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**Transcript of Amalgam Presentation to
Dental Board by Florida Dental Association
September 29, 2001**

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Male Voice,

Dr. Ross: Good Morning, We will re-convene the meeting of the Florida Board of Dentistry, the 28 of September, 2001. Let us know who is here.

Female Voice: Dr. Ross, Dr. Ackley, Dr. Dallas, (shown absent in Minutes), Mrs. Douglas, Mrs. Fisher, Dr. Garcia, Dr. Haering, Dr. Laboda, Dr. Levine, Mr. Poitevent and Mrs. Stavros.

Male Voice,

Dr. Ross: We are going to get started with the presentation from the Florida Dental Association. I'm going to turn this over to Dr. Chichetti ...

Male Voice,

Unknown: No, you are going to turn this over to Mr. Nicols...(much laughter)

Male Voice,

Mr. Graham Nicol: I just got a promotion. That's always nice.

Good Morning I appreciate your indulgence in hearing this. The material that we are presenting starts on page 8855. The actual heart of the material is on page 8857; that is the proposed rules we are asking the board to pass. The issue that really is confronting the board is frankly summarized pretty well in that rule. That is whether or not the standard of care in the state of Florida should disallow dentists removing amalgam on non-allergic patients in order to treat systemic medical conditions And the proposed rule before you finds that it falls below the standard of care.

Right at the outset I need to make a crucial point and that is that this rule defines the standard of care but does not define the scope of authorized practice or the scope of licensure. The dentists will always be authorized to do what 466002 the scope of licensure authorizes them to do. What this rule does is something entirely different. It (makes) the standard of care. So what they are authorized to do under their scope of licensure is different than what the actual standard of care in the state of Florida is. That is really a factual matter. What are most dentists doing in the same or similar circumstances and the testimony that we are going to present today focuses first on that issue. What are most dentists doing in the state of Florida with regard to this particular issue, and that is Dr. Leisa Lynn's testimony. She is a Ph.D. with the Florida State University that the Florida Dentist Association retained to conduct this survey which is also in your packet beginning on page 8858. Then the next witness is Dr. Robert Baratz, who is a physician as well as a dentist as well as an esteemed academic. He has conducted a scientific or academic review and is able to present the scientific community's findings of fact. But what this whole issue really revolves around is who the decision maker is and what makes somebody's conduct right or wrong. I don't want to get too philosophical this early in the morning but I promise that it will apply to the rule that is before you. What is it that makes somebody's conduct right or wrong? It is not conformity to their own personal standards of conduct, it is conformity to standards set forth by somebody other than themselves. And that's really drawn out pretty clearly on September

1 11, what happened there. Those people that did that act said they were acting to honor God. They
2 weren't. They were acting to honor themselves. God didn't tell them to murder anybody They
3 thought in their own arrogance, in their own self-centered attitude that that was proper conduct.
4

5 What we've got here on a much lesser scale is the same issue. Should dentists be allowed to make up
6 for themselves what is appropriate conduct or should the State of Florida Board of Dentistry set forth
7 the standard and expect dentists to conform their conduct to your standard. And the Florida Dental
8 Association feels strongly that the standard of conduct needs to be set by the Board of Dentistry and
9 the dentists need to conform their conduct to your standard.
10

11 The problem that we have in the legislation that passed last session is that it removes the standard of
12 care from the equation. It empowers dentists on their own to make their own decisions as to what is in
13 the best interest of their patients. It removes the standards. That's what's wrong with that legislation.
14 It absolutely takes away the standard and what you end up with is anarchy. You end up with every
15 body making their own rules. That's not the way it should be. That's why we are here before you
16 today to ask you to rectify that situation. Set forth the standard of care, put the rule in place so that if
17 somebody decides to practice below that standard you've got something in place when it comes to
18 discipline.
19

20 And the key here is - What is the standard of care. That is a factual issue and that is why we conducted
21 the survey to find out what actually is going on in practice in the state of Florida and that's where Dr.
22 Leisa Lynn comes in.
23

24 *Female Voice,*

25 *Dr. Lynn:* Hi, I'm Leisa Lynn. I'm (associate) professor of marketing at Florida State
26 University. I have a Ph.D. from the University of Alabama in marketing and marketing research. And
27 a friend contacted me about a month and a half ago, 6 weeks or so ago, and asked if I could help him
28 effect a survey of licensed dentists in the state of Florida. And I could and that's what I've done and
29 that's what you have before you in the report. And I would just like to tell you what we did and how
30 we got the numbers that are there. We, I, contracted with a phone polling organization here in
31 Tallahassee called Research Network, Inc., that is actually run by another professor in the College of
32 Criminology and they have a phone bank there where they have the facilities to do --they use the
33 computer and they use telephone operators to make calls. So we developed this questionnaire. I did it
34 with Graham, went back and forth and did a few versions of it and came up with the questions, the 5
35 questions that end up in the Appendix of the Report. We obtained a list of dentists randomly selected
36 from membership database of the FDA and because 75%, roughly 75% of dentists practicing in Florida
37 are FDA members. We took 75% of our sample from the membership base, randomly, and took, we
38 wanted to get a sample of the non-member dentists and so, that was a little problematic, they are not
39 cooperating with FDA necessarily so we got as many names as we could from non-member dentists to
40 try to get them to be 25% of the sample. So over the course of 4 days we made telephone calls. The
41 report delineates the numbers of calls.
42

