

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

In the Matter of the Accusation)	
Against:)	
)	
)	
Chaim Vanek, M.D.)	File No. 06-2002-141688
)	
Physician's and Surgeon's)	
Certificate No. A 77368)	
)	
Respondent)	
_____)	

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 October 10, 2006

IT IS SO ORDERED September 8, 2006

MEDICAL BOARD OF CALIFORNIA

By: *Cesar A. Aristeiguieta, M.D.*
Cesar A. Aristeiguieta, M.D., Chair
Consolidated Panel
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
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-7485
5 Facsimile: (213) 897-9395

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**

12 In the Matter of the Accusation Against:
13 CHAIM VANEK, M.D.
Physician's and Surgeon's Certificate No.:
14 A 77368,
15 Respondent.

Case No. 06-2002-141688
OAH No. L2005100647

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceedings that the following matters are true:

19 PARTIES

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

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

27 3. On or about December 12, 2001, the Medical Board of California issued
28 Physician's and Surgeon's Certificate No. A 77368 to Chaim Vanek, M.D. (Respondent). The

1 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
2 No. 06-2002-141688 (the Accusation) and will expire on July 31, 2007, unless renewed.

3 JURISDICTION

4 4. The Accusation was filed before the Division of Medical Quality
5 (Division) for the Medical Board of California, Department of Consumer Affairs, and is
6 currently pending against Respondent. The Accusation and all other statutorily required
7 documents were properly served on Respondent on November 12, 2004. Respondent timely
8 filed his Notice of Defense contesting the Accusation. A copy of the Accusation is attached as
9 Exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5 Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in the Accusation. Respondent has also carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
18 the right to present evidence and to testify on his own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent understands that the charges and allegations in the
26 Accusation, if proved at a hearing, would constitute cause for imposing discipline upon his
27 Physician's and Surgeon's certificate.

28 9. For the purpose of resolving the Accusation without the expense and

1 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
2 present a prima facie case for one or more of the charges contained therein, and Respondent
3 hereby gives up his right to present a defense thereto and to contest that cause for discipline
4 exists based on those charges.

5 CONTINGENCY

6 10. This stipulation shall be subject to approval by the Division of Medical
7 Quality. Respondent understands and agrees that counsel for Complainant and the staff of the
8 Medical Board of California may communicate directly with the Division regarding this
9 stipulation and settlement, without notice to or participation by Respondent or his counsel. By
10 signing the stipulation, Respondent understands and agrees that he may not withdraw his
11 agreement or seek to rescind the stipulation prior to the time the Division considers and acts
12 upon it. If the Division fails to adopt this stipulation as its Decision and Order, the Stipulated
13 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it
14 shall be inadmissible in any legal action between the parties, and the Division shall not be
15 disqualified from further action by having considered this matter.

16 11. The parties understand and agree that facsimile copies of this Stipulated
17 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
18 force and effect as the originals.

19 12. In consideration of the foregoing admissions and stipulations, the parties
20 agree that the (Division) may, without further notice or formal proceeding, issue and enter the
21 following Disciplinary Order:

22 ORDER

23 A. PACE CLINICAL TRAINING PROGRAM Within 60 calendar days of
24 the effective date of this Decision, respondent shall enroll in a clinical training or educational
25 program equivalent to the Physician Assessment and Clinical Education Program (PACE)
26 offered at the University of California - San Diego School of Medicine ("Program").

27 The Program shall consist of a Comprehensive Assessment program comprised of
28 a two-day assessment of respondent's physical and mental health; basic clinical and

1 communication skills common to all clinicians; and medical knowledge, skill and judgment
2 pertaining to respondent's speciality or sub-speciality, and at minimum, a 40 hour program of
3 clinical education in the area of practice in which respondent was alleged to be deficient and
4 which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any
5 other information that the Division or its designee deems relevant. Respondent shall pay all
6 expenses associated with the clinical training program.

7 Based on respondent's performance and test results in the assessment and clinical
8 education, the Program will advise the Division or its designee of its recommendation(s) for the
9 scope and length of any additional educational or clinical training, treatment for any medical
10 condition, treatment for any psychological condition, or anything else affecting respondent's
11 practice of medicine. Respondent shall comply with Program recommendations.

12 At the completion of any additional educational or clinical training, respondent
13 shall submit to and pass an examination. The Program's determination whether or not respondent
14 passed the examination or successfully completed the Program shall be binding.

15 Respondent shall complete the Program not later than six months after
16 respondent's initial enrollment unless the Division or its designee agrees in writing to a later
17 time for completion.

18 Failure to participate in and complete successfully all phases of the clinical
19 training program outlined above is a violation of this agreement.

20 **B. COMPLIANCE** If respondent timely and successfully completes the
21 terms and conditions set forth above, a public letter of reprimand shall be issued to respondent
22 pursuant to Business and Professions Code section 2233, in the form of the public letter of
23 reprimand that is attached hereto as Exhibit B and, by this reference, is incorporated herein as
24 though fully set forth.

25 **C. FAILURE TO COMPLY** If respondent fails to timely and successfully
26 complete each term and condition set forth above, then the Accusation may be amended to allege
27 these matters as additional grounds for discipline, and the case will be returned to the Office of
28 Administration Hearing for trial.

