

FILED
503-23-17769
3/15/2024 4:08 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Amy Robles, CLERK

ACCEPTED
503-23-17769
3/15/2024 4:21:26 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Amy Robles, 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

OF

ADMINISTRATIVE HEARINGS

BOARD STAFF’S FIRST AMENDED COMPLAINT

TO THE HONORABLE ADMINSTRATIVE LAW JUDGE RACHELLE ROBLES:

The Staff of the Texas Medical Board (“Board Staff”) files its First Amended Complaint against Respondent Mary Talley Bowden, MD (“Respondent”) for alleged violations of the Medical Practice Act (“the Act”), Title 3, Subtitle B, Texas Occupations Code, §§ 151.001 *et seq.* and the Board’s Rules and would show as follows:

I. SUMMARY OF FACTUAL ALLEGATIONS

There are three main issues underlying this dispute: (1) standard of care violations, (2) disciplinary action by a peer group, and (3) unprofessional conduct. First, Respondent committed standard of care violations regarding one person with whom Respondent did not have a physician-patient relationship at a Fort Worth hospital where Respondent did not have privileges. Second, Respondent had her privileges suspended and was investigated by the executive committee of a Houston hospital where she did have privileges. Third, Respondent committed unprofessional conduct when she caused a disruption at the Fort Worth hospital where she did not have privileges and also when she resigned from the Houston hospital where her suspension and disciplinary action were pending.

In October 2021, Respondent prescribed dangerous drugs to an inpatient (“the Patient”) at Texas Health Huguley Hospital Fort Worth South (“Huguley Hospital”), where she did not have privileges. Respondent issued these prescriptions for the Patient without physically examining the Patient, without speaking with the Patient via telephone, without reviewing the Patient’s medical

records, without consulting with the Patient's providers, and without having a physician-patient relationship with the Patient. In November 2021, Respondent dispatched an unaffiliated nurse to Huguley Hospital to administer the prescription medication to the Patient, despite not having privileges to treat patients at Huguley Hospital or having established a physician-patient relationship with the Patient.

The medical executive committee at Houston Methodist Hospital ("Methodist Hospital") notified Respondent that it was suspending her privileges and beginning an investigation into recent concerns about her conduct. Instead of participating in the peer review process, Respondent tendered her resignation.

II. LEGAL AUTHORITY AND JURISDICTION

1. Respondent is a Texas physician and holds Texas Medical License No. K-9770, which was originally issued on May 19, 2000. Respondent's license was in full force and effect at all times material and relevant to this First Amended Complaint.

2. Respondent received notice of one or more Informal Settlement Conferences ("ISCs"). The Board complied with all procedural rules including, but not limited to, Board Rules 182 and 187, as applicable.

3. No agreement to settle this matter has been reached by the Parties.

4. All jurisdictional requirements have been satisfied.

5. The filing of this First Amended Complaint and the relief requested are necessary to protect the health and public interest of the citizens of the State of Texas, as provided in § 151.003 of the Act.

III. APPLICABLE STATUTES AND STATUTORY VIOLATIONS

The following Statutes, Rules, and Agency Policy are applicable to the procedures for conduct of the hearing this matter:

A. General Statutes and Rules:

1. Section 164.007(a) of the Act requires that the Board adopt procedures governing formal disposition of a contested case before the State Office of Administrative Hearings (“SOAH”).

2. 22 Texas Administrative Code Chapter 187 sets forth the procedures adopted by the Board under the requirement of § 164.007(a) of the Act.

3. 22 Texas Administrative Code Chapter 190 sets forth aggravating factors that warrant more severe or restrictive action by the Board.

4. 1 Texas Administrative Code Chapter 155 sets forth the rules of procedure adopted by SOAH for contested case proceeding.

5. 1 Texas Administrative Code § 155.507 requires the issuance of a Proposal for Decision (“PFD”) containing Findings of Fact and Conclusions of Law.

6. Section 164.007(a) of the Act, Board Rule 187, and Board Rule 190 provide the Board with the sole and exclusive authority to determine the charges on the merits, to impose sanctions for violation of the Act or a Board Rule, and to issue a Final Order.

B. Specific Violations Cited:

Respondent has violated the following provisions of the Act and Board Rules:

1. Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent’s commission of an act prohibited under § 164.052 of the Act.

2. Section 164.051(a)(3) of the Act and Board Rule 165.1 authorizes the Board to take disciplinary action against Respondent based on Respondent’s failure to create and maintain an adequate, complete, and accurate medical record.

3. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent’s failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by Board Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(C), failure to use proper diligence in one’s professional practice; 190.8(1)(D), failure to

safeguard against potential complications; 190.8(1)(L), prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

4. Section 164.051(a)(7) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent being subject to disciplinary action by a licensed hospital, including limitation of hospital privileges or other disciplinary action, as defined by Board Rule 190.8(4), disciplinary action by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board within the meaning of § 164.051(a)(7) the Act.

5. Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public, as further defined by Board Rule 190.8(2)(P), behaving in a disruptive manner towards licensees, hospital personnel, other medical personnel, patients, family members, or others that interferes or could be reasonably expected to adversely impact the quality of care rendered to a patient.

6. Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

IV. FACTUAL ALLEGATIONS

Based on information and belief, Board Staff alleges the following:

Standard of Care Violations

1. In September 2021, the Patient was admitted to Huguley Hospital for increasing shortness of breath, COVID-19 infection, acute respiratory failure, and sepsis. In October 2021, the Patient was placed on ventilator support in ICU.
2. On October 22, 2021, after the Patient had been placed on a ventilator, Respondent spoke to the Patient's wife by telephone. Based on this telephone conversation, but without

physically examining the Patient, without speaking with the Patient via telephone, without reviewing the Patient's medical records, without consulting with the Patient's providers, and without having a physician-patient relationship with the Patient, Respondent issued prescriptions for the Patient.

3. Respondent's actions in treating a patient with dangerous drugs with whom she did not have a physician-patient relationship are in violation of the following Act and Board Rules:

Section 164.051(a)(1) of the Act and Board Rule 165.1(a) authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to create and maintain an adequate, complete, and accurate medical record.

Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by Board Rule Rules: 190.8(1)(A), failure to treat a patient according to the generally accepted standard of care; 190.8(1)(C), failure to use proper diligence in one's professional practice; 190.8(1)(D), failure to safeguard against potential complications; 190.8(1)(L), prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

Section 164.053(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.

Unprofessional Conduct

4. On Tuesday, November 2, 2021, Respondent submitted an application for privileges at Huguley Hospital. The Director of Medical Staff Services notified Respondent that her application was pending review. On November 4, 2021, Respondent asked to withdraw her application, claiming that the delay led her to believe that it was not going to be approved. The Director responded that she did not know the outcome of Respondent's application.

5. On Friday, November 5, 2021, the Director informed Respondent that the Credentials Vice Chair, President of the Medical Staff, and Department of Surgery Chair declined to grant her temporary privileges; however, the Director explained, this was not a denial of Respondent's application, and Huguley Hospital would continue to process her application in its

entirety. Eighty minutes later, Respondent responded in writing, "Please withdraw my application."

6. On Wednesday, November 10, 2021, at 3:52 p.m., Respondent sent an email to the Director of Medical Staff Services for Huguley Hospital, with the subject line "Supplement to application," setting forth the details of her administration of prescription medication to the Patient through Kimberly Joy Witzel, RN (License No. 865988) ("Nurse Witzel") and advising that the information "supplements my application." At 4:48 p.m., the Director sent an email back to Respondent reminding her that she did not have privileges at Huguley Hospital. The Director stated, "Dr. Bowden, you will need to complete your application that was sent to you yesterday. It will go through the credentialing process. As this time, you do not have privileges."

7. At 5:15 p.m., Respondent replied to the Director that Nurse Witzel would arrive in 30 minutes to administer the medication that Respondent prescribed. At approximately 5:45 p.m., Nurse Witzel attempted to enter the Huguley Hospital ICU to administer medication prescribed by Respondent to the Patient but was stopped by hospital security. At approximately 6:00 p.m., in response to Respondent's delegated nurse's unauthorized presence and refusal to leave, hospital staff called Fort Worth Police Department, resulting in a disruptive scene.

8. Respondent prescribed and attempted to administer medications via a delegated nurse to a person with whom Respondent did not have a physician-patient relationship, at a hospital where Respondent did not have privileges. Respondent instructed Nurse Witzel to enter Huguley Hospital, where Nurse Witzel is not employed or otherwise affiliated, which caused a disruption for hospital staff and other hospital patients that required law enforcement intervention. Respondent's actions are in violation of the Act and/or Board Rules, specifically:

Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under § 164.052 of the Act.

Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public, as further defined by Board Rules 190.8(2)(P), behaving in a disruptive manner towards licensees, hospital personnel, other medical personnel, patients, family members, or others that interferes or could be reasonably expected to adversely impact the quality of care rendered to a patient.

