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STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

SOAH DOCKET No. 503-23-17769

HEARING CONDUCTED BY THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-23-_____MD
TEXAS MEDICAL LICENSE NO. K-9770

ACCEPTED
503-23-17769
4/25/2023 12:43:42 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

IN THE MATTER OF THE

COMPLAINT AGAINST

MARY TALLEY BOWDEN, M.D.

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

COMPLAINT

TO THE HONORABLE TEXAS MEDICAL BOARD AND THE HONORABLE
ADMINISTRATIVE LAW JUDGE TO BE ASSIGNED:

COMES NOW, the staff of the Texas Medical Board (Board) and files this Complaint against Mary Talley Bowden, M.D. (Respondent) for alleged violations of the Medical Practice Act (the Act), Title 3, Subtitle B, Texas Occupations Code, §§151.001 *et seq.* (Vernon Supp. 2019) and the Board’s Rules, and would show the following:

I. SUMMARY OF FACTUAL ALLEGATIONS

Respondent violated the standard of care when she prescribed medication to one patient in the ICU of Texas Huguley Hospital, where she did not hold privileges. Respondent did not have a prior physician-patient relationship with the patient and did not establish a medical relationship prior to prescribing medication to the patient. She did not conduct an exam, nor could she have done so, as she did not have privileges at the hospital where the patient was admitted.

Respondent sent her delegate to administer the prescription medication to the patient at the hospital, despite having no treating privileges at the hospital, nor having established a physician-patient relationship with the patient. Additionally, Respondent acted in an unprofessional manner and violated confidentiality protections for patients and hospital staff when she disseminated patient identifying protected health information, and publicly identified hospital staff treating the patient and involved in patient decision-making on her social media accounts.

Respondent’s privileges at another hospital, Houston Methodist, were suspended based on Respondent’s unprofessional conduct. Respondent resigned her privileges while under investigation at Houston Methodist.

II. LEGAL AUTHORITY AND JURISDICTION

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

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

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

4. All jurisdictional requirements have been satisfied.

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

III. APPLICABLE STATUTES AND STATUTORY VIOLATIONS

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

A. General Statutes and Rules:

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

2. 22 TEX. ADMIN. CODE, CH.187 sets forth the procedures adopted by the Board under the requirement of Section 164.007(a) of the Act.

3. 22 TEX. ADMIN. CODE, CH. 190 sets forth aggravating factors that warrant more severe or restrictive action by the Board.

4. 1 TEX. ADMIN. CODE, CH. 155 sets forth the rules of procedure adopted by SOAH for contested case proceeding.

5. 1 TEX. ADMIN. CODE, CH. 155.507, requires the issuance of a Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law.

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

B. Specific Violations Cited:

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

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

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

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

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

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

interferes or could be reasonably expected to adversely impact the quality of care rendered to a patient; 190.8(2)(N) failing to maintain the confidentiality of a patient.

6. Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates any state or federal law if the act is connected with the physician's practice of medicine, specifically the HIPAA Title II Act 45 C.F.R. Parts 160-164.

IV. FACTUAL ALLEGATIONS

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

Patient Care and Disruptive Conduct

1. On or about September 28, 2021, Patient 1, was admitted to Texas Health Huguley Hospital in Fort Worth with complaints of increasing shortness of breath. Patient 1 had been diagnosed with COVID-19 the prior week. At the time of admission to the hospital, Patient 1 was suffering from acute respiratory failure and sepsis. Patient 1 declined treatment with Remdesivir.

2. On or about October 7, 2021, following severe progression of his illness, Patient 1 was intubated by hospital staff and placed in prone ventilation in the ICU.

3. On or about October 22, 2021, an appointment note created by Respondent indicated that she spoke to Patient 1's wife. Based on the conversation, Respondent issued prescriptions for the patient without examining the patient or reviewing his medical records.

4. Respondent did not have privileges at Texas Health Huguley Hospital (Huguley Hospital) and had no prior established physician/patient relationship with the patient.

5. On or about November 2, 2021, Respondent submitted an application for privileges at Huguley Hospital. Respondent was notified that her application was pending review.

6. On or about November 4, 2021, Respondent asked to withdraw her application for privileges at the facility claiming that the hospital was delaying the process.

7. On or about November 5, 2021, Huguley Hospital staff notified Respondent that they were declining to grant her temporary privileges but would continue to process her entire application. Respondent then withdrew her application.

8. On or about November 10, 2021, Respondent sent an email to Huguley Hospital, “supplementing” her application with information about her plans to have a nurse under Respondent’s supervision come to Huguley Hospital to administer the prescription to Patient 1.

9. Huguley Hospital staff informed Respondent that she had not completed her application and therefore did not have privileges at the facility.

10. Respondent replied via text and email that her nurse would arrive at Huguley Hospital in 30 minutes to administer the prescriptions to Patient 1.

