COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

Superior Court
Civil Action No.

RIHAAN CORPORATION dba JAY'S SMOKE SHOP, a Massachusetts corporation, BHAKTI, LLC, a Massachusetts limited liability company, V & K SMOKE SHOP, LLC, a Massachusetts limited liability company, and AMBREEN & S INC., a Massachusetts corporation,

Plaintiffs,

v.

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH and DR. ROBBIE GOLDSTEIN, in his official capacity as Commissioner of Public Health,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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INTRODUCTION

1. The Massachusetts Legislature has spoken in mandatory terms. A drug or other substance "may not be placed in any schedule" of the Controlled Substances Act, G.L. c. 94C, unless it has already been placed in that schedule under federal law or "the findings required for such schedule are made with respect to such drug or other substance." G.L. c. 94C, § 3. For Schedule I—the most restrictive classification the Commonwealth recognizes—the Legislature specified exactly three findings: that the substance has a high potential for abuse; that it has no currently accepted medical use in treatment in the United States; and that there is a lack of accepted safety for its use under medical supervision. *Id.*

2. On August 13, 2026, the Commissioner of Public Health placed every form of kratom in Schedule I. He made none of the three findings required under G.L. c. 94C, § 3 for inclusion in Schedule 1. The regulation he promulgated, 105 Mass. Code Regs. 726.000, contains a section titled "Findings." That section recites, with evident care, each of the five findings that G.L. c. 94C, § 2A requires for temporary emergency scheduling, but omits any findings related to the three specific but different requirements under G.L. c. 94C, § 3 for inclusion in Schedule 1. It does not state that kratom has a high potential for abuse. It does not state that kratom has no currently accepted medical use. It does not state that kratom lacks accepted safety for use under medical supervision. Those words appear nowhere in the regulation or in the Order attached to it. A copy of 105 Mass. Code Regs. 726.000 is attached hereto as Exhibit 1.

3. The omission is not a drafting oversight to be excused. Section 2A opens with a single, precise carve-out: "Notwithstanding section 2, the commissioner may, by order, place a substance in schedule I on a temporary basis." The Legislature displaced section 2. It did not displace section 3. And it plainly knew section 3 was there: one of the very conditions for temporary scheduling is that "the substance is not listed in any other schedule identified in section 3." G.L. c. 94C, § 2A(a)(iii). A Legislature that referred to section 3 by name when it wanted section 3 to apply cannot be presumed to have silently repealed it.

4. The Supreme Court of the United States has already resolved this question under a materially identical statutory structure. The federal Controlled Substances Act authorizes temporary Schedule I placement upon an "imminent hazard to the public safety" finding, 21 U.S.C. § 811(h), while a separate provision states that a substance "may not be placed in any schedule unless the findings required for such schedule are made," 21 U.S.C. § 812(b). In *Touby*

v. United States, 500 U.S. 160, 166–67 (1991), the Court held that the latter command "speaks in mandatory terms" and "draw[s] no distinction between permanent and temporary scheduling." Emergency authority, the Court explained, dispenses with certain procedures—not with the substantive prerequisites for Schedule I classification. Sections 2A and 3 of Chapter 94C are the Commonwealth's analogues of those provisions, and § 2A(f) directs the Commissioner to transmit his order to the United States Attorney General and request corresponding federal temporary scheduling under § 811(h). The parallel is not incidental; it is intentional and structural.

5. There is a second, independent defect, and it is visible on the face of the Commissioner's own record. The Order identifies the acute danger as coming from a particular class of products: "highly potent products with 7-OH or other synthetic kratom derivatives," products "mixed with unknown substances," and kratom taken together with opioids, alcohol, benzodiazepines, or sedatives. It observes that "[s]ynthesized products typically contain higher concentrations" of 7-hydroxymitragynine or synthetic derivatives of mitragynine. Having drawn that distinction repeatedly, the Commissioner then erased it. The regulation defines "kratom" to reach the botanical plant Mitragyna speciosa itself, its principal naturally occurring alkaloids, four chemically distinct derivatives, every possible isomer, ester, ether, and salt—and, finally, "any product held out or holding itself out to be kratom."

6. Nor do the Commissioner's own numbers describe the sudden crisis that emergency Schedule I treatment of an entire botanical species would require. The Order reports that kratom was listed in the cause-of-death fields of 15 death records in Massachusetts in 2020, 10 in 2021, 16 in 2022, 19 in 2023, 18 in 2024, 21 in 2025, and 8 through July 28, 2026—roughly 100 over seven years, in a Commonwealth that records on the order of 60,000 deaths

annually. The Order cites increases in poison-center calls and emergency-department mentions, but nowhere states whether those increases involve traditional botanical kratom or the concentrated and synthetic products it elsewhere identifies as the source of acute risk. Plaintiffs do not contend that the Commonwealth is powerless to regulate dangerous synthetic, concentrated, or laboratory-modified products. Plaintiffs contend that evidence of an emergency created by synthetic, concentrated, and laboratory-modified compounds does not establish that the plant, and everything "held out" as the plant, is an imminent hazard warranting Schedule I classification.

7. The consequences arrive on August 28, 2026. As of that date, 105 Mass. Code Regs. 726.006 provides that "[p]ossession or distribution of kratom by any food, retail or other commercial establishment shall constitute an imminent health hazard," and directs local boards of health, inspection departments, and municipal agents that they may take "any enforcement action consistent with a finding of an imminent health hazard, up to and including summary suspension of a municipal license or permit held by the establishment including, but not limited to, a permit to operate."

8. Plaintiffs lawfully sell kratom products today. On August 28, their inventories become contraband, their shelves become an "imminent health hazard," and the permits on which their businesses depend become subject to summary suspension.

9. The Legislature expressly made this challenge available. General Laws c. 30A, § 7 provides that the validity of a regulation—"including … the sufficiency of the reasons for its adoption as an emergency regulation"—may be determined in an action for declaratory relief under G.L. c. 231A. Plaintiffs invoke that remedy. They ask this Court to declare 105 Mass. Code Regs. 726.000 invalid, in whole or in part, and to restrain its enforcement pending final

judgment. The Court can grant that relief without deciding whether kratom is safe. It need only decide what the Legislature required before the Commonwealth may declare a substance a Schedule I controlled substance, and whether the Commissioner did so.

PARTIES

10. Plaintiff Rihaan Corporation dba Jay's Smoke Shop is a Massachusetts corporation with a principal place of business at 3 Freeman Road, Salem, Massachusetts. Plaintiff operates one retail location in the Commonwealth. Plaintiff has lawfully purchased, stocked, and sold kratom products in Massachusetts and continues to do so.