43 *Male Voice*

44 *Mr. Nicol:* While she is looking for that let me emphasize that it was very important that we
45 did not just poll Florida Dental Association members. FDA members hopefully conform their conduct
46 to the standard of care set forth in the ADA code of ethics. We also polled the non-member dentists

1 and we did that in, ah, awaiting that reflects what our membership numbers are, vis-a vis the number
2 of licensed dentists in the state of Florida. So what you have before you is not the standard of care
3 among Florida Dental Association members, it is the standard of care among Florida dentists. And
4 that's important.

5
6 *Female Voice,*

7 *Dr. Lynn:* And so we made 1,901 calls to FDA member dentists, completed 301 survey for
8 a response of 15%. 15% sounds like a little percent, but when you are talking about a survey it is a
9 really high percent. I guess that reflects the motivation of the member dentists to cooperate and be part
10 of the process of activities of Florida Dental Association. We made 747 calls to non-member dentists
11 and completed only 32 surveys for a response rate of 4%. That is a LOW response rate. We sort of
12 attributed that to the fact that we introduced the survey over the phone by saying we are calling on
13 behalf of the Florida Dental Association and they, by not being members, had already made some sort
14 of decision not to be a part of it and more likely to say no I won't cooperate. So that created a little bit
15 of a problem in the analysis because we wanted to make sure – we had a difference in the response
16 rate, we wanted to make sure that wasn't affecting our results. So, before I did the analysis that you are
17 looking at here, I ran analysis comparing our responses of non-member dentists to member dentists and
18 I found no statistical difference. The only difference is that the non-member dentists were a little more
19 likely to say they had no opinion. But in terms of the ones agreeing or disagreeing with the questions
20 of substance here, there was no statistical difference between member and non-member. So I then
21 combined the members and non-members to get the result you see here, because there was no
22 differences between those two.

23 So we had a total of 333 dentists complete the survey, 301 members and 32 non-members, all of them
24 were licensed. That was a qualification for being in the survey. I didn't even approach any non-
25 licensed dentists. I don't even know what that would be. But that would be....

26
27 *Male Voice,*

28 *Unknown* That would be a felon. (Laughter)

29
30 *Female Voice,*

31 *Dr. Lynn:* I figured it was. You can practice market research without a license but I didn't
32 think you could practice dentistry. And then we asked them how; we wanted to make sure they had
33 some knowledge of the research about amalgam and mercury toxicity and so we asked them a
34 qualifying question fundamentally – no definitely a qualifying question which asked them how
35 familiar they were with this scientific research, and if they said they were not at all familiar, then we
36 excluded them, so they were - thank you- goodby- thanks for helping us out -did not complete survey.
37 So of those 333, all of them were either very or somewhat familiar with the research. We didn't have
38 anyone in there who said they did not know about it.

39 But then we asked the 3 subsequent questions. The first one was very simple. Based on your
40 understanding of the scientific research, is amalgam that contains mercury toxic to patients? We had
41 38, or 11.4% saying Yes, 275, or 82.6% saying No and 6% or 20 giving no opinion. Not statistically
42 significant, plus or minus 3.5 percentage points and that's important to that statistical significance is
43 that these – if we had 52% saying Yes and 48% saying No, and it was plus or minus 4 or 5% then those
44 (confidence) ranges would overlap and we wouldn't have any statistical difference really between the
45 two, but because one number is so high – 82.6% and one only 11, with plus or minus 3 range 7 range

1 around them we have statistical evidence that they are in fact different and that in fact more dentists,
2 significantly more say that mercury is not a toxic

3
4 *Male Voice,*
5 *Unknown.* Amalgam is not toxic.

6
7 *Female Voice,*
8 *Dr. Lynn.* Okay. Okay. So in the report also what I did then, one other thing that I did,
9 another way to look at it, if it says: No Opinion, I limited those from the numbers. So 88% of dentists
10 who expressed an opinion about the toxicity of mercury, they said they felt it was not

11
12 *2 Male Voices*
13 *unknown:* Amalgam, Amalgam, Amalgam,

14
15 *Female Voice,*
16 *Dr. Lynn:* I'm certainly not an expert in the chemistry of it. 88% said mercury – amalgam
17 that contains mercury is not toxic. Of those who expressed an opinion. I used that model for all three
18 questions, taking out those who gave No Opinion and comparing just those who expressed an opinion,
19 which is really a standard way of doing things.

