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PRACTICE GUIDE · MEDICAL MALPRACTICE

Practice Pointers

Grand Park Law Group · 2026



1. Certified mail the § 364 notice and document everything. The 90-day notice requirement under Cal. Code Civ. Proc. § 364 is procedurally simple but substantively consequential. Use certified mail with return-receipt requested to every potential defendant — physician, medical group, hospital, and any institutional affiliates. Calendar the 90-day period and the limitations expiration immediately upon service. The interaction between § 364(d) tolling and the § 340.5 limitations period is treacherous; *Woods v. Young* (1991) 53 Cal.3d 315 should be on every malpractice lawyer's bookshelf.

2. Retain experts before you file. California requires expert testimony to establish both standard of care and causation in nearly every medical-malpractice case. The lawyer who files first and looks for an expert second courts a § 128.7 sanction motion and a defense MSJ. At intake, identify the medical specialties implicated by the alleged negligence and engage qualified consulting experts before drafting the complaint. Where AB 35's tiered cap structure permits separate caps against multiple defendants, expert review is also critical for naming the correct combination of providers and institutions.

3. Request the certified medical record — and the audit trail. Hospital electronic medical records contain audit trails showing every login, every chart access, and every late entry. Practitioners who request only the printed chart miss a substantial body of evidence. Under Cal. Health & Safety Code § 123110 and the federal HIPAA right of access, patients are entitled to a complete copy of their record. Specifically request the audit trail, the metadata, and any draft or amended notes. In nursing-home cases, also request the resident's MDS assessments, care plans, and the facility's California Department of Public Health licensing-survey citations.

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4. Plead EADACPA with specificity. Under *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771 and *Delaney v. Baker* (1999) 20 Cal.4th 23, an EADACPA claim must allege facts — not labels — establishing recklessness, oppression, fraud, or malice. Generic allegations of "understaffing" or "neglect" are insufficient. Plaintiff's counsel should plead the specific care-plan failures, the specific corporate-level decisions that produced understaffing, and the specific incidents that put the facility on notice of risk. Where possible, attach (or reference) the facility's licensing-survey citation history and any prior similar incidents. The fee-shifting provision in Cal. Welf. & Inst. Code § 15657 makes vigorous pleading and proof economically rational even in cases of modest economic damages.

5. Watch the AB 35 filing-date trigger. AB 35's expanded caps under Cal. Civ. Code § 3333.2 apply to actions filed (or arbitrations demanded) on or after January 1, 2023, regardless of when the cause of action accrued. The dollar amount in effect at the time of judgment, arbitration award, or settlement controls. The difference between $250,000 and the AB 35 schedule is the difference between a marginal case and a substantial recovery.

6. Identify arbitration clauses at intake. Members of Kaiser Permanente and certain other prepaid health plans are typically bound to arbitrate. Demand a copy of the member contract, examine it against the requirements of Cal. Code Civ. Proc. § 1295, and consider whether unconscionability or statutory non-compliance defeats the arbitration provision before filing.

Practice Medical Malpractice

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