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ADMINISTRATIVE HEARINGS
Amy Robles, CLERK

SOAH Docket No. 503-23-17769

Suffix: MD

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS MEDICAL BOARD,
PETITIONER
v.
MARY TALLEY BOWDEN, MD,
RESPONDENT**

ORDER GRANTING IN PART AND DENYING IN PART BOARD STAFF'S SECOND MOTION FOR PARTIAL SUMMARY DISPOSITION

By its second motion for partial summary disposition, staff (Staff) of the Texas Medical Board (Board) moved for summary disposition on its claim under § 164.052(a)(5) of the Texas Medical Practice Act (Act)¹ that Mary Talley Bowden, MD (Respondent) engaged in unprofessional or dishonorable conduct that is likely to injure the public, and is therefore subject to disciplinary action under § 165.051(a)(1) of the Act; and its claim under § 164.051(a)(6) of the Act that Respondent is subject to disciplinary action because she failed to practice

¹ Tex. Occ. Code title 3, subtitle B.

medicine in an acceptable professional matter. After considering the parties' briefs, the evidence submitted, and the applicable law, as set forth below, the Administrative Law Judges (ALJs) grant summary disposition on Staff's claim under §§ 164.051(a)(1) and .052(a)(5) of the Act. The ALJs deny summary disposition on Staff's claim under § 164.051(a)(6) of the Act.

I. PROCEDURAL HISTORY

Staff referred this matter to the State Office of Administrative Hearings. On December 12, 2024, Staff filed a second motion for partial summary disposition with supporting evidence.² Respondent filed a response to the motion with opposing evidence on December 30, 2024, and a supplemental response with additional opposing evidence on January 28, 2025. Staff filed its reply to Respondent's supplemental response on February 3, 2025. Because no oral argument is needed, the parties' request for oral argument is denied.³

II. SUMMARY DISPOSITION STANDARD AND EVIDENCE

Summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the movant is entitled to a decision in its favor as a matter of law on all or some of the

² On January 13, 2025, Staff filed its notice of supplemental filing of corrected exhibit (Staff Ex. 3) to its second motion for partial summary disposition. By Order dated January 15, 2025, the ALJs denied Respondent's request to strike Staff's January 13, 2025 supplemental filing.

³ 1 Tex. Admin. Code § 155.505(f)(1).

issues set out in the motion.⁴ Consequently, the movant must meet an initial burden of establishing conclusively (*i.e.*, that no reasonable person could find otherwise⁵) all essential elements of a claim or defense as a matter of law, in which case (and only then) the burden shifts to the nonmovant to present evidence raising a genuine issue of material fact.⁶ In determining whether a fact issue precludes summary disposition, an ALJ takes as true all evidence favorable to nonmovant and indulges every reasonable inference and resolves any doubts in the nonmovant's favor.⁷

The following facts were conclusively established by the summary disposition record:

1. Respondent is a physician licensed by the Board holding Texas Medical License No. K-9770, which was originally issued on May 19, 2000.⁸
2. Respondent is board certified in Otolaryngology (ear, nose, and throat) and sleep medicine.⁹

⁴ 1 Tex. Admin. Code § 155.505(a).

⁵ See *City of Keller v. Wilson*, 168 S.W.3d 802, 814-17 (Tex. 2004) (discussing the nature of conclusive evidence).

⁶ See, e.g., *Draughon v. Johnson*, 631 S.W.3d 81, 87-88 (Tex. 2021).

⁷ See, e.g., *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005).

⁸ Staff Ex. 2 at 132/633 (Public Verification/Physician Profile). Staff's motion and exhibits were filed as a single, 633-page PDF, and many of the exhibits (which often included their own attached exhibits) were not paginated. Therefore, the ALJs have referred to the page number in Staff's PDF for the pinpoint cites in this Order.

⁹ Staff Ex. 2 at 134/633 (Public Verification/Physician Profile), 272/633 (Nov. 2, 2021 temporary injunction hearing transcript (Tr.) at 6).

3. JJ (hereafter, Patient) tested positive for COVID-19 on September 23, 2021; and, five days later, was admitted to Texas Health Huguley Hospital Fort Worth South (Huguley Hospital).¹⁰
4. On October 7, 2021, Patient was placed on a ventilator and moved to Huguley Hospital's intensive care unit (ICU) in a medically induced coma.¹¹
5. Respondent became aware of Patient's situation when Patient's wife contacted Respondent. The two—Patient's wife and Respondent—conducted a telehealth visit. After discussing Patient's condition with Patient's wife, Respondent, on October 22, 2021, prescribed Ivermectin to Patient.¹²
6. Patient's wife then sued Huguley Hospital seeking injunctive relief to require Huguley Hospital and its medical staff to administer Ivermectin to her husband.¹³
7. On October 26, 2021, Patient's wife obtained an *ex parte* temporary restraining order requiring Huguley Hospital to administer Ivermectin to Patient.¹⁴
8. Claiming that the temporary restraining order was void, Huguley Hospital filed a petition for writ of mandamus in the Court of Appeals Second Appellate District of Texas (Court of Appeals).¹⁵

¹⁰ Staff Ex. 1 at 27/633 (Opinion, *Tex. Health Huguley, Inc. v. Jones*, 637 S.W.3d 202 (Tex. App.—Fort Worth 2021, no pet.) (Op.) at 3).

