

CAUSE NO. D-1-GN-26-000172

MARY TALLEY BOWDEN, M.D.,
Plaintiff,

and

THE STATE OF TEXAS,
Intervenor-Plaintiff,

vs.

TEXAS MEDICAL BOARD,
Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419TH JUDICIAL DISTRICT

**DEFENDANT’S MOTION TO DISQUALIFY THE OFFICE OF THE ATTORNEY
GENERAL AND STRIKE THE STATE’S PETITION IN INTERVENTION**

Defendant Texas Medical Board asked the Office of the Attorney General of Texas (OAG) to defend this suit. OAG agreed and swiftly assigned counsel. It exchanged privileged communications with the Board, worked through initial litigation strategy, drafted a plea to the jurisdiction and answer, and filed that answer as “Attorneys for Defendant Texas Medical Board.” Then OAG changed its mind. OAG dropped its client, quietly “recall[ing]” the answer it had filed so that no public record of the representation would remain. It then sent a letter to the Board “declining” the representation it already accepted, and it appeared in this very lawsuit purporting to represent the State of Texas against its former client. OAG’s intervention petition did not merely take a contrary legal position; it publicly denounced the Board for “acting on nothing more than personal animosity and spite” and “without following their own published protocols and in violation of the laws of this State.” State Pet. at 1.

OAG’s actions are prohibited. The Texas Rules of Disciplinary Conduct exist precisely to prevent OAG’s betrayal: a lawyer cannot represent a client in a matter, engage in privileged

communications about that matter, withdraw without warning, and reappear as an adversary in the same matter. That prohibition applies with equal force to government lawyers as it does to any other attorney. OAG must be disqualified. And because no other entity may represent the State as intervenor, the intervention petition must be stricken as a natural consequence of the disqualification.

BACKGROUND

I. The Board Disciplines Dr. Bowden for Unprofessional Conduct.

Plaintiff Dr. Mary Talley Bowden is a Texas-based physician and a board-certified ear, nose, and throat physician. Ex. A, Final Order, *In re Mary Talley Bowden, M.D.*, SOAH Docket No. 503-23-17769.MD, at 1. (Tex. Med. Bd. Oct. 17, 2025). In October 2021, Bowden was contacted by Erin Jones, whose husband Jason Jones was receiving treatment at Huguley Hospital Fort Worth South in connection with a positive COVID-19 diagnosis. *Id.* at 3. Erin conducted research and reached out to Bowden after she discovered that Bowden supported the use of ivermectin as a treatment method. *Id.* Without meeting Jason, reviewing any of his medical records, or independently confirming whether Jason still was displaying symptoms, Bowden prescribed him ivermectin. She then contacted Huguley administrators. During that conversation, hospital staff first learned that Bowden had issued a medical prescription without examining the patient or checking his medical records. *Id.* She also lacked privileges at Huguley, meaning that she did not have permission from the Huguley governing board to practice medicine at the hospital. *Id.* Erin requested that Huguley staff administer the prescription, but the hospital refused. *Id.*

A flurry of litigation followed. Relevant here, a trial court entered a TRO on November 8, 2021, that ordered Huguley to grant Bowden temporary emergency privileges without delay or denial and solely for the purpose of administering ivermectin to Jason. *Id.* at 4. In compliance with the court order, and notwithstanding that Huguley also filed an emergency mandamus petition,

Huguley staff emailed Bowden requesting that she promptly apply for privileges and include her nurse in the application. *Id.* Bowden never completed the application. *Id.* at 5.

The following day, the court of appeals stayed the TRO “until further notice of this court.” *Id.* Nonetheless, on November 10—one day after the stay was granted—Bowden emailed Huguley a “supplement to application” to obtain privileges. *Id.* This supplement did not include the application Bowden was provided, but instead contained five bullet points relating to her decision to send a nurse to Huguley to administer ivermectin. *Id.* Specifically, Bowden identified her nurse by name and license number, indicated that the nurse’s purpose was to administer ivermectin, that Bowden would employ the nurse, that Bowden would notify the hospital of the nurse’s arrival, and requested privileges for this purpose. *Id.* In response, Huguley informed Bowden that she needed to complete the application she was provided the day prior and that she did not have privileges. *Id.* In response, Bowden explained that she was dispatching her nurse to the hospital because “per the lawyers, everything is set. My nurse will arrive in about 30 minutes with the court order.” *Id.* When the nurse arrived, and consistent with the court of appeals’ order staying the TRO, Huguley denied the nurse access to treat Jason. *Id.* The nurse refused to leave and caused a disruptive scene, necessitating police intervention. *Id.*

Administrative proceedings soon commenced against Bowden, which ultimately culminated in a final order dated October 17, 2025, which imposed a public reprimand and adopted findings of fact and conclusions of law reached by two administrative law judges. The order affirmed conclusions that Bowden was subject to discipline 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.” *Id.* at 7. The Board also considered two aggravating

factors: that Bowden’s conduct was intentional, and that she demonstrated an increased potential for harm to the public. *Id.* (citing Tex. Admin. Code §§ 190.15(a)(5); 190.15(a)(7)).

II. OAG Represents the Board.

Based on Bowden’s statements at the conclusion of the administrative hearing process, the Board understood that she intended to sue the Board in state trial court to challenge the public reprimand. Consistent with the General Appropriations Act, *see* Article IX § 16.01, and section 402.0212 of the Texas Government Code, the Board contacted OAG on October 27 and requested representation. Ex. B, Declaration of Scott Freshour (“Freshour Decl.”) ¶ 6. Two days later, OAG accepted the representation, routed the case to the Administrative Law Division, and assigned Assistant Attorney General Alexander Comsudi to represent the Board. *Id.* ¶ 7. Comsudi then initiated communications with the Board’s general counsel and confirmed that the Board would not need to send a new request for representation once the lawsuit was formally filed. *Id.*

Bowden filed her petition on January 9, 2026, which seeks reversal or remand of the Board’s reprimand based on four theories: 1) the Board erred in finding that Bowden knew that she lacked privileges and could not administer medication in Huguley; 2) the Board did not substantiate its conclusion that Bowden engaged in intentional misconduct; 3) the Board violated Bowden’s due process rights; and 4) the public reprimand was excessive and arbitrary. Pet. ¶¶ 21-43. She also requested court costs. *See id.* § VIII, Prayer for Relief.

The Board promptly sent the petition to Comsudi, who communicated with the Board and provided legal advice. Freshour Decl. ¶¶ 9, 10. In consultation with Comsudi, the Board decided to file an answer and directed Comsudi to do so on January 27, 2026. *Id.* ¶ 10. The answer began with a plea to the jurisdiction attacking Bowden’s demand for court costs, included a general denial under Rule 92, and concluded with a prayer that all relief be denied. Ex. C at 1-3. It was signed by

Comsudi below a signature block including Attorney General Ken Paxton, First Assistant Attorney General Brent Webster, and Deputy Attorney General for Civil Litigation Austin Kinghorn, who were referred to collectively as “[a]ttorneys for Defendant Texas Medical Board.” *Id.*

III. OAG Switches Sides, Intervening Against the Board in Support of Dr. Bowden.

Three days later, on January 30, 2026, Comsudi emailed the Board and indicated that he filed the answer, but the OAG “executive team” instructed Comsudi to “recall it.” Freshour Decl. ¶ 11. Essentially, OAG’s “Exec. leadership” interceded to ensure that the answer was never placed on the public docket. *Id.* He assured the Board that no deadlines would be missed and that he was awaiting further instructions from the “Executive Team.” *Id.*

