



Report from the

CASE STRENGTH EVALUATION RESEARCH

conducted for:

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**Research date - December 17, 1996
in Duval County, Florida**

in the case of:

Howard v. City Hospital

CONFIDENTIAL WORK PRODUCT

CASE STRENGTH EVALUATION RESEARCH

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METHODOLOGY

This report is based on data collected from 28 mock jurors who participated in the Case Strength Evaluation Research held on December 17, 1996 in Jacksonville, Duval County, Florida. Participants were jury eligible citizens who were recruited from the Duval County State Court District. When mock jurors arrived, they answered a series of questions pertaining to personal characteristics, general attitudes, and case related issues. The mock jurors then viewed a live presentation of the case facts. The adversarial presentation was varied for each group of mock jurors. All mock jurors responded to questionnaire items at various intervals during the research, to assess their reactions to case issues. The mock jurors received judge's instructions, then deliberated to render a group verdict. The mock jurors responded to a final set of questions at the conclusion of the group discussion. This report is based on the analysis of mock jurors' responses to questionnaire items as well as the content and course of the group discussion.

VENUE DEMOGRAPHIC PROFILE

DUVAL COUNTY

POPULATION, 2000 AND PERCENTAGE CHANGE 1990-2000

	FLORIDA	DUVAL
POPULATION	15,982,378	778,879
CHANGE 1990-2000	+23.5%	+15.7%

POPULATION DENSITY, 2000

	FLORIDA	DUVAL
PERSONS PER SQUARE MILE, 2000	296.4	1,006.3

SEX AND AGE, 2000

	FLORIDA	DUVAL
POPULATION	15,982,378	778,879
SEX: MALE	48.8%	48.5%
FEMALE	51.2%	51.5%
AGE: 0-14	19.0%	22.1%
(% OF POPULATION BY AGE GROUP)		
15-24	12.2%	13.8%
25-44	28.6%	32.4%
45-64	22.7%	21.2%
65+	17.6%	10.5%
MEDIAN AGE (YEARS)	38.7	34.1

RACE, 2000

	FLORIDA	DUVAL
TOTAL POPULATION	15,982,378	778,879
WHITE	78.0%	65.8%
BLACK OR AFRICAN AMERICAN	14.6%	27.8%
AMERICAN INDIAN, ALASKA NATIVE	0.3%	0.3%
ASIAN	1.7%	2.7%
NATIVE HAWAIIAN, PACIFIC ISLANDER	0.1%	0.1%
SOME OTHER RACE	3.0%	1.3%
TWO OR MORE RACES	2.4%	2.0%
HISPANIC*	16.8%	4.1%

NOTE: *PERSONS OF HISPANIC ORIGIN MAY BE OF ANY RACE, THUS PERCENTAGES ARE COMPUTED SEPARATE FROM OTHER CLASSIFICATIONS

MARITAL STATUS, 2000

	FLORIDA	DUVAL
POPULATION, AGE 15+	12,946,990	606,727
NEVER MARRIED	23.8%	26.5%
MARRIED	54.3%	50.9%
SEPARATED	2.4%	2.9%
WIDOWED	7.9%	6.4%
DIVORCED	11.6%	13.4%

NOTE: REPORTED PERCENTAGES MAY NOT TOTAL 100% DUE TO ROUNDING
VENUE DEMOGRAPHIC PROFILE, DUVAL COUNTY, CONT'D

EDUCATIONAL ATTAINMENT, 2000

		FLORIDA	DUVAL
	POPULATION, AGE 25+ LESS THAN 9TH GRADE	11,024,645 6.7%	499,602 4.3%
HIGH SCHOOL	9TH TO 12TH GRADE GRADUATE	13.4% 28.7%	12.9% 29.1%
COLLEGE	SOME, NO DEGREE ASSOCIATE DEGREE BACHELOR'S DEGREE GRADUATE DEGREE	21.8% 7.0% 14.3% 8.1%	24.2% 7.5% 15.0% 6.9%

EMPLOYMENT STATUS, 2000

	FLORIDA	DUVAL
POPULATION, AGE 16+	12,744,825	595,693
IN LABOR FORCE	7,471,977	401,657
- EMPLOYED*	54.9%	61.6%
- UNEMPLOYED*	3.2%	3.2%

NOTE: *PERCENTAGES REPORTED ARE OF POPULATION, AGE 16+

OCCUPATION, 2000

	FLORIDA	DUVAL
EMPLOYED CIVILIAN POPULATION, AGE 16+	6,995,047	367,065
MANAGEMENT/PROFESSIONAL SERVICE	31.5% 16.9%	32.4% 17.9%
SALES/OFFICE	29.5%	29.7%
FARMING/FISHING/FORESTRY	0.9%	0.4%
CONSTRUCTION/EXTRACTION/MAINTENANCE	10.3%	8.9%
PRODUCTION/TRANSPORTATION	10.8%	10.6%

HOUSEHOLD INCOME, 1999

	FLORIDA	DUVAL
NUMBER OF HOUSEHOLDS	6,341,121	303,871
LESS THAN \$10,000	9.6%	9.3%
\$10,000 TO \$14,999	6.7%	5.8%
\$15,000 TO \$24,999	14.5%	13.3%
\$25,000 TO \$34,999	14.2%	14.1%
\$35,000 TO \$49,999	17.4%	18.4%
\$50,000 TO \$74,999	18.5%	20.1%
\$75,000 TO \$99,999	8.7%	9.3%
\$100,000 TO \$149,999	6.3%	6.4%
\$150,000 TO \$199,999	1.8%	1.5%
\$200,000 OR MORE	2.3%	1.8%
MEDIAN FAMILY INCOME	\$38,819	\$40,703

NOTE: REPORTED PERCENTAGES MAY NOT TOTAL 100% DUE TO ROUNDING
SOURCE: U.S. CENSUS BUREAU, CENSUS 2000

GROUP 1 JUROR PROFILES & INDIVIDUAL VERDICTS*

<p>Juror 4: Richard, 65+, White, Married, Technical School, Retired-Machinist, Sp. Machinist, \$1,000,000</p>		<p>Juror 5: (A) Pamela, 25-34, White, Married, Associate Degree, Teacher, Sp. Electronics, \$2,000,000</p>
<p>Juror 3: (A) Alice, 55-64, White, Married, College Degree, Administrative, Sp. Administrative, \$1,000,000</p>		<p>Juror 6: Foreperson Diana, 45-54, White, Married, Some College, Cosmetologist, Sp. Construction, \$5,000,000</p>
<p>Juror 2: Rene, 65+, White, Divorced, HS Graduate, Retired-Military, \$2,000,000</p>		<p>Juror 7: (A) Rahila, Female, 25-34, White, Married, Masters Degree, Counselor, Sp. Electronics, \$15,000,000</p>
<p>Juror 1: (A) Frank, 45-54, White, Married, HS Graduate, Retired-Sales, Sp. Sales, \$1,500,000</p>		<p>Juror 8: Olga, 55-64, Hispanic, Married, Some College, Homemaker, Sp. Electronics, \$2,000,000</p>

(A) City Hospital experience.

Note: Juror 6 (Foreperson) had heard of 3 defendant doctors.

* *Reflects individual verdicts, post deliberations.*

**VERDICT FORM
GROUP 1**

1. Was there negligence on the part of City Hospital which was a legal cause of injury to James B. Howard?

YES

2. Was there negligence on the part of John Smith, M.D., which was a legal cause of injury to James B. Howard?

YES

3. Was there negligence on the part of George Johnson, M.D., which was a legal cause of injury to James B. Howard?

YES 6 NO 2

4. Was there negligence on the part of William Goldstein, M.D., which was a legal cause of injury to James B. Howard?

YES

5. Was there negligence on the part of Elizabeth Warren, R.N., M.D., which was a legal cause of injury to James B. Howard?

YES 5 NO 3

6. Was there negligence on the part of Douglas Collins, M.D., which was a legal cause of injury to James B. Howard?

YES 3 NO 5

**VERDICT FORM
GROUP 1, CONT'D**

7. State the percentage of any negligence, which was a legal cause of James B. Howard's injuries, that you charge to:

a.	City Hospital	60%
b.	John Smith, M.D.	6%
c.	George Johnson, M.D.	5%
d.	Richard Hynes, M.D.	15%
e.	Elizabeth Warren, R.N., M.D.	10%
f.	Douglas Collins, M.D.	4%
	TOTAL	100%

8. What is the amount of any damages sustained for medical expenses in the past?

\$ 250,000

9. What is the amount of any future damages for medical expenses to be sustained in future years?

a.	Total damages over future years?	\$ 500,000
b.	The number of years over which those future damages are intended to provide compensation?	15
c.	What is the present value of those future damages?	\$ 250,000

10. What is the amount of any damages for pain and suffering, disability, physical impairment, mental anguish, inconvenience, or loss of capacity for the enjoyment of life:

a.	in the past?	\$ 500,000
b.	in the future?	\$ 500,000
	TOTAL DAMAGES OF JAMES HOWARD	\$1,500,000

**VERDICT FORM
GROUP 1, CONT'D**

11. What is the amount of any damages sustained by Susan Howard's loss of her husband's services, comfort, society and attentions:

a.	in the past?	\$ 500,000
b.	in the future?	\$ 250,000
	TOTAL DAMAGES OF SUSAN HOWARD	\$ 750,000

GROUP 2 JUROR PROFILES & INDIVIDUAL VERDICTS*

	<p>Juror 5: (B) Grace, Under 25, White, Married, Associate Degree, Student, Sp. Quality Assurance, \$0</p>	<p>Juror 6: Ronald, 35-44, White, Married, Some College, Sales, Sp. Clerical, \$3,000,000</p>	
<p>Juror 4: (B) Donald, 35-44, White, Married, Associate Degree, Machinist, Sp. Travel/Tourism, \$1,500,000</p>	<p style="font-size: 2em; opacity: 0.5;">[REDACTED]</p>		<p>Juror 7: (A) Shirley, 55-64, White, Divorced, HS Graduate, Electronics, \$3,665,000</p>
<p>Juror 3: Cleveland, 65+, Black, Married, < High School, Retired-Plumber, Sp. Skilled Labor, \$500,000</p>			<p>Juror 8: (A) Brigitte, 25-34, White, Married, Associate Degree, Clerical, Sp. Heavy Equip., \$10,000,000</p>
<p>Juror 2: Linda, 35-44, White, Married, Technical School, Songwriter, Sp. Managerial, \$3,665,000</p>			<p>Juror 9: Foreperson Alice, 55-64, White, Widowed, College Degree, YMCA, \$3,000,000</p>
<p>Juror 1: Martin, 45-54, White, Married, Some College, Retired-Military, Sp. Hotel Industry, \$3,000,000</p>			<p>Juror 10: John, 65+, White, Married, HS Graduate, Military, Sp. Administrative, \$1,500,000</p>

(A) City Hospital experience; (B) Has heard of Dr. Johnson

* Reflects individual verdicts, post deliberations.

**VERDICT FORM
GROUP 2**

1. Was there negligence on the part of City Hospital which was a legal cause of injury to James B. Howard?

YES 9 NO 1

2. Was there negligence on the part of John Smith, M.D., which was a legal cause of injury to James B. Howard?

YES 8 NO 2

3. Was there negligence on the part of George Johnson, M.D., which was a legal cause of injury to James B. Howard?

YES 8 NO 2

4. Was there negligence on the part of William Goldstein, M.D., which was a legal cause of injury to James B. Howard?

YES

5. Was there negligence on the part of Elizabeth Warren, R.N., M.D., which was a legal cause of injury to James B. Howard?

YES 9 NO 1

6. Was there negligence on the part of Douglas Collins, M.D., which was a legal cause of injury to James B. Howard?

YES 7 NO 3

**VERDICT FORM
GROUP 2, CONT'D**

7. State the percentage of any negligence, which was a legal cause of James B. Howard's injuries, that you charge to:

a.	City Hospital	30%
b.	John Smith, M.D.	10%
c.	George Johnson, M.D.	10%
d.	Richard Hynes, M.D.	30%
e.	Elizabeth Warren, R.N., M.D.	15%
f.	Douglas Collins, M.D.	5%
	TOTAL	100%

8. What is the amount of any damages sustained for medical expenses in the past?

\$ 165,000

9. What is the amount of any future damages for medical expenses to be sustained in future years?

a.	Total damages over future years?	\$2,000,000
b.	The number of years over which those future damages are intended to provide compensation?	25
c.	What is the present value of those future damages?	\$2,000,000

10. What is the amount of any damages for pain and suffering, disability, physical impairment, mental anguish, inconvenience, or loss of capacity for the enjoyment of life:

a.	in the past?	\$ 500,000
b.	in the future?	\$ 500,000
	TOTAL DAMAGES OF JAMES HOWARD	\$3,165,000

**VERDICT FORM
GROUP 2, CONT'D**

11. What is the amount of any damages sustained by Susan Howard's loss of her husband's services, comfort, society and attentions:

a.	in the past?	\$ 250,000
b.	in the future?	\$ 250,000
	TOTAL DAMAGES OF SUSAN HOWARD	\$ 500,000

GROUP 3 JUROR PROFILES & INDIVIDUAL VERDICTS*

	<p>Juror 5: Michael, 55-64, White, Married, Some Work Toward a Graduate Degree, Teacher, Sp. Government, \$4,500,000</p>	<p>Juror 6: (A) Craig, 55-64, White, Married, Associate Degree, Engineering, Sp. Homemaker, \$2,500,000</p>
<p>Juror 4: Patricia, 35-44, White, Married, HS Graduate, Electronics, Sp. Electronics, \$0</p>		<p>Juror 7: Laura, 45-54, Black, Divorced, Associate Degree, Teacher, \$500,000</p>
<p>Juror 3: Deborah, 35-44, White, Married, Some College, Electronics, Sp. Electronics, \$3,000,000</p>		<p>Juror 8: Tony, 55-64, White, Separated, Masters Degree, Sp. Ret. Engineering, \$1,500,000</p>
<p>Juror 2: Foreperson (A) Paulette, 45-54, White, Married, Associate Degree, Administrative, Sp. Administrative, \$1,000,000</p>		<p>Juror 9: Linda, 35-44, White, Widowed, HS Graduate, Clerical, \$5,000,000</p>
<p>Juror 1: James, 55-64, White, Married, Some College, Banking, Sp. Administrative, \$1,500,000</p>		<p>Juror 10: Katherine, 35-44, White, Divorced, Associate Degree, Teacher, \$1,500,000</p>

(A) City Hospital experience.

* Reflects individual verdicts, post deliberations.

**VERDICT FORM
GROUP 3**

1. Was there negligence on the part of City Hospital which was a legal cause of injury to James B. Howard?

YES 8 NO 2

2. Was there negligence on the part of John Smith, M.D., which was a legal cause of injury to James B. Howard?

NO

3. Was there negligence on the part of George Johnson, M.D., which was a legal cause of injury to James B. Howard?

YES 9 NO 1

4. Was there negligence on the part of William Goldstein, M.D., which was a legal cause of injury to James B. Howard?

YES

5. Was there negligence on the part of Elizabeth Warren, R.N., M.D., which was a legal cause of injury to James B. Howard?

YES

6. Was there negligence on the part of Douglas Collins, M.D., which was a legal cause of injury to James B. Howard?

YES

**VERDICT FORM
GROUP 3, CONT'D**

7. State the percentage of any negligence, which was a legal cause of James B. Howard's injuries, that you charge to:

a.	City Hospital	9%
b.	John Smith, M.D.	0%
c.	George Johnson, M.D.	5%
d.	Richard Hynes, M.D.	52%
e.	Elizabeth Warren, R.N., M.D.	29%
f.	Douglas Collins, M.D.	5%
	TOTAL	100%

8. What is the amount of any damages sustained for medical expenses in the past?

\$ 165,000

9. What is the amount of any future damages for medical expenses to be sustained in future years?

a.	Total damages over future years?	\$1,000,000
b.	The number of years over which those future damages are intended to provide compensation?	20
c.	What is the present value of those future damages?	\$1,000,000

10. What is the amount of any damages for pain and suffering, disability, physical impairment, mental anguish, inconvenience, or loss of capacity for the enjoyment of life:

a.	in the past?	\$ 500,000
b.	in the future?	\$ 500,000

TOTAL DAMAGES OF James Howard \$2,165,000

**VERDICT FORM
GROUP 3, CONT'D**

11. What is the amount of any damages sustained by Susan Howard's loss of her husband's services, comfort, society and attentions:

a.	in the past?	\$ 100,000
b.	in the future?	\$ 100,000
	TOTAL DAMAGES OF SUSAN HOWARD	\$ 200,000

PSYCHOLOGICAL OVERVIEW

Perhaps the greatest obstacle to overcome in this case is in reducing the impact of Howard's pre-existing problems on jurors' decision making. It is far too easy for jurors to discuss Howard's symptoms, and his doctors' role in causing his injury, as they consider City Hospital's liability. Further, it is likely that blame will be spread among all parties, with City Hospital's receiving 50% or less. You need to investigate whether pursuing the doctors as named defendants will enhance your credibility and lead to a more favorable outcome. Under the current scenario, some jurors will be frustrated by their inability to find fault with the physicians (at a minimum, the psychiatrist appears blameworthy).

If you are successful in overcoming liability hurdles, obtaining a sizable damages award may be unlikely. As stated elsewhere in this report, most jurors will be unable to relate to the plaintiff's lifestyle prior to his experience at City Hospital. Those who are able to relate may be unwilling to do so due to the psychological process of defensive attribution (over-identifying with the plaintiff to the point of blaming him for his fate). Jurors typically have difficulty in awarding large damages to persons who, in their view, were less than upstanding citizens prior to their injury. Unfortunately, Howard's disability and pre-existing work against him in this regard. On a positive note, Mrs. Howard's claim had considerable jury appeal, even in the absence of jurors' personal knowledge of her. This case, more than most others in my experience, appears to have a substantial lost consortium component.

If you are unable to settle this case, additional research, with longer arguments and the incorporation of findings and recommendations contained in this report, is strongly recommended.

CASE STRENGTHS

- Jurors recognized the hospital's responsibility in causing Mr. Howard's injury.
- Most jurors perceived the physicians as failing to communicate with one another, leading to "dropping the ball" in Mr. Howard's care.
- Many jurors remarked on the absurdity of requesting tests, then not looking at the results.
- Jurors believed Mr. Howard was not made aware of all the risks associated with his surgery.
- Many jurors were disturbed by the defendants' clearance of the plaintiff for surgery, despite the absence of test results.
- Jurors responded favorably to the significant consortium claim of Mrs. Howard.

CASE WEAKNESSES

- Jurors in this venue are generally conservative with regard to damages, especially the intangibles.
- Some jurors appeared to give the physicians the benefit of the doubt if they had only limited contact with Mr. Howard.
- Some jurors seemed reluctant to conclude that almost all medical personnel who came in contact with Mr. Howard failed to provide proper care.
- Certain subtleties involving medical procedures were lost on jurors; many appeared to "gloss over" critical details.
- Some jurors appeared to view Mr. Howard unfavorably due to his weight and pre-existing problems.

COMPELLING ARGUMENTS

Plaintiff

- The plaintiff did not have medical clearance for surgery.
- When the plaintiff had surgery, there was nothing wrong with his arms and legs.
- One of these doctors should have figured there was something wrong.
- All of the doctors had the same opportunity to catch the problem, but they just assumed it was being done.
- The doctors never spoke to one another to develop a treatment plan.
- There were visual signs that confirmed test results; both indicated something was wrong.
- The doctors were aware that some people have a Heparin allergy.
- Dr. Hynes was the captain of the ship.
- Loss of limbs is not a risk commonly associated with back surgery.

COMPELLING ARGUMENTS

Defense

- Only 8% of the population have an allergic reaction to Heparin.
- The plaintiff was in extremely poor health when he was hospitalized.
- The hospital may have made mistakes but these mistakes did not caused his problems.
- There are risks associated with every surgery.

HEURISTICS

Heuristics are common sense reasoning strategies employed by laypersons. These reasoning strategies are "shortcuts" that speed up the decision making process. Heuristics can be in one of the following forms: analogies, knowledge based on past experience, and generalizations. Heuristics may or may not be based on logic. Similarly, they may or may not be correct. It is important to note the heuristics utilized by jurors in your case so that you may appeal to their common sense notions whenever possible.

HEURISTICS

- Why didn't the doctors do their homework?
- If it was me, I'd say "did you check the results?"
- Hynes is the "main man".
- This is a combination of errors.
- There was no circle of communication.
- Substitute doctor is not like a substitute teacher - he still has full responsibility.
- How can you diagnose something if you don't look at the chart?
- Why even have the tests done if no one is reading them?
- All doctors are trained and should be able to read and understand a chart.
- The hospital is only a facility. The doctor is the one who needs to ask the questions and get the answers.
- Dr. Hynes ran the whole show.
- Dr. Hynes is the top dog.
- Dr. Torriente was the substitute teacher who didn't teach.
- I am a mother and I hold my children responsible for what they do but in the end I have the ultimate responsibility.
- The hospital is a conduit for communication.
- There had to be a communication breakdown at some time.
- When the doctors come in, they should look at the patient.
- The vascular surgeon is like the guy who comes in and puts the tire on the rim. He knows it has to have air in it and as long as it doesn't leak it is okay - that is why he is the specialist.

HEURISTICS, CONT'D

- This is like a construction job when a worker says “this is my brick and this is the only thing I am going to worry about is my brick”.
- Doing your job, shouldn't you be looking at the whole picture?
- In the 1970's in banking, if a guy was over drawn, we would call him and say “hey, Joe you are over drawn”. But as the bank grew, we couldn't afford to call all the customers because we don't have enough time in the day to call everyone who is overdrawn - it is the customer's responsibility to find out.
- Mistakes are negligence and there were too many mistakes.
- The average woman lives to the age of 80.
- People always sign informed consent forms. They are made aware of risks. He knew there had to be risks involved with having surgery.
- Diabetic patients do sometimes have problems with their veins.
- He was obese and a diabetic so anything was possible.
- If you're going to have anything to do with blood, shouldn't you be looking at the blood count?
- Every doctor I've had is responsible. The man is supposed to read the chart as soon as they come in.
- If he is my doctor and he is the orthopedic surgeon who is working on me - pay attention to what is going on with me.

COGNITIVE DISTORTIONS

Cognitive distortions occur from memory failure, misinterpretation of new information, or misapplication of old information to new situations. They are, in short, mistakes. Cognitive distortions need to be recognized so that they may be addressed in an anticipatory manner. Commonly occurring cognitive distortions may indicate a need for re-structuring particular parts of a case.

COGNITIVE DISTORTIONS

Medical terms and issues:

- whether "pulmonary" has to do with blood circulation
- there are several comparable drugs to Heparin
- chest x-rays showed right away he was going to have a pulmonary problem
- by switching sides of the main line, it caused more damage
- if he hadn't been given the Heparin he probably would have died from the pulmonary embolism
- you can see and smell gangrene on the second day

Chain of events

- Dr. Bansal did not write any orders
- The plaintiff's initial problems were beyond repair

Why was the plaintiff called into surgery before the tests were final:

- it was an emergency
- it is the hospital's responsibility to decide whether or not someone is ready to be admitted
- there was a reason why the plaintiff was put in the hospital before the tests were back

Confusion on whether or not the test results were entered into the computer:

- the CBC results were not posted

**KEY FACTORS AFFECTING JURORS'
DECISION MAKING**

Key Factors Affecting Jurors' Decision Making are the preexisting attitudes, values, and beliefs which determine, in part, how they view the issues in the case. These characteristics are part of the jurors' unique persona and are difficult to modify, even through persuasive communication. Recognizing these factors will assist the attorney in tailoring arguments to fit in with jurors' preexisting world views.

