

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

IN THE MATTER  
OF  
JOSEFINA TAN-DOMINGO, M.D.

CONSENT  
ORDER

BPMC No. #08-114

Upon the application of Josefina Tan-Domingo, 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 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.

Redacted Signature

DATED: 6-17-2008

KENDRICK A. SEARS, M.D.  
Chair  
State Board for Professional Medical Conduct

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

**IN THE MATTER  
OF  
JOSEFINA TAN-DOMINGO, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

Josefina Tan-Domingo, M.D., representing that all of the following statements are true, deposes and says:

That on or about March 14, 1973 I was licensed to practice medicine in the State of New York, and issued License No. 115469 by the New York State Education Department.

My current registration address is 7785 North State Street, Lowville, New York 13367 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 five 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 admit to the Third Specification of the Statement of Charges, in full satisfaction of the charges against me, and agree to the following penalties:

- 1) Pursuant to Section 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 five (5) years, said suspension to be stayed.

- 2) Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of five years, subject to the terms set forth in Exhibit B.
- 3) Within six months of the effective date of this Order, I shall enroll in and shall successfully complete the Med-Challenger OB-GYN Comprehension Review and Assessment course.

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

That Respondent shall maintain active registration of Respondent's 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 the 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. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 230 and 230-a and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite powers to carry out all included terms. 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: 4/28/08

Redacted Signature

JOSEFINA TAN-DOMINGO, M.D.  
RESPONDENT

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

DATED: 4/29/08

Redacted Signature

JAMES LANTIER, ESQ.  
SMITH, SOVIK, KENDRICK & SUGNET  
Attorneys for Respondent

DATED: 5/1/08

Redacted Signature

CINDY M. FASCIA, ESQ.  
Bureau of Professional Medical Conduct

DATED: 6/12/08

Redacted Signature

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

IN THE MATTER  
OF  
JOSEFINA TAN-DOMINGO, M.D.

STATEMENT  
OF  
CHARGES

Josefina Tan-Domingo, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 14, 1973, by the issuance of license number 115469 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care to Patient A on various occasions from approximately May 2002 through approximately July 2003 at Respondent's office in Lowville, New York. Respondent's medical care of Patient A failed to meet the standard of care, in that:
1. Respondent, despite the results of Patient A's June 24, 2002 endometrial biopsy, failed to perform and/or order the performance of medically indicated tests or procedures, including a hysteroscopy and curettage, to rule out cancer in Patient A and/or otherwise failed to rule out cancer in Patient A.
  2. Respondent, despite the results of Patient A's June 24, 2002 endometrial biopsy, failed to adequately discuss with Patient A and/or to document adequate discussion with Patient A of the significance of Patient A's pathology, and/or failed to document any discussion with Patient A of Respondent's recommendations for treatment and/or to document Respondent's discussion, if any, of treatment options with Patient A.
  3. Respondent failed to document any discussion of surgery with Patient A, and/or failed to document any reluctance and/or refusal by Patient A to undergo any surgical procedure, if in fact any surgical procedure

was recommended by Respondent and if any such reluctance and/or refusal by Patient A in fact occurred.

4. Respondent, on or about July 15, 2002, commenced medical treatment of Patient A with a progestational agent without obtaining adequate diagnostic information and/or without performing necessary diagnostic tests or procedures and/or without excluding a diagnosis of cancer and/or without informing Patient A that cancer had not been ruled out and could not be ruled out without said tests or procedures.
5. Respondent, after initiating progestational treatment on or about July 15, 2002, failed to perform follow-up endometrial sampling on Patient A.
6. Respondent, on or about April 8, 2003, advised Patient A to discontinue the progestational agent without performing adequate follow-up to assess the results of treatment.
7. Respondent, despite the results of Patient A's April 16, 2003 ultrasound, failed to recognize that medical treatment with the progestational agent had not adequately suppressed the endometrium; and/or failed to recommend and/or perform another endometrial biopsy on Patient A.

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **GROSS NEGLIGENCE**

Respondent is charged with professional misconduct by reason of her practicing medicine with gross negligence on a particular occasion in violation of New York Education Law §6530(4), in that Petitioner charges:

1. The facts in Paragraphs A and A.1, and/or A.2 and/or A.3 and/or A.4 and/or A.5 and/or A.6 and/or A.7.

**SECOND SPECIFICATION**  
**GROSS INCOMPETENCE**

Respondent is charged with professional misconduct by reason of her practicing medicine with gross incompetence in violation of New York Education Law §6530(6), in that Petitioner charges:

2. The facts in Paragraphs A and A.1, and/or A.2 and/or A.3 and/or A.4 and/or A.5 and/or A.6 and/or A.7.

**THIRD SPECIFICATION**  
**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with professional misconduct by reason of her practicing medicine with negligence on more than one occasion in violation of New York Education Law §6530(3), in that Petitioner charges:

3. The facts in Paragraphs A and A.1, and/or A.2 and/or A.3 and/or A.4 and/or A.5 and/or A.6 and/or A.7.

**FOURTH SPECIFICATION**  
**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with professional misconduct by reason of her practicing medicine with incompetence on more than one occasion in violation of New York Education Law §6530(5), in that Petitioner charges:

4. The facts in Paragraphs A and A.1, and/or A.2 and/or A.3 and/or A.4 and/or A.5 and/or A.6 and/or A.7.

**FIFTH SPECIFICATION**  
**FAILURE TO MAINTAIN ACCURATE RECORDS**

Respondent is charged with committing professional misconduct by reason of her failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in violation of New York Education Law §6530(32), in that Petitioner charges:

5. The facts in Paragraphs A and A.2, and/or A.3 and/or A.4.



DATED: March 24, 2008  
Albany, New York

Redacted Signature

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Peter D. Van Buren  
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 Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, 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 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 § 171(27)]; State Finance Law § 18; CPLR § 5001; Executive Law § 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 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 day period. Respondent shall then notify the Director again at least fourteen 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 and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit A or are necessary to protect the public health.
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. 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.

### **PRACTICE MONITOR**

9. 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 from 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.

### **CONTINUING MEDICAL EDUCATION**

10. Respondent, during each of the five years of the period of probation, shall complete 50 hours of Category I Continuing Medical Education (CME), for a total of 250 hours. All CME courses are subject to the prior written approval of OPMC. Said 50 hours of CME each year shall be in addition to any other CME that Respondent is required to complete to maintain licensure in any jurisdiction or privileges in any facility. Respondent shall within the first year of probation complete a fifty hour course in medical recordkeeping. Either the CPEP (Center for Personalized Education for Physicians) course in patient care documentation or the Case Western Intensive Course in Medical Recordkeeping, or another course in medical recordkeeping approved in advance by OPMC shall satisfy this requirement. Said fifty hours of medical recordkeeping CME shall satisfy Respondent's first year CME requirement. For the remaining four years of probation, Respondent shall take her required CME in the specialty areas of Obstetrics and Gynecology; and specifically the diagnosis, evaluation and treatment of female cancers, including uterine and ovarian cancers.

11. 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.