¹¹ Staff Ex. 1 at 28/633 (Op. at 4).

¹² Staff Ex. 1 at 28/633 (Op. at 4); Staff Ex. 2 at 96/633 (prescription), 273/633 (Tr. at 7).

¹³ Staff Ex. 1 at 29/633 (Op. at 5).

¹⁴ Staff Ex. 1 at 29/633 (Op. at 5); Staff Ex. 2 at 561-64/633 (Temp. Restraining Order).

¹⁵ Staff Ex. 1 at 29/633 (Op. at 5).

9. Before the Court of Appeals ruled on the mandamus petition, Patient's wife agreed to dissolve the *ex parte* temporary restraining order and to proceed to an evidentiary hearing on her motion for a temporary injunction.¹⁶
10. On November 1 and 2, 2021, the trial court held a hearing on the temporary injunction request.¹⁷ Respondent testified at the hearing, acknowledging:
 - She did not have, and had not applied for, privileges at Huguley Hospital, nor did she have a nurse who could operate under her medical license.¹⁸
 - She had never been allowed to practice medicine in a hospital without the hospital undertaking a credentialing process and granting her privileges to practice medicine inside the hospital.¹⁹
11. On November 8, 2021, the trial court signed a Temporary Injunction Order, which:

ORDERED, that . . . [Huguley Hospital] shall grant Dr. Mary Talley Bowden, M.D. and/or her nurse working under her authority, temporary emergency privileges, which shall not be unreasonably delayed or denied, solely to administer Ivermectin to [Patient], pursuant to the order and the attached Prescription of Dr. Bowden. . . .²⁰

¹⁶ Staff Ex. 1 at 29/633 (Op. at 5).

¹⁷ Staff Ex. 1 at 29/633 (Op. at 5); Staff Ex. 2 at 271-301/633 (Tr. at 5-35).

¹⁸ Staff Ex. 2 at 279-80/633, 295/633, 298/633 (Tr. at 13-14, 29, 32).

¹⁹ Staff Ex. 2 at 279/633 (Tr. at 13). Respondent also acknowledged that she had only spoken to Patient's wife and had not examined Patient or requested or reviewed his medical records. Staff Ex. 2 at 285/633 (Tr. at 19). Respondent further acknowledged that she did not know whether Patient still had COVID-19. Staff Ex. 2 at 297/633 (Tr. at 31).

²⁰ Staff Ex. 2 at 93/633 (Temp. Inj. Order & Order Setting Trial at 4).

12. On the evening of November 8, 2021, Huguley Hospital sought emergency review of the Temporary Injunction Order and requested that the Court of Appeals stay the injunction order.²¹
13. On November 9, 2021, at 2:52 p.m., Huguley Hospital sent Respondent a letter via email. In the letter, Respondent was:
 - asked to “promptly submit an application for privileges.”
 - informed that “Hospital medical staff will consider your application tonight, if it is submitted today.”
 - informed that “[i]f you intend to bring your nurse to assist you, please be sure that your application process encompasses the nurse.”
 - informed that “[i]rrespective of the medical staff’s privileging recommendation, your application will then be submitted to the Hospital’s Board of Directors, which will meet on Thursday, November 11, 2021.”
 - informed that “[i]f the Board approves your application, you will be contacted immediately and at that point you will need to notify the Hospital as to when you will arrive for the administration of your prescription to [Patient].”²²
14. At about 5:51 p.m. on November 9, 2021, the Court of Appeals stayed the Temporary Injunction Order “until further order of this court.”²³
15. The following day, on November 10, the Court of Appeals entered an order requiring expedited briefing on Huguley Hospital’s request for emergency

²¹ Staff Ex. 2 at 64-65/633 (Emerg. Mtn. for Temp. Order and Relief at 1-2).

²² Staff Ex. 4 at 579/633 (TMB 49177).

