



# Physicians *for a* Smoke-Free Canada

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Re: Proposed Vaping Promotion Regulations

Dear Mr. Cook,

I am pleased to offer some comments on the proposed Vaping Promotion Regulations, published in the Canada Gazette, Part I on December 21, 2019.

**1. Commentary on the Regulatory Impact Analysis Statement (RIAS) "Current research on vaping."**

This section relies mainly on three conclusions of the NASEM report.<sup>1</sup> While this is a worthy report, it was published two years ago and it no longer reflects the state of the evidence. The RIAS should include subsequent research findings, in addition to from the NASEM report which are relevant to the proposed regulations.

Here of some of the main research findings, with references to key recent documents, that should be acknowledged in the RIAS.

*Vaping products are a gateway drug to tobacco use*

A meta-analysis of studies of this phenomenon, reviewed in the NASEM report concluded that young e-cigarette users were four times more likely to become cigarette smokers.<sup>2</sup> A subsequent study also concluded that vapers were four times more likely to become cigarette smokers.<sup>3</sup> Other studies have come to similar conclusions. One was reviewed in the NASEM report.<sup>4</sup> Others are

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- 1 National Academies of Science Engineering and Medicine. Public Health Consequences of E-cigarettes. 2018.
  - 2 Soneji S, Barrington-Trimis JL, Wills TA, et al. Association between initial use of e-cigarettes and subsequent cigarette smoking among adolescents and young adults: a systematic review and meta-analysis. *JAMA Pediatr* 2017;171:788-797. doi: 10.1001/jamapediatrics.2017.1488.
  - 3 Berry K, Fetterman J, Benjamin E, et al. Association of electronic cigarette use with subsequent initiation of tobacco cigarettes in US youths. *JAMA Network Open* 2019; 2(2): p. e187794. doi:10.1001/jamanetworkopen.2018.7794. <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2723425>.
  - 4 Coleman BN, Rostron B, Johnson SE, et al. Electronic cigarette use among US adults in the population assessment of tobacco and health (PATH) study, 2013-2014. *Tob Control* 2017;26(e2):e117-e126. doi: 10.1136/tobaccocontrol-2016-053462.

more recent.<sup>5 6 7</sup> A recent Canadian longitudinal study also found that e-cigarette use by adolescents predicted future tobacco use. It also found that cigarette use predicted future e-cigarettes among high-school age adolescents.<sup>8</sup>

*Vaping products increase the risk of lung and cardiovascular diseases*

Recent literature reviews have concluded that vaping products are associated with adverse pulmonary<sup>9</sup> and cardiovascular events.<sup>10</sup> The review of pulmonary toxicity cited 193 references and the review of cardiovascular risk cited 89 references. Most of the studies reviewed in these two papers were experimental or epidemiological studies that showed adverse pulmonary and cardiovascular effects of e-cigarettes.

Dual use of both vaping products and cigarettes, the most common form of use, bears higher risk of lung diseases<sup>11</sup> and heart diseases<sup>12</sup> than use of either product alone. Other studies have also shown increased health risks from dual use.<sup>13 14 15</sup>

*Vaping products, at a population level, do not increase the likelihood of smoking cessation. They decrease it.*

A meta-analysis of 20 studies concluded that e-cigarette use was associated with significantly less quitting among smokers.<sup>16</sup> The meta-analysis results were confirmed when they were updated to include 37 studies.<sup>17</sup>

