

HHSC CONTRACT NO. HHS001397000001

EXPERT WITNESS AGREEMENT

This expert witness agreement is between the Health and Human Services Commission (“HHSC”), an agency of the state of Texas, on behalf of the Office of Inspector General (“OIG”), and Hunter R. Stuart II, DDS, MS, an individual (the “Expert”). HHSC and Expert, collectively the “Parties,” and individually a “Party.”

Background

The OIG has requested Expert to act as an expert witness and/or testifying witness to review certain files and other information in relation to matters that are subject to potential or actual litigation (the “Litigation”). This Agreement will document the Parties’ understanding regarding the services provided by Expert. This Agreement is entered into under the authority of § 2151.005 of the Texas Government Code.

The Parties therefore agree as follows:

1. Scope of Services

- 1.1 Expert shall assist the OIG as a consulting and/or testifying expert witness to review medical records in the Expert’s area of expertise in a timely manner.
- 1.2 Expert shall render opinions as to the reasonableness of the services performed as reflected in medical records, and whether or not the treatment in question meets the applicable standard of care.
- 1.3 Expert will be required to develop and deliver to the OIG his opinions in a written expert witness report.
- 1.4 Expert must be reasonably available to counsel, other employees of the OIG, or the Office of Attorney General (“OAG”) staff to discuss work assignments, findings, opinions, and all other matters ancillary to the record review or testifying, or both.
- 1.5 If needed, and upon reasonable notice, Expert must be available to testify in person or by deposition in all legal proceedings related to the services performed by the Expert.

2. Agreement Deliverables

2.1 The Expert must:

- 2.1.1 Develop a reasonable timeline (the “Timeline”) that will identify the duration for completing the following case reviews, if requested by OIG point of contact:
 - **Case No. 2022D03403, Weatherford Pediatric Dental Associates**
 - **Case No. 2022D00734, Timothy D. Lee, DDS**
 - **Case No. 2023D02882, SACS Professionals**
 - **Case No. 2023D03214, DFW Dental Team**
- 2.1.2 Review assigned case(s) according to the scope and methodology defined by OIG when the work is assigned.

- 2.1.3 Identify billing exceptions, quality of care concerns, and any other findings, as applicable.
- 2.1.4 Provide a complete and satisfactory summary of review findings within seven (7) calendar days of request for by OIG point of contact.

2.2 Review Tool.

The Expert must:

- 2.2.1 Address and document findings or exceptions, or both, in accordance with the requirements established by the OIG point of contact for a given assignment. The Expert must also determine policy, rule, or law violations and whether or not documentation reviewed supports services billed.
- 2.2.2 Document justification for not testing any given attributes of the case review. Attribute tests may vary based on various factors including, but not limited to the nature, scope, standards of the investigation, review, audit, or other source; however, any failure to test an attribute must be appropriately documented. OIG staff may also omit, revise, or append attribute test failure criteria, as standards and circumstances may dictate.

2.3 Satisfactory Expert Report.

The Expert must:

- 2.2.3 Ensure the Expert Report is provided in the format requested by the OIG point of contact, is comprehensive, and is consistent with findings.
- 2.2.4 Provide a signed and dated narrative summary of overall observations regarding the case review findings (including provider's documentation, billing patterns, and practice patterns) to the HHSC OIG point of contact who assigned the review or who is designated to receive the review.

3. Compensation

3.1 Maximum Liability: The total liability for expert witness services and expenses under this Agreement shall not exceed \$14,000.00 for the duration of this Agreement (the "Cap"). Any increase to the Cap must be in writing and signed by an authorized HHSC OIG representative. The Parties acknowledge and agree that nothing in this Agreement will be interpreted to create an obligation or liability in excess of the funds currently appropriated to the OIG during this biennium. Expert is not required to perform services that cannot be compensated due to the limitations of this section. Nothing in this section shall prevent the Parties from amending the total amount of this Agreement in accordance with section 8.9.

3.2 Compensation for Time. Subject to the Cap in section 3.1, in consideration of full and satisfactory performance of the services requested, OIG shall pay Expert fees billed in accordance with the following fee schedule:

- (a) **Medical Records Review Services.** Time for services includes research, telephone consultations, records and document review, preparation of reports and letters, and

any other time reasonably relating to such activities: \$200.00 per hour.

- (b) **Litigation-Related Services.** Time for services includes depositions, trial testimony, and any other time reasonably relating to litigation activities: \$400.00 per hour.
- (c) **Travel Time.** Travel rates will be \$30.00 per hour calculated from the time of Expert's departure from home or office to the time of arrival at the location specified by the OIG.
- (d) **Other Time.** Where Expert is required by the adverse party to attend a deposition, in the event that the adverse party neglects or fails to pay for such time as may be required by the applicable rules, then HHSC indemnifies Expert for said cost and time.