11. Plaintiff Bhakti, LLC is a Massachusetts limited liability company with a principal place of business at 44 McKenna Drive, North Billerica, Massachusetts. Plaintiff operates one retail location in the Commonwealth. Plaintiff has lawfully purchased, stocked, and sold kratom products in Massachusetts and continues to do so.

12. Plaintiff V & K Smoke Shop, LLC is a Massachusetts limited liability company with a principal place of business at 3 Cottage Avenue, Quincy, Massachusetts. Plaintiff operates one retail location in the Commonwealth. Plaintiff has lawfully purchased, stocked, and sold kratom products in Massachusetts and continues to do so.

13. Plaintiff Ambreen & S Inc. is a Massachusetts corporation with a principal place of business at 234 Pulaski Blvd, Bellingham, Massachusetts. Plaintiff operates one retail location in the Commonwealth. Plaintiff has lawfully purchased, stocked, and sold kratom products in Massachusetts and continues to do so.

14. Defendant Massachusetts Department of Public Health ("DPH") is an agency of the Commonwealth of Massachusetts, established under G.L. c. 17, with its principal offices at 250 Washington Street, Boston, Massachusetts. DPH is the agency that promulgated and filed

105 Mass. Code Regs. 726.000 and is responsible for its administration and enforcement, including the issuance of guidance to local and regional boards of health under 105 Mass. Code Regs. 726.006.

15. Defendant Robbie Goldstein, M.D., Ph.D., is the Commissioner of Public Health and is sued solely in his official capacity. Section 2A of Chapter 94C vests the temporary scheduling power in "the commissioner." Commissioner Goldstein issued the Order Placing Kratom in Schedule I dated August 13, 2026, and promulgated as 105 Mass. Code Regs. 726.000. He maintains his official offices at 250 Washington Street, Boston, Massachusetts.

JURISDICTION AND VENUE

16. This Court has jurisdiction under G.L. c. 30A, § 7, which provides that the validity of any regulation may be determined upon an action for declaratory relief in the manner and to the extent provided under G.L. c. 231A, and which expressly extends such review to "the sufficiency of the reasons for its adoption as an emergency regulation."

17. This Court has further jurisdiction under G.L. c. 231A, §§ 1 and 2, and under G.L. c. 212, § 4, and has authority to grant injunctive relief under G.L. c. 214, § 1 and Mass. R. Civ. P. 65. An actual controversy exists between Plaintiffs and Defendants concerning the validity and enforceability of 105 Mass. Code Regs. 726.000, and Plaintiffs are persons whose legal rights, duties, and business operations are directly and immediately affected by that regulation.

18. Plaintiffs have standing. The regulation will render unlawful, as of August 28, 2026, commercial activity that Plaintiffs lawfully conduct today; will render Plaintiffs' existing inventories Schedule I controlled substances; will declare Plaintiffs' establishments "imminent health hazards" by reason of possession alone; and will subject Plaintiffs' municipal licenses and

permits to summary suspension. Plaintiffs' injuries are concrete, particularized, imminent, and directly traceable to the challenged regulation, and would be redressed by the relief sought.

19. Venue is proper in Suffolk County under G.L. c. 223, § 5 and G.L. c. 231A, § 2. DPH and Commissioner Goldstein maintain their principal official offices in Suffolk County, and the Order and regulation challenged in this action were issued by officials located there. [Plaintiffs also transact business in Suffolk County.]

FACTUAL ALLEGATIONS

A. The statutory architecture of Chapter 94C

20. Chapter 94C, the Massachusetts Controlled Substances Act, establishes six schedules of controlled substances. Section 2 of Chapter 94C governs the ordinary process by which the Commissioner may add, delete, or reschedule substances, including the factors the Commissioner must consider and the procedures he must follow.

21. Section 3 of Chapter 94C is a separate and independent substantive limitation on the scheduling power. It provides that a drug or other substance "may not be placed in any schedule unless" it has been placed in that schedule under the federal Controlled Substances Act or "the findings required for such schedule are made with respect to such drug or other substance."

22. For Schedule I, Section 3 requires three findings: (a) that the substance has a high potential for abuse; (b) that the substance has no currently accepted medical use in treatment in the United States; and (c) that there is a lack of accepted safety for use of the substance under medical supervision.

23. Section 2A of Chapter 94C authorizes temporary emergency scheduling. It begins: "Notwithstanding section 2, the commissioner may, by order, place a substance in

schedule I on a temporary basis." The clause names Section 2 and ***only*** Section 2. It does not refer to Section 3.

24. Section 2A imposes its own requirements for temporary emergency scheduling. The Commissioner must find that temporary Schedule I placement is necessary to avoid an imminent hazard to the public safety and necessary for the preservation of the public health, safety, or general welfare; that the substance is not listed in any other schedule identified in Section 3; that no exception is in effect under Section 4; and that the substance is not excluded under Section 2(c). G.L. c. 94C, § 2A(a).

25. Before making the imminent-hazard finding, the Commissioner "shall consider" the substance's actual or relative potential for abuse and its history and current patterns of abuse. G.L. c. 94C, § 2A(b).

26. Section 2A(c) provides that an order placing a substance in Schedule I on a temporary basis "shall be an emergency regulation and subject to section 3 of chapter 30A," with two specified modifications: no further approval by any designated person or body is required, and the regulation may remain in effect for up to one year. Section 2A thus does not displace Chapter 30A; it expressly incorporates Chapter 30A's emergency-regulation requirements except where it states otherwise.

27. Chapter 30A, § 3 permits an agency to dispense with ordinary notice and public participation only if the agency finds that immediate adoption of a regulation is necessary for the preservation of the public health, safety, or general welfare and that observance of the ordinary requirements would be contrary to the public interest. The agency's finding and "a brief statement of the reasons for its finding" must be incorporated in the emergency regulation as filed.

28. Section 2A(f) directs that, after issuing a temporary scheduling order, the Commissioner shall transmit the order to the Attorney General of the United States and request that the substance be temporarily scheduled under 21 U.S.C. § 811(h). Chapter 94C's temporary scheduling provision is thus expressly keyed to, and modeled upon, the federal temporary scheduling scheme.

B. Kratom, its alkaloids, and the products at issue

29. Kratom is the common name for Mitragyna speciosa, a tree native to Southeast Asia whose leaves have been consumed for generations. As the Commissioner's own Order acknowledges, "[d]epending on the amount used, kratom may produce stimulant-like effects, such as increased alertness, or opioid-like effects, such as pain relief and sedation," and individuals use it "to self-treat conditions such as anxiety, depression, opioid use disorder and opioid withdrawal." The Order further states that an estimated 1.7 million Americans aged 12 and older used kratom in 2021.