²³ Staff Suppl. Ex. 3; Resp. Ex. 5 at 68 (Ward depo.) & Ex. 6 to depo.

review of the Temporary Injunction Order. Patient's wife was directed to file her brief seven days later on Wednesday, November 17, 2021.²⁴

16. On November 10, Respondent posted on her social media: "Need a nurse who can help in Fort Worth area . . . need to find someone ASAP. I will get the privileges, and nurse can work under me."²⁵ Respondent further posted that the "Nurse would need to put [medication] in [Patient's] feeding tube. Hospital refusing to let their nurse do it."²⁶
17. Then, at 3:52 p.m. on November 10, Respondent emailed Huguley Hospital's Director of Medical Staff Services, a registered nurse, with the subject line "Supplement to application."²⁷ Respondent stated:
 - My purpose is solely to administer Ivermectin to Patient.
 - The nurse working under me is Kimberly Joy Witzel RN, license #865988.
 - The nurse will be employed by me under this limited purpose.
 - I will notify the hospital as to when she will arrive to administer the Ivermectin.
 - I hereby request that I be approved for said limited purposes.²⁸
18. Huguley Hospital's Director of Medical Staff Services replied to Respondent, telling Respondent she did not have privileges. The Director of Medical Staff Services emailed Respondent at 4:48 p.m. on November 10: "Dr. Bowden,

²⁴ Resp. Ex. 6A.

²⁵ Staff Ex. 9 at 603/633 (TMB 49355).

²⁶ Staff Ex. 9 at 603/633 (TMB 49355).

²⁷ After the November 1-2, 2021 temporary injunction hearing, Respondent applied for privileges in Huguley Hospital, but withdrew the application on November 5, 2021. Staff Ex. 4 at 581/633 (TMB 49179) ("Please withdraw my application.").

²⁸ Staff Ex. 6 at 593/633 (TMB 49173).

you will need to complete your application that was sent to you yesterday. It will go through the credentialing process. At this time, you do not have privileges.”²⁹

19. In response, Respondent informed Huguley Hospital that she was dispatching her nurse to the Hospital. Respondent’s 5:15 p.m. (November 10) email states: “Per the lawyers, everything is set. My nurse will arrive in about 30 minutes with the court order.”³⁰
20. On November 10, 2021, Patient was in the care of Huguley Hospital, and Respondent had not been granted and did not have privileges to administer any medications to Patient, who was inpatient at Huguley Hospital.
21. Despite acknowledging in writing that her request for privileges had not been granted by Huguley Hospital and that she did not then have privileges to administer any medications to Patient while in care at Huguley Hospital, Respondent dispatched Kimberly Joy Witzel, a nurse under Respondent’s supervision, to Huguley Hospital on November 10, 2021, to administer medication to Patient.³¹
22. Upon being confronted with Respondent’s nurse trying to gain entry to the ICU, Huguley Hospital personnel refused the nurse entry. In the course of Huguley Hospital’s efforts to stop Respondent’s nurse from entering the ICU, law enforcement was called.³²
23. On November 10 at 8:36 p.m. Respondent posted to her social media (Twitter) a picture of hospital personnel in medical scrubs, stating: “This is the director of the ICU at Texas Huguley Hospital who called the police on my nurse.”³³

²⁹ Staff Ex. 6 at 593/633 (TMB 49173).

³⁰ Staff Ex. 6 at 593/633 (TMB 49173).

³¹ Resp. Ex. 6.

³² Staff Ex. 14 at 628/633 (TMB 49332); Resp. Ex. 7.

³³ Staff Ex. 14 at 628/633 (TMB 49332).

24. On November 18, 2021, the Court of Appeals reversed and vacated the trial court’s Temporary Injunction Order. The Court held that “the trial court had no legal authority to intervene in Huguley’s legal exercise of its discretion to grant, deny, or limit Dr. Bowden’s ICU credentials.”³⁴

III. ANALYSIS

By its dispositive motion, Staff argues Respondent engaged in unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by § 164.053 of the Act, or injure the public.³⁵ By Board rule, unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes:

behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient.³⁶

Staff underscores that its claim is not about the efficacy of Ivermectin against COVID-19 or anything else. Rather, it argues that Respondent is subject to discipline because she—without hospital privileges in Huguley Hospital—dispatched her

³⁴ Staff Ex. 1 at 61/633 (Op. at 37).

³⁵ Section 164.052(a)(5) of the Texas Medical Practice Act provides that a physician commits a prohibited practice if that person “commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public.” Respondent’s assertion that this claim was not raised in Staff’s pleadings is without basis. *See* Complaint at 3-6, filed Apr. 25, 2023; First Am. Complaint at 3-6, filed Mar. 15, 2024; and Second Am. Complaint at 3-5, filed Jan. 10, 2025.

