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Surgeon Liability for Anesthesia Services – Common Misperceptions

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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:

- *Glassman v. Costello,* 267 Kan. 509, 523-524, 986 P.2d 1050, 1060-61 (1999) (surgeon not liable for CRNA's negligence).
- *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.)
- *Fortson v. McNamara,* 508 So. 2d 35, 37 (Fl. App. 1987) (surgeon not liable for CRNA's negligence).
- *Pierre v. Lallie Kemp Charity Hospital,* 515 So. 2d 614, 620-621 (La. App. 1987) (surgeon not liable for CRNA's negligence).
- *Hughes v. St. Paul Fire and Marine Insurance Co.,* 401 So. 2d 448, 450 (La. App. 1981) (surgeon not liable for CRNA's negligence).
- *Sesselmon v. Mulenberg Hospital,* 306 A. 2d 474, 475-477 (N.J. Super. Ct., App. Div. 1954) (surgeon not liable for CRNA's negligence).

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

- *Sanchez v. Barba,* 2011 WL 1105807 (Conn. Super. 2011) (defense verdict upheld in case involving injury to patient due to placement of esophageal stethoscope).
- *Chism v. Campbell,* 250 Neb. 921, 553 N.W. 2d 741, 744-745 (1996) (summary judgment for surgeon and anesthesiologist).

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[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).
- *Szabo v. Bryn Mawr Hospital,* 432 Pa. Super. 409; 638 A. 2d 1004, 1006 (1994) (remanded for determination of surgeon's control over anesthesiologist).
- *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).
- *Brown v. Bozorgi,* 234 Ill. App. 3d 972; 602 N.E. 2d 48, 51 (1992) (surgeon not liable for anesthesiologist's negligence).
- *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).
- *Thomas v. Raleigh General Hospital,* 358 S.E. 2d 222, 224-225 (W.Va. App. 1987) (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

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