20
21 The second substantive question asked if they would remove amalgam that contains mercury from a
22 non-allergic patient in order to treat a systemic medical condition by removing toxic substances from
23 the body. Again all 333 gave some sort of an answer. 16, or fewer, had No Opinion on that. 54
24 dentists said Yes they would. 263 said No they would not do that and so we find that about 82% of
25 dentists expressed an opinion, said that they would not remove amalgam containing mercury from a
26 non-allergic patient to treat a systemic medical condition. And that is accurate plus or minus 4%.

27
28 And then the final question is the one about standard of care. We asked the dentists if they thought it
29 fell below the standard of care for a dentist in the State of Florida – the length of this question is –
30 every time I read it I think oh this question is so long. It is long because it's got legal implications. Do
31 you think it falls below the standard of care for a dentist in the State of Florida to remove amalgam that
32 contains mercury from a non-allergic patient in order to treat a systemic medical condition by
33 removing toxic substances from the body. Here 191 dentists said Yes it falls below the standard of
34 care, 95 dentists said No, and 47 had No Opinion, so this is a little more contentious question than the
35 others and I imagine the dentists realized that it had implications and so what we found though was
36 still 2/3, 67% of dentists with an opinion, said that it does fall below the standard of care. 33% said
37 No it doesn't, and that's accurate, plus or minus 5.5%. So still we did if we do our (confidence)
38 intervals we find that the majority, that the percentages do not overlap, that the majority does feel that
39 it does fall below the standard of care for a dentist to remove amalgam that contains mercury from a
40 non-allergic patient in order to treat a systemic medical condition.

41
42 *Male Voice,*
43 *Mr. Nicol:*
44 The importance of the survey is the standard of care is a legal definition, but it
45 actually is a factual issue. The legal definition of standard of care is what would a reasonably prudent,
46 similarly situated practitioner do in light of all the surrounding circumstances. You all are very

1 familiar with that. You are the authority on that from a regulatory perspective. You are the authority
2 on that. But it is a factual issue, and that's why we thought it was prudent to go ahead and do the
3 survey and actually establish what is going on in the State of Florida with regard to this issue, and there
4 is no better way to establish the facts than to do a survey. We don't have the ability to poll all the
5 licensees, but we polled a statistically valid sample of licensees and this is what we are finding the
6 numbers are pretty telling. 88%, 82% and 67% and I don't think those numbers really surprise any of
7 the dentists in this room or anyone with a scientific background. But to help explain why those
8 number are not surprising, we have also asked Dr. Robert Baratz to come and he's going to present
9 research that from his view of the academic literature and also his experise in this area, that there is no
10 credible scientific evidence that amalgam is causually related to any systemic medical condition, be it
11 Alzheimers, Multiple Sclerosis, Lou Gherig's disease.
12 Also he is going to present policy statements from the National Patient Advocacy Groups that deal
13 with, for example, Alzheimers, and I think that is going to be very enlightening as well to what is the
14 standard of care.
15 I don't want to miss the point though, these National Patient Advocacy Groups have their opinion but
16 they don't determine what the standard of care is. That's a responsibility of the people in this room,
17 the Board of Dentistry. You all should establish what the standard of care is. We are all asking you to
18 do that and the proposed rule demonstrates what the actual standard of care is in practice and we now
19 need that codified because the legislation has removed that standard of care. It is a pretty important
20 problem and Dr. Baratz' testimony will help us understand some the signs behind the statistical
21 sampling.

22

23 *Male Voice,*

24 *Dr. Baratz*

25

26 Thank you. Good Morning. I prepared a handout for the Board and the
27 audience that I hope has been distribued already. It sort of makes some statements that I think you can
28 read and we can discuss after I have spoken if that is okay with everybody.

29

30 My daughter is the one is the family that has the Ethel Merman voice that we have to say "please turn
31 down the volume" and most people say to me "please turn up the volume" so excuse me for being a
32 little soft spoken. I am very pleased to be here this morning and to speak before the Board. I think
33 perhaps I can give you a little bit of my own background, and I will try to give you the brief version. I
34 attended and graduated from Boston University, with a degree in Biology cum laude, and then went to
35 Northwestern Dental School where I obtained my doctor-dental-surgery degree almost 30 years ago
36 and I have been practicing dentistry 30 years in 2002. Yes, I look young. As do most of you. Along
37 the way I also earned a Ph.D. in cellular biology and anatomy from Northwestern and after teaching
38 for somewhere in the order of 15 years, I went to Medical School and obtained a medical degree from
39 Boston University School of Medicine. I did an internship and residency in internal medicine, and
40 obtained my board in oral medicine and have been practicing both internal medicine and emergency
41 medicine for more than 10 years. I have done a number of other things as well. I have also worked in
42 the medical device industry and been the medical director for several companies. Currently I am the
43 President of International Medical Consultation Services, Inc., which is a company that does tracking
44 of medical devices and has done so for almost 10 years next spring. I am also the President of the
45 National Council of Dental Health (Board) as of last week and I have spoken on a variety of subjects
46 related to practice performance for a number of years.

