SENATOR TOM DAVIS
SENATE DISTRICT 46
BEAUFORT AND JASPER COUNTIES

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November 19, 2026

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Dr. Brannon Traxler
Acting Director
South Carolina Department of Public Health
400 Otarre Parkway
Cayce, South Carolina 29033
BTraxler@dph.sc.gov

VIA EMAIL AND REGULAR MAIL

Re: The Department's failure to comply with S.C. Code § 44-53-160(C) and the South Carolina Controlled Substances Therapeutic Research Act of 1980

Dear Dr. Traxler:

As the Senator for District 46 and the author and primary sponsor, for the past eleven years, of medical-cannabis legislation that has twice passed the South Carolina Senate, I write to insist that the Department of Public Health comply with two state statutes it is now violating. Neither statute gives the Department any discretion.

On April 23, 2026, the United States Department of Justice and the Drug Enforcement Administration issued a final order rescheduling FDA-approved products containing marijuana, and marijuana subject to a state medical marijuana license, from Schedule I to Schedule III of the federal Controlled Substances Act. The order was published and took effect on April 28, 2026. (91 Fed. Reg. 22714.)

Section 44-53-160(C), as amended effective May 15, 2026, provides that when a substance is rescheduled under federal law, "the Director of the Department of Public Health *shall* within thirty days after publication in the federal register of the final order . . . reschedule the substance in the appropriate schedule." (Emphasis added.) The Department's action must be "in substance identical with the order published in the federal register," and it stands unless the General Assembly overturns it. The Department's role is ministerial. Whether South Carolina should depart from the federal scheduling decision is for the General Assembly alone to decide.

That deadline passed on May 28, 2026. Nearly six months later, the Department has issued no order. Yet on July 28, 2026, you signed an order under this same subsection adopting the federal Schedule I placement of hexahydrocannabinol. The Department cannot apply the statute when federal action tightens control of a substance and ignore it when federal action eases control.

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The Department is also violating the South Carolina Controlled Substances Therapeutic Research Act of 1980, S.C. Code §§ 44-53-610 *et seq.*, which requires the Director to appoint a Patient Qualification Review Advisory Board and to obtain marijuana "through whatever means he deems most appropriate consistent with federal law" for certified cancer and glaucoma patients. For 46 years, the federal Schedule I classification stood in the way. It no longer does. Nor does a lack of funding excuse inaction. *See Amisub of South Carolina, Inc. v. South Carolina Department of Health and Environmental Control*, 407 S.C. 583, 757 S.E.2d 408 (2014).

(1) issue an order rescheduling marijuana and marijuana extracts in substance identical with the federal order, and transmit and publish that order as Section 44-53-160(C) requires; and

(2) implement the therapeutic research program, beginning with appointing the Advisory Board, adopting procedures for certifying qualified patients, and taking the steps necessary to obtain marijuana consistent with federal law.

Please respond in writing to the following questions within thirty days of the date of this letter:

(1) Why has the Department not rescheduled marijuana as Section 44-53-160(C) requires?

(2) By what date will the Department issue the required rescheduling order?

(3) Why has the Department not implemented the therapeutic research program?

(4) When will the Department appoint the Advisory Board and begin obtaining marijuana?

Because the Department's continued inaction raises questions of statutory compliance that should be resolved with authority, I am copying Attorney General Alan Wilson on this letter and requesting a formal opinion from his office on the matters it raises.

Sincerely,

Tom Davis

Tom Davis

cc: The Honorable Alan Wilson: RCook@scag.gov
The Honorable Henry McMaster: MPlowden@governor.sc.gov
Bentley White: whitebp@dph.sc.gov
William D. Britt, Jr.: brittwd@dph.sc.gov

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