

Waranch & Brown's

2025

# Think Piece

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Holiday eBook

Medical Defense Strategies,  
Tactics, and Thoughts



**W&B**  
WARANCH + BROWN  
*Representing Health Professionals*

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## INTRODUCTION

Each year brings new challenges for Maryland healthcare providers, and 2025 was no exception. From evolving jury-selection rules to the expanding role of artificial intelligence, the litigation landscape continues to shift in ways that demand adaptability, strategy and clarity. At Waranch & Brown, we believe that staying ahead of these changes is essential for protecting the healthcare institutions and practitioners we serve.

This year's Holiday Ebook brings together a selection of our most practical, experience-driven Think Pieces. These articles reflect what we see every day in courtrooms and high-stakes negotiations, from the importance of credible arguments to the smart use of technology to a meticulous control of the narrative.

Our goal is simple: to offer forward-thinking insights that help reduce exposure, strengthen trial performance, and eliminate surprises. We hope these strategies prove useful as you navigate the year ahead.

If you need help navigating the evolving medical malpractice landscape with clarity and confidence, reach out to Waranch & Brown at <https://waranch-brown.com> or call (410) 821-3500.

**Happy Holidays!**

## Think Piece #1

### Every Juror Matters: The Importance of Thorough Jury Selection



A successful defense in a medical malpractice trial depends not only on the strength of our argument but also on who is sitting in the jury box. At Waranch and Brown, we understand that a fair and attentive jury can make all the difference — which is why we take a strategic, detail-oriented approach to every aspect of jury selection. Our mastery of this critical process helps protect our clients from biased decision-making and ensures that each juror, including alternates, is well-suited to a case with complex medical issues.

Jury selection is both an art and a science, requiring a nuanced understanding of human behavior and legal strategy. Plaintiffs' attorneys work hard to seat jurors who are sympathetic to their

clients, but we work even harder to ensure a balanced, impartial panel. Through careful questioning and analysis, we assess potential jurors on key factors such as:

**Ability to Understand Medical Information:** We prioritize jurors who can follow technical testimony and evaluate medical evidence accurately.

**Objectivity and Fairness:** We identify and challenge potential jurors who may have preconceived biases against healthcare professionals.

**Attention to Detail:** A malpractice trial often involves intricate facts. We select jurors who demonstrate patience and a willingness to engage with complex information.

**Life Experiences and Attitudes:** Personal history with healthcare can shape a juror's perspective. We explore these experiences to uncover potential biases.

**Personal Responsibility:** Jurors who embrace this concept are more likely to assess the roles of the health care providers and patients fairly.

Our meticulous attention to jury selection is just one way W&B demonstrates its commitment to justice and client defense.

## Think Piece #2

### Grounding the Argument: Ensuring Credibility in Jury Appeals



*“A \$50 million painting sits protected in a museum, while this family is left to grapple with their loss as if it’s worth nothing.”*

*“Most of us will never see a \$50 million painting, but we all know the value of a human life. It’s beyond any price tag.”*

Arguments like these — called unsubstantiated anchoring — utilize manipulative emotional appeals instead of evidence-based, factual arguments. In recent years, courts have begun cracking down on the improper use of jury arguments like these.

*Gregory v. Chohan*, a 2023 Texas wrongful death case, first spotlighted this concept. There, the plaintiff’s counsel compared the value of his client’s loss to the cost of a \$71 million dollar fighter jet and a \$186 million dollar painting. The Texas Supreme

Court deemed these analogies to be irrelevant and improper and reversed the plaintiff's jury verdict. In doing so, the appellate court emphasized that "unsubstantiated anchors" had no rational connection to the alleged injuries.

