The Nebraska Background

The path to professional recognition can be circuitous and unpredictable, and the results depend as much on serendipity as collaboration. Nebraska is the classic example of these forces in action. For several years, the Nebraska legislature has resisted regulation of either surgical assistants or surgical technologists, and achieving results looked more and more remote.

Then, in August 2014 the Nebraska Department of Health and Human Services (DHHS) determined, based upon a 115-year old case, that suturing in the OR constituted the practice of medicine, and that any unlicensed person performing such tasks (even though expressly delegated by a physician) violated Nebraska law regarding unauthorized practice of medicine, which put both the surgical assistant out of business (and out of the operating room) and jeopardized the medical license of the surgeon. That 1898 case, State of Nebraska v. Howard Paul, involved actual surgeries performed by an unlicensed person calling himself a doctor. And, even though those express medical and surgical acts were assigned to him by a licensed physician, the Supreme Court held that delegation notwithstanding, he had broken the law. The case did not involve the act of suturing.

Nevertheless, the Nebraska DHHS determination, which arose after an audit of Sidney Regional Hospital, was that suturing was the practice of medicine and therefore could only be performed by a licensed practitioner. That determination

continued on page 2...
The Legislature finds that:

The initial application needed guidance, and NE-AST, together with their surgical assistant colleagues, redrafted and refined the document, proposed the appropriate technical and definitional language, met with stakeholders and interested parties, attended and testified at the 407 Committee hearings, appeared before the Department of Health, assisted in crafting the bill to be considered by the legislature, and lobbied the bill until its successful passage. At one juncture in the proceedings, NE-AST testified as a neutral (not in support) to allow reconsideration and amendment of the bill language to include OJT consideration for CSFA certification to support licensure. Without the amended language, 90% of all surgical assistants in the state would have been forced from practice. The law as passed now allows on-the-job experience, not just program attendance and graduation, to support a path to licensure. The bill passed in the 2016 legislative session.

Nebraska surgical technologists are advancing their own registration legislation in 2017, with the support of Senator Kolterman, and they know they can count on reciprocal support from their surgical assistant colleagues. Together, stronger.
The Colorado Background

Again, serendipity was a factor in the passage of legislation in Colorado. The Department of Regulatory Agency (DORA) registration legislation for surgical assistants and surgical technologists was due to sunset in 2016. DORA posited that this registration was no longer needed.

ASA efforts began in 2015 to renew the legislation that was enacted in response to the surgical technologist, Kristen Parker, who stole fentanyl and eventually passed Hepatitis C to 18 unsuspecting surgery patients at Rose Medical Center in 2009. A total of 4,700 surgical patients were screened for possible exposure. (Editor’s note: Kristen Parker was not certified or a member of AST).

Memories fade. Last year, the Colorado legislative atmosphere was decidedly anti-regulatory and hopes to renew this legislation dimmed.

Then, Rocky Allen became headline news. He was another surgical technologist (uncertified) who abused fentanyl while employed at Swedish Medical Center beginning in 2015. The hospital advised 2,900 patients to be screened for hepatitis B and C as well as HIV.

Allen’s trouble reportedly started while serving in the military in Afghanistan. He was then fired from two hospitals in Washington, one in California, and another two in Arizona—one in which he was found passed out in the bathroom holding a syringe.

There was an apparent history of substance abuse but the can was kicked down the proverbial road until Colorado.

Rocky Allen was registered in Colorado but denied ever being previously fired. At the time, the Colorado registration did not require a background check or drug testing.

Despite this incredible violation of patient safety, DORA maintained that the registration was unnecessary. And then along came the media—an unrelenting media.

The legislative atmosphere changed. New legislation for registration now requires a criminal background check and mandatory drug testing. The new bill was enacted and signed by the governor in June.

These two experiences certainly indicate that no matter how valuable or worthwhile legislative causes are based on—sometimes the final determining factor is out of our hands. That being said, what happened in both Nebraska and Colorado was good.
According to a recent Consumer Reports survey, nearly one third of privately insured Americans received a surprise medical bill when their health plan paid less than expected. Approximately 25 percent of the survey respondents received a doctor’s bill that was not anticipated.

This gap in expectations can be attributed to the reimbursement levels set by insurance companies and the bills of out-of-network medical practitioners. These out-of-network medical practitioners include ER physicians, anesthesiologists, radiologists—and surgical assistants. All of these practitioners may be providing services at a patient’s insurer’s in-network hospital systems.

Some situations may result from an emergency when the patient has had no opportunity to decide on the medical provider(s); or when the patient receives care at his/her in-network hospital; or a healthcare facility and other providers, not in the same network, participate in the treatment. There are even some circumstances where an entire in-network hospital department has contracted for the services of providers who don’t participate in the network.

The surprise medical bill essentially includes two parts:
1. The difference in patient costs between in-network and out-of-network providers (under some insurance plans, patients are responsible for a defined percentage of in-network services and a certain percentage of allowed out-of-network charges.)
2. Balance Billing. Hospitals negotiate a fee schedule for services with in-network providers that typically reflect a discount from the providers’ full charges. Network contracts customarily prohibit their in-network providers from billing the difference between the allowed charge and the full charge. However, the out-of-network providers are under no legal obligation and can bill patients for the differences.