30. Traditional botanical kratom products—dried leaf, powdered leaf, and teas prepared from leaf material—contain mitragynine as the predominant alkaloid and only trace, naturally occurring quantities of 7-hydroxymitragynine ("7-OH"). The Commissioner's Order recognizes the distinction: "Synthesized products typically contain higher concentrations of the naturally occurring substance, 7-hydroxymitagynine [sic] (7-OH), or synthetic derivatives of mitragynine."

31. By contrast, mitragynine pseudoindoxyl ("MP"), dihydro-7-hydroxymitragynine ("MGM-15"), and 9-fluoro-7-hydroxymitragynine ("MGM-16") are not constituents of the botanical leaf in any meaningful commercial concentration. MGM-16 is a fluorinated compound that does not occur in nature at all. The Order itself states that "overdose deaths from some of

the synthetic kratom derivatives like MGM-15 and MGM-16 have not yet been reported and confirmed." These compounds are chemically, pharmacologically, and commercially distinct from the leaf.

32. Federal regulators have drawn precisely the line the Commissioner refused to draw. The United States Drug Enforcement Administration's pending temporary scheduling action addresses 7-hydroxymitragynine at or above specified concentration thresholds and expressly does not reach ordinary botanical kratom containing naturally occurring 7-OH below those thresholds. DEA has not placed kratom, in any form, in any schedule under the federal Controlled Substances Act.

33. Because kratom has not been placed in any schedule under the federal Controlled Substances Act, the first alternative basis for scheduling under G.L. c. 94C, § 3 is unavailable. The only remaining basis is that "the findings required for such schedule are made."

34. Plaintiffs do not dispute that some kratom products raise genuine public-health concerns, that some products are marketed irresponsibly, or that the Commonwealth may lawfully regulate them—through labeling requirements, potency limits, age restrictions, testing requirements, or targeted scheduling of concentrated and synthetic derivatives. Plaintiffs' claims concern whether the Commissioner complied with the statutes that govern how the Commonwealth may declare a substance a Schedule I controlled substance, and whether the regulation he adopted is supported by the reasons he gave.

C. The August 13, 2026 Order and 105 Mass. Code Regs. 726.000

35. On or about August 13, 2026, Commissioner Goldstein issued the "Order of the Commissioner Pursuant to G.L. c. 94C, § 2A Placing Kratom in Schedule I" (the "Order") and promulgated 105 Mass. Code Regs. 726.000 as an emergency regulation. *See* Exhibit 1. The

regulation states: "The effective date of this regulation shall be August 28, 2026. This regulation shall remain in effect for 1 year from its effective date unless the Commissioner finds during the intervening period that the order stated in 105 Mass. Code Regs. 726.004 is no longer necessary." 105 Mass. Code Regs. 726.005.

36. Section 726.004 is the operative provision. It states in a single sentence: "Kratom is hereby placed in schedule 1 in accordance with M.G.L. c. 94C, § 2A." Section 726.002 states that the purpose of the regulation "is to place Kratom in schedule 1 of M.G.L. c. 94C: Controlled Substances Act."

37. Section 726.003 defines the scheduled substance: "Kratom: The plant mitragyna speciosa, mitragynine, 7-hydroxymitragynine (also known as 7-OH), mitragynine pseudoindoxyl (also known as MP), dihydro-7-hydroxymitragynine (also known as MGM-15), 9-fluoro-7-hydroxymitragynine (also known as MGM-16), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible. Kratom includes any product held out or holding itself out to be kratom."

38. Section 726.001 is captioned "Findings." It contains three numbered paragraphs. The first states that the Commissioner "has considered kratom's actual or relative potential for abuse and its history and current patterns of abuse and has found that kratom is an imminent hazard to the public safety." The second states that the Commissioner has found that the order in 726.004 is necessary "to avoid an imminent hazard to the public safety" and "for the preservation of the public health, safety or general welfare"; that kratom "is not listed in any other schedule identified in section 3 of M.G.L. c. 94C"; that no exception is in effect under section 4; and that kratom "is not excluded under subsection (c) of section 2." The third states that "the immediate

adoption of this regulation is necessary for the preservation of the public health, safety, and general welfare."

39. Section 726.001 tracks the requirements of § 2A element by element. But neither that section, the remainder of the regulation, nor the attached Order contains any of the following: (a) a finding that kratom has a high potential for abuse; (b) a finding that kratom has no currently accepted medical use in treatment in the United States; or (c) a finding that there is a lack of accepted safety for the use of kratom under medical supervision. Those are the three findings that G.L. c. 94C, § 3 requires before a substance may be placed in Schedule I.

40. The Order's "Statutory Authority" section confirms the omission. It describes the Commissioner's authority as extending to temporary Schedule I placement "if the Commissioner finds that it is necessary to avoid an imminent hazard to the public safety and that it is necessary for the preservation of the public health, safety or general welfare as well as other procedural prerequisites," and concludes: "For the reasons stated below, I find that the conditions of section 2A have been met." The Commissioner made no reference to § 3 and purported to satisfy only § 2A. The regulation's authority line likewise cites only "G.L. c. 94C, § 2A."

41. Section 726.006, captioned "Guidance to all Local and Regional Boards of Health," provides that "[p]ossession or distribution of kratom by any food, retail or other commercial establishment shall constitute an imminent health hazard," and that a board of health, an authorized agent, a local inspection department or its equivalent, or a municipal government or its agent "may, pursuant to section 30 of chapter 111 and any regulation promulgated pursuant thereto, take any enforcement action consistent with a finding of an imminent health hazard, up to and including summary suspension of a municipal license or permit held by the establishment including, but not limited to, a permit to operate."

42. Section 726.006 makes the "imminent health hazard" designation automatic and status-based. It turns on possession alone. It does not depend on the potency, composition, labeling, or intended use of the product possessed; on the age of any purchaser; on any inspection finding; or on any adverse event. A sealed case of dried leaf tea in a stockroom is, by operation of the regulation, an imminent health hazard on August 28, 2026.

43. Neither 105 Mass. Code Regs. 726.001 nor the attached Order states that observance of the ordinary notice and public-participation requirements of G.L. c. 30A would be contrary to the public interest. Nor does either document explain why the fourteen-day notice period afforded by § 2A could accommodate the asserted emergency while ordinary notice and comment could not.

