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February 19, 2009

Dr. Lynn Mouden,  
DDS, MPH Oral Health Director  
Arkansas Department of Health  
4815 West Markham Street  
Slot #41 Little Rock, AR 72205

RE: Demand for retraction of false and misleading statements

Dear Dr. Mouden,

A group of concerned citizens residing in the State of Arkansas have requested that I forward to you the following demand for retraction of false or misleading statements provided by you at a recent legislative meeting.

Your Testimony

On December 18, 2008, in testimony before the House and Senate Interim Committee on Public Health, Welfare and Labor, you made statements intended to persuade committee members to support a decision to purchase expensive water treatment equipment and an on-going supply of chemicals to fulfill your goal of fluoridation of public water supplies throughout the State of Arkansas.

Your Right to Free Expression

Of course you have the right to air your opinion, as all citizens of America are afforded the opportunity to do, and this request for retraction is in no way intended to infringe upon any statements made by you as a matter of opinion.

Violation of Governor's Policy Directives

However, according to the transcripts of your testimony, you made false and misleading statements to Committee Members, hearing attendees, and all those citizens of Arkansas that may view the transcripts of your testimony or media representations of your statements, as matters of fact, which are in violation of Arkansas Office of Personnel management, Governor's Policy Directives, Section 200.1.3 Professional Standards: "All State employees shall perform their duties with courtesy, competence and the highest standards of honesty and integrity."

### Misuse of Industry and Official Capacity Credibility

Such statements made by you were known by you to be untrue and misleading, or in the exercise of reasonable care should be known to be untrue or misleading, as you identified yourself as a dentist, and the Oral Health Director in the employ of the Arkansas Department of Health, in a manner to imply that you are an expert by virtue of training, license and occupation on such matters. Your inclusion of these credentials is intended to impart the confidence and respect afforded the dental industry and the breadth of knowledge available to a State agency concerning even broader medical health issues.

### Ethical Constraints

As a licensed dentist and a member of the American Dental Association you should be aware of the ethical constraints of your using the credibility of the dental industry in combination with statements that are false and misleading in a material respect.

### Arkansas Dental Practice Act Criteria for Misrepresentations

The Arkansas Dental Practice Act establishes criteria for misrepresentations as statements that, "1. Contain a material misrepresentation of fact."; and "2. Omit a fact necessary to make the statement considered as a whole not materially misleading."

### ADA Principles of Ethics and Unprofessional Conduct

As a member of the American Dental Association you should be familiar with ADA Principles of Ethics and Code of Professional Conduct, Section 5F.2 of Principle: Veracity (truthfulness), going to great length to, "... provide insight into the meaning of the term false or misleading in a material respect." The ADA Code mirrors the Arkansas Dental Practice Act ethics requirements with examples including: a) contain a material misrepresentation of fact, b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) be intended or be likely to create an unjustified expectation..."

### Your claim that extends benefits of fluoridation beyond oral health

Furthermore you made representations in your testimony that the Arkansas Department of Health unequivocally endorses water fluoridation for the promotion of good health in general, and such endorsement was not limited to good oral health.

### AMA Principles of Ethics and Code of Professional Conduct

The tenets of integrity and honesty as published by the Governor's Policy Directive would appear to encompass a code of ethics when relating to health matters outside the oral cavity that are equally well-defined. The American Medical Association Principles of Ethics and Code of Professional Conduct, in particular Section 4731.22 (5) that establishes the definition of making a false, fraudulent, deceptive, or misleading statement: "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results, or includes representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived."

### Unfair Burden

The importance of such statements in the course of your ongoing promotion, in order to convince Committee Members, citizen representatives, community leaders and citizens to

install fluoridation equipment and purchase fluorine-containing chemicals, is far-ranging and of tremendous impact to all Arkansas communities.

The cost to ordinary citizens for abandoning the public water system or purchasing expensive reverse osmosis or distillation equipment, because simple filtration will not remove fluoride, is an unfair burden placed on all segments of populations in Arkansas, but especially the least able to afford the nutritional requirements to protect against fluoride toxicity. The cost of restoring full access to non-fluoridated water for at-will drinking and bathing as is now available is estimated to be \$5,000 to \$10,000 in equipment costs and hundreds of dollars per year for continued maintenance.

