

Lowell Tobacco Control Monthly Report

February/2020

Prepared by: Cesar Pungirum, M.M., J.D.
Program Director

Lowell

Inspections

I've conducted 24 inspections so far this month, with greater focus on the implementation of the new state law. No major issues encountered. It appears that most retailers simply chose to stop selling non-flavored vaping products to avoid the risk of receiving the new very high fines if they ever commit a violation during the sale of these products.

Pricing Surveys

Twelve pricing surveys have been conducted this month, so far.

Compliance Checks

Compliance checks are expected to resume in March/20.

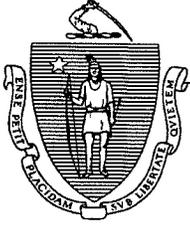
Implementation of the new state law: An Act Modernizing Tobacco Control

So far, no major issues with the implementation of the new law. We continue to receive guidance from the Massachusetts Tobacco Cessation and Prevention Program (MTCP). In fact, on March 25th I'll be attending a Municipal Tobacco Control Conference put together by MTCP and the state's Office of Local and Regional Health. This conference will focus on the implementation of the new tobacco law. Additionally, I'll attend MTCP quarterly statewide meeting on March 12th and a significant part of the meeting will be devoted the new law as well.

On February 12th, the Public Health Council amended 105 CMR 665, which was originally promulgated on December 11, 2019 to implement the new state law. The changes were made in response to the comments received during the public comment period that followed the original promulgation. *Attached you'll find a DPH letter describing the changes.*

Office of the Attorney General Office: New Press Release

AG Healey sues JUUL for having created the youth vaping epidemic, and reveals new facts about the company's campaign for targeting youth. *Press release is attached.*



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

Tel: 617-624-6000
www.mass.gov/dph

February 19, 2020

Dear Public Health Colleagues:

The Department of Public Health promulgated 105 CMR 665: Minimum standards for retail sale of tobacco and electronic nicotine delivery systems on an emergency basis and the emergency regulation took effect on December 11, 2019. The Department made a number of changes to the emergency regulation based on comments received during the public comment period which are mostly technical and clarifying in nature. On Wednesday February 12, 2020 the Public Health Council (PHC) voted to finalize the promulgation of 105 CMR 665 and those changes will take effect March 6, 2020. In the interim, the emergency regulations will remain in effect.

For more information about implementation of the new tobacco law please visit www.mass.gov/newtobaccolaw.

The changes to the regulation are listed below:

Minimum Legal Sales Age: Updates to the regulation remove the definition of “minimum legal sales age”. Due to recent changes in federal law setting the minimum sales age for tobacco products at 21 years old, this definition is no longer necessary. Throughout the entire regulation, this term has been replaced with the phrase “21 years of age”.

Tobacco Product: As promulgated in December 2019, the phrase “regardless of nicotine content in the product” was inadvertently excluded from the definition of “tobacco product”. Based on public comments and to ensure alignment with M.G.L. c. 270, § 28, this phrase has been added to the definition of “tobacco product”.

Use of Flavored ENDS in Smoking Bars: Based on public comments, the provision indicating flavored ENDS are for on-site consumption in a smoking bar has been updated to specify these products are for “on-site consumption **only**”.

Warning of Secondhand Smoking or Vaping Onsite: As originally promulgated, the regulation requires all smoking bars and retail tobacco stores post signs warning smoking and/or vaping may be present on-site; however, not all retail tobacco stores allow for on-site consumption. In response to public comment, the updated regulation requires only those retail tobacco stores that allow on-site consumption post signage warning of possible smoking, vaping, or tobacco product use onsite.

Signage Fines: As originally promulgated, the regulation says unlawful removal of a required sign is subject to a fine of “not more than \$10.00”; however, M.G.L. c. 270, § 7(c) sets the fine at \$10 (instead of up to). The regulation has been updated to require a \$10 fine.

Suspension of Tobacco Sales: As originally promulgated, the regulation sets the maximum number of days a tobacco retailer found in violation of the regulation may be suspended from selling tobacco products (e.g., “up to 30 consecutive days”). Public comments from groups representing local jurisdictions noted this “ceiling” may conflict with existing local rules and regulations.

To address this, the regulation now clearly indicates local jurisdiction may enact more stringent suspension periods, consistent with anti-preemption language within M.G.L. c. 111, § 239.

