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ERIK GUNDERSEN
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February 21, 2020

Dear Stakeholder:

The Office of Marijuana Policy (OMP) is providing the following guidance regarding the requirements of registrants in the Maine Medical Use of Marijuana Program (MMMP) and licensees in the Adult Use Marijuana Program (AUMP) related to advertising. Program participants are reminded and encouraged to review the restrictions and prohibitions on advertising that appear in [22 M.R.S. § 2429-B](#) (for MMMP) and [28-B M.R.S. §§ 701-704](#) and [18-691 C.M.R. ch. 1, § 5](#) (for AUMP).

OMP's main concern and focus of this guidance is whether advertisements have a high likelihood of reaching, or are designed to appeal to, individuals less than 21 years of age.

Generally, registrants and licensees should consider the content of any advertisement and any aspect of such advertising that could be construed as appealing to those under 21 years of age. Additionally, registrants and licensees must consider the physical placement of advertising and other marketing materials to ensure such advertisements are not placed in prohibited areas (e.g. in close proximity to a preexisting public or private school and other locations where those under 21 years of age gather).

Registrants and licensees advertising via television, radio, print, and other mass marketing, must be able to produce sufficient marketing data to demonstrate that the consumer base of the advertisement is appropriate.

Registrants and licensees wishing to engage in digital or web-based marketing must closely consider that the statute prohibits unsolicited advertising or marketing on the internet. Additionally, advertising or marketing directed toward location-based devices is prohibited unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older. Furthermore, it is required that those advertising or otherwise marketing via the internet—including on social media platforms (e.g. Facebook, Instagram, TikTok, etc.)—employ age verification techniques to ensure that visitors to those sites are over 21 years of age. For example:

- Facebook Page → Page Settings → General → Age Restrictions → People 21 and Over
- Instagram Business Profile → Settings → Business → Minimum Age → Default → 21

Advertising occurring on these platforms should, similarly, be limited to individuals 21 years of age or older who have liked and/or followed social media accounts managed by, or on behalf of, licensees and registrants.

In assessing the appropriateness of the advertisement, OMP will consider marketing data but understands incidental exposure to individuals under 21 years of age is unavoidable (e.g. an otherwise permissible print advertisement in a publication in a common waiting area).

In many instances, context is going to be critical. Permissible marketing activity could be deemed impermissible depending on the audience that is likely to encounter the advertising. For example, advertising or marketing at a publicly accessible sporting event or music venue would be not be permitted unless the specific event or venue is restricted to individuals 21 years of age or older.

This guidance is not an exhaustive list of all program requirements regarding advertising and should not be construed to exempt a registrant or licensee from any state or federal advertising regulations. We encourage you to consult an attorney regarding additional requirements related to advertising and marketing within the MMMP and AUMP.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erik Gundersen', written in a cursive style.

Erik Gundersen, Director
Office of Marijuana Policy