



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

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

Richard F. Daines, M.D.  
Commissioner  
NYS Department of Health  
Wendy E. Saunders  
Chief of Staff  
Keith W. Servis, Director  
Office of Professional Medical Conduct

*Public*

Kendrick A. Sears, M.D.  
Chair  
Michael A. Gonzalez, R.P.A.  
Vice Chair  
Ansel R. Marks, M.D., J.D.  
Executive Secretary

February 4, 2008

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Robert David Kirk, R.P.A.  
1000 E. Genesee Street, Suite 300  
Syracuse, New York 13210

Re: License No. 009022

Dear Mr. Kirk:

Enclosed is a corrected copy of BPMC Order #07-203 of the New York State Board for Professional Medical Conduct. It corrects the erroneous date of 7-19-2007 with the correct date of September 19, 2007.

All of the terms and conditions of this Order remain in effect.

Sincerely,

REDACTED

Ansel R. Marks, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: P. Scott Micho, Esq.  
333 E. Onondaga Street, Suite 300  
Syracuse, New York 13202

Rebecca A. Crance, Esq.  
Sugarman Law Firm, LLP  
360 South Warren Street  
Syracuse, New York 13202

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

IN THE MATTER  
OF  
ROBERT DAVID KIRK, R.P.A.

CORRECTED  
CONSENT  
ORDER  
BPMC #Na. 07-203

Upon the application of Robert David Kirk, R.P.A. 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 the previous Consent Order in this matter erroneously dated 7-19-07 be corrected to correspond to the actual date of signing, that is September 19, 2007.

ORDERED, that this Consent 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: 2-1-2008

REDACTED

~~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  
ROBERT DAVID KIRK, R.P.A.

CONSENT  
AGREEMENT  
AND  
ORDER

Robert David Kirk, R.P.A., representing that all of the following statements are true, states the following:

That on or about October 17, 2002, I was licensed to practice as a Physician Assistant in the State of New York, and issued License No. 009022 by the New York State Education Department.

My current address is REDACTED, 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 (Board) has charged me with thirty-four 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 plead guilty to the following specifications: 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 27, 28, 29, 31, 32, 33

(REDACTED)

in full satisfaction of the charges against me, and agree to the following penalty:

1. Censure and Reprimand
2. A three year period of Probation on the terms and conditions set

forth in Exhibit B, attached hereto, and made part of this Consent Agreement.

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

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent 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 Consent 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.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by 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 N.Y. Pub. 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 Consent 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 Consent 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 Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC 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 I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE

01/19/07

REDACTED

Robert David Kirk, R.P.A.  
RESPONDENT

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

DATE: 9/7/07

REDACTED

SCOTT MICHO, ESQ.  
Attorney for Respondent

DATE: Sept 13, 2007

REDACTED

JOSEPH CAHILL  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 9/19/07

REDACTED

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  
ROBERT DAVID KIRK, R.P.A.

STATEMENT  
OF  
CHARGES

ROBERT DAVID KIRK, R.P.A., the Respondent, was authorized to practice as a Physician Assistant on October 17, 2002 by the issuance of license number 009022 by the New York State Education Department. Respondent's is currently registered with the New York State Education Department.

FACTUAL ALLEGATIONS

A.

(REDACTED)



B.

(REDACTED)

C.

(REDACTED)

D.

(REDACTED)

E. Respondent, on August 23, 2004, improperly accessed confidential patient information using the Oswego Hospital computer system on the following patients:

1. Patient A
2. Patient B (Patient A's Father)
3. Patient C (Patient A's child)
4. Patient D (Patient A's child)
5. Patient E
6. Patient F
7. Patient G

Respondent's employment as a Physician's Assistant was terminated by Oswego Hospital on August 26, 2004.

F.

(REDACTED)

- G. Respondent, on June 14, 2005, signed and dated an "Application for Allied Professionals" with Crouse Hospital in Syracuse, New York. As part of this application, Respondent affirmed "under the penalties of perjury as follows: that he/she is the applicant named herein; that he/she has read the foregoing application and knows the contents thereof; that the same is complete, true and accurate to his/her own knowledge and belief."

The application contained the following question (Question 3):

**"Are you now or were you subject to limitation, suspension, revocation, denial, non renewal or voluntary**

**surrender of employment, appointment or privileges at any hospital or health care related institution?"**

Respondent's application has a checkmark on the line for "No," concerning this question. Respondent's response was made with intent to deceive or with reckless disregard as to the truthfulness of his statement.

1. In fact, Respondent knew his employment as a Physician Assistant with A. L. Lee Memorial Hospital was not renewed by that institution on or about December 16, 2004. Respondent's response was made with intent to deceive or with reckless disregard as to the truthfulness of his statement.
  
2. In fact, Oswego Hospital placed Respondent on 6 months disciplinary probation on August 4, 2004. This probation was a result of an incident that occurred on July 30, 2004. Respondent knew this fact. Respondent's response was made with intent to deceive or with reckless disregard as to the truthfulness of his statement.
  