KEY FACTORS AFFECTING JURORS' DECISION MAKING

- Jurors have a positive view of hospitals in general and City Hospital, making it more than a mere possibility that they will be unwilling to find it at fault.
- Jurors believed doctors should rely on charts, as well as all other information available to them.
- Jurors believed communication among medical personnel is crucial in providing quality medical care.
- Jurors believed surgery risks, while assumed by the patient, do not extend to issues/areas/problems unrelated to the initial diagnosis.
- While most jurors rated themselves as in good or excellent health, they had more than the usual amount of hospitalization experience.
- Jurors were detail oriented and slow decision makers. They are the type of people who will appreciate all the facts and figures involved in this case.
- More so than in many medical malpractice cases, jurors appeared to put themselves in the plaintiff's position. This was mainly due to the fact that his problems were post-surgical in nature (thus reducing the tendency to buy into a "God only knows" defense).
- Jurors had a favorable view of physicians and nurses, and were cognizant that even the best make mistakes.

STRATEGY RECOMMENDATIONS

The Strategy Recommendations contained in this section of the report have been designed to allow you to present your case around what the jurors want to hear. Based upon the analysis of deliberations and questionnaire responses, the following recommendations are suggestions for ways to capitalize on the strengths of your case while minimizing its weaknesses. Most attorneys believe the Strategy Recommendations are most helpful in their preparation of opening statements and final argument.

STRATEGY RECOMMENDATIONS

- Tell the mediator that this case is not one involving a "save a life" versus "save a limb" decision by medical personnel. After the fact, it is far too easy for the defendants to try to convince both fact-finders and themselves that their actions were an attempt to save Mr. Howard's life. Point out the faulty reasoning that the defendants are using in an attempt to save face.
- Explain the significance of the panic value when the platelet count reaches 40,000 or less. Aid the mediator's understanding of the far reaching consequences of a low platelet count. Do not assume that the mediator will draw the appropriate conclusion; most people are unfamiliar with platelet counts.
- Explain how and why the physicians and other medical personnel had the ultimate knowledge, control, and duty in Mr. Howard's care. Admit that, while it may be difficult to conclude that every defendant did something wrong, that is exactly the scenario which transpired. Tell the mediator you realize it is horrifying to acknowledge that almost everyone with whom Mr. Howard came in contact provided less than quality care, but to conclude anything less is to be less than fair to the plaintiff.
- List for the mediator, with a corresponding chart, the warning signs of Heparin allergy. Reveal how all the signs were there to be seen, had the medical personnel only been looking for them! You must convince the mediator that Mr. Howard's condition was obvious, especially for people who are trained to monitor changing symptoms.
- Prepare your case in a timeline. Use a chart to illustrate how the window of opportunity became progressively more closed with each passing day, hour, and minute of inattention. Do not expect the mediator to absorb all of the details in this, rather information-laden, sequence of events. Describe in detail how the passing time meant certain destruction for Mr. Howard.
- Describe each physician in order of degree of responsibility. While your case is necessarily one involving a detailed chronology (see above), it can also be explained by describing: (1) each physician's duties and (2) each physician's failure to perform his/her duties. If possible, re-order the verdict form in terms of most to least physician responsibility.

STRATEGY RECOMMENDATIONS, CONT'D

- Capitalize on the jurors' predisposition to believe it is absurd to request CBCs and not look at the results. Explain to the mediator this absurdity in combination with the multitude of ways in which the results could have been discovered (e.g., the chart, computer, phone calls, etc.). The jurors said it best, "Why conduct tests and not read them?". Use laypersons' language to illustrate this compelling point.
- Help the mediator rule out all alternative explanations of a drop in platelet count. Do not let the mediator conclude that the physicians needed time to isolate other factors which may have been causing Mr. Howard's symptoms. Once again, describe the obvious conclusion to be drawn from the plaintiff's deteriorating condition.

GRAPHICS RECOMMENDATIONS

The following Graphics Recommendations complement the Strategy Recommendations contained in the previous section of the report. Graphics Recommendations range in complexity from blow ups of pertinent jury instructions to charts requiring the design skills of a graphics consultant. Professionally prepared demonstrative aids are an essential part of courtroom preparation. They both educate and maintain interest of the jury.

GRAPHICS RECOMMENDATIONS

- Illustrate the concept of IQ. Portray an IQ of 70 on the scale to demonstrate that it is lower than it first appears. Compare IQ performance to grade level.
- Chart all the elements of pain and suffering damages. Convey to jurors that they are not to award for pain and suffering absent from the other elements.
- Outline the steps involved in gait training. Explain how the steps are different for different people.
- Use a photo of construction workers performing their jobs to convey the activity level the plaintiff once had.
- Chart the contrasts in the plaintiff's life before the amputation and since the amputation. Make sure to list even the most mundane tasks she can no longer perform.
- Use chronology of events charts to:
 - (1) Compare the time taken by most medical malpractice cases to the time taken to get this one to trial.
 - (2) Clarify the timing of the amputation and the onset of diabetes.
- Chart to explain consequences of Howard's damages:
 - loss of capacity to enjoy life
 - loss of everyday tasks

THEMES

- The defendants are making more effort to save face than they made in saving their patient's arm and leg.
- This tragedy resulted from a communication breakdown among Mr. Howard's caregivers.
- The defendants had the power to save their patient's limbs and life; instead they put both at risk.
- The window of opportunity was closed by inattention.

VOIR DIRE QUESTIONS

The order of the voir dire questions which follow is not of particular importance and should be modified to fit in with your "standard" questions. However, the wording of the questions has been designed to elicit maximum information from the venire. In general, the questions should be asked on a group basis, with the "please explain" part used to probe potential jurors on an individual level.

As you will note, the questions are in three general categories: experiential; personality variables; and attitudes, values, and beliefs. Experiential questions are those which measure venire members' personal life experiences which relate to the case. Personality variables are questions that assess potential jurors' predispositions which ultimately affect their decision making. Questions in the attitudes, values, and beliefs section assess potential jurors' overall world view.

Demographic questions are not among the voir dire questions. The reason for the absence of demographic information is that numerous research studies have revealed that juror demographics do not predict verdict. Instead, life experiences, personality variables, and attitudes, values, and beliefs are key factors in jurors' decision making.

VOIR DIRE QUESTIONS

Experiential

- How many of your friends are of a racial or ethnic background that is different from your own? How close is your relationship to this person (these persons)?
- Have you ever visited a foreign country or studied foreign culture? If yes, please explain.
- Have you ever had everything that was important to you taken away by someone else? If yes, please explain.
- Has anyone ever ignored your complaints? If yes, what happened as a result?
- Have you ever known anyone with a low level of intellectual functioning? If yes, what was your relationship to that person?
- Have you, or has anyone close to you, ever suffered the loss of a leg? If yes, what were the circumstances?
- Do you now, or have you ever, worn any type of prosthesis? If yes, please explain.
- Have you ever experienced a sudden change in your lifestyle or activity level due to circumstances beyond your control? If yes, please explain.
- Do you solve problems or trouble shoot as part of your job or your daily responsibilities?
- Have you ever gone to a doctor for a specific reason and been told you had nothing to worry about? If yes, did you believe what your doctor told you?
- Have you ever had an adult who was dependent on your for his/her care? If yes, please explain.

VOIR DIRE QUESTIONS, CONT'D

Attitudes, Values, and Beliefs

- How do you define "quality of life"?
- Do you believe poor people can have a high quality of life? Why or why not?
- Is a person's worth based on his or her race, occupation, or income? Why or why not?
- Do you believe that people who are unable to describe their pain and suffering suffer less than other people? Why or why not?
- Why should racial attitudes not enter into your decision in a lawsuit?
- Are you a family oriented person?
- In what types of activities do you engage with your family?
- Do you believe that letting a problem go without taking care of it creates an even bigger problem? Why or why not?
- What do you believe is the most important duty of a doctor to his patient?

VOIR DIRE QUESTIONS, CONT'D

Personality Variables

- Are you a person who typically gives other people the benefit of the doubt unless you have a good reason not to do so?
- What would you say about a person who has an artificial leg but chooses not to use it?
- Do you make quick judgements about other people or do you ponder on all the information?
- What type of relationship do you have with your physician?
- Do you trust your physician?
- Should you be able to trust your physician? Why or why not?
- Are you the type of person who takes care of problems as soon as they occur?
- When you go to a doctor for treatment of a problem, do you expect to leave in worse shape than you came in? Why or why not?
- Do you think that willpower and a positive attitude can overcome most of life's difficulties? Why or why not?
- Are you a person who is concerned about your physical appearance? Please explain.
- Are you a person whose physical appearance affects your mental attitude? Please explain.
- Why would a doctor alter or destroy his patient's medical records?

SURVEY RESULTS

The charts which follow reflect group responses to selected questions in the juror survey. At the bottom of each chart is a note that indicates when the question was asked. There were four time periods when jurors were completing the survey: before the case presentations (arguments), after the plaintiff's case, after the defendant's case and after deliberations. Some questions, for example, measures of liability and damages, were asked at several different time periods to allow an assessment of juror attitude change. Other questions were asked one time: either before any information was provided, to assess jurors' predisposing attitudes, values, and beliefs as they affect jurors' views of the case, or after deliberations were completed, to measure jurors' attitudes regarding case specific issues. Due to the extremely small sample size (n=28), these results should be viewed as indicative of likely trends in juror behavior, rather than definitive conclusions about the case at issue.

Health:

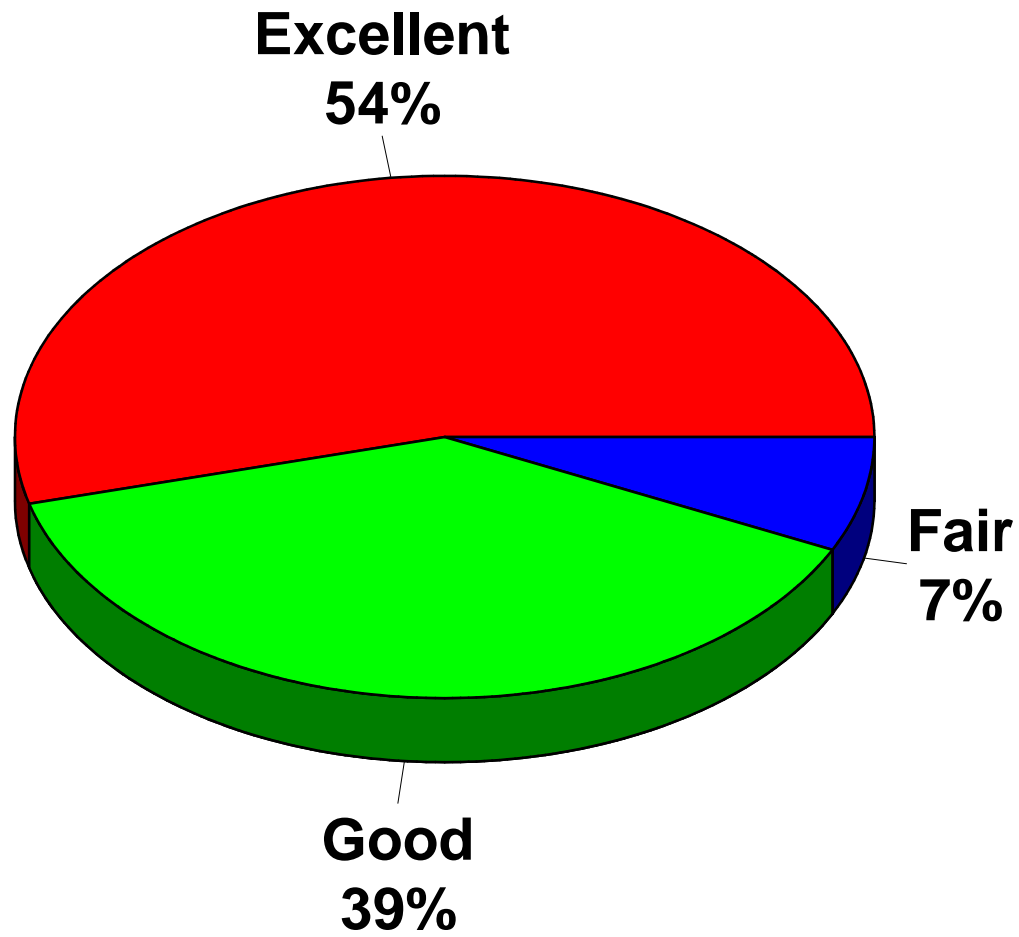
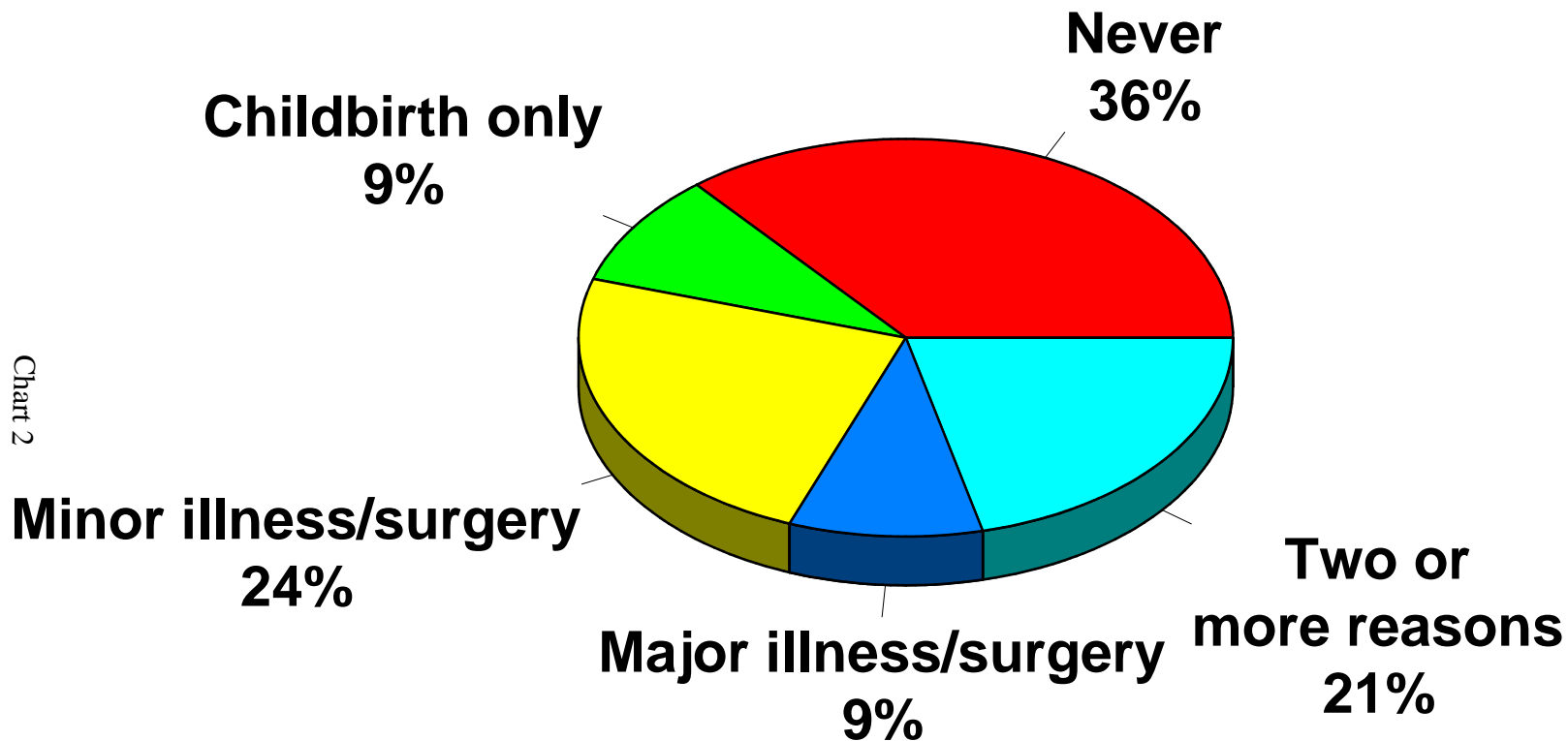


Chart 1

Note: Pre-Presentation

158CSER PR 6/96
Q23

Hospitalization experience:



Note: Pre-Presentation

158CSER PR 6/96
Q24

I usually make decisions based on:

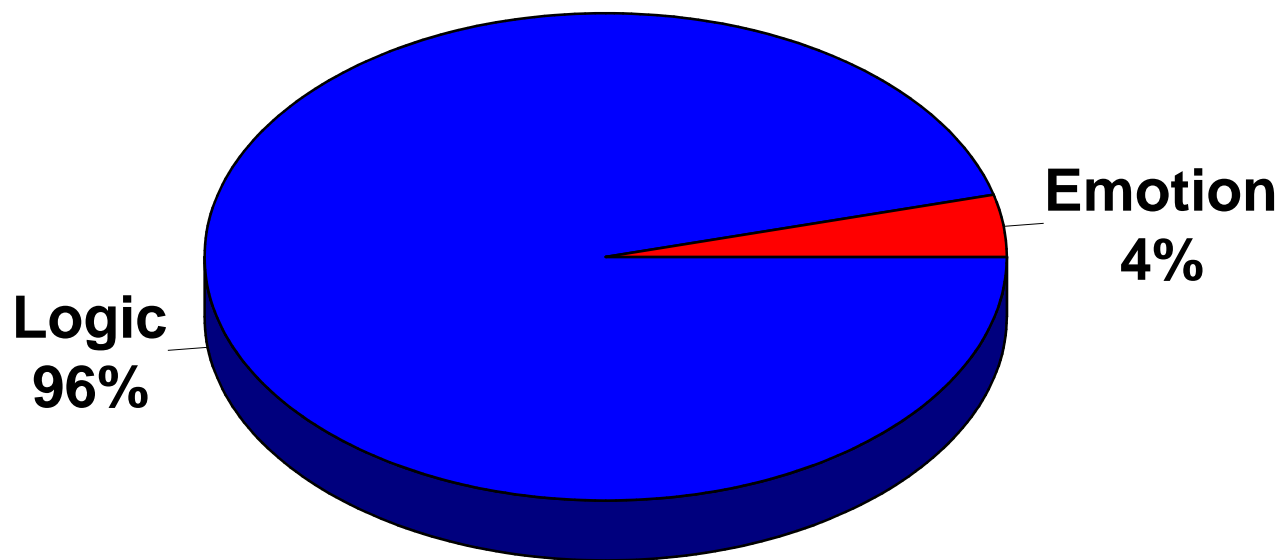


Chart 3

Note: Pre-Presentation

158CSER PR 6/96
Q25

I am usually:

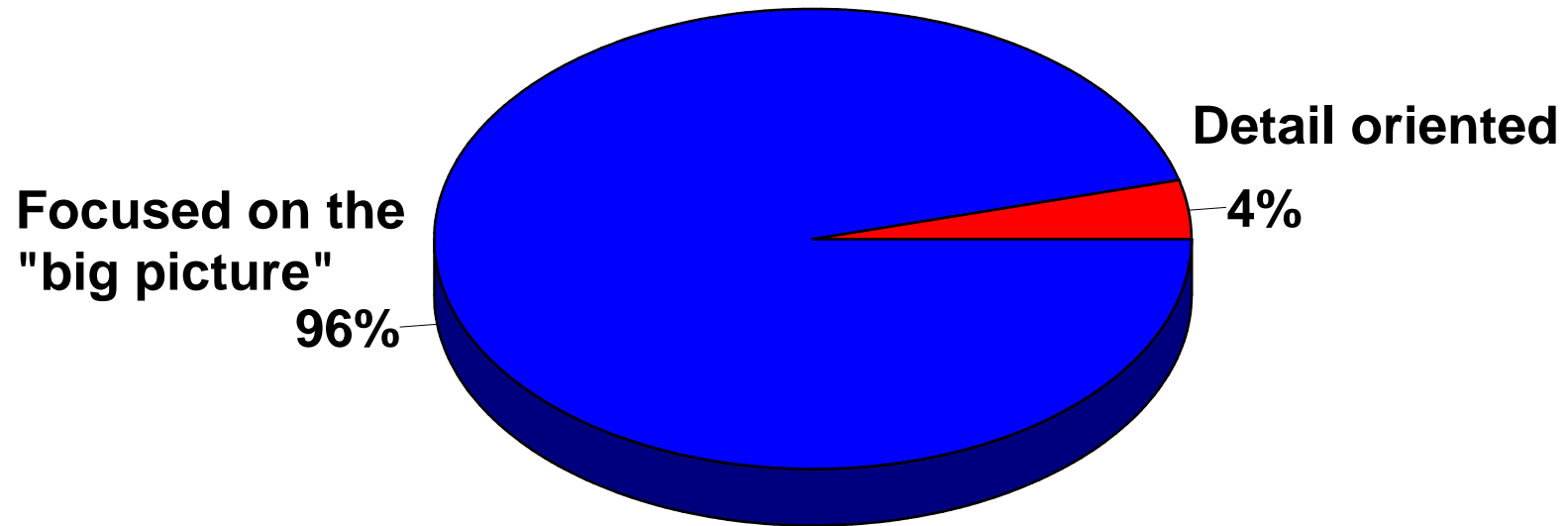


Chart 4

I usually make decisions:

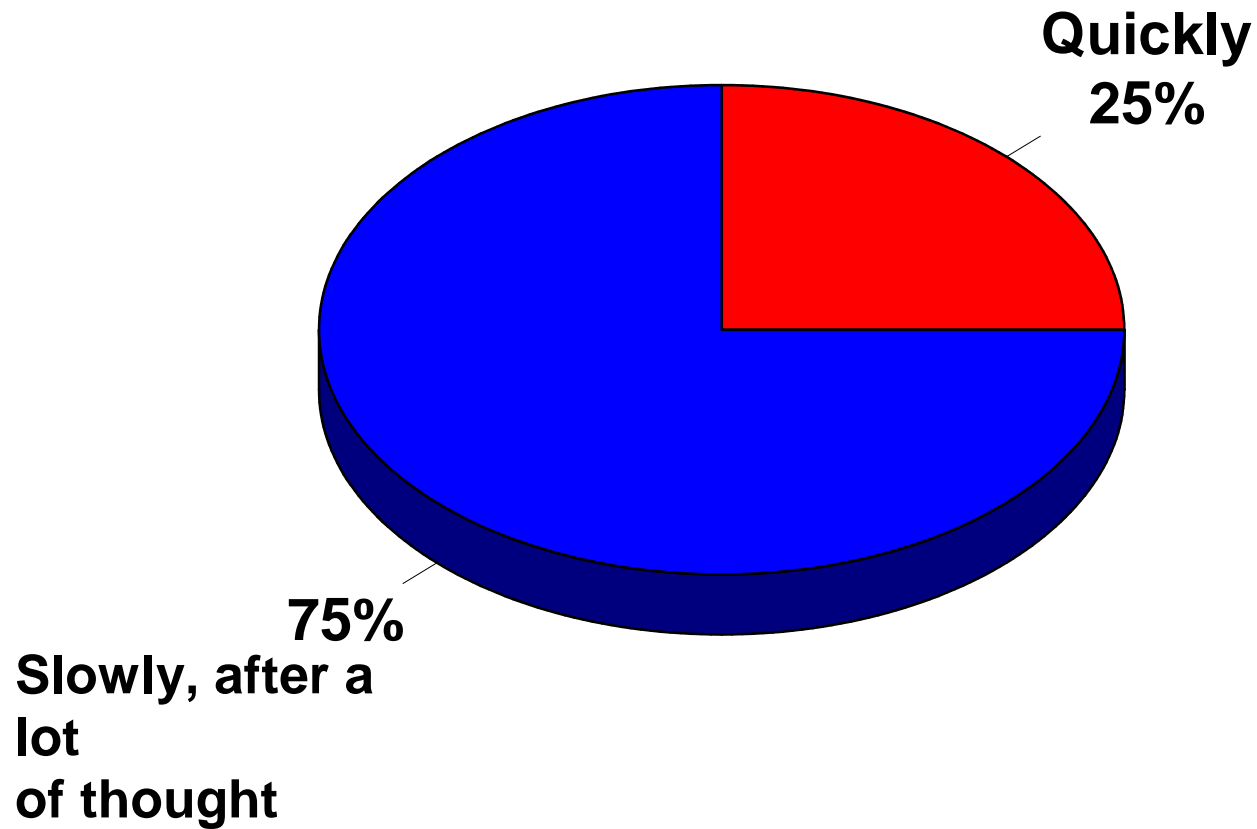


Chart 5

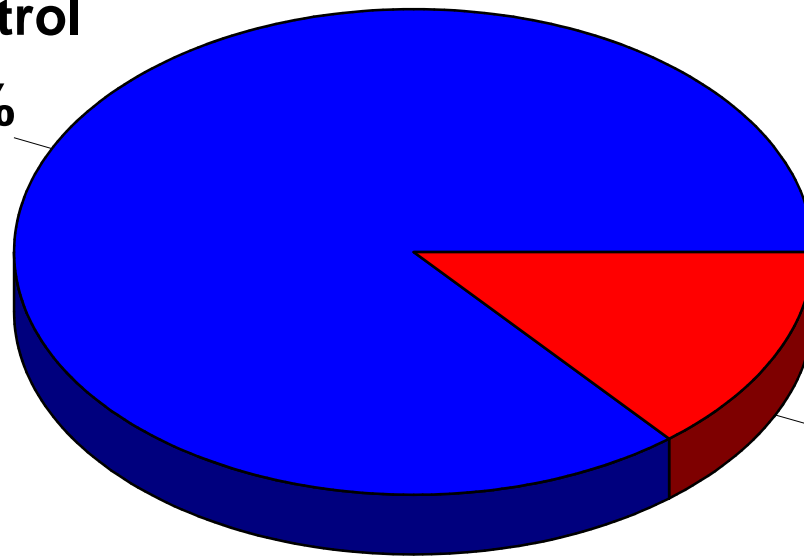
Note: Pre-Presentation

158CSER PR 6/96
Q27

I believe that what happens to me depends on:

