STATE OFFICE OF ADMINISTRATIVE HEARINGS RECEIVED ON 8/22/2025 10:31 PM

ACCEPTED
503-23-17769
8/25/2025 8:39:20 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

FILED
503-23-17769
8/22/2025 10:31 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

SOAH DOCKET NO. 503-23-17769 MD
TEXAS MEDICAL LICENSE NO. K-9770

TEXAS MEDICAL BOARD,	§	**BEFORE THE STATE OFFICE**
Petitioner,	§	
	§	
v.	§	**OF**
	§	
MARY TALLEY BOWDEN, M.D.,	§	
Respondent.	§	**ADMINSTRATIVE HEARINGS**

RESPONDENT, MARY TALLEY BOWDEN, M.D.'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

Respondent Mary Talley Bowden, M.D. ("Respondent" or "Bowden") hereby files these Exceptions to the Proposal for Decision, and requests that the Administrative Law Judges amend the Proposal for Decision in response to the following:

BACKGROUND

On March 7, 2025, the ALJs granted Partial Summary Disposition on behalf of Petitioner. On April 28, 2025, the ALJs held a hearing to elicit evidence on alleged mitigating and aggravating factors related to the alleged misconduct for which Respondent was held culpable in grant of Partial Summary Disposition. Finally, on August 7, 2025, the ALJs served their Proposal for Decision, specifying their findings of fact and conclusions of law with respect to this matter.

Respondent submits the following exceptions to the Proposal for Decision. Respondent provides general exceptions to the Proposal for Decision as well as exceptions to specific findings and fact and conclusions of law. Respondent requests the ALJs modify the Proposal for Decision as specified below.

GENERAL EXCEPTIONS

1. In addition to the exceptions for specific findings of fact below, the Proposal for Decision is ambiguous and unclear as to how the conduct that is being considered as aggravating factors relates to the conduct for which Respondent was found culpable in the Order granting partial summary disposition.

2. Respondent requests that the ALJs clarify what conduct is specifically being evaluated for aggravating and mitigating factors, given the allegations in Petitioner's Second Amended Petition allege that the "disruptive" conduct "which caused a disruption for hospital staff and other hospital patients that required law enforcement intervention" was the entering and presence of Nurse Witzel at Huguley Hospital. Petitioner's Second Amended Petition. In the Order Granting in Part and Denying in Part Board Staff's Second Motion for Partial Summary Disposition, SOAH Docket No. 503-23-17769, it is stated that Petitioner argued "that Respondent is subject to discipline because she—without hospital privileges in Huguley Hospital—dispatched her nurse to give the drug to Patient in the Hospital, thereby behaving in a disruptive manner toward hospital personnel that interfered with patient care or was reasonably expected to adversely impact the quality of care rendered to a patient."

3. Respondent recommends that the ALJs change the Proposal for Decision to include the fact that Petitioner did not present any witnesses or testimony during the April 28, 2025 hearing to negate the testimony regarding mitigating factors of Respondent and Respondent's witnesses: Beth Parlato, a licensed New York attorney; Kimberly Joy Witzel, RN; and Mollie James, D.O.

4. Respondent requests that the ALJs indicate whether Respondent is being found to have interfered with the treatment of her own Patient which she had a legal and ethical obligation to treat in the manner that she believed was in his best interest, and how her conduct in attempting to treat her Patient by administering a Patient approved medication could be reasonably expected to adversely impact the quality of care rendered to her own Patient.

5. Respondent requests that the Proposal for Decision be amended to state that Petitioners presented no evidence or testimony of aggravating factors that would support a finding that "Respondent's conduct nonetheless obstructed the normal operations of the Hospital and hindered Hospital staff as they were providing care to Hospital patients." SOAH Docket No. 503-23-17769. Petitioners did not present evidence as to what normal operations at the Hospital looked like in November of 2021 during the Covid-19 pandemic, how the presence of Nurse Witzel at Huguley Hospital obstructed normal operations of the Hospital, or how any of the alleged conduct hindered Hospital staff as they were providing care to Hospital patients.

6. Respondent requests that the Proposal for Decision be amended as it relates to Respondent's allegations of due process violations and objections raised of inadequate notice of the "facts or conduct alleged to warrant the intended [disciplinary] action" of the allegations against her as required by Tex. Occ. Code § 164.004(a)(1) and Tex. Gov't Code Ann. § 2001.054(c)(1). As noted in Footnote 6 of the Proposal for Decision, Section 164.004 relates to "informal proceedings," but those proceedings—and proper notice requirements—**are required "prior to any disciplinary proceedings before SOAH**,**"** such as this contested case**.** *Rea v. State*, 297 S.W.3d 379, 385 (Tex. App.—Austin 2009, no pet.). Furthermore, under Texas Medical Board Rule §187.24, "a Complaint [by the board as Petitioner against a licensee] shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for the retention of a license as provided in §2001.054 of the Administrative Procedure Act (APA), and §164.004(a)of the Act." Respondent therefore requests that the Proposal for Decision accurately address Respondent's objections that Petitioner failed to give proper notice under Tex. Occ. Code § 164.004(a)(1) and Tex. Gov't Code Ann. § 2001.054(c)(1) as well as the Board Rules; that Petitioner offered no evidence that it complied with the requirements of the statutes; and that

