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History of Law 6, 1991

Historia de la Ley 6 de 1991

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Abstract

Law 6 was enacted thirty years ago. Notwithstanding the fact that almost three decades have elapsed, with the exception of the regional and national leaders, many anesthesiologists are unaware of the existence of such law, of its contents or about which are the positive aspects for the specialty and for all anesthesia colleagues. There is a lack of awareness regarding the fact that the oversight committees are a valuable instrument to ensure excellence in the practice of anesthesia.

This publication shall contribute to an share an overview of the efforts made to ensure the approval of the Law by the National Congress and of the Law among all anesthesiologists in the country. In this way, all practitioners will become acquainted with the information on the topic to take advantage of the provisions in the Law.

Key words

History; Anesthesiology; Colombia; Professional practice; Law.

Resumen

La Ley 6 se promulgó hace treinta años. A pesar de que han pasado tres décadas, salvo los directivos regionales y nacionales, muchos anesestesiólogos ignoran su existencia, su contenido o cuáles son los aspectos que han sido positivos para la especialidad y para los colegas. No se conoce que los comités para el control del ejercicio de la profesión sean una herramienta útil para velar por que se realice una práctica con excelencia.

Esta publicación va a contribuir a que, ojalá, todos los anesestesiólogos del país tengan un conocimiento somero del esfuerzo hecho para lograr su aprobación en el Congreso de la República y sobre la ley. Esto le aportará al gremio la información sobre el tema que les permita aprovechar lo que la ley ofrece.

Palabras clave

Historia; Anestesiología; Colombia; Práctica profesional; Ley.

On the 30th anniversary of Law 6, which regulates the practice of anesthesia in Colombia - a landmark for our specialty - it is important to recall the process. The idea was born from a group of anesthesiologists in the Bogotá and Cundinamarca sections, with little experience in dealing with the Cundinamarca Society of Anesthesiology (Sociedad Cundinamarquesa de Anestesiología). The initiative was welcomed by the Board Members and then by the Section Assembly. The highest national authority in the field of anesthesiology finally gave its support, but with significant skepticism. Then the Law was submitted to the National Congress where it was enacted with the support of some gracious congressmen (with a bit of luck of course) and then was finally approved by the President of the Republic.

The practice of anesthesia in Colombia had been neglected in the medical arena. Our scientific organization had been established less than 40 years back and we were still being reminded of the fact that not too long ago anesthesia used to be administered by nuns. I had completed my anesthesia training five years back and by then I met technicians who administered anesthesia in the country. Dr. Juan Marín, founder of the Colombian Society of Anesthesia and Resuscitation (S.C.A.R.E.), said that when he was a student, professors used to ask any of the students to administer the anesthesia. His first instructors in anesthesiology had been nuns and when wanted to become a professor at the school he established, none of the physicians volunteered to register.

Law 6 was initially conceived by the Board of directors of the Cundinamarca Society of Anesthesiology in 1986. The members were myself as President, Doctor Ignacio Ruiz Moreno, secretary and Doctors Ricardo Carrillo Cifuentes, Francisco Garavito Lorza and Josefina Abenoza Fonseca. Our goal was to make this project the flagship of the Society of Anesthesia at the national level, to be then submitted before Congress.

Ignacio Ruiz felt that anesthesiology should be properly regulated, so than

anesthesiologists were properly prepared and the working conditions ensured adequate and safe care to patients. He wrote his ideas in a document submitted to the members of the Board and to the General Assembly of the Cundinamarca Society.

The following year, during S.C.A.R.E.'s 1987 General Assembly, a committee was appointed to study the project and to present it on the second day of the Assembly (the Assembly meeting lasted two days). The Assembly approved the document and authorized its submission before Congress. (1)

Ignacio Ruiz, who conceived the project and myself were entrusted with the task of submitting the document to the consideration of the members of Congress. Thanks to the close relationship we then had with some Congressmen and to the meetings we organized with other congressmen, our project was filed with the Congress Secretariat. The project was submitted before the Sixth Commission of Congress by doctor Remberto Burgos. It was approved and discussed at a meeting of the Chamber of Representatives which gave its approval and then was raised to the consideration of the Senate of the Republic. All of this happened in 1988. (2)

During 1989 the project came to standstill. Then in 1990, the Chairman of the Sixth Commission of the Senate brought the project back to life and appointed Doctor Carlos Celis Carrillo, anesthesiologist, founding member of the Norte de Santander Society of Anesthesiology and President of SCARE from 1979-1981, to be the speaker for the project.