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ACCEPTANCE

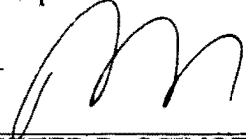
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order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

DATED: 8/1/06



CHAIM VANEK, M.D.
Respondent

DATED: 8/3/06



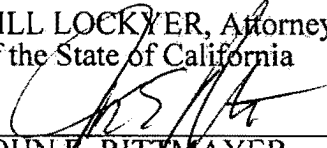
PETER R. OSINOFF
Attorney for Respondent

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: August 16, 2006

BILL LOCKYER, Attorney General
of the State of California



JOHN E. RITTMAYER
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 06-2002-141688

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *November 12 2004*
BY *Carla Kuzinski* ANALYST

1 BILL LOCKYER, Attorney General
of the State of California
2 RICHARD D. MARINO, State Bar No. 90471
Deputy Attorney General
3 California Department of Justice
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6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 06-2002-141688

12 CHAIM VANEK, M.D.
100 UCLA Medical Plaza
13 Los Angeles, CA 90095

ACCUSATION

14 Physician and Surgeon's Certificate No. A77368,
15 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. David T. Thornton (Complainant) brings this Accusation solely in his
20 official capacity as the Executive Director of the Medical Board of California, Department of
21 Consumer Affairs.

22 2. On or about December 12, 2001, the Medical Board of California issued
23 Physician and Surgeon's Certificate Number A77368 to Chaim Vanek, M.D. (Respondent). The
24 Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges
25 brought herein and will expire on July 31, 2005, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Division of Medical Quality
28 (Division) for the Medical Board of California, Department of Consumer Affairs, under the

1 authority of the following statutes and regulations. All references are to the Business and
2 Professions Code (Code) unless otherwise indicated.

3 4. Section 651 of the Code provides:

4 “(a) It is unlawful for any person licensed under this division or under any
5 initiative act referred to in this division to disseminate or cause to be disseminated
6 any form of public communication containing a false, fraudulent, misleading, or
7 deceptive statement, claim, or image for the purpose of or likely to induce,
8 directly or indirectly, the rendering of professional services or furnishing of
9 products in connection with the professional practice or business for which he or
10 she is licensed. A ‘public communication’ as used in this section includes, but is
11 not limited to, communication by means of mail, television, radio, motion picture,
12 newspaper, book, list or directory of healing arts practitioners, Internet, or other
13 electronic communication.

14 “(b) A false, fraudulent, misleading, or deceptive statement, claim, or
15 image includes a statement or claim that does any of the following:

16 “(1) Contains a misrepresentation of fact.

17 “(2) Is likely to mislead or deceive because of a failure to disclose material
18 facts.

19 “(3) (A) Is intended or is likely to create false or unjustified expectations
20 of favorable results, including the use of any photograph or other image that does
21 not accurately depict the results of the procedure being advertised or that has been
22 altered in any manner from the image of the actual subject depicted in the
23 photograph or image.

24 “...

25 “(5) Contains other representations or implications that in reasonable
26 probability will cause an ordinarily prudent person to misunderstand or be
27 deceived.

28 “(6) Makes a claim either of professional superiority or of performing

1 services in a superior manner, unless that claim is relevant to the service being
2 performed and can be substantiated with objective scientific evidence.

3 “7) Makes a scientific claim that cannot be substantiated by reliable, peer
4 reviewed, published scientific studies.

5 “8) Includes any statement, endorsement, or testimonial that is likely to
6 mislead or deceive because of a failure to disclose material facts.

7 “... ”

8 “g) Any violation of this section by a person so licensed shall constitute
9 good cause for revocation or suspension of his or her license or other disciplinary
10 action.

11 “... ”

12 5. Section 725 of the Code, in pertinent part, provides:

13 “Repeated acts of clearly excessive prescribing or administering of drugs or
14 treatment, repeated acts of clearly excessive use of diagnostic procedures, or
15 repeated acts of clearly excessive use of diagnostic or treatment facilities as
16 determined by the standard of the community of licensees is unprofessional
17 conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical
18 therapist, chiropractor, or optometrist.”

19 6. Section 2220 of the Code provides:

20 “Except as otherwise provided by law, the Division of Medical Quality may take
21 action against all persons guilty of violating this chapter [Chapter 5, the Medical Practice
22 Act]. The division shall enforce and administer this article as to physician and surgeon
23 certificate holders, and the division shall have all the powers granted in this chapter for
24 these purposes including, but not limited to:

25 “(a) Investigating complaints from the public, from other licensees, from health
26 care facilities, or from a division of the board that a physician and surgeon may be guilty
27 of unprofessional conduct. The board shall investigate the circumstances underlying any
28 report received pursuant to Section 805 within 30 days to determine if an interim

1 suspension order or temporary restraining order should be issued. The board shall
2 otherwise provide timely disposition of the reports received pursuant to Section 805.

3 “(b) Investigating the circumstances of practice of any physician and surgeon
4 where there have been any judgments, settlements, or arbitration awards requiring the
5 physician and surgeon or his or her professional liability insurer to pay an amount in
6 damages in excess of a cumulative total of thirty thousand dollars (\$30,000) with respect
7 to any claim that injury or damage was proximately caused by the physician's and
8 surgeon's error, negligence, or omission.

9 “(c) Investigating the nature and causes of injuries from cases which shall be
10 reported of a high number of judgments, settlements, or arbitration awards against a
11 physician and surgeon.”

12 7. Section 2227 of the Code, in pertinent part, provides:

13 “(a) Protection of the public shall be the highest priority for the Division of
14 Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel
15 in exercising their disciplinary authority.”