therefore any disciplinary action that may be taken by Petitioner will be "not effective." *See Rea v. State*, 297 S.W.3d at 385; Tex. Occ. Code Ann. § 164.004(a); Tex. Gov't Code Ann. § 2001.054(c).

7. Respondent further excepts to the Proposal for Decision to the extent it violates the Texas Constitution. Under the Texas Constitution, executive power may be exercised only by elected officials or their direct appointees. *Matzen v. McLane*, 659 S.W.3d 381, 390 (Tex. 2021) *citing* Tex. Const. art. I, § 2, ("The appointment of agency board members by elected officials provides crucial democratic legitimacy to state agencies, which operate under the oversight of appointees chosen by officers who are directly accountable to the people of Texas, from whom "all political power" in this State must flow."). The ALJs are not direct appointees of any elected official. Further, their decisions in this case are not reviewable by any elected official or direct employee of an elected official. In this case, the ALJs ruled that no mechanism exists for the Chief ALJ to review their decisions. Further, Tex. Occ. Code § 164.007 establishes that the Texas Medical Board may not change a finding of fact or conclusion of law or vacate or modify an order of the ALJ. As such, the ALJs' proposal for decision is not sufficiently subject to political oversight to meet the requirements of the Texas Constitution and Respondent excepts to the Proposal for Decision due to this Constitutional defect.

EXCEPTIONS TO SPECIFIC FINDINGS OF FACT

Respondent excepts to the following Findings of Fact ("FOF") from the ALJs' Order granting Partial Summary Disposition, the Findings of Fact in the Proposal for Decision, and requests the following additional Findings of Fact be added, as specified below:

I. EXCEPTIONS TO FINDINGS AND CONCLUSIONS MADE AT SUMMARY DISPOSITION.

FOF 11. On November 8, 2021, the trial court signed a Temporary Injunction Order, which:

> **ORDERED, that . . . [Huguley Hospital] shall grant Dr. Mary Talley Bowden, M.D. and/or her nurse working under her authority, temporary emergency privileges, which shall not be unreasonably delayed or denied, solely to administer Ivermectin to [Patient], pursuant to the order and the attached Prescription of Dr. Bowden. . . .**

Exception: This finding of fact fails to address key elements of the records. Specifically, the Injunction also specifically said that Dr. Bowden "**is granted access in the ICU**…". This finding of fact should set out every element Ordered by the Court in the quoted order.

FOF 19. In response, Respondent informed Huguley Hospital that she was dispatching her nurse to the Hospital. Respondent's 5:15 p.m. (November 10) email states: "Per the lawyers, everything is set. My nurse will arrive in about 30 minutes with the court order."

Exception: Respondent excepts to this finding of fact because it fails to note that the attorneys for Huguley Hospital were involved in the communications regarding the nurse. This finding of fact should be modified to read, "In response to the email string with Huguley Hospital and its attorneys, Respondent informed…."

FOF 20. On November 10, 2021, Patient was in the care of Huguley Hospital, and Respondent had not been granted and did not have privileges to administer any medications to Patient, who was inpatient at Huguley Hospital.

Exception: Respondent excepts to this finding of fact because it is contrary to the evidence. The Injunction issued by the District Court says

> "IT IS HEREBY: . . . ORDERED that Dr. Bowden and/or her nurse working under her authority **is granted access** in the ICU at Texas Health Huguley Hospital to [Patient] for the sole purpose of administering ivermectin to patient.".

Respondent's Hearing Exhibit 49 at pp. 4-5; Exhibit 3 to Respondent's Response to Claimants Second Motion for Partial Summary Disposition at pp. 4-5 (emphasis added). This order granted Dr. Bowden with express authority, i.e. "privileges", to treat [Patient] with Ivermectin while he was in the ICU at Texas Huguley Hospital. As testified by Respondent's expert, Hospitals were routinely allowing physicians to treat patients without a written acknowledgement of privileges. Hearing Transcript, p. 208, lines 5-21.

Respondent further excepts to the finding of fact that patient was in the care of Huguley Hospital. The State District Court made a finding of fact, a finding that remains undisturbed to this day, that the Patient's Wife, "in her capacity as surrogate decision-maker" had consented to Dr. Bowden's treatment of the Patient. Respondent's Hearing Exhibit 49 at p. 2, para. 8; Exhibit 3 to Respondent's Response to Claimants Second Motion for Partial Summary Disposition at p. 2, para. 8. As such, the State District Court found that the Patient was under the care of Dr. Bowden regardless of whether the was also under the care of the hospital. This administrative proceeding may not disregard such findings of facts by the District Court.