#### Demand for retraction

We hereby demand that you retract the following statements as matters of fact; or indicate in the specific that you intended the selected statements identified herein to be opinion, rather than fact; or supply the specific proof requests that would resolve our demand:

1) Your statement that fluoridation is, "merely the intentional upward adjustment" of the free fluoride ion.

Your statement that the water treatment facility is merely adjusting the amount of fluoride that is found naturally in the water supply is misleading in that no substance added to the water for purposes of water fluoridation is solely the free-fluoride ion.

We herein demand that you:

- a) Retract this identified statement as it is either outright false, or by omission of material information will reasonably cause a prudent person to misunderstand or be deceived; or
- b) Clarify in written response to this demand that this identified statement, or your presentation as a whole, is merely an opinion and not intended to be a statement of fact upon which the intended audience should rely without further due diligence; or
- c) Present proof of the existence of a product used for fluoridation purposes in the U.S. that is solely the free-fluoride ion, naming a manufacturer and any water operator that has identified such a product in their permitting process with the Arkansas Department of Health, or any other state's department of health.

2) Your statement, "People say that natural fluoridation and adjusted fluoridation are not the same. Well, actually they are the same. The fluoride ion is the same no matter what. The fluoride ion doesn't know where it's coming from." is false, misleading, and omits material facts that will reasonably cause a prudent person to misunderstand or be deceived.

You knew or with reasonable care should have known that the most widely used substance for fluoridation purposes, hydrofluosilicic acid, in its commercial form is only approximately 23% concentration, and the "as fluorine" portion only approximately 17%, meaning that to achieve a concentration of fluoride ion from this product, approximately 6 times the hydrofluosilicic acid must be added, including 6 times the attendant contaminants, such as

arsenic, lead, cadmium, mercury, beryllium and other contaminations of the phosphate ore source. Your statement also misleads your audience by referring to there not being any difference between fluoride concentrations that are found naturally in water and fluoride concentrations achieved by the purposeful addition of a fluoridation chemical. This statement misleads the audience by omitting a material fact that the water conditions that provide higher concentrations of a fluoride ion also contain other naturally occurring elements in higher concentrations as well, such as naturally occurring calcium or magnesium or strontium that mitigate the effects of the fluoride alone. The artificial addition of fluoridation chemicals does not contain these other elements. Your statement completely omits that the process you are promoting includes the addition of significant concentrations of other contaminants.

We herein demand that you:

- a) Retract this identified statement as it is either outright false, or by omission of material information will reasonably cause a prudent person to misunderstand or be deceived; or
- b) Clarify in written response to this demand that this identified statement, or your presentation as a whole, is merely an opinion and not intended to be a statement of fact upon which the intended audience should rely without further due diligence; or
- c) Present proof of the content and impurity of any product used for fluoridation purposes in the U.S. that does not contain significant amounts of contaminants by providing a true and correct, dated copy of the manufacturer's Product Review Data that the manufacturer is required to submit to NSF International in order to comply with ANSI/NSF Standard 60 General Requirement Section 3.2.1, which is required by Arkansas PWS Reg. § VII.F.

The Arkansas adoption of this Standard includes that a manufacturer shall submit a list of the product components and known or suspected impurities within the treatment chemical formulation, providing the maximum percent or parts by weight of each impurity, as well as a list of toxicological data, both published and unpublished if available, on the manufacturer's product, and all of its components and contaminants.

This requirement, established in Arkansas in 1994, after U.S. EPA's abandonment of all oversight responsibilities for direct water additives in 1988, is not satisfied by a Manufacturer's Safety Data Sheet (MSDS), or a Certificate of Analysis, because neither encompasses the scope of the manufacturer's declaration to merit selling their product in Arkansas.

- 3) Your statement, "So tooth decay is a fluoride deficiency disease" is false and misleading.

You knew or with reasonable care should have known that the accumulation of fluoride in teeth and bones does not infer usefulness, or the lack thereof as a deficiency, any more than accumulation of lead or the lack thereof infers usefulness or deficiency.

Your example of rickets being a vitamin deficiency attempts to afford fluoride the same status as a vitamin or essential nutrient, for which no fluoride compound qualifies.

The theory of the mechanism by which fluoride may benefit a reduction in tooth decay has now been corrected and clarified in the cover story of the July 2000 Journal of the American Dental Association (JADA) and the CDC August 17, 2001 MMWR, in which both declared that there is no significant reduction in tooth decay from the mechanism of ingested fluoride, including any relevant contribution from glandular saliva following ingestion of fluoridated water.

