

**APPEALS DIVISION
HEALTH AND HUMAN SERVICES COMMISSION
Austin, Texas**



**HARLINGEN FAMILY DENTISTRY,
Petitioner**

VS.

§

CAUSE NO. 13-0642-K

**TEXAS HEALTH AND HUMAN SERVICES
COMMISSION, OFFICE OF INSPECTOR
GENERAL, and DR. CHRISTINE ELLIS, DDS,
Respondents**

ORDER DENYING PETITIONER'S MOTIONS

On January 16, 2014, the court heard oral argument on three motions filed by Petitioner, i.e. (1) a plea to the jurisdiction; (2) a motion to strike Relator Ellis; and (3) a motion to dismiss for failure to serve expert reports in the above-referenced matter. The court will deal with each of these motions in turn.

Petitioner first makes a plea to the jurisdiction on the grounds that this action must be transferred to the State Office of Administrative Hearings under section 531.1201 of the Government Code. That statute became effective on September 1, 2013, and there is no indication in the statute itself, or in the bill that contained it, Senate Bill 1803, that it was to be applied retroactively. As a result, the court is of the view that Petitioner's plea to the jurisdiction should be denied.

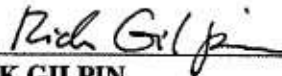
Petitioner next argues that Relator's participation in this cause is prohibited by chapter 36 of the Texas Human Resources Code, specifically section 36.113. Subsection (b) of section 36.113 provides that "[t]he court shall dismiss an action" such as Relator's claim, "unless opposed by the attorney general." The court is persuaded that subsection 36.113(b) permits the attorney general to determine whether to proceed with this sort of claim, and thus, that Petitioner's motion to strike Relator Ellis should be denied.

Finally, Petitioner files a motion to dismiss on the basis of Respondent's failure to serve expert reports in this matter. Petitioner suggests that the Texas Medical Liability Act, chapter 74 of the Texas Civil Practice and Remedies Code, applies to actions brought under the Texas Medicaid Fraud Prevention Act (the "TMFPA"), chapter 36 of the Human Resources Code. Petitioner asks the court to inject into the TMFPA provisions that would be applicable in a district court proceeding. Moreover, chapter 74 simply does not apply to administrative proceedings brought pursuant to chapter 531 of the Texas Government Code and the administrative regulations of HHSC-OIG, 1 Tex.

Admin. Code Ch. 371. For such reasons, Petitioner's motion to dismiss for Respondent's failure to serve expert reports should be denied.

IT IS THEREFORE ORDERED all three of Petitioner's motions presented to the court in the oral arguments of January 16, 2014, **ARE DENIED.**

Signed this 28th day of February, 2014.


RICK GILPIN
Administrative Law Judge