

1 CAUSE NO. 503-23-17769.MD

2
3 TEXAS MEDICAL BOARD, IN THE DISTRICT COURT OF
4 Plaintiff, STATE OFFICE OF
5 vs. ADMINISTRATIVE HEARINGS
6 MARY TALLEY BOWDEN, M.D.,
7 Defendants,

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10 TRAVIS COUNTY, TEXAS
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14

15 HEARING

16 MARY TALLEY BOWDEN, M.D.

17 APRIL 28, 2025
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19 HEARING OF MARY TALLEY BOWDEN, M.D., KIMBERLY
20 WITZEL, BETH PARLATO, AND MOLLIE JAMES, D.O. Having been
21 duly sworn by Judge Linda Burgess and Judge Rachelle Robles
22 The witness appeared over Zoom at 9:00 a.m.
23 pursuant to Texas Rule of Civil Procedure.
24
25

1 APPEARANCES OF COUNSEL

2
3 On behalf of the Plaintiff:4 TEXAS MEDICAL BOARD
Attorneys at Law
5 1801 CONGRESS AVENUE
SUITE 9-200
6 AUSTIN, TEXAS 78701
512-305-7040
7 BY: AMY SWANHOLM, ESQUIRE
amy.swanholm@tmb.state.tx.us
8 MEREDITH MASSEY, ESQUIRE
meredith.massey@tmb.state.tx.us
9

10 On behalf of the Defendants,

11 MITBY PACHOLDER JOHNSON PLLC
Attorneys at Law
12 1001 MCKINNEY STREET
SUITE 925
13 HOUSTON, TEXAS 77002
713-234-1446
14 BY: MICHAEL BARNHART, ESQUIRE
mbarnhart@mitbylaw.com
15 STEVEN MITBY, ESQUIRE
16 smitby@mitbylaw.com
17
18
19
20
21
22
23
24
25

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1 JUDGE LINDA BURGESS: Good morning. We're on the
2 record. This is SOAH docket number 503-23-17769. The
3 case is Texas Medical Board, petitioner versus Mary Talley
4 Bowden, M.D, respondent. I'm Linda Burgess, I'm here with
5 Rachelle Robles. We are the administrative law judges, or
6 we are administrative law judges. And we're also the
7 administrative law judges assigned by the State Office of
8 Administrative Hearings to hear this matter today. Today
9 is April 28th, 2025. Our time is about 9:06 a.m. This
10 hearing is being held via Zoom video conference platform.
11 We have a court reporter here with us today, Mr. Rylie
12 Austin. He's going to be the official recording of the
13 hearing. So let's be sure not to talk over each other
14 during the hearing. At this time I'm asking for
15 appearances of the parties and I'd like to start with the
16 Department.

17 AMY SWANHOLM: Yes, this is Amy.

18 JUDGE LINDA BURGESS: Sorry.

19 AMY SWANHOLM: Yes, this is Amy Swanholm and Meredith
20 Massey on behalf of board staff.

21 JUDGE LINDA BURGESS: Thank you, Ms. Swanholm and Ms.
22 Massey. I'm going to turn to the respondent.

23 MICHAEL BARNHART: Michael Barnhart and Steven Mitby
24 on behalf of the respondent. And with us in the room is
25 our paralegal, Nora Montez, and the respondent.

1 JUDGE LINDA BURGESS: Thank you, sir. And who was
2 the second attorney?

3 MICHAEL BARNHART: Steven Mitby.

4 JUDGE LINDA BURGESS: Thank you, counsel. So I want
5 to explain this hearing this morning. It's a limited
6 hearing. The purpose of today's hearing is for the ALJs
7 to take evidence on mitigating and aggravating factors
8 under Board Rule 190.15 that may affect what sanctions, if
9 any, the board is to impose upon respondent for violation
10 of Section 164.052(a)(5) of the Texas Medical Practice Act
11 claim as found by the ALJs in the order of March 12th,
12 2025. The factual basis for the violation finding was
13 that Dr. Bowden, without hospital privileges in Huguley
14 Hospital, dispatched her nurse to give a drug to patient
15 in the hospital, thereby behaving in a disruptive manner
16 toward the hospital personnel that interfered with patient
17 care or was reasonably expected to adversely impact the
18 quality of care rendered to a patient. Now, counsel, we
19 issued an order with respect to the rulings we made at the
20 pre-hearing conference on April 24th, and both of you,
21 both sides should have that order. And the ALJs also have
22 the board's April 25th, 2025 party admissions that were
23 filed. So thank you. And Mr. Barnhart, I want to make
24 sure you have those.

25 MICHAEL BARNHART: I have those. I don't think that

1 they get us where we need to go. So we are still going to
2 take testimony.

3 JUDGE LINDA BURGESS: No, I just said, do you have
4 them?

5 MICHAEL BARNHART: I have them.

6 JUDGE LINDA BURGESS: So say something, when I want
7 to comment, I'll let you know. Okay. So because we have
8 a court reporter here, we'll take a break about 10:45 to
9 give the court reporter a rest in hands. As we mentioned
10 at our pre-hearing conference, we welcome opening
11 statements from the parties. And I'd like for it to be
12 old fashioned opening statements, and by that I mean ones
13 that help the ALJs. And ones that help the ALJs is, tell
14 us what you think the evidence is going to show, and point
15 it to either the aggravating or mitigating factor that you
16 want us to focus. So when Judge Robles and I have our
17 head down, I want you to know it's not that we're not
18 listening, we're taking notes because we care what you
19 have to say and what your witnesses have to say. So with
20 that, are we ready for opening statements, Ms. Swanholm?

21 AMY SWANHOLM: Yes, Your Honor.

22 JUDGE LINDA BURGESS: Mr. Barnhart.

23 MICHAEL BARNHART: Yes, Judge.

24 JUDGE LINDA BURGESS: Okay, then let's have -- and
25 Mr. Barnhart, you don't have to make your -- well, I think

1 that's not right. So let's just go to opening statements

2 Ms. Swanholm.

3 AMY SWANHOLM: Okay, thank you, Your Honor. Just
4 before I get started, we did plan on going through some of
5 the facts because most of our case is about evidence
6 that's already in the record. So thank you for this
7 opportunity today. We are here today because of Dr.
8 Bowden's actions and the board's obligation to investigate
9 alleged violations of the Medical Practice Act. The board
10 received a complaint in this matter and it was obligated
11 to investigate. After an investigation, an informal
12 settlement conference was held where parties were unable
13 to resolve this matter informally. After that, the case
14 was filed with the State Office of Administrative
15 Hearings. The facts have already been determined, and
16 you, judges, have already found that Dr. Bowden acted
17 unprofessionally. So what happened? On September 23rd,
18 2021, the patient tested positive for COVID-19. Five days
19 later, he was admitted to Huguley Hospital. On October
20 7th, he was placed on a ventilator and moved to the ICU in
21 a medically induced coma. Sometime after that, the
22 patient's wife contacted some attorneys, Ralph Lorigo,
23 Beth Parlato, and then Jerri Ward. She scheduled a
24 telehealth visit with Dr. Bowden for purposes of getting
25 ivermectin to her husband, the patient. On October 22nd,

1 2021, Dr. Bowden spoke to the patient's wife on the phone
2 and then issued a prescription for ivermectin. The
3 patient's wife then sued Huguley Hospital to try and get
4 ivermectin to her husband. Over the next several weeks, a
5 legal battle ensued. On November 1st and 2nd, a temporary
6 injunction hearing was held. Dr. Bowden testified at that
7 hearing. A week later, on Monday, November 8th, 2021, the
8 trial court issued a temporary injunction order directing
9 Huguley Hospital to grant Dr. Bowden privileges, temporary
10 emergency privileges, solely to administer ivermectin, and
11 that those privileges shall not be unreasonably delayed or
12 denied. That evening, Huguley Hospital sought an
13 emergency appellate court review of that order, while at
14 the same time working with respondent to have her submit
15 an application for those privileges. On Tuesday, the next
16 day, November 9, 2021, around 2:30 p.m., Huguley Hospital
17 emailed Dr. Bowden and instructed her to submit an
18 application so that it could be considered by the Board of
19 Directors two days later, when they met. In that same
20 letter, Huguley Hospital informed Dr. Bowden that upon
21 approval of her application for privileges, she would be
22 informed immediately. And then at that point, Huguley
23 Hospital said Dr. Bowden would need to notify the hospital
24 as to when she would arrive to administer the medication
25 to the patient. But, on the evening of November 9th,

1 2021, the appellate court stayed the injunction order.
2 That next day, Wednesday, November 10th, at 11:28,
3 respondent posted on social media trying to find a nurse
4 to administer the medication to the patient. At 3:52 p.m.
5 that same day, Dr. Bowden emailed the Huguley Director of
6 Medical Staff Services. The email was titled "Supplement
7 to application," included information about the nurse who
8 would be administering the medication, and then stating
9 that she would notify the hospital when the nurse would be
10 arriving. Dr. Bowden also posted on social media that
11 she'd found a nurse and she was waiting for the hospital
12 to respond. At 4:48 p.m., about an hour later, the
13 hospital responded, stating that she still needed to
14 complete the application that was sent to her November
15 9th, and that she still had to go through the
16 credentialing process. She was explicitly told at that
17 point, at this time, quote, "you do not have privileges."
18 About 25 minutes later, at 5:15 p.m., Dr. Bowden responded
19 via email, stating, "Per the lawyers, everything is set.
20 My nurse will arrive in about 30 minutes with the court
21 order." Forty-five minutes later, the nurse did arrive.
22 Nurse Witzel arrived at Huguley Hospital, where she was
23 stopped by medical personnel, and there was an argument
24 with Beth Parlato, the patient's wife, and Huguley staff.
25 Huguley staff ultimately had to call law enforcement, and

1 the incident blew up in the press. Later that evening,
2 around 8:30 p.m., Dr. Bowden posted on social media
3 pictures of Huguley Hospital personnel in medical scrubs,
4 stating, "This is the director of the ICU at Huguley
5 Hospital who called the police on my nurse." After that,
6 the board received a complaint. It was widely reported in
7 the press, a lot of folks knew about it. That's often
8 something that we receive complaints in response to.
9 Board Staff investigated, engaged in our informal
10 settlement process, and when this matter could not be
11 resolved informally, staff filed the case at SOAH. Here,
12 briefs were filed, depositions were taken, more briefs were
13 filed, and you judges decided the matter on summary
14 disposition. Dr. Bowden has fully participated at every
15 step of the way. So that's what happened, Judges, the
16 facts are not in dispute. A lot of the facts already in
17 evidence show that there are aggravating factors present
18 here, which we will explain in our briefing.
19 Specifically, Judges, you've already found that Dr. Bowden
20 knew that as a physician, privileges were required to
21 treat an inpatient at a hospital. Dr. Bowden knew that on
22 the date of the incident, November 10th, 2021, she had not
23 been granted privileges to treat the patient. But Dr.
24 Bowden, despite knowing that she did not have privileges
25 at Huguley Hospital, sent the nurse to the hospital to

1 administer prescription medications to the patient.
2 These actions established that Dr. Bowden engaged in
3 unprofessional conduct and she acted in a disruptive
4 manner towards licensees and hospital personnel. But
5 those actions also show aggravating factors. What is also
6 not in dispute is that Dr. Bowden did not know about the
7 stay order. When she sent the nurse to the hospital, she
8 didn't know. And it's not in dispute that Beth Parlato
9 told Dr. Bowden that it was, quote, "appropriate for her
10 to send the nurse to the hospital." This is information
11 from Dr. Bowden's own sworn statements. And at this
12 point, we're not disputing that. We are going to take her
13 at her word, because even if she didn't know about the
14 stay order, even if she got incorrect or bad information
15 from the attorneys, it does not change the fact that, as a
16 physician, she knew. As a physician, she knew she did not
17 have privileges to treat the patient. So, like I said,
18 this case has already been decided. Facts are not in
19 dispute. And we're not here to re-litigate those facts.
20 We are here only to talk about new stuff. Whether or not
21 those factors aggravate or mitigate the conduct, we will
22 address that in briefing. Through testimony and evidence
23 today, Board Staff will show that there are several
24 aggravating factors present, as well as through our
25 briefings. As I mentioned, much of our case is about

1 information that is already in the record, that is not in
2 dispute at this point. For the remainder of our case,
3 that's up to Dr. Bowden. We plan on calling her to
4 testify, and whether or not her testimony establishes
5 evidence of aggravating or mitigating factors is up to
6 her. Now, you're going to hear a lot of information from
7 Dr. Bowden's attorneys about how she should not be
8 punished because the ends justify the means, how she had
9 to break the rules because only she could have saved the
10 patient. But reasonable physicians can disagree, and more
11 than one person can be right. You're also going to hear
12 information about how Board Staff is persecuting her and
13 singling her out for unfair treatment, how Dr. Bowden has
14 been denied her due process. That is simply not true.
15 Board Staff has followed its process through this whole
16 case, and she is entitled to due process, which she is
17 exercising today. So at this point, like at every point
18 in this process, what comes next is largely up to Dr.
19 Bowden. The facts about what she knew or didn't know have
20 already been determined by you, the judges. Re-litigating
21 this is absolutely unnecessary and outside the scope of
22 this hearing, because the purpose of this hearing today is
23 to enter any additional facts into evidence to aid the
24 board in determining what, if anything, needs to be done
25 to protect the Texas public going forward. The goal here

1 is not punishment. Board staff is here to listen, to
2 learn. We want to hear from Dr. Bowden. Where are we at
3 now? What comes next for Dr. Bowden? Has Dr. Bowden
4 learned anything from this experience? Or will she
5 continue to blame Board Staff, blame Huguley Hospital, or
6 even blame the patient's attorneys for the consequences of
7 a decision that she made? Or will she be making changes
8 going forward? Has she engaged in any personal or
9 professional reflection in response to the Judge's
10 findings? Can she follow Texas laws and rules going
11 forward? The goal here is to help the board understand
12 what, if anything, is needed to protect the Texas public.
13 That's up to her today, and we hope that she can show us.

14 JUDGE LINDA BURGESS: Thank you. Mr. Barnhart.

15 MICHAEL BARNHART: Yes, Judge. So the mitigating
16 factors that we have alleged in this case are that there
17 are circumstances that reduce the severity of the
18 misconduct that was held by the ALJs, and or circumstances
19 that reduce the responsibility of the respondent for the
20 misconduct. And we believe both. And it's important to
21 note that the TMB has telegraphed they're going to be
22 discussing comments Dr. Bowden made about the case during
23 the pendency of this matter. And therefore, the procedure
24 that this matter went through is actually relevant to the
25 context of those tweets that the TMB has asked to put into

1 evidence. So we do need to discuss the context of how
2 this case has gone in the past and how they affected Dr.
3 Bowden's state of mind and her tweets and her intent. So,
4 for example, when this case began, the TMB filed a
5 complaint. There were about six charges in that complaint
6 that have all now been abandoned by the TMB. And so many
7 of the tweets that Dr. Bowden made were about claims that
8 the TMB is no longer asserting. Those statements that she
9 made about claims that are no longer pending, cannot be
10 used as an aggravating factor in relation to the charge
11 that was sustained by the ALJs. And it's important to
12 note, and those were serious charges, a HIPAA charge,
13 prescribing a dangerous drug without a physician-patient
14 relationship, failure to supervise, you know, allowing her
15 nurse to cause a disruptive scene at Huguley Hospital,
16 those charges are gone. And Dr. Bowden's tweets about
17 those charges apparently were justified and were true, and
18 those charges are not before the ALJs. And again, as we
19 said, those statements cannot be used as an aggravating
20 factor in relation to the charge that's been -- so far
21 been sustained. The other issue is, we're going to
22 introduce evidence that Dr. Bowden had a good-faith belief
23 that she had the legal right, under court order, to send
24 the nurse to Huguley Hospital. The obligation -- so the
25 answer there is that the hospital does not overrule a

1 State District Court Judge, and the judge made specific
2 findings of fact related to the privileges issue and that
3 the privileges process was substantially modified under
4 orders from CMS. And so you had changes in the privileges
5 process that were referenced in the judge's temporary
6 injunction order. Dr. Bowden was specifically named in
7 the temporary injunction order. What the nurse did going
8 into the hospital was actually in the order without a
9 requirement for privileges. So the nurse entering the
10 hospital actually was not a privileges issue. The other
11 issue is that Dr. Bowden was one of the patient's doctors.
12 Dr. Bowden, having accepted that responsibility, had an
13 obligation to treat the patient. She would have been in
14 violation of the Medical Practice Act, if, knowing what
15 she knew or what she believed at the time, she did not
16 send the nurse to the hospital on that day. So we have a
17 technical violation of the act by sending a nurse when she
18 didn't have privileges, as was found, but we have a more
19 serious violation of the act that she avoided, by sending
20 the nurse. A physician is not allowed to abandon their
21 patient, and we're going to elicit testimony that based on
22 what she knew, had she not sent the nurse that day, that
23 would have been an abandonment of her obligations to the
24 patient. We believe that that is a very strong mitigating
25 factor in this case, that she had an affirmative

1 obligation to this patient and that she was in good faith
2 working to meet that obligation, both legal and moral.
3 We'll also note, and this will show the nurse behaved
4 extremely responsibly at the hospital. The nurse did not
5 get involved in any of the disputes between the hospital,
6 the patient's wife, and Judge Parlato. The nurse sat to
7 the side, she took video, but she sat to the side and let
8 things develop. The disruption, if any, that actually
9 occurred, had nothing to do with Dr. Bowden or her nurse.
10 It was a disruption caused by the litigation, by the
11 family, and by the lawyers, it's a simple fact. And we
12 think that the absence of substantial disruption at the
13 visit is relevant as a mitigating factor. We also believe
14 that the lowering the temperature, or the lesser
15 disruption, was caused in part by Dr. Bowden's express
16 notice, a 45 minute notice, that the nurse was on the way.
17 That gave the hospital sufficient time to prepare, to make
18 sure that patients weren't affected, and to choose how it
19 was going to respond and how it was going to take care of
20 the situation. That's a mitigating factor because it
21 certainly reduces severity of any possible disruption.
22 And so that goes to reducing the severity of the
23 misconduct. As we said, this case is a study in contrast.
24 Dr. Bowden's been living this for two and a half years.
25 And it's over an event that was 15 minutes of a nurse

1 sitting quietly in a waiting room. And so, we recognize
2 that the finding of disruptive conduct has been entered,
3 we accept that, but we do think that the facts that were
4 not used to find she was culpable are actually all very
5 relevant to define as a mitigating factor because she
6 relied on counsel in good faith, reliance upon a court
7 order, and waited until she actually had the advice of
8 counsel to do anything at the hospital itself. From when
9 she first met the patient's wife in the telehealth visit,
10 to November 10th, when the nurse was sent, was 19 days.
11 She waited 19 days to get the go-ahead under a court order
12 from an attorney. She did not go, willy-nilly, "Oh my
13 gosh, let me go treat this guy." She took her time, she
14 behaved responsibly, she behaved cautiously, and she did
15 what she believed as a doctor was required of her under
16 the Medical Practice Act to treat her patient, and did
17 only things that she genuinely believed she was legally
18 authorized to do. You should find that substantial
19 mitigation factors existed in this case, you should find
20 that there are no aggravating factors in this case, and
21 ultimately, there should be no disciplinary action against
22 Dr. Bowden in this matter. Thank you.

23 JUDGE LINDA BURGESS: Thank you.

24 STEVEN MITBY: Your Honor, this is Steven Mitby on
25 behalf of the respondent. I was wondering if I could just

1 make a few global comments to help the court get oriented

2 to what we think the issues are?

3 JUDGE LINDA BURGESS: No, we've had a full opening

4 statement by Mr. Barnhart, so if you need to visit with

5 him for a moment to tell something else, you're more than

6 welcome. But we're not going to double-team, and I'll

7 give you a moment.

8 MICHAEL BARNHART: We've got it covered, Judge.

9 JUDGE LINDA BURGESS: Okay, excellent. Thank you

10 both. Ms. Swanholm, I'd like to turn it to you. Do you

11 have some evidence that you would like to present us?

12 AMY SWANHOLM: Yes, at this time, Judge, we'd like to

13 go ahead and invoke the rule for any fact witnesses that

14 may be observing.

15 JUDGE LINDA BURGESS: Okay. I'm under the impression

16 that there are not. Well, I don't know that. Actually, I

17 don't know who's live streaming, I don't know that at all.

18 Do you know, Mr. Barnhart? Because the rule is being

19 invoked. And so what we can do is we can bring those

20 witnesses in and put them in the waiting room. And Judge

21 Robles would like to do that for us.

22 MICHAEL BARNHART: So our witnesses are not in

23 position, so as far as we know, our witnesses are not on

24 the live stream. If we need to take a minute for us to

25 verify that, we will.

1 JUDGE LINDA BURGESS: Yes, I think let's do that.

2 MICHAEL BARNHART: And that would not include Dr.
3 James since she's an expert witness, correct?

4 JUDGE LINDA BURGESS: Well, we'll let Dr. James --
5 I'm going to let the expert watch.

6 MICHAEL BARNHART: And I don't know that she has just
7 in the context that I'm making, so. May I step out and
8 make a couple of phone calls, Judge?

9 JUDGE LINDA BURGESS: Sure.

10 AMY SWANHOLM: And Steve, our first witness is going
11 to be Dr. Bowden, if you want to go ahead and get her set
12 up and ready.

13 STEVEN MITBY: Yeah, she's in the room with us right
14 now.

15 AMY SWANHOLM: Okay. I don't think we can see her on
16 camera.

17 JUDGE LINDA BURGESS: So going ahead, to do.

18 AMY SWANHOLM: Yeah. Still can't really -- thank you
19 both.

20 JUDGE LINDA BURGESS: Mr. Barnhart, how did you do?

21 MICHAEL BARNHART: So confirmed with Ms. Witzel, she
22 is not -- Nurse Witzel, she is not watching, she's
23 actually with patients. And I did not reach Ms. Parlato.
24 Ms. Parlato is a former judge and an attorney, and so I'm
25 going to make sure she knows the rules been invoked. And

1 we would do the same thing with Ms. Ward, who is also an
2 attorney, so there really should not be any issues with
3 them.

4 JUDGE LINDA BURGESS: Okay, okay. Thank you. And
5 this is the first time I've heard anyone refer to Ms.
6 Parlato as a judge, and so let's just not be confused,
7 because she wasn't a judge in Texas. She wasn't a judge
8 at the time. So let's call her Ms. Parlato, for the
9 record. Ms. Swanholm, are you ready to go?

10 AMY SWANHOLM: Yes. Before we call Dr. Bowden, we
11 would like to go ahead and get a few exhibits admitted
12 into the record.

13 JUDGE LINDA BURGESS: Sure.

14 AMY SWANHOLM: Those would be Respondent's Exhibits
15 23 --

16 JUDGE LINDA BURGESS: Just a moment.

17 AMY SWANHOLM: -- 27 --

18 JUDGE LINDA BURGESS: I'm sorry, what number did you
19 say?

20 AMY SWANHOLM: Respondent's Exhibit 23. I can move
21 our little microphone closer if I need to.

22 JUDGE LINDA BURGESS: No, no, I got confused when you
23 said Respondent.

24 AMY SWANHOLM: Yes.

25 JUDGE LINDA BURGESS: Okay. Respondent

1 is -- Respondent's 23 is November 10th email
2 correspondence?

3 AMY SWANHOLM: Yes.

4 JUDGE LINDA BURGESS: Okay.

5 AMY SWANHOLM: Think it's the Bates number Bowden
6 243.

7 JUDGE LINDA BURGESS: Okay. You're offering
8 Respondent's 23, is that right?

9 AMY SWANHOLM: Yes, Your Honor.

10 JUDGE LINDA BURGESS: Okay, Mr. Barnhart?

11 MICHAEL BARNHART: No objection.

12 JUDGE LINDA BURGESS: Okay, so we're gonna introduce
13 or -- we're admitted -- Respondent's Exhibit 23 is
14 admitted. Okay. Anything further?

15 AMY SWANHOLM: We have four more exhibits from
16 Respondents that we'd like to get admitted off the bat.
17 Respondent's Exhibits 27, 29.

18 JUDGE LINDA BURGESS: Let's do one at a time.

19 AMY SWANHOLM: Okay.

20 JUDGE LINDA BURGESS: Okay, I got 27.

21 MICHAEL BARNHART: No objection.

22 JUDGE LINDA BURGESS: Respondent's Exhibit 27 is
23 admitted.

24 AMY SWANHOLM: We would also like to Admit
25 Respondents' Exhibit 29.

1 MICHAEL BARNHART: No objection.

2 JUDGE LINDA BURGESS: Any objection?

3 MICHAEL BARNHART: No objection.

4 JUDGE LINDA BURGESS: Respondent's 29, admitted.

5 AMY SWANHOLM: All right. And we'd also like to
6 admit Respondent's Exhibit 48.

7 MICHAEL BARNHART: No objection.

8 JUDGE LINDA BURGESS: Okay, Respondent's 48 is
9 admitted. Let me put my hand on that, if I can.

10 AMY SWANHOLM: So that's the Appellate Court Order
11 for expedited briefing.

12 JUDGE LINDA BURGESS: Oh, okay. That's why I don't
13 have my hand on it. Thank you. That's dated November --

14 AMY SWANHOLM: 10th.

15 JUDGE LINDA BURGESS: 10th. Thank you.

16 AMY SWANHOLM: And then the last one is Respondent's
17 exhibit 59. This is a text exchange between Beth Parlato
18 and Dr. Bowden.

19 MICHAEL BARNHART: No objection.

20 JUDGE LINDA BURGESS: Respondent's 59 is admitted.

21 AMY SWANHOLM: All right, at this time, we'd like to
22 call -- well, actually, before we call Dr. Bowden, just
23 some preliminary matters, we would like to go ahead and
24 renew our objection to Dr. James as a testifying expert
25 here. We can address that now or when she's called. But

1 I want to just signpost that in case you do want to
2 address it.

3 JUDGE LINDA BURGESS: I think it would be -- and
4 I -- and Judge Robles can chime in on Teams for me. I
5 think it would probably be better to address it at the
6 time.

7 AMY SWANHOLM: Okay. All right, so at this time,
8 we'd like to call Dr. Bowden.

9 JUDGE LINDA BURGESS: Hi. Can you raise your right
10 hand, please, Dr. Bowden? Thank you. Do you swear or
11 affirm that the testimony you give in this proceeding is
12 the truth, the whole truth, and nothing but the truth?

13 MARY TALLEY BOWDEN, M.D.: I do. I do.

14 JUDGE LINDA BURGESS: I said thank you.
15 Where upon,

16 MARY TALLEY BOWDEN, M.D.
17 was duly sworn by Judge Linda Burgess and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY AMY SWANHOLM:

21 Q: Hi, Dr. Bowden, my name is Amy Swanholm. We've
22 met at previous depositions and proceedings, yes? Do you
23 remember those conversations?

24 A: Yes.

25 Q: Okay, so I'm just going to jump into it. You

1 would agree that you're pretty active on social media,
2 yes?

3 A: I mean, I post on social media. I don't know
4 how you define pretty active, but yes.

5 Q: Okay. On average, what would you say how many
6 times you're posting on social media per day?

7 A: I mean, I've never averaged that. I have no
8 idea.

9 Q: Okay, well --

10 A: I mean, one time, sometimes twenty times. It
11 really, I don't know. I can't give you an average.

12 Q: Okay, so you'd say between, you're usually
13 posting things on social media between one and twenty
14 times per day?

15 A: I mean, I can't truthfully tell you exactly how
16 many times per day I post on average. I cannot truthfully
17 tell you that.

18 Q: Well, those were your words, so I'm just trying
19 to understand what you said.

20 A: Well, I'm giving you a rate -- well, my exact
21 answer is, I don't know.

22 Q: Okay. How many times did you post on social
23 media, say, yesterday?

24 A: I don't remember.

25 Q: Okay. Any other days that you might

1 specifically remember just a ballpark of how many times
2 you'd posted on social media?

3 A: Well, I gave you the ballpark. One to twenty
4 times, possibly, but I've never really tracked it that
5 precisely.

6 Q: Okay. Thank you. When you're posting on social
7 media, are you usually posting things that you believe to
8 be true?

9 A: Yes.

10 Q: Okay. So if it's a statement that you made as
11 opposed to something that you may be reposting, that would
12 be something that you generally stand behind as a
13 statement that you believe in.

14 A: I don't quite understand. Can you say that
15 again?

16 Q: Sure. Your statements that you make on social
17 media, do you generally believe those to be true and
18 accurate statements?

19 A: Yes.

20 Q: Okay. Some of them might be sarcasm or jokes,
21 and some might be truly sincere, right?

22 A: Yes.

23 Q: Okay. All right. I'd like you to get what's
24 been previously marked as TMB Exhibit 1 in front of you.

25 A: I think I have it.

1 AMY SWANHOLM: Judges, would it be helpful if I
2 shared my screen, or would you like to look at it
3 independently of sharing my screen? I can do either.

4 JUDGE LINDA BURGESS: Let's do what everybody's most
5 comfortable. I have it., I'm pretty comfortable with it.

6 AMY SWANHOLM: Okay.

7 JUDGE LINDA BURGESS: Dr. Bowden, do you have it?

8 THE WITNESS: Yes, I have it.

9 JUDGE LINDA BURGESS: Okay.

10 Q: All right. So, Dr. Bowden, the statements that
11 you made and the response you made in Exhibit 1, were
12 these your statements?

13 A: Yes. Well, not all of them. One of them is
14 not.

15 Q: Right. The statement that you made and the
16 response statement that you made, those are -- that's you?

17 A: Yes.

18 AMY SWANHOLM: Okay. I'd like to move for admission
19 of TMB Exhibit 1 at this time.

20 JUDGE LINDA BURGESS: Board Exhibit 1 is admitted,
21 and it's okay to share the screen. I think Judge Robles
22 would not mind some screen sharing. And if it will help
23 in explaining it, just because I have a copy and Dr.
24 Bowden has a copy, you do whatever you need to do.

25 Q: Okay. All right. So, Dr. Bowden, do you see

1 the comment there from "KnobbyKnees?"

2 A: Yes.

3 Q: And could you just read your response

4 to -- well, actually, no. Go ahead and read

5 "KnobbyKnees" comment for the record, please.

6 A: Okay. "Give it to him family and slash or
7 friends. And have an anonymous person secretly show them

8 how much and when to sneak it to him in hospital. These

9 are desperate times, and breaking these illegal rules is

10 the way, the only way."

11 Q: Thank you. And could you please read your

12 response to that?

13 A: Yes. "He's on his stomach on a vent, and with a

14 feeding tube. Would be hard to sneak it in."

15 Q: All right, and my question is, when you were
16 talking about sneaking it in, what did you mean by that?

17 A: Well, I don't understand your question. What do
18 you mean, what would I mean by that?

19 Q: Okay, well, were you referencing --

20 A: Are you -- I mean --

21 MICHAEL BARNHART: Your Honor, I'm going to object to

22 the question. The "sneak it in" is a phrase that was used

23 above. And so, the answer would be, what is her -- the

24 actual question is, what was her understanding of what

25 "KnobbyKnees" meant?

1 JUDGE LINDA BURGESS: Okay, the question can be
2 rephrased.

3 AMY SWANHOLM: All right, thank you.

4 JUDGE LINDA BURGESS: I do notice that Dr. Bowden did
5 say "sneak it in," but let's just go ahead and rephrase
6 it anyway.

7 Q: Sure. What did you mean by your comments?

8 A: Well, I mean, I was responding to "KnobbyKnees."
9 It was not a, lets -- the intention was not to say we need
10 to go sneak it in. I was just responding, you couldn't
11 sneak it in even if you wanted to.

