

LAW WEEK COLORADO

Childs McCune Attorneys Tally Defense Victories

By **Hannah Garcia**
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ATTORNEYS AT Childs McCune came up victorious with defense verdicts in two medical malpractice cases in June, both involving claims of negligence.

"I'm not sure I see more (medical malpractice) cases being filed, but I do think the cases being filed involve significantly more damages being alleged than in the past," managing member Steve Michalek said. "That's why I think more of these cases are being tried. There's more at stake for each of the parties."

After the third day of a jury trial, managing member Chris Miller and attorney Elizabeth Howard were successful in obtaining a directed verdict on June 17, a ruling from a trial judge after finding there is not sufficient evidence for a jury to reach any other verdict.

The case involved a 33-year-old male patient who collapsed as he entered a local hospital because of an alleged hypoxic brain injury in January 2013 and died a week later. He had originally gone to an urgent care clinic complaining of shortness of breath, a sore throat and neck swelling, and the physician at the clinic told him to go to the emergency room, a 15-minute ride away.

Before he could be intubated at the emergency room, there was already significant brain damage, and the patient was taken off life support seven days later, according to Miller. There was no autopsy to confirm cause of death, Miller said.

The patient's mother, who lives in Virginia, filed the lawsuit in March 2014 in Denver District Court claiming the physician was



CHRIS MILLER

negligent for allowing the patient to drive by private car to the emergency room instead of calling an ambulance. She sought non-economic damages and funeral costs. The trial judge dismissed the case with prejudice, preventing the plaintiff from filing the lawsuit again, and agreed with defense counsel's argument that the patient's family had failed to present enough prima facie evidence of causation.

"I did feel it was the right conclusion," Miller said. "Since then, the plaintiff has not agreed not to appeal."

Miller said the court relied



STEVE MICHALEK

primarily on *Reigel v. SavaSenior-Care LLC*, a 2011 Colorado Court of Appeals ruling that reversed a trial court ruling for a plaintiff who made similar negligence claims.

On June 19, Michalek and attorney Forrest Plesko obtained a defense verdict for an emergency room physician's assistant in another jury trial in Boulder County District Court before Judge Andrew Hartman.

"Just because people have unfortunate outcomes doesn't mean the care wasn't appropriate. This was one of those situations," managing member Steve Michalek

said.

A 19-year-old patient filed the complaint against the physician's assistant seeking compensation for all medical expenses, claiming he was negligent "for failing to appropriately administer and provide follow-up care after a local anesthetic injection," according to Childs McCune. The plaintiff said he had an adverse reaction to the injection that resulted in a vasovagal syncope, or fainting, episode and related injuries.

After evidence was presented, the jury found in favor of the physician's assistant on all claims. •

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