

6.

**Letters from the Joint Administrative
Procedures Committee (JAPC)**



OFFICE OF THE ATTORNEY GENERAL

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

Reply to:
Office of the Attorney General
Administrative Law Section
PL - 01, The Capitol
Tallahassee, Florida 32399-1050
(850)414-3300; Sun.Com 994-3300

December 24, 2001

Suzanne Printy, Chief Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399-1300

RECEIVED
DEC 28 2001

RE: Department of Health: Board of Dentistry
Proposed Rule 64B5-17.014

Dear Suzanne:

Thank you for your letter dated December 19, 2001. I will ask the board staff to add your letter to the January 18-19, 2002 agenda so the concerns set forth in your letter can be discussed.

Thank you for your assistance in this matter.

Sincerely,

Edwin A. Bayó
Senior Assistant Attorney General

cc: M. Catherine Lannon, Section Chief
✓ Sue Foster, Executive Director
Windy Deckerhoff, Research Assistant

006443

JOHN M. McKAY
President



Representative Donna Clarke, Chair
Senator Betty S. Holzendorf, Alternating Chair
Senator Bill Posey
Senator Ken Pruitt
Representative Nancy Argenziano
Representative Wilbert "Tee" Holloway

THOMAS FEENEY
Speaker



CARROLL WEBB, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

December 19, 2001

Mr. Edwin A. Bayó
Assistant Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32399-1050

**Re: Department of Health: Board of Dentistry
Proposed Rule 64B5-17.014, F.A.C.**

Dear Mr. Bayó:

I have completed a review of the above referenced rule package which was advertised in the Florida Administrative Weekly on November 30, 2001. The following comments are for your consideration and response:

64B5-17.014 This rule states that removal of amalgam fillings from patients who are not allergic to amalgam for the alleged purpose of removing toxic substances from the body does not meet the minimum standards of performance for competent dental practice and poses an inherent danger to the public. Please explain the rational basis for prohibiting removal of amalgam fillings for the purpose of removing toxic substances, and not for repair, cosmetic or other purposes.

Please explain the rational basis for stating that the proscribed procedure poses an inherent danger to the public.

Also, please explain how simply removing amalgam fillings for one purpose rather than another is authorized by the laws being implemented.

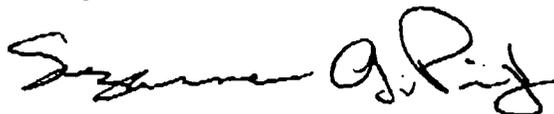
These comments have been provided for your consideration and response. Final notice of any substantive change must be noticed in the FAW and filed with this Committee no later than 21 days prior to the date these rules are filed for adoption. Notices of technical change or no change

006444

Mr. Edwin A. Bayó
Re: Proposed Rule 64B5-17.014, F.A.C.
December 19, 2001
Page 2

must be submitted to this Committee no later than 7 days prior to adoption. Therefore, if you could provide me with a response within two to three weeks of the date of this letter in the form of corrections, explanations, or additional authority it will help us to meet these deadlines.

Sincerely,



Suzanne G. Printy
Chief Attorney

cc: Ms. M. Catherine Lannon, Section Chief
Ms. Sue Foster, Executive Director
Charles L. Ross, D.D.S., Chairperson
Ms. Windy Deckerhoff, Paralegal

#126606
SA:SP C:\DATA\WP61\SP64B5-17.LTR

006445



OFFICE OF THE ATTORNEY GENERAL

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

Reply to:
Office of the Attorney General
Administrative Law Section
FL - 01, The Capitol
Tallahassee, Florida 32399-1050
(850)414-3300; SunCom 994-3300

December 5, 2001

Suzanne Printy, Chief Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399-1300

RE: Department of Health: Board of Dentistry
Rule 64B5-4.002

Dear Suzanne:

Thank you for your letters dated November 1, and November 27, 2001. I will ask the board staff to add these letters to the January 18-19, 2002 agenda so the concerns set forth in your letters can be discussed. A notice of hearing will be sent over next week which will automatically toll the time on this rule.

Thank you for your assistance in this matter.

Sincerely,

Edwin A. Bayó
Assistant Attorney General

cc: M. Catherine Lannon, Section Chief
Sue Foster, Executive Director
Windy Deckerhoff, Research Assistant

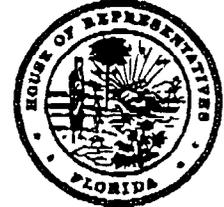
RECEIVED
2001 DEC -7 PM 2:38
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

JOHN M. MCKAY
President



Senator Betty S. Holzendorf, Chair
Representative Donna Clarke, Alternating Chair
Senator Bill Posey
Senator Ken Pruitt
Representative Nancy Argenziano
Representative Wilbert "Tee" Holloway

THOMAS FEENEY
Speaker



CARROLL WEBB, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

November 27, 2001

Mr. Edwin A. Bayó
Assistant Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32399-1050

Re: Department of Health: Board of Dentistry
Proposed Rule 64B5-4.002, F.A.C.

