

Texas Medical Board Cases Shall Follow the Texas Rules of Evidence

WHEREAS the Texas Medical Board (TMB) employees have been documented in court cases to fabricate evidence, and to bear false witness before State District Judges and in US 5th Circuit courts in criminal cases and civil administrative cases and¹,

WHEREAS TMB investigators and the Office of Attorney General do not even attempt to dispute that the TMB uses subpoenas instantner to intimidate and force the immediate release of patient records: *“1) to search intensely private papers; 2) at the specific request of law enforcement; 3) for the purpose of criminally investigating patients; and 4) for sharing intensely private information with law enforcement and the general public: and*²,

WHEREAS patient records and documents acquired during TMB civil investigations are scanned and kept for perpetuity and may be accessed by law enforcement breaching defendant’s 4th Amendment rights of unwarranted search and seizure and³,

WHEREAS in an attempt to defend bad faith actions of the TMB staff, the TMB General Counsel and the Office of Attorney General have solicited the Federal 5th Circuit Court of Appeals to deem the practice of medicine a closely regulated industry subjecting physicians and healthcare providers to release patient records via warrantless state inspection protocols used to inspect the following industries: liquor sales, firearms dealing, mining and running automobile junkyards so⁴, On August 29, 2000, then Texas AG John Cornyn’s opinion stated, *“The medical profession, unlike the liquor industry, has no “long history” of warrantless state inspection. Rather it is a profession with a history of respect towards the recognized need for privacy in the doctor-patient relationship. The health industry is not a closely regulated industry.* <https://www2.texasattorneygeneral.gov/opinions/opinions/49cornyn/op/2000/pdf/jc0274.pdf>

WHEREAS TMB cases can result in hearings before the State Office of Administrative Hearings (SOAH) do not follow the Texas Rules of Evidence, which are essential to protect the privacy of patient and physician interaction and provides established protocols for acquisition of evidence,

THEREFORE BE IT RESOLVED that court cases reveal that Texas Medical Board (TMB) employees has falsified evidence and committed perjury in administrative, state, and federal courts and given that medical care and personal health is a primary human necessity and access to healthcare providers is essential as is the need for oversight of healthcare licensees for discipline or dismissal of complaints filed with the TMB, therefore in order to insure proper due process and just treatment for patients and licensees, **the Texas State Office of Administrative Hearings in medical board cases and TMB investigations shall follow the Texas Rules of Evidence.**

Choose one:

Adopted by the _____ (Precinct _____) convention on March ____, 2022.

Adopted by the _____ (county/SD _____) convention on March ____, 2022.

**Texas Medical Board must follow the Texas Rules of Evidence
Supporting Documentation**

9 BY MR. DEMOND:

10 Q. If I make complaint against my co-counsel's
11 doctor, the State of Texas retains those records
12 indefinitely. Is that correct?

13 A. Only if there is some determination of merit to
14 that complaint.

15 Q. But even if the doctor is cleared, then the
16 State still retains the records?

17 A. Yes.

18 Q. And if law enforcement subsequently comes to
19 the Board and says, "I am investigating -- I'm performing
20 criminal investigation, I would like those records," the
21 Board will give them those records, won't it?

22 A. If they're doing a criminal investigation of
23 the physician, yes, we would.

4: Dr. Joseph Zadeh vs. Belinda West, Sharon Pease, Mari Robinson, Scott Freshour, etal in the US District Court Northern District of Texas Fort Worth Division.

law and has a properly defined scope, and it must limit the discretion of the inspecting officers." *Id.* at 703. The Supreme Court has identified four "closely regulated" industries: liquor sales, firearms dealing, mining, and running automobile junkyards. *Patel*, 135 S. Ct. at 2454-55. The practice of medicine is not included in this list.

As the court in *Zadeh* persuasively concluded, the medical profession is not a "closely regulated" industry. The court explained that:

While the practice of medicine is admittedly subject to significant oversight, there is no history of warrantless inspections of doctor's offices. In fact, the prevailing tradition is quite to the contrary. There is a long history of recognizing the need for privacy in the medical profession out of respect for doctor-patient confidentiality. It strains credibility to suggest that doctors and their patients have no reasonable expectation of privacy. See, e.g., *Sorrell v. IMS Health Inc.*, 131 S.Ct. 2653, 2668 (2011) (stipulating that for many reasons, physicians have an interest in keeping their prescription decisions confidential); *Ferguson v. City of Charleston*, 532 U.S. 67, 78 (2001) (acknowledging that a medical patient has a reasonable expectation of privacy and can assume that medical records will not be shared with nonmedical personnel without her consent); *In re Vioxx Products Liab. Litig.*, No. MDL 1657, 2005 WL 2036797, at *3-4 (E.D. La. July 22, 2005) (tracing the history of doctorpatient confidentiality to fifth century B.C. and arguing that the erosion of privacy protections in the medical field could reduce the quality of medical care). Thus, the Court concludes that the practice of medicine is not a closely regulated industry. See *Margaret S. v. Edwards*, 488 F.Supp. 181, 216-17 (E.D. La. 1980) (holding that the health industry ... is not a closely regulated industry given the history of respect towards the recognized need for privacy in the doctor-patient relationship).