



*Public*  
**New York State Board for Professional Medical Conduct**

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

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*NYS Department of Health*  
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*Office of Professional Medical Conduct*

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*Vice Chair*  
*Katherine A. Hawkins, M.D., J.D.*  
*Executive Secretary*

September 14, 2009

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Reginald M. Sutton, M.D.

Redacted Address

Re: License No. 130142

Dear Dr. Sutton:

Enclosed is a copy of BPMC #09-172 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect September 21, 2009.

**If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order** and return it to the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299

Sincerely,

Redacted Signature

Katherine A. Hawkins, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Marylou K. Roshia, Esq.  
Damon & Morey  
1000 Cathedral Place  
298 Main Street  
Buffalo, NY 14202

IN THE MATTER  
OF  
REGINALD M. SUTTON, M.D.

CONSENT  
ORDER

BPMC No. #09-172

Upon the application of Reginald M. Sutton, 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 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.

DATE: 9-11-2009

Redacted Signature

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  
REGINALD M. SUTTON, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

Reginald M. Sutton, M.D., represents that all of the following statements are true:

That on or about February 25, 1977, I was licensed to practice as a physician in the State of New York, and issued License No. 130142 by the New York State Education Department.

My current address is Redacted Address

, 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 three 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 agree not to contest the second and third specifications in full satisfaction of the charges against me, and agree to the following penalty:

Immediately upon issuance of the Consent Order for which I apply, my license to practice medicine shall be limited, pursuant to N.Y. Pub. Health Law § 230-a, to preclude patient contact and any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition. I shall be precluded from further reliance upon my license to practice medicine to exempt me from the

licensure, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated or certified by the Board of Regents, Department of Education, Department of Health or the Department of State.

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

- That Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC immediately upon having done so; and
- That Respondent shall return any and all official New York State prescriptions to the Bureau of Narcotic Enforcement, and shall surrender Respondent's Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within 15 days of the Order's effective date. Further, within 30 days of returning these prescriptions and surrendering the registration, Respondent shall provide documentary proof of these transaction(s) to the Director of OPMC; 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; and
- That Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Requirements for Closing a Medical Practice").

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined in N.Y. Educ. 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. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

I stipulate that the proposed sanction and Order are authorized by N.Y. Pub. Health Law §§ 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.

I am aware and agree that, regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the Consent Agreement that I propose in this application, or to decline to do so.

Redacted Signature

REGINALD M. SUTTON, M.D.  
Respondent

DATE 7/17/09

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

DATE: 8/25/09

Redacted Signature

MARYLOU K. ROSHIA, ESQ.  
Attorney for Respondent

DATE: 8/28/09

Redacted Signature

VALERIE B. DONOVAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 9/9/09

Redacted Signature

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

**EXHIBIT "A"**

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

**IN THE MATTER  
OF  
REGINALD M. SUTTON, M.D.**

STATEMENT  
OF  
CHARGES

REGINALD M. SUTTON, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 25, 1977, by the issuance of license number 130142 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. From in or around August, 2003 through in or around October 2004, Respondent treated Patient A (patient is identified in Appendix A), a male who presented with right sided pain, at his medical office in Buffalo, New York. Respondent's care and treatment of Patient A failed to meet accepted standards of medical practice, in that:
1. Respondent failed to elicit an adequate history of Patient A and/or failed to implement a diagnostic plan to reach a timely diagnosis.
  2. Respondent failed to note Patient A's digital clubbing.
  3. Respondent failed to obtain a chest CT scan of Patient A.
  4. Respondent failed to appropriately refer Patient A to a pulmonologist in a timely fashion.
- B. On or about November 3, 2008, effective December 4, 2008, Respondent entered into a Consent Agreement and Order with the Arizona Medical Board. The

Arizona Medical Board issued Respondent a Letter of Reprimand for Respondent's failure to document multiple patient visits, for failure to document rationale for narcotic prescriptions on multiple occasions, for prescribing a progestin containing compound for a patient who had undergone a hysterectomy, and for failure to maintain adequate records.

- C. The conduct resulting in the Arizona Medical Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:
1. New York State Education Law §6530(3) (negligence on more than one occasion).
  2. New York State Education Law §6530(5) (incompetence on more than one occasion).
  3. New York State Education Law §6530(32) (failure to maintain adequate records).

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in New York State Education 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. The facts in paragraphs A and A.1, A and A.2, A and A.3 and/or A and A.4.



**SECOND SPECIFICATION**  
**HAVING BEEN FOUND GUILTY OF**  
**PROFESSIONAL MISCONDUCT**

Respondent is charged with committing professional misconduct as defined in New York State Education Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely New York State Education Law §§ 6530(3), (5) and (32)) as alleged in the following:

2. The facts in Paragraphs B and C.

**THIRD SPECIFICATION**  
**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in New York State Education Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely New York State Education Law §§ 6530(3), (5) and (32)) as alleged in the following:

3. The facts in Paragraphs B and C.

DATED: ~~June~~ <sup>Sept. 2</sup>, 2009  
Albany, New York

Redacted Signature

**PETER D. VAN BUREN**  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

## EXHIBIT "B"

### Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State or under his or her New York license in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing himself as being eligible to practice medicine.
2. Licensee shall, within 30 days of the issuance of this Order, notify the New York State Education Department, Division of Professional Licensing Services, that Licensee's license status is "inactive," and shall provide proof of such notification to the Director of OPMC immediately upon having done so.
3. Licensee shall within fifteen (15) days of the Order notify his patients of the cessation or limitation of the licensee's medical practice and will refer all patients to another licensed practicing physician for their continued care, as appropriate. Licensee shall notify each health care plan with which the licensee contracts or is employed, and each hospital where he or she has privileges in writing of the cessation or limitation of the licensee's medical practice. Licensee shall, within 45 days of the effective date of the Order shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation or limitations of licensee's medical license.
4. Licensee shall make arrangements for the transfer and maintenance of the medical records of his or her patients. Within thirty days of the effective date of the Order, Licensee shall notify OPMC of these arrangements including the appropriate and acceptable contact person's name, address, and telephone number who shall have access to these records. Original records shall be retained for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three years after the patient reaches the age of majority whichever time period is longer. Records shall be maintained in a safe and secure place, which is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information on the record is kept confidential and made available only to authorized persons. When a patient or and/or his or her representative requests a copy of the patient's medical record or requests that the original medical record be forwarded to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of their inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate, Licensee shall within fifteen (15) days advise the DEA in writing of the licensure action and shall surrender any DEA controlled substance privileges issued pursuant to your New York State license to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 to the DEA.
6. Licensee shall within fifteen (15) days return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Licensee shall cause all prescription pads bearing his name to be destroyed. If no other licensee is providing services at his practice location, all medications shall be properly disposed.
7. Within 15 days of the Consent Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories, internet or otherwise, professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by himself or others while barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of this Order.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine and if his license is revoked, surrendered or suspended for a term of six months or more under the terms of this Order, Licensee shall divest himself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the effective date of this Order.
10. Failure to comply with the above directives may result in a civil penalty or further criminal penalties as may be authorized pursuant to the law. Under Section 6512 of the Education Law it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when such professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in section 230 a1. of the Public Health Law, which includes fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty and may include revocation of a suspended license.