The Board heard nothing for several weeks until February 12, when Attorney General Paxton appeared on the Michael Berry Show. A few minutes before the show started, and with no other advance warning, the Board received a letter from Deputy Attorney General for Civil Litigation Austin Kinghorn declaring that OAG would not represent the Board because “the request is not appropriate for representation” by OAG. *Id.* ¶ 14. Meanwhile, on the Michael Berry Show, Attorney General Paxton told listeners that he was intervening *to support Dr. Bowden*. OAG subsequently issued a press release lambasting the Board. *See* Ex. D. It announced that “Attorney General Paxton is not only declining to represent TMB in the case, but he has now filed an intervention in the case in support of Dr. Bowden . . . to ensure administrative agencies don’t violate the rights of licensed professionals in Texas.” *Id.*

The available circumstantial evidence strongly suggests that OAG communicated with Bowden in advance of its intervention while the Board still believed that OAG was its lawyer. On January 31, 2026, in apparent response to OAG’s recall of the answer, Bowden posted on X: “Great news! @KenPaxtonTX has withdrawn his response to my appeal. I took down yesterday’s tweets,

because I believe the OAG’s side of the story. They have expressed interest in working on a resolution with me.” *See* Mary Talley Bowden MD (@MaryBowdenMD), X (Jan. 31, 2026, at 11:12, a.m.), <https://x.com/MaryBowdenMD/status/2017647172175769808>. And one hour before OAG terminated its representation of the Board, Bowden again posted on social media: “I’ve been advised to listen to the @MichaelBerrySho this morning at 8:30 CT for a major announcement from @KenPaxtonTX.” *See* Mary Talley Bowden MD (@MaryBowdenMD), X (Feb. 12, 2026, at 7:26 a.m.), <https://x.com/MaryBowdenMD/status/2021939069320671492>. Bowden attached a text message from an unnamed individual that arrived at 7:15 a.m. directing her to watch the show. *Id.* Because there had not been any previous public disclosure of OAG’s side-switching, that text could only have come from someone with inside knowledge from OAG.

The ensuing petition in intervention, filed on behalf of the State of Texas by the General Litigation Division, echoed Bowden’s claims, *see* State Pet. ¶¶ 19-30, and accused the Board of “tramp[ing]” on the rights of licensees and disregarding the law and Texas and United States Constitutions. *Id.* ¶¶ 1, 11, 12. Upon receipt of Kinghorn’s letter and OAG’s petition on behalf of the State, the Board emailed Kinghorn seeking clarification and inquiring into the Board’s ability to retain outside counsel. Freshour Decl. ¶ 16. Kinghorn responded and confirmed again that OAG was “declining” representation and authorizing the Board to represent itself with potential assistance from private counsel. *Id.* ¶ 17.

After OAG terminated its representation, the undersigned counsel entered an appearance and filed an answer for the Board on March 9, 2026. Otherwise, this matter is still in its early stages. Despite Bowden’s obligations under this Court’s local rules to promptly request specific assignment of the case and file a notification including a list of all parties, their attorneys of record, the agency docket number, and whether the matter has been assigned, Travis County Dist. Ct. L.

R. 10.2(a), she has not done so. The Board's motion to disqualify OAG is therefore the first substantive motion submitted in this case.

SUMMARY OF THE ARGUMENT

OAG should be disqualified. Rule 1.09(a) of the Texas Disciplinary Rules of Professional Conduct prohibits a lawyer who formerly represented a client in a matter from representing an adverse party in the same or substantially related matter without obtaining informed consent. OAG's actions are textbook Rule 1.09 violations. Although OAG claimed it was merely "declining" to represent the Board, the undisputed evidence reflects that OAG accepted the Board's request for representation and provided legal advice and representation to the Board once Bowden filed suit. OAG then abruptly terminated that representation and is now representing an adverse party in the same matter—the State of Texas—that is seeking to unwind the Board's actions. Prior to doing so, OAG never even attempted to obtain the Board's informed consent to intervene as a plaintiff against the Board's interests.

The Board has also established prejudice. Under longstanding precedent, an irrebuttable presumption exists that an attorney who represents a client obtains that client's confidences and shares them within the firm. *In re Mitcham*, 133 S.W.3d 274, 276 (Tex. 2004). OAG must therefore be presumed to possess the Board's confidences and to be deploying them against the Board in this proceeding. That suffices for the prejudice inquiry. By contrast, Bowden will not suffer prejudice if the Court grants this motion because disqualifying OAG will have no impact on her hired counsel of choice. And whatever prejudice the State may suffer from OAG's disqualification flows directly from OAG's own ethical violations. The State was never foreclosed from intervening against the Board; instead, it was simply foreclosed from doing so *after* its counsel had already taken on the fiduciary duty to act on the Board's behalf.

The Court should disqualify OAG and strike its petition in intervention as counsel for the State.

STANDARD OF REVIEW

Although disqualification of counsel is a “severe remedy” subject to an “exacting standard,” *see In re RSR Corp.*, 568 S.W.3d 663, 666 (Tex. 2019) (orig. proceeding); *In re Murrin Brothers 1885, Ltd.*, 603 S.W.3d 53, 57 (Tex. 2019), courts routinely disqualify counsel who violate conflict-of-interest rules to the detriment of their former clients. *See, e.g., In re Hoar Const., L.L.C.*, 256 S.W.3d 790 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *In re Roseland Oil & Gas, Inc.*, 68 S.W.3d 784 (Tex. App.—Eastland 2001, orig. proceeding, no pet.); *Centerline Industries, Inc. v. Knize*, 894 S.W.2d 874 (Tex. App.—Waco 1995, no pet.); *Clarke v. Ruffino*, 819 S.W.2d 947 (Tex. App.—Houston [14th Dist.] 1991, orig. proceeding, pet. dismissed w.o.j.).

As the Texas Supreme Court has explained, “the burden is on the movant to establish with specificity a violation of one or more of the disciplinary rules.” *Spears v. Fourth Court of Appeals*, 797 S.W.2d 654, 656 (Tex. 1990). Once a movant has done so, courts examine (1) whether the movant has established prejudice if disqualification is not granted and (2) “the extent to which the nonmovant will suffer prejudice from the disqualification of his or her attorney.” *Murrin Brothers*, 603 S.W.3d at 57 (citation omitted).

ARGUMENTS AND AUTHORITIES

I. OAG Violated Rule 1.09(a) by Intervening and Taking a Position Adverse to Its Former Client.

The Texas Disciplinary Rules of Professional Conduct provide that “a lawyer who has formerly represented a client in a matter shall not thereafter represent another person *in the same or a substantially related matter* when that person’s interests are materially adverse to the interests of the former client, absent informed consent, confirmed in writing.” Tex. Disciplinary Rules

Prof'l Conduct R. 1.09(a) (emphasis added). This prohibition is deeply rooted in Texas law. Two decades before the ratification of our current Constitution, the Texas Supreme Court held that “[i]t is incompatible for an attorney to accept the employment or the confidence of both parties. And . . . the attorney cannot in general, with propriety, accept an employment by the opposite party in the same case.” *Myers v. Crockett*, 14 Tex. 257, 259 (Tex. 1855). OAG violated these precepts in all respects. *

OAG entered into an attorney-client relationship with the Board. Consistent with the Legislature’s prohibition on an agency’s use of funds to defend or initiate civil lawsuits without the consent of OAG, the Board sought and obtained OAG representation. *See* Tex. Gov. Code § 402.0212; Gen. Appropriations Act, Article IX, § 16.01. As established above, from October 29, 2025, until February 12, 2026, an attorney-client relationship existed between the Board and OAG. Freshour Decl. ¶¶ 7, 14. *See* Tex. Occ. Code §§ 152.001(a) (establishing the Board as an executive branch agency charged to regulate the practice of medicine); 152.002(a) (describing the Board’s composition of appointed members); 165.001 (providing that the Board enforces regulations against doctors and other medical professionals).