12 Q: Okay, what is your perspective on "KnobbyKnees"
13 comment?

14 A: I have never met "KnobbyKnees," I don't know who
15 "KnobbyKnees" is, and I don't remember this comment. I'm
16 just now looking at it for the first time in three and a
17 half years. So it was -- I don't know. I don't -- I
18 mean, it doesn't seem very relevant to what happened.

19 Q: Would you condone someone who might be engaging
20 in that type of actions with the patient?

21 A: No, and I did not tell anybody to sneak anything
22 in.

23 Q: Okay, you could get Board Staff's Exhibit 2 in
24 front of you, and I'll go ahead and share my screen as
25 well. All right, and just let me know when you're ready,

1 Dr. Bowden.

2 A: I'm ready.

3 Q: Okay. Dr. Bowden, Board Staff's Exhibit 2, are
4 these statements that you made on social media?

5 A: Partially. Some of them are.

6 Q: Okay, so the ones that are displayed on the
7 screen are your statements though, correct?

8 A: No. Well, two of the three are. Emily Miller
9 made one of those.

10 Q: Okay, so this is you sharing someone else's post
11 on social media, correct?

12 A: Yes.

13 Q: Okay. So then, if you could take a look at your
14 comment in response to your own post on November 9, 2021.

15 MICHAEL BARNHART: Your Honor, I have to object on
16 this one as being non-authentic. It's clear from this
17 that there is actually other posts to which she's
18 responding that were not included in this exhibit. And so
19 while we agree that the post at the very top is
20 admissible, we believe that it's inauthentic. As respect
21 to the comment that Ms. Swanholm just asked her to read.

22 JUDGE LINDA BURGESS: Overruled.

23 Q: Please read the comment, Dr. Bowden.

24 A: The one that starts with difficult?

25 Q: Yes.

1 A: "Difficult to sneak it when there's a feeding
2 tube involved. No privacy in the ICU. In similar
3 situations, family members have rubbed the medication into
4 the skin, pretending to give a back rub."

5 Q: Okay, and what did you mean by that statement?

6 A: I mean, it's factually accurate, but I was not
7 telling anybody to do anything.

8 Q: Were you potentially describing how it could be
9 done, if someone were to do it?

10 A: I was describing what other people had told me,
11 but I was not instructing anybody to do anything.

12 Q: Okay. Is this you potentially condoning that
13 type of activity?

14 A: No, it is not.

15 Q: Would you think that if somebody was in a
16 position where they absolutely, in your opinion, needed to
17 get a drug, that this might be what's necessary to save
18 that patient's life?

19 A: I can't answer for other people, no.

20 Q: Okay, well, how about you answer in your
21 perspective?

22 A: Can you repeat the question?

23 Q: Sure. Court reporter, could you please repeat
24 the question?

25 THE REPORTER: Okay. Would you think that if

1 somebody was in a position where they absolutely, in your
2 opinion, needed to get a drug, that this might be what's
3 necessary to save that patient's life?

4 A: Still don't quite understand, but no, I guess
5 not. No.

6 Q: So are you saying that if something, you know,
7 needed to be done, that physician or the patient should be
8 following the laws and rules for how drugs are
9 administered as opposed to maybe going outside of those
10 rules, even if the ends justify the means for that
11 patient's safety?

12 A: Can you say that again?

13 MICHAEL BARNHART: This is getting kind of far afield
14 and rather argumentative. I think she's answered the
15 question, Judge.

16 JUDGE LINDA BURGESS: I'm going to overrule, let Ms.
17 Swanholm ask her question, please. Go ahead, Ms.
18 Swanholm.

19 Q: So, Dr. Bowden, what I'm trying to understand
20 is, are there times when it might be appropriate to bend
21 the rules or go outside of the rules if it was in the
22 interest of patient safety?

23 A: I don't think that's pertaining to that
24 response. I was not instructing anybody to do anything
25 outside of the rules. I was relaying what other people

1 had told me. I -- and I have not ever told somebody to do
2 what what you're implying I'm telling them to do.

3 AMY SWANHOLM: Objection, non-responsive.

4 JUDGE LINDA BURGESS: I understood her response.

5 AMY SWANHOLM: Okay.

6 JUDGE LINDA BURGESS: I understood her response. I'm
7 not sustaining that objection.

8 Q: All right. I'm going to move for admission on
9 Exhibit 2.

10 MICHAEL BARNHART: Again, Your Honor, we renew our
11 objection that the portion of this is not authentic and is
12 missing relevant material as to understanding the meaning
13 of the document.

14 JUDGE LINDA BURGESS: Overruled. Oh, Exhibit 2 is
15 admitted.

16 Q: All right. Exhibit 3, Board Staff's Exhibit 3.
17 And, Dr. Bowden, does this include statements that you
18 made on social media?

19 A: Yes.

20 AMY SWANHOLM: All right, I'd like to move for
21 admission of Exhibit 3.

22 JUDGE LINDA BURGESS: Exhibit 3 is admitted.

23 Q: All right, Exhibit 4. Dr. Bowden, does this
24 exhibit include statements that you made on social media?

25 A: Do you mind sharing this? I just want to make

1 sure I have the right --

2 Q: I'm sure Mr. Barnhart can help you with that.

3 I'm hoping to move through this pretty quickly, so.

4 A: Okay.

5 THE WITNESS: Do you want to make sure that I have
6 the right thing in front of me?

7 MICHAEL BARNHART: Would you mind reading the first
8 few words of the top text?

9 AMY SWANHOLM: Nope. I think you guys can read it.

10 JUDGE LINDA BURGESS: Well, I'll read it to speed
11 this up.

12 AMY SWANHOLM: Okay.

13 JUDGE LINDA BURGESS: "Need a nurse who can help in
14 Fort Worth area." That's Exhibit 4.

15 MICHAEL BARNHART: That's the one we have.

16 Q: Okay. Dr. Bowden, does this include your
17 statements made on social media?

18 A: Yes.

19 Q: Okay, I'd like to move for admission of Board
20 Staff's Exhibit 4.

21 JUDGE LINDA BURGESS: Exhibit -- Board Staff Exhibit
22 4 is admitted.

23 Q: All right. Board Staff's Exhibit 5, which does
24 start out very similar, but states "found a nurse." You
25 could get that in front of you.

1 A: Okay, what is the question?

2 Q: Just let me know if you have it in front of you.

3 A: Yes, I have it in front of me.

4 Q: Okay. Are these statements that you made on
5 social media?

6 A: Some of them. Not all of them.

7 Q: Well, the ones that have your name on it. Are
8 those ones that you made?

9 A: Yes.

10 AMY SWANHOLM: Okay. All right. Move for Board
11 Staff's Exhibit 5 to be admitted into the record.

12 MICHAEL BARNHART: No objection.

13 JUDGE LINDA BURGESS: Board Staff -- I'm sorry, I cut
14 you off, Mr. Barnhart.

15 MICHAEL BARNHART: No objection.

16 JUDGE LINDA BURGESS: Board Staff Exhibit 5 is
17 admitted.

18 Q: All right. Board Staff's Exhibit 8, if you
19 could get that in front of you, Dr. Bowden, and let me
20 know when you have it in front of you.

21 A: Okay.

22 Q: All right. Dr. Bowden, does this exhibit
23 include statements that you made on social media?

24 A: Yes.

25 Q: Okay. You could take a minute to review that

1 and let me know when you're ready.

2 A: Yes.

3 Q: Okay. So your comment, you could read that,
4 please. And you're welcome to read Simone's comment first
5 if you feel like context is needed for your response on
6 social media.

7 A: Are you talking about the -- okay.

8 "Technically, no. But I know many people who have had
9 ivermectin snuck in. Unfortunately, he's in a medically
10 induced coma with a feeding tube. Trickier to sneak it
11 in."

12 Q: So what did you mean by your statement,
13 "trickier to sneak it in?"

14 A: Well, it's just factually accurate. It is
15 trickier to sneak a medication in if patient is in a
16 medically induced coma with a feeding tube.

17 Q: Okay. Do you think --

18 A: I was not instructing anybody to do anything.

19 Q: Okay. Do you think that it's a problem or not a
20 problem for a licensed physician to appear to encourage
21 patients to self-administer or administer prescription
22 drugs to loved ones, in a --

23 MICHAEL BARNHART: Objection, lack of foundation.

24 Q: -- manner that may be in contrast to what their
25 treatment plan is with their treating physician?

1 MICHAEL BARNHART: Objection, lack of foundation.

2 JUDGE LINDA BURGESS: Overruled.

3 A: Could you repeat the question? Because I

4 couldn't hear the entire question.

5 AMY SWANHOLM: Sure, Mr. Austin, if you don't mind?

6 JUDGE LINDA BURGESS: I think it -- Ms. Swanholm, can

7 you just rephrase it or do you need him to read it back?

8 Q: I mean, it's pretty specific, so I prefer to

9 just keep it clean with what I stated before, if you don't

10 mind.

11 JUDGE LINDA BURGESS: Okay.

12 THE REPORTER: Do you think that it's a problem or

13 not a problem for a licensed physician to appear to

14 encourage patients to self-administer or administer

15 prescription drugs to loved ones, in a manner that may be

16 in contrast to what their treatment plan is with their

17 treating physician?

18 MICHAEL BARNHART: Renew the objection. Also assumes

19 facts not in evidence.

20 A: I guess --

21 AMY SWANHOLM: And I don't think it is. It's a

22 hypothetical question asked to a licensed physician.

23 JUDGE LINDA BURGESS: [indiscernible] objection,

24 maybe the folks didn't hear it. I'm sorry, I turned my

25 head. I was trying to listen to what the doctor's

1 response was going to be.

2 MICHAEL BARNHART: Did you overrule the objection?

3 JUDGE LINDA BURGESS: I did, I did.

4 MICHAEL BARNHART: We did not hear that.

5 JUDGE LINDA BURGESS: Right. It occurred to me you

6 didn't. Okay, overruled. Let's hear the doctor's

7 response.

8 A: I guess I would argue that's not -- I'm not

9 appearing to encourage the public, but if I were

10 encouraging the public, that would be wrong. But I

11 don't -- I would argue that that's not what I was

12 intending.

13 Q: Okay, so you would agree that it would be a

14 problem if a physician was doing that?

15 A: I guess I -- it's hard to know. It's muddy, it

16 would have to be on an individual situation. But that was

17 not my intention.

18 Q: So would you say that there may be situations

19 where a physician is justified in encouraging individuals

20 to act outside the laws and rules of the state of Texas?

21 A: You mean on social media? What do you mean?

22 Q: In any context.

23 A: Can you repeat the question?

24 Q: Do you think that it might be okay in certain

25 contexts for a physician to encourage individuals to act

1 outside the laws and rules of the state of Texas?

2 A: To encourage physicians? To --

3 Q: Individuals.

4 A: Oh, individuals to break the law? Is that what
5 you're asking, that physicians should not ask individuals
6 to break the law? That I should not do that? I'm just
7 asking for clarification. Is that what you -- is that
8 your question? Should I -- do I think it's wrong for
9 physicians to encourage individuals to break the law?

10 Q: Act outside of the law were the words that I
11 used. But if you want to use that, that's similar in
12 context.

13 A: Well, I don't think anybody should be
14 encouraging individuals to break the law.

15 Q: Okay, so you would agree that physicians should
16 be following the law?

17 A: I think everybody should follow the law.

18 Q: Okay. And that physicians would have an
19 obligation, from an ethical perspective, to ensure and
20 encourage, in fact, their patients or other individuals
21 that they encounter in a medical context to act within the
22 law.

23 A: Physicians and hospitals, like Texas Huguley
24 Hospital, yes. Should follow the law.

25 Q: What about patients or patients family members?

1 A: Everybody should follow the law.

2 Q: Do you think that it's appropriate to encourage
3 someone to act outside of the law?

4 A: I think that it's -- I don't know the legal
5 technicalities of somebody telling somebody to break the
6 law, but ethically, no, they should not tell people to
7 break the law.

8 Q: Okay. And is it, in your understanding, within
9 the law for a family member to administer a prescription
10 drug that may not have been prescribed to that patient?

11 A: May not or was not?

12 Q: Well, let's assume was not.

13 A: Then that would not be -- I don't know if it's
14 illegal, but they should not do it.

15 Q: Okay. And when we're talking about sneaking
16 here, we're talking about an individual sneaking in
17 ivermectin to a patient in a hospital. Am I correct in
18 assuming that?

19 A: You mean, based on the comment I made on social
20 media? Is that what you're talking about?

21 Q: Well, the comments in Exhibit 1, Exhibit 2, and
22 this exhibit, Exhibit 8, yes.

23 A: So sorry, what is the question again?

24 Q: When we're talking about sneaking, are we
25 talking about sneaking a drug, ivermectin in this case, to

1 a patient that may not have had that drug prescribed to
2 them if an inpatient setting?

3 A: I was -- I will reiterate, I was not instructing
4 anybody to sneak or, you know, hide a medication and give
5 it to a patient. That was not an instruction, I was
6 relaying what other people were telling me.

7 Q: And I'm just asking if that's what we're talking
8 about here.

9 A: What? Is what what we're --

10 Q: Well, the context of these three tweets is about
11 potentially someone sneaking ivermectin to a patient in an
12 inpatient facility where it may not have been prescribed
13 to that patient by their treating physicians.

14 A: That happened quite often, from what I
15 understand, from what people told me, and that was what I
16 was telling, relaying that information. But that -- I was
17 not instructing anybody to do that.

18 Q: I'm truly not trying to trick you here. I'm
19 just asking if we both understand what we're talking about
20 when we're discussing these tweets related to sneaking in
21 a drug. That's it.

22 A: I guess I'm just having a hard time
23 understanding your question.

24 Q: Okay. What is the context of the use of the
25 word sneak here?

1 A: You mean how do I define sneak?

2 JUDGE LINDA BURGESS: Okay, lets --

3 Q: Alright, we have a --

4 JUDGE LINDA BURGESS: -- I'm stopping Ms. Swanholm

5 and I'm stopping the doctor. Ms. Swanholm, ask question,

6 Doctor, answer it. This is not a deposition, I want some

7 testimony. Let's start over Ms. Swanholm.

8 Q: Okay. Dr. Bowden, can we agree that the context
9 of the discussion about sneaking a drug to a patient here
10 involves sneaking ivermectin to a patient in an inpatient
11 facility?

12 A: Yes.

13 Q: That's the context of what this is used?

14 A: Yes.

15 Q: Okay, thank you. That's all I was asking. All
16 right, if you could get -- actually, not sure if I did
17 this or not already, but if we could get Exhibit 8
18 admitted into the record, please.

19 MICHAEL BARNHART: No objection.

20 JUDGE LINDA BURGESS: Exhibit 8 is admitted.

21 Q: Okay. And Doctor, would you agree that it could
22 be dangerous for someone to sneak a prescription drug to a
23 patient?

24 A: Yes.

25 Q: And you would agree that it would be unethical

1 for a physician to sneak a drug to a patient?

2 A Unethical? Yes.

3 Q All right, if you could get up Staff's Exhibit

4 11. Just let me know when you have it in front of you.

5 A: Yes.

6 Q: All right. And I'm going to try and share my

7 screen on this one, but it's going to be a little

8 off-center. All right. Are you able to see that?

9 A: Yes.

10 Q: Okay. And Dr. Bowden, is this something that

11 you posted on social media?

12 A: Yes.

13 Q: Okay. And the date on that, if you could just

14 read that for the bottom there, time and date of when you

15 posted that tweet?

16 A: It's a little blurry, but 7-something a.m.,

17 October, I don't know, 26th, 2024, I think.

18 Q: If I were to say, 7:18 a.m. on October 26th,

19 2024, does that sound accurate?

20 A: Yes.

21 Q: Okay. And then the second sentence of your

22 tweet, if you could read that, please?

23 A: Understanding of the -- oh, wait. "TMB should

24 exonerate me, but won't because they have an agenda."

25 Q: What is the agenda that you're referencing

1 there?

2 A: Political agenda.

3 Q: Okay, what do you mean by political agenda?

4 A: Well, I mean, I've been wrapped up in a -- I
5 mean, the whole pandemic was very politically divided.

6 And in my opinion, it feels like this entire three and a
7 half year, very expensive exercise has been more about
8 politics than patient health. And this is -- this whole
9 exercise is a prime example.

10 Q: Dr. Bowden, do you agree or disagree that the
11 privileging process is different based on political
12 context?

13 A: Well, the privileging process was dramatically
14 changed during the pandemic. They were giving physicians
15 same-day privileges in emergency situations. But for some
16 reason, in this situation, they put me through the
17 traditional privileging process, and they created all
18 sorts of hurdles to make it as difficult as they possibly
19 could. So in normal circumstances, during the pandemic,
20 if I had showed up in the ICU and asked for privileges,
21 they would have granted them to me on the same day. I
22 mean, I had a spotless record, I had no malpractice
23 claims, no complaints. But instead, they had me submit my
24 surgical case log, which was completely irrelevant since I
25 wasn't planning on operating on anybody in the ICU. They

1 made me get numerous letters of recommendation, and then
2 they said they were going to deny my privileges. So --

3 AMY SWANHOLM: Objection, hearsay.

4 A: Well, that was on the record.

5 MICHAEL BARNHART: Your Honor, she was asking a
6 question that related Dr. Bowden's state of mind.

7 JUDGE LINDA BURGESS: Swanholm, you ask it, she gets
8 the finish.

9 A: I can't remember what I was just -- but -- oh,
10 right, so they said that they -- they sent me a notice
11 saying, we are denying your temporary privileges, even
12 though, I mean, I heard the judge say at the end of the
13 testimony, grant her emergency temporary privileges, like,
14 like I said, that was typically a same-day process during
15 the pandemic. So that's why I feel like there was an
16 agenda.

17 Q: So are those issues against the Medical Board,
18 or are those issues that you have with Huguley Hospital's
19 privileging process?

20 A: What issue? I mean, the whole thing -- well, I
21 think the Medical Board, you know, when I went to my
22 informal settlement conference, they offered to make it
23 all go away for me if I got --

24 Q: I got to stop you right there, I want to object
25 because I want to make sure that we are maintaining

1 confidentiality for her.

2 JUDGE LINDA BURGESS: I'm gonna stop there

3 you -- Ms. Swanholm, I'm going to stop you both.

4 AMY SWANHOLM: Yeah.

5 JUDGE LINDA BURGESS: This is a little far afield. I

6 need short, quick -- not quick, but I -- let's

7 ask -- Judge Robles and I are really looking for testimony

8 on aggravating and mitigating factors. I can't emphasize

9 that enough, so I'm going to let you rephrase your

10 question if you think it bears on that, and let's go.

11 Q: And Dr. Bowden, without talking about the

12 confidential settlement process, which is confidential, to

13 protect you just as much as anybody else, could you answer

14 whether the statements that you previously made are issues

15 that you have with Huguley or issues that you have with

16 the medical board.

17 A: I would say both, given the process that this

18 has taken, has not been expeditious, it's been very

19 expensive. So it doesn't feel like, you know, looking at

20 other cases that the medical board, other thing -- you

21 know, notifications I get of other doctors who are sex

22 offenders and drug addicts, and it's just hard for me to

23 believe that this process has taken so long, has been so

24 expensive, over this matter. So it does feel like there's

25 an agenda.

1 Q: Okay. And again, what specifically is that
2 agenda that you believe we have?

3 A: Well, I -- as I said, it feels political,
4 because the entire pandemic became political. It wasn't
5 about the patient. It wasn't about saving the life of a
6 patient, sticking up for a patient. It is, you know, it
7 seems, driven by some other agenda.

8 Q: Okay. And I just want to give you an
9 opportunity to share what that agenda is, if you would
10 like to.

11 JUDGE LINDA BURGESS: Just ask a question.

12 Q: Okay. Anything else you'd like to say about
13 what you believe the board agenda is?

14 JUDGE LINDA BURGESS: Ask her a question. Ms.
15 Swanholm, I want a question. This isn't --

16 AMY SWANHOLM: Oh, I'm sorry.

17 JUDGE LINDA BURGESS: I want questions.

18 Q: Is there anything -- Is there anything else
19 you'd like to share about what you believe the board's
20 agenda may be against you?

21 A: No.

22 Q: Okay. All right. And move for Staff's Exhibit
23 11 to be admitted, if we haven't already.

24 MICHAEL BARNHART: And, Judge, I do need to object to
25 this one on relevance. This is clearly a statement about

1 a matter of public interest by a member of the public and
2 is protected by the First Amendment, and therefore cannot
3 be relevant to anything in this case.

4 JUDGE LINDA BURGESS: Objection overruled. Exhibit
5 11 is admitted.

6 Q: All right. Board Staff's Exhibit 13. And just
7 let me know when you have that up in front of you, Dr.
8 Bowden.

9 A: You said 13?

10 Q: Yes.

11 A: Yes.

12 Q: And it starts out, "Texas Medical Board accuses
13 me."

14 A: Yes.

15 Q: Okay. All right, and if you could read that
16 last sentence there. That starts out, "They have."

17 A: "They have all the evidence, but are choosing to
18 ignore."

19 Q: The date of this was 10:58 a.m. on December
20 29th, 2024. Is that correct?

21 A: Yes.

22 Q: What evidence, Dr. Bowden, do you believe that
23 the Board is choosing to ignore?

24 MICHAEL BARNHART: Objection. I believe she's asking
25 a question today about something that happened six months

1 ago.

2 Q: Sure, I can clarify. When you posted this on
3 social media, what evidence did you believe that the Board
4 was choosing to ignore?

5 A: Yeah, this has been going on for three and a
6 half years. It's hard for me to remember what my state of
7 mind was six months ago. It's just been a series of
8 frustrations, continuances, expert witnesses dropping out.
9 It has been a just -- it has been a saga. And so I don't
10 remember exactly, but. Let me look at the document that I
11 posted, and maybe that will refresh my memory. Yeah, at
12 the -- you know, I, this entire time, I thought I had the
13 duty and the legal clearance to send that nurse. I was
14 never under the impression that this patient could get
15 ivermectin without legal clearance. And so this whole
16 thing has been a legal web of confusion that, you know, I
17 got caught up in. I was trying to treat my patient and I
18 was waiting for the green light. I thought I had the
19 green light. There's clearly a technicality that I
20 missed. But my intentions were to help a dying patient.

21 Q: Okay. Do you believe that having privileges at
22 a facility where you're going to administer drugs to a
23 patient is a technicality?

24 A: There was a court order that the judge, in my
25 face, told -- said give her emergency temporary

1 privileges. There was a lawyer involved. I was waiting
2 on the green light of the lawyer. I wasn't going to
3 listen to an administrative secretary to say, yes, you can
4 go or not. I was waiting on the lawyer because this was a
5 legal case. And to me there was a hierarchy and I had to
6 go by a court order and I had to listen to the lawyer.
7 And, you know, this was not -- this was a very unusual
8 circumstance. Nothing I've ever been involved in before.
9 I doubt I will ever be involved in something like this
10 ever again. So I was doing the best I could.

11 Q: Dr. Bowden, why is it important for physicians
12 to have privileges at hospitals?

13 A: To ensure quality to, you know, most of it is
14 just quality control. Make sure that you have good
15 physicians, and.

16 Q: Would you say that the privileging process
17 ensures that patients are treated safely in an inpatient
18 setting?

19 A: Yes. The privileging process during the
20 pandemic was part quite different than it normally is, so,
21 it was a same-day process.

22 Q: In every context was it a same-day process, to
23 your knowledge?

24 A: To my knowledge, CMS changed the rules and it
25 was essentially a same-day process. It was not the

1 typical credentialing process, which is quite cumbersome,
2 in which Texas Huguley Hospital put me through and I
3 fulfilled in record time, by the way. It was very hard
4 and I did it. But that was not typically what was done
5 during the pandemic. I can't speak for 100 percent, but.

6 Q: You would agree that you don't take CMS, right?
7 You're not involved in that system.

8 A: I have opted out of Medicare.

9 Q: Okay.

10 JUDGE LINDA BURGESS: So just so I'm clear, CMS, that
11 is the Medicare system, right? I'm sorry to have
12 interrupted.

13 Q: Yes. And Dr. Bowden, if you want to elaborate
14 on that, please do so.

15 JUDGE LINDA BURGESS: I got it. I'm sorry I
16 interrupted. Go ahead.

17 Q: Dr. Bowden, you would agree that in order to
18 receive privileges at a facility, you have to submit an
19 application or for those privileges.

20 A: And I submitted two applications during the
21 process. Yes.

22 Q: And I'm just asking you generally.

23 A: Yes.

24 Q: Okay. And as far as what happened back in
25 November of 2021, regarding your state of mind during that

1 time period, you would agree that it's hard to think back
2 five years and remember what your state of mind was back
3 six months or even five years?

4 A: Well, it wasn't five years, it was three and a
5 half, but --

6 Q: Okay.

7 A: -- I remember being very busy and being -- my
8 primary focus was trying to help this patient.

9 Q: But you would agree that it's hard for you to go
10 back in time three and a half years and remember what your
11 specific state of mind was during that time, November of
12 2021?

13 A: Well, I mean, there were events during that time
14 that stood out in my mind because of what -- how tragic
15 the situation was. So it was very stressful and, you
16 know, as a mother of four and trying to help a mother of
17 six, I had deep empathy for what this patient and his wife
18 and his family were going through.

19 Q: So it's hard to remember your state of mind
20 going back six months. That's what you testified,
21 correct?

22 A: When I make a tweet six months ago amongst
23 thousands of tweets, that's hard for me to recall. When
24 there's an impactful event like what was happening around
25 the time this was happening, I remember how stressed I

1 was.

2 Q: Okay. But as far as the specific details of
3 what happened, you would say that the best information
4 about that, the most accurate information about that, are
5 the documents that have already been entered into this
6 proceeding and the testimony that you made back in
7 November, right?

8 A: Sorry, what's the question again?

9 Q: Well, it's hard to remember what happened,
10 right? Three and a half years ago, would you agree?

11 A: It depends. I, you know, when you have
12 impactful events, you remember those more clearly. When,
13 you know, it's more mundane things, you don't remember
14 them as clearly. Like I remember, you know, when you have
15 a death of a loved one, you remember those phone calls,
16 those sort of things. So I can't say that I don't
17 remember anything from three and a half years ago.

18 Q: But there were a lot of emails that were going
19 around during that time, correct?

20 A: I get thousands of emails every week, so, yes.
21 But like I said, some are more impactful than others.

22 Q: Well, you would say that, you know, if you talk
23 about something today and it turns out that there's an
24 email that might show that differently, that the email
25 would probably be a better depiction of what happened at

1 that time, versus your memory.

2 MICHAEL BARNHART: Objection, Judge, this is too
3 argumentative.

4 JUDGE LINDA BURGESS: I think we need to move on, Ms.
5 Swanholm.

6 AMY SWANHOLM: Okay. All right, move for Exhibit 13,
7 please.

8 JUDGE LINDA BURGESS: Exhibit 13 is admitted, but
9 not, as I mentioned at our pre-hearing conference, not the
10 second page of it, which is Texas Medical Board Bates
11 number 68. And I think that's reflected.

12 AMY SWANHOLM: Yeah.

13 JUDGE LINDA BURGESS: Okay, so just the first page,
14 not the second page is being admitted. Therefore, when
15 you file your exhibits at the end, I don't want to see the
16 second page.

17 AMY SWANHOLM: Yes, Your Honor.

18 JUDGE LINDA BURGESS: Thank you.

19 Q: All right, Dr. Bowden, if you could get in front
20 of you Staff's Exhibit 14.

21 A: Okay.

22 Q: Let me try and make that bigger for everybody.

23 Okay, Dr. Bowden, did you post this on social media on

24 5:25 a.m. January 25th, 2025?

25 A: Yes.

1 Q: All right. And there were responses to this
2 tweet, correct?

3 A: Yeah, I guess.

4 Q: Okay.

5 A: It's hard for me to tell from papers that these
6 are the responses, so, because it's separate. So I
7 don't -- I cannot say 100 percent that those are responses
8 to this tweet because it's in two separate pages.

9 Q: Well, it's -- I'll attest it's on two separate
10 pages because it would not all fit on one page. But it is
11 a continuation of that social media string. Does that
12 sound accurate?

13 A: I mean, I'm not going to say that, because I
14 can't see that in front of me, but I don't know what the
15 rules are with that.

16 Q: All right, can you please read your response to
17 Rusty Jewell?

18 MICHAEL BARNHART: Objection. Judge, I think she
19 just said -- well, there's no context because we have not
20 established that these -- the comments on page two are
21 related to her post on page one.

22 AMY SWANHOLM: Well --

23 JUDGE LINDA BURGESS: Okay, I'm going to overrule
24 that, but so that the record is real clear, why don't you,
25 Ms. Swanholm -- overruled. But Ms. Swanholm why don't you

1 start at the beginning.

2 Q: Okay, so this is -- just showing for the record,
3 we had agreed that you tweeted this or posted this on
4 social media 5:25 a.m. January 25th, 2025. We place this
5 on the next page so it can all be shown together, but this
6 is -- Board Staff attests that this is an accurate picture
7 of the responses on social media to that social media post
8 by Dr. Bowden. Does that help assuage your concern, Mr.
9 Barnhart?

10 MICHAEL BARNHART: No. I mean, the objection still
11 stands, if you can't establish --

12 JUDGE LINDA BURGESS: The objection doesn't stand,
13 it's been overruled. And you didn't make any such
14 objection when you had to make written objections, it was
15 just relevance, I've overruled it. I was very careful on
16 this exhibit, so let's go on.

17 Q: Okay. Dr. Bowden, can you please read your
18 response to Rusty Jewell?

19 A: "I know plenty of people with enough political
20 power to make this go away yet."

21 Q: All right, what did you mean by that response?

22 A: Well, I know plenty of people with enough
23 political power -- I mean, I know people who could
24 probably make us go away.

25 Q: Were you hoping to utilize political connections

1 to press a specific outcome in this hearing?

2 A: Yeah, I was hoping this hearing wouldn't go on
3 for three and a half years and cost me over \$250,000 to
4 defend myself, yes.

5 Q: So were you trying to utilize political
6 connections to influence the judicial proceeding?

7 A: No.

8 MICHAEL BARNHART: Objection. This is an executive
9 branch proceeding, not a judicial proceeding.

10 JUDGE LINDA BURGESS: I'm gonna sustain.

11 Q: Okay. All right, I can reword. Were you
12 helping to utilize political connections to influence this
13 proceeding?

14 A: I never once asked anybody with political power
15 to do anything about this.

16 AMY SWANHOLM: All right, I'd like to move for
17 admission of TMB Exhibit 14, please.

18 JUDGE LINDA BURGESS: As I recall --

19 AMY SWANHOLM: Oh, it's already in. I'm sorry.

20 JUDGE LINDA BURGESS: Exhibit 14, the only pages that
21 are going to be admitted, because I have already sustained
22 Dr. Bowden's objection to everything after the first two
23 pages. So only the first two pages of Exhibit 14 are
24 being admitted. And as the written order indicates, the
25 remaining Bates stamps 71 through 87 are not being

1 admitted when it's filed.

2 AMY SWANHOLM: Yes, Your Honor, we're only asking for
3 69 and 70.

4 JUDGE LINDA BURGESS: Thank you. Admitted.

5 Q: All right. And, Dr. Bowden, if you could get up
6 in front of you Respondent's Exhibit 23, please. It's
7 already been admitted.

8 A: Okay.

9 Q: Okay. And let me try to share my screen in a
10 way that's going to allow everybody to see this. It's
11 kind of tiny, so let me know, folks, if this is too small.

12 A: I can't read that.

13 Q: All right. How about now?

14 A: Yes.

15 Q: Okay. Dr. Bowden, what is this email string?

16 A: I can't -- it's hard. Can you start at the top
17 and then scroll down? Because it's hard for me to tell.

18 Q: Sure. Oh goodness, what have I done here?
19 Okay. Sorry, guys, one second. Okay, I think we're back.
20 So that's the last email in the string. And my question
21 was, what is this email string?

