


2018

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Madeleine Rosuck

*Southern Methodist University, Dedman School of Law, mrosuck@smu.edu*

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### Recommended Citation

Madeleine Rosuck, *Telemedicine is the New Narcotics Candy Store: Teladoc Opens the Floodgates for the Unrestricted Sale of Dangerous Drugs*, 21 SMU SCI. & TECH. L. REV. 89 (2018)  
<https://scholar.smu.edu/scitech/vol21/iss1/5>

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# Telemedicine is the New Narcotics Candy Store: *Teladoc* Opens the Floodgates for the Unrestricted Sale of Dangerous Drugs

*Madeleine Rosuck\**

## I. INTRODUCTION

From the emergence and utilization of advanced technology comes the incredible advancement of medicine. The introduction of technological innovations bolsters traditional medical devices, increases access to health care, lowers the cost of obtaining health care, and improves the overall standard of health care. Telemedicine is one such innovation.

The Texas Occupations Code defines a “Telehealth Service” as “a health service . . . delivered by a health professional . . . to a patient at a different physical location than the health professional using telecommunications or information technology.”<sup>1</sup> Individuals can obtain access to telehealth services through a telemedicine provider for a per-member subscription fee.<sup>2</sup> Patients create a personal account which contains their complete medical history and medical records.<sup>3</sup> Patients in need of medical consultations submit a request online, which is accepted by a board-certified physician employed by the telemedicine provider, and the consultation takes place via telephone.<sup>4</sup> The physician can offer the patient medical advice, refer the patient to a brick-and-mortar office for an in person evaluation, or prescribe the patient medication.<sup>5</sup>

People increasingly accept and utilize the telemedicine model. The shortage of physicians in the United States, coupled with the associated increased cost of health care services and the decrease in face time with physicians, makes the telemedicine system appealing because it allows patients to avoid these problems and obtain medical advice quickly, conveniently, and cheaply.<sup>6</sup> Consequently, states like Texas, with historically low health care coverage numbers, invested early in telemedicine and continue to greatly

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\* Madeleine Rosuck is a 2019 Candidate for a Juris Doctor at SMU Dedman School of Law. She received a Bachelor of Science in Communication Studies from the University of Texas at Austin.

1. TEX. OCC. CODE ANN. § 111.001(3) (West 2017).
2. *See Teladoc, Inc. v. Tex. Med. Bd.*, 112 F. Supp. 3d 529, 533 (W.D. Tex. 2015).
3. *See id.*
4. *See id.*
5. *See id.*
6. *See* Caroline M. Poma, *Telemedicine: A Therapeutic Prescription for Our Health Care System Contaminated by Old Economy Rules and Regulations*, 17 N.C. J.L. & TECH. ON. 74, 77, 79 (2016).

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support its use—especially among populations facing geographical or economic barriers to obtaining health care.<sup>7</sup>

Overall, benefits stemming from the use of telemedicine (e.g., lowered costs, increased access, and improved quality of care)<sup>8</sup> have been significant and have contributed to telemedicine’s popularity and acclaim.<sup>9</sup> But, as is the case with all relatively new and complex innovations, there are many legal implications that the courts have yet to sort out, especially regarding the restrictions and limitations imposed on telemedicine services.

The statutory and constitutional issues associated with the telemedicine model that lack judicial clarity are exemplified in *Teladoc, Inc. v. Texas Medical Board*. Here, the U.S. District Court for the Western District of Texas (Court) misinterprets a telemedicine statute resulting in an erroneous holding which has had far-reaching constitutional and practical implications. This case note examines the Court’s erroneous interpretation of § 190.8(1)(L) of the Texas Administrative Code (TAC) as a global restriction applying to all drugs prescribed through the telemedicine model. This overbroad interpretation and application of the statute by the Court caused it to grant the requested preliminary injunction preventing enforcement of the TAC, overreaching its authority and intruding on the state’s explicit police power. The correct interpretation would find the limitation applies only to the prescription of the dangerous drugs and controlled substances listed in the statute.

