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STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

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
ACCEPTED
503-23-17769
9/8/2025 8:08:14 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

OF

ADMINISTRATIVE HEARINGS

BOARD STAFF'S RESPONSE
TO RESPONDENT'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, respond to Respondent Mary Talley Bowden, MD's Exceptions to the Proposal for Decision ("PFD").

I. RESPONSE

The Honorable ALJs' PFD is appropriate. The Findings of Fact and Conclusions of Law are supported by the preponderance of the evidence and are legally sound. The proposals requested by Board Staff would not change any decision contained in the PFD; rather, they are requested only to maintain procedural consistency and to provide clarity. Conversely, the exceptions and proposals requested by Respondent would constitute a reversal of the Honorable ALJs' decision. Board Staff respectfully requests that Respondent's exceptions and proposals be denied.

A. Respondent's General Exceptions

Respondent's general exception No. 1 should be denied. Respondent's decision to dispatch a nurse to carry out her orders despite knowing that she lacked hospital privileges to do so was a violation of the Medical Practice Act and Board Rules. The facts and circumstances surrounding this same conduct aggravate her violation, because they establish that her actions were intentional and demonstrate an increased potential for harm to the public.

Respondent's general exception No. 2 should be denied. Respondent's decision to

dispatch a nurse to carry out her orders despite knowing that she lacked hospital privileges to do so was a violation of the Medical Practice Act and Board Rules. Respondent intended to override Huguley Hospital's care plan for the Patient and directed a delegate to effect this result on her behalf. Respondent's behavior was disruptive because personnel's refusing the nurse's entry to ICU and calling law enforcement interfered with patient care and was reasonably expected to have an adverse impact on the quality of care rendered to a patient.

Respondent's general exception No. 3 should be denied. See Conclusion of Law No. 6: "Respondent had the burden of proving any mitigating factors the Board may consider in determining the appropriate sanction against her." The evidence demonstrates that Respondent did not meet *her* burden to show mitigating evidence reflecting a reduction in responsibility for her conduct or relevant circumstances that lessen her responsibility for her misconduct. Board Staff had no burden to present witnesses or testimony to prove an absence of mitigating factors.

Respondent's general exception No. 4 should be denied. The Board Rule's definition for disruptive behavior does not necessitate patient specificity. The evidence establishes that Respondent's disruptive behavior interfered with Huguley Hospital's care of *its patients* and could be reasonably expected to have an adverse impact on the quality of care rendered to *a patient*.

Respondent's general exception No. 5 should be denied. Board Staff was not obligated to offer testimony on legal precedent established by the Texas Supreme Court (A hospital owes an independent duty of care to its patients and that a hospital's credentialing of doctors is necessary to the hospital's core function of providing a setting in which quality physicians dispense health care services. *Garland Cmty. Hosp. v. Rose*, 156 S.W.3d, 541, 545 (Tex. 2004)). Further, evidence on this issue was established by Respondent's witnesses, including her own testimony that Huguley Hospital had the final say in authorizing who could treat patients in its facilities, and her nurse delegate's testimony that Huguley Hospital staff stopped her from entering its ICU.

Respondent's general exception No. 6 should be denied. Respondent received timely, adequate, and proper notice of Board Staff's allegations, its Complaint, its Second Motion for Partial Summary Disposition, and the hearing before SOAH. Respondent gives no explanation why the notice she received was defective. Notice was properly given.

Respondent's general exception No. 7 should be denied. The Texas Medical Board "is an agency of the executive branch of state government with the power to regulate the practice of medicine." Tex. Occ. Code § 152.001(a). The Texas Medical Board "shall adopt procedures

governing formal disposition of a contested case” under the Administrative Procedure Act, and a “formal hearing shall be conducted by an administrative law judge employed by the State Office of Administrative Hearings.” Tex. Occ. Code § 164.007(a). Per the Administrative Procedure Act (Texas Government Code Chapter 2001), the Texas Legislature intends for administrative law judges employed by the State Office of Administrative Hearings to conduct hearings on contested cases involving state agencies. Here, the Honorable ALJs properly issued the PFD pursuant to Rule 155.507 of the SOAH rules of procedure.

