

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


In the Matter of the Accusation Against:)	
)	
RONESH SINHA,, M.D.)	MBC Case # 06-2002-132377
)	
Physician's & Surgeon's)	
Certificate No. G 75790)	
)	
_____ Respondent.)	

**ORDER CORRECTING CLERICAL ERROR IN
"CASE NUMBER" PORTION OF DECISION**

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error in the "case number" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the case number will conform to the Board's issued license.

IT IS HEREBY ORDERED that the case number contained on the Decision Order Page in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the decision to read as "06-2002-132377".

September 18, 2006



Renee Threadgill, Interim Chief of Enforcement
Division of Medical Quality
Medical Board of California

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

In the Matter of the Accusation)
Against:)
)
)
RONESH SINHA, M.D.) File No. 06-2002-134548
)
Physician's and Surgeon's)
Certificate No. A 70506)
)
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 11, 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 RONESEH SINHA, M.D.
Physician's and Surgeon's Certificate No.:
14 A 70506,
15 Respondent.

Case No. 06-2002-132377

OAH No. L20060200536

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
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 Ronesh Sinha, 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 10, 1999, the Medical Board of California issued
28 Physician's and Surgeon's Certificate No. A 70506 to Ronesh Sinha, M.D. (Respondent). The

1 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
2 No. 06-2002-132377 (the Accusation) and will expire on August 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 Accusation, if
26 proved at a hearing, would constitute cause for imposing discipline upon his Physician's and
27 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. ETHICS COURSE** Within thirty (30) days from the effective date of
21 this agreement, respondent shall enroll in a course in ethics, at respondent's expense, approved
22 in advance by the Division or its designee.

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

28 Respondent shall submit a certification of successful completion to the Division

1 or its designee not later than 15 calendar days after successfully completing the course, or not
2 later than 15 calendar days after the effective date of the Decision, whichever is later.

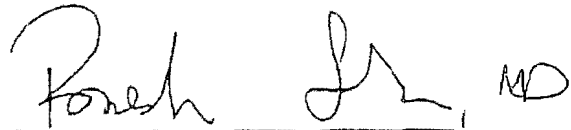
3 C. COMPLIANCE If respondent timely and successfully completes the
4 terms and conditions set forth above, a public letter of reprimand shall be issued to respondent
5 pursuant to Business and Professions Code section 2233, in the form of the public letter of
6 reprimand that is attached hereto as Exhibit B and, by this reference, is incorporated herein as
7 though fully set forth.

8 D. FAILURE TO COMPLY If respondent fails to timely and successfully
9 complete each term and condition set forth above, then the Accusation may be amended to allege
10 these matters as additional grounds for discipline, and the case will be returned to the Office of
11 Administration Hearing for trial.

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: 7/28/06

 MD

20
21 RONESH SINHA, M.D. (Respondent)
Respondent

22
23 DATED: 8/3/06



24
25 PETER R. OSINOFF
Attorney for Respondent

26 ///

27 ///

28 ///

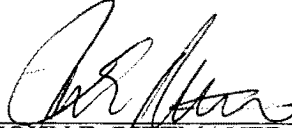
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ENDORSEMENT

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

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Exhibit A

Accusation No. 06-2002-132377

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
300 S. Spring St., Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-8644
5 Facsimile: (213) 897-9395
E-mail: richard.marino@doj.ca.gov

6 Attorneys for Complainant
7

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

13 In the Matter of the Accusation Against:

Case No. 06-2002-132377

14 RONESH SINHA, M.D.
290 Redwood Shores Parkway
15 Redwood City, CA 94065

ACCUSATION

16 Physician and Surgeon's Certificate No. A70506,
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 10, 1999, the Medical Board of California issued
23 Physician and Surgeon's Certificate Number A70506 to Ronesh Sinha, 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 August 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 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.

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

17. Section 2266 of the Code provides:

“The failure of a physician and surgeon to maintain adequate and accurate

1 records relating to the provision of services to their patients constitutes
2 unprofessional conduct.”

