



## Coloradans Protecting Patient Access Amicus Briefing Overview

We are a broad coalition of Colorado-based organizations focused on the importance of access to quality health care throughout our state. As a united team of hospitals, physicians, nurses and health care partners, we work to ensure Colorado continues to be one of the best places to receive safe, quality care and one of the best states to practice medicine. As part of Coloradans Protecting Patient Access' (CPPA) advocacy, we are working to create a supportive legal landscape with smart liability protections.

This includes researching and filing amicus briefs highlighting our expertise, experience and interest to encourage an environment in which health care professionals can safely practice medicine and patients are assured quality care. We are also tracking several pending cases that could impact the delivery of health care in Colorado, particularly primary and specialty care under the established state Health Care Availability Act (HCAA).

**Here's an overview of our advocacy on behalf of our members:**

### Fighting to Protect the HCAA's Cap on Non-economic Damages

**Case: Smith v. Surgery Center at Lone Tree**

**Why the Case is Important:** HCAA protects four key rights of the healthcare professionals and facilities. In our amicus brief, we argued:

1. The Surgery Center is prohibited by state law from practicing medicine. It was an error for the trial court to find them liable for negligence;
2. The Surgery Center did not have a duty to obtain consent from the patient that was over and above the consents provided by the doctors to the patients;
3. Off-label use of medication is common in the practice of medicine and is not in and of itself malpractice;
4. The HCAA's limit on non-economic damages in medical malpractice cases is constitutional.

**Brief Overview:** The trial court held that it was malpractice to use a specific medication and the Surgery Center was liable for making it available and for not obtaining a consent form. When the established non-economic damages cap was applied, the plaintiff's attorneys challenged the constitutionality of the HCAA, seeking to bypass established and bipartisan supported medical liability laws and tort reforms.

**Status:** This case is pending before the Colorado Court of Appeals.

### Fighting to Protect the HCAA's Limit on Prejudgment Interest

**Case: Rudnicki v. Bianco**

**Why the Case is Important:** At the Colorado Court of Appeals, the issues were the HCAA's limit of prejudgment interest and the reduction of medical expenses because the case wasn't filed within two years of injury. The HCAA caps total medical malpractice damage awards at \$1 million except in special circumstances. It has been interpreted by the state appellate court that parents must file suit seeking medical expenses incurred by a minor child during the time he or she is considered a minor within two years of the injury, or give up the right to those expenses.

**Brief Overview:** The medical malpractice lawsuit, filed on behalf of the family of a child born with complications, alleged that the physician should have known that a normal delivery was not an option for a patient and that the only safe delivery would have been a cesarean section, which was allegedly never proposed.

**Status:** This case is pending. The Colorado Court of Appeals upheld the District Court, but never reached the HCAA limit on prejudgment interest. The Colorado Supreme Court accepted review in this case in May 2020.

## Fighting Against Joint Liability

### Case: Danko v. Conyers

**Why the Case is Important:** CPPA fought for the principle that a physician should not be liable for 100 percent of damages if another may be at fault. In many states, there is joint liability where one defendant, even if found to be only one percent at fault, may be held liable for 100 percent of the damages. A key foundation to medical liability tort reform is the legal concept of comparative negligence, in which each defendant is liable for their own percentage of fault.

**Brief Overview:** A doctor performed carpal tunnel relief surgery on the plaintiff, who later developed a post-operative infection. Upon the advice of another physician, an amputation was performed. The trial court refused to allow evidence of the second physician's potential malpractice regarding causation of the damages.

**Status:** The Colorado Supreme Court did not grant review and has permitted a common law rule to override several liability and comparative negligence laws in Colorado.

## Mass Casualty and Costs of Liability

### Case: Wagner v. Planned Parenthood of the Rocky Mountains

**Why the Case is Important:** This case is important to prevent all medical facilities from bearing the cost of mass casualty events that would drive up the cost of medicine and decrease access to needed medical care.

**Brief Overview:** The widow of a man fatally shot at a Planned Parenthood clinic in Colorado, and a woman wounded in the same 2015 attack, are suing the facility over allegations of lax security. The suit claims that given the "long history of violence" at U.S. abortion clinics, Planned Parenthood in Colorado Springs should have implemented safeguards that would have prevented a gunman from going on a shooting rampage that left three people dead and nine wounded.

**Status:** This case was decided by the Colorado Supreme Court on June 8, 2020 in a 4-3 decision. The majority held that when a clinic receives threats of violence, fails to take sufficient precautions, and is the victim of a mass shooting event, the clinic may be liable even if the shooter is the cause of injuries, because the violence was foreseeable. The unfortunate result of this case is that any medical office, hospital, clinic, or other business is now open to liability for a mass casualty event if it is menaced by a disturbed individual or group that makes threats of violence and then commits violence.

## Fight Against Phantom Damages

### Cases: Scholle v. Delta Air Lines, Inc. and Gill v. Waltz and Swift Transportation

**Why the Cases are Important:** In both of these cases, "phantom damages" would directly impact medical professionals and hospitals, dramatically increasing liability costs and rolling back economic liability award caps.

**Brief Overview:** At issue in Scholle v. Delta Air Lines is an alleged disparity between workers' compensation benefits paid and the amount billed by medical providers. For Gill v. Waltz and Swift Transportation, the high court will review whether the plaintiff has standing to seek damages for personal injuries that were already paid by workers' compensation insurance, where the insurer has settled its claim directly with the defendant.

**Status:** Both cases are before the Colorado Supreme Court.

## How to Join

If you are interested in joining Coloradans Protecting Patient Access and our Health Care Aware Colorado campaign, please contact Tamra Ward at 303.324.8021 or [tamra.ward@talomapartners.com](mailto:tamra.ward@talomapartners.com).