

INDEX

ADMISSIONS

Discovery (this index)
evidence, §§13:9, 18:31

AFFIRMATIVE DEFENSES

defense perspective, § 12:8

BANKRUPTCY

defendant's, § 9:15
malpractice insurer's, § 9:14
plaintiff's, § 10:15

BLOOD AND BLOOD PRODUCT TRANSFUSIONS

liability, § 4:17

BODILY INJURY

damages, § 16:14

CAUSES OF ACTION

emotional distress
 intentional infliction, § 10:6
 negligent infliction, § 10:5
fraud, § 10:7
loss of consortium, § 10:3
negligence, § 1:1
wrongful life and wrongful birth, § 10:4

CLOSING ARGUMENTS

Trial (this index)

COMPARATIVE AWARDS

damages, § 16:10

COMPARATIVE FAULT

defenses, § 10:17

COMPENSATORY DAMAGES

damages, § 16:15

COMPLAINT

Pleadings (this index)

CONSENT

defenses, § 10:9

CONTINGENCY FEE AGREEMENTS

initial case presentment, § 4:5

CONTRIBUTORY FAULT

defenses, § 10:13

COVERING PHYSICIANS

liability, § 4:9

CROSS-EXAMINATION

Evidence (this index)

CUMIS COUNSEL

defense perspective, § 12:13

DAMAGES

- generally, § 16:7
- bodily injury, § 16:14
- classification by statute, § 16:8
- comparative awards, § 16:10
- compensatory, § 16:15
- economists, § 16:12
- Evidence (this index)
- expert testimony
 - linking liability to damages, § 13:18
 - present and future damages, § 13:19
- future pain and suffering, § 16:21
- health care expenses, § 16:18
- linking liability to damages, § 13:18
- loss of earnings/earning capacity
 - future, § 16:17
 - pretrial, § 16:16
- pain and suffering, §§16:20, 16:21
- present cash value, § 16:13
- punitive, § 10:8
- special verdicts, § 16:11
- statutory constraints, § 16:9

DEFENSE PERSPECTIVE

- generally, § 12:1
- affirmative defenses, § 12:8
- complaint, § 12:2
- cumis counsel, § 12:13
- depositions, § 12:12
- document management, § 12:6
- information management, § 12:5
- initial client interview, § 12:3
- lawyer-client relationship, § 12:9
- theory of case, § 12:4
- uninsured provider, § 12:11

DEFENSES

- acts of God, § 10:12
- affirmative defenses, § 12:8
- comparative fault, § 10:17
- consent, § 10:9
- contributory fault, § 10:13
- estoppel by administrative decisions, § 10:18
- good samaritan statutes, § 10:11
- inevitable casualty, § 10:12
- privilege, § 10:9
- workers' compensation claim, § 10:14

DEMONSTRATIVE EVIDENCE

- evidence, § 17:3

DEPOSITIONS

- generally, § 15:1
- abroad, § 15:7
- attorney's role, § 15:4
- Canadian, § 15:6
- defense perspective, § 12:12
- experts
 - generally, § 15:9
 - planning, § 15:10
 - preparation and execution, § 15:11
- out-of-state, § 15:6
- pre-deposition planning, § 15:2
- preparation for, § 15:3

INDEX

DEPOSITIONS—Continued

preservation of testimony, § 15:5
timing, § 16:1
by written question, § 15:8

DISCLOSURE

malpractice insurance, § 9:11

DISCOVERY

see also Depositions, this index

admissions

fact, opinions and law, § 14:15
genuineness of documents, § 14:14
requests for, § 14:12
substitutes, § 14:13

guidelines, § 14:3

inspection demands, § 14:7

interrogatories

generally, § 14:4
defendant's, § 14:6
plaintiff's, § 14:5

physical and mental examinations

generally, § 14:8
by court order, § 14:11
on demand, § 14:10
by stipulation, § 14:9

plaintiff's perspective, § 14:1

privileges, § 14:3

time factors, § 14:2

work product, § 14:3

DOCUMENT MANAGEMENT

defense perspective, § 12:6

DRUG ERRORS

liability, § 4:16

DUTY OF CARE

communicating with third persons, § 2:14

consent, § 2:10

conveying information to other professionals, § 2:9

generalists, § 2:3

health care providers generally, § 1:1

informed consent, § 2:11

informed refusal, § 2:12

knowledge, using contemporary, § 2:5

locality rule, § 2:6

loyalty, § 2:8

referring to specialist, § 2:13

refraining from undue familiarity, § 2:15

residents, § 4:14

specialists, § 2:4

using contemporary knowledge, § 2:5

ECONOMISTS

damages, § 16:12

EMERGENCY ROOMS

records, § 6:8

EMOTIONAL DISTRESS

Causes of Action (this index)

