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SOAH DOCKET NO. 503-23-17769.MD
TEXAS MEDICAL LICENSE NO. K9770

TEXAS MEDICAL BOARD
Petitioner,

v.

MARY TALLEY BOWDEN, MD
Respondent.

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

BOARD STAFF'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES RACHELLE ROBLES AND
LINDA J. BURGESS:

The Staff of the Texas Medical Board ("Board Staff"), by and through its attorneys of record, Amy Swanholm and Meredith Massey, file these Exceptions to the Proposal for Decision.

I. BACKGROUND and SUMMARY

On April 28, 2025, a hearing was convened solely to hear testimony and admit evidence regarding alleged aggravating and mitigating factors. On August 7, 2025, the Proposal for Decision (PFD) in this matter was issued, adopting the Findings of Fact and Conclusions of Law related to Respondent's violation of § 164.052(a) of the Act. The Proposal for Decision found that the Texas Medical Board may consider aggravating factors when determining what sanctions, if any, to impose when issuing sanctions. No mitigating factors were found.

Board Staff does not except to the Findings of Fact and Conclusions of Law. Board Staff is not requesting that the Honorable ALJs reconsider any findings or conclusions, as these proposed changes are in agreement with the PFD. It is Board Staff's position that the Findings of Fact and Conclusions of Law are supported by the preponderance of the evidence and legally sound.

Board Staff proposes the following edits and additions:

- An addition to Conclusion of Law No. 15 for procedural consistency;
- The addition of three Findings of Fact to ensure the rationale for Conclusion of Law No. 16 is more fully explained; and
- An additional Conclusion of Law to provide clarity on mitigating factors not found.

II. PROPOSED REVISIONS

A. Proposed Change to Conclusion of Law No. 15

Board Staff proposes changes to Conclusion of Law (COL) No. 15. This COL directs that the Board may consider Respondent's intentional conduct. Board Staff proposes the additional word of "knowing" in order to maintain consistency with Findings of Fact (FOF) Nos. 30 and 37, the analysis in the PFD, and the language of 22 Tex. Admin. Code § 190.15(a)(5).

The analysis in the PFD discusses how Respondent's knowledge of certain facts shows her acts were intentional. It states that Dr. Bowden "admitted she knew physicians must obtain privileges from a hospital to treat an inpatient" and that this was further supported by her social media posts from the day of the incident.¹ The PFD also states that Dr. Bowden "deliberately defied the instruction [that she did not have privileges] and sent a nurse to the Hospital's ICU."² She also "knew that the Hospital had the final say in authorizing who could treat patients in its facilities"³—and she "knew that she did not have privileges at the Hospital."⁴

Based on that discussion, FOF No. 30 finds that she explicitly admitted, "and therefore kn[ew]" that she did not have privileges at Hughley Hospital, yet she sent the nurse there anyway.⁵ FOF No. 37 relates this directly to aggravating factors. This finding states that Respondent "*knew* she did not have privileges...but nonetheless *intentionally* dispatched her nurse" to the Hospital.

Based on this and other findings, COL No. 15 concludes that Dr. Bowden's unprofessional actions were intentional. Although the finding of "knowing" is arguably included within the more weighty finding of Respondents "intentional" acts, the PFD reasons that Respondent acted with both knowledge and intent. Therefore, Board Staff proposes the following:

15. In determining the appropriate disciplinary action, the Board may consider as an aggravating factor that Respondent's conduct constituting a violation was knowing and intentional. 22 Tex. Admin. Code § 190.15(a)(7).⁶

¹ PFD at 14.

² PFD at 15.

³ PFD at 17.

⁴ *Id.*

⁵ PFD at 24.

⁶ Proposed additional language is underlined.

B. Proposed Findings of Fact in support of Conclusion of Law No. 16

COL No. 16 concludes that the Board may consider, as an aggravating factor, that Respondent's actions and behavior demonstrate an increased potential for harm to the public. The discussion section of the PFD presents a robust discussion of how Respondent may present an increased potential for harm to the public. The Board proposes additional Findings of Fact to ensure that this conclusion is supported by the factual bases as laid out in the discussion section of the PFD.

The PFD states that Respondent "intended disruption" and that she "took to social media to request local news coverage of her nurse's arrival at the Hospital".⁷ The PFD also finds that this evidence contradicts Respondent's testimony that she did not believe sending the nurse to the Hospital would cause a scene.⁸ The PFD goes on to state that despite the circumstances, "she would not act differently in the future, nor has she learned anything from this process."⁹ And this raises a legitimate concern that Respondent may repeat her actions, demonstrating increased potential for harm to the public.¹⁰

The PFD also states that the evidence shows Respondent was untruthful about her board certification status. Although this untruthfulness itself is not an aggravating factor, Respondent's statements on this and other points during the hearing, "showed her to be an untrustworthy witness [which] demonstrates an increased potential for harm to the public."¹¹

To ensure that COL No. 16 is properly supported by findings, Board Staff proposes the following additional Findings of Fact as supported by the PFD:

- XX. Respondent testified that she would not act differently in the future, nor has she learned anything from this process.¹²
- XX. Respondent's contention that she did not believe sending the nurse to Hughley Hospital would cause a disruption is contradicted by the record.¹³

⁷ PFD at 17.

⁸ PFD at 17-18.

⁹ PFD at 18.

¹⁰ *Id.*

¹¹ PFD at 19.

¹² PFD at 18.

¹³ PFD at 17-18.

XX. Respondent demonstrated untrustworthiness as a witness.¹⁴

C. Proposed Conclusion of Law on Mitigating Factors

The PFD found no mitigating factors present that would lessen responsibility for Respondent's misconduct. The Conclusions of Law are silent on this point. As Respondent bore the burden of proof to show any mitigating factors, it would assist the Board in determining sanctions to have a finding on this issue. Therefore Board Staff proposes the following Conclusion of Law:

17. The preponderance of the evidence does not support consideration of any mitigating factors that may warrant less severe or restrictive action against Respondent. Pursuant to 22 Tex. Admin. Code § 190.15(b).

III. CONCLUSION

Board Staff respectfully requests the Honorable ALJs amend Conclusion of Law No. 15, and adopt additional Findings of Fact and Conclusions of Law as proposed above. Board Staff also respectfully requests that all other proposed exceptions to the Findings of Fact and Conclusions of Law be denied.

Respectfully submitted,

TEXAS MEDICAL BOARD

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¹⁴ PFD at 19.

CERTIFICATE OF SERVICE

On August 22, 2025, I certify that a true and correct copy of the foregoing document has been served on the following individuals at the locations and the manner indicated below.

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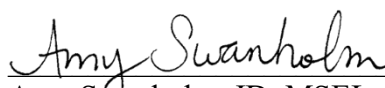
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