

October 3, 2019

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
United States House of Representatives

The Honorable Kevin McCarthy  
Minority Leader  
United States House of Representatives



Re: Coalition on Vape Safety comments on recent vape related illnesses

Dear Speaker Pelosi and Leader McCarthy,

Medical cannabis patients and adult consumers in 33 states depend upon safe, state-regulated cannabis products. As the national trade association representing the state-legal cannabis industry, our members' businesses depend upon delivering reliable products that meet their expectations. Recent reports of vaping-related illnesses and deaths are alarming and demand an immediate, robust investigation by public health professionals. Make no mistake, the legal state-regulated cannabis industry knows that any death is one death too many. Fortunately, we have policy tools that can be employed to help limit the illicit market, implement uniform good manufacturing practices and prevent future harms.

Effective public policy demands a strategy based on facts and reliable scientific evidence. But many key facts surrounding recent vaping-related illnesses and deaths remain unknown. Some of the media coverage of this brewing crisis is currently based on speculation. Many reports have conflated a wide variety of products with little in common except the use of a vaporizer. What we do know is that the role of adulterants is being seriously examined. Indeed, preliminary reports have linked nearly all reported illnesses to products purchased from the illicit market that contain potential adulterants and contaminants. An investigative report from NBC News on September 27, 2019 that tested both regulated and illicit products indicates that additives and pesticides which are likely contributing factors in this recent outbreak were found exclusively in the illicit market products tested. If so, it is essential that regulators and the media accurately warn the public about these dangers. The public needs accurate and actionable information from the government, particularly about illegal, untested, and dangerous illicit market consumer products.

The recent illnesses are an unmistakable reminder of the importance of effective regulation. If it is confirmed that Americans are being hurt because of unregulated, illicit market cannabis vape products, it is yet another reason for real, comprehensive federal cannabis reform that will allow the regulated, tested cannabis industry to displace illicit market actors. The current patchwork of state regulations highlights the need for uniformity. And uniformity comes with descheduling and federal regulation. It is time to identify and ban whatever contaminants or adulterants are causing these illnesses – if they are not banned already – on a nationwide basis. In the meantime, responsible and legal cannabis businesses stand ready to promote licensed operators and work with regulators to crack down on counterfeit products and other illicit activities.

On October 1, 2019, the National Cannabis Industry Association released substantive and thoughtful recommendations for how cannabis can be regulated at the federal level. Currently, because of marijuana's status as a Schedule I drug under the Controlled Substances Act (CSA), the Drug Enforcement Administration (DEA) is the primary federal regulator of cannabis. Criminal enforcement

therefore serves as the sole regulatory tool currently used by the federal government, and prohibition policies have utterly failed to either stamp out the illicit market or allow the legal market to effectively disrupt it at a national level. There is currently no cohesive federal public health policy for cannabis. It is now abundantly clear that we need a public health approach to cannabis regulation. We hope that lawmakers will pay attention to our recommendations, as our industry deeply believes that responsible federal regulation is what Americans deserve and should expect.

The first and most important step towards a comprehensive regulatory system for cannabis is for Congress to remove marijuana and its derivatives, including delta-9 tetrahydrocannabinol (THC), from the CSA, otherwise known as “descheduling.” Descheduling is the only way to truly reform federal cannabis policy in a sensible manner so that state regulatory programs can most successfully ensure consumer safety and to pave the way for appropriate federal regulations. Our proposal calls for cannabis products, like other consumables, to be descheduled and regulated by the government agencies that currently oversee most food and drugs, primarily the Food and Drug Administration (FDA) and the Alcohol and Tobacco Tax and Trade Bureau (TTB) within the U.S. Department of the Treasury. If vaporized products were to fall under the FDA’s purview, for example, that agency could approve ingredients that are safe to be vaporized, similar to how the FDA recognizes food or alcohol ingredients as safe.

In addition, descheduling cannabis would end many of the federal policies that make it difficult for legal cannabis businesses to effectively compete with illicit operators. Eliminating the undue burdens caused by outdated laws would help ensure that unethical actors are increasingly disrupted by legitimate, responsible businesses.

Our member businesses strive to make the lives of their patients and consumers better. Voters and legislators have approved medical programs in thirty-three states and those cannabis programs are working for patients. Patients and other consumers deserve a fact-driven regulatory response from Congress to prevent further harm. The public should have confidence in the products that we market and sell, and the legal cannabis industry stands ready to inform and abide by reasonable regulations.

In light of the indeterminate cause(s) of these illnesses and variance in state regulations regarding vape cartridges, the National Cannabis Industry Association (NCIA) is making the following recommendations:

- Congress is urged to immediately remove cannabis from the Controlled Substances Act and begin to sensibly regulate this substance in a manner similar to alcohol and other consumables, and to make funds immediately available to state medical authorities to investigate these cases.
- Licensed vape cartridge producers are encouraged to halt the use, if any, of additive thickening agents until more data is available.
- Given the preliminary reported association of some illness cases with Vitamin E acetate, any licensed producer that has included this additive in recent vape product batches is strongly encouraged to issue a voluntary recall of those products.
- Licensed cannabis retailers are encouraged to take steps to ensure none of their available vape cartridge inventories have been sourced from a producer that uses Vitamin E acetate.
- Cannabis vape cartridge consumers are urged to immediately cease the use of any product obtained from the illicit market and to limit any future purchases of vape cartridges and other cannabis products to state-licensed, regulated businesses.

The legal cannabis industry is extremely concerned about these reported illnesses and deaths. It is clear that the American public wants quality-controlled cannabis products made available for adults and patients. The recent news is, unfortunately, yet another reminder that there is no time to waste. Our industry wants to provide the products voters demand with a tireless focus on improving consumer safety. While state regulators and licensed businesses appear to be doing an excellent job at keeping potentially dangerous products out of the legal market, federal descheduling and regulation will allow more research and help states continue to improve their regulatory activities and oversight, as well as provide universal standards for safety. We are at the ready to work collaboratively with federal lawmakers, the same way we have at the state level for over a decade. Please let us know how we can help move the ball forward on descheduling legislation. Lives are literally at stake.

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