

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2825

By: Sullivan

4
5 AS INTRODUCED

6 An Act relating to civil procedure; amending 12 O.S.
7 2001, Section 3235, which relates to physical and
8 mental examination of persons; prohibiting
9 interference by representative of person to be
10 examined; prohibiting videotaping, photographs or
11 electronic recordings during examination; and
12 providing an effective date.

13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 12 O.S. 2001, Section 3235, is
15 amended to read as follows:

16 Section 3235. A. SCOPE WHEN ELEMENT OF CLAIM OR DEFENSE. When
17 the physical, including the blood group, or mental condition of a
18 party or of a person in custody or under the legal control of a
19 party, is in controversy in any proceeding in which the person
20 relies upon that condition as an element of ~~his~~ the claim or
21 defense, an adverse party may take a physical or mental examination
22 of such person.

23 B. PROCEDURE WHEN ELEMENT OF CLAIM OR DEFENSE. The party
24 desiring to take the physical or mental examination of another party
or of a person in custody or control of another party within the

1 scope of subsection A of this section shall serve ~~his~~ the request
2 upon the person to be examined and all other parties. The request
3 shall specify the time, place, manner, conditions and scope of the
4 examination and the person or persons by whom it is to be made.

5 No request shall be served until thirty (30) days after service
6 of summons and petition upon the defendant. The request shall set a
7 time for the examination not less than five (5) days after service
8 of the notice.

9 If the party or person in custody or control of the party who is
10 to be examined objects to the physical or mental examination then ~~he~~
11 the party or person shall file a motion objecting to the examination
12 and setting out the reasons why ~~his~~ the mental or physical condition
13 of the party or person is not in controversy or such person may
14 apply for a protective order under the provisions of subsection C of
15 Section 3226 of this title. The burden of proof is upon the person
16 objecting to the examination or requesting a protective order. The
17 court may set the conditions for examination or refuse to permit
18 such examination if the mental or physical condition is not in
19 controversy. If the party or the person in custody or control of
20 the party refuses to obey the court order to submit to a physical or
21 mental examination the court may impose those sanctions provided for
22 in paragraph 4 of subsection A and paragraph 2 of subsection B of
23 Section 3237 of this title.

24

1 If the motion is granted to prohibit the examination, the court
2 may impose those sanctions provided for in paragraph 4 of subsection
3 A of Section 3237 of this title upon the party requesting the
4 examination.

5 C. ORDER FOR EXAMINATION. When the physical, including the
6 blood group, or mental condition of a party, or a person in the
7 custody or under the legal control of a party, is in controversy but
8 does not meet the conditions set forth in subsection A of this
9 section, the court in which the action is pending may order the
10 party to submit to a physical or mental examination by a suitably
11 licensed or certified examiner or to produce for such examination
12 the agent, employee or person in his or her custody or legal
13 control. The order may be made only on motion for good cause shown
14 and upon notice to the person to be examined and to all parties.
15 The order shall specify the time, place, manner, conditions and
16 scope of the examination and the person or persons by whom it is to
17 be made.

18 D. REPRESENTATIVE MAY BE PRESENT. A representative of the
19 person to be examined may be present at the examination. Any
20 representative present during the examination shall not interfere or
21 restrict the examination in any way. No videotaping, photographs,
22 or electronic recordings shall be taken during such an examination.

23 E. REPORT OF EXAMINER.
24

1 1. If requested by the party or the person examined under this
2 section, the party causing the examination to be made shall deliver
3 to ~~him~~ the party or person examined a copy of a detailed written
4 report of the examiner setting out ~~his~~ findings, including results
5 of all tests made, diagnoses and conclusions, together with the like
6 reports of all earlier examinations of the same condition. After
7 delivery, the party causing the examination shall be entitled upon
8 request to receive from the party or person against whom the order
9 is made a like report of any examination, previously or thereafter
10 made, of the same condition, unless, in the case of a report of
11 examination of a person not a party, the party shows that ~~he~~ the
12 report is unable to ~~obtain it~~ be obtained. The court on motion may
13 enter an order against a party requiring delivery of a report on
14 such terms as are just. If an examiner fails or refuses to make a
15 report the court may exclude ~~his~~ the testimony if offered at the
16 trial.

17 2. If the physician or psychotherapist-patient privilege has
18 not already been waived as provided in the Oklahoma Evidence Code
19 requesting and obtaining a report of the examination made or by
20 taking the deposition of the examiner, the party examined waives any
21 privilege ~~he~~ the party may have in that action or any other
22 involving the same controversy, regarding the testimony of every
23 other person who has examined or may thereafter examine ~~him~~ the
24 party in respect of the same physical or mental condition.

1 3. This subsection applies to examinations made by agreement of
2 the parties, unless the agreement expressly provides otherwise.
3 This subsection does not preclude discovery of a report of an
4 examiner or the taking of a deposition of the examiner in accordance
5 with the provisions of any other section of the Oklahoma Discovery
6 Code.

7 SECTION 2. This act shall become effective November 1, 2008.

8

9 51-2-9297 MMP 12/12/07

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24