

## Recent Federal and State Reproductive Health Developments

Article By:

Adam H. Laughton

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This GT Alert discusses various recent developments from the U.S. Supreme Court and Texas related to reproductive health.

### Supreme Court Dismisses Challenge to FDA Approval of Mifepristone

On June 13, 2024, the U.S. Supreme Court dismissed a challenge from a group of physicians identifying as the Alliance for Hippocratic Medicine to the Food and Drug Administration's approval of mifepristone, a medication used to terminate pregnancies. The Court's unanimous decision held that the physicians lacked standing to bring the challenge because they neither prescribed mifepristone nor used it themselves. Because the Court dismissed the challenge on standing grounds, the Court's opinions did not reach the substantive issues the petitioners raised regarding the FDA's regulation of mifepristone, including whether FDA actions in 2016 and 2021 that loosened restrictions on access to the drug violated the Administrative Procedure Act. The decision vacates an order from a U.S. district court in Texas that enjoined the FDA's approval of mifepristone.

### Texas Medical Board Finalizes Rule Regarding Emergency Abortion Exceptions

The Texas Medical Board (TMB) recently finalized, and is preparing for publication, new rules related to Texas' emergency exception for abortions. The proposed rules were first announced in April 2024 and were the subject of a livestreamed TMB hearing. The rules emerged in response to pressure from the public, physicians and their professional associations, and courts (including the *Zurawski* and *Cox* cases, which received widespread media attention), asking the TMB to clarify the scope of Texas' emergency exception to its multiple statutory abortion bans. The proposed rules were deemed largely unsatisfactory to many because they (i) did not alter, supplement, or clarify statutory definitions of key terms used in defining the scope of the exception, and (ii) did not enumerate a list of potential emergency conditions to presumptively qualify for the exception. The final approved rules do not alter these aspects, which were the subject of the most significant criticism.

The final rules limit some elements of state-mandated documentation of an emergency abortion, including omitting details of diagnostic tools used to determine the necessity and emergency of the abortion, alternative treatments, and the feasibility of a transfer. The final rules also extend the time period to produce the required documentation to up to seven days after the procedure, and they

clarify that an imminent threat to a patient is not required. Finally, the rules state that TMB will not take disciplinary action against a physician based on that physician's use of "reasonable medical judgment" in providing care to a pregnant person. Alongside the final rules, the TMB president issued a [press release](#) describing the TMB's decision not to alter statutory definitions or offer a list of presumptively qualifying conditions. The press release emphasizes that the delay in documentation and other changes in the final rules are meant to allow physicians to act more promptly in delivering lifesaving care, and to act with more security regarding the scope of the emergency exception.

## **Supreme Court Dismisses Idaho Suit on Emergency Abortion Regulations**

On June 27, the Supreme Court issued a 6-3 opinion dismissing cases between the state of Idaho and certain state officials and the United States. The original suit emerged when Idaho's abortion ban went into effect and the federal government issued guidance under the Emergency Medical Treatment and Labor Act (EMTALA), reminding hospitals in states with abortion bans that EMTALA's requirement to offer emergency stabilizing treatment would also require them to offer abortions if necessary in spite of state laws. The federal government later sued the state of Idaho on a similar theory to enjoin enforcement of its statute. The federal district court issued an injunction, and Idaho appealed to the Ninth Circuit and then to the Supreme Court. Like the mifepristone suit described above, the Supreme Court dismissed the case and returned it to the district court without reaching the merits. The justices differed on the more detailed grounds for their opinion, but six justices agreed that the Court had accepted the case prematurely. Three justices dissented, stating they would have reached the merits of the challenge, while another dissented in part and stated they would have reached the merits for purposes of upholding the federal law's supremacy against the Idaho ban.

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National Law Review, Volume XIV, Number 191

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