MOLD CLAIMS: RECOGNIZING WHAT IS REAL AND DEALING WITH THE CURRENT EXCESSIVE FEARS AND CLAIMS

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The recent mold frenzy is the strangest environmental claims issue that I have seen in thirty years of toxicological and environmental litigation consulting. Why? Mold is a natural living material and is essential for life. It has neither become more prevalent than it was twenty years ago; nor is there much additional support for any new adverse health effects despite thousands of active claims alleging the contrary. Most of the allegations in this arena are based upon substantial misinformation, so often repeated that they have garnered an aura of certitude. Among the misinformation: mold and mold toxins in the indoor environment are not known to cause brain damage,[1] immunological disorders, bleeding lungs in newborns,[2,3] fibromyalgia, attention deficit disorder, cancer or chronic fatigue syndrome. The alleged chronic disorder of "fungal syndrome"[4] or "bioaerosal disease" are neither accepted in the medical community, nor known to exist. Outdoor levels of mold spores in parts of the country (i.e., St. Louis in summer) are routinely 50,000 m^3.[5] People are being told to evacuate homes which have 5% of those levels. The term "toxic" mold makes no sense.[6] Almost all molds can make mycotoxins including Alternaria, one of the most common outdoor molds and always considered "non-toxic" or benign by environmental consultants. One of the reasons for this strange and vast discord between health realities and health perceptions is the lack of medical expert voices in the fray. Instead, the din of "indoor air" experts and "air quality experts," few of whom have any medical expertise and even fewer of whom have read thoroughly the scientific literature, has coopted this field. Some fringe physicians have also jumped into this arena. The growing interest in testing and finding problems rivals Anderson's interest in keeping Enron healthy. Thus, they are neither expert, nor impartial.

Notwithstanding the fact that this situation is misdirected, the mold issue cannot be ignored. Failing to do so is perilous. I shall present some tips in dealing with facets of this mold phenomenon, from choosing and evaluating consultants to defending claims.

RISK DECISION PROCESS

As noted in the introduction, true health risks are generally minimal in most mold contamination situations. Exceptions may rarely exist, i.e., if contamination is extensive, if occupants are highly allergic, if residents are immunocompromised (generally limited to patients on chemotherapy for cancer and organ transplant treatment).[7] However, although health is the driver for most testing and remediation; we must recognize that

perceived health risks are the real driver. Because of the extensive publicity people are genuinely worried about mold. That, plus legal representation, now common, are key determinants of your actions. This is particularly true in high-risk jurisdictions like California, Florida and Texas, although no area is immune. These factors have led to the need for prompt action and decisions. Some of those must be guided by the level of distress of involved parties. This presents the claims handler a new challenge: psychological assessment and early clinical assessment of the client or occupants. This, in turn, must be considered before denying coverage or permitting the claimant to move. One approach we have used in homeowners matters is requiring a physical examination of residents who complain of symptoms. After all, the IAQ people are not qualified to connect symptoms to cause. If the occupant believes that his/her health has been compromised, then what could be more reasonable and supportable than medical confirmation? One caution: use standard, mainstream physicians, not those who are making a current career in mold hype or fear (a minute fraction, by the way, of the medical community).

COMPONENTS OF HEALTH COMMUNICATION

Some situations require effective early health risk communication. This is particularly true in commercial building, municipal facilities and schools in which large numbers of concerned workers, parents or students may be involved. My colleagues and I have conducted numerous such discussions, particularly in schools, assisted living facilities and offices when remediation, without evacuation was planned and completed. Communicators must have expertise, excellent communication skills and the ability to deal with media and internet errors in a knowledgeable, believable fashion. Any good communicator will anticipate the concerns and be prepared to answer tough questions.

EVACUATION OR NOT

A significant cost driver in the mold arena is relocation. This is particularly common in homes, but may involve commercial establishments and municipal buildings. Rarely is immediate evacuation needed. Mold is not like carbon monoxide or natural gas. An exception may be a situation in which contamination is unusually severe, i.e., a family returns after three weeks to a flooded home or a roof blows off a building. Too many IAQ investigators order evacuation with little appropriate knowledge to do so and little justification. The finding, for example, of small amounts of *Stachybotrys* is not, taken alone, grounds for evacuation. It is important that this issue be discussed with consultants you hire. If they are too cavalier, trouble can ensue. If they are overly conservative (demanding evacuation regularly) they can lead to vastly inflated costs. If occupants are complaining of symptoms they should be examined by a non-mold-activist physician at once to see whether medical findings are consistent with a mold-induced cause.