B. Respondent’s Exceptions to Specific Findings of Fact

1. *Respondent’s Exceptions to Findings/Conclusions on Summary Disposition*

Respondent’s exception to FOF 11 should be denied. Regardless of “what else” the Temporary Injunction Order said, there is no dispute that the plain language required temporary emergency privileges to administer Respondent’s prescription to the Patient at Huguley Hospital.

Respondent’s exception to FOF 19 should be denied. Respondent declared that she was dispatching her nurse to Huguley Hospital *after* she was explicitly reminded by Huguley Hospital Medical Staff Services that she did not have privileges to do so. That Huguley Hospital attorneys were copied on the email thread does not change this.

Respondent’s exception to FOF 20 should be denied. The Temporary Injunction Order was stayed and thus not effective on November 10, 2021; even if it had been effective, it did not grant “express authority, i.e. ‘privileges’ to treat the Patient.” Moreover, the Second Court of Appeals held that district court had *no* legal authority to intervene in Huguley Hospital’s legal exercise of its discretion to grant, deny, or limit Respondent’s credentials. The evidence clearly establishes that the Patient was an inpatient at Huguley Hospital and receiving treatment by its providers. Whether the Patient’s wife consented to Respondent’s treatment of her husband has no bearing on whether Huguley Hospital granted privileges to Respondent to treat the Patient. Expert testimony is not necessary to establish that Respondent had no basis to believe that she could not treat the Patient, especially when Respondent admitted she knew that physicians must obtain privileges from a hospital to treat an inpatient (*see* PFD at 14).

Respondent’s exception to FOF 21 should be denied. Respondent knows that privileges are needed to treat inpatients. Respondent knew that privileges were needed to treat the Patient at

Huguley Hospital. Respondent knew that Huguley Hospital Medical Staff Services had not granted her privileges to treat the Patient.

Respondent's exception to FOF 22 should be denied. The Patient was being treated by Huguley Hospital's providers, whose care plan excluded Respondent's prescription. Thus, Respondent's intended result was to treat the Patient in a way that was inconsistent with Huguley Hospital's providers' care plan.

Respondent's exception to FOF 23 should be denied. Respondent's nurse delegate testified at the hearing about law enforcement being called in the course of Huguley Hospital's efforts to stop her from entering the ICU. Further, Respondent herself posted on social media that the ICU director "called the police on [her] nurse."

Respondent's exception to FOF 24 should be denied. Respondent was found to engage in disruptive conduct. Her posting a picture of Huguley Hospital personnel identifying him as the ICU director who called the police illustrates her goal that a disruption ensues.

Respondent's exception to FOF 25 should be denied. As explained above, the Board Rule's definition for disruptive behavior does not necessitate patient specificity. The evidence establishes that Respondent's disruptive behavior interfered with Huguley Hospital's care of *its patients* and could be reasonably expected to have an adverse impact on the quality of care rendered to *a patient*. Time that the ICU director spent addressing the nurse delegate and the Patient's wife was time that was not spent caring for inpatients or overseeing ICU staff. Board Staff established this issue by a preponderance of the evidence.

Respondent's exception to FOF 26 should be denied. The evidence establishes that Respondent's disruptive behavior could be reasonably expected to have an adverse impact on the quality of care rendered to *any patient*. Expert testimony is not necessary for the Honorable ALJs to find that Board Staff established this issue by a preponderance of the evidence.

2. Respondent's Exceptions to Findings of Fact

Respondent's exception to FOF 2 should be denied. Board Staff admitted evidence at the hearing that Respondent is not meeting continuing certification requirements of her American Board of Otolaryngology – Head and Neck Surgery certification. Expert testimony is not necessary for the factfinder to look up and read Respondent's certification status on www.abohns.org.

