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LETTER TO THE EDITORS OF HEALTH MATRIX

Peter M. Sfikas[†]

While the American Dental Association (ADA) encourages thoughtful discussions about the science of amalgam and the ADA's position on amalgam, the ADA would be remiss if it did not respond to just a few of the numerous misrepresentations leveled against the ADA in the article, *An Uncertain Risk and an Uncertain Future: Assessing the Legal Implications of Mercury Amalgam Fillings*, by Mary Ann Chirba-Martin and Carolyn M. Welshhans, published Summer 2004.¹

Despite the authors' thinly veiled attempt at objectivity, the uninformed reader of the article is left with but one overarching impression: the ADA is not only partial to the use of dental amalgam at the expense of patients' welfare, but has successfully pressured federal and state government agencies, as well as organized dentistry, to blindly adopt the ADA's position. While the leveling of conspiracy theories has existed since time immemorial, it is disappointing that this latest theory has found a home in this law review journal. Moreover, this erroneous theory is flatly inconsistent with the ADA's activities over the years.

First and foremost, the ADA does not support the use of any one dental filling material over another. Rather, the ADA supports the principle that dentists and their patients should have the ability to select from a wide range of materials that the scientific evidence shows are safe to use, including amalgam, thereby providing the dentist with the ability to best address the unique needs of each patient.

Nonetheless, the authors create the impression that the ADA has a financial stake in the sale of amalgam. Specifically, the authors state, "[t]he ADA therefore lends its dentists' seal of approval to a variety of amalgam products, an action that some challenge as a conflict of in-

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¹ Mary Ann Chirba-Martin & Carolyn M. Welshhans, *An Uncertain Risk and an Uncertain Future: Assessing the Legal Implications of Mercury Amalgam Fillings*, 14 HEALTH MATRIX 293 (2004).

terest because the ADA is allegedly paid for such endorsements.”² Despite the authors’ attempt to avoid responsibility for this statement by pinning it on others, such blame-shifting does not diminish its falsity.

First, what the authors mistakenly refer to as the “dentists’ seal of approval” is the ADA’s Seal of Acceptance program. This program merely certifies that manufactured products have been tested by the ADA and meet its quality standards. To be evaluated for the Seal of Acceptance for a product, a manufacturer must submit the product to the ADA for evaluation.

The authors then convey the impression that a “conflict of interest” exists by repeating the canard that the ADA is paid for its “endorsement” through its Seal program. However, the truth is otherwise. From 1995 to 2002, a manufacturer was required to submit a small fee to help cover the costs of this evaluation. (Manufacturers are no longer required to submit *any* fee to the ADA for the evaluation of a professional product like amalgam.) Because the fee previously charged by the ADA to manufacturers covered *less than half* of the cost of product evaluation, the Seal of Acceptance program did not generate any net revenue for the ADA. Accordingly, the ADA has never been paid as an endorser of amalgam products. In fact, the ADA does not receive any net revenue at all in connection with amalgam.

Second, the authors completely ignore the fact that the ADA places its Seal of Acceptance not only on amalgam products, but on many other types of restorative materials, including composite resin, pit and fissure sealants, endodontic sealing materials, and dental water-based cements. Indeed, the ADA’s website discloses all of the products that receive the Seal of Acceptance. Revealingly, the authors omit this fact from their article, while nonetheless cherry-picking those portions of the ADA’s website that focus on amalgam.

