

# NHF Counsel's Report

## ASPARTAME AND OTHER HEALTH FRAUDS

By Scott C. Tips, General Counsel, NHF

It was many years ago that others – wiser than I – urged me to avoid aspartame-sweetened drinks. My brother's wife Norlene was especially adamant that it was a poison that would not do my body one bit of good. I must confess that at the time I thought that any sweetener, artificial or not, would be better than sugar. And aspartame, composed of two amino acids, seemed innocent enough. How wrong I was.

Fortunately, I listened to them, read more on the subject, and realized that as bad as sugar was for my system, aspartame was even worse and changed this part of my eating habits. The scientific evidence is substantial and long-standing. As aspartame expert and researcher Betty Martini has made clear from her many articles on the subject – including the one in this very issue of *Health Freedom News* – aspartame is dangerous.

And, yet, the government-corporate partnership pushing aspartame marches on. Natural sweetening alternatives such as stevia, which can actually help diabetics, are suppressed, while aspartame use is expanded into an ever-increasing circle of food categories all the while supported by a mainstream media that looks the other way.

### Codex Part of the Fray

Now, the Codex Committee on Food Additives (“CCFA”), which will meet in its 40<sup>th</sup> session in Beijing, China this coming April, is close to approving aspartame and aspartame-acesulfame as food additives safe for a variety of food groups. The National Health Federation will be at this meeting to oppose its approval and to report on the meeting. It will also be an opportunity for the NHF to educate Codex delegates further on the dangers of aspartame.

The CCFA Electronic Working Group dedicated to examining aspartame and other food additives has submitted a report to the Committee recommending that it adopt food-additive provisions for aspartame for certain food categories (such as beverage whiteners, unripened cheeses, frozen and dried fruits, vegetables, candies, breads, and soup broths) while discontinuing work on aspartame in other categories (such as fermented milk products, sterilized creams, whipped creams, processed meats, and vinegars). The Committee will make its decision and then refer the matter at some point to the Codex Alimentarius Commission for its ultimate approval.

### Your Support Is Crucial

In the meantime, NHF members should be on the lookout for a fundraiser from the Federation seeking support to

send the NHF to Beijing. As always, we can only do what we do for you if we have your financial and moral support. So, when you get this NHF letter, do not just set it aside, but respond immediately. Your support truly is crucial.

### Another Health-Freedom Issue under Proposition 65

California – ever known for its luscious beauty, endless energy, and general wackiness – is on the verge of stepping off the edge of the cliff yet again. A trial balloon is being floated by the powers that be to limit the potency of vitamin-and-mineral supplements under California's ridiculous Proposition 65 as *cancer-causing* agents! Of course, the State would never, ever think of applying the same standard to chemotherapeutic agents, which are known carcinogens. But throw in a few half-baked, junk-science studies using synthetic vitamins on already susceptible patients and suddenly the government makes a strawman case against high-potency supplements.

Here's how it worked and still works. In November 1986, voters in the State of California approved Proposition 65, with the understanding that its passage would help protect them from toxic chemicals in the environment. Officially known as the “Safe Drinking Water and Toxic Enforcement Act of 1986,” almost everyone these days just calls it Prop 65. Prop 65 requires the State to publish a list of those chemicals “known” to cause cancer or birth defects or other reproductive harm. This list is updated at least annually and since it was first published has ballooned to include some 775 chemicals. Although Prop 65 uses the term “known,” in the real world substances on the list are not necessarily *known* to cause cancer but are only those that *could*, under certain circumstances, pose a risk of cancer based upon the interpretation of existing scientific data, such as animal studies.

But, wait, there is more. Prop 65 requires businesses with ten or more employees to notify Californians about the presence of listed chemicals in their products, in consumers' and employees' homes or workplaces, or that are released into the environment. Proposition 65 also prohibits California businesses from knowingly discharging significant amounts of listed chemicals into drinking-water sources. California's Office of Environmental Health Hazard Assessment (OEHHA) administers this program. Without the warnings on listed products, private legal bounty hunters can sue those companies in violation of Prop 65, *even though no harm from the products is ever demonstrated*, and exact enormous legal and other costs. While some (not much) good has resulted from Prop 65, like all government programs the good intentions quickly lead to enormously bad

consequences that far outstrip any possible good. One easy example of this is the Prop 65 listing of natural progesterone as a cancer-causing agent when in fact it helps counteract the carcinogenic effects of estrogen. Natural, bioidentical progesterone is an important hormone-replacement therapy for women, many of whom have been unfortunately scared away from its health benefits by the Prop 65 warnings that are mandated on the product.