During remediation, a second evacuation decision may have to be made. The need for

this depends upon the amount of remediation and the ability to reasonably protect the occupants.

Most importantly, these decisions are all matters of judgement. You must be certain that your consultants have good judgement and valid, scientifically supportable reasons for their decisions.

HIRING CONSULTANTS AND CONTRACTORS

We have touched on the issue of consultants. The testing and remediation industry is chaotic and highly variable in quality. Some of the largest and best known firms over test and over interpret and over evaluate. That's how they get paid. To manage a nationwide consulting network best, a thorough vetting process must be used. Working with the key individuals, reviewing their work, getting recommendations and, most importantly, reviewing their reports and recommendations both for content and consistency (often one tester from a group makes his/her pet recommendations. Another, in a similar situation, says something different) are the only ways to insure that you're getting the right people. Inconsistency in recommendations and actions can get you in trouble. You need a standard and medically/scientifically supportable set of guidelines[8,9] and standard operating procedures (SOP's). Very importantly, never accept reports from industrial hygienists, engineers or other non-medical people that describe health effects of various molds. They are generally out-of-context and never useful.

TESTING/SAMPLING: HOW MUCH AND WHAT KIND?

Sampling options are another area of enormous inconsistency. Sampling should always be determined by apparent or highly suspicious water damage and suspected mold growth.[8] Random tests are uninterpretable and make no sense. The latest creative, but rarely appropriate, testing extreme involves mold-smelling dogs: a silly, expensive approach designed to escalate costs. Since dogs are touted as being able to identify mold at level 1,000 times lower than the human nose, they'll likely find it everywhere, even when it is inconsequential to human health.

COORDINATING EVALUATION AND REMEDIATION

Water incursions must be controlled and damage cleaned up. This is often a localized activity that does not and should not involve an entire facility. The allegation of widespread mold spore dissemination through the ventilation system is rarely a meaningful issue. Since spores enter buildings and homes every time we open doors and windows, they are everywhere.[10] The concern is not their presence (unless levels are extraordinarily high), but whether they find wet areas for growth. One study of normal homes studied mold spore levels during routine activities. A simple act like changing sheets on beds, for example, has been shown to generate many thousands of

airborne mold spores.[11]

DEALING WITH CONTENTS

Rarely do contents require destruction or replacement. An exception is furniture which is water soaked and moldy. This may not be salvageable. Surface spores, however, on otherwise dry furnishings, drapes and clothing can readily be cleaned. Solid surfaces can be wiped down.

POST REMEDIATION CLEARANCE

Returning occupants to post-remediated areas generally follows elimination of water damage and moldy materials. Numbers are unreliable, often uninterpretable, but commonly used. The commonly-used 1-1 or 2-1 ratios of indoor to outdoor mold are poor rules of thumb since levels can vary so markedly from time to time and since, in cold climates, winter outdoor levels are almost always lower than indoor levels.[5] The best guidelines are: 1) Has the damaged area been remediated? Visual inspection answers that question; and, 2) Are levels consistent with customary indoor levels which have been reported in the scientific literature?

SUMMARY OF KEY POINTS

- "Toxic" Mold is a meaningless term as it is commonly used.
- Indoor air mold has never been proven to produce toxicity
- Common allergies are the main endpoint of mold exposure in sensitive people: 20% or so. They are not generally serious.
- Mold or mold toxin exposures from indoor contact do not produce most of the diseases/symptoms currently being claimed
- Gardening, walking in the woods and camping expose people to vastly higher levels of "toxigenic" mold than do almost any indoor exposures.
- If people do have mold allergies, they usually have others. Cats, dogs and dust mites are far more important indoor air allergens than is mold.
- Reports from testing groups should not discuss health effects. They are usally wrong or, at minimum, out-of-context.
- The defense of irrational claims depends upon well-prepared defense counsel who understands the known clinical science of mold and its effects.

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