

SUPREME COURT OF TEXAS

Texas Board of Chiropractic Examiners; Patrick Fortner, in His Official Capacity as the Board's Executive Director; and Texas Chiropractic Association v. Texas Medical Association

616 S.W.3d 558 (Tex. 2021) · No. 18-1223 · Decided January 29, 2021

SUMMARY

This document is a dissenting opinion in a Texas Supreme Court case concerning whether the Texas Board of Chiropractic Examiners exceeded its statutory authority by authorizing chiropractors to perform vestibular-ocular-nystagmus testing. Justice Bland, joined by Justice Boyd, concluded that the rule exceeded the Legislature's limits on chiropractic practice because the testing could diagnose neurological conditions unrelated to the spine or musculoskeletal system.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Jane N. Bland; Jeffrey S. Boyd
JURISDICTION	Texas
DECIDED	January 29, 2021
DOCKET	18-1223
DISPOSITION	reversed
PROCEDURAL POSTURE	Petition for review from the Court of Appeals for the Third District of Texas concerning a challenge to rules adopted by the Texas Board of Chiropractic Examiners.
STANDARD OF REVIEW	De novo review of statutory and administrative-rule interpretation; an agency rule may be challenged by showing that it contravenes specific statutory language or runs counter to the statute's general objectives.
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; the supplied text is a dissent and is nonbinding as to the propositions stated in it.
PARTIES	Texas Board of Chiropractic Examiners, Patrick Fortner, in his official capacity as the Board's Executive Director, Texas Chiropractic Association v. Texas Medical Association

TOPICS

judicial review of agency action

administrative law

medical licensing

health law

statutory interpretation

PRACTICE AREAS

administrative law

health law

medical licensing

statutory interpretation

QUESTIONS PRESENTED

1. Whether the Texas Board of Chiropractic Examiners exceeded its statutory authority by authorizing chiropractors to perform vestibular-ocular-nystagmus testing and make related neurological diagnoses.
2. Whether the Board's definitions of musculoskeletal system and subluxation complex, considered alone, warranted a judicial determination that the Board exceeded its authority.
3. Whether a chiropractor may conduct a neurological examination outside the spine or musculoskeletal system to rule out a neurological cause of a patient's symptoms.

HOLDINGS

1. The dissent would hold that the Board exceeded its statutory authority because vestibular-ocular-nystagmus testing and the neurological diagnoses it may inform are unrelated to the spine or musculoskeletal system, the legislatively defined scope of chiropractic practice.
2. The dissent would hold that chiropractors may not use an examination outside the spine or musculoskeletal system to rule out a purely neurological or vestibular condition.

KEY QUOTATIONS

“The Board has no authority to unilaterally expand the scope of practice of chiropractic care beyond its statutory limits.” (at 3)

“It is not for courts, under the guise of agency deference, to bless agency actions that exceed statutory limits that the Legislature imposes.” (at 4)

“Any diagnosis—affirmative or negative—made by a chiropractor must be within the scope of chiropractic care.” (at 8)

“Through rulemaking, the Board effectively has nullified the Legislature’s scope-of-practice limits.” (at 10)

FACTUAL BACKGROUND

The Texas Board of Chiropractic Examiners adopted rules defining the musculoskeletal system and subluxation complex and authorizing certain qualified chiropractors to perform vestibular-ocular-nystagmus testing. The test examines eye movements and may identify vestibular or inner-ear neurological conditions. The dissent emphasized that the eyes, inner ear, and vestibular system are not part of the spine or musculoskeletal system, and therefore concluded that the rule authorized practice beyond the statutory chiropractic scope.

PROCEDURAL HISTORY

The Texas Medical Association challenged three Chiropractic Board rules, including a rule authorizing qualified chiropractors to perform technological instrumented vestibular-ocular-nystagmus testing. The trial court and the Court of Appeals for the Third District of Texas concluded that the Board exceeded its statutory authority. The Texas Supreme Court majority reached the opposite conclusion; Justice Bland, joined by Justice Boyd, dissented.

DISPOSITION

reversed

CASES CITED

- Tex. State Bd. of Exam'rs of Marriage & Family Therapists v. Tex. Med. Ass'n, 511 S.W.3d 28, 33 (Tex. 2017)
- Pruett v. Harris Cty. Bail Bond Bd., 249 S.W.3d 447, 452-53 (Tex. 2008)
- Univ. of Tex. v. Garner, 595 S.W.3d 645, 651 (Tex. 2019) (per curiam)
- Colorado County v. Staff, 510 S.W.3d 435, 444 (Tex. 2017)
- Tex. Lottery Comm'n v. First State Bank of DeQueen, 325 S.W.3d 628, 635 (Tex. 2010)
- Davenport v. Garcia, 834 S.W.2d 4, 42 (Tex. 1992) (Hecht, J., dissenting)
- R.R. Comm'n of Tex. v. Lone Star Gas Co., 844 S.W.2d 679, 685 (Tex. 1992)
- Tex. Orthopaedic Ass'n v. Tex. State Bd. of Podiatric Med. Exam'rs, 254 S.W.3d 714, 717, 721-22 (Tex. App. —Austin 2008, pet. denied)

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