1 To keep the talk focused, I would like to read a few things first just to sort of set the background for
2 what you might like to ask me. We can spend probably 3 or 4 days discussing this issue and its many
3 aspects, but I think if we cut through a lot of the weight of information it boils down to some very
4 simple facts.

5
6 I was asked to sort of come here to answer any questions you might have regarding the proposed
7 rulemaking and this boils down to the subject of a form of unprofessional conduct. That is making
8 false statements to patients for personal gain regarding the use of a safe and approved dental material
9 called dental amalgam. The language that helps fulfill your obligations in being a licensing board,
10 namely to protect the public. That's kind of odd because here you have a professional group coming to
11 the Board and asking for more regulations, if you want to think about it that way. That's usually not
12 the case. Part of your mission is to ensure that those who practice do not take advantage of their
13 privileged positions, for whatever reason, and take advantage of their patients by exerting undue
14 influence for personal or other gain, with resulting harm to the patients. That harm may be either
15 physical, or by degrading the standards of the profession by promulgating things that just aren't true, or
16 both.

17 We have often heard that this is sort of a matter of free speech. That's not true either. A dental license
18 is a privilege and a licensee has an obligation to present factually correct information to the public.
19 And your duty is to see that that happens.

20 Now lets talk about what I'll call a heavy metal problem in another vein. Lets equate this with an auto
21 license. I can write books about driving a car and on what my opinions about it might be, but the
22 simple fact of the matter is it doesn't allow me to get behind the wheel of a car and drive down the left
23 side of the road Because I think that is what should be done. You are in effect the legislature. And
24 you are being asked to tell me once again that I can't drive there. It's that simple.

25
26 In essence, I am here to tell you quite simply that the obvious is true. There are no Martians on the far
27 side of the moon. And except for a handful of reports of simple allergies, no patient, anywhere, has
28 ever been harmed by the materials in a properly mixed and placed amalgam restoration.

29
30 Now, if I had in my hand some salt, which I don't but I just happen to have a little sugar here, and we
31 open this up, and spill out one grain of this sugar, just one of those. I don't know if you saw it fall.
32 That is about one milligram. The amount of mercury that might be released from a dental amalgam is
33 a fraction of that, in a day. A fraction of a fraction of that. And that is what all the controversy, if you
34 want to call it that, is about.

35
36 The simple fact of the matter is that dose makes the poison and not what the poison might be. If this
37 were salt, this contains sodium and chloride in equal amounts. Sodium, if I were to take some sodium
38 metal and drop it into this glass of water in front of Mr. Nicol here, all of you would be killed by the
39 explosion. They are a very reactive compound when mixed together. If I were to fill this room with
40 chlorine gas, you would all not be walking out of here. But in the form of sodium chloride, those
41 materials are perfectly safe.

42 The point is that dental amalgam does not contain mercury. It has none. It contains things that were
43 mixed together which formerly were mercury and formerly were a bunch of other metals but once we
44 mixed them together they are no longer that, those separate materials, they are now a new material we
45 call amalgam. If you detect traces of mercury that are released from that material, it is because that

1 material has now been decomposed by heat and by friction to drive it back towards what used to be the
2 ingredient.

3 This is much the same as taking concrete, where you start out with water, sand and cement and
4 aggregate, mix them together, you have a new material. It is no longer water, it is no longer sand, it is
5 no longer aggregate, it is concrete. And if you are going to try to make that back into what it started
6 out as, you are going to have to take some pretty extreme forces to do that. You are going to have to
7 get a big kiln, you are going to have to probably destroy the stuff by fire and grinding and all that, and
8 you might be able to get the ingredients back out again. But even so you won't get them all back out
9 again.

10 Dose makes poison. You often hear people say, Well, mercury is a deadly poison. Amalgam has
11 mercury therefore you are putting poison in people's mouths. That is fundamentally false and anyone
12 who says that is not telling the truth. They do not understand what a poison is. If that is true, then
13 eating sodium chloride is equivalent to poisoning yourself, and we do it every day
14

15 Virtually every drug on the market, in the wrong dose, is a poison. I can poison you with aspirin, or I
16 can relieve your headache. I can treat your sticky platelets and prevent a heart attack with aspirin, or I
17 can kill you with it just as well. I can kill you with gold if I fill up your mouth with it and you couldn't
18 breathe.

