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BEFORE FACING A LAWSUIT:  
WHAT EVERY ESTABLISHMENT NEEDS TO  
KNOW

# PRESENTATION

*Presented by  
By: Josh Greenbaum  
and MaryTeresa Soltis*

*The confidence to proceed.*   
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# Facing A Claim Or Lawsuit

- Claim
- Letter of Representation
- Suit/First Notice
  - Complaint
  - Answer
  - Discovery
  - Settlement
  - Trial

# Facing A Claim Or Lawsuit

- What Role Should You Play Once A Lawsuit Is Filed?
- What Are Your Rights And Obligations?

# You Either Insure or Work for ABC Food and Beverage's Risk Management or Legal Department

What Do You Need To Know To Assess ABC's Exposure and  
Defend This Case?

# Assessing Exposure

- What Types of Liability Are You Facing?
  - Violation of a Dram Shop Statute?
    - Service to minors
    - Service to visibly intoxicated patrons
  - Common law claims
    - Negligence
    - Negligent training
    - Negligent hiring
    - Negligent supervision

# Assessing Exposure

- What may change the server's responsibility over the course of an event?
- To whom will your jurisdiction assign the ultimate responsibility?

# Assessing ABC's Exposure

- You need to know all about ABC
  - At what other types of events do they provide food and beverage service?
  - Who are its employees?
    - What is their significance, if any?

# Assessing ABC's Exposure

- What are its alcohol policies and procedures?
- What training does it offer its employees?
- What documents does it have?
- What documents are missing?
- What are its recordkeeping policies?
- Have there been any prior incidents?



- Identification
- Recognizing Intoxication
- Preventing Intoxication
- Service
- Preventative Measures
- Documenting Incidents
- Required Training/Certification
- Enforcement

## ABC's Alcohol Policies and Procedures (What You'd Like to Find)

- Preventative Measures
- Never allow intoxicated guests to drive
  - Call a taxi.
  - Persuade a sober friend/spouse to drive and go out to the car to make sure they do so.
  - Call a friend or family member.
  - If an intoxicated person insists on driving, call the police.

- Create a safe and secure environment
  - What is the mission/goal of your business?
  - Business organization
    - Management
    - Human Resources
    - Event employees
  - Rules
  - Enforcement

- Sporting events/festivals/community events
  - Segregate alcohol servers from family-related activities.
  - Smaller cup sizes
  - Drink limits
  - Limits on time of service
  - Review policies before the event.

- Train managers and supervisors on how to confront those who consume alcohol.
  - Patrons
  - Employees
  - Students

- Prior to an event, create an Event Checklist that addresses:
  - Size of the crowd
  - Staffing
  - Time when service of alcohol ends
  - Transportation options
    - Designated drivers/alternative transportation

# Event Checklist/Daily Checklist

**EVENT CHECKLIST**

Date \_\_\_\_\_ Location \_\_\_\_\_

# of Locations \_\_\_\_\_ # of Vendors \_\_\_\_\_ # of Compliance Supervisors \_\_\_\_\_

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	All servers working have attended an alcohol awareness-training program
		<input type="checkbox"/> TIPS
		<input type="checkbox"/>
		<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Required signage posted at all alcohol sales points.
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/> State & Local Laws
<input type="checkbox"/>	<input type="checkbox"/>	Conducted post event review with security/client/supervisor.
<input type="checkbox"/>	<input type="checkbox"/>	Identification procedures reviewed with servers prior to opening.
<input type="checkbox"/>	<input type="checkbox"/>	Special promotional program in use for this event.
<input type="checkbox"/>	<input type="checkbox"/>	Compliance Supervisors report any violations of policy.

Specific Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Manager's Signature: \_\_\_\_\_

**Attach to Daily Cashiers Report .**

# Incident Checklist

Limit of drinks per transaction  
(changes per event)

Attendance at the event: \_\_\_\_\_

Weather conditions: \_\_\_\_\_

What time did alcohol service stop?  
(helps to determine other service)

Closing time: \_\_\_\_\_

Type of alcoholic beverages served: \_\_\_\_\_

What time did the facility close?

