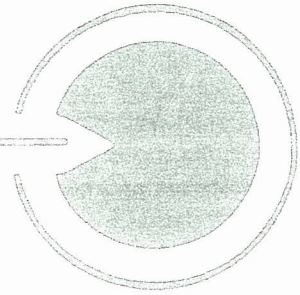


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ADA BAILS OUT ON DENTAL AMALGAM - LEAVES DENTISTS HANGING!

A civil lawsuit has been filed in Santa Clara, California, by a plaintiff claiming that he sustained injuries stemming from exposure to the mercury contained in his dental amalgams. He named as defendants his treating dentist, two amalgam manufacturers, an amalgam distributor, and the American Dental Association (ADA). The ADA, abandoning its frequently stated obligation to practicing dentists and the public health, has adroitly eliminated itself from responsibility.

In a legal brief filed with the court, attorneys for the ADA made the following argument: **"The ADA owes no legal duty of care to protect the public from allegedly dangerous products used by dentists. The ADA did not manufacture, design, supply or install the mercury-containing amalgams. The ADA does not control those who do. The ADA's only alleged involvement in the product was to provide information regarding its use. Dissemination of information relating to the practice of dentistry does not create a duty of care to protect the public from potential injury."** [W.H. Tolhurst vs. Johnson & Johnson Consumer Products, Inc.; Engelhard Corp.; ABE Dental, Inc.; The American Dental Association, et al. In the Superior Court of the State of California, In and For the County of Santa Clara. Case No. 718228]

The Court agreed with the ADA and dismissed it from the case, leaving the defendant dentist, manufacturers, and distributor adrift. This information, if it ever reaches them, should send chills down the spines of amalgam-using dentists. In the face of ever increasing scientific documentation casting doubt on the safety of dental amalgam, the only defense for its use has been the unwavering support of organized dentistry. This support has functioned rather like a security blanket, ostensibly offering assurance of protection. Now, comes the revelation that - in a court of law - organized dentistry washes its hands of legal responsibility for the potential adverse effects from the use of dental amalgam. The ADA has also issued formal notification that, as a voluntary professional organization, it has no legal authority to regulate the use of any dental material (ADA. Letter from Executive Director J.M.

Coady, D.D.S., 19 Feb 1985). Further, the ADA has admitted that there is no scientific documentation establishing the safety of dental amalgam and the defense of safety is based only on the fact that it has been used for over 150 years (ADA, Division of Scientific Affairs. When Your Patients Ask About Mercury in Amalgam. JADA, 120:395-8, 1990).

The hope that use of dental amalgam can be defended on the basis that it is a legally approved dental device, accepted and classified by the Food and Drug Administration (FDA), is also a hollow dream! Contrary to popular belief, the FDA has never accepted and classified mixed dental amalgam. Instead, the FDA has accepted "Dental Mercury" and "Amalgam Alloy" as "Safe and Effective" dental devices (Food and Drug Administration. Dental Devices: General Provisions and Classification of 110 Devices: Final Rule. Federal Register, 52(155):30082-30106, 12 Aug 1987). In 1993, in the widely

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acknowledged Public Health Service (PHS) document on dental amalgam, the FDA admitted that it had never accepted and classified mixed dental amalgam (United States Public Health Service. Dental Amalgam: A Scientific Review and Recommended Public Health Service Strategy for Research, Education and Regulation. Committee to Coordinate Environmental Health and Related Programs. Regulatory Work Group Report (FDA), Pages V1-2, 1993).

Interestingly, the ADA also refuses to certify mixed dental amalgam. Like the FDA, the ADA certifies "Dental Mercury" and "Amalgam Alloy" separately, not requiring biocompatibility testing for either product (American Dental Association. ANSI/ADA Specification No. 1 "For Alloy for Dental Amalgam"; ANSI/ADA Specification No. 6 "For Dental Mercury." 211 E. Chicago Ave., Chicago, IL 60611). It should not surprise anyone that the Chairman of the FDA Dental Device Panel that recommended this policy to the FDA in 1980 was also the Director of the ADA Council on Dental Materials, Instruments and Devices (CDMIE) at the time (Food and Drug Administration. Medical Device Classification Procedures. Federal Register, 40(97):21848-21851, 19 May 1975).

