

EXERCISE**SUMMARY JUDGMENT BRIEFING STRATEGIES*****Background***

You're on a litigation team representing a hospital being sued by a group of patients for negligence. A surgeon the hospital employed had a substance abuse problem that affected his performance during surgeries. Plaintiffs' complaint alleges that the hospital was aware of the problem because of the doctor's appearance at work; because the doctor attended rehab before he worked at the hospital; and because the hospital CEO's spouse, who's a nurse in the ER, was cc'd on emails about the doctor's behavior.

The email evidence, however, does not specifically mention drugs, and the CEO's spouse said at her deposition that when she read the emails, she believed the doctor's behavior was from fatigue. In your last set of contention interrogatories, plaintiffs admitted that the doctor's appearance at work may have been explained by other things, such as fatigue.

Discovery just closed. The partner advised the client that winning on summary judgment was unlikely, but recommended moving forward with summary judgment anyway.

Instructions

You are working on the brief for the motion. Come prepared to discuss these questions:

- Why might winning on summary judgment be unlikely, and what are some reasons to move forward anyway?
- Why might you rely on the evidence regarding the emails?
- Where might you look for undisputed facts that you can use to argue your motion?
- When researching case law for the brief, what kinds of cases would you look for?
- What are some tips to keep in mind when you're drafting the legal standard section for this brief?