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From the Desk of R. Lewis Dark...

THE DARK REPORT

RELIABLE BUSINESS INTELLIGENCE, EXCLUSIVELY FOR MEDICAL LAB CEOs / COOs / CFOs / PATHOLOGISTs

Restricted information, see page 2

Commentary & Opinion by...

R. Lewis Dark

Founder & Publisher

Pathology Lets the Oncology Cat Out of the Bag

BECAUSE OF GENETIC TECHNOLOGY, the profession of anatomic pathology may be poised for a golden age. The range of new technologies and diagnostic assays heading for clinical use have the potential to give pathologists the ability to detect disease with greater precision. They will also allow pathologists to guide clinicians to the most effective therapies.

In this golden age of genetic medicine, the biggest market will be oncology. Every healthcare expert predicts explosive growth in rates of cancer, driven primarily as the baby boomer generation moves into their retirement years. For the anatomic pathology profession, this is a fortuitous conjunction of two events—new genetic knowledge and a huge demographic bulge that will produce growing numbers of cancer cases. Further, this is a fortuitous conjunction that may never happen again.

However, I fear that the bread and butter pathologist—the physician practicing medicine in a private group practice in one of the nation's many community hospitals—will reap precious little economic benefit from this approaching opportunity. That's because the collective anatomic pathology profession has already let the "oncology cat" out of the bag.

Since 1995, private practice pathologists allowed national lab companies to compete for cancer diagnostics almost unopposed and capture big shares of the market. THE DARK REPORT was the first, and for many years, the only, voice warning the pathology profession that the astounding growth rates of companies such as **UroCor, Inc.**, and **DIANON Systems, Inc.**, were based on competing successfully for specimens from office-based physicians practicing around community hospitals. These office-based physicians have been the primary sources of specimens for many private pathology groups.

Now an even greater financial menace has emerged. It is the trend of specialist physicians—such as urologists and gastroenterologists—taking steps to establish their own histology laboratories and perform their pathology work in-house. This threat challenges not just the private practice pathologist, but also the national pathology companies that compete for these specimens. A careful strategic assessment of this new development leads to the conclusion that, in the future, private practice pathologists are not likely to be the primary provider of oncology diagnostics to the American healthcare system, because that oncology cat is now "out of the bag!" TDR

Payer Sues Pathologists For Clin Path Fee Refund

Health plan sues three Virginia pathology groups in dispute over professional component fees

CEO SUMMARY: In September, Anthem filed three lawsuits against pathology groups in Virginia, seeking refunds and punitive damages of up to $ 1 million from each pathology group for pathology professional services provided in hospital labs by these pathology groups during the period 2001 through 2005. These three cases have disturbing implications for pathologists, as well as all providers with payer contracts.

FOR YEARS, THE PATHOLOGY PROFESSION HAS FOUGHT ATTEMPTS by private payers to cease paying for clinical pathology professional services.

But it is unusual, startling, and disturbing for one of the nation's largest health insurance companies to sue pathology groups in an effort to recover clinical pathology professional service fees paid to the groups going back as far as five years! Yet this is what is unfolding in Virginia for three pathology groups. It represents a new threat to the pathology profession.

Pathologists and pathology practice administrators will be keenly interested in the outcomes of three lawsuits filed in September by **Anthem Health Plans of Virginia Inc.** That's because Anthem is a division of **Wellpoint, Inc.**, the nation's largest health insurance company with 34 million beneficiaries nationwide. The legal action initiated by Anthem in Virginia could be the opening move in a chess game by Wellpoint in which it attempts to implement a policy across the country of no payment for clinical pathology professional services.

Anthem's three lawsuits were filed in Henrico County Circuit Court, in Richmond, Virginia. In one action, Anthem Health Plans and its affiliated HMOs (**HealthKeepers**, **Peninsula Health Care**, and **Priority Health Care**) sued **Dominion Pathology Associates Inc.** of Roanoke, Virginia, and named Samuel Vance, M.D., William E. Jefferson, M.D., Alfred Campbell, M.D., and Robert E. White,

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M.D., (all in the pathology department at **Carilion Roanoke Memorial Hospital** in Roanoke, Virginia).

In its lawsuit, Anthem said it was seeking to recover payment made for automated clinical laboratory tests to the defendants. The lawsuit claims the defendants did not provide the tests to Anthem members, improperly submitted to Anthem for payment for these tests, and unlawfully refused to refund payments that Anthem said were made in error.

Billed By Pathologists

"The lab tests at issue were provided to Anthem members by a hospital that properly billed Anthem for the tests," declared the complaint. The defendants served as laboratory directors for the hospital and Anthem paid the hospital "the full contracted amount for the tests." The Anthem complaint alleges that the defendants did not provide the lab tests, but they submitted duplicate claims seeking payment for administrative functions, such as training staff, further stating that these administrative functions are not medical services and Anthem had no obligation to pay for the services.

In the first suit, the claims in question were filed over 30 months, from October 19, 2001, through March 22, 2004. The allegation is that defendants breached the contract they had with Anthem and committed fraud by double billing. The claims in dispute total $410,541.49, and the defendants owe $350,000 in punitive damages plus interest and fees, the complaint said.

The second lawsuit is similar in that Anthem and its affiliated HMOs sued **Peninsula Pathology Associates Inc.** of Newport News, Virginia, and its pathologists, David M. Smith, M.D., Carolyn O'Connor, M.D., John C. Maddox, M.D., and Jacques F. Legier, M.D. No hospital was named in the second complaint. The dates in question in the second complaint were October 29, 2001, through March 11, 2004, and all other claims in the second complaint are similar to those of the first complaint. The second complaint said the claims in dispute total $423,978.22, along with $350,000 in punitive damages, plus interest and fees.

The third lawsuit is almost identical to the other two, and names **Loudoun Pathology Associates, PLC** of Leesburg, Virginia and its pathologists, William C. Silberman, M.D., Dervila O. Jonas, M.D., and Nahla E. Acoury, M.D. The claims in question in this complaint range from December 1, 2000 through June 1, 2005. Anthem alleges that the claims in dispute total $623,914.70, along with $350,000 in punitive damages, plus interest and fees.

THE DARK REPORT spoke with several attorneys knowledgeable about past legal actions involving clinical pathology professional billing issues. These individuals wished to remain unidentified, but provided insights into the three lawsuits.

One attorney noted that lawsuits are generally filed only after discussions to resolve the dispute have proven fruitless. "Clearly, these discussions didn't resolve anything, and Anthem, like many other health plans, now seeks cost savings," observed the attorney. "The important issue and the one with the most significance for pathologists is that Anthem is seeking payment *retroactively*! That is a frightening prospect for pathologists and for any provider doing business with a health plan.

Prospective Payer Action

"Two years ago one payer challenging clinical pathology professional fees handled this issue differently," noted the attorney. "**UnitedHealth Care** decided it would stop paying patholo-

gists directly for clinical pathology professional services. It sent a notice to all pathology practices under contract. The notices went out in July 2004 and said that, effective in October, UnitedHealth Care would no longer pay clinical pathology professional service fees to the pathologists. As of October 2004, UnitedHealth Care said professional services would be considered part of the hospital payment. This action by UnitedHealth Care was prospective.

"Several **Blue Cross** plans have acted in a similar fashion, saying that they were paying for clinical pathology professional services as part of the hospital payment and that they would no longer pay pathologists directly for such services," continued the attorney. "To my knowledge, in most cases, the health plans announced that they would make a change and then changed their policies. These other payers did not try to recoup any money paid in the past. They made prospective decisions."

To Recoup Past Payments

"The prospective approach is different than Anthem's approach in handling this issue," noted another attorney. "What's unique and deeply troubling to pathologists and any hospital provider is that Anthem seeks to recoup past payments. When a major payer says to you, 'We didn't mean to pay you for this service because we changed our policy a while back and now we want our money back,' that's difficult for any provider.

"If the court upholds this approach, then a payer could apply that logic to any payments it has made in the past," the attorney said. "That is why the implications in this case are much broader than just the clinical pathology professional pathology component fees. If Anthem prevails, the court decision could con-

Two More Legal Concepts Affect Pathology Services

CERTAINLY THE THREE LAWSUITS FILED in Virginia by Anthem against three pathology groups are serious challenges to clinical pathology professional service payments. But there are two other noteworthy legal dimensions that may play a role in how this legal challenge is eventually resolved.

One attorney who discussed the issues involved in the Anthem lawsuits made two points. "First," he said, "the pathologists are not being paid. Yet they are in a rather difficult position with the hospitals because there is a potential compliance issue. Since the payer now claims that the hospital is holding money owed to the pathologists—and because this hospital is the source of referrals to pathologists—one could argue that the hospital is withholding money (assuming it has the money) that's owed to the pathologists.

"Therefore, it looks like the hospital is keeping that money, possibly as a kickback for giving the pathologists the exclusive contract to do services at the hospital," he explained. "So this situation puts the two parties into an interesting compliance bind. The hospital should be upset because the payer has put it into this awkward position and they are not getting additional money (for the pathology services) from the payer. Yet the payer is claiming the hospital is getting additional money. "

The second noteworthy fact is that disputes over professional pathology fees can be traced to 1983. That's when Medicare instituted the DRG system and paid providers based on diagnosis-related groups. At the time, Medicare said it would not pay pathologists directly for the clinical pathology professional component and instead would pay the fee to the hospitals. That made hospitals responsible to pay pathologists for clinical pathology professional services rendered to Medicare patients.

ceivably stand as a proposition that payers could start retroactively recouping money, claiming that they had made policy changes years ago. For that reason, I hope Anthem does not prevail in these three lawsuits, and that this litigation takes a long time.

Pay For Physician Services

"In addition to the significant implications of this case, the basic Anthem contracts don't give Anthem the right to pay a third party for the services of a physician," the attorney said. "And, hospitals will have not received any additional payment for the professional service component. So, contractually it seems like a weak argument for Anthem to make, but nonetheless they are suing."

One attorney told THE DARK REPORT that, in other states in which Anthem has contract disputes with pathologists, Anthem has what are called "offset provisions" in its contracts. Therefore, when the health plan seeks to recoup payments made in the past, it can simply take those funds out of current payments until the payments in dispute have been paid off.

In Kentucky and Ohio, Anthem is believed to be recouping significant dollars from pathologists by using this offset provision. Pathologists in Kentucky and Ohio are disputing the right of Anthem to use this offset provision, but the dispute is in arbitration and so the proceedings of the case are not public, the attorney said.

Payments Stopped in 2004

Curiously, there are other pathologists in Virginia who were paid in the same time period, and they apparently have not been contacted by Anthem, the first attorney noted. "In those cases, Anthem stopped paying the professional component fees in 2004—as it did for other pathologists. But the pathology groups haven't been involved in this kind of court action," he said.

The attorney representing Anthem in Virginia is W. Barry Montgomery of **Kalbaugh, Pfund & Messersmith** in Richmond, Virginia. When reached in his office last week, Montgomery said he would discuss the matter with his client before answering questions about the case. As of press time, Montgomery had not responded.

