

**3) Please type the answer to Question 3 below. (Essay)**

===== Start of Answer #3 (1220 words) =====

1) Hospital Intake Form**RELEVANCE**

Evidence will be admitted at trial if it is relevant to a matter at issue in the proceeding. Evidence must be both logically and legally relevant. Evidence is logically relevant if it makes any provable fact more or less likely based on its introduction. Evidence must also be legally relevant, meaning that its probative value must not be outweighed by any unfair prejudice, waste of time, etc. that may result from its introduction (i.e., gruesome crime scene photos).

Here, the information contained in Erin's statements contained in the hospital intake record would be logically relevant to show that Pete has sustained severe injuries as a result of the accident. It would be legally relevant because there is nothing to suggest that this information would be unfairly prejudicial or a waste of time. Indeed, the fact that Pete was still in great pain some time after the accident would likely be important in determining the overall scope of his damages. Thus, the intake form and the information contained therein are relevant to the proceeding.

**AUTHENTICATION**

Writings to be admitted into evidence must be authenticated. Some writings may be self authenticating, such as wills or other legal documents. Most other writings must be authenticated by laying an appropriate foundation, usually through someone who recorded the writing testifying to its authenticity in court with personal knowledge of its contents and recording.

Here, Nellie testified in open court that she was the nurse that treated Pete after the accident, and that she recorded the information Pete provided during his

hospital exam pursuant to standard hospital procedure on the intake form. Thus, the form was properly authenticated at trial.

### **HEARSAY**

Hearsay is an out-of-court statement offered by a declarant that seeks to prove the truth of the matter asserted. All hearsay evidence is inadmissible unless it falls within an applicable exception to the hearsay rules.

Here, the hospital intake form itself would be hearsay evidence. Pete's statements within the hospital intake form seek to establish that Pete was injured as a result of the accident, and thus they seek to establish as truth what they assert. The hospital form asserts that Pete was injured, that his injuries were the result of the accident, and that they were still present when the information was recorded. Thus, the intake record is inadmissible hearsay unless it falls within an applicable exception.

### **Business Records Exception**

An exception to the hearsay rule is for business records recorded in the regular course of business. In order to qualify as an exception to hearsay, a business record must have been taken in the regular course of business, by someone in their regular duties with knowledge of the contents of the record, and within a approximately the same time frame that the events recorded were relayed to the person creating the record.

Again, here Nellie is a nurse taking an intake record pursuant to hospital procedure, at or near the time of the post-accident interview with Pete, in her official capacity and duties, and in the course of regular business at the hospital. Therefore, the intake record qualifies as a business record exception to the hearsay rule.

### **Exception for Statements Made in Diagnosis or Medical Treatment**



Another exception for hearsay is for statements made pursuant to the course of medical treatment or diagnosis. These statements must be offered to a medical professional in the course of diagnosis or treatment.

Here, Pete's statements were made pursuant to his treatment by the nurse at the hospital immediately after the accident. He mentions that his head struck the windshield and that he is still in a great deal of pain. This information was given directly to a medical professional while being treated for his injuries in relation to the accident that is the subject of the trial. Given that his statements relate to his treatment, thus, they would fall within the medical diagnosis / treatment exception to the hearsay rule.

In conclusion, the intake form is relevant to the proceeding and is admissible under exceptions to the hearsay rule. Thus, the court properly admitted it at trial.

## 2) Pete's Testimony RE: Erin's Statements

### RELEVANCE

Relevance rules are the same as above. Here, Pete's statements regarding what Erin told him at the scene are logically relevant because they tend to show that Erin ran the red light and would be at fault for the accident. They are legally relevant because the probative value of such a statement is self-evident, and would not be unfairly prejudicial or a waste of time.

### HEARSAY

A statement made to prove the truth of the matter asserted is inadmissible hearsay unless it falls within an applicable exception. Here, Pete's statement regarding what Erin said is hearsay because it purports to make true what it states; that Erin ran the red light and was at fault for the accident. Thus, it will not be admissible unless it falls within an applicable exception.

### **Party Admission**

Certain evidence may not be considered to be hearsay (i.e., admissible "non-hearsay"). A party admission is a statement offered by a party to the proceeding offered against a party to the proceeding. This is also known as an opposing party statement.

Here, Pete's testimony offering Erin's statement about running the red light is being offered by Pete against Erin, who is a party to the proceeding as the employee of Donna. The statement is being offered against Erin to show that she was at fault for the accident. Thus, Pete's testimony regarding Erin's statement was admissible as a party admission.

### **Statement Against Interest**

Another possibility to admit Erin's statement is as an exception to the hearsay rule for statements against interest. A statement against interest must be made against the party's interest when made, but it also requires that the declarant be unavailable.

Here, Erin testified at the trial, and therefore is not unavailable by definition. Thus, the statement against interest exception would not apply here.

In conclusion, Erin's testimony would be relevant non-hearsay testimony as a party admission, and thus was properly admitted by the court in this proceeding.

### **3) Pete's Testimony RE: Donna's Statements**

### **RELEVANCE**

The rules of legal and logical relevance above still apply. Here, Donna's statements regarding medical payments would be logically relevant as they might tend to show some responsibility on her part for Pete's injuries, which could lead to an inference of fault on her part. Likewise, they would be legally relevant as

they would not appear to be unfairly prejudicial on their face.

**Public Policy Exemption -- Offer to Pay Medical Expenses**

However, certain evidence may be found to be inadmissible for public policy reasons. Offers to pay medical expenses for accidents fall within a public policy exception, and thus any statements made to the effect of offering to pay medical bills from an accident are not admissible on public policy grounds. However, while the presence of the ability to pay is not admissible, other statements related to fault may be admissible.

Here, Donna's statements at the scene are strictly related to her ability to pay medical expenses, in that Donna offered to pay all of Pete's. The statements also did not relate in any way to liability or the actions of Donna or her employee. Thus, the court should have excluded this testimony on public policy grounds.

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Question #3 Final Word Count = 1220

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**END OF EXAM**