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**When is a medical examination considered a second examination under Rule 36 of the New Brunswick Rules of Court?**

<b>Reported Case:</b>	Blyth v. Crowther and Kelly
<b>Citation:</b>	2009 NBCA 80
<b>At Issue:</b>	When both the plaintiff's physical and mental condition are in issue in an action, and the plaintiff undergoes a physical examination, will a subsequent application for a psychiatric examination be considered an application for a second medical examination?
<b>The Court:</b>	Should medical examinations that are ordered as part of the discovery process be characterized as 'independent' medical examinations? Court of Appeal of New Brunswick
<b>Judgment Rendered:</b>	October 13, 2009 (Reasons delivered November 26, 2009)
<b>Factual Summary:</b>	The plaintiff suffered injuries in a motor vehicle accident and commenced an action seeking damages. Both the plaintiff's physical state and mental state were in issue in the action. The plaintiff submitted to a physical examination by the defendant's expert, but subsequently refused to submit to a psychiatric examination.  The defendant made a motion requesting an order that the plaintiff submit to the psychiatric examination. The motions judge granted the order. The plaintiff appealed, arguing that because the examination was a second medical examination, the motions judge was required to apply a higher standard than on an application for a first examination.  The plaintiff additionally objected to the motions judge's characterization of the examination as an 'independent' medical examination.
<b>Disposition:</b>	The appeal was allowed only for the purpose of striking from the motions judge's order any reference to the 'independent' nature of the medical examination. The medical examinations were part of the discovery process, and the court found that they should be characterized as 'defence' medical examinations.  The court rejected the plaintiff's argument that the psychiatric examination was a second medical examination. Rule 36.02(1) allows a court to order a party to submit to a physical examination a mental examination, or both. The physical examination and mental examination do not need to be ordered at the same time in order for both to be considered a first medical examination. The physical examination was a first physical examination, and the mental examination was a first mental examination.

**See: <http://www.canlii.org/en/nb/nbca/doc/2009/2009nbca80/2009nbca80.html>**