This same person - John W. Stanford, Ph.D. - has written a letter stating that dental amalgam is a "reaction product" manufactured by the dentist (ADA. Letter from John W. Stanford, Ph.D., Director, Council on Dental Materials, Instruments and Equipment, 22 May 1986). Therefore, according to Dr. Stanford, mixed dental amalgam cannot be certified by the ADA and is solely the responsibility of the dentist. Once again not surprisingly, the FDA has also put the same wording into writing (Food and Drug Administration. Letter from Lillian Yin, Ph.D., Director, Division of Ob-Gyn, ENT, and Dental Devices, Office of Device Evaluation, 2 April 1991). The ADA, by the way, has not hesitated to certify other "reaction products," such as composites, cements and impression materials.

All of this adds up to one conclusion, if there ever is a legal liability for placing dental amalgam into humans, the practicing dentist has been left holding the bag! This is further compounded by another factor. The FDA has categorized mercury as a "drug" in its regulations for First Aid Materials. Since scientific documentation has clearly proven that mercury is released from in vivo dental amalgam on a daily basis and does accumulate in human tissues over time, the placement of dental amalgam constitutes implantation of a time-released, highly toxic drug into humans. This particular drug, mercury, has been scientifically proven to be more neurotoxic than lead, cadmium, or even arsenic (Sharma, RP; Obersteiner, EJ. Metals and Neurotoxic Effects. J Comp Pathology, 91:235-244, 1981b). Legal precedent has established that in any other medical circumstance, this cannot be done without informed consent.

The statement "the ADA owes no legal duty of care to protect the public from allegedly dangerous products used by

dentists," which was filed in the legal brief by the ADA, raises another important question. That is, who does have the legal duty of care to protect the public? The answer is obvious - besides the practicing dentists themselves - the Boards of Dentistry of the several states! This has been established by law, by the State Dental Practice Act in each state.

To this point, Boards of Dentistry in many states have totally ignored the burgeoning published scientific evidence questioning the safety of dental amalgam. Their argument has been, solely and exclusively, the position of organized dentistry. The ADA has even published encouragement to Boards of Dentistry to discipline dentists opposed to the use of dental mercury (ADA. 1986 Annual Session. JADA, 114:23, Jan 1987).

Now that the ADA has formally and legally removed itself from responsibility for the use of dental amalgam, the Boards of Dentistry have no defense for disciplining mercury-free dentists. Indeed, in view of the FDA's refusal to accept and classify dental amalgam, the Boards are faced with defending punishment for opposition to a dental device that has no legal acceptance.

In view of the increasing tendency for Dental Boards in some states to discipline mercury-free dentists, the situation with the Boards is especially important. Some dentists have been severely, and tragically, punished.

Instead of disciplining dentists opposed to dental amalgam, the Boards of Dentistry actually have a legal duty of care to protect the public from allegedly dangerous products used by dentists. This duty has been established by law in each state!

Unfortunately, these same laws have clauses obviously designed to protect the Boards (and the dental establishment). For example, Board members are usually immune from civil prosecution, unless "malice" can be clearly proven. As a result, the Boards of Dentistry have evolved into a conception that they are above the law. They believe, quite apparently, that they can do whatever they wish, so long as it is in accordance with organized dentistry.

Now, in the case of dental amalgam, this "security blanket" from organized dentistry has been eliminated. The Boards of Dentistry must now face the prospect of addressing the documented scientific evidence on amalgam-derived mercury exposure without the benefit of supporting scientific documentation or establishment position.

Contrary to the belief of members of the Boards, they are not above the law. They are answerable to State Law, through the Legislature and the Governor of the State! If a Dental Board disciplines a dentist simply because of opposition to chronic mercury exposure from dental amalgam, the case can be reported to the Governor and to the State Legislature. The Board must then defend its actions from charges of malfeasance and misfeasance in office, without benefit of scientific documentation or the support of organized dentistry.