

Surgeon Liability

The following discusses the legal relationship between surgeons and nurse anesthetists and some of the common misconceptions that arise in this area. Please bear in mind that this information does not constitute legal advice or a legal opinion.

The Nature of Surgeon Responsibility

While surgeons commonly order nurse anesthetists to give anesthetics, surgeons have no affirmative obligation to control the substantive course of the anesthetic process. To the contrary, a surgeon may rely upon the nurse anesthetist as the anesthesia expert. A nurse anesthetist uses independent judgment in determining the appropriate kind of anesthetic to be administered, as well as types of drugs and dosages. Merely requesting that a nurse anesthetist provide an anesthetic is not in itself an act of "control" that will necessarily make a surgeon liable for a nurse anesthetist's acts.

There are many cases which stand for the proposition that surgeons are not automatically liable for CRNA actions. In addition, surgeons do not escape liability when working with anesthesiologists. As discussed below, courts typically apply the same standard when judging whether surgeons are liable for the acts of an anesthesia provider, regardless of whether the provider is a nurse anesthetist or anesthesiologist.

Below are links to several articles by the AANA's general counsel concerning liability issues involving nurse anesthetists and surgeons. As these articles demonstrate, in determining whether a physician is liable for the negligence of a nurse anesthetist with whom the physician works, the status of the anesthesia administrator is not the relevant factor. Rather, courts examine whether the degree of control the physician exercised over the anesthesia administrator, regardless of whether the administrator is a nurse anesthetist or anesthesiologist.

A physician is not automatically liable when working with a nurse anesthetist; nor is the physician immune from liability when working with anesthesiologist. Courts have held surgeons liable for the negligence of anesthesiologists when the surgeons had control of the anesthesiologists' actions. In *Schneider v. Einstein Med. Ctr.*, 390 A.2d 1271 (Penn. 1978) and *Kitto v. Gilbert*, 570 P.2d 544 (Colo. 1977), the courts found the physicians liable for the negligence of anesthesiologists because the physicians were in control of the anesthesiologists' actions. The question, as in cases of a physician working with nurse anesthetists, is whether the physician was in control of the acts of the anesthesiologist. This is a factual inquiry and not a conclusion of law.

There are many cases in which courts have found that the surgeon was not in control of the nurse anesthetist and, therefore, not liable for the negligence of the nurse anesthetist. E.g., *Cavero v. Franklin Benevolence Soc'y*, 223 P.2d 471 (Cal. 1950); *Fortson v. McNamara*, 508 So.2d 35 (Fla. 1987); *Franklin v. Gupta*, 567 A.2d 524 (Md. 1990); *Hughes v. St. Paul Fire and Marine Ins. Co.*, 401 So.2d 448 (La. 1981); *Kemelyan v. Henderson*, 277 P.2d 372 (Wash. 1954); *Parker v. Vanderbilt*, 767 S.W.2d 412 (Tenn. 1988); *Pierre v. Lavallie Kemp Charity Hosp.*, 515 So.2d 614 (La. 1987); *Thomas v. Raleigh Gen'l Hosp.*, 358 S.E.2d 222 (W. Va. 1987); *Sesselmen v. Mullenberg Hosp.*, 306 A.2d 474 (N.J. 1954).

Moreover, numerous cases hold that mere supervision or direction of a nurse anesthetist is insufficient to hold a physician liable for a nurse anesthetist's negligence. See, e.g., *Sesselmen v. Mullenberg Hosp.*, 306 A.2d 474 (N.J. Super. Ct. App. Div. 1973) (error for trial court to instruct that obstetrical surgeon could be liable for nurse anesthetist's negligence where obstetrician never exercised control over nurse anesthetist and nurse anesthetist merely received obstetrician's instructions concerning the work to be performed); *Baird v. Sickler*, 69 Ohio St.2d 652 (1982); *Foster v. Englewood Hosp.*, 19 Ill. App. 3d. 1055 (1974); *Elizondo v. Tavarez*, 596 S.W.2d 667 (Tex. 1980); *Whitfield v. Whittaker Mem. Hosp.*, 210 (Va. 176 (1969).

It is clear from the case law that in order for a physician to be liable for the acts of the anesthesia administrator, the physician must control the administrator's actions and not merely be supervising or directing the administrator.

In a January 1988 report of the Center for Health Economics Research (CHER), an independent Boston-area based research organization that analyzes and evaluates health-related policy issues, CHER concluded that "both legal doctrine and case history (as reviewed by the AANA and ASA) do not indicate a tendency on the part of the courts to hold surgeons liable more often when they work with nurse anesthetists than with anesthesiologists."

In light of the above, it is erroneous for anyone to state or imply that surgeons are at greater risk when they work with nurse anesthetists rather than anesthesiologists.

Articles Regarding Surgeon Liability

- [Another Article on the Surgeon's Liability for Anesthesia Negligence](#)
AANA Journal April 2007
- [Nurse Anesthesia Students and Liability](#)
AANA Journal June 2002
- [Do Surgeons Get Sued When They Work With Anesthesiologists?](#)
AANA Journal April 1998
- [Standard of Care](#)
AANA Journal December 1997
- [LaCroix Case](#)
AANA Journal October 1997
- [The Nature of Supervision](#)
AANA Journal June 1997
- [Double Standards in Anesthesia](#)
AANA Journal April 1997
- [Harris v. Miller](#)
AANA Journal June 1994
- [Captain of the Ship](#)
AANA Journal February 1993
- [Supervision](#)
AANA Journal June 1991
- [Anesthesia and the Surgeon's Comfort](#)
AANA Journal December 1991
- [Franklin v. Gupta](#)
AANA Journal December 1990
- [Surgeon's Liability for Negligence of CRNAs: A Recent Case](#)
AANA Journal April 1989
- [Surgeon's Responsibility for CRNAs](#)
AANA Journal February 1989

- [Standard of Care](#)
AANA Journal August 1987
- [An Examination of Professional Relationships Between CRNAs and Other Health Care Professionals](#)
AANA Journal April 1987
- [A Surgeon's Liability for the Anesthesia Administrator: The Law According to Dr. Modell](#)
AANA Journal October 1986
- [The Irrelevant Issue of Surgeon's Liability](#)
AANA Journal October 1985
- [Legal Requirements of Physician Supervision](#)
AANA Journal October 1984
- [Liability of a Surgeon When Working With a Nurse Anesthetist](#)
AANA Journal June 1984

Summary

Courts apply the same standard to judge whether surgeons are liable for the acts of the anesthetist whether the anesthetist is a CRNA or an anesthesiologist.

If you have questions or comments about this topic, please contact the AANA's Professional Practice Division at practice@aana.com or 847-655-8870. Please bear in mind, though, that this information and the articles below summarize the pertinent information we have concerning surgeon liability. We are not able to offer customized legal guidance for your particular situation. In addition, for legal advice concerning how courts in your state have ruled, or may rule on a specific matter, you will need to consult local legal counsel.