EQUIPMENT FAILURES

liability, § 4:15

ESTOPPEL BY ADMINISTRATIVE DECISIONS

defenses, § 10:18

EVIDENCE

admissions, §§13:9, 18:31

common knowledge, § 13:12

cross-examination

defendant, § 18:50

defendant's economist, § 18:54

defendant's medical expert, § 18:56

experts, § 18:24

medical examiner, § 18:52

damages

economists, § 16:12

linking liability to, § 13:18

present and future, § 13:19

present cash value, § 16:13

defendant

courtroom admissions, § 13:11

testimony, § 18:49

defendant's medical expert, § 18:55

demonstrative evidence, § 17:3

duty of care, § 13:2

experts

formal discovery, § 13:10

foundation for testimony, § 18:9

information base for testimony, § 13:6

linking liability to damage, § 13:18

role, § 13:4

scope of coverage, § 13:5

subject matter of expert testimony, § 13:14

foundation, § 18:9

hypothetical questions, § 13:31

independent medical examinations, § 18:51

intraoperative events, § 13:16

lay witnesses, §§4:7, 18:35

medical records, § 13:8

medical texts, § 13:7

motions in limine, § 17:7

nomenclature of diagnosis and treatment, § 13:13

objections, § 18:10

offer of proof, § 18:18

pain and suffering, § 16:22

persuasion, § 18:10

postoperative events, § 13:17

preoperative events, § 13:15

presumption of due care, § 13:1

rebuttal evidence

defense, § 18:58

plaintiff's rebuttal, § 18:57

res ipsa loquitur

generally, § 13:20

common knowledge, § 13:22

defendant's response, § 13:29

defendants subject to, § 13:28

elements, §§13:25-13:27

expert input, § 13:23

jury instructions, § 13:30

outside parameters, § 13:24

predicate, § 13:21

textbook references, § 18:7

INDEX

EXPERTS

- generally, § 5:1
- court's role, § 5:3
- cross-examination, § 18:24
 - 18:40
- damages, § 13:19
- defense medical expert, § 18:55
- depositions, §§15:9-15:11
- economists
 - cross-examination, § 18:43
 - defense, § 18:53
 - direct examination, § 18:42
- file control, § 5:8
- foundation for testimony, § 18:9
- hypothetical questions, § 13:31
- information base for testimony, §§13:6, 18:19
- initial expert interview, § 5:7
- limitation on number, § 18:20
- linking liability to damages, § 13:18
- locating, § 5:5
- offer of proof, § 18:18
- preoperative events, § 13:15
- preparation for trial, § 18:39
- qualifications, § 5:2
- role, § 13:4
- scope of coverage, § 13:5
- subject matter, §§5:4, 13:14
- submission of case to, § 5:6

FEDERAL TORT CLAIMS ACT

- generally, § 8:9
- pleadings, § 11:7

FRAUD

- causes of action, § 10:7

FUTURE PAIN AND SUFFERING

- damages, § 16:21

GOOD SAMARITAN STATUTES

- defenses, § 10:11

HOSPITALS

- inter-professional relationships, § 4:14

HYPOTHETICAL QUESTIONS

- evidence, § 13:31

INDEMNITY

- generally, § 10:17

INDEPENDENT MEDICAL EXAMINATIONS

- evidence, § 18:51

INFORMATION MANAGEMENT

- defense perspective, § 12:5

INFORMED CONSENT

- duty of care, § 2:11

INFORMED REFUSAL

- duty of care, § 2:12

INITIAL CASE PRESENTMENT

- generally, § 4:1
- common grievances, § 4:6

CALIFORNIA MEDICAL MALPRACTICE

INITIAL CASE PRESENTMENT—Continued

- contingency fee agreements, § 4:5
- identifying defendants, § 4:8
- initial interview, § 4:2
- lay witnesses, § 4:7
- Medi-cal liens, § 4:3
- obtaining records before suit, § 4:4

INITIAL CLIENT INTERVIEW

- defense perspective, § 12:3

INSPECTION DEMANDS

- discovery, § 14:7

INSTRUCTIONS TO JURY

- Jury Instructions (this index)

INSURANCE

- bankruptcy, malpractice insurer's, § 9:14
- Malpractice Insurance (this index)

INTERROGATORIES

- Discovery (this index)

JOINT VENTURERS

- liability, § 4:11

JURY

- generally, § 18:2
- contact with witnesses, § 18:11
- deliberations, § 18:65
- tampering, § 18:11
- voir dire examination, § 18:13

JURY INSTRUCTIONS

- generally, § 18:64
- instructions conference, § 18:59
- res ipsa loquitur, § 13:30