3. In fact, Respondent knew his employment as a Surgical Physician Assistant at Oswego Hospital was terminated by Oswego Hospital on August 26, 2004. Respondent's response was made with intent to deceive or with reckless disregard as to the truthfulness of his statement.

4. In the alternative, Respondent did not actually read the June 14, 2005 application with Crouse Hospital in Syracuse, New York but falsely and knowingly affirmed "that he has read the foregoing application and knows the contents thereof; that the same is complete, true and accurate to his own knowledge and belief."

H. Respondent, on July 14, 2005, signed and dated an "Application for Appointment - Clinical Affiliated Staff" for St. Joseph's Hospital Health Center, Syracuse, New York. As part of this application, Respondent affirmed "under the penalties of perjury as follows: that he/she is the applicant named herein; that he/she has read the foregoing application and knows the contents thereof; that the same is complete, true and accurate to his/her own knowledge and belief."

The application contained the following question (Question 3):

**"Since your last appointment, are you now or were you subject to:**

**3. Limitation, suspension, probation, revocation, denial, non-renewal, voluntary or involuntary surrender of employment, appointment, privileges or training at any hospital or health care related institution?"**

Respondent's application had the words "voluntary," "surrender of" and "privileges" circled. There was a checkmark on the "Yes" line, and a side note said "see attached."

The typed attachment stated, in pertinent part, as follows:

**The "yes" response to question 3 under IX. (Miscellaneous Information) is due to the fact that I voluntarily left employment of both: Oswego and A.L. Memorial Hospitals to find employment in the Syracuse area, closer to my place of residence."**

1. In fact, Respondent knew his employment as a Physician Assistant with A. L. Lee Memorial Hospital was not renewed by that institution on or about December 16, 2004. Respondent's response was made with intent to deceive or with reckless disregard as to the truthfulness of his statement.
2. In fact, Oswego Hospital placed Respondent on 6 months disciplinary probation on August 4, 2004. This probation was a result of an incident that occurred on July 30, 2004. Respondent's response was made with intent to deceive or with reckless disregard as to the truthfulness of his statement.
3. In fact, Respondent knew his employment as a Surgical Physician Assistant at Oswego Hospital was terminated by Oswego Hospital on August 26, 2004. Respondent's response was made with intent to deceive or with reckless disregard as to the truthfulness of his statement.

1.

(REDACTED)



## **SPECIFICATION OF CHARGES**

### **FIRST SPECIFICATION**

Respondent is charged with obtaining his license fraudulently, in violation of New York Education Law, Section 6530(1), in that Petitioner charges:

1. The facts in Paragraph B.

### **SECOND THROUGH TWENTY-FIRST SPECIFICATIONS**

#### **FRAUDULENT PRACTICE**

Respondent is charged with practicing the profession fraudulently, in violation of New York State Education Law § 6530(2), in that Petitioner charges:

2. The facts in Paragraph A.
3. The facts in Paragraph B.
4. The facts in Paragraph C.
5. The facts in Paragraph D.
6. The facts in Paragraphs E and E.1.
7. The facts in Paragraphs E and E.2.
8. The facts in Paragraphs E and E.3.
9. The facts in Paragraphs E and E.4.
10. The facts in Paragraphs E and E.5.
11. The facts in Paragraphs E and E.6.
12. The facts in Paragraphs E and E.7.
13. The facts in Paragraph F.
14. The facts in Paragraphs G and G.1.
15. The facts in Paragraphs G and G.2.
16. The facts in Paragraphs G and G.3.

17. The facts in Paragraphs G and G.4.
18. The facts in Paragraphs H and H.1.
19. The facts in Paragraphs H and H.2.
20. The facts in Paragraphs H and H.3.
21. The facts in Paragraph I.

**TWENTY-SECOND THROUGH THIRTY-FOURTH SPECIFICATIONS**

**FALSE REPORT**

Respondent is charged with wilfully making or filing a false report in violation of New York State Education Law §8530(21), in that Petitioner charges:

22. The facts in Paragraph A.
23. The facts in Paragraph B.
24. The facts in Paragraph C.
25. The facts in Paragraph D.
26. The facts in Paragraph F.
27. The facts in Paragraphs G and G.1.
28. The facts in Paragraphs G and G.2.
29. The facts in Paragraphs G and G.3.
30. The facts in Paragraphs G and G.4.
31. The facts in Paragraphs H and H.1.
32. The facts in Paragraphs H and H.2.
33. The facts in Paragraphs H and H.3.
34. The facts in Paragraph I.

DATE: August 21, 2007  
Albany, New York

REDACTED

~~ROY NEMERSON~~  
Deputy Counsel  
Bureau of Professional Medical Conduct

## EXHIBIT "B"

### Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.

7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.

#### PRACTICE MONITOR

9. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
  - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
  - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
  - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
10. Respondent shall enroll in and complete a continuing education program in the area of medical ethics, patient confidentiality for a minimum of 12 credit hours. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probation period.
11. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.