

**3)****Diana and Phil****1. Granting Diana's motion to order physical and mental examinations**

The issue is whether physical and mental examinations are considered to be relevant to the issues in dispute between the parties and necessary taking into account all of the circumstances.



Phil's complaint is a negligence claim for physical injury, which Phil has filed in federal district court.

The issue in dispute is therefore whether Diana's conduct was negligent; i.e. the court is being asked to consider whether Diana breached a duty of care owed to Phil, causing him actual and proximate harm. The request for mental and physical examinations must therefore be considered in this context.

**a. Physical examination**

Ordinarily, in federal court permission of the court is required in order to seek a physical or mental examination of a party.

In determining whether to grant such a motion, the court will have to consider whether the physical examination is relevant in the circumstances, namely whether the examination is likely to produce evidence which may be relevant to the issues in dispute between the parties.



Here, a physical exam is being sought by Diana to ascertain the extent of the injuries which Phil is alleging she caused. This is an issue which is clearly relevant to the dispute as it goes to the level of damages which Phil will be entitled to recover if a finding of damages is determined in his favour. The court



will balance up the parties positions and will consider whether the probative value of the examination is outweighed by any substantial prejudice to Phil. In these circumstances, the physical exam would have probative value and is unlikely to cause prejudice to Phil.

In conclusion, the court did not err in granting Diana's motion to order a physical examination of Phil.

**b. Mental examination**



As mentioned above, in deciding whether to grant a motion to order a mental examination of a party the court must determine whether the examination is relevant to the issues in dispute and whether any probative value which may be obtained from the examination would be outweighed by substantial prejudice to the opposing party.

Here, the issue in dispute relates to negligence and physical injury. On these facts, there does not appear to be any logical reason for ordering a mental examination of Phil. Phil's mental function and/or his judgment does not appear to be at issue between the parties. Moreover, Phil is not claiming damages for emotional stress or any other mental form of injury which may have resulted from the driving incident. It therefore does not seem that there is any probative value to be gained in granting Diana's motion for a mental examination. On the other hand, such examination is likely to be an unnesseary intrusion on Phil.


For these reasons, the court does appear to have erred in granting the motion to order a mental examination.


**2. Permission to depose Laura**

In determining whether the court was correct to grant the deposition of Laura, it is necessary to consider whether any privilege applies between Laura and Phil. As Phil's physician, Laura owes Phil a duty of confidentiality. Information which Phil provides to Laura while he is treating her is privileged.

It would appear that Laura's deposition is being sought by Diana as a means of ascertaining the extent of Phil's injuries. She may also wish to question Laura on whether Phil told her anything about the accident, although any information obtained from such questioning is not likely to be admissible due to the physician-patient privilege.

Phil has objected to this motion on the grounds that Laura is not a party and deposing her would violate physician-client privilege.


 As to the first ground, it is not correct for Phil to argue that the motion should not be granted on the basis that Laura is not a party; parties are entitled to depose a non-party provided that the deposition is accompanied by a subpoena. It is therefore correct that Laura is a non-party but incorrect to use this as a basis for opposing the motion to depose her.

 As to the second ground, Phil is correct that there is a privilege afforded between physicians and their patients. Whether Laura is entitled to be deposed depends on the nature of the evidence she is likely to provide.

The court did not err in granting permission to Depose Laura. Although given that Diana is seeking an



### **3. Granting Diana's motion to strike Phil's demand for a jury trial**

 In accordance with Federal procedure, parties are entitled to make a timely request for a jury trial. Juries are required to consider questions as a trier of fact.



Here, we are told that Phil made a request for a jury trial a "few weeks before trial". We are not told the specific timetable for the trial and at what stage the request was made, but the facts do suggest that this was too late, as it would likely cause prejudice at such a late stage in the proceedings.



Accordingly, as the request for a jury trial was not made by Phil in a timely fashion, the court did not err in granting Diana's motion to strike Phil's demand for a jury trial.



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Question #3 Word Count = 871

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