19 So to say that dental amalgam has mercury in it is false. It has what used to be mercury.
20 People have been led to believe that inappropriate quantities of material can harm you. I don't have
21 one here but I could take a thermometer that had mercury in it, snap it into this glass and drink it in
22 front of you and not be harmed. I could sniff it and not be harmed. The quantities that would be in
23 there would be equivalent to about the amount of mercury that would go into one amalgam restoration.
24 When it was started, when it was begun to be mixed. That would be about 250 milligrams. About the
25 same amount of penicillin you would take if you were taking penicillin for something. To say that that
26 is a harmful substance is false. There are case reports where people have tried to commit suicide by
27 drinking not just the amount that was in the thermometer, but a pint of liquid mercury. Guess what
28 happened. Diarrhea. It is not absorbed from the gut. Even in pure form. And it is even less well
29 absorbed in the gut as powdered amalgam once amalgam is made. There are allegations that vapor
30 comes off the surface of a dental restoration, and indeed a tiny bit does. The amount that comes off is
31 equivalent to the amount you get every day by breathing the air in this city, by drinking the water in this
32 city, by eating the food in this city. Whether you have amalgam or not, your body has mercury in it.
33 Even the most ardent anti-amalgamist have virtually the same amount of mercury in their bodies as
34 you do, because there has not been one patient who has ever been harmed by it.
35

36 People say, well you can't prove that it is safe. Well, what does safe mean. You have to define what
37 that means to me. You have to give me a definition.

38 Is it safe to drive a car? 50,000 people are killed every year on the highways. No one is killed from
39 having dental amalgam. Unless perhaps they aspirate it and get an abscess in their lung or something
40 like that. So SAFE is a relative term.

41 Is it safe to ride a bicycle? No, because 40,000 people a year are killed in bicycle accidents.

42 Is it safe to play golf in Florida, on the west coast? No, because of about 110 people who get killed by
43 lightning strikes every year in the United States, about half of them happen on the west coast of Florida
44 where it is lightning alley.

1 So when you say SAFE, or someone says to me this is safe, give me their definition of safe and then
2 we can discuss it. But you cannot prove anything is safe unless you make a definition of what you
3 mean by that.

4 Is this material safe and effective? Yes it is.

5 Who says so? United States Government Food and Drug Administration.

6 Who says so? The National Institutes of Health.

7 Who says so? The combined Committee on Environmental Health of the United States Government.

8 Who says so? The Multiple Sclerosis Association.

9 Who says so? The Alzheimers and Related Disease Association.

10 Who says so? The American Dental Association.

11
12 And we can go on down the list. Do any of these people sell amalgam? No. Their job is to protect the
13 public, just as yours.

14
15 Yesterday you passed judgment on a dentist, who I was part of the testifying group at his trial. A
16 patient went to that dentist for the express purpose of having her amalgams taken out, if you read the
17 entire trial transcript. That was why she went there, that is not what she went out with. She went out
18 with missing 2 teeth and big craters in her jaw and ensuing problems. So I don't need to reiterate
19 much more about what problems she had. But the purpose for that visit, if you read the patient's chart,
20 was to have her amalgams out. Why? To cure her chronic illness. The one that was diagnosed with
21 the pushing down of the arms through the clear channel of the dental assistant.

22
23 So I am bringing you the same simple message that I brought to the FDA in 1991, and to legislative
24 boards in other states, there is no evidence that amalgam is harmful, and suggesting it is, or telling
25 people it is, while practicing under a dental license or other professional license, is wrong. It is
26 unprofessional conduct.

27
28 And your job is quite simply, just to do your duty and enforce the mandate that you have to protect
29 the public from those who would abuse that privilege of having that license.

30 What I am asking you to do is keep science in the dental profession. What we do should be based on
31 evidence and not on speculation or wishful thinking.

32 If there is going to be data presented, it should be collected in a controlled experiment, conducted by
33 people who know how to do research and analyzed appropriately. Not by a group of people who think
34 they can do whatever they want to do, just because they want to do it. That is not the way we should
35 regulate professionals in this country, either in Florida or in any other State.

36
37 I'd be happy to answer any questions.

38
39 *Male Voice Unknown,*

40 *Dr. Ross?* I have a question. I guess you have a copy of the proposed Rule. I am assuming
41 you do.

42
43 *Dr. Baratz:* Yes, I do.

44
45 *Male Voice Unknown,*

46 *Dr. Ross?* The paragraph 2 (a) It's the definition of amalgam.