³⁶ 22 Tex. Admin. Code § 190.8(2)(P), which is now codified as 22 Tex. Admin. Code § 180.1(2)(K) (eff. Jan. 9, 2025). *See* 50 Tex. Reg. 375 (Jan. 10, 2025). The new rule does not include the language: “that interferes or could be reasonably expected to adversely impact the quality of care rendered to a patient.” For purposes of this Order, the rule—§ 190.8(2)(P)—in effect at the time of Respondent’s conduct is applied.

nurse to give the drug to Patient in the Hospital, thereby behaving in a disruptive manner toward hospital personnel that interfered with patient care or was reasonably expected to adversely impact the quality of care rendered to a patient.

A. HOSPITAL PRIVILEGES

An understanding of hospital privileges is important to the analysis of Staff's claim. Hospital privileges are permissions granted to healthcare professionals, such as physicians, to practice medicine and perform specific procedures within a particular hospital. As the Court of Appeals stated, "[a]ll parties in this case agree that, under state and federal law, a physician such as Dr. Bowden must have hospital privileges to administer medication to a patient at Huguley."³⁷ For physicians to receive privileges, they must submit an application to the hospital. "The doctor has to provide evidence that [s]he is competent to practice in the clinical areas in which [s]he seeks privileges, and the hospital must approve the clinical privileges."³⁸ The Texas Health and Safety Code addresses the process, requiring that, after "[t]he hospital's credentials committee" completes its review, "[t]he governing body of the hospital shall take final action on the application for medical staff membership or privileges."³⁹ The Texas Health and Safety Code also defines "medical staff" as "a physician or group of physicians . . . who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital."⁴⁰

³⁷ Staff Ex. 1 at 35/633 (Op. at 11).

³⁸ *Tenet Health Ltd. v. Zamora*, 13 S.W.3d 464, 467 (Tex. App.—Corpus Christi-Edinburg 2000, pet. dism'd w.o.j.).

³⁹ Tex. Health & Safety Code § 241.101(k); Staff Ex. 1 at 37/633 (Op. at 13).

⁴⁰ Tex. Health & Safety Code § 241.003(8).

It is also established Texas law that a “hospital is not a mere hostery providing room and board and a place for physicians to practice their craft, but owes independent duties of care to its patients.”⁴¹ Because one of a hospital’s primary functions is to provide a place in which doctors dispense health care services, and because the quality of a health care provider’s medical staff is intimately connected with patient care, a hospital’s credentialing of doctors is necessary to that core function and is, therefore, an inseparable part of the health care rendered to patients.⁴²

B. RESPONDENT KNEW HOSPITAL PRIVILEGES WERE NEEDED

On November 10, 2021, Respondent had no privileges in Huguley Hospital. Just the day before, on November 9, Huguley Hospital informed Respondent her application for privileges would be submitted to the Hospital’s Board on November 11. The Hospital informed Respondent that if her application was approved, she would be “contacted immediately.”⁴³ Also undisputed is that on November 10, at 3:52 p.m., Respondent emailed the Hospital her “Supplement to application.” The Hospital responded, telling Respondent at 4:48 p.m. that “[a]t this time, you do not have privileges.”⁴⁴ The Hospital was explicit: “Dr. Bowden,

⁴¹ *Zamora*, 13 S.W.3d at 471.

⁴² *Garland Cmty. Hosp. v. Rose*, 156 S.W.3d 541, 545 (Tex. 2004) (discussing negligent credentialing claim).

⁴³ Staff Ex. 4 at 579/633 (TMB 49177).

⁴⁴ Staff Ex. 6 at 593/633 (TMB 49173) (emphasis added).

you will need to complete your application that was sent to you yesterday. It will go through the credentialing process.”⁴⁵

Only Huguley Hospital has the authority to grant or deny privileges in its hospital. And it is uncontroverted in Respondent’s 3:52 p.m. November 10 email to the Hospital that she was asking for privileges. Respondent stated: “**I hereby request that I be approved** for said limited purposes.”⁴⁶ Respondent’s request for privileges from Huguley Hospital aligns with her deposition testimony that, as a physician, she must have privileges to treat a patient who is admitted in a hospital. Respondent was asked:

Q. If they are hospitalized, do you round on them? Do you go and visit them in the hospital?

A. I would have to have privileges there to round on them.⁴⁷

But despite explicitly admitting and therefore knowing she did not have privileges in Huguley Hospital, Respondent dispatched a nurse working under her to the Hospital’s ICU to provide a drug via feeding tube to Patient, who was in the Hospital under its care.⁴⁸ When Respondent’s nurse tried to enter the ICU to

⁴⁵ Staff Ex. 6 at 593/633 (TMB 49173).

⁴⁶ Staff Ex. 6 at 593/633 (TMB 49173) (emphasis added).