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- 5 Barrington-Trimis JL, Kong G, Leventhal AM, et al. E-cigarette use and subsequent smoking frequency among adolescents. *Pediatrics* 2018;142. doi: 10.1542/peds.2018-0486.
  - 6 Hu SS, Homa DM, Wang T, et al. State-specific patterns of cigarette smoking, smokeless tobacco use, and e-cigarette use among adults — United States, 2016. *Prev Chronic Dis* 2019;16:180362. DOI: <http://dx.doi.org/10.5888/pcd16.180362>.
  - 7 Primack BA, Shensa A, Sidani JE, et al. Initiation of traditional cigarette smoking after electronic cigarette use among tobacco-naïve US young adults. *Am J Med* 2018;131:443.e1-443.e9. doi: 10.1016/j.amjmed.2017.11.005
  - 8 Aleyan S, Gohari MR, Cole AG, Leatherdale ST. Exploring the Bi-Directional Association between Tobacco and E-Cigarette Use among Youth in Canada. *Int. J. Environ. Res. Public Health* 2019, 16, 4256; doi:10.3390/ijerph16214256 [www.mdpi.com/journal/ijerph](http://www.mdpi.com/journal/ijerph).
  - 9 Gots J, Jordt S, McConnell R, Tarran R. What are the respiratory effects of e-cigarettes? *British Medical Journal*. 2019. <http://dx.doi.org/10.1136/bmj.l5275>.
  - 10 Buchanan N, Grimmer J, Tanwar V, Schwieterman N, Mohler P, Wold L. Cardiovascular risk of electronic cigarettes: a review of preclinical and clinical studies. *Cardiovascular research*. 2019 Oct 4. <https://academic.oup.com/cvres/advance-article/doi/10.1093/cvr/cvz256/5613736>.
  - 11 Bhatta DM and Glantz SA. Association of E-Cigarette Use With Respiratory Disease Among Adults: A Longitudinal Analysis. *American Journal of Preventive Medicine*. Dec. 16, 2019. [https://www.ajpmonline.org/article/S0749-3797\(19\)30391-5/fulltext](https://www.ajpmonline.org/article/S0749-3797(19)30391-5/fulltext).
  - 12 Bhatta D, Glantz S. Electronic cigarette use and myocardial infarction among adults in the United States Population Assessment of Tobacco and Health. *Journal of the American Heart Association*. 2019. <https://www.ahajournals.org/doi/pdf/10.1161/JAHA.119.012317>.
  - 13 Shahab L, Goniewicz ML, Blount BC, Brown J, McNeill A, Alwis KU, Feng J, Wang L, West R. Nicotine, carcinogen, and toxin exposure in long-term e-cigarette and nicotine replacement therapy users: a cross-sectional study. *Annals of internal medicine*. 2017 Mar 21;166(6):390-400
  - 14 Alzahrani T, Pena I, Temesgen N, Glantz SA. Association Between Electronic Cigarette Use and Myocardial Infarction. *American journal of preventive medicine*. 2018 Oct 1;55(4):455-61.
  - 15 Czoli CD, Fong GT, Goniewicz ML, Hammond D. Biomarkers of exposure among “dual users” of tobacco cigarettes and electronic cigarettes in Canada. *Nicotine & Tobacco Research*. 2018 Sep 7.
  - 16 Kalkhoran S and Glantz S. E-cigarettes and smoking cessation in real-world and clinical settings: a systematic review and meta-analysis. *Lancet Respir Med*. 2016 Feb;4(2):116-28. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4752870/>.
  - 17 Glantz S. UCSF Stan Glantz blog. [Online].; 2018 [cited 2019 05 08. Available from: <https://tobacco.ucsf.edu/another-well-done-longitudinal-study-shows-e-cigs-depress-smokingcessation>.

#### RECOMMENDATION:

- Before a final RIAS is published in Canada Gazette, Part II, **it is recommended that the “Current research on vaping” section be amended to include the information given here, together with other new and important information that will come to light before final publication.**

#### 2. Commentary on the RIAS, “Severe pulmonary illness associated with vaping”

It is not sufficient to simply say the “proposed regulation would not address the recent emergence of severe lung illness related to vaping.” The fact that the specific causes of these illnesses are unknown demands that everything possible be done to discourage use of these products, especially by non-smokers. This would include making the promotion regulations more restrictive than currently proposed.

#### 3. Commentary on the RIAS and Regulation sections titled “Advertising – requirements related to protection of young persons”

While this section of the RIAS insists on diligent age verification to keep young people away from websites advertising and selling vaping products,<sup>18</sup> it is troubling to note that there is no text in the proposed regulation to give effect to this hope for diligent age verification. The RIAS cannot be expected to function as a substitute for clear requirements in the actual text of the regulations.

Even if such wording were included in the regulation, enforcement of such a rule would throw up challenges that may be difficult to meet.

Experience tells us that the ability of young people to circumvent prohibitions on their access to websites is frequently underestimated. In addition, there is reason not to trust the actions of vaping product manufacturers in their efforts, whether voluntary or obligatory, to keep young people away from vaping product advertisements on websites. The statement of claim in a California lawsuit against JUUL showed that the company did have a scheme that kept at least some young people from accessing the JUUL website. However, the process of exclusion provided JUUL with enough information to send promotional material to the home addresses of the excluded young people. JUUL did so repeatedly.<sup>19</sup>

In the light of all these potential difficulties, **we recommend that the precautionary principle be applied and that all internet advertising and sales of vaping products be banned.** There is too much risk that young people would get access to this material.

