

# BIO-PROBE

# NEWSLETTER

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## STATE COURT OVERTURNS DENTAL BOARD!

In a dramatic decision establishing legal precedence, a State Court has overruled a State Dental Board's disciplinary action against a mercury-free dentist. The Court stated that the Board of Dentistry provided no reasons or factual data for its decision to severely discipline the dentist, and, further, expressly stated that it relied upon material outside the evidentiary record. The Court also determined that the BOD violated State constitutional requirements and principles of due process of law, as well as the Board's own rules and further held that the Board's actions were arbitrary and capricious.

This momentous action could signal the beginning of a new era in the professional controversy over the use of mercury/silver amalgam dental fillings. Accordingly, a look at the key issues faced by the dental profession, and particularly the State Dental Boards, is in order.

As a point of fact, the practice of mercury-free dentistry is legal! There is no doubt that a dentist has a right to not place amalgam fillings in patients. Why then are mercury-free dentists being



disciplined by State Dental Boards? The issue is the removal of "clinically serviceable" amalgam fillings, or rather the rationale for doing so.

Clearly, clinically serviceable amalgam fillings can be removed. Legions of dentists have done so, and continue to do so to replace the amalgams with gold fillings. This is professionally acceptable. It is also professionally acceptable to replace clinically serviceable amalgam fillings for "cosmetic" reasons. Amalgam fillings can also be removed for health reasons, providing it is done only upon patient request or the recommendation of a physician. In effect, anybody except a dentist can recommend the removal of mercury fillings for health reasons!

The issue, therefore, is only what a dentist can or cannot say to a patient about amalgam fillings. A dentist can tell a patient that mercury exposure from dental amalgam is harmless. The dentist can even say that "hundreds" or even "thousands" of published studies have proven the safety of dental amalgam or that mercury is "locked" into dental amalgam, even though these statements are patently false. A dentist cannot say that published peer reviewed scientific studies have questioned the safety of dental amalgam, even though this is true.

The discipline of dentists, for whatever reason, rests with State Dental Boards. The real question is "who determines the criteria for the discipline of dentists?" Each individual member of a State Dental Board decides that for him/herself. In the case of the controversy over the safety of dental amalgam, it is clear that the position of Dental Boards has been determined by organized dentistry. Amazingly, the foundation for the position of organized dentistry on the safety of dental amalgam is the fact that the material has been used for over 150 years, a position that is hardly scientific.

One of the most tragic aspects of the controversy over the use and safety of mercury/silver amalgam dental fillings has been the impact of disciplinary actions by State Dental Boards against mercury-free dentists. Several mercury-free dentists have had their licenses revoked or indefinitely suspended. This is an unreasonable price to pay; loss of income and future

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potential for income after years of education and expense in obtaining the professional degree and establishing a practice, in addition to the considerable expense for legal defense. Other dentists have been less severely punished, although the legal expense is still there, accompanied by the overwhelming emotional price.

Of even greater tragedy, is the fact that these attacks and punishments have been financed by the taxpayers of the state! Members of Dental Boards, as well as those of the State Attorney offices, are public employees. As such, all expenses incurred in investigating and disciplining mercury-free dentists, including salaries, are paid by taxpayer dollars. On the other hand, the dentist must finance his own defense, and pay the price for whatever discipline is applied. Indeed, as a taxpayer, the dentist is helping to finance the attacks against him/her. One must question, therefore, if opposition to mercury dental fillings is the will of the taxpaying public, or are the Dental Boards serving the interests of organized dentistry, contrary to the will of the taxpayers financing their efforts. Recent evidence indicates that the latter is true.

### STATUTORY OBLIGATIONS OF DENTAL BOARDS

Recognition of the statutory obligations of State Dental Boards is now of paramount importance. Each state has a "Dental Practice Act", which may vary somewhat in title and which has a specific numerical designation in each state. This Act specifically charges the State Dental Board (which may also have name variations in different states) with protecting the public health, safety and welfare in matters regarding dentistry. In addition, each state has statutory "Administrative Procedures" establishing policies and procedures for state agencies.

