



## Case Summaries May 1, 2026

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### DECIDED CASES

***Tex. Dep't of State Health Servs. v. Sky Mktg. Corp.***, \_\_\_ S.W.3d \_\_\_, 2026 WL \_\_\_ (Tex. May 1, 2026) [23-0887]

The issue in this case is whether the court of appeals erred in affirming the trial court's grant of a temporary injunction and denial of the plea to the jurisdiction.

The Commissioner of the Texas Department of State Health Services is responsible for maintaining Texas's schedules of controlled substances. After the Commissioner modified certain definitions within those schedules in 2021, a group of hemp vendors sued the Commissioner and the Department, seeking temporary and permanent injunctions and declaratory relief. The vendors asserted *ultra vires* claims against the Commissioner, alleging that her modifications purported to control hemp products that the 2019 Texas Farm Bill expressly legalized. The vendors also brought a claim against the Department under the Texas Administrative Procedure Act, asserting that a statement on the Department's website was an invalid rule under the Act. The Department and Commissioner responded with a plea to the jurisdiction, asserting sovereign immunity and challenging the vendors' standing. The trial court granted the temporary injunction and denied the plea to the jurisdiction. The court of appeals affirmed on both counts.

The Supreme Court affirmed in part and reversed in part. The Court held that the vendors have standing and that their claims are ripe for judicial review. It further held that sovereign immunity bars the vendors' *ultra vires* claims because Texas law reposes significant discretion in the Commissioner to establish and modify the schedules and that the Legislature has not eliminated her discretion in a way that rendered the challenged actions *ultra vires*. The Court also held that sovereign immunity bars the vendors' remaining claims against the Department because the website statement is not a rule subject to the APA. Accordingly, the Court reversed the grant of the temporary injunction.

***Ortiz v. Nelapatla***, \_\_\_ S.W.3d \_\_\_, 2026 WL \_\_\_ (Tex. May 1, 2026) [23-0953]

This personal injury case concerns the admissibility of partially controverted affidavits offered to prove the reasonableness and necessity of medical expenses.

Ortiz and Nelapatla were involved in a car crash, and Ortiz sued Nelapatla for negligence. Prior to trial, Ortiz served three medical-provider affidavits pursuant to Texas Civil Practice and Remedies Code Section 18.001. In response, Nelapatla timely served two counteraffidavits challenging the reasonableness and necessity of a portion of Ortiz's medical expenses from two of the providers. Ortiz offered both the affidavits and the counteraffidavits as evidence at trial. Nelapatla objected as to the two partially controverted affidavits and the counteraffidavits, asserting that they were inadmissible hearsay. The trial court sustained the objections.

The trial court rendered judgment on the jury's verdict for Ortiz, awarding past medical expenses in the amount reflected in the uncontroverted affidavit. A divided court of appeals affirmed.

The Supreme Court reversed. In an opinion by Justice Lehrmann, the Court explained that ordinarily expert testimony is required to prove the reasonableness and necessity of a claimant's medical expenses. However, Section 18.001 provides an alternative process whereby a claimant may serve an affidavit made by a medical-service provider or recordkeeper, which constitutes sufficient evidence to support a finding of fact on the reasonableness and necessity of the charges unless the opposing party serves a compliant counteraffidavit. The Court explained that while a counteraffidavit that controverts only a portion of the charged amounts renders the initial affidavit insufficient as to any controverted claims, it does not render the entire affidavit inadmissible; instead, a claimant may rely on the uncontroverted portion of the affidavit so long as the controverted portions are redacted. Further, the Court held that when a counteraffidavit attests to the portion of the claimed costs that is reasonable, the counteraffidavit is similarly admissible to support that claim.

Justice Sullivan dissented, arguing that when a statutorily compliant counteraffidavit is served challenging the reasonableness and necessity of any portion of the medical expenses reflected in an initial affidavit, the claimant may not submit either of the affidavits as evidence at trial and must present expert testimony to prove those elements.