Two Decades Of Battles

During the past two decades, the pathology profession has fought continuous battles against payers attempting to cease payment to pathologists for clinical pathology professional services. In court cases involving this issue, pathologists have generally gained a decision which recognizes that pathologists providing medical directorship of a clinical laboratory are providing professional services that directly benefit patients whose specimens are processed and tested in the laboratory.

Maintaining Lab Standards

Despite this consistent success in legal actions by pathologists, health insurance companies continue to take steps to deny payment to pathologists for such services. At the same time, these same health insurance companies require clinical laboratories to be accredited and under the directorship of a board-certified specialist in laboratory medicine. These requirements are in place because payers recognize that a poorly-run laboratory can be the source of poor medical care and result in expensive malpractice claims.

The contradiction in the position of payers attempting to deny reimbursement for such services has never been effectively addressed by pathologists. Now, because payer consolidation has created behemoth firms, pathologists face an even tougher battle to defend their scope of medical practice and their right to appropriate reimbursement for services that benefit patients. TDR

Molecular Diagnostics Update

Ventana & Cytyc Fall Short, Danaher Wins the Prize

Goal was Vision Systems' molecular markers and product line for histology laboratories

WHEN **Danaher Corporation's** high bid for **Vision Systems Limited** of Melbourne, Australia, was accepted last month, it appeared to be simply another acquisition by a large U.S. manufacturer. But, in fact, there are four reasons this transaction is significant to pathologists in the United States and worldwide.

If approved by Vision's shareholders later this year, the deal would mark the end of a startling string of attempted buy-out offers, involving, in order, **Ventana Medical Systems Inc.**, **Cytyc Corporation**, and Danaher. It was August when Ventana signed a friendly agreement to buy Vision for approximately $346 million. Within four weeks, Cytyc announced a $375 million bid for Vision, causing Ventana to drop out of the bidding. Cytyc later raised its bid to $518 million when it learned that Danaher was an interested bidder.

Paying A Premium Price

Danaher walked away with the prize after agreeing to pay an all-cash price of approximately $520 million. Pathologists probably know Danaher because of its ownership of **Leica Microsystems**, which manufactures microscopy systems and products used in histology laboratories. Danaher acquired Leica in 2005.

As noted, the reason why Vision Systems was highly desirable to Ventana, Cytyc, and Danaher (Leica) makes this deal significant for at least four reasons. First, three companies with a strong interest in anatomic pathology were active bidders for Vision, which owns technology for molecular markers that have strong potential for growth.

Founded in 1987, Vision makes automated instruments such as the Peloris rapid tissue processor, the Bond-maX advanced staining system, and Novocastra antibodies and biochemical reagents for biopsy-based detection of cancer and infectious diseases. Its sales in 2006 are expected to be about $128 million in U.S. dollars.

Second, the fact that Cytyc would step into the Ventana–Vision deal shows that Cytyc remains highly motivated to diversify away from its core cytology products. Longtime clients and readers of THE DARK REPORT will recall that, in 2003, Cytyc invested $168 million to acquire rights to a ductal lavage test for breast cancer. That business line has not grown as the company had anticipated.

Third, the deal shows that Danaher is seeking to complement its market presence in histology and anatomic pathology, a presence it acquired last year when it purchased Leica Microsystems. By acquiring Vision Systems, Danaher adds additional products in specimen processing, as well as technology for molecular markers.

Fourth, and perhaps most important, the deal is significant for laboratory

medicine because it shows that the investment community is willing to pay a premium price for companies that have molecular technologies that can be used in diagnostic medicine.

Revaluing Anatomic Path

"By agreeing to buy Vision Systems, Danaher has single-handedly revalued anatomic pathology (AP)," stated a lab industry expert knowledgeable about many aspects of the bidding contest. "It is significant when a company such as Danaher steps in and does the thorough financial analysis needed to justify this premium price to buy Vision. This event puts anatomic pathology on the radar screen. In the past, large companies have shown some interest in AP. But that interest was just nibbling compared to what Danaher just did.

"Looking at Danaher's acquisition of Leica last year and its acquisition of Vision this year, it's clear that Danaher isn't irrationally jumping into this market," he continued. "They know enough about the space to value it as they did. That is significant.

"The price paid for Vision Systems shows the sizable value that companies now place on AP," he added. "For years, the philosophy among companies in pathology was that blood tests would some day make tissue testing or histology obsolete. But obviously that hasn't happened. In fact, the opposite has happened. Tissue testing has gained more value because of the diagnostic tests that are tied directly to a specific therapy, such as the example of Herceptin to treat some types of breast cancers.

Access To New Markets

"Danaher's acquisition of Vision gives it instant access to the immunohistochemical marketplace, along with a proficient group of engineers and talent in life sciences because of Novacastra," our source explained. "Novacastra is highly respected in the life sciences arena. Also, Vision has an engineering division called **InviTech Corporation,** which gives Danaher those capabilities as well. Putting Vision's front-end components together with its existing product line now gives Danaher a strong presence in the immunohistochemical and *in situ* hybridization market.

"Taken together, these actions make other companies ask if they've been missing something in the AP marketplace, including why they didn't value Vision as Danaher did," he added. "Danaher was strategically looking at a growth driver for its business and found it in Vision.

Changing The Landscape

"Medicine that requires targeted therapies is changing the landscape. It has always been true that a certain percentage of targeted therapies will be guided by what's found in the blood. But now the remaining percentage of therapies will be guided by what's found in the tissues or cells. That's the game today. What's in the pipeline at all of the big pharmaceutical companies looks more and more like there is a growing business in this sector. There is a significant volume of therapies that will require tissues, making this a legitimate business.