44. To the contrary, the Order describes conditions that have persisted for years. It states that kratom products "are widely sold over the counter at retail locations in Massachusetts including gas stations, convenience stores, and smoke shops"; that they "are not required to carry warning labels"; and that they are marketed with "colorful packaging and target marketing." Each of those conditions existed long before August 13, 2026. The Order identifies no event, discovery, product, or outbreak occurring in 2026 that changed the situation.

D. The Commissioner did not make the findings Section 3 requires

45. The Findings section of 105 Mass. Code Regs. 726.000 was drafted with evident attention to the text of § 2A. It recites the imminent hazard finding, the consideration of abuse potential and patterns of abuse, the absence of listing in another schedule, the absence of an exception under § 4, and the absence of exclusion under § 2(c). The completeness of that recitation is itself significant: the Commissioner identified and satisfied each condition he understood to apply, and the § 3 findings are not among them.

46. Nor could the omission be cured by construing the Order's narrative discussion as an implicit substitute. The Order states that kratom "is not well researched for efficacy in treatment of psychiatric and substance use disorders, nor for any other medical condition," and that "there are no prescription or over-the-counter drug products containing kratom or its known alkaloids that are legally on the market." Neither statement is a finding that kratom has a high potential for abuse, that it has no currently accepted medical use in treatment, or that it lacks accepted safety under medical supervision. An absence of research is not a finding of high abuse potential; the absence of an approved drug product is not a finding regarding accepted medical use in treatment.

47. Because kratom has not been federally scheduled and because the findings required for Schedule I were not made, G.L. c. 94C, § 3 forbids the placement that 105 Mass. Code Regs. 726.004 purports to accomplish. The Commissioner had no statutory authority to place kratom in Schedule I, whether permanently or on a temporary basis.

E. The Order's own record distinguishes concentrated and synthetic products from botanical kratom

48. The Order enumerates the circumstances in which overdose "can occur": "Using highly potent products with 7-OH or other synthetic kratom derivatives alone"; "Using highly potent products that are mixed with unknown substances"; and "Using other substances with kratom, especially opioids (like fentanyl, heroin, oxycodone, or methadone), alcohol, benzodiazepines, or sedatives." Every circumstance the Commissioner identified is defined by potency, adulteration, or polysubstance use—not by the presence of the botanical plant.

49. The Order states that "[a]lthough rare, kratom-involved deaths have been reported," and that "[p]atients are especially at risk when combining with other substances and/or

when they have a chronic health condition." The Order thus describes the risk it identified as rare and as concentrated in identifiable subpopulations and use patterns.

50. The Order nowhere finds that traditional botanical kratom, standing alone and consumed as leaf, powder, liquid extract, or tea, presents an imminent hazard to the public safety. Nor does it find that MP, MGM-15, or MGM-16 present an imminent hazard; as to the latter two, it affirmatively states that no overdose deaths "have … yet been reported and confirmed" and cites only laboratory experiments. The regulation nevertheless treats the plant, its natural alkaloids, four laboratory derivatives, and all of their isomers, esters, ethers, and salts as a single undifferentiated hazard.

51. The Order's stated bridge between the identified risk and the scope of the regulation is that products "vary widely in their ingredients, strength, and purity, and are difficult to distinguish from one another," and that "consumers have no reliable way of knowing what compounds a specific product contains." That is an argument for labeling, testing, potency limits, and disclosure requirements. It is not a finding that the botanical plant is itself an imminent hazard, and it does not explain why the Commissioner could not adopt the concentration-threshold approach that federal regulators have adopted.

F. The data the Commissioner cited do not describe a sudden emergency

52. The Order reports that, from 2020 through 2026, kratom, mitragynine, and/or 7-OH were listed in the cause-of-death fields of the following numbers of death records in DPH's Registry of Vital Records and Statistics: 15 (2020); 10 (2021); 16 (2022); 19 (2023, preliminary); 18 (2024, preliminary); 21 (2025, preliminary); and 8 (January 1 through July 28, 2026). The Order elsewhere states that there have been "approximately 100 deaths reported in Massachusetts to be associated with kratom or related substances" since 2020.

53. The Order cites 127 kratom-related calls to the Massachusetts and Rhode Island Poison Center over more than five and one-half years (January 2021 through July 29, 2026), of which approximately 46% were categorized as "moderate" or "major" effect, and 314 ESSENCE syndromic-surveillance records over approximately thirteen months in which kratom was mentioned in triage notes or a chief-complaint field. A mention in a triage note is not a diagnosis, an adverse event, or an attribution of causation. The Order does not state, for any of these calls or records, whether the product involved was botanical kratom or a concentrated or synthetic derivative.

54. The result is a gap between the reasons given and the regulation adopted. Where the Order attributes acute risk, it attributes it to concentrated, synthetic, adulterated, or combined products. Where the Order supplies quantitative data, the data are not disaggregated by product type and do not show a sudden change. The Commissioner never explained why the emergency he described required declaring the plant Mitragyna speciosa—and anything held out as it—a Schedule I controlled substance.

G. The "held out" clause makes the scheduled substance indeterminate

55. The final sentence of the definition provides: "Kratom includes any product held out or holding itself out to be kratom." That clause does not describe a chemical, a plant, or a class of compounds. It defines a Schedule I controlled substance by reference to how a product is marketed or perceived, without regard to what it contains.

56. Neither the regulation nor the Order defines "held out," identifies whose representations count, or states what a product must contain to fall outside the clause. Plaintiffs cannot determine, for example, whether a botanical beverage marketed as a "kratom alternative" containing no Mitragyna speciosa alkaloids is a Schedule I substance; whether a product that a

third-party reseller or a customer describes as kratom becomes one; whether a discontinued product whose historical packaging referenced kratom remains one; or whether a placebo product containing no active alkaloid is one. The consequences of guessing wrong include criminal liability under Chapter 94C and summary suspension of Plaintiffs' permits.

H. Imminent and irreparable harm to Plaintiffs

57. On August 28, 2026, conduct that Plaintiffs lawfully engage in today—purchasing, possessing, displaying, and selling kratom products—will become subject to the prohibitions and penalties that Chapter 94C attaches to Schedule I controlled substances. Plaintiffs will be required to remove their inventories from lawful retail sale and will be unable lawfully to continue their present businesses with those inventories, causing immediate and substantial loss.

58. Beginning the same day, Plaintiffs' establishments will be deemed "imminent health hazards" by reason of possession alone, and Plaintiffs' municipal licenses and permits—including their permits to operate—will be subject to summary suspension by local officials under 105 Mass. Code Regs. 726.006 and G.L. c. 111, § 30. Suspension of a permit to operate would close a Plaintiff's business entirely, not merely halt its kratom sales.