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 licentiate 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
26

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 he committed gross negligence during his
6 care, treatment and management of Patients F.H., L.K., B.S., J.S., M.M., M.N, M.R, G.K., and
7 others, as follows:

8 A. Upon completing his residency program in June 2001,
9 Respondent was hired by Edward Lewis Tobinick M.D., to fill an “internal
10 medicine position” at Tobinick’s Institute for Neurological Research” (INR),
11 located in a medical office building adjacent to the UCLA Medical Center. At the
12 time, Tobinick was, and had been for about one year, promoting and touting
13 DiskCure as an “innovative” and “revolutionary” non-surgical treatment for pain
14 due to degenerative disc disease; that the treatment was developed by Tobinick;
15 and, that DiskCure was only available at INR. Respondent knew that DiskCure
16 was little more than etanercept (Enbrel) which was developed, manufactured and
17 distributed by the Immunex Corporation; that Enbrel was available by prescription
18 at any pharmacy; and, that there was no acceptable scientific evidence to support
19 Enbrel’s use in the treatment of pain due to degenerative disc disease. Respondent
20 was also aware that many, if not most, of those individuals who appointed at
21 Tobinick’s INR did so in the belief that the initial consultation was at no charge;
22 that INR was engaged in medical research and was affiliated with the UCLA
23 Medical Center; and, that there was support for the published claims of DiskCure’s
24 efficacy in treating pain due to degenerative disc disease.

25 **Patient F.H.**

26 B. On October 22, 2001, F.H. presented to INR with
27 complaints of a protruding disk at the C5-6 level and ongoing neck and upper back
28 pain since January 2001. F.H. heard about DiskCure and the “FREE consultation,”

1 through Tobinick's internet site at <http://www.diskcure.com> and other promotional
2 materials. F.H. did not have a free consultation with a physician and surgeon.
3 Instead, a sales associate, employed by Tobinick, showed a promotional videotape
4 depicting patients who had been administered DiskCure and no longer had back,
5 neck, arm or leg pain. The sales associated told F.H. that he was a likely
6 candidate for treatment. The sales associate then instructed F.H. to complete
7 numerous preprinted forms, a health questionnaires, and a form explaining the
8 attendant costs of the DiskCure treatment.

9 C. After completing the forms and agreeing the costs associated with
10 the treatment including a fee of \$450 for a physician consultation to determine if he was an
11 acceptable candidate for Tobinick's advertised treatment, F.H. was seen by Respondent.

12 D. Respondent administered a subcutaneous injection of etanercept
13 (Enbrel) without conducting a physical examination and without confirming the patient's
14 presenting complaints.

15 E. Within minutes of the injection, F.H. told Respondent that he (F.H.)
16 "could feel a bit of comfort[.]" Although F.H. did not quantify the degree of "comfort,"
17 Respondent recorded 90% and the degree of relief following the injection.

18 F. F.H. spent approximately one hour at the INR, including the
19 viewing of the videotape and the administration of the injection.

20 G. Fees of \$450.00 for the examination and \$1,500.00 for the Enbrel
21 injection were posted to F.H.'s credit card. On October 29, 2002, F.H. sent Tobinick a
22 written complaint along with a request to have the charges refunded because the injection
23 had not relieved his pain other than for the momentary period shortly after its
24 administration. The following date, F.H.'s refund request was denied. On November 6,
25 2001, F.H. filed a written consumer complaint with the Medical Board of California.

26 **Patient L.K..**

27 H. On August 13, 2002, L.K., a male, then 70 years old,
28 presented at INR with a complaint in the back of his right leg extending from the

1 right buttock through the thigh to the calf areas, 24 hours each day, for two to three
2 months. L.K. thought the pain was the result of a pinched nerve. L.K.'s family
3 physician had prescribed pain medication which was not effective. Having seen
4 the advertisements in the media for DiskCure and believing that INR was a
5 research clinic affiliated with the UCLA Medical Center, L.K. telephoned the
6 institute to schedule the consultation to determine if he was candidate for
7 DiskCure, a consultation he understood from the media advertisements would be at
8 no charge.