22 A: Well, can I see the whole thing?

23 Q: Well, you have it in front of you, so that's
24 probably the easier way to access it.

25 JUDGE LINDA BURGESS: Mr. Barnhart --

1 A: I would need a microscope to see it though, it's
2 tiny.

3 JUDGE LINDA BURGESS: -- show it to her, because it
4 is -- I know it came in, but it is your exhibit. So
5 you're familiar with it. Exhibit 23.

6 A: I mean, scroll down a little bit, probably see
7 it.

8 MICHAEL BARNHART: We have magnifying glasses, we've
9 asked Nora to bring one for us.

10 JUDGE LINDA BURGESS: Good job.

11 Q: All right, maybe I can speed this up a little
12 bit. Dr. Bowden, you received this email from Tandra
13 Cobern at 4:48 p.m. on November 10th, 2021? Yes?

14 A: Yes.

15 Q: And can you read what that email says?

16 A: I can read part of it. It's cut off, though.

17 Q: Okay.

18 A: "Dr. Bowden, you will need to complete your
19 application that was sent to you yesterday. We'll go
20 through the credentialing process. As this time, you do
21 not have privileges."

22 Q: Okay. There's a typo in there, but you could
23 still understand what that meant, right?

24 A: Yes.

25 Q: Okay. And then you forwarded this to Beth

1 Parlato at some time after you received that?

2 A: I can't see the time or anything, but assume so.

3 Q: Well, it's your exhibit, so I'm just asking you,
4 do you know what time you sent that to Beth Parlato?

5 A: I can't see it on the screen, and I can't see it
6 on this paper because it's minuscule, unfortunately. If
7 you could read me the time, I mean, I assume it was after,
8 but I just don't have the time.

9 Q: Okay, so you don't know because this was three
10 and a half years ago, right?

11 A: No, I don't know because I can't read it. But
12 if I could read it, then I could verify.

13 Q: Okay. It's your exhibit, so I'm just asking you
14 about it.

15 A: Okay, we'll, wait. I'm getting a magnifying
16 glass.

17 JUDGE LINDA BURGESS: [indiscernible] to testimony.

18 THE WITNESS: Do you have readers? Maybe I just need
19 reading --

20 MICHAEL BARNHART: Oh, you can use mine.

21 A: Okay, here we go. It says 6:59 a.m. I sent that
22 to Beth Parlato.

23 Q: Okay. You agree that you got this around the
24 time that it was sent by Tandra Cobern, though, correct?

25 A: It was sent about 2 hours and 15 minutes after.

1 Q: My question is --

2 A: Oh wait no, sorry, it was the following morning.

3 Q: Right. But you would agree that you were
4 checking your email around 4:48 p.m., 4:45 p.m., that time
5 period on November 10th, you were checking your email at
6 that time? Yes?

7 A: Well, I don't know because I didn't respond -- I
8 didn't send that to Beth till the next morning.

9 Q: Didn't you respond to another email from Tandra
10 Cobern around that same time period?

11 A: Well, I don't -- well, that's not what the
12 exhibit shows, but I believe I did, yes.

13 Q: Okay. So it's fair to say that you were
14 probably checking your email around that time period, yes?

15 A: Around which time period? The -- Wednesday,
16 November 10th at 4:48 p.m.?

17 Q: It's fair to say you were checking your email
18 around the time period that this email came in from Tandra
19 Cobern, yes?

20 A: Probably, yes.

21 Q: Okay, thank you. And that exhibit has already
22 been admitted, so. All right, Dr. Bowden, have you read
23 the judge's order granting the Board Staff second MSD in
24 part, that was filed in this matter on March 13th, 2021?
25 I think it was actually signed on the 12th, though.

1 A: What's an MSD?

2 Q: Motion for summary disposition.

3 A: When was it? I don't know -- have I.

4 Q: Have you read the judge's order that was issued
5 on March 12th, 2021 in this matter, but sent to parties on
6 March 13th, 2021 or 2025 in this matter?

7 A: That's why I was thrown. I heard that date.

8 Q: Yeah. I'm sorry.

9 A: I didn't know what you were talking about. Yes.

10 Q: Okay. So you agree with the Judge's findings
11 that you did not have privileges at Huguley Hospital on
12 November 10th, 2021?

13 MICHAEL BARNHART: Objection, Judge. That's improper
14 for her to ask if they agree with your findings. They can
15 ask -- she can ask for the facts, but not her opinions on
16 your legal rulings. That's prejudicial.

17 JUDGE LINDA BURGESS: That's fair. You just need to
18 frame it as a fact.

19 AMY SWANHOLM: Sure. Do you agree --

20 JUDGE LINDA BURGESS: Do you understand --

21 AMY SWANHOLM: Yes, Your Honor. Thank you.

22 A: You would agree that you do not have -- you did
23 not have privileges at Huguley Hospital on November 10th,
24 2021?

25 MICHAEL BARNHART: Objection, Judge. That's actually

1 not relevant to this case because her state of mind is
2 what's relevant, not the fact it's already been held
3 be -- held by the court.

4 JUDGE LINDA BURGESS: I'm going to overrule that,
5 because I think that's what she's going in for.

6 A: At the time, I thought I had the duty and the
7 privileges to do that. I realize now, I did not. But at
8 the time, I thought we were all good to go.

9 Q: Well, you would agree that based on the
10 communications from Huguley Hospital to you, in email,
11 that you were informed that you didn't have privileges?

12 A: No, because I spoke to the lawyer after that
13 email, and that was not the conversation we had, and
14 we -- the lawyer gave me the green light after that email.

15 Q: Who is the lawyer?

16 A: Beth Parlato.

17 Q: Was Beth Parlato representing you at the time?

18 MICHAEL BARNHART: Objection. Calls for legal
19 conclusion.

20 A: So --

21 MICHAEL BARNHART: Wait, wait.

22 AMY SWANHOLM: I'm sorry?

23 JUDGE LINDA BURGESS: You can ask it. Maybe rephrase
24 it a little bit, but go ahead. It's proper question.

25 Q: Okay, go ahead.

1 A: I mean, I did not sign a contract with that, but
2 that's what's giving me legal advice. It's similar to how
3 if -- if somebody asked me for medical advice, if I didn't
4 feel comfortable doing it. I would just -- I just would
5 refrain from doing it. But Beth didn't refrain from
6 giving me legal advice. She can -- if she wasn't going to
7 give me advice, she should have just not given me advice.
8 But she gave me advice all along. So I just, you know, I
9 didn't pay her or sign a contract, but I saw her as giving
10 me legal advice.

11 Q: But you would agree that you read the emails
12 from Tandra Cobern where she explicitly stated that you
13 did not have privileges on the evening of November 10th,
14 yes?

15 A: Tandra Cobern, as I understand it, is an
16 administrative secretary and a defendant in the case.
17 Logically, it made more sense to listen to the lawyer,
18 given that this was a lawsuit, than to listen to an
19 administrative secretary who was a defendant in the case.

20 Q: I'm just asking you whether you agree that you
21 read those emails.

22 A: Yes, I read the emails.

23 Q: Okay. And you are aware of the judge's findings
24 in this matter?

25 A: Yes.

1 Q: So you are aware that the judge has found that
2 your conduct could be reasonably expected to adversely
3 impact the quality of care rendered to a patient?

4 A: Yes.

5 Q: And you are aware that you knew, that as a
6 physician, privileges were required to treat an inpatient
7 at a hospital?

8 A: Relevant to the Judge's findings? Is that what
9 the Judge said? Yes, I guess. I haven't read that motion
10 for summary disposition since it initially came out, so I
11 would have to go back and read it.

12 Q: Okay. Do you agree that privileges are required
13 to treat a patient at an inpatient facility?

14 A: Yes.

15 Q: Okay. And you agree that on the evening of
16 November 10th, 2021, you knew that you didn't have
17 privileges at Huguley Hospital?

18 A: No.

19 MICHAEL BARNHART: Objection, asked and answered
20 multiple times.

21 JUDGE LINDA BURGESS: I'm going to sustain.

22 AMY SWANHOLM: Okay. Your Honor, this is me reading
23 specifically from Finding of Fact Number 21. So I'm just
24 asking her if she knows about that finding.

25 JUDGE LINDA BURGESS: You can ask whether she knows

1 about the finding.

2 Q: Okay. Dr. Bowden, are you aware of the finding
3 by the judges that on the evening of November 10th, 2021,
4 you knew you didn't have privileges at Huguley Hospital?

5 A: Yes.

6 Q: Okay. So, Dr. Bowden, knowing what we know now
7 about where we're at in this case, that you are -- have
8 been found to have engaged in unprofessional conduct, in
9 hindsight, do you wish you'd done anything differently?

10 A: I wish I'd hired my own lawyer.

11 Q: Okay. Do you wish you had done anything
12 differently related to the practice of medicine?

13 A: I wish I had hired my own lawyer.

14 Q: Okay. Knowing what you know now, if presented
15 with a similar scenario, would you make the same choices
16 or would you make different choices?

17 A: I don't think I will ever encounter this
18 situation ever again. But next time, I would hire my own
19 lawyer.

20 Q: Okay. Besides hiring your own lawyer, would you
21 make any different choices as a physician involved in
22 patient care or prescribing medication?

23 MICHAEL BARNHART: Your Honor, asked and answered.
24 The hiring of her own lawyer changes the entirety of the
25 equation by itself.

1 JUDGE LINDA BURGESS: You know what? I'm going to
2 let Ms. Swanholm ask the question. So overruled.

3 AMY SWANHOLM: Okay.

4 JUDGE LINDA BURGESS: You may need to rephrase it or
5 re-ask it.

6 Q: Besides hiring an attorney, would you make the
7 same choices or different choices related to the practice
8 of medicine going forward?

9 A: I mean, I have a duty to treat my patients if I
10 have a relationship with my patients. I would follow that
11 duty, but I would hire a lawyer to navigate this process
12 better so that I would have clearer understanding of what
13 was happening in trying to uphold my duty to my patient.

14 Q: Knowing what you know now that your actions were
15 found to have been unprofessional, violation of the
16 Medical Practice Act, would you do something differently
17 if you could go back in time, would you do something
18 differently in relationship to that evening?

19 A: I've answered those three times now. I would
20 hire my own lawyer.

21 Q: Okay. Have you learned anything about
22 professionalism through this process?

23 A: No.

24 Q: Okay. Is there anything that you've learned
25 through this process that would change your actions going

1 forward?

2 A: I would hire a lawyer under similar
3 circumstances.

4 Q: After going through this process, would you ever
5 direct a delegate to try and treat a patient at a hospital
6 where neither you nor the delegate had privileges?

7 A: If I knowingly knew that I did not have
8 privileges, I would not send somebody to the hospital to
9 do that. Like I said, I would have hired a lawyer to
10 navigate this process in a better way, so that I had a
11 better understanding of a very unique situation that I had
12 never been in before, and I doubt I ever will be in going
13 forward.

14 Q: Okay. And after going through this proceeding,
15 would you ever direct a delegate to administer a
16 prescription drug to a patient at a hospital where neither
17 you nor the delegate had privileges?

18 A: No.

19 Q: After going through this proceeding, would you
20 ever encourage a lay person to administer a prescription
21 drug to a patient who is in a hospital where you did not
22 have privileges?

23 A: No.

24 Q: Okay. And have you made any changes in your
25 practice from a professionalism perspective in response to

1 this proceeding?

2 A: No.

3 Q: Okay. Doctor, you're board certified, correct?

4 A: Correct.

5 Q: What are you board certified in?

6 A: Otolaryngology and sleep medicine.

7 Q: Is your board certification currently active?

8 A: Yes.

9 Q: Are you currently maintaining your continuing
10 certification with that board?

11 A: Yes.

12 Q: Is your continuing certification up to date or
13 not up to date?

14 A: Up to date.

15 Q: So if we were to go onto the board's website, it
16 would say that, yes, you are maintaining your continued
17 certification.

18 A: Yes.

19 Q: Okay. Are you okay if we do that right now?

20 A: Certainly.

21 Q: All right. Well, I just closed the window, so
22 now might be a good time to take a morning break, if
23 that's okay with the parties and I can get that up and
24 then we can -- I think I'm pretty much done after that.

25 JUDGE LINDA BURGESS: That's why I was waiting. But

1 we can take a break. How does -- for the court reporter,

2 how does 15 minutes sound?

3 THE REPORTER: 15 minutes sounds great.

4 JUDGE LINDA BURGESS: Yeah. So that would be about 5

5 after 11:00. So let's all be back at 5 after 11:00, ready

6 with the question. And thank you.

7 (Off the record)

8 (Back on record)

9 JUDGE LINDA BURGESS: Thank you, court reporter.

10 We're just back from a short break. We're back on the

11 record in SOAH Docket 503-23-17769. It's about 11:06 a.m.

12 The board was asking a question of Dr. Bowden. I'll let

13 the board proceed.

14 Q: Dr. Bowden --

15 JUDGE LINDA BURGESS: Mr. Barnhart, you might want to

16 unmute yourself before we get going.

17 Q: Dr. Bowden, is this that website that you agreed

18 we could go and look at the status of your board

19 certification?

20 A: That's the wrong board.

21 Q: Which board is this?

22 A: Well, I'm board certified with another board,

23 National Board of Physicians and Surgeons.

24 Q: So what board is this?

25 A: American Board of Otolaryngology - Head and Neck

1 Surgery.

2 Q: Is this not the one that we were talking about
3 previously?

4 A: Well, I'm boarded through two organizations, so
5 I haven't maintained that one, but I've maintained the
6 other one.

7 Q: Is that other board an ABMS board?

8 A: An ABMS?

9 Q: American Board of Medical Specialties.

10 A: I don't know. It's called National Board of
11 Physicians and Surgeons.

12 Q: Okay, do you --

13 A: You can look it up.

14 Q: -- possess any ABMS board certifications?

15 A: What is -- yes.

16 Q: Okay. What organization or what board
17 certification do you possess that is an ABMS Board
18 Certified Board?

19 A: Well, I am board certified with ABO-HNS,
20 assuming that's what you mean.

21 Q: And by ABO-HNS you mean the American Board of
22 Otolaryngology and Head and Neck Surgery?

23 A: Yes.

24 Q: Okay. Are you currently maintaining that board
25 certification?

1 A: I have not submitted my CMEs to their website.

2 But as you can see, I am board certified.

3 Q: Okay, so you would agree that you're not
4 maintaining your continuing certification requirements?

5 A: No, I would not agree to that. As I stated, I
6 have not updated them, and I am current on the other
7 board, National Board of Physicians and Surgeons. You
8 could look that up right now. I just haven't uploaded it
9 to their site.

10 MICHAEL BARNHART: Your Honor, at some point this is
11 becoming irrelevant.

12 JUDGE LINDA BURGESS: Why don't we move on, Ms.
13 Swanholm?

14 AMY SWANHOLM: Okay. And for the record, I'd just
15 like to point out that the previous findings do state that
16 she's board certified in otolaryngology. And so that is
17 the reason I am asking her about her otolaryngology board
18 certification status.

19 JUDGE LINDA BURGESS: Fair enough. It's allowed, if
20 you have something more, please do.

21 Q: Okay. Dr. Bowden, you agree that you are not
22 maintaining your continuing certification requirements for
23 your otolaryngology board certification?

24 MICHAEL BARNHART: Objection, asked and answered.

25 A: No, I do not agree with that. I do not agree

1 with that at all. And if you go to National Board of
2 Physicians and Surgeons, it says board certified in
3 Otolaryngology and Sleep Medicine.

4 Q: I'm asking you about your ABMS board
5 certification.

6 JUDGE LINDA BURGESS: Okay, I thought I -- just a
7 moment. I thought I understood the doctor's response.
8 Maybe I don't understand. What are you asking?

9 AMY SWANHOLM: So, Doctor, excuse me, Your Honor,
10 there are -- there's board certification that is generally
11 understood to mean certification by an American Board of
12 Medical Specialties. And under the ABMS organization,
13 there are certain different specialties. One of those is
14 Otolaryngology, the website that I'm showing right now.
15 Now, outside of ABMS Board Certified boards, there are
16 other organizations that call themselves boards, but they
17 are not ABMS Board Certified boards. So generally, when
18 someone says, I am board certified in, it is understood to
19 mean that they are board certified in one of those ABMS
20 boards. This is the ABMS board for Otolaryngology.

21 JUDGE LINDA BURGESS: Okay. And that's American
22 Board of Specialties. Is that right?

23 AMY SWANHOLM: American Board of Medical Specialties,
24 the abbreviation is ABMS.

25 JUDGE LINDA BURGESS: Okay.

1 MICHAEL BARNHART: So, Judge, there was a lot of
2 testimony there by Ms. Swanholm about what --

3 JUDGE LINDA BURGESS: I asked her a question.

4 MICHAEL BARNHART: -- certain things mean.

5 JUDGE LINDA BURGESS: Oh, sorry, Mr. Barnhart. I
6 asked her a question, I wanted to make sure. I was trying
7 to figure out why we're doing this. So, I think I've
8 understood the doctor's response to your specific
9 question, I think I have. Is there anything further
10 needed on this?

11 AMY SWANHOLM: We would like to admit this webpage in
12 as an exhibit and we can go ahead and get, you know,
13 certification on that if necessary. But if there's no
14 objection, we'd like to admit this one page.

15 JUDGE LINDA BURGESS: Objection, Mr. Barnhart?

16 MICHAEL BARNHART: We do object. We object to
17 hearsay, we object that it's misleading, and we object, to
18 be honest, that it's not -- that they -- the Medical Board
19 has not established the relevance of this document to
20 anything in this case.

21 AMY SWANHOLM: Okay.

22 JUDGE RACHELLE ROBLES: I'm gonna allow the exhibit
23 because it's been talked about. I want the record to be
24 clear. And if you have further questions, Mr. Barnhart or
25 Dr. Bowden on that, I welcome them. Anything further, Ms.

1 Swanholm?

2 AMY SWANHOLM: No, that'll be it for board staff.

3 Thank you.

4 JUDGE LINDA BURGESS: Okay, so this is going to be
5 Board Staff Exhibit 17?

6 AMY SWANHOLM: 17 was already proposed, and we had
7 chosen not to seek admission on that. So I think this
8 would be Board Staff Exhibit 18.

9 JUDGE LINDA BURGESS: Board Staff 18.

10 AMY SWANHOLM: Okay. And just for the record,
11 Exhibit 16 and 17, the reason we're not asking for
12 admission is because they already are in the record as
13 Board Staff's Motion for Summary Disposition Exhibit 6 and
14 16, respectively.

15 JUDGE LINDA BURGESS: Anything further from the board
16 at this time?

17 AMY SWANHOLM: No, we would pass the witness.

18 JUDGE LINDA BURGESS: Mr. Barnhart. Why don't we
19 take the screen down?

20 AMY SWANHOLM: Oh, sorry.

21 CROSS-EXAMINATION

22 BY MICHAEL BARNHART:

23 Q: So, Dr. Bowden, when did you first learn about
24 the patient that was in Huguley Hospital?

25 A: I believe October 22nd, 2021.

1 Q: And when did you dispatch a nurse to administer
2 medicine to that patient?

3 A: I believe November 10th, 2021.

4 Q: And on what date did the hospital file its
5 complaint with the medical board?

6 A: I believe October 26th or 27th, 2021.

7 Q: So the hospital filed a complaint long
8 before -- several days before there was anything done with
9 the nurse at the hospital?

10 A: Yes.

11 Q: What did the hospital ask the Texas Medical
12 Board to do?

13 AMY SWANHOLM: Objection.

14 A: I know they wanted me to pay their legal fees.

15 Q: Wait, I think --

16 A: Oh, sorry.

17 AMY SWANHOLM: Objection. I don't think there's been
18 any established testimony about what the nurse had asked
19 before, so. If she knows that, she can, but I don't think
20 we've established that at this point.

21 MICHAEL BARNHART: So --

22 JUDGE LINDA BURGESS: Please. And go a little
23 slower, Mr. Barnhart.

24 MICHAEL BARNHART: Yes, Judge. So, we were provided
25 a copy of Texas Huguley Hospital's complaint in connection

1 with the ISC. We are not seeking to put the complaint in
2 the record, but Huguley Hospital's credibility is at issue
3 here. And the fact that Huguley Hospital not only filed a
4 complaint on October 26th, but actually asked the board to
5 order Dr. Bowden to pay its legal fees because a TRO was
6 issued is relevant to their credibility. They were
7 attacking Dr. Bowden before she hardly did anything. And
8 we're going to have other testimony later that Huguley
9 Hospital affirmatively informed Ms. Parlato that they were
10 not going to comply with the Judge's order. We think, as
11 we build this case, they were not credible. And Dr.
12 Bowden and Ms. Parlato were justified in being cynical
13 about what the hospital was saying to them.

14 AMY SWANHOLM: I don't --

15 JUDGE LINDA BURGESS: You know -- go ahead.

16 AMY SWANHOLM: I don't think that it is relevant. We
17 are not here to re-litigate ancillary litigation between
18 Dr. Bowden and Huguley Hospital, where Dr. Bowden actually
19 did lose. We are here to talk about aggravating and
20 mitigating factors that apply to this case. And I'm not
21 hearing him talk about how that's connected to one of
22 their mitigating factors.

23 MICHAEL BARNHART: I will connect it to the
24 aggravating factor right now.

25 JUDGE LINDA BURGESS: Well, I'm not seeing the

1 relevance, and maybe when you have those witnesses, maybe
2 you can bring that up again. But I think we're a little
3 far afield right now on the aggravating and mitigating
4 factors. So --

5 MICHAEL BARNHART: Judge, may I make one more
6 response before you rule?

7 JUDGE LINDA BURGESS: Absolutely. Absolutely.

8 MICHAEL BARNHART: So the one response I would make,
9 is that part of the case they're clearly trying to make
10 against Dr. Bowden, is that she did not accept at face
11 value when she was told she didn't have privileges. She
12 relied on the attorney rather than what the administrator
13 of the hospital told her. And so the hospital's actions
14 that show a lack of -- this corroborates her lack of
15 credibility where the testimony will come in later. We'd
16 like to get it even as an offer of proof, because we do
17 think it's relevant to corroborate that the hospital's
18 some element of, you know, basically going after Dr.
19 Bowden through this process. And the fact that --

20 JUDGE LINDA BURGESS: So what was the question?

21 MICHAEL BARNHART: So the question was, what did
22 Huguley Hospital ask TMB to do with respect to Dr. Bowden?
23 And she started to respond, and I think. And she did
24 partially respond. She said, "They asked the Medical
25 Board to make me pay their legal fees."

1 JUDGE LINDA BURGESS: You know, I do think this is
2 far afield. I'm going to allow a little bit, and let's
3 move on. Okay?

4 MICHAEL BARNHART: That really was all I wanted, was
5 to get those two pieces in from the complaint that was on
6 the 27th. And that even from the very beginning, that the
7 hospital was asking for the Board to order her to pay the
8 hospital's legal fees. So that's all I wanted on that.

9 JUDGE LINDA BURGESS: Okay, then let's move on.
10 Thank you.

11 Q: Did you ever submit an application for
12 privileges at a hospital?

13 A: I submitted two applications.

14 Q: And why did you submit the application for
15 privileges?

16 A: Well, because I testified and the Judge said
17 they were to grant me temporary privileges. And then as
18 part of that, I had to submit a application.

19 Q: According to your understanding, did the
20 hospital have the legal right to deny your application?

21 A: No.

22 Q: So what happened to the first application you
23 filed?

24 A: It was hard because I had to get three letters
25 of recommendation, I had to submit my surgical case log

1 for the last two years, the application itself is, I
2 think, about 20 to 30 pages long. And I had to do it in
3 record time because a man's life was on the line, and I
4 was treating COVID patients. But I managed to do it in
5 record time. I did it in one day. And then I got a
6 notice a few days later that they were going to deny my
7 application for temporary emergency privileges. And
8 that -- and then it got confusing. There was a lot of
9 back and forth. I know the lawyers went back to the Judge
10 and there was fighting. And then I was told, okay, you
11 have to resubmit the whole thing all over again. They
12 wouldn't just cut and paste, I had to redo the whole
13 thing. And I did that, I believe, or no, and then I heard
14 that, no, you just need to do a supplement.

15 Q: Let's back up.

16 A: It was confusing.

17 Q: Let me ask questions, let's do bite-sized pieces
18 for the Judge. Okay, so the first application, you got a
19 notice that the emergency privileges were not being
20 granted. Is that correct?

21 AMY SWANHOLM: Objection, leading.

22 Q: And what did --

23 JUDGE LINDA BURGESS: Well, let's not lead.

24 Q: Judge, I was just restating something she
25 already testified to for context --

1 JUDGE LINDA BURGESS: Well, I'm gonna sustain, okay,
2 let's not lead. But I did agree with you on bite-size.

3 Q: Why did you withdraw the first application?

4 A: Because if you get denied privileges, it goes on
5 your record. And you have to report that every time you
6 submit privileges going forward to it for, you know, it's
7 a mark on your record.

8 Q: And what was your understanding that Huguley
9 Hospital was going to do with that application? The first
10 application --

11 A: Well, I was worried that they were purposely
12 trying to deny my privileges to create a mark on my
13 record.

14 Q: Was the hospital -- let's see. You testified,
15 this was -- this is in the record already, you testified
16 at a hearing on behalf of the patient on November 2nd, is
17 that correct?

18 AMY SWANHOLM: Objection, leading.

19 MICHAEL BARNHART: Judge, that's already in the
20 record. It was in the statement of facts that have been
21 agreed to. So all I'm doing is setting up background and
22 foundation.

23 JUDGE LINDA BURGESS: I think he was just trying to
24 move it along. I'm not going to character -- I mean, it
25 was leading, but it was just trying to move it along. So,

1 I'm going to --

2 MICHAEL BARNHART: I'm trying very hard to limit my
3 leading --

4 JUDGE LINDA BURGESS: I know.

5 MICHAEL BARNHART: I'm trying to [indiscernible]
6 facts in evidence.

7 JUDGE LINDA BURGESS: Right, I'm not sustaining that,
8 but be careful going forward, please.

9 MICHAEL BARNHART: I'm trying, Judge.

10 JUDGE LINDA BURGESS: You are. No, I did not sustain
11 that.

12 Q: So what's the next major event you remember from
13 the lawsuit after you withdrew your application for
14 privileges?

15 A: There was a lot of -- I know that the lawyer had
16 to go back to the judge and fight with the other lawyer
17 about what was going on, why there was a delay on my
18 privileges. It was -- I don't know -- I mean, and then I
19 was told, "Resubmit the privileges." And I heard, "No,
20 just submit a supplement." And then I heard, "No, you have
21 to resubmit the whole application." And I did that.

22 Q: Did -- so what changed to prompt resubmitting
23 the application?

24 A: I don't know. I don't know why I had to -- I
25 mean, it was, you know, I'm not a lawyer, so I was just

1 following what the lawyers were telling me.

2 Q: So can you turn to Respondent's Exhibit 49?

3 JUDGE LINDA BURGESS: What exhibit, please?

4 MICHAEL BARNHART: Respondent's 49.

5 A: This one?

6 Q: It's the Temporary Injunction Order.

7 A: Okay.

8 Q: Do you recognize that document?

9 A: Yes.

10 Q: And had you seen it before?

11 A: Yes.

12 Q: When was this document issued in relation to
13 your second application for privileges, if you recall?

14 A: I don't know. It was very confusing, the whole
15 thing. I guess --

16 AMY SWANHOLM: Rachel, can you not open stuff on the
17 computer, please? Okay.

18 MICHAEL BARNHART: Judge, are we able to share the
19 screen?

20 JUDGE LINDA BURGESS: You wanted to share
21 Respondent's 49, that's already been admitted?

22 MICHAEL BARNHART: Yes.

23 JUDGE LINDA BURGESS: Yes, you may do that.

24 NORA MONTEZ: So where is it at?

25 MICHAEL BARNHART: So should be -- you have to open

1 it in the folder. So go down in the bottom where the
2 folder is, the file folder, on the right.

3 AMY SWANHOLM: Your Honor, we're happy to stipulate
4 to the timeline that's already been established here. And
5 Dr. Bowden has already testified that she doesn't know, so
6 I'm not sure what the point of this is.

7 JUDGE LINDA BURGESS: We'll let Mr. Barnhart see if
8 he can -- overruled.

9 Q: You're looking at Respondent's 49, yes?

10 A: Yes.

11 Q: Did this refresh your recollection?

12 A: Yes.

13 Q: So when was -- when did you submit your second
14 application for privileges in relation to this order?

15 A: Probably after.

16 MICHAEL BARNHART: Did that come through, Your Honor?
17 Did Dr. Bowdens's response come through?

18 JUDGE LINDA BURGESS: I'm not seeing Exhibit 49 on
19 the screen, if that was the question.

20 MICHAEL BARNHART: No, Dr. Bowden answered my
21 question, so let me re-ask it. We'll deal with it later,
22 Mark.

23 Q: Dr. Bowden, Exhibit 49. Do you recall when, in
24 relation to Exhibit 49's issuance, you submitted your
25 second application.

1 A: After this.

2 MICHAEL BARNHART: Did you hear that, Judge?

3 JUDGE LINDA BURGESS: I did. Thank you.

4 MICHAEL BARNHART: She's speaking quietly, so.

5 Q: Are you named in Exhibit 49?

6 A: What do you mean, named?

7 Q: Does your name appear in Exhibit 49?

8 A: Oh. Yes.

9 Q: Where does it appear?

10 A: Let's see. Number -- on page 2.

11 Numbers -- item number 6, item number 7. Page 4, several
12 times. Page 5, several times.

13 Q: What did you understand the order in Exhibit 49
14 to accomplish?

15 AMY SWANHOLM: Objection, she's not an expert in the
16 law.

17 JUDGE LINDA BURGESS: Yeah --

18 MICHAEL BARNHART: I asked for understanding.

19 JUDGE LINDA BURGESS: Counsel, just a second. I

20 think I'm confused. I thought Exhibit 49 had been
21 admitted, but maybe I'm wrong. Maybe that was, the order

22 was 48. It was 48, not 49. So I -- now that I'm hearing

23 the testimony, I believe 49 is what? The Temporary

24 Injunction Order, is that right? What is 49?

25 MICHAEL BARNHART: Correct. It's the Temporary

1 Injunction Order.

2 JUDGE LINDA BURGESS: Yeah. Well, there's not going
3 to be any objection to 49 coming in, but I just want to
4 make sure --

5 AMY SWANHOLM: No objection.

6 JUDGE LINDA BURGESS: -- that I'm -- I know what
7 Exhibit 49 is. I was just not straight in my mind. So
8 what is the question? I'm going to sustain the objection
9 that she can state whatever her understanding is, but
10 she -- and no one is going to tell Judge Robles and I what
11 the order provides. And so with that, I think I might
12 have to sustain the way it was asked, the Board's -- your
13 question, Mr. Barnhart, so can you rephrase?

14 MICHAEL BARNHART: So the question that I'm trying to
15 ask is what is Dr. Bowden's understanding of what the
16 order covers?

17 JUDGE LINDA BURGESS: Well --

18 A: I would say that I don't have an understanding
19 because this is a different language. Lawyers speak a
20 different language, and I've said that from the start. So
21 I relied on a legal expert, Beth Parlato, to interpret it
22 for me.

23 Q: So, Dr. Bowden, if you would turn to TMB 11.
24 And that's Petitioner's Exhibit 11 at the front.

25 MICHAEL BARNHART: Oh, Judge, offer Exhibit 49 into

1 evidence.

2 JUDGE LINDA BURGESS: Exhibit 49 is admitted.

3 MICHAEL BARNHART: And my understanding Exhibit 11

4 is -- 11 is already in the record. Respondent's Exhibit

5 sorry, Petitioner's Exhibit 11 is already in the record.

6 It's been admitted.

7 JUDGE LINDA BURGESS: Board Staff, Exhibit 11, my

8 notes show has been admitted.

