



AN OPEN LETTER TO TAMPA BAY TIMES EDITOR MARK KATCHES

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The Tampa Bay Times is now hearing from thousands of kratom consumers who are contacting your newspaper about their positive, quality of life supporting and, in some cases, lifesaving experiences with kratom. These kratom consumers are speaking out precisely because your newspaper and reporters completely ignored and censored their voices. The Tampa Bay Times opted to focus on a fundamentally dishonest, click-bait, sensationalized, anti-kratom series almost exclusively featuring stories from families who believe kratom was responsible for the loss of a loved one, rather than adhere to its basic responsibility to fairly and honestly tell both sides of the story.

WHERE THE TAMPA BAY TIMES GOT IT WRONG: THE KRATOM CONSUMER PROTECTION ACT ("KCPA") IS ABOUT ENSURING THE SAFETY OF KRATOM PRODUCTS SOLD TO CONSUMERS!

Today the kratom marketplace is completely unregulated at the federal level because the FDA has chosen to advocate exclusively for a ban on kratom under the federal Controlled Substances Act ("CSA"). Repeated efforts to ban kratom have been rejected for lack of scientific evidence and data required to justify such a ban.

The FDA has created a vacuum of zero enforcement of federal regulations on the sale of kratom products, and that leaves consumers at significant safety risk. The American Kratom Association ("AKA") has actively advocated a set of state regulations that provides specific protections for consumers on the kratom products that qualify for sale in every state where the KCPA is enacted.

Fighting to protect consumer safety with needed regulations on the safety of kratom products is not the sensationalized storyline that sells more newspapers or attracts click-bait followers, but it saves lives. A death count is the sexy headline, but it does nothing to protect consumers.

The Tampa Bay Times shows its obvious bias in its criticism of the AKA's advocacy for the Kratom Consumer Protection Act ("KCPA") state legislation that makes it illegal for a manufacturer to add any dangerous substance that is listed on the federal or state controlled substance list. The Tampa Bay Times completely misses the point on the claim that controlled substances are already illegal for use and mocks the AKA's advocacy for that requirement as being unnecessary.

The model KCPA legislation has two specific provisions that restrict the unsafe concentration of kratom alkaloids and completely bans synthesized components of the products that create dangerous kratom products. The Times articles featured a synthesized “7-OH” product that is banned from sale in the states that have enacted the KCPA.

The KCPA legislation also makes it **illegal to add** any dangerous controlled substance to a kratom product. This provision gives prosecutors an additional and needed tool to prosecute bad actors who intentionally adulterate a kratom product with a substance only to give that product an effect kratom does not naturally produce. It is a powerful deterrent to any bad actor kratom manufacturer who wants to play Russian roulette with the safety of kratom consumers.

A deliberately formulated dangerous kratom product is put on the market only because an illicit manufacturer wants to make a quick buck and the FDA refuses to regulate them. Any manufacturer who chooses to adulterate a kratom product with a dangerous substance should be prosecuted for putting consumers at deadly risk.

State authorities do not have the regulatory tools and enforcement authorities over interstate commerce, so there are some limits to what any version of the KCPA can do. Controlling the quality of the kratom products sold in a state where the KCPA is enacted, verified by an independent laboratory certificate of analysis for each product, is an essential part of a regulatory regimen assuring consumers products they purchase are not adulterated.

The KCPA provides a needed level of safety for consumers that does not exist in the states that have not passed the KCPA. The AKA is committed to having all states do what the FDA refuses to do in making the kratom marketplace safer than it is today.

IS THE CLAIM BY THE TAMPA BAY TIMES THAT WERE “46 KRATOM-ONLY DEATHS” IN FLORIDA OVER A 10-TEAR PERIOD ACCURATE – OR IS IT BASED ON INACCURATE OR INCOMPLETE EVIDENCE THAT SHOULD HAVE BEEN CONSIDERED BY MEDICAL EXAMINERS?

The Tampa Bay Times highlighted the 46 “kratom-only deaths” reported in Florida by medical examiners without any serious question about the accuracy of those claims.

The AKA pointed your reporters to the Centers for Disease Control report (CDC)¹ on alleged kratom only deaths where the CDC concluded that, without consistent and standardized post-mortem investigation protocols by medical examiners, the conclusions of a kratom-only death were questionable.

That CDC report also referenced a New England Journal of Medicine commentary on alleged kratom-only deaths in Colorado where medical examiners/coroners concluded there were 4

¹ <https://www.cdc.gov/mmwr/volumes/68/wr/mm6814a2.htm>

“kratom-only” deaths among 15 reported deaths where kratom was detected among other substances in the toxicology screens over a decade.²

When the kratom-only deaths were subjected to larger drug screen panels that were not ordered by the medical examiners who determined “kratom-only” was the cause of death, all of the deaths for which blood samples were available were found to be the result of polydrug use.

Importantly, these qualified public health officials concluded with a statement that any independent observer would be compelled to agree with:

“Careful examination of deaths apparently due to kratom only must include comprehensive toxicology screening.”