Merely making products available at a point of sale accessible to young people is a form of promotion that runs counter to the law’s stated purposes “to protect young persons and non-users of tobacco products from inducements to use vaping products” and “to protect the health of young persons by restricting access to vaping products.” Young people have access to thousands of convenience stores, grocery stores and other locations where vaping products have been sold since May 23, 2018.

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18 This section includes the statement “Health Canada expects that, before visitors are granted access to a website or social media page that advertises vaping products, their age and identification would be diligently verified, for example by requiring visitors to upload a valid piece of ID so that their age and identity can be confirmed.”

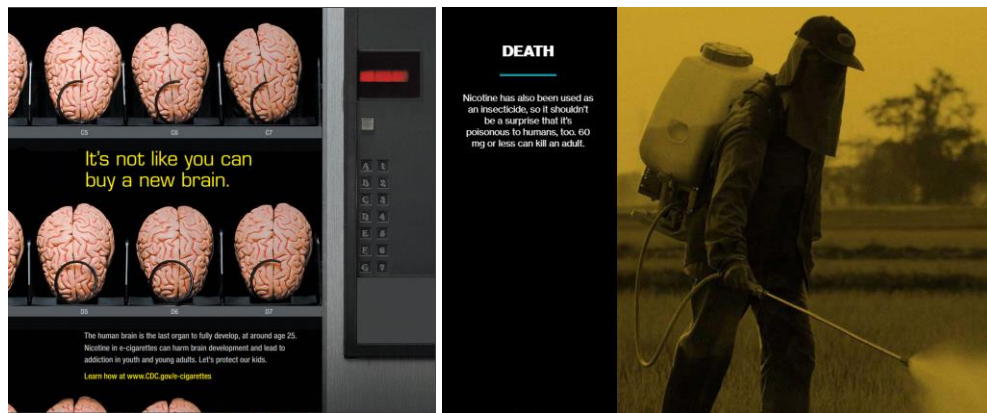
19 The People of the State of California v. JUUL Labs et al. Complaint for Permanent Injunction. County of Alameda. November 18, 2019. <https://oag.ca.gov/system/files/attachments/press-docs/91186258.pdf>.

**RECOMMENDATION:**

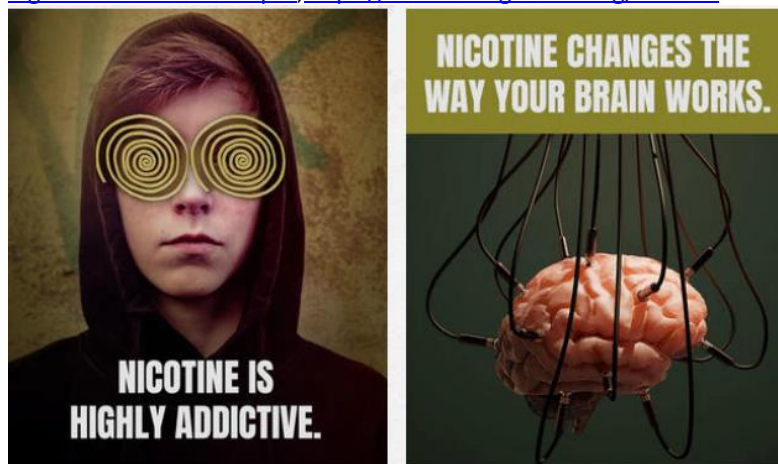
- It is therefore recommended that the regulatory power available under Section 30.8 of the TVPA be used to prohibit sales and advertising of vaping products in all places to which young persons have access.

**4. Commentary on the Proposed Regulation, “Part 2 – Required Information in Advertising”**

Regrettably the key document *List of Health Warnings for Vaping Product Advertising* is not yet available. In addition, the first two warnings proposed for use are too small and do not reflect the seriousness of the health effects of vaping as documented by current science. Moreover, they are text-only. Years of well-researched experience with effective graphic health warnings on cigarette packages has been inexplicably set aside. Graphic warnings about the health effects of vaping are in use in promotional materials developed by government agencies in the USA and could be usefully adapted for use on vaping advertisements in Canada. Some examples are shown below.



Sources: [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/assets/OSH-2019-E-Cigarette-Print-Ad-508.pdf](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/assets/OSH-2019-E-Cigarette-Print-Ad-508.pdf); <https://stillblowingsmoke.org/#health>



Source: <https://therealcost.betobaccofree.hhs.gov/vapes/real-facts>

**RECOMMENDATION:**

- It is recommended that the size of the required warnings be increased from 20% to 50% of the surface area of the advertisement.

