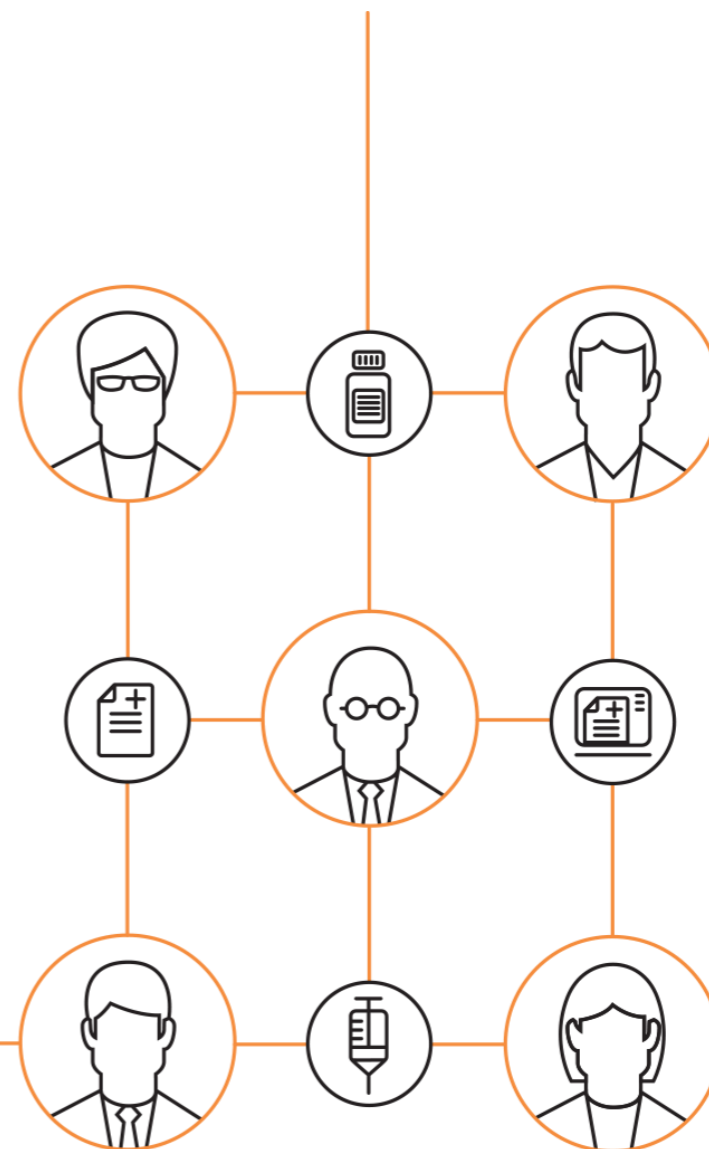


Scope of Practice and Immunity Issues During COVID-19

Michael Lamb, Esq.

Gordon Ownby, Esq.

*Cooperative of American Physicians,
Inc.*





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Disclosure

The Cooperative of American Physicians, Inc. CME Committee Planners, Jeff Shapiro, MD, and Roger Eng, MD, each disclosed relevant financial relationships which were reviewed and determined to not be a conflict of interest because the commercial companies with relationships don't have an interest in the subject matter being presented.

The following planners, reviewers, and or faculty have no financial relationships with a commercial company to disclose:

- Greg Lizer, MD
- Lisa Thomsen, MD
- Huyn Tran, MD
- Ann Whitehead, RN, JD
- Gordon T. Ownby, Esq.
- Michael Lamb, Esq.