The AKA made the offer to pay to have the 46 “kratom-only” blood samples (of those available) tested by an independent laboratory chosen by the Tampa Bay Times using a more comprehensive drug screen panel to determine if other drugs were involved, but your reporters flatly refused that offer.

DID THE TAMPA BAY TIMES REPORT ON THE FDA’S DRAMATIC SHIFT ON WHETHER KRATOM IS DANGEROUS OR NOT?

The foundation of the anti-kratom series published by the Times is the FDA has found that kratom is dangerous.

The AKA provided evidence to the Tampa Bay Times reporters that the FDA itself contradicted that claim in a Federal court case in California involving the importation of kratom raw materials that were mislabeled into the United States. That court record clearly shows the FDA refused to participate in a hearing ordered by the Judge in that case solely on the issue of the evidence and data relied upon by the FDA in their statements that kratom is dangerous.

The U.S. Attorney’s Office reported to the Court the FDA refused to appear and testify about the dangers of kratom:

“We have been in contact with representatives of the FDA regarding the upcoming sentencing hearing regarding the dangers of kratom. They have refused to provide us with witnesses or documents to support our position, as well as witnesses or documents that might be inconsistent with our position. The reason they gave was that they have not yet made a determination regarding whether kratom is dangerous.” (See Case No. 3:23-cr-00179-TWR, United States District Court Southern District of California)

The Times investigative team acknowledged they were following the “California kratom import case closely” but deliberately ignored this important evidence despite the fact that

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6688840/pdf/nihms-1040925.pdf>

the anti-kratom series was primarily based on the FDA's position on the dangers of kratom that had been officially denied by the FDA itself.

The Times anti-kratom series failed to report on the FDA's seismic shift in their position on kratom in a federal court case wherein the FDA refused to testify under oath on the very foundation of the Tampa Bay Times anti-kratom series, which is that kratom is dangerous.

HAS THE FDA PROSECUTED A SINGLE KRATOM MANUFACTURER FOR MAKING ILLEGAL THERAPEUTIC CLAIMS?

In the December 30, 2023, Tampa Bay Times article, your reporters deliberately tell only a part of the story on the fact that the AKA has referred more than 85 companies to the FDA over the past 3 years for making what appear to be illegal therapeutic claims. The now apparent trademark bias of the Tampa Bay Times anti-kratom series becomes clear when reporters attempt to divert attention away from the FDA and its statutory duty to protect consumers by trying to blame the AKA for not providing the details on those complaints submitted to the FDA.

“When asked for these reports [the 85 complaints sent to the FDA], the association [AKA] declined to share them.”

What the AKA told your reporters was the complaints were submitted to the FDA, with evidence, and it was the FDA's job to investigate and determine if those companies should be prosecuted.

Your reporters were told that the AKA attorneys advised that the Tampa Bay Times should ask the FDA themselves for the reports and the results of the FDA investigations in the event these companies had been subject to counterfeiting or ghosting of their marketing materials. Those companies were entitled to have the opportunity to respond to the FDA and defend themselves -- and it is the FDA's duty to explain why the Agency has not brought a single prosecution against those companies who had violated the law.

On one hand, the Tampa Bay Times claims a 6-month thorough investigation into kratom with four or more reporters spending 6 months full time at a cost of at least \$400,000, but on the other hand those reporters refuse to make a simple phone call to the FDA or issue a Freedom of Information Act request to verify the receipt of those complaints and the outcomes of the FDA investigation, if any investigation was conducted at all.

The biased story published by the Tampa Bay Times diverts attention away from the FDA failing in its statutory duty to protect the public health and tries to make the issue the AKA declining to provide documents that are publicly available from the FDA.

The Times properly should hold the FDA to account for why they have not prosecuted even one of the more than 85 companies the AKA reported for illegal therapeutic claims despite receiving the evidence documenting the clear violation of the Federal Food Drug and Cosmetic Act.

WHY DID THE TAMPA BAY TIMES IGNORE THE CLEAR BIAS OF THE TRIAL ATTORNEYS WHO WERE FEEDING REPORTERS THEIR ANTI-KRATOM STORIES FROM ACTUAL AND FUTURE CLIENTS?

The AKA asked for the Tampa Bay Times to take down its blatantly biased, click-bait, 3-part anti-kratom series and fully disclose both the funding sources and the level of collaboration with trial attorneys.

These trial attorneys bring a strong bias to any story where they benefit financially. The stories featured anti-kratom reports from individuals recruited and then referred by trial attorneys to contact the Times, with at least one attorney who claimed to be collaborating directly with your investigative team.

The Tampa Bay Times response on December 28, 2023, and now a new article published on December 30, 2023, attempts to further misdirect readers from the central question of whether the entire investigation was the product of the trial attorneys being puppeteers of the Times' stories with money and/or orchestrating the content of the stories for their clear financial benefit.

