AMERIPATH INC
Form 10-K/A
June 28, 2002

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K/A
(AMENDMENT NO. 1)

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE YEAR ENDED DECEMBER 31, 2001

OR

[_] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM ____________ TO ____________.

AMERIPATH, INC.
(Exact Name of Registrant as Specified in Its Charter)

| | |
|---|---|
| Delaware | 65-0642485 |
| (State or Other Jurisdiction Incorporation or Organization) | (I.R.S. Employer Identification No.) |

7289 Garden Road, Suite 200, Riviera Beach, Florida 33404
(Address of Principal Executive Offices)

Registrant's Telephone Number, Including Area Code: (561) 845-1850

Securities Registered Pursuant to Section 12(B) of the Act:

Securities Registered Pursuant to Section 12(G) of the Act:

Common Stock (Par Value $.01 Per Share)
(Title of Class)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes [X] No [_]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [_]

The aggregate market value of voting stock held by non-affiliates of the Registrant as of March 15, 2002 was approximately $858.7 million based on the $28.20 closing sale price for the Common Stock on the NASDAQ National Market System on such date. For purposes of this computation, all executive officers and directors of the Registrant have been deemed to be affiliates. Such determination should not be deemed to be an admission that such directors and officers are, in fact, affiliates of the Registrant.

The number of shares of Common Stock of the Registrant outstanding as of March 15, 2002 was 30,449,989.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's definitive Proxy Statement relating to the Registrant's 2002 Annual Meeting of Shareholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of the year covered by this Report are incorporated by reference into Part III of this Report.

# PART III

## ITEM 11. EXECUTIVE COMPENSATION

### Summary Compensation Table

The following table sets forth the aggregate compensation paid or earned during the prior three years to the Company's Chief Executive Officer and each of the Company's four other most highly compensated executive officers whose total annual salary and bonus was $100,000 or more for 2001 (the Chief Executive Officer and such other executive officers are sometimes referred to herein as the "Named Executive Officers").

| | | Annual Compensation | | |
|---|---|---|---|---|
| Name and Principal Position | Fiscal Year | Salary ($) | Bonus ($) | Other Annual Compensation ( |
| James C. New<br>Chairman of the Board, President and Chief Executive Officer | 2001 | 425,000 | 255,000 | -- ( |
| | 2000 | 375,000 | 225,000 | -- |
| | 1999 | 350,000 | 190,000 | -- |
| Alan Levin, M.D.<br>Corporate Vice President | 2001 | 294,700 | 100,800 | -- |
| | 2000 | 279,394 | 96,900 | -- |
| | 1999 | 270,636 | 84,700 | -- |
| Brian C. Carr<br>President | 2001 | 271,862 | 100,000 | 57,023 ( |
| Dennis M. Smith, Jr., M.D.<br>Executive Vice President of Genomic Strategies and Chief Medical Officer | 2001 | 348,769 | -- | -- |
| | 2000 | 252,308 | -- | -- |
| | 1999 | 294,167 | 33,333 | -- |
| Gregory A. Marsh<br>Vice President and Chief Financial Officer | 2001 | 180,939 | 100,000 | -- |

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(1) The aggregate amount of perquisites and other personal benefits provided to the executive officer is less than the lesser of 10% of the total annual salary and bonus of such officer or $50,000, but is not $0.

(2) Represents reimbursement of expenses in connection with Mr. Carr's relocation to West Palm Beach, Florida from Nashville, Tennessee.

Option Grants Table

The following table sets forth certain information regarding options granted to the Named Executive Officers during 2001.

| Name | Number of Securities Underlying Options Granted (1) | Percent of Total Options Granted to Employees in Year | Exercise Price Per Share | Expiration Date |
|---|---|---|---|---|
| James C. New | 75,000 | 8% | 24.95 | 5/3/11 |
| Alan Levin, M.D. | 25,000 | 2.7% | 24.95 | 5/3/11 |
| Brian C. Carr | 200,000 | 21.4% | 24.95 | 5/3/11 |
| Dennis M. Smith, Jr., M.D. | 25,000 | 2.7% | 24.95 | 5/3/11 |
| | 25,000 | 2.7% | 30.03 | 7/31/11 |
| Gregory A. Marsh | 10,000 | 1.1% | 18.75 | 3/6/11 |
| | 25,000 | 2.7% | 24.95 | 5/3/11 |

(1) All options were granted under either the Company's Amended and Restated 1996 Stock Option Plan or the Company's 2001 Stock Option Plan at exercise prices equal to or greater than the fair market value of the Common Stock on the date of the grant, and vest over five years with a ten-year term.

