

PUBLIC

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

**IN THE MATTER
OF
JOHN R. TALLETT, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

JOHN R. TALLETT, M.D., representing that all of the following statements are true, deposes and says:

That on or about October 12, 1995, I was licensed to practice as a physician in the State of New York, and issued License No. 201018 by the New York State Education Department.

My current address is 11 Beach Road, Dunkirk, New York 14048, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with Fifteen specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest the First Specification concerning Patients C and E in full satisfaction of the charges against me.

I agree to the following penalty: a two year suspension of my license, stayed, and three years probation in accordance the Terms of Probation which are attached hereto as Exhibit B and made part of this Consent Agreement.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain active registration of my license with the New York State Education Department

Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.


I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

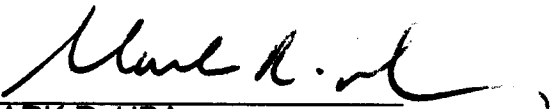
DATE: 8.11.03



JOHN R. TALLETT, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 8/19/03


MARK R. UBA
Attorney for Respondent

DATE: 8/25/03


KEVIN P. DONOVAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 9/03/03


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

**IN THE MATTER
OF
JOHN R. TALLETT, M.D.**

**CONSENT
ORDER**
BPMC No. 03-237

Upon the application of JOHN R. TALLETT, M.D. (Respondent), in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, Whichever is first.

SO ORDERED.

DATED: 9/4/03



MICHAEL GONZALEZ, R.P.A.
Vice Chair
Board for Professional Medical Conduct

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
IN THE MATTER : STATEMENT
OF : OF
JOHN R. TALLETT, M.D. : CHARGES
-----X

JOHN R. TALLETT, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 12, 1995, by the issuance of license number 201018 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided care for Patient A (patients are identified in Appendix A, attached) from around February 1996 until at least July 2000, at his office located at 268 West Main Street, Fredonia, New York, and at Brooks Memorial Hospital, Dunkirk, New York. Respondent's care of Patient A did not meet accepted standards of care in that:

1. Respondent inappropriately scheduled an ovarian cystectomy for November 1996 without adequate indication and/or documentation.
2. Respondent failed to appropriately follow up pre-operative testing of November 26, 1996, which demonstrated leukopenia and 3+ bacteria.
3. Respondent admitted Patient A for and/or took her to surgery without performing an updated history and physical examination of Patient A.
4. On or about December 2, 1996, Respondent performed an unnecessary laparoscopic procedure when the examination under anesthesia revealed no obvious adnexal masses.
5. On or around December 2, 1996, Respondent performed an aspiration of an ovarian cyst despite lack of adequate indication being demonstrated by physical examination and/or laparoscopy.

6. During a pregnancy with expected date of delivery (EDD) in October 1997, Respondent failed to appropriately follow up a urinalysis result of 2+ bacteria.
7. During the pregnancy with EDD in October 1997, Respondent failed to appropriately offer or note declination of a maternal serum alpha fetoprotein (MSAFP) test to Patient A.
8. During the pregnancy with EDD in October 1997, Respondent failed to adequately follow up drops in Patient A's platelets from 188,000, to 100,000, and/or to 45,000.

B. Respondent provided care for Patient B during a pregnancy with an EDD by ultrasound of May 25, 1999, at his office and at Brooks Memorial Hospital.

Respondent's care of Patient B did not meet accepted standards of care in that:

1. Respondent failed to appropriately offer or note declination of an MSAFP test to Patient B.
2. Respondent failed to appropriately recommend and/or prescribe Rhogam on or around the 28th week of pregnancy for Patient B, whose blood type was noted to be O negative, or note the father's blood type as being Rh negative.
3. Respondent failed to appropriately respond to the following physical findings noted on April 5, 1999: b/p of 140/100, excessive weight gain and/or 2+ proteinuria.

C. Respondent provided care for Patient C during a pregnancy in 1998, at his office and at Brooks Memorial Hospital, Dunkirk, New York. Respondent's care of Patient C did not meet accepted standards of care in that Respondent failed to adequately attempt assessment of fetal lung maturity before performing an elective cesarean section when dating of the pregnancy was not adequately accurate.

D. Respondent provided care for Patient D during a pregnancy with an EDD of around by ultrasound of February 14, 2000, at his office and at Brooks Memorial Hospital. Respondent's care of Patient D did not meet accepted standards of care in that:

1. Respondent failed to appropriately offer or note declination of an MSAFP test to Patient D.

2. Respondent failed to adequately observe, comment upon, and/or arrange an intra-partum and/or post partum plan for elevations in Patient D's blood pressure during labor.
3. Respondent failed to appropriately follow up testing of February 17, 2000, which demonstrated 3+ bacteria.

E. Respondent provided care for Patient E during a pregnancy with EDD of October 19, 1998, at his office and at Brooks Memorial Hospital. Respondent's care of Patient E did not meet accepted standards of care in that:

1. Respondent failed to appropriately offer or note declination of an MSAFP test to Patient E.
2. Respondent ordered induction of labor for Patient E without adequate indication and with an unfavorable cervix.
3. Respondent failed to take appropriate steps after being notified of a non-reassuring fetal heart rate during labor.

F. Respondent provided care for Patient F during a pregnancy with EDD of 3/18/99, at his office and at Brooks Memorial Hospital. Respondent's care of Patient F did not meet accepted standards of care in that:

1. Respondent failed to appropriately offer or note declination of an MSAFP test to Patient E.
2. Respondent failed to take appropriate steps after being notified of a non-reassuring fetal heart rate during labor.

G. Respondent was called to provide care for Patient G on or around February 24, 1999, at Brooks Memorial Hospital. Respondent's care of Patient G did not meet accepted standards of care in that he failed to timely evaluate and/or treat Patient G who had a hematocrit of 15.7 and continued vaginal bleeding after administration of Premarin.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as set forth in two or more of the following:

1. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, B and B.1, B and B.2, B and B.3, C, D and D.1, D and D.2, D and D.3, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, G.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as set forth in two or more of the following:

2. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, B and B.1, B and B.2, B and B.3, C, D and D.1, D and D.2, D and D.3, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, G.

THIRD THROUGH NINTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as set forth in the following:

3. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7 and/or A and A.8
4. The facts of paragraphs B and B.1, B and B.2 and/or B and B.3.
5. The facts of paragraph C.
6. The facts of paragraphs D and D.1, D and D.2 and/or D and D.3.
7. The facts of paragraphs E and E.1, E and E.2 and/or E and E.3.

6. The facts of paragraphs D and D.1, D and D.2 and/or D and D.3.
7. The facts of paragraphs E and E.1, E and E.2 and/or E and E.3.
8. The facts of paragraphs F and F.1 and/or F and F.2.
9. The facts of paragraphs G.

TENTH SPECIFICATION
GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(6) by practicing the profession of medicine with gross incompetence as set forth in the following:

10. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, A and A.7, A and A.8, B and B.1, B and B.2, B and B.3, C, D and D.1, D and D.2, D and D.3, E and E.1, E and E.2, E and E.3, F and F.1, F and F.2, G.

ELEVENTH THROUGH FIFTEENTH SPECIFICATIONS
FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient as set forth in:

11. The facts of paragraphs A and A and/or A and A.7.
12. The facts of paragraphs B and B.1.
13. The facts of paragraphs D and D.1 and/or D and D.2.
14. The facts of paragraphs E and E.1.
15. The facts of paragraphs F and F.1.

DATED:

 2003
Albany, New York

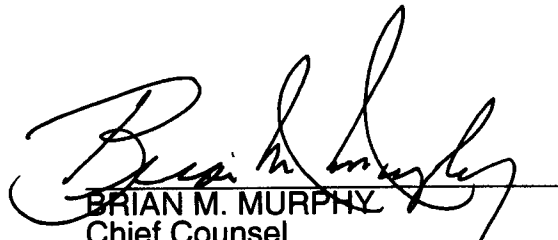

BRIAN M. MURPHY
Chief Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
3. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director or the Director's designee.
4. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms.
5. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with or periodic visits with Respondent and Respondent's staff at practice locations or OPMC offices.
6. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.

