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**Chamber of Commerce Hawaii  
22<sup>nd</sup> Annual  
2015 Hawaii  
Employment Law Seminar**

August 5, 2015

Opening Session  
8:15 – 9:15 am

Jeffrey S. Harris  
John S. Mackey  
Christine K. Belcaid

**Avoiding Costly Discrimination Claims**

Summary Judgment after *Shimrose v. Hawaii Health Syst. Corp.*, 134 Haw. 49 (Jan. 16, 2015)

Shimrose was convicted of possession with intent to distribute crystal methamphetamine. The Hilo Medical Center rejected his application for a radtech position.

Radtechs at HMC are responsible for medical imaging and preparation and maintenance of medical imaging equipment. They prepare patients for imaging and make sure that they are comfortable with the imaging process. They process, review, and transmit radiographic images. They do not administer or even assist patients with any type of drugs.

The Circuit Court granted summary judgment against Shimrose conviction record discrimination claim; holding that there was a rational relationship between his conviction and the radtechs position. The Intermediate Court of Appeals affirmed.

The Supreme Court reversed, holding that there were still issues about the rationale relationship. The Court responded to each of the medical center's proposed reasons:

| Proposed reason:   | Response:   |
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| They work around locked crash carts and drug reaction boxes. | The syringes and needles the crash carts and drug reaction boxes contain are not controlled substances and are cheaply and readily available to |

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|   | the public. The sterile water, Benadryl, baking soda, Zantac and other substances that the carts and boxes contain are not controlled.  |
| Controlled substances are present in anesthesia carts, storage areas and the hospital pharmacy.                         | There are issues whether controlled substances are in those areas and what access radtechs have to them in excess of the general public.  |
| They interact with youthful, elderly and otherwise vulnerable patients who might have their medication taken from them. | There are issues regarding how a radtech could obtain controlled substances from a patient, whether patients possess controlled substances, whether controlled substances are left in patients rooms or whether patients bring those substances with them when undergoing imaging. There is no blanket disqualification from employment that requires interaction with children or the elderly. |

After *Shimrose*. Hawaii employers who decide not to hire or terminate a convict must do more than assert plausible plausible-sounding risks to defend their decision; they must prove a rational reason for that adverse action with admissible evidence.

Lower courts will be less likely to defer to the employer's judgment about how to accomplish their legitimate goals, such as the hospital's patient safety concerns involved in *Shimrose*. Courts will take a closer look at the position's job duties and the facts pertaining to the manner in which any conviction interferes with those legitimate goals.