

NEW YORK

state department of

HEALTH

Public

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

December 27, 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Andrew Sutton, M.D.  
#16059-043  
FCI Jesup Federal Correction Institution  
26801 301 South  
Jesup, Georgia 31599

Jude B. Mulvey, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Andrew Sutton, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 13-430) 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.

HEALTH.NY.GOV  
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twitter.com/HealthNYGov

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), ~~(McKinney Supp. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013)~~, "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,

REDACTED  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah  
Enclosure



COPY

IN THE MATTER  
OF  
ANDREW SUTTON, M.D.  
C0-13-04-1975-A

DETERMINATION  
AND  
ORDER

BPMC#13-430

A hearing was held on December 11, 2013, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding and Statement of Charges, both dated October 21, 2013, were served upon the Respondent, Andrew Sutton, M.D. Pursuant to Section 230(10)(e) of the Public Health Law, Steven I. Sherman, D.O., M.S., Chairperson, Samuel F. Bosco, M.D., and William W. Walence, Ph.D, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Christine C. Traskos, Esq. Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by James Dering, Esq., General Counsel, by Jude B. Mulvey, Esq. of Counsel. The Respondent did not appear at the hearing.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

#### BACKGROUND

This proceeding was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with

misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In this case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(ii).

Copies of the Commissioner's Order, Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix I.

#### WITNESSES

For the Petitioner: None

For the Respondent: None

#### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. The Respondent, Andrew Sutton, M.D., did not appear although he was duly served. (Petitioner's Ex. 2)



2. Andrew Sutton, M.D., the Respondent, was authorized to practice medicine in New York State on July 5, 1989, by the issuance of license number 178974 by the New York State Education Department. (Petitioner's Ex. 3)

3. On March 20, 2012, in the United States District Court, Northern District of Georgia, Respondent was found guilty, after a plea of guilty, to one count of Distribution of Child Pornography in violation of 18 USC § 2252(a) 2 and (b), a felony. (Petitioner's Ex. 4)

### VOTE OF THE HEARING COMMITTEE

#### FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law.

VOTE: Sustained (3-0)

### HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing because he is incarcerated in Federal prison. The Hearing Committee notes that Respondent plead guilty to one count of distributing child pornography. He was sentenced to a term of 96 months, followed by a ten year probation. The Hearing Committee believes that Respondent's misconduct is very serious and they are concerned that his medical practice most likely involves seeing children. The Hearing Committee considered the full range of penalties available and was unanimous that revocation would be the proper penalty to protect the safety of the public under the circumstances.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. Respondent's license to practice medicine in New York State is **REVOKED**;
2. This Order shall be effective upon service on the Respondent by personal service or registered or certified mail in accordance with the requirements of Public Health Law Section 230(10)(h).

**DATED: New York, New York**

December 23, 2013

REDACTED

~~Steven I. Sherman, D.O., M.S.~~  
Chairperson

Samuel F. Bosco, M.D.  
William W. Waience, Ph.D

TO:

Andrew Sutton, M.D.#16059-043  
FCI Jesup Federal Correction Institution  
26801 301 South  
Jesup, GA 31599

Jude B. Mulvey, Esq.  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Coming Tower- Rm. 2512  
Empire State Plaza  
Albany, N.Y. 12237

# APPENDIX I



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

IN THE MATTER  
OF  
ANDREW SUTTON, M.D.  
CO-13-04-1975-A

COMMISSIONER'S  
ORDER  
AND  
NOTICE OF  
REFERRAL  
PROCEEDING

TO: Andrew Sutton #16059-043  
FCI Jesup Federal Correction Institution  
26801 301 South  
Jesup, GA 31599

The undersigned, Nirav R. Shah, M.D., M.P.H., Commissioner of Health, pursuant to New York 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 **ANDREW SUTTON, M.D.**, Respondent, New York license number 178974, has pleaded guilty to committing an act constituting a felony under federal law; as is more fully set forth in the Statement of Charges attached hereto, and made a part hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, **ANDREW SUTTON, M.D.**, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

**ANY PRACTICE OF MEDICINE IN VIOLATION OF THIS COMMISSIONER'S ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY, DEFINED BY NEW YORK EDUCATION LAW §6512.**

EXHIBIT

1

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of

New York Public Health Law §230 and New York State Administrative Procedure 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 the 11<sup>th</sup> day of December, 2013, at 10:30 a.m., at Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct.

Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. Respondent shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. The licensee may file a brief and affidavits with the Committee on Professional Conduct. A summary of the Department of Health Hearing Rules is enclosed. 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.

The hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of



Adjudication, Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF

ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. 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 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  
Oct 24 2013

REDACTED

Nirav R. Shah, M.D., M.P.H.  
Commissioner of Health  
New York State Department of Health

Inquiries should be addressed to:

Jude B. Mulvey  
Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282



STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER  
OF  
ANDREW SUTTON, M.D.  
CO-13-04-1975-A

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STATEMENT  
OF  
CHARGES

ANDREW SUTTON, M.D., Respondent, was authorized to practice medicine in New York state on July 5, 1989, by the issuance of license number 178974 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about March 20, 2012, in the United States District Court, Northern District of Georgia, Respondent was found guilty, after a plea of guilty to one count of Distribution of Child Pornography in violation of 18 USC § 2252 (a) 2 and (b), a felony. He was sentenced to ninety-six (96) months incarceration.

**SPECIFICATION**

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

1. The facts in Paragraph A.

DATED: *Oct. 21*, 2013  
Albany, New York

REDACTED

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MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct