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

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

**RESPONDENT, MARY TALLEY BOWDEN’S, M.D.,
REBUTTAL CLOSING ARGUMENTS**

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

COMES NOW Respondent, Mary Talley Bowden, M.D. (“Bowden”), and files her
Rebuttal Closing Arguments following the final hearing in this matter, and would respectfully
show the Panel as follows:

Dr. Bowden believed she had the legal authority to dispatch a nurse to treat her Patient at
Fort Worth Huguley Hospital (the “Hospital”) on November 10, 2021.¹ Her belief was based on a
Court Order and advice from counsel regarding the meaning of that Order.² Further, Dr. Bowden
waited over two weeks to dispatch a nurse and communicated clearly with the Hospital, despite
the Hospital’s refusal to try alternative treatments for a patient that doctors believed was dying.³

The SOAH has ruled that Dr. Bowden and the attorney, Beth Parlato, misinterpreted the
applicable Court Order and found Dr. Bowden culpable for such misinterpretation.⁴ The SOAH

¹ Transcript 88:24-89:2

² Respondent’s Exhibit 49, Transcript 84:2-11, 85:9-15.

³ Compare Finding of Fact No. 5 to Finding of Fact No. 17.

⁴ Transcript at 50:20, 103:22-104:15, 145:23-146:6, 171:7, 15.

has also ruled that sending the nurse itself interfered with patient care.⁵ Board Staff neither offered nor attempted to offer any evidence regarding the actual interference caused by the nurse's visit to the Hospital. For example, the record contains no evidence of whether the physician who spoke with Dr. Bowden's nurse was actually on duty at the time of the conversation or was possibly elected to appear solely for the purpose of confronting the nurse and the Patient's wife.⁶ Further, no evidence exists as to the number of patients at the Hospital on November 10, 2021 or the number of patients in the Hospital's intensive care unit. These facts are sufficient, in and of themselves, for the SOAH to find no aggravating factors exist.

Increased potential for harm to the public.

Board Staff's Closing Arguments suggest that Dr. Bowden's conduct shows an increased potential for harm to the public. However, Board Staff provides no guidance as to the meaning of this phrase. Based on the plain language of the statute and the regulation, Respondent submits that Board Staff's burden is to show the circumstances surrounding the violation itself would have an increased potential for harm to the public. See, 22 Tex. Admin. Code § 190.15(a)(5), now repealed.

First, Board Staff suggests that Dr. Bowden disregarded the Hospital's privileging requirements. However, it is uncontroverted that Dr. Bowden relied on a Court Order and the opinion of counsel interpreting the Order before dispatching a registered nurse to the Hospital. Dr. Bowden also made sure the Hospital had adequate notice that the nurse was on her way.⁷ The Patient was dying, so Dr. Bowden sought to lawfully overcome the Hospital's stubborn refusal to try and save him by providing the Patient's desired treatment. ' At that time, to Dr. Bowden's good

⁵ Order Granting and Denying Summary Disposition, p. 17.

⁶ Nurse Kimberly Witzel testifies regarding her interactions with this individual in her testimony. No evidence was offered as to the individual's general duties or the duties for which he was responsible at the specific time this interaction took place.

⁷ Transcript 84:2-11, 85:9-15, 87:14-22, 88:9-89:2, 139:14-22: Respondents Exhibit 22, Transcript 90:9-25

faith knowledge and belief, the Court Order allowed Dr. Bowden “access in the ICU at Texas Health Huguley Hospital to [the Patient] for the sole purpose of administering ivermectin to [the Patient], and shall further provide notice to the Hospital of when she shall be administering the ivermectin to [the Patient].” This was not “disregard” of the privilege process, but a good faith attempt to treat a dying patient.

Second, Board Staff seeks to vilify Dr. Bowden because she sees this case for what it is: a misunderstanding of her and her Patient’s legal rights under the applicable Court Order. More specifically, Board Staff seeks to increase Dr. Bowden’s punishment because she refuses to judicially admit a moral or ethical failing rather than a failure to properly interpret the law.⁸ The “disruption” found by SOAH arose from a difference in legal conclusions, and Dr Bowden’s corrective measures are the correct approach to prevent such errors in the future. Dr. Bowden testified very clearly that she would hire her own counsel if a similar situation were to occur.⁹ Importantly, Dr. Bowden also testified that she would not repeat the conduct for which she was found culpable, clearly negating this allegation by Board Staff.¹⁰

Third, Board Staff makes the throwaway allegation that posts to social media somehow create a risk of increased harm to the public. Board Staff provides no evidence linking social media posts generally, much less Dr. Bowden’s social media posts, to any increase of potential harm to the public. This totally unsupported allegation can be ignored as irrelevant to any aggravating factor.

Fourth, Board Staff asks the SOAH to find Dr. Bowden’s Board Certification in otolaryngology and sleep medicine constitutes an aggravating factor. This argument relies wholly

⁸ Petitioner’s Closing Argument at p. 2.

⁹ Transcript 67:14-19.

¹⁰ Transcript 69:14-23.

on Board Staff's interpretation of its own ambiguous questions, that "Board Certification" means only ABMS certification. Board Staff provided no expert testimony regarding the meaning of "Board Certification" generally or the meaning of the ABMS report that Board Staff provided at the hearing. Nevertheless, Board Staff claims, without evidence, that Dr. Bowden refuses to admit she is not "up to date" on her certification."¹¹ Dr. Bowden was abundantly clear about her certification, stating: "I have not submitted my CME's to their website, but as you can see I am Board Certified."¹² The Board Certification assertions manufactured by Board Staff have nothing to do with the Hospital or having hospital privileges before treating the Patient. Thus, this untrue allegation has nothing to do with the violation held by the SOAH and should not be used in any way to support aggravating factors.