16 8. Section 2234 of the Code provides:

17 “The Division of Medical Quality shall take action against any licensee who is
18 charged with unprofessional conduct. In addition to other provisions of this article,
19 unprofessional conduct includes, but is not limited to, the following:

20 “(a) Violating or attempting to violate, directly or indirectly, or assisting in or
21 abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter 5,
22 the Medical Practice Act].

23 “(b) Gross negligence.

24 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent
25 acts or omissions. An initial negligent act or omission followed by a separate and distinct
26 departure from the applicable standard of care shall constitute repeated negligent acts. (1)
27 An initial negligent diagnosis followed by an act or omission medically appropriate for
28 that negligent diagnosis of the patient shall constitute a single negligent act. (2) When the

1 standard of care requires a change in the diagnosis, act, or omission that constitutes the
2 negligent act described in paragraph (1), including, but not limited to, a reevaluation of the
3 diagnosis or a change in treatment, and the licensee's conduct departs from the applicable
4 standard of care, each departure constitutes a separate and distinct breach of the standard
5 of care.

6 “(d) Incompetence.

7 “(e) The commission of any act involving dishonesty or corruption which is
8 substantially related to the qualifications, functions, or duties of a physician and surgeon.

9 “(f) Any action or conduct which would have warranted the denial of a
10 certificate.”

11 9. Section 2238 of the Code provides:

12 “A violation of any federal statute or federal regulation or any of the statutes or
13 regulations of this state regulating dangerous drugs or controlled substances constitutes
14 unprofessional conduct.”

15 10. Section 2239 of the Code, in pertinent part, provides:

16 “(a) The use or prescribing for or administering to himself or herself, of any
17 controlled substance; or the use of any of the dangerous drugs specified in Section 4022,
18 or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or
19 injurious to the licensee, or to any other person or to the public, or to the extent that such
20 use impairs the ability of the licensee to practice medicine safely or more than one
21 misdemeanor or any felony involving the use, consumption, or self-administration of any
22 of the substances referred to in this section, or any combination thereof, constitutes
23 unprofessional conduct. The record of the conviction is conclusive evidence of such
24 unprofessional conduct.

25 “ . . . ”

26 11. Section 2241 of the Code provides:

27 “Unless otherwise provided by this section, the prescribing, selling,
28 furnishing, giving away, or administering or offering to prescribe, sell, furnish,

1 give away, or administer any of the drugs or compounds mentioned in Section
2 2239 to an addict or habitué constitutes unprofessional conduct.”

3 12. Section 2241.5 of the Code provides:

4 “(a) Notwithstanding any other provision of law, a physician and surgeon
5 may prescribe or administer controlled substances to a person in the course of the
6 physician and surgeon's treatment of that person for a diagnosed condition causing
7 intractable pain.

8 “(b) ‘Intractable pain,’ as used in this section, means a pain state in which
9 the cause of the pain cannot be removed or otherwise treated and which in the
10 generally accepted course of medical practice no relief or cure of the cause of the
11 pain is possible or none has been found after reasonable efforts including, but not
12 limited to, evaluation by the attending physician and surgeon and one or more
13 physicians and surgeons specializing in the treatment of the area, system, or organ
14 of the body perceived as the source of the pain.

15 “(c) No physician and surgeon shall be subject to disciplinary action by the
16 board for prescribing or administering controlled substances in the course of
17 treatment of a person for intractable pain.

18 “(d) This section shall not apply to those persons being treated by the
19 physician and surgeon for chemical dependency because of their use of drugs or
20 controlled substances.

21 “(e) This section shall not authorize a physician and surgeon to prescribe
22 or administer controlled substances to a person the physician and surgeon knows to
23 be using drugs or substances for nontherapeutic purposes.

24 “(f) This section shall not affect the power of the board to deny, revoke, or
25 suspend the license of any physician and surgeon who does any of the following:

26 “(1) Prescribes or administers a controlled substance or treatment that is
27 nontherapeutic in nature or nontherapeutic in the manner the controlled substance
28 or treatment is administered or prescribed or is for a nontherapeutic purpose in a

1 nontherapeutic manner.

2 “(2) Fails to keep complete and accurate records of purchases and
3 disposals of substances listed in the California Controlled Substances Act, or of
4 controlled substances scheduled in, or pursuant to, the federal Comprehensive
5 Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall
6 keep records of his or her purchases and disposals of these drugs, including the
7 date of purchase, the date and records of the sale or disposal of the drugs by the
8 physician and surgeon, the name and address of the person receiving the drugs, and
9 the reason for the disposal of or the dispensing of the drugs to the person and shall
10 otherwise comply with all state recordkeeping requirements for controlled
11 substances.

12 “(3) Writes false or fictitious prescriptions for controlled substances listed
13 in the California Controlled Substances Act or scheduled in the federal
14 Comprehensive Drug Abuse Prevention and Control Act of 1970.

15 “(4) Prescribes, administers, or dispenses in a manner not consistent with
16 public health and welfare controlled substances listed in the California Controlled
17 Substance Act or scheduled in the federal Comprehensive Drug Abuse Prevention
18 and Control Act of 1970.

19 “(5) Prescribes, administers, or dispenses in violation of either Chapter 4
20 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210)
21 of Division 10 of the Health and Safety Code or this chapter.

22 “(g) Nothing in this section shall be construed to prohibit the governing
23 body of a hospital from taking disciplinary actions against a physician and surgeon,
24 as authorized pursuant to Sections 809.05, 809.4, and 809.5.

25 13. Section 2242 of the Code, in pertinent part, provides:

26 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section
27 4022 without a good faith prior examination and medical indication therefor, constitutes
28 unprofessional conduct.

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“....”

