

# THE ANATOMY OF A **MEDICAL MALPRACTICE CASE**

ORANGE COUNTY PARALEGAL ASSOCIATION  
**ANNUAL CONFERENCE**  
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**Presented by**

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# WHAT IS **MEDICAL MALPRACTICE**?

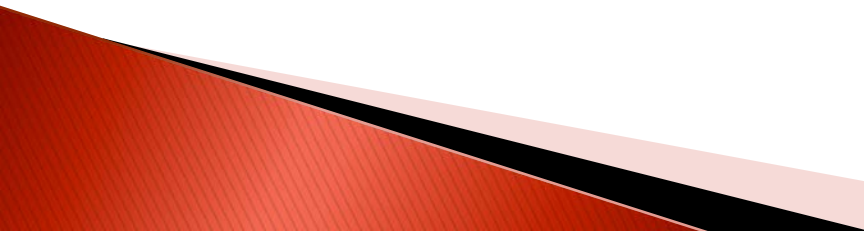
*QUESTION:* IS THERE A MEDICAL MALPRACTICE CASE EVERY TIME A PATIENT HAS A BAD RESULT AFTER MEDICAL CARE?

“RISK OF THE TREATMENT” VERSUS MEDICAL MALPRACTICE


Examples: Infections after surgery versus leaving a towel in patient’s abdomen



# BASIC ELEMENTS OF **MEDICAL MALPRACTICE** CLAIM

1. STANDARD OF CARE/NEGLIGENCE – ESTABLISHED BY EXPERT TESTIMONY
  2. CAUSATION – to a reasonable degree of medical probability (greater than 50% chance)
  3. DAMAGES – Quantify the damages: general, special and punitive
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# PLAINTIFF VERSUS DEFENSE?

- ▶ How is the attorney paid? Contingency versus hourly.
  - ▶ Who do you work with? Injured plaintiff versus doctor, his staff, nurses, hospital staff.
  - ▶ Different “emotional toll”: the suffering of Plaintiffs versus the angst of the healthcare provider re: being sued.
  - ▶ **BOTH ROLES ARE IMPORTANT.**
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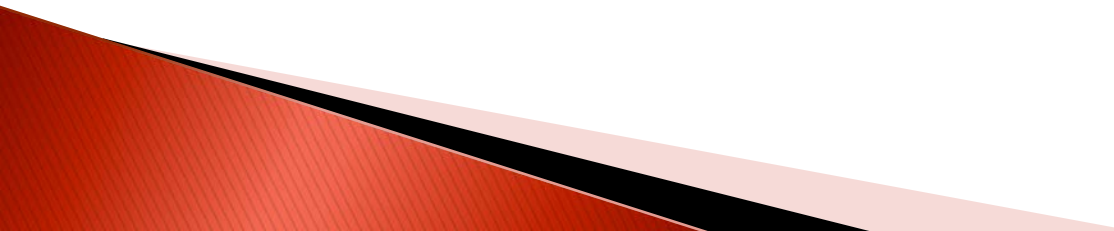
# A WORD ABOUT MICRA!

Medical Injury Compensation Reform Act of 1976

- ▶ \$250,000.00 cap on general damages.
- ▶ Limitation of attorney's fees.
- ▶ One year statute of limitations– CCP 340.5.
- ▶ Periodic payment of future medicals.
- ▶ CCP 425.13 Punitive damage motion.
- ▶ Limitations on attorney fees.

# THE START OF A NEW CASE

## Plaintiffs

- ▶ Talking with new potential clients and clients of ALL walks of life.
  - ▶ Keeping track of statutes of limitations and conflicts.
  - ▶ Ordering medical records either through service or contacting facility directly.
  - ▶ Rapport with other side.
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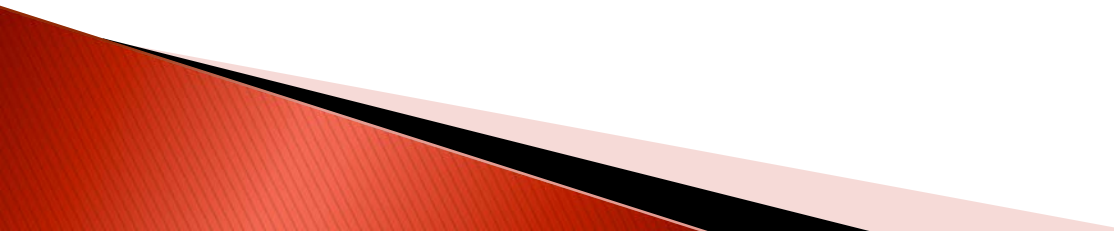
# START OF A NEW CASE

## Defense

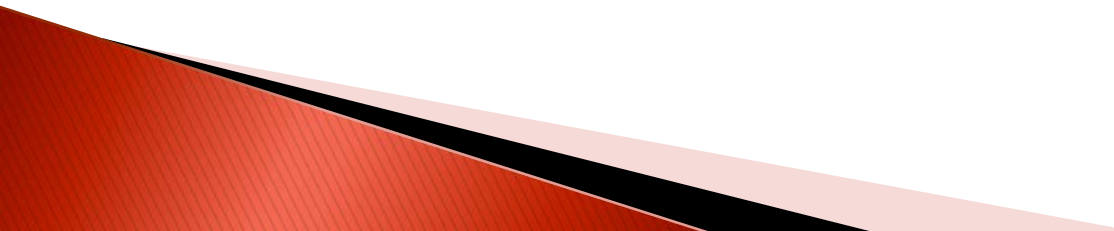
- ▶ Ordering medical records.
- ▶ Meeting with doctor, nurses, hospital staff.
- ▶ Familiarity with reporting requirements;.
- ▶ Establishing rapport with Plaintiff's attorney.
- ▶ Importance of professionalism and cooperation!



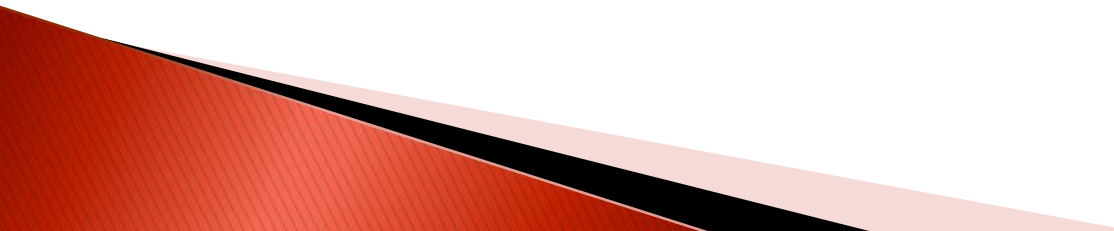
# Written Discovery

- ▶ Form Interrogatories
  - ▶ Special Interrogatories
  - ▶ Demand for Production
  - ▶ Helpful in the typical med mal case?
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# Plaintiff Depositions

- ▶ Preparation, preparation, preparation!!
  - ▶ Tell the truth . . .
  - ▶ Answer the question that is asked!
  - ▶ Don't forget the Notice and document production.
  - ▶ Address everything from tattoos, skeletons, to what to wear!
  - ▶ There will often be tears!
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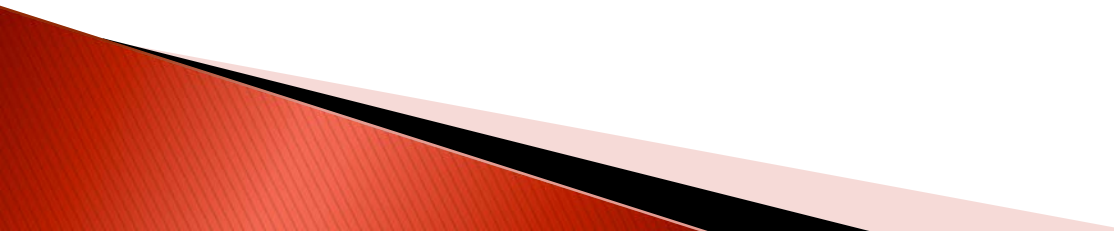
# Defendant Depositions

