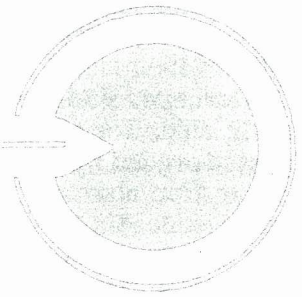


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FLORIDA DENTAL BOARD RETREATS!

On 9 August 1997, a Probable Cause Panel of the Florida Board of Dentistry (BOD) dismissed its charges against mercury-free dentists Dr. Michael F. Ziff and Dr. Milton L. McIlwain! This culminated an attack against Dr. Ziff and Dr. McIlwain that had lasted for three and one-half years. Lead attorneys for the defendants were Charles G. Brown for Dr. McIlwain and Mark A. Dresnick and Sean M. Ellsworth for Dr. Ziff, with able assistance from attorneys James M. Love, James S. Turner and Robert E. Reeves.

Complaints against Drs. Ziff and McIlwain had been filed with the Florida BOD in March and May

of 1994 by two Orlando dentists. The charges claimed false, fraudulent, misleading and deceptive advertising related to the office brochure on amalgam and an article/ad on amalgam in the Orlando newspaper. No patient complaints or treatment were involved.

The Florida BOD was provided with written responses addressing points of law and hundreds of pages of documentation supporting the scientific statements made. Five medical research scientists supplied the Florida BOD with affidavits verifying the scientific legitimacy of the statements made by the defendants. None of the statements in the two materials claimed that any diseases were caused by amalgam mercury or recommended that mercury amalgam fillings should be replaced.

The two investigators for the Agency for Health Care Administration (AHCA) recommended dismissal of the two complaints, even citing a previous BOD decision specifically allowing a Florida dentist to tell of the controversy over the safety of mercury fillings. The AHCA attorney for the BOD also recommended dismissal of both cases.

In spite of all of this, in October of 1996 the Panel of the Florida BOD ruled that there was probable cause for the charges against the two dentists on both cases and recommended that each dentist pay \$6000 and have two license reprimands. The Probable Cause Panel consisted of two dentists and one public member. At this point, the defendants engaged legal counsel who began pleadings and obtained the investigative files.

The BOD attorney indicated a willingness to negotiate to a lesser penalty, but the defendant dentists refused to admit that they had broken any Florida law. Attorneys for the defendants notified the BOD attorney of the exercising of option for an AHCA hearing before an Administrative Law Judge (ALJ). By February of 1997, the BOD attorney had sent notification of returning the cases to the Probable Cause Panel for reconsideration. The Probable Cause Panel scheduled rehearing of the cases for

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April, delayed that until early June, delayed it again until late July, and finally addressed the cases on 9 August 1997.

The hearing on 9 August was bitterly contested by opposing sides for two and one-half hours. The main issue argued by the BOD was that the materials in question alarmed the public. In the Florida Dental Practice Act, this is actually presented in the "Advertising by Dentists" section as: "Is intended or is likely to appeal primarily to a layperson's fears." Defendants' attorneys argued that the materials directly cited published science, made no claims that amalgam mercury caused any specific diseases, and even included the position of the American Dental Association in disclaimer. It is indeed fortunate that the BOD reconsidered its position, as the argument of alarming the public would have served as a precedent preventing doctors from disclosing scientific evidence of risks from smoking, consumption of fatty or high cholesterol foods, or just about any health issue ever encountered. Under the doctrine of equal protection under the law, one product cannot be singled out for legal punishment to the exclusion of all other products falling under the same potential.

The investigative file of the cases revealed some fascinating information. Several communications from the legal department of the ADA were found, which offered the BOD assistance in finding expert testimony against the defendants. The really amazing information found was the expert testimony provided to the BOD by a non-Florida dentist. The fourteen page report sent by the BOD expert focused on the license revocation and civil lawsuit of another mercury-free dentist, barely mentioning the charges against the defendants. The "evidence" submitted by the expert against the defendants consisted of the documents from the cases of the other dentist, plus the 1993 US Public Health Service (USPHS) report on dental amalgam. A court of law has recently cited that the 1993 USPHS document did not conclude that amalgam mercury was harmless.

The vital feature of this victory in Florida is that the statements made by the defendant dentists were derived from published scientific literature, providing strong argument for the principle of commercial free speech. This provided a defense that was so solid that the defendants were willing to go to court if necessary. The attempts of the BOD to enforce discipline for disclosure of valid scientific evidence had to terminate before the court was reached.

This case demonstrates several things. First, it is possible to defend mercury-free dentistry, providing that all representations made can be supported by scientific documentation. It also demonstrates

that honorable dentists can fulfil their moral obligation to their patients and to the public health, again providing that representations made are scientifically sound. It is also helpful, if not essential, that the opposing position for the safety of amalgam be provided with all information. Finally, it can be emphasized that mercury-free dentists must not claim that amalgam mercury causes specific diseases or that a patient's health problems will be cured or relieved by amalgam removal, nor can they attempt to influence patients toward amalgam removal through not generally accepted protocols.

DENTAL BOARD DECLARES NEUTRALITY ON AMALGAM SAFETY!

In the course of the Florida BOD case described above, attorney Charles G. Brown discovered another important document in the investigative file. It happens that the Pennsylvania Board of Dentistry has previously gone on record as declaring its neutrality on the controversy over the safety of dental amalgam.

The precise wording is from Pennsylvania Statutes Ch. 33; 49, 33.47. Replacement of Dental Amalgams - Statement of Policy: "(a) Background. The safety of dental amalgams, specifically, whether the mercury in amalgams causes or contributes to a variety of health problems, has become a recurring issue in dentistry. The Board has neither the resources nor the mandate to make or endorse scientific findings on this issue. It is aware, however, of no conclusive evidence that the removal of amalgams will cure or ameliorate disorders other than those associated with confirmed allergic reactions to mercury. Nonetheless, nonallergic patients may request replacement of amalgam restorations in the belief, or merely the hope, that a medical condition will thereby disappear or improve. Dentists receiving these requests must make ethical and professional decisions compatible with the best interests of their patients."

The Pennsylvania BOD set guidelines to help ensure that patients were treated fairly: "(b) Purpose. Section 4.1(a)(8) and (9) of the act (63 P.S. 123.1(a)(8) and (9)) authorizes the Board to take disciplinary action against licensees who engage in unprofessional conduct or commit acts of negligence, incompetence or malpractice. The replacement of amalgams may implicate both provisions by, for example, generating complaints of unnecessary or even harmful treatment. The Board therefore provides the following guidelines to assist its licensees in conforming their behavior to the requirements of the act. In a disciplinary action brought against a dentist for treatment associated with replacing amalgams, the Board will consider