

FILED
503-23-17769
5/28/2025 10:30 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jessica Rodriguez, CLERK

ACCEPTED
503-23-17769
5/29/2025 8:25:46 am
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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.,
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 Closing Arguments following the final hearing in this matter, and would respectfully
show the Panel as follows:

INTRODUCTION

This case has been pending for two and a half years. TMB started out with five
charges and has dropped all but one for lack of evidence. TMB dropped the HIPPA
charge, prescribing a dangerous drug without a physician-patient relationship, failure to
supervise, and resigning privileges while being under investigation – in other words, the
most serious charges that TMB alleged against Dr. Bowden. TMB dropped those

charges because they were filed without a reasonable investigation into the alleged “facts.”

The only charge left relates to Dr. Bowden sending a registered nurse to Huguley Hospital to administer Ivermectin to a dying COVID patient. The sole basis of the complaint is that Dr. Bowden lacked privileges at the Hospital. That is, at most, a technical mistake.

Dr. Bowden believed that she had been granted privileges by a court order. That order – issued by a district court with competent jurisdiction – ordered the hospital to grant Dr. Bowden privileges to treat Jason Jones (the Patient).¹ At the time she dispatched the nurse, she believed the order was in effect.

Dr. Bowden was one of the Patient’s doctors. TMB now admits that Dr. Bowden had a valid physician-patient relationship with the Patient. For that reason, she had a legal and ethical obligation to treat the Patient in the manner that she believed was in his best interest. Dr. Bowden sincerely believes, based on her clinical experience with thousands of patients, that Ivermectin is an effective treatment for COVID and saves lives. The Patient’s legal representative, his wife, had asked for Ivermectin. Therefore, Dr. Bowden had a duty to try to provide that treatment.

¹ See Respondent’s Exhibit 49: “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 Jason Jones for the sole purpose of administering ivermectin to Jason Jones...” *Erin Jones v. Texas Health Huguley, Inc., d/b/a Texas Health Huguley Hospital Fort Worth South, et al.*, Cause No. 342-329996-2; 342nd District Court.

Given Dr. Bowden's good faith belief that she was acting pursuant to a court order, Dr. Bowden had an obligation to try to administer Ivermectin under the circumstances. By sending her nurse, Dr. Bowden was trying to follow the Texas Medical Act – not violate it. Given her good faith belief, to do otherwise would have been a dereliction of her duty to the patient.

The nurse behaved responsibly while at Hughley Hospital. She remained in the public areas of the hospital – namely, a waiting room – while hospital staff decided whether to let her into the ICU to see the Patient. She was not combative or disruptive. She was only at the hospital for fifteen or twenty minutes, again at all times, in public areas of the hospital. When she was denied access to the ICU, she left as instructed without incident. Sitting quietly in a public waiting room is not disruptive. There is no evidence that a single patient – or anyone else – was adversely impacted by the nurse's presence at the Hospital.

Dr. Bowden was trying to save her dying patient, a patient on whom Fort Worth Huguley Hospital had given up.² The Hospital refused to administer Dr. Bowden's proposed treatment and fought a court battle to enforce its privilege to determine the course of treatment, regardless of the predicted outcome or the Patient's wishes. In this environment, Dr. Bowden sought to balance the rights of her Patient, her obligations to treat her Patient, and the Hospital's prerogatives. Dr. Bowden relied on

² Transcript at 50:20, 103:22-104:15, 145:23-146:6, 171:7, 15. Citations to the "Transcript" are to the Official Transcript of the Hearing of Mary Talley Bowden, M.D., April 28, 2025, before the State Office of Administrative Hearings in Case No. 503-23-17769.MD.

the counsel of an experienced attorney, Beth Parlato, to advise her on the legal aspects of the circumstances, and when told she could lawfully start treatment, she did so. The Texas Second Court of Appeals ultimately ruled that such legal advice was wrong, but Dr. Bowden was not informed of the Appellate Court's ruling. Based on this good faith and patient centered mistake, the Administrative Law Judges ("ALJs") have held that Dr. Bowden violated the Medical Practices Act by sending a nurse to administer treatment at Huguley Hospital when Dr. Bowden did not have privileges.³

Board Staff now seeks to turn Dr. Bowden's good faith effort to treat her Patient into a major event, asking the ALJs to find aggravating factors to support more significant discipline by the Texas Medical Board. However, the evidence presented in this case shows the opposite: the existence of substantial mitigating factors. The ALJs should find substantial mitigating factors and recommend that the Texas Medical Board assign no discipline in connection with this case.