"In addition, you also have important demographic shifts occurring at the same time," he added. "The baby boom population is hitting retirement age, causing the number of cancer cases to rise.

"All of these factors contribute to higher values for companies in the immunohistochemical market," he said. "It's a fast-growing and good-margin business. Across the *in vitro* diagnostic industry worldwide, there is a strategic consensus that the analysis of tissue for cancer specifically, and for other disease generally, will be a segment that grows explosively in the coming years." TDR

Doctors' Income Survey Includes Pathologists

2006's increase in physician compensation was slightly below rate of inflation

CEO SUMMARY: Information on the year-to-year change in average total cash compensation for physicians shows that income is not keeping pace with inflation. That is not news to the physician community. However, pathologists continue to earn compensation that is above the midpoint average for 16 specialties. Compensation is rising swiftly for those pathologists with specific subspecialty skills that are in high demand.

IN ITS 2006 SURVEY of physician income, *Modern Healthcare* Magazine reported on changes to pathologists' income.

Modern Healthcare tracks the average total cash compensation by specialty. These numbers are compiled by obtaining information from multiple sources. These include recruitment firms, professional groups, and surveys among physicians. *Modern Health* reports that compensation for physicians overall is up 3.9% over the previous year.

This figure is less than the current rate of inflation and is top heavy with high-earning specialists like orthopedic surgeons. While compensation has remained fairly flat over the past few years, physicians are still among the most highly paid professionals in the nation, according to the **Center for Studying Health System Change**.

How did pathologists fare compared to the other disciplines? Annual compensation for pathologists was reported by 10 sources, with average annual total cash compensation ranging from a low of $183,253 (reported by **Hospital and Healthcare Compensation Service**, a New Jersey-based consulting firm that surveys employed physicians) to a high of $359,615 (reported by the **Medical Group Management Association** [MGMA], a Colorado-based professional group which does a nationwide survey of members).

Pathology Above Midpoint

When compared against the other listed medical specialties, average total cash compensation for pathology is above the midpoint. Taking the highest reported average compensation for each of the 16 categories reported, pathology ranks seventh. The midpoint between the high and low disciplines is $339,500, with pathologists $20,000 above the midpoint. Both measures put pathologists one level above general surgery on the income scale.

One physician recruiter with experience in placing pathologists notes that several basic trends currently drive pathologist compensation. "First, base salaries for pathologists are climbing,"

Since 1995, Doctor Earnings Failed to Pace Inflation Rate

PHYSICIANS KNOW THEY EARN LESS MONEY than in past years and the statistics validate this fact. Based in Washington, DC, the Center for Studying Health System Change reports that, between 1995 and 2003, the average net income earned by physicians declined 7% after accounting for inflation during those years.

Reimbursement from both Medicare and private payers played roles in this outcome. While the cumulative rate of inflation for this eight-year period was 21%, Medicare payments increased by just 13%. In the private payer segment, commercial fees in 1995 averaged 1.43 times Medicare. That had declined to 1.23 times Medicare by 2003.

The private payer statistic demonstrates how private insurance plans are steadily adopting Medicare coverage and reimbursement policies for their own beneficiaries. Because the Medicare program is strapped for funding and likely to arbitrarily reduce physician payments in future years, the decision of private payers to base their own reimbursement levels on Medicare is not an auspicious development for the physician community.

stated Cathy Witherspoon, Recruiting Manager at **System 1 Search** in Greenville, South Carolina. "This is particularly true for dermatopathologists over the past several years and most recently for gastroenterology subspecialist pathologists. The reason is high demand for these clinical skills. Commercial laboratory companies have been increasing their compensation packages so as to compete with private pathology groups that hope to recruit the same candidates.

"Second, GI/GU pathologists, dermatopathologists, and hematopathologists are in the highest demand at the moment," continued Witherspoon. "Accordingly, these subspecialist pathologists are receiving the highest compensation. At the moment there is a huge shortage in these three specialty areas of pathology.

Limited Supply of Fellows

"This problem is compounded by the fact that there are only a handful of fellowship training programs for GI/GU pathologists," she added. "Thus, the supply of fellows available each year is much less than demand. Laboratory companies and pathology groups are driving up compensation for these specialists as they compete to hire the few available subspecialist pathologists."

Witherspoon notes that the trend in pathology is to offer a base with an incentive. "Typically, hospitals do not contract with their pathologists directly, but go through private practice groups or commercial laboratory companies," noted Witherspoon.

"Laboratory companies typically offer a base salary with a required volume threshold for the number of slides that are read," Witherspoon said. "An additional dollar amount is then paid to the pathologist for all slides read above that threshold, with no stipulation on an upper limit that may be read.