⁴⁷ Staff Ex. 7 at 597/633 (Bowden depo. at 25). Respondent further testified: “Q. So since you . . . told m[e] right now you have privileges at Cy-Fair Surgery Center, if they are not hospitalized at the surgery center, you wouldn’t be able to check on them. Right? A. Correct.” Staff Ex. 7 at 597/633 (Bowden depo. at 25).

⁴⁸ Resp. Ex. 6; Staff Ex. 14 at 624/644 (TMB 49328).

administer Respondent's prescription, Hospital personnel were required to take action to stop Respondent's nurse's entry into the ICU, including calling law enforcement.

C. THE UNCONTROVERTED FACTS ESTABLISH RESPONDENT BEHAVED IN A DISRUPTIVE MANNER THAT INTERFERED WITH PATIENT CARE

For Respondent to have violated Board Rule 190.8(2)(P), her disruptive conduct must have “interfere[d] with patient care” or have been “reasonably expected to adversely impact the quality of care rendered to a Patient.” The term “interfere” is understood in its common usage, applied in the context of the Hospital's duty to its patients.⁴⁹ Black's Law Dictionary defines “interference” as the “act or process of obstructing normal operations or intervening or meddling in the affairs of others.”⁵⁰ Similarly, the American Heritage Dictionary defines “interfere” as “to be or create a hindrance or obstacle” and “to perform an act of interference” and “interference” as “the act or an instance of hindering, obstructing, or impeding.”⁵¹ Black's Law Dictionary explains: “[t]he aim of interference . . . is always to bring about a particular result which is different from

⁴⁹ Words and phrases in Texas law “shall be read in context and construed according to the rules of grammar and common usage.” Tex. Gov't Code § 311.011.

⁵⁰ INTERFERENCE, Black's Law Dictionary (12th ed. 2024).

⁵¹ INTERFERE, INTERFERENCE, The American Heritage Dictionary (5th ed. 2022).

that which would have been produced if the mechanism had been allowed unaided to follow its inherent principles.”⁵²

When Respondent sent her nurse to the ICU to administer a medication to Patient, Respondent aimed to intervene in the care of an inpatient at Huguley Hospital. And although Respondent’s nurse, as Respondent asserts, “left the hospital without treating Patient” or “forcing” herself past Hospital personnel, Respondent’s conduct nonetheless obstructed the normal operations of the Hospital and hindered Hospital staff as they were providing care to Hospital patients. Respondent’s intended result was to override the Hospital’s care plan for Patient by administering her drug prescription to Patient. That Patient did not receive the drug simply highlights that Respondent’s obstruction did not bear fruit. Respondent was unable to bring about the result she intended. Instead, the Hospital stopped Respondent’s nurse. And Patient remained in the care of health professionals privileged to work in the Hospital.

Respondent’s counsel points out that the Temporary Injunction Order provided that “[Huguley Hospital] . . . shall grant Dr. Mary Talley Bowden, M.D. and/or her nurse working under her authority, temporary emergency privileges, which shall not be unreasonably delayed or denied, solely to administer Ivermectin to [Patient]”⁵³ This is uncontroverted. The Order’s language is clear: Huguley Hospital grants privileges. Thus, Respondent’s argument is misplaced in

⁵² INTERFERENCE, Black’s Law Dictionary (12th ed. 2024).

⁵³ Staff Ex. 2 at 93/633 (Temp. Inj. Order & Order Setting Trial at 4).

arguing that she was acting “under color of court order” when she—without privileges in the Hospital—tried to administer her prescription to Patient. The Temporary Injunction Order did not grant Respondent privileges to treat Patient in the Hospital. Because Respondent had no privileges in Huguley Hospital, her conduct in attempting to treat an inpatient in the Hospital interfered with patient care.

For purposes of the dispositive motion, the ALJs accept as true that Respondent did not know the Court of Appeals stayed the Temporary Injunction Order. The appellate court stayed the Order on November 9, one day before Respondent sent her nurse to treat an inpatient at Huguley Hospital. It is, however, immaterial that Respondent did not know the Order was stayed. The Order did not grant Respondent hospital privileges, and Respondent explicitly acknowledged she did not yet have even temporary privileges at Huguley Hospital. As a result, even if the Order had not been stayed, Respondent was not authorized by the Order to send her nurse to the Hospital to give a medication to Patient. Consequently, Respondent acted unprofessionally by disrupting and interfering with patient care when she attempted to treat Patient in the Hospital without privileges.