Total amount of beer sales at the stands near this section: \_\_\_\_\_

Total amount of beer sales at the  
stands near this section:







## Alcohol Inspection Checklist

Name of Organization: \_\_\_\_\_

Location of Event: \_\_\_\_\_ Date: \_\_\_\_\_

<b>Time of Inspections:</b>		
Someone on the door to check IDs		
Alcohol brought outside room		
Underage persons in room		
Intoxicated persons in room		
Serving beer in bottles?		
Liquor license displayed		
Servers wearing ID		
NABS available		
Server(s) consuming alcohol		
Server(s) intoxicated		
Estimated no. of persons at the event		

Products available and price:

\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____
\$ _____	\$ _____

Name(s) of server(s) and ID number. Indicate if they did **not** complete the Servers Intervention Training Program.

_____	_____
_____	_____
_____	_____

Problems/Recommendations: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Serving alcohol after license has expired? \_\_\_\_\_ If yes, until what time? \_\_\_\_\_

## Age Verification Form

I hereby certify that I am 21 years of age or older. I understand that in making this statement I may be subject to a fine or a possible jail term if I have misrepresented my age for the purpose of obtaining alcohol beverages. I also understand that I could be held legally responsible for all damages caused to the licensee.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Date of Birth: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Employee: \_\_\_\_\_

Type of ID: \_\_\_\_\_ ID Number: \_\_\_\_\_

- Enforcement
  - Policies are hollow if not enforced
  - Disciplinary violations, including loss of job
  - Reward and protect those who come forward to report violations
  - Conduct and document internal inspections
  - Use independent auditors to periodically monitor compliance

# External Audit Report

EventReport

Page 4 of 7

**Event Notes:** Agent approached employee and requested three cups of beer. Employee stated there was a two beer limit. Employee did not request proper identification from agent prior to dispensing beer. Cash transaction handled properly.

Agent was 25 year old male.

EventWorkers(s):  
African American Female :medium build, light skin tone.

**Event Notes:** Agent approached employee and requested three cups of beer. Employee stated there was a two beer limit. Employee did not request proper identification from agent prior to dispensing beer. Cash transaction handled properly.

Agent was 25 year old male.

## Assessing Prime Time's Exposure Documents

- What Documents Do You Want to Find?

## Assessing ABC's Exposure Documenting Incidents

- Written record of any unusual event.
- What to document:
- Complete immediately following the incident
  - Not at the end of a shift, the next day or when an audit is called.

- What Should be in the Incident Report?
  - Time, date, employee and manager on duty
  - Explain patron's behavior and why action was taken.
  - Note the taxi company, driver's name, and time of pick-up if a ride is called.
  - Actions taken to verify questionable identification
  - Identify any witnesses

**Incident Record Form**

Date: \_\_\_\_\_ Time of Day: \_\_\_\_\_

Server: \_\_\_\_\_ Manager: \_\_\_\_\_

Customer Name and Description: \_\_\_\_\_

# Intervention Strategies Used

Description of Incident: \_\_\_\_\_  
\_\_\_\_\_

Intervention Strategies Used: \_\_\_\_\_  
\_\_\_\_\_

Other Witnesses: \_\_\_\_\_

Signatures: \_\_\_\_\_



PLCB-9317 8/14  
Re-order form #4027

### INCIDENT DOCUMENTATION FORM\*\*



Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM

Patron Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone Number \_\_\_\_\_ Employer \_\_\_\_\_  
Age of the person \_\_\_\_\_ Verified or Approximated (circle one)  
Physical Description of Patron \_\_\_\_\_

Time patron arrived \_\_\_\_\_ am/pm  
Time departed \_\_\_\_\_ am/pm

Was medical attention given? Yes \_\_\_\_\_ No \_\_\_\_\_  
Was hospitalization needed? Yes \_\_\_\_\_ No \_\_\_\_\_  
How did the patron contribute to the injury? \_\_\_\_\_  
7. Were law enforcement authorities called? Yes \_\_\_\_\_ No \_\_\_\_\_  
Time of the call \_\_\_\_\_ AM/PM Who made the call? \_\_\_\_\_  
Name(s) of the officer(s) responding: \_\_\_\_\_  
8. Did the patron drive from the establishment? Yes \_\_\_\_\_ No \_\_\_\_\_  
9. Auto Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_ License Number \_\_\_\_\_

Describe the incident (including  
eyewitness accounts

Address \_\_\_\_\_ Phone \_\_\_\_\_  
Signature \_\_\_\_\_ Employer \_\_\_\_\_  
Witness #2 Name \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_  
Signature \_\_\_\_\_ Employer \_\_\_\_\_  
Signature of person completing the form \_\_\_\_\_ Date \_\_\_\_\_

\* This form is not a legal substitute for the PLCB-931 Declaration of Age Card.  
\*\* This form may be duplicated without the permission of the Pennsylvania Liquor Control Board.