## II. BACKGROUND

In Texas, the practice of telemedicine is governed by the laws and regulations created by the Texas Medical Board (TMB) and codified in the TAC.<sup>10</sup> In 2011, the TMB notified Teladoc, Inc., a provider of telehealth services, that it was in violation of § 190.8(1)(L) of the TAC.<sup>11</sup> The TMB’s letter to Teladoc explained that § 190.8(1)(L) required that, in order for a telehealth provider to prescribe a “dangerous drug or controlled substance” to a patient, a “proper professional relationship” must first be “establish[ed] . . . through the use of acceptable medical practices such as . . . physical examination.”<sup>12</sup> The letter explained the TMB’s interpretation of the statute and accused Teladoc of violating it by prescribing medication after a telephone

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7. John Daniel Davison, *How a Lawsuit Could Impact the Future of Healthcare in Texas*, TEX. MONTHLY (Oct. 4, 2016), <https://www.texasmonthly.com/articles/the-future-of-telemedicine-in-texas/>.

8. See Wynter K. Miller, *Trust and Antitrust: State-Based Restrictions in Telemedicine*, 50 U.C. DAVIS L. REV. 1807, 1837–40 (2017).

9. See *id.* at 1843.

10. 22 TEX. ADMIN. CODE § 174.1(a) (West 2018).

11. *Teladoc, Inc. v. Tex. Med. Bd.*, 112 F. Supp. 3d 529, 534 (W.D. Tex. 2015).

12. *Id.*

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consultation without a face-to-face examination.<sup>13</sup> Teladoc responded by filing suit against the TMB claiming its interpretation of the statute constituted an amendment to § 190.8 and was procedurally invalid.<sup>14</sup> The trial court agreed and held in Teladoc's favor.<sup>15</sup>

The TMB subsequently issued an emergency rule amending § 190.8(1)(L).<sup>16</sup> Similar to the original version of § 190.8, the new version of the rule required an established physician-patient relationship for any provider, including telehealth providers, to prescribe dangerous drugs or controlled substances.<sup>17</sup> But, the amendment included *additional* language stating that “[a] defined physician-patient relationship must include, at a minimum: . . . establishing a diagnosis through the use of acceptable medical practices, which includes documenting and performing: . . . [a] physical examination that must be performed by either a face-to-face visit or in-person evaluation.”<sup>18</sup> The additional language effectively made the previously discretionary list of suggested actions mandatory.<sup>19</sup>

Teladoc consequently filed an action claiming that the TMB violated antitrust law and the Commerce Clause of the U.S. Constitution by adopting the new version of § 190.8 and requested a preliminary injunction to prevent its enforcement.<sup>20</sup> The Court granted the preliminary injunction, holding that Teladoc: (a) made a “prima facie showing that they were likely to succeed on the merits of their claim under the Sherman Act”<sup>21</sup>; and (b) proved they would face a substantial threat of irreparable injury if forced to comply with the newly revised § 190.8.<sup>22</sup>

### III. HOLDING AND RATIONALE

In siding with Teladoc, the Court noted that a preliminary injunction may be granted if the moving party could establish: (1) a substantial likelihood of success on the merits; (2) a substantial threat that failure to grant the injunction would result in irreparable injury; (3) the threatened injury out-

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13. *Id.*

14. *Teladoc, Inc. v. Tex. Med. Bd.*, 453 S.W.3d 606, 612 (Tex. App.—Austin 2014, pet. denied).

15. *Id.* at 620.

16. *Teladoc, Inc.*, 112 F. Supp. 3d at 534.

17. 22 TEX. ADMIN. CODE § 190.8(1)(L) (West 2017).

18. *Teladoc, Inc.*, 112 F. Supp. 3d at 534; *see also* 22 TEX. ADMIN. CODE § 190.8(1)(L)(i) (West 2017).

19. *See Teladoc, Inc.*, 112 F. Supp. 3d at 534.