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Educational Objectives

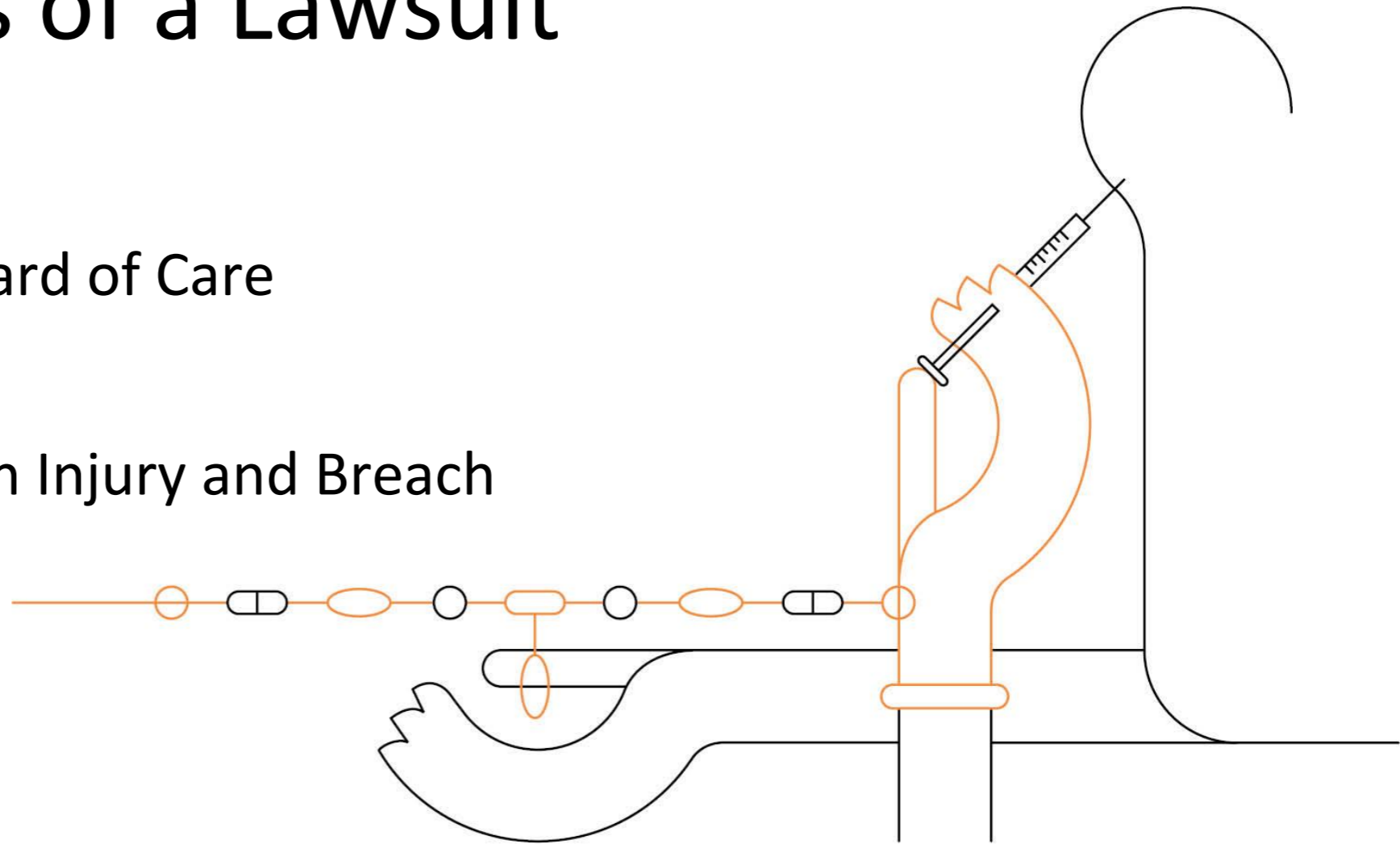
- Identify the basic elements of a medical malpractice lawsuit and why scope of practice is important
- Discuss how a physician can mitigate concerns on scope of practice during the pandemic
- Explain the importance of additional informed consent language related to COVID-19
- Describe the federal and state provisions for healthcare immunity during the pandemic