Instead, the Tampa Bay Times investigative team and the editors insist on excusing their obvious bias and try to divert attention from the unfair reporting by blaming others, including kratom consumers who want safe products to protect them.

DID THE TRIAL ATTORNEYS FUND THE TAMPA BAY TIMES ANTI-KRATOM STORIES OR NOT?

The AKA provided the Tampa Bay Times reporters with a social media post from a trial attorney who responded to the AKA's objection that the Times' story was being funded by trial attorneys. That trial attorney made the following statement:

"Pro-kratom orgs, known for top-notch PR, now criticize lawyers for funding impartial "kratom research, . . ." (See X post by trial attorney Matt Wetherington, Dec. 22, 2023)

The AKA also informed the Tampa Bay Times reporters that a trial attorney acknowledged to the members of the AKA team donations had been made to fund the Tampa Bay Times anti-kratom series. The Tampa Bay Times investigative editor offered the strong rebuttal that the AKA could "never prove our story is funded and supported by trial attorneys because it's not."

So, the obvious question is why a trial attorney would make such a claim if it were not true?

Federal law protects non-profit entities from having to disclose donor lists, and the AKA believes that is an important protection. But not having to publicly disclose a donor list is far different than responding to a statement by a trial attorney claiming funds had been contributed to an "impartial" investigation isn't true because we can "never" prove the story was funded by any trial attorney.

The Times also refused to acknowledge the social media posts where a trial attorney encouraged anti-kratom advocates to contact the investigative reporters and freely used his name when they did so because, as this trial attorney stated, he was “out there with . . . Tampa Times.”

The combination of a trial attorney claiming the anti-kratom series was funded by biased donations and the close collaboration with trial attorneys on the anti-kratom stories featured by the Times puts the credibility and independence of the Tampa Bay Times in serious question.

Trial attorneys make their money filing lawsuits against the kratom companies -- not the FDA, which refuses to regulate those companies -- since there is no money available in suing the FDA. Trial attorneys also don't make a penny if a state attorney general prevents a death by prosecuting and removing dangerously adulterated kratom products.

But the KCPA provides a level of safety for consumers at the state level until the federal KCPA is passed that will compel the FDA to do its job and properly and responsibly regulate kratom products.

The hollow and false claim of the Tampa Bay Times that the series “serves as testament to the value of strong, independent investigative journalism” was anything but in this case. Your leadership team is now hearing the passionate voices of people who were silenced by the sheer power of your pen. If there had been fair investigation kratom advocates would have been provided an equal voice to the stories of those who claim they lost a family member to an alleged kratom overdose.

Worse, reporters from the Tampa Bay Times empower the trial attorneys who are promoting that anti-kratom narrative to simply recruit more clients and who publicly state they have found your reporters to be willing collaborators in promoting a one-sided and biased story about kratom. The clear evidence of that collaboration was provided to your reporting team but was rudely and summarily rejected.

The AKA tried mightily over the past several months to work with the Tampa Bay Times investigative team, but they repeatedly dismissed proffered evidence and data, and credible challenges to the premise of the story, all with the excuse “that is not the focus of our story.” Offers of providing contact information for kratom consumers who testify passionately about how kratom saved their lives were flatly rejected.

The bias of the Tampa Bay Times anti-kratom series was baked in, and no evidence or data that provided an honest assessment of the kratom issue was accepted by your reporters or fairly reported in the stories.

IS THE GOAL OF THE TAMPA BAY TIMES TO PUBLISH A FAIR AND HONEST STORY OR A BLATANT ATTEMPT TO WIN A PULITZER PRIZE IN JOURNALISM?

The Tampa Bay Times' defense has been that the kratom series of articles were to provide the public with a fair and honest investigation. At one point one of your reporters responded to criticism of the lack of honesty about the published kratom stories pointing to past recognition for your newspaper as a winner of a Pulitzer Prize in journalism.

If that is the goal of this series of articles, we hope the Pulitzer Committee sees how deeply biased this anti-kratom story actually is and considers how badly your investigative team missed the mark on honest and fair reporting.

The Times anti-kratom series is anything but fair and honest and, in fact, has contributed to disinformation about kratom and further erodes the confidence of the public in the media.

THE TAMPA BAY TIMES WEAPONIZED ITS "POWER OF THE PEN" IN A BIASED ANTI-KRATOM SERIES OF ARTICLES.

The Tampa Bay Times can choose to abuse the "power" of its pen to misdirect, selectively choose which information to highlight, and even deliberately mislead the public with a selective and biased narrative. In this case, the victim is the truth and every reader who is misled by these biased stories.

The evaluation of the Tampa Bay Times 16,000+ word anti-kratom investigative series – and that is growing almost daily as you attempt to recast your story -- can be reduced to an old adage: "The Emperor Has No Clothes."

The kratom consumer community simply has shown the courage to call out the Tampa Bay Times for the misuse of the sacred power of the pen to honestly and fairly use the media to inform the public rather than mislead it for a cheap, sensationalized, click-bait headline.