20. *Id.*

21. *Id.* at 540.

22. *Id.* at 543.

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weighed any damage the injunction may cause the opposing party; and (4) the injunction will not disserve the public interest.<sup>23</sup>

#### **A. A Substantial Likelihood of Success on the Merits**

The Court found Teladoc satisfied all of these elements.<sup>24</sup> Teladoc brought an antitrust claim asserting the TMB violated the Sherman Act.<sup>25</sup> Teladoc argued the amended version of § 190.8 would reduce choice, access, innovation, and overall supply of physician services, as well as increase overall health care costs.<sup>26</sup> Teladoc's argument persuaded the Court that the anticompetitive nature of the amended section far outweighed any benefit the amended section could provide to the community.<sup>27</sup> In its analysis, the Court recognized that all licensed physicians in the state of Texas, including those employed by telehealth providers, are held to the same standard of ethics and care, but rejected the idea that improving the safety of the public was a substantial enough interest to justify an anticompetitive policy enacted by a group of professionals engaging in the anticompetitive conduct.<sup>28</sup>

#### **B. Substantial Threat of Irreparable Injury**

The Court held Teladoc proved it would face a substantial threat of irreparable injury if it were forced to adhere to the new rule.<sup>29</sup> The Court agreed that the enactment of § 190.8(1)(L) would prohibit physicians from providing medical care and services through telehealth providers, such as Teladoc, by requiring face-to-face consultation.<sup>30</sup> It was sympathetic to Teladoc's argument that the physicians employed by Teladoc would no longer be able to provide health care by telephone, causing monetary losses Teladoc likely would be unable to recover from the TMB.<sup>31</sup>

#### **C. Balancing of Respective Interests**

In considering the third and fourth elements required for an injunction, the Court determined enforcement of the amended section would injure both Teladoc and the public.<sup>32</sup> While the TMB presented "only anecdotal evidence of possible public harm," Teladoc presented "countervailing anecdotal evi-

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23. *Id.* at 535.

24. *Id.* at 544.

25. *Teladoc, Inc.*, 112 F. Supp. 3d at 536.

26. *Id.* at 537.

27. *See id.*

28. *See id.* at 538.

29. *See id.* at 541.

30. *See id.*

31. *See Teladoc, Inc.*, 112 F. Supp. 3d at 543.

32. *See id.*

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dence” that enforcement of the amended rule would cause significant financial injury to Teladoc, and would force medical expenses to increase for consumers.<sup>33</sup> In determining the risk of inappropriate prescriptions of dangerous drugs and controlled substances to consumers over the phone did not constitute an “imminent peril to public health, safety, or welfare,” the Court held in favor of Teladoc.<sup>34</sup>

#### IV. CRITIQUE OF THE COURT’S RATIONALE

The Court failed to consider the restrictive language in the statute that narrowed the instances where face-to-face meetings are required to only those involving the prescription of certain defined drugs.<sup>35</sup> Instead, the Court based its holding on erroneous antitrust grounds and essentially removed the statutory protections preventing individuals with drug habits from “virtual-doctor shopping” for dangerous drugs and controlled substances.<sup>36</sup>

##### A. Review of the Language of Section 190.8 and its Requirements

Section 190.8(1)(L) of the TAC governs the administration of prescriptions for dangerous drugs or controlled substances.<sup>37</sup> This section dictates that before a doctor can prescribe dangerous drugs or controlled substances to a patient, a physician-patient relationship must first be established.<sup>38</sup> This section specifically requires a “face-to-face or in-person evaluation” in order to establish a physician-patient relationship.<sup>39</sup>

Importantly, the “face-to-face or in-person evaluation” requirement of § 190.8(1)(L) pertains *only* to the prescription of a “dangerous drug or controlled substance.”<sup>40</sup> The Court in *Teladoc, Inc.* erroneously applied this requirement to all telemedicine consultations, as opposed to the narrower stated application to consultations involving only the prescription of “dangerous drugs” or “controlled substances.”<sup>41</sup> A “dangerous drug” is defined as “[a] device or a drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of the Texas Health and Safety Code.”<sup>42</sup> A “controlled substance” is defined as “a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V

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33. *See id.* at 544.

