

**Presented:**

**31st Annual UT Health Law Conference**

March 27-29, 2019  
Houston, Texas

**OPERATIONAL IMPACT OF  
SIGNIFICANT CASES**

**Yvonne K. Puig  
Daphne Andritsos Calderon  
Jeff Wurzburg**

Yvonne K. Puig  
Norton Rose Fulbright US LLP  
98 San Jacinto Boulevard, Suite 1100  
Austin, Texas 78701

yvonne.puig@nortonrosefulbright.com  
(512) 536-2450

# 2019 UT Health Law Conference

I.	ISSUES AFFECTING HOSPITALS AND HEALTHCARE PROVIDERS .....	1
A.	Physician Credentialing .....	1
1.	Zamanian v. Jefferson Parish Hospital Service District No. 2 .....	1
B.	Theories of Liability .....	2
1.	Star Systems International Ltd. v. Neology, Inc.....	2
2.	Nawar v. Gonzalez.....	3
3.	Duntsch v. State .....	4
4.	Benge and Kelsey-Seybold Medical Group, PLLC v. Williams .....	9
5.	Gillispie v. RegionalCare Hospital Partners Inc.....	11
C.	Hospital Claims.....	13
1.	In re North Cypress Medical Center Operating Co. ....	13
2.	Mayo v. Wisconsin Injured Patients and Families Compensation Fund .....	15
3.	Walters v. UPMC Presbyterian Shadyside .....	18
II.	<b>INTERPRETATION AND APPLICATION OF THE TEXAS CIVIL PRACTICE &amp; REMEDIES CODE</b> .....	21
A.	Substantive Issues Raised Under TCPRC.....	21
1.	Texas Health Presbyterian Hospital of Denton v. D.A. and M.A.....	21
B.	Is It a Health Care Liability Claim?.....	24
1.	Abshire v. Christus Health Southeast Texas.....	24
2.	In Re Kyle McAdams .....	26
3.	Windrum v. Kareh .....	27
4.	Burzlaff v. Weber.....	29
5.	Iasis Healthcare Corporation v. Pean.....	31
C.	Procedural Issues Raised Under the TCPRC .....	33
1.	Windrum v. Kareh .....	33
2.	Baylor Scott & White v. Peyton .....	36
	<b>ENDNOTES</b> .....	38

# 2019 UT Health Law Conference

## I. ISSUES AFFECTING HOSPITALS AND HEALTHCARE PROVIDERS

### A. Physician Credentialing

#### 1. *Zamanian v. Jefferson Parish Hospital Service District No. 2*

In a three paragraph opinion, the United States Fifth Circuit Court of Appeals affirmed the dismissal of a doctor's due process claims against a hospital for suspension of his admitting privileges "essentially on the basis of the district court's analysis".<sup>1</sup> Dr. Bahram Zamanian alleged he had been wrongfully terminated and brought a lawsuit in the United States District Court for the Eastern District of Louisiana against Jefferson Parish Hospital Service District No. 2.<sup>2</sup> Dr. Zamanian asserted that he was denied his right to due process in violation of 42 U.S.C.A. § 1983 following the suspension of his admitting privileges at East Jefferson General Hospital (EJGH).<sup>3</sup> EJGH sought dismissal of Dr. Zamanian's claims.<sup>4</sup>

The district court found that Dr. Zamanian met the *Twombly/Iqbal* standard requiring the Plaintiff to plead sufficient facts to state a claim that is facially plausible.<sup>5</sup> Dr. Zamanian's complaint contained factual details on the incident that took place on October 6, 2013, as well as the peer review process which he alleged violated his due process rights.<sup>6</sup> His complaint also alleged facts surrounding the hearing on his summary suspension conducted by the Medical Executive Committee, why he was not present at the meeting, and why the committee's grounds failed to meet the standards of EJGH's by-laws.<sup>7</sup>

The court disagreed with EJGH's assertion that Dr. Zamanian failed to set forth allegations establishing a property interest that is protected by his right to due process under federal and Louisiana law.<sup>8</sup> Dr. Zamanian alleged that his hospital admitting privileges were terminated without affording him sufficient due process protection.<sup>9</sup> The court noted it has held the Plaintiff's hospital admitting privileges constitute a property interest that is protected by his right to due process.<sup>10</sup>

