

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2011 MTWCC 14**

**WCC No. 2011-2722**

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**KEVIN SVENDSEN**

**Petitioner**

**vs.**

**MONTANA STATE FUND**

**Respondent/Insurer.**

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**ORDER GRANTING MOTION TO COMPEL PETITIONER TO ATTEND  
AN INDEPENDENT MEDICAL EXAMINATION**

**Summary:** Respondent moved this Court to compel Petitioner to attend an IME. Petitioner concedes Respondent is entitled to an IME but objects to the IME being performed by Dr. Schumpert. Petitioner argues that Dr. Schumpert has a conflict of interest because the industrial hygienist who conducted an on-site evaluation of Petitioner's workplace was employed by the same entity that employs Dr. Schumpert.

**Held:** Respondent's motion to compel an IME with Dr. Schumpert is granted. Petitioner cites no precedent in support of his argument that Dr. Schumpert's previous working relationship with the industrial hygienist precludes him from performing the IME. Any conflict of interest, real or perceived, may go to the weight the Court assigns to Dr. Schumpert's opinion. It does not provide a basis to preclude Dr. Schumpert from performing the IME.

**Topics:**

**Physicians: Conflict of Interest.** Where an IME physician had a previous working relationship with an industrial hygienist who performed an evaluation of the claimant's worksite, any conflict of interest caused by the previous relationship will go to the weight accorded the IME report and is insufficient grounds to preclude the physician from performing the IME.

**Physicians: Independent Medical Examinations: Generally.** Where an IME physician had a previous working relationship with an industrial hygienist who performed an evaluation of the claimant's worksite, any conflict of interest caused by the previous relationship will go to the weight accorded the IME report and is insufficient grounds to preclude the physician from performing the IME.

¶ 1 Respondent Montana State Fund (State Fund) moves the Court for an order requiring Petitioner Kevin Svendsen to attend an independent medical examination (IME) with Dr. John C. Schumpert. Svendsen does not dispute State Fund's right to an IME pursuant to § 39-71-605, MCA. Svendsen objects only to Dr. Schumpert performing the IME. Svendsen argues that Dr. Schumpert has a conflict of interest in this case because of his relationship with Resources for Environmental and Occupational Health, Inc. (REOH) and Tiffany Ott, an industrial hygienist who conducted an on-site evaluation of Svendsen's workplace in December 2010.

¶ 2 State Fund argues that Svendsen's conflict of interest argument may go to the weight the Court gives to Dr. Schumpert's opinion but does not serve as a legal basis to disqualify Dr. Schumpert from performing the IME.

#### BACKGROUND

¶ 3 Svendsen filed a workers' compensation claim in October 2010. Svendsen alleges that he has suffered neurological deficits from carbon monoxide exposure while employed by Lifeline Farms as a cheesemaker.

¶ 4 In December 2010, State Fund retained Ott to conduct environmental testing of Svendsen's worksite. Ott was employed by REOH at the time she conducted her industrial hygiene evaluation of Svendsen's workplace.<sup>1</sup> Ott issued a report concluding that there were no hazardous levels of carbon monoxide, carbon dioxide, or fungal growth.

¶ 5 On April 14, 2011, State Fund scheduled an IME with Dr. Schumpert. Svendsen objected to the IME because Dr. Schumpert is employed by REOH, the same entity which employed Ott at the time she conducted her industrial hygiene evaluation of Svendsen's workplace. Svendsen contends this creates a conflict of interest which disqualifies Dr. Schumpert from performing the IME.

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<sup>1</sup> Ott left REOH at the end of December 2010.

## DISCUSSION

¶ 6 Svendsen does not dispute that State Fund is entitled to an IME. Svendsen's objection is specific to Dr. Schumpert conducting the IME because Ott had conducted the industrial hygiene evaluation. The sole basis for Svendsen's objection is Dr. Schumpert's alleged conflict of interest arising from his employment with REOH, the same entity which employed Ott when she performed the industrial hygiene evaluation. Svendsen argues that Ott's report contains several inaccuracies and does not provide an accurate depiction of Petitioner's workplace at the time he was employed by Lifeline Farms. Svendsen contends that since a REOH employee prepared the report, Dr. Schumpert is unlikely to dispute or question Ott's findings.

¶ 7 State Fund argues that the conflict of interest Svendsen alleges may go to the weight of Dr. Schumpert's opinion but does not preclude him from performing the IME. I agree.

¶ 8 Svendsen cites no precedent to support his argument that Dr. Schumpert's previous working relationship with Ott precludes him from performing the IME in this case. Svendsen makes the bald, unsupported assertion that "[i]t is highly unlikely that Dr. Schumpert will dispute, or for that matter even question the Ott report."<sup>2</sup> Following Svendsen's rationale, a physician may be precluded from conducting an examination if among the materials the physician considered in rendering an opinion was a functional capacities evaluation or other medical testing done by professionals employed by the same clinic or hospital. This is neither realistic nor practical.

¶ 9 State Fund concedes that any conflict, real or perceived, may go to the weight the Court assigns to Dr. Schumpert's opinion. In that regard, the conflict may provide fodder for Svendsen to challenge Dr. Schumpert's opinions. It does not provide a basis to preclude Dr. Schumpert from performing the IME.

## ORDER

¶ 10 Respondent's motion to compel an independent medical examination with Dr. Schumpert is **GRANTED**.

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<sup>2</sup> Answer Brief Re: Independent Medical Examination at 3.

DATED in Helena, Montana, this 9<sup>th</sup> day of June, 2011.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Eric Rasmuson  
Daniel B. McGregor  
Submitted: May 19, 2011