In addition, while the authors characterize the debate over the safety of amalgam as one where, at best, reasonable persons can disagree, nothing can be further from the truth. On the contrary, the overwhelming majority of the scientific community concurs that no credible evidence exists to support the position that amalgam poses a health risk to the non-allergic patient. Indeed, the safety of amalgam was reconfirmed as recently as December 2004 when the Life Sciences Research Office (LSRO) in a review commissioned by the National Institutes of Health (NIH) and Food and Drug Administration (FDA) of the U.S. Department of Health and Human Services (HHS),

² *Id.* at 296.

concluded, “[t]he current data are insufficient to support an association between mercury release from dental amalgam and the various complaints that have been attributed to this restoration material.”³

This finding substantiates what other organizations have found, including the National Council Against Health Fraud, National Multiple Sclerosis Society, and Alzheimer’s Association, specifically that no evidence exists to warrant the discontinuation of dental amalgam.⁴

This scientific consensus notwithstanding, the authors nonetheless state without support, “[t]o date, the United States Government, acting primarily through the FDA, has largely *deferred* to the ADA’s position that mercury amalgams are highly beneficial and pose only slight risks in rare cases.”⁵ (Emphasis added.) The authors have it exactly backwards. The ADA’s position on amalgam stems completely from the review of the scientific literature conducted by federal health agencies. Accordingly, these agencies defer to the science, not the ADA.

The authors also misconstrue the *ADA’s Principles of Ethics and Code of Professional Conduct* (the “Code”), which according to the authors, “reflect the ADA’s suspicions about dentists who advocate mercury removal.”⁶ In particular, Advisory Opinion 5.A.1. states:

Based on current scientific data, the ADA has determined that the removal of amalgam restorations from the non-allergic patient for the alleged purpose of removing toxic substances from the body, when such treatment is performed solely at the recommendation or suggestion of the dentist, is improper and unethical. The same principle of veracity applies to the dentist’s recommendation concerning the removal of any dental restorative material.⁷

³ LIFE SCIS. RESEARCH OFFICE, REVIEW AND ANALYSIS OF THE LITERATURE ON THE POTENTIAL ADVERSE HEALTH EFFECTS OF DENTAL AMALGAM 96 (2004).

⁴ NAT’L COUNCIL AGAINST HEALTH FRAUD, NCAHF POSITION PAPER ON AMALGAM FILLINGS (2002), available at <http://www.ncahf.org/pp/amalgampp.html> (last visited May 16, 2005); NAT’L MULTIPLE SCLEROSIS SOC’Y, NO EVIDENCE THAT DENTAL PROBLEMS OR FILLINGS CAUSE MS (April 2003), available at <http://www.nationalmssociety.org/Sourcebook-Dentistry.asp> (last updated Apr. 2003); ALZHEIMER’S ASS’N, SILVER DENTAL WORK NOT LINKED TO ALZHEIMER’S DISEASE (Oct. 30, 2003), available at <http://www.alz.org/News/03Q4/103003dental.asp> (last visit May 16, 2005). See also Clarkson TW, Magos L, Myers GJ, *The Toxicology of Mercury – Current Exposures and Clinical Manifestations*, 349 NEW ENG. J. MED. 1731 (2003); *The Mercury in Your Mouth*, 56 CONSUMER REPS., 316, 316-19 (1991).

⁵ Chirba-Martin, *supra* note 1, at 298 (emphasis added).

⁶ *Id.* at 299.

⁷ AM. DENTAL ASS’N, *Advisory Opinion 5.A.1.*, in PRINCIPLES OF ETHICS AND

The authors wrongly insinuate that the Code bars informed consent discussions between dentists and their patients. Nowhere is there any wording that prevents dentists from discussing any aspect of any valid treatment option and reasonable alternatives. Such information should be consistent with accepted science and the applicable standard of care governing clinical practice. Advisory Opinion 5.A.1 only states that a dentist who induces a patient to accept treatment by misrepresenting the treatment's therapeutic value is acting unethically. The ADA's ethics position is designed to protect patients from unscrupulous, unsubstantiated claims and misguided treatments. The ethics rule reflects ADA's belief that patients and the public want and expect honest-dealing from their healthcare providers.

