

Crushing blow to ADA gag rule: federal judge rules for Breiner

The ADA's gag rule is headed to the dustbins of history.

A federal judge in Connecticut has ordered the state of Connecticut to stop harassing Dr. Mark Breiner for criticizing mercury amalgam fillings. Breiner may now advertise and advocate mercury-free dentistry in any public forum, and state why they are such a horrid health risk. See article from today's *Hartford Courant*, below

With a federal judge giving his imprimatur on Dr. Mark's free speech rights, it's clear that mercury-free dentists all over the country should be emboldened to advertise and advocate mercury-free dentistry. We urge you doctors to speak the truth boldly, and if the dental board whines, to show them this article.

The case was decided in First Amendment grounds. We give plaudits to the American Civil Liberties Union of Connecticut, who brought this case. We invite you to express your appreciation to lawyer Annette Lamoreaux, who runs the Connecticut chapter of the ACLU, at AnnetteL@cclu.org

The state of Connecticut also must rightfully pay the ACLU its legal fees. So the dental board's irrational zeal to enforce the gag rule has cost Connecticut taxpayers, who should know that their dental board (like many others) has no regard for them either.

For Dr. Mark Breiner and his lawyer Lou Blumenfeld, it is a hard-fought victory. We salute Mark for his personal courage to stand up to the special interests, and we salute Lou for ensuring Mark continues to practice dentistry and get people well. Let me, too, pay homage to Mark's first lawyer who did such outstanding work, the late Rick Ferris.

The victory is a culmination of a seven-year national project. The ADA's rule of conduct forcing silence on the part of dentists has been one of the greatest impediments to consumers learning the truth about amalgam -- or even learning they are mainly mercury and not "silver." A decade ago, the ADA's monopoly was unchallenged and the dental boards -- it's still hard to believe -- were agents of the ADA, taking licenses from dentists who would not kowtow to the gag rule. Consumers for Dental Choice began a multifaceted grassroots strategy, picking our battles to get us toward victory.

- Late 1990s: In Florida, in Arizona, in Maryland, and elsewhere, we backed dental boards off from wrongfully using their powers to take licenses.
- 1999-01: In California, we petitioned the dental board to end the gag rule. The board appeared to agree, but still would not enforce the Watson law. Led by Anita Vazquez Tibau, our work led to the shutting down of the old dental board in 2001. A chastened new board made clear that dentists have free speech rights.
- 2002-03: With the California dental board shut down over the mercury fillings issue, dental boards began a retreat. In Oregon, Sandy Duffy enlisted the ACLU to lead the fight, who demanded that state Attorney General intercede to get the rule repealed; the strategy worked. In Iowa, the process was lengthier, but the tenacity of local leader Joyce Van Haften, with Sandy Duffy and the ACLU of

Iowa, led to the Attorney General opining that the gag rule must go. In Florida, a team led by lawyer Julie Hilton and DAMS president Bernie Windham caused the Florida dental board to rescind its gag rule proposal.

- 2003-05: In Connecticut, the state's order to Dr. Breiner to stop writing newspaper articles led us to recommend he go to the ACLU, which he did. The result is the end of the gag rule in another state -- but this time via an order of a federal judge! In Alabama, the dental board pulled back from efforts to block Dr. Ada Frazier from advertising she is mercury-free.
- 2005: Some dental boards still don't have the message. Lawyers Jim Love and Bob Reeves are challenging a recent (and unconstitutional) edict from the North Carolina dental board that stops consumers from learning about mercury-free dentistry. Hopefully the Connecticut case will be useful.

Looming is the case before the Supreme Court of California, being presented by Los Angeles lawyer Shawn Khorrami. That case challenged the ADA directly, where this monopoly uses direct efforts outside of dental boards to enforce the gag rule. Filed in 2001, its dismissal by an appeals court caused Shawn to file an appeal to the state Supreme Court. Over two dozen organizations representing health care, religion, children, the environment, civil rights, health freedom, and other important interests filed friend-of-the-court letters, and the court agreed to hear the case. Oral argument is pending. It is not a free speech case but a consumer protection case.

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Dentist Can Criticize Fillings With Mercury

By LYNNE TUOHY

Hartford Courant Staff Writer, July 14 2005

Trumbull dentist Mark Breiner, who has campaigned for decades about the health risks inherent in mercury-laced amalgam fillings, has won a First Amendment battle to do so without risking his license to practice.

The state Department of Public Health recently agreed to amend a consent decree it entered into with Breiner in 2001, changing it to permit Breiner to speak publicly and write commentary pieces about his belief that amalgam fillings can cause a panoply of health risks.

"I can say whatever I want in public and not have to worry," a victorious Breiner said Wednesday.

Breiner has long been at loggerheads with the health department, which has twice threatened

to remove his license because of his controversial advocacy.

Breiner in 2001 entered a consent decree with the department to stop an effort to take his license, agreeing that he would no longer advise his patients to have their amalgam fillings - often referred to as "silver" fillings - removed. But the department felt an opinion piece Breiner wrote for the Connecticut Post in 2002 violated that decree.

In his commentary, written on the heels of a mercury spill in a Monroe high school science laboratory, Breiner reiterated his longstanding dispute with the American Dental Association over whether amalgam fillings are safe.

The state health department responded by informing Breiner that the commentary piece appeared to violate the 2001 consent decree, but that health officials would take no further action against his license if he agreed not to write any more opinion pieces about amalgam fillings or pending legislation.

Breiner not only disagreed, he enlisted the aid of the Connecticut Civil Liberties Union and sued the department, claiming it was violating his free speech rights.

"I could have said I won't speak out any more on this topic. I could have capitulated," Breiner said. "But that's not my nature.

"They're trying to get mercury out of everything," Breiner said. "You can't even get a mercury thermometer in this state. And they're saying the only safe place to have it is in someone's mouth? I've seen thousands of people who've elected to remove mercury from their mouths and thousands who have gotten better from all sorts of symptoms. It's a disservice to the public to keep them in the dark or to try to misinform them."

The modified consent decree now specifies that nothing in it "shall be construed as prohibiting [Breiner] from communicating to others, including members of the press or private individuals ... or writing or publishing op-ed pieces or articles, or speaking at a public forum or not-for-profit educational seminar about his opinions relating to amalgam fillings."

Breiner is still barred, however, from recommending that patients have amalgam fillings removed. "I do not have free speech within the confines of my office," Breiner said. "When you have a license, you forfeit certain freedoms."

Breiner may state his views in advertisements for his practice, but the consent decree mandates that he add the caveat that his opinions "are not shared by traditional dentists and physicians, the Connecticut Department of Public Health, the Connecticut State Dental Commission or the American Dental Association, all of whom have concluded that there is insufficient scientific evidence to establish that the removal of amalgam fillings cures and/or alleviates symptoms of any disease or condition."

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