During his statement, doctor Celis referred to a paper presented by doctor Mario Céspedes, "Risks for the anesthesiologist", and to a text written by doctor Jaime Herrera as co-author together with Doctors Ernesto Rojas, Alberto Castellanos and Carlos Julio Parra on the need to regulate the practice of anesthesia. (3) Doctor Celis also presented a study on professional hazards which was conducted by a commission of the Latin

American Confederation of Anesthesiology Societies (CLASA) discussing the fragile conditions under which Latin American anesthesiologists practice. (4)

The paper presented by doctor Celis was positive and got approved with little debate, though some physicians were wondering why a specialty had to be regulated and not others. Finally, Dr. Celis's arguments based on the delivery of quality services for all surgical and anesthesia patients prevailed. Then the approval by the Senate Plenary session was pending.

In February 1991, three years after the project started the journey through the Congress of the Republic, during the first Symposium on the Safety of Anesthesia – with the participation of outstanding foreign guests – we received the news that the President of the Republic had just signed "Law 6 of 1991 as the Regulatory Framework for the Practice of Anesthesiology", on January 16, 1991. (5) This was the second medical specialty, after radiology, with a regulatory law. Naturally we were very excited with this achievement. We celebrated it as a landmark in the history of our specialty and of the Colombian Society of Anesthesiology and Resuscitation.

According to Law 6, 1991 anyone practicing anesthesiology at the time the law was enacted without an anesthesia degree, had a five-year deadline to complete their degree. Then the government extended the deadline for five more years to these colleagues to legalize their situation. Failure to do so as of January 2001 prevented them from continue practicing anesthesiology.

Law 6 has been very important for our profession. Since it was enacted, no one may practice anesthesiology unless they have completed the residency. In the case of a foreign physician or a Colombian doctor who specialized abroad, they are required to submit the documentation certifying that their education is equivalent to the syllabus offered in the country. This gives us the anesthesiologists, the tools for a suitable practice. However, there are some aspects under this Law which have not been

complied with as expected. However, the progress made has been notable.

The regulatory framework of Law 6 was approved pursuant to Decree 097 of January 12, 1996, issued by the Minister of Health Augusto Galán. It requires compliance with the “standards on the minimum safety procedures that are mandatory to practice anesthesia” (article 5). These are the S.C.A.R.E. minimum safety standards in anesthesia which have to be met both by anesthesiologists and by healthcare institutions.

However, Law 6 was not welcomed by everyone. Doctor Ignacio Ruiz, in his book “Sector salud, una visión gremial” (6), shows that two institutions that were against the Law: The Instituto Antioqueño de Responsabilidad Civil y del Estado and the Comité Interdisciplinario de Responsabilidad Profesional, considered that “this exceeds the potential human and technological resources for the practice of anesthesiology [...] and could lead to difficult to solve public order issues”. In response to the criticisms, Doctor Ignacio Ruiz argued that the Law was a “genuine model of quality management in anesthesiology and resuscitation services for our patients and for the institutions. The goal was to ensure the state-of-the-art practice of anesthesia in Colombia that Colombians deserve”. (6)

Another group that expressed its disagreement with the Law was the Colombian Association of General Practitioners because they felt that their job opportunities could be hindered. Several actions were filed before the Ministry of Health in an attempt to obstruct the Law. Finally, at least two claims were filed before the Honorable Constitutional Court on the grounds of unconstitutionality of Articles 2, 3, 4, 9 letter b, 10, 11, and 15 of Law, 1991. When the members of the Board of Directors of S.C.A.R.E. were informed about the situation, they held a Special meeting to study how to defend the Law against the claims filed.