During that time, the Board shared confidential information with OAG, which in turn provided legal advice. *Id.*; *see* Tex. Disciplinary Rules Prof’l Conduct R. 1.05(a) (defining confidential information to include “both privileged information and unprivileged client information.”). For example, OAG coordinated with the Board to draft an answer to the petition,

* Although not the basis of the Board’s disqualification request, OAG also violated at least two other disciplinary rules in the course of its representation: OAG refused to allow its client to direct the litigation when it pulled down the answer absent consent, Tex. Disciplinary R. Prof’l Conduct R. 1.02(a), and OAG failed to “keep a client reasonably informed about the status of the matter and promptly comply with reasonable requests for information” when it withdrew from the case without communicating about the status of the litigation, Tex. Discip. R. Prof’l. Cond. R. 1.03(a).

which involved strategic considerations of whether to raise defective service issues and procedural avenues to address Bowden's request for attorneys' fees and costs. Ex. E. Simply put, OAG was the Board's lawyer in this matter. *See* Ex. F (correspondence between Comsudi and the Board confirming OAG's handling of the litigation); Ex. C (answer listing OAG as "Attorneys for Defendant Texas Medical Board"). The Board thus had "every right to expect the same diligent and faithful representation as any other 'client.'" *Public Utility Comm'n of Texas v. Cofer*, 754 S.W.2d 121, 125 (Tex. 1988).

OAG is now representing "another person" in the same matter. Intervenor State of Texas is "another person" under Rule 1.09. The Disciplinary Rules "should be treated like statutes," *O'Quinn v. State Bar of Texas*, 763 S.W.2d 397, 399 (Tex. 1988), and must be read to avoid absurd results, *Lane v. Comm'n for Lawyer Discipline*, 715 S.W.3d 349, 360 (Tex. 2025). As the comments to Rule 1.09 explain, the key "underlying question" is whether the subsequent representation "can be justly regarded as a changing of sides in the matter in question." On that score, OAG's conduct is the paradigmatic example of improperly changing positions. OAG drafted and filed a pleading for the Board denying Bowden's allegations. It then withdrew that pleading without the Board's consent and filed pleadings in this same case asserting that Bowden's claims are meritorious and should prevail. OAG changed sides; there is no other reasonable conclusion.

The State's interests are "materially adverse" to the interests of the Board. OAG is proud that its intervention in this case is "materially adverse" to the Board. Attorney General Paxton bragged that "we are intervening in a Texas Medical Board case against Dr. Bowden. Normally we would represent [the Board] but we are not representing them, we are *on the other side* trying to help her because we think she has been unfairly treated during a particular case during COVID where she was prescribing ivermectin." *Ken Paxton Breaks Down the Battle Ahead*, THE MICHAEL

BERRY SHOW (Feb. 12, 2026), *available at* <https://whnz.iheart.com/featured/michael-berry/content/2026-02-12-44-the-michael-berry-show-am-show-hr-1-ken-paxton-breaks-down-the-battle-ah/> (statement of Attorney General Paxton, 26:30-27:00) (emphasis added). The State then intervened as a plaintiff and is seeking to void the Board’s public reprimand. *See* State Pet. ¶¶ 19-30. The State’s interests are therefore materially adverse to the Board’s.

OAG never obtained the Board’s informed consent. Lastly, OAG never attempted to obtain the Board’s consent before intervening in this case. “[L]oyalty to a client prohibits undertaking representation directly adverse to the representation of that client in a substantially related matter unless that client’s fully informed consent is obtained and unless the lawyer reasonably believes that the lawyer’s representation will be reasonably protective of that client’s interests.” *In re Thetford*, 574 S.W.3d 362, 376 (Tex. 2019) (orig. proceeding) (citing Tex. Disciplinary Rules Prof’l Conduct R § 1.06. After OAG unilaterally recalled the answer, the Board did not hear from OAG until it received Kinghorn’s letter purporting to “decline” representation. Freshour Decl. ¶ 14. In fact, OAG was *terminating* a representation that it had already undertaken. And at no point between terminating representation and intervening in this case did OAG request or receive the Board’s informed consent.

OAG and its attorneys are not exempt from their ethical obligations. OAG is likely to argue that it must be treated differently than any other law firm, and therefore has not violated its ethical obligations, because it is led by a statewide executive officer. Not so. “All lawyers are bound by the rules.” *Webster v. Comm’n for Lawyer Discipline*, 704 S.W.3d 478, 503 (Tex. 2024). Indeed, the Rules expressly cover actions of government counsel. *See* Tex. Disciplinary Rules Prof’l Conduct R. § 1.11; *see also* Tex. Gov. Code § 81.071 (“[E]ach attorney admitted to practice in this state is subject to disciplinary jurisdiction of the supreme court and the Commission for

Lawyer Discipline”). Moreover, the courts themselves are empowered to regulate the conduct of the lawyers in front of them: “the normal adversarial system provides a powerful safeguard against executive-branch authorities who may violate the Texas Disciplinary Rules of Professional Conduct over the course of litigation.” *Webster*, 704 S.W.3d at 505. And “the courts must have the *authority* to subject any attorney’s litigation conduct to direct review,” including “over government attorneys for disciplinary purposes.” *Id.*

While it is true that in some circumstances Texas courts must be attuned to complex constitutional concerns regarding the separation of powers or sovereign immunity in adjudicating the ethical obligations of OAG attorneys, *see generally id.* at 496-506, this case presents no such difficulty. OAG abandoned a client to switch sides in litigation. That is a clear breach of its ethical obligations.

* * *

In sum, OAG’s conduct is an obvious violation of its duty of loyalty to the Board. OAG represented the Board for three and a half months and obtained confidential information from its client. Without warning—and in collusion with the Board’s adversary—OAG both terminated its representation and intervened against the Board on the same day and without consent. OAG and its attorneys ran afoul of Rule 1.09(a).

II. The Prejudice Inquiry Requires Disqualification.

The Texas Supreme Court has held that showing a disciplinary rule violation is not enough; the movant must also show prejudice if disqualification is denied. *Thetford*, 574 S.W.3d at 373-74. The Supreme Court reinforced prejudice requirements in *In re Murrin Brothers 1885, Ltd.*, noting that prejudice to both sides must be considered. 603 S.W.3d at 57. In so doing, the Supreme Court analyzed: (1) the increased financial burden in obtaining substitute counsel unfamiliar with the

case; (2) the denial of the nonmovant's right to be represented by chosen counsel; and (3) the risk that the disqualification motion is being used as a dilatory tactic. *Id.*

Prejudice to the Board exists as a matter of law. When an attorney obtains confidential information during a representation, there is an irrebuttable presumption that those confidences were obtained and shared with others at the firm. *See Mitcham*, 133 S.W.3d at 276; *National Medical Enterprises, Inc. v. Godbey*, 924 S.W.2d 123, 131 (Tex. 1996) (holding that knowledge is imputed to attorneys at the same law firm). That presumed sharing of confidences is itself prejudice. Otherwise, requiring a former client to demonstrate actual prejudice from the disclosure of its confidences would place a “virtually insurmountable burden” on the very party seeking protection, because “the only persons who know whether confidences were actually shared will generally be the very lawyers seeking to avoid disqualification.” *Grant v. Thirteenth Ct. of Appeals*, 888 S.W.2d 466, 467 (Tex. 1994). And to compel the Board to identify the specific confidences OAG obtained and demonstrate their use in this proceeding “would tear aside the protective cloak drawn about the lawyer-client relationship.” *In re George*, 28 S.W.3d 511, 517 (Tex. 2000). The irrebuttable presumption under *Mitcham* forecloses that inquiry entirely. Because OAG is presumed to possess and have shared the Board's confidences, and because those confidences are being or may now be deployed against the Board in the same matter in which they were obtained, the Board has established prejudice.