Further, TMB presented no expert testimony that Respondent did not have the legal right to treat her patient, or that the Respondent had no basis to believe that she, as a physician, had no basis to believe she could not treat her patient under the specific facts at issue here. This finding of fact should be modified to read that "the patient was admitted to ICU at Huguley Hospital". The remainder of this finding of fact should be stricken.

FOF 21. Despite explicitly admitting and therefore knowing that her request for privileges had not been granted by Huguley Hospital and that she did not then have privileges to administer Ivermectin to Patient while in care at Huguley Hospital, Respondent dispatched Kimberly Joy Witzel, a nurse under Respondent's supervision, to Huguley Hospital on November 10, 2021, to administer the medication to Patient.

Exception: Respondent excepts to this finding of fact as not consistent with evidence and as a conflation of issues. Respondent has at all times claimed she was legally authorized under the Injunction issued by the State District Court, to send a nurse to provide ivermectin for the patient. Exhibit 4, Bowden Declaration in Support of Respondent's Response to the Second Motion for Summary Disposition ("I understand Ms. Parlato to indicate the secretary/administrator was either in error or being deceptive.:"); Hearing Transcript 50:21-51:6, 88:16 to 89:2. Nowhere in the record does Dr. Bowden admit to not having the legal authority to have a nurse administer ivermectin to the patient. This finding of fact should be stricken in its entirety.

FOF 22. Respondent's intended result in dispatching her nurse to Huguley Hospital was to override the Hospital's care plan for Patient by administering her prescription to Patient.

Exception: Nothing in the record supports this finding of fact. Nothing in the records supports that Respondent attempted, in any manner, to change the care provided by the Hospital or to even make that care more difficult. The record is more than clear that Dr Bowden sought, at the request of the patients lawful surrogate, to supplement the patient's care with doses of ivermectin. This finding of fact should be stricken in its entirety or modified to state that "Respondent's intended result…was to supplement the Hospital's care plan for Patient by administering ivermection to Patient as requested by his legal surrogate." Exhibit 3 to Respondent's Response to Petitioner's Second Motion for Summary Disposition, p. 2, para 8.

FOF 23. Upon being confronted with Respondent's nurse trying to gain entry to the ICU, Huguley Hospital personnel refused the nurse entry. In the course of Huguley Hospital's efforts to stop Respondent's nurse's entry to the ICU, law enforcement was called.

Exception: Respondent excepts to this finding of fact as it is not supported by any competent evidence. No evidence has been introduced regarding police being called to prevent the nurse's entry into the ICU or that law enforcement was called "to stop Respondent's nurse's entry to the ICU." Further, the only evidence introduced regarding "police" was the complaint letter sent from Huguley Hospital to the Petitioner. The letter makes conclusory statements and provides opinion without providing any supporting facts or stating that the author actually observed the events she reports. Such evidence should therefore be given no weight and its contents disregarded. The second sentence of this finding of fact should be deleted in its entirety.

FOF 24. On November 10 at 8:36 p.m. Respondent posted to her social media (Twitter) a picture of hospital personnel in medical scrubs, stating: "This is the director of the ICU at Texas Huguley Hospital who called the police on my nurse."

Exception: This finding of fact should be stricken as irrelevant and as violating Respondent's constitutional rights. The only conduct for which Respondent was found culpable was sending a nurse to Huguley Hospital without the hospital's express grant of privileges. There is no connection for this social media tweet to constitute an aggravating factor with respect to a privileges dispute. Further, the use of this finding of fact in any disciplinary proceeding is a violation Respondent's right to free speech under the Texas and United States Constitutions.

Further, no evidence exists to connect to this tweet to any of the alleged conduct in this case. No evidence shows that this tweet had any reasonable likelihood to affect hospital operations of the care of any patient. Put simply, Petitioner's failure to introduce expert testimony precludes any probative value for this Tweet.

FOF 25. Respondent behaved in a disruptive manner toward Huguley Hospital's personnel that interfered with the Hospital's patient care.

Exception: This finding of fact should be stricken because no evidence has been presented supporting this finding. Nothing in the record discusses the number of patients in the hospital, whether anyone who spoke with the dispatched nurse was responsible for seeing patients at the time of the encounter, or any other evidence of "interfering with patient care". This finding of fact is based only on assumptions by the ALJ's and attorney argument by Petitioner. No testimony by any witness, much less testimony by an expert witness, support this finding of fact. This finding of fact should be stricken in its entirety.

FOF 26. Respondent behaved in a disruptive manner toward Huguley Hospital's personnel that could be reasonably expected to adversely impact the quality of care rendered to a patient.

