

California Opt-Out Upheld – Lower Court Dismisses Lawsuit

On Friday, October 8, 2010, the California Superior Court in San Francisco granted summary judgment in favor of both California Governor Arnold Schwarzenegger and the California Association of Nurse Anesthetists (CANA), affirming California's opt-out of the federal physician supervision requirement for nurse anesthetists.

At the conclusion of the October 8 hearing, the presiding judge announced his finding that California state law does not require that nurse anesthetists be supervised by a physician. The judge further found that the governor did not abuse his discretion in concluding that the opt-out was consistent with state law. The court therefore ruled against the California Society of Anesthesiologists (CSA) and the California Medical Association (CMA), who filed the lawsuit in February 2010. A written order reflecting the court's findings and decision will not be finalized for several days. The CSA and CMA are reviewing their options, including appealing the ruling. Meanwhile, California's opt-out remains in effect.

Additional Background

California opted out in July 2009. Gov. Schwarzenegger informed the Centers for Medicare & Medicaid Services (CMS) of the opt-out in a letter that stated that after “[h]aving consulted with the California Board of Medicine and California Board of Registered Nursing and having determined that this exemption is consistent with state law, I have concluded that it is in the interests of the people of California to opt out of this requirement.”

The CSA and CMA lawsuit requested (1) that “the Court issue a writ of mandate commanding Respondent Governor Schwarzenegger to withdraw the ‘opt-out’ letter said Respondent submitted to CMS in or about June 2009, and to take no further action to effect an opt-out under [federal regulation]”; and (2) that “the Court declare that, under California law, a CRNA is not authorized to administer anesthesia except under the supervision of a physician.”

Subsequently, CANA was granted permission to intervene as a party to the lawsuit. The AANA filed a declaration in the case in support of the governor's and CANA's position.