

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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION

Inspection No. - 129202511190008

148 CONVENIENCE & DELI, CORP.

Respondent.

Respondent requested a hearing on November 21, 2025, for an inspection which occurred on November 19, 2025.

The Respondent was represented by Attaallah Altamimi, Esq.

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

Investigative Specialist I Michael O’Bryan (hereinafter “O’Bryan”) 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 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 148 Mamaroneck Ave., White Plains, NY 10601.

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(5) provides that notwithstanding the factors listed in subdivision four of this section and the restriction set forth in paragraph (b) of subdivision six of this section, the office may issue an order to seal with an immediate effective date upon a second or subsequent inspection in which unlicensed activity is confirmed to be continuing more than ten calendar days after a notice of violation and order to cease unlicensed activity was previously issued by the office, provided that the office has also provided notice pursuant to subparagraph (ii) of paragraph (a) of subdivision thirteen of § 138-A.

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 November 19, 2025, OCM conducted an inspection of 148 Convenience & Deli, Corp. (hereinafter "148 Convenience") located at 148 Mamaroneck Ave., White Plains, NY 10601 (Ex. F1). At that time, an Order to Seal (hereinafter "OTS") was issued, and the premises were sealed (Ex. F1). On November 21, 2025, Respondent requested an emergency hearing, which was held on November 26, 2025.

2. Prior to the inspection conducted on November 19, 2025, OCM conducted a previous inspection at 148 Convenience on October 8, 2025 (Ex. A1). An Order to Cease Unlicensed Activity/Notice of Violation (hereinafter jointly “NOV”) was issued at this time.

3. The testimony and evidence support a finding that Respondent was actively selling cannabis, both during the initial inspection on October 8th and the subsequent inspection on November 19th. While Respondent argued that no actual sales were documented and no cannabis was displayed on the showroom floor, the quantity of cannabis recovered, and the nature of its packaging indicates that Respondent was using the store to sell cannabis.

4. Items recovered from 148 Convenience and the products discovered on site, show by a preponderance of the evidence that the store was likely engaged in processing illicit product.

5. OCM conducted a proper search of the location during the inspection on October 8th. A report, filed with OCM by the local fire department stated that fire personnel, on site conducting a fire-safety inspection, witnessed employees of the store processing cannabis. This report formed the basis of the inspection of the store. Upon arrival to the store on October 8, 2025, O’Bryan testified that an OCM employee witnessed the sale of illicit product. After such observation, the inspection began, and a large quantity of illicit product was discovered behind the store’s counter.

6. OCM also conducted a proper search of the location during the inspection on November 19, 2025. O’Bryan testified that an OCM employee requested illicit product from an employee of 148 Convenience and the store’s employee offered to sell illicit items. Upon searching the area behind the counter, OCM recovered illicit product.

7. Although the amount of illicit product discovered on the premises of 148 Convenience during the search on November 19th may not have warranted an OTS, as a subsequent inspection, conducted more than 10 days after the issuance of an NOV to 148 Convenience, it was properly sealed under Cannabis Law Article 6 § 138-b(5).

8. O’Bryan testified that he saw no evidence of the store being used as anything other than a retail space. He saw no evidence of the store being used as a residence and stated that he did not see on site a shower, kitchen, dresser, or any other accoutrements associated with a residence.

9. The NOV and OTS were properly served on a person of suitable age and seemingly in control of the business. The documents were also posted on the front of the premises. Respondent did not challenge service, and no objections were raised regarding its introduction.

IV. ANALYSIS AND CONCLUSIONS OF LAW

Generally, under Cannabis Law Art. 6 §138-b, a store found to be trading in illicit cannabis can be sealed if certain criteria are met. The inclusion of criteria, such as the illicit products posing an imminent threat to the public (see §138-b(4)) and that the amount sold must constitute more than a de minimis amount of the business activity (see §138-b(6)(b), places restriction on when an OTS may be legally applied. In some instances, a small amount of illicit product discovered in a store might not meet the sealing requirements of §138-b. In these instances, an NOV may be issued by OCM, pursuant to Cannabis Law Art. 6 § 138-a which, while carrying penalties such as fines, allows the operation of the store to continue. The store is expected to remedy the unlicensed activity and cease transacting in illicit product. Those stores that have been issued a proper NOV and that do not cease their unlicensed activity, continuing their trade in cannabis without a license, may become subject to the provisions of § 138-b if, during a subsequent inspection, they are again found to be in violation of the provisions of the Cannabis Law (see Cannabis Law Art. 6 §§125, 132). Under § 138-b(5) two inspections of a business, conducted more than 10 days apart, may serve as the basis for an order to seal if on both occasions, OCM discovers such violations. Under this provision of the law, OCM does not need to show that the violations were a threat to public safety, nor does it need to show that the activity was a de minimis part of the business activity. It is enough to show that the NOV issued during the first inspection was proper and that a subsequent violation was discovered. While requirements such as proper notification and ensuring that the business is not used as a residence are still necessary under a “subsequent inspection order to seal,” OCM need not show certain of the criteria for the seal to be upheld. It is sufficient for OCM to show that the initial NOV was properly issued, that more than ten (10) days passed between the first and second inspection, and that the business continued to engage in the selling of cannabis without a proper license.

