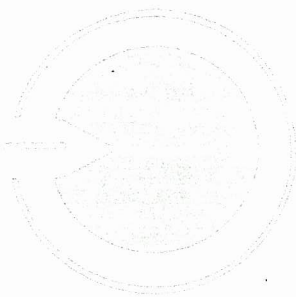


BIO-PROBE

NEWSLETTER



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ARIZONA: LEGISLATURE vs. DENTAL BOARD?

The following letter was sent from the Arizona Legislature to the Arizona Board of Dental Examiners on 27 January 1999.

Dear Members of the Board of Dental Examiners:

We are writing to voice our concern about recent Board actions concerning consumer access to mercury-free dentistry and a well-publicized Board enforcement action against a holistic dentist. We are not taking sides in any Board proceeding. But we feel we have the right to ensure that the Board complies with Arizona laws and that its procedures are fair.

Our concerns fall into four areas: compliance with Arizona statutes, fulfilling promises made to the legislature, allegations of unfair Board procedures, and the upcoming Sunset Review.

Statutes

Last year we enacted a "regulatory Bill of Rights." See ARS 41-1001.01 and amendment to ARS 41-1030. Plainly, the goal of that reform, is to ensure that state agencies write

their regulations through rule making, not adopt new standards through their enforcement actions. A licensee must first be apprised what is legal and what is not. Then if he or she violates the rules, you can surely take enforcement action. As we understand the pending decision against Dr. Terry Lee, Arizona's most outspoken mercury-free dentist, you are doing the opposite. Standards are set for mercury amalgam removal and related issues without any pre-existing rules. Another important law requiring accountability is the Administrative Procedures Act. It permits any citizen to file a petition to a Board and that Board must respond in writing within 60 days (ARS 41-1033). During 1998 the Board received petitions from Representative Debra Brimhall, the Holistic Dentists Association, and from Consumers for Dental Choice, asking for rules on mercury-free dentistry or on holistic dentistry in general. As we understand it, in the latter two cases the President of the Board simply announced a negative decision, and nothing in writing was forthcoming. If this is true, you appear to have ignored the requirement to respond in writing. We are also told that in all three cases there was an announced Board decision without a vote. If this is true, you may have violated the Open Meetings Act, which requires a public vote on all Board decisions.

Finally, the Dental Practices Act requires that you write rules defining the practice of dentistry (ARS 32-1207). All dentists would benefit by such rules.

We take our role as lawmakers seriously and request that you take your role equally seriously by complying with the laws enacted by the Legislature. Could you reply by assuring us you are complying with the Regulatory Bill of Rights, the Administrative Procedures Act, the Open Meetings Act, and the Dental Practices Act?

Promises made to the Legislature

Arizona law does not choose sides between traditional and holistic dentistry, so consumers have the right of access to holistic as well as traditional services. For several years you have assured various committees and individual legis-

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lators that consumers have full access to mercury-free dentistry. Yet the proposed Standards in the Terry Lee matter require dentists to favor mercury amalgams in their communications with patients. We are alarmed that over 100 physicians have written you expressing opposition to these standards because they will harm the efforts of physicians to treat patients with mercury toxicity. We do not expect the Board of Dentistry to take sides in the mercury amalgam debate but apparently over 100 physicians believe you have.

In 1994, you were asked by legislators to adopt disciplinary guidelines so there would be fairness and predictability in the punishments you mete out. Logically, such guidelines will ensure that similar punishments will be given to those who act similarly. But we are told that on November 13 1998, you voted unanimously not to apply those guidelines to Dr. Lee. The Auditor General has criticized the Board of Medicine for doing this very thing - ignoring disciplinary guidelines. Please let us know if you are complying with or disregarding your disciplinary guidelines.

Fair procedures

Several serious allegations about the procedures in the Lee case have been raised, allegations that have caused concern with constituents. We do not want to suggest the allegations are true or false. We would-like you to tell us the answer.

It has been alleged that: (1) Dr. Lee's lawyer became mentally ill during the trial and committed suicide right afterwards, but the Board will not have a hearing to determine if Dr. Lee had adequate representation; (2) the former Board President asked that the Board file charges because he disagreed with Dr. Lee's philosophy of dentistry; (3) a Board member made comments about the merit of this case in the Arizona Republic but has not recused himself; (4) the current Board President testified against Dr. Lee, remained on the case during the preliminary stage, then when it came time to vote, sat at a special table facing Board members and conferred with staff instead of fully recusing himself; (5) not a single patient has asked the Board to take his license, but the Board's prosecutor has asked for it anyway.

Sunset Review

At the end of 1999, this Board is subject to Sunset Review. We would hope that by that time the concerns we have expressed have been fully resolved. Re-authorization of your agency will be much more likely if we are assured you are complying with state statutes and keeping promises made to this body.

[Document signed by sixteen members of the Arizona State Legislature.]

BIO-PROBE COMMENT: The Arizona Board of Dental Examiners had filed charges against the mercury-free dentist in early 1998, claiming that nine

patients complained and were injured. Actually, no patients were injured, excepting one case of lip paresthesia following surgery (a common occurrence in dentistry). In fact, two of the supposed injured patients actually testified FOR the mercury-free dentist. Another testified that she never even wrote a complaint, but that her employer-dentist forced her to sign the letter, then fired her when she went public.

Newspaper coverage has become quite extensive and Arizona citizens have rallied to the cause of the mercury-free dentist, engendering the substantial interest of the Legislature in this case. In spite of all of this, the Arizona Dental Board clearly intended to revoke the license of the mercury-free dentist.

There are several vital points to the letter from the Arizona Legislature that should not be ignored by the Arizona Dental Board or, for that matter, the dental board of any state: 1) The lack or pre-existing rules governing mercury-free dentistry. 2) The obligation of the dental board to set standards by rule making, not by enforcement actions. 3) The requirement to inform dentists in advance as to which actions are legal and which are not. 4) The requirement, by law, for the board to provide written rules defining the practice of dentistry in the state. This all adds up to arbitrary conduct by the dental board outside of the law. It would be wise and valuable for all mercury-free dentists to investigate the Dental Practice Acts in their own states as to the application of these key points.

Late breaking news! On Friday, 19 February 1999, the Arizona Dental Board met to take action on the case. The dentist was represented by attorneys Charles G. Brown and James S. Turner of the Washington, DC law firm of Swankin & Turner (representatives for the Consumers for Dental Choice organization). The Board failed to engender enough votes to revoke, or even suspend, the license of the mercury-free dentist! All they were able to accomplish was a censure with probation. The dentist is free to continue his practice. This event represents a clear victory for patient and dentist choice for mercury-free dentistry against a determined dental board. It is an example of what can be accomplished by a determined dentist, with support from the public and legal counsel that is familiar with the amalgam issue.

DENTAL AMALGAM SYMPOSIUM IN EUROPE

Press release

Dental Amalgams and Heavy Metals: What Risks for Health and the Environment?