

CalDerm[®] Update

The Voice of California Dermatology

California Society of Dermatology & Dermatologic Surgery

NEWS FOR CALIFORNIA DERMATOLOGISTS

SPRING 2009

INSIDE THIS ISSUE:

2009 Legislation for
California Dermatologists
Cover

President's Message
Page 2

Inserts: 2009 CalDerm
Annual Meeting

Have You *Fully* Invested
in Your Profession?
Page 3

CalDerm Skin Cancer
Awareness Day
Page 4

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CalDerm Works for California Dermatologists on 2009 Legislation

By John Caldwell, CalDerm Government Relations Director
Public Policy Advocates, Sacramento

CalDerm was ready for action this year and was met with a full plate of legislative initiatives. We helped defeat a bill that would have put some physicians out of business, finally stopped the mandate to make physicians wear a badge all the time and helped push through the Assembly – on a unanimous vote – legislation to crack down on medi-spas.

Putting Physician-Owned Clinics Out of Business

AB 832 by Assemblyman Dave Jones was sponsored by the Administration. It was aimed at the thousands of physicians – including CalDerm members – who perform surgical procedures in their offices. Under the law today, if the procedures involve a specified level of anesthesia, those physician offices must be accredited by one of four independent accrediting agencies which are approved by the California Medical Board. It is a process that has been in place for more than 20 years and has resulted in an enviable patient safety record for these facilities.

The law is also very clear that these physician-owned offices are not regulated by the California Department of Public Health (DPH) which, among other things regulates the large surgery centers. But DPH has argued that, in some cases, physician-owned clinics must be regulated by DPH. Last year, a district court ruled against DPH in *Capen v. Shewry*, reaffirming that physician-owned clinics are exempt from DPH licensure. But the decision raised some other issues with some

interpreting to mean that a physician-owned office could not be licensed by DPH even if they wanted that licensure.

Late last year, DPH came forward with their legislative fix to the Capen decision – subject these physician-owned surgical clinics to regulation so burdensome that it would drive these entities out of business!! They tried to get it amended into a bill at the end of last year's session. CalDerm, working with the plastic surgeons, were able to stop it from even making it into print. But this year, DPH found an author – and a very good one at that.

AB 832, like the proposal we stopped last year, dealt with the Capen decision in the most heavy-handed manner – it proposed deletion of the provision of law that specifically exempts physician-owned surgical clinics from DPH licensure. Under the bill, virtually all of them would have to be licensed by DPH.

To make matters worse, AB 832 added a laundry list of licensure requirements including mandatory disclosures to patients saying that a surgical procedure in the physician's office may not be as safe as one in a hospital. But the most burdensome was the requirement that all offices meet building standards designed for larger commercial clinics and nursing homes. Two members of the CalDerm Board reviewed the building standards and said that any physician-owned surgical clinic that had to meet those standards would have to shut their doors and get a new facility. They

continued on page 2

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President's Message



Jerome Potozkin, M.D.

As the first quarter of 2009 came to a close many of us can take a collective sigh of relief. After many have seen our retirement plans and 401k's become 201k's, there is finally some hope with an uptick in the stock market and hope for brighter days ahead in the economy. I think it is time for us as dermatologists to see how lucky we are.

Despite the fact that many of us have seen a dramatic decrease in our personal financial wealth few of us actually feared for our jobs. We have extremely rewarding careers in a field that keeps our interest with new and emerging treatments on an ongoing basis. We may have to work a few extra years but is that really a bad thing?

As the second quarter of 2009 begins the legislative gears in Sacramento are sure to churn. CalDerm is there for every dermatologist in the state. The old adage "no news is good news" most appropriately describes how the

legislature impacts dermatology. CalDerm is ever vigilant scanning bills that might impact our specialty. We were able to catch a bill that would have required some dermatologists to have physical plants that were equivalent to modern hospitals. That would have been a financial impossibility for almost anyone impacted if the bill became law. CalDerm continues to work on your behalf with a legislative advocate John Caldwell as well as partnering with ASDS and CMA to magnify our voice.

The third quarter of 2009 is sure to be an exciting one. We look forward to CalDerm's annual meeting in San Diego. This meeting has something for everyone ranging from practice management, general dermatology, surgical dermatology as well as legislative updates. I encourage everyone to attend this fantastic meeting.