14. Section 2261 of the Code provides:

“Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct.”

15. Section 2262 of the Code provides:

“Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

“....”

16. Section 2266 of the Code provides:

“The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

17. Section 2285 of the Code provides:

“The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to the following:

“(a) Licensees who are employed by a partnership, a group, or a professional corporation that holds a fictitious name permit.

“(b) Licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

“(c) An outpatient surgery setting granted a certificate of accreditation from an accreditation agency approved by the medical board.

1 “(d) Any medical school approved by the division or a faculty practice plan
2 connected with the medical school.”

3 18. Section 17500 of the Code provides:

4 “(It is unlawful for any person, firm, corporation or association, or any
5 employee thereof with intent directly or indirectly to dispose of real or personal
6 property or to perform services, professional or otherwise, or anything of any
7 nature whatsoever or to induce the public to enter into any obligation relating
8 thereto, to make or disseminate or cause to be made or disseminated before the
9 public in this state, or to make or disseminate or cause to be made or disseminated
10 from this state before the public in any state, in any newspaper or other publication,
11 or any advertising device, or by public outcry or proclamation, or in any other
12 manner or means whatever, including over the Internet, any statement, concerning
13 that real or personal property or those services, professional or otherwise, or
14 concerning any circumstance or matter of fact connected with the proposed
15 performance or disposition thereof, which is untrue or misleading, and which is
16 known, or which by the exercise of reasonable care should be known, to be untrue
17 or misleading, or for any person, firm, or corporation to so make or disseminate or
18 cause to be so made or disseminated any such statement as part of a plan or scheme
19 with the intent not to sell that personal property or those services, professional or
20 otherwise, so advertised at the price stated therein, or as so advertised. Any
21 violation of the provisions of this section is a misdemeanor punishable by
22 imprisonment in the county jail not exceeding six months, or by a fine not
23 exceeding two thousand five hundred dollars (\$2,500), or by both that
24 imprisonment and fine.”

25 19. Section 17508 of the Code, in relevant part, provides:

26 “(a) It shall be unlawful for any person doing business in California and
27 advertising to consumers in California to make any false or misleading advertising
28 claim, including claims that (1) purport to be based on factual, objective, or clinical

1 evidence, that (2) compare the product's effectiveness or safety to that of other
2 brands or products, or that (3) purport to be based on any fact.

3 "...."

4 **HEALTH AND SAFETY CODE**

5 20. Section 11153 of the Health and Safety Code provides:

6 "(a) A prescription for a controlled substance shall only be issued for a
7 legitimate medical purpose by an individual practitioner acting in the usual course
8 of his or her professional practice. The responsibility for the proper prescribing
9 and dispensing of controlled substances is upon the prescribing practitioner, but a
10 corresponding responsibility rests with the pharmacist who fills the prescription.
11 Except as authorized by this division, the following are not legal prescriptions: (1)
12 an order purporting to be a prescription which is issued not in the usual course of
13 professional treatment or in legitimate and authorized research; or (2) an order for
14 an addict or habitual user of controlled substances, which is issued not in the
15 course of professional treatment or as part of an authorized narcotic treatment
16 program, for the purpose of providing the user with controlled substances,
17 sufficient to keep him or her comfortable by maintaining customary use.

18 "...."

19 21. Section 11154 of the Health and Safety Code provides:

20 "(a) Except in the regular practice of his or her profession, no person shall
21 knowingly prescribe, administer, dispense, or furnish a controlled substance to or
22 for any person or animal which is not under his or her treatment for a pathology or
23 condition other than addiction to a controlled substance, except as provided in this
24 division.

25 "(b) No person shall knowingly solicit, direct, induce, aid, or encourage a
26 practitioner authorized to write a prescription to unlawfully prescribe, administer,
27 dispense, or furnish a controlled substance."

28 22. Section 11157 of the Health and Safety Code provides:

1 “No person shall issue a prescription that is false or fictitious in any
2 respect.” without first obtaining a current valid license issued pursuant to this
3 chapter.”

4 23. Section 110390 of the Health and Safety Code provides:

5 “It is unlawful for any person to disseminate any false advertisement of any
6 food, drug, device, or cosmetic. An advertisement is false if it is false or
7 misleading in any particular.”

8 24. Section 110395 of the Health and Safety Code provides:

9 “It is unlawful for any person to manufacture, sell, deliver, hold, or offer for
10 sale any food, drug, device, or cosmetic that is falsely advertised.”

11 25. Section 110403 of the Health and Safety Code, in relevant part, provides:

12 “Except as otherwise provided in Section 110405, it is unlawful for any
13 person to advertise any drug or device represented to have any effect in any of the
14 following conditions, disorders, or diseases:

15 “... ”

16 “(c) Bone or joint diseases.

17 “... ”

18 26. Section 110405 of the Health and Safety Code provides:

19 “An advertisement that is not unlawful under Section 110390 is not
20 unlawful under Section 110403 if it is either one of the following:

21 “(a) Disseminated only to members of the medical, dental, pharmaceutical,
22 or veterinary professions, or appears only in the scientific periodicals of these
23 professions, or is disseminated only for the purpose of public health education by
24 persons not commercially interested, directly or indirectly, in the sale of drugs or
25 devices.

26 “(b) An advertisement that a drug or device has a specific curative or
27 therapeutic effect on a condition, disorder, or disease listed in Section 110403 if
28 the drug or device is approved or cleared for marketing for that specific curative or

1 therapeutic effect through any of the following means:

2 “(1) A new drug application approved pursuant to Section 111500, or
3 Section 505 of the federal act (21 U.S.C. Sec. 355).

