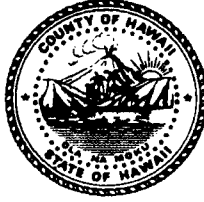


Harry Kim
Mayor



Lincoln S.T. Ashida
Corporation Counsel

Gerald Takase
Assistant Corporation
Counsel

COUNTY OF HAWAII
OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720-4262 • (808) 961-8251 • Fax (808) 961-8622

PRIVILEGED AND CONFIDENTIAL COMMUNICATION
ATTORNEY-CLIENT COMMUNICATION
NOT A PUBLIC RECORD

May 8, 2006

Ms. Charmaine Kamaka
Safety Director
Department of Civil Service
101 Pauahi Street, Suite 2
Hilo, Hawai'i 96720

Re: *IME and Procurement Code*
Our File: *WRK 06-12264*

Dear Ms. Kamaka:

You requested an opinion of this office regarding the applicability of the Procurement Code of the State of Hawai'i on IME examinations which are scheduled by the Workers' Compensation Unit in selected cases. Your question was whether IME examinations can be scheduled without adhering to the process outlined in the Procurement Code.

Section 103D-102 of the Hawai'i Revised Statutes relates to the application of the Procurement Code to various transactions. As a general rule, it requires that all procurement contracts made by a governmental body be covered by the Procurement Code.

This section does have recognized exceptions and states in subsection ((b)(4):

To produce the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:

(A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings[.]

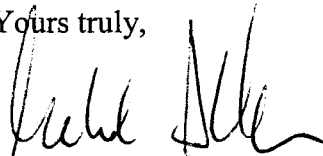
It is the opinion of this office that when a physician or other expert is retained in a particular matter, the skill or expertise that is required is particular to that witness. When an IME is requested, it is requested in anticipation of litigation, where the person performing the IME

Ms. Charmaine Kamaka
May 8, 2006
Page 2

will render an expert opinion related to the claimant and may be called to testify. Since proceeding in Workers' Compensation matters are considered to be "administrative quasi-judicial proceedings," the service retained by the expert appears to be exempt from the Procurement Code as stated in Section 103D1-02 (b)(4), as noted above.

If you have any additional questions related to the opinion stated in this letter, please contact my office.

Yours truly,

A handwritten signature in black ink, appearing to read "Michael Udovic", written in a cursive style.

Michael J. Udovic
Deputy Corporation Counsel

MJU:mc

s:\work 2006\may\wrk 06-12265 LO re IME & procurement code 5-8-06 MJUmc