

CAPITATION

- ◆ A flat fee received by the primary care doctor or group, per month for all care necessary for the insured.

CAUSES OF ACTION AGAINST THE LABORATORY/PHYSICIAN

1. MEDICAL MALPRACTICE

2. BREACH OF FIDUCIARY DUTY

BREACH OF FIDUCIARY DUTY

Breach

- ◆ Incentives Not To Treat
- ◆ Delayed Treatment
- ◆ Financial Conflicts of Interest
Unknown to Patient

BREACH OF FIDUCIARY DUTY (Continued)

Causation - Malpractice Standard Damages

- ◆ MICRA?
- ◆ Punitive Damages - Code of Civil Procedure 425.13

BREACH OF FIDUCIARY DUTY (Continued)

The Contractual Evidence

Health Plan - Group Contractual Agreement

- ◆ Capitation
- ◆ Risk Pool
- ◆ Incentive Programs

MALPRACTICE v. BREACH OF FIDUCIARY DUTY

Malpractice

- ◆ Standard of Care - Negligence
- ◆ Causation Issues
- ◆ Damages
- ◆ MICRA

PHYSICIAN/PATHOLOGIST/ LABORATORY'S FIDUCIARY DUTY

The Physician has a duty to make a full and fair disclosure to the patient of all the facts which materially affect the patient's rights and interests and to take all prudent actions including proper diagnosis and/or referral to a specialist.

“A physician is not a patient's financial advisor. ...the reason why a physician must disclose possible conflicts is not because he has a duty to protect his patient's financial interests but because certain personal interests may affect professional judgment.” Moore v. Regents of the University of California, 51 Cal. 3d 120, 132 (1990) fn.10.

The Supreme Court further stated, “accordingly, we hold that a physician who is seeking a patient’s consent for a medical procedure must, in order to satisfy his fiduciary duty and to obtain the patient’s informed consent, disclose personal interests unrelated to the patient’s health, whether research or economic, that may affect his medical judgment.” Moore, Cal. 3d at 131-32.