



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

November 3, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mary E. Kelly Sutton, M.D.
P.O. Box 885
North Attleboro, Massachusetts 02760

Muzammil Jamil Esq.
87-63 148th Street
Jamaica, New York 11435

Deborah Beth Medows, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Division of Legal Affairs
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Mary E. Kelly Sutton, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-226) 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:

Jean T. Carney, 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 Ms. Carney 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,



Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

cc: Shelly Wang Bandago by scan
Mary Kay Avellino by scan
Donna Fitzgerald by scan
Tracy Theriault by scan
opmcfinalactions@health.ny.gov by scan
Henry Weintraub by scan
Jeffrey Conklin by scan
Donald Dawson
SAPA File
BOA by scan

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

COPY

-----X
: IN THE MATTER :
:

OF :

MARY E. KELLY SUTTON, M.D. :
:-----X

DETERMINATION

AND

ORDER

A Notice of Referral Proceeding and Statement of Charges dated July 26, 2023, were duly served upon Mary E. Kelly Sutton, M.D. (Respondent) pursuant to Public Health Law (PHL) § 230(10)(d)(i). (Exhibits 1, 2.) A hearing was held on October 25, 2023, via WebEx videoconference. Pursuant to PHL § 230(10)(e), **ANDREW J. MERRITT, M.D.**, Chairperson, **RAMANATHAN RAJU, M.D.**, and **SUSAN KSIAZEK**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **KATHLEEN DIX**, Administrative Law Judge, served as the administrative officer.

The Department appeared by Deborah Beth Medows, Associate Counsel. The Respondent appeared with her attorney, Muzammil Jamil, Esq. The Hearing Committee received and examined documents from the Department (Exhibits 1-5). A transcript of the proceeding was made. After consideration of the entire hearing record, the Hearing Committee hereby issues this Determination and Order, revoking the Respondent's medical license. All findings, conclusions, and determinations are unanimous.

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 Education Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(d) for having her license to practice medicine revoked in California after a disciplinary action was

instituted by a duly authorized professional agency of that state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York State on or about May 28, 1982, by the issuance of license number 150168 by the New York State Education Department. (Exhibit 3.)

2. On September 28, 2021, the Medical Board of California determined that the Respondent had acted grossly negligent and had committed repeated negligent acts in violation of the California's Medical Practice Act, Business and Professions Code Section 2234. The Medical Board of California revoked the Respondent's license. (Exhibits 4, 5.)

DISCUSSION

The Medical Board of California Order was based upon the following facts: the Respondent issued vaccine exemptions to eight children between 2016 and 2018 which exemptions did not comply with the vaccine guidelines set forth by the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services (ACIP) and the American Academy of Pediatrics (AAP); the exemptions were issued after the elimination of the personal beliefs exemption in 2016; the Respondent did not examine the children nor seek to acquire medical records for these eight children and based the exemptions on patient and family medical history reported by the children's parents; and the Respondent did not document informed consent. (Exhibit 5.) The Medical Board of California found that "[c]ause for discipline for gross negligence and repeated negligent acts" had been established and that the Respondent's conduct in that matter was egregious and posed a serious risk to her patients'

health and the public health. (Exhibit 5, pages 20-21.)

The Hearing Committee has thoroughly considered the evidence in this matter. The Hearing Committee agreed that the Respondent's conduct resulting in the Medical Board of California disciplinary action would, if committed in New York, constitute misconduct pursuant to Education Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion and § 6530(4) by practicing the profession with gross negligence on a particular occasion based upon the Respondent's failure to adhere to applicable standards of care in issuing vaccine exemptions to eight children. The Hearing Committee thus determined that the Respondent violated Education Law § 6530(9)(d).

After determining to sustain the charge, the Hearing Committee considered all possible penalties authorized by PHL § 230-a and agreed with the Department's recommendation that the Respondent's medical license should be revoked.

In reviewing the facts cited by the Medical Board of California in the September 28, 2021 Decision, and the December 8, 2021 Order, the Hearing Committee is concerned over the Respondent's failure to adhere to applicable standards of care in issuing vaccine exemptions, in particular, her failure to follow prescribed guidelines of the ACIP and the AAP, her failure to obtain and review patient records and prior medical history for each patient for whom she issued a letter of vaccine exemption, her failure to document that she informed patients of the risks versus the benefits of vaccine exemption, her failure to document with specificity the patient's need for a vaccine exemption, and the potential harm to public safety and safety to patients in New York should the Respondent practice medicine in New York. Given the seriousness of the Respondent's omissions, the Hearing Committee finds that the only appropriate penalty in this matter is revocation of the Respondent's license to practice medicine in the State of New York.

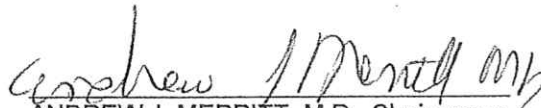
ORDER

IT IS HEREBY ORDERED THAT:

1. The charge of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent's license to practice medicine in the State of New York is hereby revoked. PHL § 230-a(4).
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: 10/30, 2023

_____, New York


ANDREW J. MERRITT, M.D., Chairperson
RAMANATHAN RAJU, M.D.
SUSAN KSIAZEK

To: Mary E. Kelly Sutton, M.D.
P.O. Box 885
North Attleboro, MA 02761

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mjamil@jamillaw.com

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