However, the court rejected Dr. Zamanian's argument that he had failed to receive sufficient due process protection.<sup>11</sup> The record demonstrated the process by which Dr. Zamanian lost his privileges at EJGH:

1) Plaintiff's privileges were summarily suspended on October 6, 2013, after which he received a letter listing the grounds of his suspension; 2) the Medical Executive Committee of EJGH then convened on October 8, 2013 to review Plaintiff's summary suspension, which was affirmed, after which Plaintiff received another letter from the Chief of Staff detailing the grounds of the affirmation; and 3) then on October 10, 2013, EJGH's Medical Staff Appropriateness of Care Committee met to review Plaintiff's suspension and voted to support the suspension. Thereafter, Plaintiff invoked EJGH's internal grievance process, which involved taking depositions and culminated in a hearing before a panel of five physicians conducted over three days on January 5, February 23, and March 2, 2016. Plaintiff was represented by counsel and was able to put on evidence at this hearing, including testimony of witnesses, but his suspension was affirmed by the panel. Finally, Plaintiff appealed the decision of

# 2019 UT Health Law Conference

the panel to the EJGH's Board of Directors who affirmed Plaintiff's suspension in April, 2016.<sup>12</sup>

Dr. Zamanian believed his due process rights had been violated because he was not able to testify at the first review of his suspension, due to his mistaken impression that he was prohibited from stepping foot on the hospital grounds, despite the letter giving him notice about the meeting stated he was allowed to attend.<sup>13</sup> However, he later attended the Medical Staff Appropriateness of Care Committee's review of his suspension and was represented by counsel at the physician panel through EJGH's internal grievance process, and appealed directly to EJGH's Board of Directors.<sup>14</sup> As a result, his absence at the first review of his suspension is of not avail.<sup>15</sup>

The court held that his constitutional allegations fail because Dr. Zamanian received sufficient due process protection: his suspension was reviewed by two separate committees, a panel of physicians over a three-day hearing, and the hospital's Board of Directors.<sup>16</sup> He conducted discovery, presented and cross-examined witnesses, submitted affidavits, and gave his statement of the incident through writing and before the different committees/panels.<sup>17</sup>

The Fifth Circuit Court of Appeals affirmed the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

## **B. Theories of Liability**

### *1. Star Systems International Ltd. v. Neology, Inc.*

In *Star Systems* a United States District Court for the Eastern District of Texas held that the Texas Citizens Participation Act (TCPA) is procedural and does not apply in federal court.<sup>18</sup> On May 13, 2014, 3M Company and 3M Innovative Properties sued Star Systems International Limited (SSI) and Stephen C. Lockhart regarding an employment dispute.<sup>19</sup> The case ended with a Settlement Agreement and Consent Judgment entry in March 2017.<sup>20</sup> In June 2017, Neology, Inc. (Neology) acquired 3M, becoming the successor-in-interest to the Settlement Agreement and Consent Judgment.<sup>21</sup> On July 12, 2018, Neology sued SSI, alleging breach of contract and violations of the Texas Uniform Trade Secrets Act, relating to the Settlement Agreement and the Consent Judgment.<sup>22</sup> Neology nonsuited these claims, but on August 10, 2018, SSI filed a lawsuit against Neology alleging (1) breach of contract; (2) defamation; (3) business disparagement; (4) tortious interference with a contract; and (5) tortious interference with prospective business relations.<sup>23</sup> On August 13, 2018, Neology removed the case to the United States District Court for the Eastern District of Texas.<sup>24</sup> SSI filed a motion to dismiss, arguing the Texas Citizens Participation Act (TCPA) barred Neology's Claims.<sup>25</sup> On December 17, 2018, Neology filed a Motion to Determine Applicability.<sup>26</sup>

The TCPA is an anti-SLAPP (Strategic Litigation Against Public Participation) statute designed to "encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury."<sup>27</sup> When a motion to dismiss is filed under the TCPA, it stops discovery until the court has ruled on the motion, except for discovery relevant to the motion.<sup>28</sup> The TCPA

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Operational Impact of Significant Cases

First appeared as part of the conference materials for the  
31<sup>st</sup> Annual Health Law Conference session  
"Operational Impact of Significant Cases"