California Society of Pathologists

2018 Annual Report to the Membership

Submitted by

James Carry, MD

President

Prepared for

Members of the

California Society of Pathologists

December 2018

CALIFORNIA SOCIETY OF PATHOLOGISTS

2018 ANNUAL REPORT TO THE MEMBERSHIP

Welcome to our colleagues from California, across the U.S. and abroad to our 71st Annual Meeting in San Francisco. Thanks to the hard work of the Education Committee led by Dr. Balaram Puligandla, I know you will enjoy an outstanding educational program.

We appreciate the support of our members and will continue to explore ways to better serve the pathology community and benefit the patients that you serve. Please feel free to approach any member of the Board of Directors with comments and suggestions; we want to hear from you!

I. LEGISLATIVE AND REGULATORY ACTIVITIES

The CSP continues its legislative advocacy. Following is a highlight of some of the issues that were monitored this year. Also, the Legislative section of the CSP website, www.calpath.org, provides access to CSP's entire legislative bill tracking activity throughout the year.

Assembly Bill 2281 – Medical Lab Technicians

CSP-sponsored legislation, AB 2281 (Irwin), which would expand the types of tests that a Medical Laboratory Technologist can perform, was signed into law by Governor Brown on August 28. The law adopted in 2002 that created the MLT license category limited MLTs to moderate complexity testing that did not involve microscopic analysis. California has the most restrictive MLT law in the nation while most states either have no similar limit on the type of moderate complexity tests that can be performed or don't license MLTs at all and defer to federal law.

AB 2281 will simply add three specific moderate complexity procedures—blood smear reviews, microscopic urinalysis, and ABO/Rh blood typing—to the duties of MLTs. This limited expansion was developed by a Laboratory Workforce Committee under the auspices of the California Hospital Association and lab professionals. It is also consistent with a report on the State of the California Medical Laboratory Technician Workforce released by the Healthforce Center at UCSF in January 2017. That study compared regulation of MLTs by other states, the numbers of MLTs in each state, and their utilization as part of the lab workforce.

These three procedures were chosen because they are all moderate complexity tests, are high volume in many labs, are part of current MLT training programs, and performed by MLTs in most other states.

AB 2281 will help clinical labs address the aging of the lab workforce and allow higher trained Clinical Lab Scientists to focus on high complexity testing and the more difficult lab tasks. AB 2281 passed the Legislature without a "No" vote even though it drew the opposition of the Engineers and Scientists of California and other labor unions and was signed into law by Governor Brown. AB 2281 will take effect January 1, 2019.

Assembly Bill 3087 – Rate setting legislation

This year, a dangerous physician rate-setting bill was blocked in the Assembly. Assembly Bill 3087 (Kalra, D-San Jose) was held on the Suspense File in the Assembly Appropriations Committee. That means it is dead for the year and session. This radical new legislation would have increased patient's out-of-pocket costs and result in a dangerous government intrusion into the health care market by creating state-sanctioned rationing of health care for all Californians.

Assembly Bill 3087 would have established an undemocratic, government-run commission with nine political appointees who would unilaterally set the price for all medical services that are not already controlled by the government, essentially eliminating commercial health care markets in California. In its first iteration, none of the political appointees are required to be patient-focused or have any tangible experience in the delivery of health care to patients. A proposed amendment would have added just one physician to the panel.

The CSP joined with a variety of medical organizations, the California Hospital Association, health plans, and the California Chamber of Commerce in opposing the bill. It would allow the Commission to set rates for physician services using Medicare rates as a benchmark indicating the rates would be higher but with no specifics. The bill would have done nothing to address the inadequate payment rates of Medi-Cal or Medicare or lack of primary care physicians.

When the bill's fate was announced by the Appropriations Committee Chair, Assemblywoman Lorena Gonzalez-Fletcher, she indicated that the author and sponsors agreed to not move the bill but that the issue is by no means dead. The dialogue on this policy will continue into next year.

In the meantime, the 2018-19 state budget that was signed by the Governor includes funding to create a state database of healthcare payments. It would collect and analyze the actual payments made to physicians, hospitals and other providers by health plans and insurers. There is a bill moving through the Legislature that would create the same database and is part of the health care reform study committee outcome.

Important California Supreme Court Decision of Independent Contractor vs. Employee Status

We wanted to make you aware of the potential impact of a decision earlier this year by the California Supreme Court, the Dynamex decision, that created great confusion and possible demise of the classification of an individual as an independent contractor vs. an employee. There has traditionally been a multiple factor test under California legal precedent for the last 30 years on whether someone is an independent contractor largely resting on the ability to control the work and independence as a professional. Physician groups often would classify such individuals as independent contractors and not employees in the case of a locum tenens relationship or other type of non-partner/ shareholder or traditional employee relationship. This decision impairs the ability to do so and could put the entity at risk to a challenge that the individual should be reclassified.

