



The New York State Society of Anesthesiologists, Inc.

110 East 40th Street, Suite 300, New York, NY 10016 USA

TELEPHONE: 212-867-7140 | FAX: 929-205-7836 | WEBSITE: www.nyssa-pga.org

Testimony for the
Joint Legislative Budget Health Hearing
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Honorable Chairs and Members of the Senate and Assembly Health Committees, Senate Finance Committee and Assembly Ways & Means Committee on behalf of the New York State Society of Anesthesiologists, thank you for the opportunity to submit testimony related to our priorities for the SFY 2024-25 State Budget.

The New York State Society of Anesthesiologists, Inc. (“NYSSA”) is a medical society consisting of approximately 4,307 physicians specializing in the field of anesthesia. NYSSA is an organization dedicated to advancing the specialty of anesthesiology and providing the safest, highest quality patient care to the citizens of New York state.

Our comments center around two critical areas of state Budget policy first scope of practice issues and second Medical Malpractice.

Scope of Practice

Our society stands together with MSSNY and other physician specialties in supporting physician lead care in office-based settings, outpatient clinics or hospitals. In a recent Medical Society survey, 75% of the physician respondents indicated that advanced care practitioners working independently during the pandemic under the Governor’s Executive Orders (waiving physician supervision requirements) had committed an error while treating a patient; 90% indicated that the error could have been prevented had there been physician oversight. CRNAs, PAs and NPs all have less training in the form of didactic and clinical education in obtaining degrees, and the training is built around a model of supervision with physicians.

In recent testimony we offered proactive solutions to help New York state meet the challenges brought about by the demands of increased surgical volume. Our recommendations ensure that New York state’s patients will still receive the highest quality of anesthesia professional services performed by physician anesthesiologists and nurse anesthetists. We want to share those with your committees as you consider the SFY 2024-25 State Budget.

LEGISLATIVE REPRESENTATION

Charles J. Assini, Jr., Esq. | NYSSA Legislative Counsel and Representative | 1036 Onondaga Road, Niskayuna, NY 12309
TELEPHONE: 518-461-3680 | E-MAIL: Chuck@AssiniLaw.com and cc: Grace@AssiniLaw.com

Reid, McNally & Savage, LLC | NYSSA Lobbyists | 1 Commerce Plaza, Suite 402, Albany, New York 12210
TELEPHONE: 518-465-7330 | FAX: 518-465-0273 | E-MAIL: Bobr@lobbywr.com and cc: Kellyk@lobbywr.com | WEBSITE: www.lobbywr.com

We ask you to keep in mind that there are unequal risks associated with the delivery of anesthesia. When patients encounter life, threatening emergencies requiring immediate medical intervention, it is imperative we preserve equal access to the physician-led supervision and the safety standard which currently exists in the New York State Health Code (which has been in existence 1989). The New York State Health Code requires the supervision of the nurse anesthetist by the physician anesthesiologist who must be immediately available, or the operating physician who must accept the responsibility of the nurse anesthetist.

The anesthesia work force, consisting primarily of physician anesthesiologists and nurse anesthetists, has seen a modest increase over the past several years according to data from the Centers for Medicare & Medicaid Services (CMS) and the American Medical Association (AMA) (*see attached graph*). This data confirms that New York state, unlike several other states, has a relatively stable number of physician anesthesiologists and nurse anesthetists.

Recommendations/Solutions

1. United States International Medical Graduates (IMGs), who have gone to medical school abroad, often cannot find residency spots when they have graduated. Increasing residency spots outside of CMS in rural counties of New York state would bring valuable work force home and bring healthcare to rural areas. New York state should also have a temporary loosening for foreign graduates (non-U.S. residents) to enter the work force for a period of time. The American Board of Anesthesiology (ABA) now has eight spots allocated per hospital as a pathway for these physicians to get their Boards. Consideration should be given to increasing the spots even more - perhaps to 12 to 14 spots.
2. Create new physician anesthesiologist residency programs. California has adopted initiatives to support more physician anesthesiologist residency programs.
3. Increase student loan forgiveness programs.
4. In recent discussions with New York state officials, we were apprised of the possibility of creating Certified Anesthesiologists Assistant (CAA) programs and licensure of CAAs in New York state. There are currently 21 states that recognize CAAs. CAAs work under the supervision of a physician anesthesiologist. This initiative would bring revenue to the state and open the door for additional qualified anesthesia providers, which NYSSA supports. NYSSA supports the licensure and practice in

New York State of both CRNAs and AAs provided such practice is under physician supervision who is immediately available to ensure patient safety. While CRNAs are licensed in other states, most of those states and the hospitals they practice in require physician supervision.

