

7.

Letters from Florida Legislators



Florida House of Representatives

Frank Farkas, D.C.
Representative, District 52

Councils & Committees:
Health Regulation, Chair
Health & Human Services Appropriations, Vice-Chair
General Education
Council for Healthy Communities
Council for Lifelong Learning

Reply to:
1510 4th Street North
St. Petersburg, Florida 33704
tel. 727-893-9855
fax 727-893-9857

13 402 South Monroe Street
1101 The Capitol
Tallahassee, Florida 32399
tel. 850-488-5719

January 9, 2002

The Florida Board of Dentistry
4052 Bald Cypress Way, Bin #C08
Tallahassee, FL 32399-3258

Dear Members of the Board of Dentistry:

As one of the legislators who supported the Health Freedom Bill, I am writing to voice my concern about recent Board actions concerning consumer access to complimentary or alternative health care treatment, specifically mercury free dentistry, a fundamental component of complimentary or alternative health care.

Last year we enacted a health Freedom Law, (S1324-Chapter 2-1-116), amending S381.026, revising Florida Patient's Bill of Rights to specifically give patients the right to receive, and licensed health care practitioners the right to provide, complimentary and alternative health care, with informed consent. The Legislature Intent paragraph of the law clearly states that it is the intent of the Legislature that citizens be able to choose from all health care options, including conventional as well as complementary or alternative health care.

The Health Freedom Law was enacted because of concerns of constituents, both patients and practitioners, of retribution by Professional Boards against complimentary and alternatives practitioners. Despite the fact Florida statute and Florida case law clearly settled the rights of patients to choose, or refuse, among competing treatments, the Health Freedom Law was passed to strengthen and clarify the law regarding delivery of complimentary and alternative health care modalities which are utilized by a substantial segment of Florida citizens.

My concern is that Florida Dental Board has passed the following rules and standards on complementary and alternative health procedures in clear contravention of the Health Freedom Law. These rules were proposed almost immediately following the enactment of this law:

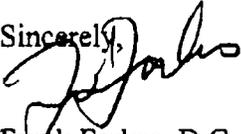
- Rule 64B5-17.014 – Removal of Amalgam Fillings, prevents a patient from receiving, and a dentist from providing, removal of amalgam(mercury) fillings if a patient does not experience amalgam allergic reaction; - it does not meet the minimum standard of care, poses a danger to the public, and the dentist's license shall be suspended for 6 months or more and may be revoked.

- Rule 64B5-4.002 – Advertising and Soliciting by Dentists, - it is false, fraudulent, misleading and likely to appeal to layperson's fears to advertise removal of mercury amalgam fillings for the purpose of curing, preventing, or diagnosing systemic diseases because such representation "is not based on accepted scientific knowledge of research."

In addition to the issue of contravention of the law, I share in the concerns expressed in the letter to this Board dated November 27, 2001, from the Attorney for the Joint Administrative Procedures Committee, that an agency of the executive branch of government has no authority to formulate evidentiary presumption as appears to be the case from the language of the advertising rule. That power is reserved solely to the courts and legislature. We share the future concern expressed in the letter that the Board appears arbitrary and capricious in specifically and exclusively including the removal of mercury amalgam fillings or restorations in the explanation of what constitutes "false, fraudulent and misleading as well as likely to appeal primarily to a layperson's fears."

Florida Law does not choose sides between traditional and complimentary or alternative dental health care, so consumers have the right of access to both services. I do not expect the board of Dentistry to take sides in the mercury amalgam debate by passing rules and standards that limit consumer access to complimentary or alternative health care in clear contravention of law and intent of the Legislature.

I feel we have the right to ensure that the Board complies with Florida laws. We take our role as lawmakers seriously and request that you take your role equally seriously by complying with the laws enacted by the Legislature. I respectfully request that you withdraw Rules 64B5-17.014 and Rule 64B5-4.002.

