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Address of CSA President-Elect Narendra Trivedi, M.D., to the 2010 House of Delegates



I am honored to serve as your 63rd President of the California Society of Anesthesiologists. With your help and support, I believe we can make this a year of great achievements for the medical specialty of Anesthesiology and for the CSA. We will be faced with many challenges in the upcoming year: Every day California's budget looks worse; the national economy is still unstable; and the implications of healthcare reform by President Obama are of increasing concern.

Though federal healthcare reform legislation has been signed, it is becoming evident that we can influence and modify certain aspects of this reform if we stand up for what is right: right for our patients, right for our members, and right for our country. Therefore, we must make advocacy the top priority for the next year. Advocacy will allow us to build relationships with legislators and assist them in modifying the reform bill, to improve the care we provide to our patients, and to address the issues facing our members. Someone has to take the lead in designing revisions to President Obama's healthcare bill: CSA and California anesthesiologists are qualified, positioned and need to do this.

There have been times in the last 20 years when medical specialties faced challenges to their practices. Some of these specialties just "hoped" for change led by someone else, rather than working hard to address those challenges. As a result, some of these specialties, like pathology, are no longer major players in modern health care.

Another specialty that just *hoped* for a better tomorrow is Cardiac Surgery. With the invention of angioplasty, stent placement and many new advances in technology, cardiac surgery volumes have significantly declined. Cardiac surgeons did not take the lead to use these new advances to their advantage; they were committed to the *status quo*. Now, many cardiac surgeons are struggling, looking for work, and performing general surgical cases to maintain their income. We must learn from these specialties that have suffered because they didn't prepare themselves for new challenges. We must prepare ourselves for the challenges of the future and push for any change that is within our power to change.

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We must not ask ourselves *if* we can do it or *if* we should change with the times. Rather, we must ask “*How* can we do it?” We must come out of the four walls of the operating room and explore opportunities to expand our role in other areas of patient care.

If we believe that nothing is going to change in our practice, we are kidding ourselves. Some challenges are already knocking at our door. Five years from now, we may not be able to collect full payments for giving a milligram of Versed for a cataract surgery or a simple podiatric procedure. With the sky-rocketing costs of healthcare, practices such as this are unsustainable. Already, there are institutions using nonphysician practitioners to render this care. But, we should not let these inevitable changes discourage us, much less stop us. Instead, we must explore ways to expand our practice. We must enhance our knowledge, our training, our experience and our expertise in the field of peri-operative care. We must invest our time in research so we can find new areas in patient care that can improve the lives of patients and also provide us with a unique set of skills. Specialties such as radiology, cardiology and vascular surgery have used new advances, new methods and new technologies to sustain their practices and incomes in the rapidly changing health care world. We must learn from their experience to make a better future for our specialty.

I have come to the realization that CSA needs to do more than just solving yesterday's problems and today's challenges. Therefore, I ask you to join me in embarking on a journey to a better future for our specialty. It will involve continuous work but will have profound rewards. I have dedicated the year of my Presidency to the theme, the “Future of Anesthesiology.” Together, we can prepare anesthesiologists for challenges of changing health care. Among other things, we must work with residency program directors to explore various options to prepare a new generation of anesthesiologists to expand the scope of their training for a better future. Some of this work is already underway.

You may ask: Can we do it? Can we successfully fight for our specialty? I believe we are beyond asking these questions. We must do it, and we must do it now—because if we fail, then our patients, our community, and our profession will suffer. So, I urge all of you to join me and your CSA in working together to guide health care policy and develop a plan for the better future of American health care and the pivotal role to be played in that future by Anesthesiology.

At this time, I would like to thank the distinguished leaders of the CSA, those CSA past presidents who have encouraged, guided and mentored me to be ready for the presidency. I offer very special thanks to Drs. Steve Goldfien, Eddie Canada, Steve Jackson, Linda Mason, Dan Cole, and Virgil Airola. Special

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thanks also are due to ASA Assistant Treasurer Dr. Jim Grant for his friendship and leadership.