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Elements of a Lawsuit

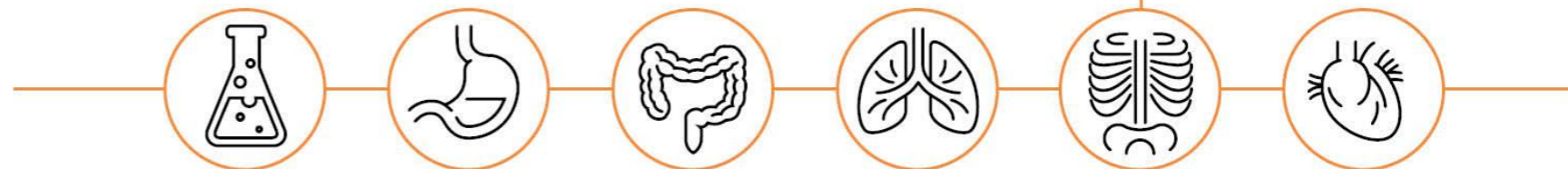
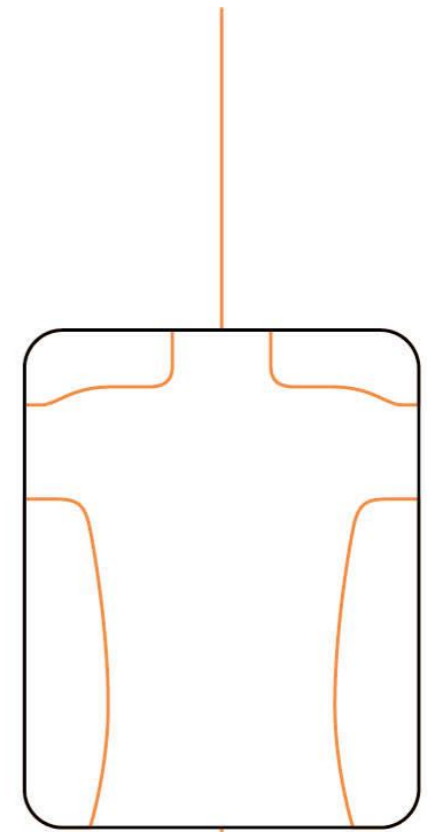
- Duty
- Breach in the Standard of Care
- Injury
- Connection Between Injury and Breach





Scope of Practice

- Education, Training & Experience
- Residency or Applicable Subspecialty?
- Would Expansion Be Considered Reckless?
- Comfort Level - Reasonable or Unreasonable?
- Medical Professional Liability Coverage

