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

OFFICE OF CANNABIS MANAGEMENT,

Petitioner,

-against-

DECISION
Inspection No. - 131202511180007

216 QUEENS SMOKE, INC.

Respondent.

Respondent requested a hearing on November 21, 2025, for an inspection which occurred on November 18, 2025. Originally, the request asked for a hearing concerning the order to seal and the notice of violation. At a subsequent conference, Respondent withdrew their request concerning the order to seal and parties agreed to a hearing concerning the notice of violation. This hearing was held on May 19, 2026.

The Respondent did not appear and was not represented by counsel at the hearing. Counsel for respondent, Micah Kwasnik, requested the right to withdraw as counsel as of April 14, 2026, after Respondent discontinued contact with Mr. Kwasnik. This request was granted and Counsel informed Respondent of his withdrawal and the subsequent hearing date.

The Office of Cannabis Management was represented by Anthony Pitnell, Esq.

Investigator Ryan Scalera (hereinafter "Scalera") 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 (hereinafter "NOV") 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 conducted at 216 Quaker Rd., Queensbury, NY 12804.

The scope of the hearing involves determination of whether OCM, by a preponderance of the evidence, demonstrated Respondent was engaged in unlicensed activity in violation of Cannabis Law § 125 (1) or (1-a) and if so, what penalty under § 132 is appropriate.

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 §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 §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 §132 (1)(c) requires that any civil penalties assessed "shall take into consideration the nature of such violation and shall assess a penalty that is proportionate to the violation…."

III. FINDINGS OF FACT

1. On November 18, 2025, OCM conducted an inspection of 216 Queens Smoke, Inc. (hereinafter "216 Queens") located at 216 Quaker Rd., Queensbury, NY 12804. OCM previously conducted an undercover operation during which cannabis was offered for sale. This operation allowed OCM to secure an Access Order, allowing them to conduct a more thorough inspection

of the location. After the inspection, OCM issued a Notice of Violation (hereinafter "NOV").[1] Respondent requested a hearing which was held on May 19, 2026.

2. OCM effected service upon Respondent using the methods delineated in Cannabis Law §138-B. Subsequent to Respondent withdrawing their request for a hearing concerning the Order to Seal, Respondent stopped communicating with their attorney, Micah Kwasnik. Mr. Kwasnik requested the right to withdraw as Respondent's counsel based on this lack of communication. After due deliberation, the request was granted. Mr. Kwasnik provided Respondent's contact information, informed Respondent of the scheduled hearing, and notified all parties of his withdrawal. Counsel's withdrawal had no impact on the service of the NOV, and I find that the NOV was properly served, despite Respondent's absence.

3. The testimony and evidence support a finding that Respondent was actively selling cannabis. Evidence detailed a publicly facing store and testimony explained that an undercover operation was conducted. Further, the amount of product strongly supports the conclusion that 216 Queens was actively selling cannabis.

4. The testimony and evidence support the finding that the products recovered from Oakland Smoke were illicit. Oakland Smoke did not possess an adult use cannabis license and did not possess proper authorization for its conduct. Further, the products recovered were not approved for sale in New York. Therefore, even with an adult use license, 216 Queens actions would have violated New York law.

5. The Office of Cannabis Management conducted a proper inspection of the location. OCM acquired an Access Order, signed by a New York Supreme Court Justice, allowing them to thoroughly inspect the location, including the safe, and the illicit product was discovered in furtherance of that order.

IV. ANALYSIS AND CONCLUSIONS OF LAW

OCM conducted a inspection of 216 Queens on November 18, 2025, and issued a Notice of Violation, Order to Seal, and an Order to Cease Unlicensed Activity (Ex. E). Subsequent to this inspection, Respondent requested a hearing to challenge the Order to Seal. Before the hearing could proceed, Respondent withdrew their request for a hearing. OCM requested that a hearing concerning the Notice of Violation/Order to Cease Unlicensed Activity (hereinafter jointly "NOV") proceed. This request was granted a hearing date was assigned. In the interim, parties engaged in settlement discussions which resulted in an offer of settlement being proposed by OCM. Respondent's attorney, Micah Kwasnik, presented the offer to his client. According to Mr. Kwasnik, after repeated attempts to contact his client, without success, he determined that he could no longer represent the Respondent and submitted a formal request to withdraw as counsel. As part of this formal request, Mr. Kwasnik provided contact

[1] OCM also issued an Order to Seal, which Respondent initially requested a hearing to challenge. Prior to the hearing, Respondent withdrew this challenge. The hearing proceeded, with OCM asking that the NOV be affirmed and a penalty be assessed.

information for Respondent, notified Respondent of his request, and informed Respondent of the upcoming hearing date. I granted Mr. Kwasnik's request to withdraw, finding that Respondent's unwillingness to converse with Mr. Kwasnik showed a desire by Respondent to sever the relationship. I informed Respondent of my decision, using the email provided by Mr. Kwasnik, reminded him of the upcoming hearing date, and explained certain rights and procedures. I also informed Respondent that should he fail to attend the hearing, it "will proceed regardless, and a penalty may be imposed." Respondent replied to this email stating that he was not responsible for 216 Queens. The hearing was conducted on May 19, 2026.