4 “(2) An abbreviated new drug application approved pursuant to Section 505
5 of the federal act (21 U.S.C. Sec. 355).

6 “(3) A licensed biological product pursuant to Section 351 of the Public
7 Health Service Act (42 U.S.C. Sec. 262).

8 “(4) A nonprescription drug that meets the requirements of Part 330 of Title
9 21 of the Code of Federal Regulations.

10 “(5) A new animal drug application approved under Section 512 of the
11 federal act (21 U.S.C. Sec. 360b).

12 “(6) An abbreviated new animal drug application approved pursuant to
13 Section 512 of the federal act (21 U.S.C. Sec. 360b).

14 “(7) A new device application approved pursuant to Section 111550.

15 “(8) A device premarket approval application approved under Section 515
16 of the federal act (21 U.S.C. Sec. 360e).

17 “(9) A determination of substantial equivalence for a device pursuant to
18 Section 513(f)(1) of the federal act (21 U.S.C. Sec. 360c (i)).”

19 **DANGEROUS DRUGS**

20 27. The following medications are dangerous drugs within the meaning of
21 Business and Professions Code section 4211, *nee* 4022:¹

22 A. **Enbrel (Etanercept)** - used to treat rheumatoid arthritis²

23 B. **Methotextrate** - an antimetabolite used control severe psoriasis,
24

25 1. Business and Professions Code section 4211 has been renumbered 4022
26 (1996, ch. 890) and, in relevant part, defines a ‘dangerous drug’ as any drug or device
27 which by federal or state law can be lawfully dispensed only on a prescription.

28 2. Approved by the Food and Drug Administration (FDA) on November 2, 1998, for the
treatment of rheumatoid arthritis (RA).

1 rheumatoid arthritis, and certain types of cancer by interfering with cell growth and
2 by suppressing the immune system

3 C. **Remicade (Infliximab)** - used to treat Crohn's Disease and
4 rheumatoid arthritis by blocking the body's immune system's overproduction of
5 the TNF-alpha³ protein

6 COST RECOVERY

7 28. Section 125.3 of the Code provides, in pertinent part, that the Division may
8 request the administrative law judge to direct a licensee found to have committed a violation or
9 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
10 and enforcement of the case.

11 MEDI-CAL REIMBURSEMENT

12 29. Section 14124.12 of the Welfare and Institutions Code, in pertinent part,
13 provides:

14 "(a) Upon receipt of written notice from the Medical Board of California, the
15 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
16 that a licensee's license has been placed on probation as a result of a disciplinary action,
17 the department may not reimburse any Medi-Cal claim for the type of surgical service or
18 invasive procedure that gave rise to the probation, including any dental surgery or invasive
19 procedure, that was performed by the licensee on or after the effective date of probation
20 and until the termination of all probationary terms and conditions or until the probationary
21 period has ended, whichever occurs first. This section shall apply except in any case in
22 which the relevant licensing board determines that compelling circumstances warrant the
23 continued reimbursement during the probationary period of any Medi-Cal claim, including
24 any claim for dental services, as so described. In such a case, the department shall
25 continue to reimburse the licensee for all procedures, except for those invasive or surgical
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27
28 3. TNF-alpha is an immune system protein that controls tuberculosis infection. TNF is the
acronym for tumor necrosis factor.

1 procedures for which the licensee was placed on probation.”

2 **FIRST CAUSE FOR DISCIPLINE**

3 **(Gross Negligence)**

4 30. Respondent is subject to disciplinary action pursuant to Business and
5 Professions Code section 2234, subdivision (b), in that she committed gross negligence during his
6 care, treatment and management of Patients O.C. and I.F., and others, as follows:

7 A. After graduating medical school, obtaining his California physician
8 and surgeon’s certificate, and completing a residency program, Respondent began working
9 for Edward Lewis Tobinick, M.D. (Tobinick), at Tobinick’s Institute for Neurological
10 Research (INR) medical office located near the UCLA Medical Center. Respondent had
11 no experience or training in neurology or in performing medical research apart from that
12 which he learned in medical school and during his internship and residency program.

13 **Patient O.C.**

14 B. On or about August 30, 2002, O.C., a female, then 83 years old,
15 presented at the INR with back pain from disc disease.⁴ When making the appointment,
16 O.C. confirmed that there would be no charge for the consultation.

17 C. Upon her arrival at INR, O.C. did not meet a physician but,
18 rather, a sales associate who showed O.C. a promotional video for DiskCure. For
19 two years, Tobinick had been promoting “DiskCure,” through the print and
20 electronic media, as a revolutionary non-surgical treatment for back, neck, leg, and
21 arm pain due to degenerative disc disease developed by, and available only at,
22 INR. The promotional materials were false or misleading in that DiskCure was not
23 a “cure” for degenerative disc disease but rather a subcutaneous injection of
24 etanercept (Enbrel) which was developed by the Immunex Corporation, not
25 Tobinick, and at Immunex’ facilities, not at INR. Enbrel was FDA approved for
26

27 4. According to the report of a magnetic resonance imaging test (MRI) which O.C. had
28 undergone in July 2002, she had moderate disc protrusion at L4-5, moderate disc degeneration
at L3-4, and moderate disc bulging at L2-3 and L-5/S-1.

1 treating various forms of arthritis. It was not FDA approved for treating pain
2 associated with degenerative disc disease.⁵ Enbrel was available, by prescription,
3 at any pharmacy for approximately \$145 per dose.