Productivity Drives Pay

"This system tends to favor companies and pathologists who take advantage of modern technologies and use sophisticated information systems to improve the quality of clinical services while boosting productivity," observed Witherspoon. "These are attributes that contribute to a more productive work flow in the laboratory while supporting faster turnaround times for test results." TDR

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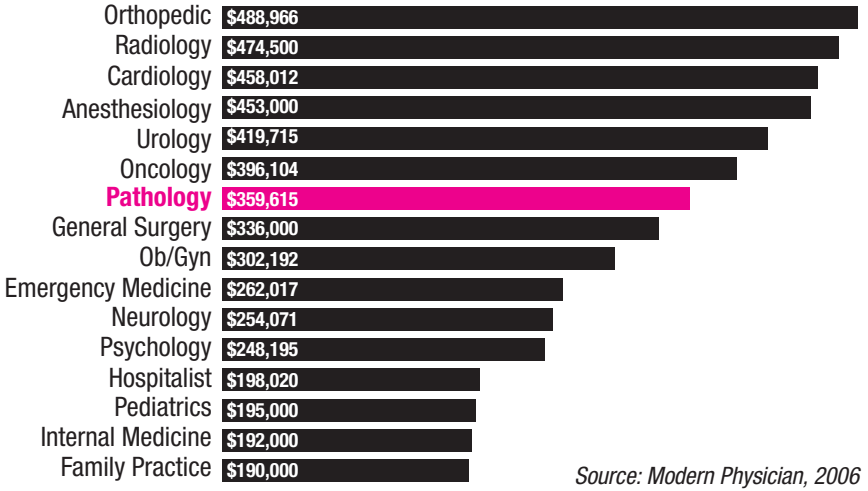
—By Michael Gerhardt

Annual Survey of Physician Compensation Places Pathologists Above Earnings Midpoint

BELOW IS A TABLE THAT RANKS THE PHYSICIAN SPECIALITIES included in the compensation survey conducted by *Modern Healthcare Magazine* in recent months. It can be seen that pathology is listed in the seventh position, above the midpoint for the 16 physician specialties that were included in the survey. Average total cash compensation for each physician specialty represents the average from each source that reported for a particular specialty. In the case of pathology, 10 different organizations reported on pathologist compensation.

ANNUAL COMPENSATION BY SPECIALTY

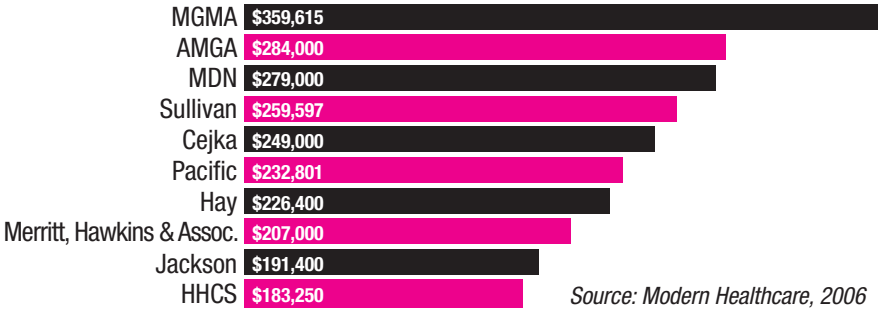
(Income is average of all sources that reported for each physician specialty.)



Source: Modern Physician, 2006

FOR THE TABLE BELOW, THE 10 COMPANIES AND ORGANIZATIONS that reported on pathologist average total cash compensation are shown. Some of these are professional associations, like MGMA (Medical Group Management Association). Others are physician recruiting firms, such as Cejka. These companies and organizations used a combination of methods to develop their data. In some cases, it was a survey of physicians. In other cases, it is a compilation of the employment packages offered to candidate pathologists.

PATHOLOGY COMPENSATION



Source: Modern Healthcare, 2006

Identity Theft Update

Medical Identity Theft Is Twist On Identity Theft Crime Wave

THERE'S A NEW TWIST to the crime of identity theft. In a recently issued report, the **Federal Trade Commission** (FTC) alerted the healthcare industry to a new threat. Organized criminal gangs are stealing medical information.

Healthcare workers are frequently part of these conspiracies to steal patients' medical information. Laboratories and pathology group practices are vulnerable to this emerging threat because they typically provide services to large numbers of patients. They employ workers in such positions as phlebotomy, accessioning, and billing/collections—all jobs which are low-wage, high-turnover, but which often have access to sensitive patient information.

Medical identity theft differs from patient identify theft. Medical ID crooks want information about the victim's identity and medical resources—such as health insurance coverage—information that allows someone else to access medical treatment using the victim's identity and medical resources.

The FTC's report, "Consumer Fraud and Identity Theft Complaint Data, January-December 2005," states that medical identity theft represents 1.8% of all identity theft cases reported between 2000, the year it began tracking victims' complaints, and 2005. During 2005, there were 4,746 reports of medical identity theft. This is a 4% increase over the number of complaints in 2004.

By the FTC's narrow definition, medical identity theft involves the use of a person's name or insurance information without consent to obtain medical goods or services, or to make false claims for medical services. This definition excludes crimes in which the healthcare employee steals the patient's information and then uses it to open new credit accounts and run up big bills. Because the FTC's tally of medical identity theft is based upon consumer self-reporting, the actual numbers of such cases is believed to be significantly higher.

Medical ID Theft Indictment

In September, a federal grand jury in Fort Lauderdale, Fla., named Isis Machado and Fernando Ferrer Jr. as participants in a scheme to steal the personal information of more than 1,100 patients of the **Cleveland Clinic** hospital in Naples, Florida. Machado worked as a front desk office coordinator for the Cleveland Clinic's hospital in Weston, Florida. Machado's cousin, Ferrer, owned **Advanced Medical Claims**, in Naples, according to the indictment.

Machado used a computer to access patients' names, birth dates, Social Security numbers, Medicare numbers, and addresses. Ferrer used the data to file fraudulent Medicare claims of more than $2.8 million. He also provided Medicare beneficiary numbers to others who then used those numbers to file fraudulent Medicare claims.