Inspection on October 8, 2025

During the hearing, O’Bryan appeared as the sole witness for OCM. He testified that OCM’s presence at the store on October 8, 2025, occurred due to a report made by the local fire department. He stated that the department was conducting a fire-safety inspection and witnessed the store processing what appeared to be cannabis product. When the fire inspector inquired as to the activity, the store employee asked the inspector to leave the store. The inspector then reported the activity to OCM.¹ Upon arrival at the store on October 8th, O’Bryan testified that the store was open to the public (as indicated by a “We’re Open” sign) (Ex. C1) and had the telltale indications of a store conducting business, including a point-of-sale system (Ex. C9), credit card machine (Ex. C10), an ATM (Ex. C11), and items priced for sale (see, e.g., Ex. C2). An employee of OCM entered the store and witnessed what he suspected to be an illicit product being sold to a customer. The OCM employee informed the other members of OCM present on site and an inspection was conducted.² The store contained a large quantity of items labeled as a cannabis or suspected of being a cannabis product by O’Bryan (see generally Ex. D). A full

¹ While this testimony constituted hearsay, it is not being considered for the accuracy (specifically, whether processing was occurring on the date of the fire inspection) but serving as the basis for OCM’s suspicion that illicit products were being sold at 148 Convenience.

² This testimony by O’Bryan was also hearsay and would not likely prove sufficient, in isolation, for a finding that 148 Convenience was selling illicit product. It does, however, bolster the evidence presented at the hearing.

accounting of the illicit items seized from 148 Convenience was submitted into evidence by OCM (Ex. B). The items seized included flower (Ex. D3-4, 6, & 19), gummies (Ex. D7-10, 12, & 17), pre-rolled cannabis cigarettes (Ex. D1 & 14-16), vapes (Ex. D18), and concentrate (Ex. D11 & 14). Many of the items seized advertised on the packaging that the product contained THC (Ex. D9-11, 14-15, & 17). Other products carried warning labels that advised customers that THC products were contained within (Ex. D9-10 & 16-17). Finally, many of the products possessed characteristics which, according to his testimony, O'Bryan suspect to be cannabis products (Ex. D1, 3-4, 6, 16, & 18-19). Many of the illicit products seized possessed pricing labels which identified them as for sale (Ex. D12, 17-18). The products were individually packaged, making them easily distributable (see e.g., D1 & 3-4). The individualized packaging also undercuts any argument which might be made that the products were for personal use. It is also likely that the store was processing the cannabis sold, based on the packaging, scales, and large number of rolling papers discovered on site (see Ex. C7 & D3). It is unnecessary, however, to draw any conclusions from the store's apparent processing as the volume of illicit product discovered on site, coupled with the individually packaged products, is sufficient to lead me to draw the conclusion that 148 Convenience was selling illicit product on October 8, 2025.

O'Bryan testified that upon his inspection of the store, he saw no evidence of the store being used as a residence. He testified that it was zoned for business use and did not contain a shower, dresser, kitchen, or other items that might indicate the stores use as a residence. While this is an unnecessary showing for the action taken by OCM on October 8, 2025, O'Bryan presented this testimony in conjunction with the search occurring on that date. This is a necessary showing for the sealing order implemented on November 19, 2025, and will be discussed below. Additionally, O'Bryan stated that after he filled out the NOV, he gave it to a person of suitable age and holding themselves out as an employee of the store (Ex. A1-2). He also posted a copy of the NOV on the front door of the establishment (Ex. E1).³ Finally, O'Bryan testified that 148 Convenience did not possess an adult use cannabis license and while it did possess a hemp license, that license expired.

Inspection on November 19, 2025

O'Bryan also served as the sole witness concerning the inspection that occurred on November 19, 2025. The layout of the store appeared identical to the layout presented by OCM's evidence concerning the inspection which occurred in October (compare Ex. C & H). O'Bryan testified that upon OCM's arrival, the store was open to the public. He further testified that an employee of OCM entered the store and asked if he could purchase cannabis. The employee behind the counter offered a cannabis product to the OCM employee. This was reported to O'Bryan⁴ who entered the store and conducted a regulatory inspection. Upon entering the store, O'Bryan again saw the presence of an ATM (Ex. H2), credit card machine (Ex. I2), and a point-of-sale system (Ex. H3) indicating that the store operated as a business. O'Bryan then conducted

³ While the standard for service is not outline in Cannabis Law Art. 6 §138-a, I find that this service would satisfy 138-b (a more invasive action) and would generally comply with the service requirements under New York Law.