## Assessing ABC's Exposure Who Will Be ABC's Witnesses?

- Who are your witnesses and how will they present?

## Assessing ABC's Exposure ABC's Witnesses

- Are your witnesses' employee files up to date?
  - Pre-employment background searches.
- Is their certification/training current?
- What will they say about their understanding of ABC's policies and procedures and their enforcement?
- Do your witnesses have any policy violations documented?

## Assessing ABC's Exposure Facts About ABC's Witnesses

- Jim and George were served by 3 different people that night.
- Jim and George were served by 3 different people
  - What is their significance and impact on ABC's exposure?

## Assessing ABC's Exposure Who Are The Witnesses To The Accident?

- How will those involved in the accident present as witnesses?
- Survivor, Jim may have:
  - Purchased alcohol underage;
  - Used false identification;
  - Consumed beer underage;
  - Decided to drink, drive, and speed;
  - Use of illegal drugs.

## Assessing ABC's Exposure Facts About the Establishment

- No prior LCB violations.
- Employee files are up to date.
- All training is current.

## Assessing ABC's Exposure ABC's Policies and Procedures Were they Enforced?

- Card everyone who appears to be under 30 (when giving wristbands and at the stands).
- Everyone must have a wristband to be served alcohol.
- Confiscated the wristbands of those who are refused service.
- Signs are posted regarding identifying visible intoxication.
- Those involved in fights are to be removed from the premises.
- Serve only one drink per customer.
- No service to minors or visibly intoxicated patrons.
- Unwritten policy to call a taxi for intoxicated patrons.

# Defending ABC

## What Do You Want to Know?

- Venue
- Other Defendants
  - Who would you consider joining?
  - What are the practical implications?
- Discovery
  - Documents are a sword and a shield
- Experts
- Motion Practice
- Standard of Proof
- Defenses
- Punitive Damages



## Defending ABC Documents You May Be Asked to Produce

Be Prepared and Have These Documents Already:

- Current Liquor License
- Current list of employees
- Credit card receipts
- Daily sales totals
- Employee files and schedules
- Minute book
- Age verification forms
- Video/security surveillance

## Defending ABC Documents You May Be Asked to Produce

- Documents ABC May be Asked to Produce:
  - Reports of prior incidents
  - Records of LCB violations and responses thereto
  - Employee files (including training records)
  - Prior complaints/lawsuits
  - Audit reports
  - Memos re: changes in policies and procedures
  - Employee handbooks

# Defending ABC Documents to Aide Your Defense

- Documents Pertaining to the Accident
  - Police Report
  - Witness Statements
    - Jim Hanson's prior statements
  - Prior Criminal History
    - George Hanson's prior DUI
  - Accident Scene Photos
    - Prime Time glass found at the scene (suggests another point of service between service at the concert and the accident)
    - 2 half-smoked marijuana cigarettes were found inside the car.

## Scene Photos



# Documents to Obtain to Aide Your Defense

- Medical Reports (Example)

PAGE 1 OF 2  
EMERGENCY MEDICAL SERVICE  
PATIENT REPORT  
DISTRICT 1

PATIENT'S NAME \_\_\_\_\_ MALE  FEMALE  RACE  WEIGHT \_\_\_\_\_  
 AE ADDRESS \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_ AGE \_\_\_\_\_  
 TOWN \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ PHONE # \_\_\_\_\_  
 INCIDENT LOCATION \_\_\_\_\_ S.S. # \_\_\_\_\_  
 TOWN \_\_\_\_\_ ZIP \_\_\_\_\_