Additionally, for purposes of the dispositive motion, the ALJs accept as true Respondent’s affidavit testimony that “attorney Beth Parlato” told Respondent it

was “appropriate” for her to send her nurse to the Hospital “that evening.”⁵⁴ Significantly, Respondent did not testify the attorney advised Respondent that she had been granted privileges in the Hospital to administer medication to Patient. Respondent’s testimony that Ms. Parlato told her it was “appropriate”⁵⁵ to send her nurse to the Hospital does not excuse that Respondent acted unprofessionally by disrupting and interfering with patient care in the Hospital. Under the circumstances, Respondent could not have justifiably relied on such a statement from Patient’s attorney.⁵⁶ The uncontroverted facts show that Respondent knew the following:

- (1) as a physician, privileges were required to treat an inpatient at a hospital;
- (2) on November 9, Huguley Hospital’s Board of Directors would meet on November 11, on her application for privileges;
- (3) as of November 10, Respondent had not been granted privileges by the Hospital’s Board to treat Patient; and

⁵⁴ Resp. Ex. 4. From Respondent’s briefing, the ALJs understand that Ms. Parlato is a New York licensed lawyer who represented Patient. Ms. Parlato is not licensed in Texas. *See* Suppl. Resp. Ex. 4 at 86-88 (Ward depo.). Further, Respondent neither identified Ms. Parlato in her affidavit nor submitted an affidavit from Ms. Parlato in response to Staff’s dispositive motion.

⁵⁵ Under Texas law, if a party believes that an injunction is being disobeyed, the party’s course of action is to go to the court. Texas Rule of Civil Procedure 692 provides that in the case of disobedience of an injunction, the complainant, her agent, or attorney may file an affidavit with the court identifying the person who is guilty of such disobedience and describing the acts constituting the disobedience. The court can then “issue a show cause order, directing and requiring such person to appear . . . and show cause why he should not be adjudged in contempt of court.” If the court is “satisfied that such person has disobeyed the injunction . . . [the court] may commit such person to jail without bail until he purges himself of such contempt.” Tex. R. Civ. P. 692.

⁵⁶ *See JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 656 (Tex. 2018) (for fraud claim, justifiable reliance on misrepresentation can be negated as a matter of law when circumstances exist under which reliance cannot be justified).

- (4) the Hospital's Director of Medical Staff Services on November 10—just before she dispatched her nurse to Huguley Hospital to put a drug in Patient's feeding tube—informed Respondent that she did not have privileges in the Hospital to treat Patient.

D. CONCLUSION AND RULING

Lacking privileges in Huguley Hospital, Respondent's conduct in dispatching Kimberly Joy Witzel, her nurse, to Huguley Hospital's ICU to administer a medication to Patient interfered with the Hospital's patient care. Hospital personnel were required to take action to stop Respondent's nurse's entry to the ICU, including calling law enforcement. The evidence conclusively establishes that Respondent behaved unprofessionally and in a disruptive manner toward licensees and hospital personnel that interfered with patient care and could be reasonably expected to adversely impact the quality of care rendered to a patient. As such, Staff is entitled to summary disposition on its claim under §§ 164.051(a)(1) and .052(a)(5), as further defined in Board Rule 190.8(2)(P).

The ALJs hereby **GRANT** summary disposition in favor of Staff on its § 164.052(a)(5) of the Act claim. Accordingly, Respondent may be subject to discipline under § 164.051(a)(1) of the Act, which authorizes the Board to take disciplinary action based on Respondent committing an act prohibited under § 164.052. Although Staff is entitled to summary disposition on its § 164.052(a)(5) claim, a hearing is necessary regarding any aggravating or mitigating factors that may affect what sanctions, if any, to impose. The parties can provide evidence on the

mitigating and aggravating factors⁵⁷ at the hearing in this matter scheduled to begin on April 28, 2025. Staff has the burden to prove aggravating factors, while Respondent has the burden to present evidence regarding mitigating factors.

The ALJs do not find that Staff is entitled to summary disposition on its § 164.051(a)(6) of the Act claim as further defined in Board Rule 190.8(1)(C) (failure to use proper diligence in one's professional practice). Accordingly, the ALJs hereby **DENY** summary disposition on Staff's § 164.051(a)(6) claim.

Therefore, Staff's second motion for summary disposition is **granted in part and denied in part**, and the findings of fact and conclusions of law listed below (or in substantively equivalent terms) will be included in the Proposal for Decision that will be issued in this case.

FINDINGS OF FACT

1. Mary Talley Bowden (Respondent) is a physician licensed by the Texas Medical Board (Board) holding Texas Medical License No. K-9770, which was originally issued on May 19, 2000.
2. Respondent is board certified in Otolaryngology (ear, nose, and throat) and sleep medicine.
3. JJ (hereafter, Patient) tested positive for COVID-19 on September 23, 2021; and, five days later, was admitted to Texas Health Huguley Hospital Fort Worth South (Huguley Hospital).

⁵⁷ 22 Tex. Admin. Code § 190.15, which is now codified as 22 Tex. Admin. Code § 180.5 (eff. Jan. 9, 2025). 50 Tex. Reg. 375.