Board Staff then conflates several issues into an allegedly single "fifth" basis for finding increased potential for harm to the public. Board Staff tries to punish Dr. Bowden because she disagreed with the Hospital's assigned doctors and because she felt the treatment of the dying Patient validated legal intervention. Even if Dr. Bowden was wrong on these points, a Tarrant County District Judge agreed with her and issued a Temporary Injunction.¹³ Having an attitude shared by a State District Court Judge presiding over the Patient's case simply cannot be an aggravating factor.

Board Staff then attempts to mix the foregoing with Dr. Bowden's refusal to agree that a physician should never advise a course of treatment different from that offered by another treating physician. Board Staff's questions on this matter are unartful at best. Board Staff asked "Q: Okay, so you would agree that it would be a problem if a physician was doing that?"¹⁴ Dr. Bowden then

¹¹ Petitioner's Closing at p. 3.

¹² Transcript 73:1-2.

¹³ Respondents Exhibit 49.

¹⁴ Transcript 39:13-14.

replied that it may depend on circumstances.¹⁵ Board Staff made no attempt to clarify what circumstances Dr. Bowden considered relevant nor provided any other evidence or testimony on this issue. Applying Board Staff's assertion to the evidence, any second opinion would be inappropriate and constitute an aggravating factor under the Medical Practices Act. Board Staff's proposal here cannot be the law, and Dr. Bowden's testimony is not sufficient to show any future increase risk of potential harm to the public, much less risk of increased potential harm associated with the conduct at issue in this case.

Finally, Board Staff mischaracterizes tweets in which Dr. Bowden explained why the Patient's wife was not smuggling ivermectin to her husband. Board Staff elicited no evidence, expert or otherwise, that Dr. Bowden's tweet had any effect on treatment at the Hospital, which is necessary to find an aggravating factor here. Dr. Bowden's repetition of the word "sneak" is simply not enough to create an aggravating factor for the violation held to have occurred by the SOAH.

Board Staff failed to meet their burden of showing an increased potential for harm to the public. The Panel should find that this aggravating factor does not apply.

Intentional, premeditated, knowing or grossly negligent act constituting a violation.

Board Staff did not meet their burden of showing that Dr. Bowden's conduct was a knowing, intentional, premeditated, or grossly negligent act constituting the violation. The regulation Dr. Bowden was held to have violated requires a finding that she was "behaving in a disruptive manner." Thus, Dr. Bowen would have had to know her conduct was disruptive in order to satisfy this factor. Dr. Molly James testified, uncontested and without objection, that she would not consider the unexpected appearance of a nurse at an ICU to be disruptive.¹⁶ Board Staff provided no evidence as to why Dr. Bowden would have reasonably expected such "disruption" to

¹⁵ Transcript 39:15-16.

¹⁶ Hearing Transcript at 203:22-24.

occur, nor did Board Staff provide any evidence why Dr. Bowden would know, or have any reason to believe, that other elements of the held violation were met. The SOAH should find that Board Staff failed to meet their burden on this factor.

Other relevant circumstances.

Board Staff alleges that “diminished rehabilitative potential” is an “other relevant circumstance increasing the seriousness” of Dr. Bowden’s alleged violation. Board Staff provides no actual evidence of any baseline “rehabilitative potential”, or of Dr. Bowden’s “diminished rehabilitative potential.” Board Staff merely complains of tweets Dr. Bowden made during the course of this two-and-a-half-year ordeal. It is important to note that Board Staff did in fact drop almost every single charge against Dr. Bowden and did so *after* Dr. Bowden posted the tweets of which Board Staff complains. Board Staff’s complaint here is an effort to punish Dr. Bowden for speech about a Government Agency, speech that is highly protected under the Constitutions of both Texas and the United States. Further, if these tweets were false, Board Staff should never have done what Dr. Bowden suggested, dismiss the claims. Dr. Bowden called Board Staff and the Medical Board out because they prosecuted her for claims they could not sustain. Such speech is not an aggravating factor and should be used as one in this matter.

Board Staff also alleges that Dr. Bowden’s testimony that she would hire her own attorney (if needed) in the future is evidence of “diminished rehabilitative potential.” However, Dr. Bowden also testified, as discussed above, that she would not treat a patient in a hospital where she does not have privileges. This negates Board Staff’s claim regarding rehabilitative potential. In addition, Dr. Bowden believed she had the legal right to send a nurse to treat her Patient at the Hospital. The SOAH has found that the legal conclusion provided to her by counsel was in error and that she was not entitled to rely on the Patient’s attorney for legal advice—*e.g.* that Dr. Bowden

should have hired her own counsel.¹⁷ This is exactly the proper response to address this situation if it were to come up in the future.

Board Staff has failed to meet its burden of showing other factors increasing the seriousness of the violation, and the SOAH should find that this factor does not apply here.

CONCLUSION

Board Staff failed to meet their burden on any of the alleged aggravating factors. The SOAH should find that no aggravating factors apply to the violation that Dr. Bowden was found to have violated.

Dated: June 9, 2025

Respectfully submitted,

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**ATTORNEYS FOR RESPONDENT MARY
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¹⁷ Order Granting Summary Disposition, p. 16.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all attorneys of record on June 9, 2025.

/s/ Michael K. Barnhart _____

Michael K. Barnhart