<b>1 PATIENT STATUS/ACTIVITY</b> <input type="checkbox"/> UNCONSCIOUS <input checked="" type="checkbox"/> ORIENTED <input type="checkbox"/> CONFUSED <input type="checkbox"/> SEMI-CONSCIOUS <input type="checkbox"/> CLONCONSCIOUS <input type="checkbox"/> ELETARIORIS <input type="checkbox"/> VIOLENT/UNCONTROLLABLE <input type="checkbox"/> RESP. ARREST <input type="checkbox"/> UNRESPONSIVE <input type="checkbox"/> CARDIAC ARREST <input type="checkbox"/> WITNESSED <input type="checkbox"/> UNWITNESSED <input type="checkbox"/> CPR LIMITED <input type="checkbox"/> BY EMS <input type="checkbox"/> BY LAY PERSON <input type="checkbox"/> BY VENDOR/RESCUE <input type="checkbox"/> BY EQUIP. <i>2000-01-01</i> ESTIMATED ANOXIC TIME <input type="checkbox"/> HRS <input type="checkbox"/> MIN		<b>3 PATIENT'S HISTORY/COMPLAINTS</b> <input type="checkbox"/> PAIN FROM INJURY <input type="checkbox"/> PAIN-BACK <input type="checkbox"/> PAIN-CHEST <input type="checkbox"/> PAIN-HEAD <input type="checkbox"/> PAIN-ABDOMEN <input type="checkbox"/> CHOKING <input type="checkbox"/> PAIN-LIMBS <input type="checkbox"/> BLEEDING <input type="checkbox"/> NUMBNESS/FEELING <input type="checkbox"/> POSITIONING <input type="checkbox"/> CHALLENGE REACTION <input type="checkbox"/> SYNCOPE <input type="checkbox"/> VIB. LOSS/DYSRTH <input type="checkbox"/> REGURGE <input type="checkbox"/> RESP. DISTRESS <input type="checkbox"/> VOMITING <input type="checkbox"/> NAUSEA <input type="checkbox"/> D.O.D. <input type="checkbox"/> OTHER <input type="checkbox"/> DIZZY <b>4 PATIENT'S ALLERGIES</b> <input type="checkbox"/> BURNS <input type="checkbox"/> CARDIAC <input type="checkbox"/> CVA <input type="checkbox"/> DIABETIC <input type="checkbox"/> D.O.D. <input type="checkbox"/> ANA <input type="checkbox"/> MATERNITY <input type="checkbox"/> MEDICAL <input type="checkbox"/> RESPIRATORY <input type="checkbox"/> DETAIL <input type="checkbox"/> BLEEDING <input type="checkbox"/> FIRE <input type="checkbox"/> SEIZURE <input type="checkbox"/> PUBLIC ASSIST <input type="checkbox"/> ASSAULT		<b>5 PATIENT'S VITALS/PHYSICAL</b> <input type="checkbox"/> PED/AUTO <input type="checkbox"/> BIKE-AUTO <input checked="" type="checkbox"/> AUTOMOBILE <input type="checkbox"/> TRUCK <input type="checkbox"/> CYCLES <input type="checkbox"/> SKI/TOL/APPL. <input type="checkbox"/> MACHINERY <input type="checkbox"/> MTR/CYCLE <input type="checkbox"/> FIGHT/VIOLENCE <input type="checkbox"/> BLUNT TRAUMA <input type="checkbox"/> FALL _____ FEET <input type="checkbox"/> EXPLOSION/FIRE <input type="checkbox"/> FIREARM <input type="checkbox"/> KNIFE/SML. OBJ. <input type="checkbox"/> CRUSHED <input type="checkbox"/> SPORT <input type="checkbox"/> DIVING <input type="checkbox"/> OTHER		<b>6 PATIENT'S INJURY/TRAUMA</b> R/L <input type="checkbox"/> HEAD <input type="checkbox"/> PELVIS <input type="checkbox"/> SHOULDER <input type="checkbox"/> FACE <input type="checkbox"/> THIGH <input type="checkbox"/> ARM <input type="checkbox"/> NECK <input type="checkbox"/> HIP <input type="checkbox"/> ELBOW <input type="checkbox"/> CHEST <input type="checkbox"/> WRIST <input type="checkbox"/> FOREARM <input type="checkbox"/> BACK <input type="checkbox"/> HAND <input type="checkbox"/> FINGER <input type="checkbox"/> ABDOMEN <input type="checkbox"/> LEG <input type="checkbox"/> TOE <input type="checkbox"/> ANGLE	
<b>2 PATIENT'S VITALS</b> NO. DOX. VIL. TIME DATE <i>4/1/2003</i> TIME <i>11:20</i>		<b>10 PATIENT'S VITALS</b> RESPIRATION <i>12/4</i> 2: <input type="checkbox"/> 3: <input type="checkbox"/> PULSE <i>72/80</i> 2: <input type="checkbox"/> 3: <input type="checkbox"/> BLOOD PRESSURE <i>120/80</i> 2: <input type="checkbox"/> 3: <input type="checkbox"/> 1. ON ARRIVAL AT SCENE 2. PRIOR TO TRANSPORT 3. ON ARRIVAL AT HOSPITAL <input type="checkbox"/> NOT TAKEN		<b>11 PATIENT'S PAST HISTORY</b> <input type="checkbox"/> ALL <input type="checkbox"/> CANCER <input type="checkbox"/> PSYCHIATRIC ILLNESS <input type="checkbox"/> ANGINA <input type="checkbox"/> ALLERGY <input type="checkbox"/> DRUG ABUSE <input type="checkbox"/> PERM. FACE/MAKER <input type="checkbox"/> DIABETES <input type="checkbox"/> CHF <input type="checkbox"/> ASTHMA <input type="checkbox"/> HYPERTENSION <input type="checkbox"/> OTHER HEART CONDITION <input type="checkbox"/> SEIZURE <input type="checkbox"/> PULMONARY EMBOLISM <input type="checkbox"/> CVA <input type="checkbox"/> COOPD <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> BEL-DENIED		<b>18 PATIENT'S VITALS</b> TEG # <i>101077</i> SQUAD # _____ <input type="checkbox"/> 1. DRIVER <input type="checkbox"/> _____ <input type="checkbox"/> 2. _____ <input type="checkbox"/> _____ <input type="checkbox"/> 3. _____ <input type="checkbox"/> _____	