- **It is recommended that *List of Health Warnings for Vaping Product Advertising* be made available as soon as possible and that the list consist exclusively of effective warnings with graphic elements.**

The draft regulations propose allowing advertising on signs and by audio and video media, as long as these advertisements are in adult-only venues. Other forms of promotion, such as promotional parties, are not specifically prohibited and would therefore be allowed. Experience with previously permitted tobacco promotions has taught us there is plenty of scope for mischief through sponsored parties and audio and visual advertising, even if they are in adult-only venues. Examples of bar promotions that were used to promote tobacco in the early 2000s are shown below, as are pictures from a restaurant promotion for vaping products in November 2019 that was the subject of a complaint we subsequently filed. The combined use of branded and unbranded elements and the interaction of these elements with staff and guests within the venue illustrate the challenge of ensuring compliance with statutory prohibitions on lifestyle and testimonial advertising when advertisements and promotions are allowed to go beyond “signs”.

**RECOMMENDATION:**

- **It is therefore recommended that all forms of advertising for vaping products be prohibited except signs in adult-only venues and in publications sent to named adults.**

**5. Commentary on the section entitled “Health Canada’s response to key stakeholder concerns.”**

By identifying only the potential benefits and making no reference to potential harms or barriers to achieving potential benefits, this section gives an overly optimistic view of e-cigarettes.<sup>20</sup> The most obvious harm is Health Canada’s own survey data which shows we now have 400,000 adolescent vapers,<sup>21</sup> dwarfing the number of former smokers “(over 20,000)” that have written to Health Canada giving testimonials on how vaping products have helped them quit smoking. This section also fails to mention that most vapers (65%) also use regular cigarettes.<sup>22</sup> It also does not reflect the most recent scientific conclusion that e-cigarettes cannot be said to be safer than combustible cigarettes.<sup>23</sup> Mention is made of the study by Hajek et al, but no mention is made of the fact that the rate of success reported by Hajek et al. was about the same as was achieved combination therapies employing therapeutically-approved medication,<sup>24</sup> nor of the fact that smoking cessation success came at the cost of substantial abuse liability.<sup>25</sup>

20 This section reads: “*This regulatory proposal brings vaping promotion restrictions much closer to those in place for tobacco. However, there are some differences because Health Canada has approached the regulation of vaping products as a separate product category from tobacco products. While vaping products are harmful, the best available scientific evidence suggests that they are less harmful than cigarettes for smokers who switch completely from tobacco to vaping products. The proposed Regulations were designed to maintain adult smokers’ continued access to commercial communications on vaping products. Giving people who smoke access to less harmful options than cigarettes could help reduce health risks and possibly save lives.*”

21 Health Canada. Results of the Canadian Student Tobacco, Alcohol and Drugs Survey (CSTADS). 2018-19. 2019.

22 Health Canada. Canadian Tobacco, Alcohol and Drugs Survey (CTADS): summary of results for 2017. <https://www.canada.ca/en/health-canada/services/canadian-tobacco-alcohol-drugs-survey/2017-summary.html>.

23 Buchanan N, Grimmer J, Tanwar V, Schwieterman N, Mohler P, Wold L. Cardiovascular risk of electronic cigarettes: a review of preclinical and clinical studies. *Cardiovascular research*. 2019 Oct 4. <https://academic.oup.com/cvadvances/advance-article/doi/10.1093/cvr/cvz256/5613736>, and Gotts J, Jordt S, McConnell R, Tarran R. What are the respiratory effects of e-cigarettes? *British Medical Journal*. 2019. <http://dx.doi.org/10.1136/bmj.l5275>.

24 Borelli B and O’Connor GT. E-Cigarettes to Assist with Smoking Cessation. *New England Journal of Medicine*. January 31, 2019. 10.1056/NEJMe1816406. [https://www.nejm.org/doi/full/10.1056/NEJMe1816406?url\\_ver=Z39.88-2003&rfr\\_id=ori:rid:crossref.org&rfr\\_dat=cr\\_pub%3dpubmed](https://www.nejm.org/doi/full/10.1056/NEJMe1816406?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed)

25 Callard C. Do e-cigarettes beat NRT as cessation aids? A key study provides two opposing results - yet only one was reported. [Online]; 2019 [cited 2019 10 23]. Available from: <http://smoke-freecanada.blogspot.com/2019/10/do-e-cigarettes-beat-nrt-as-cessation.htm>.