Clarifying Anti-Preemption Language: As originally promulgated, the regulation does not specifically acknowledge the ability of a local authority to adopt its own rules and regulations, provided those rules or regulations do not conflict with DPH regulations or federal or state law. However, commenters requested anti-preemption language be added to the regulation. To address this, DPH has included the anti-preemption language within M.G.L. c. 111, § 239 to reiterate state law for clarity in the regulation and to remove any ambiguity.

The Department is hosting two Municipal Tobacco Control Conferences for local boards of health to provide guidance on the new legislation and regulations. These conferences will take place on March 23, 2020 in Holyoke and on March 25, 2020 in Westborough. Both meetings are from 9:00-3:00. Registration is required and will be sent out via the OLRH newsletter.

For more information about the above events, please feel free to contact Patti Henley, Director of the Massachusetts Tobacco Cessation and Prevention program, patricia.henley@state.ma.us or Ron O'Connor, Director of the Office of Local and Regional Health, at ron.oconnor@state.ma.us.



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PRESS RELEASE

AG Healey Sues JUUL for Creating Youth Vaping Epidemic, Reveals New Facts About Campaign Targeting Young People

AG's Lawsuit Demands JUUL Pay for Cost of Public Health Crisis in Massachusetts

FOR IMMEDIATE RELEASE:

2/12/2020

Office of Attorney General Maura Healey

MEDIA CONTACT

Emalie Gainey

Phone

(617) 727-2543 (tel:6177272543)

Online

Emalie.Gainey@mass.gov (mailto:Emalie.Gainey@mass.gov)

BOSTON — Attorney General Maura Healey announced today that her office has sued JUUL Labs Inc. for creating a youth vaping epidemic by intentionally marketing and selling its e-cigarettes to young people. Based on multiple depositions and hundreds of thousands of pages of company documents, AG Healey’s lawsuit reveals new facts that have not previously been made public about JUUL’s youth-oriented advertising campaign in 2015.

In a [lawsuit \(/lists/attorney-generals-office-lawsuit-against-juul\)](/lists/attorney-generals-office-lawsuit-against-juul) filed in Suffolk Superior Court today against JUUL Labs Inc. and its predecessor entity Pax Labs Inc. (together, “JUUL”), the AG’s Office alleges that the company illegally advertised and sold nicotine products to underage youth and created an epidemic of nicotine addiction among young people. The lawsuit demands that JUUL pay for the costs associated with combating this public health crisis affecting young people across Massachusetts.

“JUUL is responsible for the millions of young people nationwide who are addicted to e-cigarettes, reversing decades of progress in combatting underage tobacco and nicotine use,” said AG Healey. “Our lawsuit sheds new light on the company’s intent to target young people, and we are going to make them pay for the public health crisis they caused in Massachusetts.”

AG Healey was the [first attorney general to announce](/news/ag-healey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing)

[\(/news/ag-healey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing\)](/news/ag-healey-announces-investigation-into-juul-other-online-e-cigarette-retailers-over-marketing) an investigation into JUUL in July 2018. Today’s lawsuit provides the first real window into JUUL’s original marketing plan, and shows that JUUL intentionally chose models and images that appealed to young people, that the company advertised its products on websites geared toward kids, and that JUUL shipped e-cigarettes to underage youth who ordered them directly from JUUL online.

JUUL’s Marketing and Advertising Campaign

The AG’s investigation focused on the launch of JUUL’s e-cigarette in 2015, when the company created an advertising and marketing campaign that explicitly identified its target audience as young people who were fashionable, urban, and social. According to the AG’s lawsuit, JUUL rejected an initial marketing proposal to present itself as a technology company with a target audience of adult smokers already addicted to nicotine

and instead chose the “Vaporized” advertising campaign developed by JUUL’s artistic director and inspired by sexually provocative images of young models and celebrities. According to the AG’s lawsuit, even though JUUL employees and its board of directors were concerned that models photographed for the campaign appeared too young, they used them anyway.

JUUL placed their advertisements on millions of websites, in mobile applications, in physical retail stores, in print, and on social media platforms used by young people, like Instagram, Facebook and YouTube. The company also used the images and videos of these models in an electronic billboard installation in Times Square in New York City. The company supplemented these images with pictures of the young people it recruited to attend its launch party in 2015.

Advertising on Websites used by Children and Teens

The AG’s lawsuit also makes new allegations that JUUL purchased advertising space for its Vaporized Campaign images on websites whose primary audiences are underage consumers, some even as young as children in elementary school, such as Nickelodeon, Nick Jr., The Cartoon Network, and Seventeen Magazine. JUUL also purchased advertisements on a range of other websites designed for kids, including websites to help middle school and high school students develop their mathematics and social studies skills, including coolmath-games.com and socialstudiesforkids.com.