CLINICAL COMPETENCY ASSESSMENT

7. Respondent shall obtain a clinical competency assessment performed by a program for such assessment as directed by the Director of OPMC. Respondent shall complete the assessment and cause the approved program to send a written report of such assessment to the Director of OPMC within sixty (60) days of the effective date of this Order.
8. Respondent shall be responsible for all expenses related to the clinical competency assessment and shall provide to the Director of OPMC proof of full

payment of all costs that may be charged. This term of probation shall not be satisfied in the absence of actual receipt by the Director of such documentation, and any failure to satisfy shall provide a basis for a Violation of Probation proceeding.

9. Within thirty (30) days of receipt of the clinical competency assessment report by OPMC, the Director shall determine such other terms and/or conditions of practice, if any, as may be consistent with the recommendations in the clinical competency assessment report, including personalized continuing medical education, if appropriate, as set forth below.

PERSONALIZED CONTINUING MEDICAL EDUCATION

10. Within thirty (30) days of receipt of the clinical competency assessment report by OPMC, the Director may direct that Respondent be enrolled in a course of personalized continuing medical education within a time designated by the Director, proposed by Respondent and approved, in writing, by the Director of OPMC, which includes an assigned preceptor, preferably a physician board certified in the same specialty. Respondent shall remain enrolled and shall fully participate in the program for a period of time to be determined by the Director, but in no event shall the enrollment be longer than the probationary term.
11. The Respondent shall cause the Preceptor to:
 - a. Develop and submit to the Director of OPMC for written approval a remediation plan, which addresses the deficiencies/retraining recommendations identified in the clinical competency assessment. Additionally, this proposal shall establish a timeframe for completion of the remediation program of not less than three months and no longer than twelve months.
 - b. Submit progress reports at periods identified by OPMC certifying whether the Respondent is fully participating in the personalized continuing medical education program and is making satisfactory progress towards the completion of the approved remediation plan.
 - c. Report immediately to the Director of OPMC if the Respondent withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by the Respondent.
 - d. At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by the Respondent toward remediation of all identified deficiencies.

PRACTICE CONSULTANT

12. Within thirty days of the effective date of the order, Respondent shall engage in the practice of medicine only when he has in place a practice consultant or consultants, proposed by Respondent and approved in writing by the Director of OPMC. For all high risk obstetrical situations, Respondent shall obtain and document in the medical record a timely consult, which may be in person or by telephone, as medically appropriate, from a practice consultant. This requirement of a practice consultant shall conclude three months following the

later of the completion of the clinical competency assessment or of any required personalized continuing medical education.

13. At a minimum, high risk obstetrical situations shall include:
- a. High blood pressure, including chronic hypertension, pregnancy induced hypertension, and preeclampsia;
 - b. Diabetes, including pre-existing and gestational diabetes;
 - c. Multiple gestation;
 - d. Post-term pregnancy;
 - e. Pre-term labor episodes in present pregnancy;
 - f. Unexplained abnormal MSAFP screening test;
 - g. Abnormal fetal presentation (i.e.; breech);
 - h. Maternal age of 40 or older;
 - i. Maternal age of 16 or younger;
 - j. Previous classical cesarean section;
 - k. Labor management of previous low transverse cesarean section (VBAC);
 - l. Intrauterine growth restriction/retardation (IUGR);
 - m. Maternal drug use, including but not limited to alcohol, cigarettes, cocaine, etc.;
 - n. Known thrombophilia (increased risk of blood clotting) i.e., Leiden V mutation, etc.;
 - o. Morbid obesity or excessive weight gain in pregnancy;
 - p. Previous major uterine surgery such as full thickness fibroid resection;
 - q. Poor OB history, including: previous pre-term delivery, previous incompetent cervix, recurrent spontaneous abortions, previous 2nd or 3rd trimester fetal deaths;
 - r. Previous deep vein thrombosis in pregnancy or while on oral contraceptives.
14. If Respondent is uncertain as to whether a patient falls within any of the categories set forth in paragraphs 12 and 13, he shall timely seek and document in the medical record the advice of his practice monitor, an approved consultant, or a Board certified ob/gyn if the monitors and consultants are not available in a timely manner.

PRACTICE MONITOR

15. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b. Respondent shall assure that the practice monitor review the records of all obstetrical patients who presented with a new pregnancy during the preceding month, and again review those records of patients who have reached their 28th to 30th week during the preceding month.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
16. Respondent shall provide all practice monitors and consultants with a complete copy of this Order.
17. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
18. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.