

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)
)
)
EDWARD TOBINICK, M.D.)
)
Physician's and Surgeon's)
Certificate No. G 37710)
)
Respondent)
_____)

File No. 06-2001-127668

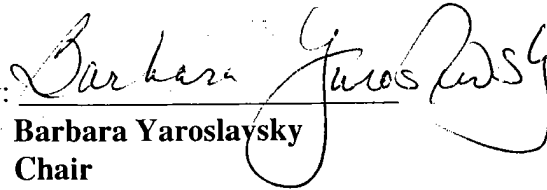
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 29, 2007

IT IS SO ORDERED December 29, 2006

MEDICAL BOARD OF CALIFORNIA

By: 
Barbara Yaroslavy
Chair
Panel B
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 JOHN E. RITTMAYER, State Bar No. 67291
Deputy Attorney General
3 California Department of Justice
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6 Attorneys for Complainant

7 **BEFORE THE**
8 **DIVISION OF MEDICAL QUALITY**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 EDWARD TOBINICK, M.D.

13 Institute of Neurological Research
100 UCLA Medical Plaza, #210
14 Los Angeles, California 90095

15 Physician's and Surgeon's Certificate No. G
16 37710

17 Respondent.

Case No. 06-2001-127668
OAH No. L2006020432

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 PARTIES

22 1. David T. Thornton (Complainant) is the Executive Director of the Medical
23 Board of California (Board). He brought this action solely in his official capacity and is
24 represented in this matter by Bill Lockyer, Attorney General of the State of California, by John E.
25 Rittmayer, Deputy Attorney General.

26 2. Respondent Edward Tobinick, M.D. (Respondent) is represented in this
27 proceeding by attorney Peter R. Osinoff, whose address is 3699 Wilshire Boulevard, 10th Floor
28 Los Angeles, CA 90010-2719

1 charges contained in the Second Amended Accusation concerning violations of Business and
2 Professions Code sections 2238 and 2285, and waives his right to present a defense thereto.
3 Respondent hereby gives up his right to contest that cause for discipline exists based on that
4 charge.

5 CIRCUMSTANCES IN MITIGATION

6 10. Published, peer reviewed scientific studies since May, 2002, have
7 provided evidence that perispinal etanercept is effective for treatment of disc-related pain.
8 Respondent discontinued his advertising for DiskCure® three years ago. Respondent has
9 published his results of other uses for perispinal etanercept without advertising them.

10 RESERVATION

11 11. The admissions made by Respondent herein are only for the purposes of
12 this proceeding, or any other proceedings in which the Division, the Board, or other professional
13 licensing agency is involved, and shall not be admissible in any other criminal or civil
14 proceeding.

15 CONTINGENCY

16 12. This stipulation shall be subject to approval by the Division. Respondent
17 understands and agrees that counsel for Complainant and the staff of the Board may
18 communicate directly with the Division regarding this stipulation and settlement, without notice
19 to or participation by Respondent or his counsel. By signing the stipulation, Respondent
20 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
21 prior to the time the Division considers and acts upon it. If the Division fails to adopt this
22 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
23 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
24 the parties, and the Division shall not be disqualified from further action by having considered
25 this matter.

26 13. The parties understand and agree that facsimile copies of this Stipulated
27 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
28 force and effect as the originals.

1 Division or its designee, be accepted towards the fulfillment of this condition if the course would
2 have been approved by the Division or its designee had the course been taken after the effective
3 date of this Decision.

4 Respondent shall submit a certification of successful completion to the Division
5 or its designee not later than 15 calendar days after successfully completing the course, or not
6 later than 15 calendar days after the effective date of the Decision, whichever is later.

7 3. MONITORING - PRACTICE/BILLING Within 30 calendar days of the
8 effective date of this Decision, respondent shall submit to the Division or its designee for prior
9 approval as a practice monitor(s), the name and qualifications of one or more licensed physicians
10 and surgeons whose licenses are valid and in good standing, and who are preferably American
11 Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current
12 business or personal relationship with respondent, or other relationship that could reasonably be
13 expected to compromise the ability of the monitor to render fair and unbiased reports to the
14 Division, including, but not limited to, any form of bartering, shall be in respondent's field of
15 practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring
16 costs.

17 The Division or its designee shall provide the approved monitor with copies of the
18 Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of
19 receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit
20 a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands
21 the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor
22 disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan
23 with the signed statement.

