

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Board of Registration in

Medicine Adjudicatory Case No.

2024-041

In the Matter of

MALCOLM M. KIRK, M.D.

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (“Board”) has determined that good cause exists to believe the following acts occurred and constitute violations for which a licensee may be sanctioned by the Board. The Board therefore alleges that Malcolm M. Kirk, M.D. (“Respondent”) has practiced medicine in violation of law, regulations, or good and accepted medical practice as set forth herein. The investigative docket number associated with this order to show cause is Docket No. 23-819.

Biographical Information

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.

Factual Allegations

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 to pay administrative fees in the amount of \$1,100.00.

Legal Basis for Proposed Relief

A. Pursuant to 243 C.M.R. 1.03(5)(a)(12), the Board may discipline a physician upon satisfactory proof to a majority of the Board that said physician has been disciplined in another jurisdiction in any way by the proper licensing authority 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, in Massachusetts, the Board may discipline a physician upon proof satisfactory to a majority of the Board that said physician has:

1. Violated 243 C.M.R. 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, the 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; or
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).

The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01.

Nature of Relief Sought

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training, or other restrictions upon the Respondent's practice of medicine.

Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board should not discipline the Respondent for the conduct described herein.

By the Board of Registration in Medicine,



Booker T. Bush, M.D.
Board Chair

Date: August 15, 2024