

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-
Medina Smoke Shop Inc.

DECISION
Inspection No. 119202508200014

Respondent.

Respondent requested an emergency hearing on August 22, 2025, which was made within seven (7) calendar days of the date of the inspection which occurred on August 20, 2025.

The emergency hearing was conducted on August 27, 2025, which is within three (3) business days of the Respondent's request.

Phil Modrzynski, Esq., represented the Respondent, Medina Smoke Shop Inc.

Kevin Marek, Esq. represented the Petitioner, the Office of Cannabis Management (hereinafter "OCM").

Investigative Specialist Antonino Giovenco testified on behalf of OCM.

I. ISSUE

The allegations set forth in the Notice of Violation indicate that the Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration, license, or permit. This allegation was based upon observations made during a regulatory inspection which was conducted at 335 N. Main Street, Medina, New York 14103.

The scope of the emergency hearing was limited solely to the issue as to whether or not the padlocking provisions Cannabis Law Article 6 § 138-b of have been met by a preponderance of the evidence.

II. APPLICABLE LAW

Cannabis Law Article 6 §138(a) provides that “The board or the Office of Cannabis Management shall, in accordance with the authority otherwise conferred in this chapter, have the authority to: 1. order any person who is unlawfully 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 without obtaining the appropriate registration, license, or permit therefor, or engaging in an indirect retail sale to cease such prohibited conduct. 2. 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 one of this section.”

Cannabis Law Article 6 § 138-b(1) provides that orders to seal: In addition to any other authority conferred in this chapter, pursuant to the provisions of this section, the board or the office shall have the authority to issue an order to seal the building or premises of any business engaged in unlicensed activity, when such activity is conducted, maintained, or permitted in such building or premises, occupied as a place of business as described in subdivision eight of section ten of this chapter, in violation of subdivision one or one-a of section one hundred twenty-five or subdivision one or eight or section one hundred thirty-two of this article.

Cannabis Law Article 6 §138-b(6) provides that an order to seal may be issued by the office or the board pursuant to subdivision three of this section only if:

- (a) no part of the premises to be sealed is used in part as a residence and pursuant to local law or ordinance is zoned and lawfully occupied as a residence; and
- (b) the unlicensed activity as described in this section is more than a de minimis part of the business activity on the premises or in the building to be sealed pursuant to this subdivision, the office shall issue a notice of violation and order to cease the unlicensed conduct, which shall constitute notice that such activity must cease immediately. (See Regulations at 9 NYCRR 133.25(f)(2-3)).

Cannabis Law Article 6 §138-b(7) provides that in assessing whether unlicensed activity within a building is more than de minimis, the office or board, as relevant, shall consider factors such as any one or more of the following:

- (a) the presence of signs or symbols, indoors or out, advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises;
- (b) information shared in any advertisements or other marketing content in connection with the unlicensed business activity and any direct or indirect sales of cannabis or other conduct in violation of this chapter;
- (c) the volume of illicit cannabis products on site; and
- (d) the variety of illicit cannabis products on site. (See Regulations at 9 NYCRR 133.25

(f)(3)(i-iv)).

Cannabis Law Article 6 §138-b (3) provides that the office may issue an order to seal with an immediate effective date if such order is based upon a finding by the office of an imminent threat to the public health, safety and welfare. (See Regulations at 9 NYCRR 133.25(f)(1)).

Cannabis Law Article 6 §138-b(4) sets forth the factors that determine an imminent threat to public health, safety, and welfare shall be limited to:

- (a) documented sales to minors;
- (b) unlicensed processing of cannabis products at the building or premises;
- (c) orders issued following an inspection wherein the person engaged in the unlicensed activity engaged in violent, tumultuous, or other behaviors indicating expressed intent to not comply with the office's order to cease the unlicensed activity;
- (d) documented presence of unlawful firearms at the building or premises;
- (e) proximity of the building or premises to schools, houses of worship, or public youth facilities;
- (f) presence of products deemed unsafe based on reports of illness or hospitalization; or
- (g) sales of, or offers to sell, cannabis products not tested or labeled lawfully in accordance with this chapter. (See Regulations at 9 NYCRR 133.25(f)(1)(i-vii).