Sincerely,

Frank Farkas, D.C.
52nd House District



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Children and Families,
Chairman
Appropriations - Subcommittee on Health
and Human Services
Health, Aging and Long-Term Care
Judiciary
Reapportionment - Subcommittee on Legislative
Apportionment and Redistricting

JOINT COMMITTEE:

Zero-Based Budgeting Subcommittee on
Health and Human Services
of the Legislative Budget Commission

SENATOR DURELL PEADEN, JR.
1st District

January 11, 2002

The Florida Board of Dentistry
4052 Bald Cypress Way, Bin #C08
Tallahassee, FL 32399-3258

Dear Members of the Board of Dentistry:

As one of a group of legislators who supported the Health Freedom Bill, I am writing to voice my concern about recent Board actions concerning consumer access to complimentary or alternative health care treatment, specifically mercury free dentistry, a fundamental component of complimentary or alternative health care.

Last year we enacted a Health Freedom Law, (S1324-Chapter2001-116), revising Florida Patient's Bill of Rights to specifically give patients the right to receive, and licensed health care practitioners the right to provide, complementary and alternative health care, with informed consent. The Legislative Intent paragraph of that law clearly states that it is the intent of the Legislature that citizens be able to choose from all health care options, including conventional as well as complementary or alternative treatment methods and that practitioners to be able to offer such complementary or alternative health care.

The Health Freedom Law was enacted because of concerns of constituents, both patients and practitioners, of retribution by Professional Boards against complementary and alternative practitioners. Despite the fact Florida statute and Florida case law clearly settled the rights of patients to choose, or refuse, among competing treatments, the Health Freedom Law was passed to strengthen and clarify the law regarding delivery of complementary and alternative health care modalities that are utilized by a substantial segment of Florida citizens.

Our concern is that Florida Dental Board has passed the following rules and standards on complementary and alternative health procedures in clear contravention of the Health Freedom Law. These rules were proposed immediately following the enactment of this law:

- . Rule 64B5-17.014-Removal of Amalgam Fillings, prevents a patient from receiving, and a dentist from providing, removal of amalgam (mercury) fillings if a patient does not experience

REPLY TO:

- 598 North Ferdon Boulevard, Crestview, Florida 32536-2753 (850) 689-0556
- 744 East Burgess Road, Suite E-103, Pensacola, Florida 32504 (850) 484-9898
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5000

Legislature's Website. <http://www.leg.state.fl.us>

JOHN M. MCKAY
President

GINNY BROWN-WAITE
President Pro Tempore

FAYE W. BLANTON
Secretary

DONALD SEVERANCE
Sergeant at Arms

January 11, 2002
Page 2

amalgam allergic reaction; - it does not meet the minimum standard of care, poses a danger to the public, and the dentist's license shall be suspended for 6 months or more and may be revoked.

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I feel we have the right to ensure that the Board complies with Florida laws. We take our role as lawmakers seriously and request that you take your role equally seriously by complying with the laws enacted by the Legislature. I respectfully request that you withdraw Rules 64B5-17.014 and Rule 64B5-4.002.

Sincerely,

Durell Peaden
State Senator, District 1



Florida House of Representatives Representative Connie Mack

District 91

Reply to:

- 2601 East Oakland Park Blvd., Suite 204
Fort Lauderdale, FL 33306
(954) 958-5569
- 402 South Monroe Street
412 The House Office Building
Tallahassee, Florida 32399-1300
(850) 488-0635

Committees:

Information Technology, Vice Chair
Fiscal Policy and Resources
Education Innovation
Business Regulation
House Redistricting

January 15, 2002

The Florida Board of Dentistry
4052 Bald Cypress Way, Bin #C08
Tallahassee, FL 32399-3258

Dear Members of the Board of Dentistry:

I sponsored the Health Freedom Bill in the Florida House last year. I am writing to voice my concern about recent Board actions concerning consumer access to complementary or alternative health care treatment.

Last year we enacted a Health Freedom Law, (S1324-Chapter2—1-116), amending S381.026, FS, revising Florida Patient's Bill of Rights to specifically give patients the right to receive, and licensed health care practitioners the right to provide, complementary and alternative health care, with informed consent. The Legislative Intent paragraph of that law clearly states that it is the intent of the Legislature that citizens be able to choose from all health care options, including conventional as well as complementary or alternative treatment methods and that practitioners to be able to offer such complementary or alternative health care.

The Health Freedom Law was enacted because of concerns of constituents, both patients and practitioners, of retribution by Professional Boards against complementary and alternative practitioners. Despite the fact Florida statute and Florida case law clearly settled the rights of patients to choose, or refuse, among competing treatments, the Health Freedom Law was passed to strengthen and clarify the law regarding delivery of complementary and alternative health care modalities which are utilized by a substantial segment of Florida citizens.

Our concern is that Florida Dental Board has passed rules and standards on complementary and alternative health procedures in clear contravention of the Health Freedom Law. Florida law does not choose sides between traditional and complementary or alternative dental health care, so consumers have the right of access to both services.

We take our role as lawmakers seriously and request that you take your role equally seriously by complying with the laws enacted by the Legislature. I respectfully request that you withdraw Rules 64B5-17.014 and Rule 64B5-4.002.

Sincerely,

A handwritten signature in cursive script that reads "Connie Mack".

Connie Mack
State Representative, District 91

Dear Members:

Last year, I was one of the legislators supporting the Health Freedom Bill which amended S381.026FS revising Florida Patients' Bill of Rights. This law specifically gave patients the right to receive, and practitioners the right to provide complementary and alternative health care where appropriate and with informed consent. It was our intent, and I believe the law reflects that intention, that patients be able to choose from all health care options available, both conventional and complementary or alternative.

One of the reasons we passed the Health Freedom Bill was to strengthen and clarify the law regarding delivery of such complementary or alternative health care, which is the choice of a substantial group of Florida citizens.

It has been brought to my attention that the Florida Dental Board has passed Rule 64B5-17.014, and Rule 64B5-4.002 which were proposed after the enactment of the above-mentioned law and which appear to be in clear contravention of its provisions. I would add that I share in the concerns expressed by the attorney for the Joint Administrative Procedures Committee (dated Nov. 27, 2001).

I believe that by passing the cited Rules, the Board has exceeded its authority. I respectfully request that at your next meeting you take immediate action to rescind the above-mentioned Rules.

Sincerely,

Jerry Melvin
State Representative, District 4



Florida House of Representatives Representative Allan G. Bense

District 6

Reply to:

- Post Office Box 2345
Panama City, Florida 32402-2345
(850) 914-6300
- 402 South Monroe Street
417 House Office Building
Tallahassee, Florida 32399-1300
(850) 488-9696

Chairman, Ready Infrastructure Council
 Council for Healthy Communities
 Fiscal Responsibility Council
 Judicial Oversight
 Transportation & Economic
 Development Appropriations

bense.allan@leg.state.fl.us

January 14, 2001

TO: Florida Board of Dentistry

FROM: Allan Bense

RE: Health Freedom Law

Last year, I was one of the legislator who supported the Health Freedom Bill (S1324-Chapter 2001-116) revising Florida Patients' Bill of Rights. This law specifically gave patients the right to receive, and practitioners the right to provide complementary and alternative health care with informed consent. It was our intent, and I believe the law reflects that intention, that patients be able to choose from all health care options available, both conventional and complementary or alternative.

One of the reasons we passed the Health Freedom Bill was to strengthen and clarify the law, ensuring delivery of such complementary or alternative health care without retribution from professional boards, to the substantial group of Florida citizens who choose complementary or alternative health care.

It has been brought to my attention that the Florida Dental Board has passed Rule 64B5-17.014 and Rule 64B5-4.002 which were proposed immediately after the enactment of the above-mentioned law and which appear to be in clear contravention of its provisions. I would add that I share in the concerns expressed by the attorney for the Joint Administrative Procedures Committee (dated Nov.27, 2001).

Board of Dentistry
Page 2

By passing the cited Rules, the Board has exceeded its authority – which is to adopt Rules to implement legislation, not inhibit. I respectfully request hat at your next meeting you take immediate action to rescind the above-mentioned Rules.