SURVEYS DRAWING ATTENTION TO SURPRISE BILLING

Several national surveys have been published regarding the issues related to surprise billing.

1. Consumers Union

In the past two years, 30% of privately insured Americans received a surprise medical bill (a medical bill where the health plan paid less than expected). This number is lower (23%) among the California subset. When looking at just the hospital subgroup (individuals who had emergency room
visits/hospitalizations/surgery in the past two years), the number rises to 37%.

In the past two years, one in seven patients have been surprised to find out that a doctor/lab/facility they thought was In-network, was actually Out-of-network. Many (63%) assumed that doctors working at an in-network hospital are also in-network. Accordingly, the majority (85%) think hospitals should have to notify patients if a doctor/technician involved in a procedure performed at that hospital will be out-of-network.

2. New York Department of Financial Services

More than 2,000 complaints were filed related to surprise medical bills. The average out-of-network emergency bill was $7,006. Insurers paid an average of $3,228; consumers paid an average of $3,778.

In the same study, results showed that 90 percent of surprise medical bills were not attributed to emergency services but for other in-hospital care, such as anesthesiology, lab services, surgery and radiology. Out-of-network assistant surgeons, often called in without a patient’s knowledge, on average billed $13,914, while insurers reimbursed $1,794.

New York implemented a mandatory, dispute resolution system, requiring insurers and providers to resolve out-of-network payment disputes, while holding patients harmless.

3. Texas Department of Insurance

Insurers determine their own “usual and customary charge” calculations within state standards, and consumers can still be balance billed for provider charges that exceed an insurer’s calculation. Varying insurer calculations likely mean some consumers are better protected from balance bills than others. In addition, a recent consumer complaint reviewed by CPPP calls into question whether an insurer is adhering to new state protections, indicating more oversight may be needed.

4. West Virginia Committee on Health and Human Resources Report

This report referenced a national study which showed that 8 percent of privately insured individuals utilized out-of-network care in 2011, and 40 percent of these cases involved surprise out-of-network claims. A study of surprise medical billings was authorized and results, together with recommendations and legislative remedies, are scheduled to be reported in 2017.

5. Florida Surprise Medical Billing Legislation

Nearly, everyone agrees that patients who unwittingly received services from out-of-network providers at in-network facilities should be protected from these bills. The political holdup is determining how much to pay the out-of-network providers. Florida sidestepped the payment issue by leaving that up to a yet-to-be-developed dispute resolution process.

6. California Surprise Medical Billing Legislation
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB533

A California bill has been introduced that would eliminate unexpectedly high medical bills, the kind that hit patients who have received care at a medical facility outside of their insurance network without knowing about it. The measure would limit the amount a patient can be charged by an out-of-network provider to no more than what he/she would have paid if that provider had been in-network.

7. Missouri Advocacy Health Alliance
http://www.mohealthalliance.org/issues/surprise-billing

Currently, the Missouri Advocacy Health Alliance is seeking feedback regarding surprise billing and compiling data to present for possible legislative initiatives.

8. Washington Surprise Billing Legislation

House Bill 2447 would ensure that patients pay only expected charges — including copays and deductibles — for emergency care. If there’s a dispute about contracts or out-of-network fees, the problems would have to be worked out with the insurer and the provider or hospital.
9. Colorado Surprise Billing Legislation
Healthcare providers are required to hold harmless from balance billing patients who make a good faith effort to obtain care from an in-network provider. The National Association of Insurance Commissioners (NAIC) has issued a Model Network Adequacy Act which addresses balance billing (Section 7); and the Colorado Department of Insurance is studying implementing provisions of the Model Act into Colorado law. (ASA members, read the Model Act that is published on the Members Only page under Legislative).

10. National Academy for State Health Policy
States are initiating action to explore the consequences of surprise billing. This report provides an update on state legislative activity to address surprise balance billing.

11. US House of Representatives End Surprise Billing Act
This proposed legislation is intended to amend the Social Security Act to prevent surprise billing practices on a national scale. While surgical assistants cannot bill Medicare, this legislation could potentially have substantive consequences.

Conclusion
Surprise medical billing is an issue that has become part of the national healthcare discussion. Surgical assistants who provide out-of-network services are advised to understand what initiatives may be active or proposed in their states. This is certainly a challenging topic but individuals across many states are urging action—it cannot be ignored.

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HOLIDAY INN ORLANDO—LAKE BUENA VISTA
All CSTs, CSFAs, CSAs and SA-Cs are invited.

ASA MEETING AGENDA

FRIDAY, SEPTEMBER 30

11 am–5 pm  Registration
9 am–1 pm  ACL Graft Workshop  4 CEs
Chris White, CSFA
See agenda online on ASA website.

2–4 pm  Bone Splinting  2 CEs
- Various splints for upper and lower extremities
- The concepts of Splinting in the OR
- Supplies needed for splinting
- Landmarks, techniques and procedure
- Hands on Splinting—2 Upper and 2 Lower extremities
David Bartczak, CSA, LSA, OPA-C

Noon–4 PM  CSFA Exam Prep Workshop
5–6 pm  Business Session 1
6–7 pm  Keynote Address: Creating Value in Healthcare  1 CE
William Cooper, MD, MBA, FACS

7:15–8:30 PM  Reception

SATURDAY, OCTOBER 1  8 CEs

7:45–8 am  Welcome  Kathy Duffy, CSFA, CSA
8–8:50 am  Pedispine  Mark Moran, MD
9–9:50 am  Assisting in Robotics  George Stransky, MD
10–10:50 am  Health Professions  Dennis Stover, CSA
11–11:50 am  Billing Q&A  David Bartczak, CSA, LSA, OPA-C
Noon–12:50 PM  Lunch (sponsored by NBSTSA)
1–1:30 pm  Business Session 2
1:40–2:30 pm  Paraesophageal Hernia  George Tuchsen, MD
2:40–3:30 pm  TAVR  Michael Morrison, CSFA
3:40–4:30 pm  Hospital vs Independent Assistant  Joseph Lundberg, CSFA
4:40–5:30 pm  Closing  Sam Araba, MD

Register and pay online at www.surgicalassistant.org

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(Includes Friday reception and keynote, Saturday Ed sessions and lunch).
Association of Surgical Assistants
6 West Dry Creek Circle
Suite 200
Littleton, CO 80120
303-694-9130
www.surgicalassistant.org

ASA ORLANDO MEETING

ASA member: $275
ASA student member: $175
(currently enrolled in CAAHEP-accredited surgical assisting program)
Nonmember: $300

HANDS-ON WORKSHOPS

ACL Graft:  
ASA member $250 / nonmember: $275

Bone Splinting:
ASA member $125 / nonmember: $150

Exam Prep:
ASA member $50 / nonmember: $75

Register and pay online at www.surgicalassistant.org

Attendance is limited to 125. Confirmation will be emailed. Onsite registration will be available on a space-available basis. All cancellations must be received in writing by September 12, 2016. Accommodations: Holiday Inn Orlando Downtown Lake Buena Vista, Florida; 1805 Hotel Plaza Blvd, Lake Buena Vista, Florida 32830, 877-394-5765. Rates: $105/night plus tax, single or double. occupancy. Reservation deadline is August 23, 2016. Room block is limited.
### WHAT DOES ASA DO FOR ME?

**LEGISLATIVE ADVOCACY AND RECOGNITION**
- Enacted Virginia Registration Surgical Assistant Law 2013
- Enacted Nebraska Surgical Assistant Licensure Law 2016
- Supported Illinois Registration Law 2015
- Engaging in Texas Sunset Legislative to Sunrise 2015-2016
- Initiating Tennessee Surgical Assistant Legislation 2015
- Enacted Colorado Sunset to Sunrise Legislation 2016
- And more states to come!

**ADVANCED SURGICAL ASSISTANT EDUCATION AND PROFESSIONAL DEVELOPMENT OPPORTUNITIES**

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
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<tbody>
<tr>
<td>2011</td>
<td>Three hands-on workshops SAN FRANCISCO</td>
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<td>Endovein Harvesting in partnership with Sorin, Inc. at the SimSurg Center</td>
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<td>Advanced Suturing Workshop</td>
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<td>Orthopedic Cadaver Lab with Arthrocare in Sunnyvale, California</td>
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<td>Learning at Sea Cruise and Education MIAMI/EASTERN CARIBBEAN</td>
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<td>2012</td>
<td>Meeting and Workshop CHICAGO</td>
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<td>2013</td>
<td>Robotics Practicum HOUSTON</td>
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<td>Learning at Sea Cruise and Education HOUSTON/WESTERN CARIBBEAN</td>
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<td>2014</td>
<td>Robotics Workshop HOUSTON</td>
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<td>Casting Workshop DENVER</td>
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<td>Covidien Workshop and Meeting ORLANDO</td>
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<td>2015</td>
<td>Spring Meeting and Ethicon Workshop PHOENIX</td>
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<td>Hands-on Pig Lab and Workshop NASHVILLE</td>
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<td>Maquet Endovein Lab LAS VEGAS</td>
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<td>Wound Management LAS VEGAS</td>
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<td>IV Therapy LAS VEGAS</td>
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<td>Spring Meeting LAS VEGAS</td>
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<td>Splinting Workshop ORLANDO</td>
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<td>ACL Graft Prep ORLANDO</td>
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<td>Fall Meeting ORLANDO</td>
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<td>2016</td>
<td>Spring Meeting HOUSTON</td>
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<td>Fall Meeting ATLANTA (TENTATIVE)</td>
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<td>Surgical Assistant Salary Survey</td>
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<td>Web-based CSFA Exam Prep</td>
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<td>Hospital Risk Managers Conference FALL 2016</td>
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<td>Salary Survey 2016</td>
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