JADA: "The fluoride incorporated developmentally--that is, systemically into the normal tooth mineral--is insufficient to have a measurable effect on acid solubility {tooth decay}."

CDC MMWR, page 4: "The prevalence of dental caries in a population is not inversely related to the concentration of fluoride in enamel, and a higher concentration of enamel fluoride is not necessarily more efficacious in preventing dental caries."

We herein demand that you:

- a) Retract this identified statement as it is either outright false, or by omission of material information will reasonably cause a prudent person to misunderstand or be deceived; or
  - b) Clarify in written response to this demand that this identified statement, or your presentation as a whole, is merely an opinion and not intended to be a statement of fact upon which the intended audience should rely without further due diligence; or
  - c) Present proof of any fluoride's essentiality to any mammal's normal growth and development, and therefore any disease caused by fluoride's deficiency, by providing a list of chronic toxicological studies (not reviews) on the long-term health and behavioral effects of continued use of hydrofluosilicic acid, the substance used in 90% of the nation's fluoridation programs.
- 4) Your statement, "People claim that overfeed would be a problem. In fact, overfeed of fluoride is a non-issue because it's the pumps selection design, frequent calibration, and monitoring make this a non-issue. Accidents can happen; nobody's ever going to say that accidents can't happen, but the way that fluoridation systems are designed is that if everything goes to hell in a hand basket, the worst thing that can happen is two parts per million in the water supply which is absolutely no problem at all." is false and misleading.

You knew your statement was untrue and misleading and would have direct impact on the decision-making of your audience, while you were in possession of the fact, or should have been by the exercise of reasonable care, that indeed in worst case scenarios of fluoride overfeed in public drinking water citizens have suffered adverse effects, have been hospitalized, and, in fact, one person died in a massive overfeed in Hoopers Bay.

Reports of overfeeds and the resulting harm can be accessed by anyone on the internet, including on PubMed.

We herein demand that you:

- a) Retract this identified statement, as it is either outright false, or by omission of material information will reasonably cause a prudent person to misunderstand or be deceived; or
- b) Clarify in written response to this demand that this identified statement, or your presentation as a whole, is merely an opinion and not intended to be a statement of fact upon which the intended audience should rely without further due diligence; or
- c) Present proof of all overfeeds being limited to two parts per million by providing the readily available CDC list of all fluoride overfeeds and leaks and spills with the concentration details.

5) Your statement, "And you have to remember that the only way you can even diagnose mild or very mild fluorosis is by a trained observer under a bright light with a completely dry tooth. So these forms of fluorosis are certainly not a public health problem in any way." is false and misleading.

Dental fluorosis is identified as an irreversible physical impairment of the tooth enamel caused by interference with normal growth and development from fluoride exposures between pre-birth and approximately 6 to 8 years of age.

Your statement that very mild or mild dental fluorosis can only be diagnosed by a trained observer with a bright light is false and misleading.

Very mild dental fluorosis is identified as being bright white or opaque spots or tooth mottling of less than one quarter of the second most severely affected tooth. Mild dental fluorosis is identified as effecting less than one half of the tooth surface of the second most severely effected tooth. Brown staining often occurs because of the porosity of the defective enamel, and this does not raise the level of identified severity.

Your statement that fluorosis is not a public health problem in any way is false and misleading.

This ignoring of the most severely effected tooth is certainly misleading, but even considering this under-accounting, Heller and Eckland report from the largest dental survey performed in the U.S. that 29.9% of children raised in fluoridated communities have dental fluorosis on two teeth or more while another 36.5% have dental fluorosis on one tooth; a total of 66.4% of children with teeth visibly damaged from fluoride overdose.

You knew or with reasonable care should have known that the extent of the surfaces impaired does not prevent the impairments visibility. In fact California and other states have long held that dental fluorosis is an adverse health effect because of the psychological effect on children by having "spotted teeth," and since 1994 health professionals have been advised by their professional associations to reduce exposures to fluoride supplements in

non-fluoridated communities because of increases in dental fluorosis from other-than-water sources.

You knew or with reasonable care should have known that the American Dental Association recently sent out new recommendations for not using fluoridated tap water to mix infant formula because of the risk of dental fluorosis.

You also knew or with reasonable care should have known that increased concentrations of the fluoride ion in the drinking water will result in a higher expected dosage of fluoride to children under 6 years of age than their family doctor can now prescribe.

