

MEMORANDUM OF UNDERSTANDING

BETWEEN THE NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT, THE CANNABIS CONTROL BOARD AND THE NEW YORK STATE DEPARTMENT OF HEALTH

This Memorandum of Understanding (“MOU”) is between the New York State Office of Cannabis Management (“OCM”) and the Cannabis Control Board (“Board”) 1220 Washington Ave, Harriman Campus, Bldg. 9, 4th Floor, Albany, NY 12226, and the New York State Department of Health (“DOH”) Empire State Plaza, Albany, NY 12201 (collectively, “Parties”).

WHEREAS, in 2014, the Compassionate Care Act (“CCA”) granted jurisdiction to DOH to regulate the manufacture, sale and use of medical marijuana and to grant licenses to businesses seeking to manufacture and dispense approved medical marijuana products;

WHEREAS, in 2021, the Marijuana Regulation and Taxation Act (“MRTA”) repealed the CCA, established the New York State Office of Cannabis Management and directed the establishment and appointment of the Cannabis Control Board for the purpose of overseeing the licensure, cultivation, production, distribution, sale and taxation of medical cannabis and adult-use cannabis and cannabinoid hemp within New York State;

WHEREAS, OCM succeeded to all functions, powers, duties, obligations, regulations, acts, authority and decisions and powers of DOH to, among other things, continue, oversee, and regulate the medical marijuana program (MRTA §§ 62-c, 62-d, 62-e, and 62-f);

WHEREAS, the MRTA does not affect any rights or remedies previously existing under the CCA, nor does it affect any actions and proceedings that were pending before DOH on the effective date of the MRTA and the establishment of OCM and the Board (MRTA §§ 62-g and 62-h);

WHEREAS, CCCNY, INC., d/b/a COMPASSIONATE CARE CENTER OF NEW YORK and/or CCCNY (“CCCNY”) brought an administrative proceeding against DOH seeking review of DOH’s rejection of CCCNY’s application for registration as a medical marijuana provider;

WHEREAS, CCCNY subsequently moved in the Supreme Court of Albany County under index number 904177/2022 (“CCCNY Albany Supreme Case”) to transfer jurisdiction over their administrative proceeding from DOH to OCM and to substitute respondents OCM and Executive Director Chris Alexander in place of DOH;

WHEREAS, NEW YORK MEDICAL GROWERS, LLC (“NYMG”) brought an administrative proceeding against DOH seeking review of DOH’s rejection of NYMG’s application for registration as a medical marijuana provider;

WHEREAS, NYMG subsequently moved in the Supreme Court of Albany County under index number 904329/2022 (“NYMG Albany Supreme Case”) to transfer jurisdiction over their administrative proceeding from DOH to OCM and to substitute respondents OCM and Executive Director Chris Alexander in place of DOH;

WHEREAS, on September 21, 2022 and September 23, 2022 Judge Christina L. Ryba of the Supreme Court of Albany County issued decisions granting both CCCNY and NYMG’s petitions in the CCCNY Albany Supreme Case and the NYMG Albany Supreme Case, respectively, to transfer jurisdiction over their proceedings (collectively the “Administrative Proceedings”) to OCM and substitute respondents OCM and Executive Director Chris Alexander in place of DOH (the “Transfer Decisions”);

WHEREAS, Administrative Law Judge (“ALJ”) Jean Carney has been presiding over the Administrative Proceedings within DOH and is familiar with the facts and circumstances surrounding these matters;

WHEREAS, attorney Mark Fleischer of DOH has been representing DOH in the Administrative Proceedings since their filing dates and is familiar with the facts and circumstances surrounding these matters;

WHEREAS, Cannabis Law § 17 provides for hearings and various proceedings thereunder with respect to the Board and its designees;

WHEREAS, as of the date of this MOU, OCM, as a newly established agency, and the Board do not yet have an administrative hearing process established for the agency;

WHEREAS, OCM has requested to utilize the services of certain DOH personnel that possess the knowledge and background relevant to the Administrative Hearings to conduct the transferred Administrative Proceedings for OCM as required by the Transfer Decisions and to carry out tasks related to the Administrative Hearings on behalf of OCM as set forth in greater detail below;

NOW, THEREFORE, it is agreed upon between DOH and OCM, as the Parties to this MOU, that:

I. PURPOSE

OCM and the Board desire to establish the terms on which (a) ALJ Jean Carney shall serve as the Board’s designee to hear the pending Administrative Proceedings now transferred to the Office and the Board by the Transfer Decision, and (b) attorney Mark Fleischer, and other counsel from DOH as deemed appropriate, shall serve as OCM’s designee to represent OCM and Executive Director Chris Alexander.

II. SCOPE OF SERVICES

ALJ Jean Carney will preside over the Administrative Proceedings and carry out such other tasks as required in relation to the Administrative Proceedings, as OCM and the Board's designee. Any appeals from the Administrative Proceeding will be heard by the Board prior to any review by the supreme court pursuant to article seventy-eight of the civil practice law and rules.

DOH attorney Mark Fleischer, and other counsel from DOH as deemed appropriate, will provide legal services to OCM as OCM's designee, in connection with the pending Administrative Proceedings. The legal services will include, but are not limited to, representing and defending OCM and Executive Director Chris Alexander for the duration of the Administrative Proceedings, including any appeal of the ALJ's decision.

III. TERM

The term of this MOU shall begin on the date that the MOU is signed by representatives of both Parties and will extend through the duration of the Administrative Proceedings, including any appeal of the ALJ's decision.

IV. COMPLIANCE WITH LAWS AND REGULATIONS

This MOU shall comport with New York State laws and regulations. OCM and DOH, in good faith, assert and believe that this MOU complies with all New York State laws and regulations. If any provision of this MOU is declared void by a court, or rendered invalid by any law or regulation, that provision shall be severed from the remainder of this MOU to the extent of the unenforceability or invalidity and the remainder of this MOU will remain in full force and effect.

V. AMENDMENT

This MOU may be modified, altered, or amended only by the express written consent of the Parties.

VI. ENTIRE AGREEMENT

This MOU and appendices constitute the entire agreement and understanding between OCM and DOH, and no representations or promises have been made that are not fully set forth herein.

VII. TERMINATION

Notwithstanding Section III of this MOU, either party may terminate this MOU by notifying the other party, in writing, and providing at least ninety (90) days' notice of its intention to do so.

VIII. NOTIFICATION

Any and all notification or written correspondence that will occur between the Parties regarding this MOU shall be directed to the following persons:

OCM

Amanda Wilson
Director of Administration

Linda Baldwin
General Counsel

DOH

Kathy S. Marks
General Counsel

Written communications to OCM shall be directed to Amanda Wilson, Director of Administration at PO BOX 2071, Albany, NY 12220. Mail is not received directly at the address listed above.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Understanding to be executed by their duly authorized representatives as of the date set forth below.

Approved by:

**NEW YORK STATE
OFFICE OF CANNABIS
MANAGEMENT**

**NEW YORK STATE DEPARTMENT OF
HEALTH**

Signed: _____
Christopher Alexander

Signed: _____
Megan Baldwin

Title: Executive Director

Title: Acting Executive Deputy Commissioner

Date: _____

Date: _____

CANNABIS CONTROL BOARD

Signed: _____
Tremaine Wright

Title: Chairwoman

Date: _____