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CALIF. RULING ON CRNA PRACTICE PROMISES NATIONWIDE TREMORS

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As if competition for exclusive contracts is not fierce enough already, on March 15, 2012, the California Court of Appeal upheld a trial court ruling that nurse anesthetists in the state do not require physician supervision.

The California Society of Anesthesiologists and the California Medical Association filed the lawsuit, and the appeal, to block the governor's decision to opt out from Medicare's physician supervision rule. The associations had asserted that California law does not permit independent practice by certified registered nurse anesthetists (CRNAs).

In its opinion, the appeals court relied on the specific California statute defining the practice of nursing, which states that the Board of Registered Nursing, and no other agency, is vested with the power to define the scope of nursing practice. The court noted that the board has repeatedly expressed its view that physician supervision of CRNAs is not required.

The court also pointed out that there is specific statutory authority for the fact that CRNAs may administer anesthesia to implement a treatment ordered by a physician—in other words, the surgeons "order" the anesthesia and the fulfillment of that request is up to the CRNA.

The associations urged the court to consider "ordered by a physician" as requiring physician oversight. They found no support for that interpretation.

The California Society of Anesthesiologists has announced that it will file a petition for review, the first step in an appeal to the California Supreme Court.

Pandora's Box

Why were judges at both the trial and appellate levels skeptical of the argument by the two associations? A look at California's Nursing Practice Act reveals a clue. The act, which specifies the scope of practice and duties for registered nurses, states, "the Legislature recognizes that nursing is a dynamic field, *the practice of which is continually evolving to include more sophisticated patient care activities*. It is the intent of the Legislature in amending this section at the 1973-74 session to provide clear legal authority for functions and procedures that have common acceptance and usage. *It is the legislative intent also to recognize the existence of overlapping functions between physicians and registered nurses* and to permit additional sharing of functions within organized health care systems that provide for collaboration between physicians and registered nurses …" (emphasis added).

This language is a treasure trove for CRNAs as well as other nurses who will clearly benefit economically as hospitals, payers and the government exert increasing pressure to expand the scope of nursing.

For example, several years ago, the California Board of Registered Nursing issued a letter endorsing the complete independent practice by CRNAs, including performance of procedures to treat both acute and chronic pain. That letter was withdrawn when the California Society of Anesthesiologists attacked it as an improperly adopted regulation.

However, the latest ruling underscores the fact that had the nursing board gone through the proper channels to push its position in the form of a regulation, not an informal yet public letter, it would now be viewed as consistent with California law.

What Next?

Whether you are an anesthesiologist or a CRNA, if you practice in California competition for exclusive contracts, both at ambulatory surgery centers and at hospitals, will increase as CRNA groups begin to seek those arrangements.

To be sure, specific medical staff bylaws may be more or less permissive in terms of the scope of CRNA practice at a given facility. Similarly, a particular insurance or managed care plan may not reimburse for unsupervised CRNA charges. Still, those issues are likely to be resolved relatively quickly—and in a manner consistent with the expanding role of nurses.

If you are an anesthesiologist practicing in a non–opt-out state (Figure), political pressure is sure to mount within your state for both an opt-out and, if necessary, an expansion of the definition and role of nursing to accommodate it. In other words, competition is destined to get tougher for you, too.

Explore Your Options

The competitive landscape for anesthesiologists is dynamic and rapidly changing. Competition, once limited to a somewhat benign concern that a group from across town would scoop up a stray ambulatory surgery center or seek to displace your group as the holder of its sole exclusive contract, has burgeoned.

In addition to aggressive local groups, truly national groups are seeking to expand across the country; staffing services and anesthesia management companies are masquerading as groups, seeking to do the same thing; and now, in opt-out states such as California—one of 16—CRNA groups will be seeking those same opportunities for themselves.

These trends further underscore the fact that groups must adopt actual business structures and seek to provide unique value—what I have called an “experience monopoly”—to their facilities, referring surgeons, patients and the larger medical staff and community. Simply continuing to provide a service to the hospital, even a clinically competent service, is equivalent to providing a commodity, one that will be provided for less or with more panache by one of the many new competitors in a race to the lowest bottom line.

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