59. Plaintiffs' injuries are irreparable. Lost customer relationships, loss of goodwill, the destruction of a going concern, and the reputational consequences of being publicly designated an imminent health hazard cannot be remedied by damages, and damages are in any event unavailable against Defendants in this action. Plaintiffs have no adequate remedy at law.

60. The balance of harms and the public interest favor relief. Enjoining a regulation that the Commissioner lacked authority to adopt imposes no cognizable harm on the Commonwealth. The Commonwealth retains all of its existing authority over adulterated,

misbranded, and dangerous products, including its authority under G.L. c. 94, G.L. c. 111, and § 2A itself to schedule the concentrated and synthetic compounds that the Order identifies as the source of acute risk. Plaintiffs do not seek to disturb any such action.

CLAIMS FOR RELIEF

COUNT I — Declaratory Judgment (G.L. c. 30A, § 7; G.L. c. 231A): 105 Mass. Code Regs. 726.000 Exceeds the Commissioner's Authority Because the Findings Required by G.L. c. 94C, § 3 Were Not Made

61. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1 through 60 as if fully set forth herein.

62. General Laws c. 94C, § 3 provides that a drug or other substance "may not be placed in any schedule unless" it has been placed in that schedule under federal law or the findings required for that schedule are made. The prohibition is categorical and is directed to the act of placement itself.

63. Section 2A does not relieve the Commissioner of that requirement. Its operative language displaces one section and one section only: "Notwithstanding ***section 2***" (emphasis added). The Legislature's decision to name § 2 while omitting § 3 is dispositive under ordinary principles of Massachusetts statutory construction, and the omission cannot be regarded as inadvertent where § 2A(a)(iii) refers to § 3 by name.

64. The Supreme Court's construction of the parallel federal provisions confirms this reading. In *Touby v. United States*, 500 U.S. 160 (1991), the Court held that 21 U.S.C. § 812(b)—which provides that a substance "may not be placed in any schedule unless the findings required for such schedule are made"—"speaks in mandatory terms" and "draw[s] no distinction between permanent and temporary scheduling." *Id.* at 166–67. Accordingly, in addition to satisfying the imminent-hazard requirements of § 811(h), the Attorney General must make the

Schedule I findings concerning high potential for abuse, absence of accepted medical use, and lack of accepted safety under medical supervision.

65. The Massachusetts and federal schemes are materially parallel in structure and in text. Section 2A corresponds to 21 U.S.C. § 811(h); § 3 corresponds to 21 U.S.C. § 812(b). Section 2A(f) requires the Commissioner to transmit his temporary order to the United States Attorney General and to request corresponding temporary scheduling under § 811(h)—confirming that the Legislature drafted § 2A with the federal scheme in view.

66. Nothing about the emergency character of § 2A is inconsistent with compliance with § 3. Section 2A relieves the Commissioner of § 2's procedures and multi-factor analysis; it does not relieve him of the substantive prerequisites for the schedule he selects. The three findings required for Schedule I are within the Commissioner's competence to make, and § 2A afforded him a fourteen-day notice period in which to make them. He did not make them.

67. The Commissioner made no finding that kratom has a high potential for abuse, no finding that kratom has no currently accepted medical use in treatment in the United States, and no finding that kratom lacks accepted safety for use under medical supervision. Kratom has not been placed in any schedule under federal law. The Commissioner therefore lacked statutory authority to place kratom in Schedule I, and 105 Mass. Code Regs. 726.000 is invalid and void.

68. An actual controversy exists, and Plaintiffs are entitled to a declaration under G.L. c. 30A, § 7 and G.L. c. 231A that 105 Mass. Code Regs. 726.000 is invalid because it was promulgated in violation of G.L. c. 94C, § 3, and to an injunction restraining its enforcement.

COUNT II — Declaratory Judgment (G.L. c. 30A, § 7; G.L. c. 231A): The Regulation Exceeds the Authority Conferred by G.L. c. 94C, § 2A Because the Required Imminent-Hazard Determination Was Not Made as to All Forms of Kratom (Pleaded in the Alternative)

69. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1 through 68 as if fully set forth herein. This Count is pleaded in the alternative to Count I.

70. Section 2A authorizes temporary Schedule I placement only where the Commissioner finds that placement is necessary to avoid an imminent hazard to the public safety and necessary for the preservation of the public health, safety, or general welfare, and only after considering the substance's actual or relative potential for abuse and its history and current patterns of abuse. The statute does not authorize emergency scheduling merely because a substance, or some products containing it, raises public-health concerns.

71. The finding § 2A requires must be made with respect to the substance *actually* placed in Schedule I. Here, that substance is defined to include the plant Mitragyna speciosa, mitragynine, 7-OH, MP, MGM-15, MGM-16, all of their isomers, esters, ethers, and salts, and "any product held out or holding itself out to be kratom."

72. The Commissioner's stated reasons do not support an imminent-hazard determination coextensive with that definition. The Order attributes acute risk to highly potent 7-OH and synthetic derivative products, to products adulterated with unknown substances, and to polysubstance use. It states that kratom-involved deaths are "rare." It states that no overdose deaths from MGM-15 or MGM-16 have been reported or confirmed. It does not find that traditional botanical kratom, consumed as leaf or tea, independently constitutes an imminent hazard to the public safety.

73. Nor does the record reflect the consideration § 2A(b) requires with respect to each scheduled substance. The Order contains no discussion of the abuse potential or patterns of

abuse of MP, MGM-15, or MGM-16 apart from a reference to laboratory experiments, and no discussion of the abuse potential or patterns of abuse of products containing no kratom alkaloids that are nonetheless swept in by the "held out" clause.

74. Evidence that concentrated or laboratory-modified compounds constitute an imminent hazard does not establish that the botanical plant from which they are derived, and every product "held out" as that plant, constitutes the same imminent hazard. Federal regulators drew that distinction using concentration thresholds. The Commissioner did not, and he did not explain why he could not.

75. Plaintiffs are entitled to a declaration that 105 Mass. Code Regs. 726.000 exceeds the authority conferred by G.L. c. 94C, § 2A, in whole or, in the alternative, insofar as it reaches the plant Mitragyna speciosa, botanical kratom products, and products "held out" as kratom, and to an injunction restraining its enforcement to that extent.

COUNT III — Declaratory Judgment (G.L. c. 30A, §§ 3 and 7; G.L. c. 231A): The Reasons Given Are Insufficient to Support Emergency Adoption of the Regulation as Written

76. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1 through 75 as if fully set forth herein.

77. Section 2A(c) provides that a temporary scheduling order "shall be an emergency regulation and subject to section 3 of chapter 30A," modified only in that no further approval is required and the regulation may remain effective for up to one year. Chapter 30A therefore applies to 105 Mass. Code Regs. 726.000 in all other respects.

