

COLORADO COURT OF APPEALS
101 West Colfax Avenue, Suite 800
Denver, Colorado 80202

Appeal from Denver District Court
Honorable Ann B. Frick, Presiding Judge
Case No. 2010-CV-7731

Plaintiffs-Appellants: COLORADO MEDICAL
SOCIETY and THE COLORADO SOCIETY OF
ANESTHESIOLOGISTS

Defendant-Appellee: JOHN W. HICKENLOOPER,
in his official capacity as the Governor of Colorado

and

Intervenors-Appellees: COLORADO HOSPITAL
ASSOCIATION, COLORADO NURSES
ASSOCIATION, and COLORADO ASSOCIATION
OF NURSE ANESTHETISTS

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Case No. 2011 CA 1005

**MOTION OF AMERICAN SOCIETY OF ANESTHESIOLOGISTS
AND AMERICAN MEDICAL ASSOCIATION
FOR LEAVE TO FILE BRIEF AS AMICI CURIAE**

The American Society of Anesthesiologists and American Medical Association, by the law firm of KENNEDY CHILDS P.C., hereby move the Court pursuant to C.A.R. 29 for leave to appear and file a Brief as Amici Curiae in support of Plaintiffs-Appellants Colorado Medical Society and Colorado Society of Anesthesiologists in this appeal, and as grounds for leave state as follows:

1. The American Society of Anesthesiologists (ASA), headquartered in Park Ridge, Illinois, and Washington D.C., is a national, nonprofit association of more than 48,000 physicians organized to raise and maintain the standards of the medical practice of anesthesiology and improve the care of patients. Since its founding in 1905, ASA has functioned as a research, scientific, and educational resource for anesthesiologists, patients, the public, and policymakers and has continuously provided highly respected guidance and expertise, particularly in patient safety matters. ASA was the first medical organization to create a foundation focused on patient safety—the Anesthesia Patient Safety Foundation, founded in 1985. In 1986, ASA was also the first medical specialty to adopt standards of care for its members. ASA’s achievements have made it an important voice in American medicine and the foremost advocate for all patients who require anesthesia, critical care, or relief from pain. More than 80 percent of all practicing anesthesiologists in the United States

belong to ASA, making it the preeminent voice of the specialty.

2. The American Medical Association (AMA) is the largest professional association of physicians, residents and medical students in the United States. For over 160 years AMA has promoted scientific advancement in medicine, improved public health, and invested in the doctor and patient relationship. In addition, through state and specialty medical societies and other physician groups seated in AMA's House of Delegates, substantially all United States physicians, residents, and medical students are represented in AMA's policy-making process. AMA members practice medicine in every state and in every field of specialization, including anesthesiology.

3. A Brief of ASA and AMA as Amici Curiae in support of Plaintiffs-Appellants is desirable in this appeal because it will state the view and positions of these professional medical organizations on the Governor's "opt-out" from Medicare standards requiring physician supervision of Certified Registered Nurse Anesthetists (CRNAs) and will state the reasons why these standards are necessary to protect the health and safety of Colorado patients undergoing anesthesia services, including both surgical anesthesia and chronic pain management. A Brief of ASA and AMA as Amici Curiae is also desirable because it will respond to the arguments made by the American Hospital Association in its Amicus Brief. A statement of the positions, and

arguments in support thereof, on the part of these Amici Curiae will be helpful and will assist this Court in making certain that all applicable arguments and public policy considerations have been fully and completely presented to this Court.

4. If ASA and AMA are authorized to file a Brief as Amici Curiae, they will present the following principal arguments:

- a. That national practice standards and protocols recommend physician supervision of CRNAs;
- b. That physician supervision of CRNAs benefits patients and citizens because CRNAs lack the medical training and experience of anesthesiologists and other licensed physicians and because safety studies support anesthesiologist supervision of CRNAs;
- c. That the scope of anesthesia services that can be provided by CRNAs without physician supervision as a result of the Governor's "opt-out" from Medicare regulations include not only intraoperative anesthesia, which inherently involves serious risks to patient health and safety, but also chronic pain management procedures, which also involve serious risks to patient health and safety when performed without physician supervision; and
- d. That patient safety and quality of care should not be sacrificed for hypothetical cost savings because allowing CRNAs to administer anesthesia without physician supervision does not save money and places both rural and poorer patients at risk.

5. Pursuant to C.A.R. 29, the Brief of ASA and AMA as Amici Curiae is being filed at the same time as the Reply Brief of Plaintiffs-Appellants Colorado Medical Society and Colorado Society of Anesthesiologists, the parties whose posi-

tion as to reversal the Brief supports. Because the Brief of ASA and AMA as Amici Curiae is being filed at the same time as Plaintiffs-Appellants' Reply Brief, the tendered Brief does not exceed 5700 words pursuant to C.A.R. 28(g).

6. Because of the importance of the issues raised herein and their far reaching effects on physicians, nurses, hospitals, and patients in the State of Colorado, the ASA and AMA respectfully request that they be permitted to appear herein as Amici Curiae, and to file their Brief in support of Plaintiffs-Appellants contemporaneously with the Reply Brief of Plaintiffs-Appellants.

Pursuant to C.A.R. 29, Amici Curiae American Society of Anesthesiologists and American Medical Association conditionally file the accompanying Brief of Amici Curiae simultaneously with this motion for leave.

WHEREFORE, the American Society of Anesthesiologists and American Medical Association respectfully request that the Court grant them leave to file their Brief as Amici Curiae in support of Plaintiffs-Appellants, that the Court accept the Brief of Amici Curiae which is conditionally filed with this motion for leave, and that the Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

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In accordance with C.R.C.P. 121 §1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 23rd day of January, 2012, a true and correct copy of the foregoing **MOTION OF AMERICAN SOCIETY OF ANESTHESIOLOGISTS AND AMERICAN MEDICAL ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE** was electronically served via LexisNexis File&Serve on the following:

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