5. Advance the Rural Pass Through (RPT) program, which is a real, obtainable solution to bring more physician anesthesiologists to rural hospitals. The Rural Pass Through program is where Medicare permits certain low-volume, rural hospitals to pay for the services of nurse anesthetists and anesthesiologist assistants through a Medicare Part A, cost-based, “pass-through” mechanism. The mechanism is used in lieu of a Part B payment for anesthesia services. Medicare should extend this program to all anesthesia providers, including physician anesthesiologists, who are presently excluded by law from participating. The federal government can directly improve care expansion in rural and underserved areas through addressing a significant problem in anesthesiology --strengthening the Anesthesia Rural Pass Through. New York state officials are advised to consider encouraging the federal government to strengthen the Anesthesia Rural Pass Through.

Preserving Safe Anesthesia Standards

There are challenges to maintaining and increasing the number of physician anesthesiologists and nurse anesthetists; however, careful consideration is needed when weighing any proposals that would impact patient safety. It is important to keep in mind that, despite advances in medicine, every procedure and surgery has risks. The physician directed anesthesia care team model is physician anesthesiologists and nurse anesthetists with different clinical and training skills working together for the benefit of the patient. In this model, the physician anesthesiologist, with advanced medical training and clinical experience, assumes the primary responsibility to determine, direct, and oversee the patient’s optimum medical care. This time-tested anesthesia safety standard, as set forth in the New York State Health Code, should not be compromised when addressing anesthesia work force solutions. NYSSA believes the foregoing solutions may be helpful in accomplishing the objective of increasing the anesthesia work force while preserving the existing standard of anesthesia care.

NYSSA cautions the committee to carefully scrutinize the impact of the Executive Order No. 4 (EO 4) during the COVID pandemic as it related to the delivery of anesthesia care. It may be asserted that removing the physician supervision standard under EO 4 demonstrated that nurse anesthetists can independently administer anesthesia and that permanent extension of EO 4 would represent a viable solution to the work force challenge. However, the facts speak otherwise:

- EO 4 did not create a nurse anesthetist's scope of practice nor authorize nurse anesthetists to prescribe (ordering anesthetic drugs required a physician's order).
- EO 4 did not supersede medical staff bylaws which reflect the New York State Health Code's requirements to protect the health and safety of the patient in accordance with accepted standards of medical practice that includes anesthesia services be directed by a physician (qualified by education and experience) who has the responsibility for clinical aspects and organization of anesthesia services.
- EO 4 did not supersede Medicare, Medicaid and Workers Compensation billing requirements requiring physician supervision nor the Office Based Surgical Accreditation anesthesia standard of physician supervision.
- Our membership was unaware of any departure from adhering to physician-led anesthesia care during the time EO 4 was in effect. No peer review studies have been published supporting the contention that nurse anesthetists administered anesthesia independently and safety during the time EO 4 was in effect. As such, it is our position that there is no evidence that nurse anesthetists practiced independently nor evidence that nurse anesthetists' independent practice would alleviate the anesthesia work force challenges. As of June 2023, there were 1,824 nurse anesthetists and 3,470 physician anesthesiologists in New York state. There were 1,646 more physician anesthesiologists than nurse anesthetists in New York state.

According to a recent Journal of the American Medical Association (JAMA) study, evidence demonstrates that administrative or policy decisions that force reduction of physician anesthesiologists' involvement will result in patient harm. *Burns et al. Association of Anesthesiologists; Staffing Ratio with Surgical Patient Morbidity and Mortality: JAMA Surg July 20, 2022: doi:10.1001/jamasurg.2022.2804*

Physicians Excess Medical Malpractice Program (H/MH Article VII Part K)

NYSSA supports MSSNY's opposition to this bill that would require the 15,000 physicians currently enrolled in the Excess Medical Malpractice Insurance program to bear 50% of the cost of these policies.

Restore Funding for the Committee for Physicians' Health (CPH)(H/MH Article VII Part L)

NYSSA supports MSSNY's opposition to this proposal and urge you to restore the legal authorization for this program in the HMM Article 7 bill and restore the \$990,000 appropriation it has historically received through the Aid to Localities Budget Bill (identified as "medical society contract pursuant to Chapter 582 of the Laws of 1984") to continue this essential program to address physician wellness.

Conclusion

Finally, the members of our society have worked tirelessly to improve patient anesthesia care for New York's citizens regardless of socioeconomic status or whether they receive care in an office, clinic, or hospitals in any borough of NYC or county of the state. We oppose any law or regulation which would threaten patient safety in anesthesia care. The New York State Society of Anesthesiologists, Inc. (NYSSA) is dedicated to advancing the specialty of anesthesiology and supporting the physicians and scientists who are striving to provide the safest, highest-quality patient care to the citizens of New York state. We thank you for allowing us to submit testimony regarding the 2024-25 State Budget.