Current limitations on prescription dosages of fluoride per day in non-fluoridated communities are: 0.25 mgs for children 6 months of age to 3 years – equivalent to approximately one cup of fluoridated water; and 0.5 mgs for children 3 to 6 years of age - equivalent to two cups of fluoridated water; and none for infants – all less than the dosage expected from children's water consumption.

You knew or with reasonable care should have known that the U.S. EPA's Integrated Risk Information System (IRIS) Reference Dose (RfD) for fluoride is 0.06 mg/kg/day.

Failure to inform your audience that the expected dosage from the addition of hydrofluosilicic acid to public drinking water will exceed the dosage that any doctor in a now non-fluoridated Arkansas community can prescribe, and will exceed the RfD of fluoride for a significant percentage of children, is a misrepresentation and omission of material fact.

We herein demand that you:

- a) Retract this identified statement, as it is either outright false, or by omission of material information will reasonably cause a prudent person to misunderstand or be deceived; or
  - b) Clarify in written response to this demand that this identified statement, or your presentation as a whole, is merely an opinion and not intended to be a statement of fact upon which the intended audience should rely without further due diligence; or
  - c) Present proof in the form of a study that identifies the number of children that will receive an expected dosage that will exceed the Reference Dose for fluoride (which is based on dental fluorosis), or to the contrary, scientific data showing that no children will exceed the RfD when the concentrations of fluoride in the water and expected dosages are added to the expected exposures from other foods, beverages, and dermal absorptions.
- 6) Your statements, "It's been claimed that fluorides cause cancer. Not an issue. In fact, according to the U.S. Public Health Service there is no evidence of an association between the risk of cancer, of any cancer and fluoride in the drinking water." And, "... well in fact there has never been any court of last resort, never that has ruled against water fluoridation." are both false and misleading.

In the early 1990's, with trials of 11, 14 and 40 days to allow for extensive expert witness testimony, courts in Illinois, Texas and Pennsylvania each came to the same conclusion: fluoride at one part per million in the water, a) aggravates existing illnesses, b) causes adverse health effects, and c) contributes to a significant increase in cancer deaths.

These are the only cases in U.S. history that have dealt with the scientific merits of the safety, effectiveness, or harm of fluoridation.

Your omission of material fact offers that no court of last resort has ruled against water fluoridation, but omits that all three judges issued injunctions against further fluoridation, and that their scientific determinations of harm have never been overturned, or been reconsidered by another court.

You failed to inform your audience that the courts which heard the scientific merits ruled that the scientific test of harm had been proven beyond a reasonable doubt, and that the upper courts determination was limited to holding that lawsuits against a legislative body acting as the people's representatives would require a standard of "no controversy" under certain legal challenges, meaning that if a legislative body had even one expert witness that would support their decision, under the specific legal challenge before them, an elected body retained the authority to act.

Your assertion that scientific evidence of an association between the risk of cancer and fluoride in the drinking water does not exist will cause a reasonable person to misunderstand or be deceived.

We herein demand that you:

- a) Retract this identified statement, as it is either outright false, or by omission of material information will reasonably cause a prudent person to misunderstand or be deceived; or
- b) Clarify in written response to this demand that this identified statement, or your presentation as a whole, is merely an opinion and not intended to be a statement of fact upon which the intended audience should rely without further due diligence; or
- c) Present proof of any court action in the U.S. in which the scientific merits of safety, effectiveness or adverse health effects of hydrofluosilicic acid or any other fluoridation product, rather than the right for representative bodies to establish public policy, were presented by expert witnesses and were heard and ruled upon by the courts as trial-able fact that the fluoridation product is safe, effective and without adverse health effects.

7) Your statement, "And it's not meant to treat or cure anything anymore than chlorinating the water is meant to treat or cure anything." is false and misleading.

You knew or with reasonable care should know that chlorine and other disinfectants are added to the water to treat the water and remove pathogens. No water operator or health

department advises that the disinfectants are intended to be ingested for purposes of treating or preventing disease in humans.

Every full scale promotion of fluoridation, including your own representations, claims that the addition of fluoride to the public drinking water is for the purpose of ingesting the substance in order to alter the physical structure of the enamel to become more resistant to acid dissolution (tooth decay), or to act topically to re-mineralize the decaying tooth, both of which are treatment and intended to prevent disease in humans.