9 I. At the outset of the office visit, L.K. was shown a
10 promotional video extolling the benefits of DiskCure. The videotape, however, did
11 not mention that DiskCure was no more than a subcutaneous injection of
12 etanercept (Enbrel) which was available by prescription at any pharmacy for about
13 \$145; that the use of Enbrel for disc disease was not FDA approved; or, that there
14 was no scientifically acceptable evidence to support the use of Enbrel to treat back
15 pain due to degenerative disc disease.

16 J. L.K. was then told that only a physician could determine
17 whether he was a suitable candidate for DiskCure and that a physician consultation
18 would cost \$300. Willing to do anything for the relief of his back pain, L.K.
19 agreed to the \$300 fee and consulted with Respondent. Respondent told L.K. that
20 DiskCure would relieve his pain. L.K. then received a subcutaneous injection of
21 etanercept (Enbrel) 25 mg for which he was charged \$2,200.

22 K. No physical examination, magnetic resonance imaging, x-
23 ray or other testing was performed prior to the injection.

24 L. Patient L.K. felt some pain relief several hours after the
25 injection. However, the pain had returned by the following day.

26 M. Patient L.K. returned to his family physician who
27 recommended physical therapy which ultimately resolved the pain.

28 N. During the latter part of September 2002, L.K. filed a

1 written consumer complaint with the Medical Board of California.

2 **Patient B.S.**

3 O. On January 23, 2002, B.S., a female, then 66 years old, with
4 a 10 year history of upper and lower back and bilateral lower bilateral extremity
5 pain, presented at INR with complaints of intolerable pain which she thought was
6 due to a bulging disc. B.S.' medical history was remarkable for insulin dependent
7 diabetes mellitus, hypertension, B.S. paid \$300 for a consultation with Respondent
8 and \$2,000 for an Enbrel injection. No physical examination, magnetic resonance
9 imaging, x-ray or other testing was performed prior to the administration of
10 Enbrel. Respondent falsely recorded that B.S. felt 100% relief from the pain
11 immediately following the Enbrel injection. B.S. then gave a testimonial to the
12 effectiveness of DiskCure. B.S.' pain returned a few days later. On November 19,
13 2002, she went to INR and demanded a refund of her payment and the return of her
14 testimonial.

15 **Patient J.S.**

16 P. On or about June 11, 2000, J.S., a male, then 76 years old,
17 presented at INR after scheduling a "free consultation." J.S. had a 10 year history
18 of low back pain. J.S. was shown a video presentation containing patient
19 testimonials to the remarkable success of the DiskCure treatment and believing that
20 INR was associated with the UCLA Medical Center, J.S. agreed to pay for a
21 consultation to determine his suitability for the DiskCure treatment. J.S. paid
22 \$450.00 for a 10-15 minute discussion with Respondent during which Respondent
23 listened to J.S. described his pain history and reviewed the results of an MRI which
24 J.S. had undergone approximately six months earlier at another facility.

25 Q. Respondent told J.S. that he was a candidate for treatment.
26 J.S. then paid \$1,500.00 for the DiskCure treatment which consisted of an injection
27 of etanercept (Enbrel) 25 mg.

28 R. Although Respondent did not perform a physical

1 examination he recorded that he did so in J.S.' patient records.

2 S. J.S. experienced relief at the time of the injection; however,
3 the pain returned several days later. J.S. returned to his pain management
4 specialist, Dr. K.B. J.S. authorized Dr. K.B. to speak with Respondent about the
5 DiskCure treatment. Dr. K.B. made several failed attempts to contact Respondent
6 at INR. Only after Dr. K.B. threatened legal action did Respondent take Dr. K.B.'s
7 call. Respondent, however, refused to discuss the treatment unless Dr. K.B. agreed
8 to execute a nondisclosure agreement. Dr. K.B. again threatened legal action.
9 Respondent then informed Dr. K.B. that DiskCure was merely an off label use of
10 etanercept (Enbrel). Respondent further informed Dr. K.B. that the research
11 behind DiskCure was not published and had not been reviewed by an independent
12 research board.

