Legal Issues in Nurse Anesthesia Practice

Certified Registered Nurse Anesthetists (CRNAs) are registered nurses who have become anesthesia specialists by taking a graduate curriculum which focuses on the development of clinical judgment and critical thinking. They are qualified to make independent judgments concerning all aspects of anesthesia care based on their education, licensure, and certification. CRNAs are legally responsible for the anesthesia care they provide and are recognized in state law in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. More information concerning how CRNAs are regulated in the states is at **www.aana.com > Resources > State Legislative & Regulatory Requirements.**

Overlap of Nursing and Medicine

Early legal challenges to nurse anesthesia practice were based on whether nurse anesthetists were illegally practicing medicine. However, for many decades now it has been well-established that nurse anesthetists are practicing nursing, not illegally practicing medicine.

Through licensing laws state legislatures determine what is and what is not the practice of medicine and what is and what is not in the public's best interest. Licensing laws, however, do not create monopolies for professions. Many professions are authorized to practice in the same, related, or similar fields and as a result have overlapping practice areas. Because of this overlap, many areas of practice are not the exclusive province of one healthcare profession or solely the practice of "medicine." For example, anesthesia administration is a series of functions through which patients are rendered insensitive to pain; these functions can and do constitute the practices of nursing, dentistry, or medicine. Courts have long recognized the administration of anesthesia by nurses as a proper nursing function.[1]

Physician Supervision Requirements

Many states do not require physician supervision of CRNAs, demonstrating that such requirements are unnecessary as the quality of care CRNAs provide in these states is as good as elsewhere. Forty states do not have a supervision requirement concerning nurse anesthetists in nursing or medical laws or regulations. Even taking into account state hospital licensing regulations, there are still 33 states that do not require physician supervision of CRNAs.

The laws of every state permit CRNAs to work directly with a physician or other authorized healthcare professional (for example, dentists and podiatrists) without being supervised by an anesthesiologist. Neither The Joint Commission (the largest voluntary accreditor of hospitals in the United States) nor Medicare requires anesthesiologist supervision of CRNAs.

The standards and guidelines of the nurse anesthesia profession (e.g., the AANA's *Scope and Standards for Nurse Anesthesia Practice*) do not require CRNAs to be physician supervised. Anesthesia outcomes are affected by factors such as provider vigilance, attention, concentration, and organization, not whether the anesthesia professional is an anesthesiologist or a CRNA or whether the CRNA is supervised.

[1] E.g., *Frank v South*, 194 S.W.375 (Ky. 1917) (overruling a challenge that nurses administering anesthesia were practicing medicine); *Sermchief v Gonzales*, 660 S.W.2d 683 (Missouri Supreme Court 1983) (holding that the nurse's scope of practice cannot be restricted by whether a function may also be the "practice of medicine")

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In addition, the National Council of State Boards of Nursing's (NCSBN) "APRN Model Act/Rules and Regulations" and the "Consensus Model for APRN Regulation: Licensure, Accreditation, Certification & Education" do not require physician supervision of CRNAs or other advanced practice registered nurses. The NCSBN APRN Model Act/Rules can be found at **www.ncsbn.org/APRN_leg_language_approved_8_08.pdf, and the consensus model is at www.aacn.nche.edu/Education/pdf/APRNReport.pdf.**

Opt-Outs

The Centers for Medicare & Medicaid Services (CMS) published in the November 13, 2001, *Federal Register* a final rule concerning the federal Medicare and Medicaid physician supervision requirement for CRNAs. The physician supervision requirement, which relates to the reimbursement of hospitals and ambulatory surgical centers (ASC), does not require the supervising physician to be an anesthesiologist (in other words, the physician may be, and often is, a surgeon). Further, the supervision requirement does not supersede state law. For example, if a state does not require CRNAs to be supervised, and a CRNA works in a physician's office that is not an ASC, the Medicare and Medicaid supervision requirement does not apply. The November 13 rule amended the supervision requirement in the Anesthesia Services Condition of Participation for hospitals, the Surgical Services Condition of Coverage for Ambulatory Surgical Centers, and the Surgical Services Condition of Participation for Critical Access Hospitals by allowing states to "opt out" of the federal supervision requirement. For a state to opt out of the federal supervision requirement, the state's governor must send a letter of attestation to CMS. The letter must attest that:

- The governor has consulted with the state boards of medicine and nursing about issues related to access to and the quality of anesthesia services in the state.
- It is in the best interests of the state's citizens to opt out of the federal physician supervision requirement.
- The opt-out is consistent with state law.

In adopting the opt-out rule CMS stated: "This rule will give States the flexibility to improve access in states that consider this an important issue. Regarding patient safety, this final rule is consistent with our efforts to improve the quality of care furnished through Federal programs, while at the same time recognizing States' traditional domain in establishing professional licensure and scope-of-practice laws." [66 FR 56767]

Since adoption of the 2001 federal rule, 15 states have opted out. The 15 states are (in order of opt-out): Iowa, Nebraska, Idaho, Minnesota, New Hampshire, New Mexico, Kansas, North Dakota, Washington, Alaska, Oregon, Montana, South Dakota, Wisconsin, and California. There has not been a single published report of any adverse effect on patient care related to the opt-outs.

For additional information regarding opt-outs, see **www.aana.com > Advocacy > State Issues > Information on Opt-Outs and Federal Supervision Requirements.**

Surgeon Liability

Regardless of whether a state requires nurse anesthetists to be supervised by a physician, nurse anesthetists are always independently responsible for their actions. A surgeon or other healthcare profes-

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sional is not automatically liable for the negligent actions of a CRNA; nor is the surgeon or other healthcare professional immune from liability when working with an anesthesiologist.

The principles governing the liability of a surgeon when working with a CRNA are the same as those governing the liability of a surgeon when working with an anesthesiologist. Whether a surgeon will be held liable for the negligence of the anesthetist depends on the facts of the case, not on the nature of the license of the anesthesia professional. Generally courts look at the degree of control the surgeon exercises over the anesthesia professional during a case, regardless of whether the anesthesia professional is a CRNA or an anesthesiologist. The same holds true in states that have a physician supervision requirement, and in states that do not. State laws do not require a supervising physician to control the acts of a CRNA, and mere supervision is insufficient to make the supervisor legally responsible for a CRNA's negligence. The CRNA is the expert in anesthesia and supervising physicians, other than anesthesiologists, are not expected to have as much knowledge of anesthesia as the CRNA. In fact, the common practice is for surgeons to defer to CRNAs as the anesthesia expert, rather than to attempt to instruct CRNAs concerning the particulars of anesthesia practice. This is unsurprising and appropriate.

Extensive information and related articles concerning surgeon liability are available at **www.aana.com > Advocacy > State Issues > Information on Surgeon Liability**.

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