**What I do to control
my life**

86%



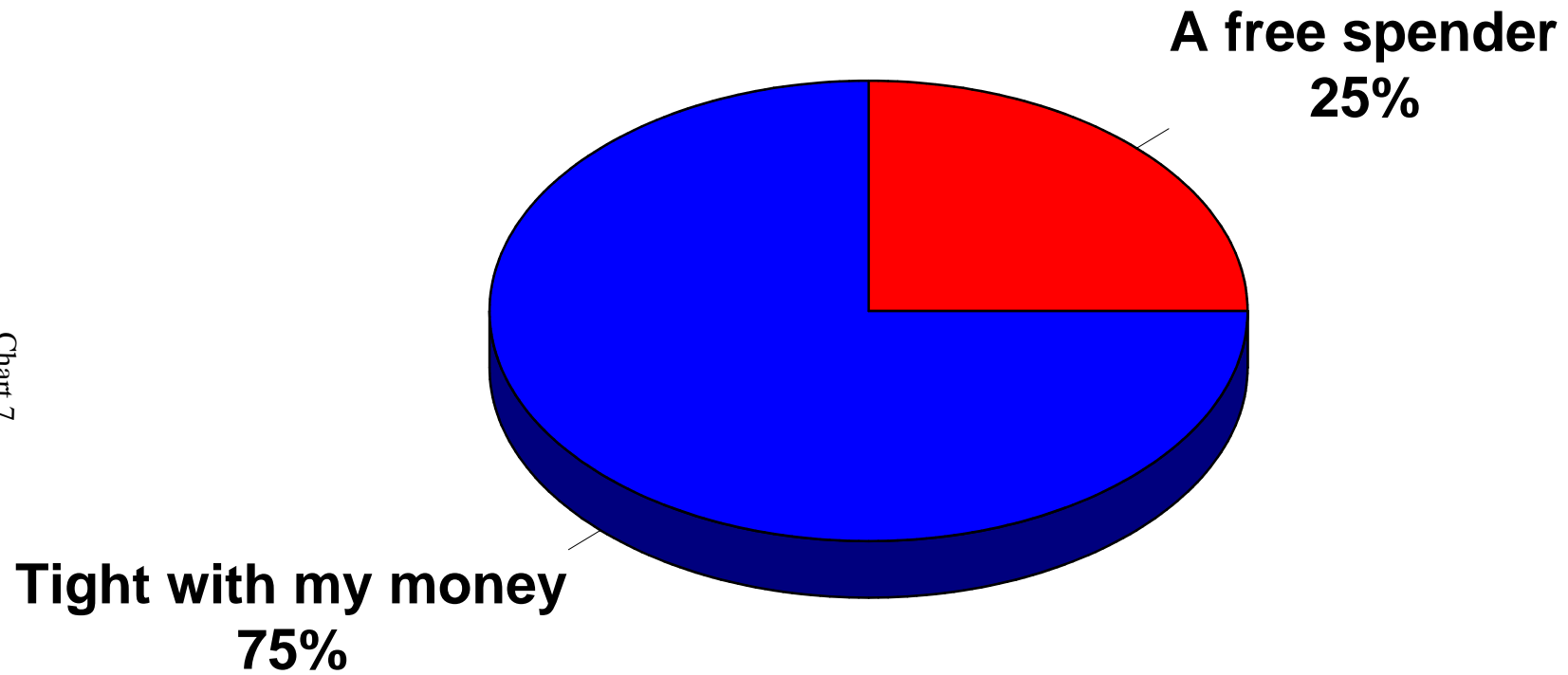
14%

**Fate or
destiny**

Chart 6

I am usually:

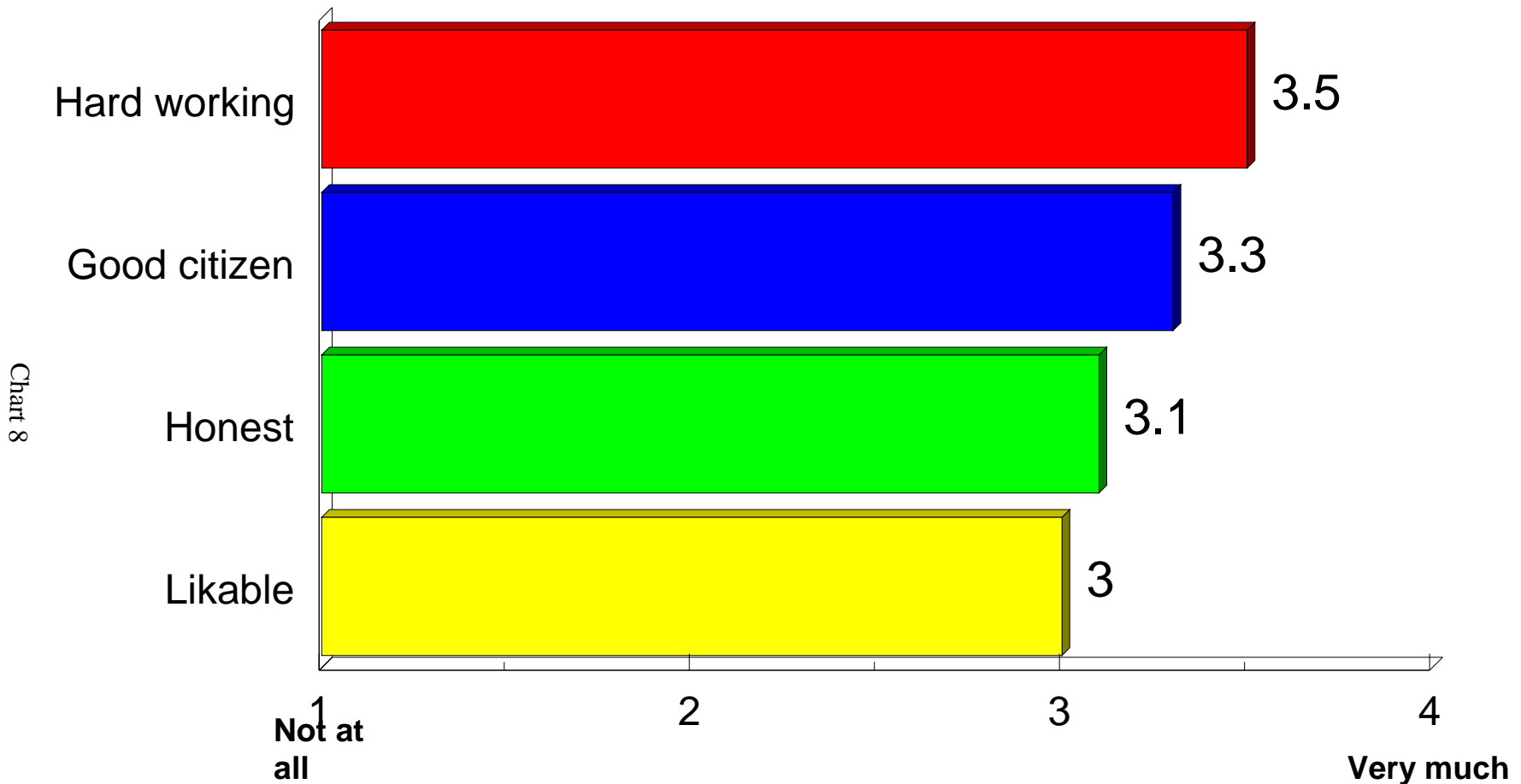
Chart 7



Note: Pre-Presentation

158CSER PR 6/96
Q29

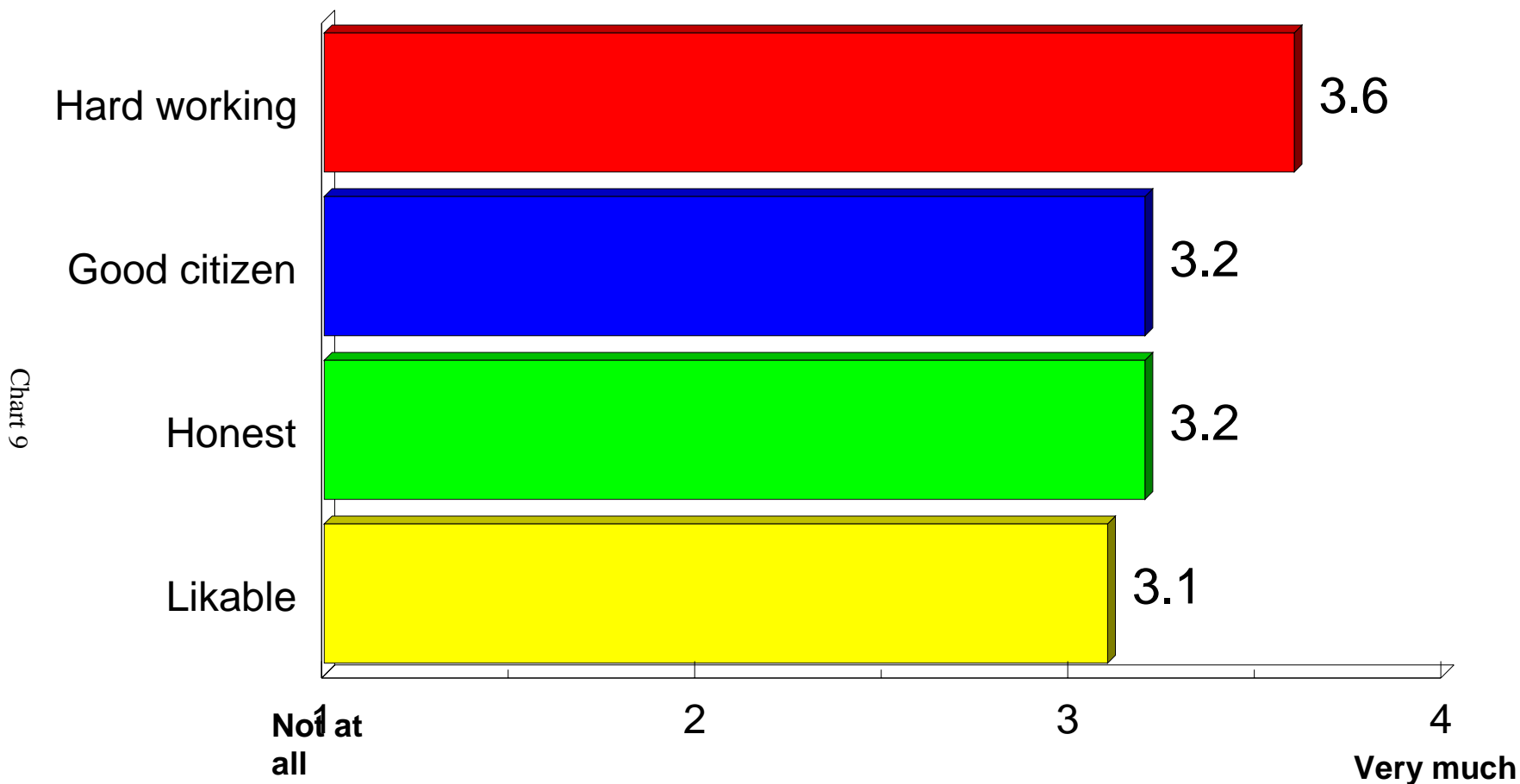
Please rate hospitals on the following characteristics, based on what you know or have heard.



Note: Pre-Presentation

158CSER PR 6/96
Q30

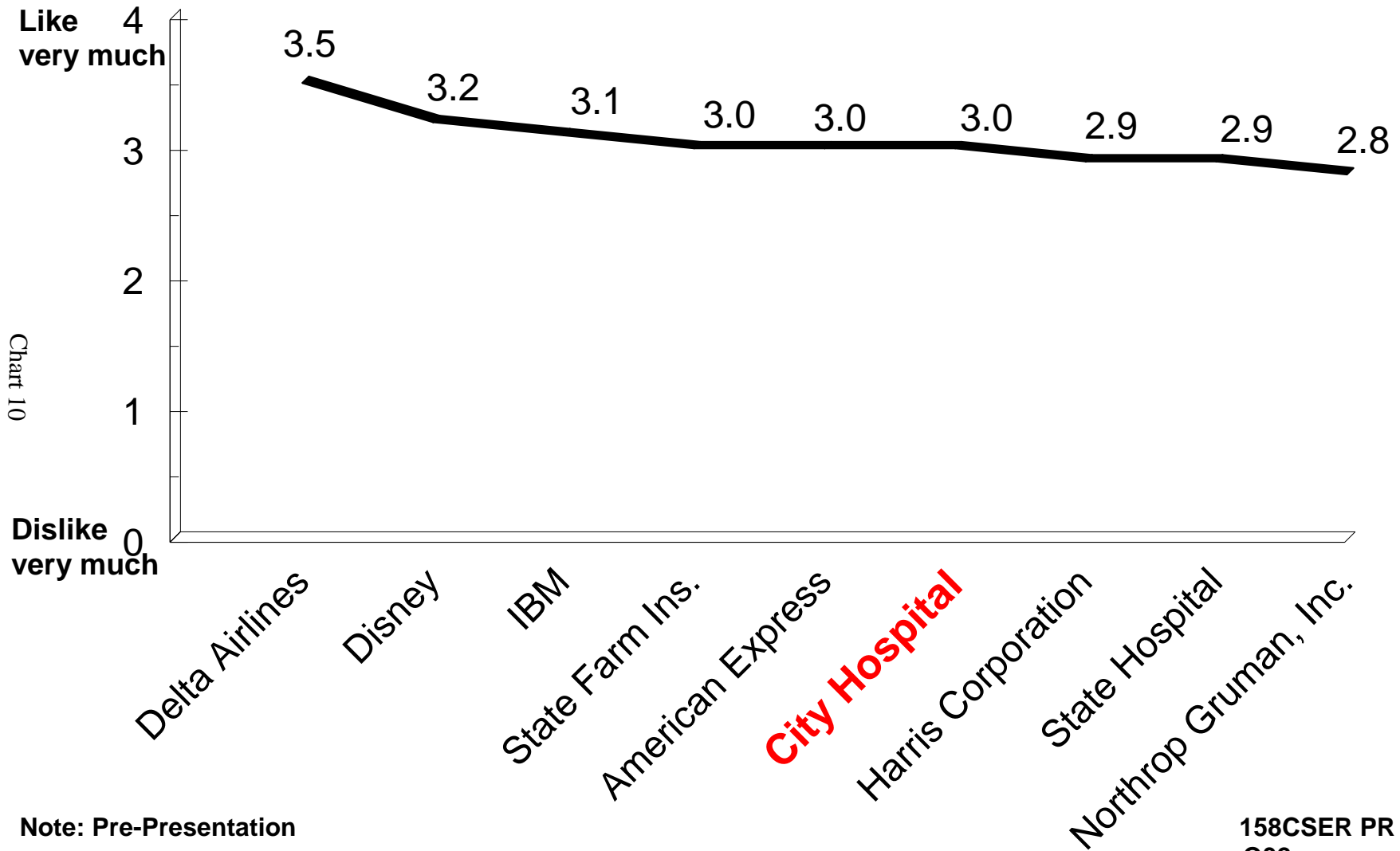
Please rate doctors on the following characteristics, based on what you know or have heard.



Note: Pre-Presentation

158CSER PR 6/96
Q31

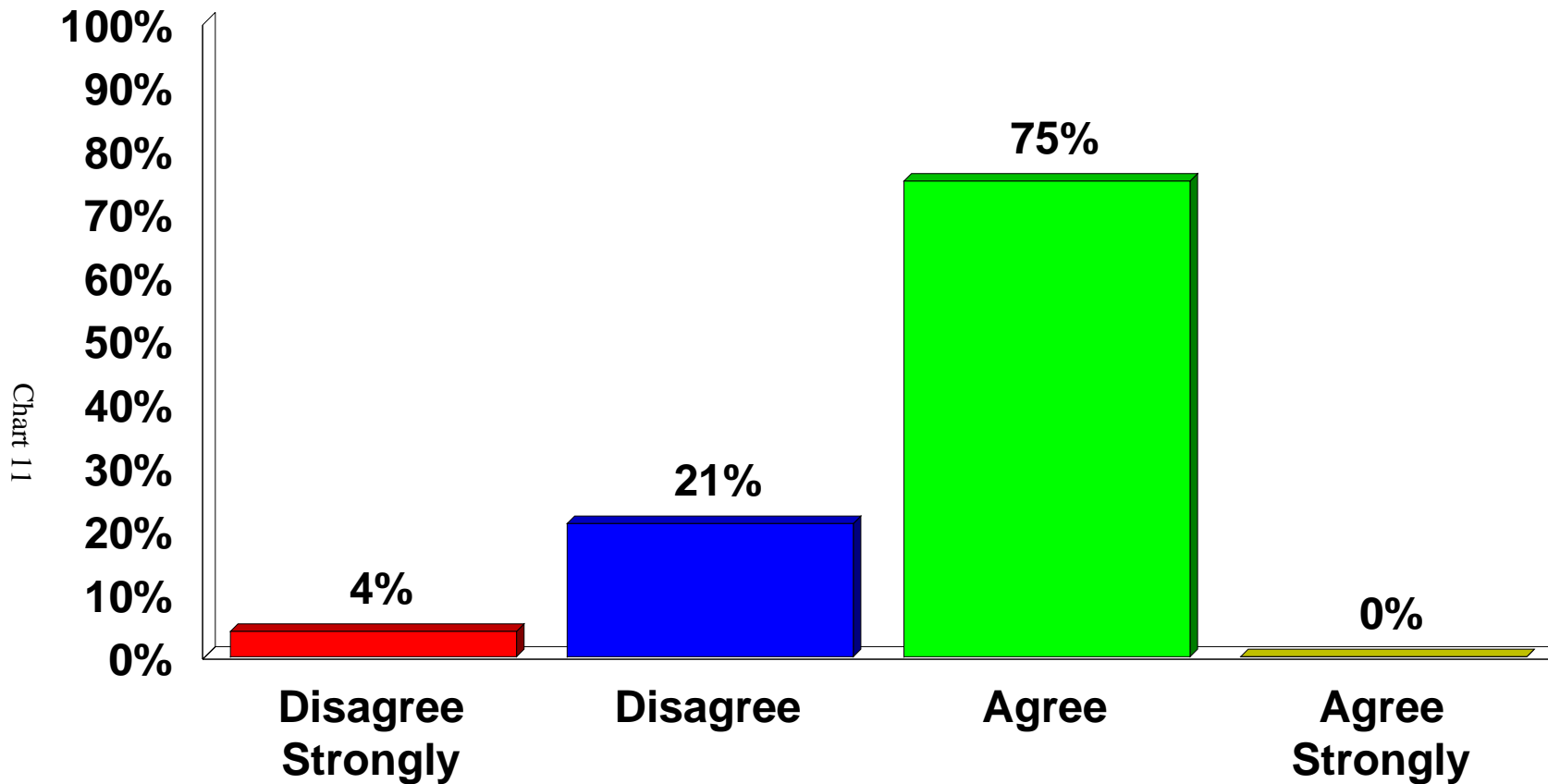
Please rate the following companies, in terms of how much you like them, based on what you know or have heard.



Note: Pre-Presentation

158CSER PR 6/96
Q32

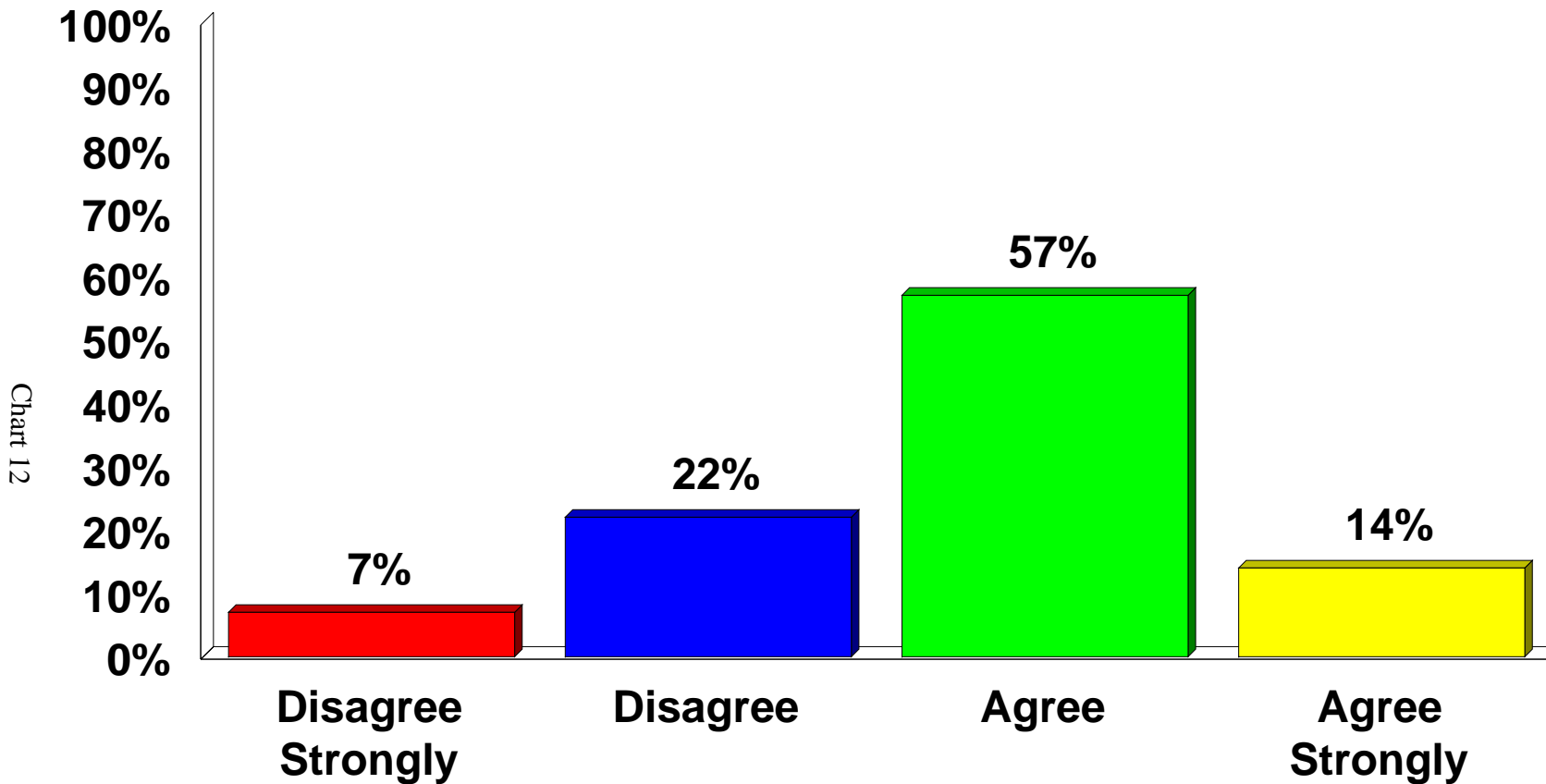
Most jury verdicts have the effect of rewarding the injured party for his/her injuries.