1
2 *Dr. Baratz.* I'm sorry, I can barely hear you, Dr. (?).
3
4 *Male Voice Unknown,*
5 *Dr. Ross?* It's the definition of amalgam. Amalgam fillings, means dental amalgam
6 containing mercury.
7
8 *Dr. Baratz* I would offer that you might want to change the language of that sentence to
9 read "containing mercury compounds."
10
11 *Male Voice Unknown,*
12 *Dr. Ross?* Right, Right.
13
14 *Male Voice,*
15 *Mr. Nicol?* That Rule was drafted by a non-scientist and the ignorance is reflected.
16
17 *Male Voice Unknown:*
18 Okay, and the second question. Removing amalgam, removing the alloy, you
19 know you are a member of the (Board?), You talked about the amount of vapor released from mercury.
20 Can you relate that to actually removing the alloy?
21
22 *Male Voice*
23 *Dr. Baratz:* Yes. Let me go back in time a little bit to understand how these things are
24 measured so that we can sort of place this in proper perspective. Prior to around the late 1970's, we
25 could not detect the amount of mercury that have now been found to be related to what might come off
26 the surface of an amalgam when someone vigorously chews or grinds their teeth. In other words, these
27 quantities are so small that we didn't have the instrumentation to measure them. They are down in the
28 parts per billion or less, range. This is a drop of water in a huge swimming pool. That's how small
29 they are.
30 Obviously the conditions for removing an amalgam depend upon what is being done and how it is
31 being done. Nevertheless, normally rotary instruments, a high-speed hand piece would be used to
32 begin to break the amalgam into large pieces. It is not ground out in its entirety, as most of us know.
33 You will normally make some criss-crosses in it and fracture out some larger pieces. Water and air are
34 blown by a high-speed hand piece to cool that so that frictional heat is minimalized, because you don't
35 want to cook the pulp. You are usually taking this out of a vital tooth to replace it either with another
36 amalgam or another restoration, depending upon the conditions of that patient's mouth. High speed
37 suction is usually, immediately next to that tooth to remove this material as fast as it is generated so
38 that the air in the mouth is evacuated at a rate that is faster than what is being produced. So, virtually
39 no vapor would ever get towards the patient, other than what's in the air in the office, which everyone
40 in the waiting room would be exposed to. Now, if someone has an appropriate ventilating system,
41 even that air is going to have very little of anything in it. It will resemble outside air. But we are not
42 talking about opening up a container of plutonium here, where a speck will kill you. We are talking
43 about taking out a material, we are not decomposing it in that process, we are driving it back into
44 particles. Yes, a little more might be released than grinding your teeth but not very much. Can we
45 measure that? With great difficulty. But those quantities do not pose a risk to any patient.
46

1 *Male Voice unknown,*
2 *Dr. Ross?* Thank you. Another question? Dr. Laboda?

3
4 *Male Voice,*
5 *Dr. Laboda:* Just a comment. It really isn't on your testimony, but again getting back to the
6 proposed rule change, in paragraph 5 when you say "most licensed dentists in Florida" that is an
7 accurate statement but it is not very emphatic. It is more than most, it is an overwhelming majority
8 and I think it would strengthen the statement if the wording were "overwhelming majority" rather than
9 most.

10
11 *Male Voice,*
12 *Mr. Nicol:* In response to that, I think that is a very good suggestion. The rule was written
13 before we knew what the facts were, before the survey results were in. But from the results of the
14 survey I think "overwhelming majority" is an accurate statement.

15
16 *Male Voice,*
17 *Dr. Baratz:* Could I comment further? There are some points about the survey which
18 actually tip it toward the side of being incorrect in a way that would bias the information even away
19 from the point of view that is being advocated by the Dental Society, the Dental Association, because
20 they put the word "removing toxic substances" in. In fact that's not true. There are no toxic
21 substances in amalgam although there are people who advocate that there are, but there are not, so that
22 in a way this study is biased towards the point of view of those who would be against the use of
23 amalgam. Even so, an overwhelming majority, virtually all of the dentists who responded indicated
24 that they do not feel that that's an issue. But this is not just an opinion poll, although that's important.
25 I think this is an issue of science and what is known to be true scientifically as well. It is important
26 that the profession acknowledge that, which is what the survey shows.

27
28 *Male Voice,*
29 *Mr. Nicol:* I think what Dr. Baratz is saying, and I am a non-scientist, but what he is
30 basically saying is that the survey would have been more accurately worded had it said "for the
31 alleged purpose of removing toxic substances. The fact that it omitted the word "alleged" and asked
32 that people presume it was a toxic substance, and even with that assumption 88% said "No, I'm not
33 going to remove it", is even more telling. Ah, the relevance of that is, note in the proposed rule it does
34 say "for the alleged purpose of removing toxic substances, so that issue has been corrected in the
35 proposed rule, as in page 8857.

36
37 *Male Voice Unknown,*
38 *Dr. Ross?* Dr. Garcia?

39
40 *Male Voice*
41 *Dr. Garcia:* Dr. Baratz, you may be soft spoken but you made your points very well. I want
42 to speak against this rule. I think that I don't see the need for the way that the rule is written. I think
43 you guys have done a super job of establishing a record right here, today. Not only by your public
44 testimony, but by the voluminous data that we have in our agenda and certainly for the, I would hope
45 that for the non-dentist members of the Board, that they obviously have been able to formulate an
46 opinion where they feel comfortable to support a rule such as this. I don't think, though, that we need

