

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: January 21, 2014  
ATTENTION: Committee Members  
SUBJECT: Overview of Physician Supervision of Certified Registered Nurse Anesthetists (CRNAs)  
FROM: Kerrie Webb, Senior Staff Counsel

Certified Registered Nurse Anesthetists (CRNAs) are both registered nurses and anesthesia specialists. The Nurse Anesthetists Act defines a “nurse anesthetist” as “a person who is a registered nurse, licensed by the board and who has met standards for certification from the board.” Business and Professions Code (B & P) § 2826(a).

In order for hospitals and surgery settings to receive reimbursement under Medicare when a CRNA administers anesthesia, certain federal regulations require that the CRNA be supervised by a physician. 42 Code of Federal Regulations (C.F.R.) §§ 482.52(a)(4), 416.42(b)(2), 485.639(c)(2).

However, other federal regulations provide that a state's governor has the discretion to make a determination on behalf of the state to opt out of the physician supervision requirement after concluding, among other things, that the opt out is consistent with state law. 42 C.F.R. §§ 482.52(c)(1), 416.42(c)(1), 485.639(e)(1).

To opt out of the physician supervision requirement, the state's governor must submit a letter to the Centers for Medicare and Medicaid Services (CMS) requesting an exemption. The letter “must attest” that the governor has (1) consulted with state boards of medicine and nursing about issues related to access to and the quality of anesthesia services in the state; (2) concluded that it is in the best interests of the State's citizens to opt out of the current federal physician supervision requirement; and (3) concluded that the opt out is consistent with State law. 42 C.F.R. §§ 482.52(c)(1), 485.639(e)(1), 416.42(c)(1). The governor's request to opt out may be submitted or withdrawn at any time, and it is effective upon submission. 42 C.F.R. §§ 482.52(c)(2), 416.42(c)(2), 485.639(e)(2).

On June 10, 2009, former Governor Arnold Schwarzenegger (the Governor) exercised his discretion under federal law and opted California out of the federal physician supervision Medicare reimbursement requirement.

The Governor’s action prompted the California Society of Anesthesiologists and the California Medical Association (collectively referred to as appellants) to file a petition for writ of mandate and request for declaratory relief contending that the Governor “acted contrary to California laws that prohibit CRNAs from administering anesthesia without physician supervision.” California Society of Anesthesiologists (CSA) v. Brown (2012) 204 Cal.App.4<sup>th</sup> 390, 394.

The trial court concluded that the Governor did not abuse his discretion in determining that the opt out was consistent with state law. Id. The court found that the controlling statutory provision on the scope of practice of CRNAs in California does not require them to administer anesthesia under physician supervision. Id. Instead, it permits CRNA's to administer anesthesia “ordered by” a physician. Bus. & Prof. Code § 2725(b)(2). Consequently, the trial court refused to issue a writ of mandate or to grant appellants’ motion for summary judgment. The appellate court affirmed the trial court’s decision. CSA, supra, 204 Cal.App.4<sup>th</sup> 390 at 394.

In reviewing the underlying facts, the appellate court acknowledged that the undisputed evidence showed that in many California medical facilities, especially in rural and underserved areas, CRNAs had been routinely administering anesthesia for decades pursuant to a physician order but without physician supervision. Id. at 396. The record did not reflect that any disciplinary action had ever been taken against a CRNA for administering anesthesia without physician supervision. Id.

The result of the opt out is that California hospitals, critical access hospitals, and ambulatory surgery centers are exempted from federal rules making physician supervision a prerequisite for Medicare reimbursements. Because hospitals and other medical facilities can always exercise stricter standards than required by state law, a hospital or other medical facility may require physician supervision of CRNAs if it deems it appropriate, irrespective of the state's opt out. 66 C.F.R. §§ 56762, 56765.

While the Governor’s decision in 2009 to opt out of the requirement for physician supervision of CRNAs drew significant attention, this was not the first administrative decision in California that determined that the Nursing Practice Act did not require physician supervision of CRNAs. In 1987, the California Department of Health Services concluded that a supervision requirement was inconsistent with the Nursing Practice Act, and it amended a Medi-Cal program regulation to eliminate the requirement that CRNAs be supervised by a physician as a condition of coverage under the Medi-Cal program. Cal. Code Regs., tit. 22 § 51326.

Moreover, in 1984, the Attorney General issued an opinion that concluded that, while a CRNA could not lawfully administer anesthesia under standardized procedures, a CRNA was legally authorized by B & P section 2725(b)(2) to administer all forms of anesthesia on the sole condition that the anesthesia be ordered by a physician, dentist or podiatrist acting within the scope of his or her license. 67 Ops.Cal.Atty.Gen. 122, 123.