

Another triumph !

By Charlie Brown

Gag Rule Unconstitutional, Says Attorney General of Iowa

In a body blow to the American Dental Association, the Attorney General of Iowa has declared that the state dental board's Gag Rule to be unconstitutional.

The Gag Rule has been the principle method that the ADA, the state dental associations, and their henchmen at the state dental boards have used to stop communications between mercury-free dentists and their patients, and advertising to inform the public about their choices. The Opinion of the Attorney General of Iowa makes clear, however, that restrictions on dentists advertising that they are mercury free, or giving their opinions about the risks of mercury dental fillings, is speech protected under our Constitution.

Iowa Attorney General Tom Miller, in an 18-page opinion issued Dec. 11, 2002, advised the Dental Board to rescind its Gag Rule on dentists who dissent from the ADA's pro-mercury policy. First, the Opinion makes clear that advertising of mercury-free dentistry is legal (p. 10). Second, while agreeing that the Dental Board has the authority to stop fraudulent and misleading solicitations, the rule is too broad. Dentists have the right to offer in good faith unpopular or unconventional advice (p. 12), and the Board may not infringe on dentists giving their personal opinion about mercury in dental fillings. (p. 13). In summary, the concluding paragraph states: Dentists do have a free speech right to voice a personal opinion and to in good faith counsel patients free of unwarranted government intervention.

As with our battle in Oregon, we were aided by the state chapter of the American Civil Liberties Union, who believes the Constitution protects the popular and the unpopular alike. Sandy Duffy, the Portland lawyer who spearheaded the demise of the Gag Rule in Oregon, met with the Governor's lawyer and testified before the Legislature on the issue, as did Iowa DAMS activists Joyce Van Haaften and Mary Davis.

The battle now returns to the Dental Board on January 7. While organized dentistry is pushing for a substitute rule, the Opinion warns:

If circumstances exist under which a dentist could violate the rule and remain compliant with minimum standards of care, even in a minority position, the rule would improperly impose one of multiple permission viewpoints.

Thus, we will now try to show the Board to recognize what the California dental board and many scientific authorities have recognized that mercury dental filings pose a health risk. So a follow-up effort engagement is needed, to ensure the Iowa Board cease its efforts to return to this Constitutionally discredited policy.

Tom Miller, the dean of all state Attorneys General, has a great track record of consumer advocacy. You can thank Attorney General Miller at jambroz@ag.state.IA.us. And advise Mary Ann Newell, bullelkman@aol.com, if you want to write a Letter to the Editor to the Iowa papers.

Dentists, it is time to start telling the public, through advertising and office information, that they are mercury-free. Consumers, it is time we all vote with our feet by patronizing only those dentists who refuse to place toxic material in children and other patients.

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