The Dynamex decision, which is final since there is no federal jurisdiction over California's Supreme Court, creates what is known as the ABC test of three factors and creates a presumption that the individual is an employee unless the relationship meets all three of the criteria. The ABC test is:

- That the worker is free from control and direction of hiring entity in performance of the work, and
- That the worker perform work that is outside the usual course of the hiring entity's business, and
- That the worker is customarily engaged in an independently established trade, occupation or business

As you can see, the second factor would be difficult to meet if a pathology group were to retain a pathologist as an independent contractor when that individual would provide pathology services, the usual course of business/ service of the pathology group.

This decision is far reaching and impacts a wide variety of professions and industries and certainly the emerging "gig" economy players like UBER and Lyft. There was an effort led by the Chamber of Commerce at the end of the Legislative session to delay the impact of the Dynamex decision until early next year when the Legislature could refine the elements of the test and exempt certain types of occupations/professions like physicians. The

CSP was involved in lobbying for that delay, but Legislative leadership chose not to act and preferred to wait until next year. Unions in California argued against any delay in application since they favored the decision.

We would encourage you to consult with legal counsel if your group has any independent contractor relationships with pathologists. Some would argue that existing Wage Orders from the Industrial Welfare Commission might exempt physicians from this classification if certain factors are met. These Wage Orders are very old and not all attorneys would concur. We also raised the issue of contracts between hospitals and pathology groups for 24/7 coverage that specifies that the pathology group is an independent contractor. That situation should be of lesser concern since California law prohibits hospitals from employing physicians.

The CSP will continue to seek clarification and specific exemption from this decision when the Legislature returns in January, and we will keep our members updated.

AB 2325 Update – Cancer Registry Reporting

At the October 2017 meeting of the CAP House of Delegates, the California Delegation brought forward its concerns regarding AB 2325 (Bonilla), which was signed by the governor in 2016, which modifies the existing cancer reporting law requiring pathologists to report cancer diagnosis electronically in a standardized format acceptable to the Cancer Registry, effective January 1, 2019.

The CSP has been an active participant in the California Data Modernization Consortium which is made up of all the major stakeholders in the cancer registry process including the major hospital systems, local registries, EHR vendors and other clinicians. It is clear that the current reporting system is neither timely nor useful in data collection. It has been our goal to emphasize the predominant role of the pathologist in cancer diagnosis.

The plan, which takes effect January 1, 2019, allows a pathologist to submit a synoptic report using the eCancer checklist elements or simply electronically submit a copy of their current report.

In early November, CSP held a webinar to discuss what cases need to be reported, data elements to be submitted, optional means of submission, and types of software/program that can assist in submission of required data with a panel of experts, including:

- Pathologist Patrick Fitzgibbons, MD, FACP of St. Joseph Health System
- Pathologist/dermatologist Emily Green, MD, a CSP Board Member
- Jeremy Pine, California Cancer Registry E-Reporting Manager at the California Department of Public Health
- John Murphy of mTuitive, Inc.

A recording of the webinar and the PowerPoint presentation are available to CSP members on the CSP website at www.calpath.org.

CDPH Policy Change on Pathologist Review of Surgical Specimens/Template to Request Flexibility

We notified you of the CDPH June of 2016 notice to hospitals that recalled a number of program flexibility notices on several regulations. One of the regulations impacted was Title 22 section 70223(g) regarding pathologist examination of surgical specimens. A letter was issued by DHCS in 1985 that allowed hospital medical staff to adopt modified policy allowing for direct disposal of certain surgical specimens without pathologist examination that included bone fragments, foreign bodies and other specimens.

A facility seeking to obtain program flexibility for Title 22 of the California Code of Regulations section 70223(g) would need to submit a written request and provide substantiating evidence. The request must include a list of specimens that will not be reviewed by pathology and an explanation as to why each specimen will not be reviewed. The supporting evidence could be in the form of an adopted written policy and procedure approved by the medical staff and governing body, which describes how the specimens will be handled and assures that an alternative method of meeting the requirements of Section 70223(g) is provided. This policy will be reviewed and approved by the facility's licensing district office and a California Department of Public Health's Licensing and Certification Program medical consultant.

The impact of this new notice is that all tissues and objects removed during surgery must be sent for pathologist review with no exceptions. In an effort to assist members who want to request regulatory flexibility we have attached a sample policy that relies upon the CAP policy statement on the subject. Here is a link to the sample text.

