

Kari M. Hershey
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Experience

January 2006 to
Present

Hershey | Decker | Drake¹

Shareholder

Litigation and Appeals: Represent professionals and entities in complex health care litigation and appeals.

Administrative Law: Serve as a hearing officer and represent health care providers in professional review proceedings and in regulatory matters before:

- Board of Chiropractic Examiners
- Board of Dental Examiners
- Board of Nursing
- Board of Optometric Examiners
- Board of Pharmacy
- Board of Veterinary Medicine
- CMS (Medicare and Medicaid)
- Colorado Medical Board
- Colorado Plumbing Board
- CDPHE (Department of Health)
- Department of Human Services
- DEA
- Electrical Board
- Hospital/facility peer review
- Health plan peer review
- Mental Health Licensing Section
- Office of Acupuncture Licensure
- Office of Attorney General
- Office of Civil Rights (HIPAA)
- Office of Inspector General
- Office of Naturopathic Doctors
- Physical and Respiratory Therapy

General Counsel: Provide counsel about responding to and managing legal issues, contracting, policies and procedures, compliance, and health care legislation.

May 2008 to
Present

University of Colorado Law School, Boulder, Colorado

Adjunct Professor, Health Law

Teach health law to second and third year law students. Oversee annual medical malpractice mock trial involving the law and medical schools.

September 2002 to
January 2006

Montgomery Little, PC, Greenwood Village, Colorado

Senior Associate, Health Law Group

Represent health care entities and licensed professionals in litigation, licensing, and professional review actions. Provided counsel to hospitals, surgery centers, individual and medical practices, the Colorado Medical Society, and other entities.

August 1996 to
September 2002

HCA-HealthONE, Denver, Colorado

Ethics and Compliance Officer / Risk Manager / Strategist

Implemented and managed ethics and compliance program, including a Corporate Integrity Agreement, contracting, responding to regulatory investigations, and managing release of health information. Responsible for minimizing liability associated with adverse events, including evaluating and negotiating claims and managing outside counsel. Incident command center and crisis team member providing strategic and logistical support for disaster response to events (e.g. Columbine shootings, AirLife crash, and security guard killing). Selected by colleagues as team facilitator. Employee Crisis Fund administrator.

¹ Includes predecessor firms.

August 2001 to
May 2002

Colorado Court of Appeals, Denver, Colorado

Intern —Honorable Leonard Plank

Analyzed issues of law on appeal and drafted opinions for the Court, including review of trial records and briefs to identify record support for, and weakness in arguments. Researched case law to ensure appropriate use of precedent.

Education

September 1998 to
May 2002

University of Denver College of Law, Denver, Colorado

Juris Doctor, May 2002

3.70 GPA — Ranked 2nd in class

Order of St. Ives

Mary T. Hoagland Scholar

Awards for Scholastic Excellence: Criminal Procedure (Fall 2002); Health Law (Spring 2001); Remedies (Spring 2001); Lawyering Process (Fall 1998)

September 1986 to
June 1990

Michigan State University, East Lansing, Michigan

BA in Journalism, June 1990

3.04 GPA

Memberships

American Health Lawyers Association

Douglas/Elbert Counties Bar Association

Denver Bar Association/Health Law Section

Colorado Women's Bar Association

Honors

5280 Top Lawyers 2017

Colorado Super Lawyer 2015, 2016, 2017

Colorado Rising Star 2010, 2011, 2012

Published Opinions

Baack v. Horizon (Colo. App. April 9, 2015)(finding CRCP 60 is the appropriate vehicle for setting aside an award of costs and fees when the underlying basis for the award is overturned and a separate appeal of such fees is unnecessary)

People v. Hoskins (Colo. September 8, 2014)(reversing a trial court order disqualifying defendant's counsel of choice under Colorado Rule of Professional Conduct 1.9)

Colorado Medical Board v. Office of Administrative Courts (Colo. June 23, 2014) (holding administrative proceedings are civil suits for purposes of peer review statute)

Kelly v. Haralampopoulos, (Colo. June 16, 2014)(as *amicus* for the AMA and Colorado medical and specialty societies defining the medical diagnosis exception to hearsay under CRE 804)

Churchill v. Univ. of Colo. at Boulder, (Colo. Sept. 10, 2012); (Colo. App. Nov. 24, 2010)(upholding trial court ruling that termination was a quasi-judicial proceeding, entitling the Regents to immunity and denying reinstatement and front pay)

Colorado Medical Society and Colorado Society of Anesthesiologists v. Hickenlooper (Colo. App. 2012)(determining that the Governor's opt-out from federal physician supervision requirements for delivery of anesthesia is consistent with Colorado law) (Currently pending before the Colorado Supreme Court)

Ortega v. Kaiser Foundation Health Plan, et. al. (Colo. 2011)(as *amicus* determining applicability of privilege to medical records in malpractice actions)

Published Opinions *Day v. Johnson* (Colo. 2011)(as *amicus* upholding Colorado Civil Jury Instruction 15:4 in medical malpractice actions)

Lee v. Banner Health (Colo. App. 2009)(interpreting the scope of Committee on Anticompetitive Conduct review in challenges to professional review actions)

Reutter v. Weber (Colo. 2007)(holding that defense lawyers are not prevented from conducting *ex parte* interviews with treating providers under all circumstances)

Espinoza v. Perez, (Colo. App. 2006)(holding wrongful death claims unassignable)

Hartmann v. Nordin (Colo. 2006)(as *amicus* for the University of Colorado determining the scope of discovery of family history in medical malpractice actions)

Goodwin v. Morris, (Colo. App. 2006)(holding that prejudgment interest is not within the limits of the HCAA and such interest is to be calculated on the amount of damages awarded prior to application of the HCAA damage limitations)

Raleigh v. Performance Plumbing, (Colo. 2006)(as *amicus* for CDLA)(holding that the tort of negligent hiring can operate to hold an employer liable for acts of an employee that are within or outside the scope of employment)

Alcon v. Spicer, (Colo. 2005)(as *amicus* for Copic)(holding that plaintiffs do not authorize a complete waiver of the physician patient privilege by placing physical conditions at issue in a lawsuit, but carry the burden of establishing a privilege and must create a detailed privilege log so that privilege may be assessed).

Ortlieb v. Howery (10th Circuit 2003)(holding that unauthorized disclosure of medical records does not give rise to a claim under 42 USC 1983, also addressing judicial estoppel as prohibiting litigants from taking inconsistent legal positions in administrative and court proceedings).

Trials, Administrative Hearings, and Arbitrations

Sept. 20-30, 2016 *David Graf v. David Barton, DC*
Douglas County District Court (15CV30794)
Jury verdict in favor of client, Dr. Barton in action alleging malpractice

August 6-10, 2012 *Robert Brockmann, MD v. Sound Inpatient Physicians*
Private Arbitration
Award against client in breach of contract regarding physician employment

June 18-25, 2012 *Board of Chiropractic Examiners v. Brandon Credeur, DC*
Office of Administrative Courts (CH-2011-007)
Final Agency Action finding documentation deficiencies and resolving 34 counts with a Letter of Admonition in licensing action initially seeking revocation

May 2-3, 2011 *Lee v. Banner Health, et. al.*
Weld County District Court
Directed Verdict on behalf of clients Drs. Fraser and R. Kiser (subsequently appealed and settled)

Jan. 24-27, 2011 *Heidi Oster, MD and Horizon v. Judy Baack, MD*
Douglas County District Court
Bench trial with a split ruling. Appeal reversed findings in favor of Plaintiff in favor of client, Dr. Baack

Dec. 6-10, 2010 *Michael Ryskin, MD v. Sterling Regional MedCenter; S. Campbell, MD; J. Bonell, MD; J. Elliff, MD; M. Joy; and T. Soper, MD*
U.S. District Court
Jury verdict in favor of defendants including clients Drs. Bonell and Elliff in case alleging wrongful termination and improper professional review

Aug. 26, 2010 & Feb. 3, 2011 *Marvin Yust v. Yust Family Partnership and Donald Yust*
Private Arbitration award in favor of client related to effect of health care POA on corporate agreements

Mar. 3- April 9, 2009 *Ward Churchill v. University of Colorado*
Denver District Court (06CV11473)
Jury verdict in favor Plaintiff for \$1; judgment NOV in favor of client University, upheld on appeal through the Colorado Supreme Court. Denial of petition for cert at US Supreme Court in action alleging First Amendment retaliation

June 23-July 27, 2008 *Loyce Kelley v. R. Tillquist, MD; J. O'Brien, MD; M. Gruber, MD; D. Klein, MD*
Denver District Court (04CV5621)
Jury verdict in favor of all defendants including client Dr. Gruber in alleged malpractice action

Aug. 7-11, 2006 *Roger Lucas v. University of Colorado; Elizabeth Tarbutton*
Denver District Court (04CV9046)
Jury verdict in favor of CU; Directed verdict in favor of client Tarbutton in wrongful termination and tortuous interference action

July 30, 2004 *Professional Finance v. Eugene and Victoria Wagner*
Weld County District Court (03CV6821)
Verdict in favor of client E. Wagner; Verdict for ½ amount sought against client V. Wagner

May 3-May 7, 2004 *Nestor Romero v. Leonard Salano, DC*
Adams County District Court (01CV2366)
Jury verdict in favor of client Dr. Salano in action alleging malpractice

Mar. 28-April 2, 2004 *Marty Rohrs v. Paul Lambert; Dorian Homes; Rike Palese; Carmen Terry; and ReMax Classic*
Douglas County District Court (02CV1396)
Jury verdict in favor of clients Rike Palese; Carmen Terry; and ReMax Classic in breach of contract and negligent misrepresentation action

Aug. 4-19, 2003 *Board of Chiropractic Examiners v. K. Patrick Ray, DC*
Office of Administrative Courts (CH-2002-003)
Final Agency Action fully exonerating client, Dr. Ray in action seeking revocation

July 19, 2003 *Arsim and Thomas Jones v. Stainsafe and Westwood Home Furnishings*
El Paso County Small Claims Courts (02S1947)
Defense verdict in favor of client Westwood Home Furnishings in breach of warranty and contract action

Presentations

- Avoiding Liability & Discipline in Medical Malpractice*
May 9-10, 2016 University of Colorado School of Medicine
- Lawsuits & Medical Malpractice*
May 4-5, 2015 University of Colorado School of Medicine
- Medical Settlements & Stipulations: Collateral Consequences*
June 25, 2015, Colorado Defense Lawyers Association
- 2014 Legislative Session: Laws Affecting Health Care Risk Management*
September 5, 2014, Colorado Healthcare Associated Risk Managers
- De-Mystifying Medical Malpractice: Avoiding Liability & Discipline*
May 5, 2014, University of Colorado School of Medicine
- Health Care Contracting*
Feb. 13, 2014, Denver and Arapahoe-Douglas-Elbert Medical Societies
- Chief Justice's Commission on the Legal Profession Professionalism Orientation*
Sept. 21, 2013; Sept. 15, 2012
- The Chiropractic Practice Act, the Board and You: Avoiding Regulatory Compliance Issues*
Nov. 13, 2012, Colorado Women's Chiropractic Association
- The Impact of Social Media & Other Electronic Communications*
May 8, 2012, University of Colorado School of Medicine
- Maximized Documentation*, September 24, 2011, Castle Rock, Colorado
- The Medical Practice Act, the Board and You: Avoiding Regulatory Compliance Issues*
May 10, 2011, University of Colorado School of Medicine
- Emergency Medicine Liability*
Nov. 17, 2010, American College of Emergency Physicians Colorado
- Personal Objection in Health Care*, February 4, 2010, Iliff School of Theology
- A Matter of Conscience: Conscience Objection in Health Care*
May 18, 2009, Colorado Bar, Civil Rights Section CLE
- Colorado's Prompt Pay Statute*, April 21, 2009, Colorado Medical Society, Denver
- Legal Issues in Behavioral Health*
Jan. 22, 2009; March 15, 2007; March 14, 2006; Oct. 8, 2004
- Fair and Transparent Contracting*
Sept. 12, 2008, Colorado Medical Society Annual Meeting
- Medical Records Update*, Jan. 27, 2008; Jan. 24, 2007; Jan. 27, 2006
- I Don't Want to Get Sued!* August 8, 2007
Emergency Medicine Fellowship Program, Children's Hospital
- Documentation in an Ambulatory Surgery Center*, March 30, 2007
- Trauma & Disaster: The Rules have Changed*, April 7, 2006
- Stark and Anti-Kickback Legislation*, November 3, 2004
- Antitrust Law in Health Care*, November 2, 2004
- Mental Health & the Law*, October 10, 2003
- Health Information: Confidentiality, Conflicts & Compliance*, October 8, 2003

Publications

Colorado Lawyer

New Interprofessional Guidelines for Lawyers and Healthcare Professionals (May 2014)

Colorado Medicine

New Interprofessional Guidelines for Lawyers and Healthcare Professionals (June 2014)

Secure and Responsible Drug Disposal Act of 2010 (May/June 2011)

Liability Fight Continues in the Courts (January/February 2011)

Communication Challenges: Legal Requirements for Patients with Barriers (Nov/Dec 2010)

Discharging a patient of the practice (July/August 2010)

The New Medical Practice Act (May/June 2010)

New HIPAA Requirements: Breach Notification (September/October 2009)

New Reporting Requirements for Colorado Physicians (Sept/Oct 2008)

Physician Patient Relationships: Has One Been Created? (2005)

Pharmaceutical Incentives and Your Practice: Limiting Liability (2005)

Changes to EMTALA may Ease Burden on Health Care Providers (2004)

Stark II Legislation and Exceptions to the Ban on Physician Referrals (2004)

HIPAA Series (2003)

Final Changes to Notice and Consent Requirements of the HIPAA Privacy Rule

HIPAA and Working with Others: Requirements for Business Associates

Conducting a HIPAA Compliance Assessment: Is Your Practice Ready?

HIPAA and the Minimum Necessary Standard

HIPAA Requirements for Use of Health Information in Sales & Marketing

The HIPAA Privacy Rule and Colorado's Theft of Medical Records Law

Security Standards: The Final Phase of HIPAA's Administration Simplification

The Hospitalist

Unused Prescriptions: Safe and legal disposal (May 2010)

Patient Privacy Upgrade (February 2010)

Never Event Implications (February 2009)

This Just Isn't Working (November 2009)

Navigating the Deposition Minefield (February 2008)

Is that Your Patient? (April 2008)

Ten Ways to Help Your Case (June 2008)

Medical Board Maneuvers (August 2008)

Enough is Enough, I'm Calling a Lawyer (November 2008)

How to Stay out of Litigation (January 2007)

The Power of Sorry (October 2007)

Contract Caveats (December 2007)

Evaluating Hospital/Physician Recruiting Arrangements (September 2006)

Testimony

Senate Committee on Health and Human Services on SB205 (concerning third party payor processes) (April 14, 2011)

Senate Local Government Committee on HB1106 (concerning calculating medical expenses in personal injury claims) (March 29, 2011)

House Judiciary Committee on HB1043 (concerning medical marijuana) (February 10, 2011)

Medical Marijuana Advisory Committee (concerning proposed rulemaking related to the medical marijuana registry) (November 10, 2010)

House Business Affairs and Labor Committee on SB178 (concerning transparency and fairness in medical performance programs) (April 27, 2010)

House Committee on Health and Human Services on HB1416 (concerning Chiropractic prescriptive authority) (April 22, 2010)

Senate Business Labor and Technology Committee on SB178 (concerning transparency and fairness in workers' compensation performance programs) (April 12, 2010)

House Judiciary Committee on HB10-1238 (concerning the Patient Safety Act) (March 31, 2010)

House Committee on Health and Human Services on HB10-1238 (concerning the Patient Safety Act) (February 22, 2010)

House Committee on Health and Human Services on HB10-1128 and HB10-1025 (concerning proposed elimination of the Committee on Anticompetitive Conduct and the Colorado Medical Decision Act) (February 5, 2010)

Interim Task Force on Hospice and Palliative Care (concerning advanced directives) (September 24, 2009)

Secretary of State on Amendment 54 (concerning Statewide disaster preparedness contracts) (July 22, 2009)

Senate Committee on Judiciary on SB09-1344 (concerning potential amendments to the Health Care Availability Act) (April 20, 2009)

Senate Committee on Health and Human Services on SB09-239 (concerning Nurse Practice Act Sunset) (March 5, 2009)

Civic Activity

2013-Present Member - University of Colorado Law School Health Law Advisory Board

2012-2015 Mentor - Colorado Supreme Court Pilot Program

2011-Present Colorado Lawyers for Colorado Veterans Volunteer

2014-2015 Mesa Middle School Advisory Counsel (Elected, Voting Member)

2014 Colorado Bar Association Mock Trial Scoring Panelist

2012; 08-09 DORA Enforcement Process Review Committee

2008 Pollwatcher

2008 Barristers Ball Volunteer

2005- 2007 Castle Rock Elementary School Advisory Counsel (Elected, Voting Member)

2005- 2007 Douglas County Schools District Advisory Counsel Member