Exception: This finding of fact should be stricken because it is not supported by any evidence. Nothing in the record discusses the number of patients in the hospital, whether anyone who spoke with the nurse was responsible for seeing patients at the time of the encounter, or any other evidence of "interfering patient care" or expert testimony that Dr. Bowden's conduct "could be reasonably expected adversely impact the quality of care". The ALJ's are not experts in hospital operations and therefore cannot reach this conclusion without the assistance of expert testimony—expert testimony that TMB failed to provide. In other words, this finding of fact is based only on assumptions by the ALJ's and attorney argument by Petitioner. This finding of fact should be stricken in its entirety. This testimony is not disputed by any testimony offered by Petitioner.

II. <u>EXCEPTIONS TO FINDINGS OF FACT.</u>

Respondent objects to each Finding of Fact listed below, for at least the reasons stated in the below exceptions:

FOF 2. Respondent was board certified in Otolaryngology (ear, nose, and throat) in May 2004 and Sleep Medicine in January 2010 by the American Board of Otolaryngology—Head and Neck Surgery. Respondent is not meeting the continuing certification requirements of her American Board of Otolaryngology—Head and Neck Surgery certification.

Exception: No evidence was presented at the hearing that Respondent was not meeting the continuing education requirements. At most, the evidence showed that Respondent had not reported any such compliance. This finding of fact relies almost exclusively on attorney argument. Further, Petitioner provided no expert testimony in connection with this finding of fact. This finding of fact should be stricken.

FOF 19. On November 8, 2021, the trial court signed a Temporary Injunction Order, which:

> **ORDERED, that . . . [Huguley Hospital] shall grant Dr. Mary Talley Bowden, M.D. and/or her nurse working under her authority, temporary emergency privileges, which shall not be unreasonably delayed or denied, solely to administer Ivermectin to [Patient], pursuant to the order and the attached Prescription of Dr. Bowden. . . .**

Exception: This finding of fact fails to address key elements of the records. Specifically, the Injunction also specifically said that Dr. Bowden "**is granted access in the ICU**…". This finding of fact should set out every command Ordered by the Court in the quoted order. See Exhibit 3, to Respondent's Response to Respondent's Second Motion for Summary Judgment and Respondent's Hearing Exhibit 49.

FOF 26. Huguley Hospital's Director of Medical Staff Services replied to Respondent, telling Respondent she did not have privileges. The Director of Medical Staff Services emailed

Respondent at 4:48 p.m. on November 10: "Dr. Bowden, you will need to complete your application that was sent to you yesterday. It will go through the credentialing process. At this time, you do not have privileges."

Exception: Respondent excepts to this finding of fact because it fails to note that the attorneys for Huguley Hospital and the patient were involved in the communications regarding the nurse. See Respondent's Exhibit 22 and 23. This Finding of Fact should be amended to read "…replied to Respondent, in an email string that included counsel for the Hospital…."

FOF 27. In response, Respondent informed Huguley Hospital that she was dispatching her nurse to the Hospital. Respondent's 5:15 p.m. (November 10) email states: "Per the lawyers, everything is set. My nurse will arrive in about 30 minutes with the court order."

Exception: Respondent excepts to this finding of fact because it fails to note that the attorneys for Huguley Hospital and the patient were involved in the communications regarding the nurse. See Respondent's Exhibit 22 and 23. This Finding of Fact should be amended to read "…Respondent, in an email string that included counsel for the Hospital, informed Huguley….".

FOF 28. On November 10, 2021, Patient was in the care of Huguley Hospital, and Respondent had not been granted and did not have privileges to administer any medications to Patient, who was inpatient at Huguley Hospital.

Exception: Respondent excepts to this finding of fact because it is contrary to the evidence. The Injunction issued by the District Court says

> "IT IS HEREBY: . . . ORDERED that Dr. Bowden and/or her nurse working under her authority **is granted access** in the ICU at Texas Health Huguley Hospital to [Patient] for the sole purpose of administering ivermectin to patient.".

Respondent's Hearing Exhibit 49 at pp. 4-5; Exhibit 3 to Respondent's Response to Claimants Second Motion for Partial Summary Disposition at pp. 4-5 (emphasis added). This order granted Dr. Bowden express authority, i.e. "privileges", to treat [Patient] with Ivermectin while he was in the ICU at Texas Huguley Hospital. As testified by Respondent's expert, Hospitals were routinely allowing physicians to treat patients without a written acknowledgement of privileges. Hearing Transcript, p. 208, lines 5-21.

FOF 29. New York licensed attorney Beth Parlato was not acting as Respondent's attorney and, given that, Respondent could not have relied upon any supposed legal advice from Ms. Parlato.