(2) These assumed annual rates of appreciation were used in compliance with the rules of the Securities and Exchange Commission and are not intended to forecast future price appreciation of the Common Stock.

Option Exercises in Last Year and Year-End Option Value Table

The following table sets forth information regarding exercise of options during 2001 and the options held at December 31, 2001 by each of the Named Executive Officers.

| Name | Number of Options Exercised | Amount Realized | Number of Unexercised Options at Year End | | Value In-The at 200 |
|---|---|---|---|---|---|
| | | | Exercisable | Unexercisable | Exercisab |

| | | | | | |
|---|---|---|---|---|---|
| James C. New | 150,000 | $2,845,294 | 266,211 | 169,800 | $7,217,32 |
| Alan Levin, M.D. | 47,300 | $ 510,412 | 7,200 | 67,800 | $ 160,27 |
| Brian C. Carr | 2,008 | $ 20,761 | -- | 200,000 | - |
| Dennis M. Smith, Jr., M.D. | -- | -- | 22,800 | 96,200 | $ 506,18 |
| Gregory A. Marsh | 9,500 | $ 162,025 | 10,500 | 59,200 | $ 232,73 |

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(1) The indicated value of the options is a computation of the difference between the applicable option exercise price and the closing market price of the Common Stock as of December 31, 2001 ($32.26) multiplied by the number of shares of Common Stock underlying such option.

Employment Agreements

The Company entered into an employment agreement with Mr. New effective April 1, 2001, pursuant to which Mr. New is eligible to receive an annual bonus of up to 50% of his base salary upon attaining mutually agreed upon objectives relating to the Company's performance, and a potential additional amount of bonus for exceeding the objectives. For the year ended December 31, 2001, the Compensation Committee of the Board of Directors determined that Mr. New exceeded his performance objectives for 2001 and awarded a bonus to Mr. New that exceeded 50% of his base salary. Upon termination of his employment by the Company for reasons other than disability, death or cause, Mr. New will receive a pro rata portion of his bonus for the year in which the termination occurs, his base salary and prior years' bonus for a period of 24 months, and his benefits for a period of 18 months. In the event of a "change-in-control" of the Company, the Company will pay Mr. New a bonus equal to two times his annual base salary and bonus, if either the Board of Directors approves such payment or if the per share selling price is greater than average market price for the prior six months, and accelerate the vesting of all the unvested options held by Mr. New. If Mr. New's employment is terminated in connection with a change-in-control or within one year after a change-in-control, the Company will also pay Mr. New a pro rata portion of his bonus for the year in which the termination occurs, make a lump sum payment to Mr. New equal to two times his annual base salary and bonus plus the cost of 18 months of benefits, and accelerate the vesting of all of the unvested options held by Mr. New. On the other hand, if Mr. New is still employed by the Company on the one-year anniversary of the change-in-control, the Company will pay him a bonus equal to one times his annual base salary and bonus. Following the termination of his employment with the Company, Mr. New has agreed not to compete with the Company or solicit the Company's employees or customers for two years.

The Company entered into an employment agreement with Mr. Carr on November 30, 2000 and amended it on April 1, 2001. Under this agreement, Mr. Carr is eligible to receive an annual bonus of up to 35% of his base salary upon attaining mutually agreed upon objectives relating to the Company's performance, and a potential additional amount of bonus for exceeding the objectives. Upon termination of his employment by the Company for reasons other than disability, death or cause, Mr. Carr will receive a pro rata portion of his bonus for the year in which the termination occurs and his base salary for a period of 12 months. If the Company experiences a change-in-control, the Company will pay Mr. Carr a bonus equal to one times his base salary and accelerate the vesting of all of the unvested options held by Mr. Carr. If

Mr. Carr's employment is terminated within one year after a change-in-control, the Company will also pay Mr. Carr a pro rata portion of his bonus for the year in which the termination occurs plus a lump sum payment equal to two times his annual base salary and accelerate the vesting of all of the unvested options held by Mr. Carr. On the other hand, if Mr. Carr is still employed by the Company on the one year anniversary of the change-in-control the Company will pay him a bonus equal to one times his base salary. Following the termination of his employment with the Company, Mr. Carr has also agreed to neither compete with the Company for one year nor solicit its employees or customers for two years.

