

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. - 114202510290025

PURPLE HAZE SHOP II, INC.

Respondent.

Respondent requested a hearing on October 30, 2025, for an inspection which occurred on October 29, 2025.

The Respondent was represented by Phil Modrzynski.

The Office of Cannabis Management (hereinafter “OCM”) was represented by Kevin Brown, Esq.

Investigative Specialist I Eva Chumsky (hereinafter “Chumsky”) testified on behalf of OCM.

Joshua Pennel, Esq. Administrative Law Judge (the Presiding Judge)

I. ISSUE

The allegations set forth in the Notice of Violation, Order to Cease Unlicensed Activity, and Order to Seal (jointly hereinafter “OTS”) asserts that the Respondent was offering cannabis products, as defined by Cannabis Law Article 3, for sale without an appropriate registration, license, or permit. These allegations are based upon observations made during an inspection which was conducted at 957 Brighton Rd., Tonawanda, NY 14150.

The scope of the emergency hearing was limited solely to the issue as to whether the padlocking provisions of Cannabis Law Article 6 § 138-b have been met by a preponderance of the evidence.

II. APPLICABLE LAW

Cannabis Law Article 6 §125(1) states that “[n]o person shall cultivate, process, distribute for sale or sell at wholesale or retail or deliver to consumers any cannabis, cannabis product, medical cannabis or cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, within the state without obtaining the appropriate registration, license, or permit therefor required....”

Cannabis Law Article 6 §132(1)(a) provides that any person who sells cannabis, or cannabis products, or any product marketed or labeled as such, without having an appropriate registration, license or permit therefor, may be subject to a civil penalty of not more than ten thousand dollars for each day during which such violation continues.

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. On October 29, 2025, OCM conducted an inspection of Purple Haze Shop II, Inc. (hereinafter "Purple Haze") located at 957 Brighton Rd., Tonawanda, NY 14150 (Ex. A). At that time, an OTS was issued, and the premises were sealed (Ex. A). On October 30, 2025, Respondent requested an emergency hearing, which was held on November 4, 2025.

2. The testimony and evidence support a finding that Respondent was actively selling cannabis. While Respondent argued that no actual sales were documented and no cannabis was displayed on the showroom floor, the quantity of cannabis recovered on site indicates that Respondent was using the store to sell cannabis.

3. The Office of Cannabis Management conducted a proper search of the location. Chumsky testified that all illicit product recovered from Purple Haze was readily accessible and in plain view during an initial search. Further, access to the two "side rooms" occurred via doors that were open and the rooms viewable by OCM upon entering the store.

4. The unlicensed activity which warranted an OTS 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. The amount of illicit product discovered at Purple Haze was significant and likely constituted a sizable portion of the business. Hundreds of individual cannabis products were found on site and evidence of processing was recovered from the store.

5. The unlicensed activity being conducted at Purple Haze constituted an imminent threat to public health, safety, and welfare based on sales of, or offers to sell, cannabis products that were not tested or labeled lawfully in accordance with Cannabis Law Article 6. OCM’s evidence showed by a preponderance of the evidence that Purple Haze engaged in on-site processing.

6. The OTS was properly served to a person of suitable age and in control at the business. The document was also posted on the front of the premises. Respondent did not challenge service, and no objections were raised regarding its introduction at the hearing.

IV. ANALYSIS AND CONCLUSIONS OF LAW

During the hearing, Chumsky appeared as the sole witness for OCM. She testified that OCM’s presence at the store was motivated by complaints received from the public.¹ Upon arrival, she noticed that the store had indications that it was a business open to the public and that it was operating at the time of OCM’s arrival. This was demonstrated by “hours of operation” being displayed on the front window (Ex. B-2) and, according to testimony, a customer making a purchase at the time Chumsky entered. The store had the telltale signs of operating as a business, including an ATM (Ex. C-4), point of sale system (Ex. D-12), a pricing gun (Ex. D-11), and a showroom stocked with product labeled for sale (see e.g., C-1-5). While all products found on display in the showroom were legal, many were related to the consumption of cannabis. This included glassware (pipes and bongs) (Ex. C-2-3), grinders, rolling papers (Ex. C-5), and trays. Further, other items, either used as decoration or on display for sale had connection to cannabis, according to Chumsky, and served as advertising to potential customers that cannabis might be purchased on site, including socks imprinted with cannabis leaves and RAW rolling paper inflatables (Ex. C-1-3). Chumsky testified that her search of the OCM database, which she performed prior to the inspection, determined that Purple Haze had no adult use cannabis license and possessed only an expired hemp license.

