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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KEVIN LIN,
Plaintiff,

v.

JONATHAN CAREY JACKSON and
JANE DOE JACKSON,

Defendants.

No. 20-2-06043-7 SEA

ORDER ON MOTION FOR CR 35 EXAM

THIS MATTER came before the Court upon Defendant’s Motion to Compel CR 35 Exam. The Court has reviewed the following:

- 1. Defendant’s Motion to Compel CR 35 Exam with the Declaration of David M. Reeve.
- 2. Plaintiff’s Response to Defendant’s CR 35 Motion.
- 3. Declaration of Bob Dawson, and Exhibits.
- 4. Defendant’s Reply with the included Declaration of David M. Reeve.

Based on the stipulation that there is good cause for the CR 35 exam to occur, the Court ORDERS as follows:

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1. Eugene Toomey, M.D., or other examiner, may examine plaintiff's body on December 1, 2020 starting at 11:30 am or on any other date and time agreed upon by the parties.
2. Defense counsel shall provide a copy of examiner's curriculum vitae, to plaintiff's counsel at least 10 days before the date of the CR 35 exam.
3. Plaintiff may have a representative present at the examination at no additional charge.
4. Plaintiff or his representative may make an audiotape recording of the examination, at no additional charge. Audiotaping or videotaping, if agreed upon, is not to be the responsibility of either the examiner or his staff. Audio or video recording is not to interfere in the examination process.
5. The exam by the examiner shall be limited to inquiry in the field of expertise of the examiner. The examiner shall not conduct an inquiry or examination in fields outside his or her expertise (i.e. psychiatric, psychological, etc.).
6. No psychiatric or psychological tests shall be administered. No invasive tests shall be done.
7. Plaintiff shall not be asked to fill out any forms at the examination, other than the Machaon COVID-19 Pandemic—Reception and Claimant Disclosure Form, attached as Exhibit 5 to the Declaration of Bob Dawson re Plaintiff's Response to Defendant's Motion to Compel CR 35 Exam, nor will examiner ask any questions about who is at fault for the December 11, 2019,

1 pedestrian/motor vehicle collision. Such restriction does not limit questions
2 about physical dynamics of the collision that may be relevant to the injury.

3 8. As to our current COVID-19 crisis:

4 All attendees including all examinees, examiner, and other ancillary
5 personnel, such as videographers, legal nurse consultants, legal
6 representatives, interpreters, and all other person that will be participating in
7 IMEs/CR 35 exams will be required to wear a facial mask and gloves at all
8 times within the office. If needed, a mask and gloves will be provided.

9 During the check in process, questions will be given in writing to examinees
10 and other relevant personnel to disclose any symptoms of COVID-19
11 including sore throat, cough, chest pain, difficulty breathing, and temperature
12 above 100 degrees. If any of these symptoms are present then the exam will
13 be discontinued so that the affected person can see their family physician or
14 present to an urgent care center for COVID-19 testing.

15 No more than two people will be allowed in the reception area at any one
16 time, adhering to 6-ft social distance guidelines. Individuals not directly
17 involved in the examination will be asked to wait in the Medical Dental
18 lobby.

19 At the conclusion of every examination, the reception area and exam room
20 will be cleaned in preparation for the next examinee.

21 Dr. Toomey, or other CR 35 examiner, shall wear fresh scrubs before
22 examining Kevin Lin.

23 9. Defense counsel shall deliver to plaintiff's counsel a copy of the detailed
24 written report of the examiner setting out the examiner's findings, including
25 results of all tests made, diagnosis and conclusions, regardless of whether the
26 examiner will be called to testify at trial.

27 10. The examiner's report shall be delivered to plaintiff's counsel within 45 days
28 of the examination.

- 1 11. The examiner is not required to provide plaintiff's counsel with all Form
2 1099's, or other official documentation of the examiner's income for the years
3 2015 through 2019 for conducting forensic work, including examinations and
4 records reviews, **prior to the examination**. However, the Court does not find
5 provision of five years of such material to be unreasonable. The parties are
6 encouraged to work together to facilitate provision of this requested
7 information without need for additional Court intervention, but the Court will
8 stand by to address this issue, if necessary, perhaps if the examiner retains
9 counsel to oppose plaintiff's request.
- 10 12. If plaintiff's counsel takes the deposition of the examiner, then examiner shall
11 charge no more than \$650.00 per hour for the amount of time actually taken
12 for the deposition, as reported by the court reporter.
- 13 13. Neither the plaintiff nor defendant shall be charged for records review, or any
14 other deposition preparation by the other side's experts absent an agreement
15 between the examiner and either party for such payment.
- 16 14. If requested, examiner shall provide a complete copy of all files and records
17 received and/or reviewed related to plaintiff's examination.
- 18 15. The examiner shall at the time of examiner's deposition, or earlier if
19 requested, shall make all files and records related to plaintiff's examination
20 available for review by plaintiff's counsel.
- 21 16. The location of the deposition shall be in the examiner's office, or in another
22 location where medical references used in assessing plaintiff's condition are

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found, unless otherwise agreed between counsel. If a subsequent deposition of the examiner is necessary because of a claimed inability to access medical references used in preparing the examiner’s report, other than for internet or computer related issues, defendant will be responsible for reasonable deposition costs of a follow-up deposition.

17. Defense counsel shall advise examiner of the above conditions for the examination of Kevin Lin’s body, and confirm that examiner agrees to all conditions, and to this Court’s Order regarding the examination of Kevin Lin’s body.

DONE this _____ day of November, 2020.

Judge John F. McHale
King County Superior Court

King County Superior Court
Judicial Electronic Signature Page

Case Number: 20-2-06043-7
Case Title: LIN VS JACKSON

Document Title: ORDER RE REGARDING CR 35 EXAMINATION

Signed by: John McHale
Date: 11/9/2020 9:00:00 AM



Judge/Commissioner/ProTem: John McHale

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: AF423262C0D7324C0963515B4358C216B2DA5B62
Certificate effective date: 1/3/2017 2:45:44 PM
Certificate expiry date: 1/3/2022 2:45:44 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="John McHale:
vPQxaqnx4xG3sy0AH11GsA=="