There are two very special individuals who have helped me learn how to handle the challenges and problems faced by CSA and a major part of the reason that today I feel confident and ready for this job. Over the past two years they have become trusted friends, and I would like to thank Drs. Michael Champeau and Dr. Linda Hertzberg.

I would like also to thank my partners at Permanente Medical Group who have always been my strong supporters. I would like to thank all my Permanente friends of many years for their support and encouragement.

Finally I would like to thank my family members who are in the back of the room: My dad, who has been a great inspiration and a role model for me all my life. My wife Trupti and my two sons, Akash and Nick, have always been there for me—supporting, advising and obviously critiquing me. Without them, I could not succeed in life. Thank you.

I want to thank all of you once again for giving me this great responsibility. I promise I will take this responsibility seriously and work hard to meet or exceed your expectations. Now, let's get ready and work together so that we can achieve these goals and make 2010-2011 the best year for CSA yet, and make CSA a leader in organized medicine.

Address of CSA President Linda B. Hertzberg, M.D., to the 2010 CSA House of Delegates

Thank you for the opportunity to address the 2010 House of Delegates. It has been a privilege to serve the California Society of Anesthesiologists for the past year. Near the end of my speech before this HOD last year I said, "I am looking forward to a challenging and energetic year working on behalf of the members of the CSA." Little did I realize how prophetic those words were and how challenging this year would become. For the next several minutes I hope to share a few thoughts with you about the past year and the future of our Society.

When my daughter was in high school, my sister and her children came to visit our family in Fresno. At one point we drove up to the Bay Area. As anyone who has lived in Central California knows, to get from Fresno to other major metropolitan areas of California requires driving through acres and miles of farmland. My niece, a typical resident of suburban New Jersey, kept asking where we were because there did not appear to be any major buildings, towns,

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or other points of reference. After receiving what she considered to be a series of unsatisfactory answers to her questions, she finally announced, "We are nowhere!" That became the theme for the rest of the car trip. So where is the CSA now? Are we nowhere? Well, we certainly are not where we anticipated we would be one year ago when my presidency began. The road has taken many detours that we did not imagine last May. The medical and political landscape we now inhabit may well seem unfamiliar relative to where many of us have lived our professional lives.

At this time last year, major national health care reform was under discussion in Washington, D.C. No one could have anticipated the twists and turns of the legislative and political process leading up to the enactment of major health care reform legislation earlier this year. The position of the AMA in supporting the legislation as written was particularly problematic for many physicians both inside and outside of organized medicine and anesthesiology. This proved to be no less controversial within the CSA and ASA. There were many who believed that there was little to love in any of the health care proposals that we saw last summer and autumn. Within both the CSA and ASA there was a movement to oppose staunchly any of the legislative options. ASA chose instead to work to de-link payment methodology for anesthesiologists in the so-called "public plan" from the already undervalued anesthesia Medicare rates. This became THE message that the ASA asked its members to carry forward in contacts with members of Congress late last year. This strategy proved controversial within the CSA because a vocal group of the membership believed that we still would be headed for a total government takeover of the health care system, no matter what payment system was agreed upon.

Ultimately CSA leadership chose to support the ASA strategy going forward. The CSA stayed with the ASA on this course throughout the ongoing political drama leading up to the House of Representatives enacting, in March 2010, a Senate-approved health care reform bill and its companion reconciliation act. That bill was opposed by the ASA and other major specialty societies, but endorsed by the AMA. Not addressed by the Congress in this legislation (despite promises to the contrary) was the flawed Sustainable Growth Rate (SGR) formula used by CMS to update Medicare payment rates to physicians on an annual basis. Organized medicine and the ASA are now left in the unenviable position of continually asking for deferral of the 21 percent payment cut mandated by the SGR formula this year. In the meantime, the ASA is attempting to have anesthesia codes revalued by Secretary Sibelius, as this appears to be allowed under the new legislation. This week you received information from the ASA about contacting your Congressmen and asking

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them to sign the bipartisan "Anesthesiology Medicare Payment Letter." I urge you to follow up on this request.

