

**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

IN THE MATTER OF:	)	BEFORE THE TENNESSEE BOARD
	)	OF MEDICAL EXAMINERS
KIRK BRODY, M.D.,	)	
RESPONDENT	)	DOCKET NO.: 17.18-237104A
	)	
CHATTANOOGA, TENNESSEE	)	
TENNESSEE LICENSE NO. 29154	)	

FINAL ORDER

This matter came to be heard before the Tennessee Board of Medical Examiners (hereinafter the “Board”) on September 25, 2024, pursuant to a Notice of Charges and Memorandum for Assessment of Civil Penalties issued against Kirk Brody, M.D. (“Respondent”). Presiding at the hearing was the Honorable Claudia Padfield, Administrative Judge, assigned by the Secretary of State. The Division of Health-Related Boards of the Tennessee Department of Health was represented by Brittani C. Kendrick, Esq. Respondent requested a continuance on September 24, 2024, at 3:16 p.m., based upon the Boards discussion by majority vote, the Board **DENIED** the respondents motion to continue after review of the file and deliberations. Counsel for the State made a motion pursuant to Tennessee Code Annotated Section (TENN. CODE ANN. §) 4-5-309 to find the Respondent in default. In support of its motion, the State introduced evidence that Respondent was informed of the hearing date and time by certified mail and by first class mail at Respondent’s address of record that Respondent was required to keep up to date by law, as well as by email. By majority vote, the Board **GRANTED** the State’s motion to find the Respondent in **DEFAULT** and to conduct the proceeding without the participation of the Respondent.

II. FINDINGS OF FACT

1. At all times pertinent, Respondent has been licensed by the Board as a medical doctor in the State of Tennessee, having been granted a Tennessee medical license number 29154 by the Board on April 2, 1997, which expired on January 31, 2025.
2. At all times pertinent, Respondent was board certified in Obstetrics and Gynecology.
3. Respondent was practicing obstetrics and gynecology at Erlanger Health System and the office Kirk Brody, M.D., P.C. both in Chattanooga, TN between 2017 and 2020.
4. On or about December 2, 2019, the State received a complaint that Respondent informed his patients that he would be performing their deliveries at Erlanger Health System in Chattanooga, Tennessee in spite of losing his hospital privileges at said health system on or about August 12, 2019. During the course of the investigation by the State's Office of Investigation, the following was revealed:
 - a. On or about July 4, 2017, Respondent performed a Caesarean section delivery, on patient, C.A., resulting in a laceration to the newborn that was not documented in the operative notes. The laceration was to the newborn's scalp, and it was 3.5 inches behind the left ear. The laceration was 2 inches deep, "full thickness and thru the scalp aponeurosis to the bone." The newborn was seven (7) pounds, and therefore, within the range to attempt a vaginal delivery pursuant to the American College of Obstetrics and Gynecology ("ACOG") and standard of care. There was no documentation in C.A.'s chart that she requested a Caesarean section. Additionally, Respondent failed to document C.A.'s chart with a detailed

evaluation for postpartum depression despite postpartum records indicating an Edinburgh Postnatal Depression Scale (“EPDS”) score of thirteen (13), and any score greater than 10 requiring a detailed evaluation of postpartum depression.

- b. On or about April 17, 2018, a patient, A.M., underwent a medical induction of labor at thirty-eight (38) weeks for insulin dependent type 2 diabetes mellitus which means A.M. had a higher risk for complications during and after delivery, including but not limited to shoulder dystocia. Forceps were used by Respondent during this delivery. Respondent did not document A.M.’s chart as to why forceps were used. Respondent failed to document that he discussed with A.M. the use of forceps in a diabetic patient and that he ever obtained informed consent from A.M. to use said forceps. A.M. experienced shoulder dystocia and fourth degree vaginal laceration as a result of the use of forceps during delivery.
- c. On or about June 5, 2018, Respondent performed a delivery on patient, A.J., by forceps that resulted in a fourth-degree vaginal laceration. Respondent did not document A.J.’s chart as to why forceps were used. Respondent failed to document that he discussed with A.J. the use of forceps in a diabetic patient and that he ever obtained informed consent from A.J. to use said forceps. Additionally, Respondent gave orders to give A.J. antihypertensive medication and beta blocker by mouth even though there was no indication for the use of this medication for A.J. as she was bradycardic.
- d. On or about November 8, 2018, a patient, M.S., with gestational diabetes mellitus was medically induced at thirty-seven (37) weeks. Respondent delivered M.S. by forceps. Additionally, Respondent attempted to place forceps seven (7) times

before the eighth successful attempt. Respondent did not document M.S.'s chart as to why forceps were used. Respondent failed to document that he discussed with M.S. the use of forceps in a diabetic patient and that he ever obtained informed consent from M.S. to use said forceps. M.S. experienced shoulder dystocia and second-degree vaginal laceration as a result of the use of forceps during delivery.

5. On November 19, 2020, the State received a complaint that on or about February 18, 2020, Respondent, mistakenly and without consent, performed an endometrial biopsy on a patient, M.M., who was solely in the office for an annual exam. Respondent failed to perform a time out to ensure that the correct patient and procedure was being performed. Additionally, Respondent failed to obtain informed consent before conducting the procedure on the patient.

III. CONCLUSIONS OF LAW

The Stipulations of Fact are sufficient to establish that grounds for discipline of Respondent's medical license exist. Specifically, Respondent has violated the following statutes or rules which are part of the Tennessee Medical Practice Act, (TENN. CODE ANN. § 63-6-101, *et seq.*) for which disciplinary action before and by the Board is authorized:

6. The facts stipulated in paragraphs one (1) through five (5), *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(1):

Unprofessional, dishonorable or unethical conduct.

7. The facts stipulated in paragraphs one (1) through five (5), *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(4): Gross health care liability or a pattern of continued

or repeated health care liability, ignorance, negligence or incompetence in the course of medical practice.

IV. POLICY STATEMENT

The Tennessee Board of Medical Examiners takes this action in order to protect the health, safety and welfare of the citizens of the State of Tennessee.

V. ORDER

NOW THEREFORE, the Board orders the following:

8. The Tennessee medical license of Kirk W. Brody, M.D., license number 29154, is hereby **SUSPENDED**, effective the date of entry of this Consent Order.
9. Within thirty (30) days of the entry of this Order, Respondent must provide written documentation to the Board's Disciplinary Coordinator at disciplinary.coordinator@tn.gov of his compliance with this paragraph, including:
 - a. Proof that Respondent has updated his information on file with the Board to accurately reflect his collaborating relationships, or a state that no update is needed;
 - b. Proof that Respondent has terminated any existing collaboration agreement with an advanced practice registered nurse, physician assistant, or pharmacist; and
 - c. Proof that any individual Respondent ceased collaborating with pursuant to this Order has been notified of this change.
10. Prior to petitioning for an Order of Compliance to lift the suspension, Respondent must:

- a. Enroll in and successfully complete sixty (60) hours total of Continuing Medical Education (“CME”) in general management of labor/delivery, pre-approved by the Board’s Consultant. Within thirty (30) days after successful completion of the courses, Respondent shall email proof of successful completion of the courses to the Disciplinary Coordinator, at Disciplinary.Coordinator@tn.gov. CME course hours earned from attendance and completion of the courses noted above shall be in addition to the CME hours required to maintain licensure.
- b. Enroll in and successfully complete the three (3) day medical course entitled “Intensive Course in Medical Documentation” offered at The Case Western Reserve University Continuing Medical Education Program at The Case Western Reserve University School of Medicine located in Cleveland, Ohio, or an equivalent course pre-approved by the Board’s Consultant. Within thirty (30) days after successful completion of the courses, Respondent shall email proof of successful completion of the courses to the Disciplinary Coordinator, at Disciplinary.Coordinator@tn.gov. CME course hours earned from attendance and completion of the courses noted above shall be in addition to the CME hours required to maintain licensure.
- c. Enroll in and successfully complete thirty (30) hours total of CME in general physician-patient communication, ethics, and general physician policies and procedures pre-approved by the Board’s Consultant. Within thirty (30) days after successful completion of the courses, Respondent shall email proof of successful completion of the courses to the Disciplinary Coordinator, at Disciplinary.Coordinator@tn.gov. CME course hours earned from attendance and

completion of the courses noted above shall be in addition to the CME hours required to maintain licensure.

11. The Board may, at the time of the petition for Order of Compliance to lift the suspension, devise a re-entry plan the Board deems reasonably necessary, based on then existing facts and/or professional opinions, to protect the health, safety, and welfare of the citizens of Tennessee if the Respondent has been out of clinical practice for more than two years.
12. As part of his petition for an "Order of Compliance," Respondent shall appear personally before the Board.
13. Once the suspension is lifted Respondent's license shall be placed on **PROBATION** for a period of not less than five (5) years.
14. During the period of probation, Respondent shall:
 - a. Complete fifteen (15) hours of CMEs in general management of labor/delivery each year of probation, pre-approved by the Board's Medical Consultant. Within thirty (30) days after successful completion of the courses, Respondent shall email proof of successful completion of the courses to the Disciplinary Coordinator, at Disciplinary.Coordinator@tn.gov. CME course hours earned from attendance and completion of the courses noted above shall be in addition to the CME hours required to maintain licensure; and
 - b. In year three (3) of Probation, complete fifteen (15) hours of CMEs in physician-patient communication, ethics and general physicians policies and procedures, pre-approved by the Board's Medical Consultant. Within thirty (30) days after successful completion of the courses, Respondent shall email proof of successful completion of the courses to the Disciplinary Coordinator, at

Disciplinary.Coordinator@tn.gov. CME course hours earned from attendance and completion of the courses noted above shall be in addition to the CME hours required to maintain licensure.

15. At the expiration of the probationary period, Respondent becomes eligible to petition the Board for an Order of Compliance lifting the restrictions imposed by this Consent Order. As part of his petition for an Order of Compliance, Respondent shall appear personally before the Board.
16. If the Board agrees to lift Respondent's probation, the Board shall have discretion to restrict Respondent's license in another manner to protect the health, safety, and welfare of the public.
17. Respondent is assessed and must pay, pursuant to Rule 0880-02-.12(4) of the Official Compilation Rules and Regulations of the State of Tennessee, five (5) Type "A" Civil Penalties, in the amount of one thousand dollars (\$1,000.00) each, representative of the five (5) patients at issue in this case, *supra*, for a total Civil Penalty of **Five Thousand Dollars (\$5,000.00)**.
18. Respondent must pay, pursuant to TENN. CODE ANN. § 63-6-214(k) and Rule 0880-02-.12(1)(j) of the Official Compilation Rules and Regulations of the State of Tennessee, the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. The maximum amount for the assessment of costs shall be Twenty Thousand Dollars (\$20,000.00).

19. Failure to comply with any of the terms of this Order shall be considered a Board Order violation, which may result in further discipline against Respondent.
20. Respondent understands that this is a formal disciplinary action and will be reported to the National Practitioner Data Bank (N.P.D.B.) and/or similar agency.
21. Any and all civil penalties and costs shall be paid in full within sixty (60) days from the issuance of the Assessment of Costs. Payment shall be made by **certified check, cashier's check, or money order**, payable to the **State of Tennessee**, Department of Health. Any and all payments shall be forwarded to the **Disciplinary Coordinator, The Division of Health-Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243**. A notation shall be placed on said money order or such check that it is payable for the Civil Penalty and Costs of **Kirk W. Brody, M.D., Case Nos. 2019056221, 2020032321**.

So **ORDERED** by the Tennessee Board of Medical Examiners at a public meeting of the Board this 25th day of September, 2024.

Deborah J. Christensen, MD
Chairperson
Tennessee Board of Medical Examiners

RECONSIDERATION, ADMINISTRATIVE RELIEF AND JUDICIAL REVIEW

Within fifteen (15) days after the entry of an initial or final order, a party may file a petition to the Board for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition with the Board, it is deemed denied. TENN. CODE ANN. § 4-5-317.

In addition, a party may petition the Board for a stay of the Final Order within seven (7) days after the effective date of the Final Order. TENN. CODE ANN. § 4-5-316.

Finally, a party may seek judicial review by filing a petition for review in the chancery court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the chancery court of Davidson County within sixty (60) days after the effective date of the Final Order. A petition for reconsideration does not act to extend the sixty (60) day period; however, if the petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the petition. TENN. CODE ANN. § 4-5-322.

PREPARED FOR ENTRY:

Brittani C. Kendrick

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Office of General Counsel
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Nashville, Tennessee 37243
(615) 532-7692
Brittani.kendrick@tn.gov

9/24/2024
DATE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, Kirk Brody, MD, at the following addresses:

Women's Health Center
14498 University Cove Place
Tampa, Florida 33613,

Certified No. 9589 0710 5270 2144 0813 31

6212 Colmar Place
Apollo Beach, Florida 33572,

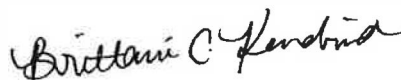
Certified No. 9589 0710 5270 2144 0813 48

6246 Colmar Place
Apollo Beach, Florida 33572,

Certified No. 9589 0710 5270 0707 9356 33

by delivering same in the United States regular mail and United States certified mail, return receipt requested, with sufficient postage thereon to reach its destination, and via email at: kb011963@yahoo.com.

This 26th day of September, 2024.



Brittani C. Kendrick
Senior Associate General Counsel