Recruiting Young Celebrities to Build Brand Awareness

JUUL attempted to recruit celebrities and social media influencers with large numbers of underage followers, such as celebrities like Miley Cyrus, Cara Delevingne, Kristen Stewart, and social media influencers Luka Sabbat and Tavi Gevinson. JUUL gave out hundreds of free e-cigarettes to celebrities and social media influencers to promote awareness of the JUUL brand and e-cigarette products. JUUL targeted influencers who were fashion bloggers, stylists, celebrities, and affiliated with certain television programs, networks, or movies filmed or produced in New York City and Los Angeles. JUUL also inspired competitors like Eonsmoke, [who AG Healey also sued](#)

[\(/news/ag-healey-sues-national-e-cigarette-retailer-eonsmoke-for-marketing-and-selling-nicotine\)](#), to launch their own copycat JUUL products, using hashtags and catchphrases to sell e-

cigarettes in an array of sweet flavors with ever-increasing concentrations of nicotine. JUUL sold its own flavors that were particularly appealing to young people such as mango, crème brulee, coco mint and cool cucumber, and JUUL's advertisements often made no mention of nicotine.

Knowingly Advertising to Underage People by Email

From the outset of the Vaporized Campaign, JUUL collected the email addresses of visitors to its website for its email marketing list, through which it promoted JUUL products and offered specials and discounts. The AG's investigation revealed that JUUL sent these emails to addresses associated with consumers who had failed or didn't complete JUUL's age verification process. According to an analysis commissioned by JUUL in the summer of 2017, approximately 40,000 email addresses on its email marketing list were associated with records of individuals who had failed JUUL's own age verification process and 83 percent of the approximately 420,000 email addresses on JUUL's marketing list couldn't be matched with the record of an individual at least 18 years old. JUUL nevertheless continued to send marketing emails to this list for a full year, until August 2018.

Shipping E-cigarettes to Underage Consumers

The AG's investigation of JUUL also revealed that the company illegally sold e-cigarettes to underage consumers through its website without proper age verification as [required by regulations](/ago/news-and-updates/press-releases/2015/2015-09-14-final-e-cigarette-regulations.html) issued by AG Healey in 2015. JUUL sold e-cigarettes to consumers who supplied dates of birth that established they were younger than the minimum legal sales age and made more than 10,000 shipments of e-cigarettes to recipients and addresses in Massachusetts that JUUL made no attempt to age verify.

The company shipped e-cigarettes to underage high school students and recent graduates across the state including students from Brookline High School, Hanover High School, Longmeadow High School, Weston High School, and the Bridgewater-Raynham School District High School. JUUL allowed more than 1,200 accounts to be established for Massachusetts consumers using school email addresses, including email addresses associated with high schools in Beverly, Malden, and Braintree and shipped its products to

recipients with obviously fabricated names, like “PodGod.” The company made thousands of shipments of e-cigarettes to Massachusetts without requiring an adult signature at receipt and JUUL’s customer service representatives even provided consumers with advice on how to evade minimum legal sales restriction requirements. There were no limits on how many products someone could buy, and they could be shipped anywhere and to anyone.

Working with Risky Retailers

The lawsuit also alleges that JUUL got hundreds of Massachusetts stores to sell its products, including approximately 850 stores it knew the FDA had cited for attempting to sell tobacco products to underage teens. The company even ran its own “secret shopper inspection” of Massachusetts retailers, caught them attempting to sell products to teens, and continued to work with those stores.

E-cigarette use is now an epidemic among adolescents. In Massachusetts, more than 50 percent of high school students have tried e-cigarettes, and more than 30 percent have used e-cigarettes in the past 30 days. JUUL, meanwhile, made approximately \$3.3 billion in U.S. retail sales between September 2018 and August 2019 and controls approximately three quarters of the e-cigarette market. Adolescents are substantially more susceptible to nicotine addiction than adults, and nicotine poses particular risks to their cognitive development. JUUL nevertheless engaged in an advertising campaign that appealed to these consumers, even though JUUL’s e-cigarettes are both legally prohibited and particularly unsafe for adolescents.

According to the lawsuit, JUUL’s misconduct has created a public health crisis and an epidemic of nicotine addiction among underage consumers, which the AG’s Office alleges constitutes a public nuisance for which JUUL is liable to the state. The AG’s Office seeks restitution, damages, and penalties for JUUL’s illegal conduct and an order requiring JUUL to abate the harm it has caused in Massachusetts.