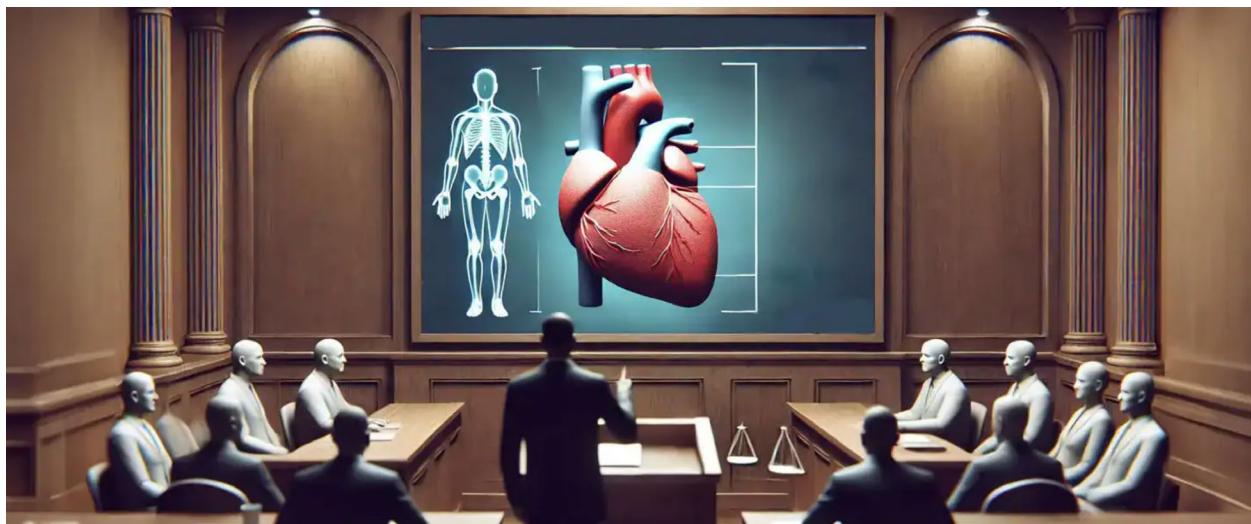
Since *Gregory*, Texas courts have consistently reinforced this principle, overturning verdicts influenced by such tactics. In these cases, plaintiffs made arguments that their losses should be compared to a \$350 million dollar painting, and multimillion-dollar athlete and CEO salaries.

While Maryland appellate courts have not yet explicitly addressed unsubstantiated anchoring, at Waranch & Brown we understand how these tactics can unfairly influence outcomes, and our attorneys are experienced in identifying and dismantling these arguments. Our team employs proactive strategies, including pretrial motions to preclude arbitrary comparisons, vigilant objections during trial, and closing arguments that keep the focal point on the evidence.

With a deep commitment to upholding fairness and a proven track record in Maryland courtrooms, we are ready to advocate for our clients with precision and skill.

## Think Piece #3

### Visual Evidence: How It Shapes Perspectives in the Courtroom



Medical malpractice cases involve complex concepts that can be difficult for juries to understand. At Waranch & Brown, we use advanced technology — 3D modeling, detailed animations, and interactive demonstratives — to present these concepts in a way that is clear and accessible. These tools allow us to transform technical medical details into visual narratives that jurors can easily follow, keeping the focus on the facts, rather than speculation.

Sometimes old-fashioned methods serve the purpose, too. For example, W&B attorney Rachel Giroux recently secured a victory for a surgeon in a case alleging negligence in the performance of a bowel resection. Using a common garden hose to illustrate the urinary system's pressure dynamics and plastic tubing to

represent the ureter's shape enabled the jury to understand a key point.

Visual aids are particularly valuable in helping experts communicate their testimony effectively. These tools not only simplify complex ideas but also add credibility to the testimony, making it more persuasive and impactful.

In addition to supporting expert witnesses, these technologies help during cross-examinations and rebuttals. A well-designed visual timeline or short animation of a procedure can challenge the plaintiff's narrative, highlight inconsistencies, and keep the jury focused on the evidence presented. By integrating visual storytelling into our defense strategy, we empower jurors to understand the intricacies of medical cases and make informed, fact-based decisions.

At Waranch & Brown, we are committed to using innovative tools to tell your story clearly and effectively, ensuring that even the most complex cases are presented in a way that resonates with the jury.

## Think Piece #4

### Defending Smarter: How We Confront and Use AI in Malpractice Litigation



Love it or hate it, Artificial Intelligence has arrived on the scene. It's showing up in real cases, in real time. At Waranch & Brown, we have already seen firsthand how AI is shaping the landscape of medical malpractice litigation, and we're taking a measured, strategic approach to both the risks and opportunities it presents.

We approach AI in this space with a healthy mix of skepticism and strategy. Recently, we deposed a plaintiff's expert who admitted to using AI to generate his record review notes. If the opinions driving a malpractice claim are based on content drafted or influenced by generative AI, that raises real questions: Who is the author of the opinion? What sources were used? How reliable is the analysis? When plaintiffs' experts rely on AI

to draft or shape their work, we're prepared to confront these issues head-on. Whether in deposition, motion practice, or at trial, we strike fast and we strike hard.

Internally, we're also identifying ways to use AI tools to strengthen our defense. We may use AI to help organize timelines, streamline literature reviews, or assist with drafting and proofreading. AI will never replace our legal judgment. But it can improve our efficiency and accuracy, which only benefits the health care professionals we serve.

In medical malpractice defense, precision and credibility are everything. We place human intelligence at the center of our work, with AI serving as a tool to strengthen and enhance it. And when others rely on AI without rigor or oversight, we'll be ready to expose it.

