

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Board of Registration in Medicine

Adjudicatory Case No. 2024-041

In the Matter of

MALCOLM M. KIRK, M.D.

CONSENT ORDER

Pursuant to G.L. c. 30A, § 10, Malcolm M. Kirk, M.D. ("Respondent") and the Board of Registration in Medicine ("Board") (hereinafter referred to jointly as the "Parties") agree that the Board may issue this Consent Order to resolve the above-captioned adjudicatory proceeding. The Parties further agree that this Consent Order will have all the force and effect of a Final Decision within the meaning of 801 CMR 1.01(11)(d). The Respondent admits to the findings of fact specified below and agrees that the Board may make the conclusions of law and impose the sanction set forth below in resolution of investigative Docket No. 23-819.

Findings of Fact

1. The Respondent is a 1989 graduate of the Pennsylvania State Univ. College of Medicine and is certified by the American Board of Internal Medicine in Clinical Cardiac Electrophysiology. He has been licensed to practice medicine in Massachusetts under certificate number 281413 since September 12, 2019. The Respondent's principal office location is in Cranston, Rhode Island. He has admitting privileges at several Rhode Island hospitals and at Charlton Memorial Hospital, Fall River Massachusetts.
2. The Respondent is licensed to practice medicine in Rhode Island.

3. On November 8, 2023, the Rhode Island Board of Medical Licensure and Discipline (“RI Board”) issued a Consent Order/Agreement Action(s) for REPRIMAND based on Failure to Conform to Minimal Standards of Acceptable Medical Practice / Negligence.

4. Specifically, the RI Board disciplined the Respondent for unprofessional conduct in violation of RIGL 5-37-5.1 (19) and (27).

5. The RI Board disciplined the Respondent for the following conduct:

- a. The Respondent was scheduled to perform a procedure at Rhode Island Hospital on January 12, 2023.
- b. On the evening of January 11, 2023, the Respondent learned that he had tested positive for the Coronavirus disease (“COVID-19”).
- c. Despite the positive test results, the Respondent proceeded to conduct the procedure on the following morning of January 12, 2023.
- d. The Respondent admitted that he conducted a procedure while COVID-19 positive.
- e. The RI Board Investigative Committee made a probable cause determination of unprofessional conduct on the part of the Respondent, in violation of RIGL 5-37-5.1 (19) and (27), finding that the Respondent’s conduct violated both federal and state quarantine guidelines applicable to COVID-19.
- f. The Respondent assented to the RI Board’s order of reprimand, which requires the Respondent to review, be familiar with, and follow all federal and state COVID-19 and other infectious disease guidelines that are directly applicable to healthcare providers and assessment of administrative fees.

Conclusions of Law

- A. Respondent violated 243 C.M.R. 1.03(5)(a)(12) by being disciplined by the RI Board for reasons substantially the same as those set forth in G.L. c. 112, § 5 or 243 C.M.R. 1.03(5). More specifically, the reason discipline was imposed by the RI Board is substantially the same as Respondent having violated:
1. violated 243 CMR 1.03(5)(a)(2), by committing an offense against any provision of the laws of the Commonwealth relating to the practice of medicine, or any rule or regulation adopted thereunder, to wit, Respondent violated 243 CMR 2.07(27)(a), Infection Prevention and Control, by failing to maintain infection control policies and procedures and failing to comply with Department of Public Health Guidance for Health Care Personnel with SARS-CoV2 Infection or Exposure;
 2. engaged in conduct that undermines the public confidence in the integrity of the medical profession. *See Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982); *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979).

Sanction and Order

The Respondent's license is hereby ADMONISHED. This sanction is imposed for each violation of law listed in the Conclusion section and not a combination of any or all of them.

Execution of this Consent Order

Complaint Counsel and the Respondent agree that the approval of this Consent Order is left to the discretion of the Board. The signature of Complaint Counsel and the Respondent are expressly conditioned on the Board accepting this Consent Order. If the Board rejects this

Consent Order in whole or in part, then the entire document shall be null and void; thereafter, neither of the parties nor anyone else may rely on these stipulations in this proceeding.

As to any matter in this Consent Order left to the discretion of the Board, neither the Respondent, nor anyone acting on his behalf, has received any promises or representations regarding the same.

The Respondent waives any right of appeal that he may have resulting from the Board's acceptance of this Consent Order.

The Respondent shall provide a complete copy of this Consent Order within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which the Respondent practices medicine; any in- or out-of-state health maintenance organization with whom the Respondent has privileges or any other kind of association; any state agency, in- or out-of-state, with which the Respondent has a provider contract; any in- or out-of-state medical employer, whether or not the Respondent practices medicine there; the state licensing boards of all states in which the Respondent has any kind of license to practice medicine; the Drug Enforcement Administration Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. If the Respondent chooses to utilize electronic mail to notify any of the aforementioned designated entities, the Respondent shall obtain written confirmation of their receipt of a complete copy of this Consent Order from those designated entities. The Respondent shall also provide this notification to any such designated entities with which the Respondent becomes associated in the year following the date of imposition of this admonishment. The Respondent is further directed to certify to the Board within ten (10) days that the Respondent has complied with this directive.

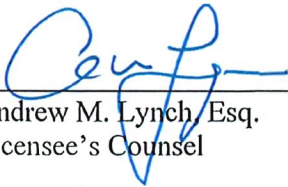
The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.



Malcolm M. Kirk, M.D.
Licensee

May 13, 2024

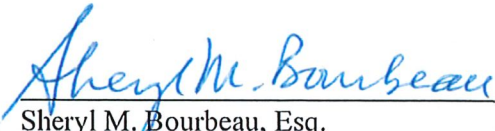
Date



Andrew M. Lynch, Esq.
Licensee's Counsel

5/13/24

Date



Sheryl M. Bourbeau, Esq.
Complaint Counsel

5/14/2024

Date

So ORDERED by the Board of Registration in Medicine this 15th__ day of August, 2024_.



Booker T. Bush, M.D.
Board Chair