24 Within 60 calendar days of the effective date of this Decision, and continuing
25 throughout probation, respondent's practice shall be monitored by the approved monitor.
26 Respondent shall make all records available for immediate inspection and copying on the
27 premises by the monitor at all times during business hours, and shall retain the records for the
28 entire term of probation.

1 The monitor(s) shall submit a quarterly written report to the Division or its
2 designee which includes an evaluation of respondent's performance, indicating whether
3 respondent's practices are within the standards of practice of medicine or billing, or both, and
4 whether respondent is practicing medicine safely, billing appropriately or both.

5 It shall be the sole responsibility of respondent to ensure that the monitor submits
6 the quarterly written reports to the Division or its designee within 10 calendar days after the end
7 of the preceding quarter.

8 If the monitor resigns or is no longer available, respondent shall, within 5 calendar
9 days of such resignation or unavailability, submit to the Division or its designee, for prior
10 approval, the name and qualifications of a replacement monitor who will be assuming that
11 responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement
12 monitor within 60 days of the resignation or unavailability of the monitor, respondent shall be
13 suspended from the practice of medicine until a replacement monitor is approved and prepared to
14 assume immediate monitoring responsibility. Respondent shall cease the practice of medicine
15 within 3 calendar days after being so notified by the Division or designee.

16 In lieu of a monitor, respondent may participate in a professional enhancement
17 program equivalent to the one offered by the Physician Assessment and Clinical Education
18 Program at the University of California, San Diego School of Medicine, that includes, at
19 minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of
20 professional growth and education. Respondent shall participate in the professional enhancement
21 program at respondent's expense during the term of probation.

22 Failure to maintain all records, or to make all appropriate records available for
23 immediate inspection and copying on the premises, or to comply with this condition as outlined
24 above is a violation of probation.

25 4. NOTIFICATION Prior to engaging in the practice of medicine, the
26 respondent shall provide a true copy of the Decision and Second Amended Accusation to the
27 Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership
28 are extended to respondent, at any other facility where respondent engages in the practice of

1 medicine, including all physician and locum tenens registries or other similar agencies, and to the
2 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
3 to respondent. Respondent shall submit proof of compliance to the Division or its designee
4 within 15 calendar days.

5 This condition shall apply to any change(s) in hospitals, other facilities or
6 insurance carrier.

7 5. SUPERVISION OF PHYSICIAN ASSISTANTS During probation,
8 respondent is prohibited from supervising physician assistants.

9 6. OBEY ALL LAWS Respondent shall obey all federal, state and local
10 laws, all rules governing the practice of medicine in California, and remain in full compliance
11 with any court ordered criminal probation, payments and other orders.

12 7. QUARTERLY DECLARATIONS Respondent shall submit quarterly
13 declarations under penalty of perjury on forms provided by the Division, stating whether there
14 has been compliance with all the conditions of probation. Respondent shall submit quarterly
15 declarations not later than 10 calendar days after the end of the preceding quarter.

16 8. PROBATION UNIT COMPLIANCE Respondent shall comply with the
17 Division's probation unit. Respondent shall, at all times, keep the Division informed of
18 respondent's business and residence addresses. Changes of such addresses shall be immediately
19 communicated in writing to the Division or its designee. Under no circumstances shall a post
20 office box serve as an address of record, except as allowed by Business and Professions Code
21 section 2021(b).

22 Respondent shall not engage in the practice of medicine in respondent's place of
23 residence. Respondent shall maintain a current and renewed California physician's and
24 surgeon's license.

25 Respondent shall immediately inform the Division, or its designee, in writing, of
26 travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last,
27 more than 30 calendar days.

28 9. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE Respondent

1 shall be available in person for interviews either at respondent's place of business or at the
2 probation unit office, with the Division or its designee, upon request at various intervals, and
3 either with or without prior notice throughout the term of probation.

4 10. RESIDING OR PRACTICING OUT-OF-STATE In the event respondent
5 should leave the State of California to reside or to practice, respondent shall notify the Division
6 or its designee in writing 30 calendar days prior to the dates of departure and return. Non-
7 practice is defined as any period of time exceeding 30 calendar days in which respondent is not
8 engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions
9 Code.

10 All time spent in an intensive training program outside the State of California
11 which has been approved by the Division or its designee shall be considered as time spent in the
12 practice of medicine within the State. A Board-ordered suspension of practice shall not be
13 considered as a period of non-practice. Periods of temporary or permanent residence or practice
14 outside California will not apply to the reduction of the probationary term. Periods of temporary
15 or permanent residence or practice outside California will relieve respondent of the responsibility
16 to comply with the probationary terms and conditions with the exception of this condition and
17 the following terms and conditions of probation: Obey All Laws and Probation Unit
18 Compliance.

