

PREDICATES GUIDE

COMMON PREDICATES

- Predicate is the information necessary to make evidence admissible.
- The Rules of Evidence do not apply to predicate Qs, so you can ask leading Qs. (104).
- There are a lot of resources & publications dedicated to predicates. This guide only contains a handful that attorneys will likely encounter at some point, regardless of their area of practice.
- Attorneys should consider including in their trial notebook a checklist containing the elements of their claims or defenses, the testimony & exhibits they will rely on to prove each element, the W relied on for the testimony & exhibits, & the predicate Qs they will need to ask the W to admit each item.
 - So, for instance, if you will rely on a hearsay statement to prove the legal duty element of a negligence claim, you should prepare predicate Qs showing the statement is subject to a hearsay exception (e.g. if you are going rely on an excited utterance exception, immediately before asking the W to repeat the hearsay statement, you should ask Qs establishing the declarant's emotional state at the time they made the hearsay statement).

Physician Expert W (702)

- Are you an (MD or DO)?
- What is your undergraduate degree in? Where did you get it?
- Where did you attend medical school? When did you graduate?
- Where did you do your residency? What subject(s) did you do your residency in?
- Did you do a fellowship? Where? In what subject(s)?
- Do you have hospital admitting privileges? Which hospitals do you have privileges at?
- When were you licensed to practice medicine in TX? Are you licensed anywhere else?
- Have you ever been disciplined by a state medical board?
- How long have you practiced medicine?
- Are you board certified? What are you board certified in? What did you have to do to obtain board certification?
- What is your specialty? How long has that been your specialty?
- Have you ever testified as an expert before? When?
- Are you familiar with ___? How are you familiar with ___?
- How many ___ have you performed? Observed?
- What special training do you have in ___?

- Have you published any articles on ___? Lectured on the topic? Participated in peer reviews involving ___? How many?
- Did you review any peer reviewed publications or treatises on ___ in preparation for your testimony today? What did you review?
- Did you review any medical records in preparation for your testimony today? Any other statements or materials? What did you review?

Photos: It doesn't matter if W took photo

- Do you recognize the (location, person, or object) in this exhibit?
- What is the (location, person, or object) depicted in this exhibit?
- Is this exhibit an accurate depiction of the (location, person, or object)?

Recorded Recollection

- Did you witness ___ event?
- Did you make a written statement at or near the time of ___ event?
- When you made that written statement, was ___ event fresh in your mind?
- Are the details of ___ event as fresh in your mind today as they were when you wrote the statement? [no]
 - Show prior written statement.
- Is this the written statement you made after witnessing ___ event?
- Was this an accurate description of ___ event at the time you wrote it?
- Did you sign this statement? Would you have signed it if it was inaccurate?
- Is it your habit or practice to record similar events after they happen in an accurate manner?

Emails/Text Messages: you may be able to use the reply letter doctrine to authenticate

- Do you recognize this exhibit? What is it?
- Were you the recipient of these (text messages or emails)?
- Who sent you these (text messages or emails)?
- How do you know ___ sent you these messages?
- Is this (email address, phone number, or saved contact) associated with ___?
- Have you corresponded back-and-forth with ___ using this (number or address)?
- Do the contents of these messages refer to prior communications you've had with ___?

- Do you have any reason to believe when you corresponded with ___ using this (number or address) that you were actually corresponding with anyone other than ___?
- Have you altered or deleted any portions of the (text message or emails) depicted in this exhibit?
- Is this a fair & accurate representation of the (texts or emails) you exchanged with ___?
 - If you've organized the messages in another exhibit as a spreadsheet, go to Summaries.

Summaries (1006):

- Did you review the (messages, prescriptions, records, etc.) contained in __ exhibits?
- Are the volume & organization of (messages, prescriptions, records, etc.) contained in __ exhibit such that they cannot be conveniently examined in court?
- Have you created a (chart, summary, or calculation) of the (messages, prescriptions, records, etc.) contained in __ exhibit?
- Is this (chart, summary, or calculation) an accurate representation of the (messages, prescriptions, records, etc.) contained in __ exhibit?

Social Media:

- Do you recognize exhibit? What is it?
- Do you have a (FB/Twitter/Instagram/etc.) page?
- Is your account protected by a username & password?
- Are you the only person with access to your account?
- Are you friends with (or follow) ___ on (FB/Twitter/Instagram/etc.)?
- How do you know ___ is the person operating this account on (FB/Twitter/Instagram/etc.)?
- Are there photos & information posted using this account that only ___ would know or have access to?
- Does the exhibit depict how you see ___'s page from your account? How do you know this is ___'s page?
- Do you recognize the (post or comment) in the exhibit from ___'s page?
- When did you last view it on their page?
- Have you altered or deleted any portions of the (post or comment) depicted in this exhibit?
- Is this a fair & accurate representation of the (post or comment) you viewed on ___'s page?

Website:

- Do you recognize the website depicted in this exhibit? What is it?
- How was this exhibit prepared?
- Does this exhibit accurately represent what appeared on your computer screen when you viewed this website?

- Does the exhibit contain the website address (URL) with the date & time it was accessed?

Business Records: (custodian of records):

- Where are you employed?
- What is your position at the entity?
- Do you recognize this exhibit? What is it?
- Was the exhibit made & kept in regular course of business?
- Was regular practice of business to create records like the exhibit?
- Was the exhibit created at or near the time of the event recorded?
- Was the exhibit made by, or from information provided by, someone with personal knowledge acting within the regular course of business?
- Are the documents true & correct copies of the originals?

Courtroom Demonstration:

- W personally observed act
 - Did you see ___?
 - What happened?
 - Could you demonstrate ___ for us the same way you remember observing it at the time?
- W did not personally observe act
 - Have you received training in ___?
 - Do you have experience (performing or observing) ___?
 - How (many times or how often) have you (performed or observed) ___?
 - Did you review the __ records in this case? W testimony?
 - Although you were not present at the time, based on your training & experience, can you draw reasonable inferences about what may have occurred during ___ based on the descriptions contained in the __ records & W testimony?
 - Would it assist the (J or Jury) to understand what happened during __ if you demonstrate what the evidence suggests happened?
 - Will your demonstration be substantially similar to the ___ described in the medical records & W testimony?
 - Based on your training, experience, & review of the evidence, could you please demonstrate to the (J or Jury) ___?



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