

# Monthly News & Updates

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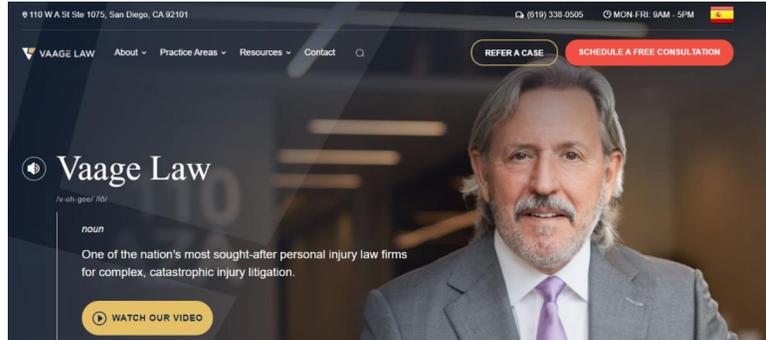
## Newsletter Topics

*Medical Fraud and  
Conspiracy - How to Spot It*

*Vaage Travels*

*Tip of the Month*

*Book Review*



## Vaage Law Launches New Website

**Vaage Law** has launched a new website with an emphasis on mentoring, referrals, and co-counsel opportunities. If you are a plaintiff's attorney and are interested in improving your trial skills, take advantage of Bob Vaage's extensive trial experience by registering now to receive **Vaage's Weekly Trial Tips**. Reach out to Bob about your case by calling (619) 338-0505 or contacting us through the website's **Referral Page**.

## Medical Fraud and Conspiracy - How to Spot It

*Bob Vaage walks you through the steps he takes in reviewing a case for medical fraud and conspiracy.*

Because of the caps on damages and limited contingency fee recovery in medical negligence cases, I'm always looking for a non-MICRA theory. So when I'm reviewing a surgical implant case, regardless of the type of implant, I'm looking for a fraud or product liability angle. Was my client a guinea pig in human experimentation of a device? Was the surgeon somehow compensated by the

manufacturer for using the device in my client? Was the device used in a manner not approved or cleared by the FDA (off-label)? Was my client aware that the device was being used off-label?

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## Identify the Implanted Devices

The first place I look in all surgical implant cases, whether it's a spinal implant, mesh, pain pump, or some other implant, is the intraoperative, perioperative, or implantable device record. Hospitals are required to identify implanted devices by description and their serial number/lot number/catalog number in the medical records. If the device has been removed or explanted, get your hands on it or request that it be retained.

Another source of information on what devices were implanted or used is the hospital's billing records.

	Entry 1
Implant/Explant	Implant
Implant Identification	
Description	MESH SERISCAFFOLD 10X25CM SCF10X25AGEN
Serial Number	NONE
Lot Number	P14082201A
Manufacturer	ALLE
Catalog #	SCF10X25AGEN
Size	n/a
Expiration Date	09/30/17
Usage Data	
Implant Site	RIGHT AND LEFT BREAST
Quantity	2
Outcomes Met [0.30]?	Yes

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## Look for Altered Records

Review the preop records from the surgeon's office and the operative report. In one case, the surgeon added language to the preop note that he advised the patient of the potential conflict of interest with the device manufacturer. The patient denied any such knowledge. The patient's pre-litigation photocopy of the record had no

