

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Robert Dean Tonks, M.D.

Physician's & Surgeon's
Certificate No A 46158

Respondent.

Case No. 800-2017-039010

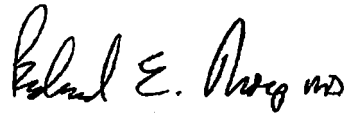
DECISION

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

This Decision shall become effective at 5:00 p.m. on February 24, 2022.

IT IS SO ORDERED January 25, 2022.

MEDICAL BOARD OF CALIFORNIA



Richard E. Thorp, M.D. Chair
Panel B

1 ROB BONTA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 KEITH C. SHAW
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8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:
15 **ROBERT DEAN TONKS, M.D.**
16 **8010 Frost St., Ste. 604**
17 **San Diego, CA 92123**
18 **Physician's and Surgeon's Certificate No.**
A 46158
19 Respondent.

Case No. 800-2017-039010
OAH No. 2021020095
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPRIMAND**

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

24 **PARTIES**

25 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
26 California (Board). He brought this action solely in his official capacity and is represented in this
27 matter by Rob Bonta, Attorney General of the State of California, by Keith C. Shaw, Deputy
28 Attorney General.

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 800-2017-039010, if proven at a hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent gives up his right to contest that, at a hearing, Complainant
7 could establish a *prima facie* case with respect to the charges and allegations contained in the
8 Accusation.

9 11. Respondent agrees that if a subsequent accusation is filed against him before the
10 Medical Board of California, all of the charges and allegations contained in Accusation No. 800-
11 2017-039010 shall be deemed true, correct and fully admitted by Respondent for purposes of that
12 proceeding or any other licensing proceeding involving Respondent in the State of California.

13 12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
14 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
15 Disciplinary Order below.

16 CONTINGENCY

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

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1 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
2 copies of this Stipulated Settlement and Disciplinary Order for Public Reprimand, including PDF
3 and facsimile signatures thereto, shall have the same force and effect as the originals.

4 15. In consideration of the foregoing admissions and stipulations, the parties agree that
5 the Board may, without further notice or formal proceeding, issue and enter the following
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 **A. PUBLIC REPRIMAND**

9 IT IS HEREBY ORDERED that Robert Dean Tonks, M.D., Physician's and Surgeon's
10 Certificate No. A 46158, shall be and hereby is publicly reprimanded pursuant to California
11 Business and Professions Code section 2227, subdivision (a)(4). This public reprimand is issued
12 in connection with allegations that Respondent committed repeatedly negligent acts in his care
13 and treatment of patients A and B, and continually used offensive language in the operating room,
14 as set forth in Accusation No. 800-2017-039010.

15 **B. EDUCATION COURSE**

16 Within 60 calendar days of the effective date of this Decision, Respondent shall submit to
17 the Board or its designee for its prior approval educational program(s) or course(s) which shall
18 not be less than 40 hours. The educational program(s) or course(s) shall be aimed at correcting
19 any areas of deficient practice or knowledge and shall be Category I certified. The educational
20 program(s) or course(s) shall be at Respondent's expense and shall be in addition to the
21 Continuing Medical Education (CME) requirements for renewal of licensure. Following the
22 completion of each course, the Board or its designee may administer an examination to test
23 Respondent's knowledge of the course. Respondent shall participate in and successfully
24 complete the classroom component of the course(s) not later than nine (9) months after
25 Respondent's initial enrollment. Respondent shall successfully complete any other component of
26 the course(s) within one (1) year of enrollment.

27 Respondent shall submit a certification of successful completion to the Board or its
28 designee not later than fifteen (15) calendar days after successfully completing the course(s), or

1 not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

2 **C. MEDICAL RECORD KEEPING COURSE**

3 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
4 course in medical record keeping approved in advance by the Board or its designee. Respondent
5 shall provide the approved course provider with any information and documents that the approved
6 course provider may deem pertinent. Respondent shall participate in and successfully complete
7 the classroom component of the course not later than six (6) months after Respondent's initial
8 enrollment. Respondent shall successfully complete any other component of the course within
9 one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense
10 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
11 licensure.

12 A medical record keeping course taken after the acts that gave rise to the charges in the
13 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
14 or its designee, be accepted towards the fulfillment of this condition if the course would have
15 been approved by the Board or its designee had the course been taken after the effective date of
16 this Decision.