11. That same day, Respondent used her social media profile on the platform known as “Twitter” to discuss Patient 1’s care and requesting media coverage. Respondent announced that she had a nurse she would dispatch to Huguley Hospital to administer the medications.

12. On November 10, 2021, in response to Respondent’s nurse’s unauthorized presence at Huguley Hospital and refusal to leave, hospital staff called the Fort Worth Police Department, resulting in a disruptive scene.

13. Respondent used her Twitter account, a public forum, to disseminate pictures of Huguley Hospital staff.

14. Respondent issued and attempted to administer prescriptions to a patient with whom she did not have a physician-patient relationship, without examining or evaluating the patient, while the patient was in the ICU of a hospital where she did not have privileges. Respondent instructed her delegate to enter the hospital unauthorized, causing a disruptive scene. Respondent inappropriately publicized the patient’s care and identified hospital staff on social media. Respondent’s actions are in violation of the Act and/or Board Rules, specifically:

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

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

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

190.8(1)(C) failure to use proper diligence in one's professional practice; 190.8(1)(D), failure to safeguard against potential complications; 190.8(1)(L), prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

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

Section 164.053(a)(1) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's commission of an act that violates any state or federal law if the act is connected with the physician's practice of medicine, specifically the HIPAA Title II Act 45 C.F.R. Parts 160-164.

Disciplinary Action by Peer Groups

15. On or about December 17, 2020, Respondent was granted temporary privileges at Houston Methodist Hospital (Houston Methodist) and was appointed as provisional staff at the facility on or about January 27, 2021.

16. On or about November 8, 2021, Houston Methodist staff became aware of Respondent's "unethical behavior" and "dissemination of disinformation" via social media.

17. Some of the issues staff highlighted were, but not limited to, Respondent's declaration that she would no longer care for vaccinated patients; unproven statements about the hospital denying patient care; her use of foul language; and a lack of understanding of HIPAA, since she used patient identifying information on her public social media pages.

18. Respondent was requested by November 11, 2021 letter from Houston Methodist peer review to provide proof she met the hospital's requirements for Covid protocols within seven days and advised that she conduct herself professionally on social media and not use vulgar, abusive or offensive language.

19. On November 12, 2021, the Houston Methodist peer review committee sent Respondent a letter noting that she had been unprofessional and inappropriate to a hospital

Department Chair when approached about the issues cited in the November 11th letter. Respondent was advised that the medical executive committee (MEC) was beginning an investigation and implementing a precautionary suspension of her privileges for no longer than 30 days.

20. The letter advised Respondent that a meeting of the Medical Executive Committee (MEC) would take place on November 28, 2021, to discuss the suspension and investigation, and that Respondent's presence was required.

21. Respondent instead tendered her resignation to Houston Methodist by letter dated November 15, 2021.

22. Respondent's resignation of her privileges while under investigation by the Houston Methodist MEC for unprofessional conduct is in violation of the Act and/or Board Rules, specifically:

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

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

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

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

V. AGGRAVATING AND MITIGATING FACTORS

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

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

VI. NOTICE TO RESPONDENT

IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS COMPLAINT WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS AFTER THE DATE OF RECEIPT, A DEFAULT ORDER MAY BE ENTERED AGAINST YOU, WHICH MAY INCLUDE THE DENIAL OF LICENSURE OR ANY OR ALL OF THE REQUESTED SANCTIONS, INCLUDING THE REVOCATION OF YOUR LICENSE. A COPY OF ANY ANSWER YOU FILE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ALSO BE PROVIDED TO THE HEARINGS COORDINATOR OF THE TEXAS MEDICAL BOARD.

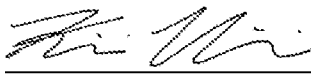
VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Board staff requests that an administrative law judge employed by the State Office of Administrative Hearings conduct a contested case hearing on the merits of the Complaint and issue a Proposal for Decision containing Findings of Fact and Conclusions of Law necessary to support a determination that Respondent violated the Act and rules adopted thereunder, as set forth in this Complaint.

Respectfully submitted,

TEXAS MEDICAL BOARD

AMY SWANHOLM, J.D., MSEL
Litigation and Enforcement Manager

By: 

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Filed with the Texas Medical Board on April 25, 2023

A handwritten signature in black ink that reads "Stephen Brint Carlton". The signature is written in a cursive, slightly slanted style.

Stephen Brint Carlton, J.D.
Executive Director
Texas Medical Board

CERTIFICATE OF SERVICE

I certify that on the 25th day of April 2023, a true and correct copy of the foregoing Complaint has been served as follows:

VIA EFILE:

Docket Clerk
State Office of Administrative Hearings
William P. Clements Bldg.
300 W. 15th Street, Suite 504
Austin, TX 78701-1649

VIA CERTIFIED MAIL RRR/NO. 7014 2870 0000 3060 3728 AND FIRST CLASS MAIL:

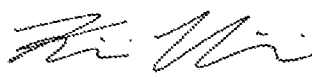
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