## Think Piece #5

### Literature as Leverage: Elevating Trial Credibility



The credibility of expert witnesses can make or break the defense of your medical malpractice case. If your attorneys do not understand how to manage expert testimony effectively, it can lead to confusion, weaken your defense, making it more difficult to achieve a defense verdict.

Consider how a typical medical malpractice trial unfolds.

There the jury sits — unfamiliar with the medicine at issue, and unfamiliar with the legal procedures around them. And then come opening statements. Each attorney stands up and starts touting a different expert as the “preeminent expert” in the relevant field of medicine. The only problem: these “preeminent

experts” all reach different conclusions. And the jury doesn’t know whom to believe.

As the trial proceeds, the credentials of the experts begin to blur. Their scientific explanations turn to noise in the wash of cross examination, equivocation, and sixteen-syllable medical terms. The one thing that every juror understands is that these experts are being paid!

At the end of the day, juries want to know what has been accepted as conventional wisdom, they want to see it in black and white, and they want to hear it from someone who isn’t being “paid” for their opinion. That is why it is crucial for an expert’s opinion to be backed by something more than just their “I say so,” whether that is in the form of a textbook, an association’s guideline, or a medical journal.

Recently, we tried a case where our experts presented multiple treatises supporting their key opinions. After deliberations and a defense verdict, the jury told us that they liked our paid experts, but they really believed the “non-paid” experts — i.e., the authors of those treatises!

At Waranch and Brown, we make finding supportive literature a priority, not an afterthought. When a particular scientific issue is hotly disputed, we ensure that our experts are armed with literature at the earliest possible phase of litigation.

## Think Piece #6

### Controlling the Narrative: How to Manage the Death of a Plaintiff



For healthcare professionals involved in medical malpractice litigation, the untimely death of a plaintiff can drastically alter the course of a trial. When a plaintiff passes away after suit is filed, but before they “testified” via written discovery responses or deposition, the narrative risks becoming skewed by speculation and conjecture. The challenge, then, is ensuring that the jury bases its decision on the facts, not on what the plaintiff’s attorneys might wish to project onto their deceased client.

In a recent case, we faced this very scenario. The plaintiff passed away before she could offer any testimony or participate in discovery. This meant there was no direct insight into her thoughts, actions, or experiences during the critical moments leading up to her death. Recognizing the potential for the

plaintiff's attorneys to fill this void with their own interpretations, we filed motions to preclude any assignment of thoughts, emotions, or subjective experiences to her during the trial.

Why was this important? Without any testimony from the plaintiff, there was no basis for speculation about what she may have felt or thought during the key events. By successfully excluding speculative and prejudicial narratives, we ensured that the jury remained focused on objective evidence rather than being swayed by unfounded emotional appeals.

This strategy highlights a crucial aspect of trial preparation: controlling the narrative when key testimony is missing. By preventing the plaintiff's attorneys from "imagining out loud" what the deceased plaintiff thought, or wanted, or felt, we maintained the integrity of the trial. The jury deliberated based on the concrete evidence presented, rather than being led by speculative and potentially misleading interpretations.

## Think Piece #7

### W&B War Story: Trial Win by Focusing on Decision-Making Process

In a recent hard-fought victory, Waranch & Brown's Alexander Carlson and Neal M. Brown secured a defense verdict at trial on behalf of a local surgeon in a \$1.5 million case.



[Watch the Video Think Piece on W&B TV »](#)

This case involved a claim of negligence arising from a laparoscopic gallbladder removal surgery that resulted in the severing of the common bile duct, requiring the plaintiff to undergo multiple follow-up surgeries. Acknowledging the seriousness of the injury, our defense centered on shifting the

jury's focus from the injury itself to the medical decisions made during the procedure.

The plaintiff argued that the surgeon should have used an intraoperative cholangiogram, but we demonstrated — through expert testimony and authoritative medical literature — that this was not the standard of care. We emphasized that cholangiogram is not the “silver bullet” the plaintiffs portrayed it to be, and the jury agreed. By compelling the plaintiff to pinpoint specific medical decisions they claimed violated the standard of care, we successfully defended the surgeon’s choices, which were grounded in his training and experience.

A key to our defense was the use of visual aids, which illustrated how such injuries can occur without negligence. In addition, our thorough preparation of the defendant surgeon paid off — several jurors noted that his professionalism and confident testimony reassured them of his competence and skill.

Bottom line: all surgery involves risk of unintended injury. The key is to show the jury how that can happen in the absence of medical negligence.

## Think Piece #8

### Mastering the New Voir Dire: Navigating Maryland's Expanded Jury Selection



Change is inevitable. Getting blindsided by change doesn't have to be.

One significant recent change affects jury selection rules — an important factor in any medical malpractice case. Below, we break down what these new rules mean and how they might impact malpractice trials.

