

RULE 33

MEDICAL EXAMINATION OF PARTIES

MOTION FOR MEDICAL EXAMINATION

33.01 A motion by an adverse party for an order under section 48 of the *Judicature Act* for the physical or mental examination of a party whose physical or mental condition is in question in a proceeding shall be made on notice to every other party.

ORDER FOR EXAMINATION

Contents of Order

33.02 (1) An order under section 48 of the *Judicature Act* may specify the time, place and purpose of the examination and shall name the health practitioner or practitioners by whom it is to be conducted.

Further Examinations

(2) The court may order a second examination or further examinations on such terms respecting costs and other matters as are just.

DISPUTE AS TO SCOPE OF EXAMINATION

33.03 The court may on motion determine any dispute relating to the scope of an examination.

PROVISION OF INFORMATION TO PARTY OBTAINING ORDER

Interpretation

33.04 (1) Subrule 30.01(1) (meaning of "document", "power") applies to subrule (2).

Party to be Examined Must Provide Information

- (2) The party to be examined shall, unless the court orders otherwise, provide to the party obtaining the order, at least seven days before the examination, a copy of,
- (a) any report made by a health practitioner who has treated or examined the party to be examined in respect of the mental or physical condition in question, other than a practitioner whose report was made in preparation for contemplated or pending litigation and for no other purpose, and whom the party to be examined undertakes not to call as a witness at the hearing; and
 - (b) any hospital record or other medical document relating to the mental or physical condition in question that is in the possession, control or power of the party other than a document made in preparation for contemplated or pending litigation and for no other purpose, and in respect of which the party to be examined undertakes not to call evidence at the hearing.

WHO MAY ATTEND ON EXAMINATION

33.05 No person other than the person being examined, the examining health practitioner and such assistants as the practitioner requires for the purpose of the examination shall be present at the examination, unless the court orders otherwise.

MEDICAL REPORTS

Preparation of Report

33.06 (1) After conducting an examination, the examining health practitioner shall prepare a written report setting out his or her observations, the results of any tests made and his or her conclusions, diagnosis and prognosis and shall forthwith provide the report to the party who obtained the order.

Service of Report

(2) The party who obtained the order shall forthwith serve the report on every other party.

PENALTY FOR FAILURE TO COMPLY

33.07 A party who fails to comply with section 48 of the *Judicature Act* or an order made under that section or with Rule 33.04 is liable, if a plaintiff or applicant, to have the proceeding dismissed or, if a defendant or respondent, to have the statement of defence or affidavit in response to the application struck out.

EXAMINATION BY CONSENT

33.08 Rules 33.01 to 33.07 apply to a physical or mental examination conducted on the consent in writing of the parties, except to the extent that they are waived by the consent.

Preece v. Nicholson, et al., 2019 PESC 34

The defendants applied pursuant to Rule 33 for an order for the minor plaintiff to complete the IME initiated by one physician, by providing blood and urine samples to be tested, the results of which would be determined by another physician. After concluding the matter was properly before the court in the form of a Rule 37 motion, the court reviewed the three part test of fairness, necessity and prejudice and granted the defendants' motion.