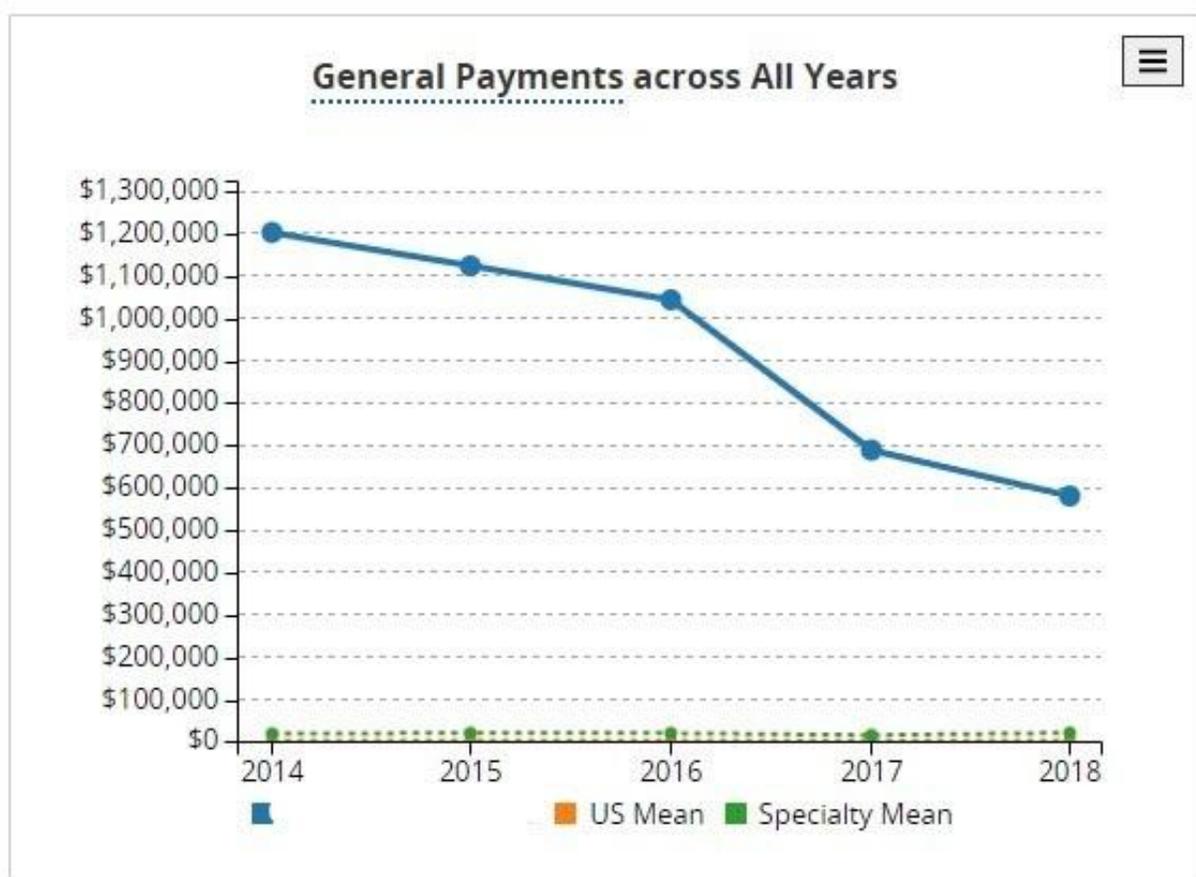
such notation. When you suspect altered records, ask to inspect the original medical record. It was pretty obvious that the language had been added by the surgeon after the fact.

Another key record is the consent form. Is the device mentioned? When did the patient sign the consent form -- as he/she was being wheeled into the operating room? Is there one consent form in the surgeon's records and another consent form in the hospital records?

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## Look for Conflicts of Interest

Once I have identified the device, I focus my attention on the surgeon. Pursuant to the Sunshine Act, manufacturers are required to report payments to physicians. Use the [Open Payments](#) search tool to look up payments to a surgeon. If a surgeon appears to be receiving significantly more income from the manufacturer of the implanted device, I'm going to dig further. On the search results page, you'll see the different types of payment, e.g., royalty or license, consulting fee, travel and lodging, current or prospective ownership or investment interest, faculty/ speaker for an education program, and food/beverage. I generally focus on the royalties and consulting fees.



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## Look for Clinical Trials or Clinical Studies

If you suspect that your client may have been a human guinea pig for a clinical trial or clinical study, go to [ClinicalTrials.gov](https://clinicaltrials.gov) to see if the device has been involved in any clinical trials or studies. Note the dates, location, and principal investigator. We have had a patient who had a procedure involving an implant where the surgeon and hospital were the principal investigator and site for a clinical study. She was not aware of the study and had none of the additional disclosures or informed consent protections afforded by the Protection of Human Subjects in Medical Experimentation Act (Calif. Health & Safety Code sections 24170-24179.5).