Exception: This finding of fact is contrary to the evidence presented. Both Respondent and Judge Parlatto testified that Dr. Bowden solicited legal advice and Judge Parlato willingly provided here with that legal advice. Hearing Transcript 88:9 to 89:2, 139:1-22. Under Texas law, this is sufficient to create an attorney client relationship between Dr. Bowden and Judge Parlato. This finding of fact should be modified to simply state that "Dr. Bowden and Judge Parlato formed an attorney client relationship consistent with Texas law."

FOF 30. Despite explicitly admitting and therefore knowing that her request for privileges had not been granted by Huguley Hospital and that she did not then have privileges to administer Ivermectin to Patient while in care at Huguley Hospital, Respondent dispatched Kimberly Joy Witzel, a nurse under Respondent's supervision, to Huguley Hospital on November 10, 2021, to administer the medication to Patient.

Exception: Respondent excepts to this finding of fact as not consistent with evidence and as a conflation of issues. Respondent has at all times claimed she was legally authorized, under the

Injunction issued by the State District Court, to send a nurse to provide ivermectin for the patient. Exhibit 4, Bowden Declaration in Support of Respondent's Response to the Second Motion for Summary Disposition ("I understand Ms. Parlato to indicate the secretary/administrator was either in error or being deceptive.:"); Hearing Transcript 50:21-51:6, 88:16 to 89:2. Nowhere in the record does Dr. Bowden admit to not having the legal authority to have a nurse administer ivermectin to the patient and in particular to knowing she did not have such legal authority.. This finding of fact should be stricken in its entirety.

FOF 31. Respondent's intended result in dispatching her nurse to Huguley Hospital was to override the Hospital's care plan for Patient by administering her prescription to Patient.

Exception: Nothing in the record supports this finding of fact. No evidence supports any inference that Respondent attempted, in any manner, to change the care provided by the Hospital or to even make that care more difficult. The record is replete with evidence that Respondent sought, at the request of the patients lawful surrogate, to ***supplement*** the patient's care with doses of ivermectin. This finding of fact should be stricken in its entirety or modified to state that "Respondent's intended result…was to supplement the Hospital's care plan, as requested by Patient's surrogate,….".

FOF 32. Upon being confronted with Respondent's nurse trying to gain entry to the ICU, Huguley Hospital personnel refused the nurse entry. In the course of Huguley Hospital's efforts to stop Respondent's nurse's entry to the ICU, law enforcement was called.

Exception: Respondent excepts to this finding of fact as it is not supported by any competent evidence. No evidence has been introduced regarding police being required to prevent the nurse's entry into the ICU or that law enforcement was called "to stop Respondent's nurse's entry to the ICU." Further, the only evidence introduced regarding the police was the complaint letter sent from

Huguley Hospital to the TMB. The letter makes conclusory statements and provides opinion without providing any supporting facts or stating that the author actually observed the events she reports. Such evidence should therefore be provided no weight and its contents discarded. The second sentence of this finding of fact should be deleted in its entirety.

FOF 33. On November 10, 2021, at 8:36 p.m. Respondent posted to her social media account on Twitter a picture of hospital personnel in medical scrubs, stating: "This is the director of the ICU at Texas Huguley Hospital who called the police on my nurse.

Exception: This finding of fact should be stricken as irrelevant and as violating Respondent's constitutional rights. The only conduct for which Respondent was found culpable was sending a nurse to Huguley Hospital without privileges. There is no connection for this social media tweet to constitute an aggravating factor with respect to a privileges dispute. Further, the use of this finding of fact in any disciplinary proceeding is a violation Respondent's right to free speech under the Texas and United States Constitutions.

FOF 34. Respondent behaved in a disruptive manner toward Huguley Hospital's personnel that interfered with the Hospital's patient care.

Exception: This finding of fact should be stricken because no evidence has been presented supporting this finding. Nothing in the record discusses the number of patients in the hospital on November 10, 2021, whether anyone who spoke with the nurse was responsible for seeing patients at the time of the encounter, or any other evidence of "interfering with patient care". This finding of fact is based only on assumptions by the ALJs and attorney argument by Petitioner. This finding of fact should be stricken in its entirety.

FOF 35. Respondent behaved in a disruptive manner toward Huguley Hospital's personnel that could be reasonably expected to adversely impact the quality of care rendered to a patient.

Exception: This finding of fact should be stricken because it is not supported by any evidence. Nothing in the record discusses the number of patient's in the hospital, whether anyone who spoke with the nurse was responsible for seeing patients at the time of the encounter, or any other evidence of "interfering patient care" or expert testimony that Dr. Bowden's conduct "could be reasonably expected adversely impact the quality of care". The ALJ's are not experts in hospital operations and therefore cannot reach this conclusion without the assistance of expert testimony—expert testimony that TMB failed to provide. In other words, this finding of fact is based only on assumptions by the ALJ's and attorney argument by Petitioner. This finding of fact should be stricken in its entirety.