**Branded and unbranded Promotions in Adult-only venues, Montreal, autumn 2003.**  
(Photos by Physicians for a Smoke-Free Canada and Coalition québécoise pour le contrôle du tabac)



2003



2003

Insertmarketing.ca brochure illustrating ways in which Vype was promoted in an age-restricted venue in November 2018.

  
**APRÈS NOIR**  
DINNER CONCERT SERIES  
**ACTIVATIONS**

		
<b>PROJECTION MAPPING</b>	<b>VIP AREA</b>	<b>FOG SCREEN</b>
		
<b>SIDE PROJECTORS</b>	<b>TENT CARDS</b>	<b>ELITE TABLE SEATING</b>
		
<b>FASHION SEEDING</b>	<b>ARTIST PAINTING</b>	<b>VINYL BRANDING</b>

Giving people who smoke access to vaping products in the hopes that they will use them to quit smoking is assigned some importance in this section. It is important to note that this access will be maintained by these proposed regulations and that such access will not be substantially diminished by any of the recommendations made here. Importantly, the proposed regulations will reduce youth access to promotions of vaping products. The recommendations proposed here will serve to better meet the law's purposes by reducing youth access even more, but not prevent adult smokers from having easy access to vaping products. In other words, the benefits that are touted will not be diminished by any of the amendments we propose.

## 6. Concluding remarks

Data from the CSTADS survey show that there are 400,000 adolescents in Canada who have vaped in the last 30 days.<sup>26</sup> This is a public health crisis that requires urgent attention. While the proposed regulations, together with the amendments proposed here, are not sufficient to address this challenge, they are necessary.

### RECOMMENDATIONS:

**It is therefore recommended that this proposed promotion regulation, as amended by the recommendations proposed here, be implemented without delay.**

While the proposed regulations, with the recommended improvements we have suggested, will go some way to protecting youth from inducements to use vaping products, this is only the beginning of the regulatory, legislative and policy changes needed to effectively curb the rapidly growing epidemic of nicotine vaping.

Here are additional subjects that need to be addressed urgently:

- Change maximum allowed concentration of nicotine in vaping products from 66 mg/ml to 20 mg/ml.
- Prohibit alterations to vaping products that encourage inhalation. For example, prohibit addition of organic acids to create nicotine salts.
- Ban all flavours except tobacco in all vaping products but establish a mechanism that would allow exemptions if there is evidence that doing so is in the public interest.
- Include vaping products in definition of tobacco products, thereby applying act and many regulations, such as reporting of sales and promotional expenditures, to vaping products.
- Large, rotating, graphic health warnings on packages of vaping products. Plain and standardized appearance of packages of vaping products.
- Measurement and reporting of pH of tobacco and vaping products so that valid comparisons can be made.
- Measurement and reporting of particle size in tobacco smoke and vaping product aerosol.
- Measurement, reporting and maximal limits of temperature and voltage of vaping products.
- Measurement and reporting of amounts of chemical constituents in vaping product aerosol.
- Substantially revise and upgrade promotional and educational materials on tobacco and vaping. Increase annual expenditure on these activities to a level that will match the per-capita expenditures on these activities in California.

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26 Health Canada. Results of the Canadian Student Tobacco, Alcohol and Drugs Survey (CSTADS). 2018-19. 2019.



In the longer term:

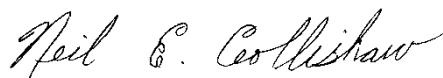
- Restructure the TVPA so that it will be one of the tools to help reach the government's objective of reaching 5% prevalence by 2035, by including mandatory targets of less than 5% prevalence of use of tobacco and other recreational nicotine products by 2035, with accountability for government and industry.

## 7. Summary of Recommendations

It is recommended:

- that the "Current research on vaping" section be amended to include the information given here, together with other new and important information that will come to light before final publication;
- that the precautionary principle be applied and that all internet advertising and sales of vaping products be banned;
- that the regulatory power available under Section 30.8 of the TVPA be used to prohibit sales and advertising of vaping products in all places to which young persons have access;
- that the size of the required warnings be increased from 20% to 50% of the surface area of the advertisement;
- that *List of Health Warnings for Vaping Product Advertising* be made available as soon as possible and that the list consist exclusively of effective warnings with graphic elements;
- that all forms of advertising for vaping products be prohibited except signs in adult-only venues and in publications sent to named adults;
- that this proposed promotion regulation, as amended by the recommendations proposed here, be implemented without delay.

Yours sincerely,



Neil E. Collishaw  
Research Director