-fight-for-recognition-chagas-disease-meets-controversy [Photo credit in more recent publications is given to WHO/TDR]</p>	 <p>Acute Chagas Disease in a young child. The eye sign of Romana is present. ...</p>

h. Colon perforation

<p>Used in Course (without attribution)</p>	
<p>Previously published in Shakir, A.J. <i>Ogilvie's syndrome-related right colon perforation after cesarean section: A case series</i>. KAOHSIUNG J. MED. SCI. 2011 Jun; 27(6): 234-8. See, https://onlinelibrary.wiley.com/doi/full/10.1016/j.kjms.2010.11.006</p>	 <p>Figure 1. Abdominal X-ray showing massively dilated colon.</p>

i. "Wayward Pancreas"

<p>Used in Course (without attribution)</p>	
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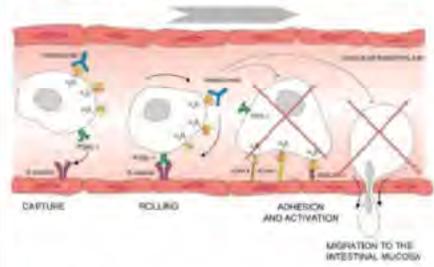
Previously published in Godil, A., et al, *Images in Clinical Medicine: Annular Pancreas*. NEW ENG. J. MED. 1997 Jun. 19: 1794.



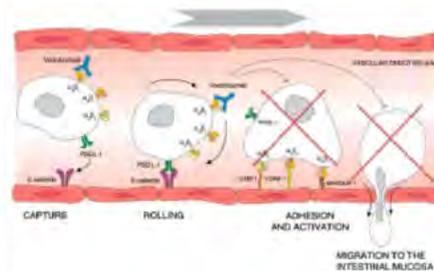
j. Vedolizumab in ulcerative colitis

Used in Course (without attribution)

Leukocyte Trafficking Inhibition



Previously published in Domenech, E. et al., *Efficacy and safety of vedolizumab in the treatment of ulcerative colitis*. GASTROENTEROLOGIA Y HEPATOLOGIA (Eng. Edn). 2016 Dec. 1; 39(10):677-86.



k. Infection diagnosis/treatment flowchart

<p>Used in Course (without attribution) and in at least one of the Asserted Publications – ACING THE GI BOARDS (2015) (without attribution)</p>	<pre> graph TD PMN[PMN Count] --> L250[<250] PMN --> R250[>250] L250 --> L250_Cplus[Culture +] L250 --> L250_Cminus[Culture -] R250 --> R250_Cplus[Culture +] R250 --> R250_Cminus[Culture -] L250_Cplus --> NNBA[NNBA] L250_Cminus --> Normal[Normal] NNBA --> NP[Symptoms Present] NNBA --> NA[Symptoms Absent] NP --> T1[Treat] NA --> NT[No Treat] R250_Cplus --> SBP[SBP] R250_Cminus --> CNNA[CNNA] SBP --> T2[Treat] CNNA --> T3[Treat] </pre>
<p>Previously published in substantially similar form in Liou, I.W. et al, <i>Management of Cirrhosis-Related Complications: Recognition and Management of Spontaneous Bacterial Peritonitis</i>, HEPATITIS C ONLINE. See, https://www.hepatitis-c.org/management-cirrhosis-related-complications/spontaneous-bacterial-peritonitis-recognition-management/core-concept/all/#-diagnosis-spontaneous-bacterial-peritonitis12</p>	<pre> graph TD Start[Diagnostic paracentesis: 1) Ascitic fluid cell count and differential, and 2) Ascitic fluid bacterial culture (inoculated at bedside)] --> PMN{PMN > 250 cells/mm?} PMN -- NO --> Signs{Signs/symptoms of infection?} Signs -- NO --> NoAntib[No antibiotics indicated] Signs -- YES --> Empiric[Begin empiric antibiotic therapy for SBP] Empiric --> CulturePos1{Culture positive?} CulturePos1 -- YES --> Bacterascites[Bacterascites: repeat diagnostic paracentesis when culture growth is discovered] CulturePos1 -- NO --> Complete5[Complete 5 day antibiotic course] PMN -- YES --> Presumptive[Presumptive SBP: 1) Begin empiric antibiotic therapy (e.g. cefotaxime 2 gm IV q8h), and 2) IV albumin on day 1 and day 3 IF serum creatinine >1 mg/dL, BUN > 30 mg/dL, or total bilirubin > 4 mg/dL.] Presumptive --> CulturePos2{Culture positive?} CulturePos2 -- YES --> Confirmed[Confirmed SBP: narrow antibiotic regimen based on susceptibility results to complete 5 day course] CulturePos2 -- NO --> Complete5 </pre>

I. Pancreatic Cyst Characteristics Table

Used in Course (without attribution) and in at least one of the Asserted Works (ACING THE PANCREATICOBILIARY QUESTIONS ON THE GI BOARD EXAM (2018)) (without attribution)

