

2012 WL 4337448 (Colo.Dist.Ct.) (Verdict and Settlement Summary)

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WEST'S JURY VERDICTS - COLORADO REPORTS

Jury Finds Nursing Home Negligent; Awards \$3.2M to Widow

District Court of Colorado, Sixteenth Judicial District, Otero County.

Frazier v. Grace Healthcare

**Type of Case:**

Wrongful Death • Adult

Medical Malpractice-Procedures & Treatment • Failure to Diagnose/Treat

Medical Malpractice-Facility • Nursing Home

**Elder** & Vulnerable Adult • Medical **Abuse** & Neglect

Fraud & Misrepresentation • Failure to Disclose

Intentional Torts • Infliction of Emotional Distress

**Specific Liability:** Nursing home facility failed to properly treat or inform a resident's family regarding a seriously infected bedsore that had developed on the resident, leading to the resident's death

**General Injury:** Death, bedsore and necrotic abscess; medical expenses

**Jurisdiction:**

State: Colorado

County: Otero

**Related Court Documents:**

[Plaintiffs' complaint: 2011 WL 8635583](#)

[Defendants' motion in limine on medical causation: 2012 WL 3316152](#)

Verdict form: [2012 WL 3307865](#)

Order of judgment: [2012 WL 3527619](#)

Case Name: Marietta Frazier, Mark Frazier and Wanda Frazier as heirs at law of Henry Frazier, deceased  
v. Grace Healthcare LLC and Rocky Ford Healthcare LLC, both d/b/a Pioneer Healthcare Center

**Docket/File Number:** 11 CV 92

**Verdict: Plaintiff Marietta Frazier, \$3,200,000.00; reduced in judgment to \$300,000 pursuant to Colorado's Healthcare Availability Act**

**Verdict Range:** \$2,000,000 - 4,999,999

**Verdict Date:** April 27, 2012

**Judge:** Michael Schiferl

**Attorneys:**

Plaintiffs: Jerome M. Reinan and Jordana Griff Gingrass, Law Offices of J.M. Reinan, Denver, Colo.

Defendants: Thomas B. Quinn and Laurie J. Rust, Gordon & Rees, Denver, Colo.

**Trial Type:** Jury

**Experts:**

Plaintiffs: Keith Armitage, MD, infectious disease, University Medical Group Infirmary, Cleveland, Ohio

Defendants: Robert Sawyer, MD, wound treatment, St. Luke's Medical Center, Denver, Colo.; David Call, MD, internal medicine, Colorado Springs, Colo.; Michelle Barron, MD, infectious disease, Denver, Colo.

**Breakdown of Award:**

**\$3,200,000.00 to plaintiff Marietta Frazier for noneconomic losses**

**Reduced in judgment to \$300,000 pursuant to Colorado's Healthcare Availability Act.**

**Summary of Facts:**

Henry Frazier reportedly became a resident in May 2009 at licensed nursing facility Pioneer Healthcare Center in Rocky Ford, Colo., owned and operated by Rocky Ford Healthcare LLC and Grace Healthcare LLC. Henry's family said Henry had a known risk of developing skin issues and Pioneer knew that State and Federal regulations required them to develop and implement a reasonable plan to regularly assess and prevent such skin injuries from occurring. Further, because Henry was reportedly unable to be his own advocate, Pioneer allegedly had a duty to advise Henry's family of any significant changes to Henry's health.

Henry's son, Mark Frazier, said he was visiting Henry Oct. 2, 2010, when a Pioneer nurse aide allegedly told Mark that Henry had a very serious pressure sore on his bottom. The aide reportedly told Mark he had been afraid to speak up because he feared Pioneer would fire him. After Mark saw the "fist-size necrotic abscess" sore, he reportedly demanded that Henry be sent to a hospital and, after Pioneer's protest, Henry was transferred to Arkansas Valley Regional Medical Center. Despite aggressive treatment for his infection, Henry died Dec. 3, 2010.

Marietta Frazier, Henry's widow, Mark, and Wanda Frazier, Henry's daughter, sued Grace Healthcare and Rocky Ford Healthcare in Otero County District Court July 11, 2011. The plaintiffs asserted claims against the defendants for wrongful death negligence, fraudulent non-disclosure and intentional infliction of emotional distress. The plaintiffs alleged the defendants were aware of Henry's infected bedsore but fraudulently failed to disclose the serious health issue to the family, effectively abandoned Henry, and specifically forbid Pioneer's nurses and aides from disclosing the serious condition.

With regard to their negligence claim, the plaintiffs asserted the defendants negligently failed to follow their policies and procedures concerning wound prevention and care, failed to develop an adequate plan of care, failed to use reasonably effective infection controls, failed to follow State and Federal regulations, failed to provide adequate staffing, failed to provide reasonable and appropriate management in the facility, and failed to cure known dangerous conditions at Pioneer. The plaintiffs reported that after Henry's death, the Colorado Department of Public Health and Environment conducted an investigation of Pioneer and found 27 separate deficiencies and concluded that Pioneer was "grossly deficient."

The plaintiffs sought damages for Henry's wrongful death, grief, upset, loss, anger, loss of society and companionship and for the amount billed in final medical and hospice care after Henry was discharged from Pioneer Oct. 3, 2010. The plaintiffs also sought pre and postjudgment interest, attorney fees and court costs.

The defendants reportedly acknowledged the existence of Henry's [bedsore](#) but asserted the [wound](#) was unavoidable, that they were giving proper treatment at Pioneer, and that the [wound](#) was healing when Henry died. The defendants contended Henry's death was not caused by the [bedsorewound](#) but was instead caused by the advancement in his [Parkinson's disease](#) and his inability to swallow. According to the defendants, Henry's aspiration of formula Dec. 1, 2010, caused his death.

With only Marietta proceeding as a plaintiff, the case proceeded to a five-day jury trial. Jurors returned a verdict in favor of plaintiff Marietta May 27, 2012, finding the defendants' negligence was a cause of Henry's death and awarding Marietta \$3,200,000.

After trial the defendants filed a motion under Colorado's Healthcare Availability Act for the reduction of damages, pursuant to [Colo. Rev. Stat. Ann. 13-64-302\(1\)\(b\)-\(c\)](#), seeking to reduce the award to the statutory limit of \$300,000. Plaintiff Marietta countered the defendants' motion by asking the court to apply the felonious killing exception of Colorado's Wrongful Death Act, pursuant to [Colo. Rev. Stat. Ann. 13-21-203\(1\)\(a\)](#) and [15-11-803\(1\)\(b\)](#), and to enter judgment for the full \$3,200,000 verdict.

In an order entered June 21, 2012, *nunc pro tunc* April 27, 2012, Judge Michael Schiferl reduced the verdict award to \$300,000, awarded the plaintiff \$38,889.73 of interest, and awarded judgment of \$338,889.73 in favor of plaintiff Marietta.

Court: District Court of Colorado, Sixteenth Judicial District, Otero County.