LAWYER-CLIENT RELATIONSHIP

- defense perspective, § 12:9

LAY PERSONNEL

- liability, § 4:12

LAY WITNESSES

- evidence, §§4:7, 18:35

LIABILITY

- blood and blood product transfusions, § 4:17
- covering physicians, § 4:9
- drug errors, § 4:16
- employees of professional corporation, § 4:13
- equipment failures, § 4:15
- joint venturers, § 4:11
- lay personnel, § 4:12
- medical instrument failures, § 4:18
- ostensible agency, § 4:20
- proximate cause, § 4:21
- referring physician, § 4:10
- res ipsa loquitur, § 10:10
- residents, § 4:14
- vicarious liability of health care institutions, § 4:19

LIMITATIONS OF ACTIONS

- generally, § 7:1
- cause of action

INDEX

LIMITATIONS OF ACTIONS—Continued

cause of action—Continued

- accrual, § 7:4
- defined, § 7:3
- challenges based on, § 7:7
- minor plaintiffs, § 7:5
- pre-MICRA, § 7:2
- special trials, § 7:7
- tolling, § 7:6

LOCALITY RULE

- duty of care, § 2:6

LOSS OF CONSORTIUM

- causes of action, § 10:3

LOSS OF EARNINGS/EARNING CAPACITY

- Damages (this index)

LOYALTY

- duty of care, § 2:8

MALPRACTICE INSURANCE

- generally, § 9:1
- bankruptcy, insolvency, below
- claims department administration, § 9:7
- claims made coverage, § 9:2
- coverage agreements, § 9:2
- cumis counsel, § 9:13
- defense counsel, § 9:10
- disclosure, § 9:11
- duty to pay supplemental costs, § 9:5
- duty to provide defense, § 9:4
- indemnity payments, § 9:8
- insolvency
 - defendant, § 9:15
 - insurer, § 9:14
- occurrence coverage, § 9:2
- policy period and claims made, § 9:6
- scope of coverage, § 9:3
- successive policies, § 9:12
- supplemental costs, § 9:5
- underinsured doctors, § 9:12
- uninsured doctors, § 9:12

MEDICAL INJURY COMPENSATION REFORM ACT (MICRA)

- arbitration
 - arbitrability, § 8:6
 - demand, § 8:7
- certificate of merit, § 8:4
- claims against public entities, § 8:5
- effect on verdicts, § 18:66
- estate claims, § 8:10
- federal actions, § 8:8
- Federal Tort Claims Act, § 8:9
- Medi-Cal notices, § 8:3
- notice of intention to commence action, § 8:2
- periodicizing the judgment, § 18:67
- pre-filing notices, § 8:1

MEDICAL INSTRUMENT FAILURES

- liability, § 4:18

MEDI-CAL LIENS

- notice, § 8:3

MEDI-CAL LIENS—Continued
state's right to reimbursement, § 4:3

MEDICAL RECORDS
charting techniques, § 6:5
decipherment, § 6:3
emergency room records, § 6:8
hospital records
 categories of, § 6:8
 court's view of, § 6:10
 deception, § 6:9
 hospital organization, § 6:7
nursing records, § 6:8
office records
 codes, § 6:5
 generally, §§6:1, 6:2
 importance of, § 6:6
 important items, § 6:4

MEDICAL TEXTS
evidence, § 13:7

MOTIONS
continuance, § 17:6
directed verdict, § 18:29
disqualifying trial judge, § 17:8
judgment notwithstanding the verdict, § 18:69
judgment on the pleadings, § 18:26
mistrial, § 18:6
motions in limine, § 17:7
new trial, § 18:69
nonsuit, §§18:16, 18:28

NEGLIGENCE
cause of action, § 1:1
duty of care, § 13:2

NOMENCLATURE OF DIAGNOSIS AND TREATMENT
evidence, § 13:13

OBJECTIONS
evidence, § 18:10

OSTENSIBLE AGENCY
liability, § 4:20

OUT-OF-STATE DEPOSITIONS
depositions, § 15:6

PAIN AND SUFFERING
damages, §§16:20, 16:21
evidence, § 16:22

PARTIES
plaintiffs, § 10:2
relationships, § 10:1

PHYSICAL AND MENTAL EXAMINATIONS
Discovery (this index)

PHYSICIAN-PATIENT RELATIONSHIP
duty of care
 general practitioner, § 2:3
 in general, § 2:2
 specialist, § 2:4
Medical Injury Compensation Reform Act (MICRA), § 2:1

