



## **I.R.C.P. 35. Physical and Mental Examinations**

### **Idaho Rules of Civil Procedure Rule 35. Physical and Mental Examinations.**

#### **(a) Order for an Examination.**

(1) *In General.* The court where the action is pending may order a party whose mental or physical condition, including blood group, is in controversy to submit to a physical or mental examination by a suitably certified examiner, licensed physician, or a qualified mental health professional as defined in Idaho Code section 6-1901, excluding nurses. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) *Motion and Notice; Contents of the Order.* The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, including any tests or procedures to be performed, as well as the person or persons who will perform it.

(3) *Representative at Examination.* Upon reasonable notice, the party being examined or the person having custody or legal control of the person being examined, must have the right to have a representative of his or her choice present for the examination.

#### **(b) Examiner's Report.**

(1) *Request by the Party or Person Examined.* The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) *Contents.* The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.



(3) *Request by the Moving Party.* After delivering the reports, the party who moved for the examination may request, and is entitled to receive, from the party against whom the examination order was issued all other writings or recordings created by the examiner or the party including the originals of forms and test score sheets and like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) *Waiver of Privilege.* By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have, in that action or any other action involving the same controversy, concerning testimony about all examinations of the same condition.

(5) *Failure to Deliver a Report.* The court on motion may order, on just terms, that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) *Scope.* This subdivision (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.

(Adopted March 1, 2016, effective July 1, 2016.)

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