With best personal regard, I am

Yours very truly,



Allan Bense



Florida House of Representatives

Rob Wallace
Representative, 47th District

10031 N. Dale Mabry Highway
Tampa, FL 33618-4409
(813) 632-6830

223 The Capitol
402 South Monroe Street
Tallahassee, FL 32399-1300
(850) 488-0275

January 15, 2002

The Florida Board of Dentistry
4052 Bald Cypress Way, Bin #C08
Tallahassee, FL 32399-3258

Dear Members of the Board of Dentistry:

As one of a group of legislators who supported the Health Freedom Bill, I am writing to voice my concern about recent Board actions concerning consumer access to complementary or alternative health care treatment, specifically mercury free dentistry, a fundamental component of complementary or alternative health care.

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The Florida Board of Dentistry
Page Two
January 15, 2002

These rules were proposed almost immediately following the enactment of this law:

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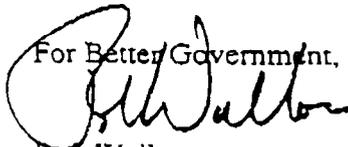
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For Better Government,



Rob Wallace
State Representative
District 47

RW:gcp



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DEC 31 2001

Florida House of Representatives

140 South Atlantic Avenue, Suite 202
Ormond Beach, FL 32176-6621
Phone: (904) 676-4000 or SC 370-4000
Fax: (904) 676-4002 or SC 370-4002
E-mail: lynn.evelyn@lcr.state.fl.us

Evelyn J. Lynn
State Representative
District 27

December 27, 2001

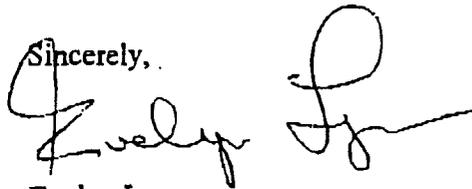
Room 221, The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300
Phone: (850) 488-9873
Fax: (850) 488-4330

Dr. Faustino G. Garcia, Chairman
Florida Board of Dentistry
555 Biltmore Way, Suite 102
Coral Gables, FL 33134

Dear Dr. Garcia:

Thank you for your response to my letter voicing concerns about proposed rule changes regarding amalgam. While I understand your concerns for protecting consumers from "unscrupulous" dentists, I am concerned that the wording of your proposed rule will prevent many "scrupulous" dentists from fulfilling a patient's request or from acting in the patient's best interest.

I believe you would protect consumers and dentists by re-wording your rules. Thank you for your consideration.

Sincerely,

Evelyn Lynn

cc: Secretary Agwunobi, Department of Health
Cindy Ritter, Program Administrator, Board of Dentistry

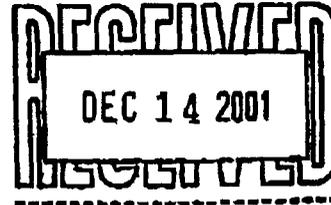
EJL/lw

006441

Faustino G. Garcia D.M.D., P.A.

December 10, 2001

Ms. Evelyn J. Lynn
State Representative
Florida House of Representatives
140 South Atlantic Avenue, #202
Ormond Beach, FL 32176



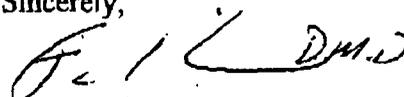
Dear Representative Lynn:

Thank you for your letter dated December 3, 2001. As you have recognized in your letter, there is indeed a potential for unscrupulous dentists to make money by appealing to the fears of laypersons concerning the safety of amalgam fillings. This issue is of the utmost concern to the Board of Dentistry.

A public hearing to discuss this proposed rule has been noticed in connection with our January meeting in Tampa, and has been scheduled for 2:00 PM on Friday, January 18th. The Board's intent behind these two rules is to prohibit the financial exploitation of patients and the protection of the public. Any medical or dental procedure, including the removal of an amalgam filling, carries some degree of risk and possible complication. The Board had used the term "non-allergic patient" to denote a patient with no documented diagnosis of a specific allergy purportedly caused by an amalgam filling. Although the Board acknowledges that there is a spirited debate over the safety of amalgam fillings, the fact remains that the majority of dentists, as well as the Food and Drug Administration and the American Dental Association consider them safe. The Board deems that a dentist who removes an amalgam filling from a patient based upon the dentist's representations concerning purported illness brought about by said filling is indeed practicing below the standard of practice.

