

Sample RESPONSE to DEMAND

Attorney's Name

Address

Phone number

Attorney for Plaintiff (*insert name*)

Case Number:

Plaintiff,

**RESPONSE TO DEMAND FOR
PHYSICAL EXAMINATION**

vs.

Defendants.

_____ /

TO DEFENDANTS HEREIN AND TO THEIR ATTORNEYS OF RECORD:

COMES NOW the plaintiff (*insert name*) and, pursuant to the terms and provisions of Code of Civil Procedure §2032.230, responds to the Demand for Physical Examination as follows:

RESPONSE TO DEMAND FOR EXAMINATION

Plaintiff will submit to the demanded Defense Medical Examination (hereinafter the DME) on (*insert date*), at (*insert time*), to be performed by (*insert defense examiner's name, address and phone number*). The following conditions will apply:

1. History of the Underlying Accident

Plaintiff will not discuss the manner in which the underlying accident, which gives rise to this litigation, occurred, other than to describe it in general terms (*e.g.*, automobile accident).

Should further information as to the mechanics of the accident be necessary to the defense medical examiner, defendants' counsel may provide a copy of the plaintiff's deposition, or a summary thereof, to the doctor prior to the examination.

2. Identification and Personal Information

Plaintiff recognizes the medical examiner's need to identify the plaintiff at the time of the examination and will provide the following information:

1. Full name;
2. Date of birth;
3. Current residence address;
4. Current driver's license; and/or
5. Social Security number.

Plaintiff will not provide the defense medical examiner with additional personal information including, but not limited to, the following:

1. Residence telephone number;
2. Medical insurance information or other insurance information; or
3. Employment history.

The basis of this limitation is that the request of the above-listed information would invade plaintiff's right of privacy, is impermissibly overbroad and, therefore, oppressive, burdensome and irrelevant to the subject matter of this action. (See, Britt v. Superior Court (1978) 20 Cal.3d 844.)

Further, any persons assisting the examiner must be fully identified by name and title to plaintiff and on audiotape or court reporter's record. No persons other than plaintiff, his/her representative, court reporter, doctor and usual staff are allowed to be present during the examination. No "defense observers" will be permitted to attend or observe the examination.

3. Medical History

Plaintiff may not be compelled to create any items of potential documentary evidence and will not fill out any charts, new patient records, forms or histories that may be requested or provided by the defense medical examiner. The basis of this objection is that it is oppressive to require plaintiff to complete any written forms, as opposed to answering questions orally. To require plaintiff to complete written forms would violate plaintiff's right not to create items of demonstrative evidence for defendants' use, and since plaintiff is not a patient of the defense examiner, s/he is consenting to this examination pursuant to the requirements of Code of Civil Procedure §2032.230.

Plaintiff recognizes the examiner's need to obtain a relevant medical history and will answer any reasonable relevant medical history questions posed by the examiner. Plaintiff will not provide a written medical history. Should such a written medical history be required, defendants' counsel may provide either copies of the plaintiff's deposition and medical records or summaries thereof prior to the examination.

Other than questions seeking reasonable, relevant medical history, all other medical history questions will be objected to as invading plaintiff's right of privacy, being impermissibly overbroad, oppressive, burdensome and irrelevant to the subject matter of the action in that such questions seek disclosure of plaintiff's medical history which, except as answered, does not reasonably relate to the injuries which are the subject of this action. (See, Britt v. Superior Court

(1978) 20 Cal.3d 844.)

4. Financial Responsibility

Plaintiff will not assume financial responsibility for any of the medical billings arising as a result of this DME, nor will plaintiff execute an assignment of benefits form.

5. Limitation of X-Rays and Diagnostic Tests

Plaintiff, by and through plaintiff's counsel, has already, or will authorize, access to prior x-rays of the area of the body injured in the accident which gives rise to this instant action. Absent a court order compelling same, plaintiff will not submit to any additional x-rays of that area of the body that may be requested by the defense medical examiner.

Pursuant to Code of Civil Procedure §2032.220(a)(1), plaintiff will not submit to any painful, protracted or intrusive studies or tests and specifically refuses to submit to any additional x-rays, EEGs, EMGs, blood tests or urinalyses.

The examination must be limited to plaintiff's conditions which are in controversy in this action, as provided by Code of Civil Procedure §2032.220(a)(1).

6. Timing of the Examination

Plaintiff will not be unduly inconvenienced by the defendants' demanded DME.

Plaintiff will appear at the examiner's office on the agreed to date and the requested appointment time. If the DME has not commenced within 30 minutes of the agreed to time, plaintiff will consider this protracted delay to be a waiver of defendants' right to the DME and will leave the medical examiner's office, pursuant to Code of Civil Procedure §2032.220(a)(1).

The total time for examination and testing, if applicable, will not exceed two hours. If any period of time exceeding 30 minutes goes by when plaintiff is not being examined by the doctor or his staff, then plaintiff will be free to leave.

Please take further notice that should the defense doctor fail to start the examination promptly and conclude it within the agreed upon time frame, the examining physician, defense counsel and/or defendant shall be held responsible for any costs incurred by the waste of time, including, but not limited to the attorney, attorney's representative, paralegal or legal assistant, and/or court reporter.

7. Attendance of Attorney's Representative

“(a) The attorney for the examinee or for a party producing the examinee, or that attorney's representative, shall be permitted to attend and observe any physical examination conducted for discovery purposes, and to record stenographically or by audiotape any words spoken to or by the examinee during any phase of the examination.” (Code of Civil Procedure §2032.510(a).) Plaintiff's observer will be Karen Magarian, D.C.

The defense counsel and examiner agree to neither obstruct the plaintiff observer's view or opportunity to witness all portions of the examination, nor impede observer from reminding the plaintiff to take regular rest/comfort breaks as needed during the examination.

Any cancellation of the examination less than forty-eight (48) business hours before it is scheduled, or cancellation/refusal to proceed with the examination once Plaintiff and Plaintiff's observer have arrived will require the minimal payment of \$499.00 as a cancellation fee charged by our observer before the examination can be rescheduled.

8. Doctor to be Provided with this Response

The defense examiner is to be served with a copy of this response prior to the examination.

9. Demand for Production of Report

Pursuant to the provisions of Code of Civil Procedure §2032.610, plaintiff demands

copies of all reports and writings generated by the doctor of the defense medical examination setting out the history, medical record review, examinations, findings, including the tests and results of all tests made, diagnoses, prognoses and the conclusions of the defense medical examiner and all record review reports within 30 days following the examination. (See, Kennedy v. Superior Court (1998) 64 Cal.App.4th 674.)

DATED: *(insert date)*

(insert name of Plaintiff Law Firm)

By _____

(insert attorney's name), Attorneys for plaintiff
(insert Plaintiff client's name)