9 Q: Dr. Bowden, you testified about this document
10 earlier, did you not? Looking at the bottom -- so, sorry
11 the -- this is a -- well, tell me what this is.

12 A: Well, I'm tweeting the text correspondence
13 between myself and Beth Parlato, the lawyer, showing my
14 understanding of what was happening during this legal
15 situation.

16 Q: And did you understand Judge Parlato in this
17 text to be giving you legal opinions?

18 A: Yes, I asked her to clarify. I said I'm
19 confused by the order. I was seeking clarification from
20 her.

21 Q: And did you understand her to have given you a
22 legal opinion in response?

23 A: Yes.

24 Q: And what was that legal opinion?

25 A: That we were -- we had the green light, that we

1 had the legal authority to proceed and send a nurse to the
2 hospital.

3 Q: Did you -- how often did you communicate with
4 Ms. Parlato by text?

5 A: I mean. Pretty regularly.

6 Q: So between October 22nd and November 11th. What
7 about after November 11th?

8 A: After? After this is all done? Not very often.

9 Q: Okay. And if you would -- so if you would turn
10 now to Respondents' Exhibit 27.

11 A: Okay.

12 Q: So at the bottom of Respondent's Exhibit 27,
13 there is a -- and this has already been admitted as well,
14 if I recall correctly. So at the bottom on the left in
15 gray, there's a text message. Could you read that,
16 please?

17 A: Last one.

18 Q: The last one, Yes.

19 A: "I just spoke with Ralph. We both agree not to
20 wait until the last minute. We had this issue in another
21 hospital. A half hour is reasonable notice."

22 Q: And to your understanding, who made that
23 statement?

24 A: Beth.

25 Q: And you know who -- Beth, who?

1 A: Parlato.

2 Q: And do you know who Ralph is?

3 A: Ralph Lorigo was the other attorney on the case.

4 Q: And did you do anything in response to this text

5 message?

6 A: I mean, I probably did tweet -- I did tweet to

7 alert the media, and I think I sent an email to the

8 hospital.

9 Q: Let's go to Respondent's Exhibit 22.

10 A: Okay.

11 Q: So, again, I know this is really small type

12 again. Can you see what time this email was sent?

13 A: 5:15 p.m.

14 Q: On what day?

15 A: On November 10th, 2021.

16 Q: And what the -- and so what is this email?

17 A: It's me following the instruction to send a

18 notification to the administrative secretary at the

19 hospital to let her know that the nurse was en route.

20 Q: And how much time did you tell them they had?

21 A: 30 minutes.

22 Q: So to sum this up, was this your notice to the

23 hospital, the nurse was coming and would be there in 30

24 minutes?

25 A: Yes.

1 Q: Also, it was discussed in connection with
2 Exhibit 23 earlier. Let's talk about it here, because the
3 texts are here, the messages are here. There are -- do
4 you happen to know who Josh Ross, is in the third message
5 now?

6 A: The attorney for the hospital.

7 AMY SWANHOLM: Hold on, are you talking about Exhibit
8 22 or Exhibit 23? Because they're both email
9 correspondences, right?

10 MICHAEL BARNHART: It's in both, but we're in 22.

11 AMY SWANHOLM: Okay, thank you.

12 JUDGE LINDA BURGESS: Stop. Let's be real careful
13 and let's say "respondent" so the record doesn't get
14 confused.

15 MICHAEL BARNHART: Yes, Judge.

16 JUDGE LINDA BURGESS: So are you on Respondent's 23?

17 MICHAEL BARNHART: We're on Respondent's 22, Judge.

18 JUDGE LINDA BURGESS: Okay, thank you.

19 Q: And so Respondent's 22, she testified a second
20 ago, is her message back to the hospital. So does the
21 word "stay" appear anywhere in Respondent's Exhibit 22?

22 A: No.

23 Q: Did anybody at the hospital ever communicate to
24 you, prior to you sending the nurse, that there was a stay
25 of the injunction?

1 A: No, which is odd.

2 Q: What was your understanding of the status of the
3 injunction when you sent the nurse to the hospital on
4 November 10th?

5 A: That it was active.

6 Q: So earlier Ms. Swanholm asked you questions
7 about statements you tweeted, related, for example,
8 agendas that certain people may have. And I think your
9 testimony was when you tweeted that you believed both the
10 TMB and Huguley Hospital had agendas. Is that your
11 accurate testimony?

12 A: Yes.

13 Q: Did you send any Public Information Act requests
14 to the TMB?

15 AMY SWANHOLM: Objection. Relevance.

16 MICHAEL BARNHART: So, Judge, I've got about three
17 questions. We're going to keep this very light, but it is
18 relevant.

19 AMY SWANHOLM: Well, it's not relevant, Your Honor.
20 This is not about open records. This is about whether or
21 not there's anything that aggravates or mitigates the
22 finding that she engaged in unprofessional conduct. And I
23 don't know what that would relate to.

24 JUDGE LINDA BURGESS: I'm inclined to sustain. Do
25 you have another argument, Mr. --

1 MICHAEL BARNHART: So I do, Judge. This goes
2 directly to testimony that was elicited on TMB's cross.

3 AMY SWANHOLM: And, Yur Honor, she responded that she
4 didn't really have any information about an agenda. If
5 she thought that there was, she could have responded to
6 that question.

7 JUDGE LINDA BURGESS: You know what, this seems
8 highly irrelevant to me. If it's three questions, let me
9 hear the first one and let me hear the response, and I may
10 cut it off over that. This doesn't sound relevant though.
11 Go, Mr. Barnhart.

12 MICHAEL BARNHART: If I'm going to ask one question,
13 I want to ask a leading question because that's going to
14 be the simplest way to address your concern, I think,
15 Judge.

16 JUDGE LINDA BURGESS: Don't ask a leading question.

17 Q: Were your response -- were your Public
18 Information Act requests to the TMB in connection with
19 your concern that TMB was pursuing an agenda?

20 A: One thing I forgot to mention when I answered
21 Ms. Swanholm, is that I did find out through Open Records
22 Request that the TMB was emailing about me prior to
23 these -- prior to me even knowing there were complaints
24 against me. And they were emailing about media stories
25 about me, this is all through Open Records Request.

1 Sharon Barnes, the person that presided over my settlement
2 conference, was emailing about me, and that's -- so that's
3 part of the reason I thought they had an agenda.

4 AMY SWANHOLM: Objection. Hearsay, relevance,
5 misstates facts not in evidence.

6 MICHAEL BARNHART: It goes to her state of mind,
7 Judge.

8 JUDGE LINDA BURGESS: Okay, we're getting way afield
9 folks, way afield --

10 MICHAEL BARNHART: I'm done with that line of
11 questions anyway.

12 JUDGE LINDA BURGESS: Okay, I hope so.

13 AMY SWANHOLM: Your Honor, we have an objection. And
14 I would like to just --

15 JUDGE LINDA BURGESS: I got it. I got it. Judge
16 Robles and I know what weight to give what evidence. So
17 we've let it in. We know what weight to give it. Mr.
18 Barnhart. Go ahead.

19 MICHAEL BARNHART: Understood, your honor.

20 Q: What is your understanding of the investigation
21 that TMB did prior to your informal settlement conference?

22 AMY SWANHOLM: Objection, 164.00 --

23 JUDGE LINDA BURGESS: Sustained. This is too far
24 afield. This is too far afield.

25 Q: Dr. Bowden, do individuals have the right to

1 protect their reputation in the public?

2 A: Yes.

3 Q: Why do you tweet?

4 A: Because I was -- because a huge hospital went
5 after me very publicly and said I was dangerous. And so --

6 AMY SWANHOLM: Objection hearsay.

7 A: -- and I had to protect my reputation by
8 becoming much more vocal on social media.

9 JUDGE LINDA BURGESS: I'm going to sustain this
10 hearsay objection.

11 MICHAEL BARNHART: I'm just -- I know you're going to
12 keep the sustain, I'm just going to say that I think that
13 does reflect her state of mind and would be admissible for
14 that reason. That she understands -- that that was her
15 understanding of what was happening.

16 JUDGE LINDA BURGESS: You know, you didn't even link
17 it to Huguley Hospital.

18 MICHAEL BARNHART: Understood, Your Honor.

19 Q: Dr. Bowden, when you sent Nurse Witzel to the
20 hospital, what was your understanding about any disruption
21 that that would likely cause?

22 A: I didn't expect her -- any disruption because we
23 gave the hospital notice as instructed.

24 Q: What was your expectation of sending this person
25 to the hospital would have on care for patients?

1 A: I didn't expect it to have any impact on care
2 for patients.

3 Q: Did you take on yourself, and only yourself, the
4 full responsibility for sending Nurse Witzel to the
5 hospital?

6 A: Yes.

7 Q: Did you rely on anyone else in accepting that
8 responsibility?

9 A: No.

10 Q: Did you get a legal opinion prior to sending
11 Nurse Witzel?

12 A: Yes.

13 Q: Did you rely on that legal opinion when sending
14 Nurse Witzel to the hospital?

15 A: Yes.

16 Q: Pass the witness at this time.

17 REDIRECT EXAMINATION

18 BY AMY SWANHOLM:

19 Q: Yes, thank you. Dr. Bowden, isn't it true that
20 you tweeted out, excuse me, that you posted in social
21 media that you wanted media to know that the nurse was on
22 her way to the hospital?

23 A: Well, that was what the lawyer advised.

24 Q: I'm just asking you if you posted on social
25 media, trying to get media attention, when you were

1 sending the nurse to the hospital?

2 A: Well, there was a man's life on the line, so
3 yes. And that was what the lawyer advised.

4 Q: So is it fair to say that you signed on to be a
5 part of this legal proceeding and you just kind of went
6 along for the ride?

7 A: What does that mean?

8 Q: Well, it sounds like --

9 A: I don't -- along for the ride -- I was trying to
10 save somebody's life. That's what I was trying to do. I
11 was trying to save the life of a father of six children.

12 Q: Okay. Do you think that that perspective
13 overrides the basic legal requirement and basic medical
14 requirement to have privileges at a facility before you
15 treat patients at that facility?

16 A: I made every effort to follow the law, I made
17 every effort to do everything correctly. I waited as long
18 as possible, I got the green light from the legal expert,
19 because this was a legal matter. My intention was to help
20 a dying man.

21 Q: Was that dying man without any other medical
22 providers that were providing care for him, or did he have
23 medical care and medical providers that were providing
24 care to him?

25 A: Yeah, his medical providers were talking

1 hospice. They had basically given up.

2 Q: So he did have medical providers that were
3 providing care to him during that time period?

4 MICHAEL BARNHART: Objection, asked and answered.

5 JUDGE LINDA BURGESS: I'm going to allow the
6 question.

7 A: Can you repeat the question, please?

8 Q: So you agree that he did have medical providers
9 that were providing care to him in October and November of
10 2021?

11 A: Yes, I agree.

12 Q: And in fact, he had a whole team of medical
13 providers that were providing care during that time
14 period, yes?

15 A: I was one of those. I had a doctor patient
16 relationship with him, as you guys admitted.

17 Q: Were you his only medical provider or were there
18 a team at that time?

19 A: Yeah, I was not his only provider.

20 Q: Okay. Is it fair to say that there was a
21 disagreement between you and his other medical providers
22 about what the proper course of treatment was for the
23 patient?

24 A: Yes, and that is not uncommon.

25 Q: Okay. Would that common occurrence justify

1 disregarding the requirement to have privileges at a
2 facility?

3 A: If there were not a lawsuit involved, yes, but
4 there was a lawsuit involved. It was a different
5 circumstance.

6 Q: But again, you knew you didn't have privileges
7 at Huguley Hospital on November 10th, 2021.

8 A: If there had not been a lawsuit involved, then
9 it would have been wrong, there was a lawsuit involved.
10 This was a different circumstance, this is a circumstance
11 I had never encountered before. I doubt -- I know I will
12 never encounter this going forward. In retrospect, I
13 should have hired my own lawyer to navigate this more
14 smoothly. But this was part of a lawsuit. This was not a
15 typical get privileges and try to treat a patient.

16 Q: If someone told you that you should do something
17 contrary to what you know to be correct as a physician,
18 you're not going to do that automatically, right?

19 MICHAEL BARNHART: Judge --

20 A: Like --

21 MICHAEL BARNHART: Wait. Objection. This is getting
22 too argumentative.

23 JUDGE LINDA BURGESS: I'd like Ms. Swanholm to move
24 on.

25 Q: Okay. Doctor, is it possible that during this

1 time period, Huguley Hospital was doing more than one
2 thing? Working to appeal the TI while also working to
3 comply with the TI that was in effect at the time, on
4 November 8th, 9th.

5 A: What is a TI?

6 MICHAEL BARNHART: Objection, relevance.

7 Q: Temporary Injunction. The exhibit that
8 Doctor -- you just looked at.

9 MICHAEL BARNHART: I've got an objection, Judge.

10 JUDGE LINDA BURGESS: Let's start over with the
11 question and use the word Temporary Injunction.

12 Q: Sure. Dr. Bowden, is it possible that Huguley
13 Hospital was both working to get you potentially
14 credentialed while also simultaneously working to pursue
15 their legal right to appeal the Temporary Injunction?

16 A: It -- most physicians at that time, it was a
17 same day credentialing process. It was not the type of
18 credentialing process that they put me through. So it
19 suggests that they weren't making their best effort.

20 Q: So on November 9th, they -- you resubmitted that
21 application, correct?

22 A: I believe so.

23 Q: And you agree that you got correspondence from
24 Huguley that said, "All right, send it in. We've got our
25 board of directors meeting on the evening of November

1 11th." Yes?

2 A: Yes.

3 Q: So what's roughly that time period?

4 A: What do you mean?

5 Q: Well, how long is it between November 9th and
6 November 11th?

7 A: Two days.

8 Q: Okay. Do you think two days is an unreasonable
9 time period?

10 A: When somebody's about to die? Yes.

11 Q: So do you think that because you believed he was
12 about to die, it justified circumventing that privilege's
13 process?

14 A: Well, it was a --

15 MICHAEL BARNHART: Objection, misstates facts in
16 evidence. The medical record in this case said he was
17 going to be put on hospice.

18 AMY SWANHOLM: So, the medical records are not --

19 MICHAEL BARNHART: Not what Dr. Bowden believed. Dr.
20 Bowden --

21 JUDGE LINDA BURGESS: No, no, no, woah, woah, woah.
22 I'm not going to hear an objection that is going to try to
23 state facts not in the record. So we're going to start
24 over. Mrs. Swanholm, please ask your question, and then
25 if Mr. Barnhart has objection, he can make an objection.

1 Q: Doctor, do you believe that -- excuse me. Let
2 me start over, sorry, remember my own statement. Does
3 your belief that the patient was about to die, justify
4 overriding that privileging process that was in place from
5 November 9th with the understanding it would probably be
6 granted on November 11th?

7 A: The judge ordered emergency temporary
8 privileges, and I don't define emergency as 48 hours.
9 Emergency is not 48 hours, emergency is same day. And
10 that -- these judge -- These lawyers did 148 cases. I was
11 the only one where we ran into this kind of issue. If the
12 judge orders emergency temporary privileges, that's
13 typically a same day process. It is not 48 hours.

14 Q: I'm asking about here, and I'm asking about you.
15 Is your belief that the patient was going to die,
16 justification for circumventing that privileging process?

17 A: I was following emergency -- my belief was that
18 the judge ordered emergency temporary privileges.

19 Q: Objection, non-responsive.

20 MICHAEL BARNHART: Your Honor, in response to that
21 objection, I think it was responsive --

22 JUDGE LINDA BURGESS: Just a second. I'm not going
23 to sustain the objection. I understand what the question
24 was, and I understand what the response was. We are
25 listening.

1 Q: All right. Dr. Bowden, to your knowledge, are
2 legal fees at issue in an administrative proceeding?

3 A: What do you -- I don't understand the question.

4 Q: Sorry, one second. I think we're about done.
5 Dr. Bowden, are you familiar with the decision from the
6 Court of Appeals in this matter?

7 A: Are you talking about the patient's case? Yes.

8 Q: Okay. So you're aware that the Court of Appeals
9 found that under the facts of this case, the trial court
10 had no legal authority to intervene in Huguley's legal
11 exercise of its discretion to grant, deny, or limit Dr.
12 Bowden's ICU credentials?

13 A: I would have to go look at that and also talk to
14 the lawyer. I don't remember.

15 Q: Okay.

16 AMY SWANHOLM: All right. No further questions.

17 JUDGE LINDA BURGESS: Mr. Barnhart, further
18 questions, sir?

19 MICHAEL BARNHART: Just a couple.

20 RECROSS EXAMINATION

21 BY MICHAEL BARNHART:

22 Q: What was your -- on November 10th, 2021, what
23 was your understanding of the patient's prognosis?

24 AMY SWANHOLM: Objection. That goes outside the
25 scope of my cross, or redirect, I guess we would call it

1 here.

2 JUDGE LINDA BURGESS: I'm gonna allow it.

3 MICHAEL BARNHART: You said you're allowing it,
4 Judge?

5 Q: You can answer that.

6 A: That he was about to die.

7 Q: And what was your understanding of changes in
8 the treatment plan being made by the other members of his
9 medical team?

10 A: That there were not going to be any significant
11 changes.

12 Q: Was there any doctors -- are you -- what
13 doctors, other than you, were proposing changes to his
14 medical plan in an attempt to improve his prognosis?

15 A: None.

16 MICHAEL BARNHART: Pass the witness, Judge

17 AMY SWANHOLM: I'm sorry, I have to ask just a
18 few --

19 JUDGE LINDA BURGESS: Oh, no thats --

20 AMY SWANHOLM: very short questions.

21 JUDGE RACHELLE ROBLES: [indiscernible] your time.

22 Go ahead.

23 FURTHER REDIRECT EXAMINATION

24 BY AMY SWANHOLM:

25 Q: Dr. Bowden, what was the date of death of this

1 patient?

2 A: April 11th, 2023, I believe.

3 Q: So that was over a year and a half after the
4 stuff that happened during November of 2021, correct?

5 A: After this case, a new doctor took his case
6 over.

7 Q: I'm just asking you if you acknowledge that the
8 patient did not immediately die in November of 2021.

9 A: The toughest patient I have ever seen. It was
10 actually amazing. Probably because his wife was by his
11 side every day.

12 Q: All right. And during that time period, again,
13 the patient had a full medical team that was providing
14 care to him? Yes.

15 A: He had a different medical team after the case.

16 Q: At all times in October and November of 2021 and
17 ongoing, he had a medical team that was providing care to
18 him, correct?

19 A: I was part of that team.

20 Q: Did you ever prescribe anything that was
21 actually received by the patient?

22 A: No.

23 Q: Okay. So you would agree that the medical care
24 provided by other medical providers did end up allowing
25 him to have more time with his friends and family, yes?

1 A: Well, he lost half of his body weight. He was
2 in and out of the hospital repeatedly. It was a very
3 tough, very tough situation. He did not have quality of
4 life, and at the end, he basically gave up.

5 Q: So is that a yes or a no?

6 A: Sorry, can you repeat the question? I forgot.

7 Q: You would agree that he had a team of medical
8 providers that were providing him care during this time
9 period, correct?

10 A: He had two different teams. He had a team
11 before the case, then he had a different team after the
12 case.

13 Q: And again, you were not a provider that actually
14 ended up treating him during that time period or after,
15 correct?

16 A: I had a physician-patient relationship with him
17 at one point, but I did not -- I was never allowed to
18 treat him.

19 Q: Okay. So the plan of care provided by those
20 other teams at Huguley and thereafter did end up allowing
21 him to spend more time with his friends and family, yes?

22 MICHAEL BARNHART: Objection, assumes facts not in
23 evidence.

24 JUDGE LINDA BURGESS: I think it's been established,
25 his death.

1 Q: Okay. All right, thank you.

2 JUDGE LINDA BURGESS: Let's move on.

3 AMY SWANHOLM: That's all I have, Your Honor.

4 JUDGE LINDA BURGESS: Anything further, Mr. Barnhart?

5 MICHAEL BARNHART: Nothing, Judge.

6 JUDGE LINDA BURGESS: Okay. Anything further, Board?

7 Well, hold on, the Board has moved it to you. I'm sorry,

8 Mr. Barnhart. Mr. Barnhart, what do you think --

9 AMY SWANHOLM: Uh --

10 JUDGE LINDA BURGESS: What now? I'm sorry?

11 AMY SWANHOLM: I'm sorry, we haven't rested or passed

12 yet.

13 JUDGE LINDA BURGESS: Oh, I am so sorry. Go ahead.

14 AMY SWANHOLM: I -- I'm -- we're about to pass, I

15 believe, but depending on --

16 JUDGE LINDA BURGESS: Consult, I'm sorry.

17 AMY SWANHOLM: Okay. I'm -- yeah, I think depending

18 on just hearing what Mr. Barnhart had said through

19 discussions on the record, we don't know whether there

20 will or will not be testimony about this, but it looks

21 like there might be. So I do just want to signpost to you

22 that we may have a rebuttal witness. So, we are not

23 resting, we'd just like to pass.

24 JUDGE LINDA BURGESS: Okay.

25 MICHAEL BARNHART: And Judge, we would like to know

1 who that rebuttal witness to be sure they were disclosed
2 during discovery.

3 AMY SWANHOLM: Yep, this would be --

4 JUDGE LINDA BURGESS: If that --

5 AMY SWANHOLM: Okay. If -- these are individuals
6 that were disclosed during discovery, if it comes up, we
7 will call the witnesses at that point.

8 JUDGE LINDA BURGESS: Okay, so you need to -- you've
9 rested, you need to rest, and then I need to turn it over
10 to -- you, do a rebuttal and you do a rebuttal.

11 AMY SWANHOLM: Okay.

12 JUDGE LINDA BURGESS: Your case in chief is over, am
13 I correct?

14 AMY SWANHOLM: Yes, Your Honor.

15 JUDGE LINDA BURGESS: Okay, Mr. Barnhart?

16 MICHAEL BARNHART: So at this time, since they
17 rested, we would ask for a directed verdict if they have
18 not met their burden on aggravating factors.

19 JUDGE LINDA BURGESS: Okay, well that's going to be
20 denied and is denied.

21 MICHAEL BARNHART: And we would, we'd also like for
22 a -- some instructions on what you and Judge Robles are
23 intending on schedule, as we set our witnesses.

24 JUDGE LINDA BURGESS: So it's about, it's about 12
25 o'clock. We're happy to go, you know, a little bit longer

1 before the lunch break, but if you'd like the lunch break

2 now, we can lunch break now.

3 MICHAEL BARNHART: We could use a time to work out
4 the technical issues in getting some of our evidence on
5 the screen, so. We're struggling with that, so.

6 JUDGE LINDA BURGESS: So it sounds like you'd like to
7 break right now.

8 MICHAEL BARNHART: If we can please.

9 JUDGE LINDA BURGESS: We can do that.

10 AMY SWANHOLM: In the interest of time, can we just
11 do 30 minutes? So, I think we're all hoping to finish
12 today if possible.

13 JUDGE LINDA BURGESS: No, he wants a break, he's
14 going to get a break. One thing I'd like to do is, Board,
15 can you call out, and I'm not holding you to it, but I
16 have it all through my notes and I think this will make it
17 better for everyone, as we go through what we all
18 understand at this time, the exhibits are. Ms. Swanholm,
19 do you want to start or do you want me to start?

20 AMY SWANHOLM: I can go through it pretty quickly if
21 you want.

22 JUDGE LINDA BURGESS: Let's do. And I -- well, I
23 think on Respondents Exhibits I have -- Mr. Barnhart ask
24 for your help on this too. So on Respondents Exhibits we
25 have 23, 27, 29, 48, 49, and 59. Is that right?

1 MICHAEL BARNHART: Which is telling me I technically
2 forgot to offer 22 into evidence.

3 JUDGE LINDA BURGESS: Oh, okay. Okay, let's look at
4 that. That's on a different piece of paper.

5 AMY SWANHOLM: We don't object to entering 22 into
6 the, into the record. I think it's actually already in as
7 an MSD Exhibit.

8 JUDGE LINDA BURGESS: That's okay, we're going to get
9 that in right now. Respondents Exhibit 22 is in. Does
10 that sound right, folks, on Respondents Exhibits?

11 MICHAEL BARNHART: And you agree -- and you said 49
12 as well, correct?

13 JUDGE LINDA BURGESS: I did, and does that --

14 MICHAEL BARNHART: That sounds right.

15 JUDGE LINDA BURGESS: Ms. Swanholm?

16 AMY SWANHOLM: Yes.

17 JUDGE LINDA BURGESS: Okay, excellent, excellent.

18 Let's start working -- maybe that got onto another page or

19 on the floor. Let's see. Board Exhibit 1 was admitted.

20 Board Exhibit 2 was admitted. Board Exhibit 3 was

21 admitted. Board Exhibit 4 was admitted. Board Exhibit 5

22 was admitted. Board Exhibit 8 was admitted. Board

23 11 -- Board Exhibit 11 was admitted. Board Exhibit 13.

24 Board Exhibit 14.

25 AMY SWANHOLM: I think we also wanted to admit if we

1 didn't, exhibit 13, the objection was previously
2 overruled.

3 MICHAEL BARNHART: Yeah, I think she said it was.

4 AMY SWANHOLM: Okay, sorry, just making sure.

5 MICHAEL BARNHART: No, I mean, yeah, no objection, if
6 it's not.

7 JUDGE LINDA BURGESS: Okay, I may just not have that
8 readily in front of me.

9 AMY SWANHOLM: Okay.

10 JUDGE RACHELLE ROBLES: Board Exhibit 13 was
11 admitted, but only the first page.

12 JUDGE LINDA BURGESS: Okay, thank you. I think that
13 might help everyone as we go into our next section -- our
14 next -- after we come back from the break. So we'll break
15 for 45 minutes now. Yes, Ms. Swanholm.

16 AMY SWANHOLM: So we had 14 and 18 as well.

17 JUDGE LINDA BURGESS: Oh, goodness. I'm so sorry.
18 Let's see. You did, it's right here, Exhibit 14.

19 AMY SWANHOLM: And then 18 is that screenshot that we
20 showed about --

21 JUDGE LINDA BURGESS: Yes, thank you.

22 AMY SWANHOLM: -- board certification.

23 JUDGE LINDA BURGESS: And on the break, why don't you
24 send it over to Mr. Barnhart if he wants to use it?

25 AMY SWANHOLM: Yep, we can do that. There was a

1 little, like, pop up on that. We'll just put that on the
2 following page so that everybody has that information.

3 JUDGE LINDA BURGESS: Okay.

4 AMY SWANHOLM: And put it on the second page.

5 JUDGE LINDA BURGESS: So we'll come back at 12:50,
6 does that sound acceptable? We'll see everyone back at
7 12:50 then.

8 (Off the record)

9 (Back on record)

10 JUDGE RACHELLE ROBLES: This is Judge Robles with the
11 State Office of Administrative Hearings. It's now 12:52
12 p.m. We are coming back after our lunch break, and now
13 we're reconvening. Right before the break, TMB or the
14 Board had rested, so we're going to go ahead and start
15 with the Respondent's direct case. Are there any
16 housekeeping matters that we left on the table before we
17 begin? Sounds like no. Okay. Ms. Swanholm, did you have
18 a comment --

19 AMY SWANHOLM: No, Your Honor.

20 JUDGE RACHELLE ROBLES: -- or question?

21 AMY SWANHOLM: We're sending the Board Staff's
22 Exhibit 18 now. Apologies, got pulled into a meeting over
23 lunch.

24 JUDGE RACHELLE ROBLES: Okay, thank you so much for
25 doing that. All right, so now that TMB has rested, we're

1 turning to the respondent. And Mr. Barnhart, just so we
2 get an overview, can you give us an order of witnesses
3 that you intend to call before we jump right in?

4 MICHAEL BARNHART: Yes, Judge. Just to be clear,
5 we're not planning on recalling Dr. Bowden, we're going to
6 rely on her testimony from this morning on the mitigating
7 fact. We're going to call Kim Witzel first, who I believe
8 is in the waiting room.

9 JUDGE RACHELLE ROBLES: Okay.

10 MICHAEL BARNHART: Second will be Beth Parlato and
11 then third will be Mollie James, Dr. Mollie James.

12 JUDGE RACHELLE ROBLES: Okay, thank you for that. So
13 just to clarify, you do not intend to call Ms. Jerri Ward,
14 is that correct?

15 MICHAEL BARNHART: Not with the agreement that Dr.
16 Bowden didn't know about the state work. That really was
17 the main function of our testimony.

18 JUDGE RACHELLE ROBLES: Okay, I'll go ahead and
19 bracket Ms. Ward in our list of witnesses just so we can
20 keep an eye on that. And because of the Board's request
21 earlier, we did create a breakout room, you know, in the
22 event that -- because if everyone recalls, the board did
23 invoke the rule so we can put a witness in there if need
24 be, you know, pending other testimony that's being given.
25 Just so you know, everyone, you know, just so everyone

1 knows that that is available for that.

2 AMY SWANHOLM: And Judge, just as a preliminary
3 matter with Kim Witzel and we're not disputing the
4 authenticity of that video. At the pre-hearing
5 conference, Mr. Barnhart had said that he would be calling
6 her for that purpose only. So if that's still the case,
7 were comfortable with authentication on that video and
8 will not object to it being admitted into the record.

9 JUDGE RACHELLE ROBLES: Did you have a response to
10 that, Mr. Barnhart?

11 MICHAEL BARNHART: I do think that it is worthwhile
12 having the video shown here for you and having her testify
13 about what happened leading up to and after the video
14 ended.

15 AMY SWANHOLM: I'm not sure, that would be --

16 JUDGE RACHELLE ROBLES: Go ahead, Ms. Swanholm.

17 AMY SWANHOLM: I'm not sure that will be relevant,
18 but we'll object when it comes up.

19 JUDGE RACHELLE ROBLES: Okay, so let's start with the
20 Respondent's case in chief. And Mr. Barnhart, if you want
21 to call your first witness.

22 MICHAEL BARNHART: So, we call Kimberly Witzel.

23 JUDGE RACHELLE ROBLES: Okay, let's see. Is she in
24 here yet? Or is it -- I have someone as having called in
25 as Kimberly, is that Ms. Witzel?

1 MICHAEL BARNHART: Let me double check.

2 AMY SWANHOLM: You're in the middle. There you go.

3 Looks good.

4 JUDGE RACHELLE ROBLES: And while we're waiting, I'm
5 seeing the camera pan to Ms. Massey. Ms. Massey, are you
6 going to be doing cross-examination of this witness?

7 MEREDITH MASSEY: Yes, Judge.

8 JUDGE RACHELLE ROBLES: Is that what I'm
9 understanding? Okay, thank you.

10 MEREDITH MASSEY: Yes, Judge.

11 MICHAEL BARNHART: Yes, Kimberly is our witness,
12 Kimberly Witzel.

13 JUDGE RACHELLE ROBLES: Okay, we'll go ahead and
14 admit her into the courtroom then. Okay, good afternoon.
15 I have someone is calling in with the screen name
16 Kimberly. Can you please share your video and unmute
17 yourself and identify yourself. Good afternoon. You're
18 muted. If you could, please -- yep.

19 KIMBERLY WITZEL: Okay. How about now?

20 JUDGE RACHELLE ROBLES: Okay, thank you. Yes, we
21 can hear you loud and clear. Thank you so much. And Ms.
22 Witzel, can you please spell your last name?

23 KIMBERLY WITZEL: W-i-t-z, as in zebra, e-l.

24 JUDGE RACHELLE ROBLES: Okay, thank you. I'm
25 changing your screen -- your Zoom display name so it

1 reflects for whom you're testifying and your name, okay?

2 Alright. And Ms. Witzel, Mr. Barnhart, or the respondents
3 attorney has called you as a witness, so if you could
4 please state your name for the record?

