



Physicians *for a* Smoke-Free Canada

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March 22, 2019

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Re: Notice of Intent to Regulate Vaping Product Advertising [Corrected, 2019-03-27]

Dear Mr. Van Loon

The Notice of Intent to regulate vaping advertising, issued on February 5, 2019 does acknowledge that there is an epidemic in teen vaping across the country. It does propose some measures to begin to address this problem. However, we have reviewed the proposals your department has made and believe these actions are inadequate. The deficiencies are as follows:

General considerations

- Regulation-making does not lend itself very well to addressing the vaping epidemic. The problem exists now, but the process to make regulations is inherently slow. The mandatory steps to be undertaken in regulation-making will take several months, if not several years – too slow for solving an immediate public health crisis.
- The Tobacco and Vaping Products Act is fundamentally flawed. It allows advertising for vaping product except where specifically prohibited. This structure has already proven itself to be ineffective. Advertising abounds in retail stores and on the Internet. Many of these advertisements contain lifestyle elements, even though lifestyle advertising is illegal. A better structure would be to adopt the same structure that we have for tobacco advertisement – all advertising would be banned except where specifically allowed such as adult-only venues. The surest and quickest way to do this would be for the government to make a few changes to the Tobacco and Vaping Products Act. A minimal set of changes is proposed in the attachment.
- Should legislative change not be achieved, then some way should be found to achieve a general prohibition on advertising with exceptions through regulations

Points of sale and public places

- In the context of a general permission to advertise, trying to ban advertising at points of sale and in public places may work less well than intended. The tobacco industry (which now owns or controls the leading brands of vaping products) will find ways to adapt to these specific prohibitions by more heavily exploiting other channels that are permitted, or by exploiting loopholes in the regulation, or by other means. Examples of how they have done this for tobacco advertising abound. Here is one example. In the 1990s, when most tobacco advertising was banned, but sponsorship advertising was allowed, the companies created

advertising immediately on November 1, 2018, the ad continued to be broadcast over 1000 more times until November 19.¹

- A better solution would be to prohibit all advertising with a few exceptions. No exception would be allowed for broadcast advertising.

Publications

- No line can easily be drawn around youth-oriented publications, websites and social media platforms. Youth would still have access to all publications, and all websites and social media platforms. Any attempt to restrict the ban on vaping advertising to just youth-oriented publications, and youth-oriented digital platforms would be met with failure. Moreover, allowing promotional material anywhere online facilitates its transfer and pervasive use in user-generated numeric platforms, many of which are highly popular among youth and are known to have contributed to the popularity of these products among young people. Advertising for vaping products should be banned in all publications and all electronic media.

Other forms of retail promotion

- Eliminating display of vaping products at point of sale is a worthy idea. An even better idea would be to limit the sale of vaping products to adult-only, vaping-only stores. This would parallel the situation in most provinces where cannabis sales are limited to cannabis-only stores. At a later time, health authorities should also move to limit tobacco sales to tobacco-only stores or to tobacco-and-vape-only stores.

Proposed warnings

- In terms of the warnings included in permitted advertising, those proposed do not adequately reflect current scientific knowledge about the hazards of vaping to the population, nor the ability of these devices to lead to or sustain smoking.
- Dr. Bonnie Halpern-Felsher of Stanford University has done research that concludes warnings of the type proposed will not be understood by youth.²

Youth Don't Understand Addiction



Warning that simply says a product is addictive or contains an addictive chemical not understood by youth

 **Stanford**
Children's Health

Lucile Packard
Children's Hospital
Stanford

1 Physicians for a Smoke-Free Canada. Blog. February 27, 2019 (<http://smoke-free-canada.blogspot.com/2019/02/is-health-canada-really-going-to-let.html>)

2 Dr. Bonnie Halpern-Felsher Stanford University. "What FDA should do to reduce youth addiction to e-cigarettes" FDA's Eliminating Youth Electronic Cigarette and Other Tobacco Product Use: The Role for Drug Therapies Part 15 Public

- The size and format of warnings should mirror the requirements for warnings on cigarettes. The warning should be large and contain graphic elements.
- A criterion used in determining the content of tobacco package warnings is the requirement that science has determined that tobacco is a cause of the disease that is the subject of the warning. We cannot wait for definitive proof of causation to warn people about the dangers of vaping. If we did, hundreds of thousands would become addicted and thousands would become ill and die waiting for epidemiological evidence to accumulate. “Epidemiological evidence” requires many people to become sick and die. Instead, the precautionary principle should apply. We should warn people when we have strong evidence of adverse health consequences.
- Currently, there is strong evidence of the following adverse health consequences.
 - Vaping nicotine is addictive.
 - The statement “nicotine is addictive” is not fully understood by young people.
 - For the population as a whole, vaping decreases the likelihood of quitting smoking.
 - Many vapers, especially young people, never smoked.
 - Young people who start vaping are more likely to become cigarette smokers.
 - Most vapers also smoke cigarettes. Dual use increases risk compared to use of just one nicotine product.
 - Vaping is a risk factor for heart and circulatory diseases.
 - Vaping is a risk factor for lung diseases.
 - Vaping reduces the effectiveness of cancer therapy.
 - Vaping causes changes in human cells that can lead to cancer.

