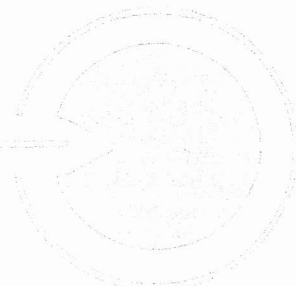


# BIO-PROBE

# NEWSLETTER



Volume 11

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American  
Dental  
Association

ADA

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August 10, 1995

Mr. Sam Ziff  
Editor and Publisher  
Bio-Probe, Inc.  
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Dear Mr. Ziff:

This replies to your letter of July 20, 1995 concerning the article that appeared in the July 1995 issue of the *Bio-Probe Newsletter*. I am familiar with the litigation which is the subject of that article.

As a preliminary matter, I should note that it is common in the publishing business to solicit comment on articles before they are published, not after. However, the following information is provided in the hope it will be of interest to your readers.

The July 1995 issue of the *Bio-Probe Newsletter* reported on a lawsuit pending in Santa Clara, California that was brought by a patient who claimed he was injured as a result of mercury-containing dental amalgams. The ADA was one of defendants named in the lawsuit. The Superior Court for the County of Santa Clara dismissed the ADA from the lawsuit in January 1993 on the ground that because of public policy considerations the ADA had no legal duty to the plaintiff in this case.

The ADA is a voluntary association whose object is to encourage the improvement of the health of the public and to promote the art and science of dentistry. One way the Association carries out this object is by disseminating scientific information to the profession on a wide variety of dentally-related topics, including dental amalgam. The ADA takes the position, based on currently available scientific evidence, that dental amalgam is a safe and effective restorative material, except in the case of the rare patient who is allergic to one of its components. The ADA's position is consistent with the views of U.S. Public Health Service and its agencies, including the Food and Drug Administration and National Institute of Dental Research.

Others have different views. They are free to communicate their views to the profession in any number of ways. For

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example, the same issue of "Bio-Probe Newsletter" that discusses the Santa Clara lawsuit contains numerous articles critical of the use of dental amalgam and alerts the reader to several seminars and symposia devoted to the issue.

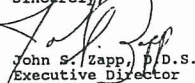
The concept of free speech is key to the court's decision in the Santa Clara case. In its opinion, the court stated:

To subject Defendant Association to liability would be, in this Court's opinion, contrary to public policy which the Court perceives to be the promotion rather than suppression of the free flow of scientific information directed to the practicing membership of the professional community to which the Defendants' publication are directed, i.e., professional dentists. Otherwise stated, to impose a duty/liability in this case would effectively suppress the publication of scientific literature, controversial or not, not only with respect to the members of this professional association but likely with respect to the publications of other professions such as physicians, attorneys, pharmacists and accountants.

It is a fundamental tenet of free speech that truth is most likely to be discovered in the free marketplace of competing ideas, rather than in courts of law. The ADA makes no apology for defending the free exchange of scientific information on the safety of dental amalgam.

I hope this information is helpful. All future media inquiries should be directed to the ADA's Office of Media Relations at (312) 440-2855.

Sincerely,

  
John S. Zapp, Ph.D.S.  
Executive Director

JSZ:es

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## ADA RESPONDS TO BIO-PROBE!

In the July 1995 issue (Vol. 11, No. 4), the Bio-Probe Newsletter featured the news that the American Dental Association (ADA) declared the following in a Court of Law: "The ADA owes no legal duty of care to protect the public from allegedly dangerous products used by dentists, etc." After discussion with numerous members of the ADA, Bio-Probe was unable to find any members that were aware of that court declaration. We had even received reports (undocumented) that officers in the ADA believed that our report was false. In

view of the absence of awareness of the ADA action, Bio-Probe formally requested a response from the ADA, for publication in the September Newsletter issue. A letter, dated 10 August 1995, was received from John S. Zapp, D.D.S., the Executive Director of the ADA. That letter, in its entirety appears above.