3.3 Billable Time. All times must be billed in one-quarter hour increments and reflect only actual time spent. OIG will not pay for review, execution, or processing by Expert relating to the submission of invoices.

3.4 Billing Process.

3.4.1 Expert shall submit itemized invoices for reimbursement to the attention of:

HHSC Accounts Payable

HHSC_AP@hhsc.state.tx.us

AND

HHSC – Office of Inspector General

IG_Contracts@hhsc.state.tx.us

- 3.4.2 Expert's itemized invoices shall describe the document received or reviewed and shall include the contract number, case number, Expert's Texas Identification Number (TIN), and the OIG point of contact who assigned the case review.
- 3.4.3 HHSC-OIG will review and validate all invoices. Upon final approval, OIG will authorize payment and process all invoices.

3.5 Reimbursement of Expenses: Subject to the Cap in section 3.1, if onsite review is requested by OIG, Expert will be reimbursed without mark-up for reasonable travel expenses validly incurred (including meals, lodging, mileage and coach class round trip airfare, car rental charges), directly and solely in support of this Agreement and written approval by the OIG in advance. Provided, however, Expert acknowledges that Expert will not be reimbursed for expenses that are prohibited or that exceed the allowable amounts payable to employees of the state of Texas. The maximum reimbursement rate for meals and lodging applicable to this Agreement may be viewed at this website: <http://www.gsa.gov/portal/category/21287>.

- 3.5.1 OIG will reimburse mileage for personal vehicle use at an amount not to exceed the Texas Comptroller's travel and mileage reimbursement rates effective at the time of travel.

- 3.5.2 A rental car may be used if the Expert is traveling over 150 miles. Rental car expenses shall not exceed the “full size” car pricing.
- 3.5.3 Airline fares must be considered at the lowest rates. Expert may not fly on special or first-class flights.
- 3.5.4 Other approved travel expenses not listed will be reviewed and considered on a case-by-case basis.

4. Agreement Term

The Agreement shall be effective upon the signature date of the latter of the Parties to sign this Agreement and continue through the conclusion of the case or Litigation, except as otherwise provided by this Agreement.

5. Termination of Agreement.

This Agreement may be canceled by mutual consent. In addition, either Party to this Agreement may cancel it by the giving of at least 30 days’ notice in writing to the other Party. This Agreement is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the appropriations act, health and human service agency consolidations, or any other disruption of current appropriations, this Agreement will be terminated immediately. HHSC agrees to pay Expert for fees and expenses incurred to the time of cancellation subject to the payment terms of this Agreement. If Expert refuses upon request to testify for the OIG for any reason, HHSC shall not be required to pay Expert for any time Expert spent in preparation for testimony not given.

6. Agreement Representatives.

The following will act as the Representative authorized to administer activities under this Agreement on behalf of their respective Party.

HHSC OIG

Name: Sandy Fang
Title: Contract Administration Manager
Mailing Address: P.O. Box 85200, Mail Code 1300, Austin TX 787058-5200
Phone Number: (512) 568-1638
Email Address: IG_Contracts@hhs.texas.gov

Expert

Name: Hunter R. Stuart II, DDS, MS
Mailing Address: 2708 Citadel Drive, Arlington, TX 76012
Phone Number: (817) 692-3909
Email Address: HRSDDS@gmail.com

7. Notices

7.1 All notices, demands, requests, approvals, and other instruments, given pursuant to this Agreement shall be in writing and shall be validly given on: (i) the date of delivery by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or

(ii) three business days after being mailed via United States Postal Services. All notices under the Agreement shall be sent to a party at the respective address indicated below or to such other party in writing.

HHSC

Health and Human Services Commission
Office of Inspector General
P.O. Box 85200, Mail Code 1300
Austin, TX 78708-5200
Attention: Chief Counsel

Expert

Hunter R. Stuart II, DDS, MS
2708 Citadel Drive
Arlington, TX 76012

7.2 The Expert must:

- 7.2.1 Maintain at all times at least one active email address for the receipt of contract-related communications from HHSC OIG. It is the Expert's responsibility to monitor this email address for contract-related information.
- 7.2.2 Notify the OIG Contract Manager (IG_Contracts@hhsc.state.tx.us) within five (5) business days of any changes to the status of the Expert's professional license or board certification, or whether a complaint that has been filed against the Expert's license, or an investigation of the Expert's license or board certification is being initiated.
- 7.2.3 Notify the OIG Contract Manager (IG_Contracts@hhsc.state.tx.us) within one (1) business day, or as soon as practical, whichever is earlier, of determining that the Expert's opinion or the substance of the Expert's anticipated testimony has changed or will change.
- 7.2.4 Notify the OIG Contract Manager (IG_Contracts@hhsc.state.tx.us) within one (1) business day of receiving a request for information pursuant to the Texas Public Information Act.