Dear Mr Bayo:

After further review of this rule, I have the following questions:

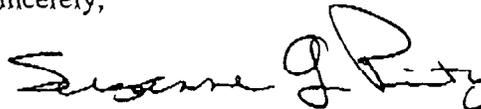
64B5-4.002(3)(g) This rule states that "it is false, fraudulent and misleading as well as likely to appeal primarily to a layperson's fears for a dentist to advertise removal of mercury amalgam fillings or restorations for the alleged purpose of curing, preventing or diagnosing systemic diseases." This appears to create a un rebuttable presumption that such advertising is false, fraudulent and misleading and that such advertising appeals to layperson's fears. Evidentiary presumptions arise as a matter of law, and the power to establish them is reserved solely to the courts and the legislature. An agency of the executive branch of our government has no authority to formulate an evidentiary presumption. B.R. and W.C. v. Department of Health and Rehabilitative Services, 558 So.2d 1027 (Fla. 2nd DCA 1989), review denied, 567 So.2d 434 (Fla. 1990).

Further, please explain the rational basis for specifically and exclusively including the removal of mercury amalgam fillings or restorations in this

Mr. Edwin A. Bayó
Re: Department of Health: Board of Dentistry
November 27, 2001
Page 2

explanation of what constitutes "false, fraudulent and misleading as well as likely to appeal primarily to a layperson's fears." Without a rational explanation, this selection appears to be arbitrary and capricious.

Sincerely,



Suzanne G. Printy
Chief Attorney

cc: Representative Donna Clarke
Ms. M. Catherine Lannon, Section Chief
Ms. Sue Foster, Executive Director
Charles L. Ross, D.D.S., Chairperson
Ms. Windy Deckerhoff, Paralegal

#126152
SA:SP C:\DATA\WP6\NSP64B5-4 LTR

JOHN M. McKAY
President



THOMAS FEENEY
Speaker



THE FLORIDA LEGISLATURE
JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

Senator Betty S. Holzendorf, Chair
Representative Donna Clarke, Alternating Chair
Senator Bill Posey
Senator Ken Pruitt
Representative Nancy Argenziano
Representative Wilbert "Tee" Holloway

CARROLL WEBB, EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

November 1, 2001

Mr. Edwin A. Bayó
Assistant Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32399-1050

Re: Department of Health: Board of Dentistry
Proposed Rule 64B5-4.002, F.A.C.

Dear Mr. Bayo:

Rule 64B5-4.002, F.A.C., for which an amendment was recently proposed, includes §§466.019 and 466.028(1)(d), F.S., as law implemented. In light of the recent passage of §456.41, F.S., (2001), please give me your thoughts as to how that statute, particularly paragraph (3)(c), F.S., relates to this rule.

Thank you for your continued interest in this rule.

Sincerely,

Suzanne G. Printy
Chief Attorney

cc: Ms. M. Catherine Lannon, Section Chief
Ms. Sue Foster, Executive Director
Charles L. Ross, D.D.S., Chairperson
Ms. Windy Deckerhoff, Paralegal

#126152
SA:SP CADATA\WP61\SP64B5-4.LTR

RECEIVED

NOV 08 2001

DEPT. OF LEGAL AFFAIRS
Administrative Law Section

24 (a) The health care practitioner must inform the
25 patient of the practitioner's education, experience, and
26 credentials in relation to the complementary or alternative
27 health care treatment option.

28 (b) The health care practitioner may, in his or her
29 discretion, communicate the information orally or in written
30 form directly to the patient or to the patient's legal
31 representative.

2

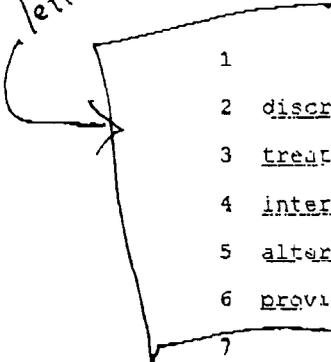
CODING: Words ~~struck~~ are deletions; words underlined are additions.

*Suzanne Priddy,
JAPC attorney's
letter references this paragraph.*

Florida Senate - 2001
1-1088-01

SB 1324
See HB

1 (c) The health care practitioner may, in his or her
2 discretion and without restriction, recommend any mode of
3 treatment that is, in his or her judgment, in the best
4 interests of the patient, including complementary or
5 alternative health care treatments, in accordance with the
6 provisions of his or her license.



7 (4) RECORDS.--Every health care practitioner providing
8 a patient with a complementary or alternative health care
9 treatment must indicate in the patient's care record the
10 method by which the requirements of subsection (3) were met.

11 (5) EFFECT.--This section does not modify or change
12 the scope of practice of any licensees of the department, nor
13 does it alter in any way the provisions of the individual
14 practice acts for those licensees, which require licensees to
15 practice within their respective standards of care and which
16 prohibit fraud and exploitation of patients.

17 Section 2. Paragraph (d) of subsection (4) of section
18 381.026, Florida Statutes, is amended to read:

19 381.026 Florida Patient's Bill of Rights and
20 Responsibilities.--