The Company assumed obligations of an employment agreement with Dr. Levin, in his capacity as an Affiliated Physician, as of June 30, 1996 in connection with the Company's acquisition of Derrick and Associates. On August 12, 1999, the Company entered into an Executive Retention Agreement with Dr. Levin. On June 1, 2001, the Company entered into an Amendment to Employment and Retention Agreements with Dr. Levin that amended the first two agreements. Pursuant to the Company employment agreements with Dr. Levin, he is eligible to receive an annual bonus of up to 35% of his base salary upon attaining mutually agreed upon objectives relating to the Company's performance, and a potential additional amount of bonus for exceeding the objectives. Upon termination of his employment by the Company for reasons other than disability, death or cause, Dr. Levin will receive a pro rata portion of his bonus earned for the year in which the termination occurs and his base salary for a period of 12 months and benefits for a period of 18 months. If the Company experiences a change-in-control, the Company will pay Dr. Levin a bonus equal to two times his base salary and accelerate the vesting of all of the unvested options held by Dr. Levin. If Dr. Levin's employment is terminated in connection with a change-in-control or within one year after a change-in-control, the Company will also pay Dr. Levin a pro rata portion of his bonus for the year in which the termination occurs plus a lump sum equal to one times his base salary plus the cost of 18 months of benefits and accelerate the vesting of all of the unvested options held by Dr. Levin. On the other hand, if Dr. Levin is still employed by the Company on the one year anniversary of the change-in-control, the Company will pay him a bonus equal to one times his base salary. Following the termination of his employment with the Company, Dr. Levin has also agreed not to compete with the Company or solicit its employees or customers for two years. In November 2001, Dr. Levin resigned his position as Chief Operating Officer and became the Corporate Vice President and a practicing pathologist at one of the Company's operations.

The Company entered into an employment agreement with Mr. Marsh effective April 1, 2001, pursuant to which Mr. Marsh is eligible to receive an annual bonus of up to 35% of his base salary upon attaining mutually agreed upon objectives relating to the Company's performance, and a potential additional amount of bonus for exceeding the objectives. Upon termination of his employment by the Company for reasons other than disability, death or cause, Mr. Marsh will receive a pro rata portion of his bonus for the year in which the termination occurs and his base salary and benefits for a period of 12 months. If the Company experiences a change-in-control, the Company will pay Mr. Marsh a bonus equal to one and a half times his base salary and accelerate the vesting of all of the unvested options held by Mr. Marsh. If Mr. Marsh's employment is terminated within one year after a change-in-control, the Company will also pay Mr. Marsh a pro rata portion of his bonus for the year in which the termination occurs plus a lump sum equal to one and a half times his base salary plus the cost of 12 months of benefits and accelerate the vesting of all of the unvested options held by Mr. Marsh. On the other hand, if Mr. Marsh is still employed by the Company on the one year anniversary of the change-in-control, the Company will pay him a bonus equal to one times his base salary. Following the termination of his employment with the Company, Mr. Marsh has also agreed to neither compete with the Company for one year nor solicit its employees or customers for two years.

The Company entered into an employment agreement with Dr. Smith, in his capacity as an Affiliated Physician, as of December 1, 1997, in connection with the Company's acquisition of Laboratory Physicians in Jacksonville, Florida. On June 1, 2001, the Company and Dr. Smith amended this agreement to change his title from "Medical Director of the Jacksonville Division" to "Executive Vice President of Genomic Strategies and Chief Medical Officer." Upon his termination because of death or disability, the Company will pay Dr. Smith 60 days salary. If Dr. Smith is terminated without cause, the Company will pay him one year salary. If the Company experiences a change-in-control, all of Dr. Smith's unvested options shall become vested. If Dr. Smith's employment is terminated within one year after a change-in-control, the Company will pay Dr. Smith a lump sum equal to one times his base salary and accelerate the vesting of all of the unvested options held by Dr. Smith. Dr. Smith has agreed not to compete with the Company or solicit employees or customers from the Company for two years following the termination of his employment unless the Company terminates him without cause.