Chumsky testified that the first action of OCM upon entering the store was to conduct a “safety sweep.” While conducting this sweep to secure the store and the safety of OCM employees, Chumsky testified that she saw an open safe that contained what she suspected, due to her training and experience, products containing cannabis (Ex. C-7).² She further testified that

¹ Purple Haze had also previously been subject to an Order to Seal, which was upheld in December 2024.

² Respondent’s attorney argued that testing to confirm the presence of cannabis is necessary to affirm a finding under Cannabis Law § 138-b. To support this, he highlights the differences in language between Cannabis Law §§ 138-a & 138-b. Specifically, he identifies the language in 138-a which allows for products “marketed or labeled” as cannabis to be used to support a finding under this statute. He correctly points out that similar language is absent

she entered one of the two rooms off from the show room that appears to have functioned as an office (Ex. C-1 & D-3). The door to this office was open and upon entering it, Chumsky noticed a sizable number of products scattered under the desk that, again, she suspected of containing cannabis (Ex. D-4). On closer inspection, both the products in the safe and those found on the floor in the office contained suspected cannabis flower or other cannabis products (Ex. C-8 & 13, D-7).

Among the illicit products found on site included flower, edibles, and concentrate. While the amount of concentrate and edibles discovered were relatively small (Ex. C-8-14, 16 & E-7-8), OCM recovered hundreds of packages of individually packaged loose flower (Ex. D-6 & E-9); additional pre-rolled cannabis cigarettes were also found in small quantity (Ex. C-15). Further, there was evidence, in the form of scales and grinder (both containing what Chumsky testified appeared to be cannabis residue), trays (with flower still present on its surface), and rolling paper which indicated that processing was being performed on site (Ex. D-8). This processing would allow for an even greater number of products to be individually prepared and sold by Purple Haze. In total, more than two hundred and fifty individually packaged bags of loose flower were recovered from the store, along with ten packages of edibles, a small number of pre-rolled cannabis cigarettes, and vapes or vape cartridges (Ex. E-7-9).

The loose flower recovered from Purple Haze is sufficient to conclude that the store was selling cannabis. No other legitimate conclusion can be reached based on the volume of product and the evidence of production on site. While respondent argued that the products location, mostly confined to the office and removed from the showroom, invites an alternative conclusion, I find this argument unpersuasive. The office was mere feet away from the show room and any employee would have quick, unfettered access to the office and the product contained within. Further, the sheer volume of product recovered makes the conclusion that this was for personal use untenable. The products discovered in the safe, which provided even greater access to illicit materials, support this finding. While the items discovered in the safe alone might not exceed the amount allowed under New York law for personal consumption, the hundreds of bags of individually portioned loose flower establish the conclusion that Purple Haze was selling cannabis.

Chumsky next testified that she saw no evidence that Purple Haze was being used as a residence. She stated that during her initial sweep of the business, no accoutrements associated with a residence were seen. The evidence supports such a conclusion and no evidence to the contrary was submitted by Respondent. I would also note that the previous decision to seal these premises also found no evidence of the location being used as a 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. Large quantities of loose flower

from § 138-b and, instead, he argues that § 138-b requires actual, proven cannabis products (see § 138-b(4)(b) & (g)). However, § 138-b(1) incorporates Cannabis Law § 132(1) & (8) into this section of law. Using the language of § 132, OCM is not required to test products to justify an Order to Seal and may use products that are either known to be cannabis or “any product marketed or labeled as such” (Cannabis Law § 132(1)(a)).