34. *See id.*

35. *See id.* at 534.

36. *See id.* at 543.

37. *See* 22 TEX. ADMIN. CODE § 190.8(1)(L) (West 2017).

38. *See id.*

39. *See id.* § 190.8(1)(L)(i)(II)(c).

40. *Id.* § 190.8(1)(L).

41. *Id.*

42. *Id.* § 172.2(g)(3).

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or Penalty Groups 1, 1-A, or 2-4.”<sup>43</sup> Some of the drugs listed in these sections include typically abused drugs such as hydrocodone, morphine, opium, and oxycodone.<sup>44</sup>

Penalty Group 3 specifically lists narcotics, as well as drugs categorized as “having a potential for abuse associated with a stimulant effect” or a “depressant effect on the central nervous system.”<sup>45</sup> In contrast, prescription drugs that are not typically habit forming or subject to abuse are not included in either the “dangerous drug” category or the “controlled substance” category.<sup>46</sup> Section 190.8(1)(L) of the TAC does *not* prohibit the prescribing and administering of prescription-strength drugs used in antibiotics or used to treat sinus infections, allergic reactions, or fevers.<sup>47</sup> The drugs specifically covered by § 190.8(1)(L) are known to be abused or have severe psychological effects on users.<sup>48</sup> This distinction clearly demonstrates the statute’s fundamental purpose of requiring a face-to-face consultation before a prescription may be written and issued for habit-forming or frequently abused drugs.

#### **B. Incorrect Interpretation and Application of Section 190.8(1)(L)**

Section 190.8(1)(L) was not meant to prevent people from using telehealth services or to prevent the prescription of drugs often used to treat common, though severe, illnesses.<sup>49</sup> Section 190.8(1)(L) was similarly not meant to entirely prevent the prescription of dangerous drugs.<sup>50</sup> It merely sought to ensure certain drugs deemed to be dangerous by the state are only prescribed for appropriate and accurate diagnoses. The state was not unreasonable in deciding a doctor should be required to conduct an in person evaluation to determine whether an antidepressant, stimulant, opiate, or narcotic is medically necessary. The drugs covered in § 190.8(1)(L) are substances

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43. 22 TEX. ADMIN. CODE § 172.2(g)(2).

44. See TEX. HEALTH & SAFETY CODE ANN. § 481.102(3)(A) (West 2017).

45. *Id.* § 481.104 (a)(1)–(4).

46. See *id.* §§ 481.102, 481.104 (failing to appear in the statutory definitions are non-habit-forming prescription drugs).

47. See *id.* §§ 481.102, 481.104 (failing to include drugs such as ibuprofen, paracetamol, pseudoephedrine, or acetaminophen in penalty group lists—all ingredients found in prescription strength pain relievers, decongestants, and other medications often prescribed for severe pain or illness).

48. See Joanna Moncreiff et al., *The Psychoactive Effects of Psychiatric Medication: The Elephant in the Room*, NAT’L CTR. FOR BIOTECHNOLOGY INFO. (NOV. 18, 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4118946/>.

49. See *supra* text accompanying note 47.

50. See 22 TEX. ADMIN. CODE § 190.8(L) (West 2017) (lacking prohibition of prescription of dangerous drugs in the statutory language; statutory language merely places guidelines on the prescription process).