For many of our members who have practices with large proportions of patients with Medicare or other government-based payers, the path forward is alarming because the successful outcome of either of these initiatives is by no means certain, and is dependent upon the actions of politicians and bureaucrats. The costs of doing business as medical professionals do not go down, while payments to physicians are cut and paperwork and documentation demands increase. Are we nowhere? Well, we are certainly not where we had hoped to be at this time a year ago with health care reform. The impact of the health care reform bill on our professional lives and the care of our patients is uncertain and the road ahead is unclear. We still may be wandering in the hinterlands for a while.

Next on the list of places we did not intend to visit this year is Governor Schwarzenegger's opt-out of the CMS requirement that nurse anesthetists be supervised by physicians. If health care reform put the CSA and its members in the midst of the California hinterlands, then the opt-out left us wondering whether it was the Governor or the CSA that was in the wrong state.

You have all received numerous messages from the CSA this year about the opt-out and what the CSA is doing about it. I am assuming that this HOD is particularly well informed on this subject and will therefore emphasize only a few points.

The most likely reasons for the opt-out center around retaliation for CSA's opposition to the Governor's push to tax physicians 2 percent of their gross revenue as part of his ill-fated 2007 Health Care Reform plan, and also CSA's leading role to stop a rule to legalize Chiropractic Manipulation Under Anesthesia (MUA). Governor Schwarzenegger's support for his long time friends who are now appointees on the Chiropractic Board, and their efforts to bend state rules has been well publicized over the past several years. The only other explanation for the opt-out that we were able to obtain is that it reflects the Governor's consistent encouragement of physician extenders. That said, efforts to expand non-physician scopes of practice, whether proposed by the Governor or others, have gone down to legislative defeat since he has been in office. With an opt-out, he is able to expand scope of practice without a legislative process.

In regard to the specific CMS requirement that an opt-out be consistent with state law, California law explicitly limits CRNAs, and all RNs, to the

“administration of medications and therapeutic agents, necessary to implement a treatment ... ordered by, and within the scope of practice of, a physician, dentist, podiatrist. ...” The Nursing Practice Act also makes it unprofessional conduct for a CRNA or RN to administer any controlled substance or dangerous drug “except as directed by a physician, dentist or podiatrist.” The California Board of Registered Nursing (BRN) has long denied that the words “ordered or directed” are synonymous with “supervised” and, hence, have promoted a theory at odds with past court decisions and State Attorney General opinions. Several years ago, when CSA sued the BRN for disseminating these views as “underground regulations,” the BRN removed its last statement of this sort from its website and substituted a disclaimer that “no reliance should be placed” on such guidance. This “no reliance” statement remains there today. The lawsuit was never resolved. What Governor Schwarzenegger did with the opt-out was, in effect, to adopt the position that the BRN itself could not defend in the still pending *CSA v. BRN* lawsuit.

Late last year CSA was given a copy of a Legislative Counsel opinion confirming that California law does indeed mandate physician supervision of nurse anesthetists. As the office responsible for reviewing bills coming before the legislature, the Legislative Counsel's opinion has particular weight. CSA shared this document with the membership in January, and it is posted on our website to assist members dealing with their hospitals should questions arise about staffing models with unsupervised practice by nurse anesthetists.

Our lawsuit to compel the Governor to withdraw the opt-out was filed jointly with the CMA in early February. The Governor responded in late March. The Attorney General agreed that Arnold Schwarzenegger is the Governor and the suit was properly filed, and disputed all other points in our lawsuit. More recently, the California Association of Nurse Anesthetists has filed a motion to intervene as an interested party. CSA and CMA chose not to oppose that motion as long as the court allowed permissive intervention only, meaning that no new issues could be raised by CANA. The court eventually approved the motion by CANA for intervention. In the interim, AANA and CANA were attempting to win on this scope of practice issue in the court of public opinion by using the public policy arguments of access, cost, and surgeons' desires not to supervise nurse anesthetists when no anesthesiologist is available. All of these arguments are easily refuted, but remain irrelevant to the underlying issues raised by the CSA and CMA in our lawsuit. Specifically, the legal issue of what state law says is ignored by the AANA and CANA. Our motions and arguments for summary judgment and writ of mandamus will be filed shortly. It is unlikely that there will be any final resolution for several months, whether we ultimately obtain a summary judgment or proceed to a hearing. No matter