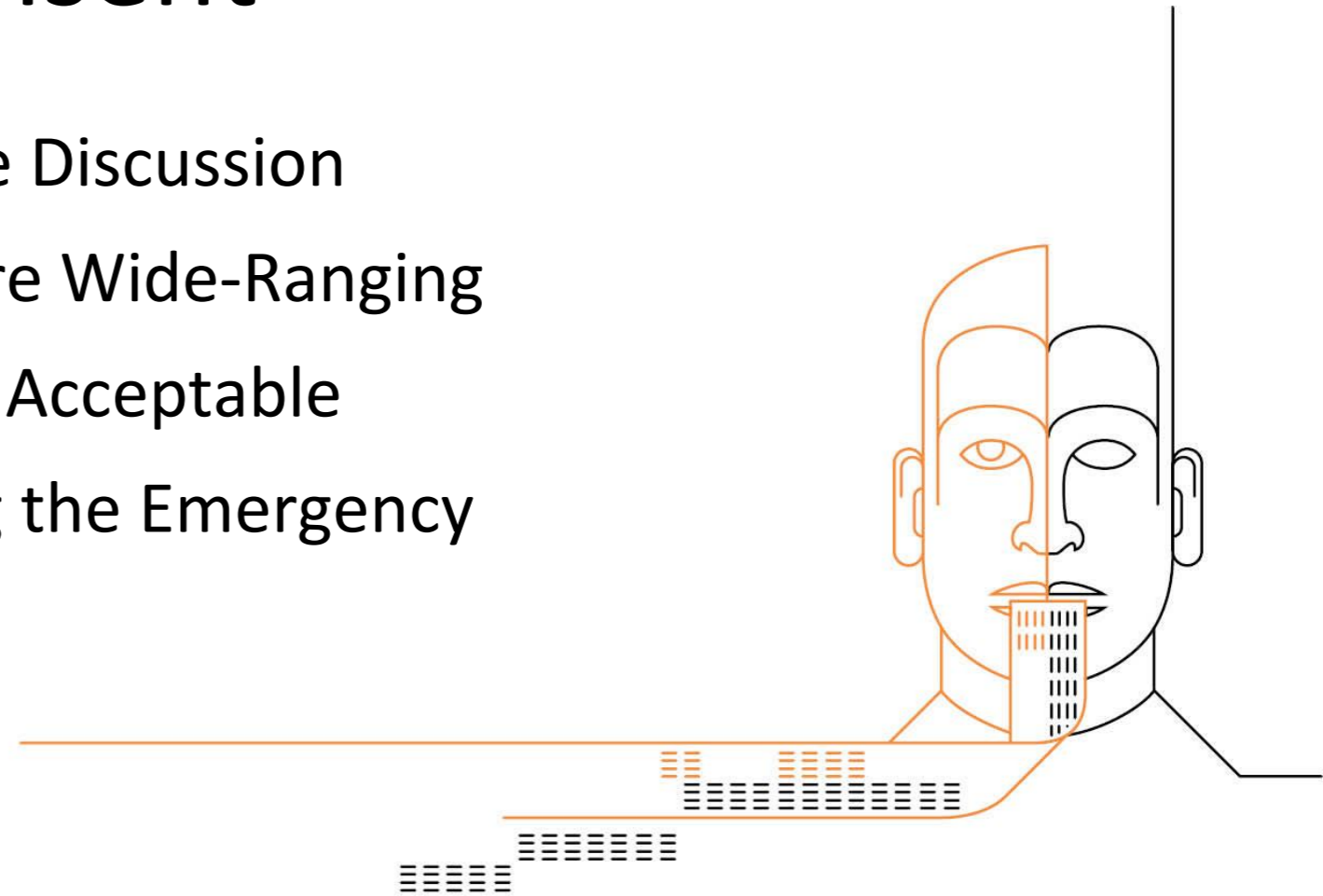




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Informed Consent

- It's Not the Document, It's the Discussion
- Most Document Templates Are Wide-Ranging
- Custom & Practice Testimony Acceptable
- Additional Note Useful During the Emergency





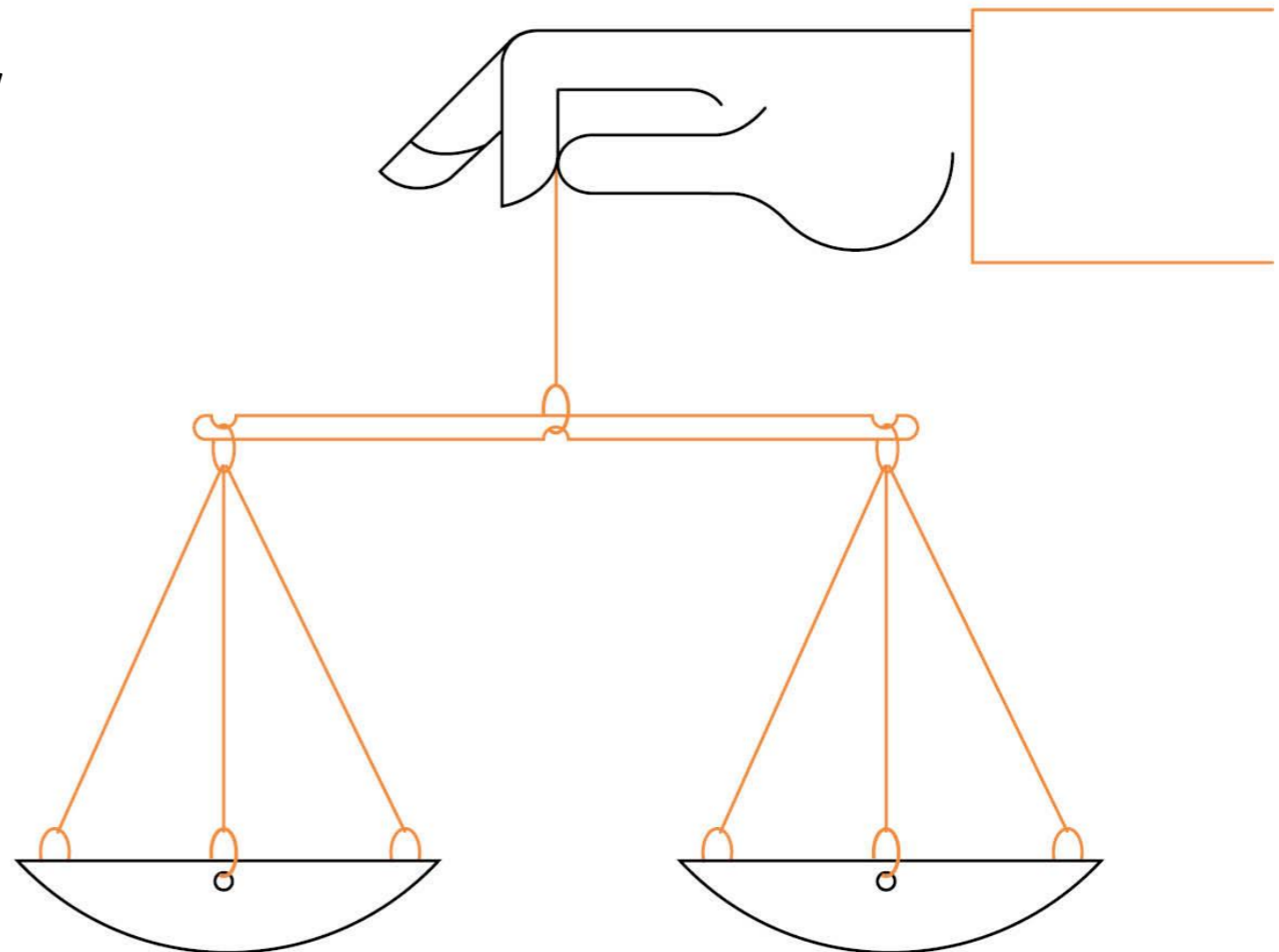
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Informed Consent