Disciplinary Action by Peer Group and Unprofessional Conduct

9. In December 2020, Respondent was granted temporary privileges at Methodist Hospital. In January 2021, Respondent was appointed as Provisional Medical Staff at the facility.

10. On or about Monday, November 8, 2021, the Director of Medical Staff Services at Methodist Hospital became aware of complaints about Respondent's recent conduct and statements that were deemed to demonstrate unprofessional behavior unbecoming of a member of Methodist Hospital's Provisional Medical Staff.

11. On Thursday, November 11, 2021, the Medical Staff Executive Committee at Methodist Hospital convened a quorum. The Committee voted to send Respondent a letter requesting proof of vaccination status and admonishing her for failing to adhere to the values outlined in the Medical Staff Bylaws.

12. The same day, November 11, 2021, the President of the Medical Staff sent Respondent a letter requesting that she submit documentation confirming her vaccination status and reminding her that when she accepted privileges at Methodist Hospital, she agreed to conduct herself professionally and to treat others with respect, courtesy, dignity, and compassion.

13. On Friday, November 12, 2021, the President of the Medical Staff sent Respondent another letter, with the subject line "Special Notice of Precautionary Suspension," via courier delivery and email. The President informed Respondent that her actions did not meet the standard for membership set forth in the Medical Staff Bylaws. Accordingly, the Medical Staff Executive Committee initiated an investigation and implemented a precautionary suspension of her privileges, effective immediately and required her to appear at a hearing in several weeks.

14. On Monday, November 15, 2021, Respondent sent the President of the Medical Staff a letter tendering her resignation, effective immediately.

15. On December 14, 2021, the Expedited Credentialing Committee at Methodist Hospital noted in its meeting minutes that Respondent resigned while under investigation.

16. Respondent resigned her privileges at Methodist Hospital while her privileges were suspended and while she was under investigation by its Medical Staff Executive Committee for unprofessional conduct. Respondent's actions are in violation of the Act and/or Board Rules, specifically:

Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act prohibited under § 164.052 of the Act.

Section 164.051(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent being subject to disciplinary action by a licensed hospital, including limitation of hospital privileges or other disciplinary action, as defined by Board Rule 190.8(4) disciplinary action by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of § 164.051(a)(7) the Act.

Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as further defined by Board Rule 190.8(1)(C), failure to use proper diligence in one's professional practice.

Section 164.052(a)(5) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public.

V. AGGRAVATING AND MITIGATING FACTORS

Board Rule 190.14 provides that the Board may impose more restrictive sanctions when there are multiple violations of the Act. Board Rule 190.15 provides that the Board may consider aggravating factors that warrant more severe or restrictive disciplinary action. This case includes the following aggravating factors: (5) increased potential for harm to the public; (7) intentional, premeditated, knowing, or grossly negligent act constituting a violation; (9) previous disciplinary action by the board, any government agency, peer review organization, or health care entity; and (11) other relevant circumstances increasing the seriousness of the misconduct.

Board staff is aware of no mitigating factors that apply and demands that Respondent submit proof to substantiate any alleged mitigating factors.

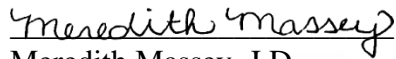
VI. PRAYER

For these reasons, Board Staff prays the Honorable Administrative Law Judge employed by the State Office of Administrative Hearings to conduct a contested case hearing on the merits of the First Amended Complaint and issue a Proposal for Decision containing Findings of Fact and Conclusions of Law necessary to support a determination that Respondent violated the Act and rules adopted thereunder as set forth in this First Amended Complaint.

Respectfully submitted,

TEXAS MEDICAL BOARD

AMY SWANHOLM, JD, MSEL
Director of Litigation



Meredith Massey, J.D.

Senior Staff Attorney

Texas State Bar No. 24077190

1801 Congress Avenue, Suite 9-200

Austin, Texas 78701

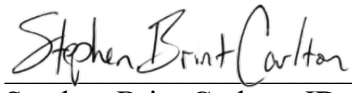
Telephone: (512) 305-7040

Fax # (888) 391-2366

Email: Meredith.Massey@tmb.state.tx.us

ATTORNEYS FOR BOARD STAFF

Filed with the Texas Medical Board on March 15, 2024.

A handwritten signature in cursive script that reads "Stephen Brint Carlton".

Stephen Brint Carlton, JD
Executive Director
Texas Medical Board