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Re: Labelling and Advertising of Cannabis in Draft Rule 2

Dear Chair Pepper and Members Hulburd and Karris:

I write on behalf of Physicians, Families and Friends Education Fund to address the language in Draft Rule 2 governing labelling and advertising of cannabis. This draft was posted on your website within the past few days. We ask that the Board substantially revise the draft to conform to the professional recommendations on both topics by the Vermont Medical Society. I enclose the Resolution adopted by the Vermont Medical Society earlier this month. The Resolution also can be found at

<https://vermontmedicalsociety51665.wildapricot.org/resources/2021%20VMS%20Cannabis%20Resolution%20-%20As%20Passed%20by%20Board.pdf>

The Resolution urges you to require the following simple concise language on all packaging and in all advertising:

## **WARNING: Cannabis/THC may cause:**

- 1. Psychosis\***
- 2. Impaired driving**
- 3. Addiction**
- 4. Suicide attempt\***
- 5. Uncontrollable vomiting**
- 6. Harm to fetus/nursing baby**

\*This can occur in individuals with no previous history of psychosis or mental illness.

The Vermont Medical Society's Resolution is founded upon peer-reviewed medical studies published in some of the world's leading medical journals. The studies are cited in the Resolution.

The proposed package warning in Draft Rule 2.2.10 warns: 1) to keep the product away from children and pets; 2) not to use if pregnant or breastfeeding; 3) that use may be habit-forming and may impair concentration, coordination and judgment; 4) that persons 25 or younger are more likely to experience harm to the developing brain, and 5) that driving or operating machinery while under the influence of this product is illegal.

Draft Rule 2.2.210 draft has double the word-count and is less easy to read and understand than the Vermont Medical Society's short and to-the-point, plain-language warning.

Draft Rule 2.2.10 also does not warn potential purchasers of some of the medically-documented, most severe consequences of cannabis use: *psychosis and suicide attempts by individuals with no prior mental health history*. Vermonters deserve to have the facts concisely and clearly communicated to them before they purchase and ingest cannabis. Vermonters will have no idea, without this warning, that psychosis or suicide attempts may result from cannabis use even if they are without any prior personal or family history of psychosis or mental illness. We are doing Vermonters a disservice by withholding this information. We wish Vermonters to be informed decision-makers and Vermonters cannot make informed decisions about purchase and use without this information.

Nor does the draft warn potential purchasers that *uncontrollable vomiting* may result. This is vomiting so severe and persistent that hospitalization can be required to save lives. Cannabis hyperemesis syndrome ("CHS") was a "case report" because it was so rare—before the commercialization and advertising of cannabis or the widespread and regular use by the public of high THC (greater than 15 % THC) cannabis products marketed as safe to the public. To learn more, please review this site created by advocates of cannabis legalization and commercialization who are also victims of CHS seeking to warn the public <https://youtu.be/y5WweNVc7nw>

Vermonters will have no idea of this documented consequence of cannabis use if not warned. They deserve to know this too.

And, while the draft warns not to use if pregnant or breastfeeding, it does not say why. Is it to avoid harm to the mother or to the child? If to the child, is this warning just because the State of Vermont does not want minors to get high? The warning needs to state in plain English that *the fetus or infant may be harmed* if you use

cannabis. Pregnant women and mothers need to know this.<sup>1</sup> I attach the educational materials on this prepared by the American College of Obstetricians and Gynecologists.

Also, warning that cannabis use may be “habit forming” has a different connotation than warning that cannabis use may cause *addiction*. Drug abuse experts use the term “habit forming” to refer to addiction, but in common usage jogging, a brisk evening walk, wearing slippers in the house, brushing one’s teeth, reading crime novels, solving math puzzles or spending time with a favorite pet or loved one could all be “habit forming” although none connote the loss of freedom to choose, nor they do not communicate the adverse impact on the consumer’s life, career, or family which is commonly understood by the public by the word “addiction.” Vermonters need to know that cannabis use can cause *addiction*, not that it can be “habit forming.”

Proposed Rule 2.2.11 governs advertising. My clients were astonished to discover that the draft contains *no mandatory disclosures in advertising*. The labeling requirements discussed above, while important, will be, for most customers, too late. They won’t read the package until after they have purchased the product, if they read it at all. The disclosures that the Medical Society has proposed must be made *before* the sale is consummated so that an educated potential consumer will have this information in mind when deciding whether or not to purchase.

It appears that the draft omits any mandatory disclosures in advertising because of a fear—an ill-advised fear—that the First Amendment prohibits mandatory disclosures. It does not. Chief U.S. District Judge Reiss’s order upholding Vermont’s genetic engineering disclosure law applies squarely to the advertising of cannabis. *Grocery Mfr’s Ass’n. v. Sorrell*, 102 F.Supp. 3d 583 (2015). Judge Reiss explained that the First Amendment applies to advertising because it is a form of commercial speech, but that the First Amendment *allows* compelled disclosures of facts that are not political viewpoints in order to protect an important government interest. In that case, as here, the government interest involved is more substantial than “appeasement” of “consumer curiosity.” The disclosure is reasonably related to the State’s interest in protecting Vermonters from physical and/or mental harm that is sometimes irreversible. Therefore, the regulation is likely to be upheld as a reasonable exercise of the State’s power to protect the public.

...an advertiser's [First Amendment] rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers." *Zauderer*, 471 U.S. at 651. The Court has described *Zauderer* as "less exacting scrutiny" and

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<sup>1</sup> The warning against use while pregnant or breast-feeding accompanies many widely used products, such as roasted dandelion root tea. The medical evidence compels a stronger warning for cannabis than for dandelion root tea.

has noted that the "First Amendment protection for commercial speech is justified in large part by the information's value to consumers" and because the "constitutionally protected interest in not providing the required factual information is 'minimal.'"

These conclusions by Chief Judge Reiss about forced disclosure of genetic engineering in food products apply with greater force to compelled disclosure of the medical risks of ingesting cannabis. Robust scientific evidence now supports and describes the harms resulting from cannabis use in hundreds of high-quality, peer-reviewed medical articles, in some instances with little or no credible opposing scientific evidence. The harm resulting from ingesting genetically engineered foods, in contrast, was supported by little settled medical evidence at the time of the ruling. But the mandatory disclosure was upheld.

The same public safety rationale applies here as applies to cigarettes, but even more so. The health effects of tobacco use generally arise from long-term use, while some of the documented severe adverse health effects of cannabis use arise from short term use, (even single use). The public is generally unaware of these risks. Potential consumers need to know before their first use.

Sections 907(c)(1)(D) and 978(d) and (e) of Title 7 empower the Board to set standards for labelling of packages and for advertising. We respectfully submit that the health and safety of many tens of thousands of Vermonters will be unnecessarily placed at risk if the Board does not adopt warnings Vermont's doctors have urged the Board to adopt.

Thank you for the careful attention to these issues. We would be happy to present additional context, detail and commentary on these drafts, and the supporting data, at one of your upcoming meetings.

Respectfully submitted,  
*/s/James A. Dumont*  
James A. Dumont, Esq.