This matter is being handled by Assistant Attorneys General Samantha Shusterman and Elizabeth Cho and Division Chief Max Weinstein, all of the AG’s Consumer Protection Division, Director Angela Brooks of the AG’s Child and Youth Protection Unit, Paralegals

David Birch and Matthew Johnson of the AG's Consumer Protection Division, and Investigator Ciara Tran, of the AG's Civil Investigations Division.

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STATEMENTS OF SUPPORT

Matthew L. Myers, President of the Campaign for Tobacco-Free Kids

"The Campaign for Tobacco-Free Kids applauds Attorney General Healey for her leadership in holding JUUL accountable for addicting a generation of our kids. JUUL fueled the youth e-cigarette epidemic with its sweet flavors, kid-friendly design and marketing, and massive doses of nicotine. By launching the first state investigation of JUUL and now filing this lawsuit, Attorney General Healey is delivering an unmistakable message to e-cigarette makers that they will not get away with targeting and addicting our kids."

Dr. Jonathan Winickoff, Director of Pediatric Research at the Tobacco Research and Treatment Center at MGH, and Harvard Medical School Professor

"I've seen firsthand the impact that e-cigarettes have on teenagers, including anxiety, depression, mood disorders, and asthma in my patients. Studies show these products impact brain development, contain cancer causing chemicals, and can alter the brain to potentiate addiction to combusted tobacco and other drugs. This action will help pediatricians treat the tens of thousands of adolescents in Massachusetts who are now addicted to JUUL and similar products. We are grateful to Attorney General Maura Healey for her work in leading the country toward a tobacco-free future for children."

Dr. Maryanne C. Bombaugh, President of the Massachusetts Medical Society

"The physicians of the Massachusetts Medical Society support the action taken today by Attorney General Healey. As physicians, we find the dangerous and dishonest tactics, ripped from the Big Tobacco playbook, that were used to introduce these deadly and addictive products to children have not only injured the health of our children but will continue to injure the health of our patients and communities for years to come. Companies that deploy deceptive marketing approaches have sabotaged the previous

successful progress made toward making this generation of children nicotine-free and have instead fueled a public health crisis of nicotine addiction.”

Deborah Davis, President of the Massachusetts Association of School Committees and Chair of the Northeast Metro Tech School Committee

“It is critical that Massachusetts takes action to protect the health and safety of our students. Having the Attorney General at the helm of this litigation is the most effective way to ensure that our students will benefit in every possible way. We are grateful to AG Healey for filing this lawsuit on behalf of our students and schools, as well as the health providers, social services agencies, and others in the public health community working to address this crisis.”

Laurie H. Glimcher, President and CEO of the Dana-Farber Cancer Institute, and the Richard and Susan Smith Professor of Medicine at Harvard Medical School

“We know that there are health risks from vaping from the harmful and potentially harmful substances found in many vaping liquids. We also know that vaping leads teens and young adults to smoking traditional cigarettes and one-third of them will eventually die from smoking-related diseases. We must do all we can to protect another generation from a life of addiction, disease and early death. Because the fact remains that the single most effective thing we can do to prevent cancer and save lives is to reduce smoking and tobacco use. That is why Dana-Farber Cancer Institute applauds Attorney General Healey’s efforts to hold electronic cigarette manufacturers responsible for targeting children and young adults in their predatory marketing.”

Massachusetts Senator John F. Keenan

“JUUL has taken a page straight from Big Tobacco’s playbook by directly targeting and actively marketing to kids through deceptive practices, all while claiming to be a product for adult consumers. I am proud to stand with Attorney General Healey as she fights to protect young people in the Commonwealth who have been tricked into thinking that JUUL products are cool and harmless, and who now are struggling with nicotine addiction.”

Massachusetts Representative Danielle Gregoire

“I am proud to stand with our Attorney General today to continue the work we did this fall

in banning flavored tobacco. Flavored products have been key in Big Tobacco's resurgence and ability to hook our children. The Attorney General's actions today against JUUL show that our state will no longer permit such shameless manipulation of our children."

Dr. Kevin Churchwell President and COO of Boston Children's Hospital

"Boston Children's Hospital stands firmly with Attorney General Healey in this important effort to protect young people from the very harmful impacts of electronic cigarettes. At Children's, we see firsthand the impact these dangerous products have on children's health and well-being. We are grateful to the Attorney General for her strong and effective leadership in protecting the children of Massachusetts."