4. On October 7, 2021, Patient was placed on a ventilator and moved to Huguley Hospital's intensive care unit (ICU) in a medically induced coma.
5. Respondent became aware of Patient's situation when Patient's wife contacted Respondent. The two—Patient's wife and Respondent—conducted a telehealth visit. After discussing Patient's condition with Patient's wife, Respondent, on October 22, 2021, prescribed Ivermectin to Patient.
6. Patient's wife then sued Huguley Hospital seeking injunctive relief to require Huguley Hospital and its medical staff to administer Ivermectin to her husband.
7. On October 26, 2021, Patient's wife obtained an *ex parte* temporary restraining order requiring Huguley Hospital to administer the drug to Patient.
8. Claiming that the temporary restraining order was void, Huguley Hospital filed a petition for writ of mandamus in the Court of Appeals Second Appellate District of Texas (Court of Appeals).
9. Before the Court of Appeals ruled on the mandamus petition, Patient's wife agreed to dissolve the *ex parte* temporary restraining order and to proceed to an evidentiary hearing on her motion for a temporary injunction.
10. On November 1 and 2, 2021, the trial court held a hearing on the temporary injunction request. Respondent testified at the hearing, acknowledging:
 - She had only spoken to Patient's wife and had not examined Patient or requested or reviewed his medical records.
 - She did not know whether Patient still had COVID-19.
 - She did not have, and had not applied for, privileges at Huguley Hospital, nor did she have a nurse who could operate under her medical license.

- She had never been allowed to practice medicine in a hospital without the hospital undertaking a credentialing process and granting her privileges to practice medicine inside the hospital.
11. On November 8, 2021, the trial court signed a Temporary Injunction Order, which:
- ORDERED, that . . . [Huguley Hospital] shall grant Dr. Mary Talley Bowden, M.D. and/or her nurse working under her authority, temporary emergency privileges, which shall not be unreasonably delayed or denied, solely to administer Ivermectin to [Patient], pursuant to the order and the attached Prescription of Dr. Bowden. . . .
12. On the evening of November 8, 2021, Huguley Hospital sought emergency review of the Temporary Injunction Order and requested that the Court of Appeals stay the injunction order.
13. On November 9, 2021, at 2:52 p.m., Huguley Hospital sent Respondent a letter via email. In the letter, Respondent was:
- asked to “promptly submit an application for privileges.”
 - informed that “Hospital medical staff will consider your application tonight, if it is submitted today.”
 - informed that “[i]f you intend to bring your nurse to assist you, please be sure that your application process encompasses the nurse.”
 - informed that “[i]rrespective of the medical staff’s privileging recommendation, your application will then be submitted to the Hospital’s Board of Directors, which will meet on Thursday, November 11, 2021.”
 - informed that “[i]f the Board approves your application, you will be contacted immediately and at that point you will need to notify the

Hospital as to when you will arrive for the administration of your prescription to [Patient].”

14. At about 5:51 p.m. on November 9, 2021, the Court of Appeals stayed the Temporary Injunction Order “until further order of this court.”
15. The following day, on November 10, the Court of Appeals entered an order requiring expedited briefing on Huguley Hospital’s request for emergency review of the Temporary Injunction Order. Patient’s wife was directed to file her brief seven days later on Wednesday, November 17, 2021.
16. On November 10, Respondent posted on her social media: “Need a nurse who can help in Fort Worth area . . . my patient can get Ivermectin for 7 days but the nurse who was going to help can no longer help. Please retweet . . . need to find someone ASAP. I will get the privileges, and nurse can work under me.” Respondent further posted that the “Nurse would need to put it in his feeding tube. Hospital refusing to let their nurse do it.”
17. Then, at 3:52 p.m. on November 10, Respondent emailed Huguley Hospital’s Director of Medical Staff Services, a registered nurse, with the subject line “Supplement to application.” Respondent stated:
 - My purpose is solely to administer Ivermectin to Patient.
 - The nurse working under me is Kimberly Joy Witzel RN, license #865988.
 - The nurse will be employed by me under this limited purpose.
 - I will notify the hospital as to when she will arrive to administer the Ivermectin.
 - I hereby request that I be approved for said limited purposes.
18. Huguley Hospital’s Director of Medical Staff Services replied to Respondent, telling Respondent she did not have privileges. The Director of Medical Staff Services emailed Respondent at 4:48 p.m. on November 10: “Dr. Bowden, you will need to complete your application that was sent to you yesterday. It

will go through the credentialing process. At this time, you do not have privileges.”