5 KIMBERLY WITZEL: Kimberly Witzel.

6 JUDGE RACHELLE ROBLES: Okay. And I'm going to put
7 you under oath. And then, Mr. Barnhart, you can start
8 with your questioning. Ms. Witzel, please raise your
9 right hand. Do you solemnly swear or affirm that the
10 testimony given this proceeding is the truth, the whole
11 truth, and nothing but the truth?

12 KIMBERLY WITZEL: I do.

13 JUDGE RACHELLE ROBLES: Thank you. You can go ahead.
14 Mr. Barnhart.

15 Whereupon,

16 KIMBERLY WITZEL
17 was duly sworn by Judge Rachelle Robles and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MICHAEL BARNHART:

21 Q: Ms. Witzel, we've met before. My name is
22 Michael Barnhart and I attended a deposition you gave in
23 this case previously, is that correct?

24 A: Yes, sir.

25 Q: How did you come to know the respondent, Mary

1 Bowden?

2 A: Friend of mine who is a nurse knew the patient's
3 family I guess, was neighbors with them or something. And
4 the friend of mine called me and asked if I would be
5 interested in administering that medication.

6 Q: And did you talk with Dr. Bowden before you
7 administered the medication?

8 A: Yes.

9 Q: And discussed -- did she discuss with you what
10 you were going to be doing at Huguley Hospital?

11 A: Yes, sir.

12 Q: Did you go to Huguley Hospital at some point?

13 A: Yes, sir.

14 Q: And when was that?

15 A: November 10th, 2021.

16 Q: And do you remember approximately what time?

17 A: It was evening. It was probably around 5:00 or
18 6:00 p.m.

19 Q: So what did you do when you arrived at Huguley
20 Hospital?

21 A: I met with the patient's wife outside of the
22 hospital. We sat down and kind of went over some stuff.
23 I took pictures of the court order she showed me and I
24 just kind of followed her in. I was told to bring my ID,
25 so there was a table set up at some point inside the

1 hospital. So I gave them my ID and they gave me a sticker
2 visitor badge and we proceeded to the ICU. And I just
3 followed the patient's wife.

4 Q: And did you actually enter the ICU?

5 A: No.

6 Q: So where did you get to?

7 A: The door of the ICU. She led to the door that's
8 a big magnetic locked type thing. And I guess she had
9 been going there every day, so she went to go open it. I
10 guess she knocked or rang a bell or something.

11 Q: And it was your understanding that this was
12 routine for her, she had done before.

13 A: Yes.

14 MEREDITH MASSEY: Objection, leading.

15 JUDGE RACHELLE ROBLES: Can you repeat the objection,
16 Ms. Massey?

17 MEREDITH MASSEY: Yes, I objected to leading.

18 JUDGE RACHELLE ROBLES: Mr. Barnhart, please rephrase
19 your question. Objection sustained.

20 Q: I believe you testified she knocked on the door,
21 rung a bell, is that correct?

22 A: Correct.

23 Q: What happened next?

24 A: I guess the director of the unit, the nursing
25 director, I believe, came to the door and opened it and

1 said that he was not going to let us in, and I was not
2 going to be giving the patient ivermectin.

3 Q: What was your impression about his attitude
4 towards you when you got to the door? Or when he opened
5 door, I'm sorry.

6 A: Attitude towards me?

7 Q: Yes.

8 A: He did not want me -- he didn't want me there.
9 He -- I don't know, it was like guarding.

10 Q: Did you have any sense that he was surprised?

11 A: No. He came to the door prepared to tell me
12 that -- we didn't go to the door and say, hey, we're here
13 to give ivermectin. He came to the door and told us we
14 weren't going to.

15 Q: And what did you do at that point?

16 A: Well, he gave us the option, he said, you can
17 leave or we'll call the police. And since we had a court
18 order, I felt like maybe the police did need to sort it
19 out. So I told the patient's wife to call the lawyer and
20 tell us what to do.

21 MEREDITH MASSEY: Judge, I'm gonna have to object to
22 hearsay.

23 JUDGE RACHELLE ROBLES: Response, Mr. Barnhart?

24 MICHAEL BARNHART: I think the simple answer at this
25 point is for us to play the video.

1 JUDGE RACHELLE ROBLES: Okay. So. Objection
2 sustained. We can play video.

3 MICHAEL BARNHART: So can you pull up Exhibit 2, the
4 video of Exhibit 2, please.

5 Q: Ms. Witzel, that's a video that you took, is
6 that correct?

7 A: Yes, sir.

8 Q: And does that reflect events that happened at
9 Huguley Hospital on November 10th, 2021?

10 A: Yes, sir.

11 Q: How long did you stay at Huguley Hospital that
12 evening?

13 A: Time-wise, I really couldn't be sure. We may
14 have -- I couldn't give you a time frame and be accurate,
15 it would just be a guess. We waited for the police to get
16 there since we had the Court Order and we thought they
17 could direct us on what to do next. I stayed until I was
18 asked to leave.

19 Q: And how many times were you asked to leave?

20 A: One time.

21 Q: So you left after the first time you were asked
22 to leave?

23 A: Yes, sir.

24 Q: What is your understanding about why the police
25 were called?

1 A: I'm not real sure. It didn't make sense to me.

2 Q: Were the police called before or after the
3 events in that video?

4 A: I believe after. I didn't watch anybody call
5 the police, I just knew that we were waiting for the
6 police. I thought that would be the right thing to do
7 with a court order.

8 Q: And did you ever return to Huguley Hospital?

9 A: No.

10 JUDGE LINDA BURGESS: Let's hold on for just a
11 moment. Let's wait for Judge Robles.

12 JUDGE RACHELLE ROBLES: Apologies, can everyone hear
13 me okay?

14 MICHAEL BARNHART: Yes, Judge.

15 JUDGE RACHELLE ROBLES: Okay, thank you. For some
16 reason, I'm having problems with my video, but apparently
17 you can hear me. So please proceed, and I'll keep trying
18 to get my video back up.

19 MICHAEL BARNHART: So, no further questions.

20 JUDGE RACHELLE ROBLES: Okay. Thank you for that,
21 Mr. Barnhart. Ms. Massey, did you have any cross-
22 examination for this witness?

23 MEREDITH MASSEY: I do, Judge. Thank you.

24 JUDGE RACHELLE ROBLES: Okay.

25 CROSS-EXAMINATION

1 BY MEREDITH MASSEY:

2 Q: Good afternoon, Ms. Witzel. I have a few
3 questions for you. Now, Ms. Witzel -- thank you. You
4 mainly communicated with the patient's wife by phone
5 calls, correct?

6 A: I guess mainly. I couldn't really be sure who I
7 talked to at what point, but I know that I had talked to
8 the patient's wife and Dr. Bowden, and I may have spoken
9 briefly to the lawyer, I'm not positive.

10 Q: Ms. Witzel, you never had privileges yourself at
11 Huguley Hospital, right?

12 A: No, ma'am.

13 Q: And you never applied for privileges at Huguley
14 Hospital?

15 A: No.

16 Q: And, Ms. Witzel, you don't know whether Dr.
17 Bowden ever applied for privileges at Huguley Hospital,
18 right?

19 A: I don't know.

20 Q: And you don't know whether Dr. Bowden ever
21 received privileges at Huguley Hospital?

22 A: I assumed a court order was a temporary
23 privilege. That's what I was under the impression of.

24 Q: You never had a discussion with Dr. Bowden about
25 her getting privileges at Huguley Hospital, right?

1 A: No.

2 Q: You testified that you sent Dr. Bowden your
3 driver's license number for her to vet you, is that right?

4 A: I believe I sent her my nursing license number
5 and probably various things. I'm not -- I don't recall
6 everything I sent her, but that was probably one.

7 Q: And while Dr. Bowden was checking out your
8 background and your credentials, you recall that you were
9 just waiting for the hospital to give some direction,
10 right?

11 A: Correct.

12 Q: And specifically, you testified that we were
13 waiting for the hospital to say that it was okay for you
14 to come up there, right?

15 A: Yes.

16 MICHAEL BARNHART: Objection, Judge. Lack of
17 foundation. I think she could make it, but I'd ask her
18 that she -- that Ms. Massey make the foundation on these
19 questions.

20 JUDGE RACHELLE ROBLES: What's your objection
21 exactly, Mr. Barnhart?

22 MICHAEL BARNHART: I think that she's quoting from, I
23 think, I don't know, but I think she's quoting from
24 Witzel's deposition, and I'd just like her to make that
25 clear.

1 JUDGE RACHELLE ROBLES: Do you have a response, Ms.
2 Massey?

3 Q: I asked her, "you testified," and then I said
4 the sentence, and she said yes, so I didn't see that there
5 was any issue.

6 JUDGE RACHELLE ROBLES: Overruled.

7 Q: All right, Ms. Witzel, you also testified that
8 you were waiting for the hospital to let you know what to
9 do. Does that sound accurate?

10 A: When to come is what that meant, yeah.

11 Q: And Nurse Witzel, you don't recall who gave you
12 instructions to go to the hospital, right? You don't
13 recall if it was Dr. Bowden or the patient's wife or the
14 patient's wife's attorneys?

15 A: Correct.

16 Q: And you don't remember what specific
17 instructions you were given about going off to the
18 hospital?

19 A: I was told that I needed an ID and I would - it
20 wouldn't hurt to have my own supplies.

21 Q: Is that pretty much the extent of what your
22 instructions were?

23 A: I mean, I had an order, a medical order from Dr.
24 Bowden. But if you're asking about the moment of arrival,
25 what I was waiting on, can you clarify that?

1 Q: Yeah. When you said that y'all were waiting to
2 get the -- to be told that you could go up to the
3 hospital, you don't remember if you received any specific
4 instructions about, oh, I've been told I can go up to the
5 hospital, here are some specific instructions. Is that
6 right?

7 A: Those were the only instructions I recall, is to
8 make sure I bring my ID and to have my own supplies.
9 That's what I recall.

10 Q: All right. Thank you, Nurse Witzel. I'll pass.

11 JUDGE RACHELLE ROBLES: Okay. Thank you, Ms. Massey.
12 Mr. Barnhart, any redirect?

13 MICHAEL BARNHART: Just a couple of questions on the
14 redirect.

15 REDIRECT EXAMINATION

16 BY MICHAEL BARNHART:

17 Q: You're a registered nurse, is that correct?

18 A: Yes, sir.

19 Q: What board supervises your license?

20 A: The Board of Texas -- Board of Nursing in Texas.

21 MEREDITH MASSEY: Your Honors, I'm going to have to
22 object. This is outside the scope of my cross and not
23 relevant to this proceeding as a whole.

24 JUDGE RACHELLE ROBLES: Response, Mr. Barnhart?

25 MICHAEL BARNHART: Ms. Massey sought to impeach this

1 witness based upon implied misconduct. And so Ms. --

2 Nurse Witzel was actually investigated by the nursing

3 board with no action taken. I think that's relevant.

4 MEREDITH MASSEY: Your Honor, may I respond? May I

5 respond, Your Honor?

6 JUDGE RACHELLE ROBLES: No, sustained. Objection.

7 Sustained. Please move on, Mr. Barnhart.

8 MICHAEL BARNHART: Pass the witness.

9 JUDGE RACHELLE ROBLES: Okay, thank you. Ms. Massey,
10 any other questions for this witness?

11 MEREDITH MASSEY: No, Judge. Thank you.

12 JUDGE RACHELLE ROBLES: Okay, thank you, so we have
13 no further questions for this witness. Ms. Witzel, thank
14 you so much.

15 THE WITNESS: Thank you.

16 JUDGE RACHELLE ROBLES: And I want to apologize to
17 everyone. My video is on the fritz for whatever reason,
18 so I will fiddle with that, the break. So for now, I'm
19 just going to have it go through with audio. Okay, Mr.
20 Barnhart, please call your next witness.

21 MICHAEL BARNHART: So our next witness is Beth
22 Parlato, and I'm verifying that she's in the -- she's
23 actually joining in the waiting room now.

24 JUDGE RACHELLE ROBLES: Okay.

25 THE WITNESS: Did I leave?

1 JUDGE RACHELLE ROBLES: You're still here, Ms.

2 Witzel, we can hear you.

3 THE WITNESS: I'm sorry. I'm trying to get out, I

4 don't know how.

5 JUDGE RACHELLE ROBLES: I can try to remove -- okay,

6 there we go. Okay, so, and Mr. Barnhart, just so you

7 know, I do have the window open to see who's waiting in

8 the wings, and we do not yet see Ms. Parlato.

9 MICHAEL BARNHART: She said she's log -- I mean, I've

10 got a text message that I just got that she's logging in.

11 JUDGE RACHELLE ROBLES: Okay, thank you. Okay, I'm

12 admitting Ms. Parlato at this point. Okay, Ms. Parlato,

13 if you could please share your video and unmute yourself.

14 Fantastic, thank you so much. I know you're just seeing

15 in a disembodied voice right now. I'm Judge Robles with

16 the State Office of Administrative Hearings, and I have

17 here with me Judge Burgess. Unfortunately, I'm having

18 video problems, so if you could please bear with me. Ms.

19 Parlato, can you please state your name for the record?

20 BETH PARLATO: Yes. Beth Parlato.

21 JUDGE RACHELLE ROBLES: Thank you so much. And as

22 you are aware, you've been called to testify as a witness

23 here in this proceeding regarding the respondent, if I

24 could go ahead and put you under oath. Please raise your

25 right hand. Ms. Parlato, do you solemnly swear or affirm

1 that the testimony given this proceeding is the truth, the
2 whole truth, and nothing but the truth?

3 BETH PARLATO: Yes, I do.

4 JUDGE RACHELLE ROBLES: Thank you. You can go ahead,
5 Mr. Barnhart.

6 Whereupon,

7 BETH PARLATO

8 was duly sworn by Judge Rachelle Robles and testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MICHAEL BARNHART:

12 Q: So, Ms. Parlato, it's good to see you again.

13 How are you familiar with Dr. Bowden, the Respondent in
14 this matter?

15 A: I first met Dr. Bowden when, several years ago,
16 when we were doing, myself and attorney Ralph Lorigo were
17 doing different cases during the COVID years, and we had
18 been retained by clients the, oh, my goodness, Patient 1's
19 wife and Patient 1. I'm sorry, oh, my goodness. I just
20 had a flip of my mind.

21 Q: We're saying patient and patient's wife.

22 A: Yep.

23 Q: Patient and patient's wife.

24 A: Correct. And Dr. Bowden was basically, I guess
25 he would -- in legal terms, say retained or hired or

1 whatever word you want to use by Patient 1's wife to act
2 on Patient 1's behalf while he was --

3 JUDGE RACHELLE ROBLES: Okay, I apologize, Ms.
4 Parlato. I'm going to jump in really quickly. If you
5 could please refer to these people as patient and
6 patient's wife, we would really appreciate it.

7 THE WITNESS: Right, can do that.

8 JUDGE RACHELLE ROBLES: Thank you.

9 THE WITNESS: Yes.

10 JUDGE LINDA BURGESS: Thank you.

11 A: So I first -- that was how I first met the
12 doctor, is when she was representing the patient and the
13 patient's wife. And we were representing the patient and
14 the patient's wife with respect to the legal aspects of
15 their case.

16 Q: What was that -- and just to clarify, what was
17 Dr. Bowden's role in the litigation against Huguley
18 Hospital?

19 A: So her role was to represent the patient,
20 Patient 1. She was sought for -- she was sought after to
21 administer a different protocol than the hospital was
22 administering. There had come a point in time with
23 patients across the country where they were given a
24 certain protocol in the hospitals. And if they were on
25 ventilators for more than, I believe it was 14 days, the

1 life expectancy at that point went way down. So myself
2 and attorney Ralph Lorigo were doing cases across the
3 country to help the patients receive an alternative
4 protocol. And Dr. Bowden was part of that group of
5 doctors that were also working across the country in
6 trying to help these patients get off ventilators, give
7 them a different protocol than the hospital was
8 administering. And quite honestly, we saw very good
9 results. So she was basically hired to administer a
10 different protocol for patient.

11 Q: Did Dr. Bowden provide expert testimony in the
12 litigation?

13 A: She did. So we did have to go to a hearing
14 because the hospital, of course, challenged our petition
15 that was filed in the Texas District Court. And since she
16 was the doctor representing Patient 1, we -- excuse me,
17 patient, we had to call her, yes, as the expert witness in
18 the case for the hearing.

19 Q: So let me take a step back. I need to do a
20 little bit of foundational questioning. Do you hold any
21 professional licenses?

22 A: I do, yes. I'm an attorney.

23 Q: And what license --

24 A: Yes, a J.D. degree.

25 Q: And where are you licensed?

1 A: I'm licensed in New York State. I've been
2 licensed since 1993, so I've been practicing over 30
3 years.

4 Q: And how many cases related to COVID treatment do
5 you recall doing in 2021 and 2022?

6 A: Right. So cases that actually went to a hearing
7 or a trial were over 200. I believe we had about 203
8 cases over 35 different states. That does not include
9 cases which we did not have to file legal documents. We
10 were able to just be retained by the patient's family, and
11 we were able to work with hospital administrators and
12 settle things out of court, so we did not have to actually
13 file a lawsuit.

14 Q: And it's already in the record that the patient
15 in this case never got the alternative treatment you were
16 promoting. Do you agree with that?

17 A: I do agree with that, correct.

18 MICHAEL BARNHART: So we want to pull up -- will you
19 pull up Respondent's Exhibit 49?

20 A: So do you want me to pull it up?

21 Q: I'm having to pull it up on the screen-share.

22 A: Okay, that's --

23 Q: So --

24 A: Yep.

25 NORA MONTEZ: Would it be in confidential?

1 MICHAEL BARNHART: No, it's right there, it's right

2 above it.

3 Q: So do you see the document there, Ms. Parlato?

4 A: Well, I see it, but it's not pulled up. But let

5 me try -- 49? I'm double tapping to try and get into it.

6 PDF, it's not opening.

7 Q: Well, and were sharing it on our screen, so you

8 should be able to see it on the Zoom call.

9 A: Yeah, it's not.

10 MEREDITH MASSEY: Your honor, we don't -- Board Staff

11 cannot see it either. It just shows the list of documents

12 inside the downloads folder.

13 MICHAEL BARNHART: That's it. Okay, so go back to

14 share. Stop share and go back to --

15 JUDGE RACHELLE ROBLES: That's also what I'm seeing.

16 MICHAEL BARNHART: We'll fix it.

17 NORA MONTEZ: Share screen.

18 MICHAEL BARNHART: Share screen. And then right

19 there to the left, to the left, right there. Okay.

20 Q: So do you see it now?

21 A: I do.

22 Q: Do you recognize this document?

23 A: Yes, I do.

24 Q: And were you involved in the litigation in

25 obtaining this order?

1 A: Yes, I was.

2 Q: At the time in November, and I'll just say it
3 this way, on November 10th of 2021, what was your
4 understanding of what this order accomplished?

5 MEREDITH MASSEY: Judge, I'm going to have to insert
6 an objection here. When we had our pre-trial conference,
7 this witness was decided to be not an expert witness. And
8 I believe Your Honors ruled that they are -- that the
9 attorney witnesses are not permitted to testify about
10 legal opinions or interpretations on court orders.

11 JUDGE RACHELLE ROBLES: Ms. Massey, can you more
12 succinctly state your objection.

13 MEREDITH MASSEY: Object that this is an attempt to
14 offer expert testimony that is already been ruled on as
15 beyond the scope of what this hearing is. And that I
16 believe Your Honors said that you did not need, being
17 attorneys yourselves, you did not need witnesses to come
18 in and provide expert opinions on legal interpretation.

19 JUDGE RACHELLE ROBLES: So outside the scope, Ms.
20 Massey?

21 MEREDITH MASSEY: Yes, Judge.

22 JUDGE RACHELLE ROBLES: Sustained. You can ask your
23 next question, Mr. Barnhart.

24 Q: Did you relay any information to Dr. Bowden
25 about this order?

1 A: Yes, I did.

2 Q: And what information did you relay to Dr. Bowden
3 about this order?

4 A: So I would have not only relayed it, but would
5 have sent it to her. Plus, the doctor was, she was
6 participating in the hearing. So she heard what the judge
7 had to say from the bench. And this order
8 granted -- well, we won at the district court level and we
9 won the hearing. And patient was to receive ivermectin
10 and it was to be administered by the doctor or a nurse
11 that was working under her care, and it was to be
12 administered without delay, immediately. I mean, this was
13 a life and death situation. This is why we brought
14 emergency petitions. We didn't file lawsuits to be heard,
15 you know, several weeks or months down the road. We would
16 have to bring emergency petitions to be able to get in
17 front of a judge basically within 24, 48 hours. So --

18 MEREDITH MASSEY: Judge, I'm sorry, I'm going to have
19 to interject and object that this is also beyond the
20 scope. At the pre-trial, excuse me, pre-hearing
21 conference, it was decided that this witness could not
22 testify about legal opinions or strategy in the lawsuits
23 with the hospital and the patient's wife.

24 JUDGE RACHELLE ROBLES: Sustained. Please ask your
25 next question, Mr. Barnhart.

1 MICHAEL BARNHART: Let's go ahead and move to -- so
2 go into the file. Open Exhibit -- TMB Exhibit 17. No,
3 so, go into Respondent's Exhibit 22. So don't do that
4 under the share.

5 NORA MONTEZ: Oh.

6 MICHAEL BARNHART: Go ahead and stop sharing.

7 NORA MONTEZ: Sorry.

8 MICHAEL BARNHART: Just go to the file folder on the
9 bottom right. Right there, and then go to the folder and
10 open Exhibit 22. Now go to share, and now go back to the
11 Zoom link and go to share.

12 NORA MONTEZ: Now I go back into Zoom.

13 MICHAEL BARNHART: There, correct.

14 NORA MONTEZ: [indiscernible]

15 MICHAEL BARNHART: And then go to share.

16 Q: So I know this is hard to read. Who is Josh
17 Ross?

18 A: I believe -- okay, so I believe Josh Ross would
19 be the -- he was the attorney that was representing the
20 hospital.

21 Q: And how much communication did you have with
22 Josh Ross in the first 10 days of November of 2021?

23 A: I'm sorry, I didn't hear the first part of the
24 question.

25 Q: How much communication did you have with Mr.

1 Ross during the first 10 days of 2021?

2 A: A lot of communication. Actually, I had just
3 testified a few minutes ago that we had hundreds of cases.
4 In this case in particular, we had -- it was very involved
5 with the hospital. We had a lot of communications.

6 Q: And when did Mr. Ross tell you that there was a
7 stay of the temporary injunction?

8 A: Mr. Ross never told me that there was a stay of
9 the temporary injunction.

10 Q: When did anyone associated with the hospital
11 tell you there was a stay of the temporary injunction?

12 A: They never did.

13 Q: How, how much contact did you have with Mr. Ross
14 on November 10th?

15 A: Again, this is so many years ago, so, more than
16 likely, I would have had telephone communication with
17 them, but it also looks like I had -- is this date
18 November 10th? Yes. It also looks like that I would have
19 had email communication with him, too.

20 Q: Well, you're actually not on this email train,
21 so I just wanted to. I know it's hard to read, so.

22 A: Okay, yeah. Do have my reading glasses on, but
23 it is very small print for me right here, but I would have
24 absolutely had communication with him.

25 Q: Who associated with the hospital had your phone

1 number?

2 A: I'm sorry again, who associated at the hospital?

3 Q: Who -- what persons that were associated with
4 the hospital had your phone number?

5 A: Well, this attorney did because we always talked
6 by cell phone. So he had my personal cell phone number.

7 Q: And so, and I think everybody's clear about
8 this. When did you learn about the stay of the temporary
9 injunction?

10 A: When the nurse went to the hospital and
11 patient's wife called me. The person who was telling her,
12 we have an order, but he wouldn't show us the order. We
13 kept asking, show it to us, take a screenshot of it, send
14 it to me, email it to me, let me look at it. And he
15 refused. And so --

16 MEREDITH MASSEY: Judge, I'm going to have to object
17 to relevance here. The issue of knowing about the stay or
18 not knowing about the stay is not at issue. It's already
19 been decided in the findings of fact.

20 JUDGE RACHELLE ROBLES: Did you have a response, Mr.
21 Barnhart?

22 MICHAEL BARNHART: Your Honor, Dr. Bowden's good
23 faith reliance on this lawyer's advice is highly relevant
24 to the mitigating factors. And what this lawyer knew and
25 when she knew it is relevant to that advice.

1 JUDGE RACHELLE ROBLES: Overruled. You can go ahead
2 and answer that.

3 A: So we -- I was not -- I was first made aware
4 from patient's wife calling me from the hospital when the
5 nurse was there. However, we didn't see the order,
6 because for whatever reason, they didn't want to show us.
7 Even when the police came, they didn't want to show us.
8 So I would not have actually seen the order until the next
9 day. Which would have been, I believe, November 11th. So
10 we had no knowledge of the stay order.

11 Q: Understood. So, Ms. Parlato, do you have TMB
12 Exhibit 11 available to you there? It would be just --

13 A: How would I find that? Is that the -- what I'm
14 looking at now, this email?

15 Q: No, it's [indiscernible], so we'll need to pull
16 up TMB's Exhibit 11.

17 MICHAEL BARNHART: Yeah, stop. Go to the folder.
18 You need to go to TMB's exhibits. Did you download TMB's
19 exhibits?

20 NORA MONTEZ: It should have.

21 MICHAEL BARNHART: Go back into Zoom and share. So,
22 Nora, scroll up if you would.

23 Q: So, Ms. Parlato, is that a picture of you at the
24 top of this image?

25 A: Yes, it is.

1 Q: Do you recognize this string of text between you
2 and Dr. Bowden?

3 A: Yes.

4 Q: In this text string -- what does this text
5 string cover?

6 A: That -- it looks like a text message between
7 myself and Doctor, and I said that I'm going to send her a
8 copy of the order that we received from the Court of
9 Appeals, and that the hospital did not -- was not granted
10 their stay.

11 Q: And then --

12 MICHAEL BARNHART: Nora, scr -- a little bit, go up a
13 bit more.

14 Q: So the bottom two messages, tell us what's
15 happening there.

16 A: Yes. So then the doctor would have asked. Her
17 response to me was, "so then, in the meantime, can he get
18 the ivermectin?" And I answered in the affirmative and
19 said, "yes, he can get one full week of ivermectin."

20 Q: Were you answering Dr. Bowden in your capacity
21 as an attorney?

22 A: I was.

23 MICHAEL BARNHART: Nora, so, can you pull up Exhibit
24 48 -- our Exhibit 48. Should be under [indiscernible].
25 So, Nora, if you could go ahead and scroll down.

1 Q: So, Ms. Parlato, do you recognize this document?

2 A: Yes.

3 Q: And can you tell us what it is?

4 A: Yes. So this is the order, which would have
5 been the order I was referring to when I sent the text
6 message to the doctor, that basically what they did was
7 they granted an expedited briefing schedule, which pushed
8 up, you know, the time frame, and that I was explaining to
9 her, you know, that we had a week before our briefs were
10 due.

11 Q: Did you construe this order as denying their
12 request for stay?

13 A: Correct. It doesn't -- I mean, yes, correct,
14 doesn't specifically address it. So in our legal opinion,
15 that was the only thing that was granted to the appellant,
16 was the request for an expedited briefing schedule, and
17 nothing else was granted.

18 MEREDITH MASSEY: Judge, I'm going to have to object
19 here to offering legal opinion and legal interpretation of
20 the written order.

21 JUDGE RACHELLE ROBLES: Sustained. We are not taking
22 testimony here on legal opinions from this witness.

23 MICHAEL BARNHART: Your Honor, the only thing we're
24 trying to offer is evidence of what was communicated to
25 Dr. Bowden at the time.

1 JUDGE RACHELLE ROBLES: Yes, and it's a fine line,
2 but I'm sustaining that. So you have to choose your
3 questions carefully, Mr. Barnhart.

4 MICHAEL BARNHART: Understood, Judge. So, and then,
5 Nora, could you pull up our Exhibit 27.

6 Q: Ms. Parlato, do you recognize this text string?

7 A: Yes.

8 Q: And you see the bubble there that begins with,
9 "I just spoke with Ralph."

10 A: Yes.

11 Q: And who is Ralph?

12 A: Ralph Lorigo. I believe I mentioned him at the
13 very beginning, he was the attorney. Him and I were doing
14 the litigation over those couple years during COVID. He
15 is also an attorney in New York State.

16 Q: You see where you say, "A half hour is
17 reasonable notice?"

18 A: I do.

19 Q: What do you mean by that? Or what did you mean
20 at the time by that?

21 A: Yeah. So that was to give the hospital notice
22 that the doctor or the nurse who was working on behalf of
23 the doctor was going to the hospital to administer the
24 ivermectin to Patient 1. This is something that came up
25 in all of our cases, I had already explained we did

1 hundreds of cases. And so what was happening is when the
2 hospital would not agree to actually administer the
3 alternative protocol, we would then utilize the doctor
4 that was on the case for the patient or a nurse that
5 worked on behalf of the doctor. So we would have to
6 arrange for that doctor to go into the hospital. So
7 we -- this came up before in other cases, and so we had
8 established through other courts and other litigation that
9 a half hour was reasonable notice to let the hospital know
10 that our doctor was on the way to administer the protocol.

11 Q: Why was reasonable notice necessary?

12 A: Well, just because, I mean, and quite honestly,
13 it probably isn't necessary because we had a court order
14 that said that the doctor could go into a hospital. But
15 we would just believe that giving reasonable notice is
16 just common courtesy, that just to give them the heads up
17 that we are coming here, we are going to administer the
18 ivermectin and to make sure that anybody who needed to be
19 there with the patient, whether other doctors from the
20 hospital or nurses, nursing staff, that everybody would
21 just be ready for us to come.

22 Q: So you just said that they'd be ready for you to
23 come. Were you trying to avoid surprise?

24 MEREDITH MASSEY: Objection, leading.

25 JUDGE RACHELLE ROBLES: Did you have a response, Mr.

1 Barnhart?

2 MICHAEL BARNHART: That is simply just trying to
3 advance a testimony. There are some -- there is some
4 permissibility to ask leading questions, advance
5 testimony. That is clear in the Section 6 of the Texas
6 Rules of Evidence. Not every leading question is
7 impermissible.

8 JUDGE RACHELLE ROBLES: Overruled. But please make
9 sure to be careful with that, Mr. Barnhart.

10 MICHAEL BARNHART: I'm -- very hard to use it
11 sparingly.

12 A: So, correct. Courtesy to just allow the
13 hospital know that the doctor was coming. So, exactly, to
14 make sure that there was no surprise.

15 Q: Did the Texas Medical Board -- when did you
16 first learn about this case against Dr. Bowden?

17 A: Fairly recently. I believe maybe sometime over
18 the summer, the past summer, in 2024.

19 Q: So it was after the -- after this case was
20 actually filed in the State Office of Administrative
21 Hearings?

22 A: Correct. I didn't learn about it until, I
23 believe I received an email from your office saying that
24 the other -- the attorneys for the other -- for the Texas
25 Medical Board would be wanting a deposition from me. And

1 I was told they wanted to do it sometime in July. That
2 was the first I heard of it. But then they never, I don't
3 believe, got in touch with me in July.

4 Q: You said the first time in July of what year?

5 A: 2024.

6 Q: Last question. What was your impression of
7 Huguley Hospital's candor and credibility when you were
8 dealing with them?

9 A: Well, I could say that what was personally told
10 to us and told to the judge throughout the proceeding and
11 afterwards, when we were trying to be able to get things
12 accomplished, the hospital's attorney was not going to
13 comply. No matter what, whether there was a court order
14 or not, the hospital's attorney was not going to comply
15 with giving ivermectin, period. He wanted to continue his
16 killing protocol and did not want to utilize an
17 alternative protocol, and he wasn't going to comply.

