



## Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

June 4, 2018

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Marc S. Nash, Esq.  
Bureau of Professional Medical Conduct  
Corning Tower Building – Room 2512  
Empire State Plaza  
Albany, New York 12237

Timothy Barth, M.D.  
FMC Lexington  
3301 Leestown Road  
Lexington, Kentucky 40511

**RE: In the Matter of Timothy Barth, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.18-128) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct  
New York State Department of Health  
Office of Professional Medical Conduct  
Riverview Center  
150 Broadway - Suite 355  
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Riverview Center  
150 Broadway – Suite 510  
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cac  
Enclosure

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

**IN THE MATTER  
OF  
TIMOTHY BARTH, M.D.**

**DETERMINATION  
AND  
ORDER**

BPMC 18-128

A hearing was held on May 17, 2018, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **KENDRICK A. SEARS, M.D.**, Chairperson, **AMIT M. SHELAT, D.O., FACP** and **DENNIS P. ZIMMERMAN, M.S., CRC**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **DAWN MacKILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

The Department appeared by Marc S. Nash, Senior Attorney. A Notice of Referral Proceeding and Statement of Charges dated March 6, 2018, were duly served pursuant to PHL § 230(10)(d)(i) upon Timothy Barth, M.D. (Respondent), who did not appear at the hearing. (Exhibit 2.) The Hearing Committee received and examined documents from the Department (Exhibits 1-5) and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charge that the Respondent committed professional misconduct, in violation of Education Law (Educ. Law) 6530(9)(a)(ii), and that pursuant to PHL 230-a, the penalty of revocation of his medical license is appropriate.

### **BACKGROUND**

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law 6530(9)(a)(ii), by having been convicted of an act constituting a crime under federal law, specifically Receipt of Child Pornography, a felony, under 18 U.S.C. § 2252A(a)(2). Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence.

### **FINDINGS OF FACT**

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Timothy Barth, M.D., the Respondent, was licensed to practice medicine in New York on May 19, 1978, by the issuance of license number 134422 by the Education Department. (Exhibit 3.)

2. On or about August 30, 2017, in the United States District Court, Eastern District of Michigan, the Respondent was adjudicated guilty, following his plea of guilty, to the felony crime of Receipt of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2). The Respondent was sentenced to 100 months of imprisonment followed by five years of supervised release. He was ordered to forfeit computer devices and equipment and to pay a \$100 assessment, a \$5,000 Justice for Victims of Trafficking Act assessment and a \$20,000 fine. (Exhibit 4.)

### **VOTE OF THE HEARING COMMITTEE**

#### **FIRST SPECIFICATION**

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law 6530(9)(a)(ii).

VOTE: Sustained (3-0)

**CONCLUSIONS OF LAW**

The Hearing Committee reviewed the Department's evidence showing the Respondent's plea of guilty in the United States District Court, Eastern District of Michigan, to Receipt of Child Pornography, a felony under 18 USC § 2252A(a)(2). Based on this conviction, the Hearing Committee determined the Respondent violated Educ. Law 6530(9)(a)(ii), which specifically defines professional misconduct to include:

9. (a) Being convicted of committing an act constituting a crime under... (ii) federal law.

Although the Respondent was duly served by personal service with notice of the hearing in conformity with the requirements of PHL 230(10)(d), he failed to respond to the charges. The Hearing Committee considered the Respondent's use of electronic equipment for the sexual exploitation of children egregious and agreed with the Department's recommendation that, pursuant to PHL 230-a, his New York medical license be revoked.

**ORDER**

**IT IS HEREBY ORDERED THAT:**


1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained;
2. The Respondent's license to practice medicine in New York State is revoked; and
3. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL § 230(10)(h).

**DATED:** Albany, New York  
6/1, 2018

  
**Kendrick A. Sears, M.D., Chairperson**

**Amit M. Shelat, D.O., FACP**  
**Dennis P. Zimmerman, M.S., CRC**

**TO: Timothy Barth, M.D.**

  
FMC Lexington  
3301 Leestown Road  
Lexington, Kentucky 40511

Marc S. Nash, Esq.  
Senior Attorney  
Bureau of Professional Medical Conduct  
Corning Tower Building – Room 2512  
Empire State Plaza  
Albany, New York 12237

# APPENDIX I

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

IN THE MATTER  
OF  
TIMOTHY BARTH, M.D.

COMMISSIONER'S  
ORDER OF  
SUMMARY  
ACTION

TO: TIMOTHY BARTH, M.D.

FMC Lexington  
3301 Leestown Road  
Lexington, Kentucky 40511

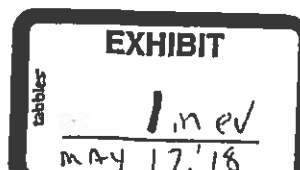
The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that TIMOTHY BARTH, M.D. (henceforth "Respondent"), New York license number 134422, has pleaded or been found guilty or convicted of committing an act constituting a felony under New York State law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York State law, as is more fully set forth in the Statement of Charges attached to the Notice of Referral Proceeding or Notice of Hearing and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law §230(12)(b), that effective immediately, Respondent shall not practice medicine in the State of New York, or practice in any setting under the authority of Respondent's New York license.

Any practice of medicine in violation of this Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29) and may constitute unauthorized medical practice, a Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within ninety days of the service of this order and shall end within ninety days





thereafter. The hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Hearing or Notice of Referral Proceeding provided to the Respondent contemporaneously with this Order.

THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO PRACTICE  
MEDICINE IN NEW YORK STATE BE REVOKED OR  
SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT  
TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC  
HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN  
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York  
February 6, 2018  
March

  
HOWARD A. ZUCKER, M.D., J.D.  
Commissioner of Health  
New York State Department of Health

Inquiries should be directed to:

Marc S. Nash  
Senior Attorney  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282

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

IN THE MATTER  
OF  
TIMOTHY BARTH, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: TIMOTHY BARTH, M.D.

FMC Lexington  
3301 Leestown Road  
Lexington, Kentucky 40511

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on May 17, 2018 at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.<sup>1</sup>

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State

<sup>1</sup> For GPS purposes, enter "Menands", not "Albany".

Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges at least ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. You may also file a written brief and affidavits with the Committee. All such documents shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

**YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here 

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO PRACTICE  
MEDICINE IN NEW YORK STATE BE REVOKED OR  
SUSPENDED, AND/OR THAT YOU BE FINED OR  
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW  
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED  
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN  
THIS MATTER.

DATED: Albany, New York  
February , 2018  
MARCH 6

  
MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Marc S. Nash  
Senior Attorney  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

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

IN THE MATTER  
OF  
TIMOTHY BARTH, M.D.

STATEMENT  
OF  
CHARGES

TIMOTHY BARTH, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 19, 1978, by the issuance of license number 134422 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about April 5, 2017, in the United States District Court, Eastern District of Michigan, Respondent pled guilty to one felony count of Receipt of Child Pornography [18 U.S.C. §2252A(a)(2)]. On August 23, 2017, Respondent was convicted and sentenced to a total term of one hundred (100) months' incarceration followed by a five-year period of supervised release. Respondent was assessed monetary penalties totaling \$25,100.00.

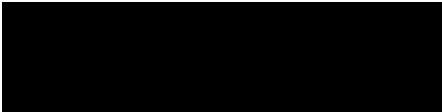
**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

Respondent violated Education Law § 6530(9)(a)(ii) by having been convicted of an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

DATE: ~~February~~ <sup>MARCH 6,</sup> 2018  
Albany, New York

  
MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct