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THE MOLD CONTROVERSY

Mold is a fascinating organism. It is neither a true plant nor is it an animal. It has no brain, yet it can attack you at your weakest link and cause severe damage, illness and depress your immune system. It breaks down the trees that fall in the forest and dead biological matter, both plant and animal. So-called experts (that usually work for insurers) are fond of saying in court that if it were not for mold, we'd be up to our necks in dead plants and animals. But while admitting that mold eats and destroys organic materials, they deny that mold is harmful to humans that are exposed to it. This position, of course, defies logic and is nothing but spin doctoring.

There are thousands of species of mold. Many of them are beneficial. In fact, even molds that are dangerous to humans when exposed in their raw form have been used to make medicines that combat bacterial infections and even save lives, like penicillin.

But mold has become controversial. Why? Because in recent years it has been appearing in places it never did before—people's homes and workplaces. It has made people ill and their homes uninhabitable. This causes problems for builders and insurers. Mold became controversial because they set out to deny it was a problem in order to save money defending and denying claims.

Mold needs two things to exist; moisture and a food source. Mold should not be found in houses because they are built to shed water and should be completely dry inside. They are, after all, shelters to protect you and your family from the elements. So there should not be any mold found in your house. But mold will appear where there has been moisture intrusion, either from a leaking roof, door or window, or where there is a broken pipe or plumbing fixture that has failed.

In some cases the water leak is the result of shoddy building practices, failed materials or a bad design. In other cases, it is the result of, for example, a broken water pipe that is covered by your homeowner's policy. But builders and insurers do not want to accept responsibility so they try to avoid paying. The mold controversy was born out of their refusal to acknowledge the problem and take responsibility. Instead, they deny that mold makes people ill and homes uninhabitable. They feel it is less expensive to hire experts to give them a cover story than to stand behind their product (in the builder's case) or honor their obligations (in the insurer's case). Mold in a sick building setting is controversial only because insurers, corporations and builders—those responsible for making people ill and for paying for repairs—want it to be controverted.

Mold has been understood to be dangerous and even deadly for many centuries. As early as Leviticus (Ch. 14, 33-57), God directed the Children of Israel to deal with a greenish stain in a house by removing the "plague in the house" and all contaminated building materials and then discarding them. Moldy clothing and structures were treated as if they suffered from leprosy. If mold contaminated clothes could not be cleaned, they were to be burned. Who are we to argue with the Lord? After all, He created mold, He knows more about it than we do.

Many experts now believe that the "Curse of King Tut" which led to the deaths of many of the

men who discovered his tomb was nothing more than mold induced illness that proved to be fatal. In the 18th century, Ramazzini, considered the father of occupational medicine, described an illness of workers inhaling "foul and mischievous powder" from handling crops. Ergot poisoning, linked to the Salem witch trials, is now believed to have been caused by moldy rye grain. The most famous case of moldy grain occurred in Russia in the early 20th century, prior to and during World War II, killing thousands. In the early 1960s, an outbreak of turkey X disease in England, which killed over 100,000 birds, was later traced to mold-contaminated peanuts from Brazil.

There have been many documented cases of farm animals dying from eating moldy hay. The malady of "farmer's lung" was known to have been caused largely by mold. Toxins emitted by mold, particularly aflatoxins and ochratoxins, have been shown to cause cancer. But there are other kinds of toxins produced by molds that have not been studied as carefully, partly because they have been discovered fairly recently and partly because there was strong governmental impetus for discovering mold problems in the agricultural setting, given that agriculture is such a large component of our economy and gross national product.

After mold was found to be a real problem in sick building syndrome cases, insurers needed time to revamp their policies to exclude mold. So they hired pseudo experts to deny the association between mold and health problems. Then they fought tooth and nail and spread misinformation to prevent people from proving they were sick from moldy buildings.

What's worse, the government was no help to mold victims. Not only does the government want a thriving economy, but one is mindful that there are thousands of government buildings with flat roofs that are most prone to water leaks. Acknowledging mold was a major health problem could have led to a flood of worker's comp claims by government workers.

When Dr. Dearborn showed that the deaths of a number of infants in Cleveland, Ohio was due to the presence of stachybotris (the only substance common to all of the homes), which caused pulmonary hemosiderosis (bleeding lungs), his findings raised alarms in the insurance and business communities. Political pressure was brought to bear to muddy the waters and "re-evaluate" his findings. The Center for Disease Control used other doctors that had nothing to do with his study to say that whether mold caused the infants' deaths was still an open question. These back seat drivers did not even consult him or use his evidence before concluding that his findings were "inconclusive." But when the surviving children were removed from their moldy homes their health improved. When five of them were returned, their symptoms also returned and one of them died. The American Academy of Pediatrics has since recommended that "Infants who die suddenly without known cause should have an autopsy done including a Prussian blue stain of lung tissue to look for the presence of hemosiderin."

During this period of confusion caused by this dubious re-evaluation of Dr. Dearborn's findings, business interests, insurers, builders groups, their lobbyists and attorneys began developing misinformation and trying to change the legal landscape to reduce their exposure to lawsuits. They have been trying their level best for the past decade to head off claims from people that were victimized by shoddy building practices and insurers that refuse to pay claims on their policies.

But the truth has a way of filtering through. Medical science has come up with thousands of studies showing associating mold with human health problems. Today, the CDC has come around and proclaimed that mold can cause illnesses. The EPA, FEMA and the Institute of Medicine all agree that mold can cause illnesses. Read Chapters 4 and 5 of the IOM Report called "Damp Indoor Spaces." However, defense attorneys working for builders, landlords and insurance

companies cite the IOM report and take it out of context, distorting its findings and creating ambiguities—all to save money and deny justice to innocent mold victims. I have heard defense attorneys say all too often that the CDC concludes that mold is not harmful. That isn't true. The CDC has finally come around to acknowledging that mold is harmful to humans.

Like with lawsuits against big tobacco, the first plaintiffs usually lost their mold cases, but a few isolated wins now and then gave other mold victims hope. That is where we are today.

WHY DOCTORS DO NOT GET IT

Today, people harmed by mold are frequently misdiagnosed. Patients consult a physician with symptoms that resemble a lingering cold or flu. They also present with symptoms that mock asthma, allergies, bronchitis, irritable bowel syndrome, fibromyalgia, or dozens of other possible (and often erroneous) diagnoses. In fact, many physicians have no idea that mold contamination can cause neurological effects, which resemble sensory integration disorder, autism, or MS. Brown University set out to disprove the link in a study in Great Britain that mold can cause depression. After the study, Brown University reported a “solid association between depression and living in a damp, moldy home.”

The following symptoms have all been associated with mold exposure, and have been reported in my clients' cases:

- Respiratory distress, coughing, sneezing, sinusitis
- Gagging (vomiting) on mucous
- Hypersensitivity pneumonitis
- Burning throat and lungs (like acid reflux)
- Asthmatic signs; wheezing, shortness of breath
- Coughing, burning in lungs
- Irritable bowel syndrome, nausea, diarrhea
- Sharp abdominal pains, stomach lesions
- Bladder, liver, spleen, or kidney pain
- Dark or painful urine
- Dirt-like taste in mouth, coated tongue
- Food allergies or intolerances/leaky gut syndrome
- Altered immunity
- Memory loss, brain fog, slurred speech, confusion, word loss, difficulty staying on track
- Vision problems
- Swollen lymph nodes
- Large boils on neck
- Yellowing of nails, ridges, or white marks under nail
- Thyroid irregularities, sometimes dysfunction
- Headaches
- Anxiety/depression
- Heart palpitations, tachycardia (rapid heartbeat), Irregular heartbeat, heart attack
- Post Traumatic Stress Disorder
- Cholesterol, and/or triglycerides irregularities
- Ringing in ears, dizziness, loss of hearing, draining ears
- Chronic fatigue
- Intermittent face flushing, the Mylar Flush
- Night sweats, fever
- Nose bleeds

- Rash or hives, bloody lesions on the skin
- Sudden weight changes
- Cancer
- Joint/muscle stiffness, pain and weakness
- Seizures, inadvertent body jerking, twitching
- Facial numbing, tingling
- Chronic hypersensitivity/sensory integration disorder

Frequently these symptoms lead to a misdiagnosis because they resemble other maladies that are more easily explained and treated. But when these symptoms appear, a thorough physician should suspect an environmental insult and conduct a blood test (IgG testing) to see if mold appears in the patient's blood. Then a thorough building site investigation should be scheduled with a mold expert that understands building science so that the source of the mold can be pinpointed.

if you have developed symptoms, and see visible mold in your dwelling, you should tell your doctor you suspect mold contamination. If he is reticent to consider mold a factor in your illness, consult a different doctor. Finding a general practitioner who understands mold is not easy, so consult a specialist in the fields of immunology and environmental or occupational medicine. And this is important—find one who does not testify for the defense in court cases. Doctors that are defense “experts” stubbornly refuse to acknowledge mold causes these symptoms.

PROBLEMS IN NEW CONSTRUCTION

One might wonder, “Why do we hear so much about mold these days and not in the past?” The answer is not an obvious one, but a short history lesson will help highlight the answer for you. Before the Arab Oil Embargo of 1973, and for decades before this, many painted interior walls were constructed of wooden lathe (thin wooden boards) and a mortar mix, which contained antifungal properties. Those kinds of painted surfaces were resistant to mold. Many houses, particularly the older ones with wooden sliding windows, were also somewhat drafty, which led to many fresh air exchanges during the day.

But after oil prices soared in 1973, the building industry began looking at more energy efficient methods and materials. This was a natural response to market factors as people wanted houses that did not cost so much to heat. The result was more energy efficient homes, tighter windows, the use of sheet-rock or drywall and OSB plywood. These “good cents homes” were less drafty and more energy efficient. But this move to new materials led to lower indoor air quality. Ironically, the drafty old houses were healthier because they exchanged the air from the outside around the clock. But alas, it turns out that mold, particularly the marker taxa molds that have been implicated in SBS love drywall and oriented strand board plywood (OSB).

Builders have also cut corners to save money. Instead of installing flashing around windows, they simply put on trim and a bead of caulk. But caulking fails and dries out over time and windows without flashing will eventually leak. According to a recent ABC news report, complaints regarding new homes to the Better Business Bureau have doubled in the last five years. Mold, which appears in many of those complaints, has become more of an issue in recent years due to new building materials and processes. The manufacturing techniques used to produce materials such as OSB plywood also bring more molds into the structure from the beginning. Dormant and isolated mold spores can be impregnated into these materials in the manufacturing process, then become active when these materials get wet. This happens frequently during the building process, which has become year round in many parts of the country. Energy conservation codes have also led to the construction of homes that are unable to breathe and dry. Therefore, once water is

trapped, mold has the conditions it needs to flourish.

HOLDING BAD BUILDERS ACCOUNTABLE

The construction industry is very competitive. Many startup builders hungry to get established build for less than more established, more reliable builders. This creates market pressure downward which appeals to consumers. But as customers all too often find out to their dismay, it is not what you pay, but what you get for what you pay that counts the most. To respond to this competition, however, even good builders cut corners. Look around your neighborhoods. Even expensive houses often have cheap doors and baseboards. All too often, the need to finish the job and start the next one leads builders to work through wet weather. As they do they close up walls with insulation and drywall even when they are still wet inside. The builders hope the house dries out over time, but the EPA has recently stated that mold can begin growing as early as 24 to 48 hours after the building materials become wet. What some of these builders are doing is constructing self-composting buildings, which start rotting as soon as they are built.

Holding builders accountable is not always easy. The building industry has perfected lobbying to an art form. Builders associations can lavish campaign contributions on legislators, permeate and populate oversight arms in the public bureaucracy and stall or defeat any consumer legislation that comes down the road. They have even made it a point to elect sympathetic judges to our appellate courts. A case in point is the recent “Homeowner’s Bill of Rights” in Washington state that never saw the light of day in the last legislative session. In Oregon, the governor appointed a Construction Claims Task Force after the verdict we received in *Haynes v Adair Homes*, a toxic mold case tried in Clackamas County in 2005, and following news stories that revealed the paucity of insurance coverage for such claims. Builders and insurance executives peopled the CCTF, but the overwhelming weight of submissions and testimony from many of us on the front lines of the issue led it to recommend a number of measures to the legislature that would have changed things for the better. At last report, the building industry was bent on preventing those recommendations from ever becoming law.

So how do you hold bad builders accountable? It is not easy. Many, if not most, of the construction contracts in use today have binding mandatory arbitration clauses that create an atmosphere in which builders are rarely held accountable for poor construction practices. The homeowner may enter into this agreement to arbitrate without even knowing it. Upon filing suit, the court will receive a motion from the builder-defendant stating that the case does not belong in court but has to be resolved in binding arbitration. Judges like to lighten their workload by sending cases to arbitration. Who can blame them? Sadly, building contractors often select an arbitration company to hear any disputes with its customers. That arbitration company likely receives repeat business from this builder—so guess whose side it is likely to be sympathize with? Not the side it sees once, but the side that is a regular customer.

Public building inspectors are frequently of little or no protection to the homeowner. Many of them are ill trained and lack knowledge. Even qualified inspectors are inspecting, not to see that the builder employs good workmanship, but to see that certain minimum building codes are met. Most people do not realize this but building codes are minimum codes, not necessarily the embodiment of good construction practices. As such, there is little incentive for builders to put safety or the health of their customers above profits.

The errors in building which contribute to mold problems include lack of flashing around windows and doors, improper grading and drainage, use of wet materials or building in wet weather without thoroughly drying the materials before shutting up the wall cavities with

insulation and sheet-rock, plumbing failures, improperly installed dryer vents, lack of vapor barriers, improperly vented or inadequate fans in bathrooms and above stoves, improperly installed roofing, and much more. Even constructing homes in heavy clay soil can lead to problems as the excavation becomes a collecting point for surface run off which can pool up in the crawl space. All too often, when one of these failures occurs, it can be years before mold is discovered. By then, the damage is done, your kids are sick and you find yourself having to make payments on a house that you cannot occupy.

In some states, the law requires you to give notice to the builder and an opportunity to correct the defects before you have a right to sue. These “right to repair” laws are designed to lessen the number of court cases and the legislature wants the builder to have a chance to do the right thing. Usually, the builder will be in denial and will show up, if at all, concerned about making a “band aid” fix so he can claim he repaired the problem. These “right to repair” statutes sometimes have specific provisions about how to give notice and what is required of you. It is important that you consult an attorney before taking any official action that could end up preventing you from holding the builder legally accountable. But very few construction attorneys truly understand mold.

THE IMPORTANCE OF AWARENESS

Some people are extremely sensitive to mold, and can become sick from exposure to not only spores but also spore fragments and byproducts of spores. Health problems caused by mold exposure and/or mycotoxicosis are expensive to treat. Ironically, if doctors were properly informed and trained, exposure is treatable in many ways. If contractors considered how their slipshod practices could cost them much more money than the profits they think they make because of their speed, they would not get sued so often. While the building industry complains about all the lawsuits, it is a pretty accurate statement that many of the lawsuits are brought on by a select few shoddy builders. Instead of circling the wagons around these disreputable contractors, the builders associations should purge their ranks of them.

HOW TO PROCEED IF YOU HAVE A MOLD PROBLEM

Have the house tested.

If you discover mold in your house, you need to act quickly and take it seriously. You may be tempted, as some of my clients have been, to destroy the evidence. But what you should do is first protect your family from exposure (which may mean moving out of the house temporarily) and then have a mold expert perform an analysis. You need to think of this as gathering evidence. Do not use home mold testing kits. From an evidentiary standpoint, they are worthless. A jury wants to hear from a professional what is going on with your house, you have too much interest in the outcome of the case. Hire true professionals to diagnose and inspect the building. Do NOT skimp on experts. Hire someone thorough, not the cheapest mold investigator you can find. Hire someone that does not work for insurance companies as a large part of their business. Insurers like to pay as little as possible and often hire someone that knows that being thorough means it may be his last work from that insurer. There are many so-called professional mold testers willing to take your money to collect samples. But proficiency is the key. A sample taken in one stud bay may come back negative while one taken a few feet away may come back positive. And mold testing can be easily manipulated and interpreted. It is important to find an ethical and qualified industrial hygienist. Don't use one chosen by your builder, insurer or landlord, as they know which testers will skew results in their favor.

If you live in an apartment, you need to consider your exit strategy. You do not own the building

so you do not need to stay and fight for its repair. But you do need to maintain control of the evidence before you vacate the premises. But once you have the evidence, it's usually best to get out. Staying and fighting for your deposit may make your health deteriorate further. You can always fight over the deposit later.

Make an appointment with a knowledgeable mold doctor.

The most commonly acknowledged symptoms of mold allergy are respiratory and sinus related. However, as noted in the list above, there are much more serious, systemic clues to watch for. Unfortunately, it is rarely possible to go to your neighborhood doctor or allergist to have your concerns validated. That is usually not because they don't care, they just don't have the experience treating mold patients or the knowledge they need.

Allergists tend to think "allergy" instead of an infectious or toxic exposure. This skews their analysis slightly. The tests they use tend to look for a type 1 allergy and are prone to false negatives. They like to use their allergy skin tests because they invested in the apparatus of conducting those tests and can charge for doing them in house. Blood tests, (IgG tests) are more reliable, but most of the money goes to the lab interpreting the samples. There you have it. A doctor was once honest enough to explain this to me just this way.

In my experience, the better-qualified doctors in mold cases are immunologists and practitioners of occupational and environmental medicine. Even among them, many are not adequately informed about mold. Research mold advocates online to find referrals to the handful of doctors who acknowledge mold contamination on not just an allergic level but an infectious and toxic level as well. Most importantly, find someone with experience diagnosing and successfully treating mold exposure. Do not go to doctors that testify for defense attorneys. They are worthless as treating physicians because they deny the problem. There are objective tests to measure the amount of mold in your system. Take your results from the mold expert's site investigation to your doctor. He will run blood work and see if the same molds are in your body.

Decide to stay or leave.

Your qualified mold doctor and industrial hygienist can advise you on whether you are safe in your home, or should relocate. Ask the mold expert how to remediate things you need to take with you—or if that is even possible. Generally, non-porous items like silverware and dishes can be cleaned. But porous items are considered irremediable. You can actually cross contaminate your new home if you take contaminated items with you.

Listen to the counsel of your experts. Whether you leave or stay, be sure to access the advice on websites that have a proven and unbiased track record, like the EPA, HADD or sites that can be helpful to you regarding documentation of your problem. It is also wise to consult a construction defect or toxic tort attorney who is both experienced and who has been successful in handling mold cases. A knowledgeable attorney can help you with information about hiring experts as well as how best to pursue your rights with your builder, landlord or insurance company. Wrong steps can be costly. But know this, most attorneys do not know a thing about how to prepare and win a mold case. Of the attorneys that say they know how, see if they have even won one. If they say they have "settled some" ask for the telephone number of their former client—then call him or her to see how the case ended. Many so-called mold attorneys have some experience, but always seem to lose their cases. You need an attorney who can win your case, not just take it to trial. There are a lot of pretenders out there, and not all of them work for the defense.

Remediation can be expensive and difficult, and if improperly handled, can be dangerous.

Sometimes botched remediations have spread spores throughout a structure that might have otherwise been salvageable. It may be (and usually is) necessary to vacate the premises during remediation. In order to properly remediate, the water intrusion must be stopped. The structure must be dried. The spores must be contained and removed. Again, QUALIFIED professionals should handle mold, using the proper protective gear. Covering mold with paint is no solution. Covering up mold can get you sued for fraud if you ever sell the house. Have your mold investigator decide what needs to be done and then have a competent mold remediation contractor tender a bid to that scope of work. Once a home has been remediated, you need to have a clearance test performed to be sure it is safe before reentering.

Afterward.

Individuals who have been in a moldy environment are frequently hyper-sensitized to mold and symptoms can re-occur when they re-encounter it. Some people are not able to return to a remediated structure for this reason, even though it might be healthy for someone else. Be careful going into old buildings, barns and even antique and second-hand bookshops.

Remember, if you decide to sell the house, the law in most states requires you to disclose known defects in the house before selling it. That means you will need to make a full and fair mold disclosure. Provide the reports and documentation from the work and the clearance testing. This is not only so that the buyer cannot say you hid anything from him, but because you do not want to put anyone else through what you just experienced. Tell the truth the whole truth and nothing but the truth.

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