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## Look for Adverse Events at the FDA Website

The U.S. Food and Drug Administration tracks reports of adverse events associated with a medical device in its Manufacturer and User Facility Device Experience ([MAUDE](#)) database. If you type in the device name and manufacturer in the search bar, you'll see adverse event reporting, possible recalls, warning letters and responses, original approval/clearance of the device, the Class of the device, and other information. Are the reported adverse events similar to the complications or injuries sustained by the patient? Has the FDA issued a warning letter to the manufacturer for promoting or marketing the device for uses that were not consistent with the FDA's cleared indications for use? Was the device adulterated and/or misbranded? Did the manufacturer unilaterally alter the product's intended use and indications?

*These medical fraud and conspiracy cases are extremely complex. Depending on the type of medical device involved, certain claims may be preempted. If you suspect you may have a medical fraud/conspiracy or medical device products case, contact Vaage Law by phone at (619) 338-0505 or through our website at [VaageLaw.com](https://VaageLaw.com) for advice on how to proceed with your case.*

# Galapagos Islands

Charles Darwin had it right when he described the Galapagos Islands:

*"...[B]y far the most remarkable feature in the natural history of this archipelago ... is that the different islands to a considerable extent are inhabited by a different set of beings..." - Voyage of the 'Beagle.'*

I fear with climate change this fragile ecosystem won't last. Visit it while you can.



Male Blue-footed Booby birds dance for their females. It's quite a show.



Galapagos Sea Lions love taking naps on warm beach sands.



This Sally Lightfoot Crab is ready to take on a Marine Iguana.



Male Great Frigate Birds inflate their throat pouch to attract females - sadly, no takers for this poor fellow.

## This Month's Tip

**Consider Amending Your Case Caption Before Trial**

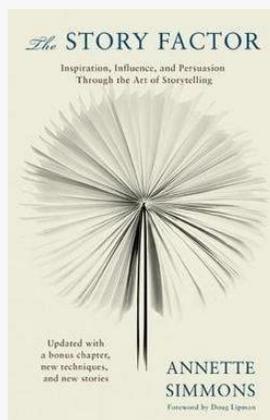
*- Elizabeth Teixeira, Esq.*

At the time of trial, consider amending your case caption to remove extraneous, previously dismissed defendants. Inclusion of these defendants could confuse, mislead, and distract the jury and interject prejudicial and irrelevant evidence. Rather than applying the evidence in assessing the liability of the named defendants, the jurors could be confused by seeing dismissed defendants in the case caption. See Evidence Code sections 352 and 403.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." CCP § 473(a)(1), emphasis added.

Especially in terms of a verdict form, do you want the jury to wonder why there are defendants named in the caption, but not in the verdict form itself? If you don't think jurors will notice, you are not giving them enough credit.

## Book Review



### The Story Factor by Annette Simmons

In this book about the power of storytelling, Annette Simmons writes, "People value their own conclusions more highly than yours. They will only have faith in a story

that has become real for them personally. Once people make your story their story, you have tapped into the powerful force of faith."

She describes 6 types of stories:

1. Who I Am
2. Why I Am Here [I use this in my openings]
3. The Vision
4. Teaching
5. Values-in-Action
6. I Know What You Are Thinking

Simmons explains "push" strategies, such as persuasion, bribery, and various appeals, and how a story is a "pull" strategy, where people come to trust the message you bring.

She goes on to write, "A good story helps you influence the interpretation people give to facts. Facts aren't influential until they mean something to someone. A story delivers a context so that your facts slide into new slots in your listener's brains."

Since good trial attorneys are exceptional storytellers, I recommend this book to all attorneys interested in improving their craft.

[Find the Book](#)



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## San Diego Personal Injury Lawyers

Since 1992, our firm has been focusing primarily on helping victims of injury regain order in their lives. We are compassionate, understanding, and committed to achieving your best possible outcome in the courtroom or at the settlement table.