18 MEREDITH MASSEY: Judge, I'm gonna have to object to
19 hearsay.

20 JUDGE RACHELLE ROBLES: Sustained.

21 Q: As you are formulating your legal advice for Dr.
22 Bowden, how did your relationship with Huguley Hospital
23 affect that advice?

24 A: So we were in constant -- I was in constant
25 communication with the hospital's attorney. There was

1 even a point in time where we thought possibly we could
2 work it out outside of the court order. That he was going
3 to find somebody in the hospital to administer it, and not
4 that initial doctor, but that never ended up coming to
5 fruition. So we were in constant communication, and it
6 was very -- there were roadblocks along the way.
7 Basically, my understanding was that the hospital did not
8 want to comply, period. And so they continued to put
9 roadblocks in front of us. Even when the judge had said
10 there should be no delays in allowing Dr. Bowden's
11 credentials or whatever it is to be able to go into that
12 hospital, there should be no delay. And she was adamant
13 about that. And they continued and continued, I believe,
14 for well over a week.

15 MEREDITH MASSEY: I'm going to have to object again
16 to hearsay. What the judge might have said from the bench
17 during this proceeding, that was not captured on the
18 record.

19 JUDGE RACHELLE ROBLES: Sustained.

20 Q: You were one of the attorneys for the patient
21 himself, is that correct?

22 A: Correct.

23 Q: What were you told about his prognosis?

24 A: That he was not going to make it. We were told
25 that his prognosis was, he was going to die.

1 Q: And who told you that?

2 A: The doctors that were treating him in the
3 hospital, the attorney that was on the case and his wife,
4 the patient's wife. That -- all of that was in our
5 initial pleadings of why we requested an emergency
6 hearing.

7 MICHAEL BARNHART: Pass the witness.

8 JUDGE RACHELLE ROBLES: Ms. Massey, any questions for
9 this witness?

10 MEREDITH MASSEY: Yes, Judge.

11 JUDGE RACHELLE ROBLES: Okay, you can go ahead.

12 CROSS-EXAMINATION

13 BY MEREDITH MASSEY:

14 Q: Ms. Parlato, do you remember when you gave your
15 deposition in this case a couple of months ago?

16 A: Was it a -- I guess it was a couple months ago.
17 Honestly, I don't recall exactly when, but that sounds
18 right.

19 Q: Okay. Do you remember testifying about -- you
20 told us a lot about the work that you'd been doing in the
21 last four years since this incident happened, up until
22 now. You told us about doing a lot of public policy work,
23 you relocated, and you're now doing a bunch of public
24 policy work, right?

25 A: Correct. I'm outside of D.C., yes. And I am in

1 a different role now, correct.

2 Q: Yes. And in the last four years, you were kept
3 pretty busy with your partnership with Parlato Law.

4 A: Did I what? Did I keep Parlato Law?

5 Q: You and your husband owned Parlato Law in New
6 York, right?

7 A: Correct, we did.

8 Q: And that kept you pretty busy the last four
9 years.

10 A: No, that's not exactly true. I was not really
11 working with Parlato Law, my husband was. I was doing of
12 counsel work with Ralph Lorigo's office. And when I left
13 Ralph -- excuse me, when I left Ralph Lorigo's office, I
14 have since been working for -- I'm senior legal counsel
15 with Independent Women's Forum in Washington, D.C., so no,
16 I really have not been doing litigation through Parlato
17 Law.

18 MEREDITH MASSEY: And I'm sorry, I should have done
19 this already. Mr. Barnhart, could you please stop sharing
20 the screen so that Ms. Parlato is back to full screen?
21 Thank you.

22 Q: And Ms. Parlato, you have been spending a lot of
23 time doing medical freedom work in the last four years,
24 right?

25 A: During -- I was doing that during the time that

1 New York State was shut down and we had all of the, you
2 know, COVID shutdowns. So when that ended, then I had not
3 been doing that anymore.

4 Q: But would you say it's fair to say that you've
5 had a lot going on in the last four years with all of
6 these things since this incident happened at Huguley
7 Hospital until this hearing today?

8 A: Would that be fair to say that I have a lot
9 going on? Sure. I think all of us can say, as lawyers
10 are busy, yes.

11 Q: All right. Leading up to this hearing today, is
12 it still true that you have not spoken to Dr. Bowden, to
13 Doctor -- to Jerri Ward, to Ralph Lorigo, or to Kimberly
14 Witzel?

15 A: I don't know who Kimberly is, but yes, correct
16 to the other three. I have not spoken to them.

17 Q: All right. Thank you. And Ms. Parlato, isn't
18 it true that you don't know what Dr. Bowden knew about the
19 status of her privileges application when the nurse went
20 to the hospital?

21 A: Can you repeat that? Is it true that I didn't
22 know?

23 Q: Right. Isn't it true that you don't know what
24 Dr. Bowden knew when the nurse went to the hospital?

25 A: I don't know.

1 MICHAEL BARNHART: Your honor --

2 A: I wouldn't agree --

3 Q: Wait, wait.

4 A: I'm sorry.

5 Q: Ms. Parlato. Wait.

6 MICHAEL BARNHART: Your Honor, I'm going to object
7 and ask the TMB give the same caution that we were given.
8 If they're going to get into legal questions with this
9 witness, then we should be able to ask more broadly legal
10 questions as well. This is getting in that realm of
11 trying to use this witness as a legal expert.

12 JUDGE RACHELLE ROBLES: Okay, Mr. Barnhart, it sounds
13 like there's a lot going on there, but can you succinctly
14 sustain your objection, please?

15 MICHAEL BARNHART: So, as Ms. Massey objected, we
16 also object that this is outside the scope of what she's
17 being permitted to testify on.

18 JUDGE RACHELLE ROBLES: Sustained.

19 MEREDITH MASSEY: Judge, may I ask Ms. Parlato about
20 her personal knowledge about what Dr. Bowden's
21 understanding was? If she doesn't know, then she can say
22 she doesn't know.

23 JUDGE RACHELLE ROBLES: Yes.

24 Q: All right, Ms. Parlato, I'm going to ask the
25 question a little bit differently. Isn't it true that you

1 do not know -- you do not have personal knowledge of Dr.
2 Bowden's understanding of her privileges application at
3 the time that the nurse went to the hospital?

4 A: No, I'm not going to say that that's true. I
5 could tell you what my personal knowledge was. She
6 was -- the doctor was in contact with us because she heard
7 the judge say that it basically didn't -- it didn't matter
8 about paperwork, that the hospital was to allow her
9 verbally, with no delay, was to allow her or her nurse to
10 enter into the hospital to give a patient the alternative
11 protocol. So she was under the impression from us and
12 from the court and from the court's order, in writing,
13 that there was no understanding that we needed to wait for
14 anything. And the understanding was that the hospital
15 kept -- well, I'll just leave it at that. That the
16 understanding was that as soon as we were given the okay
17 that the stay wasn't granted, that she was able to go, or
18 her nurse was able to go into the hospital to administer
19 the ivermectin.

20 Q: So I appreciate that. My question's a little
21 bit different. My question was specifically about your
22 personal knowledge of Dr. Bowden's understanding of her
23 privileges application, not to do with the order or a
24 stay. It doesn't have to do with that.

25 A: Well, I think initially you said her privileges,

1 and now you just said privileges application. That's
2 really two different things, because her privileges were
3 basically court-ordered, that she was allowed to go into
4 the hospital. An application process, I don't -- you're
5 correct. I wouldn't understand the application process
6 because that really was not relevant to what we were
7 trying to accomplish, because the court ordered her to be
8 able to be allowed to go into the hospital.

9 Q: So I'm going to show you a page from your
10 deposition just so that we can make sure we're on the same
11 page, because I think maybe either we have a
12 misunderstanding or something. So I'm going to show you
13 page 104 from your deposition transcript, and we're going
14 to start on line 15. And we're going to share our screen
15 in one second. And so what I'm going to do, Ms. Parlato,
16 is I will read the question that Ms. Swanholm posed to
17 you, and then I'm going to ask you to read your response
18 that starts with the witness. Okay.

19 JUDGE RACHELLE ROBLES: Before you ask your question,
20 Ms. Massey, I want to clarify, is this admitted as an
21 exhibit yet?

22 MICHAEL BARNHART: It is not.

23 MEREDITH MASSEY: This is her --

24 JUDGE RACHELLE ROBLES: And I understand this is an
25 excerpt from the deposition, but I want to be very clear

1 about what we're referring to here.

2 MEREDITH MASSEY: Yes, Judge, I'm pulling up her
3 deposition transcript. It has not been offered into
4 evidence.

5 JUDGE RACHELLE ROBLES: Okay.

6 MEREDITH MASSEY: I'm just showing it to her at this
7 time.

8 JUDGE RACHELLE ROBLES: Okay. You can go ahead, Ms.
9 Massey.

10 Q: All right, thank you. So I'm going to begin
11 with the question. So if Dr. Bowden acknowledged in her
12 testimony that she did not have privileges when the nurse
13 went to the hospital, would that change your statement
14 about, you think she had privileges? And Ms. Parlato
15 could you please --

16 A: No, no. It was just going up and down. I was
17 trying to find where it was. Okay, yes. Okay, so you
18 want me to read what I said?

19 Q: Yes, please.

20 A: "Yes. Yes, yeah. It would change my statement
21 because I would have been told by the hospital's attorney,
22 who knew that the hospital was fighting. They wanted to
23 make this difficult for her. We were handling this from
24 the legal end. And so whether or not what she knew or
25 what the doctor knew, I don't know. And I obviously don't

1 know what her testimony is, but in my perspective, I know"

2 and I can't read the rest.

3 Q: And it was -- you can read to the next page, but

4 you did read to the --

5 A: "I know that I would have been in contact, and I

6 know I was in contact with the hospital's attorney. He

7 would have given me the okay, and everything was all set."

8 Q: Okay. So what I -- what I'm asking you about is

9 at the bottom of page 104, when you said, "and so whether

10 or not what she knew, what the doctor knew, I don't know."

11 So that's just what I'm trying to clarify or give you a

12 chance to explain, you did or didn't have personal

13 knowledge of what Dr. Bowden knew about her privileges,

14 slash application for privileges at Huguley Hospital at

15 the time the nurse went in.

16 MICHAEL BARNHART: I'm going to object to the

17 question as it's compound, as the witness has already

18 stated, that the privilege issue and the privilege

19 application issue are two separate things.

20 JUDGE RACHELLE ROBLES: Overruled.

21 A: Okay, so --

22 JUDGE RACHELLE ROBLES: But Ms. Massey, if you could

23 please reframe it.

24 MEREDITH MASSEY: Yes, Judge.

25 Q: Okay, Ms. Parlato, my question, because I was

1 reading your testimony, and you said, "whether or not what
2 she knew, what the doctor knew, I don't know." So when
3 you said that in your deposition testimony, and then what
4 you and I just had this conversation a moment ago, my
5 question is, what was your personal knowledge of Dr.
6 Bowden's understanding of her privileges status at the
7 time that the nurse went to the hospital?

8 A: So my understanding is really exactly what I
9 just said a few minutes ago. I think that in my
10 deposition, I don't know, it was several hours long, and
11 this was a hypothetical, so I'm not exactly sure what was
12 said before, what was said prior to. But what I'm saying
13 right now is when I know at that moment, during that time
14 when we were texting and talking, and I told her, yes,
15 that you can go to the hospital, send your nurse now to
16 the hospital, that the understanding was that we had a
17 court order that said she can go. So to me, it's
18 irrelevant what her application process was, we have a
19 judge saying he could get the treatment, so she was
20 sending her nurse to deliver and administer that treatment
21 under that court order. So that's. That's what I know.
22 She knew because we discussed it.

23 Q: So, Ms. Parlato, this court order that we keep
24 talking about, this -- it's the temporary injunction
25 order, right?

1 A: Correct.

2 Q: Yeah, so in that order, there are several
3 ordering paragraphs, and one of them that you have said a
4 couple of times talks about, and I'll just pull it up.
5 The ordering paragraph says that Dr. Bowden is to be given
6 the ability to go into the hospital. Right?

7 A: Correct --

8 MICHAEL BARNHART: Your Honor, I'm going to object --

9 A: -- I don't have it in front of me, but yes.

10 MICHAEL BARNHART: Again, if we're not letting this
11 witness testify as the meaning of the order, then this
12 witness should not be testifying as the meaning of the
13 order. Again, it's outside the scope.

14 JUDGE RACHELLE ROBLES: Ms. Massey, please, I want to
15 hear that question again before I rule.

16 Q: Ms. Parlato, have you read the TI order
17 recently?

18 A: No.

19 JUDGE RACHELLE ROBLES: Ms. Massey, are you
20 withdrawing that previous question?

21 Q: I'll withdraw it. I'll withdraw it.

22 JUDGE RACHELLE ROBLES: Okay. Go ahead and ask the
23 question again, please.

24 Q: Ms. Parlato, you had said that we were handling
25 it from the legal end. Is it fair to say that respondent

1 was handling things from the medical end?

2 A: I -- from the medical end, she was waiting for
3 our okay, so she wasn't able to do anything until we gave
4 her the okay. So she did what she was supposed to do.
5 She wrote the scripts, the patient's wife filled the
6 scripts, we went to a hearing. She did everything -- she,
7 you know, examined the patient. She did everything she
8 was supposed to do medically. We were just waiting for
9 the go-ahead to be able to go into the hospital to save
10 his life.

11 Q: So, Ms. Parlato, and I think you said this a
12 second ago. You have never personally applied for
13 hospital privileges, right?

14 A: Correct.

15 Q: So in a case like this one, or let's say all of
16 the cases, the COVID cases that you mentioned, the 204,
17 did you fill out privileges applications, credentialing
18 applications, or did the doctor who was working with you
19 fill those out?

20 A: Nobody had to, that's why this case was so
21 unusual. And I had so many conversations with the
22 hospital's attorney because of COVID and there were so
23 many protocols in every -- like, protocols weren't being
24 followed during COVID. There were so many exceptions to
25 all the rules and regulations because it was a pandemic.

1 And so there was not one doctor in any other case that
2 went through this, they never had to do that. Once the
3 court ordered and allowed the doctor, well, I should say
4 allowed. Once the court issued an order and we had a
5 written order that the judge said the doctor was to
6 administer the protocol, we never got -- no other hospital
7 fought us, except for this. And I -- well, this is my
8 opinion, but I don't even know if it was the hospital so
9 much as the doctor. But --

10 Q: Well, let me ask you -- if I may, of all these
11 other cases where you said you never had to fill out, or
12 the doctor working with you never had to fill out
13 credentialing applications, how many of those were in
14 Texas?

15 A: Probably three. I can remember about three
16 cases in Texas -- possibly about three cases in Texas, but
17 we had them, like I said, in 35 other states. So we did
18 have cases in all other states, and we didn't really have
19 to go through this. So --

20 Q: And this was the only time that Huguley Hospital
21 was involved in one of the cases that you --

22 A: Correct.

23 Q: Okay. And would you agree that every hospital
24 has their own protocol, their own process or credentialing
25 physicians?

1 A: They do, correct --

2 MICHAEL BARNHART: Again Judge --

3 A: -- they do --

4 MICHAEL BARNHART: -- we're getting outside --

5 A: -- until it's a pandemic. Oh, I'm sorry.

6 MICHAEL BARNHART: So, Judge, again, we're getting
7 outside the scope of what this witness is being allowed to
8 testify on.

9 JUDGE RACHELLE ROBLES: Sustained.

10 Q: Ms. Parlato, you are practice -- you are
11 licensed to practice in New York, not Texas, right?

12 A: Correct.

13 Q: Okay. And you haven't practiced law in Texas,
14 right?

15 A: Correct.

16 Q: And for this case, it was your colleague, Ralph,
17 who was admitted pro hac vice, not --

18 A: Right. We would usually just do one pro hac
19 vice, depending on who was actually going to be the first
20 chair in the hearing. So I was at the hearing, and I was
21 in the hearing, but I was second chair, so I did not do
22 pro hac vice. Correct.

23 MEREDITH MASSEY: Okay.

24 JUDGE RACHELLE ROBLES: Okay. So I'm breaking in
25 right now. I want to remind parties to make sure to not

1 interrupt each other. Mr. Austin has the very difficult
2 job of, you know, transcribing this hearing, and we want
3 to make sure that the record is as clear as possible. And
4 one of our duties here is to make sure to develop the
5 record, and we can't do that if people are talking over
6 each other. So please make sure to wait until the other
7 person is finished answering or asking a question. If
8 there is a longer than usual answer and you have an
9 objection, please just jump in with "Objection," and then
10 state very succinctly what your objection is, and then I
11 can make a ruling, okay? And I forgot where we left off.
12 Ms. Massey, did you finish answering your -- asking your
13 question?

14 MEREDITH MASSEY: I'm sorry, Judge. Yes, Your Honor.

15 JUDGE RACHELLE ROBLES: And if you wouldn't mind
16 restating it so Ms. Parlato can answer.

17 MEREDITH MASSEY: I don't remember what question I
18 left off on. Could the court reporter please read it
19 back?

20 THE REPORTER: Yes, give me just one second.

21 JUDGE RACHELLE ROBLES: Thank you, Mr. Austin.

22 MICHAEL BARNHART: I believe you said, and for this
23 case, it was your colleague Ralph who admitted -- who has
24 admitted pro hac vice.

25 MEREDITH MASSEY: Thank you.

1 THE REPORTER: Of course.

2 MEREDITH MASSEY: And Your Honor, I believe the
3 witness gave a full answer to that.

4 JUDGE RACHELLE ROBLES: Okay.

5 MEREDITH MASSEY: I'm ready to go to the next one, if
6 that's okay.

7 JUDGE RACHELLE ROBLES: Yes, thank you.

8 MEREDITH MASSEY: All right, thank you.

9 Q: Ms. Parlato, a moment ago, you answered Mr.
10 Barnhart's question about when you told Dr. Bowden about
11 getting one full week of medication, Mr. Barnhart asked
12 you, were you answering Dr. Bowden in your capacity as an
13 attorney, and you answered yes. Is that correct?

14 A: Correct.

15 Q: All right, so I'd like to ask a couple of
16 questions about that because you actually did not have a
17 legal relationship with Dr. Bowden, right? Because you
18 didn't represent her, right?

19 A: Correct --

20 MICHAEL BARNHART: Objection. Again, we're getting
21 into legal issues, and she's asking the witness to draw a
22 legal conclusion.

23 JUDGE RACHELLE ROBLES: Did you have a response, Ms.
24 Massey?

25 MICHAEL BARNHART: I do, because Mr. Barnhart asked

1 the question about, did you answer Dr. Bowden in your
2 capacity as an attorney? I'm just trying to get a little
3 clarification on that. I --

4 JUDGE RACHELLE ROBLES: Okay, overruled. But,
5 just --

6 MICHAEL BARNHART: May I make one response to that?

7 JUDGE RACHELLE ROBLES: Mr. Barnhart, overruled. Ms.
8 Massey, I'm allowing you -- I'm allowing Ms. Parlato to
9 answer that question, but we're not going to go too far
10 outside this particular line of questioning. You can go
11 ahead and answer that, Ms. Parlato. Thank you.

12 THE WITNESS: Yep, thank you, Judge.

13 A: So I would have -- when the question was, am I
14 answering the capacity of an attorney? Well, yes, that's
15 my only capacity in this case. I'm not answering in any
16 other capacity. Myself and Ralph were representing
17 patient and patient's wife, and Dr. Bowden was patient and
18 patient's wife doctor. So therefore, we had that
19 relationship in common within this case. Therefore, I
20 answered the question, I'm answering in my capacity as a
21 lawyer, because I was. And she was waiting for us to give
22 her the okay based upon, you know, based upon whether or
23 not the court of appeals was, you know, what they were
24 going to do with the case.

25 Q: Okay. And you kind of answered that for me

1 because you said that your client was the patient and the
2 patient's wife.

3 A: Correct, we had a retainer agreement with them.
4 Correct.

5 Q: Alright, Ms. Parlato, you would agree that if a
6 physician does not have privileges, she cannot practice in
7 that hospital.

8 A: I'm not agreeing with that, because there were
9 different rules during COVID. So you want to -- I mean,
10 now in 2025, correct. But during those years of 2020,
11 2021, '22, that is not the case. Doctors were going into
12 hospitals all across this country without doing
13 form -- applying for formal privileges. I know that
14 because they were in our cases.

15 Q: Well, so when we took your deposition, we talked
16 a little bit about that, and you were asked about, and I
17 can pull this up. You were asked about, in all of those
18 cases, did the doctors always have privileges? And let me
19 pull this up because I'd like to get a little
20 clarification on that. I'm going to pull up page 34 of
21 your deposition.

22 A: Yep.

23 Q: And I'm going to start at line 20.

24 MICHAEL BARNHART: So, Judge, this is technically
25 hearsay, and the proper foundation for impeachment has not

1 been laid with this deposition.

2 JUDGE RACHELLE ROBLES: Are you objecting to Ms.
3 Parlato answering the question, Mr. Barnhart?

4 MICHAEL BARNHART: I'm objecting to the use of this
5 document for impeachment purposes because the proper
6 foundation for impeachment has not been laid. For use of
7 this document --

8 JUDGE RACHELLE ROBLES: Ms. Massey, did you have a
9 response?

10 MEREDITH MASSEY: Well, he said hearsay, and
11 I -- there's no hearsay here. I don't understand that
12 objection. So, is that objection no longer on the table?

13 MICHAEL BARNHART: No, it is hearsay because it's
14 what the court reporter or somebody else said, that she
15 said.

16 JUDGE RACHELLE ROBLES: Overruled. Please answer the
17 question, Ms. Parlato, or Ms. Massey, I'm not sure if
18 you've asked the question already.

19 Q: So, I'm going to start -- I'm going to read the
20 question starting at line 20. And Ms. Parlato, I'm just
21 going to ask that you read line 23 through 25, which is
22 your answer. So the question is, "In any of the
23 other -- those other cases, did physicians go into a
24 hospital to administer a drug where they did not have
25 privileges?" And then if you could answer.

1 A: And I said, yes. Every --

2 Q: But -- could you --

3 A: Yep.

4 Q: If you could --

5 A: Yep. "In every one of those cases, we got them
6 temporary privileges for that specific patient. So when
7 we would file the lawsuit and we would get --" If
8 somebody could scroll.

9 Q: And that's fine. That's actually the line that
10 I wanted to ask you about, because a moment ago you said
11 that you didn't have to get privileges for the doctors
12 working with you in those other cases. But then when we
13 talked about it in your deposition, you said --

14 A: It was for the court -- I'm sorry. Excuse me,
15 I'm sorry, Judge. I -- go ahead, I'm sorry.

16 Q: Yeah. And you had said, in every one of those
17 cases, we got them temporary privileges. So the doctors
18 in those other cases that you had, they did have
19 privileges before they treated that specific patient,
20 right?

21 A: They received temporary privileges through the
22 court orders. It's what I was trying to say, which is
23 what we received through this judge through the TR, you
24 know, whatever document, whatever order she signed, so
25 they would get temporary privileges through the court

1 orders. We never had to, if I could go back and try and
2 think of 204 cases, I -- you would ask me this question,
3 or somebody asked me this question, did I fill out
4 applications for privileges? No. I mean, that's all part
5 of the lawsuit that we were filing. If you looked at our
6 initial pleadings, we were asking for that. That was part
7 of our initial pleadings, that we were also asking the
8 court, as part of our declaratory judgments, to allow our
9 doctor or nurse to go into the hospital and administer the
10 alternative protocol. That language is in all of our
11 pleadings. So that's what I'm referring to, that, you
12 know, the courts would give them temporary privileges.
13 Because all of those application stuff was, at least in
14 our experience, in the cases that we dealt with, that
15 really wasn't -- because it was COVID. And it was a, you
16 know, it was a difficult time. And I think that a lot of
17 hospitals were just. They weren't following the exact
18 rules and regulations they would follow if we weren't
19 under such COVID restrictions.

20 Q: So, okay, thank you, Ms. Parlato. I want to
21 this -- I put up on the screen your deposition testimony
22 again. And it's -- I think it's just like the next page
23 from the one that we just read. And I -- I'm trying to,
24 again, get some clarification, because I feel like I'm
25 hearing kind of some different answers that I'm just

1 trying to nail down. So I'm going to start reading at
2 line number 9 of page 35 and the question -- So we're
3 going to -- I apologize, let's go back to page 34 at the
4 bottom. This is where we had stopped, and then it goes
5 over into page 35. So if you could start reading from
6 line 23, which is the part that you just read, and then
7 we'll continue on to page 35.

8 A: I said, "Yes, in every one of those cases, we
9 got them temporary privileges for that specific patient.
10 So when we'd filed the lawsuit, we would get a positive
11 result. So part of that process was we would then have to
12 get the doctor his or her temporary privileges to go into
13 that hospital to administer that protocol daily. So it
14 was an everyday thing. In Chicago, we even had the
15 privileges extended to the ICU, and the patients were on
16 the ventilator. They were given temporary privileges to
17 go into the ICU and administer the FLCCC protocol on a
18 daily basis until that patient was off the ventilator."

19 Q: So let me read the next question, because it
20 kind of ties it all together. In any of those instances,
21 did the physicians have no privileges whatsoever, whether
22 it was normal, or temporary privileges or some other type
23 of privilege?

24 A: Right. They had temporary privileges. And
25 that's what I had said. And again, what I'm saying in

1 this case.

2 Q: Okay. And then the question -- the person
3 asking the question says, "Okay, thank you." And then you
4 added a couple more lines, if you don't mind. Can you
5 start with line 15?

6 A: You want me to read?

7 Q: Yes, please.

8 A: Line 15. Well, what does it say? "They had
9 temporary privileges. Okay, thank you. And we would get
10 them." Correct. We did, it was part of our initial
11 lawsuit.

12 Q: Okay. And then we're almost finished. And then
13 when the deposition was happening, the person asking the
14 question says, "Oh, I'm sorry. Please finish your answer
15 if you'd like to." And then you said just a couple more
16 lines. Could you read 18 and 19, please?

17 A: Yes, "We would get the temporary privileges for
18 that particular patient."

19 Q: Okay. All right. Thank you.

20 MEREDITH MASSEY: So you can stop sharing the screen.

21 Q: So, Ms. Parlato, we heard Dr. Bowden testify
22 about having to fill out credentialing paperwork and
23 having to fill out this application. I think she said she
24 had to fill it out twice. Why would Dr. Bowden have been
25 trying to fill out an application for privileges at

1 Huguely Hospital if it was not necessary for her to fill
2 them out? Because you had a court order.

3 A: Because this hospital in particular, what -- no
4 matter what the judge said, was not going to allow her to
5 go into the hospital and administer the protocol. This
6 hospital in particular did everything they could to not
7 allow her to go into the hospital, period. And we knew
8 that because the attorney told us and the doctor told us.

9 Q: Wasn't there a lot -- didn't you say that you
10 had been in constant communication with the hospital
11 attorney about trying to work through this process? I
12 think in your deposition you even said they tried to
13 expedite -- you and this hospital lawyer were trying to
14 expedite this process.

15 A: Correct. But I believe she started somewhere at
16 the beginning of November and still even after the judge's
17 order, it was three days later, before we even went to the
18 hospital. So, I mean, this is a process of nearly two
19 weeks. There was no expediting. They were not going to
20 give them to her and they were not going to allow her to
21 administer the protocol.

22 Q: Well, so, but -- okay, doc -- excuse me, Ms.
23 Parlato, on November 9th, we know from the evidence, that
24 the medical staff committee sent an email to Dr. Bowden
25 with instructions for completing her application. And

1 then it would go to the committee and then it would go to
2 the board. Do you remember looking at that?

3 A: Yes, I think so.

4 Q: It was a pretty detailed letter. I think it was
5 maybe even two pages. So my question for you is, why
6 would the medical staff committee go to such great lengths
7 to give these detailed instructions and say, this is our
8 attempt to comply with our obligations under the order?
9 Why would they do that if they weren't going to comply?

10 A: Why, so you're asking my opinion, and they knew
11 they weren't going to apply, so they were giving her the
12 run-around, period. That's why things were going back and
13 forth. I believe there's also an email from the person
14 who she was sending the applications to, to the hospital's
15 attorney. And he was basically saying, you know, give
16 her -- basically giving her a hard time. There's -- they
17 weren't -- they were not going to comply with the court
18 order that has that -- nobody was denying that. It was
19 almost as if everybody knew it.

20 Q: Can you be specific what you mean by the email
21 giving her a hard time? I'm gonna see if we can find
22 that.

23 A: There -- I know there was an email which would
24 have been between Dr. Bowden and the person who she was in
25 contact with, with the application and the hospital's

1 attorney.

2 Q: All right. Are you referencing the emails where
3 Dr. Bowden supplements her application?

4 A: I don't know.

5 Q: Okay. Ms. Parlato, if it was your belief that
6 the hospital was not going to comply, they were giving Dr.
7 Bowden a hard time or the run-around, to use your words,
8 do you think it's possible that you kind of jumped the gun
9 and told her that she could go ahead and go to the
10 hospital and give the protocol? And then --

11 A: Absolutely not. And -- there's zero
12 possibility. It was absolutely not possible. Not only
13 was I practicing attorney for 30 years with an exemplary
14 record, I also was a judge for 12. So I do understand the
15 way the law works. And I never would have told her if I
16 had any indication that there was a stay order, she would
17 not have sent that nurse.

18 But we were not given the stay order. I believe it
19 was done purposely. Nobody got it. None of the lawyers
20 on the other side. And so there's no way we would have
21 given her that. We never would have told her to discharge
22 or dispatch the nurse. If we knew that the nurse was
23 not -- if we knew legally that the order was stayed, it
24 would not have happened.

25 Q: Well, okay, so taking the issue of this stay

1 away, and we're just talking about the application and
2 having it go through the process, you knew that it hadn't
3 gone through the process yet, right?

4 A: Okay. Correct. And I'll tell you what the
5 thought process was. The thought process is, we have a
6 man who -- they were telling his wife, we're gonna pull
7 him off the ventilator just so he could die. Okay? They
8 weren't keeping him on, they were gonna pull him off. We
9 were trying to save his life, and we knew that they would
10 never -- the paperwork was gonna get lost somewhere.
11 So we had a court order that allowed her to go to that
12 hospital without delay. It was already three days since
13 the judge signed that order, she signed it 8:30 in the
14 morning three days earlier. So in my opinion, when every
15 minute counts and he's dying, and we have an order that
16 allowed her to go to the hospital, administer that
17 ivermectin, because the hospital was to grant her
18 temporary privileges without delay, that in our opinion,
19 legal opinion, she was entitled to go, until or if, the
20 court of appeals stayed it. And we were unaware that
21 there was a stay, and if there was a stay, then we would
22 have told her you cannot go.

23 Q: Okay, this order that required her to be able to
24 go in, doesn't the same order require her to be granted
25 privileges? Because just the order itself wasn't the

1 golden ticket into the hospital, right? It was, she gets
2 the right to go in, but she also has to be granted
3 privileges. Wasn't it -- weren't both of those
4 requirements in that same order?

5 A: Correct, and they were in the order and we had
6 the order. And the nurse went to the hospital with that
7 order.

8 Q: But at that time, right, Ms. Parlato, at that
9 time, she did not have an email or a piece of paper or
10 anything in writing that said, you've been granted
11 privileges.

12 A: But that's never been the way it worked. I
13 don't believe there's ever been one case where that was
14 the case that we've been dealing with this. Nobody got an
15 email. It was the court order said you were to give
16 privileges. It could have been orally, it could have
17 been, okay, we're going today at 5:00. She should have
18 been able to go that day. But what happened is in this
19 particular hospital, they were getting all the red tape
20 with all this paperwork and application process. I mean,
21 I -- we had never really, we had never run into this, this
22 issue, but we knew that they were going to do that. They,
23 they did not want us, meaning to give Patient 1 basically
24 a chance at life. And that's the way I look at it.