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that undoubtedly need to be regulated, and should only be prescribed as necessary to address the mental or physical symptoms they are intended to relieve. Accordingly, since a face-to-face meeting is far more likely than a telephone meeting to reveal all symptoms relevant to an accurate diagnosis, a face-to-face meeting is required when prescribing medications under this Section.<sup>51</sup>

It is detrimental to public interest to allow the unfettered distribution of certain drugs proven to harm a person's life and livelihood.<sup>52</sup> This assertion is supported by the fact that other states have enacted similar statutes putting limitations and restrictions on the prescription of dangerous drugs.<sup>53</sup> In Florida, "[p]hysicians may not prescribe controlled substances through the use of telemedicine unless the patient is in a hospital facility."<sup>54</sup> Similarly, in Virginia, "physicians may prescribe Schedule VI medication via telemedicine when a doctor-patient relationship is established using face-to-face, two-way real-time communications services."<sup>55</sup>

In allowing doctors to prescribe controlled substances over the phone, the Court erroneously held that "no imminent peril to public health, safety, or welfare existed."<sup>56</sup> This argument is erroneous because permitting the prescription of dangerous drugs and controlled substances without requiring a doctor to determine medical necessity through a thorough, in-person mental and physical examination essentially allows for the unrestricted distribution of drugs and substances known to directly and detrimentally affect the health and safety of the user, and harms the public at large.<sup>57</sup> By incorrectly interpreting the scope of § 190.8(1)(L), the Court incorrectly applied the statute. The Court's ruling allowed for the arbitrary and unregulated distribution of a wide variety of extremely dangerous drugs without requiring a doctor to conduct a physical examination to determine whether the drugs are medically necessary.<sup>58</sup>

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51. See *Teladoc, Inc. v. Tex. Med. Bd.*, 112 F. Supp. 3d 529, 538 (W.D. Tex. 2015).

52. See NORAH D. VOLKOW, NAT'L INST. ON DRUG ABUSE, DRUGS, BRAINS, AND BEHAVIOR: THE SCIENCE OF ADDICTION (2014).

53. See generally Nathaniel M. Ferrante & Thomas B. Lacktman, *Virginia Telehealth Law: What You Need to Know*, HEALTH CARE L. TODAY (Apr. 12, 2016), <https://www.healthcarelawtoday.com/2016/04/12/4419/>.

54. Jamaal R. Jones, Esq., *Telemedicine and its Intersection with Mobile Health Apps and Wearable Tech*, JONES HEALTH LAW (Feb. 22, 2016), <http://www.joneshealthlaw.com/telemedicine-and-its-intersection-with-mobile-health-apps-and-wearable-tech/>.

55. Ferrante & Lacktman, *supra* note 53.

56. *Teladoc, Inc.*, 112 F. Supp. 3d at 544.

57. See *id.*

58. See *id.*



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### C. Holding and Rationale, Revisited

If the Court applied the intended, narrow version of the rule, the outcome of the case would have been drastically different. The Court should have interpreted this rule as requiring an in person evaluation before the prescription of *dangerous* drugs, not before the prescription of *all* drugs. Had the Court accurately analyzed the rule's intended meaning, it would have been clear there was no basis for an antitrust claim, no actual threat of irreparable injury, and no purpose for the rule other than to protect the health and safety of the public.<sup>59</sup>

The Court was persuaded by Teladoc's argument that implementing the amended § 190.8 would result in an antitrust injury through the complete elimination of all medical services provided through telehealth providers. This violation would put physicians out of jobs, and consumers out of a reasonable, inexpensive health care option.<sup>60</sup> Had the amended rule been correctly interpreted, however, the Court would have realized the regulation of dangerous drugs and controlled substances would not have prohibited physicians altogether from providing health care services, as Teladoc claimed.<sup>61</sup> Teladoc's argument is irrational because the rule does not require that every single evaluation or consultation be in person.<sup>62</sup> The correct result would be that patients would need an in person evaluation only to obtain prescriptions for a very particular subset of drugs. The rule merely requires one consultation be in person to establish a physician-patient relationship, and that is only if the patient is in need of a prescription for a controlled substance or a dangerous drug.<sup>63</sup> This standard clearly does not render a physician entirely incapable of practicing medicine, thus disproving Teladoc's antitrust argument.

