

**Regulation of the Canton Board of Health  
Prohibition of the Sale of Tobacco Products to Minors-2013**

**A. Statement of Purpose:**

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000)); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Ibid.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore the Canton Board of Health hereby promulgates this Regulation (Regulation) to curtail the access to tobacco products by minors.

**B. Authority:**

This Regulation is promulgated pursuant to the authority granted to the Canton Board of Health under Massachusetts General Laws Chapter 111, §31.

**C. Definitions:**

For the purpose of this Regulation, the following words shall have the following meanings:

**Business Agent:** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

**“Electronic Cigarette”:** (Also, E-Cigarette) A nicotine delivery system which may or may not have the appearance of a cigarette, but which uses battery power or some other form of heat or energy to assist in delivering nicotine to the user and which provides vapor or liquid or other form of nicotine to the user, or relies on vaporization of solid or liquid nicotine.

**Employee:** Any individual who performs services for an employer.

**Employer:** Any individual, company, partnership, association, corporation, trust or other organized group of individuals, which uses the services of one (1) or more employees.

**Lock-out device:** A device that locks out sales from a vending machine unless a release mechanism is triggered by an employee.

**Minor:** For the purpose of this Regulation, a minor is any individual who is under the age of twenty-one (21) years.

**Nicotine Delivery Product:** Any manufactured non-medical method, device, or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, whether or not smoke or vapor is produced, which is sold for the purpose of delivering nicotine in any of its forms to an individual, either directly or indirectly and either internally or externally, not including traditional tobacco products as defined in this Regulation, and which has not been prescribed by a physician or other licensed medical personnel who can legally prescribe medication. Nicotine delivery products include, but are not limited to smokeless tobacco products as defined in this Regulation. A nicotine delivery product does not include any product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product, or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine gum, nicotine patches, and e-cigarettes are exempt from prohibition of sale by this regulation if sold to individuals above the age of 21.

**Non-Medical:** Not approved by the US Food and Drug Agency (FDA).

**Permit:** A tobacco sales permit issued or required pursuant to this Regulation.

**Permit Holder:** Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a tobacco sales permit from the Canton Board of Health or any person who is required to apply for a tobacco sales permit pursuant to this Regulation, or his or her business agent.

**Person:** An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

**Self Service Display:** Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

**Smokeless Tobacco Product:** For the purposes of this Regulation, smokeless tobacco shall be defined as any tobacco product that may or may not produce a vapor, but does not produce smoke, not including chewing tobacco or “snuff”.

**Tobacco Product:** Cigarettes, cigars, loose leaf tobacco, chewing tobacco, pipe tobacco, “snuff” , “Blunt Wraps”, “Snus”, so called (Smokeless, flavored tobacco product primarily placed by the user between the inner lip and the gum, but can be ingested by other methods), and any other merchandise for human consumption containing plant material from any of several plants belonging to the genus *Nicotiana*, of the nightshade family, including, but not limited to the species *Nicotiana tabacum*.

**Vending Machine:** Any automated or mechanical self service device, which upon insertion of money, tokens, or any other form of payment, dispenses cigarettes, any tobacco or nicotine product.

#### **D. Tobacco Sales to Minors Prohibited:**

1. No person shall sell or distribute tobacco products, smokeless tobacco product, e-cigarettes, or any other non-medical nicotine delivery product, or permit such products to be sold or distributed to any minor as defined in this Regulation; or not being the parent or legal guardian of the minor, give such products to a minor.
2. In conformance with and in addition to Massachusetts General Law, Chapter 270, § 7, a copy of Massachusetts General Laws, Chapter 270, § 6, (Statute) shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products or any other non-medical nicotine delivery system at retail. Any shop or other place which conducts the sale or distribution of cigars must also post a notice (Notice) that states, “WARNING: Cigars Are Not A Safer Alternative To Cigarettes Or Smokeless Tobacco”, or, “WARNING: Cigar Smoke Contains Carbon Monoxide And Nicotine, An Addictive Drug”. The copy of the Statute and the Notices shall each be at least 48 square inches and shall be posted conspicuously by the permit holder in the shop or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The copy of the Statute and the Notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. The copy of the Statute and the Notices may be provided by the Canton Board of Health.
3. Identification: Each person selling or distributing tobacco products, e-cigarettes, or any other non-medical nicotine delivery product shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth. The person selling tobacco or nicotine products shall verify that the purchaser is twenty-one (21) years of age or older. Verification is required for any person who appears to be under the age of twenty-seven (27).

