



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

	§	No. 08-22-00149-CV
THE STATE OF TEXAS	§	Appeal from the
FOR THE BEST INTEREST AND	§	Probate Court No. 2
PROTECTION OF A.R.C.	§	of El Paso County, Texas
	§	(TC# 2022-CMH00771)

CONCURRENCE

We take statutes as we find them. *Texas Lottery Comm’n v. First State Bank of DeQueen*, 325 S.W.3d 628, 637 (Tex. 2010) (“But we must take statutes as we find them and first and primarily seek the Legislature’s intent in its language.”). And equally true, “[a] court may not judicially amend a statute by adding words that are not contained in the language of the statute.” *Lippincott v. Whisenhunt*, 462 S.W.3d 507, 508 (Tex. 2015). Here, as the majority points out, the legislature chose to define a “physician” to include a physician-in-training but did not include a like definition for a “psychiatrist.”

We also afford deference to an agency’s interpretation of the statutory terms it administers (when that interpretation is reasonable and not inconsistent with the statutory language). *Texas Comm’n on Env’t Quality v. Maverick County*, 642 S.W.3d 537, 544 (Tex. 2022). And while the

agency that administers many of the State’s mental health issues would allow a physician-in-training—supervised by a board certified or board eligible psychiatrist—to write a prescription for medications, that is a far cry from allowing the same resident to restrain a person’s freedom or require a person to take medicine against their will. Moreover, DSHS has not defined the term psychiatrist for the specific purposes relevant here, and nor does our record affirmatively show that the resident doctor was supervised by a board certified or board eligible psychiatrist, as the TAC definition would require. 25 TEX.ADMIN. CODE ANN. § 415.3(13).

Texas Tech School of Medicine, appearing as amicus, urges that requiring a psychiatrist to actually see the patient and sign the CME would unduly burden the functioning of a teaching hospital. That may or may not be true. Nothing in our record addresses that issue. And in truth, Texas Tech’s argument is the sort best directed at the legislature or DSHA, which can take input from the several teaching hospitals around the State and balance any burden of having an instructor evaluate the patient against the value of a person’s freedom and self-determination of their medical care. Stated otherwise, our opinion today is not the end-point of this dispute, but only a data point for the legislature (or perhaps DSHS) to consider in whether to refine or amend the statute (or the agency rules).¹

JEFF ALLEY, Justice

September 21, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.

¹ It is more than theoretically possible for the legislature to amend a statute that it feels a court has failed to apply as it intends. See, e.g. *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 653 (Tex. 2006) (noting statutory amendments by legislature were in response to court decisions); *Texas Dep’t of Protective & Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 188-89 (Tex. 2004) (noting legislature amended statute in response to intermediate appellate court decision). And conveniently, we are fast approaching a new legislative session.