Had the Court correctly interpreted § 190.8, it would have balanced all respective interests differently. The Court believed that if § 190.8 applied, the result would be the "destruction of Teladoc's business model, and ability to do business in Texas."<sup>64</sup> For the reasons stated above, this assertion is incorrect. The regulation of controlled substances and dangerous drugs would not result in the complete destruction of Teladoc's business model.<sup>65</sup> In fact, Teladoc did not put forth any evidence indicating what percentage of its profits, if any, were made from calls which resulted in its doctors writing prescriptions. Thus, there was no way for the Court to know what actual damage applying § 190.8 would cause to Teladoc. However, since Teladoc does not function solely to prescribe dangerous drugs and controlled sub-

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59. 22 TEX. ADMIN. CODE § 190.8 (1)(L) (West 2017).

60. *See Teladoc, Inc.*, 112 F. Supp. 3d at 537.

61. *See id.* at 543.

62. *See id.*

63. 22 TEX. ADMIN. CODE § 190.8(L)(i)(II)(c).

64. *Teladoc, Inc.*, 112 F. Supp. 3d at 543.

65. *See id.*

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stances, it is reasonable to conclude that their entire business model would not be destroyed.<sup>66</sup>

Had the Court correctly interpreted § 190.8, it would have determined that the regulation of controlled substances and dangerous drugs would not have the fatal, irreparable impact on Teladoc and its business model that Teladoc claimed.<sup>67</sup> Had the Court correctly interpreted § 190.8, it would have realized that Teladoc's claims and evidence presented in trial were overreaching and overdramatic.<sup>68</sup> Limiting access to controlled drugs does not materially restrict a physician's practice of medicine and does not constitute an antitrust violation through anticompetitive impact.<sup>69</sup> For those reasons, and because the relevant statute was interpreted incorrectly and thus applied improperly, the Court's holding was erroneous.<sup>70</sup>

#### V. CONSTITUTIONAL IMPLICATIONS OF THE COURT'S ERRONEOUS RULING

One of the unfortunate results of the Court's erroneous holding in this case is the rationalization of a direct interference on a state's explicit police power. The Constitution reserves certain powers to the states.<sup>71</sup> Indeed, in one of the first and most fundamental U.S. Supreme Court cases, the Supreme Court held state health laws are governed by the state and are "not within the power granted to Congress."<sup>72</sup> The idea that states have the specific and exclusive power to create and regulate laws pertaining to health and health care was upheld in a later Supreme Court case, which stated that "[a]s long as a State does not needlessly obstruct interstate trade . . . it retains broad regulatory authority to protect the health and safety of its citizens."<sup>73</sup> Historically, courts have checked the state's police power to regulate health and health care statutes by requiring the states, in enacting such statutes, to prove the statutes promote public health.<sup>74</sup> Courts have only restricted a state's police power when the proposed statute constituted a "degree of restriction of personal liberty [that] was found to be unconscionable."<sup>75</sup>

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66. *See id.* at 533.

67. *See id.* at 541.

68. *See id.*

69. *See id.* at 536.

70. *See Teladoc, Inc.*, 112 F. Supp. 3d at 536.

71. *See* U.S. CONST. AMEND. X.

72. *Gibbons v. Ogden*, 22 U.S. 1, 3 (1824).

73. *Maine v. Taylor*, 477 U.S. 131, 151 (1986).

74. *See* Jorge E. Galva et al., *Public Health Strategy and the Police Powers of the State*, NAT'L CTR. FOR BIOTECHNOLOGY INFO. (2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2569983/#B6>.

75. *Id.*

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In *Teladoc, Inc.*, the Court overreached in prohibiting Texas from exercising its police power. The TMB cited various reasons why it believed § 190.8 addressed serious public health concerns.<sup>76</sup> The Court rejected the TMB's concerns, calling them "anecdotal."<sup>77</sup> However, the Court did not call TMB's concerns unreasonable, irrational, unconscionable, or a restriction of personal liberty.<sup>78</sup> Judicial precedent dictates that it is clearly within a state's police power to establish laws and regulations promoting public health and safety.<sup>79</sup> Because the regulation proposed by the TMB was not unconscionable, did not restrict individual liberties, and was enacted to promote the health and safety of the public, the Court's holding was overreaching.

