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# Legal Briefs

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## A look at the Georgia *Worthy* case

On September 4, 1985, the Supreme Court of Georgia handed down a ruling on appeal from a series of four cases involving the same incident: *Central Anesthesia Associates, P.C., et al. v. Worthy, et al.*; and three other related cases, — — Ga. — —, 333 S.E.2d 829 (1985).<sup>\*</sup> The issues raised in this Georgia Supreme Court decision, both those which the Court answered and those which the Court left unanswered, are pertinent and interesting.

### **Factual background of the *Worthy* decision.**

The *Worthy* case is a medical malpractice case involving a woman who went to a hospital to give birth in September of 1981. Ms. Worthy gave birth without anesthesia and apparently without complication. The next day, Ms. Worthy underwent a tubal ligation procedure which was performed by her obstetrician-gynecologist, assisted by an intern employed by the hospital. Anesthesia in the hospital was provided by a professional corporation of eight anesthesiologists; the anesthesia for Ms. Worthy's procedure was administered by a registered nurse enrolled as a student nurse anesthetist in a school operated at the hospital by the anesthesiologists' corporation. At the time of induction, the student nurse anesthetist was under the supervision of a physician's assistant employed by the corporation. During the tubal ligation procedure, Ms. Worthy suffered cardiac arrest, resulting in brain damage.

At the time of the cardiac arrest, the obstetrician-gynecologist, the physician's assistant and the student nurse anesthetist were in the seventh floor operating room where the surgery was being performed. The physician's assistant was present when the student nurse anesthetist began administering the anesthesia but he left for approximately 10 to 15 minutes, during which period the patient's complications arose. At this time, four of the eight anesthesiologists were not at the hospital. Of those at the hospital, one was attending an open heart surgery patient and had no responsibility for Ms. Worthy's treatment. The remaining three anesthesiologists were defendants in this case.

### **Issues facing the *Worthy* Court**

Mr. and Ms. Worthy brought a legal action against the anesthesiologists' group, the student nurse anesthetist, the physician's assistant, the three anesthesiologists, the obstetrician-gynecologist, the assisting intern employed by the hospital and the hospital. The trial court found that all of the defendants, except the assisting intern employed by the hospital, had violated a Georgia statute which requires that a CRNA administer anesthesia "under the direction and responsibility of a duly licensed physician with training or experience in anesthesia."

The Georgia Court of Appeals agreed with the trial court with respect to the anesthesiologists' group, the

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<sup>\*</sup>Note: At the time of this writing, the case did not yet have a complete Georgia citation.

student nurse anesthetist, the physician's assistant and the three anesthesiologists. The Court of Appeals also found that the hospital, which used a surgical consent form stating that the anesthesia would be administered under the direct supervision of an anesthesiologist from the group, and which contracted with the anesthesiologists' group to operate the school of anesthesia to which it lent its name, facilities, funding and services, and which contemplated use of student anesthetists, had also violated its legal duty by knowingly permitting the anesthesiologists' group to violate the Georgia statute.

### **Negligence *per se***

The *Worthy* case came before the Supreme Court of Georgia solely to determine whether the trial court erred in deciding that the defendants violated the Georgia statute. If the defendants violated this statute, then they violated a standard of conduct established by the Legislature. A violation of this type is, in most circumstances, conclusive evidence that the violator is negligent *per se*.

The legal principle of negligence *per se* holds, where it is applicable, that the violation of a statute which creates a standard of conduct is sufficient, by itself, to establish negligence. Obviously, there may be cases where the doctrine would not apply, such as where the person injured is not someone the statute was trying to protect or where the injury was not the type contemplated by the statute. The principle of negligence *per se* is helpful to a plaintiff in a negligence case because the plaintiff does not have to offer expert testimony on a standard of care.

The *Worthy* Court determined that the Georgia statute created a standard of conduct for those who are authorized to administer anesthesia and that the standard of conduct was created to protect patients from unreasonable risks associated with the administration of anesthesia. If a violation of this type of statute is found, and as a result negligence *per se* is determined, the plaintiff must still show that the violation caused the injury or damages incurred by the patient.

### **Applying negligence *per se* to *Worthy***

The Court found that the student nurse anesthetist administering the anesthesia to Ms. *Worthy* was supervised by a physician's assistant and not by a duly licensed physician with training or experience in anesthesia. The Court further held that the supervisory role could not be delegated to a physician's assistant. As a result, the Court concluded that the defendants had violated the statute and they were, therefore, negligent *per se*.

The defendants argued that the lower courts failed to recognize a Georgia Board of Nursing regulation

which provides that a registered professional nurse who holds a temporary permit or a current license to practice nursing and who is enrolled as a student in a nurse anesthesia program may administer anesthesia, as long as the practice of anesthesia is confined to the educational requirements of the program and the student nurse anesthetist is under the direct supervision of an anesthesiologist or a CRNA.