- ▶ Preparation, preparation, preparation!!
  - ▶ The “trial” attorney appears (not the young associate).
  - ▶ Opportunity to talk about the direction the case is going.
  - ▶ Don't forget about the Notice including document production!
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# A Word About **Social Media**

- ▶ Probably best for clients to avoid all together!
- ▶ Pitfalls for Plaintiffs– Facebook, Instagram.
- ▶ Pitfalls for Defendants – Website forms, proclamations about how we “always” do something or how we always treat a condition.
- ▶ **BOTTOM LINE: KNOW WHAT IS OUT THERE!  
AVOID SURPRISES. . . .**

# LAW AND MOTION PRACTICE

- ▶ **Demurrers** common when Complaint has something in addition to medical negligence.
  - ▶ Calendar deadlines with ticklers.
  - ▶ **Motions to Compel** rare but some examples: defendant doctor questions re: x-ray or doctor and video depo; out of the ordinary discovery.
  - ▶ Always try to work it out!
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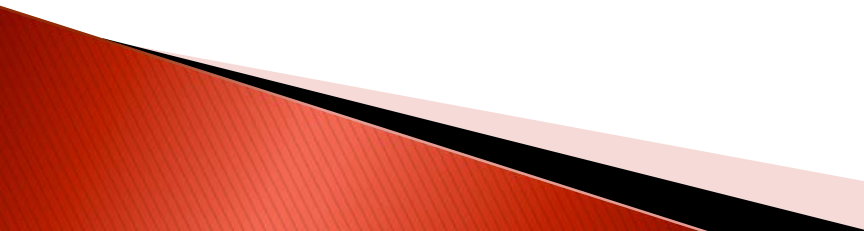
# MOTIONS FOR SUMMARY JUDGMENT

- ▶ HOW TO KEEP YOUR SANITY?
- ▶ Summary Judgment versus Summary Adjudication?
- ▶ Dispositive Motion! It's a BIG DEAL!
- ▶ Deadlines: 75 day notice; must be heard 30 days before trial; opposition due 14 days before Motion.
- ▶ Expert Declaration: DO IT EARLY and give it to defense asking them to take motion off calendar.

# EXPERT DEPOSITIONS

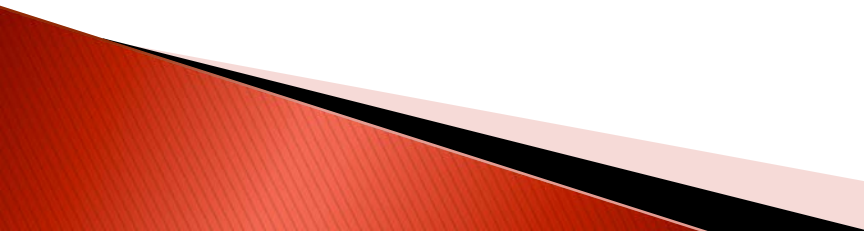
- ▶ Who goes first: Plaintiff or Defense?
- ▶ Expert files 3 days in advance (CCP 2034.210)
- ▶ Develop GOOD rapport with expert's assistant.
- ▶ Keep track of expert's availability/schedules.
- ▶ Don't forget the check (Show me the money!)
- ▶ Two hour minimum? NO!

# TRIAL/SETTLEMENT PREPARATION

- ▶ Trial versus settlement: costs, time commitment, emotional and physical toll.
  - ▶ It is ALWAYS the client's decision.
  - ▶ Know the RULES: County and Department.
  - ▶ Work EARLY with defense to prepare all joint documents.
  - ▶ Trial date drives settlement!
  - ▶ Writing settlement demand letter.
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# DURING TRIAL

- ▶ You are either in trial or on call 24/7.
  - ▶ Available to line up witnesses, be with clients, write last minute briefs, whatever!
  - ▶ Hold down the fort for the other cases in the office.
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# QUESTIONS?

THANK YOU!