THE DARK REPORT recommends that labs and pathology group practices assess their vulnerability to the crime of medical identity theft. Making it tough for crooks is the best defense, since criminals prefer easy pickin's over hard work. TDR

Docs' Pricing, Outcomes Available to the Public

New federal executive order on publishing price and outcome data for hospitals, physicians

CEO SUMMARY: ***Transparency of provider prices and outcomes is coming to healthcare. A new executive order directs all federal agencies to collect and publish data on prices and outcomes for healthcare providers serving beneficiaries of government health programs. At the same time, private payers are putting more information on the Web to help consumers learn what physicians charge and which ones provide the best care.***

SEVERAL TRENDS ARE CONVERGING that will enable the public to access and scrutinize both the prices charged by individual ob-gyns and the healthcare outcomes they produce. As this happens, the financial success of pathologists will be directly related to how well they compare with other pathologists.

THE DARK REPORT believes the best name for this development is transparency of provider prices and outcomes. It is linked to the trend of making consumers responsible for choosing their physicians and paying a greater proportion of their bill. To achieve this result, payers know that provider prices and information about their outcomes must be easily accessible to consumers.

Two recent events show the speed with which price and outcomes transparency is evolving. First came the executive order signed by President George W. Bush on August 22 requiring federal health agencies to collect data on the quality and cost of health care and publish that data for the beneficiaries of federal health programs. This action comes on the heels of Medicare's first steps, taken earlier this year, to publish the reimbursement prices it pays to individual hospitals and physicians on its Web site. *(See TDR, March 20, 2006.)* Since that time, *The Wall Street Journal* has reported that state governments and hospital associations in Florida, New Hampshire, Utah, and New Mexico are launching Web services that list hospital charges.

Private Payers Take Action

Medicare's action to make public the prices it pays providers has been copied by at least five of the nation's largest health insurers. Since the first of this year, **Humana Inc.**, **Cigna Corp.**, **UnitedHealth Group Inc.**, and **Blue Cross Blue Shield** plans in several regions announced that they will also publish prices.

The earliest effort for private payer price transparency was the pilot project launched by **Aetna, Inc.** in the Cincinnati market last year. THE DARK REPORT was first to alert the laborato-

ry profession to this development and its consequences. In the pilot program, Aetna lets its members see actual discounted rates specific to their health plan for office visits, diagnostic tests, and minor procedures. In this pilot, Aetna disclosed the prices it paid to 5,000 affiliated primary care and specialty physicians for 600 procedures. The areas covered in the pilot were Ohio; Northern Kentucky; and Southeast Indiana.

Successful Pilot Project

That pilot project must have been successful, because Aetna is expanding its price/outcomes transparency strategy. This is the second event propelling forward the trend of public access to prices and provider outcomes data.

This fall, Aetna began expanding price transparency in a number of markets. Not only would Aetna post prices, but it would make available clinical quality, and practice efficiency information on physicians in Connecticut; Washington, DC; Northern Virginia; Maryland; Cincinnati, Cleveland, Columbus, Dayton and Springfield, Ohio; Northern Kentucky; Southeast Indiana; and South Florida.

Aetna is also posting physician-specific pricing for as many as 30 of the most widely accessed services by specialty and indicators based on adverse events. Further, Aetna will publish 30-day hospital re-admission rates, overall efficiency in use of medical services, and the volume of Aetna members treated. Aetna will do this in an expanded number of markets to supplement physician price information it has already posted. Physician prices will also be posted by Aetna in Kansas City, Las Vegas, and Pittsburgh.

When this round of projects is done, Aetna indicates that clinical quality and efficiency information will be available for more than 14,800 specialists. There will also be pricing information posted for at least 70,000 physicians.

The trend to make information about prices and healthcare outcomes available to beneficiaries and the public is moving faster than expected. When planning strategy, lab managers and pathologists should keep three things in mind.

First, any patients currently seen by the group that enroll in CDHPs tend to quickly get interested in the specific price they are being charged for their healthcare. Thus, laboratories should immediately prepare to make prices and outcomes available to patients upon request.

In communities where CDHP enrollment is minimal, this step can be taken later rather than sooner. However, there are many markets, particularly in California, Florida, and Texas, where laboratories will want to move expeditiously on this point. One easy way to fulfill a customer's request for price information is to have a written price list available at patient service centers. For the long-term, using the laboratory's Web site as the place to post patient pricing and outcomes data is an effective solution.

Educate Physicians

Second, the laboratory should educate its physicians and staff on these developments. They should know how and where Medicare and private payers like Aetna are publishing the price information for individual physicians and hospitals. Pathologists and staff should also be trained in how to respond when a patient asks about prices—and then requests a discount. This type of preparation will ensure that the laboratory remains patient-friendly and is not perceived to be holding back information from patients about prices or outcomes because it might be negative.

Third, THE DARK REPORT recommends that laboratories get ahead of

Federal Government Is Pushing Transparency In Prices and Outcomes of Hospitals, Physicians

IT IS NO COINCIDENCE THAT THE TWO SECTORS of healthcare which pay the largest bills are interested in seeing the prices paid to individual hospitals made public and easily accessible to consumers.

One sector is the federal government, which funds 40% of all the healthcare services provided in the United States. The other sector is made of up employers, who pay the lion's share of that remaining 60%. The double-digit annual increases in health benefits costs have pushed both sectors to take aggressive, proactive steps to improve the value of healthcare services.

THE DARK REPORT has provided regular intelligence briefings about these circumstances. The increase in the number of consumer-directed health plans (CDHPs) is directly related to this effort. But this initiative can only succeed if consumers can easily access pricing and outcomes data for individual hospitals and physicians for services. Consumers need both types of information to make informed buying decisions when they select a physician or hospital.