<b>12 PATIENT'S VITALS</b> <input type="checkbox"/> WARM <input type="checkbox"/> COOL <input checked="" type="checkbox"/> NORMAL <input type="checkbox"/> UNUSUAL <input type="checkbox"/> MOIST <input type="checkbox"/> DRY <input type="checkbox"/> CLAYED <input type="checkbox"/> R/R D/L <input type="checkbox"/> PALE <input type="checkbox"/> FLUSHED <input type="checkbox"/> CONSTRICTED <input type="checkbox"/> R/R D/L <input type="checkbox"/> CYANOTIC <input type="checkbox"/> LASHER <input type="checkbox"/> HELLO/ROSH <input type="checkbox"/> R/R D/L <input type="checkbox"/> C/HEM <input type="checkbox"/> NON-REACTIVE <input type="checkbox"/> R/R D/L <input type="checkbox"/> OTHER <input type="checkbox"/> R/R D/L		<b>13 PATIENT'S VITALS</b> <input type="checkbox"/> NORMAL <input type="checkbox"/> UNUSUAL <input type="checkbox"/> BURNED <input type="checkbox"/> UNBURNED <input type="checkbox"/> BURNED <input type="checkbox"/> UNBURNED <input type="checkbox"/> BURNED <input type="checkbox"/> UNBURNED <input type="checkbox"/> BURNED <input type="checkbox"/> UNBURNED		<b>15 PATIENT'S VITALS</b> MEDICATIONS DENIED DENIED		<b>19 PATIENT'S VITALS</b> MEDIC. <input type="checkbox"/> NOT DIR. <input type="checkbox"/> DIDN'T TREAT <input type="checkbox"/> RECALLED <input type="checkbox"/> TREATED <input type="checkbox"/> AMB. <input type="checkbox"/> _____ <input type="checkbox"/> PRODUCE <input type="checkbox"/> _____ <input type="checkbox"/> RESCUE <input type="checkbox"/> _____ <input type="checkbox"/> FIRE <input type="checkbox"/> _____	
<b>14 PATIENT'S VITALS</b> <input type="checkbox"/> CERV. COLLAR <input type="checkbox"/> BURN TREATMENT <input type="checkbox"/> BOARD <input type="checkbox"/> BURN TREATMENT <input type="checkbox"/> C/THORP/DC <input type="checkbox"/> SPOXYGEN <input type="checkbox"/> LPM <input type="checkbox"/> REDSHORT BRD. <input type="checkbox"/> MASK <input type="checkbox"/> CANULA <input type="checkbox"/> AED <input type="checkbox"/> AED OFF/COME <input type="checkbox"/> DRINK <input type="checkbox"/> SHOCK _____ TIMES <input type="checkbox"/> ORAL AIRWAY <input type="checkbox"/> D <input type="checkbox"/> NASAL AIRWAY <input type="checkbox"/> D <input type="checkbox"/> ORAL SUCTION <input type="checkbox"/> _____ <input type="checkbox"/> BAG MASK <input type="checkbox"/> _____ <input type="checkbox"/> ASSESSMENT <input type="checkbox"/> _____ <input type="checkbox"/> D/T. RESTRAINTS <input type="checkbox"/> _____ <input type="checkbox"/> TRACTION SPLINT <input type="checkbox"/> _____ <input type="checkbox"/> BRUISES <input type="checkbox"/> _____ <input type="checkbox"/> EXTORTION <input type="checkbox"/> _____ TIME _____		<b>17 PATIENT'S VITALS</b> SIG. RUN # <i>552</i> MGR. AS: <i>ZH</i> DATE <i>4/1/2003</i> TIME _____ CALL DISPATCHED <input type="checkbox"/> _____ UNIT RESPONDED <input type="checkbox"/> _____ ARRIVED AT LOCATION <input type="checkbox"/> _____ DEPARTED LOCATION <input type="checkbox"/> _____ ARRIVED AT HOSPITAL <input type="checkbox"/> _____ AVAILABLE <input type="checkbox"/> _____ TIME IN _____ TOTAL TIME <i>51 mins.</i>		<b>20 PATIENT'S VITALS</b> <input type="checkbox"/> TO AMBULANCE <input type="checkbox"/> AMBULANCE <input type="checkbox"/> FIVEES <input type="checkbox"/> CARRIED <input type="checkbox"/> CARRY <input type="checkbox"/> STRETCHER <input type="checkbox"/> STRETCHER <input type="checkbox"/> STRETCHER <input type="checkbox"/> STRETCHER <input type="checkbox"/> STRETCHER <input type="checkbox"/> STRETCHER <input type="checkbox"/> STRETCHER		<b>21 PATIENT'S VITALS</b> <input type="checkbox"/> TREATED <input type="checkbox"/> NO BLS REQ. <input type="checkbox"/> REFUSED <input type="checkbox"/> PVT. AUTO <input type="checkbox"/> OTHER <input type="checkbox"/> TRANSPORTED TO: <i>1000</i>	
<b>22 PATIENT'S VITALS</b> RESPONDING TO SCENE <input type="checkbox"/> _____ TIME _____ TRANS TO MED. FACILITY <input type="checkbox"/> _____		<b>23 PATIENT'S VITALS</b> HOSPITAL <input type="checkbox"/> _____ SCENE <input type="checkbox"/> _____ TOTAL <input type="checkbox"/> _____		<b>24 PATIENT'S VITALS</b> RECEIVING HOSPITAL _____ SIGNATURE _____ SIGNATURE _____			