4 D. Respondent knew that prospective patients scheduled initial
5 appointments at INR believing that the consultation for Tobinick's widely
6 publicized DiskCure was free. Respondent knew that patients could not receive
7 DiskCure unless the patient agree to pay \$300 to 450 for a physician consultation
8 and an additional fee, as high as \$2,200, for one treatment.

9 E. With the assistance of an INR employee, O.C. completed a
10 number of forms, including a legal disclaimer and "Informed Consent." After
11 being advised that she would be charged \$300 to meet and consult with a physician
12 to determine if she was an acceptable candidate for the DiskCure treatment and
13 another \$2,200 for the treatment itself, O.C. agreed and then spoke with
14 Respondent. At the time, O.C. had "had back pain for several years" and was
15 "willing to try [and pay] anything."

16 F. Respondent reviewed the results of the MRI which O.C. had
17 undergone earlier at another facility. Respondent told O.C. that she was a good
18 candidate for DiskCure and that the treatment would eliminate her pain.

19 G. Respondent did not perform a complete physical
20 examination. Respondent did not discuss the potential side effects and risks of
21 Enbrel use. Respondent did not advise Patient O.C. that there was no scientific
22 evidence to support the claims that Enbrel was effective in treating back pain.
23 However, Respondent later prepared a medical record for the patient which
24 indicates that he performed a complete physical examination and fully advised the
25 patient of the risk of Enbrel before administering the drug.

26
27
28 5. At the time, there was no scientifically acceptable evidence to support the effectiveness
of etanercept (Enbrel) in relieving pain due to degenerative disc disease.

1 H. Patient O.C. paid \$2,500 for the August 30th visit, including
2 the fee charged for the single etanercept (Enbrel) injection. The pain relief that
3 O.C. experienced, if any, was short lived..

4 I. On or about December 31, 2002, O.C. filed a written
5 consumer complaint with the Medical Board of California.

6 **Patient I.F.**

7 J. Prompted by repeated media advertisements and the promise
8 of a free consultation, I.V. scheduled his consultation for December 31, 2002. On
9 that day, I.F. presented to INR. His free consultation, O.C.'s, was with a sales
10 associate, not a physician. I.F. was shown a promotional video which testimonials
11 by reported DiskCure users who were now pain free. I.F. was told that while he
12 was likely candidate for the treatment, he would have to have to pay \$300.00 for a
13 physician to make the final decision.

14 K. Willing to do almost anything to be pain free, I.F. agreed to
15 pay the \$300.00 whereupon he was met by Respondent. Respondent spent about
16 15 minutes with I.F. During this time, Respondent told I.F. that the treatment
17 results for DiskCure were remarkable and that he was a good candidate for the
18 "cure." I.F. then agreed to pay \$2,200 for the treatment and was administered an
19 injection of etanercept (Enbrel) 25 mg. The charges were placed on the patient's
20 credit card.

21 L. Later, after being advised that his medical insurance may
22 cover the DiskCure treatment, I.F. called Respondent to enlist his assistance in the
23 filing the necessary paperwork as well as crediting I.F. credit card account.
24 Respondent refused to take I.F.'s calls.

25 M. The following acts and omissions of Respondent during his
26 care, treatment and management of patients constitute departures from the standard
27 of care:

28 1) Respondent, intentionally or negligently, misled

1 the public to believe he was engaged in neurological research for, or
2 on behalf of, the UCLA Medical Center.

3 2) Respondent falsely and fraudulently promoted
4 and touted DiskCure as having been invented at INR when it was
5 little more than a subcutaneous injection of etanercept (Enbrel), a
6 drug developed by the Immunex Corporation.

7 3) Respondent falsely and fraudulently represented
8 Tobinick's DiskCure as a revolutionary treatment only available at
9 Respondent's Institute for Neurological Research when it was little
10 more than a subcutaneous injection of etanercept (Enbrel).

11 4) Respondent took advantage of charged as much
12 as \$1,500 \$2,000 for each injection even though Enbrel was
13 available by prescription for around \$145 for each dose
14 administered by Respondent.

15 5) Respondent failed to disclose the lack of
16 scientifically acceptable evidence to support his public claim that
17 DiskCure was a safe and effective alternative method to alleviate
18 back, neck, arm and leg pain due to degenerative disc disease.

19 6) Respondent exposed patients to well documented
20 potential risk and harm by administering etanercept (Enbrel) to treat
21 back, neck, arm and leg pain due to degenerative disc disease where
22 there was no known or available scientifically acceptable evidence
23 to support etanercept (Enbrel)'s use for back, neck, arm and leg pain
24 due to degenerative disc disease.

25 7) Respondent failed to obtain a valid informed
26 consent before commencing treatment in that the document with the
27 heading "Informed Consent" and which purported to advise the
28 patient that the principle drug comprising DiskCure was not

1 approved for the treatment of back, neck, arm or leg pain due to
2 degenerative disc disease compromised by statements made to the
3 patient, specifically, and to the public, generally, by Respondent and
4 Tobinick.

5 8) Respondent falsely claimed that DiskCure had
6 shown to be 95% effective in the treatment of back, neck, arm and
7 leg pain due to degenerative disc disease, even though there was no
8 known scientifically acceptable data, findings, studies or other
9 evidence supporting such claims.

10 9) Respondent failed to follow the professional
11 standards of practice applicable for using a dangerous drug to treat
12 disease and other medical condition for which the dangerous drug
13 has not received approval.

