

Personal Injury: Defendants May Conduct Multiple Independent Medical Examinations with Good Cause

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[Gomez v. Rendon](#), No. 3D12-1105, 2013 WL 1316439 (Fla. 3d DCA April 3, 2013) When a personal injury plaintiff's physical condition is in controversy, and it changes substantially after the defendant conducts an independent medical examination ("IME"), Florida's Third District Court of Appeal has held that good cause exists to request a second physical examination, and that the request should be granted. Defendants need not put discovery on hold and delay conducting a second IME until all surgeries and treatments have occurred. **Facts** Plaintiff sued defendant for negligence after defendant's vehicle struck plaintiff's son, Kevin Oquendo ("Oquendo"). Pursuant to Florida Rule of Civil Procedure 1.360, defendant requested an IME, which was conducted after Oquendo's initial surgery. Plaintiff later notified defendant that Oquendo was to have a second surgery in "the immediate future." Before trial, Oquendo underwent a second surgery. Defendant retained the doctor who conducted the IME as her medical expert. The medical expert testified at deposition that, based on his examination of Oquendo after the first surgery, there was no permanent injury. But, because the IME was conducted before the second surgery, the expert did not know if Oquendo had a permanent injury after the second surgery. Defendant, therefore, filed a motion for a post-surgery defense examination. The trial court denied the motion, concluding that defendant was on notice of the second surgery and should have conducted the examination after that surgery. **Court Opinion** The Third District Court of Appeal followed its previous decision in *Royal Caribbean Cruises, Ltd. v. Cox*, 974 So. 2d 462 (Fla. 3d DCA 2008) and looked to the language of Rule 1.360, which allows a party to conduct the physical examination of another when (1) "the condition that is the subject of the requested examination is in controversy" and (2) "the party submitting the request has good cause for the examination." The language of Rule 1.360(a) "does not limit the party requesting an IME to a single examination of the other party." *Cox*, 974 So. 2d at 465 (emphasis in original). Because Oquendo underwent a second operation that led to a substantial change in his physical

condition, good cause was found to request a second physical examination. Of note, plaintiff argued that by providing defendant with X-rays, CT scans, and updated records concerning Oquendo's post-surgical condition, the need for a second IME was eliminated, and no material harm would result from denying defendant's motion for a post-surgery examination. The Third DCA found that a "mere review of the opposing party's medical records is not a sufficient substitute for a firsthand, physical examination." As a result, defendants may be permitted to request multiple independent medical examinations where good cause exists.

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