13 T. Dr. K.B. filed a written consumer complaint with the
14 Medical Board of California.

15 **Patient M.M.**

16 U. On or about March 15, 2002, after scheduling a "free
17 consultation" as advertised in the Los Angeles Times, M.M., a female, then 72
18 years old, presented to INR. M.M. had a 10 year history of bilateral upper and
19 lower extremity pain with dysesthesia. Her medical history is also remarkable for
20 hypertension and osteoarthritis.

21 V. A sales associate showed M.M. a video presentation
22 containing patient testimonials to the remarkable success of the DiskCure
23 treatment. Believing that INR was associated with the UCLA Medical Center as
24 well as the testimonials, M.M. agreed to pay for a consultation to determine her
25 suitability for the DiskCure treatment. M.M. paid \$300.00 for a consultation with
26 Respondent.

27 W. Respondent told M.M. that she was a candidate for
28 treatment. M.M. then paid \$1,900.00 for the DiskCure treatment which consisted

1 of an injection of etanercept (Enbrel) 25 mg. M.M. felt relief for a couple days but
2 began experiencing a number of side effects associated with etanercept of which
3 she was not advised by Respondent prior to treatment.

4 X. Although Respondent did not perform a physical
5 examination he recorded that he did so in M.M. patient records. Respondent,
6 however, did not record M.M.'s vital signs. Respondent did not confirm M.M.'s
7 reported pain history or attempt to determine the cause of the pain.

8 Y. M.M. returned to INR on two occasions complaining of side
9 effect from DiskCure.

10 **Patients M.N. and M.R.**

11 Z. Prompted by media advertisements, M.N. and M.R.,
12 females, appointed at INR for a free consultation for the treatment of back pain.
13 Each patient's "free consultation" was with a sales associate, not a physician.
14 M.N. and M.R. were shown a video containing patient testimonials that they were
15 pain free after DiskCure. After agreeing to pay for a physician consultation which
16 each patient was told was necessary before undergoing the DiskCure treatment, the
17 patients met with Respondent. M.N. and M.R. were told by Respondent or by the
18 sales associate or both that there was only a 5% failure rate with DiskCure.
19 Respondent knew such information was false because there was no scientifically
20 acceptable data in support of the claim.

21 **Patient G.K.**

22 AA. Prompted by an advertisement published in the Los Angeles
23 Times, G.K. appointed at INR for treatment of a herniated disc and osteoarthritis.
24 On the day of her appointment, G.K. was shown a video testimonial regarding
25 DiskCure. After agreeing to pay for a physician consultation, G.K. was seen by
26 Respondent.

27 BB. Respondent reviewed the results of magnetic resonance
28 imaging test undergone earlier by G.K. at another facility. No physical

1 examination was recorded. The patient's vital signs were not taken.
2 Notwithstanding, Respondent told G.K. that she was a candidate for DiskCure.
3 G.K. agree to an additional fee of \$1,200 and received a subcutaneous injection
4 etanercept (Enbrel). G.K. felt immediate relief from her back pain.

5 CC. G.K. scheduled a second appointment at INR's Newport
6 Beach location as it was closer to her residence. On August 10, 2001, G.K.
7 presented to the Newport Beach location where she was seen by another physician
8 employed by Edward Lewis Tobinick, Susan Davoodifar, M.D.

9 DD. The following acts and omissions of Respondent during his
10 care, treatment and management of patients, considered separately or collectively,
11 constitute extreme departures from the standard of care:

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

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

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

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

27 5) Respondent failed to disclose the lack of
28 scientifically acceptable evidence to support his public claim that

1 DiskCure was a safe and effective alternative method to alleviate
2 back, neck, arm and leg pain due to degenerative disc disease.