In preventing the application of the TMB's rule, the Court erroneously imposed their federal powers on an area designated to the states. While it is undoubtedly important that state agencies, and the rules and regulations they impose, be checked by the federal system, federal courts cannot subjectively decide to reject a state's proposed rules. In *Teladoc, Inc.*, the Court believed § 190.8 would restrict citizens' access to health care services.<sup>80</sup> Had the Court correctly interpreted § 190.8, it likely would have concluded the rule did not restrict all access to health care, but rather imposed a reasonable restriction on the prescription of dangerous drugs and controlled substances.<sup>81</sup> Such a restriction is not excessive, and for that reason, the Court's holding was erroneous.

The Court's holding could have alarming consequences. The Court only briefly mentioned why it rejected the TMB's public health and safety arguments. The majority of its reasoning focused on the detriment that *Teladoc* would suffer if § 190.8 applied instead of listing legitimate reasons why the rule could be seen as overly-restrictive or unconscionable.<sup>82</sup> In doing so, the erroneous holding set a precedent for federal courts to arbitrarily restrain a state's police power. Because the Court did not thoroughly explain the judicial or constitutional precedent supporting its decision to intervene and restrict the state's police power, its holding permits a federal court to encroach on a state's rights without giving a valid reason for doing so. The holding in *Teladoc, Inc.* unconstitutionally granted rights to the federal system which are explicitly reserved to the states.<sup>83</sup> Should federal courts in the future fol-

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76. See *Teladoc, Inc. v. Tex. Med. Bd.*, 112 F. Supp. 3d 529, 538 (W.D. Tex. 2015).

77. *Id.* at 544.

78. See Galva et al., *supra* note 74.

79. See *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 25 (1905).

80. See *Teladoc, Inc.*, 112 F. Supp. 3d at 540.

81. See *id.*

82. See *id.* at 543.

83. See *id.*

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low this precedent, it will completely disrupt the system of checks and balances that is a fundamental component of the U.S. Constitution.

## VI. CONCLUSION

There is no doubt telemedicine is important, beneficial, and should be practiced in the state of Texas. However, there is also no reason why the enforcement of rules and regulations regarding the dispensing of dangerous drugs and controlled substances should be restrained, absent any concerns regarding unconscionability of the rule or the restriction of individual liberties. The Court did the public a disservice in overextending the meaning of § 190.8. The rule at issue in the case was about the ability to prescribe dangerous drugs. The Court, in misinterpreting the rule, erroneously made the case about the general ability to practice telemedicine. The actual issue was a small subtopic of the perceived issue. In misinterpreting the rule, the Court unconstitutionally overreached, and unjustifiably intervened, in an area over which the Constitution explicitly gives the states control. In rejecting the state's reasonable public policy argument, the Court threatened the health and safety of the citizens of the state. As it stands, a person can be prescribed dangerous drugs without an in person evaluation to ensure that those drugs are medically necessary. It is not unreasonable to require an in person evaluation for a doctor to prescribe dangerous drugs or controlled substances such as narcotics, which affect a person's central nervous system, and are often used recreationally or abused.

Lastly, in expanding the scope of the issue, the Court addressed inappropriate and irrelevant antitrust accusations which would not have applied had the Court correctly interpreted the rule at issue. This mistake erroneously determined the outcome of the case and created a dangerous precedent. In actuality, § 190.8 does not limit the general practice of telemedicine. The rule merely limits the prescription and administration of controlled substances and decidedly dangerous drugs. Had the Court assessed the problem correctly, it would have found the restriction reasonable and in the best interests of public health. For these reasons, the Court's holding was erroneous, and courts in the future would be wise to refer to this case with caution.