ARGUMENT

A. Board Staff offered no evidence it satisfied the due process statute.

Board Staff have produced absolutely no evidence that Petitioner satisfied Tex. Occ. Code § 164.004. This statute contains specific notice provisions that the Texas Medical Board must meet before assigning discipline to a physician. In fact, Board Staff

³ Respondent acknowledges the ALJs' ruling and respectfully maintains that no violation occurred.

have judicially admitted it did not meet this statute by not even pleading that it had met all conditions precedent to discipline.

Further, a finding that a physician violated the Medical Practices Act is not, even by implication, a disposition of TMB's requirements under § 164.004. The Texas Supreme Court expressly held that failure to satisfy § 164.004 only negates discipline against a physician but does not deprive the State Office of Administrative Hearings ("SOAH") or the TMB of jurisdiction to adjudicate culpability. *Rea v. State*, 297 S.W.3d 379, 385 (Tex. App.—Austin 2009, no pet.) ("neither occupation code section 164.004(a) nor government code section 2001.054(c) provide that, upon insufficient notice, any administrative proceeding must cease or the agency or SOAH loses its jurisdiction.")

Compliance with § 164.004 is not a technicality in this case. Board Staff originally brought a litany of charges against Dr. Bowden, all of which have since been abandoned.⁴ Unable to prove its original charges, Board Staff pivoted to a technical point on which it eventually received summary disposition. This pivot violates Tex. Occ. Code § 164.004 and TMB should not be allowed to discipline Dr. Bowden when Board Staff did not follow TMB's enabling statutes.

⁴ Compare Board Staff's Original Complaint with SOAH's Order Memorializing Prehearing Conference, which specifies the issues to be addressed at trial.

B. Mitigating Factor No. 1—Circumstances which make the violation less serious.

Dr. Bowden engaged in specific conduct making the violation found by the ALJs less serious. Specifically, Dr. Bowden relied on a Court Order, obtained advice of counsel before engaging a nurse, and provided the Hospital advance notice of the nurse's visit.

First, Dr. Bowden relied on a Court Order when giving Nurse Kimberly Witzel instructions regarding the Patient. Specifically, Dr. Bowden knew that the Fort Worth District Court had issued a temporary injunction requiring the Hospital to immediately grant Dr. Bowden privileges.⁵ Dr. Bowden testified she understood the injunction was active when Nurse Witzel went to the Hospital.⁶ The Hospital asked Dr. Bowden to resubmit her application for privileges and she did so.⁷

As both Dr. Bowden and Beth Parlato testified, Dr. Bowden then relied on legal advice from Ms. Parlato when interpreting the Order.⁸ Dr. Bowden solicited legal advice from Ms. Parlato and Ms. Parlato willingly gave it. Under Texas Law, this created an attorney-client relationship between Dr. Bowden and Ms. Parlato. *Vinson & Elkins v. Moran*, 946 S.W.2d 381, 405 (Tex. App.—Houston [14th Dist.] 1997, writ diss'd by agr.) ("The attorney-client relationship is a contractual relationship in which an attorney 'agrees' to render professional services for a client"). *Id.* The existence of the agreement

⁵ Respondent's Exhibit 49, Transcript 84:2-11, 85:9-15,

⁶ Transcript 92:2-5

⁷ Transcript 85:9-15.

⁸ Transcript 87:14-22, 88:9 - 89:2, 139:14-22

is determined by the objective conduct of the parties, not their subjective beliefs.⁹ Here, Dr. Bowden sought Ms. Parlato's professional legal services asking for her legal opinion on Dr. Bowden's ability to treat the Patient.¹⁰ Ms. Parlato provided that legal opinion in her capacity as an attorney, reflecting her agreement to accept Dr. Bowden as a client, even if least for this limited purpose.

These facts make it clear that Dr. Bowen did not ignore the law or the prerogatives of the Hospital. Dr. Bowden relied on a written injunction issued by a Texas District Court and the interpretation of that injunction by an attorney working on the case. Dr. Bowden took substantial steps to try and ensure she had legal authority to treat the Patient before attempting to do so. Dr. Bowden's reliance on the Order and legal advice are substantial mitigating factors.

Importantly, Board Staff introduced no evidence regarding any standard that Dr. Bowden violated by relying on Ms. Parlato's legal opinion. Board Staff has been critical of Ms. Parlato, insisting that her legal advice to Dr. Bowden was in error. However, no evidence has been presented suggesting, much less showing, that Dr. Bowden failed to meet her responsibility as a physician by soliciting legal advice from Ms. Parlato in this specific case.