“My physician has explained the risks of possible Corona Virus exposure. I understand and accept the risks and have chosen to proceed with the surgery.”

Federal & State Immunity

- Federal CARES Act
- COVID-19 Healthcare Provider Protection Act
- California Good Samaritan Law
- California State of Emergency





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Federal CARES Act

Section 3215. Limitation on liability for volunteer health care professionals during COVID-19 emergency response. Pre-empts State law to provide liability protection (immunity) to any ***volunteer*** health professional for harm caused by simple negligence in providing in good faith treatment in response to and during the COVID-19 public health emergency. The professional must be acting within the scope of his or her license, not acting in an intentional or willful and wanton manner, and not be under the influence of alcohol or drugs.



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COVID-19 Healthcare Provider Protection Act of 2020

Congress Finds:

“In order to assure adequate provision of healthcare services in interstate commerce during the course of this pandemic, and to incentivize healthcare providers to continue offering such services wherever they may be located, it is necessary to provide liability protections to such providers, protecting them from claims or lawsuits arising out of, resulting from, or related to the provision of healthcare services.”



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COVID-19 Healthcare Provider Protection Act of 2020

Section 4(a): “Notwithstanding any other provision of law to the contrary, no healthcare provider shall be liable for any harm, damage, breach, or a tort caused by, arising out of, relating to, or resulting from any act of omission of the healthcare provider in arranging for or providing healthcare services.”



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COVID-19 Healthcare Provider Protection Act of 2020

Exception:

“Section 4(a) shall not apply if a harm, damage, breach, or tort resulting from or related to arranging or providing healthcare services is shown by clear and convincing evidence to be the result of intentional criminal conduct, intentional infliction of harm, willful misconduct, or gross negligence, provided, however, that acts, omissions, or decisions resulting from a resource or staffing shortage shall not be considered to be intentional criminal conduct, intentional infliction of harm, willful misconduct, or gross negligence.”



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COVID-19 Healthcare Provider Protection Act of 2020

- HR 7059 Introduced on May 29, 2020
- Sponsors: Phil Roe (R-TN) & Lou Correa (D-CA)
- Services Must Be Within Scope of Licensure,
Notwithstanding Scope of Practice
- Good Prospect for Passage
- <https://actnow.io/WqPZnbe>