1 to, and again this is probably a legal question that should be answered by the attorneys in the room,
2 I'm not sure that it is good to write a rule, its such a long rule, I, personally, would be very, very
3 comfortable, and this is for discussion, with just paren (1) which states basically that we are
4 recognizing this as, the removal of amalgam, as below minimum standard, and then going directly to
5 paren (6). If that is done, these are the penalties that are going to be imposed. Yet, if for legal reasons
6 attorneys feel they are more comfortable, if we write, I don't think all our rules are written in the same
7 way. We have to write an explanation for our logic, our mode of thinking for every rule, and I think
8 that would say what I hope the Board would support. I would want to say this is again a term that was
9 used by the prosecuting attorney in the case you referenced yesterday that sorta raised some eyebrows
10 among some people, but this is, my personal opinion, my humble opinion is quackery. It is not based
11 on sound scientific evidence. You mentioned all these organizations, Multiple Sclerosis, the FDA, are
12 the people that we rely on for the research, we have all gone repeatedly on the the record, as long as I
13 have been on the Board, we have looked at this, over and over and over and over, and, it is time to
14 come up with a rule. I'm not sure we want to make such an elaborate rule. I think we need to make a
15 rule that is simple, that says "This is wrong and if you do it this is.... Rather than give the explanation.
16 If the attorneys feel a little more comfortable by beefing up the rule with the language, I'll support it,
17 but I think it needs to be a little simpler.

18
19 *Male Voice,*

20 *Dr. Baratz:* I'm not sure I can respond from a legal point of view except to say that in 1987,
21 I was called by the prosecuting attorney for the Department of Education in the State of New York, for
22 exactly the purpose that is before you today. A case involving a dentist that you may have heard about
23 down here in Florida, named Joel Berger (sp?). Joel Berger lost his license in the State of New York
24 for exactly the type of behavior that this rule covers. Subsequently I was called by the State of
25 California to deal with a Dr. Hullett in the State of California in the early 90's. Subsequently I was
26 called by the State of Colorado to deal with a dentist that some of you may have heard of named Hal
27 Huggins, who was conducting a number of practices that would be in violation of the proposed rule.
28 And I could go on with that list in the States of Iowa, Minnesota, Kentucky, Maine, Rhode Island and
29 other places where I have been involved in helping the Board try to deal with practitioners who were
30 practicing outside the realm of scientific reasonability in terms of what they were telling patients and
31 what they were doing. Conservatively, the amount of money that was spent by these States would be
32 well over a million dollars in those prosecutions to remove the licenses of those practitioners and the
33 effort that was involved was enormous, taking in some cases up to 5 years because there wasn't a rule
34 and because they had to try this issue, each and every time. I think it is important that there be a rule.
35 I think your question had more to do with the language and the scope, and I would defer to the legal
36 eagles who are more professionally informed about law than I, but I think it is important that you
37 understand that this particular issue, as you correctly pointed out, has been with us for a long time and
38 it is time to end the debate, so to speak, and to set a rule so that you don't have to come back to this
39 year after year after year, because the science is quite clear on this topic.

40
41 *Male Voice Unknown,*

42 *Dr. Ross?* Okay, Dr. Laboda, and then you – respond to that.

1 *Male Voice,*
2 *Ed Bayo, Atty for Board:*
3 I like this rule a lot better than what I saw at Tampa and my suggestion would be that
4 paragraphs 1 through 4 are the way to go and drop the last 2 paragraphs. I think that paragraph 6,
5 when you are going to penalize, that should be addressed in disciplinary guidelines. It does not belong
6 in Rules. You don't have any rule that specifically talks of penalty so that should be included
7 somewhere else. If I understand Dr. Baratz correctly, I question how much support there is for the last
8 sentence of paragraph 5, where it's much more likely to cause significant damage... I mean if I hear
9 correctly the vapor released is not that big a deal, but in any event, I think that 1, 2 3 and 4 is really
10 what you need.
11 You took action at your last meeting to also amend your advertising rule and there is language that is
12 already ongoing. I believe that between this and this, you're covered.
13 Having said that, keep in mind that the standard of practice in this rule may be of guidance in setting a
14 standard of practice but ultimately that standard of practice may well be decided on the case or a
15 couple of cases. All of this information and the record that has been developed here is very valuable
16 when the time comes, if there is a time when somebody challenges this rule, I'm certainly going to call
17 on Dr. Baratz and others to bolster any possible challenge.
18 I think what I said, paragraphs 1 through 4, and between that and what you already took action last
19 time is plenty. I think that if you attack from that, you are in good point.

20
21 *Male Voice,*
22 *Dr. Ross:* Dr. Laboda?

23
24 *Dr. Laboda:* I think what you are missing in paragraph 5 it's not the vapor that is released,
25 When you attack a sound tooth with a good amalgam filling in it to remove that filling you jeopardize
26 that tooth. Every time you drill on a tooth you stand to potentially create a non-vital tooth by basically
27 killing the nerve.

28
29 *Ed Bayo:* Is that not paragraph 4? Is that paragraph 4?