14 10) Providing false and fraudulent information and
15 otherwise intentionally misrepresenting the medical condition of
16 patients and others for the purpose of obtaining etanercept (Enbrel);
17 or, in the alternative, enabling and allowing Edward Lewis Tobinick
18 to provide false and fraudulent information and otherwise
19 misrepresent the medical condition of patient for the purpose of
20 obtaining etanercept (Enbrel).

21 11) Prescribed dangerous drugs without medical
22 indication for the drug and without first performing an adequate
23 physical examination.

24 12) Refusing to return calls from patient
25 concerning billing and other issues related to the treatment received.

26 **SECOND CAUSE FOR DISCIPLINE**

27 **(Repeated Negligent Acts)**

28 31. Respondent is subject to disciplinary action pursuant to Business and

1 Professions Code section 2234, subdivision (c), in that Respondent committed repeated acts of
2 negligence during his care, treatment and management of Patients O.C. and I.F., and others, as
3 follows:

4 A. Complainant refers to and, by this reference, incorporates
5 herein, Paragraph 30, subparagraphs A through L, inclusive, above, as though fully
6 set forth.

7 B. The following acts and omissions of Respondent during his
8 care, treatment and management of patients constitute departures from the standard
9 of care:

10 1) Respondent, intentionally or negligently, misled
11 the public to believe he was engaged in neurological research for, or
12 on behalf of, the UCLA Medical Center.

13 2) Respondent falsely and fraudulently promoted
14 and touted DiskCure as having been invented at INR when it was
15 little more than a subcutaneous injection of etanercept (Enbrel), a
16 drug developed by the Immunex Corporation.

17 3) Respondent falsely and fraudulently represented
18 DiskCure as a revolutionary treatment only available at
19 Respondent's Institute for Neurological Research when it was little
20 more than a subcutaneous injection of etanercept (Enbrel).

21 4) Respondent took advantage of charged as much
22 as \$1,500 \$2,000 for each injection even though Enbrel was
23 available by prescription for around \$145 for each dose
24 administered by Respondent.

25 5) Respondent failed to disclose the lack of
26 scientifically acceptable evidence to support his public claim that
27 DiskCure was a safe and effective alternative method to alleviate
28 back, neck, arm and leg pain due to degenerative disc disease.

1 6) Respondent exposed patients to well documented
2 potential risk and harm by administering etanercept (Enbrel) to treat
3 back, neck, arm and leg pain due to degenerative disc disease where
4 there was no known or available scientifically acceptable evidence
5 to support etanercept (Enbrel)'s use for back, neck, arm and leg pain
6 due to degenerative disc disease.

7 7) Respondent failed to obtain a valid informed
8 consent before commencing treatment in that the document with the
9 heading "Informed Consent" and which purported to advise the
10 patient that the principle drug comprising DiskCure was not
11 approved for the treatment of back, neck, arm or leg pain due to
12 degenerative disc disease compromised by statements made to the
13 patient, specifically, and to the public, generally, by Respondent
14 Tobinick.

15 8) Respondent falsely claimed that DiskCure had
16 shown to be 95% effective in the treatment of back, neck, arm and
17 leg pain due to degenerative disc disease, even though there was no
18 known scientifically acceptable data, findings, studies or other
19 evidence supporting such claims.

20 9) Respondent failed to follow the professional
21 standards of practice applicable for using a dangerous drug to treat
22 disease and other medical condition for which the dangerous drug
23 has not received approval.

24 10) Providing false and fraudulent information and
25 otherwise intentionally misrepresenting the medical condition of
26 patients and others for the purpose of obtaining etanercept (Enbrel);
27 or, in the alternative, enabling and allowing Edward Lewis Tobinick
28 to provide false and fraudulent information and otherwise

1 misrepresent the medical condition of patient for the purpose of
2 obtaining etanercept (Enbrel).

3 11) Prescribed dangerous drugs without medical
4 indication for the drug and without first performing an adequate
5 physical examination.

6 12) Refusing to return calls from patient
7 concerning billing and other issues related to the treatment received.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Incompetence)**

10 32. Respondent is subject to disciplinary action pursuant to Business and
11 Professions Code section 2234, subdivision (d), for incompetence, in that Respondent has
12 demonstrated the inability to discharge the duties and responsibilities of a licensed physician and
13 surgeon, as follows:

14 A. Complainant refers to and, by this reference, incorporates
15 herein Paragraphs 30, subparagraphs A through L, inclusive, above, as though fully
16 set forth.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Dishonest or Corrupt Acts)**

19 33. Respondent is subject to disciplinary action pursuant to Business and
20 Professions Code section 2234, subdivision (e), in that Respondent has committed dishonest or
21 corrupt acts as a licensed physician and surgeon, as follows:

22 A. Complainant refers to and, by this reference, incorporates
23 herein Paragraph 30, subparagraphs A through L, inclusive, above, as though fully
24 set forth.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Prescribing Without Good Faith Examination or Medical Indication))**

27 34. Respondent is subject to disciplinary action pursuant to Business and
28 Professions Code section 2242 in that Respondent prescribed or administered dangerous drugs,

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Preamble

“Never in the history of human civilization has the well being of each individual been so inextricably linked to that of every other. Plagues and pandemics respect no national borders in a world of global commerce and travel. Wars and acts of terrorism enlist innocents as combatants and mark civilians as targets. Advances in medical science and genetics, while promising great good, may also be harnessed as agents of evil. The unprecedented scope and immediacy of these universal challenges demand concerted action and response by all.