FOF 36. On November 18, 2021, the Court of Appeals reversed and vacated the trial court's Temporary Injunction Order. The Court held that "the trial court had no legal authority to intervene in Huguley's legal exercise of its discretion to grant, deny, or limit Dr. Bowden's ICU credentials."

Exception: This finding of fact is irrelevant to any issue before the SOAH and should be stricken in its entirety. Just because a Court of Appeals overrules a district court, that does not negate Respondent's reliance on an order of the District Court.

FOF 37. That Respondent knew she did not have privileges to administer her prescription to Patient while in care of Huguley Hospital but nonetheless intentionally dispatched her nurse to administer the medication and that Respondent's intended result in dispatching her nurse

to the Hospital was to override the Hospital's care plan for Patient is a relevant aggravating factor the Board may consider in determining the appropriate sanction.

Exception: Respondent excepts to this finding of fact as not consistent with evidence and as a conflation of issues. Respondent has at all times claimed she was legally authorized, under the Injunction issued by the State District Court, to send a nurse to provide ivermectin for the patient. Exhibit 4, Bowden Declaration in Support of Respondent's Response to the Second Motion for Summary Disposition ("I understand Ms. Parlato to indicate the secretary/administrator was either in error or being deceptive.:"); Hearing Transcript 50:21-51:6, 88:16 to 89:2. Nowhere in the record does Dr. Bowden admit to not having the legal authority to have a nurse administer ivermectin to the Patient. This finding of fact should be stricken in its entirety.

FOF 38. Respondent, based on her disagreement with an inpatient's treatment plan, may repeat her attempt to disregard a hospital's rules on physician credentialing and treat an inpatient at a facility where she is not privileged.

Exception. No evidence was presented to support this conclusion. The evidence reflects that this specific case involved a patient's surrogate who wanted to supplement the patient's treatment plan and a court order which stated Respondent "is granted access" to the ICU in order to provide the desired treatment. Respondent obtained legal advice that she was authorized to enter the hospital. Petitioner presented no evidence regarding how commonly this set of factors may arise and Respondent stated she would engage separate counsel to advise her if a similar situation arose.

FOF 39. Respondent is not maintaining the continuing certification requirements for her American Board of Otolaryngology—Head and Neck Surgery certification.

Exception: This finding of fact should be stricken because it is not relevant. Whether Respondent maintains here ABO certification in 2025 is irrelevant to the issue of the Respondent's treatment efforts nearly four years earlier. Further, the only admitted evidence suggests that Respondent failed to report continuing certification requirements. No evidence was presented as to whether Respondent met those requirements. Finally, nothing in the Medical Practices Act requires Respondent to maintain this particular certification.

FOF 40. Respondent did not prove any relevant circumstances reducing the seriousness of her misconduct.

Exception: The evidence shows that Respondent took material steps to reduce the seriousness of the alleged misconduct, specifically that Respondent notified the hospital that the nurse was coming in order to reduce any issues regarding surprise to the hospital. This finding of fact should be stricken.

FOF 41. Respondent did not prove any relevant circumstances lessening responsibility for her misconduct.

Exception: The evidence does not support this finding of fact and it should be stricken. The Hospital declined to notify counsel for Respondent and the Patient, Ms. Parlato, regarding the stay and that Nurse Witzel would not be granted access because of that stay. Respondent's Exhibits 22, 23, Hearing Transcript 136:6-137:15. By declining to communicate with Ms. Parlato, the hospital and it attorneys took responsibility for the nurse's visit, lessening Respondents responsibility for the visit.

REQUESTS FOR ADDITIONAL FINDINGS OF FACT.

Respondent requests that the following additional Findings of Fact be added to the Proposal for Decision and be included in the Final Decision:

1. Respondent lessened the severity of any disruption to the hospital by providing the hospital with clear notice that the nurse was on her way. The notice was effective as the hospital had time to prepare for the nurse's arrival before she arrived. Hearing Transcript 203:25-204:7.
2. The Hospital granted permission, by conduct, for the nurse to enter the hospital and to approach the ICU. Both the hospital and its lawyers knew the nurse was on its way yet no effort was made to notify Ms. Parlato that there was in issue with the Temporary Injunction. The Hospital's attorneys had Ms.Parlato's direct cell phone number and spoke with her regularly. See, Respondent's Exhibits 22 and 23, Hearing Transcript 135:16-137:14. This consent by silent constitutes both a negation of Respondent's culpability as well as constitutes a mitigating factor lessening Respondent's responsibility for the alleged conduct.
3. The hospital's decision not to inform the patient's attorney about the stay of the injunction or to tell Ms. Parlato that the nurse could not come is a factor lessening Petitioner's responsibility for the alleged conduct. Hearing Transcript 137:7-15.
4. Petitioner did not satisfy its due process obligations to Respondent under Tex. Occ. Code § 164.004. Petitioner presented no evidence regarding its written notice to Respondent that was provided before the Complaint was filed with the SOAH.