Meanwhile, Bowden will suffer no harm from the State's disqualification. OAG is not her attorney. This motion does not concern or challenge her counsel. And no party is entitled to the State's participation as an intervenor. Texas Rule of Civil Procedure 60 allows but does not require intervention, and no statute compels OAG to intervene as a plaintiff in this case. Even in cases where the constitutionality of a state statute is challenged—not so here—the procedure for

intervention set out by the Texas Legislature is discretionary, not mandatory. *See* Tex. Gov. Code § 402.010; *Holt v. Tex. Dep't. of Ins.*, No. 03-17-00758, 2018 WL 6695725, at *5-6 (Tex. App.—Austin, Dec. 20, 2018, pet. denied) (“[T]he Attorney General [has] discretion to determine whether to intervene.”). Simply put, Dr. Bowden’s case is not affected procedurally or substantively by disqualifying the State.

Any prejudice OAG may claim on behalf of the State is of its own creation. OAG is charged by the Texas Constitution to represent the State and its interests, and in cases where OAG chooses to intervene, OAG speaks for the State. *See Maud v. Terrell*, 200 S.W. 375, 376-77 (Tex. 1918) (noting that the constitutional authority of the Attorney General and prosecutors to represent the State is exclusive); Tex. Const. art. IV, § 22. OAG initially determined that the State’s interests were best served by accepting the request for representation from the Board, rendering legal advice, and filing a pleading on behalf of the Board. That determination had consequences; the Disciplinary Rules prevent OAG, like any other law firm, from representing an intervenor in a case after having represented the defendant without first obtaining informed consent. OAG should not now be heard to complain that its own actions prejudiced the State in violation of the Texas Disciplinary Rules of Professional Conduct and, arguably, the Texas Government Code. *See* Tex. Gov. Code § 81.071. As OAG maintains in its petition in intervention, the State of Texas has an “overwhelming interest” in making sure that state actors do not “disregard the law.” State Pet. at ¶ 11. It follows, then, that it is always in the state’s interest to follow the law, which raises significant questions as to OAG’s decisions in this case. *See Tex. Ass’n of Bus. v. City of Austin*, 565 S.W.3d 425, 441 (Tex. App.—Austin 2018, pet. denied) (the violation of duly enacted state law by local government officials “clearly inflicts irreparable harm on the State”); *cf.* Tex. Const. art. IV, § 10 (the Governor shall “cause the laws to be faithfully executed...”).

Finally, this motion is filed to address a “necessity” that cannot “be addressed by other remedies,” and not as a “as a dilatory trial tactic.” *In re Murrin*, 603 S.W.3d at 57 (internal quotation marks omitted). The ordinary attorney disciplinary process would be insufficient to address OAG’s ethical violations because the Board would be forced to suffer the prejudice of having its former counsel appear against it in the same matter. Moreover, any post facto attempt to address OAG’s unethical conduct is complicated by the separation of powers concerns discussed at length in *Webster*—whereas the trial court has the unquestioned authority to address ethical violations that occur in the cases pending before it. *Webster*, 704 S.W.3d at 490. Accordingly, no other sufficient remedy is available to the Board other than disqualification.

Moreover, this motion is not filed as a dilatory tactic to obtain a litigation advantage. The actual plaintiff in this matter is unaffected by the Board’s motion—she is free to proceed with her counsel of choice, and her claims will succeed or fail on their merit, not as a result of the Court’s ruling on this motion for disqualification. This case is in its initial procedural stages. As described above, Bowden has not taken any action to move this case forward after filing her petition despite Local Rule 10’s clear mandate to request assignment to a particular judge. And the Board did not lightly take the step of filing a motion for disqualification of the State of Texas’s law firm, and it required time to deliberate and consider whether to do so—time that did not prejudice any party or impede the Court’s efficient administration of justice. Courts have found disqualification motions untimely when they are “being used as a tactical weapon.” *Spears*, 797 S.W.2d at 658. Those circumstances are simply not present here.

III. The State’s Petition in Intervention Should Be Stricken.

Under Texas Rule of Civil Procedure 60, any party may intervene by filing a pleading, subject to being stricken by the court for sufficient cause on the motion of any party. Tex. R. Civ.

P. 60. An intervenor need not secure the trial court's permission to intervene; instead, the party opposing the intervention must challenge it by a motion to strike. *Guaranty Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990). A trial court generally has "broad discretion" in determining whether an intervention should be stricken. *Id.*

The basis for striking OAG's petition is straightforward, supported by sufficient cause, and intertwined with the Court's analysis of whether to disqualify OAG. OAG is the only entity that can represent the State in these proceedings. *Maud*, 200 S.W. at 376-77; Tex. Const. art. IV, § 22. Should the Court grant the Board's motion to disqualify, no entity is left with the capacity to handle the State's representation. Striking the petition is therefore not merely appropriate but required as the necessary and logical consequence of the disqualification.

PRAYER

For the foregoing reasons, the Board respectfully requests the Court disqualify OAG and strike its petition in intervention.

Dated: July 1, 2026.

Respectfully submitted.

/s/ Christopher D. Hilton

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CERTIFICATE OF CONFERENCE

I certify that on July 1, 2026, counsel for Defendant Texas Medical Board conferred with counsel for Plaintiff Mary Bowden and Intervenor State of Texas regarding this motion. Both Plaintiff and Intervenor are opposed to the relief requested herein.

/s/ Anthony J. Rodregous
Anthony J. Rodregous

CERTIFICATE OF SERVICE

I certify that on July 1, 2026, this document was electronically filed through File & Serve Texas, thereby effectuating service on counsel for all parties who have appeared.

/s/ Anthony J. Rodregous
Anthony J. Rodregous

EXHIBIT A

**HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-23-17769.MD
TEXAS MEDICAL LICENSE NO. K9770**

IN THE MATTER OF THE

COMPLAINT AGAINST

MARY TALLEY BOWDEN, MD

BEFORE THE

TEXAS MEDICAL BOARD

FINAL ORDER

During an open meeting at Austin, Texas, the Texas Medical Board (Board) finds that the above-styled case was assigned to and presided over by the Honorable Administrative Law Judges (ALJs) Rachelle Nicolette Robles and Linda J. Burgess of the State Office of Administrative Hearings (SOAH). On March 12, 2025, the ALJs granted in part and denied in part Board Staff's Second Motion for Partial Summary Disposition. The ALJs granted summary disposition in favor of Board Staff on its claim brought under § 164.052(a)(5) of the Texas Medical Practice Act (Act).

On April 28, 2025, the ALJs convened a hearing to take evidence on aggravating and mitigating factors that may affect what sanctions, if any, the Board is to impose. On August 7, 2025, the ALJs issued the Proposal for Decision (PFD) containing Findings of Fact and Conclusions of Law. The PFD was properly served on all Parties. On August 22, 2025, the Parties each filed exceptions to the PFD. On September 8, 2025, Board Staff filed replies to exceptions. Respondent did not file any replies to exceptions. On September 18, 2025, the ALJs issued an exceptions letter recommending no changes to the PFD.

The Board, after review and due consideration of the PFD, adopts the Findings of Fact and Conclusions of Law of the ALJs.

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 was board certified in Otolaryngology (ear, nose, and throat) in May 2004 and Sleep Medicine in January 2010 by the American Board of Otolaryngology—Head and

Neck Surgery. Respondent is not meeting the continuing certification requirements of her American Board of Otolaryngology—Head and Neck Surgery certification.