The Company entered into an employment agreement with Mr. Billington on November 30, 2000 and amended it on April 1, 2001. Under this agreement, Mr. Billington is eligible to receive an annual bonus of up to 30% of his base salary upon attaining mutually agreed upon objectives relating to the Company's performance, and a potential additional amount of bonus for exceeding the objectives. Upon termination of his employment by the Company for reasons other than disability, death or cause, Mr. Billington will receive a pro rata portion of his bonus for the year in which the termination occurs and his base salary for a period of 12 months. If the Company experiences a change-in-control, the Company will pay Mr. Billington a bonus equal to one times his base salary and accelerate the vesting of all of the unvested options held by Mr. Billington. If Mr. Billington's employment is terminated within one year after a change-in-control, the Company will also pay Mr. Billington a pro rata portion of his bonus for the year in which the termination occurs plus a lump sum payment equal to one times his annual base salary and accelerate the vesting of all of the unvested options held by Mr. Billington. Following the termination of his employment with the Company, Mr. Billington has also agreed to neither compete with the Company for one year nor solicit its employees or customers for two years.

The Company entered into an employment agreement with Mr. Fuller effective April 1, 2001, pursuant to which Mr. Fuller is eligible to receive an annual bonus of up to 35% of his base salary upon attaining mutually agreed upon objectives relating to the Company's performance, and a potential additional amount of bonus for exceeding the objectives. Upon termination of his employment by the Company for reasons other than disability, death or cause, Mr. Fuller will receive a pro rata portion of his bonus for the year in which the termination occurs and his base salary and benefits for a period of 12 months. If the Company experiences a change-in-control, the Company will pay Mr. Fuller a bonus equal to one times his base salary and accelerate the vesting of all of the unvested options held by Mr. Fuller. If Mr. Fuller's employment is terminated in connection with a change-in-control or within one year after a change-in-control, the Company will also pay Mr. Fuller a pro rata portion of his bonus for the year in which the termination occurs plus a lump sum payment equal to one times his annual base salary plus the cost of 12 months of benefits and accelerate the vesting of all the unvested options held by Mr. Fuller. On the other hand, if Mr. Fuller is still employed by the Company on the one-year anniversary of the change-in-control, the Company will pay him a bonus equal to one times his base salary. Following the termination of his employment with the Company, Mr. Fuller has also agreed to neither compete with the Company for one year nor solicit its employees or customers for two years.

Each of the Named Executive Officers holds options to purchase Common Stock granted under either the Company's Amended and Restated 1996 Stock Option Plan or the Company's 2001 Stock Option Plan. In addition to other events, such options generally become fully exercisable upon: (i) a merger, consolidation, reorganization, liquidation, or dissolution in which the Company does not survive; (ii) a sale, lease, exchange or other disposition of all or substantially all of the Company's property or other assets; (iii) certain specified changes in control of the Company.

Long-Term Incentive and Pension Plans

The Company does not have any long-term incentive or pension plans.

Compensation Committee Interlocks and Insider Participation in Compensation Decisions

From the beginning of 2001 through March 2001, Messrs. Roberts and Stamps were the members of the Compensation Committee of the Board of Directors. From March 2001 to December 2001, Messrs. Gibson and Stamps were the members of the Compensation Committee. In December 2001, Mr. Stamps resigned from the Board of Directors, and Mr. Kelly joined the Board of Directors and the Compensation Committee with Mr. Gibson for the remainder of 2001. All compensation decisions affecting Mr. New were approved by the Compensation Committee and by the Company's Board of Directors, except for Mr. New.

Director Compensation

The Company pays each director who is not an employee a retainer of $10,000 per year plus $1,500 for each meeting of the Board of Directors, and $500 for each meeting of a committee of the Board of Directors, attended in person. In addition, each director who is not an employee of the Company receives an option to purchase 5,000 shares of Common Stock under the Company's 1996 Director's Stock Option Plan in connection with his or her initial election to the Board of Directors and is eligible to receive discretionary grants of options to purchase additional shares from time to time thereafter. During 2001, the Company made a discretionary grant of 4,000 stock options, at an exercise price of $24.95, to Dr. A. Renschler. The Company also reimburses all directors for out-of-pocket expenses incurred in connection with the rendering of services as a director.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this amended Report to be signed on its behalf by the undersigned, thereunto duly authorized, in Riviera Beach, Florida, on June 28, 2002.

AMERIPATH, INC.

/s/ Gregory A. Marsh

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Gregory A. Marsh,
Vice President, Chief Financial Officer
and Secretary