

1 Rule 35. Physical and mental examination of persons.

2 (a) Order for examination. When the mental or physical condition (including the  
3 blood group) of a party or of a person in the custody or under the legal control of a party  
4 is in controversy, the court in which the action is pending may order the party or person  
5 to submit to a physical or mental examination by a suitably licensed or certified  
6 examiner or to produce for examination the person in the party's custody or legal  
7 control, unless the party is unable to produce the person for examination. The order  
8 may be made only on motion for good cause shown and upon notice to the person to be  
9 examined and to all parties and shall specify the time, place, manner, conditions, and  
10 scope of the examination and the person or persons by whom it is to be made.

11 (b) Report of examining physician.

12 (b)(1) If requested by a party against whom an order is made under Rule 35(a) or  
13 the person examined, the party causing the examination to be made shall deliver to the  
14 person examined and/or the other party a copy of a detailed written report of the  
15 examiner setting out the examiner's findings, including results of all tests made,  
16 diagnosis and conclusions, together with like reports of all earlier examinations of the  
17 same condition. After delivery the party causing the examination shall be entitled upon  
18 request to receive from the party against whom the order is made a like report of any  
19 examination, previously or thereafter made, of the same condition, unless, in the case of  
20 a report of examination of a person not a party, the party shows that the report cannot  
21 be obtained. The court on motion may order delivery of a report on such terms as are  
22 just, ~~and if~~ if an examiner fails or refuses to make a report, ~~the court may exclude the~~  
23 ~~examiner's testimony if offered at the trial~~ on motion may take any action authorized by  
24 Rule 37(b)(2).

25 (b)(2) By requesting and obtaining a report of the examination so ordered or by  
26 taking the deposition of the examiner, the party examined waives any privilege the party  
27 may have in that action or any other involving the same controversy, regarding the  
28 testimony of every other person who has examined or may thereafter examine the party  
29 in respect of the same mental or physical condition.

30 (b)(3) This subdivision applies to examinations made by agreement of the parties,  
31 unless the agreement expressly provides otherwise. This subdivision does not preclude

32 discovery of a report of any other examiner or the taking of a deposition of an examiner  
33 in accordance with the provisions of any other rule.

34 (c) Right of party examined to other medical reports. At the time of making an order  
35 to submit to an examination under Subdivision (a) ~~of this rule~~, the court shall, upon  
36 motion of the party to be examined, order the party seeking such examination to furnish  
37 to the party to be examined a report of any examination previously made or medical  
38 treatment previously given by any examiner employed directly or indirectly by the party  
39 seeking the order for a physical or mental examination, or at whose instance or request  
40 such medical examination or treatment has previously been conducted. ~~If the party~~  
41 ~~seeking the examination refuses to deliver such report, the court on motion and notice~~  
42 ~~may make an order requiring delivery on such terms as are just; and if an examiner fails~~  
43 ~~or refuses to make such a report the court may exclude the examiner's testimony if~~  
44 ~~offered at the trial, or may make such other order as is authorized under Rule 37.~~

45 (d) Sanctions.

46 (d)(1) If a party or a person in the custody or under the legal control of a party fails to  
47 obey an order entered under Subdivision (a), the court on motion may take any action  
48 authorized by Rule 37(b)(2), except that the failure cannot be treated as contempt of  
49 court.

50 (d)(2) If a party fails to obey an order entered under Subdivision (c), the court on  
51 motion may take any action authorized by Rule 37(b)(2).

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