### **E. Other Prohibited Items:**

All non-medical use Nicotine Delivery Products including, but not limited to dissolvable nicotine tablets, “Snus”, and Smokeless Tobacco Products, as defined in this Regulation are prohibited from sale, without exception, in the Town of Canton.

E-cigarettes as defined in this Regulation, nicotine gum, and nicotine patches used for medical purposes such as quitting or reducing smoking are exempt from this provision, however such exempt products shall not be sold or delivered to any minors under the age of 21 unless such minor provides a signed prescription by a licensed physician, physician assistant, or nurse practitioner. Violations of this section shall be punishable pursuant to Section L(1)(g) and (h),

### **F. Tobacco Sales Permit:**

1. No person shall sell or otherwise distribute tobacco or nicotine products within the Town of Canton without first obtaining a tobacco seller’s permit (Permit) which expires annually, by the Canton Board of Health.
2. As part of the Permit application process, the applicant will be provided with the “Prohibition of the Sale of Tobacco Products to Minors Regulation with 2013 Revisions” (Regulation). Each applicant shall sign a statement declaring that the applicant has read said Regulation and that the applicant is responsible for instructing any and all employees who will be responsible for sales of tobacco products concerning both state laws regarding the sale of tobacco products and this Regulation.
3. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before Permit pursuant to this Regulation may be issued by the Canton Board of Health.
4. The fee for a Permit shall be determined by a simple majority vote of the Canton Board of Health annually. All such permits shall be renewed annually by January 1<sup>st</sup> of each year.
5. A separate Permit is required for each retail establishment selling tobacco products and shall include the types of tobacco or nicotine products to be sold.
6. Each Permit shall be displayed at the retail establishment in a conspicuous place.

7. No Permit holder shall allow any employee to sell cigarettes, or other tobacco products or non-medical nicotine delivery products until such employee reads this Regulation and State laws regarding the sale of tobacco or nicotine products, and signs a statement, a copy of which will be placed on file in the office of the Canton Board of Health and the employer, stating that the employee has read this Regulation and applicable State laws, and is required to check the identification of any person appearing to be under the age of twenty-seven (27) and shall not to sell tobacco or nicotine products to anyone under the age of twenty-one (21) years pursuant to this Regulation.
8. Tobacco Sale Permits in Canton are non-transferable.
9. Issuance of a Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment by the Canton Board of Health or its agents to ensure compliance with this Regulation.

#### **G. Free Distribution:**

No person shall distribute, or cause to be distributed, any free samples of tobacco products, or any other non-medical nicotine delivery product.

#### **H. Out-of-Package Sales:**

No person shall sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

#### **I. Self-Service Displays:**

Self-service displays of tobacco products or any other non-medical nicotine delivery products are prohibited. All humidors must be locked. Walk-in humidors must be locked so that access cannot be gained from the outside without unlocking it. Self-service displays that are located in facilities where the retailer checks the identification of customers and ensures that no person younger than twenty-one (21) years of age is permitted to enter at any time are exempted from this section of the Regulation.

**J. Tobacco Vending Machines:** All tobacco vending machines are prohibited with the following exception only. A tobacco vending machine equipped with a lock out device in an establishment with a valid liquor-pouring license. A lock-out device locks out sales from the vending machine unless a release mechanism triggered by an employee is permitted. The release mechanism must not allow continuous operation of the vending machine, must be out of the reach of all customers, and in a location accessible only to employees. All vending machines subject to this exception must be in full view at all times of the employee(s) responsible for operating the lock-out device.

## **K. Responsibility:**

It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this Regulation pertaining to his or her distribution of tobacco products and any other non-medical nicotine delivery product.