Note: Pre-Presentation

158CSER PR 6/96
Q52

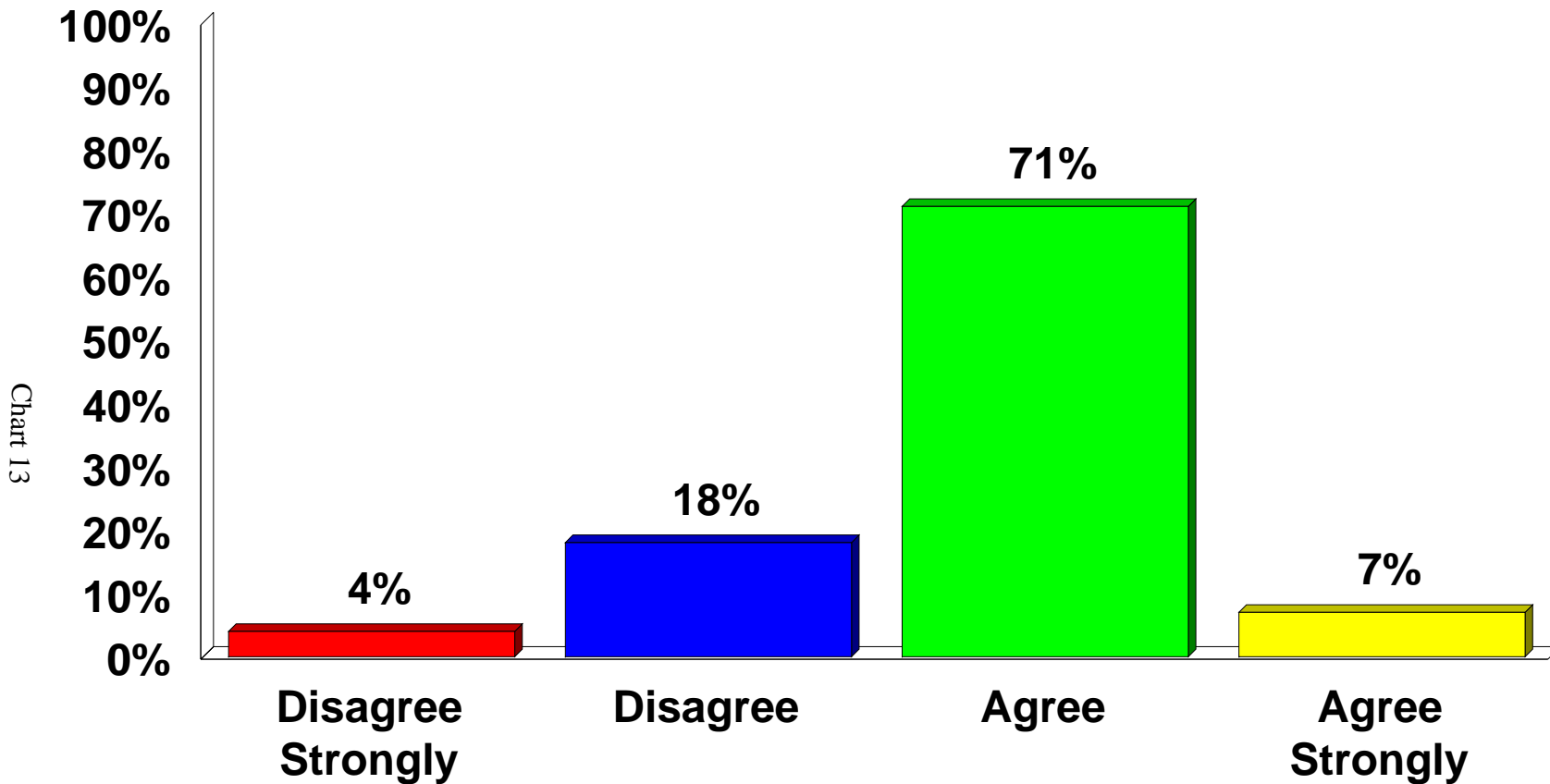
There should be a cap on pain and suffering amounts awarded by juries in personal injury/wrongful death cases.



Note: Pre-Presentation

158CSER PR 6/96
Q53

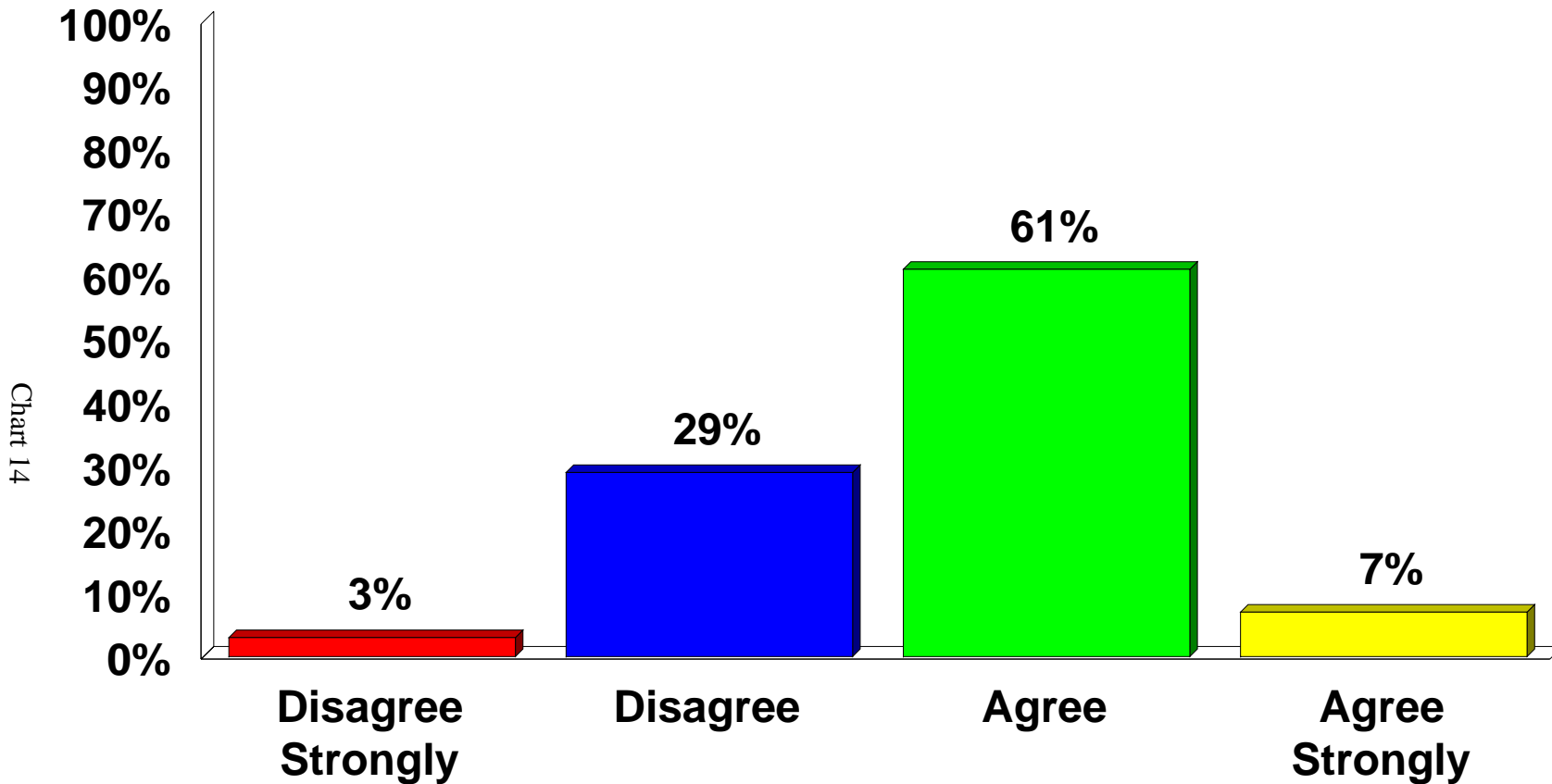
An informed patient accepts the risks if he/she agrees to undergo surgery.



Note: Pre-Presentation

158CSER PR 6/96
Q54

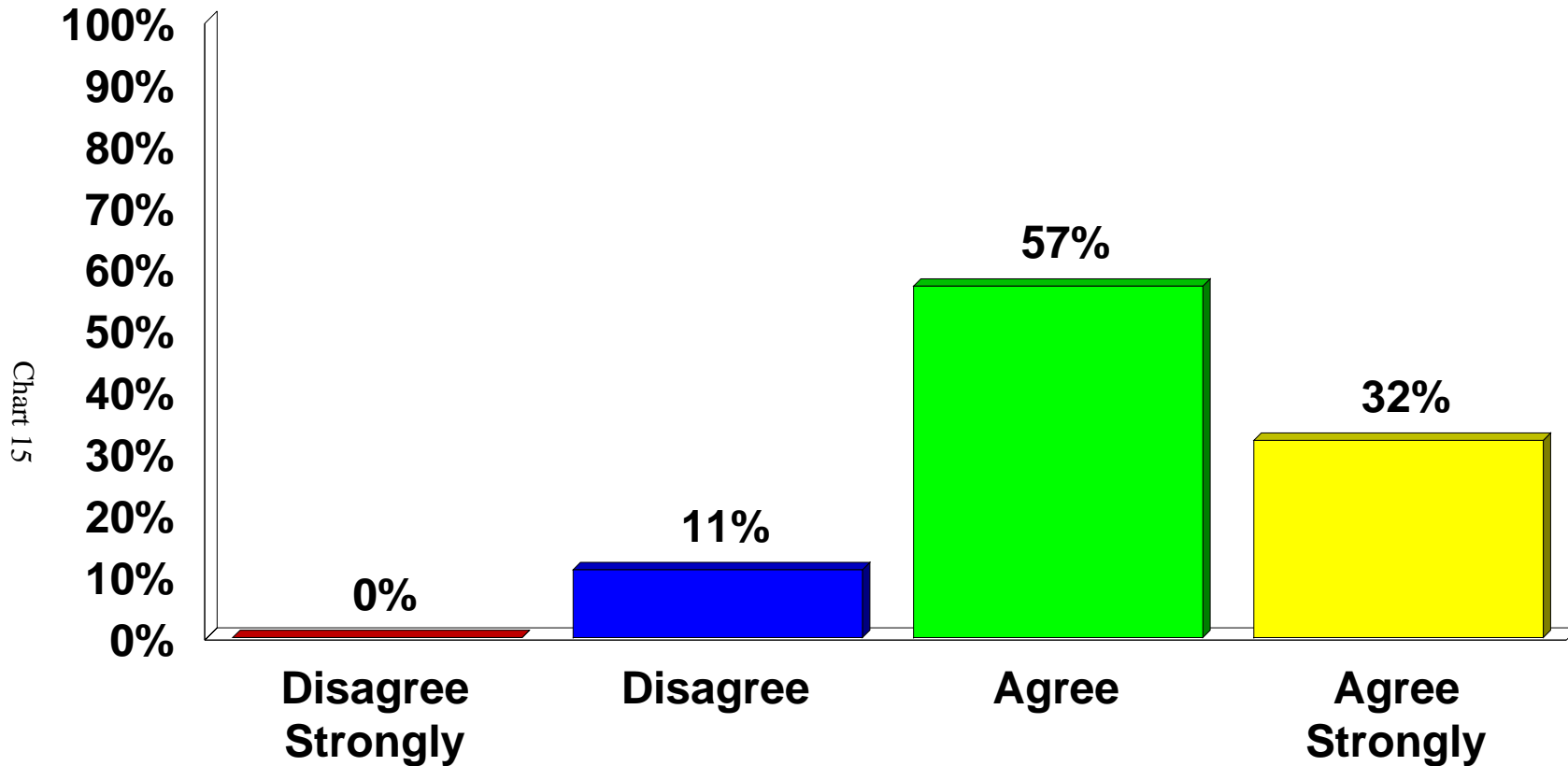
Medical malpractice suits are ruining the health care system in this country.



Note: Pre-Presentation

158CSER PR 6/96
Q55

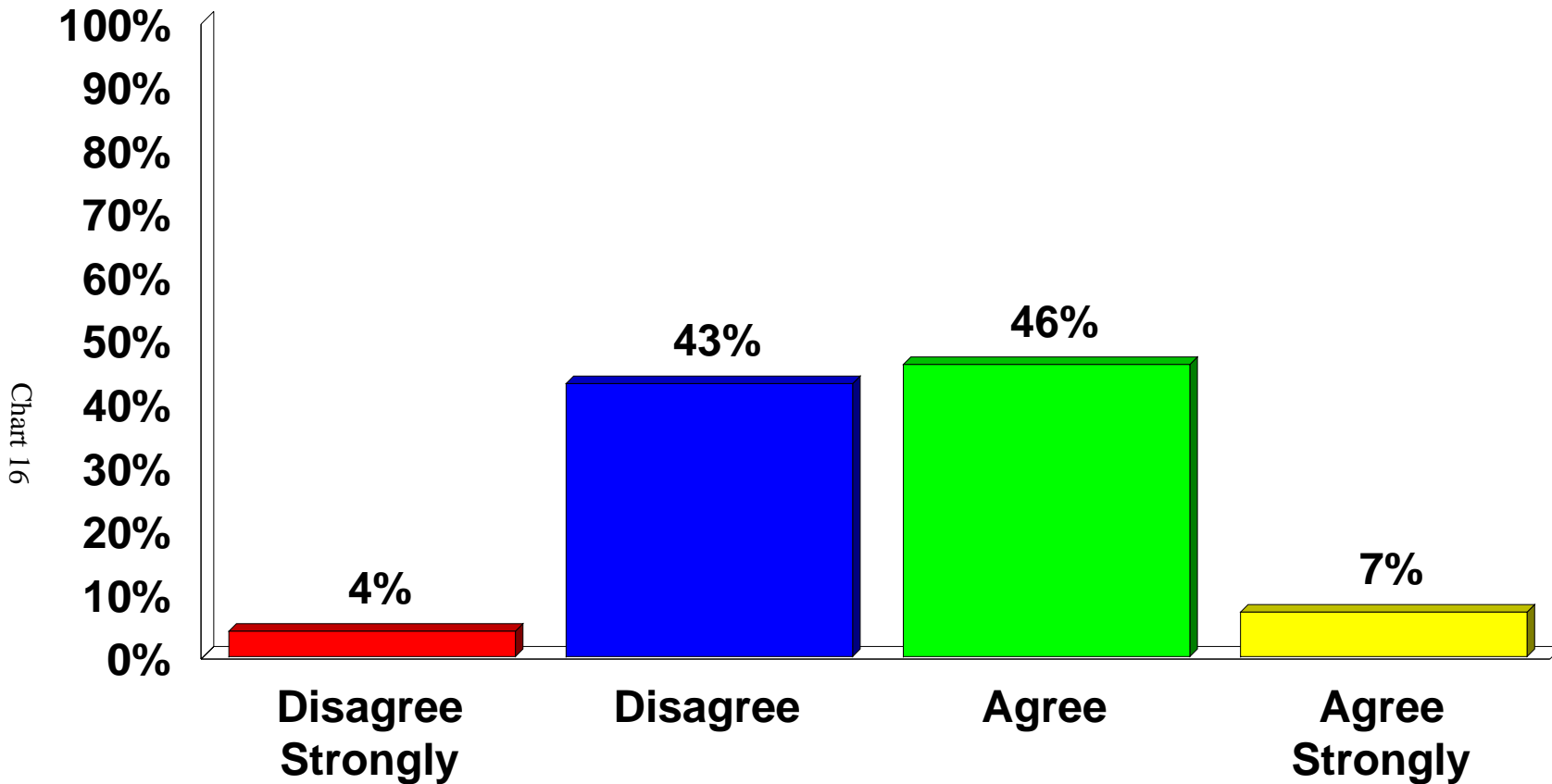
Hospitals should be less interested making money and more interested in the quality of patient care.



Note: Pre-Presentation

158CSER PR 6/96
Q56

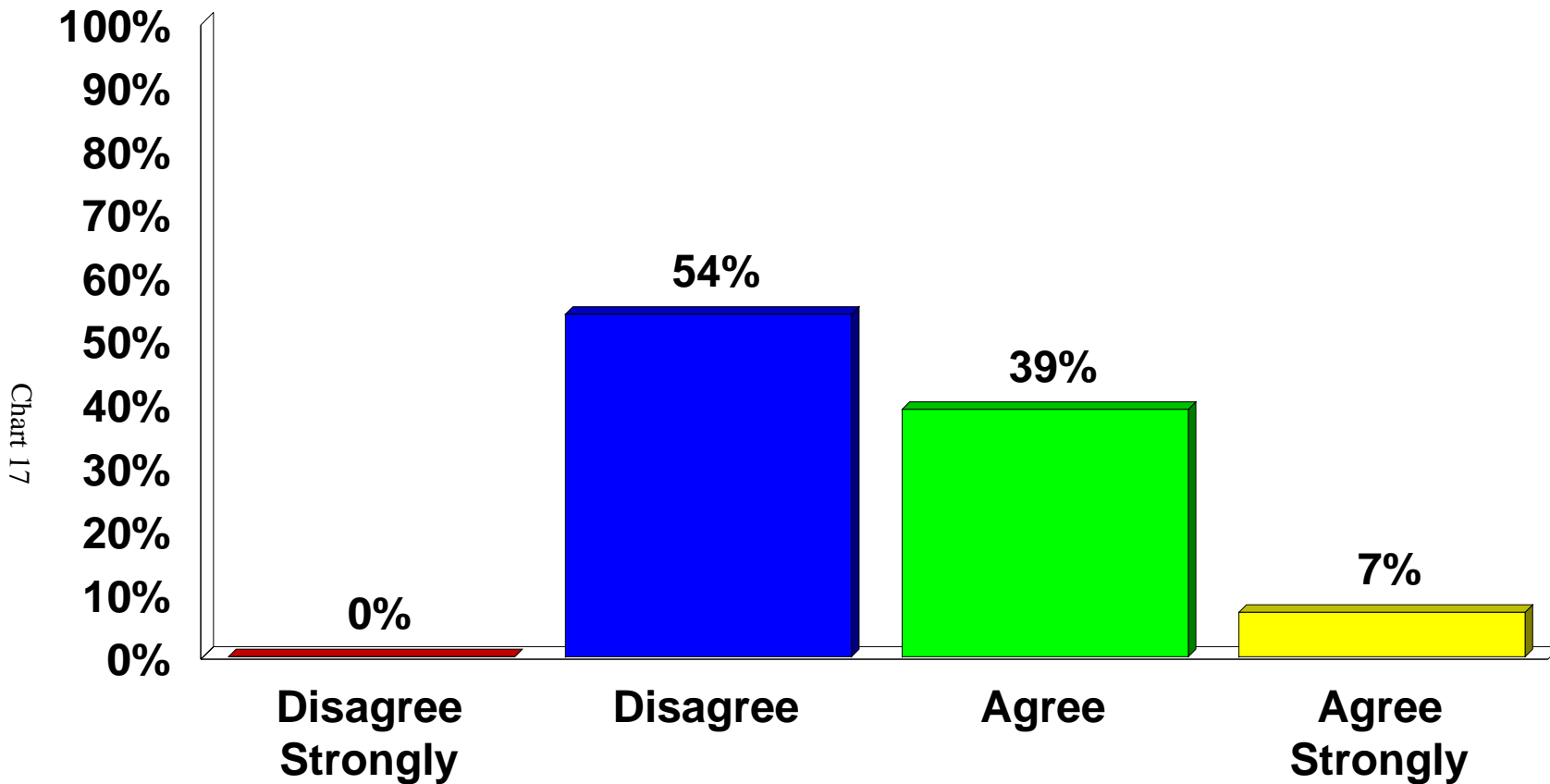
Hospitals and medical professionals will do anything they can to cover for one another's mistakes.



Note: Pre-Presentation

158CSER PR 6/96
Q57

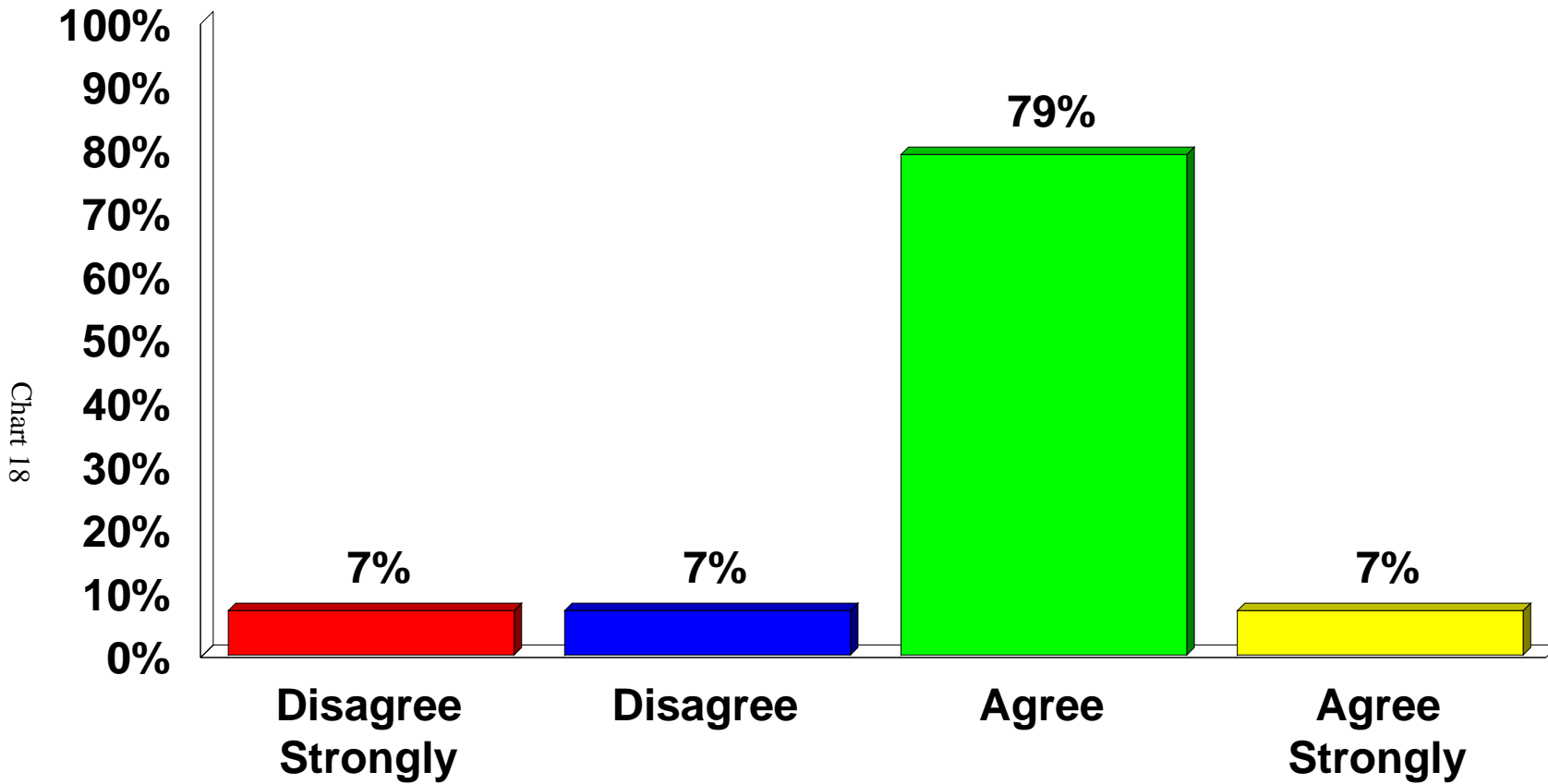
When a human life is damaged, someone should pay regardless of the circumstances.