III. FINDINGS OF FACT

1. The OCM search of Medina Smoke Shop on August 22, 2025, was based on a search warrant issued to numerous entities including: the Orleans County Major Felony Crime Task Force, Albion Police Department, Orleans County Sheriff's Department, and OCM. (Exhibit A). Investigator Giovenco was one of seven OCM investigators present during this search.
2. Investigator Giovenco testified that he is an Investigative Specialist 1 with OCM. He explained that he received both in office and field training, since being employed by OCM. That training consisted of being to identify hemp and cannabis products by labeling and marketing. He also stated that when identifying cannabis products, he looks for bubble font and or a cannabis leaf on the labeling as well as smell and appearance. To determine if cannabis is being sold or marketed at a location, he stated that he observes the nature of signage such as a pot leaf, marketing, and different characters or figures.
3. During Investigator Giovenco's inspection of Medina Smoke Shop, he discovered that the location had a back room used for storage. He also observed that the building had a basement as well as two apartments on top of the store.

4. The Investigator stated during his testimony that the 3rd floor apartment was being rented to a Mr. Dawson, and the 2nd floor apartment was leased to the owner of the shop, Mr. Mohamed Gobah. The 2nd floor apartment is accessible from both the street and an interior stairwell that leads from the store up to the 2nd floor apartment or down to the basement.

5. Investigator Giovenco explained that during the inspection suspected cannabis products were discovered in the back room of Medina Smoke Shop as well as the 2nd floor apartment. Investigator Giovenco stated that he spoke to Mr. Mohamed Gobah's brother, Aqeel Gobah and Mr. Dawson on scene during the inspection. He was told that no one resided in the 2nd floor apartment.

6. Exhibit C and Exhibit E were put into evidence. Exhibit C features vouchers for products seized from the location along with the location of some of those products. Exhibit E features pictures of many of those products, and during Investigator Giovenco's testimony he explained where each product was recovered.

7. At the conclusion of Petitioner's case, Respondent's counsel moved to dismiss on the grounds that Respondent had failed to make out a prima facie case. For the reasons below, I am denying Respondent's motion.

IV. ANALYSIS AND OPINION

I find that cannabis products were being offered for sale at Medina Smoke Shop Inc. based on the copious amounts of alleged cannabis products found in both the storage room, and 2nd floor apartment being used for product storage. It's notable that according to the investigator, the back room was visible from the front of the store. Respondent argues that defects in the search warrant in this case, make the search of the 2nd floor unit of the property illegal. However, the warrant directs the agencies to search "#335 North Main Street, Median Smoke Shop Inc." and describes the building as, "a brick three story commercial/ retail building..." Though the last line of the second paragraph states, "the areas to be searched being...the entire store location of 45 North Main Street, any storage areas, common areas and curtilage," the address 335 North Main Street is listed multiple times in that paragraph, and it is evident that the number 45 is a typo. Additionally, the 2nd floor apartment was not being resided in, and contained a lot of products, some of which were also found on the first floor in the back room. The fact that some of the same products were found in the downstairs back room and upstairs, is evidence that the two units were connected and that the products back office of the location was most likely being resupplied from the product stored in the apartment. It also demonstrates that the apartment was being used as a secondary storage area for Medina Smoke Shop and thus was part of the commercial/retail space of the building, which was covered in the search warrant description.¹ Exhibit E1 contains a photograph of a bag of product found in the back office upon arrival. The remainder of Exhibit E contains a mix of products, loose and packaged cannabis flower, vapes, concentrates, pre-rolls, pre-rolls with diamonds, and edibles, from various brands, found upstairs and downstairs at the location. The following list of products, which were found both upstairs

¹ OCM argued that the 2nd floor apartment was within the curtilage of the store. This is patently incorrect. Black's Law Dictionary defines curtilage as, "The land or yard adjoining a house, usu. within an enclosure."

and downstairs, includes but is not limited to: a pre-roll in a white topped-unlabeled container (E3 and E40), Treezy Live Resin Infused concentrate (E4 and E40), Kush King Live Resin Diamond Infused concentrate (E7, E9, E10 and E39, E41), and Death Bar (E21, E22, E38). As such, OCM has proven by a preponderance of the evidence that Medina Smoke Shop was selling or offering cannabis products for sale without a license.