The Board does not intend to prohibit any patient from making an informed decision to have an amalgam filling removed, even if only for cosmetic or aesthetic reasons. The Board must, however, establish standards, which will guide dentists in providing the necessary information to the patient so that the patient can exercise an informed choice. At this level no rule is etched in stone. Multiple forums may be necessary in future to effectively achieve our mutual concerns.

Sincerely,


Faustino G Garcia, DMD

FGG:lg

006442

555 Biltmore Way, Suite 102 • Coral Gables, Florida 33134 • Phone: (305) 444-4300



Florida House of Representatives

140 South Atlantic Avenue, #202
Ormond Beach, FL 32176
Phone: (904) 676-4000
Fax: (904) 676-4002
E-mail: lynn.evelyn@leg.state.fl.us

Evelyn J. Lynn
State Representative
District 27
December 3, 2001

Room 221, The Capitol
402 South Monroe Street
Tallahassee, FL 32399
Phone: (850) 488-6204
Fax: (850) 488-4330

Faustino Garcia, DMD, Chairman
Florida Board of Dentistry
555 Biltmore Way, #102
Coral Gables, FL 33134

Dear Chairman Garcia:

I am writing on behalf of one of my constituents who developed symptoms of multiple sclerosis at the age of 27 after receiving an amalgam filling. She claims her symptoms were due to the mercury in the amalgam. I have attached a copy of her letter; however, I believe you have recently received many similar letters on this issue.

It is my understanding that the Board of Dentistry has plans to adopt new language in Rule 64B5-4.002 and 64B5-17.014. I understand the first one applies to "advertising and soliciting by dentists" and I am in full agreement that dentists should not be allowed to make money using scare tactics to solicit business. My concern is with the second rule, 64B5-17.014, which states:

"(1) The Board of Dentistry has determined pursuant to Sections Florida Statutes, that removal of amalgam fillings from non-allergic patients for the alleged purpose of removing toxic substances from the body does not meet the minimum standards of performance for competent dental practice in Florida and poses an inherent danger to the public."

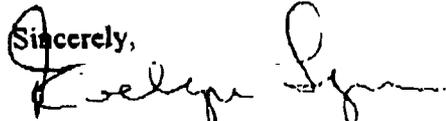
I am hoping you will help me understand two things:

- (1) What constitutes a "non-allergic patient?"
and
- (2) If my dentist removes my amalgam (at my request), does that make him incompetent because he "does not meet the minimum standards of performance for competent dental practice"?

I would also appreciate an explanation of how removing amalgam (which, in the past, has contained as much as 50% mercury) "poses an inherent danger to the public." I am very concerned that once this rule is adopted, it may expose honest and well-intending dentists to untold litigation.

Dr. Faustino Garcia, Chairman
Florida Board of Dentistry
November 30, 2001
Page 2 of 2

I would appreciate hearing from you on this issue so that I may better understand your position and, hopefully, the position of the Florida Board of Dentistry.

Sincerely,

Evelyn J. Lynn

cc: Secretary Agwunobi, Department of Health
Cindy Ritter, Program Administrator, Board of Dentistry

Attachment

EJL/lw

FLORIDA HOUSE OF REPRESENTATIVES

Committee on Colleges & Universities Council for Lifelong Learning

Tom Feeney
Speaker

Bev Kilmer
Chair

January 8, 2002

The Florida Board of Dentistry
4052 Bald Cypress Way, Bin #C08
Tallahassee, Florida 32399-3258

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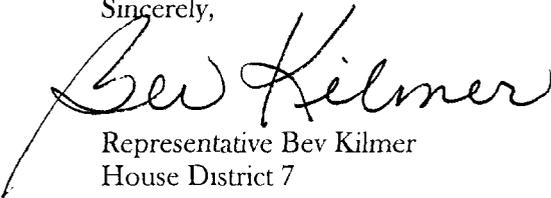
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Sincerely,



Representative Bev Kilmer
House District 7

BK/dd

✓ cc: Julie Hilton, President
Citizens for Health Freedom