8. Miscellaneous

8.1 Payment of Debt or Delinquency to the State. As required by §2252.903 of the Texas Government Code, Expert agrees that any payments owing to Expert under this Agreement may be applied directly toward any debt or delinquency that Expert owes the state of Texas or any agency of the state of Texas regardless of when it arises, until the debt or delinquency is paid in full.

8.2 Products and Materials Produced in Texas. Expert agrees that as required by section 2155.4441 of the Texas Government Code, in performing the services required and its other duties and other obligations under this Agreement, Expert will purchase products and materials that are available at a price and delivery time comparable to products and

materials produced outside of Texas.

8.3 Texas Family Code Child Support Certification. Pursuant to §231.006 of the Texas Family Code, Expert certifies that it is not ineligible to enter into this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

8.4 Nondiscrimination. Expert warrants it will comply with all federal, state, and local laws, as well as HHSC and OIG policies applicable to performance under this Agreement, including, nondiscrimination, equal employment opportunity, and affirmative action. Additionally, OIG requires Expert to maintain a high standard of professionalism and that he will not discriminate or make discriminatory remarks based on race, color, religion, sex, national origin, age, disability, sexual preference, genetic information, veteran status, political affiliation, or religious beliefs.

8.5 Severability. In the event any provision of this Agreement becomes unenforceable or void, all other provisions of this Agreement will remain in effect.

8.6 Re-assignment of the Agreement. This Agreement may not be assigned without the written consent of the non-assigning Party.

8.7 Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes any prior understandings or oral or written agreements between HHSC OIG and Expert regarding the matters provided for in this Agreement.

8.8 Amendments. This Agreement may be amended only by written agreement signed by the authorized representatives of both parties.

8.9 Governing Law; Venue and Jurisdiction. This Agreement shall be governed and enforced by the laws of the state of Texas. Venue for any suit concerning this Agreement shall be in a court of competent jurisdiction in Travis County, Texas.

8.10 Dispute Resolution. The dispute resolution process provided for in Chapter 2260 (Resolution of Certain Contract Claims Against the State) of the Texas Government Code shall be used, as further described below, by HHSC and the Expert to attempt to resolve any claim made by the Expert that HHSC has breached a term or condition of this Agreement:

- (a) Expert's claims for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided for in Chapter 2260, Subchapter B (Negotiation of Claims), of the Texas Government Code. To initiate the process, Expert shall submit written notice, as provided in the notice provision of the Agreement. The notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of HHSC OIG and

- Expert otherwise entitled to notice under the parties' contract.
- (b) Compliance by Expert with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Texas Government Code.
 - (c) The contested case process provided in Chapter 2260, Subchapter C (Contested Case Hearing), of the Texas Government Code is the Expert's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by HHSC OIG if the parties are unable to resolve their disputes under subparagraph (A) of this subchapter.
 - (d) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by HHSC OIG nor any other conduct of any representative of HHSC OIG relating to the Agreement shall be considered a waiver of sovereign immunity to suit.
 - (e) Neither the occurrence of an event, nor the pendency of a claim constitutes grounds for the suspension of performance by Expert, in whole or in part.
 - (f) Imposition of sanctions under this Agreement does not authorize the use of the Dispute Resolution process under Chapter 2260.

8.11 Sovereign Immunity. Nothing in this Agreement shall be construed as a waiver of the state's sovereign immunity. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the state of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the state of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. HHSC does not waive any privileges, rights, defenses, or immunities available to HHSC by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement.

8.12 Record Retention. Expert will keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to HHSC OIG, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Agreement and all state and federal rules, regulations, and statutes. Unless otherwise specified in this Agreement, Expert will maintain legible copies of this Agreement and all related documents for a minimum of seven years after the termination of the contract period or seven years after the completion of any litigation or dispute involving the Agreement, whichever is later.

8.13 Access. Expert understands that acceptance of funds under this Agreement acts as acceptance of the authority of HHSC OIG or the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Expert further agrees to cooperate fully with HHSC OIG or the State Auditor's Office, or any successor agency, in the conduct of the audit or investigation, including providing all records requested.