19 Respondent's license shall be automatically cancelled if respondent's periods of
20 temporary or permanent residence or practice outside California total two years. However,
21 respondent's license shall not be cancelled as long as respondent is residing and practicing
22 medicine in another state of the United States and is on active probation with the medical
23 licensing authority of that state, in which case the two year period shall begin on the date
24 probation is completed or terminated in that state.

25 11. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

26 In the event respondent resides in the State of California and for any reason
27 respondent stops practicing medicine in California, respondent shall notify the Division or its
28 designee in writing within 30 calendar days prior to the dates of non-practice and return to

1 practice. Any period of non-practice within California, as defined in this condition, will not
2 apply to the reduction of the probationary term and does not relieve respondent of the
3 responsibility to comply with the terms and conditions of probation. Non-practice is defined as
4 any period of time exceeding 30 calendar days in which respondent is not engaging in any
5 activities defined in sections 2051 and 2052 of the Business and Professions Code.

6 All time spent in an intensive training program which has been approved by the
7 Division or its designee shall be considered time spent in the practice of medicine. For purposes
8 of this condition, non-practice due to a Board-ordered suspension or in compliance with any
9 other condition of probation, shall not be considered a period of non-practice.

10 Respondent's license shall be automatically cancelled if respondent resides in
11 California and for a total of two years, fails to engage in California in any of the activities
12 described in Business and Professions Code sections 2051 and 2052.

13 12. COMPLETION OF PROBATION Respondent shall comply with all
14 financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar
15 days prior to the completion of probation. Upon successful completion of probation,
16 respondent's certificate shall be fully restored.

17 13. VIOLATION OF PROBATION Failure to fully comply with any term or
18 condition of probation is a violation of probation. If respondent violates probation in any respect,
19 the Division, after giving respondent notice and the opportunity to be heard, may revoke
20 probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to
21 Revoke Probation, or an Interim Suspension Order is filed against respondent during probation,
22 the Division shall have continuing jurisdiction until the matter is final, and the period of
23 probation shall be extended until the matter is final.

24 14. LICENSE SURRENDER Following the effective date of this Decision, if
25 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, respondent may request the voluntary surrender of
27 respondent's license. The Division reserves the right to evaluate respondent's request and to
28 exercise its discretion whether or not to grant the request, or to take any other action deemed

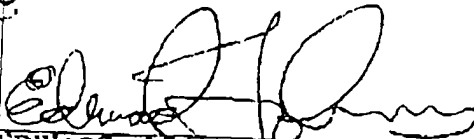
1 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
2 respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the
3 Division or its designee and respondent shall no longer practice medicine. Respondent will no
4 longer be subject to the terms and conditions of probation and the surrender of respondent's
5 license shall be deemed disciplinary action. If respondent re-applies for a medical license, the
6 application shall be treated as a petition for reinstatement of a revoked certificate.

7 15. PROBATION MONITORING COSTS Respondent shall pay the costs
8 associated with probation monitoring each and every year of probation, as designated by the
9 Division. Such costs shall be payable to the Medical Board of California and delivered to the
10 Division or its designee no later than January 31 of each calendar year. Failure to pay costs
11 within 30 calendar days of the due date is a violation of probation.

12 ACCEPTANCE

13 I have carefully read the above Stipulated Settlement and Disciplinary Order and
14 have fully discussed it with my attorney, Peter R. Osinoff. I understand the stipulation and the
15 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
16 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
17 bound by the Decision and Order of the Division of Medical Quality, Medical Board of
18 California.

19 DATED: September 19, 2006

20
21 
22 EDWARD TOBINICK, M.D. (Respondent)
23 Respondent

24 I have read and fully discussed with Respondent Edward Tobinick, M.D. the
25 terms and conditions and other matters contained in the above Stipulated Settlement and

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Disciplinary Order. I approve its form and content.

DATED: 9/19/06



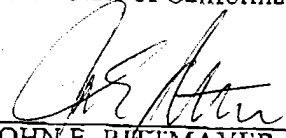
PETER R. OSINOFF
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Division of Medical Quality, Medical Board of California of the Department of Consumer Affairs.

DATED: November 8, 2006

BILL LOCKYER, Attorney General
of the State of California



JOHN E. RITTMAYER
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2004600861
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