3. After filing its Complaint against Respondent in April 2023, staff (Staff) of the Board referred this matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The case was set for a four-day hearing to convene on April 29-May 3, 2024. A week before the hearing, Respondent requested a continuance of the hearing, which was granted. The case was then set to convene on October 21-25, 2024, dates agreed to by the parties. Before the October 2024 setting, Staff requested a continuance of the hearing, which was granted. The case was then reset to convene on April 28-May 2, 2025.
4. On December 12, 2024, Staff 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.
5. 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. Staff filed its Reply to Respondent's Supplemental Response on February 3, 2025.
6. On March 12, 2025, the Administrative Law Judges (ALJs) granted in part and denied in part Staff's Second Motion for Partial Summary Disposition. The ALJs granted summary disposition in favor of Staff on its § 164.052(a)(5) of the Texas Medical Practice Act (Act) claim. Accordingly, the ALJs determined that Respondent may be subject to discipline under § 164.051(a)(1) of the Act, which authorizes the Board to take disciplinary action against a person for committing an act prohibited under § 164.052 of the Act.
7. On April 21, 2025, a prehearing conference convened. At that time, Staff announced that Staff would not be pursuing at hearing the two remaining claims—§§ 164.05(a)(6) and (a)(7)¹—pleaded against Respondent in Staff's Second Amended Complaint. The April 28, 2025 hearing proceeded with the ALJs taking evidence on aggravating and mitigating factors that may affect what sanctions, if any, the Board is to impose for Respondent's violation of § 164.052(a) of the Act as found by the ALJs.
8. Respondent was notified of the time, place, and nature of the hearing, including a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted.
9. The April 28, 2025 hearing was held before ALJs Linda J. Burgess and Rachelle Nicolette Robles, via Zoom videoconferencing. Attorneys Amy Swanholm and Meredith Massey represented Staff. Attorneys Michael Barnhart and Steven Mitby represented Respondent.

¹ Texas Medical Practice Act, Tex. Occ. Code title 3, subtitle B.

10. The record closed on June 9, 2025, upon the filing of written closing arguments.
11. 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).
12. 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.
13. 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.
14. Patient's wife then sued Huguley Hospital seeking injunctive relief to require Huguley Hospital and its medical staff to administer Ivermectin to her husband.
15. On October 26, 2021, Patient's wife obtained an *ex parte* temporary restraining order requiring Huguley Hospital to administer the drug to Patient.
16. 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).
17. 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.
18. 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.

19. 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. 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. 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. 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. The following day, on November 10, 2021, 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.
24. On November 10, Respondent posted on her social media account: “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.”

25. 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.
26. 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."
27. 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."
28. 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.
29. New York licensed attorney Beth Parlato was not acting as Respondent's attorney and, given that, Respondent could not have relied upon any supposed legal advice from Ms. Parlato.
30. 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.
31. 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.
32. 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's entry to the ICU, law enforcement was called.

33. On November 10, 2021, at 8:36 p.m. Respondent posted to her social media account on 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."
34. Respondent behaved in a disruptive manner toward Huguley Hospital's personnel that interfered with the Hospital's patient care.
35. 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.
36. 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."
37. That Respondent knew she did not have privileges to administer her prescription to Patient while in care of Huguley Hospital but nonetheless intentionally dispatched her nurse to administer the medication and that Respondent's intended result in dispatching her nurse to the Hospital was to override the Hospital's care plan for Patient is a relevant aggravating factor the Board may consider in determining the appropriate sanction.
38. Respondent, based on her disagreement with an inpatient's treatment plan, may repeat her attempt to disregard a hospital's rules on physician credentialing and treat an inpatient at a facility where she is not privileged.
39. Respondent is not maintaining the continuing certification requirements for her American Board of Otolaryngology—Head and Neck Surgery certification.
40. Respondent did not prove any relevant circumstances reducing the seriousness of her misconduct.
41. Respondent did not prove any relevant circumstances lessening responsibility for her misconduct.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Medical Practice Act, Tex. Occ. Code, title 3, subtitle B.
2. SOAH has jurisdiction to hold a contested case hearing and 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(a).
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. Respondent received proper notice of the complaint and the hearing. Tex. Occ. Code § 164.005(f); Tex. Gov't Code §§ 2001.051-.052.
5. Staff had the burden of proving that Respondent is subject to disciplinary action by the Board and any aggravating factors the Board may consider in determining the appropriate sanction against Respondent. 22 Tex. Admin. Code § 190.15(a); 1 Tex. Admin. Code § 155.427.
6. Respondent had the burden of proving any mitigating factors the Board may consider in determining the appropriate sanction against her. 22 Tex. Admin. Code § 190.15(b); 1 Tex. Admin. Code § 155.427
7. The standard of proof is by a preponderance of the evidence. *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
8. 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).
9. 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).
10. 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).
11. 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).
12. 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).
13. 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).
14. The ALJs are prohibited from making a recommendation regarding the appropriate action to be taken by the Board in this case. Tex. Occ. Code § 164.007(a-1).

15. In determining the appropriate disciplinary action, the Board may consider as an aggravating factor that Respondent's conduct constituting a violation was intentional. 22 Tex. Admin. Code § 190.15(a)(7).
16. In determining the appropriate disciplinary action, the Board may consider as an aggravating factor that Respondent's unprofessional behavior demonstrates an increased potential for harm to the public. 22 Tex. Admin. Code § 190.15(a)(5).

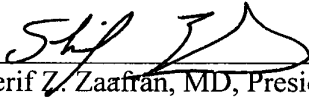
ORDER

The Board hereby adopts the Findings of Fact and Conclusions of Law as proposed by the ALJs and ORDERS that Respondent is subject to the following terms and conditions:

1. This Final Order constitutes a PUBLIC REPRIMAND of Respondent, and Respondent is hereby reprimanded.

SIGNATURE PAGE TO FOLLOW

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
17 day of October, 2025.



Sherif Z. Zaafran, MD, President
Texas Medical Board

EXHIBIT B

CAUSE NO. D-1-GN-26-000172

MARY TALLEY BOWDEN, M.D.,
Plaintiff

and

THE STATE OF TEXAS
Intervenor-Plaintiff

vs.

TEXAS MEDICAL BOARD,
Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419TH JUDICIAL DISTRICT

DECLARATION OF SCOTT FRESHOUR

1. My name is Scott Freshour. I am the General Counsel at the Texas Medical Board, having been employed by the Board since March 2002. I am over the age of 18, competent to testify to the matters stated herein, and make this declaration based upon my personal knowledge.

2. I obtained a bachelor's degree in environmental studies from St. Edwards University in Austin, Texas in May 1982. I obtained a juris doctorate from St. Mary's University in San Antonio, Texas in December 1993, and have been licensed to practice law in Texas since May 1994.

3. After obtaining my juris doctorate, I worked as an associate attorney at a law firm for three years before transitioning to state employment in 1996. I first worked at the Texas Department of Public Safety, and after four years I moved to the Employees Retirement System of Texas, where I worked for two years before joining the Texas Medical Board in 2002. I have worked for the Board ever since.

4. In my role as General Counsel of the Texas Medical Board, I am responsible for all functions of the General Counsel Office. I am the primary legal advisor of the agency and the Medical Board. My duties include but are not limited to rule making, statutory analysis, litigation advice involving the agency, employees, or board members and interacting with OAG in lawsuits filed against the agency, including reviewing pleadings, discussing merits, facts, and litigation strategy.

5. I am familiar with the lawsuit styled *Mary Talley Bowden, M.D. v. Texas Medical Board*, D-1-GN-26-000172, filed in the 419th district court in Travis County.

6. On October 27, 2025, I became aware that Bowden was preparing to file a lawsuit against the Texas Medical Board in Travis County due to the Board's decision to impose a public reprimand against Bowden. As a result, I emailed the Office of the Attorney General to request representation.