Maryland's Expanded Voir Dire Pilot Program, operational from January to June 2025 in several counties, introduces significant changes aimed at enhancing fairness and transparency in jury

selection. The following are key changes within the pilot program:

Traditional voir dire with additional questions posed to jurors by the attorneys. This approach helps identify potential biases, particularly those concerning healthcare and malpractice issues, and aims to assist in making informed peremptory challenges; Individual juror voir dire allows for questions to be asked in confidence and so that attorneys may uncover biases that may not surface in a group setting;

Attorney-led voir dire will enable attorneys to directly ask detailed and probing questions;

Written questionnaires will take place ahead of voir dire, allowing for an early opportunity to assess opinions on key issues and streamlining the jury process;

Limited opening remarks will be allowed to provide context to jurors and allow for more meaningful responses.

The expanded voir dire sets the stage for more targeted and meaningful juror responses. It aims to offer defense attorneys enhanced capabilities to detect biases and challenge biased jurors, deeper insight into juror impartiality, transparency, and a greater chance to select a fair jury, potentially leading to more favorable trial outcomes.

However, this thoroughness comes with its own set of challenges. The process may extend jury selection, potentially increasing costs and leading to trial delays. Moreover, a diverse jury pool may introduce unpredictability and in-depth questioning may lead to uncomfortable disclosures, potentially resulting in juror removals that don't always benefit the defense. While the pilot program presents new tools for improving jury selection and promises a fairer trial process, its success will depend on how well attorneys adapt to and manage these changes.

At Waranch & Brown, we understand that staying ahead of legal changes is crucial for protecting physicians and healthcare providers from liability. That's why we closely monitor updates to Maryland law to ensure our defense strategies remain strong. This ensures that we are prepared to leverage these new opportunities while carefully navigating any challenges to ensure a balanced and effective approach.

## Think Piece #9

### Digital Footprints: Tracking Social Media Clues in Malpractice Defense



In today's digital world, social media is more than just a platform for social interaction — it is also a valuable legal tool. Our team at Waranch & Brown adeptly utilizes plaintiffs' social media to debunk claims and provide credence to defense theories. By scrutinizing online behaviors, we've challenged the authenticity of alleged injuries, providing a clearer picture of the plaintiff's actual condition. Even transaction histories on platforms like Venmo can imply a more active lifestyle or contradict claimed financial hardships.

To resonate with the jury, the narrative we present at trial must be supported by compelling visuals and videos. We've found that

evidence sourced from familiar platforms like Instagram and TikTok is compelling to the average juror because it aligns closely with their everyday experiences and perceptions. Modern juries are accustomed to seeing significant portions of people's lives documented via social media.

Utilizing social media gives us a window into the "real" life of plaintiffs and provides evidence that can alter the course of a trial. As we continue to explore this evolving landscape, our commitment to leveraging all available resources to defend our clients remains unwavering.

## Think Piece #10

### To Zoom or Not to Zoom: Keeping Plaintiffs Engaged at Virtual Mediation



Virtual mediation, which started as a necessary contingent during the pandemic, has become the new norm. It's easy to see why: convenience, flexibility and cost savings while still (ostensibly) meeting the goals of collaboration, negotiation, and effective resolution.

But is it really a good thing? Sometimes, no. At a virtual mediation, plaintiff's counsel can more easily shield their client from the defense presentation and the weaknesses in their case. But does that mean virtual mediation must go? Not necessarily. Physical presence is but one of many factors that go into a successful mediation. With thoughtful preparation well before mediation, all goals of mediation can be met — whether virtual

or in-person. At Waranch & Brown, we carefully weigh all factors before our cases are mediated.

We choose our mediators based upon their tried-and-true skills in communicating with the plaintiff and applying the requisite “physical” pressure and motivation to settle cases remotely. We also know our comrades in the plaintiffs’ bar. With thoughtful reconnaissance before mediation, we can assess plaintiff’s desire to settle, whether speed bumps are anticipated or whether that in-person interface is required for more effective communication.

At Waranch and Brown, we have extensive experience in both virtual and in-person mediations with successful resolutions based on analysis of all factors and maintaining an open dialogue with opposing counsel and our mediators.

## ABOUT THE AUTHORS

Waranch & Brown thought leaders publish electronic “Think Piece” newsletters on current legal issues.



*Waranch & Brown, LLC, is a regional litigation practice based in Baltimore County, Maryland.*

*Our clients include health care providers, hospital systems, and national insurance carriers. The firm provides trial attorneys with over 250 years of collective litigation experience.*

*To speak with a representative of Waranch & Brown, please visit <https://waranch-brown.com>, or call us at (410) 821-3500.*