Respondent's exception to FOF 19 should be denied. Regardless of "what else" the

Temporary Injunction Order said, there is no dispute that the plain language required temporary emergency privileges to administer Respondent's prescription to the Patient.

Respondent's exception to FOF 26 should be denied. Respondent declared that she was dispatching her nurse to Huguley Hospital *after* she was explicitly reminded that she did not have privileges to do so. That Huguley Hospital attorneys were copied on the email thread does not change this.

Respondent's exception to FOF 27 should be denied. Respondent declared that she was dispatching her nurse to Huguley Hospital *after* she was explicitly reminded by Huguley Hospital Medical Staff Services that she did not have privileges to do so. That Huguley Hospital attorneys and the Patient's wife's attorney were copied on the email thread does not change this.

Respondent's exception to FOF 28 should be denied. At no time did the Temporary Injunction Order *ever* grant privileges to Respondent. Even if the Order had been effective on November 10, 2021, which is denied, it did not grant "express authority, i.e. 'privileges' to treat the Patient." Moreover, the Second Court of Appeals held that district court had *no* legal authority to intervene in Huguley Hospital's legal exercise of its discretion to grant, deny, or limit Respondent's credentials.

Respondent's exception to FOF 29 should be denied. Beth Parlato testified at the hearing that she did not represent Respondent. Ms. Parlato is not licensed to practice law in Texas, has never practiced law in Texas, and was not admitted *pro hac vice* in the Texas district court case involving the Patient's wife and Huguley Hospital.

Respondent's exception to FOF 30 should be denied. Respondent could not reasonably believe that the court order granted her privileges if the court order unambiguously instructed the hospital to grant her privileges. Respondent knew that the court order did not grant her privileges as evidenced by her completion and submission of two credentialing applications. The Director of Medical Staff Services for Huguley Hospital explicitly reminded Respondent that she lacked privileges. Knowing that she did not have privileges, Respondent intentionally directed her nurse delegate to go to the ICU to carry out her orders anyway.

Respondent's exception to FOF 31 should be denied. The Patient was being treated by Huguley Hospital's providers, whose care plan excluded Respondent's prescription. Thus, Respondent's intended result was to treat the Patient in a way that conflicted with Huguley Hospital's providers' care plan.

Respondent's exception to FOF 32 should be denied. Respondent's nurse delegate testified at the hearing about law enforcement being called in the course of Huguley Hospital's efforts to stop her from entering the ICU. Further, Respondent herself posted on social media that the ICU director "called the police on [her] nurse."

Respondent's exception to FOF 33 should be denied. Respondent was found to commit disruptive conduct. Her posting a picture of Huguley Hospital personnel identifying him as the ICU director who called the police illustrates her goal that a disruption ensues.

Respondent's exception to FOF 34 should be denied. As explained above, the Board Rule's definition for disruptive behavior does not necessitate patient specificity. The evidence establishes that Respondent's disruptive behavior interfered with Huguley Hospital's care of *its patients* and could be reasonably expected to have an adverse impact on the quality of care rendered to *any patient*. Certainly, time that the ICU director spent addressing the nurse delegate and the Patient's wife was time that was not spent caring for inpatients or overseeing ICU staff. Nevertheless, Board Staff was not required to prove the number of inpatients or assigned ICU staff at the time.

Respondent's exception to FOF 35 should be denied. The evidence establishes that Respondent's disruptive behavior could be reasonably expected to have an adverse impact on the quality of care rendered to *any patient*. Expert testimony is not necessary for the factfinder to understand how distracting hospital personnel from caring for their patients is reasonably expected to detract from the quality of that care.

Respondent's exception to FOF 36 should be denied. Respondent could not reasonably believe that the court order granted her privileges if the court order unambiguously instructed the hospital to grant her privileges. Respondent knew that the court order did not grant her privileges as evidenced by her completion and submission of two credentialing applications.

Respondent's exception to FOF 37 should be denied. Respondent could not reasonably believe that the court order granted her privileges if the court order unambiguously instructed the hospital to grant her privileges. Respondent knew that the court order did not grant her privileges as evidenced by her completion and submission of two credentialing applications.

