



*“It is erroneous for anyone to state or imply that surgeons are at greater risk of liability when they work with CRNAs rather than physician anesthesiologists.”*

## Surgeon Liability Overview

Whether the anesthesia provider is a Certified Registered Nurse Anesthetist (CRNA)/nurse anesthesiologist or a physician anesthesiologist, courts apply the same standard to determine whether surgeons are liable for the acts of the anesthesia provider. The following discusses the legal relationship between surgeons and CRNAs and some of the common misconceptions that arise in this area. This information does not constitute legal advice or a legal opinion.

While surgeons commonly order CRNAs to administer anesthetics, surgeons have no affirmative obligation to control the substantive course of the anesthetic process. To the contrary, a surgeon may rely upon the CRNA as the anesthesia expert. A CRNA uses independent judgment in determining the appropriate anesthetic to be administered, the types and dosages of medications, and any necessary anesthetic-related procedures. Merely requesting that a CRNA provide an anesthetic is not in itself an act of “control” that will transfer liability for the acts of a CRNA to a surgeon.

Significant case law precedent supports the notion that surgeons are not automatically liable for CRNA actions. In addition, surgeons do not escape liability when working with physician

anesthesiologists. As discussed below, courts typically apply the same standard when determining whether surgeons are liable for the acts of any anesthesia provider: Courts examine the degree of control the surgeon exercised over the administration of anesthesia regardless of provider type.

A surgeon is not automatically liable when working with a CRNA; nor is the surgeon automatically immune from liability when working with a physician anesthesiologist. Courts have held surgeons liable for the negligence of physician anesthesiologists when the surgeons exerted control over 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 surgeons liable for the negligence of physician anesthesiologists because the surgeons were in control of the anesthesiologists’ actions. The relevant question of fact, whether the surgeon works with a CRNA or a physician anesthesiologist, is whether the surgeon controlled the acts of the anesthesia provider.

In many cases, the courts have determined the surgeon was not in control of the CRNA and, therefore, not liable for the negligence of the CRNA. 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. Mulenberg Hosp., 306 A.2d 474 (N.J. 1954).

Moreover, numerous courts have ruled that mere supervision or direction of a CRNA is insufficient to hold a surgeon liable for the negligence of a CRNA. See, e.g., Sesselmen v. Mulenberg 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 CRNA's negligence where obstetrician never exercised control over CRNA and CRNA 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. Tavaréz, 596 S.W.2d 667 (Tex. 1980); Whitfield v. Whittaker Mem. Hosp., 210 (Va. 176 (1969).

Case law makes clear that in order for a surgeon to be liable for the acts of the anesthesia provider, the surgeon must control the provider's actions and not merely be supervising or directing the provider.

The January 1988 report by the Center for Health Economics Research (CHER), an independent Boston-area based research organization that analyzes and evaluates health-related policy issues, 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 of liability when they work with CRNAs rather than physician anesthesiologists.

If you have questions or comments about this issue, please consult your own legal counsel. The AANA is 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.