7. On October 29, 2025, I was contacted by Assistant Attorney General Alexander Comsudi, who indicated he would be representing the Board in this matter and that no further representation request was required once the Board was served.

8. On January 9, 2026, I received a petition filed in the 419th District Court in Travis County filed by Dr. Mary Talley Bowden against the Board.

9. On January 14, 2026, I forwarded the petition to Mr. Comsudi, and he responded the same day requesting the citation, which was never provided to me.

10. Between January 25, 2026, and January 27, 2026, I engaged in communications with Mr. Comsudi regarding jurisdictional deficiencies we identified. I directed Mr. Comsudi to file an answer after concluding it was the most appropriate decision after weighing all factors and consulting with Mr. Comsudi.

11. On January 30, 2026, I received an email from Mr. Comsudi informing me that he filed the answer but was directed by the “executive team” in the Attorney General’s Office to recall it. OAG never filed an answer as instructed in this case.

12. Mr. Comsudi further explained that opposing counsel committed to resubmit the petition to the Attorney General’s Office and that no deadlines would be missed. OAG never filed an answer in this case. I never received any resubmitted petition.

13. On February 2, 2026, I attempted to meet with the Attorney General’s Office after discovering concerning social media posts by Bowden. I was again told by Comsudi that an answer from “executive team” was forthcoming, but I never met with OAG in response to this request.

14. This was my final communication with Mr. Comsudi, because on February 12, 2026, I received an unprompted and unexpected email from OAG containing a letter from Deputy Attorney General Austin Kinghorn. The letter indicated that OAG had conducted further review and determined the Board’s case was not appropriate for representation. Kinghorn then indicated that OAG declined the Board’s request for representation and was withdrawing as counsel.

15. Upon discovering OAG’s termination decision, I emailed Mr. Kinghorn and requested a meeting with OAG regarding this decision because I was very surprised and because this is an urgent matter for the Board.

16. A few hours later, I again emailed Deputy Attorney General Kinghorn seeking confirmation that OAG was terminating representation in this matter as well as a related matter filed in federal court, and asked whether the Board was authorized to represent itself in this matter and whether it may obtain outside counsel of its choice.

17. On February 15, 2026, Deputy Kinghorn sent another letter confirming that OAG terminated representation in both cases, and that the Board was authorized to represent itself in the matter and that OAG would consider a contract for outside counsel executed by the Board.

18. I have not spoken with OAG after receiving this e-mail from Deputy Kinghorn.

My name is Scott Maynard Freshour, and I am an employee of the following governmental agency: The Texas Medical Board. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, State of Texas, on the 1st day of July, 2026.

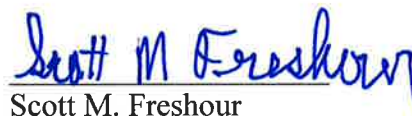

Scott M. Freshour

EXHIBIT C

MARY TALLEY BOWDEN, M.D.,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS MEDICAL BOARD,	§	
<i>Defendant.</i>	§	
	§	419 TH JUDICIAL DISTRICT

TEXAS MEDICAL BOARD'S ORIGINAL ANSWER

Defendant Texas Medical Board (TMB or Board) files this Original Answer in response to Plaintiff's Original Petition.

PLEA TO THE JURISDICTION

1. A plaintiff bears the burden of alleging facts that affirmatively demonstrate the trial court's jurisdiction. *Hidalgo Cty. v. Dyer*, 358 S.W.3d 698, 703 (Tex. App.—Corpus Christi 2011, no pet.). "A party who sues the State must have an independent waiver of immunity from suit for each claim in the suit." *State v. Sledge*, 36 S.W.3d 152, 156 (Tex. App.—Houston [1st Dist.] 2000, pet. denied). Here, Plaintiff has not pled any legal basis for the Court's subject matter jurisdiction.

Plaintiff alleges claims for court costs without citation to any statute to authorize such an award.¹ Uniform Declaratory Judgments Act (UDJA), Tex.

¹ Out of an abundance of caution, Defendant presumes Plaintiff refers to the Uniform Declaratory Judgments Act (UDJA), Tex. Civ. Prac. & Rem. Code ch. 37, to authorize such court costs even though she does not cite to it.

Civ. Prac. & Rem. Code ch. 37; *See* Pl.’s Pet. at 16. However, Texas Occupations Code chapter 164.009 is the sole basis for jurisdiction for this action and provides a limited waiver of sovereign immunity for judicial review of the Board’s final decision. *See* Tex. Occ. Code § 164.009 (“A person whose license to practice medicine has been revoked or who is subject to other disciplinary action by the board may appeal to a Travis County district court not later than the 30th day after the date the board decision is final.”).

4. “Where a statute provides a method for attack on a [Board’s] order, an action for declaratory judgment does not lie.” *Tex. Employment Comm’n v. Child, Inc.*, 738 S.W.2d 56, 58 (Tex. App.—Austin 1987, writ denied). A party is not entitled to redundant remedies. *McLane Co., Inc. v. Tex. Alcoholic Bev. Comm’n*, 514 S.W.3d 871, 878 (Tex. App.—Austin 2017, pet. filed.). “Under the redundant remedies doctrine, courts will not entertain an action brought under the UDJA when the same claim could be pursued through different channels.” *Patel v. Texas Dep’t of Licensing & Reg.*, 469 S.W.3d 69, 79 (Tex. 2015). “An award of attorney’s fees under the [U]DJA is unavailable if the claim for declaratory relief is merely incidental to other claims for relief.” *Jackson v. State Office of Admin. Hearings*, 351 S.W.3d 290, 300-01 (Tex. 2011). Here, judicial review of the Board’s decision will resolve the same controversy sought to be resolved by a declaratory judgment. Thus, the UDJA claim for declaratory

relief is merely incidental to the suit for judicial review. Plaintiff's UDJA claim for attorney fees and court costs are unavailable, redundant, and barred.

GENERAL DENIAL

5. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, the Board enters a general denial to each and every allegation contained within Plaintiff's Original Petition and demands strict proof thereof.

EXEMPT FROM INITIAL DISCLOSURES

6. Pursuant to Rule 194.2(d) of the Texas Rules of Civil Procedure, this proceeding is exempt from initial disclosure because it is an action for review on an administrative record. Accordingly, the Board will not serve initial disclosures in this proceeding.

PRAYER

Upon notice and hearing, the Texas Medical Board respectfully asks the Court:

1. enter a final judgment that the decision being appealed is supported by substantial evidence;
2. that Plaintiff takes nothing in this suit;
3. that all costs of litigation, including court costs and attorney fees, be adjudged against Plaintiff; and
4. The Board further prays for such other and further relief, both general and special, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

AUSTIN KINGHORN
Deputy Attorney General for Civil
Litigation

ERNEST C. GARCIA
Chief, Administrative Law Division

/s/ Alexander R. Comsudi
ALEXANDER R. COMSUDI
State Bar No. 24087006
Assistant Attorney General
Administrative Law Division
Office of the Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-3204
Alexanderraymond.Comsudi@oag.texas.gov

ATTORNEYS FOR DEFENDANT
TEXAS MEDICAL BOARD

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2026, a true and correct copy of the above document was served on the following attorneys of record via e-service and/or electronic transmission:

LEXIS ANDERSON, ESQ.
Texas Bar No. 24127016
BARNES LAW
700 South Flower Street, Suite 1000
Los Angeles, California 90017
Tel: (310) 510-6211
lexisanderson@barneslawllp.com
ATTORNEY FOR PLAINTIFF

/s/Alexander R. Comsudi
ALEXANDER R. COMSUDI
ASSISTANT ATTORNEY GENERAL

EXHIBIT D



February 12, 2026 | Press Release

Attorney General Ken Paxton Takes Legal Action to Support Mary Talley Bowden and Defend Her Constitutional Rights

Attorney General Ken Paxton has taken legal action to support Mary Talley Bowden, M.D., in her case against the Texas Medical Board (“TMB”).

