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HN2 The court may order a plaintiff in a personal injury action to undergo a physical examination by the defendant's doctor. The doctor should be free to ask such questions as may be necessary to enable him to formulate an intelligent opinion regarding the nature and extent of the plaintiff's injuries, but he should not be allowed to make inquiries into matters not reasonably related to the legitimate scope of the examination. The plaintiff should be permitted to have the assistance and protection of an attorney during the examination. [Shepardize - Narrow by this Headnote](#)

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CA(1) (1)

Mandamus > Acts and Duties Enforceable.

--Mandamus will issue, where there is no plain, speedy and adequate remedy in ordinary course of law, to compel performance of act which law specifically enjoins or to compel admission of party to use and enjoyment of right to which he is entitled and from which he is unlawfully precluded. ([Code Civ. Proc., §§ 1085, 1086.](#))

CA(2) (2)

Id. > Existence of Other Remedy.

--Since an order staying all proceedings in personal injury action until plaintiff complies with order to submit to oral and physical examination in absence of her attorney is not appealable, and she does not have any plain, speedy and adequate remedy in ordinary course of law, writ of mandamus is available to test whether court by its order has imposed unlawful condition on plaintiff's right to proceed to trial.

CA(3) (3)

Inspection > Physical Examination.

--Court may order plaintiff in personal injury action to undergo physical examination by defendant's doctor, and doctor should be free to ask such questions as may be necessary to enable him to formulate intelligent opinion regarding nature and extent of plaintiff's injuries, but he should not be allowed to make inquiries into matters not reasonably related to legitimate scope of examination.

CA(4) (4)

Id. > Physical Examination.

--Whenever doctor selected by defendant conducts physical examination of plaintiff, there is possibility that improper questions may be asked, and plaintiff should be permitted to have assistance and protection of attorney during examination.

CA(5) (5)

Id. > Physical Examination > Enforcing Order for Examination.

--Superior court, in staying all proceedings in personal injury action until plaintiff should comply with order directing her to submit to oral and physical examination by defendants' doctor without presence of her attorney, imposes unwarranted condition on her right to have case proceed to trial, and writ of mandate will issue to allow case to go to trial without requiring plaintiff to comply with such condition.

Counsel: Roy A. Sharff, in pro. per., and Ivan C. Sperbeck for Petitioners.

Thomas W. Loris as Amicus Curiae on behalf of Petitioners.

Bronson, Bronson & McKinnon and John F. Ward for Respondent and Real Party in Interest.

Bledsoe, Smith & Cathcart, Peart, Baraty & Hassard, George A. Smith and Alan L. Bonnington as Amici Curiae on behalf of Respondent and Real Party in Interest.

Judges: In Bank. Gibson, C. J. Shenk, J., Edmonds, J., Carter, J., Traynor, J., [Schauer](#), J., and Spence, J., concurred.

Opinion by: GIBSON

Opinion

[509] After a personal injury action was set for trial, the defendants made a motion for an order requiring the plaintiff to submit to an examination by defendants' doctor in the absence of her attorney. Plaintiff consented to the examination but requested that she be permitted to have her attorney present. The respondent court made an order directing that she "submit to an oral and physical examination concerning [her] alleged injuries, which said examination shall be performed in the absence of said plaintiff's attorney . . . and that further proceedings by plaintiff in the above entitled **[510]** action be stayed until said plaintiff . . . submits to said examination." This proceeding was brought to compel respondent court to allow the case to go to trial without requiring plaintiff to submit to an examination under the conditions specified in the order.

Two attorneys, who represented plaintiff in the personal injury action, joined with her in requesting relief, but they have no standing on their own behalf to challenge the validity of the order, and the proceeding is dismissed as to them.

CA(1) (1) **HN1** Mandamus will issue, where there is not a plain, speedy and adequate remedy in the ordinary course of law, to compel performance of an act which the law specifically enjoins or to compel the admission of a party to the use and enjoyment of a right to which he is entitled and from which he is unlawfully precluded. ([Code Civ. Proc., §§ 1085, 1086.](#)) **CA(2)**

(2) The order in the present case is not appealable, and plaintiff does not have any plain, speedy and adequate remedy in the ordinary course of law. The writ is, therefore, available to test whether the court by its order has imposed an unlawful condition upon plaintiff's right to proceed to trial.

CA(3) (3) It has been held that **HN2** the court may order a plaintiff in a personal injury action to undergo a physical examination by the defendant's doctor. ([Johnston v. Southern Pac. Co., 150 Cal. 535 \[89 P. 348, 11 Ann.Cas. 841\].](#)) The doctor should, of course, be free to ask such questions as may be necessary to enable him to formulate an intelligent opinion regarding the nature and extent of the plaintiff's injuries, but he should not be allowed to make inquiries into matters not reasonably related to the legitimate scope of the examination. (See [Wood v. Flagg \(1907\), 121 App.Div. 636 \[106 N.Y.S. 308\]](#); [Wunsch v. Weber \(1894\), 29 N.Y.S. 1100.](#))

CA(4) (4) Whenever a doctor selected by the defendant conducts a physical examination of the plaintiff, there is a possibility that improper questions may be asked, and a lay person should not be expected to evaluate the propriety of every question at his peril. The plaintiff, therefore, should be permitted to have the assistance and protection of an attorney during the examination. (See [Williams v. Chattanooga Iron Works \(1915\), 5 Tenn. C.C.A. 10, 20-21, aff'd. 131 Tenn. 683 \[176 S.W. 1031, Ann.Cas. 1916B 101\].](#))

It is argued that an attorney, by making groundless objections, may hinder an examination, thereby depriving the defendant of the benefit of an informed medical opinion. The plaintiff, however, should not be left unprotected on the assumption **[511]** that an attorney will unduly interfere with the examination. Should such interference occur, appropriate steps may be taken by the court to provide the doctor with a reasonable opportunity to complete his investigation of the nature and extent of any injuries the plaintiff may have sustained.

CA(5) (5) We are of the view that the respondent court, in staying all proceedings until plaintiff should comply with the order directing her to submit to an oral and physical examination without the presence of her attorney, imposed an unwarranted condition on her right to have the case proceed to trial.

Let a writ of mandate issue directing respondent court to allow the case to be tried without requiring plaintiff to submit to a medical examination in the absence of her attorney.