25 Q: All right, Ms. Parlato, a couple of questions

1 about that then. If this was the case that she didn't
2 need to be granted privileges, then why did Dr. Bowden not
3 go in on November 3, or November 9, or November 8? Why
4 did she -- why didn't she go in a lot earlier than that?
5 What was -- why did you tell her it was okay on November
6 10?

7 A: Okay. So we had the order that the -- that she
8 was to be allowed to administer the ivermectin, the
9 protocol, and they were to allow her in without delay, so
10 to speak. Well, during that time period, there was -- we
11 knew, obviously, because I'd been in contact with the
12 hospital's attorney, that they were going to appeal the
13 case. They were appealing the ruling. So again, knowing
14 the law, we were -- we weren't going to give her the okay
15 if we knew that, that the ruling then was going to be
16 appealed and that we lost. So then when we got the
17 decision that they didn't grant the stay, that's when I --
18 that we gave her the advice, now you can go. Because they
19 weren't granted the stay, so now you can go, do the
20 ivermectin, however, we have this expedited briefing
21 schedule. We had to get an appellate attorney to do all
22 of this within so many days. I believe it was within a
23 week. So that was the understanding. That's why it
24 wasn't done on the 8th or the 9th, whatever date that was
25 you asked me about.

1 Q: But isn't it true that you actually did not get
2 a denial of the stay? You didn't get a denial of the
3 stay, right?

4 A: We didn't receive anything other than that order
5 that was one of the exhibits. We never received anything
6 else.

7 Q: So you got the order that granted the expedited
8 briefing schedule, right? And --

9 A: That's all we recieved.

10 Q: And the motion asked for relief in two parts,
11 right? It asked for expedited briefing and it asked for
12 an emergency stay, right? And so you --

13 A: Correct.

14 Q: Okay. And so you got the ruling on the
15 expedited briefing schedule, correct?

16 A: Correct. Because the order says we're granting
17 in part. So when you read it saying we're granting in
18 part, they granted that part. That's --

19 Q: But it also -- but it didn't say denied in part,
20 right?

21 A: Correct.

22 Q: So, you --

23 A: Correct, but it said granted in part. So
24 therefore we took that as, they did not get their stay.
25 And they didn't notify us, nobody gave us a document. The

1 attorney who I talked to all the time just forgot to give
2 it to us, so we never had it. Or else we would not have
3 dispatched the doctor, and she was relying on what we told
4 her to do.

5 Q: Ms. Parlato, when. When you were saying that
6 this was an ICU situation and it was a patient's life. I
7 don't want to misstate your testimony, but you were, you
8 were saying that a moment ago. Is it -- actually, I'm
9 going to strike that.

10 JUDGE RACHELLE ROBLES: I'm going to jump in really
11 quick and do a quick time check. I do want to note that
12 we've been going for about an hour and a half at this
13 point, and we're getting to the point where we should
14 probably take an afternoon break, especially to give Mr.
15 Austin a rest, since he's been frantically, you know,
16 transcribing everything. So, Ms. Massey, I want to check
17 in with you and ask you how many more questions you have
18 for Ms. Parlato.

19 MEREDITH MASSEY: I think probably 10 minutes.

20 JUDGE RACHELLE ROBLES: Okay. And Mr. Barnhart, I
21 know that -- I'm just assuming that you have some
22 redirect. So let's just see where we are after
23 with -- when Ms. Massey finishes her questions, and then
24 we'll check in on that. Okay?

25 MEREDITH MASSEY: I would also be fine if you wanted

1 to take an afternoon break right now, I'm at a pause.

2 JUDGE RACHELLE ROBLES: Let's go ahead and finish
3 your questions, Ms. Massey so we have a clean break, but
4 thank you.

5 MEREDITH MASSEY: Yes, Judge, okay.

6 Q: All right. Ms. Parlato, isn't it your
7 understanding that when someone applies for privileges,
8 they are notified in writing that the application is
9 granted or denied?

10 A: It wouldn't -- it's my understanding they'd be
11 notified in writing, I don't know. I mean, things were
12 done so different over the four years of COVID litigation
13 or three years of COVID litigation, so I don't know. I
14 would, you know, you want me to guess? Yes, that would
15 make sense.

16 Q: Do you believe that, since Dr. Bowden is a
17 doctor, do you believe that Dr. Bowden understands what
18 she was supposed to receive to be granted privileges, to
19 be able to follow through with sending the nurse? Do you
20 believe that Dr. Bowden knew what the privileges process
21 would be?

22 MICHAEL BARNHART: Again, I'm going to object this
23 outside the scope, but it requires this witness to
24 impliedly express an opinion over what the requirements
25 are.

1 JUDGE RACHELLE ROBLES: Sustained.

2 Q: I'm going to show you Board Staff Exhibit 16.

3 MICHAEL BARNHART: Your Honor, I know that this is in
4 the record in something else, we identified an issue with
5 this exhibit, literally identified it over the weekend.
6 Our Exhibits 22 and 23 show that this exhibit was actually
7 doctored before it was sent to the TMB by Huguley
8 Hospital.

9 JUDGE RACHELLE ROBLES: Did you say doctored?

10 MICHAEL BARNHART: I did. They deleted information,
11 the emails from the attorneys that are in Exhibits 22 and
12 23. It may have been unintentional, thinking it was
13 privileged matter, but the information that was sent to
14 Dr. Bowden included the communications with the attorneys,
15 and that's reflected in our Exhibits 22 and 23.

16 JUDGE RACHELLE ROBLES: Okay, well, let's take it one
17 thing at a time. So I'm tabling your objection, Mr.
18 Barnhart. Ms. Massey, which exhibit did you just refer to
19 to talk to Ms. Parlato about?

20 MEREDITH MASSEY: 16.

21 JUDGE RACHELLE ROBLES: Okay. And how does that
22 relate to Respondent Exhibits 22 and 23?

23 MICHAEL BARNHART: My understanding is that the
24 information, the emails were part -- the same emails were
25 part of some different threads depending on to whom it was

1 forwarded or to whom -- who replied to whom on that. And
2 that's my understanding of why there are three email
3 chains that have some of the same information, but not all
4 of the same, and that's why they look a little bit
5 different. I have no knowledge whatsoever about doctoring
6 any -- something being doctored. This is the first I've
7 heard about it, I have no idea.

8 JUDGE RACHELLE ROBLES: Okay. Thank you for that
9 explanation, Ms. Massey. Mr. Barnhart, I'm not quite
10 sure, you know, about the respondent -- your objection
11 right now, I'm tabling that. I want to focus right now
12 and just get through Ms. Parlato's testimony. The first
13 page, if I recall of Exhibit -- Respondent Exhibit 16 has
14 been admitted and nothing else. So we can refer to that.

15 JUDGE LINDA BURGESS: If I have a memory on --

16 JUDGE LINDA BURGESS: Yes, Judge Burgess.

17 JUDGE RACHELLE ROBLES: -- Exhibit 16, the first page
18 is not admitted, but the next two pages are. Is that
19 right, Ms. Massey?

20 MEREDITH MASSEY: That's right, Your Honor, yes

21 JUDGE RACHELLE ROBLES: Okay. Thank you, Judge
22 Burgess.

23 JUDGE RACHELLE ROBLES: We've already ruled on the
24 objections on this.

25 MEREDITH MASSEY: I beg your pardon? Oh.

1 Q: So what I want to ask you about, Ms. Parlato, is
2 this email that was sent from Dr. Bowden to the hospital
3 and you are copied on it, bparlato@parlato.com. the date
4 and time is November 10th, 2021, at 3:52 p.m. The subject
5 line says, "Supplement to application." If you need just
6 a couple minutes to skim it, that's fine.

7 A: Yeah, can you scroll down so I can see the rest,
8 please? Oh, okay.

9 Q: And that's the extent of the message. So my
10 question for you is this email with the subject line,
11 "Supplement to application," do you remember if you told
12 Dr. Bowden to send this to the hospital?

13 A: I do not. I don't recall this.

14 Q: Okay, that's --

15 A: I don't recall it.

16 Q: So the very last line of the email says, "I
17 hereby request that I be approved for said limited
18 purposes."

19 A: Okay.

20 Q: Now, the time this is 3:52 in the afternoon. So
21 I want to ask you what your thoughts are as someone who
22 was involved in this and copied on this email. Why does
23 Dr. Bowden send an email that says, Supplement to
24 application," and why does she close the email with, "I
25 hereby request that I be approved," if she -- if the court

1 order that you believed to be in effect, let her do that
2 anyway?

3 A: Well, they must have requested that. I mean,
4 the attorney knew our position. I mean, everybody knows
5 what the court order says. I mean, it's pretty -- it was
6 pretty specific. And so possibly somebody asked her to do
7 that. I mean, maybe it was the hospital attorney, and it
8 came through me, and I honestly don't recall. But she
9 wouldn't have just done it on her own. Somebody would
10 have had to say, hey, can you send this as, like, the last
11 thing they need or something? I'm not sure. I don't
12 know.

13 Q: All right, so now I'm -- yes, we've scrolled up
14 on Exhibit 16. At 4:48 we know that the director of the
15 medical staff services, her name is Tandra Cobern, she's a
16 registered nurse. She sends an email to Dr. Bowden. And
17 could you read that where it says, "Dr. Bowden, you will
18 need."

19 A: "You will need to complete your application that
20 was sent to you yesterday. I will go through the -- it
21 will go through the credentialing process. At this time,
22 you do not have privileges."

23 Q: So -- thank you. From this message, we can know
24 that Huguley Hospital intended for Dr. Bowden to submit a
25 completed application for privileges. Right?

1 A: In violation of a court --

2 MICHAEL BARNHART: Objection, it calls for
3 speculation.

4 MEREDITH MASSEY: May I respond?

5 JUDGE RACHELLE ROBLES: Yes, you may.

6 Q: I'm only referencing exactly what the explicit
7 instructions are, not asking her to extrapolate any
8 thoughts or feelings from what the explicit instructions
9 are.

10 MICHAEL BARNHART: If she's relying on --

11 JUDGE RACHELLE ROBLES: Overruled.

12 MICHAEL BARNHART: If she's relying on explicit
13 instructions [indiscernible]

14 JUDGE LINDA BURGESS: Over -- Mr. Barnhart,
15 overruled. You can go ahead and answer the question, Ms.
16 Parlato.

17 A: I apologize. Ms. Massey, can you -- counsel,
18 can you tell me what the question was? I apologize.

19 Q: Yes, of course. So from this message at 4:48 we
20 can tell that Huguley Hospital intended for Dr. Bowden to
21 submit a completed application for privileges, right?

22 A: From what she's saying, correct. In violation
23 of the court order three days later. This is what I'm
24 saying. They were doing everything they could to stall
25 her. That that's what they were doing. But above it, it

1 says per the lawyers, which means I spoke with hospital
2 lawyer. They knew we were coming.

3 Q: Okay. All right, we'll get to that. Just a
4 second. This message from the Director of Medical Staff
5 Services that was sent at 4:48 says that the hospital
6 intended for Dr. Bowden's application for privileges to go
7 through the credentialing process, right?

8 A: Correct.

9 Q: Okay. And finally, what this message says, that
10 at 4:48 on November 10th, Dr. Bowden did not have
11 privileges to treat any patient at Huguley Hospital,
12 right?

13 A: I don't know that. That's what Tanya or
14 Tandra -- that's what she said, correct.

15 Q: Right. And she is the Director of Medical Staff
16 Services. So that's what the Director of Medical Staff
17 Services has said at 4:48, right.

18 A: Correct.

19 MICHAEL BARNHART: Objection, I don't think there's
20 any testimony as to Ms. Cobern's actual position.

21 JUDGE RACHELLE ROBLES: Ms. Massey, what is your
22 question again? I'm not ruling on it just yet, I want to
23 understand exactly what you're trying to get to here.

24 Q: That the Director of Medical Staff Services
25 relayed the hospital's position because that is the

1 committee that grants or denies privileges. And if the
2 director of the committee that grants or denies privileges
3 told Dr. Bowden at 4:48, at this time you do not have
4 privileges, doesn't that say what the position of the
5 hospital is?

6 JUDGE RACHELLE ROBLES: Overruled.

7 A: My -- I'm sorry, I didn't have my phone on
8 silent, I apologize. So my response to that is,
9 apparently at 4:48, that's the email, I'm reading it. But
10 a half hour later, per the lawyers, plural, everything was
11 all set. Because in between that time, I would have had
12 conversations with the hospital attorney and we were not
13 dealing with anybody other than the attorney to try and
14 get this accomplished. And so --

15 Q: Ms. Parlato --

16 A: I think --

17 Q: I appreciate that my question's a little bit
18 different. Before we get to that 5:15 email, we're
19 talking about what was happening at 4:48. At 4:48, the
20 position of Huguley Hospital was that Dr. Bowden did not
21 have hospital privileges, right?

22 A: I, you know, I honestly, this is what this
23 person said from Advent Health, is that Huguley Hospital?
24 That's what she said. Again, I'm not in the position of
25 knowing that, to be honest with you, that's what it says

1 in the email. But I'm not even sure that I believe that
2 because just the way that everything was happening, we
3 couldn't believe everything. But yes, that's what it
4 says.

5 Q: All right, I'm going to pull up Respondent's
6 Exhibit 22, which they have offered and admitted. And I'm
7 going to have --

8 MEREDITH MASSEY: Could you please zoom in on the
9 very bottom of the email. One moment please.

10 JUDGE RACHELLE ROBLES: Before you ask your question
11 regarding that, Ms. Massey, I want to make sure that the
12 record is clear regarding Exhibit 16 that we had just been
13 discussing. I know that we did a run through of all the
14 admitted exhibits before we broke for lunch, but has. Has
15 Exhibit 16 been offered into evidence?

16 MEREDITH MASSEY: You know what, Judge? I'm
17 realizing that we haven't and so I'd like to admit Board
18 Staff Exhibit 16.

19 JUDGE RACHELLE ROBLES: Any objections, Mr. Barnhart?

20 MICHAEL BARNHART: Yeah, the objection is actually
21 that the evidence shows it's not authentic that there were
22 emails that are intervened between those two that were not
23 included in this email. And our Exhibit 22 and 23 reflect
24 that clearly.

25 Q: May I respond, Judge?

1 JUDGE RACHELLE ROBLES: Yes, you may.

2 Q: This document was part of a production that was
3 accompanied by a business records affidavit. And that was
4 not -- the authenticity was not objected to for all of
5 these years. I have no reason to believe that this was
6 doctored. As I said, my understanding is that at
7 different times the email was forwarded or replied to.
8 And that was why certain things appear a little bit
9 differently across the three.

10 JUDGE RACHELLE ROBLES: Overruled, Board Exhibit
11 Number 16 is admitted. And Mr. Barnhart, if you wish to
12 clarify with your Exhibits 22 and 23, we can do that at
13 that point, okay?

14 MICHAEL BARNHART: So Judge, I think the simplest way
15 on that would be to simply try to clarify it in the
16 closing briefs.

17 JUDGE RACHELLE ROBLES: That's fine, but Board
18 Exhibit 16 is admitted.

19 MICHAEL BARNHART: Understood.

20 JUDGE RACHELLE ROBLES: Okay, Ms. Massey, you can go
21 ahead and ask your question. I believe you we're turning
22 to another exhibit.

23 MEREDITH MASSEY: Yes. Thank you, Judge.

24 Q: I'm -- I've pulled up Respondent Exhibit 22.

25 Ms. Parlato, this is an email from Tandra Cobern. We were

1 just talking about her and her affiliation with this
2 matter. Can you please take a look at the signature block
3 on her email that is, that is visible in Respondent's
4 Exhibit 22?

5 A: Yes. She's sending it to Josh Ross.

6 Q: Okay. The signature block at the very bottom
7 where it has her credentials, it has her title.

8 A: Oh, Ms. --

9 Q: Yes.

10 A: Oh. Okay, so what would you like me to say?
11 She's Region Director, Medical Staff Services.

12 Q: It looks like --

13 MICHAEL BARNHART: Your Honor, we object to this as
14 hearsay within hearsay, that we agreed that Dr. Bowden
15 received this, but the representation itself of these
16 credentials is hearsay.

17 JUDGE RACHELLE ROBLES: Overruled. And before we move
18 on to Ms. Parlato answering the question, I do want to
19 clarify, going back to Exhibit Number 16 that we just
20 admitted about a minute ago, I do want to note that in
21 Exhibit 16, the first page is not admitted into evidence.
22 Just the two pages that follow.

23 MEREDITH MASSEY: That's correct, Judge. Yes.

24 JUDGE RACHELLE ROBLES: Okay. All right, so the
25 record's clear. But Ms. Massey, if you could please

1 re-ask your question so Ms. Parlato can answer.

2 Q: Ms. Parlato, I was asking you to take a look at
3 and read aloud Tandra Cobern's signature block, her email
4 signature that says her credentials, her title, her
5 employer, her position. Could you just read those three
6 lines, please?

7 A: "Tandra Cobern, RN, MSOW-C, southwest Region
8 Director, Medical Staff Services, Director of Quality,
9 Texas Health, Huguley Hospital."

10 Q: All right, thank you so much. All right, so now
11 I'm going to go back to -- let's see. Ms. Parlato, do you
12 see the timestamp on the email in Respondent's Exhibit 22?

13 A: Right. At 4:39, she's asking the attorney, "Do
14 you want me to tell her she must fill out an application?"

15 Q: And then if we scroll up and we see the
16 response, the response timestamp says 4:44 and 58 seconds
17 p.m., right?

18 A: Correct.

19 Q: All right, so this is Josh Ross, who you said
20 was the hospital lawyer, who you had been having a lot of
21 communication with, right?

22 A: Correct.

23 Q: All right, so Josh Ross is Replying to Tandra
24 Cobern's email that was sent a few minutes prior. Could
25 you please read what Josh Ross has said to Tandra Cobern?

1 A: Yep. "You should handle it exactly as it would
2 be handled if it wasn't her, but some other doctor.
3 However you would reply to that person, do the same with
4 her." Again --

5 Q: All right, so we --

6 A: -- we know that they were not going to make this
7 easy for her. They were stalling her at every single
8 chance they can get.

9 Q: Okay, Ms. Parlato, we just established that
10 Tandra Cobern was the director of medical staff services
11 at Huguley Hospital. We just looked at her signature
12 block.

13 MICHAEL BARNHART: Object to that. Assumes facts not
14 clearly in evidence.

15 JUDGE RACHELLE ROBLES: Do you have a response --

16 MEREDITH MASSEY: We just --

17 JUDGE RACHELLE ROBLES: -- Ms. Massey?

18 MEREDITH MASSEY: Yes, Your Honor, we just looked at
19 her signature block. This is his exhibit, I mean, this is
20 Respondent's Exhibit 22. There was no previous discussion
21 about concerns of authenticity. I don't see why we can't
22 rely on the signature.

23 JUDGE RACHELLE ROBLES: Overruled. Let's move on,
24 please.

25 Q: All right, Ms. Parlato, so we're looking at this

1 email exchange from Ms. Cobern -- between Ms. Cobern and
2 Mr. Ross. All right, so what he says --

3 MEREDITH MASSEY: If you could scroll down, please.

4 Q: What he says is, to handle it the way -- "You
5 should handle it exactly as it would be handled if it was
6 some other doctor." And we know that Tandra Cobern is the
7 director of medical staff services, which is the committee
8 that grants or denies privileges. So what is your
9 understanding as a person involved in this? Not as
10 patient's lawyer. What is your understanding of what is
11 being told to Huguely Hospital's credentialing committee?

12 A: My understanding, in reading this, is probably
13 not the same as everybody else's because I'm looking at
14 it, looking that she -- why -- if she does this every day,
15 this is what she does, why is she reaching out to a lawyer
16 for a decision? She's reaching out to the lawyer because
17 they know that they're under court order. And this doctor
18 in particular, Dr. Bowden, was supposed to get special
19 privileges. They weren't supposed to do all this
20 application process. They weren't supposed to go through
21 all the red tape, and they weren't supposed to take three
22 days to be able to do it. And so I'm looking at it as,
23 this is just another evidence of they were not going
24 to -- they did not want her to try and save Patient 1's
25 life, period. So I'm looking at it different than you

1 are. I see what it says, but again --

2 Q: But, Ms. Par --

3 A: Go ahead, I'm sorry

4 Q: But Ms. Parlato, isn't this the hospital's
5 attorney telling the credentialing committee to follow
6 their protocol?

7 A: And -- but he couldn't -- that's what my point
8 is. He was not supposed to be doing that per court order,
9 which is -- I had a conversation after the fact, a half
10 hour after all of this happened. I probably had the same
11 reaction now, as I'm getting a little heated up here
12 because it just, it's so unconscionable what happened
13 here. Anyway, I would have had a conversation with him.
14 He then knew it was okay for her to go. I'm not sending
15 her without a conversation with this attorney. I talked
16 to this attorney. He knew that we were going. Which is
17 evidence of the above email if you kept scrolling up.

18 Q: We will get to that, I promise. What my
19 question about that is, is the hospital attorney a member
20 of the credentialing committee?

21 A: My guess is no.

22 Q: Okay. And what we have in writing here is the
23 hospital attorney telling the credentialing committee to
24 follow their process for processing an application for
25 privileges, right?

1 A: Because their client told their attorney that we
2 are not allowing her in the hospital to give that
3 protocol, period. We were told that, the lawyer told me
4 that.

5 Q: But Ms. Parlato, that's not what this email
6 says. Right now we're talking about this email.

7 A: Okay.

8 Q: This email that -- yes, right now what this
9 email says, if we're paying attention to the date and the
10 timestamp. This is the hospital attorney telling the
11 credentialing committee that they need to follow their
12 procedures for processing a privileges application, right?

13 A: At that time, correct.

14 Q: Right, okay. So as we know, the incident at the
15 hospital happened on the evening of November 10th. And we
16 know from the video we watched a moment ago that it was
17 around 6 o'clock. Can we agree to that?

18 A: I didn't watch a video, but yes, probably. I
19 mean, it was in the evening, so yes.

20 Q: So what I'm trying to understand is, you have
21 said that the lawyer for the hospital was telling you
22 something different at the same time that we have these
23 written emails that say, follow the normal procedure,
24 handle this the way you would, everything that we just
25 went through. Is it possible --

1 A: Correct.

2 Q: Okay, now, Ms. Parlato, I know, and you talked
3 about this a little bit earlier, back a few days prior, on
4 November 3, you had at least email conversations, but I
5 believe it was also telephone conversations because we can
6 see it in the email. You had many conversations with the
7 hospital lawyer, right?

8 A: During that whole 10 day period, correct.

9 Q: Is it possible that what you're recollecting
10 could be conversations with the hospital lawyer that
11 happened on November 3 and not on November 10?

12 A: With what? I would have had conversations with
13 him both times. What are you referencing?

14 Q: You had testified, and you've testified today,
15 that he gave the green light, he gave the okay, that y'all
16 had worked something out. Is it possible that what you're
17 remembering is the conversation you had with him over the
18 phone a few days prior, before --

19 A: No. No, it's not possible. I mean, we were in
20 constant contact over this case and we knew what they were
21 trying to do. They were -- they wanted to stall the
22 doctor until they heard from the court of appeals because
23 they were appealing the decision. We know that's what
24 happened over the last few days. So I'm not confusing
25 anything because it's two -- first of all, it's two weeks

1 and it's a completely -- one was pre-trial, prior to the
2 trial, the other, you know, conversation we're referring
3 to here is after the trial. So I would not be confused in
4 conversations.

5 Q: So what I was actually referencing happened
6 after the trial because the hearing was November 1 and 2.
7 And we can see, and I can find where that is, you had a
8 conversation with him the next day before the written
9 order for the TI came out. Does that sound familiar?

10 A: It does, because that was when they were trying
11 to find another doctor in the hospital that said that they
12 would do it. There was another doctor who believed in
13 this type of protocol, and they were trying to see if he
14 would get on board to be able to administer the ivermectin
15 and -- which the doctor was willing to do. But then
16 the -- apparently, I think that -- I don't know what
17 happened. I mean, that's all internal, I'm not exactly
18 sure, but it did not work out. So I do understand what
19 you're talking about, but that's not, that's not this
20 conversation.

21 THE REPORTER: I'm sorry to interrupt, but I need a
22 break. Is that all right?

23 JUDGE RACHELLE ROBLES: Yes, of course, Mr. Austin.
24 So I do want to note that it's almost 3 o'clock. We've
25 gone way over what we thought we would be doing when we

1 did a check about a half an hour ago. So, Ms. Massey, we
2 need to give Mr. Austin break, and frankly, I think that
3 it would be good for everyone. So please put a pin in
4 where you are and then we'll pick it up and finish out
5 your cross examination of Ms. Parlato, and then we'll
6 start with Mr. Barnhart's redirect. I think that, you
7 know, let's keep it at 15 minutes. That would put us at
8 coming back at 3:10.

9 THE WITNESS: Okay. I am having to make -- I was
10 told I'd only be an hour. I had something at 3:30 that I
11 just pushed off now at 4:00. I mean I'm an hour -- I'm
12 Eastern time. I mean this is -- I apologize, but I am --
13 this is a workday for me and I really cannot come back to
14 this.

15 JUDGE RACHELLE ROBLES: Okay. Thank you for
16 notifying us of your constraints, Ms. Parlato. So the
17 thing is that we have to take -- so Ms. Parlato, you had a
18 time commitment for when?

19 THE WITNESS: Well, it was 3:30 -- well, I'm an hour
20 ahead of you and. And so I had to text the person before
21 when you saw me go down that I had to switch now to 4
22 o'clock, it's now 3:56. So I -- and now another 15 minute
23 break, I mean now we're looking at probably not being done
24 till 5 o'clock here. I had so many other things I was
25 supposed to be doing, I mean, I apologize. I was just

1 told it would be about an hour, so I didn't plan on longer
2 than that.

3 JUDGE LINDA BURGESS: We're going to take a short
4 break for the court reporter, he's asked for. Y'all need
5 to be back. Ms. Massey.

6 MEREDITH MASSEY: Yes.

7 JUDGE LINDA BURGESS: You have got to speed this up.

8 MEREDITH MASSEY: Yes, Judge. I under --

9 JUDGE LINDA BURGESS: You should be finished -- said
10 10 minutes.

11 MEREDITH MASSEY: I apologize.

12 JUDGE LINDA BURGESS: We're going to have to take it
13 there so --

14 JUDGE RACHELLE ROBLES: And we are off the record,
15 so. Oh, sorry, Judge Burgess. We're off the record. It's
16 2:56. I'm pausing this right now.

17 (Off the record)

18 (Back on record)

19 JUDGE RACHELLE ROBLES: Okay. Good afternoon. It's
20 3:11 at this point point. And Mr. Austin, we went off the
21 record as soon as you logged off, but we can go ahead and
22 get back on the record. I am seeing the court reporter,
23 Judge Burgess, TMB and the respondent. And I know that
24 Ms. Parlato has some prior commitments. I do want to note
25 that everyone should endeavor to be more efficient with

1 their questions. As I stated previously, we stated
2 previously, we anticipated this going for about four to
3 six hours. So we need for parties to be more targeted
4 with how they're asking their questions and their follow
5 up questions. Mr. Austin, if I hadn't stated already, we
6 could please go ahead and get back on the record when
7 you're ready.

8 THE REPORTER: I'm all ready.

9 JUDGE RACHELLE ROBLES: Okay, thank you. All right.
10 And I know that Ms. Parlato has a prior commitment that
11 she needs -- really needs to get back to. Ms. Massey, any
12 other questions?

13 MEREDITH MASSEY: I just need to ask her to
14 authenticate Board Staff's Exhibit 17. I have it pulled
15 up on her screen. It is an email that she is carbon
16 copied on.

17 MICHAEL BARNHART: Judge, that's also Respondent's
18 Exhibit 25. So no objection. This doesn't need to be
19 authenticated.

20 JUDGE RACHELLE ROBLES: Okay, thank you for that, Mr.
21 Barnhart. So we would move that Exhibit -- is that
22 Respondent's Exhibit 17, you said?

23 MEREDITH MASSEY: Board Staff's Exhibit 17.

24 JUDGE RACHELLE ROBLES: Okay, so are you asking for
25 it to be admitted, Ms. Massey?

1 MEREDITH MASSEY: Yes, Judge.

2 JUDGE RACHELLE ROBLES: Any objections, Mr. Barnhart?

3 MICHAEL BARNHART: No objection.

4 JUDGE RACHELLE ROBLES: I'm sorry?

5 MICHAEL BARNHART: No objection.

6 JUDGE RACHELLE ROBLES: Okay, thank you, Mr.

7 Barnhart. Board Exhibit 17 is admitted. Anything else,

8 Ms. Massey?

9 MEREDITH MASSEY: No, Judge -- no, Your Honor. We'll
10 pass, thank you.

11 JUDGE RACHELLE ROBLES: Okay, thank you. Mr.
12 Barnhart, did you have redirect?

13 MICHAEL BARNHART: No redirect.

14 JUDGE RACHELLE ROBLES: Okay, thank you. If there
15 are any other questions for Ms. Parlato, thank you so much
16 for taking the time to testify. We appreciate it.

17 THE WITNESS: Thank you.

18 JUDGE RACHELLE ROBLES: Thank you. Okay, Mr.
19 Barnhart, do you have another witness to call?

20 MICHAEL BARNHART: We have one more witness and I
21 think I can get through her in about 15 or 20 minutes.
22 It's Dr. Mollie James.

23 JUDGE RACHELLE ROBLES: Okay, thank you. And I do
24 want to note to everyone that I did -- oh, let me go ahead
25 and start recording again.

1 JUDGE RACHELLE ROBLES: I want to appreciate
2 everyone's continued patience with my lack of video. I
3 did try to put it back on, but it's eluding me as far as
4 fixing this. So again, thank you for everyone's patience
5 regarding this. Okay, so Mr. Barnhart, you said you had
6 another witness?

7 MICHAEL BARNHART: Yes, it's Dr. Mollie James.

8 JUDGE RACHELLE ROBLES: Okay, thank you. And is
9 she -- I don't see her in the waiting room, is she going
10 to be entering shortly?

11 MICHAEL BARNHART: I just texted her to let her know
12 she's up.

13 JUDGE RACHELLE ROBLES: Okay, fantastic. Thank you
14 so much.

15 MICHAEL BARNHART: And I got a response back that
16 says "okay".

17 JUDGE RACHELLE ROBLES: Okay. Okay, still not seeing
18 your witness, Mr. Barnhart, as an update. Okay, it looks
19 like Dr. James has just logged on. I am admitting her
20 now. Okay, good afternoon. Dr. James, are you there?
21 Okay, fantastic. Thank you. I'm Judge Robles. It's the
22 disembodied voice that you're hearing. And unfortunately,
23 my video is not cooperating with me today.

24 I do want to change your Zoom display really quick
25 just to know who you are. I'm Judge Robles with the State

1 Office of Administrative Hearings, and I have here with me
2 today Judge Burgess. And we want to thank you for your
3 time for calling in to give testimony today. Can you
4 please state your name for the record?

5 MOLLIE JAMES, D.O.: Dr. Mollie James.

6 JUDGE RACHELLE ROBLES: Okay. Thank you, Dr. James.
7 Please raise your right hand so I can put you under oath.
8 Dr. James, do you solemnly swear or affirm that the
9 testimony given this proceeding is the truth, the whole
10 truth, and nothing but the truth?

11 MOLLIE JAMES, D.O.: I do.

12 JUDGE RACHELLE ROBLES: Thank you. You can go ahead,
13 Mr. Barnhart.

14 Whereupon,

15 MOLLIE JAMES, D.O.
16 was duly sworn by Judge Rachelle Robles and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MICHAEL BARNHART:

20 Q: So, Dr. James, can you tell us about your
21 medical education, please?

22 A: Yes, I'm a D.O. physician. I was trained at Des
23 Moines University. Upon graduating, I did an internship
24 and residency in general surgery, followed by a fellowship
25 in surgical critical care and a research fellowship. I

1 have a master's in public health. I am board certified in
2 general surgery and critical care medicine and an
3 additional certification in functional medicine.