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what happens, the decision is likely to be appealed by one side or the other. This is not solely an anesthesia scope of practice issue. Both in California and nationally there is a push to enlarge the role and scope of practice of physician extenders in all specialties. This movement has gathered steam since the passage of health care reform. CMA is certainly cognizant of the larger implications for scope of practice, which is one of the reasons they are partnering with us in the lawsuit against the Governor.

One of my partners recently told me that he wrote a letter to the Governor after the opt-out, disputing the Governor's position and asking that the Governor withdraw the opt-out letter. It turns out that when Arnold Schwarzenegger was filming the movie "Twins," my partner had occasion to see the filming in Los Angeles. At the time they were filming a stunt and Schwarzenegger's stunt double looked exactly like him. The point he made in his letter to the Governor was that one's double may resemble one superficially, but lacks the knowledge, background, and experience to be the real thing, whether that is a physician or an actor.

I urge each and every one of you to be vigilant in your communities and medical staffs regarding these scope-of-practice issues, not just in anesthesia. All patients should be able to have access to a physician for their care should they so desire. Remember that you are the real thing, with all the medical background, knowledge and training to safely guide patients through a critical time in their lives. Continue to advocate for physician care to be available to all patients in all specialties. I cannot predict how the lawsuit on the opt-out will turn out, but I can assure you that CMA, CSA and ASA will do everything in their power to affect the outcome in favor of our patients' right to have a physician involved in all their anesthesia care.

Let's move briefly now to another area of interest for the CSA. For several years we have been opposing the efforts of the Board of Chiropractic Examiners to have regulations approved that would allow chiropractic manipulation under anesthesia. If the Governor appeared to be in the wrong state with the opt-out, then surely this one is in Planet Hollywood.

The proposed regulations went back and forth between the Board of Chiropractic Examiners and the Office of Administrative Law (OAL), with multiple revisions along the way. CSA delivered comments opposing these proposed regulations each time a change was made. CSA does not believe that MUA is within the scope of practice of a chiropractor based on the current laws that describe the scope of the specialty. In addition we cited studies suggesting that the practice is potentially dangerous to patients.

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In 2007 the CSA introduced a resolution to the ASA HOD that was ultimately adopted in the following form:

RESOLVED, that the American Society of Anesthesiologists declares that the use of general anesthesia for chiropractic spinal manipulation has no scientific basis and that there is no evidence to support a claim that its use is either safe or beneficial for patients.

This resolution was also cited in our arguments before the OAL. Despite these efforts, the OAL approved the regulations allowing MUA in March. The CSA BOD responded by adopting the ASA resolution as our own and sending a letter to various state agencies, malpractice carriers, and health insurance companies informing them of the opinion in the resolution. Unfortunately any appeal of the decision by the OAL would go to the Governor, so the chance of overturning this result is negligible. Seemingly, if the opt-out and Chiropractic MUA regulations are allowed to stand, potentially we may see something truly alarming here in California: Chiropractic MUA with independently practicing nurse anesthetists without anesthesiologists raising questions about benefit, safety, or scientific validity. CSA will continue to monitor this situation and keep its members informed. In our continuing quest to answer the question, "Where are we, and are we nowhere?", let's move now from Hollywood to San Mateo, CSA headquarters. In my speech at the Annual Meeting of the HOD last year, I urged that we question our assumptions about "the way we do it here." A major initiative was undertaken this year to examine our processes and update all aspects of the communications functions of the CSA. Here is some of what I said about this a year ago:

