

In the present motion, Dr. Woody argued that the lawsuit should be dismissed because the Plaintiff failed to comply with Chapter 74 of the Texas Civil Practice and Remedies Code, which concerns state law Health Care Liability Claims. She specifically argued that the case should be dismissed because the Plaintiff failed to timely submit an expert report as required by Chapter 74. If the Plaintiff was pursuing supplemental state claims relating to Chapter 74, then Dr. Woody would have a basis for a dismissal of such claims. However, the Plaintiff's lawsuit involves § 1983 claims only. Federal law, not Texas law, governs § 1983 claims. If the Plaintiff attempts to pursue a Texas Health Care Liability Claim in this case, then Dr. Woody may reurge her motion. However, as it presently stands, this lawsuit is based solely on § 1983, and the motion to dismiss lacks merit. It is therefore

ORDERED that Dr. Woody's motion to dismiss Plaintiff's complaint (docket entry #39) is **DENIED**.

So **ORDERED** and **SIGNED** this **8** day of **December, 2009**.



JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE