

QUESTION 2 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I  
OR IN SOFTEST ANSWER SCREEN 2

Paul claims back and neck injuries arising out of an automobile accident. Denise, the defendant, rear-ended Paul's Cadillac Escalade while driving her Mini-Cooper. The only eyewitness to the accident, Wilma, testified in her deposition that Paul was speeding and abruptly stopped, when Denise, driving slowly, swerved to avoid him. Wilma also testified that Denise, nevertheless, gently bumped Paul's Escalade, at which point Paul leapt from his vehicle, waving his arms and jumping around.

During trial in a Michigan state court, Denise is offering the expert testimony of a nationally recognized orthopedic surgeon. This expert will testify that Paul has back and neck conditions that are longstanding and in no way related to the accident. The expert bases his opinion on (1) Paul's certified hospital records containing his surgeon's diagnosis that the conditions are strictly congenital; (2) the expert's assessment that his experience, training, and education as applied to his physical examination of Paul confirmed the hospital diagnosis; and (3) Wilma's deposition testimony. The hospital record contains the regular entries of those hospital personnel, including the surgeon, who provided services to Paul during his stay, pursuant to the hospital's usual business practice. Denise timely informed Paul of her intent to use the record and offered the sworn certification and record for his review pretrial. Paul chose not to review it.

Paul moved pre-trial to exclude the expert's testimony altogether under MRE 702. The trial court denied the motion, finding the expert's experience, training, and education sufficient to be of assistance to the jury. With the expert now on the witness stand, Paul objects to the expert's testimony, arguing that the facts and data on which the expert is basing his opinion -- (i) his experience, training, and education; (ii) Wilma's deposition testimony; and (iii) the hospital record are not in evidence as required by MRE 703, Basis of Opinion Testimony By Experts. Paul also argues that the hospital record is hearsay and cannot be authenticated under MRE 901 because the hospital surgeon is deceased and cannot be cross-examined. Finally, he argues that, although either he or Denise could have called Wilma as a trial witness, he did not do so and Denise has not done so yet.

\*\*\*\*\*THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I\*\*\*\*\*  
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Explain your analysis and determine how the court should rule on each of Paul's objections that:

1. The expert's experience, training, and education are not in evidence.
2. Wilma's deposition testimony is not in evidence.
3. The hospital record is hearsay.
4. The hospital record cannot be authenticated.