8.14 Independent Vendor/ No Agency or Partnership. It is the intent of HHSC and

Expert that the Expert is an independent Expert and not an employee of HHSC for any purpose. The Expert and HHSC understand and agree that (a) HHSC will not withhold or pay on behalf of Expert any sums for income tax, unemployment insurance, social security, or any other withholding, or make available to the Expert any of the benefits, including workers' compensation, insurance coverage, and health and retirement benefits afforded to employees of HHSC, (b) all such withholdings, payments and benefits, if any, are the sole responsibility of Expert, and (c) Expert must indemnify and hold harmless HHSC from any damages or liability, including attorneys' fees and legal expenses, incurred by HHSC OIG with respect to such payments, withholdings, and benefits. It is expressly acknowledged and agreed by and between HHSC OIG and Expert that nothing in this Agreement is intended to create a joint venture relationship, a partnership relationship, or a principal/agent relationship. Expert will be solely and entirely responsible for its acts in the performance of this Agreement.

8.15 Confidentiality (i) Expert agrees to safeguard the confidentiality of any confidential information supplied by the OIG. Expert agrees to destroy all copies of confidential information in possession of the Expert at the termination of this Agreement. "Confidential Information" includes any document or information supplied in any form, or any portion thereof that contains:

- (1) Client Information, including Personal Identifying Information defined by Texas Business and Commerce Code Chapter 521;
- (2) Protected Health Information (PHI) in any form including, Electronic Protected Health Information or Unsecured Protected Health Information, that identifies an individual or subscriber in any manner and relates to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual, the provision of health care to such individual, or the past, present, or future payment for the provision of health care to such individual, as defined in the Health Insurance Portability and Accountability Act;
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
- (4) Federal Tax Information defined in Internal Revenue Service Publication 1075;
- (5) Social Security Administration Data, defined as records, information, or data made by the Social Security Administration to HHS for its administration of federally funded benefit programs under the Social Security Act including, without limitation, Medicaid information;
- (6) Information designated as confidential under the constitution and laws of the state of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

Confidential information includes, among other things, medical bills, claims forms, charge sheets, medical records, medical charts, test results, notes, dictation, invoices, itemized billing statements, remittance advice forms, and explanations of benefits, checks, notices, and requests. Confidential information also includes, among other things, all notes, summaries, compilations, extracts, abstracts, or oral communications that contain, are

based on, or are derived from confidential information. Confidential information also includes, among other things, any information protected from disclosure under Tex. Health & Safety Code Ch. 595, Human Resources Code §§ 12.003 and 21.012, and 42 CFR § 431.300 et seq.

(ii) Expert acknowledges and agrees that all information obtained by the Expert and impressions formed by the Expert in the course of the Expert's services shall be confidential and disclosed only to the OIG or other parties as may be specifically authorized by the OIG. This provision shall survive the termination of the Agreement.

8.16 Conflict of Interest. Expert certifies that it does not have any potential or actual conflict of interest to HHSC, including the OIG, the Office of the Attorney General of OAG, or the state of Texas. Expert shall immediately notify OIG and the OAG, in writing, upon discovery of any actual or potential discovery. Expert agrees that during the life of this Agreement, Expert shall not provide any other person, firm corporation, or other entity in connection with the matters that are the subject of this Agreement without the prior written of the OIG and the OAG.

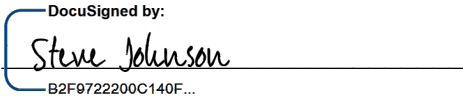
8.17 Compliance with Laws. Expert hereby agrees to comply with all state of Texas, federal, and local laws applicable to its performance under this Agreement.

8.18 Counterparts and Facsimile Signatures. If the parties sign this Agreement in counterparts, each will be deemed an original but all counterparts together will constitute one instrument. This Agreement may be executed by facsimile signature, which shall be treated as an original signature.

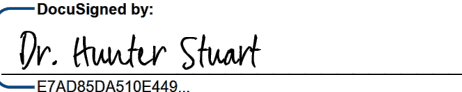
8.19 Federal Assurances. Expert further certifies that the Federal Assurances that are incorporated into the Contract as Attachment A, have been reviewed and that Expert is in compliance with each of the requirements reflected in the Assurances.

Each party is signing this Agreement on the date stated under that party's signature.

HEALTH AND HUMAN SERVICES COMMISSION

By:  DocuSigned by:
B2F6722200C140F...
Name: Steve Johnson
Title: Chief of Investigations and Reviews
Date of Signature: 8/28/2023

EXPERT: Hunter R. Stuart II, DDS, MS

By:  DocuSigned by:
E7AD85DA510E449...
Name: Dr. Hunter Stuart
Title: Dentist Anesthesiologist
Date of Signature: 8/23/2023

THE FOLLOWING DOCUMENT IS ATTACHED AND ITS RESPECTIVE TERMS ARE HEREBY INCORPORATED INTO THIS CONTRACT BY REFERENCE:

- Attachment A: Federal Assurances – Non-Construction Programs
- Attachment B: Contract Affirmations