A woman from State A sued a man from State B in a federal district court in State B for intentional infliction of emotional distress and sought $80,000 in damages. The woman claimed that the man's actions caused her to suffer post-traumatic stress disorder. The man wishes to subject the woman to a mental examination by a licensed psychiatrist of his own choosing before trial.

Which is true about the prospect of a mental examination?

A. A federal district court in State A may order the woman to undergo a mental examination because that is where the woman resides.

B. Only the federal district court in State B may order the woman to undergo a mental examination because that is where the lawsuit is pending.

C. The examining psychiatrist is entitled to receive the woman's prior psychiatric records because he cannot conduct a complete examination without this information.

D. The woman is entitled to choose who will perform the examination because the party to be examined always has this right.

Explanation:

Physical & mental examinations

(FRCP 35)

Examination requirements*	• Party's mental or physical condition is in controversy • Motion for court order based on good cause • Court order issued where suit is pending provides notice specifying time, place, manner, conditions, scope & person performing exam
Examiner's reportrequirements	• In writing & detail all findings (eg, diagnoses, conclusions & test results) • Deliver to examined party upon request
Effects of examination	• By requesting & receiving report, examined party waives any privilege concerning testimony about condition • After delivering report, party who sought exam may request & must receive previous reports of examined party's condition

FRCP = Federal Rule of Civil Procedure.

*Requirements unnecessary if parties stipulate to exam.

During discovery, the **court where the lawsuit is pending** may **order** a party to undergo a **mental or physical examination** by a suitably licensed or certified examiner. This court order is valid when:

- that party's mental or physical **condition is in controversy**—ie, a physical injury or mental disorder is the subject of a claim or defense in the suit

- the motion for the order is based on **good cause**—eg, the information sought *cannot* be easily attained by other means—*and*

- the order provides **notice** by specifying the time, place, manner, conditions, scope, and person who will perform the exam.

Here, the woman's mental condition is in controversy since she claims that the man caused her to suffer post-traumatic stress disorder. There also is good cause for a mental examination because the man likely cannot obtain information about her true mental condition by other means. But since the suit is pending in the federal district court in State B, only that court may order the woman to undergo a mental examination **(Choice A)**.

(Choice C) The examining *psychiatrist* is not entitled to receive the woman's prior psychiatric records before conducting the examination. Instead, such records need only be disclosed to the *man* if he requests them after the woman requests and receives a copy of the psychiatrist's report.

(Choice D) The party to be examined does not possess an absolute right to choose who will perform the examination. Instead, the party requesting the examination may choose the examiner unless the examined party has a valid objection. In that case, the court will appoint the examiner.

Educational objective:

The court where a lawsuit is pending may order a physical or mental examination of a party when (1) that party's mental or physical condition is in controversy, (2) the motion for the order is based on good cause, and (3) the order provides notice specifying the time, place, manner, conditions, scope, and person to perform the exam.

References

- Fed. R. Civ. P. 35 (physical and mental exams).

- Schlagenhauf v. Holder, 379 U.S. 104, 118–19 (1964) (explaining the "in controversy" and "good cause" requirements for a mental or physical examination of a party during discovery).