If there is any ambiguity about this goal, Bush removed it on August 22nd when he signed the executive order directing all federal agencies to collect and publish data on prices and outcomes. He stated that it sends a message to physicians and other providers that, "to do business with the federal government, you've got to show us your prices. The fact is," he continued, "if you have excellent information about quality, about service, and about price, people make good decisions."

This executive order also promotes health savings accounts (HSAs). "There's a choice between having the government make decisions or consumers make decisions,"declared Bush. "Health care policy ought to be aimed at bolstering the consumer, empowering individuals to be responsible for health care decisions."

The newly-signed executive order also directs federal agencies and their contractors to promote the use of health-care technology and reward consumers who shop for medical care based on quality and value. For example, where available, the agencies should use computer systems that are linked, thus allowing a physician in one state to see the records from a veteran from another state if the veteran happens to be traveling when he or she needs care. Federal agencies are also instructed to develop programs that measure the quality of care, and develop those measures with the private sector and other government agencies.

To comply with the order, the agencies must have programs under way by January 1, 2007. Department of Health and Human Services (DHHS) Secretary Mike Leavitt expects this executive order will have impact, stating that "It will fuel a substantial amount of change in the way health care is ultimately purchased, but it will take time for that to unfold."

this trend by gathering data on how effective test utilization improves outcomes. One benefit from this strategy is that it can help the laboratory become a more effective clinical resource for referring clinicians.

The drive for true transparency in the prices and healthcare outcomes of individual physicans and hospitals is unstoppable at this point. Well-run laboratories should welcome this development. It will eventually eliminate the much-hated HMOs and managed care contracts. More importantly, it restores the physician-patient relationship that was displaced in the 1990s. **TDR**

Anatomic Path Trends

RedPath Integrated Pathology Raises $4 Million From Investors

Another anatomic pathology company taps equity investment company for growth funds

IN PITTSBURGH, PENNSYLVANIA, **RedPath Integrated Pathology, Inc.** is in the midst of raising money for expansion. On September 25, 2006, it announced a $4 million equity financing commitment from **NewSpring Capital** of Philadephia, Pennsylvania.

RedPath represents an interesting new business model in anatomic pathology. The company launched in June 2004. Its founder and Chief Medical Officer is Sidney Finkelstein, M.D., who, while at **University of Pittsburgh Medical Center** (UPMC), developed a patent-protected technology called Topographic Genotyping. RedPath's President and CEO is Mary Del Brady, who was President of **TissueInformatics** in Pittsburgh. *(See TDR, April 9, 2001.)*

RedPath achieved $1 million in revenues by the end of its first 12 months of operations. For 2006, the laboratory company is on track to hit almost $5 million in revenues.

Dynamic Cancer Diagnosis

What makes RedPath an interesting new player in anatomic pathology is its business strategy. The company describes itself thusly: "We are one of the first commercial laboratories to integrate genomic analysis with everyday pathology practice. With our patented platform technology, PathFinderTG, we have changed the pathology review and analysis process from a static, one-dimensional one into a dynamic process with quantitative, comprehensive and objective results, so that clinicians can render definitive diagnoses where none otherwise exist."

RedPath has organized its PathFinderTG to provide different tests that support both the diagnosis of cancer and the planning of treatment across multiple organ systems. The technology allows RedPath to work from a range of specimens, including traditional chemically-fixed slides, fluid aspirates, and cytology smears.

The company says that some of its highest volume test requests have centered around "definitive diagnosis of pancreatic cancer from pancreatic fluid cysts; treatment planning for brain tumors; and distinguishing between a new cancer and metastasis of a former cancer."

RedPath illustrates several characteristics about the anatomic pathology marketplace. First, new technologies are giving pathologists more sensitive tools for diagnosis, as well has helping clinicians with treatment options. Second, there is plenty of investor money ready to fund these types of pathology ventures. Third, with RedPath expecting to book yearly revenues of almost $5 million by its 30th month of operations, it is a powerful example of how fast the clinical marketplace can respond to new diagnostic technologies. TDR

Lab Trends In Canada Run Ahead of U.S.A.

Labs in Canada face tight budgets and an even tighter supply of trained lab staff

CEO SUMMARY: In specific ways, laboratories in Canada are already confronting the future that awaits laboratories in the United States. Many of the challenges are identical, including shrinking reimbursement and funding, as well as a shortage of skilled lab staff. One unfolding development is pressure on pathologists to accept less compensation, leading pathologists in two provinces to study productivity.

IN DIFFERENT PROVINCES OF CANADA, laboratory organizations are dealing with issues and trends that put them ahead of similar trends in the United States.

That made the presentations particularly interesting at this year's *Executive Edge* conference, conducted September 25-26 in Toronto, Ontario. This meeting is co-produced by **QSE Consulting** and THE DARK REPORT.

Almost 100 laboratory administrators and pathologists from across Canada gathered this year to learn the latest in laboratory management and hear about innovative responses to current trends in Canadian healthcare. Although much of the content is focused on how laboratories can meet the needs of Canada's single-payer health system, many challenges facing Canadian laboratories are nearly identical with the challenges confronting laboratories in the United States.

The basic list is familiar. Reimbursement and funding for laboratory services in Canada is declining steadily. One consequence of this trend is that laboratory consolidation across multiple regions is ongoing. Another consequence of tight healthcare budgets is that several provinces are reassessing the level of compensation paid to pathologists.

Of course, trained technical labor is in short supply. In particular, the impending retirement of baby boomer medical technologists is a recognized threat to the ability of labs in Canada to meet the demand for lab testing.

