

SUPREME COURT OF TEXAS

Ruben Aleman, M.D. v. Texas Medical Board

Aleman · No. 17-0385 · Decided May 24, 2019

SUMMARY

This document is Justice Jeffrey S. Boyd's dissenting opinion in a Texas Supreme Court case concerning the Texas Medical Board's disciplinary authority over a physician who certified a death certificate on paper rather than through the required electronic system. The dissent argues that the governing statutes plainly authorized discipline for an illegal act connected with the practice of medicine and would have affirmed the lower court's judgment. It also rejects the physician's impossibility defense and challenge to the penalties.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Jeffrey S. Boyd
JURISDICTION	Texas
DECIDED	May 24, 2019
DOCKET	17-0385
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review from the Third Court of Appeals of Texas in an administrative disciplinary proceeding.
STANDARD OF REVIEW	Whether the Board acted within its statutory authority and whether its decision constituted an abuse of discretion; the dissent states that the Board did not abuse its discretion.
PRECEDENTIAL VALUE	Published dissenting opinion; persuasive only as to the dissent's reasoning and not a binding holding.
PARTIES	Ruben Aleman, M.D. v. Texas Medical Board

TOPICS

medical licensing administrative law statutory interpretation plain meaning rule appellate procedure

PRACTICE AREAS

health law administrative law medical licensing statutory interpretation

QUESTIONS PRESENTED

1. Whether Texas Occupations Code sections 164.051(a)(1), 164.052(a)(5), and 164.053(a)(1) authorize the Medical Board to discipline a physician for committing any state-law violation connected with the practice of medicine, or only a violation independently likely to deceive or defraud the public.
2. Whether Dr. Aleman could assert impossibility because he had not registered to use the electronic death-certification system.
3. Whether the Medical Board abused its discretion by imposing arbitrary or capricious penalties.
4. Whether the Board's complaint satisfied statutory requirements and whether Dr. Aleman was entitled to attorney's fees in the administrative proceedings.

HOLDINGS

1. In the dissent's view, the statute expressly authorizes the Medical Board to discipline a physician who commits an act violating any state or federal law if that act is connected with the physician's practice of medicine; the statute does not require a separate showing that the particular act was likely to deceive or defraud the public.
2. In the dissent's view, Dr. Aleman could not rely on impossibility because his inability to electronically certify the death certificate resulted from his own failure to register for the electronic system.
3. In the dissent's view, the Board did not abuse its discretion by imposing arbitrary or capricious penalties because the penalties were below the maximum authorized by the Board's rules.

KEY QUOTATIONS

“Instead of “construing” the statute to divine some fictional “legislative intent,” I would just apply the statute’s plain and unambiguous language.” (at 1)

“At the risk of proving F. Scott Fitzgerald’s point, I (at least keeping good company with the administrative law judge, the Board, the trial court, and the unanimous court of appeals) find all this pretty simple:” (at 2)

““Includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.” (at 6)

“The statute expressly provides that the category of prohibited conduct for which a physician may be disciplined—however that category may be described— “includes” illegal conduct connected with the practice of medicine.” (at 7)

FACTUAL BACKGROUND

Texas law required medical professionals to certify patients' death certificates electronically. After a four-and-a-half-year transition period and multiple notices from the Medical Board, Dr. Aleman had not registered for the electronic system and certified a patient's death certificate on paper one month after the grace period expired. The Board initiated disciplinary proceedings for violating a law connected with the practice of medicine.

PROCEDURAL HISTORY

An administrative law judge found that Dr. Aleman violated the law by certifying a death certificate on paper rather than electronically. The Texas Medical Board adopted the finding and imposed discipline; the trial court and the Third Court of Appeals upheld the Board's action. Dr. Aleman petitioned the Supreme Court of Texas for review. Justice Boyd dissented from the Court's disposition and would have affirmed the lower courts, the Board, and the administrative law judge.

DISPOSITION

other

CASES CITED

- Aleman v. Tex. Med. Bd., 565 S.W.3d 26, 28 (Tex. App.—Austin 2017)
- Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm'n, 518 S.W.3d 318, 325 (Tex. 2017)
- Lawson v. FMR LLC, 571 U.S. 429, 460 (2014) (Scalia, J., concurring)
- Bank One Chicago, N.A. v. Midwest Bank & Tr. Co., 516 U.S. 264, 279 (1996) (Scalia, J., concurring)
- Sherman v. United States, 356 U.S. 369, 381 (1958) (Frankfurter, J., concurring)
- Tex. Dep't of Pub. Safety v. LaFleur, 32 S.W.3d 911, 915 n.7 (Tex. App.—Texarkana 2000, no pet.)
- PlainsCapital Bank v. Martin, 459 S.W.3d 550, 556 (Tex. 2015)
- Adams v. Starside Custom Builders, LLC, 547 S.W.3d 890, 894 (Tex. 2018)
- Youngkin v. Hines, 546 S.W.3d 675, 680-81 (Tex. 2018)
- TGS-NOPEC Geophysical Co. v. Combs, 340 S.W.3d 432, 439, 441 (Tex. 2011)
- Melden & Hunt, Inc. v. E. Rio Hondo Water Supply Corp., 520 S.W.3d 887, 893 (Tex. 2017)
- Abutahoun v. Dow Chem. Co., 463 S.W.3d 42, 46 (Tex. 2015)
- Ross v. St. Luke's Episcopal Hosp., 462 S.W.3d 496, 501 (Tex. 2015)
- In re Ford Motor Co., 442 S.W.3d 265, 271 (Tex. 2014) (orig. proceeding)
- Combs v. Roark Amusement & Vending, L.P., 422 S.W.3d 632, 636 (Tex. 2013)
- City of Waco v. Kelley, 309 S.W.3d 536, 542 (Tex. 2010)
- Tex. Dep't of Transp. v. Needham, 82 S.W.3d 314, 318 (Tex. 2002)
- Tijerina v. City of Tyler, 846 S.W.2d 825, 827 (Tex. 1992)
- Lewis v. City of Chicago, 560 U.S. 205, 215 (2010)
- Badaracco v. Commissioner of Internal Revenue, 464 U.S. 386, 398 (1984)