On Your Behalf …

Legislative and Practice Affairs Division

The ASA Legislative Conference

"Brand New Opportunities"

By Linda J. Mason, M.D., ASA Director from California

The ASA Legislative Conference was held May 4-6, 2009, in Washington, D.C. The California Society of Anesthesiologists delegation included 17 members, four of whom were residents. The list of attendees were: Barbara Baldwin, CEO; Michael W. Champeau, President; Christine Doyle, Assistant Secretary; Linda B. Hertzberg, President-Elect; Robert Hertzka, Past President of the CMA; Norman Levin, Past President; Linda J. Mason, ASA Director from California; Rebecca Patchin, AMA Board of Trustees; Kenneth Y. Pauker, LPAD Chair; Johnathan Pregler, Speaker of the CSA House of Delegates; Mark A. Singleton, ASA Alternate Director; Stan Stead, ASA Delegate and Chair of the ASA Committee on Economics; R. L. Sullivan, Jr., Past President; and the four residents: Jenna Hansen, Stanford University; Ariel Hurtado, UC Irvine; Jacques Neelankavil, UC Los Angeles; and Adam Tibble, UC San Diego. Visits were made to over 50 members of Congress by our delegation.

Members of Congress who addressed the conference were Frank Pallone, Jr. (D-NJ), the chairman of the Subcommittee on Health, Committee on Energy and Commerce, U.S. House of Representatives; John Sullivan (R-OK), also a member of the Subcommittee on Health, Committee on Energy and Commerce, U.S. House of Representatives; Ron Wyden (D-OR), member Committee on Finance, U.S. Senate; and the Honorable Orrin Hatch (R-UT), Senior Republican, Subcommittee on Health Care, Committee on Finance, U.S. Senate. The Government Award for exemplary contributions to the medical specialty of anesthesiology, its practitioners and their patients was presented to John "Jay" Rockefeller (D-WV), Chairman of the Subcommittee on Health Care (Senate Committee on Finance). The major issues discussed with the members of Congress during our congressional visits were:

Health Care Reform—Balance Universal Access System and Payment Reforms with Cost-Savings. The ASA supports health care reform that establishes a pluralistic system building on the best features of public and private coverage, administration and financing and ensuring access to health insurance for all. Health care reform must recognize and value the leadership role of physicians as champions of high quality, cost efficient patient care based on their advanced education, skills and expertise. Also, health care reform must promote and further support efforts to improve quality, specifically research that improves patient safety and clinical outcomes. Should Congress pursue a public plan option, it is critical that it allow for fair anesthesia conversion factor, and not follow Medicare's unacceptably low payments for anesthesia services. Plans must have reasonable and workable mechanisms to pay those who provide care to plan beneficiaries.

Medicare SGR Formula—Assure Reasonable Payment for Physician Services. The ASA supports comprehensive Medicare Sustainable Growth Rate (SGR) formula reform because physicians face a 20 percent Medicare payment cut on January 1, 2010, with added cuts projected for subsequent years. The current Medicare payment system is simply not sustainable and requires a complete overhaul. Patient's access to medical care will continue to be compromised if Medicare payment cuts are a recurring feature of the formula. We are asking Congress to stop Medicare payment cuts, provide positive updates that reflect increases in practice costs, and permanently replace the SGR.

Truth and Transparency—Empower Patients with Accurate Information about Health Care Providers. The ASA supports needed legislation to safeguard patients from false health care advertising and marketing.

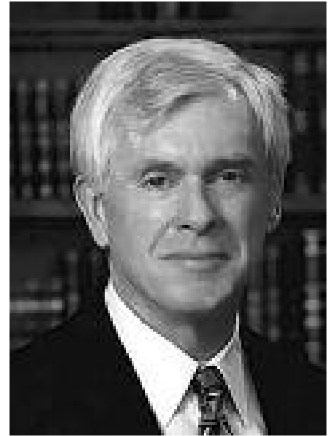
Rural Pass-Through—Expand Patient Access to Physician Anesthesia Services in Rural Areas. The ASA supports broader access to anesthesiologists in rural hospitals. Medicare allows, on a pass-through basis, more generous Part A payments for anesthesiology assistants and nurse anesthetists but not for anesthesiologists working in rural areas. The pass-through should be extended to anesthesiologists as well, which would help expand access to anesthesiology medical care in rural areas.