BIO-PROBE COMMENT: Statements contained in the letter from Dr. Zapp, along with those of the ADA in the Court and from the Court itself, raise some interesting, if not critical issues:

1. Dr. Zapp confirmed the ADA position stated in Court and acknowledged that he was aware of the court case (Para. 1), but did not address why the membership of ADA had not been informed of the ADA declaration in court, which was the specific concern of Bio-Probe. This omission demands concern over the motive of ADA for not revealing its vitally important court declaration to its membership, as well as the dental profession generally.

2. While pointing out that "the ADA had no legal duty to the plaintiff in this case" (Para. 3), Dr. Zapp emphasized the ADA's continuing support for the safety and effectiveness of dental amalgam (Para. 4). This indicates that while the ADA encourages dentists to use dental amalgam, legal liability belongs only to the dentist, manufacturers and distributors if the ADA is wrong about its safety. It would seem, therefore, that "this case" should more accurately be stated as "any case."

3. Dr. Zapp states that the ADA position on the safety of dental amalgam is consistent with the U. S. Public Health Service (USPHS) and its agencies. This is clearly inaccurate. In 1994, the U. S. Public Health Service, through its Agency for Toxic Substances and Disease Registry (ATSDR), published its "Toxicological Profile for Mercury" update. New Minimal Risk Levels (MRL's) for chronic and acute general population exposures to mercury vapor were established and **calculated to be 0.28 and 0.40 micrograms of mercury per day, respectively.** The ASTDR document on page 125 states **"both MRL's are below estimated exposure levels from dental amalgam."** This clearly establishes that the United States Public Health Service considers mercury exposure from dental amalgam to present a risk to patients and renders all previous positions of USPHS and its agencies obsolete and invalid.

4. Dr. Zapp defines the objectives of the ADA as "to encourage the improvement of the health of the public and to promote the art and science of dentistry." (Para. 4) These two goals could very well be conflicting in regard to its policies on dental amalgam. In 1984, the ADA formally admitted that patients with amalgam fillings are chronically exposed to amalgam-derived mercury. Now, the USPHS declares that

exposure to be well above its MRL, clearly establishing that the use of amalgam does not improve the health of the public.

On the other hand, the ADA, in its efforts to promote the art and science of dentistry, has clearly been instrumental, if not paramount, in encouraging and promoting the use of dental amalgam. The influence of the ADA in establishing the use of dental amalgam as a "standard of care" for the dental profession is well documented and undeniable. The ADA has published its opinion that dental amalgam is both safe and effective numerous times. In 1987 the ADA altered its "Principles of Ethics and Code of Professional Conduct" to declare the advocacy of the removal of dental amalgam as a means of eliminating the daily exposure to mercury to be unethical, and published encouragement that dentists who do so be disciplined by Dental Boards. This, coupled with and the fact that its membership includes approximately 74% of the dental profession clearly establishes its influence on the use of dental amalgam as the "standard of care" for the dental profession.

5. The statement that "it is common in the publishing business to solicit comment on articles before they are published, not after" came as quite a surprise. The ADA has never requested pre-publication comment from Bio-Probe on any of the numerous articles on dental amalgam it has published in JADA or the ADA News. Is Dr. Zapp establishing a new policy for ADA that will be open to all interested parties?

6. Finally, we reserve the most important topic for last! The comments of Dr. Zapp, and those of the Court itself, clearly establish support for "freedom of speech" on the amalgam controversy. Dr. Zapp even declares that "the ADA makes no apology for defending the free exchange of scientific information on the safety of dental amalgam." In point of fact, this contradicts the 1987 addition on dental amalgam to the ADA "Principles of Ethics and Code of Professional Conduct." The Boards of Dentistry in every state should be made aware of this current ADA position, along with emphasis that the right of freedom of speech is not constitutionally limited to the American Dental Association. This letter, and court case, provides strong new support for the practice of mercury-free dentistry in case of challenges by Boards of Dentistry. In the event that a "scientific information" restriction be utilized, remember the formal position of the ADA on dental amalgam published in JADA in 1990, whereby the ADA states that the "strongest support" for the safety of dental amalgam is that so many have been placed for over 150 years. That position could hardly be characterized as scientific; it is certainly anecdotal to the extreme!

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