



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

July 16, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Re: License No. 164738

Dear Dr. Tsao:

Enclosed please find Order #BPMC 04-158 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect July 23, 2004.

Since the penalty imposed by the Order is a suspension of your license, you are required to deliver to the Board your license and registration by August 6, 2004 which is 5 days after the August 1, 2004 effective date of the suspension of your license. Please deliver your license to the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Donna Mantel, Esq.
Kern Augustine Conroy and Schooppman, P.C.
420 Lakeville Road
Lake Success, NY 11042

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

IN THE MATTER
OF
FRANCIS TSAO, M.D.

CONSENT
ORDER

BPMC No. 04-158

Upon the application of (Respondent) FRANCIS TSAO, M.D. 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: 7-16-04


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

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

IN THE MATTER
OF
FRANCIS TSAO, M.D.

CONSENT
AGREEMENT
AND
ORDER

FRANCIS TSAO, M.D., representing that all of the following statements are true, deposes and says:

That on or about November 12, 1985, I was licensed to practice as a physician in the State of New York, and issued License No. 164738 by the New York State Education Department.

My current address is P.O. Box 1186
217 E. 70th St. LENOX HILL STATION
New York, NY 10021 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 one specification 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, Negligence On More Than One Occasion, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to §230-a(2) of the Public Health law, my license to practice medicine in the State of New York shall be suspended for a period of one year, with the 30 day period beginning August 1, 2004 to be served as a period of actual suspension, and with the remainder of the suspension to be stayed. Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of five years beginning at the conclusion of the thirty day period of actual suspension, subject to the terms set forth in attached Exhibit "B." Upon my successful completion of three years of probation, I may petition the Director for an early termination of probation and the Director shall exercise reasonable discretion in deciding whether to grant my petition.

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

That Respondent shall maintain active registration of licensure 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.

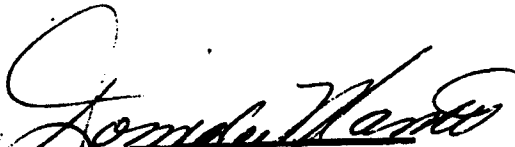
DATED 7/6/04



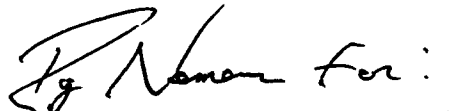
FRANCIS TSAO, M.D.
RESPONDENT

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

DATE: 7/6/04


DONNA MANTEL, ESQ.
Attorney for Respondent

DATE: 7/7/04 (duplicate
from
7/6)


MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 7/14/04


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

**IN THE MATTER
OF
FRANCIS TSAO, M.D.**

**STATEMENT
OF
CHARGES**

FRANCIS TSAO, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 12, 1985, by the issuance of license number 164738 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. During periods in or about and between February 2002 and April 2003, including periods in or after December 2002, when Respondent knew Patient A was pregnant, Respondent inappropriately prescribed large quantities of Vicodin ES to Patient A.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

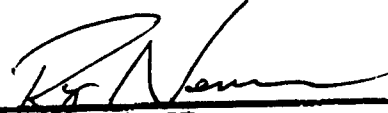
Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

1. Paragraph A.

DATED:

(duplicate from July 7 July 67)
June 2004
New York, New York

EXHIBIT "A"



Roy Nemerson
Deputy 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 maintain active registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees.
3. 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.
4. 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's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 6001; Executive Law section 32].
6. 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.

7. 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 staff at practice locations or OPMC offices.
8. 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 all (100%) of records pertaining to controlled substance prescribing outside of a hospital setting, as well as 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 be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. 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.

9. 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.
10. Respondent shall enroll in and complete a continuing education program in the area of the appropriate prescribing of controlled substances. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probation period.
11. Respondent shall continue in counseling, therapy or other treatment with a health care professional proposed by Respondent and subject to the written approval of the Director of OPMC, for the duration of the period of this Order. The health care professional shall be familiar with Respondent's history of inappropriate prescribing of controlled substances, with this Order, and with the terms of probation imposed by the Order. Licensees shall submit the name of a proposed successor within seven days of learning the approved health care professional is no longer willing or able to serve. The treating health care professional shall acknowledge willingness to comply with the reporting requirements below by executing the acknowledgment provided by OPMC.
 - a. Respondent's treating health care professional shall submit to OPMC a treatment plan and quarterly reports certifying that Respondent is complying with the treatment.
 - b. The treating health care professional shall report to OPMC immediately if Respondent leaves treatment against medical advice, is noncompliant with the treatment plan, or if Respondent demonstrates any significant pattern of absences.
12. Respondent shall enroll, or continue enrollment, in the Committee for Physicians' Health (CPH) and shall engage in a contract with CPH that fully describes the terms, conditions and duration of a treatment program. Respondent shall comply with the contract. Respondent shall provide a written authorization for CPH to provide the Director of OPMC with any/all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract, including full access to the records maintained by CPH with respect to Respondent.
 - a. Respondent shall cause CPH to report to OPMC promptly if Respondent refuses to comply with the contract, refuses to submit to treatment or if Respondent's condition is not substantially alleviated by treatment.
 - b. Respondent shall cause CPH to report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.

13. 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.