30
31 *Dr. Laboda:* It is the actual removal of the filling that puts the tooth at risk, unnecessarily.
32 So I think that's what you are addressing. That there is more damage trying to
33 take it out than to leave it.

34
35 *Ed Bayo* Right. I read paragraph 4. I think paragraph 4 kind of touches on all of that.
36 I agree with you on that. In layman's terms you are messing around with a tooth that is fine, that is
37 standing there, that has no problem, that any time you do that you create a problem, yeah. I read
38 paragraph 4 to the patients being exposed to unnecessary pain, financial cost, tooth loss, increased
39 exploitation.

40
41 *Dr. Laboda:* Yeah, that sounds okay. Be that as it may, I think its a matter of we are just
42 quibbling over words now, and I think that I would like to see us direct you to draft a rule and get back
43 to us with the exact wording which is what we are going to have to do. Right?

44
45

1 *Ed Bayo:* No really. I can work off what is here because you have already noticed for
2 Rule Development 64B5-17.014 That was Rule Development. You do not have to have any kind of
3 text at that time.
4

5 *Dr. Laboda:* We have no other rules that prescribe penalties?
6

7 *Ed Bayo:* That's the new disciplinary guidelines.
8

9 *Dr. Laboda:* And I think that 6 ought to be, somewhere ought to be in our disciplinary
10 guidelines, because I think we definitely want a 6 month suspension in there automatically if
11 somebody is found guilty of this.
12

13 *Ed Bayo:* And as a matter of fact this kinda dovetails with an argument that I could bring
14 to you regarding new disciplinary guidelines in general, when the time comes. There is a letter from
15 JAPC here from Alan Grossman (?) Suzanne Printy, and I 'm gonna have to respond to that. She has
16 raised some concerns about similar guidelines and you need to address that. So
17

18 *Dr. Laboda:* To complete, particularly for our lay members, when you see who is wearing the
19 black hats and the good hats in this particular situation, from a financial gain point of view, it's a great
20 boon to the dentists if we took a position, You know you ought to remove all amalgam fillings because
21 that's the dentist relief act of 2001, because you've got all these people coming in that need work. So
22 the point being that the majority of the dentists who espouse this philosophy do it for financial gain.
23 Unfortunately there is a small group of true believers. They're the scary ones. They are the ones that
24 really believe it is the correct thing to do, but that is a minority. The great majority of them do it for
25 financial gain and so as far as mother and apple pie, this rule is important and I think we need to pass
26 it.
27 I would move that we adopt paragraphs 1 through 4, as we get into rulemaking, with paragraph 6 being
28 moved into disciplinary guidelines.
29

30 *Female Voice,*
31 *Ms. Douglas:* Second.
32

33 *Male Voice,*
34 *Dr. Ross:* We have a Motion. It has been seconded. Any other discussion on the motion?
35

36 *Male Voice Unknown,*
37 *Ross? or Garcia?* Again, I'm not on the content, on to what we are trying to do right here. We've
38 had discussion here in our small group of how to interpret different words like "most". I guarantee this
39 is something that will be challenged. Again I believe we will be able to defend this rule in any
40 language that we choose to do so, but the more language that's in here, I think the more challengable it
41 is going to become and its going to be challenged in front of non-dentists, in front of judges and
42 hearing officers. I think that even words like "generally accepted" is going to be challenged,
43 "scientifically determined by prudent practitioners", you're going to have to begin basically defining
44 all this, and that's okay, we are able to do that, but I think it will be whole lot cleaner, a whole lot
45 cleaner, if we go 1 and 6. The other thing is, we do have a (unit?) delegation group and it does say in
46 the rule itself a mandatory 6 months suspension, (?) so just for discussion.

1
2 *Male Voice,*
3 *Mr.Nicol:* Dr. (Ross?), I think I can simplify this. If I can cut to the heart of the matter in a
4 few moments. I'm the one that drafted the rule. Paragraphs 2, 3, 4 and 5 are factual conclusions. The
5 reason paragraphs 2, 3, 4 and 5 were drafted in the original rule, is we didn't have the testimony of Dr.
6 Baratz and Dr. Flynn , in the record, 600 pages of the record then. I would recommend that we delete
7 2, 3, 4 and 5, keep paragraph 1, in this rule, the new rule, and shift paragraph 6 to the disciplinary
8 section. And I think you can keep number 1 and number 6 in different sections and you have done
9 what you need to do.

10
11 *Male Voice,*
12 *Dr. Ross:* We have a motion on the floor.

13
14 *Dr.Laboda:* I would be willing to modify the motion to reflect what Graham just stated.

15
16 *Male Voice,*
17 *Dr. Ross:* All right, second?

18
19 *Female*
20 *Voice:* Second.

21
22 *Male Voice,*
23 *Dr. Ross:* Any other discussion -- All in favor of the motion let me know by an aye sign.
24 (Chorus of ayes). Those opposed? Motion carries.
25
26
27
28