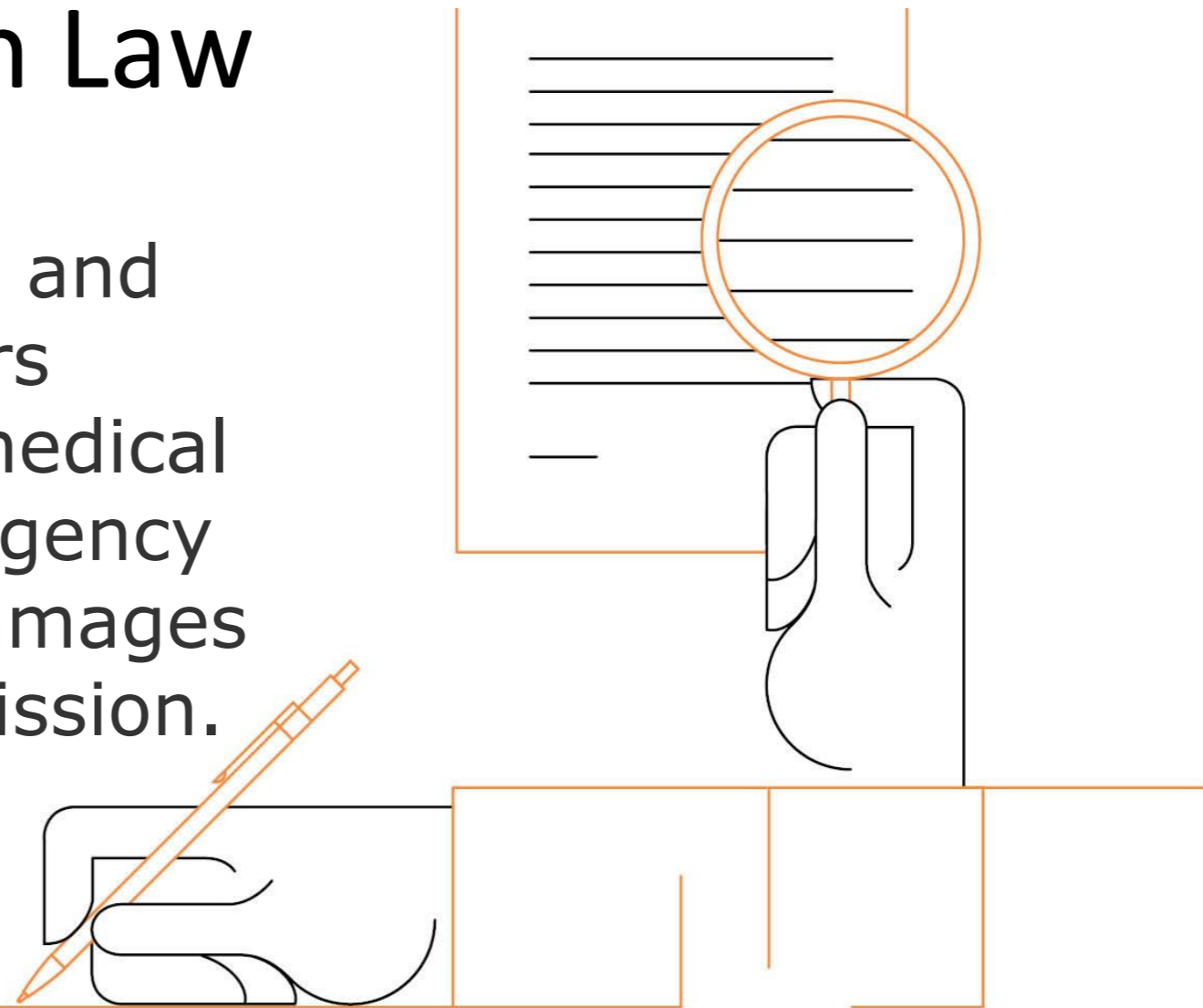
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State Good Samaritan Law

H&S Code Section 1799.102:

No person who in good faith, and not for compensation, renders emergency medical or non-medical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission.

The scene of an emergency shall not include emergency departments and other places where medical care is usually offered.





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California State of Emergency

- Declared by Gov. Newsom on March 4, 2020
- Immunity Applies to All Healthcare Providers, Not Just Volunteers



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California State of Emergency

Gov. Code Section 8659:

“Any physician or surgeon (whether licensed in this state or any other state), hospital, pharmacist, respiratory care practitioner, nurse, or dentist who renders services during any emergency ***at the express or implied request of any responsible state or local official or agency*** shall have no liability for any injuries sustained by any person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained; provided, however, that the immunity herein granted shall not apply in the event of a willful act or omission.”



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