P. R. Co., 353 N. W.2d 195, 198 (Minn. Ct. App. 1984); and *Tomlin v. Holecek*, 150 F.R.D. 628, 631 (D. Minn. 1993).

d. Defendants assert that Plaintiffs' proposal that Marie's IME be recorded "as an alternative for [Plaintiff] Craig being present" should be denied because: (1) *Tomlin* provides that "the presence of a third person, physically or by tape recording, is inimical to the conduct of a valid psychiatric examination"; (2) none of Defendants' prospective examiners allow recordings to be taken of their examinations; and (3) a recording of the examination "would not accomplish Plaintiffs' purported purpose for requesting Craig's presence at the exam, as Plaintiffs' counsel has provided that Craig wishes to be at the exam so he can be "available for his wife if she experiences distress."

e. Defendants request that Marie's IME occur in the Twin cities metro area, as Defendants provided that they have been "unable to locate any qualified examiners located in or near Otter Tail County." In the alternative, Defendants provide that St. Cloud, Minnesota could be a slightly closer location for the examination as one prospective examiner expressed willingness to travel there.

f. Defendants assert that Plaintiffs' experts should be excluded because Plaintiffs failed to disclose written reports prepared by Plaintiffs' experts outlining their opinions by the parties' stipulated deadline of January 28, 2022. Defendants hold that while Plaintiffs provided the "experts' CVs, their prior testimonies, and a fee schedule," Plaintiffs' refusal to provide the experts' opinions even after Defendants' notification of the deficiency

constitutes “a transparent attempt to withhold discovery materials” under the requirements of Minn. R. Civ. P. 26.01(b). If the Court feels the exclusion of Plaintiffs’ experts is unwarranted under the circumstances, Defendant ask in the alternative that the Court issue an order compelling the disclosure of Plaintiffs' experts' written reports. Defendants also request that the Court order Plaintiffs to pay Defendants' attorney fees and costs incurred in making their Motion under Minn. R. Civ. P. 37.01 (d).

2. On March 22, 2022, Plaintiffs filed a Memorandum of Law in Opposition to Defendant’s Motion to Compel IME and Exclude Plaintiffs’ Expert.
    a. Plaintiffs hold that the Court should not require Marie Stevenson to travel outside Otter Tail County for an IME because “there are equally effective ways to conduct the exam in Fergus Falls.” Plaintiffs assert that “[g]iven the ubiquity of psychological examinations being conducted by remote means—by highly qualified psychiatrists and psychologists around the country—Defendants’ motion chooses needless conflict over a reasonable compromise proposed by Plaintiffs.” Plaintiffs also assert that “Plaintiffs’ medical difficulties with extended sitting and car travel,” would make travel to the Twin Cities metro area or St. Cloud challenging for Marie and is unreasonable. Plaintiffs assert that Minn. R. Civ. P. 35.01 “does not vest defense counsel with an absolute right to dictate the physician before whom the plaintiff is to appear,” nor does it “grant the defense an adverse examination as a matter of right.” See *Ossenfort v. Associated Milk Producers, Inc.*, 254 N.W.2d 672 (Minn. 1977). Plaintiffs hold that the Court

should exercise its discretion in ordering an adverse examination under the above rule to allow Marie to appear for her IME via Zoom technology. Further, Plaintiffs assert that they had agreed that Craig would not be present on January 14, 2022.

b. Plaintiffs hold that recording Marie's IME is appropriate because the Court may attach conditions to an order for an examination. See *Wood*, 353 N.W.2d at 197. Plaintiffs' own experts have stated that "these evaluations are *routinely recorded* and that recording provides an objective record of what was and was not said and asked."

c. Plaintiffs state that on January 28, 2022, Plaintiffs served their Expert Disclosures which provided that the experts had "not completed [their] analysis nor prepared [their] written report[s]" and that the "report[s] will be produced immediately upon issuance and no later than March 28, 2022, pursuant to the Court's August 31, 2021 Scheduling Order." Plaintiffs hold that they have not been in violation of the parties' stipulated deadline by not providing their experts' opinions, and ask the Court to deny Defendants' Motion to Exclude Plaintiffs' Experts and also deny Defendants' attorney's fees and costs as requested in their Motion. Plaintiffs provide that *Dennie v. Metropolitan Medical Center* supports their position. *Dennie v. Metropolitan Medical Center*, 387 N.W.2d 401, 405 (Minn. 1986) (quotations omitted).

3. In an action in which the mental condition of a party is in controversy, the court may order the party to submit to a mental examination by a suitably licensed or certified examiner. Minn. R. Civ. P. 35.01.

a. "The order may be made only on motion for good cause shown and upon notice to the party or person to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is made." *Id*.

4. "The general rule in Minnesota is expert testimony should be suppressed for failure to make a timely disclosure of the expert's identity only where counsel's dereliction in failing to make the disclosure is inexcusable and results in disadvantage to his opponent." *Dennie*, 387 N.W.2d 401, 405 (Minn. 1986) (quotations omitted).

5. After hearing the parties' arguments at the Motion Hearing as well as reading through this matter's extensive records and documents involved in this lawsuit, the Court makes the following conclusions of law.

a. Marie shall travel to St. Cloud, Minnesota, and submit to an IME in person by an examiner selected by Defendants.

b. Craig shall not be permitted to attend Marie's IME.

c. There shall be no recording of Marie's IME.

d. The Court shall not limit or dictate which tests the examiner utilizes in performing Marie's IME.

e. Plaintiff's experts shall not be excluded. Additionally, the Court shall not grant Defendants requested attorney's fees and costs from Plaintiffs. Should the disclosures received by Plaintiff's experts raise issues that were unknown to the Defendants at the time of Marie's deposition, Defendants shall be allowed a further deposition of Marie solely on the issues related to the expert disclosures.

KMM

K.M.M.