RECEIVING HOSPITAL \_\_\_\_\_  
 SIGNATURE \_\_\_\_\_  
 SIGNATURE \_\_\_\_\_

WHITE - CHART  
 YELLOW - SQUAD  
 BLUE - BILLING

PAGE 2 OF 2

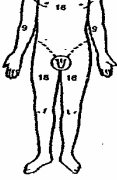
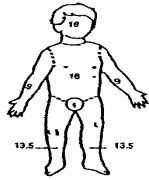
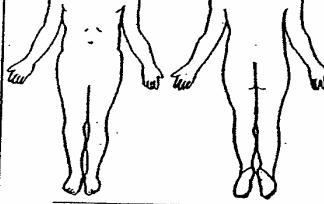
RUN #: \_\_\_\_\_

ADDITIONAL HISTORY OR PERTINENT INFORMATION

DATE 1-1-1

ok to find a 20yo. ♂ sitting COARS in back of police car.  
Pt. was involved in a MVA where the car lost control and  
rolled over. Pt. was the restrained passenger. Pt. had  
no complaints of any kind. Pt. had C-spine precautions  
taken. Pt. stated he had been drinken c the

taken. Pt. stated he had been drinken c the  
driver = unknown amount. Oz applied, medics assisted  
and transported to \_\_\_\_\_ incident

To Voice	3	TIME	Respiratory Rate	2	
To Pain	2		Rapid	2	
None	1		Slow	1	
1. Verbal Response	5	Total	Absent	0	
Oriented	5		Muscle Tone	2	
Confused	4		Good	2	
Inappropriate words	3	GCS Points	Fair	1	
Incomprehensible words	2		Absent	0	
None	1		Strong	2	
2. Motor Response	6	Score	Weak	1	TOTAL
Obeys Commands	6		All Pink	2	
Purposeful movement (pain)	5		Some Pink	1	
Withdraw (pain)	4	14-15	5	PREPARER'S SIGNATURE	
Flexion (pain)	3	11-13	4		
Extension (pain)	2	8-10	3		
None	1	5-7	2		
None	1	3-4	1		