As physicians, we are bound in our response by a common heritage of caring for the sick and the suffering. Through the centuries, individual physicians have fulfilled this obligation by applying their skills and knowledge competently, selflessly and at times heroically. Today, our profession must reaffirm its historical commitment to combat natural and man-made assaults on the health and well being of humankind. Only by acting together across geographic and ideological divides can we overcome such powerful threats. Humanity is our patient.

Declaration

We, the members of the world community of physicians, solemnly commit ourselves to:

- I. Respect human life and the dignity of every individual.
- II. Refrain from supporting or committing crimes against humanity and condemn all such acts.
- III. Treat the sick and injured with competence and compassion and without prejudice.
- IV. Apply our knowledge and skills when needed, though doing so may put us at risk.
- V. Protect the privacy and confidentiality of those for whom we care and breach that confidence only when keeping it would seriously threaten their health and safety or that of others.
- VI. Work freely with colleagues to discover, develop, and promote advances in medicine and public health that ameliorate suffering and contribute to human well-being.
- VII. Educate the public and polity about present and future threats to the health of humanity.
- VIII. Advocate for social, economic, educational, and political changes that ameliorate suffering and contribute to human well-being.
- IX. Teach and mentor those who follow us for they are the future of our caring profession.

1 of the Medical Practice Act as alleged in the causes for discipline, set forth in paragraph 30,
2 subparagraphs A through L, inclusive, above, during his care, treatment and management of

3
4 We make these promises solemnly, freely, and upon our personal and
5 professional honor.”

6
7 * * *

8 **AMA Code of Medical Ethics**

9 **Preamble**

10 The medical profession has long subscribed to a body of ethical statements
11 developed primarily for the benefit of the patient. As a member of this
12 profession, a physician must recognize responsibility to patients first and
13 foremost, as well as to society, to other health professionals, and to self. The
14 following Principles adopted by the American Medical Association are not laws,
15 but standards of conduct which define the essentials of honorable behavior for
16 the physician.

17 **Principles of Medical Ethics**

18 A physician shall respect the law and also recognize a
19 responsibility to seek changes in those requirements which are
20 contrary to the best interests of the patient.

21 A physician shall respect the rights of patients, colleagues, and
22 other health professionals, and shall safeguard patient
23 confidences and privacy within the constraints of the law.

24 A physician shall continue to study, apply, and advance scientific
25 knowledge, maintain a commitment to medical education, make
26 relevant information available to patients, colleagues, and the
27 public, obtain consultation, and use the talents of other health
28 professionals when indicated.

A physician shall, in the provision of appropriate patient care,
except in emergencies, be free to choose whom to serve, with
whom to associate, and the environment in which to provide
medical care.

A physician shall recognize a responsibility to participate in
activities contributing to the improvement of the community and
the betterment of public health.

A physician shall, while caring for a patient, regard responsibility
to the patient as paramount.

A physician shall support access to medical care for all people.

1 Patients O.C. and I.F., as follows:

2 A. Complainant refers to and, by this reference, incorporates
3 herein Paragraph 30, subparagraphs A through L, inclusive, above, as though fully
4 set forth.

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1 PRAYER

2 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Division of Medical Quality issue a decision:


4 1. Revoking or suspending Physician and Surgeon's Certificate Number G,
5 issued to Chaim Vanek, M.D.;

6 2. Revoking, suspending or denying approval of Chaim Vanek's, M.D.,
7 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

8 3. Ordering Chaim Vanek, M.D., to pay the Division of Medical Quality the
9 reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the
10 costs of probation monitoring; and,

11 4. Taking such other and further action as deemed necessary and proper.

12 DATED: November 12, 2004.

13
14 
15 DAVID T. THORNTON
16 Interim Executive Director
17 Medical Board of California
18 Department of Consumer Affairs
19 State of California

20 Complainant
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22
23
24
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Exhibit B
Public Letter of Reprimand



MEDICAL BOARD OF CALIFORNIA
EXECUTIVE OFFICE
1434 Howe Avenue, Suite 92
Sacramento, CA 95825-3236
(916) 263-2389 FAX (916) 263-2387
www.medbd.ca.gov



April 11, 2007

Chaim Vanek, M.D.
P.O. Box 8485
Portland, OR 97207

RE: Physician's and Surgeon's Certificate No. A-77368
Case No. 06-2002-141688

Public Letter of Reprimand

On November 12, 2004, an Accusation was filed against you regarding your care and treatment of two patients who were seen in 2002, while you were employed by Edward L. Tobinick, M.D., Inc. at the Institute for Neurological Research. You gave these two patients one injection each of etanercept (a tumor necrosis factor- α inhibitor that has been approved by the United States Food and Drug Administration for several uses, including in cases of rheumatoid arthritis and other autoimmune diseases) to relieve pain resulting from disk injury. The use of etanercept required that a physician and surgeon take particular care with patients who may have infections or who are at high risk of developing infections. Although no medical harm came to either of these two patients as a result of your care and treatment, you did not exercise that extra degree of care by:

- (1) Failing to measure the body temperature or to perform a skin test for tuberculosis in either patient before injecting them with etanercept, although neither patient had active tuberculosis.
- (2) Failing to assure that diabetes mellitus of patient I.F. was under control by measuring Hemoglobin A_{1C}.

Pursuant to the authority of the California Business and Professions Code section 2233, you are hereby issued this Public Letter of Reprimand by the Medical Board of California with the expectation that you have addressed the causes for this conduct, and that you have taken steps to ensure that this conduct will not be repeated.

Cesar A. Aristeiguieta, M.D.
President
Division of Medical Quality