The decision as to what specific specimens should be exempted is up to each pathology department and medical staff. You should be aware that CAP lab accreditation standards must reflect state law and therefore the current inspection standard states that all specimens removed during surgery must be reviewed by a pathologist. In order to have exemptions a regulatory flexibility request must be submitted by the hospital.

Read the notice here

Please complete a CDPH 5000 form - Program Flexibility to submit your request.

II. MEDI-CAL AND MEDICARE PROGRAMS

Medicare – Notice from Noridian on Standing Order for Lab Tests

Laboratory orders must be submitted within 12 months of order. Noridian has received notice of errors from the Comprehensive Error Rate Testing Contractor (CERT) for laboratory claims that have "Standing Orders" that are over 12 months old. In some cases, specifically for End Stage Renal Disease beneficiaries, standing orders submitted for review were over 12 months old.

When the laboratory service(s) is initially ordered, medical necessity is established; therefore, at the time of the initial order, the beneficiary's medical records must include documentation indicating the service is reasonable and necessary as well.

In addition to information that justifies the initial provision of the service (s), clinical information must be in the beneficiary's medical record to support that the laboratory service continues to remain reasonable and necessary. For the claim (date of service) under review, information used to justify continued medical need must be timely.

Noridian has determined that timely documentation for laboratory service standing orders is defined as a medical record in the preceding 12 months. Providers may wish to set a reminder to renew such orders on or about 12 months from the previous order.

Policy Update for HPV Testing and Co-Testing

The CSP reached out to the Medi-Cal program to urge that the policy on HPV testing be altered. Their policy had limited coverage for CPT 87264 to patients age 30 or older. Due to our advocacy that policy was altered, and the notice below has been published. Labs that had previous denials for this code based upon age will have those claims automatically reprocessed retroactive to 1/1/17.

Effective retroactively for dates of service on or after January 1, 2017, the age restriction for CPT-4 codes 87624 (infectious agent detection by nucleic acid [DNA or RNA]; Human papillomavirus, high-risk types [e.g. 16, 18, 31, 33, 35 ,39, 45, 51, 52, 56, 58, 59, 68]) and 87625 (infectious agent detection by nucleic acid [DNA or RNA]; Human papillomavirus, types 16 and 18 only, includes type 45, if performed) is updated for the Medi-Cal program. The age restriction for these HPV testing and co-testing codes is updated from "30 to 65 years of age," to "21 years of age and older."

An Erroneous Payment Correction (EPC) will be implemented to reprocess affected claims. No action is required of providers.

This change is based on the recommendations from the American Society of Colposcopy and Cervical Pathology (ASCCP) 2012 Updated Consensus Guidelines for the Management of Abnormal Cervical Cancer Screening Tests and Cancer Precursors.

The information is reflected in the Clinics and Hospitals General Medicine Obstetrics provider manual.

Changes in Medi-Cal Coverage for Laboratory Services

The first change on FISH testing was made at the request of the CSP after we were informed by a member pathology group that Medi-Cal did not cover 88365. Dues to the structure of the CPT coding the code denoting the second FISH stain procedure but not the first. Medi-Cal did not recognize the nuance of the coding and would deny the first FISH or initial procedure.

Additional In Situ Hybridization Surgical Pathology Benefit

Effective for dates of service on or after April 1, 2018, CPT-4 code 88365 (in situ hybridization [eg, FISH], per specimen; initial single probe stain procedure) is a new Medi-Cal benefit. The code is split-billable and allows the following modifiers: 26, TC and 90. CPT-4 code 88365 has no age, gender or frequency restrictions and does not require a Treatment Authorization Request (TAR).

This information is reflected in the following provider manual(s):

- Clinics and Hospitals General Medicine Obstetrics on the following pages: path surg (2); tar and non cd8 (4)
- Inpatient services on the following page: tar and non cd8 (4)

New Sequence Analysis for Molecular Pathology Procedures

Effective for dates of service on or after April 1, 2018, the TP53 test (tumor protein 53, targeted sequence analysis of 2-5 exons) is a Medi-Cal benefit reimbursable under both CPT-4 codes 81404 (molecular pathology procedure, level 5) and 81405 (molecular pathology procedure, level 6) with any of the following numbered Treatment Authorization Request (TAR) criteria:

1. All of the following conditions:
    a. The patient has sarcoma diagnosed before 45 years of age, and

   b. A first-degree relative with any cancer before 45 years of age, and
   c. A first or second-degree relative with any cancer before 45 years of age, or a sarcoma at any age; or
2. All of the following conditions:
   a. A tumor belonging to the Li-Fraumeni Syndrome (LFS) tumor spectrum (soft tissue sarcoma, osteosarcoma, pre-menopausal breast cancer, brain tumor, adrenocortical carcinoma, leukemia or lung bronchoalveolar cancer) before 46 years of age, and
   b. At least one first or second-degree relative with an LFS tumor (except breast cancer if the patient has breast cancer) before 56 years of age or with multiple tumors; or
3. The patient has multiple tumors (except multiple breast tumors), two of which belong to the LFS tumor spectrum, and the first occurred before 46 years of age;
4. The patient is diagnosed with adrenocortical carcinoma or choroid plexus tumor.

