

Pursuant to the authority vested in the Cannabis Control Board by Sections 13, 16, 16-a, 17, 89, 132, and 133 of the Cannabis Law, Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, and a new Part 133 is added, to be effective upon publication of a Notice of Emergency Adoption and Revised Rulemaking in the New York State Register, to read as follows:

Part 133

VIOLATIONS, HEARINGS, AND ENFORCEMENT

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**§ 133.1 Definitions**

For the purposes of this Part, the following terms shall have the following meanings:

(a) *Administrative law judge* or *ALJ* means a hearing officer who is assigned to and conducts a hearing pursuant to the Cannabis Law and this Part.

(b) *Civil Practice Law and Rules* or *CPLR* means Chapter 8 of the Consolidated Laws of New York.

(c) *Corrective action plan* means a plan submitted by a licensee to the office that addresses corrections made or to be made by a licensee as a result of a violation or non-compliance with the Cannabis Law, rules, or regulations, of the office.

(d) *Debarment* means an exclusion from (1) contracting or subcontracting with a licensee, (2) contracting or subcontracting with, or submitting bids for contracts awarded by, the office, and (3) eligibility for a license issued pursuant to Cannabis Law.

(e) *License* means a license, registration, permit or approval issued in accordance with the Cannabis Law.

(f) *Licensee* means a licensee, registrant, permittee, or approved person under the Cannabis Law.

(g) *Party* means all persons designated as petitioner, respondent, or intervenor in any proceeding pursuant to this Part.

### **§ 133.2 Denial of Requests for Change or Amendment of License or Renewals of License**

(a) Upon review of a request for change or amendment of a license, including, but not limited, to changes of ownership, or a renewal of a license, the licensee shall be notified whether the request was approved.

(b) If a request is not approved, the notice shall identify the reasons therefore, including the person and particular offense or incident that does not satisfy the requirements and prohibitions of the Cannabis Law or applicable regulations.

(c) The notice shall provide the licensee with the opportunity to cure and the options therefor.

(d) The licensee shall submit the proposed cure no later than the date set forth in the notice of denial of a request for change or amendment of a license or renewal of license.

(e) The denial will be affirmed as final, and the licensee will be deemed to have waived any rights it may otherwise have or have had to challenge the denial.

(f) If the parties do not agree to the proposed resolution, the licensee may request a hearing before an administrative law judge challenging the denial of the change or amendment of license or renewal.

(g) Request for administrative law judge hearing.

(1) a request for a hearing before an administrative law judge may be made only after the parties fail to agree on a proposed resolution and shall be a challenge of the denial of a change or amendment of license or renewal. The request shall be in a form and a manner determined by the

board. The request shall be made no later than thirty (30) days after the date the office indicates whether it shall agree to the proposed resolution or maintain the denial.

(2) a request for a hearing before an administrative law judge shall specifically identify each issue and fact in dispute and state the position of the licensee, the pertinent facts to be adduced at the hearing, and the reasons supporting that position.

(3) if a request for a hearing is not filed as set forth herein or state the basis of the hearing request, the request will be summarily dismissed, the denial will be affirmed as final, and the licensee will be deemed to have waived any rights it may otherwise have or have had to challenge the denial of the change or amendment of license or renewal of license.

(4) a hearing before an administrative law judge shall be conducted pursuant to the procedures therefor set forth in this Part.

### **§ 133.3 Compliance Inspections and Enforcement Investigations**

(a) The office may conduct inspections or investigations of the licensee and any premises licensed by the board, and on any affiliated vehicles owned, leased or utilized by the licensee and all records, including, but limited to, financial statements and corporate documents, samples, photographs, videos, recordings, papers, books, documents, records, payrolls, accounts, correspondence, electronic communications and information, devices, supplies, and any other information to examine, without prior notice. Such inspection or investigation may include interviews of individuals, including, but not limited to, employees, contractors, managers,

supervisors or any other persons whom the office has determined are involved in the financing, management, or operation of a licensee or subpoenas to compel the production of papers, books, documents, records, payrolls, accounts, correspondence, electronic communications, devices, supplies, and other tangible things. Submission of an application for a license, issuance of a license, or permit to a licensee, constitutes consent for an inspection. Such premises shall be subject to inspection by the office, by the duly authorized representatives of the office, by any peace officer acting pursuant to their special duties, or by a police officer. After a license is issued, it is the continuing obligation of the licensee to grant access to these records, locations and individuals.