17 Respondent shall submit a certification of successful completion to the Board or its
18 designee not later than 15 calendar days after successfully completing the course, or not later than
19 15 calendar days after the effective date of the Decision, whichever is later.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reprimand and have fully discussed it with my attorney, Robert W. Frank, Esq. 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 for Public Reprimand voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

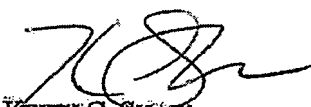
DATED: 12/1/21 
ROBERT DEAN TONKS, M.D.
Respondent

I have read and fully discussed with Respondent Robert Dean Tonks, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reprimand. I approve its form and content.

DATED: 12-2-21 
ROBERT W. FRANK
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reprimand is hereby respectfully submitted for consideration by the Medical Board of California,

DATED: 12/2/21 Respectfully submitted,
ROB BONIA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

KEITH C. SHAW
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-039010

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8 *Attorneys for Complainant*

9

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

12

13

In the Matter of the Accusation Against:

Case No. 800-2017-039010

14

ROBERT DEAN TONKS, M.D.

A C C U S A T I O N

15

8010 Frost St., Ste. 604
San Diego, CA 92123-4204

16

17

**Physician's and Surgeon's Certificate
No. A 46158**

18

Respondent.

19

20

21

PARTIES

22

1. William Prasifka (Complainant) brings this Accusation solely in his official capacity
23 as the Executive Director of the Medical Board of California, Department of Consumer Affairs
24 (Board).

25

2. On or about June 5, 1989, the Medical Board issued Physician's and Surgeon's
26 Certificate No. A 46158 to Robert Dean Tonks, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on October 31, 2022, unless renewed.

JURISDICTION

1
2 3. This Accusation is brought before the Medical Board of California (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 2227 of the Code authorizes the Board to discipline a licensee and obtain
6 probation costs.

7 5. Section 2228 of the Code authorizes the Board to discipline a licensee by placing
8 them on probation.

9 6. Section 2234 of the Code, states in part:

10 “The board shall take action against any licensee who is charged with unprofessional
11 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
12 limited to, the following:

13 “(b) Gross negligence.

14 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
15 omissions. An initial negligent act or omission followed by a separate and distinct departure from
16 the applicable standard of care shall constitute repeated negligent acts.

17 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate
18 for that negligent diagnosis of the patient shall constitute a single negligent act.

19 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
20 constitutes the negligent act described in paragraph (1), including, but not limited to, a
21 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the
22 applicable standard of care, each departure constitutes a separate and distinct breach of the
23 standard of care.”

24 7. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain
25 adequate and accurate records relating to the provision of services to their patients constitutes
26 unprofessional conduct.”

27 8. Section 2229 of the Code states that the protection of the public shall be the highest
28 priority for the Board in exercising their disciplinary authority. While attempts to rehabilitate a

1 licensee should be made when possible, Section 2229, subdivision (c), states that when
2 rehabilitation and protection are inconsistent, protection shall be paramount.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 9. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined
6 by section 2234, subdivision (b), of the Code, in that he committed gross negligence as more
7 particularly alleged hereinafter:

8 10. Respondent is an orthopedic surgeon and was on the medical staff at Sharp Memorial
9 Hospital (Sharp) from approximately April 1990 through May 2018. Respondent was a member
10 of Sharp's Orthopedic Trauma On-Call Panel. Sharp began addressing multiple behavioral issues
11 with Respondent shortly after his employment began,¹ and continuing until his separation with
12 Sharp, which included yelling at and using offensive language toward other physicians and
13 medical staff in front of patients. Since at least August 2000, Sharp's Medical Executive
14 Committee (MEC) and multiple Chiefs of Staff have spoken with and counseled Respondent
15 numerous times regarding his behavioral issues.

16 11. Since approximately June 2016, Respondent incurred three (3) Behavioral Variance
17 Reports (BVR's) for reasons that included yelling at and using obscenities toward other Sharp
18 medical staff. On or about April 5, 2017, Sharp's MEC addressed Respondent's behavioral
19 issues, which included using "foul" language toward Sharp medical staff. Sharp's MEC noted
20 that Respondent does not take responsibility for his actions and does not fully comprehend the
21 impact of his conduct on staff, peers, and patients. Sharp's MEC determined that Respondent
22 would be required to attend UCSD's PACE program,² which he subsequently refused.

23 12. On or about November 7, 2017, Respondent's Trauma On-Call Panel privileges were
24 summarily restricted by Sharp for numerous reasons, including 1) his behavior toward nursing

25 _____
26 ¹ Conduct occurring more than seven (7) years from the filing date of this Accusation is
for informational purposes only and is not alleged as a basis for disciplinary action.