- Excerpt from Coroner's Report (Examples)

Digestive

The tongue and hypopharynx show no evidence of previous injury or disease. The esophagus is normal and enters the stomach in the usual manner. The stomach contains 800 cc. of thick, yellow liquid. It smells like apples. This is suggestive of beer consumption. There is no gastritis or ulcer. The small bowel, appendix, and large intestines are unremarkable on serosal surface. The 1850 gram pink-brown liver has a smooth, thin capsule. The cut surface is pink-brown, anemic, and has retained architecture. The biliary tree is not dilated. There are no focal lesions.

The stomach contains 800 cc. of thick, yellow liquid. It smells like apples. This is suggestive of beer consumption.

# Defending ABC

## What Experts Do You Need?

### SAMPLE TOXICOLOGIST REPORT TIME LINE

Date	Time- hour	BAC %	Comments	
Jan 1, 2005	8:10		0.069	
	8:00		0.07	
	7:00		0.09	
	6:00		0.11	
	5:00		0.13	
	4:00		0.15	
	3:00		0.17	
	2:00		0.19	
	1:30		0.20	
	1:00		0.21	
	Dec. 31, 2004	0.00	0.23	Left the Country Club
		23:00		0.25
		22:00		0.27
21:00			0.16	
20:30			0.10	Arrive at the Country Club



# Defending ABC Time-Line

- 4:30 p.m. – Purchase 2 six packs of beer at Gas Station store
- 5:00 p.m. – Arrive at fraternity party
- 8:00 p.m. – Leave fraternity party
- 8:15 p.m. – Arrive at Concert
- 9:00 p.m. – Concert begins
- 12:00 a.m. – Leave Concert
- 2:00 a.m. – Accident
- 2:30 a.m. – Autopsy – George BAC .18
- 3:00 a.m. – Jim's blood is drawn - BAC .14

# Defending ABC

## What Do the Hansons Have to Prove?

- Standard of proof under most Dram Shop Acts
  - ABC served alcohol to Jim and George Hanson;
  - Who were, at the time of service, minors or visibly intoxicated;
  - Such service of alcohol was a proximate cause of George's death and Jim's injuries; and
  - George's death and Jim's injuries were foreseeable consequences of the negligent service of alcohol.

# Defending ABC

## What Defenses Do We Have?

- Can the Hansens prove service to a minor or visibly intoxicated patron?
- Did ABC's service to Jim and George cause the accident?
  - Alcohol purchased at Gas Station Store
  - Alcohol consumed at fraternity party
  - Alcohol consumed at Fagan's (last known service before the accident)
  - Possible consumption at Prime Time

# Defending ABC

## What Other Defenses Do We Have?

- Comparative and Contributory Negligence
  - What are the jurisdiction's rules/standards?
  - What arguments do we have?
    - Decision to purchase alcohol underage and with fake ID
    - Decision to use fake ID to gain permission to drink at the concert
    - Decision to drink knowing he was the designated driver
    - Decision to drive
    - Decision to become a passenger with one who had been drinking
    - Decision to use illegal drugs
    - Decision to speed

# Defending ABC Against Punitive Damages

- What Facts Would Be Argued to Support a Punitive Damages Award?
- What Facts Would Be Argued Against a Punitive Damages Award?

## What To Do If An Accident Happens Or You Get Sued

- Contact counsel
- Contact your insurance carrier
- Contact other entities involved
- Preserve documents and other possible evidence
  - Litigation hold
- Look at applicable contracts

## What To Do If An Accident Happens Or You Get Sued

- Who is Your Lawyer and What Role Will You Play in the Case?
  - Can you choose counsel?
  - Does that attorney know and understand your business?
  - How will you handle reporting?
  - Request a litigation budget
  - Listen to your counsel, but it is ultimately your decision.

## What To Do If An Accident Happens Or You Get Sued

- Complaint, Answer, Discovery, Motions, Settle/Trial
- Require a litigation plan and budget
- Manage discovery
- Apply a business analysis
- Leave your emotions out of it



# After The Dust Clears

- Revisit your litigation plan and budget
  - Plan v. Reality
- Ask what you could have done to be more efficient
- Fix any operational problems that gave rise to the lawsuit
- Fix any problems with your insurance, contracts, or operations
- Make these things someone's job to handle and report to you!