



# Teladoc v. Texas Medical Board (W.D. Tex.)

Topics Covered: Antitrust

## Outcome: Unfavorable

### Issue

The issue in this case was whether the Texas Medical Board (TMB) had demonstrated immunity from the federal antitrust laws under the “state action” doctrine.

### AMA Interest

The AMA believes that state medical boards should be able to regulate medical practice within their states according to their best medical judgments.

### Case Summary

Under TMB regulations, before a physician can prescribe a “dangerous drug” or controlled substance, the physician must first, inter alia, establish “a defined physician-patient relationship.” With certain exceptions, such relationship would require a physical examination to be performed through “either a face-to-face visit or in-person evaluation.” Elsewhere, the regulations require the physical examination to be performed in the same physical location or at an established medical site. The regulations go on to say, “an online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient are inadequate to establish a defined physician-patient relationship.”

Teladoc, Inc. provides health care services using telecommunication technologies. The Teladoc methodology would allow physicians to prescribe medications without the establishment of a physician-patient relationship, as defined in the TMB regulations. Thus, if the regulations are valid, Teladoc would be limited in the way it could carry on business in Texas, if it could carry on business at all.

Teladoc and two physicians on its panel sued TMB in the United States District Court for the Western District of Texas. It sought an injunction, monetary damages, and a declaratory judgment that the TMB telemedicine regulations restrain trade. It asserted that the State of Texas did not “actively supervise” TMB. Under *North Carolina State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015), therefore, TMB was not immunized from the federal antitrust laws under the “state action” doctrine. Thus, Teladoc claimed, the TMB telemedicine regulations violated the Sherman Act and were invalid.

TMB moved to dismiss the complaint for failure to state a cause of action. TMB asserted that, under Teladoc’s complaint and applicable Texas law, TMB was entitled to immunity from federal antitrust claims under the “state action” doctrine because TMB’s decisions are subject to “active supervision.” TMB claimed the necessary state supervision arose from potential judicial review of its regulations in the Texas courts, as well as review by the State Office of Administrative

Hearings and by the Texas Legislature. On December 14, 2015, the district court rejected each of the TMB arguments and denied the motion to dismiss.

TMB filed a notice of appeal from the order of December 14, 2015. However on October 17, 2016, following extensive briefing but before oral argument, TMB voluntarily dismissed its appeal. Jurisdiction over the case then reverted to the District Court.

### **Litigation Center Involvement**

The Litigation Center, along with the Texas Medical Association, filed an *amicus* brief to the United States Court of Appeals for the Fifth Circuit. The brief supported TMB's right to regulate the practice of medicine in Texas without interference by non-physicians.

United States Court of Appeals for the Fifth Circuit brief