27 ² The University of California at San Diego's Physician Assessment and Clinical
28 Education (PACE) program is the largest assessment and remediation program for healthcare
professionals in the country.

1 and other health care staff, and his inappropriate and disrespectful communications with Sharp
2 staff and nurses in front of patients; and 2) Respondent's inability or unwillingness to address
3 these concerns raised at multiple meetings with Sharp medical staff leadership.

4 13. In an interview on or about January 23, 2019, Respondent admitted that he used
5 offensive language in the Sharp operating room multiple times. Respondent acknowledged that
6 he was warned by Sharp's MEC numerous times to cease that behavior, but the behavior
7 continued. Respondent indicated that he elected to resign his privileges at Sharp rather than
8 proceed with Sharp's judicial review process, which he believed was "ridiculous" and a "waste of
9 time."

10 14. Respondent committed gross negligence, which included, but was not limited to, the
11 following: Respondent continually used offensive language toward Sharp medical staff.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Repeated Negligent Acts)**

14 15. Respondent is subject to disciplinary action under section 2234, subdivision (c), of
15 the Code in that Respondent engaged in unprofessional conduct and committed repeated
16 negligent acts based on the following circumstances.

17 16. The allegations of Paragraphs 9 through 14, above, are incorporated herein by
18 reference as if fully set forth.

19 17. On or about the morning of December 15, 2018, Patient A, a then 78-year-old female,
20 sustained a fracture to her right elbow and a left wrist injury following a fall. Patient A, who
21 suffered from dementia, was immediately taken to the Scripps Memorial Hospital emergency
22 room. She was quickly examined in the ER, where it was determined following x-rays that she
23 would likely require surgery pending an orthopedic consultation by Respondent. She was placed
24 on an NPO³ status. Even though Respondent was on duty the entire day, he did not examine
25 Patient A, explain her injuries, or discuss a treatment plan with her family.

26
27 ³ NPO, which means "nothing by mouth," is fasting that is generally prescribed in
28 preparation for an operation.

1 18. The next morning at approximately 7:30 a.m., Respondent appeared in Patient A's
2 doorway and stated that Patient A had a fractured right elbow requiring surgery, but failed to
3 examine or speak directly with her. Patient A's husband, a retired physician, explained to
4 Respondent that he was concerned that Patient A also had a fractured left wrist. Respondent
5 indicated that he would obtain an x-ray of her left wrist after he performed surgery of the right
6 elbow. Patient A's husband also expressed concern to Respondent that Patient A, who was
7 diabetic, was needlessly placed on an NPO for many hours the previous day even though her
8 surgery was not scheduled until the next morning.⁴

9 19. Patient A was taken into surgery that morning for her right elbow fracture, which was
10 performed by Respondent. Respondent discovered during surgery following a review of x-rays
11 that Patient A also sustained a fracture to her left wrist requiring surgical intervention.
12 Respondent called Patient A's husband from the operating room and asked for verbal permission
13 to proceed with surgery of Patient A's left wrist, which he agreed. Had Respondent examined
14 Patient A on the day she was admitted to the hospital, he would have been aware earlier of her
15 left wrist injury and ordered appropriate x-rays, corrected the unnecessary NPO for that day,
16 explained the treatment plan to Patient A's husband, and obtained a more appropriate informed
17 consent for surgery of the left wrist.

18 20. Respondent committed repeated negligent acts in his care and treatment of Patient A
19 which included, but was not limited to, the following:

20 (a) Respondent failed to properly examine Patient A until the morning of
21 her surgery; and

22 (b) Respondent failed to obtain appropriate informed consent for surgery
23 of Patient A's left wrist.

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26 _____
27 ⁴ Respondent indicated that he had informed the ER physician that Patient A should be
28 taken off NPO since the surgery would not be performed until the next morning, but "somehow,
they didn't get that memo." Instead, Patient A was on NPO from the afternoon of December 15,
2018, all the way through her surgery the next morning.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 21. Respondent is subject to disciplinary action under section 2234, subdivision (c), of
4 the Code in that Respondent engaged in unprofessional conduct and committed repeated
5 negligent acts based on the following circumstances.

6 22. The allegations of Paragraphs 9 through 20, above, are incorporated herein by
7 reference as if fully set forth.