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

9 7) Respondent failed to obtain a valid informed
10 consent before commencing treatment in that the document with the
11 heading "Informed Consent" and which purported to advise the
12 patient that the principle drug comprising DiskCure was not
13 approved for the treatment of back, neck, arm or leg pain due to
14 degenerative disc disease compromised by statements made to the
15 patient by Respondent as well as information disseminated by
16 Edward Lewis Tobinick, M.D., through the print and electronic
17 media that DiskCure was revolutionary, a "magic bullet," and other
18 similar, unsupported claims.

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

24 9) Respondent failed to follow the professional
25 standards of practice applicable for using a dangerous drug to treat
26 disease and other medical condition for which the dangerous drug
27 has not received approval.

28 10) Providing false and fraudulent information and

1 otherwise intentionally misrepresenting the medical condition of
2 patients and others for the purpose of obtaining etanercept (Enbrel);
3 or, in the alternative, enabling and allowing Edward Lewis Tobinick
4 to provide false and fraudulent information and otherwise
5 misrepresent the medical condition of patient for the purpose of
6 obtaining etanercept (Enbrel).

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Repeated Negligent Acts)**

9 31 Respondent is subject to disciplinary action pursuant to Business and
10 Professions Code section 2234, subdivision (c), in that he committed repeated acts of negligence
11 during his care, treatment and management of Patients F.H., L.K., B.S., J.S., M.M., M.N, M.R,
12 G.K., and others, as follows:

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

16 B. The following acts and omissions of Respondent during his
17 care, treatment and management of patients constitute departures from the standard
18 of care:

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

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

26 3) Respondent falsely and fraudulently represented
27 his DiskCure as a revolutionary treatment only available at
28 Respondent's Institute for Neurological Research when it was little

1 more than a subcutaneous injection of etanercept (Enbrel).

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

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

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

16 7) Respondent failed to obtain a valid informed
17 consent before commencing treatment in that the document with the
18 heading "Informed Consent" and which purported to advise the
19 patient that the principle drug comprising DiskCure was not
20 approved for the treatment of back, neck, arm or leg pain due to
21 degenerative disc disease compromised by statements made to the
22 patient by Respondent as well as information disseminated by
23 Edward Lewis Tobinick, M.D., through the print and electronic
24 media that DiskCure was revolutionary, a "magic bullet," and other
25 similar, unsupported claims.

26 8) Respondent falsely claimed that DiskCure had
27 shown to be 95% effective in the treatment of back, neck, arm and
28 leg pain due to degenerative disc disease, even though there was no

1 known scientifically acceptable data, findings, studies or other
2 evidence supporting such claims.

3 9) Respondent failed to follow the professional
4 standards of practice applicable for using a dangerous drug to treat
5 disease and other medical condition for which the dangerous drug
6 has not received approval.

7 10) Providing false and fraudulent information and
8 otherwise intentionally misrepresenting the medical condition of
9 patients and others for the purpose of obtaining etanercept (Enbrel);
10 or, in the alternative, enabling and allowing Edward Lewis Tobinick
11 to provide false and fraudulent information and otherwise
12 misrepresent the medical condition of patient for the purpose of
13 obtaining etanercept (Enbrel).

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Incompetence)**

16 32 Respondent is subject to disciplinary action pursuant to Business and
17 Professions Code section 2234, subdivision (d), in that he has demonstrated the inability to
18 discharge the duties and responsibilities of a licensed physician and surgeon, as follows:

19 A. Complainant refers to and, by this reference, incorporates
20 herein paragraph 30, subparagraphs A through DD, inclusive, above, as though
21 fully set forth.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Dishonest or Corrupt Acts)**

24 33. Respondent is subject to disciplinary action pursuant to Business and
25 Professions Code section 2234, subdivision (e), in that he committed dishonest or corrupt acts or
26 assisted Edward Lewis Tobinick, M.D., to commit dishonest or corrupt acts, as a licensed
27 physician and surgeon, as follows:

28 A. Complainant refers to and, by this reference, incorporates

1 herein paragraph 30, subparagraphs A through DD, inclusive, above, as though
2 fully set forth.