Note: Pre-Presentation

158CSER PR 6/96
Q58

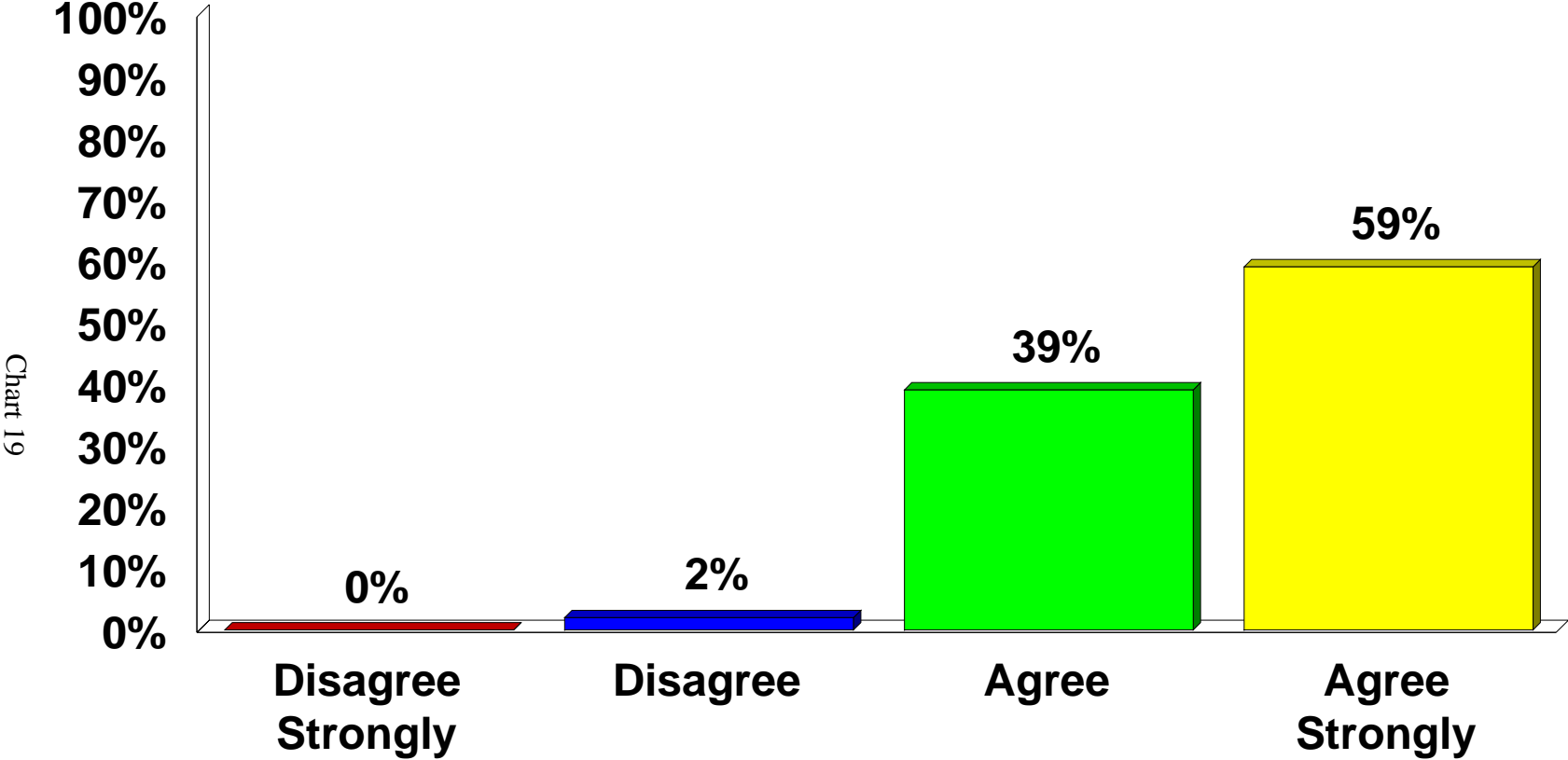
It is inevitable that sometimes injuries will occur for unknown reasons.



Note: Pre-Presentation

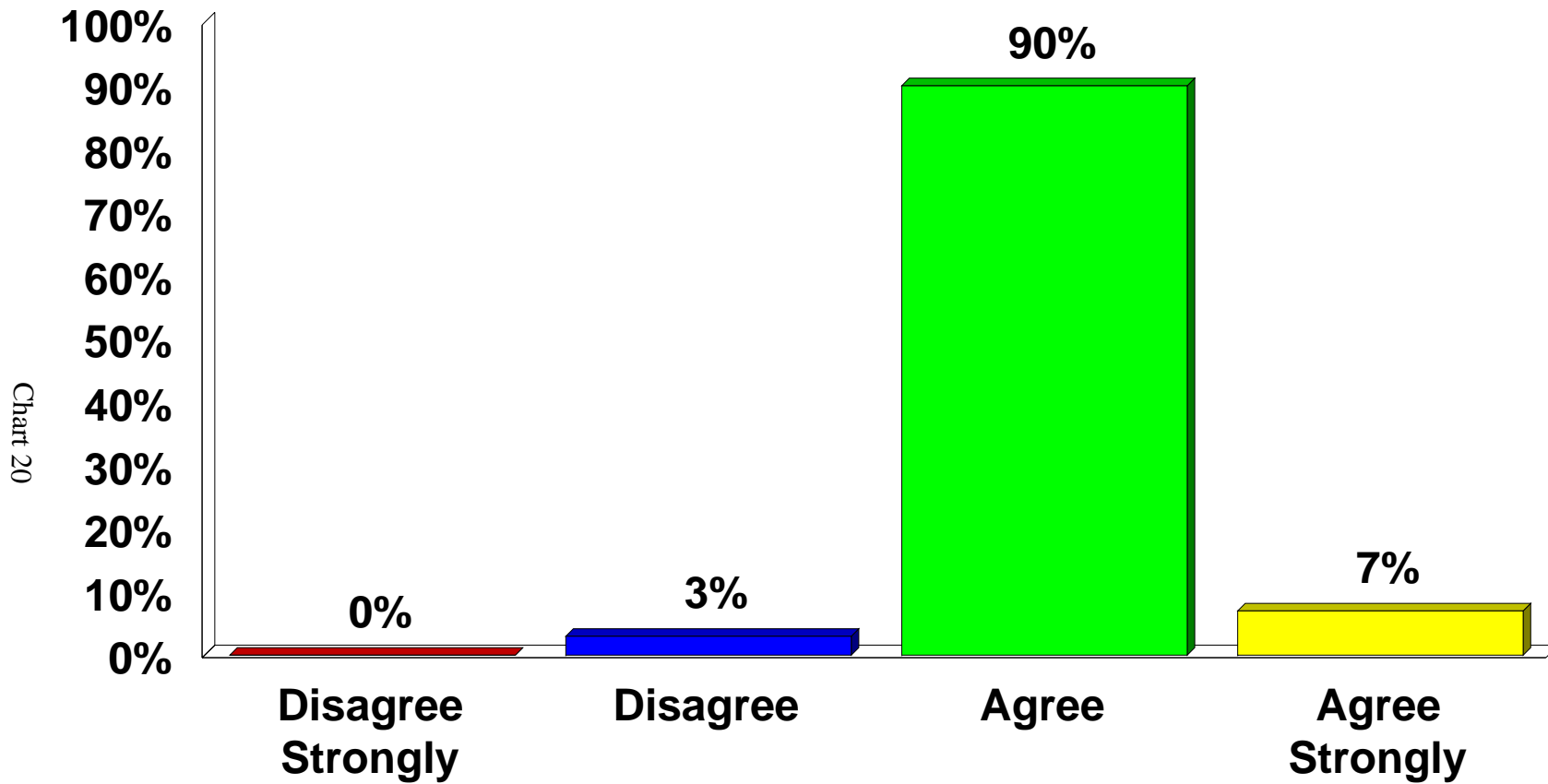
158CSER PR 6/96
Q59

The members of a surgical team, including physicians and nurses, should be totally familiar with the effects of the drugs used during surgery.



Note: Pre-Presentation

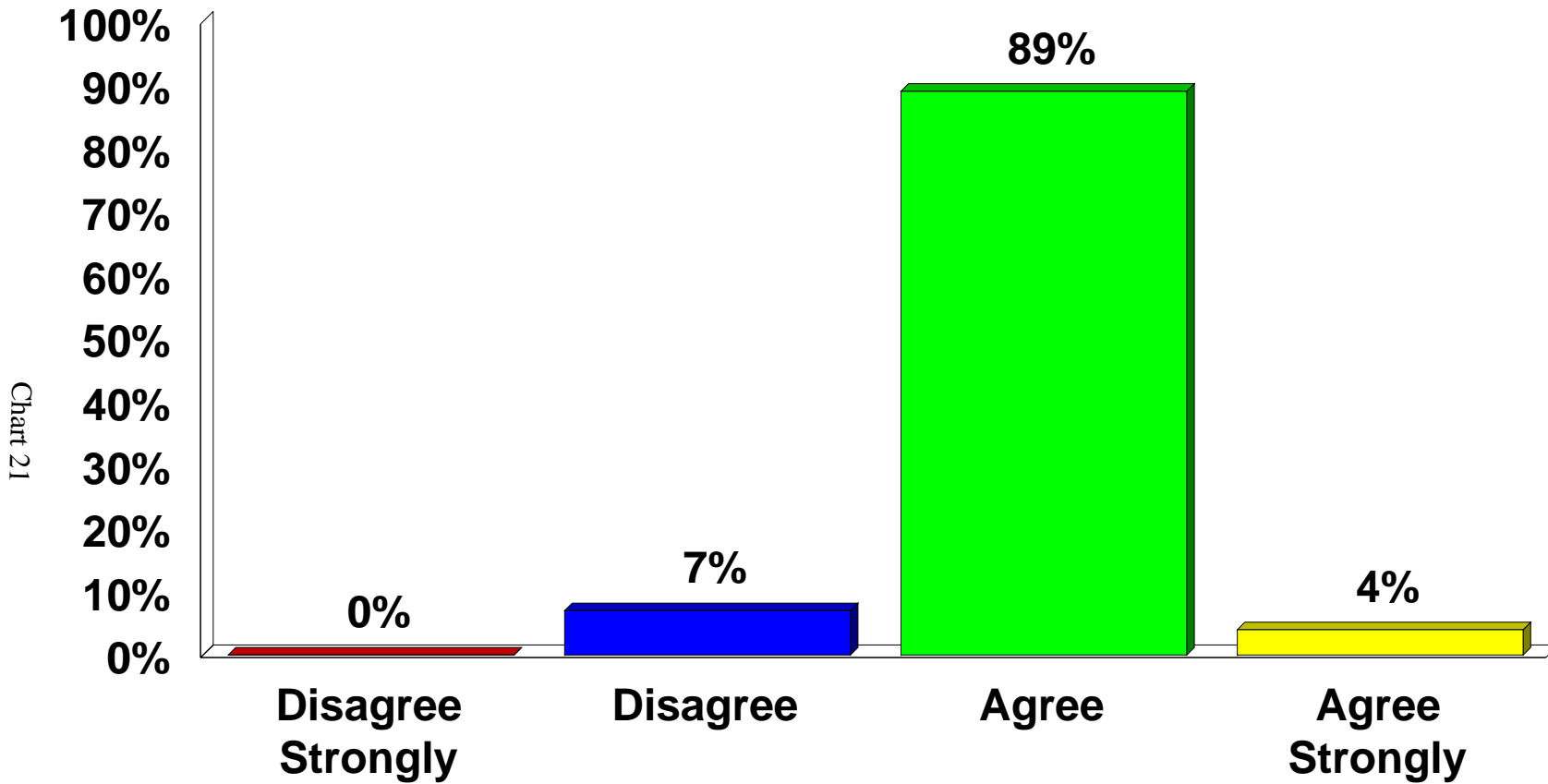
Even the best doctors make mistakes.



Note: Pre-Presentation

158CSER PR 6/96
Q61

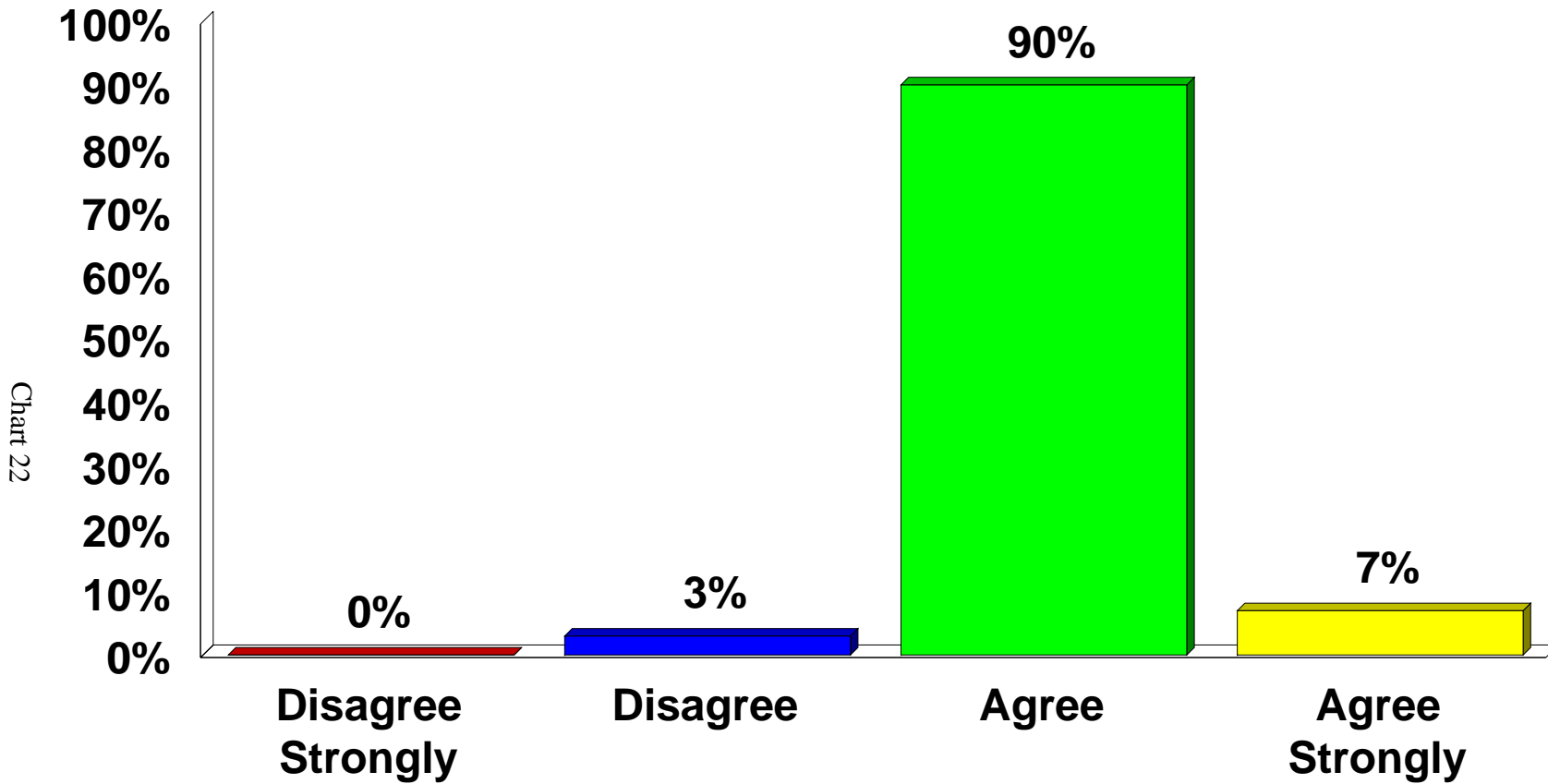
I trust nurses.



Note: Pre-Presentation

158CSER PR 6/96
Q62

Even the best nurses make mistakes.



Note: Pre-Presentation

158CSER PR 6/96
Q63

How would you describe your opinion of hospitals in this area?

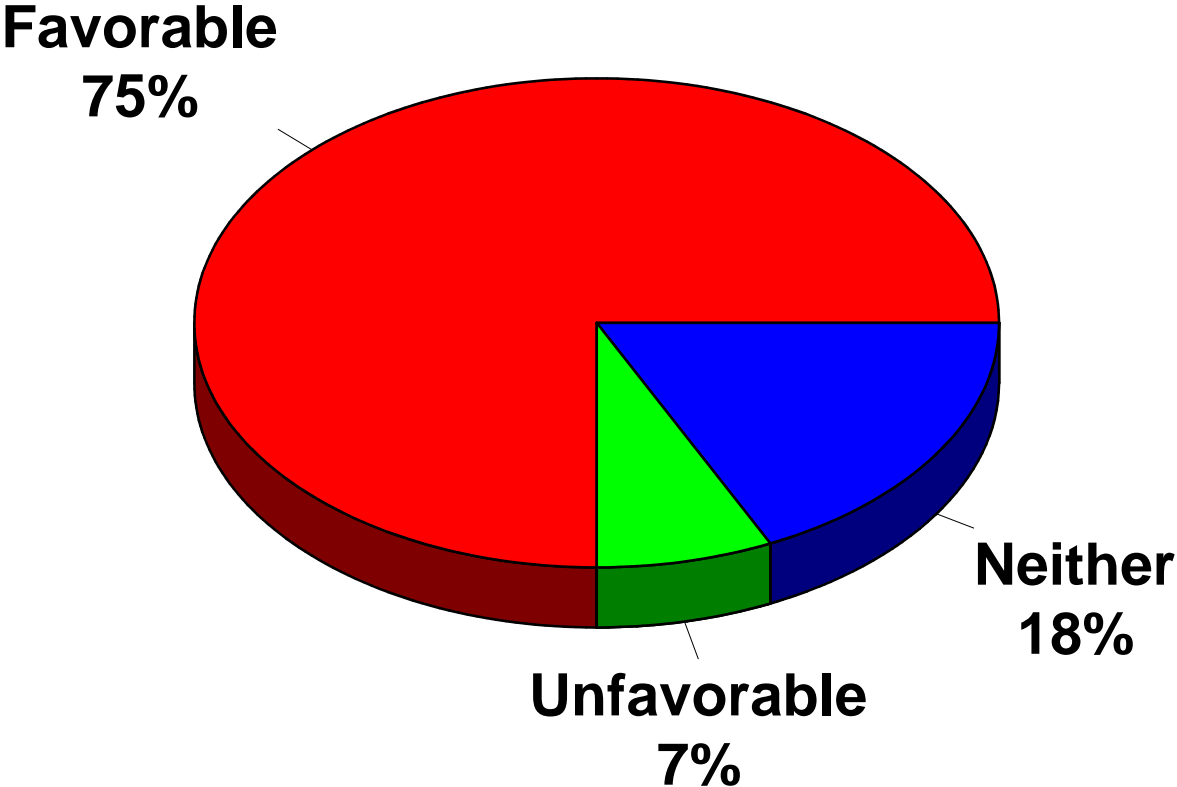
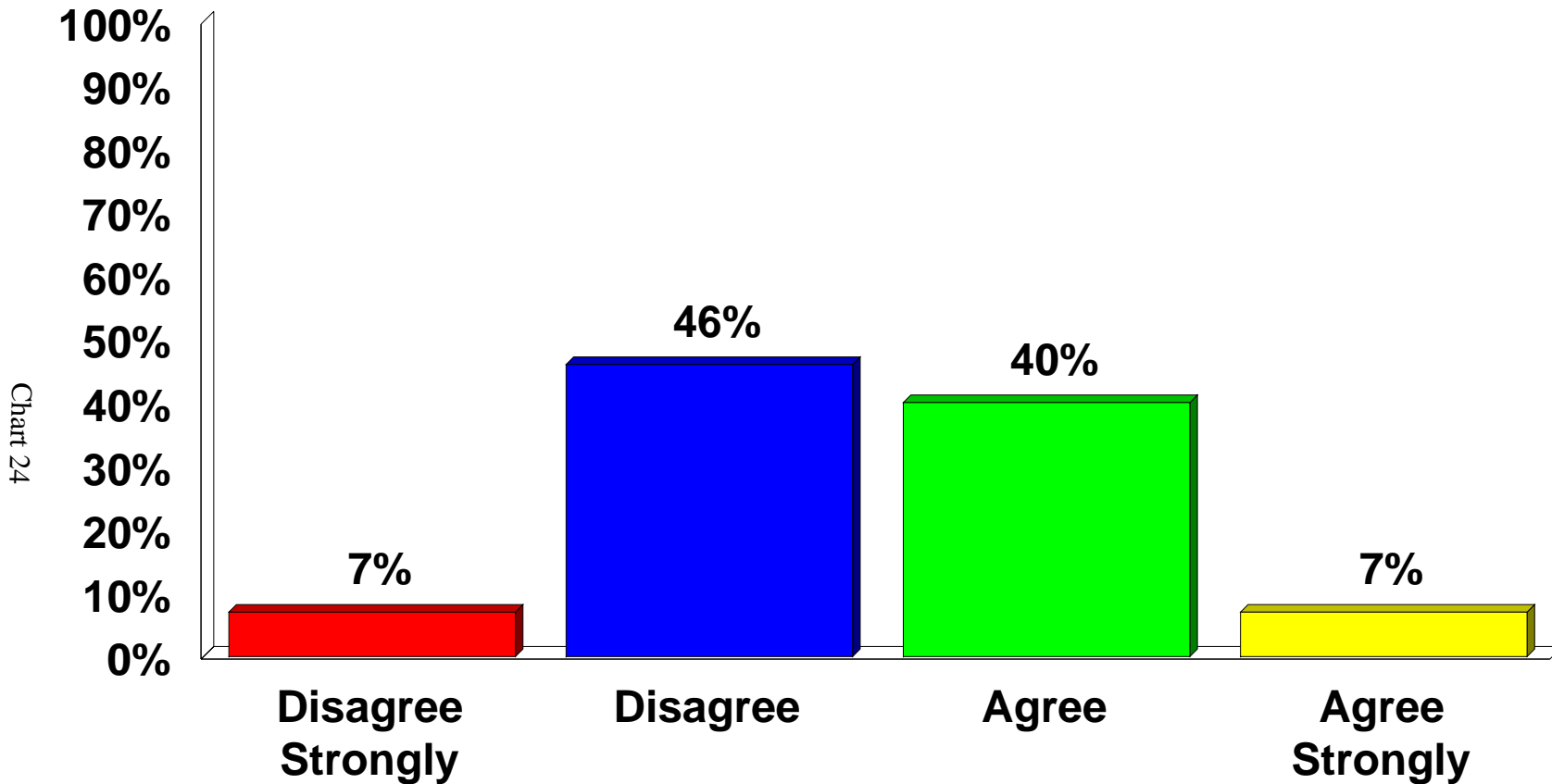


