LIABILITY OF SURGEONS FOR THE ACTS OF NURSE ANESTHETISTS UNDER FLORIDA LAW

James W. Linn
Glenn E. Thomas
Legal Counsel

Florida Association of Nurse Anesthetists

This memorandum summarizes the decisions of Florida courts concerning the liability of surgeons for the negligent acts of Certified Registered Nurse Anesthetists (CRNAs). CRNAs are authorized to administer anesthesia and perform other anesthesia-related functions, medical diagnosis and treatment, prescription, and operation as authorized within the framework of an established supervisory protocol, approved by the medical staff of the facility in which the anesthetic service is performed. §464.012(4)(a), Fla. Stat. (2021).

In Florida, a surgeon is *not* liable for the negligence of a CRNA unless the surgeon directed the procedures utilized by the CRNA or had a genuine opportunity to alter the course of anesthesia-related events.

In determining a surgeon's liability for the negligent acts of others, Florida courts distinguish between CRNAs and surgical nurses. Because surgical nurses generally act according to a surgeon's specific directions, they are considered agents or servants of the surgeon, and therefore the surgeon is liable for their negligent actions. *See Drew v. Knowles*, 511 So.2d 393 (Fla. 2d DCA 1987); *Beaches Hospital v. Lee*, 384 So.2d 234 (Fla. 1st DCA 1980). In contrast, a CRNA will typically administer anesthesia independently, without the direct control of the surgeon. In *Dohr v. Smith*, 104 So.2d 29 (Fla. 1958) the Florida Supreme Court recognized this difference, observing that while the surgeon may be "captain of the ship," "he and the anesthetist were working in highly expert fields peculiar to each and ... despite a common goal ... their responsibilities were not inextricably bound together" [*Id.* at *32, citing Hudson v. Weiland*, 150 Fla. 523, 8 So.2d 37 (Fla. 1942)].

The Second District Court of Appeal once again addressed the issue of whether a surgeon should be held vicariously liable for the negligence of a nurse anesthetist under his supervision, in *Fortson v. McNamara*, 508 So.2d 35 (Fla. 2d DCA 1987). *Fortson* also compares the status of a CRNA with that of a surgical nurse, who is acting under the specific direction of a surgeon. The Court in *Fortson* held the surgeon was not liable for the negligence of the CRNA, reasoning that *control* rather than mere *supervision* determine the surgeon's liability. *Id*. at 36. The Court said,

> While we agree that a surgical nurse, under the direct supervision of the surgeon, who acts according to the surgeon's specific directions, is certainly the servant of the surgeon, we are not willing to place a nurse anesthetist in this category, particularly where there is no showing that the surgeon directed the procedures to be utilized by the nurse anesthetist or had a genuine opportunity to alter the course of events.
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> *Id* at 37.

In *Vargas v. Dulzaids*, 520 So.2d 306 (Fla. 3d DCA), review dismissed, 528 So.2d 1184 (Fla. 1988), the Third District Court of Appeal reiterated the general principle that a surgeon will not be held liable for the negligence of a "fellow specialist such as an anesthetist or an intern." *Id.* at 307. In contrast, the court in *Vargas* held that a heart surgeon *could* be held liable for the negligence of an uncertified perfusionist who assisted during surgery.

Courts in other states have likewise declined to hold surgeons liable for the negligence of nurse anesthetists, absent evidence of direct control over the CRNAs' actions. *See e.g., Parker v. Vanderbilt*, 767 S.W. 2d 412 (Tenn. App. 1988); *Hughs v. St. Paul Fire and Marine Insurance Company*, 401 So.2d 448 (La. 1981); *Kemalyan v. Henderson*, 277 P.2d 372 (Wash. 1954); *Sesselman v. Mulenberg Hospital*, 306 A.2d 474 (N.J. 1954). Other states' courts have also held that mere supervision of a nurse anesthetist is insufficient to hold a surgeon liable for the anesthetist's negligence. *See, e.g., Foster v. Englewood Hospital*, 19 Ill. App. 3d 1055 (1974).

Although not decided on the same theories of vicarious liability discussed above, the Florida Supreme Court in *Gershuny v. Martin McFall Messenger Anesthesia Professional Association*, 539 So.2d 1131 (Fla. 1989), held that a group of physician anesthesiologists that employed a CRNA was not liable for the CRNA's negligence. The Court found that the members of the physician group could only be held personally liable if the negligence was committed by them or by someone under their direct supervision and control. Otherwise, the liability of the physicians is no greater than that of a shareholder-employee of any domestic business corporation.

Conclusion

In Florida and many other states, surgeons are not liable for the negligence of Certified Registered Nurse Anesthetists unless the surgeon directly controls the procedures utilized by the nurse anesthetist. The court decisions supporting this principle are based in large part on the specialized training and certification of CRNAs, as well as the manner in which surgeons and CRNAs typically practice.