3 B. On or about and during his employment as a physician an
4 surgeon for Edward Lewis Tobinick, M.D., or INR, Respondent made false
5 representations to others to enable Tobinick to obtain etanercept (Enbrel) to
6 promote, market, dispense, administer and otherwise provide, using the name
7 DiskCure.

8 C. Near the end of 2000, Tobinick learned that because
9 production of Enbrel could not meet demand, current Enbrel users were required to
10 register with the "Enbrel Enrollment Program" in order to have their prescriptions
11 filled; and, further, that prospective Enbrel users were required to add their names
12 to the "Prospective Patient List" in order to obtain Enbrel if and when the
13 medication became available.⁴ Tobinick registered or caused to be registered 47
14 individuals, including his brother, other members of his family, himself, who was
15 not a patient, in the "Enbrel Enrollment Program" as current patients being treated
16 with Enbrel and, further, listed INR's address as the delivery site for the Enbrel
17 prescriptions. Most, if not all, of the individuals whose names were registered or
18 caused to be registered were not current users of Enbrel and none suffered from
19 rheumatoid arthritis or other disease or medical condition for which Enbrel was an
20 approved treatment. Respondent himself completed the enrollment application for
21 39 of the 47.

22 D. By assisting Tobinick to obtain Enbrel for individuals who
23 were not then current Enbrel users or sufferers from rheumatoid arthritis,
24 Respondent reduced the availability of Enbrel to patients with rheumatoid arthritis
25 or other disease or medical condition for which Enbrel was an approved treatment
26 who were obtaining relief with Enbrel and for whom Enbrel had been appropriately
27

28 4. Enbrel continued to be in short supply well into 2003.

1 prescribed. Based largely on the 39 enrollments falsely reported by Respondent,
2 Tobinick was able to obtain 712 vials of Enbrel, enough medication to treat seven
3 patients with rheumatoid arthritis for an entire year, from a single pharmacy, during
4 September and October 2002.

5 **FIFTH CAUSE FOR DISCIPLINE**

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

7 34. Respondent is subject to disciplinary action pursuant to Business and
8 Professions Code section 2242 in that he prescribed dangerous drugs without a good faith
9 examination or without acceptable medical indication, therefor as follows:

10 A. Complainant refers to and, by this reference, incorporates
11 herein paragraph 30, subparagraphs A through CC, inclusive, above, as though
12 fully set forth.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 **(False Documents)**

15 35 Respondent is subject to disciplinary action pursuant to Business and
16 Professions Code section 2261 in that he created false documents relating to the provision of
17 medical services to patients or assisted Edward Lewis Tobinick, M.D., to create false documents
18 relating to the provision of medical services to patients, as follows:

19 A. Complainant refers to and, by this reference, incorporates
20 herein paragraphs 30, subparagraphs A through CC, inclusive, and 33,
21 subparagraphs B through D, inclusive, above, as though fully set forth.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 **(Failure To Maintain Adequate Patient Records)**

24 36 Respondent is subject to disciplinary action pursuant to Business and
25 Professions Code section 2266 in that he failed to maintain adequate and accurate records relating
26 to the provision of medical services to patients, as follows:

27 A. Complainant refers to and, by this reference, incorporates
28 herein paragraph 30, subparagraphs A through CC, inclusive, above, as though

1 fully set forth.