Maryalice Foisy, President, Massachusetts PTA

"As an organization, the Massachusetts Parent Teacher Association (PTA) has been fighting for the health, safety, well-being, and education of all children for over 100 years. The issue of vaping has had and continues to have a serious impact on our youth and is at the top of our advocacy agenda. As such, Massachusetts PTA fully supports the Attorney General's efforts."

Lauren Smith, MD, Chair of Tobacco Free Mass

"Tobacco Free Mass applauds Attorney General Healey's action to hold JUUL accountable for targeting young people with its marketing practices. JUUL's dishonest marketing practices undid years of progress in preventing youth addiction to tobacco. Attorney General Healey's actions are an important contribution to Massachusetts' efforts to protect young people from a lifetime of addiction to all types of tobacco products."

Jenny M. Gormley, President, Massachusetts School Nurses Organization

"The Massachusetts School Nurse Organization (MSNO) supports efforts by Massachusetts Attorney General Maura Healey to protect youth from business practices that harm health and safety. MA School Nurses have seen firsthand the devastating harm from vaping nicotine addiction among students seeing the nurses in health offices for rapid heart rate, chest pain, persistent coughing, nausea, vomiting, and cramping. School Nurses also lead school teams of administrators and school counselors who seek to address mental/behavioral consequences from vaping, including student anxiety, irritability, difficulty concentrating, and dismissal from school and school activities for

violating school district policy and laws related to nicotine use on school grounds. Including vaping language in the state mandated annual substance use interview screening, known as SBIRT, is helping school nurses identify students at risk for vaping nicotine addiction. School Nurses support students who are trying to quit by advocating for practices that can assist students with nicotine addiction and refer students to the few treatment programs that exist in the state. Some school nurses have participated in a training program for health care providers seeking to help youth with vaping cessation. The younger a student starts using nicotine, the more likely they will become addicted for life. With gratitude for the work of the Attorney General's Office to stop vaping use in youth under 21 years of age."

Marcia Testa, MPH, PhD, President, Massachusetts Association of Health Boards

"The Massachusetts Association of Health Boards (MAHB) strongly supports Attorney General Healey's actions against JUUL. This company, virtually single handedly, reversed nearly two decades of progress in reducing youth addition to nicotine. Additionally, and even more horrifying, JUUL representatives followed the tobacco industry's playbook by visiting schools, offering them money to help 'prevent' the use of JUUL in schools, while – in the same visits – telling 9th graders that its product was 'totally safe.' As one teenager said in his testimony before Congress in July, his classmates were more likely to vape after the visit from JUUL representatives because they said it was safe. As the coordinating organization for the Commonwealth's 351 local boards of health, MAHB applauds and thanks Attorney General Healey for her proactive and decisive action to protect those who are most vulnerable to the greed of corporations who place their profits above the safety of people."

Thomas Scott, Executive Director, Massachusetts Association of Schools Superintendents

"Schools and superintendents have been on the front lines of the vaping crisis in Massachusetts. We have lost instructional time and reallocated money and other resources trying to help students and address the growing problem of youth use of e-cigarettes. We are grateful that Attorney General Healey has taken legal action on behalf of our children, and we will support her efforts in whatever ways we can."

Meredith Berkman and Dorian Fuhrman, Parents Against Vaping e-cigarettes; Kristin Beauparlant, PAVe (Parents Against Vaping e-cigarettes) Massachusetts

We are deeply grateful to Attorney General Maura Healey for taking decisive action today against JUUL with a lawsuit that outlines in disturbing detail the many predatory ways in which this Big Tobacco company targeted teens, causing the youth vaping epidemic that has impacted so many families in Massachusetts and across the country. Thank you to AG Healey and her dedicated staff for taking the time to methodically investigate JUUL and hold it accountable for the damage it has done to our kids, an entire generation that would not have been initiated into tobacco use but for this company's deliberate efforts—copied by dozens of JUUL copycats flooding the e-cigarette market—to create a brand-new customer base of nicotine addicts.

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Media Contact

Emalie Gainey

Phone

(617) 727-2543 (tel:6177272543)

Online

Emalie.Gainey@mass.gov (mailto:Emalie.Gainey@mass.gov)

Meggie Quackenbush

Phone

(617) 727-2543 (tel:6177272543)

Online

Margaret.Quackenbush@mass.gov (mailto:Margaret.Quackenbush@mass.gov)



Office of Attorney General Maura Healey

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Attorney General Maura Healey is the chief lawyer and law enforcement officer of the Commonwealth of Massachusetts.

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