Without such warnings, the products and their manufacturers and distributors are sitting ducks. In fact, one growth industry spawned by Prop 65 are the numerous private law firms dedicated to shooting first and asking questions later in a “no prisoners taken” attempt to earn huge legal fees while doing a bare-minimum of public good. The State and County governments may also bring legal action, but often it is these vulture firms that are first out of the gate to win the jackpot. After all, BMWs and exotic vacations must be paid for somehow.

So, into this twenty-plus year history of misregulation in the public interest steps OEHHA with its trial balloon. OEHHA, it says, is *proposing* regulatory language – in concept only and not as a formal regulatory proposal, mind you – that would essentially classify all vitamin-and-mineral dietary supplements with above-RDA potencies (note they still use the old Recommended Daily Allowance term instead of the correct RDI, or Recommended Dietary Intake) as cancer-causing agents unless proven otherwise! Because California’s Prop 65 has nationwide impact due to the size of the market, you can easily imagine the harm this will do with substances that are incredibly safe and effective.

Here is what OEHHA wrote in a typical late-Friday release (March 21, 2008):

“Certain chemicals or compounds such as vitamins and minerals are necessary to promote human health or to ensure the healthy growth of food crops. *Excessive exposures to these same chemicals or compounds can cause cancer or adverse reproductive effects.* OEHHA is seeking a way to balance the need for these nutrients with the necessity for providing Proposition 65 warnings for exposures to listed chemicals in foods. OEHHA has developed draft regulatory language that addresses this issue, which can be found below.” (emphasis added)

OEHHA has then proposed the following regulatory “concept” (conveniently worded already by the Agency’s legal department):

“Section 1250X. Exposure to Beneficial Nutrients in a Food

(a) Human consumption of a food shall not constitute an “exposure” for purposes of Section 25249.6 of the Act to a listed chemical in a food if the person causing the exposure to the chemical can show that the chemical is a nutrient that is beneficial to human health and that the total amount of the chemical consumed in a food, whether naturally occurring,

intentionally added to the food, or otherwise present, does not exceed the level established in subsection (c).

(b) *For purposes of this section, a chemical is beneficial to human health if a daily value or allowance has been established for the chemical or compound by the Food and Nutrition Board of the Institute of Medicine, National Academies.*

(c) This section applies only to exposures that do not exceed the Recommended Daily Allowance (RDA) established in the Dietary Reference Intake Tables of the Food and Nutrition Board of the Institute of Medicine, National Academies, current edition, if one is established. *If no RDA is established, this section applies only to exposures that do not exceed 20 percent (20%) of the Tolerable Upper Intake Level established in the Dietary Reference Intake Tables of the Food and Nutrition Board of the Institute of Medicine, National Academies, current edition.*” (emphasis added)

In its Notice, OEHHA has set two key dates for public input: (1) A public meeting on **April 18, 2008**, to be held from 10:00 a.m. to 12:00 noon in the Sierra Hearing Room at the California Environmental Protection Agency Headquarters Building located at 1001 I Street, Sacramento, California, where OEHHA will hold a public workshop for the ostensible purpose of gathering input from interested parties concerning the issues raised by these regulatory “concepts”; and (2) Written submissions to be received from all interested parties no later than **5:00 p.m. on Friday, May 2, 2008**, directed to the attention of Fran Kammerer, Staff Counsel, Office of Environmental Health Hazard Assessment, 1001 I Street, Sacramento, California 95812; or by e-mail to [fkammerer@oehha.ca.gov](mailto:fkammerer@oehha.ca.gov).

Should OEHHA be so incredibly stupid as to proceed with actually proposing regulations on this issue, OEHHA says that it will receive additional public comments. Regardless, the National Health Federation has already consulted with outside legal counsel specialized in this area of law for the express purpose of stopping this outrage. NHF will be in attendance at the April 18<sup>th</sup> meeting *and* will be submitting cogent written comments, assisted by scientific and legal experts, opposing this regulatory “concept.” The Federation is also exploring legal action against the Agency should it proceed in any way with implementing its concept.

In the meantime, we ask all NHF members and readers to sign our **on-line petition** opposing this ridiculous concept, which we will personally submit to OEHHA. (Go to [www.thenhf.com/press\\_releases/prop65\\_petition.htm](http://www.thenhf.com/press_releases/prop65_petition.htm).) If not on-line, you may also express your opposition in writing to the Office of Environmental Health Hazard Assessment, Attn: Fran Kammerer, Staff Counsel, 1001 I Street, Sacramento, California 95812. Comments are due by May 2, 2008, 5 p.m. We also ask you to send us any scientific and legal data that you might have supporting our position that vitamins and minerals do not belong on the Proposition 65 list, so that we may incorporate all pertinent information into our comments and possible lawsuit. Spread the word and inundate OEHHA with your opposition to its “concept” as well. Together, we will stop this from proceeding. 