Lastly, I would like to invite each of you to participate. For some it may mean becoming active on the CalDerm Board of Directors. Others may simply make us aware of a situation impacting dermatology. Never forget CalDerm is here for you and we collectively are CalDerm. Hoping the rest of 2009 is a great one for all.



Jerome Potozkin, M.D.
CalDerm President

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were not alone in making that assessment – the California Society of Plastic Surgeons (CSPS) said simply that the bill would put their members out of business.

Under AB 832, the determination of which clinics would have to get a DPH license was based on the levels of anesthesia used at the clinics. As written, many CalDerm members might have been able to avoid the licensure requirement. But had AB 832 passed, those members – and all dermatologists -- would have been precluded from offering procedures involving higher use of anesthesia in the future. For that reason, CalDerm had opposed this

proposal when it was first floated last year. So when it was introduced by Assemblyman Jones this year, defeat of the bill became a top priority of the CalDerm Board. But we had our work cut out for us. Assemblyman Jones is a very good author. He is not only smart and relentless, but he is Chair of the very committee that would hear the bill. (Committee members tend to defer to their Chairs and as a result, it is very difficult to kill a Chair's bill in his own committee.)

So, CalDerm working with the California Medical Association, the California Society of Plastic Surgeons, and others met with the author and pointed out a number of problems

with the bill. Our main point was fairly simple: Where's the problem? The regulatory process in place (using the independent accrediting agencies to inspect the facilities) has a very good record of protecting patients. So we kept asking – where's the evidence that the existing system is not working? If the state is going to dramatically change the way these entities are regulated – and put them out of business – there should be some problem with the existing process. But we never got an answer to that question. Then we pointed out that there is plenty of evidence that the DPH is not capable of regulating these facilities. We provided the author with the critical Legislative audit of DPH's poor track record in regulating labs.

After the meeting, the author made some amendments, but CalDerm and the others remained opposed. So we took our arguments to the Health Committee with CalDerm, CSPS and CMA divvying up the membership.

Obviously we had an impact. On the Sunday before the hearing on the bill, the author's staff e-mailed those of us opposed to the bill a new set of amendments. Under the proposed amendments, the contents of the bill were to be deleted and replaced with language to create a workgroup to "consider the implications of the 2007 Third District Court of Appeals ruling, *Capen v. Shewry*, (155 Cal. App. 4th 378), existing quality and accreditation standards, including federal conditions of participation for ambulatory surgical centers participating in the Medicare program, and the state of the art of ambulatory surgery centers within this state." We made sure that CalDerm was included in the working group to deal with this issue and quickly removed our opposition. By the day of the hearing, we testified in favor of the bill.

Cracking Down on Medi-Spas

CalDerm is a co-sponsor (with the American Society of Dermatologic Surgery) of AB 252 by Assemblywoman Wilma Carter. The bill allows the Medical Board to take away the medical license of a physician who partakes in a "rent-a-doc" scheme (that is, allows his/her license to be used so a non-physician can set up a medi-spa). It also specifies that medi-

spa businesses are guilty of perpetrating health care fraud under the Penal Code if they violate Corporate Practice of Medicine statutes.

It is identical to the final version of AB 2398 (Nakanishi) of last year which was killed on the Senate floor on the final day of session by Senator Mark Ridley-Thomas in retaliation for the Assembly killing one of his bills.

CalDerm and ASDS actively lobbied AB 252 before its first hearing in the Assembly Business and Professions Committee. The result was that the bill passed out of the committee unanimously then out of the Assembly Appropriations Committee also unanimously. AB 252 passed off the Assembly Floor on May 4 on a 79-0 vote.

Making Docs Wear A Badge

It has taken two legislative sessions, but CalDerm has finally killed a proposal that would require all physicians seeing patients to always wear a badge including their name and license status. The supporters of the idea have argued that patients, especially in medi-spas, may not know that the person performing their procedure is not a physician. CalDerm

members didn't like the idea for a number of reasons. Some members with smaller offices simply resented the idea of having to wear a badge in their own office. Others thought the badge requirement made no sense unless it applied to all allied health professionals.

The language was in an omnibus health care bill (SB 1454 Ridley Thomas) last year. That bill died in the Appropriations Committee, but for unrelated fiscal reasons. This year virtually the same bill – with the badge mandate -- was reintroduced, but this time with a different author (SB 674 Negrete-McLeod). We again raised our objection and this time we were finally successful. On April 28, SB 674 was amended to remove the badge requirement provision.

