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Health Care Bulletin

OHIO SUPREME COURT RULES AGAINST OHIO STATE MEDICAL BOARD: INVALIDATES REGULATION INVOLVING PRACTICE OF ANESTHESIOLOGIST ASSISTANTS

On May 23, 2007, the Ohio Supreme Court invalidated an Ohio State Medical Board ("Board") regulation which prohibited anesthesiologist assistants ("AAs") from performing epidural and spinal anesthetic procedures and implementing medically accepted monitoring techniques. More specifically, the Court held that Ohio Administrative Code § 4731-24-04(A) (the "Rule") was invalid because it conflicted with Ohio Revised Code § 4760.09 which permitted AAs to perform such procedures. This decision has broad implications for the health care community and all regulated industries as it relates to the authority of regulatory agencies. The Court reinforced a well established legal principle that government agencies may only act within the scope of their intended authority.

The Rule stated "[n]othing in this chapter of the Administrative Code shall permit an anesthesiologist assistant to perform any anesthetic procedure not specifically authorized by Chapter 4760 of the Revised Code, including epidural and spinal anesthetic procedures and invasive medically accepted monitoring techniques." Arguing that the Rule was in direct conflict with the statute, Joseph Hoffman, an AA practicing in Cleveland, filed suit on June 10, 2003 against the Ohio State Medical Board demanding a declaration that the rule conflicted with the statute and was, therefore, invalid.

The trial court agreed, holding that the

Board specifically negated Ohio Revised Code § 4760.09 (the "Statute") which permitted AAs to assist with spinal and epidural procedures as well as medically accepted monitoring techniques by enacting a rule prohibiting AAs from performing these procedures. Additionally, the court held that it would be unreasonable to allow "assist" to mean that AA's may carry out procedures as requested by the supervising anesthesiologist everywhere else but in the Rule at issue here.

The Board appealed the trial court's decision to the Tenth District Court of Appeals in Franklin County. The Board argued that resolution of this issue depended upon whether the word "assist" is defined according to its "ordinary" definition or its technical definition as used in the medical field. Mr. Hoffman maintained that the Rule conflicts with the statute regardless of which definition is applied to the term "assist." Additionally, *amici curiae* briefs in support of Mr. Hoffman were filed by the American Academy of Anesthesiologist Assistants, the Ohio Academy of Anesthesiologist Assistants, Case Western Reserve University, University Hospitals of Cleveland, Parma Anesthesia Associates, Inc., The Anesthesia Associates of Cincinnati, Mercy Anesthesiologists, Inc. and The Members of the Academy of Medicine of Cleveland/Northern Ohio Medical Association.

However, on July 21, 2005, the Court of

Appeals issued its decision reversing the trial court. The Court of Appeals held the ordinary meaning of "assist" was consistent with a regulatory prohibition upon the performance of the enumerated procedures under the Rule. Although finding that the Board had compromised its position by adopting a definition of "assist" that supported Mr. Hoffman's position, the Court of Appeals held that the existence of a specialized meaning within the profession, itself, was not dispositive of the meaning intended by the legislature in drafting the statute as the legislature clearly intended for an everyday meaning to be inferred.

On August 11, 2005, the Court of Appeals granted Mr. Hoffman's unopposed motion for a stay of the Court of Appeals' opinion pending his appeal to the Supreme Court.

On September 19, 2005, Mr. Hoffman filed his notice of appeal to the Ohio Supreme Court. The Supreme Court subsequently agreed to hear Mr. Hoffman's appeal. Mr. Hoffman's brief was filed on March 27, 2006. Once again, supporting *amici curiae* briefs were filed in support of Mr. Hoffman.

In its decision, the Ohio Supreme Court held that the word "assist" had acquired a technical meaning in the field of anesthesiology, a meaning which the General Assembly intended to apply. Applying the technical definition of "assist," the Statute clearly permits an

AA to carry out the performance of epidural and spinal anesthetic procedures as well as carry out the implementation of medically accepted monitoring techniques as requested by the AA's supervising anesthesiologist. Because the Rule prohibits AAs from performing procedures that the Statute permits, the Rule conflicts with the Statute and, therefore, is invalid.

The Supreme Court's decision means that AAs in the State of Ohio can continue to practice as they have been for decades. Specifically, AA's are permitted to perform epidural and spinal anesthetic procedures as well as carry out the implementation of medically accepted monitoring techniques as requested by and performed under the direction of the AA's supervising anesthesiologist who must be physically present in the room. In future rulemaking, regulatory agencies and boards will likely take heed of the effective warning provided by the Court in this decision: That they carefully promulgate administrative rules which support, and not conflict, with the statutes enacted by the General Assembly.

As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.

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