

February 28, 2024

**Via Efile**

Texas Court of Appeals, Third District  
204 West 14<sup>th</sup> Street  
Austin, Texas 78701

Re: Cause No. 03-23-00263-CV *Quantum Plus, LLC, et al. v. Hospital Internists of Austin, P.A., et al.*

Honorable Justices of the Court:

The Texas Hospital Association (“THA”), a representative of over 460 Texas hospitals and hospital system members, submits this letter as *amicus* and in support of the Appellants, Quantum Plus, LLC and Lonestar Hospital Medicine Associates, P.A., in the above-captioned Cause. The issues before the Court are of significant interest to THA and its members, as they affect the delivery of care, operations, and financial viability of Texas hospitals. Of specific concern to THA is the trial court’s use of an overly broad definition in describing the corporate practice of medicine doctrine in its charge to the jury.<sup>1</sup> The negative impact the propagation of this overly broad definition will have on hospital operations, specifically the administrative oversight of contracted physicians and advanced practice clinicians, requires THA to raise this potential for the Court’s consideration. THA alone bore the cost of preparing this letter.

Subject to limited exceptions, Texas hospitals cannot directly employ physicians. *See* 22 Texas Admin. Code § 177.17. One alternative to a hospital’s direct employment of physicians is the ability for nonprofit health organizations to employ licensed physicians. *See* Texas Occ. Code § 162.001. The ability to employ physicians through nonprofit health organizations is recognized by the Texas Medical Board and has resulted in the certification of over 1,000 nonprofit health

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<sup>1</sup> The definition in the jury charge at issue reads in relevant part: “‘Texas Prohibition on the Corporate Practice of Medicine’ refers to the State’s statutes, rules and regulations prohibiting general business corporations from practicing medicine, or controlling or directing physicians’ medical decisions in any way.”

organizations.<sup>2</sup> Under this arrangement, the nonprofit health organization might enter into an agreement with a hospital to fulfill physician staffing needs. However, a general prohibition on the corporate practice of medicine remains even when these exceptions or arrangements might apply – for example: that “[t]he policies of the health organization must be drafted and interpreted in a manner that reserves the sole authority to engage in the practice of medicine to a physician participating in the health organization, regardless of the physician's employment status with the health organization.” Tex. Occ. Code §162.0022(d).

The relationship between a hospital and physicians who are granted privileges to practice in the hospital – employed, contracted, or otherwise – is governed in part by those statutes that define the corporate practice of medicine doctrine. *See* 22 Tex. Admin. Code § 177.17(a). While the definition of the corporate practice of medicine is multivariate, it is not completely nebulous, and it is clear the statutes’ collective purpose is to prohibit non-physicians from *practicing* medicine.<sup>3</sup> However, the corporate practice of medicine doctrine does not prohibit a hospital from exercising some general administrative control over physicians who practice within the facility. *See* Tex. Health & Safety Code, §§ 241.101 and 241.1015(d) (outlining hospital authority over medical staff and allowing hospitals to use contractual provisions to regulate physician availability, hospital coverage, regulatory compliance, and quality of care standards). The trial court’s use of an overly broad definition of the corporate practice of medicine doctrine in the jury charge, which exceeds the boundaries clearly established by statute, was certain to confuse the jury and sets a precedent that will likely have a significant impact on hospitals’ ability to manage all clinical staff, ensure compliance with even the most fundamental administrative or regulatory guidelines, and to provide the best, most efficient care to Texas patients.

As most hospitals rely on physician-staffing arrangements, these relationships may be governed by contracts ensuring, for example, the availability of physician coverage for certain types of physician services, as in the instant case. Or such arrangements may be simply a matter of the physician exercising the clinical privileges granted by the hospital’s governing body. In any case, the corporate

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<sup>2</sup> Texas Medical Board’s listing of certified NPHOs: <https://www.tmb.state.tx.us/idl/C7BCCC43-96B0-2AA9-3444-0C0103B70594>.

<sup>3</sup> “Practicing medicine” is defined as “the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who: (A) publicly professes to be a physician or surgeon; or (B) directly or indirectly charges money or other compensation for those services.” Tex. Occ. Code §151.002(13).

practice of medicine statutes guide the relationship between physicians and both the hospital and staffing organization. Generally, this relationship operates as intended: with all parties cooperating with applicable laws, regulations, and operating in sync to provide the best medical care and treatment possible for Texas patients. If the trial court's overly broad definition of corporate practice of medicine were to remain legally actionable, then efforts by hospitals to impose even the most innocuous administrative requirements on physicians would be significantly impaired, if not completely obviated. It might also discourage hospitals from instituting best practices, which could negatively impact patient care.

Hospitals are highly complex organizations with functions that intertwine and interrelate in ways that may not seem obvious. Actions occurring in one part of the hospital often have repercussions for other departments or areas. For example, if a physician is late rounding on patients, this may delay laboratory orders, which may delay scheduling necessary medical procedures, which may disrupt operating room schedules, which then may impact other patients' care. Similarly, if a physician does not adhere to schedules for patient discharge, as medically appropriate, hospital beds will be occupied longer, resulting in unavailability for patients who may be waiting for admission, which may also impact other patients waiting to be evaluated.

There are many other examples to illustrate why the efficient operation of a hospital is necessary, and why administrative requirements that have nothing to do with the practice of medicine or the exercise of medical judgment are necessary. These requirements do not merely serve as the means to the hospital's legitimate business ends. Delays in patient care or the unavailability of an often-scarce resource or service can have a real and negative impact on the patients who need that care on a timely basis. The confusing and erroneous standard embodied in the trial court's jury charge would call into question any administrative requirement that has the effect of impacting where or when the physician carries out his or her independent medical judgment in the hospital. That is not the law, and never has been. Hospitals must be able to adopt processes and protocols, as long as those processes do not involve the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions. *See* Tex. Occ. Code §151.002(a)(13) (defining "practicing medicine").

The Texas Hospital Association respectfully urges the Court to reverse the judgment of the trial court and render judgment in favor of appellants on the basis that nothing

Appellants did as adduced at trial constituted a violation of the corporate practice of medicine doctrine.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cesar J. Lopez', with a long horizontal flourish extending to the right.

Cesar J. Lopez  
Vice President, Legal  
Texas Hospital Association

Texas Bar No. 24065641

## CERTIFICATE OF SERVICE

I certify that the foregoing document was electronically filed with the Clerk of the Court via the electronic case filing system, and a true and correct copy of the foregoing was served via e-service or e-mail on the following counsel of record on February 28, 2024:

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Filing Description: Amicus Letter  
Status as of 2/29/2024 10:14 AM CST

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