Pain Care—Improve Pain Care for America's Patients. Currently, there is a Senate bill, S. 660, being considered. The ASA supports enhancing Federal funding for pain care research, training, access and outreach. The House companion legislation, H.R. 756, passed under suspension on March 30, 2009. Congressmembers were asked to cosponsor S. 660.

The state issues forum included a presentation by our own Kenneth Y. Pauker, M.D., on balance billing in California, post the *Prospect* lawsuit, and out-of-network billing. An excellent presentation by Norman A. Cohen, M.D., Chair on the ASA Section on Professional Practice, gave us an overview of anesthesia and Health Care Reform. Charles D. Gregorius, M.D., Chair of the ASAPAC Executive Board, gave the ASAPAC update and encouraged each member to improve our participation in the ASAPAC in order for ASA to represent us in advocating at the state and national level. An increase in numbers and contributions, especially from our California members, will help secure the future of anesthesiology as a specialty for all of us and assure that we are well represented at the Congressional level.

Medical Board Guidelines on Physician Supervision

By William E. Barnaby, Esq.,
CSA Legislative Counsel



Physician supervision is a term that appears with some frequency in California laws and regulations dealing with health professionals' scopes of practice, payment standards, and medical services offered by health plans and insurers. In some instances, a level of supervision is indicated, such as "direct supervision" or "physician need not be personally present but must be readily accessible." More often, however, the term is not qualified so it is open for interpretation.

Some relevant guidance has been offered by Janie Cordray, Senior Researcher for the Medical Board of California (MBC), as to what "physician supervision" means and the standard that MBC applies. A shortened version appears in the April 2009 issue of the *Newsletter*, the quarterly MBC publication, entitled "The Business of Medicine—Medical Spas." Though aimed primarily at an emerging and apparently very lucrative part of cosmetic medicine, Ms. Cordray's advice merits serious attention on a wider basis.

She notes: "In the practice of medicine, physicians routinely delegate functions to allied health professionals. Physicians, however, may only delegate to appropriately licensed staff that they know to be capable of performing the

task." She goes on to observe: "In the current environment, many have operated under the opinion that since the nursing regulations are broadly written, nurses may perform anything anywhere with essentially no supervision as long as there are 'standardized procedures' or 'delegation of services' on file."

With regard to nurses, her statement is particularly cogent. "Standardized procedures allow nurses to perform procedures while the physician is not on-site; however, they do not absolve physicians of their supervisory responsibilities." Because the Nursing Practice Act does not define "supervision," the plain English definition applies. "Supervision," she says, "is defined as the act of supervising, which is to oversee, to direct, to have charge, to inspect, to provide guidance and evaluation. The law and regulations support this definition."

As an example, she asserts the regulations for "standardized procedures guidelines … require physicians to be responsible for ensuring the experience, training and education requirement for the delegated function—and must be documented. The regulations require that a method of initial and continuing evaluation of the nurses' competence be established. Further, it is the responsibility of the physician to examine the patient before delegating a task to a registered nurse."

To underline the point, Ms. Cordray declares: "Supervise is a verb, and it requires those calling themselves supervisors to guide, direct, oversee, and evaluate performance. Physicians must really supervise, not simply lend their license to allied health professionals on paper without providing any supervision. A 'supervising' physician who does not give direction, oversee or inspect, is not performing the task of supervising and is in violation of the law." She follows this with a section on Qualifications of Physician Supervisors. She states: "If they are to supervise the procedure, the physician also should be capable of performing it. One cannot provide guidance, direction, evaluation, and oversight unless one is knowledgeable and competent in the procedure being delegated."

The full article (found at www.mbc.ca.gov/licensee/medical_spas-business.pdf) is followed by a disclaimer that it is not a substitute for professional legal advice. "Physicians may want to consult their attorneys or malpractice carriers for additional legal advice" is the exact warning.

The bottom line: Physicians should be careful in delegating patient care functions to allied health professionals. Their license and their legal liability may be at stake.