Doctor Rafael Macía Mejía, S.C.A.R.E.’s prosecutor, forwarded to the Honorable

Court a letter demanding the enforceability of the Law, arguing that it was a model of quality. (7)

The Honorable Constitutional Court formally summoned S.C.A.R.E. to a public hearing to clarify and further discuss some aspects of the Law. The hearing was held on November 30 1994. We presented our arguments before the court members represented by our manager and legal counsel Dr. Gonzalo Peña, the Ministry of Health doctor Alonso Gómez Duque, anesthesiologist, the Chairman of the National Academy of Medicine doctor Gilberto Rueda Pérez and former presidents of S.C.A.R.E. Rafael Macía Mejía and myself.

By mid-1995 we received the good news that the final decision of the Honorable Constitutional Court was the enforceability of Law 6. The Constitutional Court found that the Law was consistent with the constitutional norms, except for a couple of articles establishing some limitations to foreign non-nationalized physicians. This Ruling C-280 of 1995 (8), determined that according to the Political Constitution anesthesiologists had to be suitable and their professional education had to be certified by respected academic authorities.

The only aspect that the Court found unconstitutional was to veto non-nationalized aliens from practicing anesthesiology. The Court also refrained from passing judgement on article nine which states that “the entities shall be subject to the rates agreed by S.C.A.R.E. and the national government”.

Despite the decision by the Honorable Constitutional Court under ruling C-280 of 1995, in April 15, 2009 the court received another claim against the Law. The claimant argued that one article infringed Articles 48, 49, 333 and 334 of the National Constitution and that the requirement that only anesthesiologists could administer anesthesia was contrary to the efficiency and the economy of the healthcare system because of the exceedingly high cost for delivering the service. Moreover, in his opinion, this led to a monopoly of anesthesiologists and restricted the

economic freedom of physicians in other specialties.

When the Board of Directors of S.C.A.R.E. became aware of this new claim, it forwarded a statement defending the constitutionality of the article involved. The representatives of the School of Medicine of the various universities - Andes, Rosario, Sabana and Nacional – and the Ministry of Social Protection, Ruling C-709 of 2009, of the Honorable Constitutional Court explained that the Law on Human Resources in Healthcare (Law 1167/07) (9) did not abolish Article 4 of Law 6, 1991, as the claimant argued, and accepted the argument that all matters pertaining to Law 6, 1991 shall be considered Res Judicata (10).

Certainly the adoption of this Law and bylaws has been very important for anesthesiology and for the patients because it raises the bar for the practice of anesthesiology in the country, both in terms of training of practitioners, as well as in terms of acknowledging this branch of medicine. Presently the requirements to certify operating rooms in the different healthcare institutions, list several items from the minimal safety standards for anesthesia.

However, there are still some pending matters. One of them is the “Special work considerations” for anesthesiologists:

Art 1º. PARAGRAPH. Because of the potential risk to which patients are subject and the constant exposure to inhaling toxic gases, radiations and stressful situations for the anesthesiologist, the practice of anesthesia is considered a high-risk profession and should receive a special management approach.

Moreover, the Honorable Constitutional Court refrained from passing a ruling on the constitutionality of article nine which says that “for independent practice, institutions shall be subject to the rates regulated by the Colombian Society of Anesthesiology and Resuscitation, SCARE, and the National Government”. Since the Constitutional Court did not rule this article as unenforceable, this legal mandate

prevails and should be observed. I feel that this issue should be further scrutinized in the context of our current realities.

The National Committee for the Practice of Anesthesiology, an advisory, consultative and control body (art. 13) and the sectoral committees have been meeting over thirty years since the enactment of the Law. They have worked, but it seems to me that we can make better use of this instrument. There are some aspects associated with the practice of our specialty that should be considered more carefully by the aforementioned committees. These are not just advisory and consultative in nature, but also “control the practice of anesthesiology in terms of technical, regulatory and legal aspects in the Republic of Colombia” (art. 13 and 14 of the Law).

Law 6, 1991 has been a very useful tool for anesthesiology, but anesthesiologists and the anesthesia societies - S.C.A.R.E. and the Department level societies – shall find a way to make sure that what the Law says is fully adhered to, not just to favor the practice of anesthesiology, but to ensure an increasingly safer care for patients which is the primary goal of medicine in general.

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Conflicts of interest

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