



**Vidaurri, Lyde, Rodriguez
& Haynes, LLP**

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Newsletter

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In This Issue: The Medical Expert and Court Ordered Medical Examinations

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Vidaurri, Lyde, Rodriguez & Haynes, LLP, is a full service insurance defense law firm representing insured individuals, professionals and companies across a broad spectrum of industries, including healthcare, transportation, retail, and manufacturing.

KEY POINTS

- A court may order a medical or physical examination of a party under the Texas Rules of Civil Procedure.
- In deciding whether to order a medical examination, a trial court is guided by a two prong test dealing with whether the condition is in controversy and whether there is good cause.

Last month we talked about the role of experts in litigation, and the different factors that are considered in determining if an expert should be used. In the area of personal injury defense there is a type of expert that is of extreme importance, the medical expert. A medical expert for the defense will usually review all the medical records produced by the Plaintiff during the discovery process and will produce a report based on a "reasonable degree of medical probability." But, what about a personal medical examination, which would provide that expert with first-hand information of the Plaintiff's medical and physical condition?

Rule 204.1 of the Texas Rules of Civil Procedure provides that a party may move for an order compelling a medical examination of the other party if he can show good cause and the physical condition of that party is in controversy. The motion to compel such examination needs to be filed no later than 30 days before the end of the discovery period.

The Supreme Court of Texas established a test for when a court may compel a party to undergo an examination in a litigated case under the predecessor of Rule 204.1, TRCP 167(a). In *Coates v. Whittington* the Court established a two prong test: (1) It must be shown by the moving party that the condition is in controversy; and (2) there must be good cause. See *Coates v. Whittington* 758 S.W.2d 749 (Tex. 1988); See also, *In re San Juana Caballero*, 36 S.W.3d 143 (Tex. 2000); *In re Transwestern Publishing Company, L.L.C.*, 96 S.W.3d 501 (Tex. 2002); *Williams v. Sanderson*, 904 S.W.2d 212 (Tex. 1995).

The case law regarding these examinations is mostly for mental examinations, such as in *Coates*, but that rationale is also applicable to

physical examinations, and it appears that the conditions for compelling a party to undergo a physical examination may even be less stringent. "While the rule has seldom been litigated with regard to physical, as opposed to mental examinations, at least in the context of an examination as invasive as a gynecological examination, the same standard for good cause applies." *In re San Juana Caballero*, 36 S.W.3d 143 (Tex. 2000).

When the Plaintiff offers the testimony of his/her medical providers to support the claims for physical injuries caused by the incident that is the basis of the suit, there is a strong presumption that the Plaintiff has placed his/her physical/medical condition in controversy, and there is good cause for a motion to compel a medical examination. "By asserting a physical injury and by intending to use expert medical testimony to prove his alleged physical condition, the Real Party in Interest has placed his physical condition in controversy, and has provided the Relators with good cause to seek an independent medical examination." *Beamon v. O'Neill*, 865 S.W.2d 583(Tex. 1993).

Furthermore, deposition excerpts of Plaintiff's medical provider can be used to support the argument that Plaintiff has placed his/her physical condition in controversy as Plaintiff is using an expert to support his/her claims. See *Williams v. Sanderson*, 904 S.W.2d 212 (Tex. 1995). Under *Coates*, good cause would be shown by evidence that the examination is relevant to the issues in controversy, there is a reasonable connection between the examination and the condition in controversy, and it is not possible to obtain the information through any other less intrusive means. See *In re Caballero*.