

September 2, 2003

Marshall Shragg  
Board of Dentistry  
2829 University Avenue SE- Suite 450  
Minneapolis, MN 55414-3249

Dear Mr. Shragg:

We are writing you seeking clarifications on the policies of the Minnesota Board of Dentistry ("Board") regarding mercury amalgam fillings. On November 25, 1997, your then President, Robert C. Schwegler, stated that dentists are free to conduct mercury free dentistry and that patients are free to choose mercury free amalgams. However, we have received complaints stating that the Board severely sanctions dentists discussing the merits of mercury free dentistry with their patients and that the prohibition has in the past culminated in dentists losing their license.

We are aware of the debate that is fulminating around the use of mercury in dental filings. We also understand the governmental interest in regulating the conduct of dentists and in protecting consumers from aspects of commercial speech by dentists that may be false and misleading. However, the First Amendment is offended when government suppression of speech targets one side of the debate. *First National Bank of Boston v. Bellotti*, 437 U.S. 785-86 (1978). The rationale of United States Supreme Court is that, "[c]ommercial speech not only serves the economic interests of the speaker, but also assist consumers and furthers the societal interest in the fullest possible dissemination of information." *Central Hudson Gas and Electric Co. v. Public Service Commission*, 477 U.S. 561-562 (1980). Thus, if the allegations against the Board of Dentistry are true, it is likely that the board has crossed the appropriate boundaries of the commercial speech doctrine.

We would like you to confirm whether the Board's regulatory activity in this area is limited to the issue of dentist diagnosis of mercury toxicity and not the advocacy of mercury free fillings. We would also like to know if dentists may advertise a mercury free practice and its purported benefits.

Sincerely,

Charles Samuelson  
Executive Director