78. Chapter 30A, § 3 permits an agency to dispense with ordinary notice and public participation only upon a finding that immediate adoption is necessary for the preservation of the public health, safety, or general welfare and that observance of the ordinary requirements would

be contrary to the public interest, and it requires that the finding and "a brief statement of the reasons for its finding" be incorporated in the emergency regulation as filed.

79. Section 726.001(3) recites only that "the immediate adoption of this regulation is necessary for the preservation of the public health, safety, and general welfare." It contains no finding that observance of the ordinary notice and public-participation requirements would be contrary to the public interest, and it contains no statement of reasons for such a finding. The conclusory recitation supplies neither the finding nor the explanation that § 3 requires.

80. The reasons supplied do not explain the emergency regulation actually adopted. They do not explain any public-health concern that justifies listing all kratom products rather than only the discrete class of concentrated and synthetic products to which it attributes acute risk. The Order describes long-standing market conditions, essentially flat mortality data, and undifferentiated poison-center and surveillance figures, and it attributes acute risk to a discrete class of concentrated and synthetic products. Those reasons do not explain why immediate adoption of a rule declaring the entire kratom plant and every product held out as kratom a Schedule I controlled substance was necessary, or why ordinary notice and comment as to that scope would have been contrary to the public interest.

81. General Laws c. 30A, § 7 expressly authorizes judicial review of "the sufficiency of the reasons for its adoption as an emergency regulation." Plaintiffs are entitled to a declaration that the reasons stated in 105 Mass. Code Regs. 726.000 are insufficient to support its adoption as an emergency regulation, that the regulation is invalid, and to an injunction restraining its enforcement.

COUNT IV — Declaratory Judgment (G.L. c. 30A, § 7; G.L. c. 231A): The Regulation Is Arbitrary and Capricious and Ultra Vires in Its Breadth (Pleaded in the Alternative)

82. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1 through 81 as if fully set forth herein. This Count is pleaded in the alternative to Counts I through III.

83. Under G.L. c. 30A, § 7 and G.L. c. 231A, a regulation may be declared invalid when it exceeds the authority delegated by the Legislature or is arbitrary, capricious, or otherwise not in accordance with law. The same familiar grounds are reflected in G.L. c. 30A, § 14(7)(b) and (g). 105 Mass. Code Regs. 726.000 exceeds those limits because it treats materially different substances identically. It places in the same schedule, on the same day, on the same asserted basis: a plant leaf consumed as tea; its predominant naturally occurring alkaloid; a trace naturally occurring alkaloid; three laboratory-generated derivatives, one of them fluorinated and not found in nature; every possible isomer, ester, ether, and salt of each; and any product, of any composition, that is "held out" as kratom.

84. The Commissioner drew the distinction himself and then abandoned it without explanation. His Order identifies concentration and synthesis as what makes products dangerous, yet the regulation makes concentration and composition irrelevant. He offered no reason why a threshold-based approach—the approach federal regulators adopted—was unavailable, unworkable, or insufficient.

85. Section 726.006 compounds the defect. It declares mere possession by a commercial establishment an "imminent health hazard" as a matter of definition, without regard to quantity, potency, packaging, labeling, storage, or sale, and directs municipal officials that they may summarily suspend the establishment's operating permits on that basis alone.

86. Plaintiffs are entitled to a declaration that 105 Mass. Code Regs. 726.000 is arbitrary, capricious, and beyond the authority delegated by G.L. c. 94C, § 2A, in whole or, in the alternative, as to 105 Mass. Code Regs. 726.003's definition of "kratom" insofar as it reaches the plant and products held out as kratom and as to 105 Mass. Code Regs. 726.006, and to an injunction restraining enforcement to that extent.

COUNT V — Declaratory Judgment:
The Definition of "Kratom" Is Unconstitutionally Vague
(Pleaded in the Alternative)

87. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1 through 86 as if fully set forth herein. This Count is pleaded in the alternative.

88. A regulation that defines conduct carrying criminal and licensing consequences must give a person of ordinary intelligence fair notice of what it prohibits and must provide standards that constrain the discretion of enforcement officials. Those requirements arise under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and under Articles 1, 10, and 12 of the Massachusetts Declaration of Rights.

89. The clause "any product held out or holding itself out to be kratom" satisfies neither requirement. It supplies no chemical, botanical, or quantitative criterion. It does not identify whose representations are attributed to the product—the manufacturer's, the distributor's, the retailer's, a third-party reviewer's, or a consumer's. It does not indicate whether historical or discontinued marketing counts. It does not state whether a product containing no Mitragyna speciosa alkaloid can be a Schedule I controlled substance solely because of how it is described. And it leaves each of the Commonwealth's local boards of health free to answer those questions differently while enforcing 105 Mass. Code Regs. 726.006.

90. The consequences of the ambiguity are severe. Misjudging the clause exposes Plaintiffs and their employees to criminal liability for possession and distribution of a Schedule I

controlled substance and exposes Plaintiffs' establishments to designation as imminent health hazards and to summary suspension of their permits to operate.

91. Plaintiffs are entitled to a declaration that the definition of "kratom" in 105 Mass. Code Regs. 726.003 is void for vagueness, at minimum as to the clause "any product held out or holding itself out to be kratom," and to an injunction restraining its enforcement.

COUNT VI — Declaratory Judgment:
Deprivation of Procedural Due Process
(Pleaded in the Alternative)

92. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1 through 91 as if fully set forth herein. This Count is pleaded in the alternative.

93. Plaintiffs hold municipal licenses and permits, including permits to operate, in which they have constitutionally protected property interests under the Fourteenth Amendment and Articles 1, 10, and 12 of the Massachusetts Declaration of Rights.

94. Section 726.006 directs local officials that they may summarily suspend those licenses and permits based solely on the fact of possession, and it prescribes no notice, no pre-suspension opportunity to be heard, no post-suspension hearing within any specified period, no standards governing the exercise of that discretion, and no mechanism for prompt review. Because the predicate "imminent health hazard" is established by definition rather than by any factual determination, there is no contested issue for the establishment to be heard on and no risk assessment to test.