Content of advertisements

- As for tobacco, an exception to a general prohibition would be to permit brand preference and information advertising only, and only places where young people are not allowed and in publications sent to named persons, similar to the provision currently in force for tobacco advertising. Consideration could also be given to permitting brand preference and information advertising inside packages of cigarettes.

Retail displays

- Retail display of vaping products is a form of promotion and should be banned. However, display could be allowed in adult-only vape shops.

Flavours

- Flavours appeal to youth and should be prohibited.

Product composition

- JUUL and the Vype ePod use weak acids to form easily-inhalable low-pH nicotine salts. Benzoic acid is used in the former and lactic acid in the latter. Inhaling either product matches or exceeds the blood nicotine delivery profile of cigarettes. Both produce about 16 ng/ml of plasma nicotine 5 minutes after inhalation. At 59 mg/ml of nicotine for JUUL and 57 mg/ml of nicotine for the Vype ePod, they are the crack cocaine of the recreational nicotine world.
- Both companies have published research indicating the higher level of nicotine delivery by their protonated nicotine delivery systems. (see below).

- Health Canada should prohibit low-pH e-cigarettes and, as has been done in the European Union, limit the amount of nicotine in e-cigarette pods to 20 mg/ml or less.

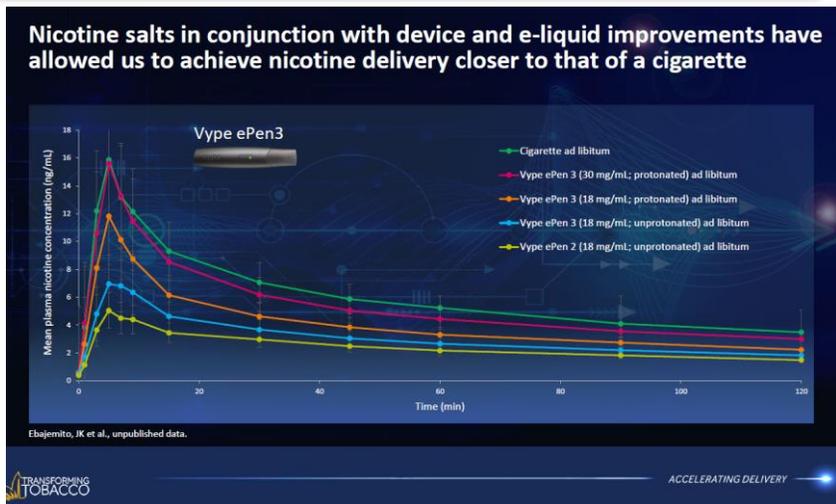
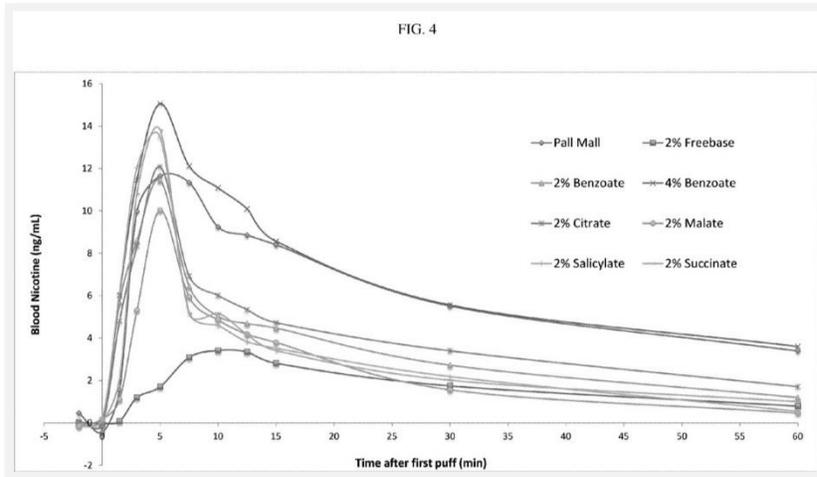
I have no conflict of interest with the tobacco industry.

Yours sincerely,

Neil E. Collishaw

Neil E. Collishaw
Research Director

Laboratory results showing speed and intensity of absorption of nicotine – JUUL³ and BAT⁴



3 Pax Labs patent for JUUL. Canada Patent 290967. http://www.ic.gc.ca/opic-cipo/cpd/eng/patent/2909967/summary.html?query=juul+and+nicotine&start=1&num=50&type=basic_search
4 BAT Investor Day 14 May 2019. Science supporting accelerated delivery. Slide 21.