The Georgia Supreme Court stated that the validity of the regulation was not an issue before the Court and that even if the lower courts had recognized the regulation, the student nurse anesthetist still was improperly supervised because the supervision was not by a physician or CRNA. Consequently, the regulation had no bearing on the case.

### **Secondary Issues**

In addition to deciding that the defendants were negligent *per se*, the Court also decided two other issues. First the Court discussed the hospital's violation of the statute. While the Court upheld the trial court's conclusion that the hospital had violated the statute and was thereby negligent *per se*, the Court did not read the trial court's decision as concluding that hospitals are liable for the negligence of independent professionals using the hospital's premises. Rather, the Georgia Supreme Court held that, "a hospital has a duty to its patients not to lead them to believe that anesthesia will be administered under the direct supervision of an anesthesiologist and then knowingly permit violations of [the statute] by an anesthesiology school operated on its premises by an anesthesiology group to which the hospital has entrusted its anesthesiology services."

Second, the student nurse anesthetist argued that she should not be held to the standard of care and skill of a CRNA, but only to the standard of care and skill of a second year student nurse anesthetist. The Court, in a summary sentence, rejected this argument, although it provided no rationale for this conclusion.

What are the ramifications of this case? There has been some suggestion that the case precludes the administration of anesthesia in a student clinical setting. The Georgia Board of Nursing Regulations, however, recognizes the administration of anesthesia by a nurse anesthetist. These regulations *require* a nursing education program to demonstrate that it provides clinical learning experiences in a variety of settings to meet the objectives of each course with a clinical component. Furthermore, the regulations allow a student nurse anesthetist to administer anesthesia as long as the student is confined to the educational requirements of a

nursing education program and is under the direct supervision of an anesthesiologist or a CRNA.

### The Georgia standard of supervision

The Georgia statute involved in the *Worthy* decision requires that a CRNA administer anesthesia "under the direction and responsibility of a duly licensed physician with training or experience in anesthesia." An interesting issue arises out of this statutory language. The requirement that the supervising physician have "training or experience in anesthesia" is unusual: most state statutes require only that the supervising person be a physician.

While the statute governing CRNAs requires that the supervision be by a "duly licensed physician with training or experience in anesthesia," the regulation governing student nurse anesthetists provides that the supervision be by "an anesthesiologist or a certified registered nurse anesthetist." The Georgia Supreme Court in the *Worthy* decision periodically uses "anesthesiologist" in place of "physician" and some concern has been expressed that this is a Court interpretation that an anesthesiologist is required. It is unlikely that the Georgia Supreme Court was, *in fact*, interpreting the supervision requirement. It is more likely that the Court was simply addressing the specific facts

of the *Worthy* case in which the supervising physician was supposed to be an anesthesiologist. The Court reached the conclusion that the student nurse anesthetist should have been supervised by one of the three anesthesiologists and not by the physician's assistant. If the Georgia Legislature had intended to require supervision by an anesthesiologist it would have said so specifically and a court would not make such a drastic revisionary interpretation of a statute in such a casual manner.

The *Worthy* decision may be one of those cases where a court reached the right result but it left unanswered the question of how it arrived there. The answer simply may be that the Georgia Supreme Court was faced with a situation in which it felt compelled to draw a line with respect to the type of supervision under which a student nurse anesthetist may administer anesthesia. Georgia's statute and corresponding regulations do not contemplate having any one other than physicians and CRNAs supervise student nurse anesthetists. Physician's assistants, a third group of practitioners, were not authorized by statute or regulation to supervise student anesthetists. The Georgia Supreme Court, therefore, refused to carve out an exception for the physician's assistants.

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## AANA Journal Course

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### Test Yourself Answers

(Questions appeared on page 176.)

1. The *goal* of quality assurance is to improve care and the *role* is to monitor the quality of that care.

2. A *standard* is a desired and achievable level of performance against which actual practice is compared. A standard serves as a generalized framework for developing specific *criteria* which act as indicators of patient care. For example, "all patients will be interviewed by an anesthetist preoperatively" is a standard of care. Criteria to evaluate how effectively this particular standard is met may include items such as: "documentation of previous anesthetics on preanesthesia assessment sheet" or "anesthetist's counseling statement lists possible risks of anesthesia."

3. Decentralized QA is synonymous with unit-level quality assurance. QA activities generated by unit-level staff, gain an immediacy and relevancy which are frequently lacking when QA projects are dictated by those remote from the practitioner's day-to-day clinical concerns.

4. Three types of criteria include:

(a) *Structure criteria* which are concerned with the physical, fiscal, or organizational characteristics of a setting.

(b) *Process criteria* which focus on the actual activities of the health care provider.

(c) *Outcome criteria* which assess the end result of care and usually indicate a measurable change in the state of the patient's health.

5. Evaluation is necessary to assess the effectiveness of planned QA interventions in improving patient care. A critical appraisal is equally crucial in determining the impact of the action taken on both the underlying value system and the general QA program.