In 2021, the family of a hospitalized first responder sought a court order directing Dr. Bowden, or a nurse under her supervision, to administer Ivermectin to the patient, who was on a ventilator and in a medically induced coma due to severe COVID-19 complications. A state district court granted the order. However, shortly before Dr. Bowden’s nurse was set to arrive at the hospital, an appeals court blocked the district court’s order. Dr. Bowden was not aware of this stay. Dr. Bowden continued efforts to prescribe Ivermectin, and when the nurse appeared at the hospital, hospital staff refused entry and law enforcement was called.

However, despite acting in good faith to provide medical care to a potentially dying patient at the request of the patient's family—and while under the assumption that she was acting in full accordance with the law—the Texas Medical Board issued an administrative penalty and public reprimand of Dr. Bowden. Dr. Bowden has now sued the TMB to reverse the reprimand. Attorney General Paxton is not only declining to represent TMB in the case, but he has now filed an intervention in the case in support of Dr. Bowden. Further, Attorney General Paxton—in support of Mary Talley Bowden—is also declining to represent TMB in another case brought by Dr. Bowden.

“I will not stand by as Dr. Bowden has her Constitutional rights trampled and ability to serve her patients impeded with an illegal reprimand,” said Attorney General Paxton. “Dr. Bowden has been a champion for health freedom, selflessly served her patients, and acted in full accordance with the law. That's why I've filed this intervention in support of Dr. Bowden and to ensure administrative agencies don't violate the rights of licensed professionals in Texas.”

The intervention notes that TMB's reprimand was done with no consideration of medical expert testimony, ignored the fact that Dr. Bowden was acting in reliance upon both a court order and advice of counsel, and ignored due process during the hearing on the reprimand.

To read the intervention in support of Dr. Bowden, [click here](https://www.sos.texas.gov/sites/default/files/images/press/Bowden%20Intervention%20(Filed)_0.pdf) ([/sites/default/files/images/press/Bowden%20Intervention%20\(Filed\)_0.pdf](https://www.sos.texas.gov/sites/default/files/images/press/Bowden%20Intervention%20(Filed)_0.pdf)).

[Back to Top](#)

EXHIBIT E

Liz Quintero

From: Alexander Raymond Comsudi <AlexanderRaymond.Comsudi@oag.texas.gov>
Sent: Friday, January 30, 2026 4:31 PM
To: Scott Freshour; Wendy Pajak
Cc: Holly Dudrick; Ted Ross; Liz Quintero
Subject: RE: Action Required - Lack of Service - : TMB Referral of Mary Bowden; Sutton et al v. Federation of State Med. Boards et al

Importance: High

External Message Warning

This email originated from outside of TMB.

Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Mr. Freshour,

We filed an answer today in the above referenced case but were instructed by our Exec leadership to recall it. Opposing counsel stated she would re-serve the AG with the petition and citation. No deadlines will be missed, and I am waiting on further instructions from the Executive team. I will update accordingly.

Thank you,



Alexander Raymond Comsudi
Assistant Attorney General
Administrative Law Division
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711-2548
(512) 475-3204
AlexanderRaymond.Comsudi@oag.texas.gov

From: Scott Freshour <Scott.Freshour@tmb.texas.gov>
Sent: Tuesday, January 27, 2026 10:17 AM
To: Alexander Raymond Comsudi <AlexanderRaymond.Comsudi@oag.texas.gov>; Wendy Pajak <Wendy.Pajak@tmb.texas.gov>
Cc: Holly Dudrick <Holly.Dudrick@oag.texas.gov>; Ted Ross <Ted.Ross@oag.texas.gov>; Liz Quintero <Liz.Quintero@tmb.texas.gov>
Subject: RE: Action Required - Lack of Service - : TMB Referral of Mary Bowden; Sutton et al v. Federation of State Med. Boards et al

Alexander,

Proceed as outlined.

Scott

From: Alexander Raymond Comsudi <AlexanderRaymond.Comsudi@oag.texas.gov>

Sent: Tuesday, January 27, 2026 9:27 AM

To: Scott Freshour <Scott.Freshour@tmb.texas.gov>; Wendy Pajak <Wendy.Pajak@tmb.texas.gov>

Cc: Holly Dudrick <Holly.Dudrick@oag.texas.gov>; Ted Ross <Ted.Ross@oag.texas.gov>; Liz Quintero <Liz.Quintero@tmb.texas.gov>

Subject: RE: Action Required - Lack of Service - : TMB Referral of Mary Bowden; Sutton et al v. Federation of State Med. Boards et al

External Message Warning

This email originated from outside of TMB.

Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Mr. Freshour,

Filing an answer will be most expeditious rather than making a tedious and drawn-out fight over service. I have attached a draft copy of the answer. If you approve, I will get it filed this week.

Thank you,

Alexander

From: Scott Freshour <Scott.Freshour@tmb.texas.gov>

Sent: Monday, January 26, 2026 2:42 PM

To: Alexander Raymond Comsudi <AlexanderRaymond.Comsudi@oag.texas.gov>; Wendy Pajak <Wendy.Pajak@tmb.texas.gov>

Cc: Holly Dudrick <Holly.Dudrick@oag.texas.gov>; Ted Ross <Ted.Ross@oag.texas.gov>

Subject: RE: Action Required - Lack of Service - : TMB Referral of Mary Bowden; Sutton et al v. Federation of State Med. Boards et al

Alexander,

Do you have preference? Pro and Cons of each method.

We would like to use the most expedient method to get out of this case.

Glad to have set up a TEAMS mtg to discuss if needed.

Scott

From: Alexander Raymond Comsudi <AlexanderRaymond.Comsudi@oag.texas.gov>
Sent: Monday, January 26, 2026 2:31 PM
To: Scott Freshour <Scott.Freshour@tmb.texas.gov>
Cc: Holly Dudrick <Holly.Dudrick@oag.texas.gov>; Wendy Pajak <Wendy.Pajak@tmb.texas.gov>; Liz Quintero <Liz.Quintero@tmb.texas.gov>; Ted Ross <Ted.Ross@oag.texas.gov>
Subject: Action Required - Lack of Service - : TMB Referral of Mary Bowden; Sutton et al v. Federation of State Med. Boards et al

External Message Warning

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Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon, Mr. Freshour,

The petition in this case has not been properly served to my knowledge and opposing counsel will not request a citation. Opposing counsel for Dr. Bowden believes that following the Texas Government Code § 2001.176(b)(2) by sending the petition certified mail constitutes proper service of a petition under Rule 21. Opposing counsel is Texas licensed but operating out of California and we could object on lack of personal jurisdiction as there is no special appearance in this state. (Tex. R. Civ. P. 120a). Or we could also wait for a default judgment and that argue lack of proper personal service. Both of those options require a hearing. Either way, the ultimate outcome would be the same - the court would still require us to answer at the end of the day.

Would you like to make an objection on lack of personal jurisdiction or wait for a default judgment? Or, I can file a general denial answer and we look toward the bigger battle.

Please advise.

Thanks,



Alexander Raymond Comsudi
Assistant Attorney General
Administrative Law Division
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711-2548
(512) 475-3204
AlexanderRaymond.Comsudi@oag.texas.gov

From: Scott Freshour <Scott.Freshour@tmb.texas.gov>
Sent: Monday, December 29, 2025 11:11 AM
To: Alexander Raymond Comsudi <AlexanderRaymond.Comsudi@oag.texas.gov>
Cc: Holly Dudrick <Holly.Dudrick@oag.texas.gov>; Wendy Pajak <Wendy.Pajak@tmb.texas.gov>; Liz Quintero

<Liz.Quintero@tmb.texas.gov>

Subject: RE: TMB Referral of Mary Bowden; Sutton et al v. Federation of State Med. Boards et al

Alexander,

See screenshots attached. Dr. Zaafran received these today.

