House Bill 191 – PROPONENT TESTIMONY
Ohio House Health Committee
Wednesday, January 25, 2018
Anna Polyak, RN, JD

Good morning, Chairman Huffman, Vice Chair Gavarone, Ranking Member Antonio, and members of the House Health Committee. My name is Anna Polyak and I am the Senior Director of State Government Affairs with the American Association of Nurse Anesthetists. My legal experience includes working in public health, healthcare compliance, healthcare regulation and representing patients in medical malpractice cases. For the last 7 years I have been working closely with many states across the country to help remove the barriers to practice for nurse anesthetists. Before going to law school I worked as an operating room nurse in a large trauma center. I appreciate the opportunity to be before you today and I would like to spend a few minutes addressing the issue of surgeon liability when working with a CRNA.

When a CRNA works under the supervision of a surgeon, as CRNAs currently do in Ohio, the issue of surgeon liability frequently comes up. The question that often gets asked is: whether or not the surgeon is automatically liable for the conduct of a CRNA? In short, the answer is: no. The courts do not look at the status of the anesthesia administrator, but rather the degree of control the surgeon exercises over the administrator, regardless whether that administrator is a CRNA or a physician anesthesiologist. Therefore, when a surgeon in Ohio works with a CRNA in a supervisory capacity, he or she has no affirmative obligation to control the substantive course of the anesthetic process. Moreover, surgeons rely upon the nurse anesthetist as the anesthesia expert. A nurse anesthetist uses independent judgment in determining the appropriate kind of anesthetic to be administered, as well as types of drugs and dosages. Merely serving as a supervising physician for the nurse anesthetist to satisfy the requirements under state law is not in itself an act of "control" that will make a surgeon liable for a nurse anesthetist's acts.

There are many court decisions which stand for the proposition that surgeons are not automatically liable for CRNA actions. In addition, surgeons do not escape liability when working with anesthesiologists. The courts typically apply the same standard when judging whether surgeons are liable for the acts of an anesthesia provider, regardless of whether the provider is a nurse anesthetist or anesthesiologist. In other words, when determining whether a physician is liable for the negligence of a nurse anesthetist with whom the physician works, the status of the anesthesia administrator is not the relevant factor. Rather, courts examine the degree of control the physician exercised over the anesthesia administrator, regardless of whether the administrator is a nurse anesthetist or an anesthesiologist. Therefore, it would be erroneous for anyone to state or imply that surgeons are at greater risk when they work with nurse anesthetists rather than anesthesiologists.

So, why remove supervision in Ohio if the surgeon is not automatically liable for the conduct of a CRNA? While removing supervision language from the state law may not have actual impact on surgeon liability, it will, however, remove the perception of surgeon liability and alleviate concerns that some surgeons have about supervising another provider whose scope of practice is different than their own. While the Ohio Revised Code requires the immediate presence and supervision of a physician, it does not provide qualifications or obligations for a supervising physician. Therefore, the supervision and immediate presence requirements do nothing to improve the delivery patient care, but on the contrary, the current law creates uncertainty and confusion when it comes to surgeon liability.

You have heard testimony that current supervision requirement casts doubt among surgeons as to who is responsible for the actions of CRNAs relative to the anesthesia care they provide. Taking out the supervision requirement from statute would help alleviate the perceptions of liability that many surgeons have relating to their role as a supervising physician. The removal of 'perception' of liability would help facilities attract and retain surgeons and improve patient access to quality surgical care.

I thank you for your time here today and would be happy to answer any questions.

Sources:

Schneider v. Einstein Med. Ctr., 390 A.2d 1271 (Penn. 1978)

Kitto v. Gilbert, 570 P.2d 544 (Colo. 1977)

Lewis v. Physicians Ins. Co. of Wisconsin, 627 N.W.2d 484 (Wis. 2001)

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);

Sesselmen v. Mulenberg Hosp., 306 A.2d 474 (N.J. Super. Ct. App. Div. 1973)

Baird v. Sickler, M.D.,69 Ohio St. 2d 652 (Ohio 1982)

Ferguson v. Dyer, 149 App.3d, 380 (Ohio 2002)