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HEARING BEFORE THE OREGON DEPARTMENT OF JUSTICE

NOVEMBER 14, 2019

Testimony of Kyle Turk

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Thank you for the opportunity to testify. NPA was founded in 1936 to ensure that Americans have access to safe and affordable natural products, and also to promote and protect the interests of retailers and suppliers of natural nutritional foods and natural products. We are the oldest and largest trade association in our industry, but most of our members are small and medium-sized businesses. And while the industry has existed for many years, it has only recently -- since the late 1980s -- transformed into a major engine of economic growth, customer satisfaction, and job creation throughout the U.S., including here in Oregon. Today, America is the undisputed global leader in natural products and dietary supplements. But that leadership position could be lost forever with overreaching regulatory proposals like the one being considered today.

This is why our members are so concerned.

First, it would likely confuse Oregon's consumers and raise their costs for safe and regulated dietary supplements with no increased benefits to consumer protection.

Second, it is unnecessary, redundant and likely to be overturned by future litigation.

And third, it would burden Oregon taxpayers not only from increased law enforcement outlays but from the real potential that Oregon consumers would simply go online to purchase the products they want instead of buying them in-state, which would have negative impacts on state business income tax revenue, not to mention Oregon's dietary supplement industry.

But most important is consumer protection, and here is why this proposal is unnecessary. As the state's own economic impact analysis of the proposal states, the Federal Trade Commission (FTC) has national enforcement responsibility for false claims on products and FTC is the authority with regards to regulation in order to ensure the goal of a uniform national standard. Uniform standards are critical because they allow businesses to make claims with confidence that they are in compliance.

Under this proposal, however, private parties could be the arbiters of what does or doesn't meet a particular standard, as opposed to experienced federal authorities.

That makes standards even less useful and increases consumer confusion. This is particularly true if persons can profit from what they, and inconsistent court rulings, could be deemed as state regulatory violations. While such a proposal would arguably benefit the plaintiff's bar, it would not help Oregonians seeking natural products for healthy lifestyles.

Furthermore, because advertising crosses state lines and is subject to the interstate commerce clause, nothing in federal law would permit Oregon to enforce its advertising regulations. The text of the proposed regulation is not based on language in current statutes and would appear to be violation of the administrative procedures act (APA) on the basis that it does not accurately or adequately set forth the fiscal and economic impact on the state and businesses. It ignores the cost to the state of enforcement, particularly since under well-established law, expert evidence would be

required to show what constitutes competent and reliable scientific evidence. Under the Touhy rule, a state cannot require a federal agency to provide such testimony.

Finally, Oregon cannot assume that there would be no cost to industry for compliance. As discussed above, while the language of the standard may identical, there is no assurance that the state will interpret and apply the language the same way the FTC does. As such, regulatory compliance costs would increase, which is particularly true if private parties are given any role in enforcing via litigation.

So again, thank you for the opportunity to testify, and I'd be happy to answer any questions as this is a complex issue.