I instructed him to mail the copies to TMB offices and that we already had OAG representation.

Do I need to send another RFR since this is a federal suit and not the anticipated substantial evidence appeal of a board action.

The reason I ask is that Dr. Bowden has indicated she will be filing a second suit, which is the appeal of the Board's Final Order of Reprimand because her Motion for rehearing was denied by the Bd on Dec 12, 2025.

Scott

From: Sherif Zaafran <Sherif.Zaafran@tmb.texas.gov>

Sent: Monday, December 29, 2025 10:35 AM

To: Scott Freshour <Scott.Freshour@tmb.texas.gov>

Cc: Brint Carlton <Brint.Carlton@tmb.texas.gov>

Subject: Lawsuit document

See attached

Sherif Zaafran, MD FASA
President, Texas Medical Board



EXHIBIT F



Intro - RE: Mary Talley Bowden, M.D. vs. Texas Medical Board (BOWDEN M)

From Alexander Raymond Comsudi <AlexanderRaymond.Comsudi@oag.texas.gov>

Date Wed 10/29/2025 8:53 AM

To Scott Freshour <Scott.Freshour@tmb.texas.gov>; Liz Quintero <Liz.Quintero@tmb.texas.gov>; Wendy Pajak <Wendy.Pajak@tmb.texas.gov>; Yvette Yarbrough <Yvette.Yarbrough@tmb.texas.gov>; Sarah Tuthill <Sarah.Tuthill@tmb.texas.gov>; Brint Carlton <Brint.Carlton@tmb.texas.gov>

Cc Ted Ross <Ted.Ross@oag.texas.gov>; Holly Dudrick <Holly.Dudrick@oag.texas.gov>

Some people who received this message don't often get email from alexanderraymond.comsudi@oag.texas.gov. [Learn why this is important](#)

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Good morning, all,

I am the newly assigned Assistant Attorney General assigned to this matter. I look forward to handling this matter for you along with my legal assistant, Holly.

Please forward the lawsuit with citation when you are served. Additionally, there is no need to send a second RFR letter. Let me know if there is anything I can do for you in the meantime.

Thank you,



Alexander Raymond Comsudi
Assistant Attorney General
Administrative Law Division
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711-2548
(512) 475-3204
AlexanderRaymond.Comsudi@oag.texas.gov

From: Vanessa Castillo <Vanessa.Castillo@oag.texas.gov>

Sent: Wednesday, October 29, 2025 8:19 AM

To: scott.freshour@tmb.state.tx.us; liz.quintero@tmb.state.tx.us; wendy.pajak@tmb.state.tx.us; Yvette Yarbrough <yvette.yarbrough@tmb.state.tx.us>; sarah.tuthill@tmb.state.tx.us; brint.carlton@tmb.state.tx.us

Cc: Alexander Raymond Comsudi <AlexanderRaymond.Comsudi@oag.texas.gov>; Ted Ross <Ted.Ross@oag.texas.gov>; Holly Dudrick <Holly.Dudrick@oag.texas.gov>; Ernest Garcia <Ernest.Garcia@oag.texas.gov>; Vanessa Castillo <Vanessa.Castillo@oag.texas.gov>

Subject: Mary Talley Bowden, M.D. vs. Texas Medical Board (BOWDEN M)

Dear Mr. Freshour,

Thank you for the opportunity to serve your agency in the above-referenced matter. This case has been assigned to Assistant Attorney General Alexander Comsudi. He will contact you in the near future, if you have not communicated with him already. All correspondence and other contacts regarding this case should be made directly to Mr. Comsudi or his Legal Assistant.

Contact information for Mr. Comsudi and his Legal Assistant is listed below.

Assistant Attorney General	Mr. Alexander Comsudi	(512) 475-3204	AlexanderRaymond.Comsudi@oag.texas.gov
Legal Assistant	Ms. Holly Dudrick	(512) 475-4100	Holly.dudrick@oag.texas.gov

We look forward to working with you on this matter. If you have any additional questions, you may also contact our Division Chief, Ernest C. Garcia at (512) 936-0804, ernest.garcia@oag.texas.gov.

Thank you,



Vanessa Castillo

Case Manager
Administrative Law Division
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548
Austin, Texas 78711-2548
Direct: (512) 475-3212
Fax: (512) 320-0167
Vanessa.Castillo@oag.texas.gov

PRIVILEGED AND CONFIDENTIAL: This communication may be confidential and/or privileged pursuant to Government Code Sections 552.101, 552.103, 552.107 and 552.111, and should not be disclosed without the express authorization of the Texas Attorney General.

Automated Certificate of eService

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Rosalinda Luna on behalf of Christopher Hilton

Bar No. 24087727

rosie@stonehilton.com

Envelope ID: 116847290

Filing Code Description: Motion (No Fee)

Filing Description: DEFENDANT'S MOTION TO DISQUALIFY THE OFFICE OF THE ATTORNEY GENERAL AND STRIKE THE STATE'S PETITION IN INTERVENTION

Status as of 7/5/2026 11:16 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jeff Lutz		jeff.lutz@oag.texas.gov	7/1/2026 3:06:22 PM	SENT
Ted Ross		ted.ross@oag.texas.gov	7/1/2026 3:06:22 PM	SENT
william farrell		william.farrell@oag.texas.gov	7/1/2026 3:06:22 PM	SENT
Lexis Anderson		lexisanderson@barneslawllp.com	7/1/2026 3:06:22 PM	SENT
Holly Dudrick		holly.dudrick@oag.texas.gov	7/1/2026 3:06:22 PM	ERROR

Associated Case Party: THE STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
William Farrell		biff.farrell@oag.texas.gov	7/1/2026 3:06:22 PM	SENT
Troy Sager		Troy.Sager@oag.texas.gov	7/1/2026 3:06:22 PM	SENT

Associated Case Party: TEXAS MEDICAL BOARD

Name	BarNumber	Email	TimestampSubmitted	Status
Christopher Hilton		chris@stonehilton.com	7/1/2026 3:06:22 PM	SENT
Rosalinda Luna		rosie@stonehilton.com	7/1/2026 3:06:22 PM	SENT
Anthony Rodregous	24146382	Anthony@StoneHilton.com	7/1/2026 3:06:22 PM	SENT
Maria Mendoza		maria@stonehilton.com	7/1/2026 3:06:22 PM	SENT
Bonnie Chester		bonnie@stonehilton.com	7/1/2026 3:06:22 PM	SENT
Judd Stone		Judd@stonehilton.com	7/1/2026 3:06:22 PM	SENT

Associated Case Party: MARY TALLEYBOWDEN

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Rosalinda Luna on behalf of Christopher Hilton

Bar No. 24087727

rosie@stonehilton.com

Envelope ID: 116847290

Filing Code Description: Motion (No Fee)

Filing Description: DEFENDANT'S MOTION TO DISQUALIFY THE
OFFICE OF THE ATTORNEY GENERAL AND STRIKE THE STATE'S
PETITION IN INTERVENTION

Status as of 7/5/2026 11:16 AM CST

Associated Case Party: MARY TALLEYBOWDEN

Name	BarNumber	Email	TimestampSubmitted	Status
Lexis Anderson		lexisanderson@barneslawllp.com	7/1/2026 3:06:22 PM	SENT
Robert Barnes		robertbarnes@barneslawllp.com	7/1/2026 3:06:22 PM	SENT