95. The threatened deprivation of Plaintiffs' licenses and permits without adequate notice or a prompt opportunity for review would violate Plaintiffs' right to procedural due process. Plaintiffs are entitled to a declaration to that effect and to an injunction restraining Defendants from directing or authorizing summary suspension of Plaintiffs' licenses or permits under 105 Mass. Code Regs. 726.006 without constitutionally adequate process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

a. Declare, pursuant to G.L. c. 30A, § 7 and G.L. c. 231A, that 105 Mass. Code Regs. 726.000 is invalid and unenforceable because the Commissioner failed to make the findings required by G.L. c. 94C, § 3 before placing kratom in Schedule I;

b. In the alternative, declare that 105 Mass. Code Regs. 726.000 exceeds the authority conferred by G.L. c. 94C, § 2A, in whole or insofar as it reaches the plant Mitragyna speciosa, botanical kratom products, and products "held out or holding [themselves] out to be kratom";

c. In the alternative, declare that the reasons stated in 105 Mass. Code Regs. 726.000 are insufficient to support its adoption as an emergency regulation under G.L. c. 30A, §§ 3 and 7, and that the regulation is therefore invalid;

d. In the alternative, declare that 105 Mass. Code Regs. 726.000 is arbitrary, capricious, and not in accordance with law, in whole or as to 105 Mass. Code Regs. 726.003 and 105 Mass. Code Regs. 726.006;

e. In the alternative, declare that the clause "any product held out or holding itself out to be kratom" in 105 Mass. Code Regs. 726.003 is void for vagueness;

f. In the alternative, declare that 105 Mass. Code Regs. 726.006 violates Plaintiffs' right to procedural due process insofar as it authorizes summary suspension of Plaintiffs' municipal licenses and permits without adequate notice or a prompt opportunity for review;

g. Issue a temporary restraining order and, after hearing, a preliminary injunction restraining Defendants, their officers, agents, and employees, and all persons acting in

concert with them, from enforcing or implementing 105 Mass. Code Regs. 726.000, and from directing, advising, or authorizing local or regional boards of health or municipal officials to enforce it, pending final judgment;

h. Enter a permanent injunction to the same effect;

i. Order expedited proceedings so that Plaintiffs' request for interim relief may be heard before August 28, 2026;

j. Award Plaintiffs their costs and, to the extent permitted by law, their reasonable attorneys' fees; and

k. Grant such other and further relief as this Court deems just and proper.

Dated: August 21, 2026

By Its Attorneys,

/s/ *David K. Caplan*

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EXHIBIT 1

105 CMR 726.000: Temporary placement of Kratom in schedule 1 pursuant to M.G.L. c. 94C, § 2A

726.001: Findings

(1) The Commissioner has considered kratom's actual or relative potential for abuse and its history and current patterns of abuse and has found that kratom is an imminent hazard to the public safety.
(2) The Commissioner has found:
    a. The order stated in 105 CMR 726.004 is necessary:
        i. to avoid an imminent hazard to the public safety; and,
        ii. for the preservation of the public health, safety or general welfare.
    b. Kratom is not listed in any other schedule identified in section 3 of M.G.L. c. 94C.
    c. No exception is in effect for kratom pursuant to section 4 of M.G.L. c. 94C.
    d. Kratom is not excluded under subsection (c) of section 2 of M.G.L. c. 94C.
(3) Based on the foregoing, the Commissioner has found that the immediate adoption of this regulation is necessary for the preservation of the public health, safety, and general welfare.

726.002: Purpose

The purpose of 105 CMR 726.000 is to place Kratom in schedule 1 of M.G.L. c. 94C: Controlled Substances Act.

726.003: Definitions

Commissioner: The Commissioner of Public Health.

Kratom: The plant mitragyna speciosa, mitragynine, 7-hydroxymitragynine (also known as 7-OH), mitragynine pseudoindoxyl (also known as MP), dihydro-7-hydroxymitragynine (also known as MGM-15), 9-fluoro-7-hydroxymitragynine (also known as MGM-16), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible. Kratom includes any product held out or holding itself out to be kratom.

Board of Health or Local Board of Health or Regional Board of Health: the appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health or health department of a city or town.

Schedule: As defined in M.G.L. c. 94C, § 1.

726.004: Order

Kratom is hereby placed in schedule 1 in accordance with M.G.L. c. 94C, § 2A.

726.005: Effective date

The effective date of this regulation shall be August 28, 2026. This regulation shall remain in effect for 1 year from its effective date unless the Commissioner finds during the intervening period that the order stated in 105 CMR 726.004 is no longer necessary.

726.006: Guidance to all Local and Regional Boards of Health

Possession or distribution of kratom by any food, retail or other commercial establishment shall constitute an imminent health hazard. While the order stated in 105 CMR 726.004 is in effect, a board of health or an authorized agent, the local inspection department or the equivalent, or a municipal government or its agent may, pursuant to section 30 of chapter 111 and any regulation promulgated pursuant thereto, take any enforcement action consistent with a finding of an imminent health hazard, up to and including summary suspension of a municipal license or permit held by the establishment including, but not limited to, a permit to operate.

The Commissioner may issue other guidance under this section as may be necessary.

Authority: G.L. c. 94C, § 2A

ORDER OF THE COMMISSIONER PURSUANT TO G.L. c. 94C, § 2A PLACING KRATOM IN SCHEDULE I

Statutory Authority

The Commissioner of the Department of Public Health has the authority under G.L. c. 94C, § 2A to order the placement of an unscheduled substance in schedule I on a temporary basis if the Commissioner finds that it is necessary to avoid an imminent hazard to the public safety and that it is necessary for the preservation of the public health, safety or general welfare as well as other procedural prerequisites. The statute requires a 14-day notice period and the order is an emergency regulation in effect for up to 1 year.

For the reasons stated below, I find that the conditions of section 2A have been met regarding the use, sale and distribution of kratom, and therefore order the placement of kratom on schedule I on a temporary basis as provided in section 2A. (Attached)

Prior to issuing this Order, I have considered the public safety hazard posed by kratom's actual or relative potential for abuse and its history and current patterns of abuse, as discussed below:

Kratom Background

Kratom (*Mitragyna speciosa*) is a plant native to Southeast Asia. Depending on the amount used, kratom may produce stimulant-like effects, such as increased alertness, or opioid-like effects, such as pain relief and sedation. While individuals may use kratom recreationally, it is also used to self-treat conditions such as anxiety, depression, opioid use disorder and opioid withdrawal. According to data form the Substance Abuse and Mental Health Services Administration's National Survey on Drug Use and Health an estimated 1.7 million Americans aged 12 and older used kratom in 2021.[1] Kratom is not well researched for efficacy in treatment of psychiatric and substance use disorders, nor for any other medical condition.