Chart 23

Note: Pre-Presentation

158CSER PR 6/96
Q64

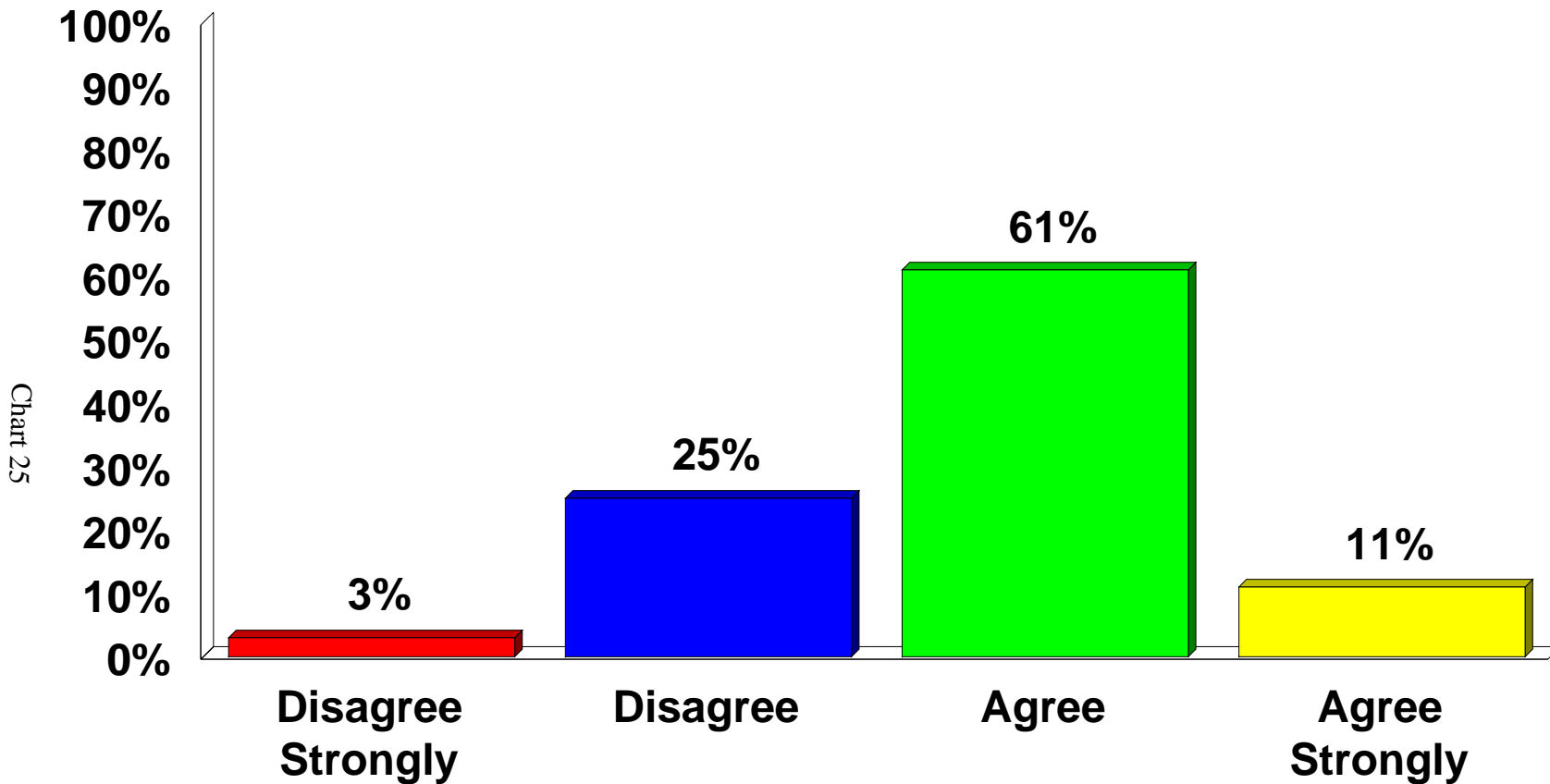
No one could have predicted how the plaintiff was going to react to any medication, including Heparin.



Note: Post-Deliberation

158SER PR 6/96
Q103

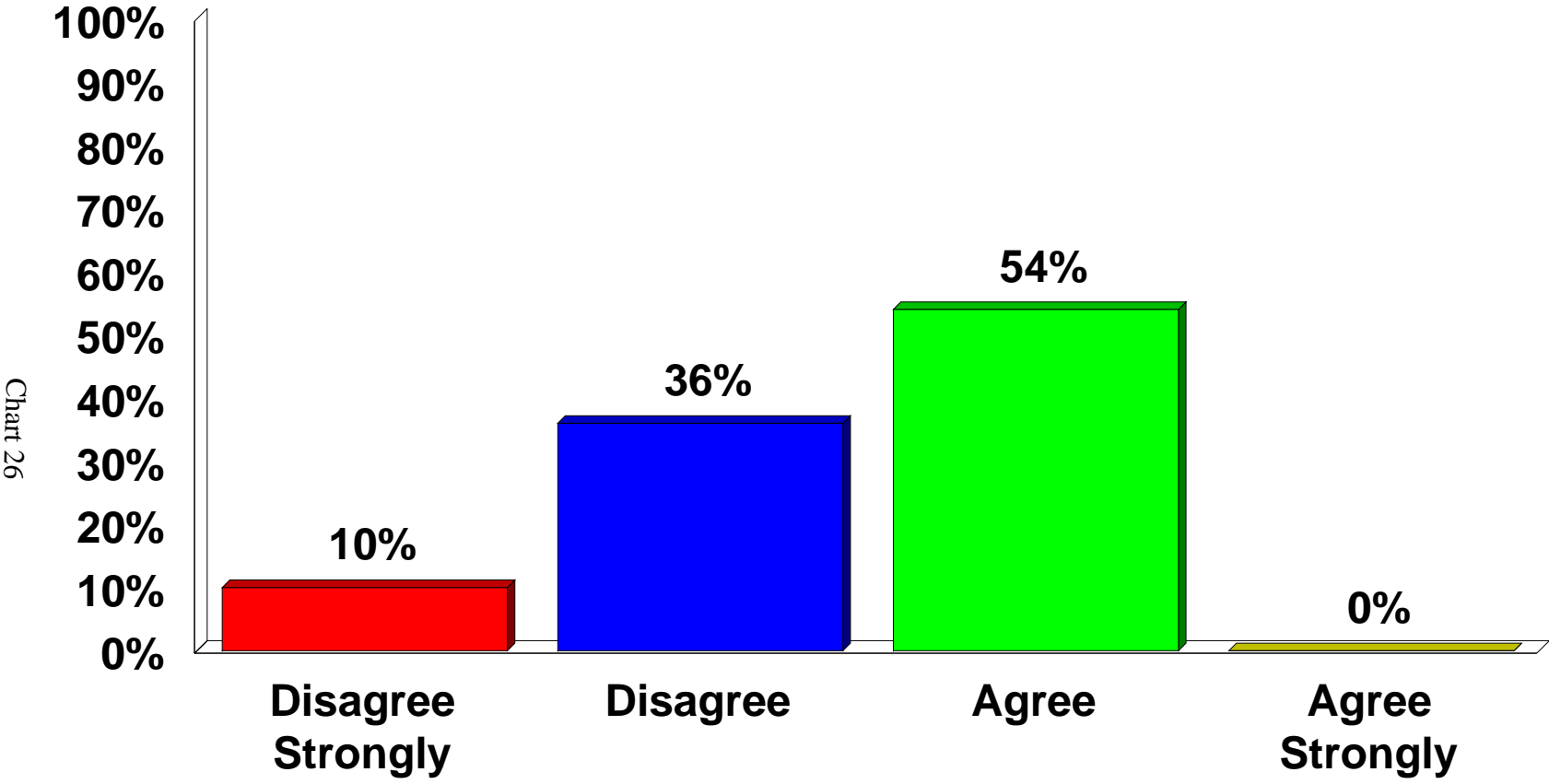
The plaintiff was in overall poor health before the surgery.



Note: Post-Deliberation

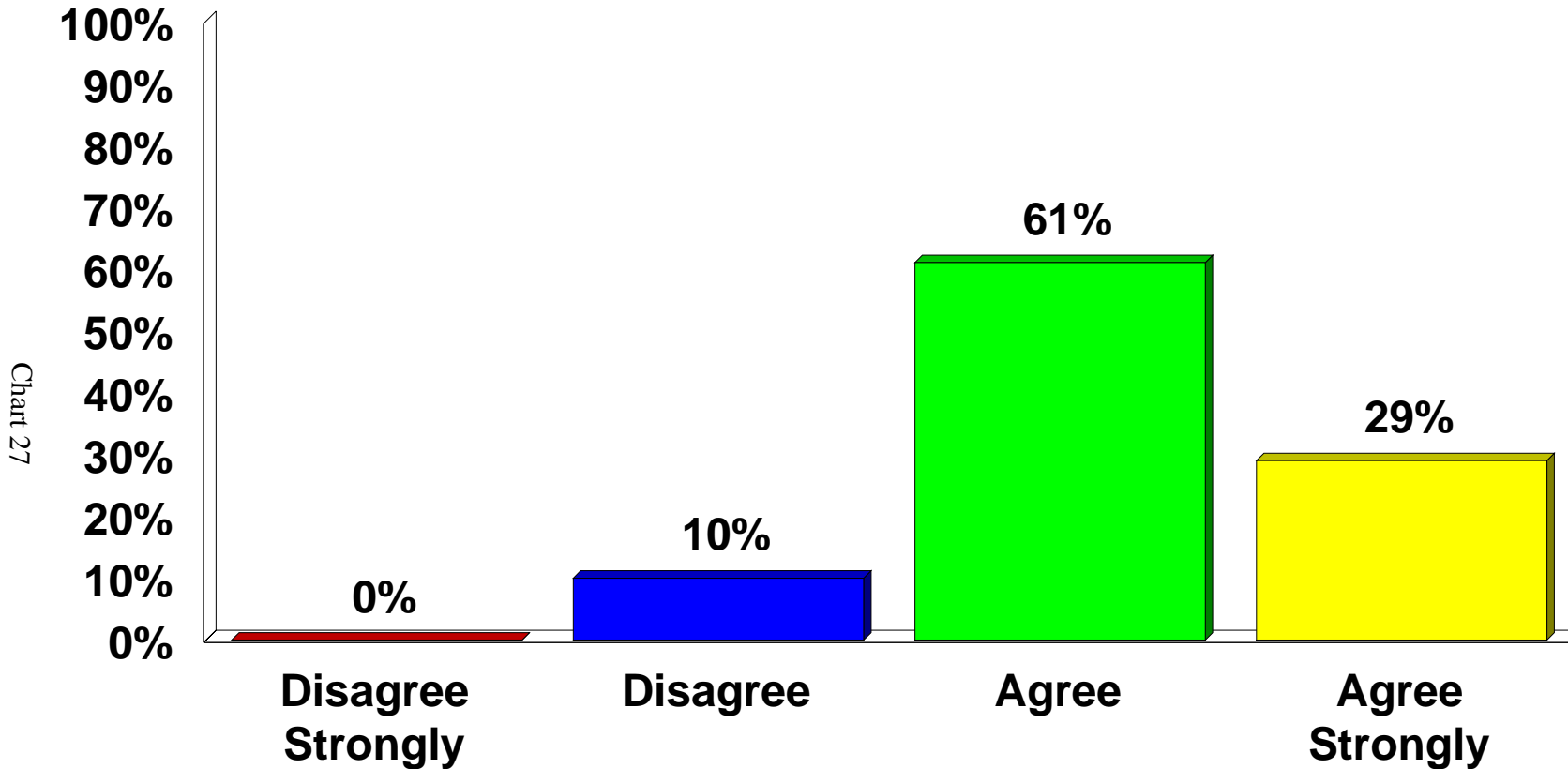
158SER PR 6/96
Q104

The hospital staff showed complete and total disregard in the care of the plaintiff.



Note: Post-Deliberation

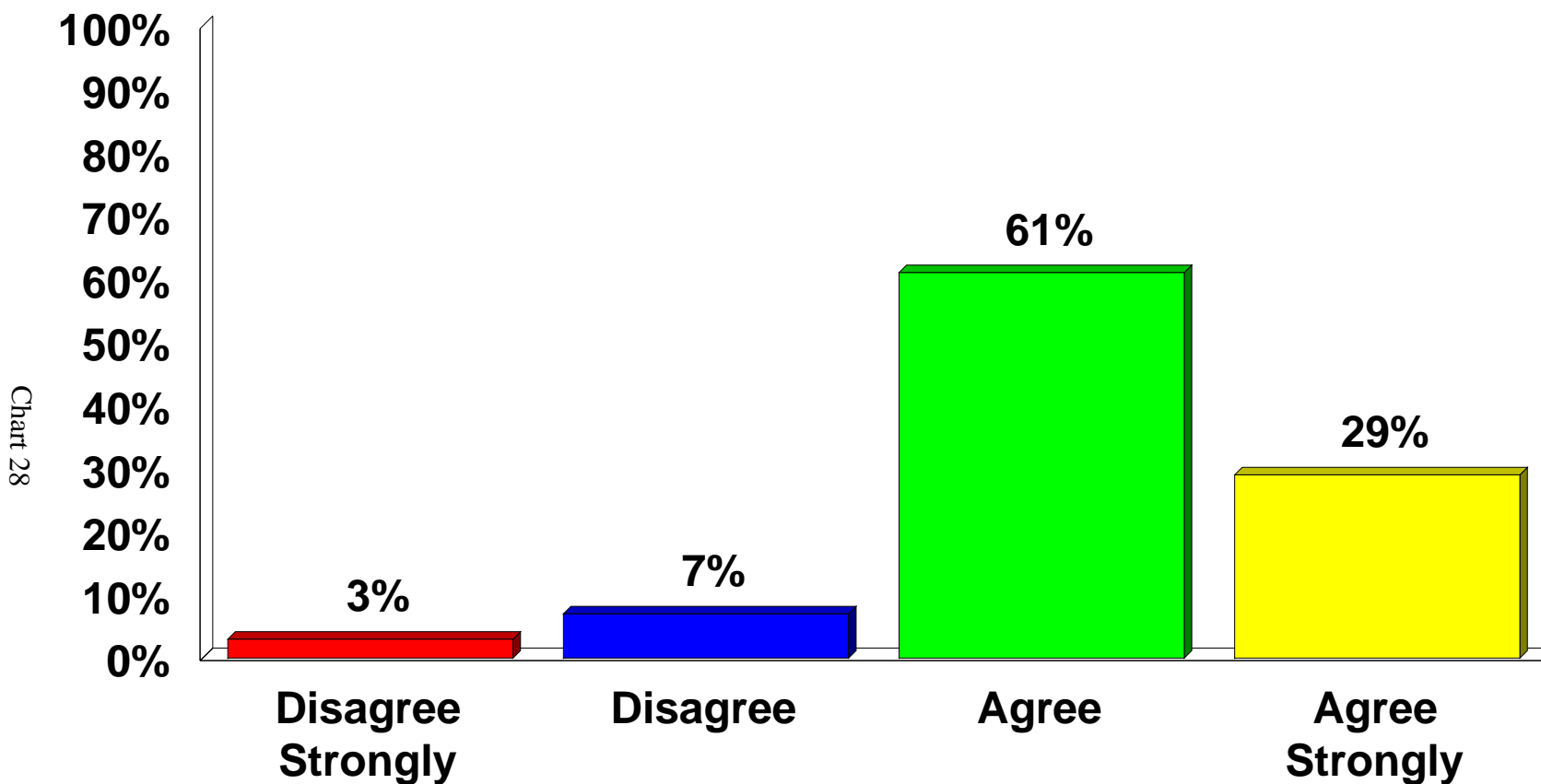
The hospital should have had record keeping measures in place to ensure this type of tragedy could never happen.



Note: Post-Deliberation

158SER PR 6/96
Q105

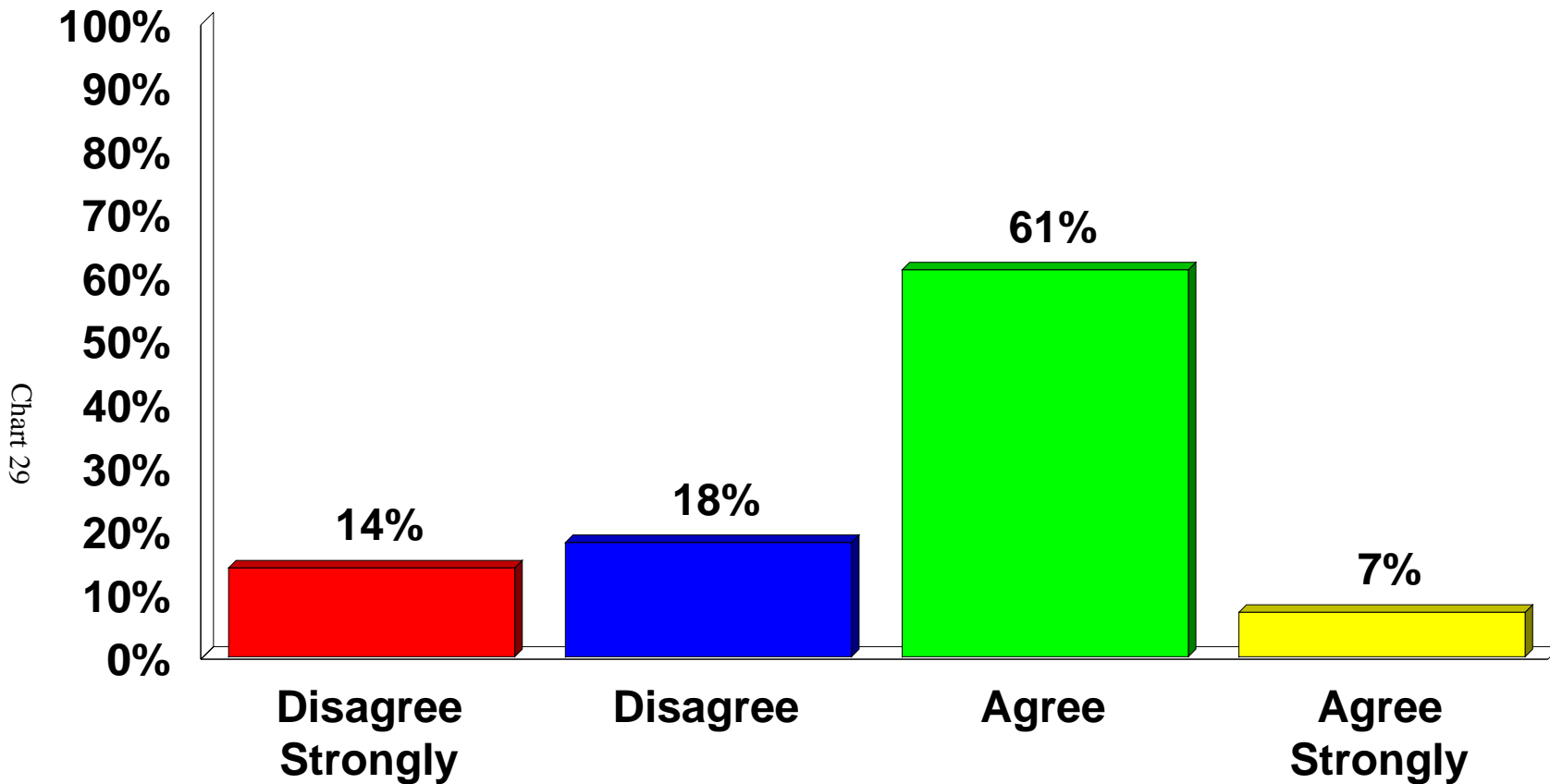
This tragedy is a result of a gross miscommunication on the part of the staff of the hospital and the doctors.



Note: Post-Deliberation

158SER PR 6/96
Q106

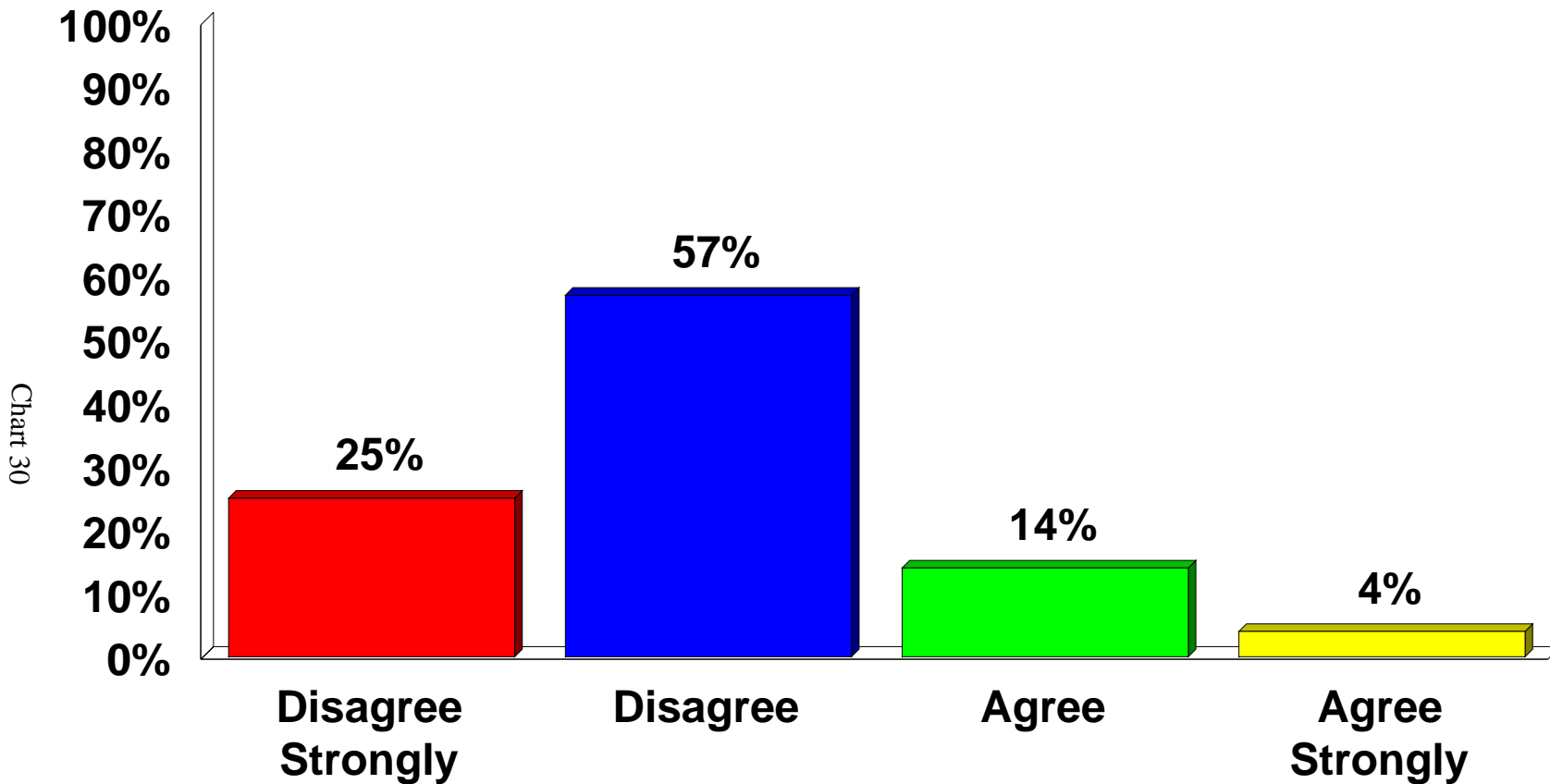
All of the doctors are responsible for what happened to the plaintiff.