This information is reflected in the following provider manual(s):

- Clinics and Hospitals General Medicine Obstetrics on the following pages: path molec (31, 35)

New Molecular Pathology Benefit: Testing Retinal Pigment Protein 65kDa

Effective for dates of service on or after April 1, 2018, full gene sequence test RPE65 (retinal pigment epithelium-specific protein 65kDa) is a new Medi-Cal benefit under CPT-4 code 81406 (molecular pathology procedure, Level 7).

Reimbursement for this service requires an approved *Treatment Authorization Request* and requires providers to document the following:

- Patient has a clinical diagnosis of retinal dystrophy, and
- The decision for gene therapy is contingent on the test results

This information is reflected in the following provider manual(s):

- Clinics and Hospitals General Medicine Obstetrics on the following page: path molec (38)

III. EDUCATIONAL PROGRAMS

California Seminars in Pathology

Once again, Education Committee Chairperson Balaram Puligandla, MD and the members of the Committee have created an extraordinary program, California Seminars in Pathology. The Committee's hard work has continued the Society's tradition of providing a premier scientific meeting for pathologists.

IV. MEMBERSHIP

The financial resources provided by members' dues drive the activities and services of the CSP. The CSP, like most medical associations, is struggling with sagging membership numbers. The CSP cannot survive if only a small number of pathologists in a group belong on behalf of the entire group. We encourage senior members of practice groups to discuss joining the CSP with junior members. If you are not currently a member, or have colleagues in your group who do not belong, we would encourage you to join and participate in the Society's services.

Practice Management Members

The Practice Management Committee has continued to confer on Medicare and Medi-Cal claims processing issues.

The CSP has begun to develop some additional webinar programs to provide information to practice managers and pathologists. We hope to continue to expand those offerings.

The CSP continues its efforts to build a database of individual pathology practice managers. If you would like to have your group manager become involved as an Associate Member, simply call the CSP office at (916) 446-6001 or go the CSP website at www.calpath.org. The membership information is available on the website under the membership section.

V. NOMINATING COMMITTEE REPORT

The Nominating Committee of the California Society of Pathologists nominates the following members to serve as Officers and Directors of the Board for 2019-2020. The election will take place at the Annual Business Meeting, Friday, November 30, 2018.

Officers	
President	Derek Marsee, MD, PhD
Vice President	Kristie White, MD
Secretary-Treasurer	James Harris, MD
Immediate Past President	James Carry, MD
Board of Directors (Three-year terms)	Luke Perkocha, MD, MBA, FCAP
	Christopher Wixom, MD
	G. Peter Sarantopoulos, MD
	Timothy R. Hamill, MD

VI. FINANCIAL REPORT

Our accountant audited our year-end financial statement for the fiscal year ending December 31, 2018. CSP had revenue of $356,870 with expenses of $362,482 for a net loss of $5,612. A copy of the year-end report can be obtained from the CSP Central Office.

VII. CONCLUSION

It has been an honor and privilege to serve as President, and I thank you all for your support.

The CSP is an organization that continues to achieve its goal of enhancing the specialty of Pathology. This success is due to the collective efforts of an active and extremely capable Board of Directors and staff.

Join me in thanking each of the members of the CSP Board of Directors:

Officers	
Vice President	Derek Marsee, MD, PhD
Secretary Treasurer	Kristie White, MD

Past President	Timothy Hamill, MD
Board of Directors	
Brent Larson, DO	James Harris, MD
Melvin Hoshiko, MD	David B. Kaminsky, MD, FIAC
Wayne Garret, DO	Luke Perkocha, MD, MBA, FCAP
Gerald Weiss, MD	Emily Ann Green, MD
Luke Perkocha, MD, MBA, FCAP	Balaram Puligandla, MD
Gerald Weiss, MD	
Resident Representatives	
Lucy Han, MD	Michelle Don, MD
Education Committee Chair	Balaram Puligandla, MD
CSP Executive Director	Robert Achermann

Respectfully submitted,

James B. Carry, MD
President