

STATE OF NEW YORK  
OFFICE OF CANNABIS MANAGEMENT  
OFFICE OF ADMINISTRATIVE HEARINGS

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**OFFICE OF CANNABIS MANAGEMENT,**

Petitioner,

-against-

**DECISION: PETITIONER'S  
MOTION TO DISMISS THE  
RESPONDENT'S REQUEST  
FOR A HEARING PURSUANT  
TO 9 NYCRR § 133.10**  
**Inspection No. No. 20250423-ALB  
FABR**

**Omnium Health, Inc.**

Respondent.

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Respondent requested a hearing with respect to the quarantine order and associated statement of findings served on them by Petitioner. The quarantine order was issued April 23, 2025.

Subsequently, a conference was held, on July 18, 2025, with respect to whether Respondent was entitled to a hearing at this juncture.

The Petitioner moved to dismiss Respondent's request as not ripe.

The Respondent is represented by Jay Smith-Hill, Esq., Compliance Counsel and Matt Parker, Esq. Outside Counsel.

The Office of Cannabis Management (hereinafter "OCM") is represented by Laura Krzeminski, Esq.

Laurie J. Cartwright, Esq. Administrative Law Judge (the Presiding Judge)

## I. ISSUE

The issue raised in emails between the parties and at the conference held on July 18, 2025, is: whether Respondent is entitled to a hearing challenging the quarantine and the underlying statement of facts instituted on April 25, 2025, before the Office of Administrative Hearings (OAH).

## II. APPLICABLE LAW

9 NYCRR § 133.10 (a) Any party may request a hearing pursuant to this Part to the Office of Administrative Hearings with copy to the other party.

9 NYCRR § 133.4(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 licensee, registrant or permittee. Sanctions may include, but are not limited to, maintaining a record of any and all violations, civil penalties, fees, fines, suspension, cancellation, or revocation of a license, debarment, non-renewal, a stop order to cease any and all licensed activity and any or all cannabis-related or cannabinoid hemp-related activities outside the scope of their license, seizure or quarantine of product, and referral to state or local law civil or criminal investigative or enforcement entities, or any combination thereof. The office may in its discretion, use licensee's past record when determining an appropriate penalty.

9 NYCRR § 133.4(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 work order and be required to cease any or all licensed, registered, or permitted activity, as well as any or all cannabis-related or cannabinoid hemp-related activities outside the scope of their license. The stop work order, may be issued simultaneously with or include, but is not limited to, an order of quarantine or recall of cannabis or cannabinoid hemp products, an order of disposal or destruction of cannabis or cannabinoid hemp products, or an order of cessation of sales, processing, or cultivation of cannabis products, or any cannabis-related or cannabinoid hemp-related activities, after a date specified by the office.

9 NYCRR § 133.5(a) Any violations or instances of noncompliance by a licensee identified whether by a compliance site visit, compliance inspection, compliance investigation or other compliance related action, shall be documented in a statement of findings by the office. This section does not apply to any site visits, inspections, or investigations conducted by the enforcement division or any other unit.

(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 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 non-comply; and

(iv) any other information the licensee would like to share regarding the violation and circumstances relating to the noncompliance.

(2) a procedure addressing how the licensee shall correct each area of non-compliance;

(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 non-compliance shall be corrected; and

(5) any other information as determined by the office.

(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) Upon written approval of the office, the licensee shall immediately implement each section of the corrective action plan as approved by the office. 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) Nothing in this section shall limit the office from determining at any time that there is no appropriate cure or corrective action that can be taken for the licensee's violation(s), and that such violations shall be grounds for suspension, cancellation, revocation, or debarment of a license, registration, or permit, and denial of renewal, change, or amendment of licenses, registrations, or permits.

(f) Failure by the licensee to complete a corrective action plan for each separate violation that fully resolves that violation in a the time frame prescribed by the office in the statement of findings, responses to corrective action plans, or other correspondence from the office; failure by the licensee to fully implement each corrective action plan immediately upon approval by the office, and in accordance with that approval and time frame prescribed by the office; and failure to comply with any these requirements in this section, will be deemed separate violations of this section and may result in suspension, cancellation, revocation, a civil penalty, a stop work order, permanent debarment from

vending, contracting or engaging in a business transaction with any person licensed under the Cannabis Law, or any penalty permitted under the Cannabis Law.

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

### **III. FINDINGS OF FACT**

1. The following facts form part of the record during the two preliminary conferences related to this matter involving Respondent and Petitioner.
2. Omnium Health Inc. is an OCM licensed Cannabis Processor.
3. On or about April 23, 2025, Petitioner issued a quarantine order and statement of findings related to some of Respondent's products.
4. Respondent and Petitioner agree that subsequent to the issuance of the statement of findings they have engaged in some of the steps related to a Corrective Action Plan (hereinafter "CAP"), outlined in 9 NYCRR § 133.5.
5. Respondent asserts that they have complied with every request made by Petitioner as part of the CAP process, including but not limited to the retesting of product, but that the Petitioner has continually raised, "new, vague concern about insufficient proof that the products were grown or processed in New York, without issuing a new Statement of Findings or formal request for documentation."
6. As such, Respondent asserts that the CAP process has broken down irreparably, and that they are entitled to a hearing per 9 NYCRR § 133.10.
7. Petitioner on the other hand asserts that 9 NYCRR § 133 only provides hearings where OCM has issued the following: destruction orders, summary suspension orders, or full stop work orders, along with disciplinary action initiated by OCM via the filing of a notice of pleadings.
8. Petitioner avers that quarantine is an investigatory tool, which OCM can institute indefinitely, and which Respondent cannot challenge.

### **IV. ANALYSIS AND CONCLUSIONS OF LAW**

9 NYCRR §133.10 (a) states plainly, "[a]ny party may request a hearing pursuant to this Part to the Office of Administrative Hearings with copy to the other party." The language does not state that only OCM may initiate hearing pursuant to §133, neither does it limit the

subsections pursuant to the part, under which a party may request a hearing. Though Petitioner states that only they may initiate disciplinary proceedings, and correspondingly, hearings through service of a notice of pleadings, that language is not found anywhere in §133 of the OCM regulations. Additionally, when Petitioner was asked repeatedly during the conference in this matter to point to the regulation or law that limits hearings under §133 to destruction orders, summary suspension orders, or full stop work orders, Petitioner failed to cite a specific provision doing so. The OCM Regulations provide explicitly for expedited hearings in the case of serious violations warranting stop work orders, but that does not prohibit non-expedited hearings, in the case of other sanctions or penalties. See 9 NYCRR §133.6.

Quarantine orders are not merely investigatory tools as Petitioner asserts but sanctions on Respondent. 9 NYCRR §133.4(c) states in relevant part, “Sanctions may include, but are not limited to, maintaining a record of any and all violations, civil penalties, fees, fines, suspension, cancellation, or revocation of a license, debarment, non-renewal, a stop order to cease any and all licensed activity and any or all cannabis-related or cannabinoid hemp-related activities outside the scope of their license, seizure or quarantine of product, and referral to state or local law civil or criminal investigative or enforcement entities, or any combination thereof.” 9 NYCRR §133.4(c) groups quarantine orders with seizures. Petitioner asserts that quarantine orders can be extended indefinitely, and without additional findings, rendering them sanctions, or a form of penalty, for which Respondent would be entitled to a hearing. An indefinite quarantine would create a new enforcement mechanism outside of the prescribed regulatory safeguards. Additionally, an indefinite quarantine of perishable product is essentially a destruction order, as the product depreciates in quality and value until it is valueless. The regulations prescribe a CAP process as a mechanism for licensees to remedy violations before further enforcement. Petitioner and Respondent agree that this process has been initiated, but Respondent alleges that at this time all meaningful engagement has ceased. If licensees cannot contest an indefinite quarantine after complying with CAP procedures, the process becomes meaningless and discourages voluntary remediation. The regulations prescribe the CAP process in addition to others as avenues by which Respondent can challenge agency sanctions and action. Furthermore, if quarantine orders are indefinite in nature as asserted by Petitioner, they are functioning as a seizure and sanction, to which Respondent is entitled to be heard. Such seizure and sanction do not in this instance serve as an investigatory tool.

Fundamental notions of due process require a party to be able to challenge agency action. “Procedural due process protection affords notice (hopefully in advance) of a possible deprivation of life, liberty or property by the government, and a meaningful opportunity to contest the deprivation prior to its imposition (or if not prior to, in a time and manner that itself will afford sufficient redress if the deprivation is found to be unconstitutional). “The essence of due process is the requirement that a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.”” See People v. Bell, 3 Misc. 3d 773, 777, 778 N.Y.S.2d 837, 841 (Sup. Ct. 2003) quoting, Mathews v. Eldridge, 424 U.S. 319, 349, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) (internal citations omitted). Petitioner alleges that an Article 78 proceeding is Respondent’s sole avenue for contesting the quarantine order. While it theoretically may be one option, 9 NYCRR §133.10, a party must exhaust administrative

remedies prior to seeking relief via an Article 78 action. “As a general rule, ‘one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law’ ” (Matter of Keener v. City of Middletown, 115 A.D.3d 859, 860, 982 N.Y.S.2d 325, quoting *Watergate II Apts. v. Buffalo Sewer Auth.*, 46 N.Y.2d 52, 57, 412 N.Y.S.2d 821, 385 N.E.2d 560; see Matter of Aliano v. Oliva, 72 A.D.3d 944, 946, 899 N.Y.S.2d 330) Failure to do so can result in denial of the petition and dismissal of the proceeding. See *Carnelian Farms, LLC v. Vill. of Muttontown Bldg. Dep't*, 151 A.D.3d 845, 847, 56 N.Y.S.3d 554, 556 (2017). Additionally, SAPA §102(3), gives priority to an administrative remedy before further judicial review. The plain language of 9 NYCRR §133.10 entitles Respondent to a hearing, and the Supreme Court is unlikely to hear Respondent’s petition without review by OAH as well as the CCB upon an appeal. Lastly, Respondent doesn’t fall under one of the established exceptions under the rule requiring exhaustion of administrative remedies. See *Watergate II Apartments v. Buffalo Sewer Auth.*, 46 N.Y.2d 52, 57, 385 N.E.2d 560, 563 (1978). As such, Respondent would likely have their petition denied and the proceeding dismissed, as they have not exhausted all administrative remedies.

## V. DECISION

In accordance with 9 NYCRR § 133.10 (a) Respondent is entitled to a hearing regarding the sanctions levied by Petitioner in the form of a quarantine order.

**WHEREFORE, THE RESPONDENT’S REQUEST FOR A HEARING IS GRANTED.**

This constitutes the final decision of the Office of Administrative Hearings. A copy of this decision shall be served upon the parties.

Dated: July 31, 2025

*Laurie Cartwright*  
Laurie J. Cartwright  
Administrative Law Judge

PLEASE BE ADVISED: Either party may appeal this decision within 30 calendar days of receipt, according to the specific manner described in Regulations at 9 NYCRR §§ 133.23(g)(5) and 133.25(k).

This decision was sent via email on July 31, 2025, to the following:

Laura Krzemiski, Esq.

Matthew K. Parker, Esq.

Jay Smith-Hill, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchev, Esq.