



**345TH DISTRICT COURT
TRAVIS COUNTY COURTHOUSE
P. O. BOX 1748
AUSTIN, TEXAS 78767**

STEPHEN YELENOSKY

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(512) 854-9374

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July 1, 2014

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Mr. Mark A Weitz
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Via Fax: (512)852-4446

Re: Cause No. D-1-GN-13-003928; *Texas Association of Aesthetic Nurses, et al vs. The Texas Medical Board and Mari Robinson, Executive Director in the 126th Judicial District Court, Travis County, Texas*

Dear Counsel:

Enclosed please find attached a decision letter and Order from Judge Stephen Yelenosky regarding the above mentioned cause. The original letter and order have been filed with the District Clerk's Office. Please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Angela Riley".

Angela Riley
Court Operations Officer, 345th District Court
Travis County, Texas

Enclosure(s) 4 pages including this cover page



Filed in The District Court
of Travis County, Texas

JUL 01 2014

At 2:37 P.M.
Amalia Rodriguez-Mendoza, Clerk

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Re: Cause No. D-1-GN-13-003928; *Texas Association of Aesthetic Nurses, et al vs. The Texas Medical Board and Mari Robinson, Executive Director in the 126th Judicial District Court, Travis County, Texas*

Dear Counsel:

This is a challenge to an administrative rule. The full relief the plaintiffs can achieve is an invalidation and remand of the rule to the Texas Medical Board. Plaintiffs advance several independent grounds for that relief.

The court's consideration of "reasoned justification" is confined to the four-corners of the final rule. Among other things, this rule requires that a physician or mid-level provider be "onsite during the procedure" or that a delegating physician be "available for emergency consultation in the event of an adverse outcome, and if the physician considers it necessary, be able to conduct an emergency appointment with the patient."

The Board's justification states "the intent of the rule is to enhance and insure patient safety during non-surgical cosmetic procedures." As the Board further explains, that intent is met by

insuring that a physician or mid-level provider will be present at a facility where cosmetic procedures are being performed to personally treat or supervise treatment of any complications arising from the procedure ... the personal presence of a physician or mid-level provider at a facility where cosmetic

Cause No. D-1-GN-13-003928

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procedures are being performed provides greater safety to patients than mere standing delegation orders and phone consultation.

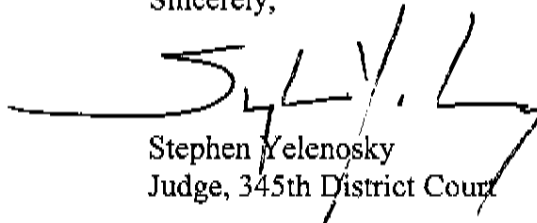
That may be a reasoned justification for some rule, but not this one.

This is a justification for an indispensable requirement not for a choice between a more cautious and less cautious option. Not only is it self-evident that availability by phone is less cautious than a physician's presence, the Board's justification explicitly makes that point. Yet, under the rule the physician does not have to be present, and even after an "adverse outcome" the physician is left to his own discretion as to whether to see the patient. The assistant attorney general's failure to address the inherent and explicit conflict is telling. Counsel mounts a fine defense of the justification but not of the rule.

I will invalidate and remand the rule for further proceedings by the Board. The court does not reach any of the other grounds raised or arguments made.

My order follows.

Sincerely,



Stephen Yelenosky
Judge, 345th District Court

SY/ar

Original: Hon. Amalia Rodriguez-Mendoza, District Clerk

JUL 01 2014

CAUSE NO. D-1-GN-13-003928

At 2:37 P.M.
Amalia Rodriguez-Mendoza, Clerk

TEXAS ASSOCIATION OF
AESTHETIC NURSES, *ET AL.*
Plaintiffs,

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

TEXAS MEDICAL BOARD, AND
MARI ROBINSON, EXECUTIVE
DIRECTOR.
Defendants.

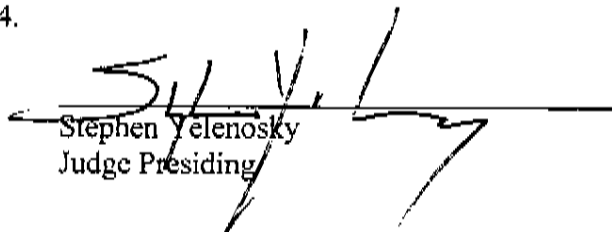
126th JUDICIAL DISTRICT

FINAL JUDGMENT

On June 16, 2014, the court heard evidence and argument regarding the Texas Association of Aesthetic Nurses' Plaintiffs' Request for Declaratory Judgment and Permanent Injunctive Relief. Having considered the evidence and argument, the court finds that Rule 193.17 lacks a reasoned justification. The rule allows qualified unlicensed personnel to perform a procedure without a physician or midlevel practitioner onsite during the procedure and without requiring the physician to go onsite in the event of an adverse outcome. Yet the reason given for the rule is that the presence of a physician or mid-level provider during procedures to personally treat or supervise treatment of any complications arising from the procedure insures patient safety. The rule and the justification contradict one another.

IT IS ORDERED that Rule 193.17 is invalidated and remanded to the Texas Medical Board for further proceedings consistent with this order.

SIGNED this 1st day of July, 2014.


Stephen Yelenosky
Judge Presiding