Respondent's exception to FOF 38 should be denied. Respondent committed disruptive conduct in violation of the Medical Practice Act and Board Rules. Respondent declared that she would not act differently in the future and that she did not learn anything from this process. This

raises a legitimate concern that if Respondent disagrees with an inpatient's treatment plan in the future, she may repeat her attempt to disregard a hospital's credentialing process and treat an inpatient in a facility where she is not privileged

Respondent's exception to FOF 39 should be denied. The evidence regarding Respondent's continuing certification requirements shows that she was untruthful about her certification status. Respondent's board certification status falls under the umbrella of professional conduct and ethics that govern a physician's ability to serve her patients honestly and competently. Respondent's untruthfulness on this issue showed her to be an untrustworthy witness, which supports that Respondent's unprofessional behavior demonstrates an increased potential for harm to the public.

Respondent's exception to FOF 40 should be denied. Respondent's warning Huguley Hospital that her nurse was en route without privileges to the ICU does not reduce the seriousness of Respondent's misconduct in directing her nurse to proceed without privileges to the ICU.

Respondent's exception to FOF 41 should be denied. Regardless of the status of the stay, Nurse Witzel would not be granted access to the ICU because Respondent lacked hospital privileges. Huguley Hospital was not responsible for informing Beth Parlato about the stay (moreover, Ms. Parlato testified that she was not counsel for Respondent). There is no evidence or authority to support the notion that "by declining to communicate with Ms. Parlato, the hospital and its attorney took responsibility for the nurse's visit." Further, Respondent testified at the hearing: "Q: Did you take on yourself, and only yourself, the full responsibility for sending Nurse Witzel to the hospital? A: Yes. Q: Did you rely on anyone else in accepting that responsibility? A: No." Transcript at 96:3-9.

3. Respondent's Requests for Additional Findings of Fact

Respondent's requested Finding No. 1 should be denied. Respondent's warning Huguley Hospital that her nurse was en route without privileges to the ICU does not reduce the seriousness of Respondent's misconduct in directing her nurse to proceed without privileges to the ICU. The mitigating factor pertains to other relevant circumstances reducing the seriousness of the *misconduct*, not the seriousness of the *result* of the misconduct. If anything, Respondent's warning to Huguley Hospital is evidence that her actions were premeditated.

Respondent's requested Finding No. 2 should be denied. Hospital privileges are not

granted through “permission by conduct” or through “consent by silence.” The Director of Medical Staff Services explicitly reminded Respondent that she still needed to complete her privileges application for approval and that she did not have privileges. There is no reasonable interpretation that this instruction granted permission for the nurse to enter the ICU. Huguley Hospital was not responsible for telling Beth Parlato that, *in addition to Respondent lacking privileges*, the Temporary Injunction Order was stayed. Respondent knew that she lacked privileges when she sent her nurse to the ICU; nothing here “negates” Respondent’s culpability or lessens her responsibility for her misconduct.

Respondent’s requested Finding No. 3 should be denied. Huguley Hospital was not responsible for telling Beth Parlato that, *in addition to Respondent lacking privileges*, the Temporary Injunction Order was stayed. Respondent knew that she lacked privileges when she sent her nurse to the ICU. The status of the stay does not lessen her responsibility for intentionally disregarding the Director of Medical Staff Services’ explicit reminder that she did not have privileges.

Respondent’s requested Finding No. 4 should be denied. Board Staff informed Respondent of the allegations it was investigating and the violations it was prosecuting, and Respondent personally participated in the process. *See, e.g.*, Transcript at 46:21-22 (“...you know, when I went to my informal settlement conference....”). Respondent gives no explanation this was insufficient to put her on notice.

C. Respondent’s Exceptions to Specific Conclusions of Law

Respondent’s exception to COL 3 should be denied. Board Staff informed Respondent of the allegations it was investigating and the violations it was prosecuting, and Respondent personally participated in the process. Respondent behaved in a disruptive manner when she dispatched her nurse delegate to administer medication to the Patient at Huguley Hospital, where Respondent knew that she did not hold privileges. These actions violated the Medical Practice Act and Board Rules.