OCM has also proven that the premises in this case was not being used as a residence. The Investigator testified that the employee, Mr. Dawson told him that no one lived in the 2nd floor apartment and that it was just storage. The 1st floor store, which was sealed, did not contain a shower, or dresser with clothing and appeared to be a commercial space not residence.

The unlicensed activity which warranted an order to seal constituted more than a “de minimis” part the business activity. The Cannabis Law Article 6 §138-b (7) and OCM Regulations part 133.25(f)(3) enumerate the factors to consider when determining if unlicensed activity occurring within a business is more than de minimis. One of the factors in analyzing if the activity was more than de minimis, includes determining if there are signs and symbols advertising the sale of cannabis or otherwise indicating that cannabis is sold on the premises. Exhibit D11 features rolling trays that were hung on the wall, and Exhibit D12 features an inflatable Raw joint or blunt. Another of the relevant factors is whether a large volume and variety of illicit cannabis products was found on the premises during the inspection, on August 22, 2025. Per the testimony of Investigator Giovenco and the exhibits entered into evidence, there were numerous brands and types of cannabis products observed. The volume of product found on the premises is viewable in Exhibit C, the vouchers for the products that were seized during the inspection. Namely: 59- 1g concentrates, 42- 2g cannabis concentrates, 13-3 g cannabis concentrates, 12- cannabis containers of batter of unknown weight, 38- 3.5g packages of cannabis flower, 68 cannabis pre-rolls, 12-5,000mg cannabis edibles, 10- 1,500mg, 22- 1,000mg cannabis edibles, 41- 500 mg cannabis edibles, 5- 3,000mg cannabis edibles, 30 cannabis pre-rolls, 5- cannabis pre-rolls with diamonds/kief, 4- 3.5g 1/8 bags of cannabis flower, 6-3g THC vapes, 8- 2g THC vapes, 4- 1g THC vapes, and 2- containers cannabis batter/wax. The variety of product can be seen in the multitude of brands and varieties/flavors depicted in Exhibit E. These brands include but are not limited to: Treezy (multiple strains, products, and flavors), Get Lit, Kush King (multiple strains and flavors), Luigi (multiple strains and flavors), Honey Palm, Death Bar (multiple flavors), Fusion Extracts (multiple strains and flavors), TKO, First Class- Knockout, Faded Fruits, and Runtz.

Lastly, the unlicensed activity occurring at Medina Smoke Shop, constituted an imminent threat to public health, safety, and welfare in that: there were sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. Investigator Giovenco testified that none of the products found at the locations indicated that they were tested or inspected by New York state, nor did they contain labels stating as such. According to Investigator Giovenco, many of the products contained California cannabis warning labels. Such labels can be seen in Exhibits: E2, E14, E18, E23, E25, E29, E30, E35, E44, E45, and E46. Other products contained no warning label, or an ambiguous or fake cannabis warning label, such as: E21, E22, E32, and E34.

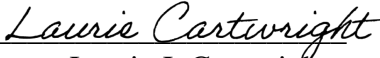
V. DECISION

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON August 22, 2025, IS HEREBY EXTENDED FOR ONE YEAR FROM THE DATE OF THIS DECISION.

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

Please be advised that either party may appeal this decision within 30 calendar days of receipt, according to the specific manner described in

Dated: September 3, 2025


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 September 3, 2025, to the following:

Nickolas Perry
Sheila Wagner
Celena Ditchev, Esq.
Kevin Marek, Esq.
Phil Modrzynski, Esq.