

Testimony of Sandy Duffy, J.D.,¹
May 8th, 2003, 2:00 p.m.
Before the Government Reform Committee
Wellness and Human Rights Subcommittee

Chair Burton and other distinguished committee members:

Background.

I am Sandy Duffy. My day job is as a lawyer for Multnomah County, Oregon, the county where Portland is located. I became involved in the mercury-free dental fillings cause when my 48 year-old husband's prostate cancer treatment failed and he was sent home to prepare for the inevitable. With a 7 year-old son, it was not an answer I could accept.

In searching for help for my husband, I learned that mercury suppresses the immune system and the primary source of mercury for humans is mercury amalgam dental fillings. I was astounded. I knew mercury to be a serious toxin and could not believe that the federal government had not done something about a toxic product found in the mouths of 80% of Americans. How could this be?

How to hide mercury in dental fillings.

I now know that my lack of knowledge was not unique. 60% of Americans do not know that there is a controversy over the safety of mercury amalgam. It has been used by dentists for over 170 years, but dentistry, primarily through its lead organization the American Dental Association (ADA), has succeeded in hiding the fact that an amalgam is 50% elemental mercury. How has dentistry accomplished this? In these ways:

- By creating a “tri-partite” pyramid of dental associations: The ADA, state dental associations and local county dental societies where information flows from the top down
- By using the term “silver fillings” and hiding the fact that amalgams are 50% elemental mercury
- By lobbying for state laws that allow state dental associations to prepare a list of proposed dental board appointees from which the governor makes appointments to the state regulatory board

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- By intertwining the ADA with state dental boards. The national organization for state dental boards, the American Association of Dental Examiners, is actually located inside ADA headquarters
- By intertwining the ADA with federal agencies responsible for regulating the safety of dental devices and workplace safety, as well as the one directing federal dental research dollars
- By concerted disinformation campaigns. For example, the “Tripartite dental associations” lobbying efforts at the federal and state levels which assert that there is no evidence that mercury amalgam causes adverse health effects when weight of scientific evidence proves just the opposite
- By adoption of “ethical rules” by dental trade associations and dental regulatory boards which deem it unethical or fraudulent for dentists to tell patients that removal of mercury amalgam dental fillings removes a toxin from the body
- By using dental regulatory boards to prosecute mercury-free dentists for advertising mercury-free dentistry or violating the “ethical rules” by telling patients about mercury toxicity

The “gag order.”

The use of “ethical rules” have been a particularly powerful and effective tool in intimidating mercury-free dentists from informing patients about the existence of mercury in dental fillings, and the risks of such fillings. The ADA led the way for the states’ regulatory boards when it adopted Ethical Rule 5A which declares:

*“removal of amalgam... for the alleged purpose of removing toxic substances from the body, whenperformed solely at the **recommendation or suggestion** of the dentist, is improper and unethical.”*

While the ADA claims that it does not tell dentists not to talk about amalgam, this rule clearly tells a dentist not to **speak** about a specific topic – the removal of amalgam. Mercury-free dentists are concerned that any speech critical of amalgam can be construed by a vigilant dental board as advocating removal of amalgam.

The Oregon Board of Dentistry adopted an even more onerous policy which provided that:

*“It is a **fraud** ... for a dentist to **advocate** to a patient the removal of ... amalgam restorations solely to substitute a material that does not contain mercury ...”*

In Oregon, fraud is a basis for revocation of a dentist’s license. This policy also tells a dentist not to advocate, i.e., not to **speak** on a specific subject – the removal of amalgams.

Last year I was able to enlist the help of the ACLU to challenge this policy of the Oregon Board of Dentistry. The ACLU convinced the Oregon Attorney General’s Office to recommend that the Board rescind its policy because it was an unconstitutional abridgement of free speech. On March 8, 2002, the Board did rescind the policy.

Last week I asked my mercury-free dentist what the rescission of this policy personally meant to him. He asserted that it took away a very effective gag order. He now feels free to advise his patients about the hazards of mercury in dental fillings and safe alternatives. He did not feel he could speak this freely before the rescission of the policy.

And then in May of last year I flew to Des Moines, Iowa, to testify before a legislative committee reviewing administrative rules, which was considering a similar Board of Dental Examiner’s rule. The Iowa rule states that:

*“**Recommending** removal of restorations or removing [them] ... for the alleged purpose of removing toxic substances from the body, when such activity is initiated by the dentist, is an improper and unacceptable treatment regimen.”*

And, again, unacceptable treatment regimens can subject the dentist to license revocation, which has actually occurred in Iowa.