EXCEPTIONS TO SPECIFIC CONCLUSIONS OF LAW

Respondent excepts to the following Conclusions of Law ("COL") as stated in the Proposal for Decision:

COL 3. Respondent received timely and adequate notice of the allegations against her and Staff's Second Motion for Partial Summary Disposition. Tex. Gov't Code §§ 2001.051-.052; Tex. Occ. Code § 164.005(f); 1 Tex. Admin. Code § 155.103.

Exception: Respondent excepts to this conclusion of law as Petitioner failed to give proper notice to Respondent of each particular act—the specific conduct—alleged to be a violation of a specific statute or rule. Furthermore, Petitioner's Second Amended Complaint, as written, relies on a lack of a physician-patient relationship as a predicate for the alleged conduct to be disruptive. *See* Board Staff's Second Amended Complaint at Page 5, Par. 7. Petitioner therefore cannot proceed to judgment on this basis as it does not comport with Petitioner's pleadings. Petitioner dismissed its claims against Respondent upon which a lack of a physician-patient relationship was necessary. Petitioner presented no evidence that Respondent failed to establish a physician-patient relationship. Further, according to the Fort Worth injunction order, the patient's wife consented to the treatment. This is evidence of an existing physician-patient relationship.

COL 4. Respondent received proper notice of the complaint and the hearing. Tex. Occ. Code § 164.005(f); Tex. Gov't Code §§ 2001.051-.052.

Exception: Respondent excepts to this conclusion of law as Petitioner failed to give proper notice to Respondent of each particular act—the specific conduct—alleged to be a violation of a specific statute or rule. Furthermore, Petitioner's Second Amended Complaint, as written, relies on a lack of a physician-patient relationship as a predicate for the alleged conduct to be disruptive. *See* Board Staff's Second Amended Complaint at Page 5, Par. 7. Petitioner therefore cannot proceed to judgment on this basis as it does not comport with Petitioner's pleadings. Petitioner dismissed its claims against Respondent upon which a lack of a physician-patient relationship was necessary. Petitioner presented no evidence that Respondent failed to establish a physician-patient relationship.

Further, according to the Fort Worth injunction order, the patient's wife consented to the treatment, establishing such a physician patient relationship. Therefore, the evidence conclusively eliminates an element of Respondent's alleged violation and precludes any finding of Respondent's culpability.

COL 5. Staff had the burden of proving that Respondent is subject to disciplinary action by the Board and any aggravating factors the Board may consider in determining the appropriate sanction against Respondent. 22 Tex. Admin. Code § 190.15(a); 1 Tex. Admin. Code § 155.427.

Exception: Respondent excepts to this conclusion of law as Petitioners had the burden to prove which factors were applicable to Respondent's case when applied to the specific acts or conduct of Respondent. Specifically, Respondent asserts Petitioner did not meet its burden on summary disposition or at the hearing on the merits. Because Respondent did not meet its burden of proof, this conclusion of law should be stricken.

COL 9. Because the quality of a health care provider's medical staff is intimately connected with patient care, a hospital's credentialing of doctors is necessary to that core function and is, therefore, an inseparable part of the health care rendered to patients. *Garland Cmty. Hosp. v. Rose*, 156 S.W.3d 541, 545 (Tex. 2004).

Exception: Respondent excepts to this conclusion of law as the factual basis for the finding was not alleged by Petitioner in its pleadings. Furthermore, the case which the conclusion of law relies upon is inapposite. In *Garland Cmty. Hosp. v. Rose*, 156 S.W.3d 541, 545 (Tex. 2004), the Texas Supreme Court held that the plaintiff patient brought a claim under the former Medical Liability and Insurance Improvement Act (MLIIA) against a hospital when alleging that the hospital negligently credentialed a physician who performed cosmetic surgeries on the plaintiff patient. The Court reasoned that "[w]hen a plaintiff's credentialing complaint centers on the quality of the doctor's treatment, as it does here, the hospital's alleged acts or omissions in credentialing are inextricably intertwined with the patient's medical treatment and the hospital's provision of health care *Garland Cmty. Hosp. v. Rose*, 156 S.W.3d 541, 546 (Tex. 2004).

Respondent does not dispute that, today, *Garland* is the law with respect to these credentialing issues. However, it was the litigation at issue in this proceeding that first interpreted *Garland* in that manner. In other words, neither Respondent nor Ms. Parloto had reason to believe or know, on November 10, 2021, that the analysis in *Garland* controlled Patient's dispute with the hospital. Therefore, this conclusion of law should not be applied as a negative factor in interpreting Respondent's conduct or the legal advice she received in connection herewith.