Today the electronically connected population expects up-to-date information provided in an easily accessed, brief, and interlinked manner. The ability within the CSA to cross communicate among individuals and groups, to support forums and blogs, to provide information useful and interesting to members, and to create and maintain access to our online publications, will require a change in our thinking about how we do business. First and foremost, this means that the correct technological infrastructure must be available. The Communications Committee has been charged to work with the central office, our Treasurer, and the Finance and Administration Committee to explore how the CSA can make this vision a reality. If we do not re-invest capital in ourselves through this project, we risk becoming complacent, out-of-date, and irrelevant to our members by continuing with "the way we do it here."



Legislative Counsel Bill Barnaby presents the Resolution to CSA President Linda Hertzberg for her service to CSA.

I am pleased to report today that—with a lot of time and hard work devoted by members of the Communications Committee, Board, and CSA office staff—this project is now funded and well underway. You can expect to see a new and more fully functional Web 2.0 CSA Website with the capabilities described up and running in the next several months. In addition, with this the CSA will be able to bring its bulk e-mail handling in house, making it simpler to distribute messages and news to members in a timely manner. The events of this past year and the challenges of communicating with our membership have given me a deep appreciation about how useful and timely these changes will be. We are indeed somewhere in this project, even if that somewhere is in between San Mateo and cyberspace.

Today we are not where we expected to be a year ago; we certainly have taken a few interesting and unanticipated paths. We cannot allow the concept of “the way we do it here” to hold back the CSA because, as we have seen, the political and regulatory landscape does not stand still. The CSA may need to be in many places at once, but these are not “nowhere.” Rather they are a series of familiar and unfamiliar locales that we will need to both adapt to and shape in order to further the CSA’s mission and agenda on behalf of the specialty of anesthesiology, and the patients we care for here in California.

An organization is only as strong as the people it inspires to work on behalf of its goals and ideals. I thank each and every one of you for giving of your

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time, knowledge, and expertise to the CSA. The Board could not do its work without all of you as part of our initiatives, whether that work involves calling Congressmen, serving on committees, contributing to ASAPAC and GASPAC, or sending in your thoughts and ideas.

As I said earlier, this has been an energetic and challenging (and I might add difficult) year. There are many people to thank here for their support, hard work and help along the way. The members of the Executive Committee deserve special notice since they have worked many hours above and beyond what is normally required. In particular, our incoming President, Dr. Narendra Trivedi, and our Past President, Dr. Michael Champeau, spent many hours working with me both on the phone and in person throughout the year. The members of the CSA Board are an energetic and creative group and have risen gracefully to the challenges we faced. Barbara Baldwin, our CEO, and her team in the central office, have done a terrific job running the day-to-day operations and business of the society, while keeping up with new, sudden and unexpected demands. Our legislative lobbyists and consultants, William Barnaby and Bill Jr., spent countless hours working on issues related to the opt-out and poring over, compiling, organizing, and analyzing thousands of pages of documents obtained in our Public Record Acts requests prior to the filing of our lawsuit. They continue to represent our interests energetically in Sacramento.

On a personal note, I have a wonderful group of partners in my practice at Anesthesia Consultants of Fresno, several of whom are here today, and who have supported me with the gifts of time and advice in my professional work at the CSA and ASA. Last but not least, for my beloved husband, David Merzel: He has always been there for me whatever I chose to do professionally. We will be married 23 years on Monday, and it seems like both a moment and an eternity. I look forward to many more wonderful years together. David and my children, Rachel and Michael, have given me the gifts of unconditional love, support, and time. I love you all dearly and am profoundly grateful for all you do. It has been a tough year for the family as well, so I know they are happy to be regaining some of my attention after this weekend.

I look forward to working with and for my friend and our incoming President Dr. Narendra Trivedi during the coming year, in whatever capacity he needs. I am certain that he is up to the challenges that face him and the CSA on your behalf.

Thank you all for your interest and support this year. It has been an honor to serve.