

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
GENERAL CIVIL DIVISION**

Plaintiff(s),

CASE NO.: ___ CA ___

v.

DIVISION: I

Defendant(s).

_____ /

ORDER COMPELLING RULE 1.360 EXAMINATION

Pursuant to Florida Rule of Civil Procedure 1.360, (“Examination of Persons”), Defendant’s counsel has notified Plaintiff’s counsel that the Plaintiff, is requested to present for a noninvasive medical examination as follows:

Examiner:
Address:
Date:
Time:
Scope:

THE FOLLOWING CONDITIONS ARE TO BE OBSERVED BY ALL PARTIES INVOLVED:

1. This examination is not a deposition so the examiner shall be limited to that information reasonably necessary to conduct the specialty-appropriate examination and evaluation of an individual, including a brief medical history as well as present complaints. The examination is to be limited to the specific medical or psychological conditions in controversy and unless modified by another court order, such examination will be the only exam for the specific condition(s) or issues in controversy (without limiting the possibility of multiple specialties). No invasive testing shall be performed without informed consent by the Plaintiff/examinee, or further Order of court. The examiner must provide information regarding his/her medical malpractice insurance status no later than ten (10) days prior to any physical examination.

2. The examinee will not be required to complete any lengthy information forms upon arrival at the examiner’s office. The examinee will furnish the doctor with name, address, and date of birth. Questions pertaining to how the Plaintiff was injured, and where and how the Plaintiff sustained the injuries complained of, are permitted. Questions pertaining to “fault”, when the Plaintiff hired his/her attorney, who referred the Plaintiff to any doctor, and what the Plaintiff told his attorney or any investigators are NOT permitted.

3. It shall be the defense attorney's responsibility to provide the examiner with all medical records, imaging studies, test results, and the like, which the defense wants the examiner to review and rely upon as part of the examination. Unless he or she has exclusive control of any original records or imaging studies, Plaintiff shall not be required to bring anything to the exam other than valid identification (*e.g.*, Driver's License, Official Florida Identification Card or government-issued Passport).

4. Plaintiff is permitted to have his/her attorney (and spouse, or parent, or other representative) present for the examination, provided that only one of these listed non-attorney persons may attend. Such person(s) may unobtrusively observe the examination, unless the examiner or defense counsel establishes a case-specific reason why such person's presence would be disruptive, and that no other qualified individual in the area would be willing to conduct the examination with such person present. In the case of a neuropsychological exam, all observers shall watch and listen from an adjacent room if available, or by video feed. If the examination is to be recorded or observed by others, the request or response of the examinee's attorney shall include the number of people attending, their role, and the method(s) of recording.

5. Plaintiff's counsel may also send a court reporter or a videographer to the examination, provided that claimant's counsel notifies defense counsel at least 10 days in advance of the identity, either by proper name or by title (*e.g.*, videographer from XYZ Reporting Service). It is the duty of defense counsel to relay this information to the examiner's office personnel.

6. Neither Defendant's attorney nor any of Defendant's representatives may attend, or observe, record or video the exam. Only if the video is identified as impeachment material for use at trial may the defense counsel obtain a copy. The medical examiner shall not be entitled to any payment of an additional or accommodation fee from the Plaintiff or his/her counsel, simply because of the presence of a legally permitted third parties. The court shall reserve ruling as to whether such costs, if imposed by an examiner, may be properly recoverable by the Defendant as a taxable cost, or otherwise awarded by the court.

7. If a videotape or digital recording is made of the examination by counsel for Plaintiff, it is considered work-product, and neither the defense nor the examiner is entitled to a copy, unless and until same is designated as (or reasonably expected to become) trial evidence, subject to discovery only upon a showing of need and undue hardship. Use of the video or DVD is limited specifically to the instant litigation. At the close of litigation, including any appeal, all copies shall be destroyed – unless counsel convinces the court (and an order is entered) that there is some compelling reason for either party, or the examiner, to retain a copy.

8. Neither Plaintiff's counsel, nor anyone else permitted to be present, shall interject themselves into the examination unless the examiner seeks information not permitted by this Order. If Plaintiff's counsel speaks openly or confers privately with the examinee, and this disrupts the exam or causes the examiner to terminate the examination, counsel may be subject to sanctions.

9. The report of the examiner shall be sent to Plaintiff's counsel, as required by Rule 1.360(b), within 30 days of the examination – but in no event less than 21 days before the beginning of trial, unless otherwise agreed between counsel for the parties or ordered by the court due to special problems. Unless a Plaintiff's treating or retained expert has revised or supplemented an opinion after his/her report or deposition, the examiner shall not change, amend, or supplement the opinions set forth in said report during any testimony (deposition or trial) he may give in reference to his examination of the Plaintiff, without providing a supplemental report, which must be provided to Plaintiff's counsel at least 15 days before trial. Violation of this provision may result in the limitation or striking of the examiner's testimony.

9(a). If the examination involves neuropsychological testing: In addition to the report, the examiner shall provide all raw data, including copies of all notes, tests, test results, scoring and test protocols, to Plaintiff's treating or retained psychologist or neuropsychologist, who must return them to the defense examiner at the conclusion of this case.

10. All protected health information generated or obtained by the examiner shall be kept in accordance with HIPPA requirements and shall not be disseminated by the examiner or defense counsel to any other person or entity not a party to this case without a specific order from this court.

11. Defense counsel must provide the examiner with a copy of this Order and explain the need for the examiner's compliance. As a condition of performing the examination, the examiner shall agree to provide responses to FRCP 1.280(b) (4) (A) inquiries, once such interrogatories or Requests to Produce are propounded by Plaintiff.

DONE AND ORDERED at Tampa, Florida, this ____ day of _____, 20__.

PAUL L. HUEY
CIRCUIT JUDGE

Copies furnished to: