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FRIDAY–TUESDAY
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POSTGRADUATE ASSEMBLY IN ANESTHESIOLOGY

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(fourth row, left to right) Michael S. Jakubowski, Peter
B. Kane, Scott B. Groudine, (third row, left to right)
Steven S. Schwalbe, Robert S. Lagasse, Michael H.
Mendeszoon, (second row, left to right) Paul H.
Willoughby, Alan E. Curle, Phillip N. Fyman, (bottom
row, left to right) Lawrence J. Epstein, Jared C. Barlow,
and Kathleen A. O’Leary.
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Working Together to Protect Our Patients

OUTGOING PRESIDENT ROSE BERKUN, M.D.

“Accept the challenges so that you can feel the exhilaration of victory.”

– George S. Patton

The NYSSA faces many challenges. Nurse anesthetists are aggressively seeking independent practice, taking credit for the safety in anesthesia that has been achieved by physician anesthesiologists. They have repeatedly made false claims, declaring that: they are primary anesthesia providers; their doctorate degree in nurse anesthesia is equivalent to a doctor of medicine degree; if the “Safe Anesthesia” bill passes, anesthesiologists will restrict the practice of nurse anesthetists in New York state; and passage of their “Title” bill will NOT lead to independent practice.

Complicating the fight to preserve physician supervision of nurse anesthetists is the fact that 40 percent of legislators and 60 percent of the general public do not know that anesthesiologists are physicians. We only get 15 minutes to present our case to legislators when we meet with them in Albany.

This year the NYSSA followed the ASA’s lead and rebranded our marketing campaign to clearly identify ourselves as physician anesthesiologists. The folder containing material for the NYSSA Legislative Day that is given to legislators includes information on why, when seconds count, physician anesthesiologists save lives; the difference in education between physician anesthesiologists and nurse anesthetists; facts about the practice of anesthesia; and the critical importance of preserving physician supervision.

In addition, we debunked the myth that the “Title” bill will not lead to independent practice of nurse anesthetists. Dr. Larry Epstein, NYSSA past president and a member of the Board of Medicine, expertly identified the process of progression from the passage of the “Title” bill to the elimination of physician supervision in New York state. The result of our well-thought-through approach was the defeat of this bill.
in the 2017 legislative session. In fact, the NYSSA was so successful in blocking the bill that it prompted NYSANA to hire a national public relations firm to continue their fight for independent practice. Our efforts were further validated when Senate Republican Majority Leader John Flanagan, at the conclusion of our meeting in Albany, said, “I get it, 1,600 hours,” referring to the difference in training and expertise between physician anesthesiologists and nurse anesthetists.

Another big challenge is raising funds for NYAPAC. Last year I asked all our members to donate $100 each to the PAC. If all 2,400 active members followed that request, our PAC today would be $240,000 strong. That did not happen. However, many of you stepped up to the plate and put tremendous effort into energizing our members and convincing them to donate to the PAC. Great thanks go out to the district directors who held fundraisers in 2017: Dr. Dan Sajewski, District 8; Dr. Elizabeth Mahoney, District 7; Dr. Richard Wissler, District 6; and Dr. Matthew Wecksell and Dr. Cheryl Gooden, District 3. As a result, we collected a total of $137,000, a record amount, even if only by $527, as compared to last year’s highest PAC total. I hope that the rest of the district directors will rise to the challenge and hold fundraisers in 2018. We need your leadership and commitment.

Gender diversity in leadership positions within academic anesthesiology, private practice and organized medicine remains a challenge. In a recent article written by Dr. Roya Saffary, the figures on ASA leadership positions showed only 4 percent of ASA directors (two out of 50), 12 percent of alternate directors, and 26 percent of committee chairs were women. In academic anesthesiology, as of 2006,
28 percent of program directors, 13 percent of chairs, and 10 percent of all medical school department chairs were female anesthesiologists. These numbers reflect the overall percentages of women in medicine.

The goal of the Ad Hoc Committee on Women Physicians was to focus on leadership development, successful negotiating skills and work-life balance, as well as on providing guidance, mentorship and sponsorship within academic anesthesiology, the private sector and organized medicine. Under the leadership of Dr. Melinda Aquino and Dr. Janine Limoncelli, the committee formed a mentoring network, created a website that will serve as an information hub, and developed a panel for the PGA. I am also happy to report that the number of active women NYSSA members increased from 26 percent in 2016 to 29 percent in 2017. I look forward to working with the committee on cultivating future women leaders.

I could not complete my year as NYSSA president without expressing deep gratitude to the people who work diligently behind the scenes and are vital to our organization. Every day NYSSA staff members, led by Executive Director Stuart Hayman, work hard on behalf of the association’s members, New York patients, and the profession of
anesthesiology. Leadership is practiced not so much in words as in attitude and actions. Under Stuart’s leadership, the NYSSA has prospered in terms of its finances, membership numbers and legislative victories.

In 2017 Stuart began his 10th year as our executive director. Originally from Washington, D.C., Stuart is a proud U.S. Navy veteran. After his military service, he earned a bachelor’s degree in accounting and a master’s degree in administration, both from Maryland universities. Stuart’s career in organized medicine began at the Montgomery County Medical Society in Maryland, where he spent 10 years as chief operating officer. In 1998, he moved to New York to become the executive director of the Westchester County Medical Society and the Westchester Academy of Medicine, and 10 years later he assumed the position of NYSSA executive director.

It was my honor and pleasure to work closely with Stuart this year. His knowledge, guidance and support made my year as president exciting, productive, successful and quite entertaining. I would like to thank Stuart for his excellent work and dedication to our society and present him with a special Excellence in Service award.

In order to succeed, we must first believe that we can. My parents always told me that anything is possible through hard work and perseverance. I am forever grateful to them for leaving the Soviet Union, where Jews were persecuted and freedom of speech was suppressed, and for believing that life could be better, and that being a refugee did not preclude one from achieving success. I thank my parents for their support and for being my greatest role models.

I refer to our society as a family. I truly believe that we are one and that by working together we will continue to excel, grow and protect our patients. I would like to thank each and every one of you for working hard on behalf of our society, our PAC, our members and our patients. It has been a great privilege to serve as your president and I look forward to working with all of you in the upcoming years.
President’s Message

Please Help Us Protect Our Patients and Save Lives

DAVID S. BRONHEIM, M.D.

It is my pleasure to introduce myself as your new president and to take this opportunity to tell you a little bit about my history with the NYSSA. Like many of you, I joined the NYSSA at the start of my residency. Since joining the society in 1986, I have volunteered my time to the NYSSA, originally as a PGA speaker and a member of various committees and the House of Delegates. I have also served as the District 2 secretary, president and director, and, more recently, as the NYSSA assistant treasurer, treasurer, vice president and president-elect.

I originally planned to use my first column in Sphere to write about recent and future changes at the NYSSA and my goals for the year. However, as I write this article in mid-January, we just received word that Gov. Andrew Cuomo’s new budget proposal includes language that could potentially destroy the current anesthesia care team model. The governor’s proposal would eliminate the statewide requirement that a physician be physically present and immediately available to supervise a nurse anesthetist, replacing that requirement with a weak collaborative relationship that is indistinguishable from independent nursing practice. The proposal would also grant broad prescription writing authority to nurse anesthetists at a time when New York, like so many other states, is combating opioid abuse.

Once again it appears that the safety of our patients is being threatened by those who wish to practice medicine without the benefit of a medical degree. Nurse anesthetists have made no secret of their desire to practice medicine independently. Yet while these practitioners are competent to practice under physician supervision, they lack the education, training and critical thinking skills necessary to assume the role of a physician.

The NYSSA leadership has already reached out to the health commissioner, Dr. Howard Zucker, to express our grave concerns about this recommendation and the negative impact this change would have on patient safety. Furthermore, the NYSSA leadership will do everything
in our power to educate all the decision makers as to why this proposal represents an extremely poor choice for our citizens. We have already encouraged the leaders within our academic community to voice their own independent opinions. If we are to be successful in our effort to safeguard our patients, we will need our governor and legislators to hear your voices as well. We will be reaching out directly to ask all of you to speak to your elected officials. We must also mobilize as never before. We must have the active support of every member of the NYSSA. Please consider participating in the NYSSA’s Legislative Day on May 1. If you are unable to join us in Albany, please make a generous contribution to NYAPAC immediately to support your colleagues who are giving their time on your behalf. Your active involvement and support has never been more important.

On the national level this past year, it took an enormous amount of advocacy to preserve the highest-quality anesthesia care for our nation’s veterans in the VA system. While the VA had considered granting all advanced practice registered nurses, including nurse anesthetists, “full practice authority,” thanks to the coordinated advocacy efforts of your state and national societies, along with the comments received from thousands of veterans and their family members, we gained recognition that the operating room is different from an outpatient clinic, and that when events don’t go as planned in the operating room, seconds count. Consequently, we were able to preserve the physician-led, team-based

Dr. David Bronheim addresses the House of Delegates.
model of anesthesia care in the VA. Now, however, the safety of New York patients is being threatened.

When it comes to the provision of anesthesia, I admit that I am extremely selfish, although not for the reasons one might expect. Any changes that take place at the state or national level in terms of how anesthesia is delivered will have little impact, if any, on my individual practice. At 60 years old, I will be retired before any of these discussed changes would affect me on a professional level. The fact is that this issue affects me not so much as a physician but as a patient. I am selfish because I am worried about the long-term quality of my own healthcare and I wish to preserve the highest-quality care for when I need it. So I am asking all NYSSA members to please join us and help protect my medical care. To learn more about how you can get involved and make a difference, visit the NYSSA website at www.nyssa-pga.org.

In the next issue of Sphere, I will discuss the changes we are making this year to better support our members. I look forward to sharing these exciting initiatives with you.

Thank you to our PGA71 Supporters!
New York State Society of Anesthesiologists

33rd Annual Legislative Day in Albany

Tuesday, May 1, 2018

Location: Renaissance Hotel
144 State Street | Albany, NY 12207

8 am Breakfast Meeting
To include a discussion regarding legislative issues potentially impacting anesthesiologists in the state of New York

10 am Legislative Appointments
(which will be scheduled for members)

Speakers:

- **David S. Bronheim, M.D.**, President, NYSSA
- **Jonathan S. Gal, M.D.**, Downstate Vice Chair, Government & Legal Affairs Committee, NYSSA
- **Robert Reid**, Partner, Reid, McNally & Savage
- **Shauneen McNally**, Partner, Reid, McNally & Savage
- **Charles Assini**, Legislative Counsel to the NYSSA, Higgins, Roberts & Suprunowicz, P.C.

RSVP

Go to surveymonkey.com/r/NYSSALeg2018 and fill out the required information. Questions? Contact Grace Carter at GKcarter@HRSLaw.us.com.

All NYSSA members are invited — you must RSVP.

Travel expenses will be reimbursed at IRS rates. Overnight accommodations must be preapproved, please contact NYSSA headquarters.
Expanding the NYSSA’s Reach

SAMIR KENDALE, M.D.

With 2018 well underway, now is a great time to think about how we, as anesthesiologists and as a society, can continue to move forward. The discussions we had during the Communications Committee meeting at the 2017 PGA were a prime example of how we are constantly progressing. Dedicated committee members discussed a number of excellent ideas about how to expand the NYSSA’s reach in the coming year. Stay tuned over the next few months. (And take a look at the fantastic photographs in this issue to relive the PGA or see what you may have missed.)

Why is it so important for the NYSSA to expand its reach? Why not be content with the progress we have made so far and the terrific society we already have? In fact, there are a number of appropriate answers to these questions, but one of the most important answers is “advocacy.” This term gets used regularly, but what does it really mean? For whom or what are we advocating?

First, we are advocating for ourselves as physician anesthesiologists. Our specialty has been at the forefront of scientific and clinical advances for decades, advancing perioperative care and taking care of a variety of patients in a multitude of settings. We make these advances because we love what we do on a daily basis, and because we love the field of anesthesiology. If we are to continue to have the opportunity to make these advances and to perform this exciting job every day, our specialty needs to exist for us to do so.

Most importantly, we are advocating for our patients. The safety of anesthesia has improved dramatically thanks to the efforts of anesthesiologists, and as the result of technologic and pharmacologic developments, consensus- and scientifically based guidelines, and policy changes. Ultimately, the result is a more favorable perioperative experience for the patient. We need to continue to be involved in patient care, as we have proven that we are our patients’ best advocates.

What form should your advocacy take? Here are a few ways to get involved in the NYSSA’s advocacy efforts:
1. Write a letter to a legislator: Writing letters (or emails) to legislators ensures that your voice is heard, and legislators aim to satisfy their constituents. Even if you don’t have the time or ability to write an original letter, there are templates available from both the NYSSA and the ASA.

2. Attend legislative days in Albany: Even better than writing a letter is personally meeting legislators on their home turf. Legislative days give you the chance to talk to them face to face.

3. Donate to a PAC: Money talks. In addition to donating time, donating to NYAPAC and ASAPAC (and getting your colleagues to donate) is one of the best ways to support advocacy efforts.

4. Attend a legislative conference: These meetings are a valuable way to learn important skills and to connect with other advocacy leaders in the field.

5. Get residents involved: While they are learning clinical skills, teach residents the importance of being involved in their state societies by inviting them to district meetings, or encourage them to join NYSSA committees. I became involved as a resident and am grateful to those who urged me to participate.

By getting involved in the NYSSA’s advocacy efforts, you will help ensure that we can continue to provide safe anesthesia care for all our patients.

72nd PGA Scientific Exhibits, Poster Presentations, Medically Challenging Case Report Posters

If you are interested in submitting applications to exhibit your projects at the upcoming 72nd PostGraduate Assembly in Anesthesiology — December 7-11, 2018, please visit www.pga.nyc for instructions to submit online (available in May).

Deadline for filing is August 15, 2018.

Submissions are only accepted electronically.
As I write this column, we are in the middle of what has already become one of the worst flu seasons in more than a decade. The number of flu-related hospitalizations and deaths has been front-page news for weeks, and will likely continue to grip our attention as we head toward spring.

As we collectively turn our attention to the havoc wrought by a particularly deadly flu season, however, it’s easy to forget about the other public health emergency that so many Americans are facing every day: the opioid epidemic.

The rate of opioid overdose deaths has increased 200 percent since 2000. From 2000 to 2016, more than 600,000 people died from drug overdoses. According to the U.S. Centers for Disease Control and Prevention (CDC), opioids were involved in 42,249 deaths in 2016 alone. Today it is estimated that more than 2 million Americans abuse opioids.

New York has not been spared from the opioid epidemic. In fact, the CDC identified New York as one of the states that experienced a statistically significant increase in drug overdose deaths from 2015 to 2016.

In 2012 Gov. Andrew Cuomo signed legislation aimed at overhauling the way prescription drugs were distributed and tracked in the state. At the time, New York state Sen. Kemp Hannon noted the alarming fact that in the previous documented year, 22 million new prescriptions for painkilling drugs (not including refills) had been written in a state that is home to 19.5 million people.

The legislation signed in 2012 created a new, updated prescription monitoring program (I-STOP) that made it harder for patients to “doctor shop” to illegally obtain prescriptions from multiple practitioners. Through the Prescription Monitoring Program (PM P) Registry, information about dispensed controlled substances is reported by pharmacies in “real time,” and both practitioners and pharmacists can
view a patient’s controlled substance history. As of August 27, 2013, most prescribers were required to consult the PMP Registry when writing prescriptions for Schedule II, III, and IV controlled substances.

In addition to I-STOP, New York’s legislation made it one of the first states to mandate electronic prescribing (e-prescribing) for all controlled substances with limited exceptions. The legislation also expanded the functions of a workgroup established by the Department of Health under the existing Prescription Pain Medication Awareness Program with the goal of increasing education among healthcare providers about the potential for abuse of controlled substances, and the proper balancing of pain management with abuse prevention.

Healthcare provider education is now mandatory in New York, where those licensed to prescribe controlled substances, including medical residents who prescribe controlled substances under a facility DEA registration number, must complete at least three hours of course work or training in pain management, palliative care, and addiction. The initial deadline for the completion of the course work or training was July 1, 2017, and then once every three years thereafter. Prescribers licensed on or after July 1, 2017, must complete their course work or training within one year of registration, and then once within each three-year period thereafter.

New York City also recently announced a lawsuit against eight companies that make or distribute opioids, joining a growing list of cities and states across the country that are attempting to hold drug manufacturers and distributors at least partially responsible for actions that many believe contributed to this epidemic. The lawsuit seeks $500 million in damages, money that Mayor Bill De Blasio says will be used to help fight the crisis.

In a sign that these lawsuits may be starting to influence how drugmakers market opioids, Perdue Pharma, the maker of OxyContin, announced on February 10, 2018, that it will no longer promote OxyContin to physicians. According to The Associated Press, the company “acknowledged that its promotions exaggerated the drug’s safety and minimized the risks of addiction.” While this is a welcome, albeit long overdue, acknowledgment, there is no indication if other pharmaceutical companies will follow suit.
Lawsuits aimed at forcing the drug industry to take ownership of its role in this crisis are just the beginning. As states look for creative ways to mitigate the toll of opioid abuse, physicians must be part of these discussions. To that end, on the national level the ASA partnered with the hospitals of Premier Inc. to launch a national opioid safety pilot. The six-month pilot, which began in September 2017, is geared toward addressing opioid misuse, dependence and addiction by improving pain management and reducing opioid prescriptions after surgery.

The ASA also collaborated with the CDC on “Guidelines for Prescribing Opioids for Chronic Pain,” which provides recommendations for primary care providers on opioid prescribing as well as information regarding the risks of opioid use. In addition, the ASA is working with other pain societies, through the Pain Care Coalition, to support policies to further responsible pain care.

Where do we go from here? The opioid crisis was finally declared a public health emergency in late 2017; however, no new resources were allocated on a national level to combat this epidemic. Tragically, while we wait for federal authorities to take action, thousands more will die. As experts in pain medicine, physician anesthesiologists are in a unique position to influence local and national efforts to curb opioid abuse and save lives. We welcome the input and ideas of all NYSSA members, and hope to share your constructive feedback in future issues of Sphere.

Take Action Now

Gov. Andrew Cuomo’s current budget would allow more than 1,300 nurses (CRNAs) to start prescribing opioids without any physician supervision. This proposal comes at a time when 115 Americans are dying every day as a result of opioid abuse.

New York’s physician anesthesiologists must speak out against any proposal that will lower New York’s safe anesthesia standards and exacerbate the opioid epidemic in the state.

Go to www.capwiz.com/nyssa-pga/home/ to register your opposition to the governor’s budget proposal.
5th Annual Mid Atlantic ANESTHESIA RESEARCH CONFERENCE

MAARC 2018

April 20-22, 2018

Erickson Alumni Center
Morgantown, West Virginia

Contact: maarc2018@wvumedicine.org
Hosted by West Virginia University School of Medicine

Abstract Deadline: April 8, 2018
Appealing to Legislators to ‘Do No Harm’

STUART HAYMAN, M.S.

Every year, members of the NYSSA find themselves attempting to educate New York state legislators as part of the ongoing discussions regarding nurse anesthetist title and scope of practice. Given the potential harm to patients from allowing non-physicians to practice medicine, one could easily question the motivation of politicians who support legislation that would grant a nurse anesthetist the ability to practice as a physician. Personally, I believe the vast majority of legislators have the desire to do good for their constituents. That said, before any well-meaning legislator acts on a piece of legislation, he or she should first be certain to “do no harm.”

The current debate revolves around the governor’s budget proposal. We are concerned about Part H of the health budget, which would allow nurses to administer anesthesia without supervision. This change to the nurse anesthetist’s scope of practice has repeatedly been defeated in recent years in the New York Legislature, as well as by the Veterans Health Administration. The proposal goes dangerously beyond the recognition of nurse anesthetists’ title by attempting to grant nurses the full practice privileges of physician anesthesiologists.

As Dr. Rose Berkun so eloquently stated while testifying in front of key legislators at the New York state healthcare budget hearings, “If nurse anesthetists wanted to work independently as physicians, they should have gone to medical school and completed a residency. The practice of medicine should be determined by education and NOT by politics.”

Dr. Berkun and Dr. Vilma Joseph both sacrificed their personal time to represent the association, the profession, and New York patients when
they joined NYSSA Legislative Counsel Chuck Assini, Esq., NYSSA lobbyist Bob Reid, and me to attend a nine-plus-hour hearing in Albany on the healthcare budget. These two dedicated NYSSA leaders deserve the thanks and respect of every NYSSA member. Dr. Berkun drove five hours from western New York after working all day in order to be in Albany the night before her Tuesday testimony at the hearing. Dr. Joseph was on call and working all Monday night in the Bronx prior to driving up to Albany at 7 a.m. They were then forced to wait through nearly 10 hours of testimony before it was their turn to speak. (While they waited, Drs. Berkun and Joseph visited with key legislators and participated in a television interview.)

The hearings began with the testimony of Commissioner of Health Dr. Howard Zucker, who also happens to be an anesthesiologist. After Dr. Zucker spoke for about 30 minutes, he and New York Medicaid Director Jason Helgerson were peppered with questions from legislators for more than four hours.

The testimony was something to behold. The amount of misinformation was eye opening. That being said, I do believe a few legislators deserve credit for trying to get honest, “full disclosure” answers out of the state employees who were testifying.

Sen. Kemp Hannon asked Dr. Zucker why the commissioner buried the proposed $10 million change on nurse anesthetist scope of practice in the middle of the $64 billion healthcare budget. Assemblywoman Rodneyse Bichotte asked Dr. Zucker if this proposal would negatively impact patient safety, create a two-tiered system with a reduced level of care for people with less resources, and potentially add to New York’s opioid crisis. Assemblyman Phil Steck asked whether the proposal provided for physician oversight of nurse anesthetists. Dr. Zucker offered many muddled, indirect answers to these questions. When pressed about whether the supervision standard would be preserved, the commissioner confessed that, at best, it would be up to each hospital. One Assembly member noted that it sounded like the decision would be influenced by economics and that “collaboration” was not the appropriate standard.

Assemblyman Andrew Garbarino wanted to know how New York would save $10 million if the reimbursement for anesthesia is exactly the same under Medicaid whether it’s delivered by a physician anesthesiologist or...
a nurse anesthetist. In response to this question, Director Helgerson indicated that he assumed the state would lower the reimbursement to CRNAs who provided the service.

The first eight hours of testimony and questions on this proposal involved various staff members representing different government departments (financial services, health, Medicaid inspector general, etc.). These individuals were unable to answer many of the questions asked of them, repeatedly telling legislators that they would have to get back to them. Finally it was time for the list of approximately 40 special interest groups to testify.

It was after the ninth hour of testimony that we heard from someone who truly surprised us. Jill Furillo, RN, executive director of the New York State Nurses Association, told legislators that her organization is opposed to the proposal, saying it could do harm. She testified that the CRNA expansion of scope should be removed from the governor’s budget and that there are specific issues in this proposal that need to be addressed and clarified by the Legislature.

Representatives from the New York State Association of Nurse Anesthetists testified next. Their president, Cheryl Spulecki, claimed that New York was one of only two states in the country that didn’t provide nurse anesthetists the title “CRNA” and then inaccurately and deceptively correlated that with unsupervised independent practice for nurse anesthetists in New York. Spulecki claimed that all but two states allow nurse anesthetists to practice independently. The truth is that only four states allow independent practice, and they are rural states with small populations. Spulecki also stated, erroneously, that nurse anesthetists provide the majority of anesthesia services to rural and poor communities, adding that they do so as safely and more cost effectively than physician anesthesiologists. She then introduced Juan Quintana, a CRNA from Texas and the 2016 president of the American Association of Nurse Anesthetists (AANA). He testified that he had his own business providing anesthesia services in Texas, an interesting statement given the fact that Texas does not allow non-physicians to own businesses that provide medical services unless these services are supervised by physicians.

We next heard from Drs. Berkun and Joseph. They concisely and effectively disputed each and every assertion by the nurse anesthetists.
They explained that this initiative has previously been rejected for numerous good reasons:

**TRAINING:** Nurses are trained to work under the supervision of physician anesthesiologists, not independently. They have far less education and hands-on training. This proposal would grant authority for nurse anesthetists to perform pre-anesthesia evaluations, anesthetic induction and emergence. These are functions that they have not been trained to perform or allowed to do without direct supervision.

**SAFETY:** Independent studies have shown that the chances of an adverse outcome are significantly higher when anesthesia is provided by an unsupervised nurse anesthetist.

**COST SAVINGS:** There is a claim that this proposal would save New York $10 million. Under Medicare and Medicaid, the reimbursement for anesthesia services is exactly the same whether it is administered by a physician anesthesiologist or an anesthesia care team.

**EXPANSION OF ACCESS:** We do not have a shortage of anesthesia providers in New York. Our association survey of New York hospitals found that NO hospitals in the state are performing surgeries without access to a physician anesthesiologist. They either had anesthesiologists on staff or are affiliated with other hospitals that do. In 2016 the American Medical Association’s workforce study determined that out of 1,276 nurse anesthetists practicing in New York, more than two-thirds (870) practice in Albany and to its south — meaning downstate. This proposal would not expand coverage to the western part of the state.

**DISCRIMINATION:** This proposal will create a two-tiered healthcare system where the quality of anesthesia care will be determined by a patient’s insurance or other economic considerations. Those with resources will be cared for by physicians while those without will see nurses.

**SCOURGE OF OPIOIDS:** We are in the peak of an opioid epidemic that has caused many unnecessary deaths. This expansion of scope would allow approximately 1,300 undertrained and unsupervised prescribers to write opioid pain medication prescriptions, thereby exacerbating this crisis.
PATIENTS’ RIGHTS: Anesthesia patients are at their most vulnerable while rendered unconscious in surgery. They should continue to have the right to receive care from a physician anesthesiologist who is properly trained to supervise their anesthesia.

Drs. Berkun and Joseph ended their testimony with the following statement:

Every day anesthesiologists work with nurses on our anesthesia care team. We respect their work and their participation. However, the medical practice of anesthesia is not a collaborative practice. There is no room for a discussion between doctors and allied health professionals when a patient’s life has only seconds to be saved. When things fail in the operating room and the patient’s life is on the line, there is no time for discussion. As anesthesiologists and as physicians, we are trained to act decisively in these dire situations. Nurses do not receive the same level of training and are not equipped for this level of practice expansion. This proposal dangerously weakens anesthesia care in New York and will lead to a higher rate of mortality.

We thank Drs. Berkun and Joseph for attending this grueling hearing and for their excellent testimony. We left the hearing feeling that the day was a positive one for New York’s patients. Many legislators seemed to understand that this proposal was nothing more than a special interest group attempting to practice medicine without the benefit of a doctor of medicine degree. Our advocacy efforts will continue, and we will keep the membership informed about our progress.

72nd PGA Resident Research Contest

If you are interested in submitting an abstract for the upcoming 72nd PostGraduate Assembly in Anesthesiology — December 7-11, 2018, please email the abstract to Dr. Charles Emala at pgaresidentresearch@emala.net, with the subject line: “Resident Research Contest PGA72”

The final deadline for abstract submission is May 1, 2018.
Gov. Andrew Cuomo’s Birthday Celebration

Drs. Jonathan Gal (left) and David Wlody

(Left to right) MSSNY Immediate Past President Dr. Malcolm Reid, Buffalo Mayor Byron Brown, Dr. Rose Berkun, and MSSNY President Dr. Charles Rothberg

Chris Cuomo with Dr. Rose Berkun

(Left to right) NYSSA lobbyist Bob Reid with Drs. Jonathan Gal, Rose Berkun, Andrew Rosenberg, and David Wlody

(Left to right) Drs. David Wlody, Charles Rothberg, Rose Berkun, Jonathan Gal, and Andrew Rosenberg
Fundraiser for Assemblywoman Rodneyse Bichotte

Assemblywoman Rodneyse Bichotte (center) with Drs. Andrew Rosenberg and Ansara Vaz

Democratic Assembly Campaign Committee Fundraiser

Assemblyman Joseph Morelle and Dr. David Bronheim

Bob Reid, Speaker Carl Heastie, Dr. David Bronheim, and Dr. Ansara Vaz
The 71st PostGraduate Assembly in Anesthesiology: Opening Session and R.W. Robertazzi Memorial Panel

Dr. Rose Berkun presents Dr. Ingrid Hollinger with the 2017 Distinguished Service Award

Dr. Scott Groudine

ASA President Dr. James Grant

Dr. Robert Lagasse

The NYU Jazz Choir

NYSSA — The New York State Society of Anesthesiologists, Inc.
E.A. Rovenstine Memorial Lecture

Dr. Richard Beers presents the Rovenstine plaque to Dr. Carin Hagberg.
Poster Presentations
Workshops
Dr. Rose Berkun welcomes ASA President Dr. James Grant to address the House.

Dr. Rose Berkun speaks to members of the House.

MSSNY President Dr. Charles Rothberg addresses the House.

Drs. Charles Rothberg and Rose Berkun
(Left to right) NYSSA past presidents Drs. Jared Barlow, Peter Kane, Michael Jakubowski, Steven Schwalbe, Michael Mendezsoon, and Michael Simon receive presidential medals.

Dr. James Grant at the podium

ASA President-elect Dr. Linda Mason

NYSSA Speaker of the House Dr. Tracey Straker
ASA Vice President for Scientific Affairs Dr. Beverly Philip

Dr. Rose Berkun congratulates NYSSA Executive Director Stuart Hayman on his 10th PGA.

Dr. Tracey Straker at the podium
International Scholars Reception

International Scholars Committee Chair Dr. Elizabeth A. M. Frost with Dr. Rose Berkun

Committee member Dr. Cheryl Gooden (left) with 2017 scholars Drs. Jesse Morales DeRobalino, Marlon Alva Saavedra, and Pamela Gamarra Moreno

Drs. Darko Ilic and Aleksander Nikolic
(Left to right) Drs. Pamela Gamarra Moreno, Wirinda Chiravanich, Iris Molano Meza, Marija Rajkovic, Elizabeth A. M. Frost, Jesse Morales DeRobalino, Ujma Shresta, and Cheryl Gooden

Drs. Darko Ilic, Aleksander Nikolic, and Marija Rajkovic

The 2017 international scholars take time for a photo with NYSSA volunteers and staff.
Scenes From the Speaker’s Reception

Drs. Michael O’Connor, Robert Johnstone, Audrée Bendo, and Robert Lagasse

ASA First Vice President
Dr. Mary Dale Peterson with Patrick Vigona from Draeger, Inc.

Drs. Melinda Aquino and Elizabeth A. M. Frost

Drs. Lawrence Epstein, Robert Johnstone, and Lance Wagner

Erica Epstein and Dr. Michael Simon

Drs. James Mesrobian and James Grant
Drs. Beverly Philip and Michael Smith

(Left to right) Dr. Ellen Brand, Dr. Janine Limoncelli, Susan Limoncelli, and Dr. Linda Shore-Lesserson

Drs. Michael O’Connor and Beverly Philip

Dr. Lance Wagner and Charles Assini, Esq.

Drs. Andrew and Maris Rosenberg

Drs. Christopher Troianos and Eugene Viscusi

Drs. Richard Beers and Alexander Hannenberg
Resident Happy Hour
Technical Exhibits
Scenes From the President’s Reception

Dr. Rose Berkun enjoys the evening with her family.

Drs. Ingrid Hollinger and Michael Simon

Drs. David Bronheim, Vinod Malholtra, and Steven Schulman

The signature drink of the evening: Rosetini
The band gets the party started.

Drs. Debbie Plagenhoef, Jeffrey Plagenhoef, Sherif Zaafran, and Audrée Bendo

Drs. Jesus Calimlim and Christopher Campese
Drs. Jeffrey Plagenhoef, Debbie Plagenhoef, and Kenneth Elmassian

Drs. James Grant and Charles Rothberg

Kathy Wissler and Dr. Richard Wissler

Dr. Richard Beers poses for a photo with his wife, Ruth, and daughters Ariana, Charlotte and Kathryn.
Photo Booth Fun at the President’s Reception
Plans Are Already Underway for the 72nd PGA

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- Catch up with colleagues and friends - and network with your peers
- Bring back to your institution the latest on the Opioid Epidemic and how to change your practice
  - Dr. Jerome Adams, U.S. Surgeon General will provide an update on the Opioid Epidemic
- Neuraxial Opioids Monitoring Pro/Con - do you need additional patient safety monitoring post cesarean?
- What's New in Obstetrics by Dr. Sean Blackwell, President, Society for Maternal Fetal Medicine
- Updates in Critical Care and Obstetric Hemorrhage - latest on QBL, POC testing, TXA - what you really need to know and use
- SOAP 50th Anniversary - learn about the past and what's next in Obstetric Anesthesia
- The Future of Patient Safety by Dr. David Birnbach, University of Miami

For more information, please visit: [https://soap.org/50-AM.php](https://soap.org/50-AM.php)
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2018

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Understanding Matters Before the Office of Professional Medical Conduct (OPMC)

MATHEW J. LEVY, ESQ., AND STACEY LIPITZ MARDER, ESQ.

A physician’s license is his/her most valuable asset; thus, any threat to that license should be taken very seriously. A matter before the Office of Professional Medical Conduct (OPMC) would constitute such a threat.

The OPMC is the branch of the New York State Department of Health responsible for investigating all complaints of misconduct; coordinating disciplinary hearings that may result from an investigation; monitoring physicians whose licenses have been restored after temporary license surrender; and monitoring physicians, physician assistants, and special assistants placed on probation as a result of disciplinary action. The OPMC is an extremely powerful organization that has the authority to revoke a physician’s license.

The OPMC is authorized to restrict a physician’s license in the event he/she engages in medical misconduct. Examples of medical misconduct include (but are not limited to): practicing fraudulently; practicing with gross incompetence or gross negligence; practicing while impaired by alcohol, drugs, physical or mental disability; being convicted of a crime; filing a false report; guaranteeing that treatment will result in a cure; refusing to provide services because of race, creed, color or national origin; performing services not authorized by the patient; harassing, abusing or intimidating a patient; ordering excessive tests; and abandoning or neglecting a patient in need of immediate care.

The OPMC is required to address every complaint it receives. While some claims are dismissed immediately, others require investigation. The OPMC investigator may call the physician who is the subject of the complaint to obtain additional information or may send a letter requesting records.

If a physician is contacted by an OPMC investigator, the physician should immediately obtain counsel with experience representing clients before the OPMC. Physicians should never speak with an OPMC investigator without counsel present. Unfortunately, in the spirit of cooperation many clients attempt to “wing it” with the OPMC investigator, hoping for quick closure, which virtually never occurs. It
is imperative that any response be well thought through, as otherwise it can create additional hurdles to overcome at a later date. The OPMC investigator likely already spoke to the patient and staff members regarding the issue.

Many physicians are concerned that hiring counsel would make them appear guilty in front of the OPMC. This is untrue, and the OPMC actually recommends that all physicians under investigation be represented by counsel. Most matters involving the OPMC are covered under the physician’s malpractice policy. It is important for physicians to reach out to their malpractice representative in order to verify coverage.

Once the OPMC conducts its initial review, it may send correspondence offering the physician an interview before the OPMC investigator and a medical director. The physician and his/her attorney will determine if an interview is advisable, and if the interview should be conducted in person or via telephone. The benefit of an interview is that it gives the physician the chance to tell his/her side of the story. It also gives the OPMC a chance to question the physician without a predetermined script. Physicians are not obligated to attend the interview; in some cases the interview can further damage the physician’s case.

If attendance at an interview would be in the best interest of the physician, proper preparation by the physician and his/her attorney is essential, including strategizing and performing an internal investigation of the situation. The attorney may need to speak with a third party, such as a nurse, the biller or the front desk person. The attorney must also determine the strengths and weaknesses of the situation. Remember, while an investigation may be launched in response to a complaint about inappropriate touching, for example, it could wind up with a billing fraud allegation regarding the same patient. It is very important that the physician is completely candid and open with his/her attorney. Physicians should not leave out any details. Attorney-client privilege attaches to all conversations between the physician and his/her attorney as long as there is no third party in the room. The physician’s attorney should have at least one preparation session, consisting at least in part of a mock interview. The preparation is not the same as when a physician is appearing for a malpractice deposition.

If the interview will be conducted in person, it will be held at one of the OPMC’s locations throughout New York state. In attendance at the
interview would be the physician, his/her attorney, the OPMC investigator and the medical director. Although the interview is not recorded, an OPMC representative would be in attendance to take notes.

Within 30 days of the interview, the OPMC will provide a Report of Interview (ROI), which is a summary of the interview. At that time, the attorney will likely want to submit a written submission to the OPMC responding to the ROI and further emphasizing and explicating the physician’s position on the matter. Additional information to explain questions where the physician’s answer was less than satisfactory can be an important part of a submission.

It often takes several weeks to several months for the OPMC to respond to a post-interview submission. The response letter may state that the investigation has ended with no action being taken. If that occurs, the physician is a winner. On the other hand, the response letter may state that the physician is being issued an Administrative Warning. This is non-disciplinary and kept private. The physician would appear with his/her attorney at an OPMC office and receive “the warning” as to what issues the physician needs to work on in the future. The only time the Administrative Warning can be used against a physician is if the OPMC receives a similar complaint about the physician in the future.

If the investigation is not closed, the physician’s attorney will get a phone call from an OPMC prosecuting attorney, who will inform the physician’s attorney of pending allegations and the charges and disciplinary action the OPMC is willing to agree to. This can run the gamut from surrender of license to suspension, probation, partially stayed suspension, fines, educational courses, or Censure and Reprimand. Any discipline agreed to is published on the OPMC website and placed in the National Practitioner Data Bank. This is public information that can be accessed by any third party. Such disciplinary action can negatively impact a physician’s managed care contracts, employment and hospital affiliations.

The physician’s attorney can attempt to negotiate a lesser punishment from the OPMC. If both sides cannot agree, an Informal Settlement Conference (“ISC”) can be requested. At an ISC both sides “informally” lay out their cases to a hearing officer, who is an attorney employed by the OPMC, and a client, who is a member of “the board.” There are no witnesses and there is no sworn testimony. The hearing officer and client
on the board confer at the conclusion of the ISC and provide their recommendation. If the physician does not agree with the recommendation, the OPMC’s prosecutor will draw up charges against the physician that will result in a hearing, which is the equivalent of an administrative “trial.” There are witnesses and experts that testify under oath. A hearing officer, paid by the state, is the presiding judge. The hearing officer has no vote over the outcome but does control how the hearing is run and therefore can influence the outcome. A lot of evidence that might not be allowed in a civil court may be allowed by the hearing officer. Two medical specialists from the “board” and one lay person will act as the “jury.” They each get to ask questions of every witness. Often, the panelists’ questions are more penetrating than the prosecutor’s questions, as the prosecutor is not a healthcare provider. Most matters before the OPMC do not reach this level, as more than 90 percent of OPMC investigations are closed at the interview level.

**Conclusion**

A matter before the OPMC can be very daunting for a physician, as the results can severely impact a physician’s livelihood. With a good team and proper preparation, the process can be manageable, with favorable results for the physician.

---

**Mathew J. Levy, Esq., is a partner and Stacey Lipitz Marder, Esq., is senior counsel at Weiss Zarett Brofman Sonnenklar & Levy, P.C., the NYSSA’s general counsel. Mr. Levy can be reached at 516-926-3320 or mlevy@weisszarett.com. Ms. Marder can be reached at 516-926-3319 or smarder@weisszarett.com. The firm can be found on the Web at weisszarett.com.**

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* The Office of Professional Discipline (OPD) is the branch of the New York State Education Department responsible for regulating the licenses of chiropractors, dentists and podiatrists (and other professionals excluding physicians, physician assistants and special assistants).
New York State’s Fee-Splitting Prohibition

Approximately one year ago, Dr. Rose Berkun (immediate past president) alerted members to a series of recoupment letters from the New York State Medicaid Fraud Control Unit (MFCU) that were sent to physicians who have management or billing company arrangements based upon a percentage of collections. (This alert can be found on the NYSSA website at http://www.nyssa-pga.org/legislative-regulatory-issues. See the President’s Letter February 27, 2017, “New York Attorney General Takes on Fee Splitting.”)

The alert warned members that such arrangements are fraudulent under Medicaid law. At the time the alert was prepared, the NYSSA had reached out to many different individuals (including MSSNY) in an effort to determine why the New York attorney general’s office was suddenly pursuing this enforcement action due to the fact that it was based on a 20-year-old MFCU advisory.

We have had no further developments that explain why the New York attorney general pursued these actions, but we felt it was important to highlight that, in addition to a possible MFCU enforcement action, if compensation with a billing company is based on a percentage of the practice’s income, this type of arrangement has long been prohibited in New York state because it is deemed to constitute fee splitting. The fee-splitting prohibition, enacted in 1998, is found in both statute (Education Law Section 6530.19) and regulation [8 NYCRR 29.1(b)]. The fee-splitting prohibition is intended to guard against the sharing of fees for professional services between licensed and unlicensed individuals or entities and to guard against improper interference or influence from lay persons who ostensibly have the financial bottom line, rather than the patient’s best interest, in mind. A physician may be subject to a charge of unprofessional conduct for violating the fee-splitting prohibition and could be subject to punishment that includes revocation, suspension, or annulment of the physician’s license and a possible fine. Unfortunately, New York’s fee-splitting prohibition does not expressly permit or provide a safe harbor
for percentage-based compensation arrangements for which some states, like California, do provide.

When the original alert was prepared, the primary focus of the warning was on the MFCU recoupment action. However, the advice contained in the alert is applicable to charging all third-party payer providers, not just Medicaid providers.

What should you do? It is vital to reach out to your billing company/practice management company to find an alternative method to reimburse your billing company for their services, one that is not based on free splitting but, instead, on time or a flat fee.

**NYSSA Annual Legislative Day (May 1, 2018)**

The 33rd annual Legislative Day in Albany is scheduled for Tuesday, May 1, 2018. Look for information from the NYSSA about how to register to attend.

An essential and critical component of effective governmental advocacy is “grassroots” lobbying. In brief, grassroots lobbying means meeting with your legislators (New York Senate and Assembly) in person to demonstrate that you, as a constituent, are interested, involved, and informed on particular bills before them. As a practicing physician anesthesiologist in the legislator’s district, grassroots lobbying also means advocating for legislation that will preserve the safe anesthesia standard for the patients in your community. The effectiveness of our members’ grassroots advocacy is illustrated by the efforts last year by so many of you to submit comments voicing concerns about the VA APRN rule. Your efforts, together with the efforts of other physician anesthesiologists throughout the country, resulted in nurse anesthetists being excluded from the APRN rule, thereby preserving physician-led anesthesia care for veterans.

I would like to take this opportunity to thank all of our members who have taken the time over the years to attend Legislative Day, and I urge members who have not yet attended to participate this year.

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The 36th Annual International Symposium: Clinical Update in Anesthesiology, Surgery and Perioperative Medicine

MEERA KIRPEKAR, M.D., AND MARYNA KHROMAVA, M.D.

The 36th Annual International Symposium: Clinical Update in Anesthesiology, Surgery and Perioperative Medicine, organized by the Department of Anesthesiology at Icahn School of Medicine at Mount Sinai in New York, was held in January 2018 in Paradise Island, Bahamas. More than 130 participants from 17 countries (Austria, Belgium, Canada, China, Czech Republic, Georgia, Germany, Hungary, India, Italy, the Netherlands, Slovakia, Poland, Turkey, the U.S., and, for the first time, Brazil and Russia) attended this long-standing symposium.

As in previous years, the symposium highlighted three special lectures by renowned physicians and surgeons from around the world. In total, the symposium consisted of 87 lectures and four complimentary workshops on topics ranging from one lung ventilation to regional blocks. Additionally, a lively research competition was held, devoted to residents, fellows and junior attendings who presented 14 interesting cases and original research.

First place was awarded to Dr. Korey Springman from the Mayo Clinic, Rochester, Minnesota, for her presentation “Application and implementation of perioperative proven multimodal analgesia and PONV prophylaxis therapies to the rapid recovery cardiac surgery patient — Do they make a difference?”

As per tradition, the symposium was held in a tropical climate, this
time in the Bahamas at the Atlantis Paradise Island Resort, known for its sunny beaches, water park, and marine habitats. The mornings were spent in lectures and hands-on workshops that brought attention to the most recent clinical updates in anesthesiology, surgery, and pain medicine while also showcasing medicine on a global level, with participants from different countries engaging in a lively debate. Later in the day, conference attendees had time to enjoy the resort’s many offerings and to reconnect with colleagues from around the world. One of the highlights of the symposium was a special congratulation given by Dr. David Reich, president and chief operating officer of the Mount Sinai Hospital, to Dr. George Silvay for his 50th year serving the Icahn School of Medicine at Mount Sinai. Dr. Silvay was honored for his accomplishments in medicine, both academically and clinically, and for his contributions to research in cardiac anesthesiology and surgery.

Mount Sinai will host the 37th Annual International Symposium: Clinical Update in Anesthesiology, Surgery and Perioperative Medicine from January 20-25, 2019, at the Renaissance Aruba Resort and Casino in Aruba. Everyone is invited to attend. Please send inquiries to Dr. George Silvay at george.silvay@mountsinai.org.

Meera Kirpekar, M.D., and Maryna Khromava, M.D., are with the Department of Anesthesiology, Perioperative and Pain Medicine, Icahn School of Medicine at Mount Sinai.

Complimentary Hands-On Workshops

**TUESDAY, JANUARY 16, 2018**

**One Lung Ventilation**
Dawn Desiderio (USA), Javier Campos (USA), Alessia Pedoto (USA), Bob Williams (USA)

**WEDNESDAY, JANUARY 17, 2018**

**Transthoracic Echo**
Joerg Ender (Germany), Marc Stone (USA), Zak Hillel (USA), Theresa Gelzinis (USA), Bob Williams (USA)

**THURSDAY, JANUARY 18, 2018**

**Hands-On Regional Block**
Meg Rosenblatt (USA), Michael Anderson (USA), Christina Jeng (USA), Bob Williams (USA)

**Difficult Airway**
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Final program and hotel information will be available in September 2018. Interesting cases and research abstracts will be accepted for oral presentation. For abstract form, contact menachem.weiner@mountsinai.org (Deadline October 30, 2018) For faculty information: george.silvay@mountsinai.org For general information: margorie.fraticelli@mountsinai.org
Membership Update

New or Reinstated Members
October 1 – December 31, 2017

Active Members

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Kim Randolph, M.D.

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Naomi Dong, M.D.
Ghislaine Echevarria, M.D.
Ajay Jain, M.D.
Richard Levy, M.D.
Qing Liu, M.D.
Fatima Mawji, M.D.
James McKeever, M.D.
Gajewski Michal, D.O.
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Arati Patil, M.D.
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Demetri Koutsospyros, M.D.
Bernadette Pasamba-Rakhlin, M.D.
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Membership Update

New or Reinstated Members
October 1 – December 31, 2017

Resident Members continued

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Karampal Singh, M.B.B.S.
Linda Wong, M.D.
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Joseph James, M.D.
Membership Update

New or Reinstated Members
October 1 – December 31, 2017

Resident Members continued

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Neil Mathur, M.D.
Mercades Meuli, M.D.
Demitri Podolski, M.D.
Patrick Savery, M.D.
Akif Shinaishin, M.D.

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