19. In response, Respondent informed Huguley Hospital that she was dispatching her nurse to the Hospital. Respondent’s 5:15 p.m. (November 10) email states: “Per the lawyers, everything is set. My nurse will arrive in about 30 minutes with the court order.”
20. On November 10, 2021, Patient was in the care of Huguley Hospital, and Respondent had not been granted and did not have privileges to administer any medications to Patient, who was inpatient at Huguley Hospital.
21. Despite explicitly admitting and therefore knowing that her request for privileges had not been granted by Huguley Hospital and that she did not then have privileges to administer Ivermectin to Patient while in care at Huguley Hospital, Respondent dispatched Kimberly Joy Witzel, a nurse under Respondent’s supervision, to Huguley Hospital on November 10, 2021, to administer the medication to Patient.
22. Respondent’s intended result in dispatching her nurse to Huguley Hospital was to override the Hospital’s care plan for Patient by administering her prescription to Patient.
23. Upon being confronted with Respondent’s nurse trying to gain entry to the ICU, Huguley Hospital personnel refused the nurse entry. In the course of Huguley Hospital efforts to stop Respondent’s nurse’s entry to the ICU, law enforcement was called.
24. On November 10 at 8:36 p.m. Respondent posted to her social media (Twitter) a picture of hospital personnel in medical scrubs, stating: “This is the director of the ICU at Texas Huguley Hospital who called the police on my nurse.”
25. Respondent behaved in a disruptive manner toward Huguley Hospital’s personnel that interfered with the Hospital’s patient care.

26. Respondent behaved in a disruptive manner toward Huguley Hospital's personnel that could be reasonably expected to adversely impact the quality of care rendered to a patient.
27. On November 18, 2021, the Court of Appeals reversed and vacated the trial court's Temporary Injunction Order. The Court held that "the trial court had no legal authority to intervene in Huguley's legal exercise of its discretion to grant, deny, or limit Dr. Bowden's ICU credentials."
28. On December 12, 2024, staff (Staff) of the Board filed a Second Motion for Partial Summary Disposition with supporting evidence. On January 13, 2025, Staff filed its notice of supplemental filing of corrected exhibit (Staff Ex. 3) to its Second Motion for Partial Summary Disposition. By Order dated January 15, 2025, the Administrative Law Judges denied Respondent's request to strike Staff's January 13, 2025 supplemental filing.
29. Respondent filed a Response to the Second Motion for Partial Summary Disposition with opposing evidence on December 30, 2024. Then, on January 28, 2025, Respondent filed a Supplemental Response with additional opposing evidence.
30. Staff filed its Reply to Respondent's Supplemental Response on February 3, 2025.

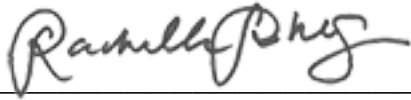
CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. Tex. Occ. Code, title 3, subtitle B.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Occ. Code § 164.007.
3. Respondent received timely and adequate notice of the allegations against her and Staff's Second Motion for Partial Summary Disposition. Tex. Gov't Code

§§ 2001.051-.052; Tex. Occ. Code § 164.005(f); 1 Tex. Admin. Code § 155.103.

4. Staff had the burden of showing by a preponderance of the evidence that Respondent is subject to disciplinary action by the Board. 1 Tex. Admin. Code § 155.427.
5. All or part of a contested case may be disposed of by summary disposition if the pleadings, the motion for summary disposition, and the summary disposition evidence show there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law on all or some of the issues. 1 Tex. Admin. Code § 155.505(a).
6. Because the quality of a health care provider's medical staff is intimately connected with patient care, a hospital's credentialing of doctors is necessary to that core function and is, therefore, an inseparable part of the health care rendered to patients. *Garland Cmty. Hosp. v. Rose*, 156 S.W.3d 541, 545 (Tex. 2004).
7. Only Huguley Hospital's governing body has the authority to grant or deny privileges to a physician, such as Respondent, in its hospital. Tex. Health & Safety Code § 241.101(k); Tex. Att'y Gen. Op. No. GA-0102 (2003).
8. Respondent could not have justifiably relied on a statement from Patient's attorney that it was "appropriate" for Respondent to send her nurse to Huguley Hospital. *See JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 656 (Tex. 2018).
9. Staff established there is no genuine issue of material fact regarding the allegation that Respondent is subject to disciplinary action under Tex. Occ. Code § 164.051(a)(1).
10. Respondent is subject to disciplinary action because she engaged in unprofessional conduct in that she behaved in a disruptive manner toward licensees and hospital personnel that interfered with patient care and could be reasonably expected to adversely impact the quality of care rendered to a patient. Tex. Occ. Code §§ 164.051(a)(1), .052(a)(5); 22 Tex. Admin. Code § 190.8(2)(P).

Signed March 12, 2025



Rachelle Nicolette Robles,
Administrative Law Judge



Linda J. Burgess,
Administrative Law Judge