## **L. Violations:**

1. Violations of this Regulation shall be punishable as follows:
  - a. In the case of a first violation, the Permit Holder shall receive a fine in the amount of one hundred dollars (\$100) and the permit shall be suspended for three (3) consecutive business days.
  - b. In the case of two (2) violations within an eighteen (18) months period the Permit Holder shall receive a fine in the amount of two hundred dollars (\$200) and the permit shall be suspended for seven (7) consecutive business days.
  - c. In the case of three violations within an eighteen (18) month period, the Permit Holder shall receive a fine in the amount of three hundred dollars (\$300) and the permit shall be suspended for thirty (30) consecutive business days.
  - d. In the case of four or more violations within an eighteen (18) month period, the Permit Holder shall receive a fine in the amount of three hundred dollars (\$300) and the permit shall be permanently revoked.
  - e. All fines shall be paid prior to lifting of any suspensions, regardless of the length of the suspension. Revocations shall be permanent.
  - f. Any Permit holder who engages in the sale or distribution of tobacco products or any other nicotine delivery system or device to any person while the permit holder's permit is suspended shall be subject to the suspension of all Canton Board of Health issued permits for thirty (30) consecutive business days.
  - g. Any person who engages in the sale or distribution of tobacco products in the Town of Canton without having a valid Permit shall be subject to a fine of five hundred dollars (\$500) for each offense.
  - h. Each day that a violation of this Regulation occurs shall be considered a separate offense.
2. Refusal by a Permit holder to allow an inspection pursuant to this Regulation shall result in the suspension of the Permit for thirty (30) consecutive business days.

3. The Canton Board of Health shall provide the Permit holder with written notice of the intent to suspend or revoke a Permit, which notice shall contain the reasons therefore and shall establish a time, place, and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The Permit holder or its agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. The Canton Board of Health, after the hearing, may suspend, revoke, or reinstate the Permit. All tobacco products shall be removed from the retail establishment upon suspension or revocation of the Permit. Failure to remove all tobacco products shall constitute a separate violation of this Regulation and shall be subject to the penalties stated in Sections L(1)(f) and/or L(1)(g) of this Regulation.
4. Any permit holder found in violation of this Regulation who does not pay the assessed fine within twenty-one (21) days from the date the fine is issued may be subject to criminal proceedings and/or permanent revocation of the tobacco seller's permit.

**M. Appeal:**

Any person aggrieved by the final decision of the Board of Health may seek relief therefrom, in any court of competent jurisdiction, as provided by the General Laws of the Commonwealth of Massachusetts.

**N. Enforcement:**

Enforcement of this Regulation shall be by the Canton Board of Health, the Canton Police Department, or its designated agent(s).

**O. Effective Date:**

This Regulation shall take effect on January 1, 2014

**P. Sunset Provision:**

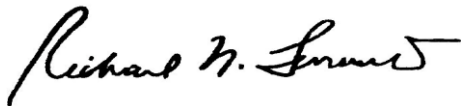
This Regulation shall be subject to a "Sunset Provision" which shall take effect at midnight on December 31, 2019, which provides that the definition of a minor in Section C as, "Any individual who is under the age of twenty-one (21) years" and shall automatically be replaced with the definition of a minor as, "Any individual who is under the age of eighteen (18) years" unless the Sunset Provision is voided or otherwise annulled pursuant to Section Q of this Regulation.

**Q. Automatic Reenactment of this Regulation:**

For the “Sunset Provision” in Section “P” of this Regulation to take place by December 31, 2018, and prior to the initial promulgation of this Regulation, the Canton Board of Health shall conduct or cause to be conducted a baseline risk survey on Canton students under the age of eighteen (18) in the Canton Middle School and Canton High School on tobacco and nicotine consumption and acquisition behaviors. The Board of Health shall annually conduct this same survey within the same school grades to determine by December 31, 2018, if this Regulation has had a positive effect (reduced consumption and/or acquisition), negative effect (increased consumption and/or acquisition), or neutral effect (no change in consumption and/or acquisition) on the studied behaviors as determined solely by the Canton Board of Health. If the Board of Health determines that the survey demonstrates that there is a positive effect to this Regulation showing there has been a reduction of tobacco and nicotine use resulting from the increase in the age of a minor to legally purchase cigarettes and other tobacco products and nicotine delivery products from eighteen (18) years to twenty-one (21), the definition of a minor in Section C shall be automatically re-enacted and the Sunset Provision shall not transpire. A negative or neutral outcome would not produce an automatic re-enactment of this Regulation.

**R. Severability:**

This Regulation is severable. If any provision of this Regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

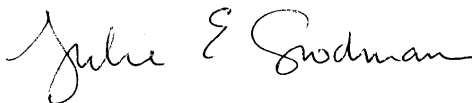


Signed: \_\_\_\_\_  
Richard Levrault, M.D.

Date: August 12, 2013



Signed: \_\_\_\_\_  
Robert Schneiders



Signed: \_\_\_\_\_  
Julie E. Goodman, PhD