4 Q: And what boards, what agencies hold your board
5 certifications?

6 A: Yep, it's the American Osteopathic Board of
7 Surgery under the AOA. American Osteopathic Association.

8 Q: And have you had cause to work in an intensive
9 care unit?

10 A: Yes, I'm an intensivist. So I've covered both
11 the surgical and medical ICU and treated about 2,000 COVID
12 patients during the COVID pandemic in the ICU.

13 Q: What is your experience of treating patients in
14 the ICU outside of COVID?

15 A: Outside of COVID I worked in ICU for 10 years.
16 So treating conditions -- a variety of conditions.

17 AMY SWANHOLM: And at this time, Your Honors, I would
18 like to go ahead and object to this witness offering
19 expert testimony. Don't think that there's anything that
20 would be relevant related to the medical care provided to
21 the patient, because this is a hearing on aggravating and
22 mitigating factors only.

23 Q: So this witness is actually not going to testify
24 about the medical care. This witness is actually going to
25 testify about the impact of the nurse going to the

1 hospital on an ICU unit, and the benefit to the hospital
2 reduction of impact by giving the 30 minutes notice.

3 AMY SWANHOLM: And I also don't see how that is
4 relevant to an aggravating or a mitigating factor.

5 MICHAEL BARNHART: Taking a step to reduce the impact
6 of something that's been found to be unlawful has got to
7 be a mitigating factor.

8 JUDGE RACHELLE ROBLES: Mr. Barnhart, are you
9 offering her -- does she have personal knowledge of the
10 circumstances so she would be testifying as a fact
11 witness? Or are you offering her as an expert witness?

12 MICHAEL BARNHART: We are offering her as an expert
13 witness in -- but the basis of the offer is that she
14 has knowledge of ICU operations and she can provide
15 expert testimony that providing advance notice would
16 decrease the severity of a disruption by someone
17 going to the hospital.

18 AMY SWANHOLM: I don't see how a physician who is
19 qualified to practice medicine would understand what would
20 or would not qualify as a disruption in this circumstance.
21 And that's also not something that we had any notice that
22 she would be testifying about. It's not included in her
23 designation or in the witness list description.

24 MICHAEL BARNHART: I believe --

25 JUDGE RACHELLE ROBLES: Okay, I've heard the

1 arguments. Thank you so much. If parties can hold on
2 while Judge Burgess and I confer.

3 AMY SWANHOLM: And, your honors, just for expediency,
4 I'm sharing their witness list right now.

5 JUDGE RACHELLE ROBLES: Okay, thank you, everyone,
6 for waiting. So we understand -- we've heard arguments
7 from both sides. And Ms. Swanholm, I want to understand,
8 you say there's something about not having had notice
9 regarding Ms. -- or Dr. James testimony for that
10 particular purpose. Can you explain that a little bit
11 more, please?

12 AMY SWANHOLM: Yes. Mr. Barnhart just stated that
13 she would be offering expert testimony about the impact of
14 the time and disruption. There's nothing in her expert
15 designation or her expert report or in the witness
16 descriptions that were provided that talk about timing or
17 disruption. So we didn't have any notice that she would
18 be testifying or offering expert testimony about this.
19 And at this point, it just seems like they're trying to
20 shoehorn her in for any reason in this hearing.

21 MICHAEL BARNHART: If I may respond Judge?

22 JUDGE RACHELLE ROBLES: Mr. Barnhart, did you have a
23 response to that?

24 MICHAEL BARNHART: So Ms. Swanholm had just put up
25 our witness designations in this case, and we expressly

1 said including mitigating and alleged aggravating factors
2 would be part of her testimony.

3 AMY SWANHOLM: Right, but the subject matter is what
4 I am objecting to, right?

5 JUDGE RACHELLE ROBLES: Okay. So we're going to
6 admit her testimony as an expert witness for that very
7 limited purpose that Mr. Barnhart described earlier, and
8 that's it. So objection overruled. You can go ahead, Mr.
9 Barnhart. Did you have additional questions for Dr.
10 James?

11 MICHAEL BARNHART: So, I do.

12 Q: So, Dr. James, I just want to ask, have
13 you -- tell me of what kinds of disruption have you
14 experienced working in an ER?

15 A: In ER? There are a number --

16 Q: Oh, I'm sorry, bad question. Working in an ICU?

17 A: Yeah. So things that cause disruption in the
18 ICU would be belligerent family members, substance abuse
19 issues. Usually it comes down to family members that are
20 disruptive. It can come down to staff, there can be staff
21 interactions. That's most of it.

22 Q: Would an unexpected nurse arrival be a
23 disruption?

24 A: I can't see how it would be.

25 Q: Would notice -- so, would -- so, okay. Would

1 providing 30 minutes notice that a nurse not previously
2 credentialed in the hospital was going to be showing up to
3 the ICU, would that notice reduce the level of disruption
4 from her attendance in the ER?

5 A: I would think so. Because if you know something
6 is going to happen, you can mitigate the damage on that.
7 If it is a damage type situation.

8 MICHAEL BARNHART: And again, I'm trying to be
9 careful --

10 AMY SWANHOLM: And I'd like to object again. She has
11 not been authenticated or, excuse me, she has not been
12 qualified to talk about risk management in a medical
13 setting.

14 JUDGE RACHELLE ROBLES: So are you objecting to the
15 scope right now, Ms. Swanholm?

16 AMY SWANHOLM: Yes, I am objecting to the scope.

17 JUDGE RACHELLE ROBLES: Okay, sustained. Please ask
18 your next question, Mr. Barnhart.

19 Q: In your opinion, what is the level of risk to a
20 patient by a registered nurse appearing unexpectedly in an
21 ICU?

22 A: The main things that pose risk would be if the
23 person was carrying a weapon, was creating threats, was
24 threatening staff, was threatening physical harm or damage
25 to the staff or the family member of the patient or the

1 patient directly. Those would be the things that would be
2 direct risk and harm to the patient.

3 AMY SWANHOLM: And again, I'd like to object. She
4 has not been qualified as somebody who can talk about risk
5 in a medical setting. Object to scope.

6 JUDGE RACHELLE ROBLES: Sustained.

7 Q: Dr. James, have you ever been involved in
8 setting safety parameters for an ICU?

9 A: Yes.

10 Q: And what was that --

11 A: I was the ICU director. Yeah.

12 Q: And so what was your involvement as ICU director
13 in setting safety parameters for an ICU?

14 A: Yeah, this was a common issue we dealt with
15 because we'd often have gang members or people of physical
16 violence that were brought in by law enforcement, gunshot
17 wounds and things like that. So we had to know what the
18 operating procedures were in those instances. And as the
19 ICU director, I had to help develop those and make sure
20 that those were enforced at all times.

21 Q: Your Honor --

22 A: We had an instance at one of our ICUs where the
23 gang was having an altercation out front of the hospital.
24 So it's been acutely relevant to most of my practice.

25 Q: And were you involved in the planning for how to

1 deal with those kinds of issues?

2 A: On the management side of it, as the ICU
3 director, you have to know the operating procedures and
4 know the risks that are posed, and then, of course,
5 recognize those threats daily as you're working to protect
6 your patients. And I've on multiple occasions been called
7 because of disruptive family members to specifically
8 engage in those and de-escalate those situations and deal
9 with them.

10 MICHAEL BARNHART: So, Your Honor, I would ask that
11 the sustained objections be reversed and that testimony be
12 admitted. That I believe we've established her
13 qualifications to testify on the issue.

14 AMY SWANHOLM: And if I can respond, the fact that
15 she has been involved in setting protocols for an ICU from
16 a medical perspective is not the same thing as risk
17 management. In addition, gang member access or safety
18 issues of that matter are not at issue here.

19 MICHAEL BARNHART: But, Your Honor, what is at issue
20 here is what Dr. Bowden's understanding and expectations
21 were at the time, intent and knowledge and gross
22 negligence were being alleged by the TMB against Dr.
23 Bowden. Dr. James' testimony is relevant to whether Dr.
24 Bowden's expectation that it was not disruptive was
25 reasonable under the circumstance, even if it was wrong.

1 AMY SWANHOLM: Well, the mitigating factors that are
2 at issue here don't focus on relevant circumstances
3 reducing the outcome of the misconduct. So I don't see
4 how that's relevant to an alleged mitigating factor here.
5 In addition, I would argue again that this is outside the
6 scope of what we'd had any notice that she was going to
7 testify about. And I do understand some leeway, but I
8 think we're pushing it right here.

9 JUDGE RACHELLE ROBLES: I agree. Sustained.

10 MICHAEL BARNHART: Nothing further.

11 JUDGE RACHELLE ROBLES: Okay. Thank you, Mr.
12 Barnhart. Ms. Swanholm, any questions for Dr. James?

13 CROSS-EXAMINATION

14 BY AMY SWANHOLM:

15 Q: Dr. James, you would agree that a physician
16 needs privileges before they can treat a patient in an
17 inpatient facility, correct?

18 A: Yes.

19 Q: And that privileges are generally granted in
20 written form, correct?

21 A: Generally.

22 Q: Okay.

23 AMY SWANHOLM: No further questions.

24 JUDGE RACHELLE ROBLES: Okay. Thank you, Ms. Massey.
25 Mr. Barnhart, any redirect for this witness?

1 MICHAEL BARNHART: One or two redirect questions.

2 JUDGE RACHELLE ROBLES: Okay.

3 REDIRECT EXAMINATION

4 BY MICHAEL BARNHART:

5 Q: Dr. James, during COVID were you aware of
6 physicians getting privileges verbally rather than in
7 writing?

8 A: Yes.

9 Q: How often did that occur?

10 A: All of the time. Because there was a massive
11 shortage of physicians to cover the ICU, people were
12 granted temporary privileges outside of their scope of
13 practice on a number of occasions because we didn't have
14 enough physicians to manage ventilators. I received
15 verbal, very temporary privileges when I volunteered in
16 New York within four days of signing up to do so.
17 And -- so that was a common occurrence. It was an
18 emergency declaration at most hospitals. So they shifted
19 from standard operating procedure to emergency operating
20 procedure, which gave them a lot of leeway in granting
21 those kind of privileges.

22 MICHAEL BARNHART: Nothing further.

23 JUDGE RACHELLE ROBLES: Okay. Thank you, Mr.
24 Barnhart. Ms. Swanholm, any additional questions?

25 AMY SWANHOLM: Short follow up.

1 RE CROSS EXAMINATION

2 BY AMY SWANHOLM:

3 Q: You would agree that even if verbal privileges
4 discussion happened, there would always be a follow up in
5 writing, correct?

6 A: I would assume so, but I don't know all of the
7 operating procedures and all of instances that have
8 happened.

9 Q: Okay, so you would agree that privileges are
10 something that are kind of hospital specific to a certain
11 extent?

12 A: The privileging process isn't specific to
13 hospitals. It generally follows a specific process. And
14 my understanding is if a court order comes into play that
15 trumps any process in the hospital.

16 AMY SWANHOLM: And that's not what I asked you. I'm
17 just asking you about privileging processes are, you know,
18 generally specific to a hospital, that they vary from
19 hospital to hospital, yes?

20 A: I would argue --

21 MICHAEL BARNHART: Your Honor, I would object that
22 she -- that Dr. James has not been designated to testify
23 on these topics. That she has been objected to on general
24 medical issues and that TMB -- it's outside the scope.
25 TMB should not be able to do just a very broad general

1 questioning when they insisted that her scope was
2 extraordinarily limited.

3 JUDGE RACHELLE ROBLES: Did you have a response, Ms.
4 Swanholm?

5 AMY SWANHOLM: Yeah, I'm just asking her about
6 privileges generally and I can go through, you know, some
7 background if needed. But I don't think that Mr. Barnhart
8 would object to his own expert witness being qualified as
9 an expert witness.

10 JUDGE RACHELLE ROBLES: Objection sustained, Ms.
11 Swanholm. Okay, because he's correct, you're asking
12 for -- as a general matter, I'm going to allow you to
13 rephrase that question. That's more targeted to
14 the -- that something is more tailor made to which Dr.
15 James can testify as an expert witness in here.

16 Q: As a physician, you don't have any experience
17 with the credentialing process at Huguley Hospital,
18 correct?

19 A: I do not.

20 Q: Okay, thank you.

21 AMY SWANHOLM: No further questions.

22 JUDGE RACHELLE ROBLES: Okay, thank you. Ms.
23 Swanholm. Mr. Barnhart, any other redirect?

24 MICHAEL BARNHART: No other questions.

25 JUDGE RACHELLE ROBLES: Okay, thank you. All right.

1 Dr. James, we have no further questions for you at this
2 time. Thank you so much for testifying during this
3 hearing. We very much appreciate it.

4 THE WITNESS: Thank you.

5 JUDGE RACHELLE ROBLES: Thank you. Okay. Mr.
6 Barnhart, any other witnesses?

7 MICHAEL BARNHART: I believe that we're done. May I
8 have a couple minutes to confer with co-counsel?

9 JUDGE RACHELLE ROBLES: Yes, of course. Let's go
10 ahead and go off the record and I will stop recording or
11 pause recording right now.

12 JUDGE RACHELLE ROBLES: Okay, thank you. Let's go
13 back on the record, Mr. Austin. Okay, thank you. Mr.
14 Barnhart, any other witnesses to call?

15 MICHAEL BARNHART: Respondent rests.

16 JUDGE RACHELLE ROBLES: Okay, if Respondent rests,
17 let's go ahead and move forward. If parties can hold on
18 for just a second. And Ms. Swanholm, I believe that at
19 the pre-hearing conference you mentioned something about
20 rebuttal. Is that something that you wanted to pursue?

21 AMY SWANHOLM: We have a couple of Respondent's
22 Exhibits that we'd like to offer as rebuttal. But that's
23 it.

24 JUDGE RACHELLE ROBLES: Okay, let's go ahead and
25 start with that, then.

1 AMY SWANHOLM: We'd just like to offer Respondent's

2 Exhibit 40.

3 JUDGE RACHELLE ROBLES: Any objections?

4 MICHAEL BARNHART: No objection.

5 JUDGE RACHELLE ROBLES: Okay, thank you.

6 Respondent's Exhibit 40 is admitted.

7 AMY SWANHOLM: Respondent's Exhibit 45.

8 JUDGE RACHELLE ROBLES: I'll give you a second to get

9 there, Mr. Barnhart. Did you say number -- Respondent's

10 Exhibit 45, Ms. Swanholm?

11 AMY SWANHOLM: Yes, Your Honor.

12 JUDGE RACHELLE ROBLES: Okay, let me -- believe

13 that's a confidential exhibit, is that correct?

14 MICHAEL BARNHART: That is correct.

15 JUDGE RACHELLE ROBLES: Okay.

16 AMY SWANHOLM: I -- sorry, let me --

17 JUDGE RACHELLE ROBLES: Please don't screen share it.

18 AMY SWANHOLM: Okay.

19 JUDGE RACHELLE ROBLES: You can just view it on your

20 screen. Thank you. Because it is a confidential exhibit.

21 AMY SWANHOLM: You know, I would argue there's

22 nothing in here that warrants it being admitted

23 confidentially. So we'd like to get it admitted without

24 any protections.

25 MICHAEL BARNHART: The patient's wife's name is in

1 it. That was the one thing that why we did it
2 confidentially.

3 AMY SWANHOLM: Ah. Well, we'd be happy to submit
4 that with the patient's name redacted if you have an issue
5 with it. Patient's wife name redacted, if that would be
6 more comfortable for you.

7 JUDGE RACHELLE ROBLES: Any thoughts on that, Mr.
8 Barnhart?

9 MICHAEL BARNHART: I actually don't think this
10 particular exhibit is admissible without supporting
11 testimony.

12 AMY SWANHOLM: It's your exhibit.

13 MICHAEL BARNHART: I realized that we proffered, but
14 we were going to have to prove it up to some degree.

15 AMY SWANHOLM: We're not objecting to authenticity
16 here.

17 MICHAEL BARNHART: But I think it's misleading in the
18 absence of it being properly authenticated.

19 AMY SWANHOLM: Well, you know, in all respect, you
20 had an opportunity to offer testimony if you want, but
21 this is a text message that does involve a witness that
22 you've already called to testify.

23 JUDGE RACHELLE ROBLES: Okay, I'll admit it over the
24 objection, but with the patient's wife's name redacted,
25 please. When you submit it for the record copy.

1 AMY SWANHOLM: Yes, Your Honor. And even though it's
2 Respondent's Exhibit 45, do you want to keep that marking
3 or would you prefer to have Board Staff's Exhibit on it,
4 since we are going to be marking it up? I don't want to
5 overstep anything with --

6 JUDGE RACHELLE ROBLES: Yes, I think -- yes, Ms.
7 Swanholm, I think that's a good solution. And that would
8 make it. Is it Board Exhibit 19?

9 AMY SWANHOLM: Yes, 19.

10 JUDGE RACHELLE ROBLES: Okay, thank you. So that
11 document, Respondent Exhibit 45, which is confidential, is
12 admitted as Board Exhibit 19, which will be admitted with
13 the patient's wife's name redacted. Any other exhibits
14 you want to proffer on rebuttal, Ms. Swanholm?

15 AMY SWANHOLM: Respondents Exhibit 31.

16 JUDGE RACHELLE ROBLES: Okay.

17 MICHAEL BARNHART: No objection.

18 JUDGE RACHELLE ROBLES: And that is not confidential,
19 is that correct?

20 AMY SWANHOLM: Correct.

21 AMY SWANHOLM: Alright, and let me just check with my
22 co-counsel to make sure I got all of those.

23 JUDGE RACHELLE ROBLES: Mr. Barnhart, did you have
24 any objections to the admission of that exhibit?

25 MICHAEL BARNHART: I did not.

1 JUDGE RACHELLE ROBLES: Okay. Respondents Exhibit

2 30 -- wait, let me see. 31 is admitted. Anything else,

3 Ms. Swanholm?

4 AMY SWANHOLM: One moment. We thought we would have

5 a little more time before we got here, so my apologies.

6 JUDGE RACHELLE ROBLES: No problem. Ms. Swanholm,

7 you're -- we can hear you just in case that's a thing for

8 you. Okay, no problem.

9 AMY SWANHOLM: Was Respondents Exhibit 24 admitted to

10 the record already?

11 JUDGE RACHELLE ROBLES: Let me check.

12 AMY SWANHOLM: If not, we'd like to offer that.

13 JUDGE RACHELLE ROBLES: I'm not seeing it. I'm

14 seeing Respondents Exhibit 22, 23, 27, 29, 48, 59. And

15 that's generally in numerical order, so. And not just

16 generally, it is in numerical order. So I'm not showing

17 in my list. Unless anyone wants to correct me on that I'm

18 happy to be corrected if I'm wrong.

19 AMY SWANHOLM: I think they did say 24.

20 MICHAEL BARNHART: No objection.

21 JUDGE RACHELLE ROBLES: Okay. And I'm hearing no

22 objection from Mr. Barnhart, is that correct, sir?

23 MICHAEL BARNHART: Correct.

24 AMY SWANHOLM: Okay.

25 JUDGE RACHELLE ROBLES: Respondent Exhibit 24 is

1 admitted into the record. Anything else, Ms. Swanholm?

2 AMY SWANHOLM: Okay, and we're just verifying that 49
3 is in the record, Respondent's Exhibit 49.

4 MICHAEL BARNHART: Yes.

5 AMY SWANHOLM: I think we already got 31 and 40.

6 Okay, so 31 and 40 are also already in the record, yes,
7 Your Honors?

8 JUDGE RACHELLE ROBLES: I am not sure. So, okay,
9 wait. So, 49 is in the record. Just going back to what
10 you were asking before. And what are the other two that
11 you're asking about?

12 AMY SWANHOLM: 31 and 40. I think we just offered
13 31, so that one should be in. But I'm just double
14 checking on Respondent Exhibit 40.

15 JUDGE RACHELLE ROBLES: I'm not seeing that in my
16 list. And again, I'm happy to be corrected if I'm wrong
17 on that.

18 JUDGE LINDA BURGESS: I thought you just offered
19 Respondents.

20 JUDGE RACHELLE ROBLES: Okay, are you offering
21 Respondent's Exhibit 40 into the record, Ms. Swanholm?

22 AMY SWANHOLM: Yes, Your Honor.

23 JUDGE RACHELLE ROBLES: Okay, any objections, Mr.
24 Barnhart?

25 MICHAEL BARNHART: Again, I think this is one that

1 may should be -- look at it, but I think it may should be
2 submitted redacted at the top.

3 AMY SWANHOLM: Yeah, you're right. We can redact the
4 patient's name and submit that as Board Staff's Exhibit
5 20.

6 JUDGE RACHELLE ROBLES: Okay, so I'm hearing that
7 there aren't any objections to the admission of that, so
8 Respondent Exhibit 40 is admitted as Board Exhibit 20 with
9 patient name redacted. Okay, Any other exhibits?

10 AMY SWANHOLM: All right, Board Staff rest's its
11 rebuttal.

12 JUDGE RACHELLE ROBLES: Okay, thank you. So now
13 we've concluded the rebuttal case for Board Staff. And so
14 we're now getting to the tail end of this proceeding. I
15 do believe that we had discussed post hearing submission
16 of admitted exhibits during the pre-hearing conference.
17 And Judge Burgess and I are going to be kind of talking
18 through this finishing portion together.

19 And so as everyone knows, we always include it in our
20 orders that parties are instructed to file the record
21 exhibits. And then we will be getting that all in a nice
22 pretty package. So then Judge Burgess and I can, you
23 know, be referring to those documents when we're drafting
24 up our proposal for decision.

25 JUDGE LINDA BURGESS: So what I would suggest is do

1 a, you know, a chart and list them, the ones that have
2 been admitted. That usually works out real well for the
3 parties. And you will file this of record. And we'll ask
4 for those to be filed of record tomorrow, if that's a
5 problem, you know, and that might be with staff. It can
6 be 48 hours.

7 AMY SWANHOLM: Let me check with my support staff
8 really quickly.

9 JUDGE LINDA BURGESS: Sure.

10 AMY SWANHOLM: Tomorrow is -- we can do tomorrow?
11 Okay. Yes, we can. One question on that chart, do you
12 want all of the proposed exhibits listed or just the
13 admitted exhibits?

14 JUDGE LINDA BURGESS: Just the admitted exhibits.
15 Did you -- Mr. Barnhart, did you have a question? Did you
16 get that?

17 MICHAEL BARNHART: I actually was looking at
18 something else as you were talking. So, do you want us to
19 do a joint filing or each do our own filing?

20 JUDGE LINDA BURGESS: It would be great if you did a
21 joint filing, the old fashioned way.

22 MICHAEL BARNHART: I think we can manage a joint
23 filing on the admitted exhibits.

24 JUDGE LINDA BURGESS: And if you can't, that's okay,
25 but it would be, do the board, then you do respondents,

1 the admitted. And you know, you guys can check it, and
2 then if there's a problem, just file them. But I'm -- we
3 normally say within 24 hours, but we're going to conclude
4 today. So if it takes staff, you know, until Wednesday,
5 that's fine.

6 MICHAEL BARNHART: My understanding is that there
7 were no exhibits that were actually not admitted that were
8 offered. And so the issue of designated exhibits that
9 were denied is not at issue.

10 JUDGE LINDA BURGESS: No, you're just filing the
11 admitted exhibits. They're going into their record, the
12 admitted -- just think of it that way. The admitted
13 exhibits are going into the record.

14 AMY SWANHOLM: All right, so housekeeping. Michael,
15 what we'll do is we'll create that chart, we'll send it
16 over to you for your review, make any edits as needed, and
17 then Board Staff will submit Board Staff's exhibits and
18 respondent will submit respondents exhibits.

19 MICHAEL BARNHART: Okay, that makes sense.

20 AMY SWANHOLM: That's fine.

21 JUDGE RACHELLE ROBLES: Okay, so now if we've
22 addressed the post hearing submission of exhibits in the
23 order that we issued late last week, memorializing the
24 rulings that we had made and discussions that we had at
25 the pre-hearing conference. We want closing, written

1 closing arguments from parties. As discussed, they should
2 not exceed 12 pages and they should incline citations to
3 exhibits and hearing testimony. And because of that, the
4 first round of initial briefs will be due 14 days after
5 the court reporter files the transcript of the record.
6 And then rebuttal or, you know, reply briefs will not
7 exceed seven pages.

8 JUDGE LINDA BURGESS: And Mr. Barnhart --

9 JUDGE RACHELLE ROBLES: And they will be filed 10
10 days after. I'm sorry?

11 JUDGE LINDA BURGESS: We do remember, you might have
12 a child graduation thing going on. So just --

13 JUDGE RACHELLE ROBLES: Yes, and we --

14 JUDGE LINDA BURGESS: -- let us know if that's a
15 problem.

16 JUDGE RACHELLE ROBLES: Right.

17 MICHAEL BARNHART: Yeah. With it being one day, I
18 suspect that the main briefs will be fine. We may ask for
19 a short extension on the replies, depending on how --

20 JUDGE RACHELLE ROBLES: Of course. And we can
21 address that -- so this is what -- this is the timeframe
22 that we have laid out right now. And we want to make sure
23 that you get to that graduation, Mr. Barnhart. So if the,
24 if the timeframes are running into themselves, then we
25 would just expect to see a motion for adjustment of that.

1 MICHAEL BARNHART: Understand.

2 JUDGE RACHELLE ROBLES: We can address that.

3 MICHAEL BARNHART: So I do have one question. We
4 need to communicate with the court reporter to be sure he
5 has our contact information.

6 THE REPORTER: Let me double check, I believe it was
7 on the complaint. Yes, I do.

8 MICHAEL BARNHART: Well, and do you have -- I guess I
9 need to make sure you have my email,
10 mbarnhart@mitbylaw.com.

11 THE REPORTER: Yes, I've got that, and Mr. Mitby's.

12 MICHAEL BARNHART: Yeah, we've had some folks leave,
13 so we've had some things that went to wrong email
14 addresses recently.

15 JUDGE LINDA BURGESS: Okay --

16 MICHAEL BARNHART: Thank you.

17 JUDGE LINDA BURGESS: -- so how -- let's talk
18 through. Is the board going to file the transcript of
19 record?

20 AMY SWANHOLM: Yes, but we, per our contract with Ken
21 Owen, cannot provide a copy of the transcript to
22 respondents. So they would have to purchase that
23 themselves.

24 JUDGE LINDA BURGESS: Sure. I'm sure they understand
25 that. You understand that, Mr. Barnhart?

1 MICHAEL BARNHART: We do.

2 JUDGE LINDA BURGESS: Yeah, but I just want to make
3 sure the transcript gets filed for the record. And I
4 don't know who's going to do that. I'm taking it the
5 board's going to do that.

6 AMY SWANHOLM: So generally what Mr. Austin will do
7 is he'll finish up the transcript, when it's finished, it
8 will be submitted to the court as well as to any parties
9 that have purchased a copy of it at the same time.

10 JUDGE LINDA BURGESS: Okay.

11 AMY SWANHOLM: So we don't normally proactively file
12 that because our court reporters will go ahead and do that
13 directly with SOAH at the time that they're providing it
14 to the parties.

15 JUDGE LINDA BURGESS: Okay. So we'll take it from
16 there. I just want to make sure it gets to SOAH. Okay.

17 AMY SWANHOLM: Yes. And Mr. Austin, if you have
18 questions about that, reach out, we can talk through it.
19 Mr. Owen also is very aware of how that process goes.

20 JUDGE LINDA BURGESS: Thank you.

21 THE REPORTER: While we're on the subject, Mr.
22 Barnhart, did you want to order a copy of the transcript?

23 MICHAEL BARNHART: Yeah, we are.

24 THE REPORTER: Okay.

25 JUDGE LINDA BURGESS: Is there anything further?

1 THE REPORTER: One more thing. The patient's name
2 was mentioned a couple times, did you want me to redact
3 that?

4 AMY SWANHOLM: Yes, please.

5 THE REPORTER: Okay.

6 MICHAEL BARNHART: We agree that's appropriate.

7 JUDGE LINDA BURGESS: I guess -- what will you do?
8 Just put patient or what will you do?

9 THE REPORTER: I can do -- I can just replace it
10 with Patient or Patient's wife, or I can just put redact
11 it wherever it appears.

12 AMY SWANHOLM: Let me double check in the complaint
13 as to how we're referring to the patient. Is it Patient 1
14 or is it Patient? Yeah, I believe in the record, we've
15 been officially calling the patient, Patient 1, and then
16 it would be Patient 1's Wife.

17 THE REPORTER: Okay, so I'll just replace it with
18 Patient 1's Wife or Patient 1.

19 AMY SWANHOLM: Okay.

20 THE REPORTER: And that's it for me.

21 JUDGE RACHELLE ROBLES: Thank you, Mr. Austin. Is
22 there anything else from anyone else?

23 MICHAEL BARNHART: We don't have anything.

24 AMY SWANHOLM: Nothing from --

25 JUDGE RACHELLE ROBLES: Okay, thank you, Mr.

1 Barnhart. Ms. Swanholm?

2 AMY SWANHOLM: Nothing from board staff.

3 JUDGE RACHELLE ROBLES: Okay and Judge Burgess, anything else
4 that we need to cover before we adjourn?

5 JUDGE LINDA BURGESS: Nothing from Judge Burgess.

6 JUDGE RACHELLE ROBLES: And nothing from Judge
7 Robles. Well, I want to thank you, everyone. This was
8 very helpful to us, and we will now adjourn. And if there
9 are any motions regarding timeframes, like I said, we'll
10 look forward -- we'll make sure to look out for that. And
11 in the meantime, we'll just look out for the transcript.

12 THE REPORTER: Thank you.

13 JUDGE RACHELLE ROBLES: Okay. Thank you.

14 MICHAEL BARNHART: Thank you, Judge.

15 JUDGE LINDA BURGESS: Thank you. Going off the
16 record?

17 JUDGE RACHELLE ROBLES: Yes, we're going off the
18 record.

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1 CAUSE NO. 503-23-17769.MD

2 TEXAS MEDICAL BOARD, IN THE DISTRICT COURT OF

3 Plaintiff, STATE OFFICE OF

4 vs. ADMINISTRATIVE HEARINGS

5 MARY TALLEY BOWDEN, M.D.,

6 Defendants,

7
8
9 TRAVIS COUNTY, TEXAS

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11
12 REPORTER'S CERTIFICATE

13 HEARING OF MARY TALLEY BOWDEN, M.D.

14
15 I, RYLIE AUSTIN, Reporter and Notary Public for the
16 State of Texas, hereby certify to the following:

17 That the testimony was accurately captured with
18 annotations by me during the proceeding;

19 Certified to me this 9 MAY, 2025

20
21 _____
22 RYLIE AUSTIN CER No. 4114
23 Notary Commission No. 135501321
24 Commission Expires: FEBRUARY 7, 2029
25 Ken Owen & Associates, LP
2525 Wallingwood Drive
Building 6 Suite A
Austin, Texas 78746
512-472-0880
Firm Registration No. 115

1 CERTIFICATE OF TRANSCRIPTIONIST

2 I, RYLIE AUSTIN, legal transcriptionist, do
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4 That the foregoing is a complete and accurate
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8 transcribed the entirety of the proceeding to ensure a
9 verbatim record to the best of my ability.

10 I further certify that I am not neither attorney
11 for, nor a relative or employee of any of the parties to
12 the action; further, that I am not a relative or employee
13 of any attorney employed by the parties hereto, nor
14 financially or otherwise interested in the outcome of this
15 matter.

16 In witness thereof, I have hereunto set my hand
17 this 9 MAY, 2025.

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19
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21 _____
22 RYLIE AUSTIN

23 Legal Transcriber
24
25

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