Variable	Mucinous Cystic Neoplasm	IPMNs	Serous Cystadenoma	Solid Pseudo-Papillary Neoplasm
Age	Middle-aged	Middle-aged to Older	Older	Young! (<40 yrs)
Gender	♀ > ♂	No gender bias!	♀ > ♂	Females (95%)
Imaging	95% body or tail (thick mucin)	"fishmouth"; "cluster of grapes"	Microcystic or "honeycomb"; Central scar	Mixed solid/cystic; In body/tail
Cytology	CEA > 192 Low amylase	CEA > 192 High amylase	Low CEA (<0.5) + glycogen (cuboidal cells)	Low CEA Branching 'finger-like' projections
Malignant Potential	Moderate-High	Moderate (depends...)	Way low	Moderate over time

Previously published in substantially similar form in Cunningham et al. *Intraductal papillary mucinous neoplasms are differentiated from other pancreatic cystic lesions*. WORLD J GASTROINTEST SURG 2010; 2(10): 331–336. An electronic worksheet version of this table is available at <http://pathology.jhu.edu/pancreas/professionals/ipmn.php>.

Typical Characteristics	IPMN	MCN	SC	PSEUDO **	SPN
Age Group	Elderly	Middle	Middle-Elderly	Any	Young
Gender	70% male	95% female	>50% female	>50% male	80%–90% female
History	Asx; Pain; +/- Jaundice	Asx; Pain; Nausea	Asx; VHL	Pancreatitis **	Asx; Pain; Nausea
Location in Pancreas	Head in 70%; Multi-focal	Body/Tail in 95%	Anywhere	Anywhere	Anywhere
Shape	Ovoid	Spherical	Ovoid	Spherical	Ovoid
Locularity	Any	Uni or Oligo	Oligo or Multi	Uni	Oligo or Multi
Duct Communication	Common	No	No	Common	No
Calcification	No	No	Central sunburst	No	Some
Cyst Fluid Appearance	Viscous, clear, muc	Viscous, clear, muc	Thin, clear, nonmuc	Opaque, bloody/ Necrotic debris	Opaque, bloody/ Necrotic debris
High CEA/Mucin*	+	+	-	-	-
High Ca 19-9	+/-	+/-	-	+	-
Amylase	+	-	-	+	-

48. Indeed, much of the same material that Wyanoke alleges was copied by Dr. James from the Asserted Publications did not originate with Wyanoke or with Wyanoke's author, but instead was taken without attribution from the previously published works of yet other authors.

49. For example, the "Pancreatic Cyst" table published in the Course and in an Asserted Publication, as set out in Paragraph 48(l) above, is one of the three tables that Wyanoke alleges was also depicted in the same or substantially similar form in Dr. James' guide and that Wyanoke asserts is evidence of Dr. James' infringement. Yet as is evident, that table was not original to Wyanoke or its author; they did no more than edit the prior factual compilation of an earlier writer, and gave no attribution.

50. Likewise, the "Infection diagnosis/treatment flowchart" published in the Course and in an Asserted Publication, as shown in Paragraph 48(k) above, is one of the three tables that Wyanoke alleges was also depicted in the same or substantially similar form in Dr. James' guide and that Wyanoke asserts is evidence of Dr. James' infringement. Yet as is evident, that flowchart was not original to Wyanoke or its author. Once again, they did no more than edit the prior factual compilation of an earlier writer, and gave no attribution.

51. In short, any *de minimis* similarity between Dr. James' works and those of Wyanoke does not exceed that permitted by fair use, and no attribution was appropriate or required.

COUNT I.

[Declaratory Relief Pursuant to 28 U.S.C. § 2201, et seq. (Declaratory Judgment Act) and the Copyright Act (Title 17 of the U.S. Code)]

52. There is a real and actual controversy between Dr. James and Wyanoke as to whether Dr. James' work infringes the Asserted Publications of Wyanoke.

53. Wyanoke's conduct has forced Dr. James to choose between making payments to Wyanoke and telling his friends and followers to buy the Asserted Publications from Wyanoke

and its affiliate, or risking legal liability. The controversy between Dr. James and Wyanoke is real and substantial and demands specific relief through a decree of a conclusive character.

54. Dr. James is entitled to a declaratory judgment that his QUANTUM BOARD REVIEW does not infringe any copyrights owned, controlled, or otherwise capable of assertion by Wyanoke, and that Wyanoke is not entitled to any compensation or other relief from him.

WHEREFORE, Plaintiff Dr. James prays for judgment against the defendants as follows:

1. For a declaration that Dr. James' publication of QUANTUM BOARD REVIEW does not infringe any copyrights owned or controlled by Wyanoke; and,
2. For a declaration that to the extent (if any) there is a copyrightable interest in one or more of the tables or other material in question, Dr. James' use is protected by the fair use doctrine and does not infringe for that reason; and
3. For an order enjoining Wyanoke, all entities controlled by Wyanoke, their attorneys, agents, and assigns from asserting any copyright claims against Dr. James in connection with QUANTUM BOARD REVIEW; and
4. For such other and further relief as the Court may deem proper.

Respectfully submitted this 16th day of July, 2020.

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