INDEX

PHYSICIANS

on-call doctors, § 1:2
uninsured, § 9:12

PLEADINGS

California state complaints, § 11:2
complaint
 challenges to, § 12:2
 pleading facts, § 11:1
 verification, § 12:2
compliance with MICRA, § 11:5
federal court forms, § 11:6
federal court proceedings, § 11:4
Federal Tort Claims Act, § 11:7
state court forms, § 11:3

PRESENT CASH VALUE

damages, § 16:13

PRETRIAL EVENTS

case evaluation, § 16:3
conferences, § 18:1
depositions, § 16:1
jury demand, § 17:2
motions, § 16:2
setting trial, § 16:4
settlement, § 16:5
settlement conference, § 16:6
witness preparation, § 17:4

PRIVILEGES

defenses, § 10:9
discovery, § 14:3

PROVIDER-PATIENT RELATIONSHIP

generally, § 1:1
aggressive bill-collecting, § 10:16
creation
 casual contacts, § 1:2
 common law, § 1:2
 contract, § 1:3
duration, § 1:4
on-call doctors, § 1:2
scope, § 1:5

PROXIMATE CAUSE

liability, § 4:21

PUNITIVE DAMAGES

damages, § 10:8

REBUTTAL EVIDENCE

Evidence (this index)

RECORDS

Medical Records (this index)

REFERRING PHYSICIAN

liability, § 4:10

REFERRING TO SPECIALIST

duty of care, § 2:13

RES IPSA LOQUITUR

Evidence (this index)
liability, § 10:10

CALIFORNIA MEDICAL MALPRACTICE

RESIDENTS

duty of care, § 4:14

SPECIAL VERDICTS

damages, § 16:11

SPECIALISTS

duty of care, § 2:4

SUCCESSIVE POLICIES

malpractice insurance, § 9:12

SUPPLEMENTAL COSTS

malpractice insurance, § 9:5

TAMPERING WITH JURY

jury, § 18:11

TEXTBOOK REFERENCES

evidence, § 18:7

TEXTS

evidence, medical texts, § 13:7

TIME FACTORS

discovery, § 14:2

TRIAL

generally, § 18:1

admissions, § 18:31

authority of court, § 18:7

closing arguments

generally, § 18:60

defendant's, § 18:62

plaintiff's, § 18:61

rebuttal, § 18:63

continuance, § 17:6

costs, § 18:68

cross-examination

defendant, § 18:50

defendant's economist, § 18:54

defendant's medical expert, § 18:56

experts, §§18:24, 18:40

lay witnesses, § 18:36

medical examiner, § 18:52

plaintiff, § 18:34

unsued doctors, §§18:38, 18:47

decorum, § 18:1

defendant's case-in-chief

generally, § 18:44

adverse examination of plaintiff, § 18:48

conceptualizing the defense, § 18:45

defendant's testimony, § 18:49

lay witnesses, § 18:46

direct examination

plaintiff's economist, § 18:42

directed verdict, § 18:29

disqualifying trial judge, § 17:8

exhibits

list, § 17:9

independent medical examinations, § 18:51

instructions conference, § 18:59

judgments

motion for judgment notwithstanding the verdict, § 18:69

periodicizing, § 18:67

INDEX

TRIAL—Continued

judicial behavior, § 18:12

jury

challenges to, § 18:2

deliberations, § 18:65

tampering, § 18:11

voir dire examination, § 18:13

jury instructions, § 17:10

memorandum of costs, § 18:68

mistrial, § 18:6

motions

for judgment on the pleadings, § 18:26

for new trial, § 18:69

judgment notwithstanding the verdict, § 18:69

nonsuit, § 18:28

nonsuit, § 18:16

opening statements

generally, § 18:14

defendant's, § 18:17

plaintiff's, § 18:15

plaintiff's case-in-chief

generally, § 18:30

adverse examination of provider, § 18:31

direct examination, § 18:33

position papers, § 17:9

pre-trial conferences, § 18:1

rebuttal

defense, § 18:58

plaintiff's, § 18:57

settlement discussions, § 18:3

stipulations, § 18:8

trial briefs, § 17:9

verdicts, § 17:9

MICRA, § 18:66

voir dire examination, § 18:13

witness list, § 17:9

UNDERINSURED DOCTORS

malpractice insurance, § 9:12

UNINSURED DOCTORS

malpractice insurance, § 9:12

UNINSURED PROVIDER

defense perspective, § 12:11

VICARIOUS LIABILITY OF HEALTH CARE INSTITUTIONS

liability, § 4:19

VOIR DIRE EXAMINATION

jury, § 18:13

WORK PRODUCT

discovery, § 14:3

WORKERS' COMPENSATION

simultaneous claim as defense, § 10:14

WRONGFUL DEATH

generally, § 16:23

WRONGFUL LIFE AND WRONGFUL BIRTH

causes of action, § 10:4