Touching All Three Trends

One laboratory case study that touched all three of these trends was the regional laboratory consolidation project that took place in the Okanagan-Kootenay area of British Columbia. Marty Woods, Director of Redesign for the **Interior Health Authority of British Columbia**, played a key role in creating a rationalized regional laboratory organization from 34 separate laboratory sites, spread across several hundred miles in the interior of British Columbia.

"Over the years, there was a common incentive across all of these laboratories," explained Woods. "It was 'Don't

change unless you must!' So little had been done in recent years to realize efficiencies and bring costs in line with current budgets. We thus embarked on a project to standardize and rationalize testing services and operations across these 34 laboratory sites.

5 LIS Vendors, 34 Versions

"The challenges were daunting," he continued. "For example, the labs utilized just five LIS vendors. But there were 34 different versions of LIS to be standardized. To succeed in this regionalization project, we decided to standardize the product and set about to match test menus to the care settings in each community. Then information technology was standardized to support these testing services."

Adequate laboratory staffing was not an issue, at least at present. "But that will change," observed Woods. "Approximately 25% of laboratory staff serving labs in this interior region of British Columbia will retire in five to seven years. That is 100 positions. Currently our educational system is producing three to four graduating students per year as replacements."

Another issue was the loss of half the pathologists from one group. "When contract negotiations with the British Columbia government reached an impasse, five of 10 pathologists in the group left the area to work elsewhere," explained Woods. "In these communities, it is not easy to replace so many pathologists."

Compensation for pathology services has been contentious in British Columbia because the provincial health system targeted laboratory medicine for reimbursement reductions in recent years. THE DARK REPORT has provided some coverage of these events. *(See April 26, 2004 and November 22, 2004.)*

To speak directly to this issue, Jatinder Bhan, Chair and Director of **C.J. Coady Associates** in New Westminster, British Columbia, appeared at *Executive Edge* and discussed why the provincial health authority was seeking to redesign the reimbursement program for pathologists working in the province. Dr. Bhan presented pathologist productivity studies that were used to support contract negotiations that led to a revised compensation agreement between the province and pathologists. In Ontario, Canada's most populous province, a similar assessment of pathologist productivity and compensation is under way. Bertha Garcia, M.D., Chair and Chief of Pathology at **University Hospital in London**, Ontario, reported on the progress of these studies.

THE DARK REPORT considers it no coincidence that pathologists in British Columbia and Ontario are being forced to defend their compensation. In the United States, payers have been challenging clinical pathology professional services for two decades. *(See pages 2-5.)*

Coag Testing In Pharmacies

Another fascinating case study was the provision of coagulation testing services in commercial pharmacies. In Vancouver, British Columbia, Wendy Leong, PharmD, MBA, worked with **Long Pharmacies** to establish clinics in the pharmacies to perform point-of-care testing and advise the patients and pharmacists on anticoagulant therapies. Dr. Leon is the Anticoagulation Service Director and Assistant Professor of Pharmacy at the **University of British Columbia**.

As these examples show, lab directors and pathologists in Canada are implementing their own solutions to the common challenges faced by labs on both sides of the border. TDR

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INTELLIGENCE LATE & LATENT

Items too late to print, too early to report

There's regulatory relief for California labs in the important area of technical staff licensing. California's **Department of Health Services** (DHS) has approved the Board of Registry medical technologist (MT) examination administered by the **American Society of Clinical Pathology** (ASCP) as meeting the California clinical laboratory scientist (CLS) licensure requirements. The approval is effective on October 1, 2006 and was publicly announced by ASCP on November 1, 2006.

MORE ON: CA MT License

This new decision will help ease the acute shortage of med techs faced by almost all laboratories in California. It is now possible for ASCP-certified med techs to work in California without having to take the state's CLS licensing exam. Individuals will need only to submit an application for state licensure, along with appropriate documentation of professional status.

$10 MILLION "X PRIZE": MAP 100 FULL GENOMES IN JUST 10 DAYS

To accelerate advances in DNA research that support personalized medicine, the **X Prize Foundation** of Washington, DC, announced a new scientific prize on October 4. It will award a $10 million prize to the first team that successfully maps 100 human genomes in just 10 days. As an added bonus, the team can win an additional $1 million if it is willing to decode the genes of another 100 people, who will include donors to the prize and celebrities.

ADD TO: DNA Prize

The goal of this prize is to encourage the development of technology that speeds up the process of mapping the human genome while reducing the cost to accomplish this task. Most existing methods depend on a basic chemistry process known as Sanger sequencing, developed almost two decades ago. Organizers at the X Prize Foundation observe that researchers and companies will have to invent new technologies to accomplish the feat of mapping the genomes of 100 people in only 10 days. On the other hand, they believe the prize can be claimed in less than five years. Laboratory managers and pathologists understand the implications of this prize. Should the technology of gene sequencing reach the target level of productivity and cost encouraged by the X Prize, it will greatly accelerate advances in genetic medicine and the use of molecular diagnostics by more clinicians.

UNION STRIKE THREAT AT UK BLOOD SERVICE

Laboratory consolidation has been a reality in North America for more than a decade. But politics continue to prevent proposed lab consolidation efforts in the United Kingdom (UK). Recently the NHS (**National Health Service**) announced plans to consolidate 14 blood centers into three sites during the next five years. Immediately, **Amicus**, a union representing employees of the blood service, declared that it would "ballot for industrial action [strike]" in opposition to the consolidation plans. Such labor actions regularly block efforts to re-engineer and consolidate laboratory organizations in the UK.

That's all the insider intelligence for this report. Look for the next briefing on Monday, November 27, 2006.