In view of the mounting scientific evidence questioning the safety of mercury exposure from amalgam dental fillings, the State Dental Boards are now facing a dilemma. In the past, the actions of the Boards regarding dental amalgam have been virtually arbitrary, being based solely upon the dictates of organized dentistry. Now, several Boards are being challenged, pitting documented science and government standard versus professional "opinion."

Members of State Dental Boards have functioned under the belief that they are beyond reproach, because they believe that they are immune from civil prosecution. This is not necessarily so! In some states Dental Boards may be subject to civil prosecution if it can be proven that their actions were based upon bias or malicious intent. Although it is not easy to prove bias or malicious intent, the increasing scientific documentation and governmental activity questioning dental amalgam mercury is making it increasingly difficult to defend its use on supportable grounds. In addition, if Dental Board actions are contrary to their statutory obligations they may also be subject to the potential for charges of malfeasance and misfeasance in office, as they are duly constituted public officials. Some states even have remedies for "arbitrary or capricious" actions of regulatory boards.

### USPHS SETS STANDARD/ DETERMINES AMALGAM MERCURY A RISK TO PATIENTS!

Now the question becomes: "Are the State Boards of Dentistry fulfilling their statutory obligation to protect the public health, safety and welfare regarding exposure to mercury from amalgam dental fillings?" The answer is derived from awareness of the 1994 United States Public Health Service (USPHS) determination: "Thus, both MRLs are below estimated exposure levels from dental amalgam." [USPHS, ATSDR. Toxicological Profile for Mercury: Update. TP-93/10, page 125.]

In this document, the USPHS established its "Minimal Risk Level (MRL)" for chronic and acute exposure to mercury vapor for the general population (as distinguished from the 40-hours per week exposure for healthy adult workers limitation of the OSHA Workplace Standard). The chronic exposure MRL is 0.014 mcg Hg/m<sup>3</sup> air, which the USPHS calculated to equal 0.28 mcg Hg/day intake; while the acute exposure MRL is 0.02 mcg Hg/m<sup>3</sup> air, which translated to 0.4 mcg Hg/day intake. The USPHS made their comparison to the conservative dental estimates of daily intake of amalgam mercury, which were found in the 1993 CCEHRP document. The amalgam mercury daily intake determined by medical experts exceeds USPHS MRLs even more.

The USPHS Standard is not an opinion, a "committee consensus," or even open to interpretation! It is a United States Standard for the general population! Thus, the United States Government has determined, and ruled, that the continual exposure to mercury from amalgam fillings is not without risk to patients. It is, therefore, the statutory obligation of State Boards of Dentistry to inform the citizens and dentists of their state of this risk! Further, the previous "consensus reports" from sub-units of USPHS, such as the Food and Drug Administration and the National Institutes of Health/National Institute of Dental Research, have now been superseded and rendered obsolete.

### DENTAL BOARDS INFORMED

The International Academy of Oral Medicine and Toxicology (IAOMT) has taken steps to formally record that members of State Boards of Dentistry are aware of the USPHS 1994 determination. Packages were sent to individual members of Boards of Dentistry (BOD) in 39 states (34 by certified mail/return receipt), starting in August of 1995. Besides the USPHS information, BOD members were also provided with; 1) the 1992 American Dental Association (ADA) Court pleading that "the ADA owes no legal duty of care to protect the public from allegedly dangerous products used by dentists", 2) the April 1995 FASEB J. article portraying the published science questioning the safety of dental amalgam and describing the widening gap between medical scientists and the dental profession, 3) the June 1995 letter from the Canadian Dental Association to its members warning of the forthcoming Health Canada report which may call for a limitation of amalgam fillings allowed for its citizens, 4) the 1993 statements of the U.S. Food and Drug Administration (FDA) that they have never evaluated and classified mixed dental amalgam as an