

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
DANA J. AKIYA, M.D., : FINAL DECISION AND ORDER
RESPONDENT. :
 : **ORDER 0007168**

Division of Legal Services and Compliance Case No. 19 MED 545

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Dana J. Akiya, M.D.
Wauwatosa, WI 53226

Wisconsin Medical Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Medical Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Dana J. Akiya, M.D., (DOB xx-xx-1977), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 49540-20, first issued on July 27, 2006, with registration current through October 31, 2021. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Wauwatosa, Wisconsin 53226.

2. At all times relevant to this matter, Respondent was privileged as a physician specializing in obstetrics and gynecology at a hospital located in Waukesha, Wisconsin (Hospital).

3. The Hospital's labor and delivery department had multiple obstetrical groups, including Respondent's group and Physician F's group. In addition to the attending obstetricians, the Hospital had a 24-hour, on-staff, designated obstetrician who was available to the attending obstetrician and nursing staff.

4. On April 22, 2016, at 2:05 pm, Patient A, a 32-year old female who was 40 weeks and one day pregnant and considered high risk, with a history of one C-section via low transverse incision, was admitted to the Hospital for labor and delivery.

5. On the morning of April 23, 2016, Respondent was aware that Physician F was in-house and available to assist Respondent. Physician F also offered his services to Respondent if needed.

6. On April 23, 2016, at 9:10 am, after three hours of pushing, Respondent called for an urgent C-section for Patient A. For several hours prior, Patient A's fetal heart rate tracings were in a prolonged Category (CAT) 2 status.

7. At 9:16 am, Respondent was alerted to a change with another patient, Patient B. Respondent entered Patient B's room and ruptured her shortly thereafter. Respondent's plan was to deliver Patient B within 15 minutes and get back to the operating room to conduct the C-section on Patient A. However, Patient B's delivery took longer than planned.

8. At 10:00 am, Nurse D came to Patient B's room to inform Respondent there was decreasing variability in Patient A.

9. Respondent instructed Nurse D to get Patient A to the operating room (OR). At approximately 10:05 am, Nurse D called again and told Respondent the fetal status showed a CAT 3 strip with bradycardia. In the OR, the fetal heart rate was audible and about 50 bpm.

10. Nurse E called Physician F and held the phone to Respondent's ear. Respondent asked Physician F to perform the C-section on Patient A and said she would join him as soon as she delivered Patient B.

11. Physician F began the C-section on Patient A at 10:31 am.

12. The baby was born in critical condition with an Apgar score of one (1). He was transferred to a children's hospital where he expired two days later.

13. The standard of minimally competent medical practice in Wisconsin required Respondent, under these circumstances, to call another physician to handle the delivery of one of the patients as soon as Respondent knew that Patient A needed a C-section and Patient B was ready to deliver at the same time.

14. A formal complaint will be filed in this matter with the Department of Administration Division of Hearings and Appeals. The filing of this complaint is necessary solely to toll the statute of limitations.

15. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.02(3), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent violated Wisconsin Admin. Code § MED 10.03(2)(b), by departing from or failing to conform to the standard of minimally competent medical practice which creates an unacceptable risk of harm to a patient or the public whether or not the act or omission resulted in actual harm to any person.

3. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.

2. Respondent is REPRIMANDED.

3. The license to practice medicine and surgery in the state of Wisconsin issued to Dana J. Akiya, M.D., (license number 49540-20) is LIMITED as follows:

a. Within nine (9) months of the date of this Order, Respondent shall successfully complete five (5) hours of education on the topic of labor and delivery case management.

b. Respondent shall be responsible for obtaining the course(s) required under this Order, for providing adequate course(s) descriptions to the Department Monitor, and for obtaining pre-approval of the course(s) from the Wisconsin Medical Examining Board, or its designee, prior to commencement of the course(s).

c. The Board's monitoring liaison may change the number of credit hours and/or education topics in response to a request from Respondent. The monitoring liaison may consider the topic availability and/or hours of education when determining if a change to the ordered education should occur.

d. Within thirty (30) days of completion of the ordered education, Respondent shall submit proof of successful completion of the ordered education in the form of verification from the institution providing the education to the Department Monitor at the address stated below.

- e. Respondent is responsible for all costs associated with compliance with this educational requirement.
 - f. None of the education completed pursuant to this requirement may be used to satisfy any other continuing education requirements that have been or may be instituted by the Board or Department.
4. Within 90 days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$2,968.00.
5. Requests for course approval, proof of successful course completion, and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Respondent may also submit this information online at: <https://dpsmonitoring.wi.gov/>

6. In the event Respondent violates any term of this Order, Respondent's license (number 49540-20), or Respondent's right to renew her license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

7. This Order is effective on the date of its signing.

WISCONSIN MEDICAL EXAMINING BOARD

By: Shelton A. Wasserman, MD
A Member of the Board

20 January 2021
Date

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DANA J. AKIYA, M.D.,
RESPONDENT.

:
:
:
:
:

STIPULATION
ORDER 0007168

Division of Legal Services and Compliance Case No. 19 MED 545

Respondent Dana J. Akiya, M.D., and the Division of Legal Services and Compliance, Department of Safety and Professional Services, stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Attorney Samuel J. Leib.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

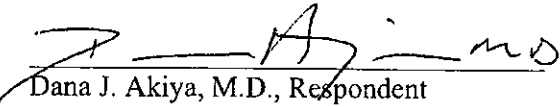
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent's attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

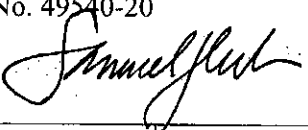
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. A formal complaint will be filed in this matter with the Department of Administration Division of Hearings and Appeals. The filing of this complaint is necessary solely to toll the statute of limitations. The Division of Legal Services and Compliance agrees to withdraw that complaint if the Board adopts the Stipulation and issues the attached Final Decision and Order.


9. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Dana J. Akiya, M.D., Respondent
Wauwatosa, WI 53226
License No. 49540-20

1/7/21
Date


Samuel J. Leib, Attorney for Respondent
Leib Knott Gaynor, LLC
219 N. Milwaukee St., Suite 710
Milwaukee, WI 53202

1/7/21
Date


Alicia M. Kennedy, Attorney
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

1/8/21
Date