Note: Post-Deliberation

158SER PR 6/96
Q107

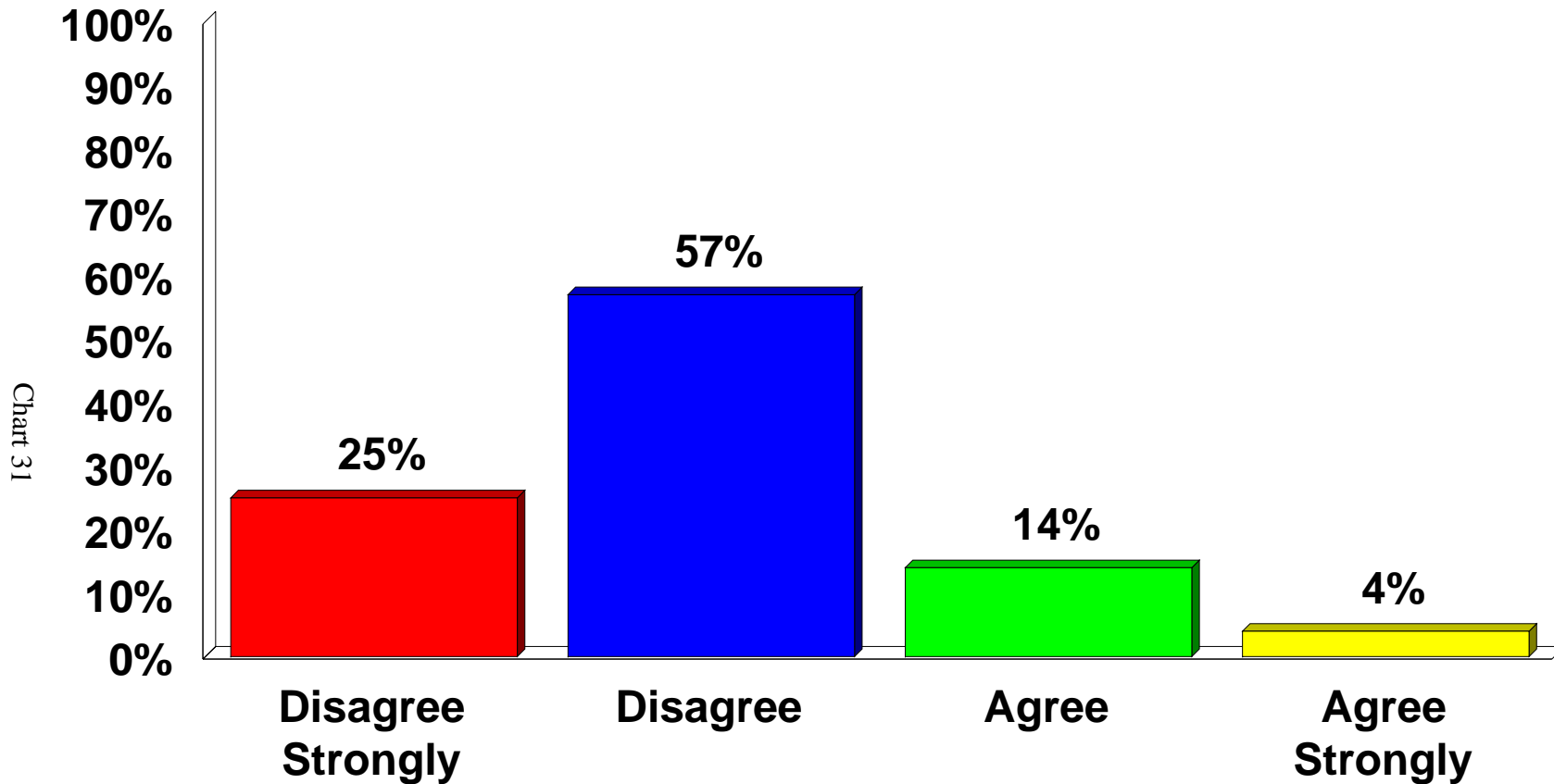
All of the doctors are equally responsible for what happened to the plaintiff.



Note: Post-Deliberation

158SER PR 6/96
Q108

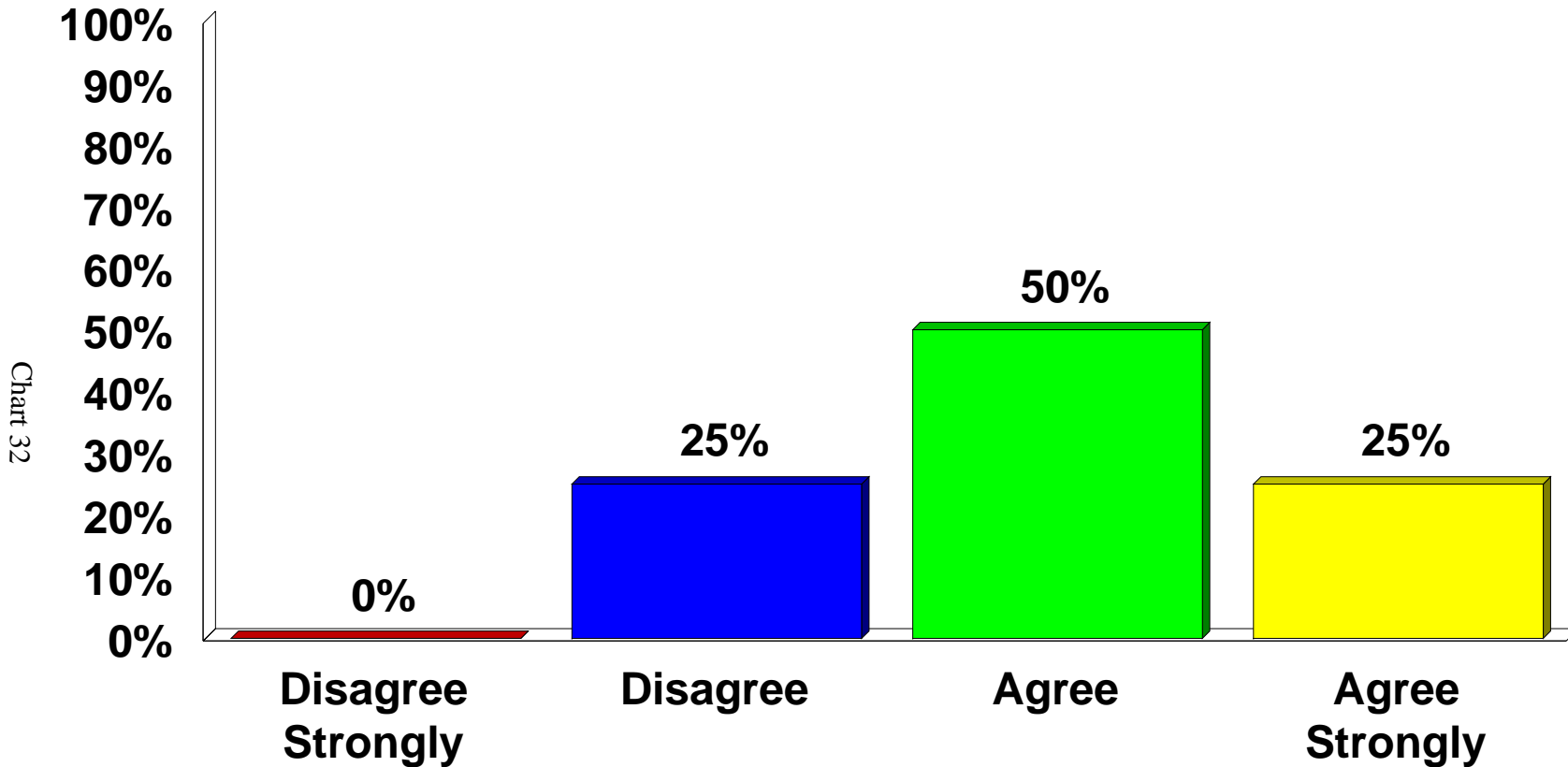
The doctors should have recognized this condition and discontinued the Heparin treatments.



Note: Post-Deliberation

158SER PR 6/96
Q109

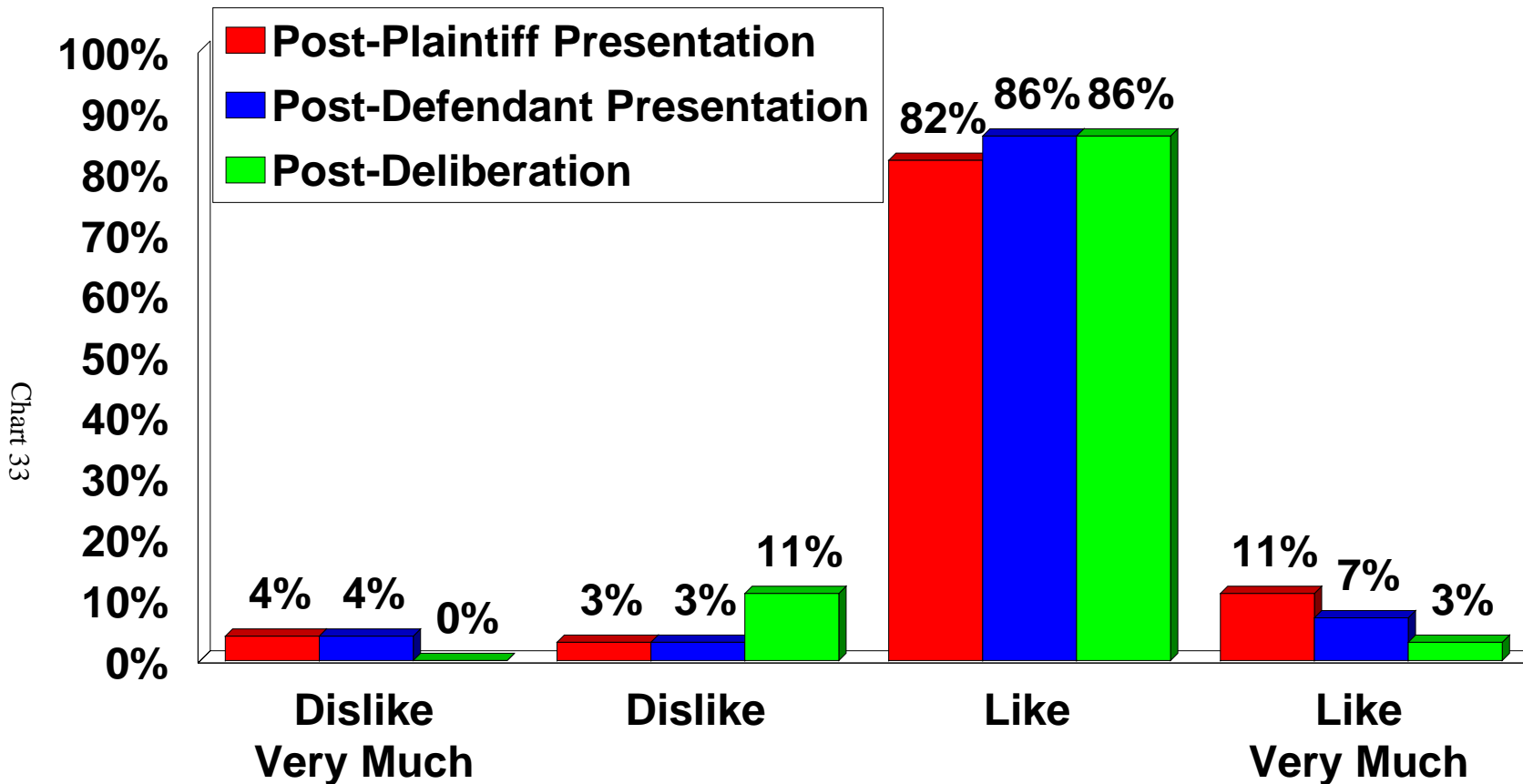
Even if the hospital staff did not give the results back to the doctors, it is the doctors' responsibility to check on the results, personally, if necessary.



Note: Post-Deliberation

158SER PR 6/96
Q110

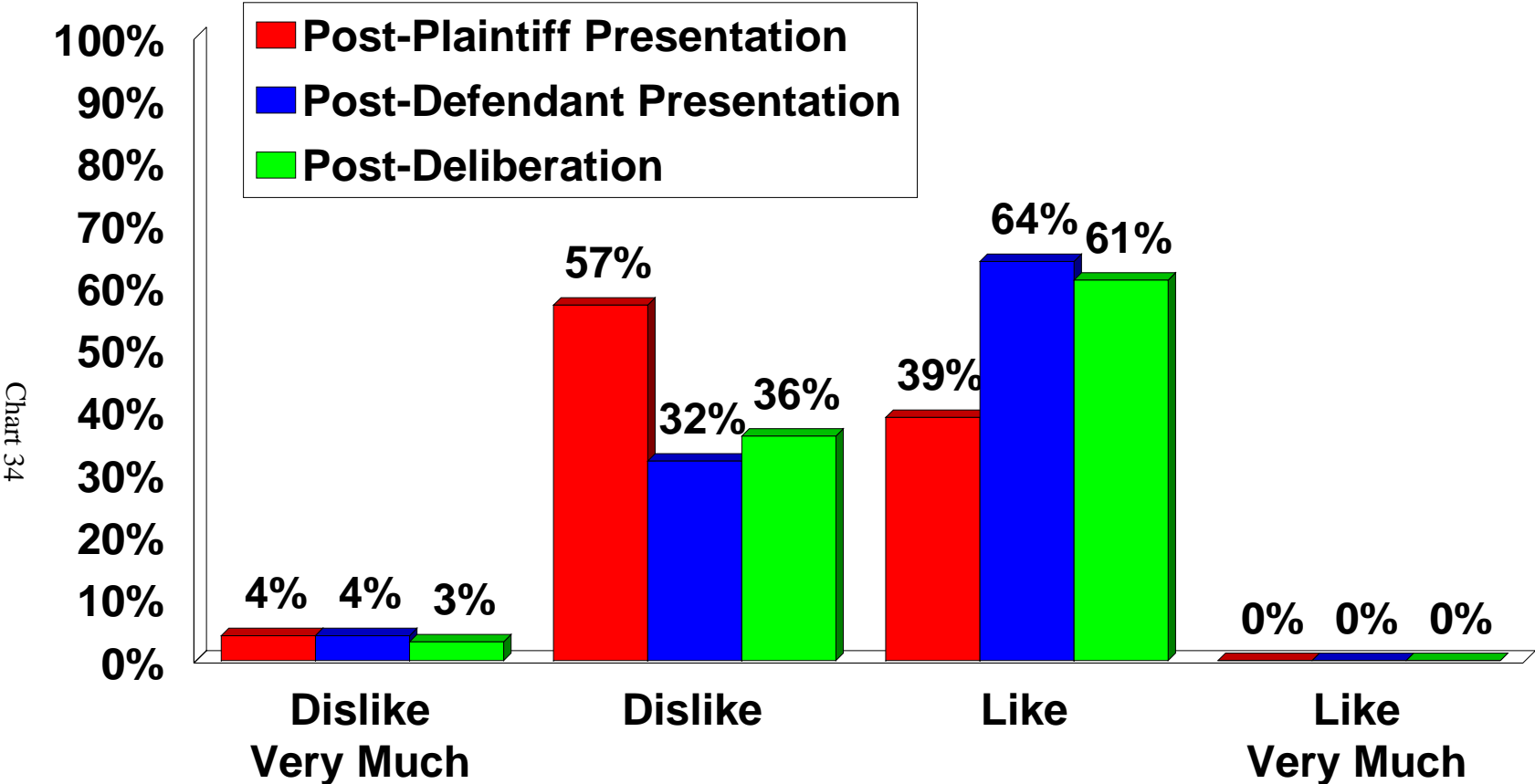
Please rate the plaintiff, who is suing the defendants, the hospital and the doctors, in terms of how much you like or dislike the plaintiff.



Note: Post-Deliberation

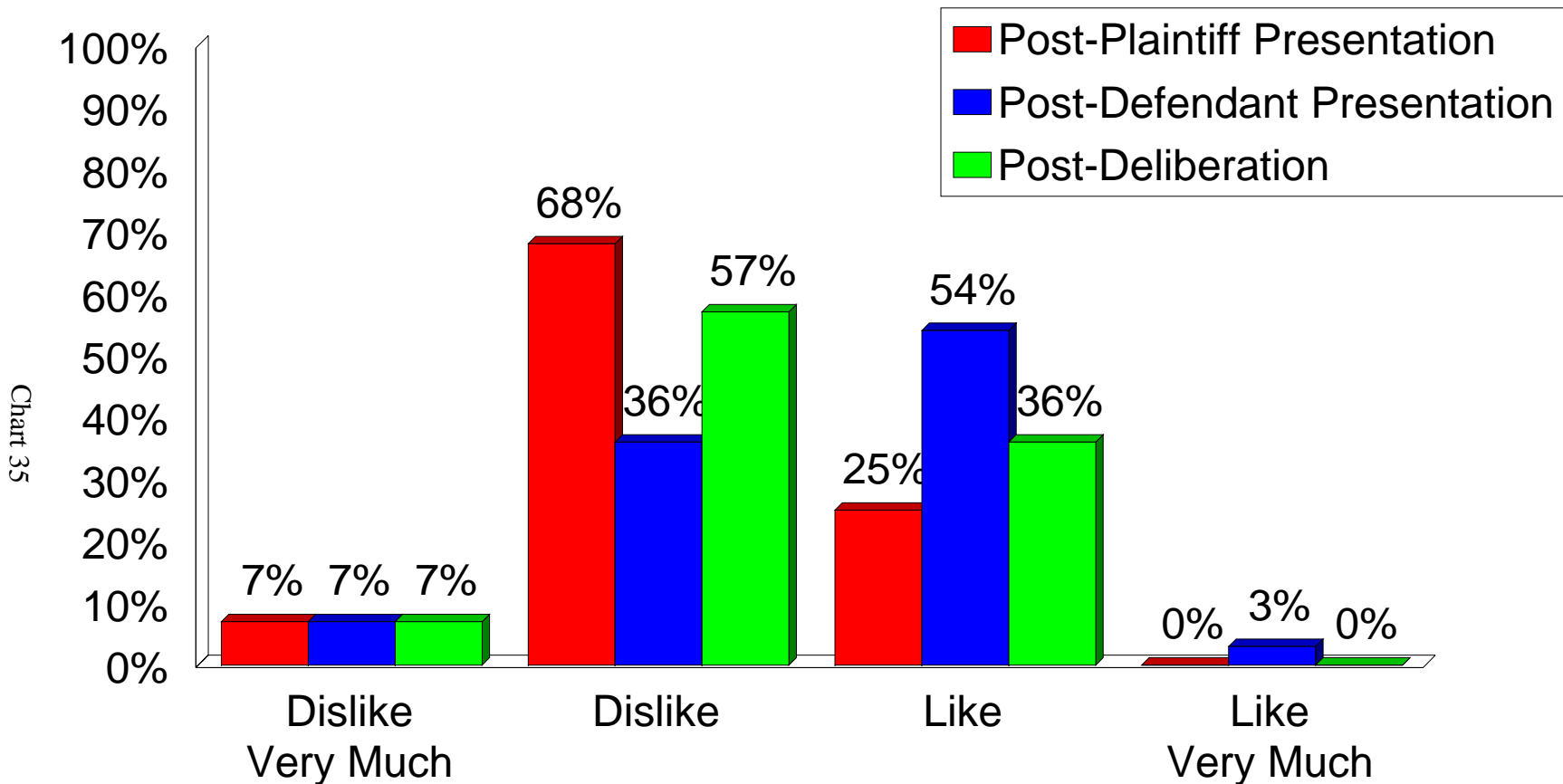
158SER PR 6/96
Q76, Q86, Q118

Please rate the defendant, the hospital, in terms of how much you like or dislike the defendant.



Note: Post-Deliberation

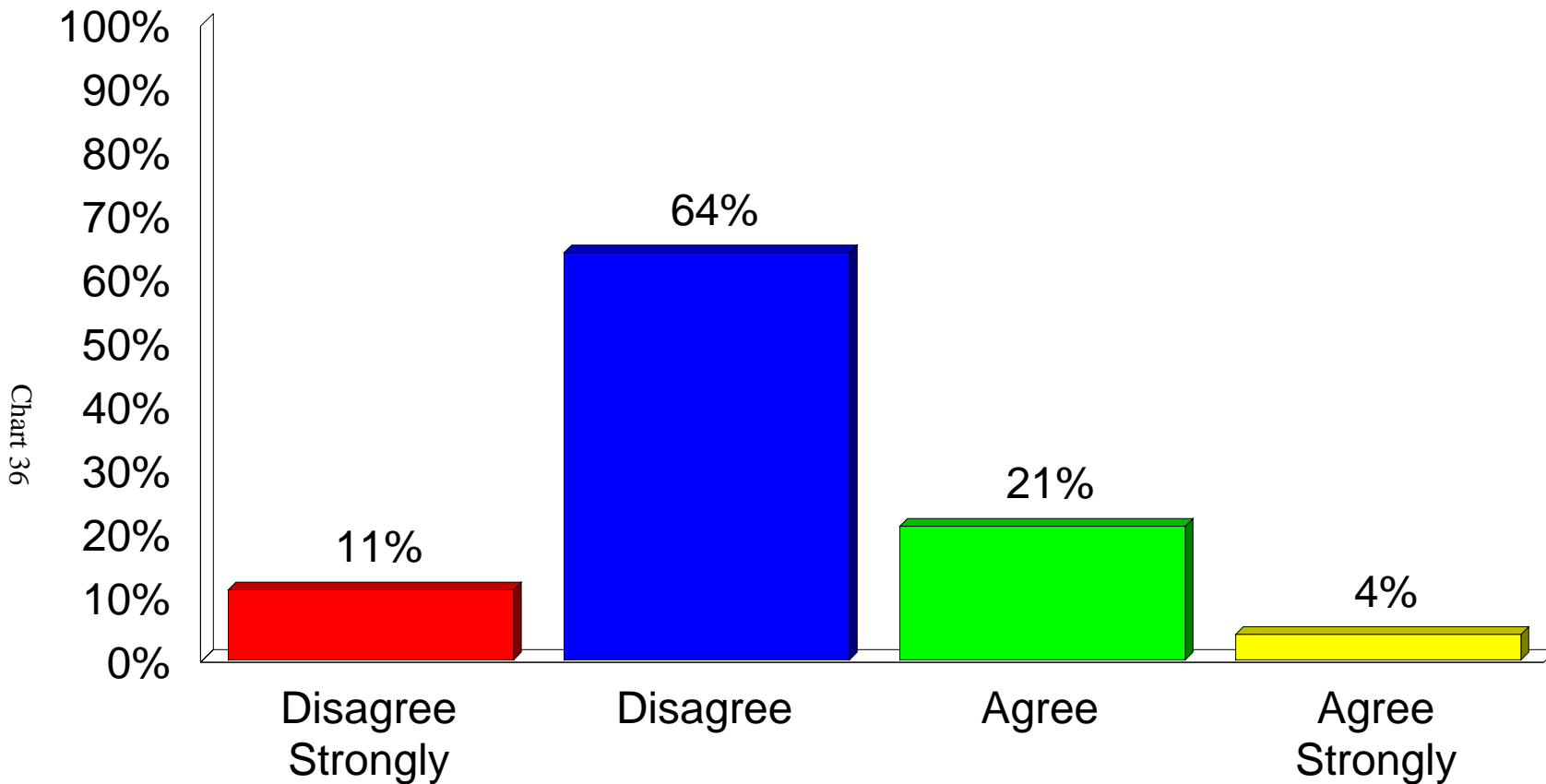
Please rate the defendants, the doctors, in terms of how much you like or dislike the defendants.