In a further attempt to portray the ADA as a multi-headed hydra controlling the conduct of various governmental agencies, the authors suggest that the ADA influences or controls state dental board disciplinary proceedings. However, the authors mistakenly conflate disciplinary proceedings brought before state dental associations and proceedings before state dental boards. Neither the ADA nor the state dental associations have any authority over dental board disciplinary proceedings because these associations are merely voluntary professional associations, not state agencies. Indeed, the author's confusion is reflected in their assertion that "the ADA forbids its dentists from suggesting mercury removal under threat of license suspension."⁸ Of course, because the ADA is not a state agency, it has absolutely no authority to suspend or revoke a dentist's license. Such power is reserved to state dental boards.

In a related manner, the authors imply collusion between the ADA and the state dental boards. While theories on collusion may make interesting reading, dentistry is a science-based profession which uses sound science to guide its decisions. Given that the science continues to support the safety of dental amalgam, is it really surprising that dentists in professional associations and dentists serving on dental boards have taken a similar position on this subject? The authors exhibit a serious lack of understanding of "collusion," at least as used in the antitrust context, and confuse good judgment based upon an examination of the science with "collusion." Their unsupported and unsupportable speculation simply has no place in an article that appears in a scholarly publication.

The authors' inherent bias against the ADA is perhaps most gallingly displayed by their critique of the ADA for bringing a defamation

CODE OF PROFESSIONAL CONDUCT (2005).

⁸ Chirba-Martin, *supra* note 1, at 302.

lawsuit against an attorney whom the ADA alleged libeled the ADA.⁹ Without disclosing any of the relevant facts, the authors state, “[A]fter a Los Angeles attorney sued the ADA on behalf of patient-plaintiffs claiming that mercury amalgam caused autism in children, the [ADA] counter-sued the attorney on the grounds of defamation.”¹⁰ What the authors failed to disclose in the text of their article, however, was that the basis of the lawsuit was several allegedly libelous statements against the ADA *posted on the attorney’s website* for anyone with internet access to view. Of course, unless the reader took the time and effort to obtain a copy of the ADA’s complaint, the reader would inexorably be left with the conclusion that the ADA’s lawsuit was improperly undertaken for retaliatory purposes, rather than to protect the ADA’s reputation and integrity. As you are aware, and as readers should be aware, if the ADA is defamed, it is clearly entitled to assert its legal rights in a court of law. Perhaps most revealing here is the fact that the authors *conveniently fail* to inform readers that the Los Angeles attorney filed a motion to dismiss the ADA’s defamation complaint, and the court *denied the motion*. Misrepresentations and half-truths have no place in these types of articles. This example further illustrates the authors’ undisguised bias against the ADA that is prevalent throughout their article. Unfortunately, this bias compromises the objectivity and hence the quality of the article.

Finally, the authors discuss the amalgam litigation filed across the country, including cases where the ADA was a defendant.¹¹ It bears noting that nearly every case filed against the ADA has been dismissed at the pleadings stage. Indeed, in these cases, the ADA has either been dismissed voluntarily by the plaintiffs or by the courts as a result of a motion to dismiss/strike filed by the ADA.¹²

The above comments by the ADA touch upon just a few of the many misrepresentations, incorrect innuendos, and inaccuracies contained in the dubious quality article prepared by the authors. The ADA was disappointed that the authors failed to take advantage of their opportunity to present a well-researched, non-biased article on amalgam and related legal issues. Aside from the inaccuracies, this article is neither objective nor balanced and fails to enhance a reader’s understanding of the complex issues surrounding the use of dental amalgam. Unfortunately, a reader with minimal background or un-

⁹ *Id.* at 303.

¹⁰ *Id.*

¹¹ *Id.* at 311.

¹² See, e.g., *Botter v. Am. Dental Ass’n*, 124 S.W.3d 856 (Tex. App. 2003); *Murphy v. Aventis Pasteur, Inc.*, 270 F. Supp. 2d 1368 (N.D. Ga. 2003).

derstanding of dental amalgam will be short-changed by the authors' article.