⁴ While this relaying of information constitutes hearsay (possibly double hearsay) I find it unnecessary to confirm the validity of this event as the amount of illicit product recovered from the store indicates that the store was trading in illicit cannabis products. Instead, this information serves as the foundation for OCM's inspection on November 19, 2025, an unnecessary element of the violation.

the inspection and discovered both pre-roll cannabis cigarettes and loose flower (see Ex. I2-3). These items were known to be cannabis by O'Bryan due to his training and experience in identifying cannabis. Further, some of the items were labeled with price tags (Ex. I2). These tags used language known to O'Bryan as being common strains of cannabis (sativa & hybrid). Approximately fifty (50) individual packages of cannabis were recovered from the location (Ex. I3). Much of this was found behind the counter and easily accessible to the employees of the store (Ex. I1). While Respondent's attorney argued that some of the illicit product (that is seen in Exhibit I2) was discovered on the employee's person, no evidence was presented that suggested that this product belonged to the employee and not 148 Convenience. The items discovered on the employee were of the same style and brand discovered in the store. It is more likely than not that these items belonged to the store and not the employee. Finally, Respondent argued that O'Bryan's direct testimony differed from his testimony on cross examination. I found O'Bryan's testimony to be highly credible and any difference highlighted between the statements were imprecise at worst. Regardless, based on the testimony of O'Bryan and the significant quantities of illicit product discovered behind the counter, I conclude that the store was trading in cannabis.

While the amount discovered on site constituted a small-to-middling amount of cannabis, the amount did support a conclusion that the store was selling cannabis. The amount may not be sufficient to overcome the de minimis standard that is required under the general use of Cannabis Law Art. 6 § 138-b (although depending on the size of the legal business conducted at 148 Convenience, it may have been sufficient). However, as discussed above, this standard (along with the threat to public safety) is not a required showing when using 138-b(5). Therefore, the showing by OCM that 148 Convenience was selling or attempting to sell cannabis products or products labeled as cannabis is sufficient to seal the store under this section of law. The two additional factors which remain are whether service was properly executed on November 19th and whether the location was being used as a residence.

O'Bryan, when discussing the search on November 19, 2025, stated nothing concerning whether the 148 Convenience was being used as a residence. This remains a necessary showing by OCM even when sealing a business under the provisions of 138-b(5). O'Bryan did state, however, when discussing the October inspection that he did search for any indications that 148 Convenience was being used as a residence. As discussed above, O'Bryan stated that the store showed no signs. Further, on the OTS issued to 148 Convenience on November 19th, O'Bryan marked the section of the form that stated that no part of the premises is used as a residence. Also, the photographic evidence shown submitted from the inspection on November 19th shows that no significant differences exist between the store's makeup and layout during that inspection and the store as it looked just over a month prior on October 8, 2025. Finally, no evidence was submitted by Respondent to counter the assertions made by OCM that 148 Convenience was being used solely as a business. This evidence is sufficient to show by a preponderance of the evidence that 148 Convenience was not being used as a residence when it was sealed on November 19, 2025.

O'Bryan testified that he provided a copy of the OTS to an individual of suitable age who was holding himself out to be an employee of the store (see Ex. F1-2). This employee accepted service and provided no further address for the owner of the store (Ex. F1). Further, a copy of the OTS was placed on the front door of the business (Ex. J1). Finally, the owner

requested a hearing shortly after 148 Convenience was sealed using the process described on the OTS form. Although no assertion was made by Respondent that service was not properly made, I find that such an argument would have, nonetheless, failed based on the above findings.

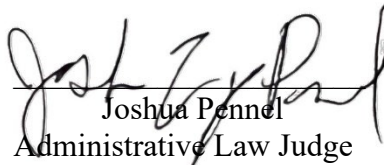
V. DECISION

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 148 Mamaroneck Ave., White Plains, NY 10601. Respondent engaged in this behavior both on October 8, 2025, and again on November 19, 2025. These two dates, being more than ten (10) calendar days apart, as required by Cannabis Law Art. 6 §138-b(5), I find that Respondent violated Cannabis Law Article 6 and affirm the Order to Seal.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6 §138-b (9), THE ORDER TO SEAL, ISSUED ON NOVEMBER 19, 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: December 3, 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 December 3, 2025, to the following:

Attaallah Altamimi, Esq.
Kevin Marek, Esq.
Nickolas Perry
Sheila Wagner
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