Note: Post-Deliberation

158SER PR 6/96
Q79, Q88, Q120

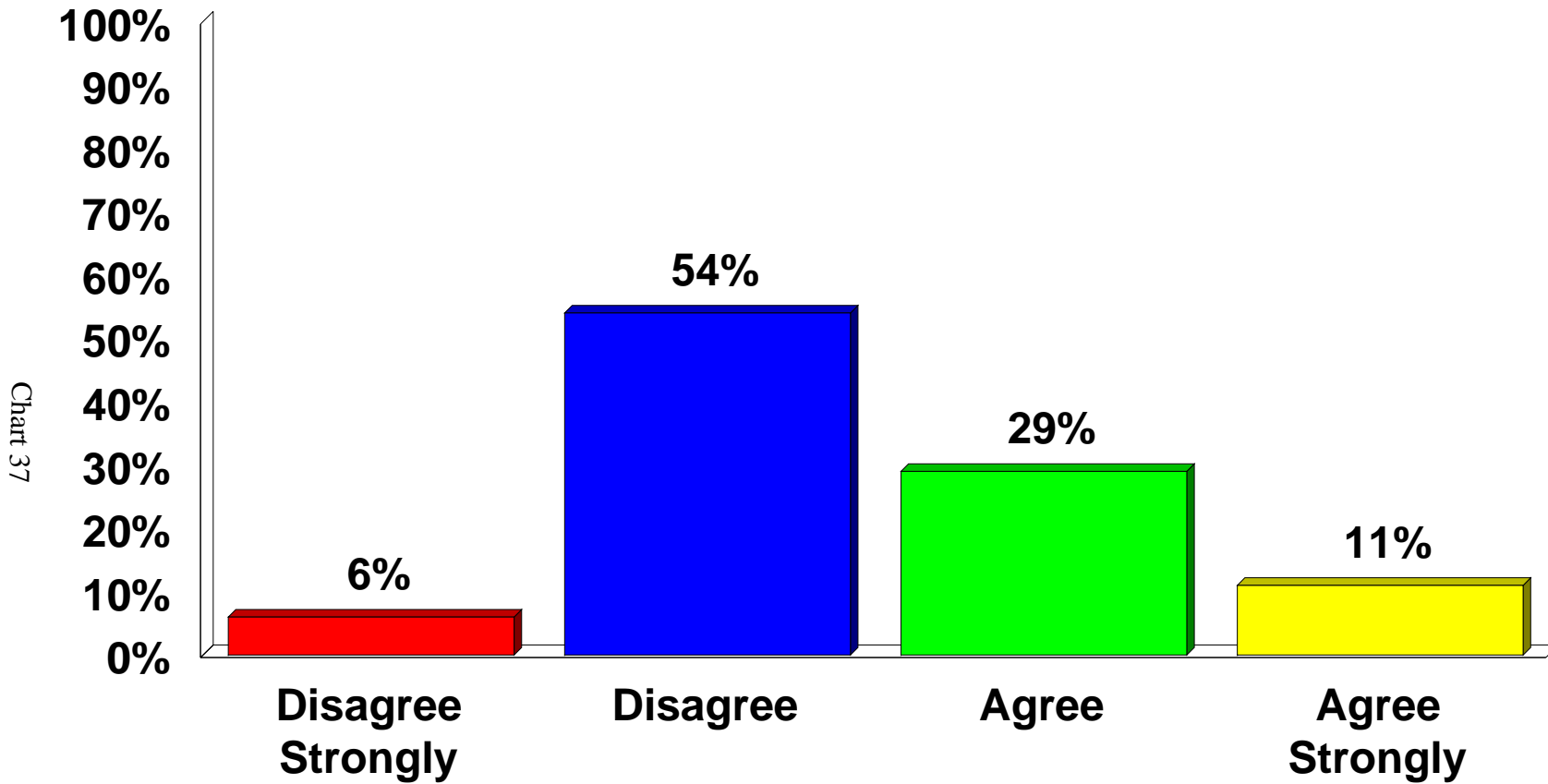
Part of my decision was based on anger toward the defendant, the hospital.



Note: Post-Deliberation

158SER PR 6/96
Q121

Part of my decision was based on anger toward the defendants, the doctors.

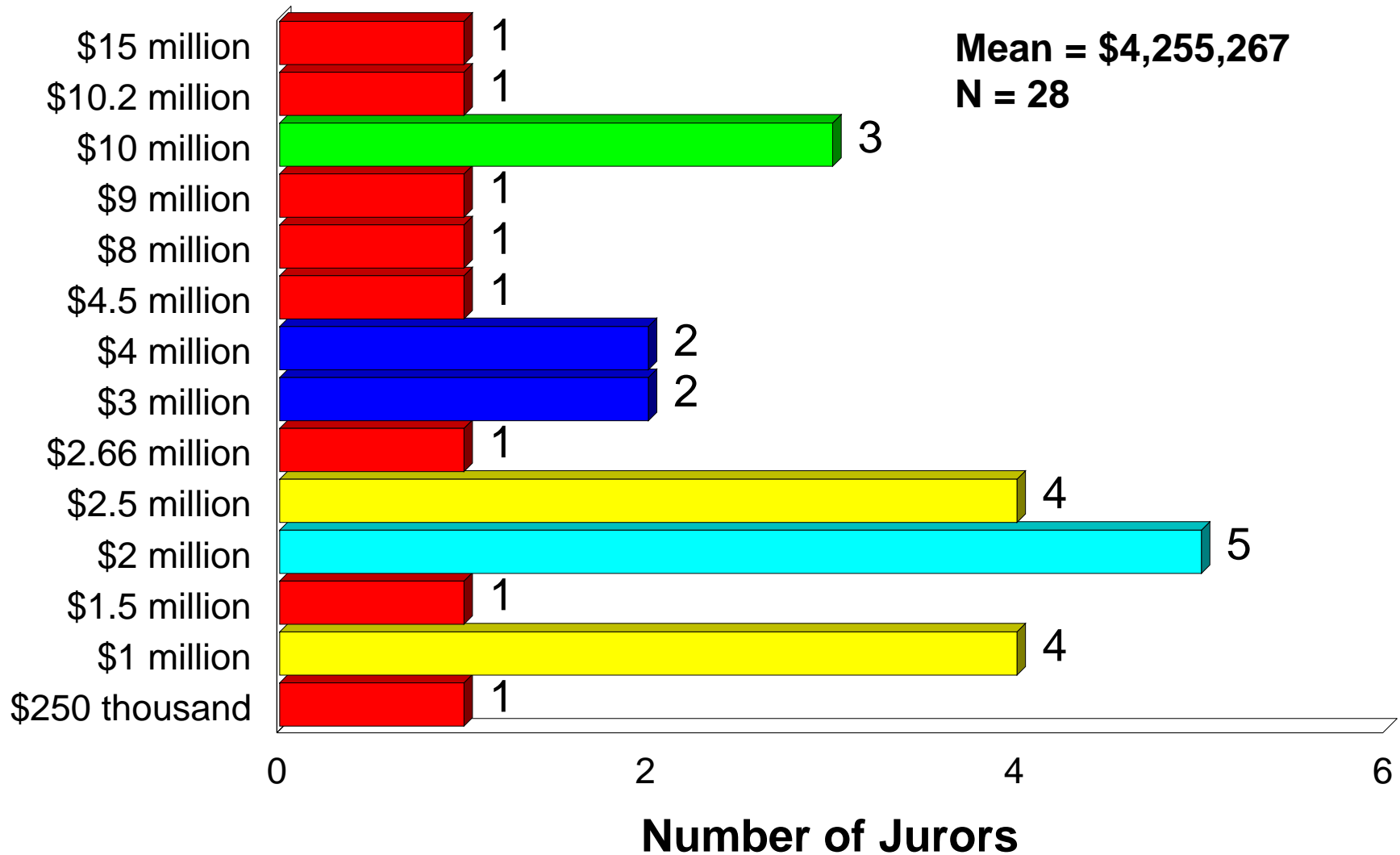


Note: Post-Deliberation

158SER PR 6/96
Q122

After hearing the plaintiff's side of the case, how much would you award the plaintiff?

Chart 38



Note: Post-Plaintiff Presentation

158CSER PR 6/96
Q83

After hearing the defendant's side of the case, how much would you award the plaintiff?

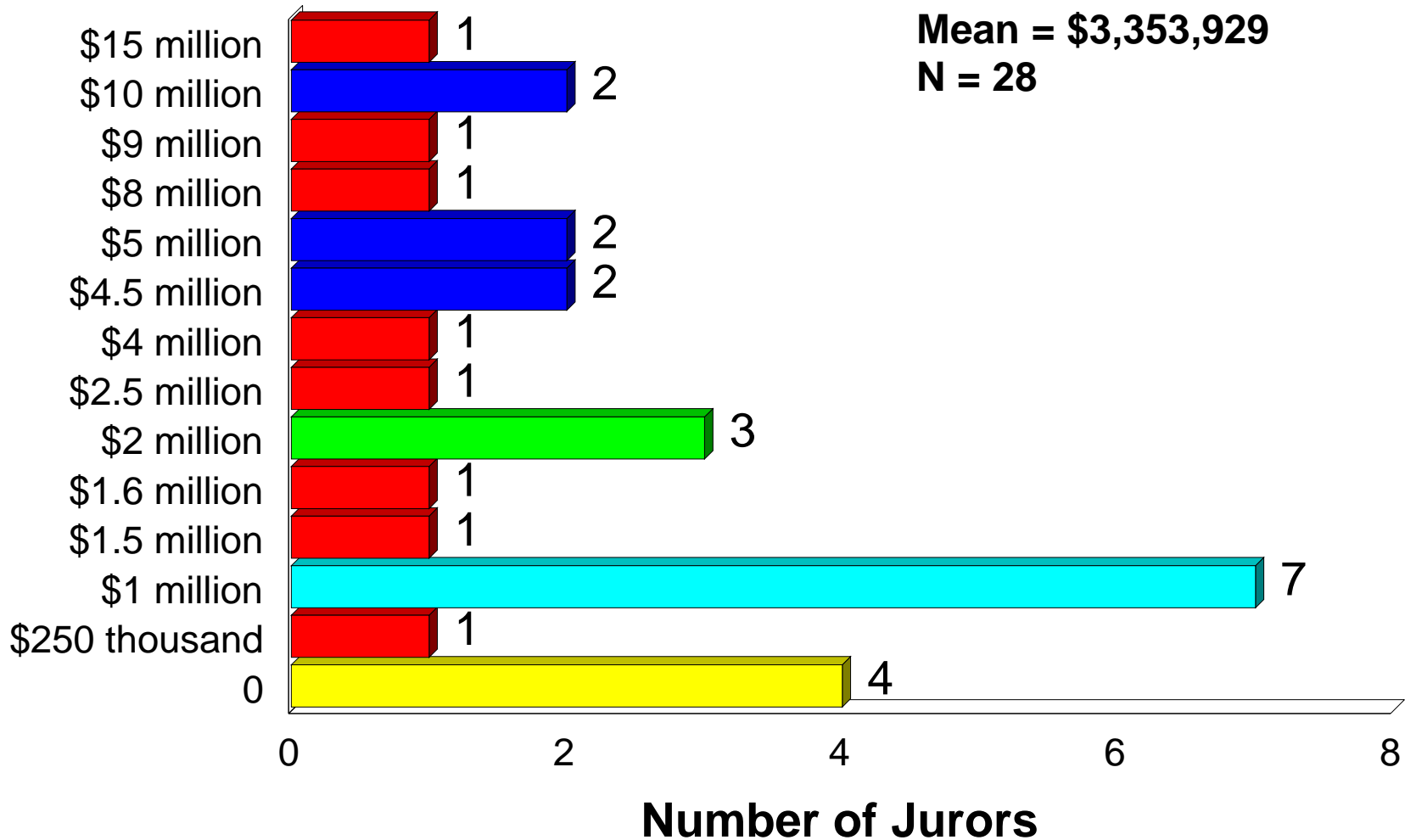


Chart 39

Note: Post-Defense Presentation

158CSER PR 6/96
Q91

After discussing the case, how much would you award the plaintiff?

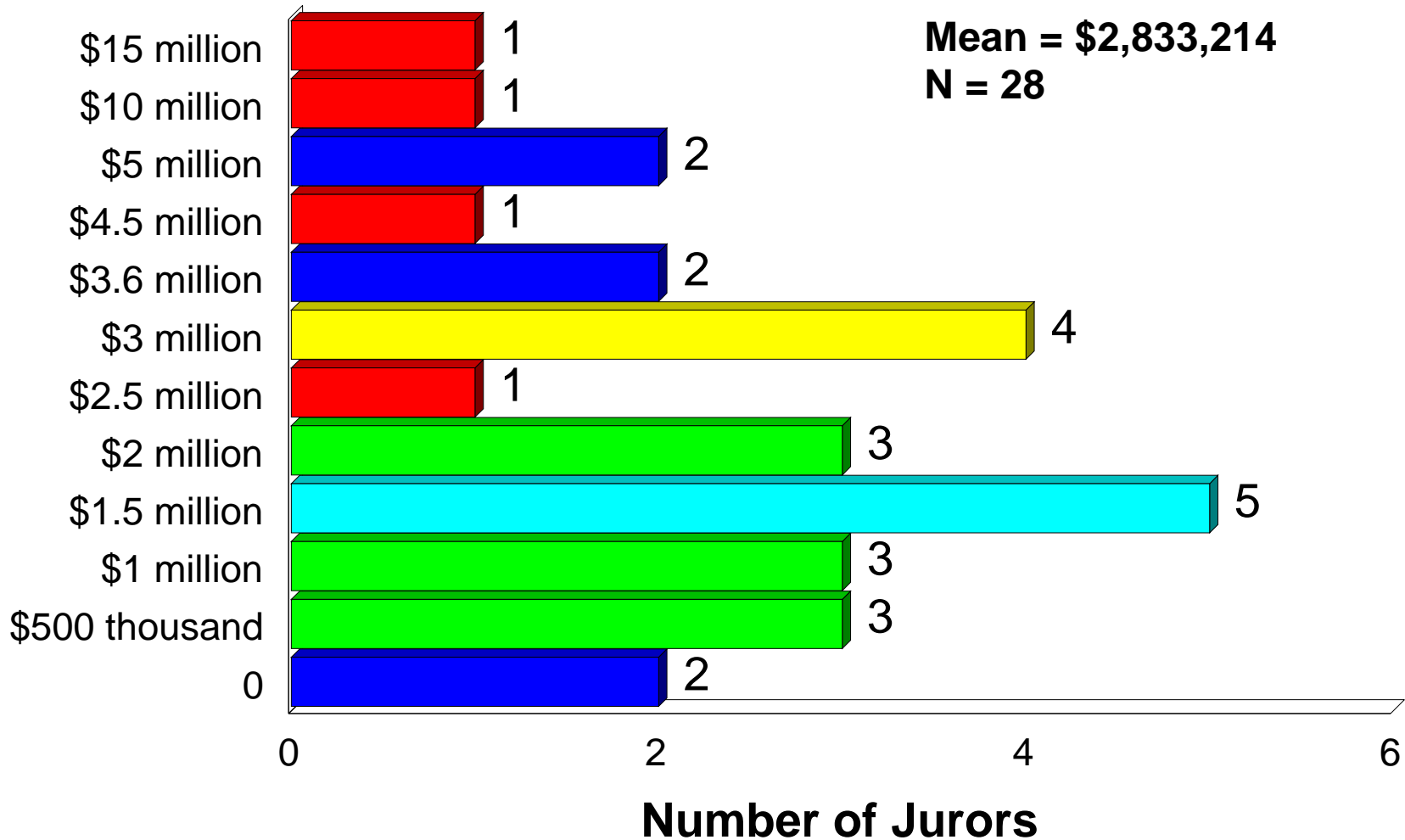


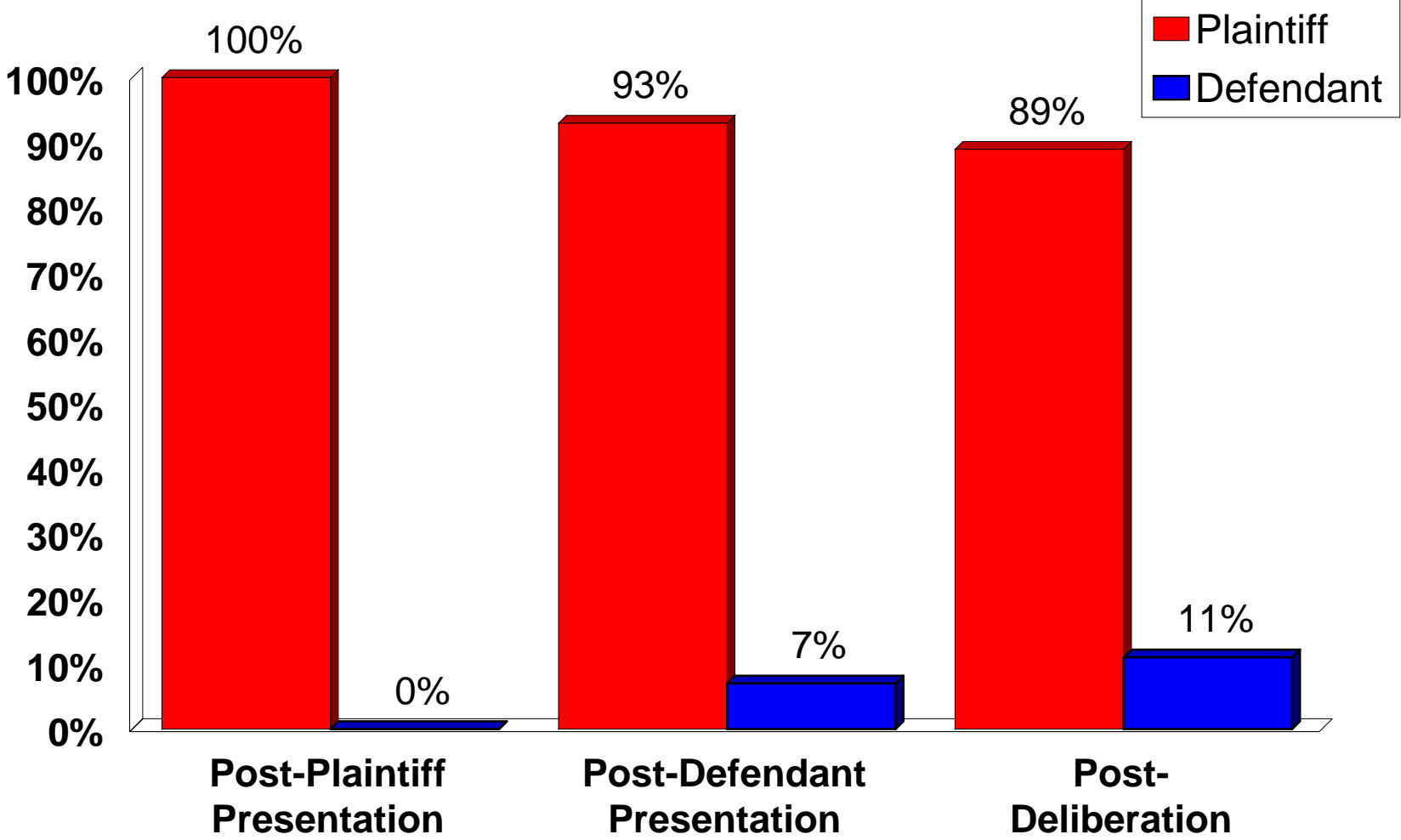
Chart 40

Note: Post-Deliberation

158CSER PR 6/96
Q120

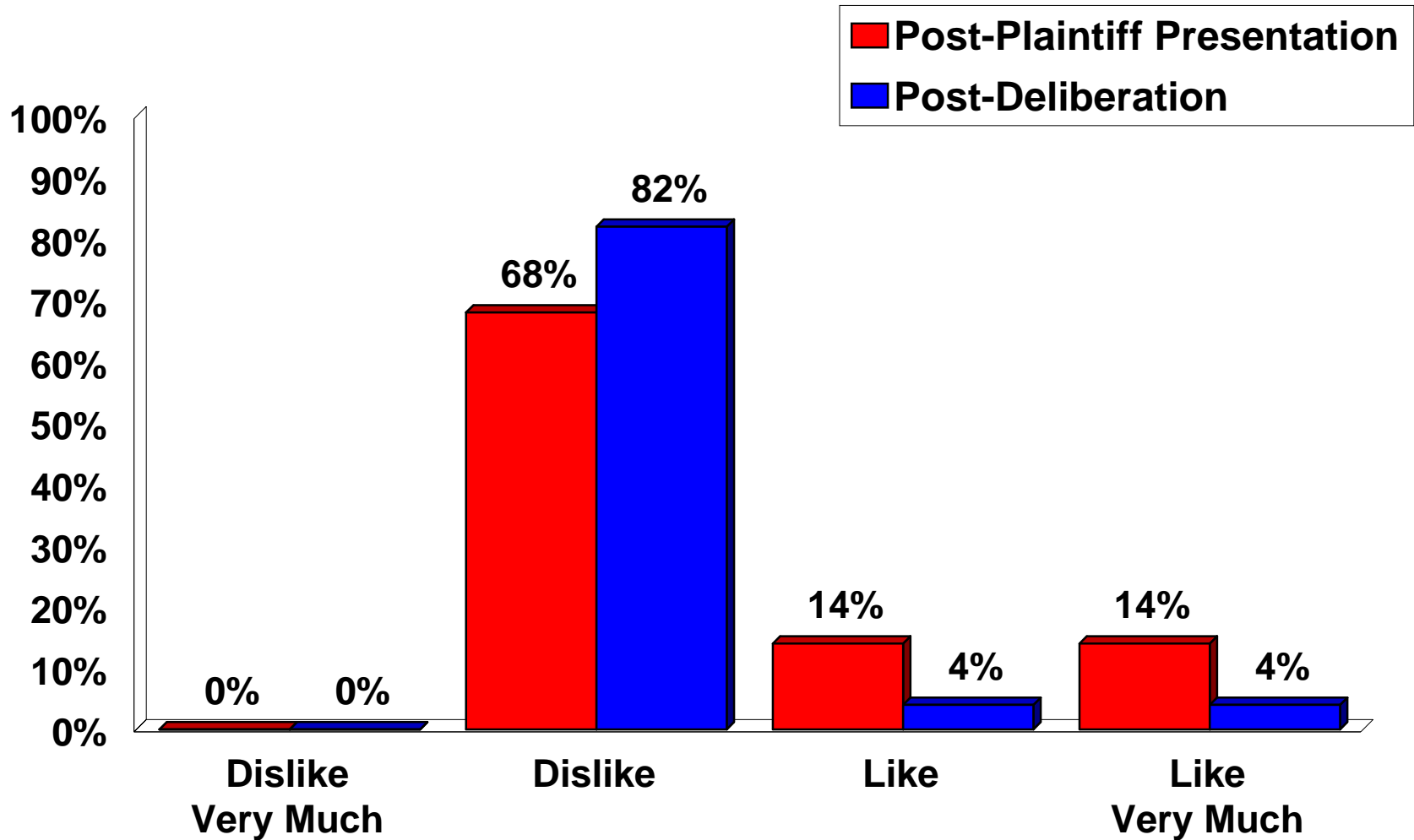
Who do you want to win the case?

Chart 41



Please rate the presentation of the plaintiff's attorney.

Chart 42



Please rate the presentation of the defendant's attorney.

Chart 43