CalDerm will continue to keep members apprised of changing legislation throughout the remainder of the legislative session through email CalDerm Alerts and on the CalDerm web site. If you are not a member in good standing with CalDerm, please join today and help support our efforts to protect the business and health care interests of California dermatologists.

Have You Fully Invested in Your Profession?

Every year CalDerm sifts through thousands of legislative bills to ensure that no initiative moves forward that could adversely impact the practice of dermatology in California. **Every year** there is some bill found, often more, that poses a significant threat to the way California dermatologists run their practice. **Every year**, CalDerm works with members of the legislature, their staff, other medical specialty societies and the California Medical Association to make sure that dermatology has a voice in public policy decisions that impact the House of Medicine. And **every year**, CalDerm needs your support to make this all possible.

For those reading this newsletter and have paid your annual dues to CalDerm, thank you for investing in your future and the future of all your colleagues in California. Please remember that your membership needs to be consistent, year after year, for **every year** you practice. CalDerm was officially established in 1972 and for 37 years this group of volunteer physicians has fought tough battles with law makers **every year**. Think of your annual contribution of \$300 as an insurance policy – perhaps one of the best policies you will ever have that will protect your business interests as a dermatologist and ensure the right to unrestrained access to healthcare for your patients.

Is my membership in good standing?

If you received a membership application insert with this newsletter, your membership is not in good standing or you have not yet become a member of CalDerm. There are two simple ways to join: Complete the application insert and fax or mail to CalDerm along with your annual contribution of \$300. Again, this is an insurance policy you cannot do without. Or, you can log on to www.calderm.org and select the Membership Information link in the left side column. Select Physician Profile Information to review or update your profile – if your membership is not current, please select Renew Your Membership Today or Join CalDerm Today. If you do not have a profile in the system, follow the instructions on the link Join CalDerm Today. If you experience any difficulty with your online profile update, contact Karmi Ferguson at (916) 498-1712 or email to membership@calderm.org and we will assist you.

NEWS FOR CALIFORNIA DERMATOLOGISTS

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CalDerm Skin Cancer Awareness Day

In its 11th year, the CalDerm Skin Cancer Awareness Day continues to be a popular event among legislative staff at the State Capitol. Held on "Melanoma Monday," May 4, 2009 the free skin cancer screening conducted by CalDerm members was again successful this year with 210 participants. The screening is part of a nationwide effort organized by the American Academy of Dermatology



Senator Elaine Alquist, Chair of the Senate Health Committee presents a Senate Resolution to Ann Haas, M.D. and CalDerm Government Relations Director, John Caldwell.

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that educates participants on early detection methods and sun safety.

Honorary legislative sponsors of the event included Senator Elaine Alquist, Chair of the Senate Health Committee, Assembly Member Dave Jones, Chair of the Assembly Health Committee and Assembly Member Nathan Fletcher, Vice Chair of the Assembly Health Committee. Senator Alquist authored a Senate Resolution in honor of the event which was presented to CalDerm President Elect, Ann Haas, M.D.

CalDerm extends its appreciation and gratitude to the following members who volunteered their time to make this event possible:

April Armstrong, M.D., Sacramento, Ann Haas, M.D., Sacramento, S. Brian Jiang, M.D., San Diego, John Kasch, M.D., Sacramento, Margaret Mann, M.D., Irvine, Alexander Miller, M.D., Yorba Linda, Jerome Potozkin, M.D., Walnut Creek, Alan Semion, M.D., Sacramento, Marc Silverstein, M.D., Sacramento, Sima Torabian, M.D., Sacramento.

In addition, the event ran smoothly with the help of several volunteers:

Elaine Erickson, RN, Dermatology Nurses Association, Linda Starr, former Capitol Staff, Cathy Gardella, former

Capitol Staff, Miki Shirakawa-Garcia, M.D., UC Davis Resident, Melissa Reyes, M.D., UC Davis Resident.

Ortho Neutrogena was on hand to provide a UV camera and photos to the participants (always an eye-opener!) and the event was underwritten by grants from the Personal Care Products Council in Washington, DC and the Schering-Plough Corporation. All companies provided participants with sample sun screen products and educational materials. We were also joined by staff from the California State Cancer Registry program.



CalDerm screening volunteers: S. Brian Jiang, M.D., Alexander Miller, M.D., Jerome Potozkin, M.D. and Margaret Mann, M.D.