Respondent’s exception to COL 4 should be denied. Board Staff informed Respondent of the allegations it was investigating and the violations it was prosecuting, and Respondent personally participated in the process. Respondent behaved in a disruptive manner when she dispatched her nurse delegate to administer medication to the Patient at Huguley Hospital, where

Respondent knew that she did not hold privileges. These actions violated the Medical Practice Act and Board Rules.

Respondent's exception to COL 5 should be denied. Board Staff satisfied its burden of proving that Respondent's actions violated the Medical Practice Act and Board Rules. Board Staff satisfied its burden of proving that the facts and circumstances surrounding Respondent's actions demonstrate that her actions were intentional and that her actions raise concern for increased potential for harm to the public.

Respondent's exception to COL 9 should be denied. There is no evidence or argument to rebut (or reverse) the Texas Supreme Court opinion that a hospital's credentialing of doctors is necessary to the goal of quality medical staff rendering health care to patients.

Respondent's exception to COL 11 should be denied. Respondent's reliance on Beth Parlato's legal advice is not convincing as a "mistake of law." Respondent failed to meet her responsibility as a physician when she was expressly informed by the governing body of Huguley Hospital that she did not have privileges and intentionally sent her nurse to the ICU anyway. Respondent's own expert testified that physicians must be privileged by a facility before treating a patient in the facility. Transcript at 207:15-18.

Respondent's exception to COL 12 should be denied. Board Staff met its burden on summary disposition and at the hearing on aggravating/mitigating factors. Respondent committed disruptive conduct in violation of the Medical Practice Act and Board Rules. She is subject to discipline under the Medical Practice Act and Board Rules.

Respondent's exception to COL 13 should be denied. Board Staff informed Respondent of the allegations it was investigating and the violations it was prosecuting, and Respondent personally participated in the process. Respondent received timely, adequate, and proper notice of Board Staff's allegations, its Complaint, its Second Motion for Partial Summary Disposition, and the hearing before SOAH. Respondent gives no explanation why the notice she received was defective. Lacking privileges in Huguley Hospital, Respondent's conduct in dispatching her nurse delegate to the ICU to administer medication to the Patient interfered with Huguley Hospital's patient care, because personnel were required to take action to stop Respondent's nurse delegate's entry to the ICU, including calling law enforcement. These actions by Respondent were unprofessional and disruptive behavior that interfered with patient care and could be reasonably expected to adversely impact the quality of care rendered to a patient.

Respondent's exception to COL 15 should be denied. The Director of Medical Staff Services for Huguley Hospital explicitly reminded Respondent that she lacked privileges. Knowing that she did not have privileges, Respondent intentionally directed her nurse delegate to go to the ICU to carry out her orders anyway.

Respondent's exception to COL 16 should be denied. Board Staff met its burden on summary disposition and at the hearing on aggravating/mitigating factors. Respondent committed disruptive conduct in violation of the Medical Practice Act and Board Rules. Respondent declared that she would not act differently in the future and that she did not learn anything from this process. This raises a legitimate concern that if Respondent disagrees with an inpatient's treatment plan in the future, she may repeat her attempt to disregard a hospital's credentialing process and treat an inpatient in a facility where she is not privileged.

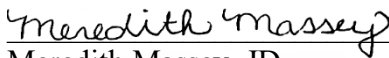
II. CONCLUSION

Board Staff respectfully requests the Honorable ALJs to deny all relief sought in Respondent's Exceptions.

Respectfully submitted,

TEXAS MEDICAL BOARD

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CERTIFICATE OF SERVICE

On September 8, 2025, I certify that a true and correct copy of the foregoing document has been served on the following individuals at the locations and in the manner indicated below.

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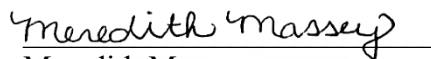
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