



Colorado Medical Society v. Hickenlooper, 2015 CO 41 (Colo. 2015)

Topics Covered: Scope of Practice

Outcome: Very Unfavorable

Issue

The issue in this case was whether Colorado law allows certified registered nurse anesthetists (CRNAs) to administer anesthesia without physician supervision.

AMA Interest

The AMA believes that CRNAs should practice under physician supervision, in order to protect patients.

Case Summary

General care hospitals, ambulatory surgery centers, and critical access hospitals that participate in the Medicare program must satisfy conditions that the Department of Health and Human Services (HHS) finds necessary for patients' health and safety. As part of the Medicare participation requirements, CRNAs who administer anesthesia in general care hospitals, ambulatory surgery centers and critical access hospitals must do so under a physician's supervision, unless the governor of the state "opts out" of such requirement by certifying that the applicable state law permits anesthesia administration without physician supervision.

The Governor of Colorado asked the Colorado Medical Board and the Colorado Board of Nursing whether the termination of physician supervision of CRNAs would be in the best interest of Colorado and would be consistent with state law. Both boards answered affirmatively that Colorado law would allow CRNAs to practice without physician supervision, and they supported the governor's proposal to opt-out of such requirement. The governor then notified HHS that he had exercised the option to exempt all critical access hospitals and fourteen specifically named "rural general hospitals" from the physician supervision requirement.

The Colorado Medical Society (CMS) and the Colorado Society of Anesthesiologists (CSA) sued to compel the governor to rescind the Medicare opt-out. They contend that, regardless of the positions of the governor and the medical and nursing boards, the administration of anesthesia is "the practice of medicine" under the Colorado Medical Practice Act. Also, it is a component of what the Colorado Nursing Act and the nursing board regulations define as "a designated medical function," which a nurse can provide only under physician supervision. The Colorado Hospital Association (CHA), the Colorado Nurses Association, and the Colorado Association of Nurse Anesthetists intervened as additional defendants.

The trial court dismissed the complaint for failure to state a cause of action, holding that the Colorado Nurse Practice Act allows CRNAs to provide health care services without physician

supervision. CMS and CSA appealed to the Colorado Court of Appeals. However, the Court of Appeals affirmed. The medical societies again appealed, but on June 1, 2015, the Colorado Supreme Court affirmed, finding that the Governor of Colorado had acted within his discretion regarding the Medicare opt-out requirement.

Litigation Center Involvement

The Litigation Center, along with the American Society of Anesthesiologists, filed a *amicus* briefs in the Colorado Court of Appeals and in the Colorado Supreme Court in support of CMS and CSA. In addition, the Litigation Center is contributing financially to the CMS lawsuit.

Colorado Court of Appeals brief

Colorado Supreme Court brief