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PRACTICE GUIDE · MEDICAL MALPRACTICE

Procedural Prerequisites

Grand Park Law Group · 2026



A. **The 90-Day Notice of Intent (CCP § 364)**

Cal. Code Civ. Proc. § 364 requires that no action against a healthcare provider for professional negligence may be commenced unless the defendant has been given at least 90 days' prior notice of the intention to commence the action. The notice must inform the defendant of (1) the legal basis of the claim, (2) the type of loss sustained, and (3) the nature of the injuries suffered.

Section 364(d) tolls the limitations period for 90 days when notice is served within the last 90 days of the limitations period. This tolling provision is essential for end-of-statute filings and must be calculated with precision: courts have rejected attempts to claim a flat 90-day extension regardless of when notice is served. The Supreme Court in *Woods v. Young* (1991) 53 Cal.3d 315 clarified the operation of the tolling provision and confirmed that the limitations period is extended by 90 days only when notice is served in the final 90 days.

A plaintiff's failure to comply with § 364 does not invalidate a subsequently filed action, but it may subject counsel to professional discipline. The notice requirement is therefore best understood as a mandatory but non-jurisdictional procedural prerequisite.

B. **Periodic Payments of Future Damages (CCP § 667.7)**

Cal. Code Civ. Proc. § 667.7 authorizes the court, on motion of either party, to order periodic payment of future damages exceeding $50,000 in actions for injury or damages against a healthcare provider based on professional negligence. The statute reflects the Legislature's judgment that lump-sum awards of future damages overcompensate plaintiffs (because they receive the present value of future losses immediately) and impose insurance-pricing volatility.

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The statute requires that the court order specify the recipient, the dollar amount, and the interval of payments. Periodic payments terminate on the death of the judgment creditor with respect to losses other than future medical expenses; future medical expenses continue to be paid to the estate. The defendant must post adequate security to ensure performance, typically through an annuity contract.

C. Arbitration Provisions in Health-Plan Contracts

A substantial portion of California medical-malpractice claims are diverted from the courts entirely by mandatory arbitration clauses in health-plan contracts. Kaiser Permanente, in particular, requires its members to arbitrate professional-negligence claims pursuant to Cal. Code Civ. Proc. § 1295, which prescribes specific font-size and disclosure requirements for arbitration provisions in medical-services contracts.

Practitioners must, at intake, identify whether the claim is subject to a binding arbitration provision and adjust strategy accordingly. The procedural and discovery rules in arbitration differ materially from those in court, and the arbitrator-selection process can be outcome-determinative. Section 1295 violations — most commonly, font-size or signature-placement defects — may render the arbitration clause unenforceable and preserve the plaintiff's right to a jury trial.

Practice	Medical Malpractice
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