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 Yaroslavsky
Chair
Panel B
Division of Medical Quality
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.
Institute of Neurological Research
100 UCLA Medical Plaza, #210
Los Angeles, California 90095

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

Respondent.

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

STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

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

PARTIES

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

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

JURISDICTION
4. Second Amended Accusation No. 06-2001-127668 was filed before the Division of Medical Quality (Division) of the Board, and is currently pending against Respondent. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent on September 18, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of the Second Amended Accusation No. 06-2001-127668 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS
5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation No. 06-2001-127668. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.
6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Second Amended Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY
8. Respondent understands that the charges and allegations in Second Amended Accusation No. 06-2003-143245, if proven at a hearing, constitute cause for imposing discipline upon his Physician’s and Surgeon’s certificate.
9. Respondent admits that the Board could present a prima facie case of the
charges contained in the Second Amended Accusation concerning violations of Business and Professions Code sections 2238 and 2285, and waives his right to present a defense thereto. Respondent hereby gives up his right to contest that cause for discipline exists based on that charge.

CIRCUMSTANCES IN MITIGATION

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

RESERVATION

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

CONTINGENCY

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

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
14. In consideration of the foregoing admissions and stipulations, the parties agree that the Division may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED Respondent Edward Tobinick, M.D. (Respondent) is suspended from the practice of medicine for 60 days. However, the suspension is stayed and Respondent is placed on probation for one (1) year, or until completion of the ethics course provided for in paragraph 2 below, whichever occurs later, on the following terms and conditions.

1. **PRESCRIBING PRACTICES COURSE** Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

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

2. **ETHICS COURSE** Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.
Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

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

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

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

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent’s practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours, and shall retain the records for the entire term of probation.
The monitor(s) shall submit a quarterly written report to the Division or its
designee which includes an evaluation of respondent’s performance, indicating whether
respondent’s practices are within the standards of practice of medicine or billing, or both, and
whether respondent is practicing medicine safely, billing appropriately or both.

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

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

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

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

4. NOTIFICATION Prior to engaging in the practice of medicine, the
respondent shall provide a true copy of the Decision and Second Amended Accusation to the
Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership
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
to respondent. Respondent shall submit proof of compliance to the Division or its designee
3 within 15 calendar days.

4 This condition shall apply to any change(s) in hospitals, other facilities or
5 insurance carrier.
6
5. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, respondent is prohibited from supervising physician assistants.
7
6. OBEY ALL LAWS Respondent shall obey all federal, state and local
8 laws, all rules governing the practice of medicine in California, and remain in full compliance
9 with any court ordered criminal probation, payments and other orders.
10
7. QUARTERLY DECLARATIONS Respondent shall submit quarterly
11 declarations under penalty of perjury on forms provided by the Division, stating whether there
12 has been compliance with all the conditions of probation. Respondent shall submit quarterly
13 declarations not later than 10 calendar days after the end of the preceding quarter.
14
8. PROBATION UNIT COMPLIANCE Respondent shall comply with the
15 Division's probation unit. Respondent shall, at all times, keep the Division informed of
16 respondent's business and residence addresses. Changes of such addresses shall be immediately
17 communicated in writing to the Division or its designee. Under no circumstances shall a post
18 office box serve as an address of record, except as allowed by Business and Professions Code
19 section 2021(b).
20
21 Respondent shall not engage in the practice of medicine in respondent's place of
22 residence. Respondent shall maintain a current and renewed California physician's and
23 surgeon's license.
24
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
shall be available in person for interviews either at respondent’s place of business or at the
probation unit office, with the Division or its designee, upon request at various intervals, and
either with or without prior notice throughout the term of probation.

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

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

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

11. **FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT**

In the event respondent resides in the State of California and for any reason
respondent stops practicing medicine in California, respondent shall notify the Division or its
designee in writing within 30 calendar days prior to the dates of non-practice and return to
practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

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

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

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

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

14. LICENSE SURRENDER  Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Division reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed
appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent’s wallet and wallet certificate to the Division or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent’s license shall be deemed disciplinary action. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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

**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: September 19, 2006

EDWARD TOBINICK, M.D. (Respondent)

Respondent

I have read and fully discussed with Respondent Edward Tobinick, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and
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 9, 2006

BILL LOCKYER, Attorney General
of the State of California

JOHN E. RITTMAYER
Deputy Attorney General

Attorneys for Complainant