

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TELADOC, INC., TELADOC
PHYSICIANS, P.A., KYON HOOD, and
EMMETTE A. CLARK,

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Plaintiffs,

Civil Action No. 1:15-cv-00343-RP

v.

JURY TRIAL DEMANDED

TEXAS MEDICAL BOARD, MICHAEL
ARAMBULA, JULIE K. ATTEBURY,
MANUEL G. GUAJARDO, JOHN R.
GUERRA, J. SCOTT HOLLIDAY,
MARGARET C. MCNEESE, ALLAN N.
SHULKIN, ROBERT B. SIMONSON,
WYNNE M. SNOOTS, PAULETTE B.
SOUTHARD, KARL W. SWANN,
SURENDA K. VARMA, STANLEY S.
WANG, and GEORGE WILLEFORD III,
individually and in their capacities as
members of the Texas Medical Board,

Defendants.

JOINT STIPULATION AND DISMISSAL OF CERTAIN DEFENDANTS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Teladoc, Inc., Teladoc Physicians, P.A., Kyon Hood and Emmette A. Clark, Plaintiffs herein, and Michael Arambula, Julie K. Attebury, Manuel G. Guajardo, John R. Guerra, J. Scott Holliday, Margaret C. Mcneese, Allan N. Shulkin, Robert B. Simonson, Wynne M. Snoots, Paulette B. Southard, Karl W. Swann, Surenda K. Varma, Stanley S. Wang, and George Willeford III, in their capacities as members of the Texas Medical Board (“TMB”), Defendants herein, file this Joint Stipulation and Dismissal of Certain Defendants and show the following.

On July 6, 2015, Plaintiffs filed their Amended Complaint, which, like the original complaint, names as defendants the TMB as well as members of the TMB in both their individual and official capacities. The Amended Complaint adds a request for attorneys' fees and costs. The individual-capacity defendants have not been served with the Amended Complaint and have not appeared in this case.

After conferring with one another, and to resolve issues relating to the identity of the proper defendants and the availability of the relief sought, Plaintiffs and Defendants have agreed to the following:

1. The board members in their official capacities are liable to pay an award of attorneys' fees if Plaintiffs are the prevailing party in this case within the meaning of either or both of 15 U.S.C. § 26 and 28 U.S.C. § 1988. *See Hutto v. Finney*, 437 U.S. 678, 693-700 (1978) ("Costs have traditionally been awarded without regard for the States' Eleventh Amendment immunity.").
2. Attorneys' fees awarded against the board members in their official capacities must be paid by the state. *See Scott v. Flowers*, 910 F.2d 201, 213 (5th Cir. 1990) ("Any such award . . . must be paid by the state.").
3. Because Plaintiffs may obtain the full relief sought from the board members in their official capacities, the Parties agree to dismiss as defendants the board members in their individual capacities and the Texas Medical Board. *See Verizon Md. Inc v. Public Serv. Comm'n of Md*, 535 U.S. at 645 (2002) (upholding suit for injunctive relief against officials on state regulatory board).

4. The Parties agree that the dismissal of these defendants has no effect on the preliminary injunction previously entered by this Court, *see* Dkt. 44, or on Plaintiffs' ability to obtain any relief sought in the Amended Complaint.

The Parties therefore stipulate to the dismissal of the individual-capacity defendants and the Texas Medical Board pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii).

Plaintiffs and Defendants make this stipulation without prejudice to any other claims, defenses, or facts alleged in this suit and without waiving any rights, privileges, or defenses, all of which are expressly and specifically reserved.

The Parties further stipulate to waiver of a jury for the trial of this cause and proceed with a non-jury trial.

Dated: July 22, 2015

Respectfully submitted,

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/s/ James C. Todd
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