Synthesized products typically contain higher concentrations of the naturally occurring substance, 7-hydroxymitagynine (7-OH), or synthetic derivatives of mitragynine. The contents of kratom products, both "natural" and "synthetic", vary widely in their ingredients, strength, and purity, and are difficult to distinguish from one another. Consumers have no reliable way of knowing what compounds a specific product contains or how potent it may be. As a relatively new product in the United States and given current marketing methods, many individuals may consume kratom without being aware of its presence in a product and/or without understanding of potential harmful side effects and risk of dependence.[2]

Some kratom products are manufactured as gelatin-based "gummy" candies with flavors that reflect those found in popular candy (e.g. "blue raspberry", "sour apple"). Packaging resembles

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[1] FDA and Kratom | FDA

[2] Perry T, Chin S. The Unregulated Rise of Kratom Drinks: Emerging Challenges and Policy Recommendations. Public Health Rep. 2026 May-Jun;141(3):329-334. doi: 10.1177/00333549251403378. Epub 2026 Jan 12. PMID: 41527301; PMCID: PMC12799471.

that of popular candy brands and does not carry warning labels. These products appeal to youth who may consume them without knowledge or understanding of their psychoactive nature (see "Appendix A"). Products are often marketed as a "sober alternative," branded as "all-natural" or "plant-based" herbal supplements, exploiting the health-halo effect, which is the tendency to associate such labels with safety and wellness. Such marketing obscures the fact that kratom use can lead to tolerance, withdrawal, and misuse.[3]

According to the FDA, there are no prescription or over-the-counter drug products containing kratom or its known alkaloids that are legally on the market in the U.S.[4]

Risks of Kratom Use

The FDA has warned consumers not to use kratom because of the risk of serious adverse events, including liver toxicity, seizures, and substance use disorder (SUD). The active alkaloids in kratom act upon opioid receptors. As such, kratom products carry substantial risks of dependence, acute toxicity, overdose, and organ failure. Additional risks of use include delusional thinking, psychosis, seizures, and dehydration resulting from excessive urination and sweating. Overdose can occur, including fatal overdose, particularly when using highly potent products, using kratom products mixed with unknown substances, and/or using other substances alongside kratom products, especially opioids, alcohol, benzodiazepines, or other sedatives.[5]

Overdose can occur, particularly when:

- Using highly potent products with 7-OH or other synthetic kratom derivatives alone;
- Using highly potent products that are mixed with unknown substances; and
- Using other substances with kratom, especially opioids (like fentanyl, heroin, oxycodone, or methadone), alcohol, benzodiazepines, or sedatives.

Although rare, kratom-involved deaths have been reported. Patients are especially at risk when combining with other substances and/or when they have a chronic health condition. While overdose deaths from some of the synthetic kratom derivatives like MGM-15 and MGM-16 have not yet been reported and confirmed, they have caused respiratory depression and overdose in laboratory experiments.

Physical dependence develops when an individual takes kratom products often and consistently so that when they stop taking it, they experience unpleasant withdrawal symptoms. Many people take kratom products and don't realize that it could be harmful or that dependence can occur.

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[3] Perry T, Chin S. The Unregulated Rise of Kratom Drinks: Emerging Challenges and Policy Recommendations. Public Health Rep. 2026 May-Jun;141(3):329-334. doi: 10.1177/00333549251403378. Epub 2026 Jan 12. PMID: 41527301; PMCID: PMC12799471.

[4] FDA and Kratom | FDA

[5] Smallets S, Litvin S, Abele G, Kirsh S, Paustenbach D. The acute adverse health effects of kratom: an evaluation of case reports. Front Pharmacol. 2025 Aug 29;16:1620601. doi: 10.3389/fphar.2025.1620601. PMID: 40949154; PMCID: PMC12425911.

Withdrawal can occur when regular or daily use of kratom products is stopped. People can experience symptoms similar to opioid withdrawal, such as anxiety, agitation, muscle spasms, runny nose, hot flashes, loss of appetite, diarrhea, restlessness, and fever.

Kratom use disorder (addiction) can occur when people using kratom products compulsively use and crave these products despite adverse consequences, like overdose, withdrawal, or disruptions in their relationships and ability to work, go to school, or take care of their family.

Commercial Availability and Vulnerability of Minors

Because these products are widely sold over the counter at retail locations in Massachusetts including gas stations, convenience stores, and smoke shops, consumers, including minors, can easily acquire them without age verification or understanding of potential dangers. Kratom products are not required to carry warning labels and are often stocked in areas in front of counters and accessible to all customers. This leaves the public unaware of severe health risks, including potentially dangerous drug interactions, undisclosed adulterants, and other risks. Further, manufacturers frequently use colorful packaging and target marketing that obscures the drug's effects and addictive qualities, placing children and consumers at risk of accidental ingestion, dependency, overdose, and acute toxicity.

Massachusetts Usage and Impact Data

Massachusetts health data demonstrate that kratom is an acute public health safety hazard in Massachusetts. Since 2020, there have been approximately 100 deaths reported in Massachusetts to be associated with kratom or related substances. Deaths may be underreported as no ICD codes (clinical modification for diagnosis coding in U.S. healthcare settings) currently relate to kratom or related substances.

From July 2025 through July 28, 2026, the Electronic Surveillance System for the Early Notification of Community-Based Epidemics (ESSENCE) has records of 314 visits in MA where kratom was mentioned in either the "triage notes" or "chief complaint" field.

Additionally, the Massachusetts and Rhode Island Poison Center has reported 127 kratom-related calls from January 2021 through July 29, 2026, including 10 calls for children aged 5 years or less, half of which were for children aged 1 year or less. Of the 127 calls received, approximately 46% were categorized as "moderate" or "major" effect. Calls for kratom exposure from Jan 1, 2026, through July 29, 2026 are approximately equal to the total number of calls for kratom exposure received in all of calendar year 2025.

Currently, mitragynine and 7-OH are routinely tested for upon overdose death and DPH is actively monitoring counts and trends of kratom-involved overdose. Death records contain the names of substances that contributed to death. From 2020-2026, kratom, mitragynine, and/or 7-

hydroxymitragynine (7-OH) were listed as the "cause of death" fields in the following number of DPH's Registry of Vital Records (RVRS) death records, by year:

Table 1: RVRS death records: Deaths associated with Kratom use in MA

Year	Number of Records
2020	15
2021	10
2022	16
2023	19*
2024	18*
2025	21*
2026	8†

*preliminary data

† data as reported 1/1/2026-7/28/2026

Appendix A

Examples of kratom products currently on the market in Massachusetts.

The above photo is from Minnesota Public Radio News with all products confirmed as being available in Massachusetts by Brookline's Massachusetts Tobacco Cessation and Prevention (MTCP) Board of Health program.

The above photo has been provided by Melrose's MTCP Board of Health program.