2 **EIGHTH CAUSE FOR DISCIPLINE**

3 **(Violation Of Drug Laws)**

4 37 Respondent is subject to disciplinary action for unprofessional conduct,
5 pursuant to Business and Professions Code section 2238 in that he violated the following drug
6 laws: Health and Safety Code sections 11153, subdivision (a) ["A prescription for a controlled
7 substance shall only be issued for a legitimate medical purpose by an individual practitioner acting
8 in the usual course of his or her professional practice. . . . Except as authorized by this division,
9 the following are not legal prescriptions: (1) an order purporting to be a prescription which is
10 issued not in the usual course of professional treatment or in legitimate and authorized research. . .
11 ."] and 11157 ["No person shall issue a prescription that is false or fictitious in any respect."],
12 during his care, treatment and management of patients, as follows:

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

16 **NINTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct)**

18 38 Respondent is subject to disciplinary action for unprofessional conduct,
19 pursuant to Business and Professions Code section 2234, generally, in that he breeched the canons
20 of ethics applicable to the medical profession, generally, and California physicians and surgeons,
21 specifically,^{5 6} in addition to violating the Medical Practice Act by committing, or aiding and
22

23 5. California physicians and surgeons are bound by the Declaration of Professional
24 Responsibility, adopted by the House of Delegates of the American Medical Association, on
December 4, 2001, which provides:

25 **Preamble**

26 Never in the history of human civilization has the well being of each individual been so inextricably
27 linked to that of every other. Plagues and pandemics respect no national borders in a world of global
28 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.

1
2 As physicians, we are bound in our response by a common heritage of caring for the sick and the
3 suffering. Through the centuries, individual physicians have fulfilled this obligation by applying
4 their skills and knowledge competently, selflessly and at times heroically. Today, our profession
5 must reaffirm its historical commitment to combat natural and man-made assaults on the health
6 and well being of humankind. Only by acting together across geographic and ideological divides
7 can we overcome such powerful threats. Humanity is our patient.

8 **Declaration**

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

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

We make these promises solemnly, freely, and upon our personal and professional honor.

6. California physicians and surgeons are bound by the American Medical Association (AMA) Code of Ethics, adopted by the AMA's House of Delegates, on June 17, 2001, which provides:

Preamble

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

Principles of Medical Ethics

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

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

1 abetting Edward Lewis Tobinick to commit dishonest or corrupt acts; violating drug statutes;
2 committing gross and repeated acts of negligence; prescribing a dangerous drug without a physical
3 examination or medical indication; creating a false document; and, rendering excessive treatment
4 to patients, as follows:

5 A. Complainant refers to and, by this reference, incorporates
6 herein paragraphs 30, subparagraphs A through CC, inclusive, and 33,
7 subparagraphs B through D, inclusive, above, as though fully set forth.

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A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health 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 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
5 A70506, issued to Ronesh Sinha, M.D.;
- 6 2. Revoking, suspending or denying approval of Ronesh Sinha's, M.D.,
7 authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 8 3. Ordering Ronesh Sinha, 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.

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

20 Complainant
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23 03573160-LA03AD0761
24 SinhaAccusationFinalDraft1.wpd
rdm:11.12.04

Exhibit B
Public Letter of Reprimand



MEDICAL BOARD OF CALIFORNIA
Executive Office



December 17, 2007

Ronesh Sinha, M.D.
Palo Alto Medical Foundation
805 Veterans Boulevard, Suite 201
Redwood City, CA 94063

RE: Physician's and Surgeon's Certificate No. A-70506
Case No. 06-2002-132377

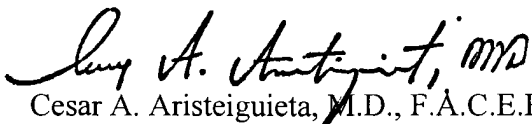
Public Letter of Reprimand

On November 12, 2004, an accusation was filed against you regarding your care and treatment of five patients who were seen in 2001 and 2002, while you were employed by Edward L. Tobinick, M.D., Inc. at the Institute for Neurological Research. You gave four of the five 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 any of these four 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 any of the four patients before injecting them with etanercept, although none of the five patients had active tuberculosis.
- (2) Failing to ensure that diabetes mellitus of patients B.S. and L.K. was under control by measuring hemoglobin A₁C.

In addition, pursuant to your employer's policy at that time, some of the patients you saw had signed confidentiality agreements, and you did not fully explain to them that they could disclose the identity of the medication to their treating physicians.

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., F.A.C.E.P.
President