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Chairman Elliot Kaye's Statement on the Passage of a Federal Safety Standard For High Powered Magnet Sets

September 29,
2014

STATEMENT OF CHAIRMAN ELLIOT F. KAYE ON THE PASSAGE OF A FEDERAL SAFETY STANDARD[1] FOR HIGH-POWERED MAGNET SETS

Contact the Chairman's Office

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We have no more sacred charge at the U.S. Consumer Product Safety Commission than to protect vulnerable populations, especially children. For this reason, I was proud to join with three of my fellow Commissioners to approve unanimously a new federal safety standard for high-powered magnet sets. Doctors, families of victims and consumers across the country called upon the Commission to vote yes to protecting children and teenagers from the hidden and CPSC (a) (2) Respondent's Motion to Dismiss Exhibit 2

responded.

During the time I have been at the CPSC, the Commission has taken a number of important and uplifting consumer product safety actions. An example that comes to mind is when the Commission approved in 2010 the creation of the SaferProducts.gov database of publicly searchable consumer product safety incidents. For the first time, consumers were given direct access to, and a voice on, reports of harm and potential harm that had been hidden from public view.

Our action on high-powered magnet sets is just as important from a safety perspective. But, for me at least, it is much more solemn.

CPSC Staff Appropriately and Properly Acted to Protect Children

Before explaining why, it is important to note that I have not seen a better example of the Commission, and particularly the CPSC staff, responding and proceeding in a manner true to our mission and purpose.

The action that culminated in this week's vote began with incident reports. First a few, then more, and finally, enough to become a very alarming and disturbing trend. This was a trend that our staff had experience in detecting and addressing, as many years earlier there was a wave of serious injuries and incidents involving magnets in children's toys. The hazard pattern^[2] with magnet related incidents is similar—it is hidden, both from caregivers and medical professionals.

In an effort to reverse the trend and address the emerging hazard with aggregated magnet sets, our staff worked through a progression of our authorities starting in 2011. We hoped each step taken would be the last one needed to address the frightening injuries to children – injuries that have been described as gunshot wounds to the gut but without sign of entry or exit.

Unfortunately, the continued prevalence of incidents made pursuing a mandatory rule necessary. And so the staff did, beginning in September 2012, with a Notice of Proposed Rulemaking. This was a bottom-up effort, not the result of any kind of Congressional or Commission-level prompting. As a result, CPSC staff faithfully executed the mission of the agency by recommending to the Commission that federal rulemaking be pursued. I want to express my deep appreciation to all of the CPSC staff who worked so hard on this rule.

Magnet Sets are Associated with Significant Hurt and Loss

From a consumer product safety perspective, this truly is an important moment. As I mentioned in



Chairman Elliot Kaye began serving as chairman July 30, 2014.

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believe it is also a solemn one. For me, the action CPSC has taken is accompanied by the tremendous amounts of loss and hurt that many have experienced and still will experience.

Many are facing financial loss, whether that be as a result of health care costs piling up from treatment to their children injured by these magnets, or whether that be businesses, and one business in particular, likely to bear the brunt of our regulatory action approved today.

Many hurt emotionally, whether that be from enduring their child suffering from these horrible injuries, or whether that be a business owner grappling to accept an entrepreneurial dream faces possible extinction.

Most heart wrenching of all, one little girl, [REDACTED], was terribly hurt and lost forever.

We all have fears in life. Every single one of us. For me, the biggest without any question, is something tragic happening to one of my boys. Every night, EVERY NIGHT, long after we have put them to bed, I sneak back into their rooms to kiss them one more time. As I do that, I feel tremendous gratitude they are alive and well, and that I am so blessed to have the privilege of hearing in the dark of their rooms the soothing and rhythmic sound of their breathing. I hug them tight, trying not to wake them, all the while knowing that, as long as I might hang on that particular evening, that moment is rather fleeting. And I also know each night that there is certainly no guarantee I will have even one more night to hold onto them tight.

As a parent and as the Chairman of the CPSC, I hurt so much for [REDACTED] family. I was so deeply moved that [REDACTED] mother, brothers, grandmother, aunt, and cousin took the time to drive from [REDACTED] to attend the Commission's vote. I will always think of [REDACTED] when it comes to this rule and the action the Commission has approved, and I am so deeply sorry for the [REDACTED] family's loss.

Also in our thoughts is [REDACTED] from [REDACTED] who had to battle through numerous surgeries as a [REDACTED]-year old, after his intestines were perforated. [REDACTED] is not alone, as many children and teenagers have suffered serious injuries after ingesting these hazardous magnets. As many families and the medical community well know.

To the medical community—specifically the gastroenterologists— led by Dr. Athos Bousvaros, the President of the North American Society for Pediatric Gastroenterology, Hepatology and Nutrition, we thank you for your contributions to this effort, including your first-person accounts of rushing children into surgery.

Recognizing Rulemaking Ramifications while Providing a Much Safer Path Forward

There is, of course, another extremely important aspect of our action today. And I would like to mention it. Exhibit 2

feel the weight of, and am sorry for, the likely loss of one man's dream. While there are some who we do not agree with on how to address the hazards presented by these magnets, they should know I respect their dream to innovate and to create. As many who have worked with me have heard me say, it is important from time to time to "dream big and then even bigger."

Some loss, tragically, is permanent and life-changing. We were witnesses to that with the presence of [REDACTED] family. But not all loss and hurt need be. At least that is my hope for this process – that the mandatory standard the Commission approved on September 24, 2014, will prevent future loss and hurt by protecting and preserving not only the precious health of children, but will also provide sufficient space for the entrepreneurial dreams of adults.

[1] My comments are exclusively directed to the CPSC's rulemaking efforts with respect to high-powered magnets sets. While others may raise principled concerns regarding the agency choosing to exercise multiple authorities simultaneously, the fact that Congress provided the Commission with the option to proceed in such a manner indicates that doing so is an entirely appropriate and legitimate action for the agency to take in furtherance of protecting consumers from unreasonable risk of injury. Moreover, if the Commission has detected a hazard pattern warranting action to protect consumers (as it did here), and the Commission has identified a way to address the hazard (as it has here), I believe it is morally incumbent upon the Commission to act to protect consumers as quickly as it reasonably can. To me, there is no justifiable reason to proceed otherwise.

[2] I encourage the public to learn more about the serious hazard posed by these magnets by visiting www.cpsc.gov/magnets. To view the video of the Commission's vote, please visit www.cpsc.gov/en/Newsroom/Multimedia/?vid=70718.

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