You also with reasonable care should have known that water operators must purchase only chemicals that meet ANSI/NSF Standard 60, which limits fluoride contamination from a water additive for purposes of treating water to 10% of the U.S. Maximum Contaminant Level (MCL) for fluoride (determined by National Research Council's December 2006 report on fluoride as not protective of human health at its current 4 parts per million), which means that a fluoride compound that is added for purposes of treating water can only be added at a maximum of 0.4 parts per million. It is only the exception that is afforded for treating dental disease that allows a higher concentration to meet fluoridation goals.

We herein demand that you:

- a) Retract this identified statement, as it is either outright false, or by omission of material information will reasonably cause a prudent person to misunderstand or be deceived; or
  - b) Clarify in written response to this demand that this identified statement, or your presentation as a whole, is merely an opinion and not intended to be a statement of fact upon which the intended audience should rely without further due diligence; or
  - c) Present proof of any competent claim of the benefit of fluoridation that does not include the intention of the public policy of fluoridation as altering the ability for teeth to resist dental caries by incorporating fluoride into enamel through ingestion, which changes the physical structure of the tooth, or re-mineralizing the tooth topically.
- 8) Your statement, "Uh... fluoridate toothpaste, while one of the major champions in the fight against tooth decay, is less effective than community water fluoridation because it's a constant exposure to that very low levels as opposed to what we hope people do twice a day and I realize that not everybody does." Is false and misleading.

Your statement omits the fact that fluoride-containing toothpastes have been approved by the FDA for topical application to the surfaces of the teeth, while the FDA has reported in the house Committee on Science's 1998-2000 congressional Investigation on fluoride that no fluoride-containing product intended to be ingested for the purpose of reducing tooth decay has ever been approved.

In fact, the FDA has required a label for fluoride-containing toothpastes that warns that if a person swallows more than an amount recommended for brushing (a pea sized drop, containing approximately the 1 mg amount found in a liter of fluoridated water), that you should immediately contact a physician or a poison control center.

You knew or with reasonable care should have known before making such statements that topical applications of fluoride in a dental office are frequently in the 12,000 to 20,000 parts per million range, and that no fluorine-containing toothpaste has been approved even as low as 500 parts per million concentration, much less 1 part per million.

We herein demand that you:

- a) Retract this identified statement, as it is either outright false, or by omission of material information will reasonably cause a prudent person to misunderstand or be deceived; or
- b) Clarify in written response to this demand that this identified statement, or your presentation as a whole, is merely an opinion and not intended to be a statement of fact upon which the intended audience should rely without further due diligence; or
- c) Present proof that your claim of safety and effectiveness for fluoridation can be met by the addition of any fluoridation chemical by having any entity in the chain of delivery of a fluoridation chemical or manufacturer make a declaration of the universal claim made by proponents of fluoridation:

"This specific product, as it is constituted and inclusive of contaminants, is effective at reducing the incidence of tooth decay when ingested in dilution amounts consistent with fluoridation goals of 0.7-1.2 milligrams of fluoride ion per liter, and is safe for the full range of expected human consumption at these dilution ranges, without known or anticipated adverse health effects over a lifetime, including for infants, children, the elderly, and other populations afforded equal protection."

#### Your duty to perform due diligence beyond recitation of rhetoric

Any performance of due diligence before lending your profession's credibility, or your state office authority, to your statements would have revealed the true facts. Because of your false and misleading statements, some representatives, your audience, and citizens who place faith in the standing of health professionals, will be persuaded that your statements are in fact true, and take steps that have both health and cost consequences to themselves and our community.

Perhaps you were simply unaware of the true facts and studies that contradict your testimony, or, your testimony may have been intended as opinion, rather than a factual representation, for which you certainly have the right of expression.

#### Demand for immediate retraction

We thus offer this opportunity and demand that within 5 working days you provide us with a written retraction of the unequivocally false and misleading statements or deception by omission of material fact in light of the information available to you and outlined herein, so it may be posted for interested parties.

With public funds, tremendous individual cost, and the health of our families, friends, neighbors, and generations of children to come at stake, we welcome the honesty and

integrity that the public deserves and the Governor's Policy Directive requires from its public servants.

Legal redress and professional sanctions

Should you decide not to provide a retraction of these representations that you knew, or should have known with reasonable care, were false and misleading, your statements shall be considered intentionally false, and concerned citizens will be forced to seek all legal redress and professional sanctions available under Arkansas law.

Your prompt attention to these items is appreciated.

Sincerely,

*Janie Evins*

Janie M. Evins

JME:ca