(b) A licensee shall make themselves or an agent thereof available and present for any inspection or investigation required by the office. An inspection or investigation may include but is not limited to inspecting and ensuring that a licensee complies with all requirements of the Cannabis Law and all related regulations.

(c) During an inspection, investigation, or at any time, the office may direct a licensee to send any cannabis, cannabis samples or cannabis products to the state reference laboratory, or, to a permitted cannabis laboratory pursuant to Part 130 of this Title, for testing of contaminants, cannabinoid profile or other testing including, but not limited to, filth, foreign material, heavy metals, and the presence of pesticides not approved for use on cannabis by the office.

(d) An inspection or investigation may be made prior to the issuance of a license or the renewal of a license. Additional inspections may be made at any point the office deems it necessary for the enforcement of applicable laws, rules or regulations.

(e) The failure of a licensee to make themselves available for an inspection or investigation, make available any documents and information requested by the office, allow access to a licensed premises and cooperate with an inspection or investigation of the licensed premises by a duly authorized representative of the office, by any peace officer acting pursuant to their special duties, or by a police officer, acting pursuant to their powers and duties, shall result in immediate summary suspension of the license.

(f) During an inspection or investigation, any items containing cannabis or cannabis products which are in violation of the Cannabis Law or its applicable regulations may be seized and a stop order issued provided that:

(1) a licensee shall be notified of the seizure;

(2) a signed receipt shall be issued which states the items seized, their approximate weight, quantity and physical description;

(3) the office shall maintain documentation of the chain of custody of seized items; and

(4) upon determination that the detention of the items seized are no longer necessary to ensure compliance with applicable regulations, the licensee shall be notified of that determination and the items may be returned to the licensee. The licensee shall acknowledge, in writing, receipt of the seized items at the time of such return.

### **§ 133.4 Violations**

(a) Violation categories:

(1) Category 1 - Violations are such that they are immediate and severe threat to public health, safety or welfare.

(2) Category 2 - Violations are such that they create a severe threat to public health, safety or welfare.

(3) Category 3 - Violations are such that they create a potential threat to public health, safety or welfare.

(4) Category 4 - Violations are such that they create a climate which is conducive to abuses of office regulations governing the cultivation, processing, production, distribution, sale, or delivery of cannabis or cannabis products.

(5) Category 5 - Violations are those that are inconsistent with the orderly operation of a regulated business engaged in the cultivation, processing, production, distribution, sale, or

delivery of cannabis or cannabis products or those that are inconsistent with said business's ability to operate in a manner that comports with applicable regulations.

(b) Unless engaged in a corrective action plan or remediation activities approved by the office, a licensee shall not destroy, damage, alter, tamper with, remove or conceal potential evidence of a violation under this subdivision; attempt to do so, or ask or encourage another person to do so.

(c) In response to a violation of any provision of the Cannabis Law and other related regulations, the office is authorized to take enforcement action or impose sanctions upon a license holder. Sanctions may include, but are not limited to, civil penalties, fees or fines, suspension, cancellation, or revocation of a license, debarment, non-renewal, a stop order to cease all licensed activity, seizure or quarantine of product, and referral to state or local law civil or criminal investigative or enforcement entities, or any combination thereof.

(d) The office may, in its discretion, conduct multiple enforcement actions or impose sanctions pursuant to this Part to be applied concurrently or consecutively.

(e) Licensees shall comply with all laws of the State of New York and all applicable regulations of New York State agencies.

(f) A licensee shall supervise the conduct at the licensed premises at all times. A licensee will be held accountable for any violation of any applicable laws, rules, and regulations

associated with licensed entities that occur in or around the licensed premises and that are committed or permitted by any manager, agent or employee of such licensee.

(g) If the office determines that a licensee does not comply with the Cannabis Law and related regulations, the licensee may be issued a stop order and be required to cease all licensed activity, including, but not limited to, the quarantine of cannabis for disposal thereof, and sale of cannabis products, after a date specified by the office.

### **§ 133.5 Corrective Action Plan**

(a) Any violations or instances of noncompliance identified whether by an inspection, investigation or otherwise, shall be documented in a statement of findings by the office.

(b) A licensee shall respond to a statement of findings by submitting a written corrective action plan in a format acceptable to the office within fifteen (15) calendar days of the date of the statement of findings. A corrective action plan shall address all violations and areas of noncompliance cited in the statement of findings and shall contain:

(1) an assessment and analysis of the violation and circumstances relating to the noncompliance including, but not limited to:

(i) restating facts and circumstances surrounding the events in the statement of findings as the licensee understands them;

- (ii) an analysis of any remedies that were immediately put into place to address the situation;
  - (iii) an attestation that there was no intention to violate any laws or purposefully noncomply;
- and
- (iv) any other information the licensee would like to share regarding the violation and circumstances relating to the noncompliance.
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- (2) a procedure addressing how the licensee shall correct each area of noncompliance;
  - (3) an explanation of how proposed corrective actions will be implemented and maintained to ensure noncompliance does not recur;
  - (4) the proposed date by which each area of noncompliance shall be corrected; and
  - (5) any other information as determined by the office.
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- (c) Notwithstanding the foregoing, any finding which the office determines jeopardizes the immediate health, safety, or well-being of the public as referenced in section 133.4 of this Part, Categories 1-3 shall require immediate corrective action. The licensee shall submit a corrective action plan to the office within twenty-four (24) hours of notification by the office of such deficiency and violation.

(d) If the office determines that the corrective action plan needs modification, the licensee shall modify the plan until it is approved by the office.

(e) Upon written approval of the office, the licensee shall implement the corrective action plan.

(f) Failure by the licensee to comply with these requirements may result in suspension, cancellation, revocation, a civil penalty or permanent debarment from vending, contracting or engaging in a business transaction with any person licensed under the Cannabis Law.

(g) Nothing herein shall limit the application of any other remedies, enforcement actions or sanctions applicable pursuant to the Cannabis Law, this Part, or any other laws, rules or regulations.

### **§ 133.6 Summary Suspension and Stop Work Orders**

(a) The office may issue a summary suspension order or stop work order to any licensee that has:

(1) committed a Category 1 violation;

(2) committed any violation that poses or posed a severe and imminent risk to public health, safety or welfare;

- (3) engaged in any action or failed to act in any way that poses or posed a severe and immediate risk to public health, safety or welfare;
  - (4) failed to make themselves available to the duly authorized representative of the office, to any peace officer acting pursuant to their special duties, or to a police officer, during an inspection or investigation; or
  - (5) failed to make available any documents requested by the office.
- (b) The office may summarily suspend a license prior to a hearing, provided that a hearing shall subsequently be held pursuant this Part.
- (1) in the event that the office issues a summary suspension order to any licensee:
    - (i) all rights and privileges to operate any business licensed by the board are suspended until such time as such licensee receives written notice that the summary suspension order or stop work order is lifted;
    - (ii) all business operations and licensed activity must immediately cease;
    - (iii) the licensee must submit a corrective action plan in the manner described in this Part;
    - (iv) licensee may request an expedited hearing; and

(v) failure to comply with a summary suspension order or stop work order may result in an immediate revocation of any license possessed by the licensee and prohibit issuance of any new license or renewal of any existing license.

(c) The office may issue a stop work order to any unlicensed person that is engaged in any cannabis related activity that poses an immediate threat to public health, safety or welfare including, but not limited to, any activity for which such person should have sought a license. Such activity may be referred to Department of Taxation and Finance, district attorney and any other civil or criminal investigative or enforcement agencies.

(1) in the event that the office issues a stop work order to an unlicensed person:

(i) that person must cease all cannabis related activity;

(ii) the office may seize any and all cannabis and cannabis related products and any proceeds from the sale, distribution, processing or cultivation of cannabis or cannabis products;

(iii) the office may begin proceedings for debarment; and

(iv) the office may initiate a proceeding to impose penalties.

**§ 133.7 Grounds for Suspension, Cancellation, Revocation, or Debarment of a License, and Denial of Renewal, Change, or Amendment of Licenses**

(a) The office may suspend, cancel, or revoke a license, debar a person from licensure, and deny the renewal of a license, change, or amendment of license where:

(1) information provided by the licensee was deceptive, misleading, false or fraudulent, or tends to deceive or create a misleading impression, whether directly, or by omission, including lack of disclosure or insufficient disclosure;

(2) a licensee has failed to substantially comply with any requirement of the Cannabis Law and related regulations;

(3) a licensee has failed to submit, obtain approval, or implement a corrective action plan to the satisfaction of the office, as submitted;

(4) a licensee has assigned or attempted to change ownership or assign its license to another entity without prior approval of the office under the Cannabis Law and related regulations;

(5) a licensee or its true parties of interest did not comply with direct or indirect ownership or interest rules, or regulations;

(6) operation of the licensed premises has been noncompliant, as shown by, but not limited to, one or more of the following:

- (i) failure to maintain the licensed premises in a clean, orderly, and sanitary fashion;
  - (ii) repeated sales of cannabis products to individuals younger than 21 years old, unless, in each instance, the licensee reasonably relied on government validly issued identification card in compliance with the Cannabis Law and related regulations; or
  - (iii) repeated failure to comply with the Cannabis Law or its related rules, regulations.
- (7) other incompetent or negligent operation, including, but not limited to:
- (i) the financial management of the licensee, including the financial solvency status of the licensee; and
  - (ii) a licensee maintaining a substandard level of compliance with the statutory and regulatory requirements for the operation of licensed premises in another jurisdiction including, but not limited to, a failure to correct deficiencies, a limitation on, or a suspension, revocation or refusal to grant or renew a license to operate.
- (8) the conduct or practices of the licensee demonstrate a lack of qualification as specified in the Cannabis Law and regulations;

(9) a licensee has any criminal conduct as evidenced by any criminal proceedings that resulted in a conviction, guilty plea, plea of nolo contendere, or admission to sufficient facts in New York State or other jurisdiction;

(10) a licensee has committed, permitted, aided or abetted, or conspired to commit any practice in the operation of any licensed premises unauthorized by Cannabis Law, including, but not limited to, engaging in the diversion of cannabis or cannabis products;

(11) the conduct or practices of the licensee have been detrimental to the safety, health, or welfare of the public;

(12) a person cultivates, manufactures, processes, tests, distributes, packages, sells, or dispenses cannabis products without a license after March thirty first two thousand twenty-one;  
or

(13) a licensee engages in conduct that would constitute a category one violation or other egregious act or action.

(b) Any licensee is prohibited from contracting or otherwise engaging in any business relationship with a debarred person.

### **§ 133.8 Notice of Hearing and Statement of Charges**

(a) A notice of hearing and statement of charges shall be provided to the licensee by the office and will include a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to any applicable statutes and regulations that serve as the basis of the violation, and a statement of the matters asserted comprising the statement of charges.

(b) The notice of hearing shall specify the time, place and date for a hearing.

(c) Service of the notice of hearing and statement of charges, if any, shall be served at least thirty (30) days prior to the date of the hearing and shall be sent by certified or registered mail, or by service consistent with Article 3 of the CPLR. Where service is by mail, service shall be deemed complete three (3) days after mailing.

(d) The notice shall provide the licensee with the opportunity cure.

### **§ 133.9 Request for Adjournment**

(a) A request for an adjournment of a hearing shall be made in writing and submitted to the administrative law judge and other parties prior to the hearing.

(b) Adjournments shall be granted only by the administrative law judge, and only after the administrative law judge has consulted with all parties. When granted, adjournments should be assigned a specific time, date and place.

### **§ 133.10 Answer or Responsive Pleadings**

- (a) A party may serve an answer, or responsive pleadings, signed by the party. The answer or responsive pleadings shall specify which allegations are admitted, which allegations are denied and which allegations a party has insufficient information upon which to form an opinion.
  
- (b) The answer or responsive pleadings shall be served no later than seven (7) days before the initial hearing date.
  
- (c) An answer or responsive pleading is required if there are affirmative defenses.

### **§ 133.11 Amendment of Pleadings**

Any party may amend or supplement a pleading at any time prior to the issuance of the administrative law judge's decision upon the approval of the administrative law judge, if there is no substantial prejudice to any party.

### **§ 133.12 Service of Papers**

All notices and papers connected with a hearing, other than the notice of hearing and statement of charges, if any, may be served by ordinary mail. Except where otherwise provided, service by mail shall be deemed complete three days after mailing.

### **§ 133.13 Disclosure**

(a) There shall be no disclosure, including, but not limited to, bills of particulars, exchanges of documents and witness lists, depositions, interrogatories, discovery and requests for documents. An administrative law judge may not require disclosure. When the parties agree to any form of disclosure, the administrative law judge shall ensure that all parties proceed in accordance with the agreement of the parties. The administrative law judge shall not be bound by the rules of evidence observed by courts, except the rules of privilege recognized by law.

(b) Notice of hearing issued by the office.

(1) Upon application of any party, the administrative law judge:

(i) upon good cause shown, may allow demands and responses within time periods other than those described in this subdivision;

(ii) upon good cause shown, may limit, condition, or regulate the use of information or material disclosed by the party who made the disclosure; and

(iii) may preclude a party that unreasonably fails to timely respond for disclosure or to supplement its disclosure from introducing evidence or witnesses not disclosed.

### **§ 133.14 Office of Administrative Hearings**

There is hereby established within the Office of Cannabis Management an Office of Administrative Hearings which shall conduct all adjudicatory proceedings which devolve upon

the board by requirement of statute. All adjudicatory proceedings shall be conducted by the Office of Administrative Hearings through the service of administrative law judges who will have all the power and authority of presiding officers or hearing officers as defined by the State Administrative Procedure Act, and other pertinent statutes, and these regulations.

### **§133.15 Responsibilities of the Administrative Law Judge**

(a) The administrative law judge is responsible for scheduling and conducting all administrative hearings as set forth in this Part. The administrative law judge is in charge of reviewing the statement of charges and all motions filed under this Part, as well as issuing decisions after hearings and on motions.

(1) All administrative law judges shall be licensed to practice law and shall not serve in any other capacity within the office.

(2) For administrative and personnel purposes, the chief administrative law judge shall report directly to the office's Executive Director or the Executive Director's designee.

(b) The administrative law judge may take judicial notice of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the office. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken, every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to the decision to dispute the fact of its materiality.

- (c) The administrative law judge shall conduct the hearing in a fair and impartial manner.
  
- (d) The administrative law judge shall have the power to:
  - (1) rule upon requests, including all requests for adjournments;
  
  - (2) rule upon all requests, including all requests for a stay of an adjudicatory proceeding;
  
  - (3) set the time and place of the hearing;
  
  - (4) administer oaths and affirmations;
  
  - (5) issue subpoenas requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers and other evidence;
  
  - (6) summon and examine witnesses, including the authority to direct a party, without necessity of subpoena, to appear and to testify;
  
  - (7) admit and exclude evidence;
  
  - (8) limit the number of times any witness may testify, repetitious examination or cross-examination, and the amount of corroborative or cumulative testimony;
  
  - (9) hear oral argument or direct written arguments on facts or law;

(10) order the parties to appear for a pre-hearing conference to consider matters which may simplify the issues or expedite the proceeding;

(11) order that opening statements be made; and

(12) take all measures necessary, but not otherwise prohibited by this Part, for the maintenance of order and the efficient conduct of the hearing and conduct the hearing in accordance with the requirements of due process.

(e) The administrative law judge shall not have the power to:

(1) remove testimony from the transcript by deletion, expungement or otherwise; and

(2) dismiss a notice of charges; and

(f) No administrative law judge may preside if they have an interest in or bias toward the subject matter of the proceeding, or a conflict of interest with respect to the parties. An administrative law judge shall recuse themselves from any case in which they believe that there is, or there may be perceived to be, a conflict of interest. Any party may file with the office a request for the removal of an administrative law judge, along with a supporting affidavit, on the grounds that the judge cannot render a fair and impartial decision in a particular case.

(g) Unless otherwise authorized by law, an administrative law judge shall not communicate in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending before the administrative law judge with any person except upon notice and opportunity for all parties to participate, except that an administrative law judge may consult on questions of law and ministerial matters with other administrative law judges and support staff of the office, provided that such other administrative law judges or support staff have not been engaged in investigative or prosecutorial functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding or would not be disqualified pursuant to this section.

### **§ 133.16 Administrative Law Judge Hearings**

(a) Appearances.

(1) a party may appear in person or through representation by an attorney. If a party appears through representation by an attorney, service of papers shall be made upon the attorney.

(2) any person appearing on behalf of a party in a representative capacity may be required to show their authority to act in such capacity and shall file a notice of appearance.

(3) if a party fails to appear at the hearing and no adjournment has been requested and granted for cause, the administrative law judge shall recommend a default order.

(4) at any time before a decision is issued, the administrative law judge may relieve any party of the consequences of any default upon good cause shown.

(b) Consolidation and Severance.

(1) in proceedings which involve common questions of law, fact, or parties, the administrative law judge, upon their own initiative or upon motion of any party, may order a consolidation of actions or a joint hearing of any or all issues to avoid unnecessary delay and cost.

(2) the administrative law judge, to avoid prejudice or inconvenience, may order a severance of the issues at a hearing and hear testimony separately as to any issue in the proceeding.

(c) Intervention.

(1) At any time after the institution of a proceeding, the administrative law judge may, upon a verified petition and for good cause shown, and upon notice to the parties, permit a person to intervene as a party.

(2) The petition of any person desiring to intervene as a party shall state with precision and particularity:

(i) the petitioner's interest in the matter at issue;

- (ii) the nature of the evidence petitioner intends to present and the names of witnesses, if any;
  - (iii) the nature of the argument petitioner intends to make; and
  - (iv) any other reason that petitioner should be allowed to intervene.
- (d) Conduct of hearing and evidence.
- (1) Each witness shall be sworn or given an affirmation.
  - (2) The rules of evidence need not be observed.
  - (3) Each party shall have the right to present relevant evidence and to cross-examine witnesses offer rebuttal evidence and examine any document or item offered into evidence.
  - (4) Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the office.
  - (5) All evidence, including records, documents and memoranda in the possession of the office of which it intends to introduce at the hearing, shall be offered and made a part of the record. All such documentary evidence may be received in the form of copies or excerpts, or by

incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

(6) Except as otherwise provided by statute, the burden of proof shall be on the party who initiated the proceeding. No decision, determination, or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with a preponderance of the evidence.

(7) The administrative law judge may not compel the disclosure of the identity of any person employed by the office, who made a report, or any person who provided information in an investigation of any such report.

(8) Complaints by a person outside of the office may be introduced into evidence by either party and their production may not be required by the administrative law judge even if the complainant is a witness.

(e) Record.

(1) a verbatim record of the proceedings shall be made by whatever means the office deems appropriate.

(2) the record of the hearing shall include: the notice of hearing, statement of charges, if any, petition for a hearing before the administrative law judge, if any, answer and any other

responsive pleadings; motions and requests submitted, and rulings thereon; the transcript or recording of the testimony taken at the hearing; exhibits; stipulations, if any; a statement of matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; briefs or objections as may have been submitted and filed in connection with the hearing and any decisions rendered.

### **§ 133.17 Subpoenas**

A subpoena issued by the office pursuant to authority granted by the board shall be governed by the CPLR.

### **§ 133.18 Stipulations and Consent Orders**

(a) At any time prior to issuance of a board determination, parties may enter a stipulation for the resolution of any or all issues.

(b) The office may issue a consent order upon agreement or stipulation of the parties. A consent order shall have the same force and effect as an order issued after a hearing.

(c) As a condition for the settlement of all charges and potential charges, a licensee, who is under investigation or against whom a decision has been made that a hearing is warranted, shall, at any time after service of the notice of hearing and statement of charges:

(1) admit guilt to at least one of the acts of misconduct alleged,

- (2) agree not to contest the allegations, and
- (3) assert that they cannot successfully defend against at least one of the acts of misconduct alleged and shall either surrender their license or agree to a penalty.
- (d) The signatories to such an agreement or stipulation, as described in this section, shall be the licensee, their counsel, if the licensee is represented, and the Office of General Counsel.
- (1) if the licensee is a permitted cannabis laboratory, the signatories shall also include the director of the office of professional medical conduct and the chairperson of the State Board for Professional Medical Conduct. The chairperson of the State Board for Professional Medical Conduct shall issue a surrender or consent order based upon said agreement or stipulation.
- (i) the order shall have the same force and effect as an order issued after a hearing.

### **§ 133.19 Administrative Law Judge's Decision**

- (a) The administrative law judge shall prepare the decision which shall include the administrative law judge's findings of facts, legal conclusions, and a penalty, if any, and shall submit it to all parties and the board.
- (b) The fact that an administrative law judge's rulings, decisions or other actions favor or disfavor the office, or any other party shall not be considered in establishing the administrative law judge's salary, promotion, benefits, working conditions, case assignments or opportunities

for employment or promotion, and shall not be the cause of any disciplinary proceedings, removal, reassignment, reclassification, or relocation. There shall not be established any quotas or similar expectations for any administrative law judge that relate in any way to whether the administrative law judge's rulings, decisions or other actions favor or disfavor the office. The work of the administrative law judge shall be evaluated only on the following general areas of performance: competence, objectivity, fairness, productivity, diligence and temperament.

### **§ 133.20 Filing of Exceptions to Administrative Law Judge's Decision**

(a) Within thirty (30) days of the date a copy of the decision of the administrative law judge is sent to all parties, any party may submit exceptions to the decision for review by the board. If a party elects to submit such an exception, it must be submitted electronically in a document not to exceed ten (10) pages and must be single spaced and typed in a times new roman, 12-point font, unless approval has been given by the office to submit the exception in another manner.

(b) The exceptions may include:

(1) the administrative law judge's findings of fact, conclusions of law, penalty, or disposition with which the party disagrees, the reasons for disagreement and a substitute finding, conclusion or disposition;

(2) general comments on the appropriateness of the decision; and

(3) an alternative proposed decision for consideration by the board.

- (c) The party shall send a copy of its exceptions to all other parties or their attorneys and the administrative law judge.
- (d) The opportunity to submit exceptions may be waived by a party.
- (e) On notice to all parties, a party may request the board to extend the exception period. The board shall only address a request for an extension that has been made prior to the expiration of the exception period and after giving all other parties an opportunity to state their positions as to the request. The exception period may be extended by the board at the request of either party, for good cause shown, and on notice to all parties. Extensions of time shall not be granted to allow a party to respond to exceptions already filed by another party.
- (f) All exceptions to an administrative law judge's decision shall be submitted to the board with the record of the hearing.
- (g) If an exception is not submit as set forth herein, the decision of the administrative law judge shall be affirmed as final and shall become the final determination of the board, and the parties will be deemed to have waived any rights they may otherwise have or have had to challenge the administrative law judge's decision.

### **§ 133.21 Determination of the Board**

(a) The board shall be responsible for issuing determinations after review of decision issued by administrative law judges if an exception to the decision has been taken, provided, however, that the board may delegate such authority to the board's designee.

(b) Within one hundred-twenty (120) days after the issuance of the administrative law judge's decision, the board or its delegee shall issue a determination.

(c) The board's determination shall be embodied in a written order containing the reasons in support of the determination. The board in its sole discretion may engage outside assistance in the review of facts and law pertaining to any case before it.

(d) The drafting of the determination may be delegated to a designee who has had no prior involvement with respect to the matter.

(e) The board's determination may incorporate by reference, or reject, the administrative law judge's determination in whole or in part. The board shall consider all parties' exceptions submitted in response to the administrative law judge's decision but is not required to respond to these submissions.

(f) The board determination shall include, but not be limited to, the following:

(1) a statement of reasons including decisions of each issue of fact or law necessary to the determination;

- (2) any disciplinary actions, sanctions, or penalty or an informal disposition of the matter;
- (3) the board's determination shall be supported by at least a majority of the members deciding the matter;
- (4) the board's determination constitutes a final agency determination; and
- (5) the board or a delegee of the board shall electronically mail a copy of the determination to each licensee or their attorneys of record and, upon written request, shall mail a copy of the determination to each licensee or their attorneys of record.

### **§ 133.22 Appeal of the Determination of the Board**

All parties shall have the right to appeal the determination of the board by the commencement of an Article 78 Proceeding.

### **§ 133.23 Actions Relating to Unlicensed Activities**

- (a) The office may issue a notice of violation and order to cease unlicensed activity to any person, as defined in subdivision 40-a of section 3 of the Cannabis Law, who is cultivating, processing, distributing or selling cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such in this state, or engaging in an indirect retail sale, without obtaining the appropriate registration, license, or permit therefor.

(b) In the event that the office issues a notice of violation and order to cease unlicensed activity to a person:

(1) that person must cease all cannabis or cannabinoid hemp related activity as described in subdivision (a) of this section;

(2) the office may seize any cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, found in the possession of a person engaged in the conduct described in subdivision (a) of this section;

(3) the office may require that any books and records of all transactions involving the sale cannabis product and security, tracking, record keeping, record retention and surveillance systems, relating to all cannabis at every stage of acquiring, possession, manufacture, sale, delivery, transporting, testing or distributing, be turned over to them for inspection, examination, or audit.

(4) the office may affix a copy of such notice of violation and order to cease unlicensed activity on the front window, door, or exterior wall of the location where such activity is taking place. The notice and order shall be within five feet of the front door or other opening to such location where customers enter from the street, at a vertical height no less than four feet and no more than six feet from the ground or floor. When an establishment does not have a direct entrance from the street, the person shall permit the office to post such notice of violation and

order to cease unlicensed activity at its immediate point of entry in a place where potential customers or members of the public are likely to see it;

(5) such notice of violation and order to cease unlicensed activity shall not be removed, altered, covered, or defaced in any way except when authorized by the office. Any removal of such notice of violation and order to cease unlicensed activity shall constitute a violation of these regulations and shall be punishable by a fine of up to \$5,000 in accordance with subdivision 1 of section 16 of the Cannabis Law;

(6) the person served with such notice of violation and order to cease unlicensed activity shall also permit the office to affix one or more warning notice at or near the front door or other opening to such location where customers enter from the street advising the public that the business is ordered to stop the unlawful activity and of the public health and safety concerns relating to illicit cannabis;

(7) such warning notice shall not be removed altered, covered, or, defaced in any way except when authorized by the office. Any removal of the warning notice constitutes a violation of these regulations and shall be punishable by a fine of up to \$5,000 in accordance with subdivision 1 of section 16 of the Cannabis Law.

(c) Having been served with the above-mentioned notice of violation, order to cease and warning notice pursuant to Cannabis Law section 138-a, any person, as defined in section 3, subdivision 40-a of the Cannabis Law, who is cultivating, processing, distributing, or selling

cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such in this State, or engaging in an indirect retail sale, without obtaining the appropriate registration, license, or permit must submit a verified affidavit of compliance attesting that the person has ceased the activity constituting the violation and, if applicable, complied with the office's order to cease within seven business days of service of a blank verified affidavit of compliance on such person.

(d) Such verified affidavit of compliance shall be completed by the business owner, signed under penalty of perjury, and mailed to the office via certified mail to the mailing address referenced on the notice of violation within seven business days of service of the blank verified affidavit of compliance upon such person.

(e) Failure to submit the verified affidavit of compliance within the timeframe required by subdivision (d) of this section will result in the rebuttable presumption of continued unlicensed business activity and subsequently subject said place of business and/or the owner/principal of the business to ongoing daily penalties of \$20,000 per day pursuant to section 132 of the Cannabis Law for each day after the date of the notice of violation and order to cease unlicensed activity until such verified affidavit of compliance is submitted to the office. If a verified affidavit of compliance is submitted and thereafter the business and/or the owner/principal of the business is in violation of any section of the Cannabis Law sections 101, 125, or 132, a rebuttable presumption of continued unlicensed business activity will have been established and said place of business and/or the owner/principal of the business will be subject

to ongoing daily penalties of up to \$20,000 per day pursuant to section 132 of the Cannabis Law for each day after the date of the notice of violation and order to cease unlicensed activity.

(f) The office may initiate an administrative proceeding to enforce the order to cease the unlicensed activity and order the financial penalty that the office assessed for the violation. The proceeding will be subject to Articles 3 and 4 of the State Administrative Procedure Act and sections 133.8(a) and (b), 133.9, 133.10(a) and (c), 133.11, 133.12, 133.13, 133.14, 133.15, and 133.16, 133.19(b) of this Part. Any references to “licensee” in such sections shall be read to apply to persons subject to enforcement pursuant to this section.

(1) Notwithstanding subdivision (c) of section 133.8 of this Part and pursuant to subdivision 3 of section 17 of the Cannabis Law, the notice of hearing may provide for a hearing date on less than fifteen days’ notice.

(2) The office may issue subpoenas pursuant to the CPLR.

(3) The parties may enter a stipulation for the resolution of any and all issues at any time prior to issuance of a decision by the assigned administrative law judge. The office may issue a consent order upon agreement or stipulation of the parties. A consent order shall have the same force and effect as an order issued after a hearing.

(4) After the hearing, the administrative law judge shall issue a decision based on the administrative law judge's findings of fact and conclusions of law. Such decision shall be final and binding when issued.

(5) Any of the parties may appeal the administrative law judge decision within 30 calendar days of receipt. Such an appeal shall be made by filing with the board, and serving on the other party or parties, a written memorandum stating the appellant's arguments and setting forth specifically the questions of procedure, fact, law or policy to which exceptions are taken, identifying that part of the administrative law judge's decision and order to which objection is made, specifically designating the portions of the record relied upon, and stating the grounds for exceptions. A party upon whom an adverse party has served an appeal may file and serve a memorandum in opposition and cross-appeal within 30 calendar days after such service. A response to a cross-appeal may be filed and served within 15 calendar days after service of the cross-appeal. The failure of any party to respond shall not be deemed a waiver or admission. The record on appeal shall consist of the evidentiary exhibits from and transcript of the hearing, and the memorandums of appeal, opposition, and cross-appeal. The board or the board's designee may, in their discretion, stay the effective date of the decision, and shall, based solely on the record on appeal, either confirm the decision in writing, make a written, superseding decision including a statement as to why they have not confirmed the administrative law judge's decision, or remand the matter to the administrative judge for additional proceedings.

#### **§ 133.24 Severability**

If any provision of this Part or its application to any particular person or circumstance is held invalid, the remainder of this Part and its application to other persons and circumstances shall not be affected thereby.