

[CAPTION]

MOTION TO PRODUCE WITNESS FOR PHYSICAL EXAMINATION

The Defendant, by counsel, pursuant to Trial Rule 35(A), Indiana Rules of Procedure, respectfully requests this Court for an Order requiring that [insert name of witness], present (him/herself) for physical examination for the following good and sufficient reason(s):

1. _____
2. _____
3. _____

The examination shall take place on [insert date] at [insert address]. The examination will be conducted by [insert doctor's name] and shall include [specify scope and manner].

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to order production of witness's body for physical examination and for all other relief just and proper in the premises.

(Signature)

NOTE

If the State is attempting to conduct a physical exam of the Defendant, the State must comply with the Defendant's Due Process, Fourth Amendment and Article I, Section 11 rights. See Winston v. Lee, 470 U.S. 753 (1985); Carr v. State, 728 N.E.2d 125 (Ind. 2000).

REFERENCES

CASEBANK M.3.c; M.5.d

T.R. 35, Indiana Rules of Procedure (physical and mental examination of persons; person being asked to submit to examination must be notified of request).

CASE LAW

Thompkins v. State, 270 Ind. 163, 383 N.E.2d 347 (1978), *denial of habeas corpus aff'd*, 965 F.2d 330 (where blood test was performed in a proper manner pursuant to a discovery order and required no unreasonable intrusion into the Defendant's person, there was no error in the admission of the Defendant's blood test results).

Fathke v. State, 951 P.2d 1226 (Ala.Ct.App. 1998) (trial court abused its discretion in denying the Defendant's motion to compel victim to furnish palm prints, which could have supported inference that third person committed robbery; taking of the palm print would have constituted only minimal intrusion on victim's privacy and could have supported inference that third person committed robbery).

Jacob v. Chaplin, 639 N.E.2d 1010, 1013 (Ind. 1994) (during T.R. 35 court-ordered physical exam, trial court did not abuse discretion by allowing a party to take notes or electronically record verbal exchange during the examination)

Lockridge v. State, 263 Ind. 678, 338 N.E.2d 275 (1975) (the Defendant's pleas of not guilty by reason of insanity acted as waiver of physician-patient privilege in respect to all physicians who might testify at trial).

Canfield v. Sandock, 563 N.E.2d 526 (Ind. 1990) (waiver of privilege, by filing lawsuit, or otherwise placing physical or mental condition in issue does not open door to entire medical record; waiver operates only as to those matter causally and historically related to the condition put in issue and which have a direct medical relevance to the defense made).

Hoover v. State, 589 N.E.2d 243 (Ind. 1992) (the Defendant has no right to subject prosecuting witness in sex offense case to psychiatric examination, but the court may exercise its discretion in ordering such exam); see also Soloman v. State, 439 N.E.2d 570 (Ind. 1982).

Mengon v. State, 505 N.E.2d 788 (Ind. 1987) (the trial court did not err in denying the Defendant's request for psychiatric exam of undercover police officer to whom the Defendant sold drugs; during competency exam officer acknowledged he was recovering alcoholic and others who were acquainted with him testified).