

# You be the Jury #2

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## **Avoiding Liability Bulletin - January 15, 2012**

This bulletin continues to evaluate the case presented in an earlier bulletin where Mr. Smith sustained permanent injury to his right hand, right arm and right side of his body and alleged his permanent injury was due to the negligent care he received at ABC Hospital. If you recall, one of the questions asked at the end of the case presentation was: What evidence would you like to see/hear to determine that Mr. Smith met his burden of proof? And, the question continues, what is his burden of proof?

Perhaps the best way to respond to the first part of the question is to determine what evidence is. Evidence is defined as “something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact”. (1) Evidence can be further defined in various ways. As examples, evidence can be real evidence (such as a paralyzed arm) that is important to the issue(s) at trial, testimonial evidence (such as Mr. Smith’s testimony) to prove the truth of the matter at issue in the trial, medical or expert evidence (such as that given by the expert witnesses at trial), and documentary evidence authenticated and supplied by a writing or other document (such as the Mr. Smith’s medical record). (2)

Evidence can also be defined by its characteristics. As examples, evidence can be admissible (relevant and necessary for the court to hear), credible (worthy of belief and trustworthy), indispensable (without which a fact cannot be proven), and probative (tends to prove or disprove a point in issue). (3)

In this case, evidence is needed to allow Mr. Smith to win his case against ABC Hospital and for him to meet his burden of proof. Which things from the following list would you find important to see/hear as evidence in this case

1. Testimony of Nurse Jones;
2. Records and testimony of the physical therapist;
3. Medical record of Mr. Smith while in the CCU;
4. Affidavit of Nurse Jones’ children attesting to their mothers’ skill and expertise as a CCU nurse;
5. Testimony of Mr. Smith’s expert witness;
6. Testimony of nurse staff members who worked with Nurse Jones during the time she cared for Mr. Smith;
7. Testimony of Mr. Smith’s wife as to his physical limitations since the injury and its effect on her and their relationship;
8. Testimony of Mr. Smith;
9. Testimony about what Mr. Smith’s job entailed prior to his surgery and treatment at ABC Hospital;
10. Demonstration as to Mr. Smith’s limitations since the injury;

11. Incident/occurrence reports involving Nurse Jones;
12. Other lawsuits in which Nurse Jones was involved during the time she worked at ABC Hospital and elsewhere;
13. Whether Nurse Jones has professional liability insurance and, if so, how much;
14. Whether ABC Hospital has professional liability insurance and, if so, how much;
15. How many lawsuits have been filed against ABC Hospital involving its CCU care;
16. Medical Record of surgery done on Mr. Smith's hand;
17. Testimony about the care received from former patients of Nurse Jones;
18. Testimony of the other patient in the same room as Mr. Smith about what they/he heard and saw relating to Mr. Smith's care;
19. Qualifications of Mr. Smith's expert witness;
20. Testimony from the IV therapy equipment manufacturer about its recommendations for its use, when IV tubing should be changed, and other pertinent information related to the use of the IV equipment with a patient such as Mr. Smith;
21. Copies of ABC's policies and procedures on documentation.

Any other evidence not listed for consideration you would like to see/hear?

And, what is Mr. Smith's burden of proof?

Standing by and still listening!

## **FOOTNOTES**

1. Bryan A. Garner, Editor (2001). Black's Law Dictionary. Second Pocket Edition. St. Paul, MN: West Group, 250.
2. Id., 250-255.
3. Id.

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