The alleged violation is also less serious because, in accordance with the District Court's Order, Dr. Bowden took specific, successful steps to reduce any impact of her

⁹ *Id.*

¹⁰ Petitioner's Exhibit 11, Transcript 88:9-89:1, 139:4-22.

treatment of the Patient on the Hospital. Dr. Bowden provided advance notice that she was sending nurse Witzel to the Hospital.¹¹ Dr. Bowden did so to (1) comply with the Court's order granting Dr. Bowden access to her Patient, and (2) to eliminate the possibility of surprise and disruption on patient care.¹² Dr. Bowden's notice was successful as evidenced by Nurse Witzel's testimony that someone was waiting for her when she arrived at the Hospital.¹³ In other words, Dr. Bowden not only attempted to reduce or prevent any disruption, she succeeded.

Lastly, it is important to note that Board Staff has never alleged, much less shown, any actual effect on patient care caused by Dr. Bowden dispatching Nurse Witzel to the Hospital. For example, Board Staff presented no evidence on whether the staff member that Nurse Witzel encountered had any patient care duties at the time of their interaction. In fact, Dr. Bowden's uncontroverted testimony is that she had no reason to believe that, given prior notice, Nurse Witzel's appearance at the Hospital would have any effect on patient care or would cause any disruption.

This detail is critical. Texas law holds that the key element of unprofessional or dishonorable conduct is that it must be likely to deceive or defraud the public or injure the public. *See* Tex. Occ. Code § 164.052. The regulation cited by the Board and the ALJs to hold otherwise has been repealed. Thus, Dr. Bowden's uncontroverted

¹¹ Respondents Exhibit 22, Transcript 90:9-25.

¹² Transcript, 95:21-23.

¹³ Transcript 118:24-119:14.

testimony that her conduct was not likely to injure anyone is dispositive of the issues here.

C. Mitigating Factor No. 2—circumstances reducing responsibility for the violation.

Respondent also elicited evidence of circumstances that reduce Dr. Bowden's responsibility for the claimed act. As discussed above, Dr. Bowden received advice of counsel that she had legal authority to treat her Patient.¹⁴ Ms. Parlato was the attorney communicating both with Dr. Bowden and also with Counsel for the Hospital.¹⁵ Dr. Bowden had no reason to believe she could not rely on Ms. Parlato to give this legal advice. At a minimum, getting Ms. Parlato's advice shows good faith and reflects Dr. Bowden's attempt to comply with the law. *See Nueces Trust Co. v. White*, 564 S.W.2d 798, 806 (Tex. Civ. App. – Corpus Christi 1978, no writ), cited by *Beacon Nat'l Ins. Co. v. Reynolds*, 799 S.W.2d 390, 397 (Tex. App.—Fort Worth 1990, writ denied) (legal advice sought in good faith goes to the mental state of the client at the time the client acts on the advice).

The behavior of Hospital staff and representatives also reflects a reduction in responsibility for Dr. Bowden's conduct. As Nurse Witzel testified, the Hospital clearly knew she was coming on the evening of November 10, 2021, because of Dr. Bowden's advance notice of her arrive to treat the Patient¹⁶ Despite this knowledge, the Hospital

¹⁴ Transcript 87:14-22, 88:9 - 89:2, 139:14-22.

¹⁵ Transcript 89:3-5, 135:16-136:5.

¹⁶ Transcript 118:24-119:14.

made no attempt to prevent the Nurse Witzel from coming, neither calling or emailing Ms. Parlato or anyone else.¹⁷

It is undisputed that Nurse Witzel behaved professionally while in attendance at the Hospital.¹⁸ Her testimony made it clear that she took no actions that were in themselves disruptive and Board Staff has tendered no evidence Nurse Witzel did anything contrary to what she testified to. Nurse Witzel left as soon as she was requested by Hospital staff to leave, and did so without incident.¹⁹

CONCLUSION

Dr. Bowden established a patient physician relationship with the Patient and thus had a duty to provide care, subject to applicable law. Dr. Bowden received an attorney opinion regarding a valid court order that she was legally authorized to provide care, invoking her duty to treat. Dr. Bowden behaved consistently with this opinion, dispatching a nurse to provide treatment. Nurse Witzel behaved professionally and left the Hospital when requested by its staff. These are not the acts that justify encumbering Dr. Bowden's medical license. The ALJs should find that substantial material mitigating factors apply and recommend that the Texas Medical Board assign no discipline.

¹⁷ Transcript 135:25-136:12

¹⁸ Transcript 119:15-20.

¹⁹ Transcript 120:19-23

Dated: May 28, 2025

Respectfully submitted,

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**ATTORNEYS FOR RESPONDENT
MARY TALLEY BOWDEN, M.D.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all attorneys of record on May 28, 2025.

/s/ Michael K. Barnhart

Michael K. Barnhart