The legislative committee requested an opinion on the constitutionality of the rule from the Attorney General. After intervention by the Iowa ACLU, the Attorney General finally issued an Attorney General’s Opinion which concluded:

“Dentists do have a free speech right to voice a personal opinion and to in good faith counsel patients free of unwarranted governmental intervention. The Dental Board must be cautious in the application of this or a similar rule to avoid encapturing fully-protected speech. In light of the law summarized in this opinion, we advise the Board to reassess the continued viability of subrule 27.7(8)...”

The Iowa Board of Dental Examiners has scheduled a meeting for June 18, 2003, to rescind the Iowa rule.

The Arizona legislature actually took the unprecedented step of sending a letter of reprimand to its Dental Board for its extensive and expensive prosecution of a mercury-free dentist. The Arizona Goldwater Center suggests that the cure to this problem is appointment of mercury-free dentists from mercury-free dental associations to the Dental Board. This will mean wresting the control of appointment lists from the ADA affiliate state dental associations.

The experiences in Oregon, Iowa and Arizona show that the mercury-using majority of dentists have exerted regulatory power to control the free speech rights of mercury-free dentists and interfered with their relationships with their patients in order to protect the majority's unfettered use of mercury as a restorative material. The intended effect of these gag orders is anticompetitive. Mercury-using dentists are limiting the practices of mercury-free dentists who now account for 21-28% of practicing dentists.²

NIDCR research results.

Here is a question which needs to be asked: On the issue of mercury amalgams, are federal agencies protecting the health of citizens or the economic interests of mercury-using dentists? Due to time limits today, I will limit my remarks to just the National Institute of Dental and Craniofacial Research (NIDCR).

In the 1940's the ADA successfully lobbied to get a separate division of the National Institute of Health (NIH) for research related to dentistry. The NIDCR has been safely in the hands of mercury-using dentists ever since. They decide who gets taxpayer research dollars, what topics are researched and what results are published. While the ADA repeatedly claims that there are no credible studies linking mercury amalgam to specific diseases, the NIDCR research data base reveals that it has funded 543 studies related to amalgam since 1972.

I've reviewed the studies performed over the past ten years and only one NIDCR study has been published. Is NIDCR sitting on a mountain of evidence that mercury amalgams are safe and effective? I think not. It would have been published in a timely manner and highly publicized by the ADA. I urge this Committee to request copies of all 543 of these research studies (not abstracts) and to provide mercury-free advocates copies as well to evaluate the quality of the research and the results of the research.

"Silver fillings" brochure.

And, finally, I would like to show you a prime example of the misleading information produced by the ADA for use by practicing dentists to convince their patients about the safety of mercury amalgam when they express concern about the use of mercury in dentistry.

² Christiansen research Institute and Dental Products Magazine.

DISPLAY BROCHURE BLOW UP

The front of the brochure purports to give information about “silver fillings.” In many states it is a violation of the consumer protection laws to describe a product by a component which represents a minor constituent of the product. Since mercury is, by far, the primary ingredient of mercury amalgam dental fillings, this brochure represents an intent to mislead consumers into believing “silver fillings” are primarily composed of the precious metal silver and to hide the substantial toxic mercury content.

The brochure sets out questions a patient might ask about mercury amalgam and the ADA’s responses. I have attached to written copies of my remarks here today, several documents which may prove to be of interest to you, including a table which is essentially a rebuttal of the misinformation contained in this brochure along with citations to supporting documentation.

Conclusion.

The ADA has already made contact with every member of Congress advocating rejection of HR 1680, the Watson/Burton bill which includes a requirement for informed consent before placement of mercury amalgams. The ADA has made it clear that its goal is to continue to keep the American public in the dark about the risks of mercury amalgam.

The scope of this Committee includes Human Rights. I submit that the continued use of mercury amalgam with the complicity of federal agencies is a violation of the Nuremberg Code which prohibits human experimentation without informed consent. The Code has been determined by the NIH to be applicable to its actions, which includes NIDCR. It is disturbingly appropriate to apply the Code to the amalgam issue.

On a happier personal note, my husband had his amalgams removed, went through mercury detoxification, is alive and well, working full-time and involved in many activities with our almost 13-year-old son.

I want to thank you Chair Burton, ranking member Congresswoman Watson, and other Committee members for the opportunity to shine some light on the subject of mercury in dental fillings and to urge you to continue to investigate this important health issue.