COL 11. Respondent could not have justifiably relied on a statement from Patient's attorney that it was "appropriate" for Respondent to send her nurse to Huguley Hospital. *See JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 656 (Tex. 2018).

Exception: Respondent excepts to this conclusion of law as the case which it relies upon is inapposite. In *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648 (Tex. 2018), a contract dispute case, the Texas Supreme Court held that Orca Assets, a sophisticated business entity, could not have justifiably relied on the oral representations made by JPMorgan, another sophisticated business entity, regarding the title to tracks of land because Orca Assets was composed of experienced and knowledgeable businesspeople who encountered several "red flags" when negotiated the arm's-length transaction.

Here, Respondent was justifiably relying on <u>legal advice</u>—which she solicited—given to her by <u>a lawyer</u>—who willingly provided such advice—regarding what action was appropriate under a district court order. It would be astonishing to say that a lay person seeking legal advice from a lawyer is not reasonably justified in believing that the advice is trustworthy or appropriate. Therefore, this conclusion should be stricken.

Critically, Petitioner introduced no evidence that the Board's jurisprudence exam or other training would construe this case in the manner used in the Proposal for Decision or that any guidance or mandatory training would instruct a physician that the physician must ignore legal advice in this specific circumstance.

COL 12. Staff established there is no genuine issue of material fact regarding the allegation that Respondent is subject to disciplinary action under Tex. Occ. Code § 164.051(a)(1).

Exception: Respondent excepts to this conclusion of law as specified in the exceptions to Findings of Fact above. Specifically, Respondent asserts Petitioner did not meet its burden on summary disposition or at the hearing on the merits. Because Respondent did not meet its burden of proof, this conclusion of law should be stricken.

COL 13. Respondent is subject to disciplinary action because she engaged in unprofessional conduct in that she behaved in a disruptive manner toward licensees and hospital personnel that interfered with patient care and could be reasonably expected to adversely impact the quality of care rendered to a patient. Tex. Occ. Code §§ 164.051(a)(1), .052(a)(5); 22 Tex. Admin. Code § 190.8(2)(P).

Exception: Respondent excepts to this conclusion of law as specified in the exceptions to Findings of Fact above. Specifically, Petitioners gave inadequate notice of the "facts or conduct alleged to warrant the intended [disciplinary] action" of the allegations against her as required by Tex. Occ. Code § 164.004(a)(1) and Tex. Gov't Code Ann. § 2001.054(c)(1), and therefore any disciplinary action would be "not effective." Petitioners gave inadequate notice of the complaint under Tex. Occ.

Code § 164.005(f) and Tex. Gov't Code §§ 2001.051-.052 because Petitioner failed to give Respondent notice of each particular act alleged to be a violation of a specific statute or rule. Respondent asserts Petitioner did not meet its burden on summary disposition or at the hearing on the merits. Because Respondent did not meet its burden of proof, this conclusion of law should be stricken.

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

Exception: Respondent excepts to this conclusion of law as Petitioner did not meet its burden of specifying which specific acts were "intentional" nor meet its burden of presenting evidence to negate that Respondent has at all times claimed she was legally authorized, under the Injunction issued by the State District Court, to send a nurse to provide ivermectin for the patient. Exhibit 4, Bowden Declaration in Support of Respondent's Response to the Second Motion for Summary Disposition ("I understand Ms. Parlato to indicate the secretary/administrator was either in error or being deceptive.:"); Hearing Transcript 50:21-51:6, 88:16 to 89:2. Nowhere in the record does Dr. Bowden admit to not having the legal authority to have a nurse administer ivermectin to the Patient. This conclusion of law should be stricken in its entirety.

COL 16. In determining the appropriate disciplinary action, the Board may consider as an aggravating factor that Respondent's unprofessional behavior demonstrates an increased potential for harm to the public. 22 Tex. Admin. Code § 190.15(a)(5).

Exception: Respondent excepts to this conclusion of law as specified in the exceptions to Findings of Fact above and the exceptions to COL 9. Specifically, Respondent asserts Petitioner did not meet its burden on summary disposition or at the hearing on the merits. Because Respondent did not meet its burden of proof, this conclusion of law should be stricken.

Dated: August 22, 2025

Respectfully submitted,

MITBY PACHOLDER JOHNSON PLLC

/s/ Michael K Barnhart

Steven J. Mitby
State Bar No. 24037123
Email: smitby@mitbylaw.com
Michael K. Barnhart
Texas Bar No. 24040472
Email: mbarnhart@mitbylaw.com
1001 McKinney Street, Suite 925
Houston, Texas 77002
Telephone: (713) 234-1446
Facsimile: (713) 234-1456
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all attorneys of record on August 22, 2025.

/s/ Michael K. Barnhart
Michael K. Barnhart