were recovered on site. Further, many signs and symbols associated with cannabis use were present. Advertisements, blow ups, decorations, and other products, all legal, but which serve as indicators that illicit products may be found on site were submitted into evidence (Ex. C-1-3). Respondent argued that the lack of variety on site undercuts OCM's action in sealing the store as the product present constituted only a de minimis part of the business. This argument fails for multiple reasons. First, Chumsky correctly testified that all varieties of cannabis typically available for purchase were found on site (concentrate, edibles, and flower). While the vast majority of product recovered was flower, the statute does not require for a variety of product to present to justify an order to seal; volume alone can constitute justification for sealing a premises (see Cannabis Law Article 6 §138-b(7)), and I find that a large quantity of flower was present on site. Also, the signs and symbols present on site reinforces the conclusion that the sale of illicit product was more than a de minimis part of the business. Next, Respondent argued that the size of Purple Haze's "legal" business dwarfs the illicit product and, therefore, the illicit product is de minimis. I also find this argument fails. While Purple Haze appears to have a sizable legal business (see C-1-5), no evidence was put forward as to the exact size of the business. I must, therefore, rely on the evidence presented and cannot find that even the large number of legal products on display can "counterbalance" the hundreds of bags of illicit product recovered. The volume is simply too great to be considered de minimis. For these reasons, I find by a preponderance of the evidence that the amount of illicit product recovered from Purple Haze constituted more than a de minimis amount of activity by the business.

The unlicensed activity being conducted at Purple Haze 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. None of the products discovered at Purple Haze appear to have been tested in New York (none possessed the necessary state stamp that proves that the product underwent the necessary testing) and the evidence shows that many or all the products were produced out of state, never undergoing New York State testing (see generally, Ex. C). While some had a counterfeit New York stamp,³ most of the products had only a generic warning label indicating that the product contained cannabis (Ex. C-14, 19, 23-25, & 28), an out of state label (Ex. C-17 & 26) or no safety warning at all (Ex. C-8, 15-16, 20-21, 27, & 29). Further, it is highly likely that Purple Haze was processing cannabis on site by weighing and packaging loose flower (Ex. D-5-8). The scales and trays were discovered near the hundreds of baggies that had been individually filled with loose flower. This alone qualifies as a safety hazard as it is unlikely that Purple Haze followed the safety and health guidelines required of a processor and certainly did not undergo inspection that would confirm that safety and health guidelines were followed. The lack of testing, inappropriate labeling, and on-site processing makes Purple Haze's actions a danger to the public health, safety, and welfare pursuant to Cannabis Law Article 6 §138-b(4)(g).

Respondent did not challenge service. The service requirements of the Order to Seal are delineated in Cannabis Law (see Cannabis Law § 138-b). The OTS was given to Respondent personally (Ex. A & E-1). A notice was also posted on the door of the store (Ex. E-3) and Respondent requested a hearing via the instruction contained on the OTS. Respondent also appeared at the hearing, supporting a finding that he was properly and adequately served.

³ The purported New York stamps seem in appearance to be counterfeit due to the fact that the contents of the package and the packaging itself are out of compliance with New York Law (Ex. C-10).

It should be noted, although Respondent made no argument concerning the validity of OCM's search, I determine that the search was valid and properly performed. The product seized was in plain view of the Chumsky and OCM's presence on site constituted a valid inspection of a business open to the public. The adjacent rooms were easily accessible by staff and Chumsky stated that they were open at the time she entered the location.

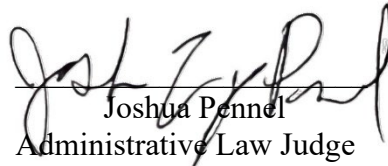
V. DECISION

The Respondent engaged in the sale of illicit cannabis and cannabis products without a license, registration, or permit to do so, at the location of 957 Brighton Rd., Tonawanda, NY 14150. In so doing, Respondent violated Cannabis Law Article 6. The Order to Seal is hereby affirmed.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON OCTOBER 29, 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.

Dated: November 10, 2025


Joshua Pennel
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 November 10, 2025, to the following:

Phil Modrzynski, Esq.

Kevin Brown, Esq.

Nickolas Perry

Sheila Wagner

Celena Ditchchev, Esq.