8 23. On or about August 7, 2016, Patient B, a then 47-year-old male physician visiting from
9 Arizona, rolled his pickup truck down a 100-foot embankment and was airlifted to Sharp
10 Memorial Hospital with major injuries. Patient B was found to have acute fractures of his left
11 radius and ulnar,⁵ an acute fracture of the L2 transverse process,⁶ a 15% acute fracture of T12
12 vertebrae,⁷ and a left forehead laceration. Respondent was the orthopedic surgeon on call at
13 Sharp and attended to Patient B. Respondent noted that Patient B had closed markedly displaced
14 and comminuted radius and ulnar shaft fractures and would require surgery. Respondent also
15 noted that Patient B was unable to move his left hand.

16 24. Respondent performed a left forearm open reduction and internal fixation⁸ with a left
17 supraclavicular anesthetic block on the day of Patient B's admission. Respondent inserted a six-
18 hole radius plate with six (6) screws at the fracture site. Four (4) out of the six (6) screws
19 implanted by Respondent were excessively long by 4-6 millimeters and should have been
20 replaced with shorter screws before the surgery was completed. Respondent noted that the
21 surgery was performed appropriately with no complications. Respondent recorded his
22 preoperative orthopedic examination, diagnosis, and plan after performing surgery on Patient B.

23 _____
24 ⁵ A fracture of the radius and ulnar is a break of the bones in the forearm.

25 ⁶ The L2 vertebra is the second lumbar spinal vertebra in the human body. A transverse
26 process fracture is an injury that affects a vertebrae of the spine.

27 ⁷ The T12 vertebra is the twelfth thoracic vertebra in the spine of the human body.

28 ⁸ An open reduction and internal fixation (ORIF) puts pieces of a fractured bone into place
using surgery. Screws, plates, sutures, or rods are used to hold the fractured bone together.

1 In the days following surgery, Patient B experienced left arm pain and a persistent inability to
2 extend his wrist or thumb.

3 25. Once Patient B returned home to Arizona, he followed up with a hand specialist and it
4 was determined that the posterior interosseous nerve ⁹ was injured in his left forearm. During an
5 exploration of Patient B's left forearm on about October 6, 2016, it was discovered that the
6 posterior interosseous nerve injury was caused by one of the excessively long radius bone plate
7 screws inserted by Respondent during surgery. Specifically, one of the middle screws went
8 through the middle portion of the posterior interosseous nerve with "near full disruption of the
9 nerve."

10 26. In an interview on or about June 22, 2020, Respondent admitted that he was aware that
11 a screw appeared to be too long in fluoroscopy, "but I didn't think it would be a big problem
12 because – usually it isn't a big problem, but in this case, it was a big problem." Respondent
13 indicated that Patient B had a crushed arm injury and had an aesthetic block during surgery,
14 making it difficult to assess whether there was damage to the posterior interosseous nerve.
15 Respondent stated that he did not believe there was a complete nerve injury that would require
16 exploration, so he wanted to watch it during the patient's recovery at Sharp.

17 27. Respondent committed repeated negligent acts in his care and treatment of Patient B
18 which included, but was not limited to, the following:

19 (a) Respondent failed to record Patient B's preoperative orthopedic
20 examination, evaluation, diagnosis and treatment plan prior to
21 surgery; and

22 (b) Respondent inserted excessively long radius plate screws and failed to
23 replace them with screws of appropriate length during surgery.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Failure to Maintain Adequate and Accurate Records)**

26 28. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
27 defined by section 2266, of the Code, in that Respondent failed to maintain adequate and accurate

28 ⁹ The posterior interosseous nerve (or PIN) is a motor nerve in the forearm.

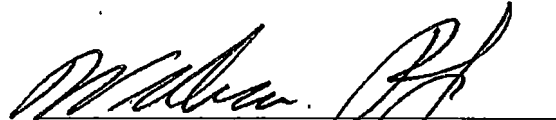
1 records regarding his care and treatment of Patients A and B, as more particularly alleged in
2 paragraphs 17 through 27, above, which are hereby incorporated by reference and realleged as if
3 fully set forth herein.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Medical Board of California issue a decision:

- 7 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 46158, issued
8 to Robert Dean Tonks, M.D.;
- 9 2. Revoking, suspending or denying approval of Robert Dean Tonks, M.D.'s authority
10 to supervise physician assistants and advanced practice nurses;
- 11 3. Ordering Robert Dean Tonks, M.D., if placed on probation, to pay the Board the costs
12 of probation monitoring; and
- 13 4. Taking such other and further action as deemed necessary and proper.

14
15 DATED: NOV 23 2020

16 
17 WILLIAM PRASIFKA
18 Executive Director
19 Medical Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant

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