We all know that we are responsible for our own actions, and that under the law of negligence, this can include things that we do ("acts") and things that we fail to do ("omissions"). We also know that we can sometimes be responsible, under the law, for the acts or omissions of others. For example, an employer may be liable to third parties for the acts or omissions of its employees. In the case of professional employees, an employer's liability arises simply because of the employer-employee relationship.

A surgeon who is not the employer of the anesthesia provider (CRNA or MD) is generally not liable for the acts or omissions of the CRNA/anesthesiologist.¹ This is true even where the surgeon is “supervising” a CRNA for purposes of state licensure or reimbursement. This is because “supervise” in that context does not mean directing the CRNA as to the manner and means by which the CRNA administers anesthesia. In fact, a surgeon would almost never undertake to direct a CRNA in the provision of anesthesia services (and generally should not do so), simply because the training and experience of a CRNA in anesthesia will normally exceed that of the surgeon.

The cases that have considered the question are uniform in their support.

Cases that have held that a surgeon was not liable for the acts or omissions of a CRNA:

- **Starcher v. Byrne**, 687 So. 2d 737, 741-742 (Miss. 1997) (surgeon not liable for CRNA's negligence).
- **Parker v. Vanderbilt**, 767 S.W. 2d 412, 415-416 (Tenn. App. 1988) (rejecting “captain of the ship” doctrine and finding surgeon not liable for CRNA's negligence.)

Cases in which a surgeon was sued for alleged anesthesia error when working with an anesthesiologist:


¹ Accord, 1 American Law of Medical Malpractice 3d § 3:17 (West 2014). The cases above reflect the consistency of this general rule. Research has disclosed no case finding the surgeon vicariously liable for the acts or omissions of a CRNA or anesthesiologist.
• Carolan v. Hill, 553 N.W. 2d 882 (Iowa 1996) (ulnar nerve injury; defense verdict remanded in part).
• Robertson v. Hospital Corporation of America, 653 So. 2d 1265, 1266-1273 (La. App. 1995) (ulnar nerve damage; liability apportioned 72% to anesthesiologist, 20% to surgeon, 10% to hospital).
• Adams v. Childrens Mercy Hospital, 848 S.W. 2d 535, 538 (Mo. App. 1993) (surgeon not liable for negligence of anesthesia resident under faculty supervision).
• Franklin v. Gupta, 567 A. 2d 524, 539 (Md. Ct. App. 1990) (rejecting the “captain of the ship” doctrine; surgeon not liable for anesthesiologist or CRNA negligence).
• Schneider v. Einstein Medical Center, 390 A. 2d 1271, 1277-1278 (Penn. Super. 1978) (surgeon liable for failure to cancel procedure when anesthesiologist not able to intubate patient).

About the Author

*Charles Key is General Counsel and Secretary of LifeLinc Corporation, Memphis, Tennessee, which provides management services for anesthesia and pain management professionals, ambulatory surgery centers, and hospitals in nine states. With more than 30 years’ experience in healthcare, Mr. Key has represented hospitals, physicians, other healthcare providers, and a variety of health-related organizations, in business planning, regulatory compliance, managed care, insurance, risk management, and medical staff relations. He holds an undergraduate degree in philosophy from Arkansas State University and a law degree from the University of Missouri-Columbia, and has served as an adjunct professor in the graduate program in health administration at the University of Memphis. Mr. Key is a past chair of the Tennessee Bar Association Health Law Section, the Tennessee Bar Foundation Board of Trustees, and the editorial boards of The Health Lawyer and Stark & Anti-Kickback Toolkit, both publications of the American Bar Association’s Health Law Section. He is a member of the American Bar Association, the American Health Lawyers Association, and the State Bar Associations of Missouri and Tennessee.

For more information, you may reach Charles Key at ckey@lifelinc.com or by phone at 866.362.6963.