

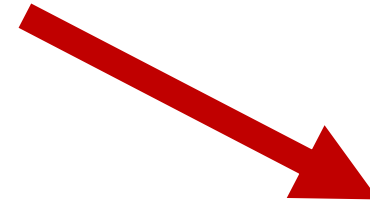
CDLA “Hot Topics in Medicine”

Lisa Leasure

Mark Fogg

Kevin Kuhn

August 5, 2022



Scholle v. Ehrichs, M.D., et. al. (Colo. App. 2022)

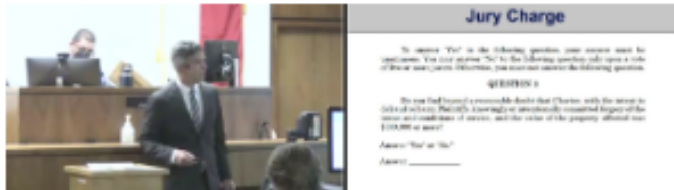
- Colorado Court of Appeals, July 28, 2022
- Something for everyone
 - HCAA Damages
 - HCAA's own "collateral source evidence" statute (13-64-402)
 - Causation
 - Forseeability
 - Jury Instructions
 - Collateral source
 - Institutional negligence

Recent Big National Verdicts



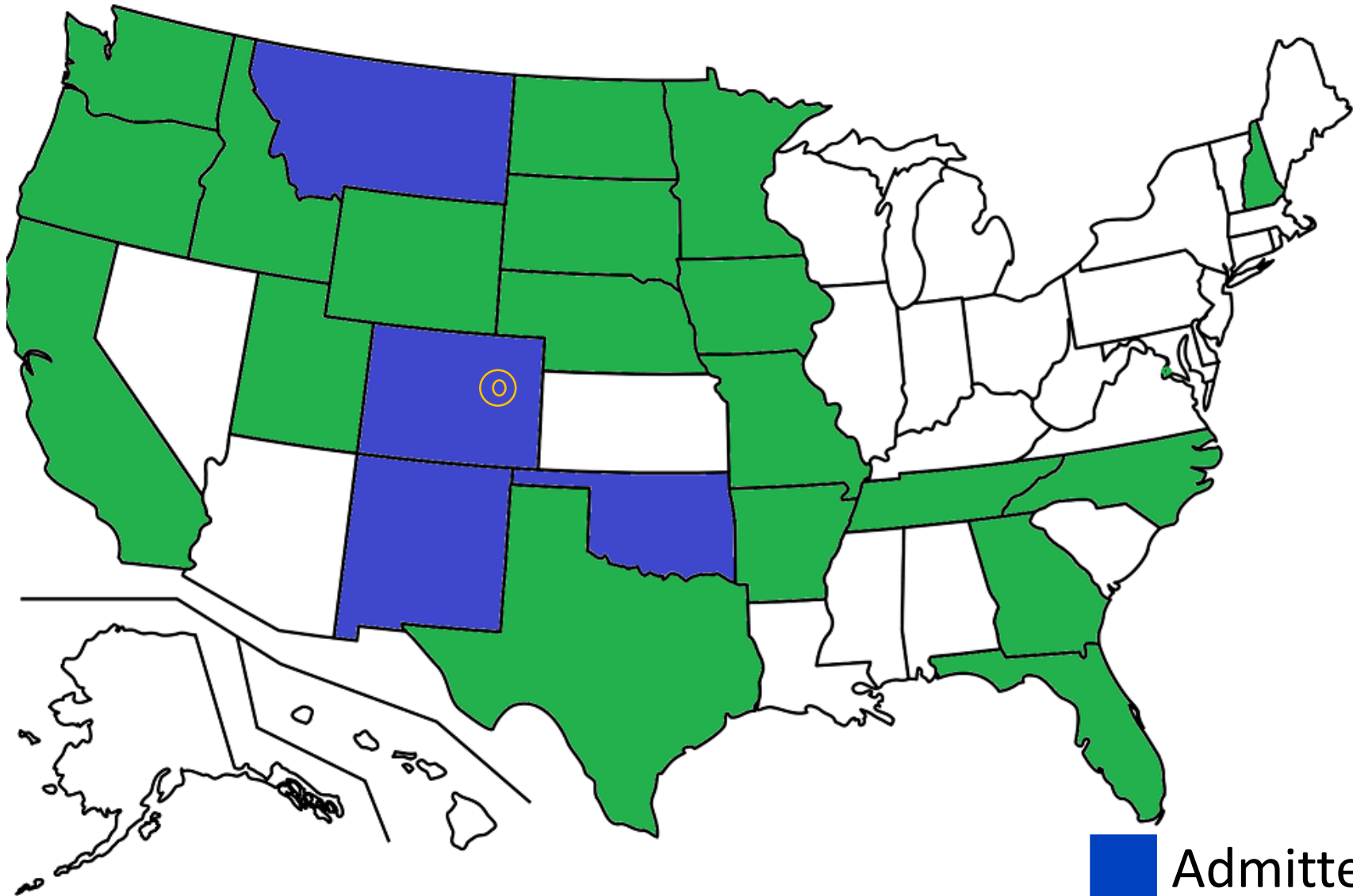
\$30M Verdict Hits GA Hospital & Doctor in Birth-Injury, Med Mal Trial

Jul 25, 2022



\$7 Billion Awarded To Family Of Elderly Woman Murdered By Cable Company Service Technician

Jul 26, 2022



■ Admitted to the bar
■ Admitted Pro Hac Vice

Keys to successful defense of a medical malpractice case *anywhere*

- Powerfully Specific Motions in Limine
- Powerfully Specific Trial Briefs
- Powerfully Specific Tendered Jury Instructions

National Trends

- “Anchoring” damages
- Institutional negligence claims
- Negligent credentialing
- Plaintiffs attacking “audit trails” and EMRs
 - Solution: E-discovery counsel

Try More, Win More

- Supplemental Jury Questionnaires
- Mock Trials
- Focus Groups

MEDICAL EXPERIENCES

10. Have you, or has someone close to you, ever: (please check all that apply)

If you checked any of the above, please briefly explain what, when and to whom it happened. (Use additional room on a separate sheet, as necessary.)

Yourself

Someone Close

a. Gone to a hospital while in serious medical distress?

b. Been diagnosed with stomach cancer?

c. Gotten a second opinion after being diagnosed with cancer?

d. Had a medical problem that you believe was mistreated or misdiagnosed?

e. Had serious health problems as a result of improper medical treatment?

f. Had a gastric or weight-loss procedure, such as a gastrectomy (stomach removal)?

Damages Experts and Resources

- Prudent Investor Rule (CRS 15-1.1-102(a))
- *See trial court opinions in the Gresser v. Banner Health case, stroking plaintiffs' economist's expert (Jan 2022)*
- Economist/Annuity
- Collateral Source Challenges and Potential Remedies
- Physical Medicine and Rehabilitation
- Dealing with Life Care Plans
- IEP/IDEA – School Therapies and Adaptive Equipment
- Life Expectancy
- Stipulations of Expected Testimony *re Damages*

Lateral to the incomparable Mark Fogg