OCM provided service to Respondent via the method outlined in Cannabis Law §138-B(2). Respondent retained counsel and requested a hearing using the procedure delineated on the NOV. While Respondent later disclaimed any connection to 216 Queens, this assertion fails to explain why he retained counsel to challenge the Order to Seal. Respondent was informed of the hearing and provided a method to access the hearing. Further, when he failed to attend, a subsequent email was sent asking if he intended to appear. After providing adequate time for Respondent to appear, the hearing proceeded as a default pursuant to 9 NYCRR §133.18(a)(3). I find that OCM's actions related to service, as described in Scalera's testimony and supported by evidence (Ex. E & F), satisfies the notification and service requirements under the law. Although the proceeding conducted is not governed by Cannabis Law §138-B, the methods delineated in that section are sufficient in this case to provide notice. Further, Respondent's actions of obtaining counsel and requesting a hearing support finding.

Scalera testified that OCM conducted an undercover operation at 216 Queens, during which, OCM confirmed the presence of illicit cannabis and that the store was actively selling the product. He testified that the store did not possess an Adult Use license, which would make any sales of cannabis illicit. After the undercover operation on November 3, 2025, during which they were offered cannabis by an employee of the store, OCM applied to a New York Supreme Court and was granted an Access Order to inspect 216 Queens (Ex. A).[2] I find that this Access Order gives OCM sufficient authorization to conduct the inspection of 216 Queens, both the public areas and beyond the retail space, including the locked safe discovered on site.

OCM conducted its inspection on November 18, 2025. Scalera testified that during this inspection he searched for and found a set of keys that he believed opened a safe. This belief was based on information obtained during the undercover operation, during which an employee of OCM, posing as a customer asked for cannabis. The OCM employee then saw an employee of 216 Queens remove a set of keys from the cash drawer and open a safe to retrieve the requested cannabis product. Scalera testified that upon entering the store on November 18, 2026, he found the keys in the reported location (Ex. B-14) which allowed him to open the safe and search the contents (Ex. B-19-20). It was inside this safe that Scalera testified that he discovered the entirety of the cannabis products seized from the store.

Within 216 Queen, OCM recovered a variety of illicit cannabis products. Vapes, edibles, pre-roll cannabis cigarettes, and cannabis flower were all retrieved from the safe within the shop (see generally, Ex. C). Some of the products displayed prices, which further supports

[2] There is a similar, but not identical name present on the Access Order. The Order has 212 Smoke as the business name. When asked about this discrepancy, Scalera testified that the business had adjusted its name four days after the Access Order was granted. Further, the address listed on the Access Order was identical to the 216 Queens. I find that the name discrepancy is inconsequential to the inspection and that OCM properly executed the Access Order.

the conclusion that the store was actively selling these products (Ex. C-1, 3-9, 14, 16, 20, 36, & 41). Many of the products had labels, wording, or warnings that identified the products as containing cannabis (Ex. C-1, 3, 6-14, 16, 18, 20-21, 23-35, 37-39, 41-42, & 48-49). Other products, while not labeled as cannabis were identified by Scalera, due to his training and experience, as being cannabis products (Ex. C-2, 4-5, & 43-47). None of these products bore the New York State stamp, a symbol that identifies a product as being approved for sale in New York. This means that none of the products discovered at 216 Queens were tested or approved for sale, making the products ineligible for legal sales, even if the store had possessed an adult use license. Further, this lack of testing allowed for many of the products to far exceed the dosage limits put in place by New York as a safety precaution (Ex. C-14, 16, & 36-41). The products recovered were in a wide variety of forms, brands, flavors, and strains of cannabis. This also supports a finding that the store was actively selling as the amount recovered far exceeded the personal use limits under the law and the variety suggests the store catered to the individual tastes of consumers.

The amount recovered from the store suggests that 216 Queens maintained a robust operation of selling illicit cannabis. Both due to the store's lack of an adult use cannabis license and the products recovered, which were not legal for sale in New York, all products being offered for sale were illicit under § 138-A. The volume and variety of the products along with the price tags present on many of the products strongly suggest that the store was actively selling these products. I find that OCM has met their burden of proof and determine that the NOV issued to 216 Queens was justifiably issued and that a penalty is warranted in this case.

Penalty

OCM showed by a preponderance of the evidence that 216 Queens possessed and attempted to sell a product containing cannabis. I am compelled to impose a penalty and due to the moderate level of product recovered and the danger posed by the untested products, including high concentrations of THC and products that resemble products that may entice children, I find that moderately-high penalty is warranted. Cannabis Law Article 6 §132 (1)(c) requires a "proportional" penalty, and I believe the evidence supports this type of penalty.

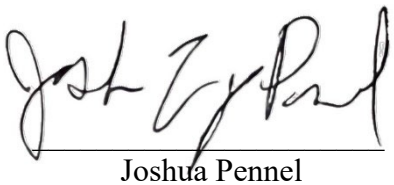
V. DECISION

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 216 Quaker Rd., Queensbury, NY 12804. In so doing, Respondent violated Cannabis Law Article 6 and is ordered to pay a fine of $7,000.

WHEREFORE, PURSUANT TO CANNABIS LAW ARTICLE 6, RESPONDENT IS HEREBY ORDERED TO PAY A $7,000 FINE UNDER CANNABIS LAW ARTICLE 6 §132 FOR VIOLATIONS UNDER §125, AND AS A PROPORTIONATE PENALTY, FOR THE UNLICENSED SALE OF ILLICIT CANNABIS ON NOVEMBER 18, 2025.

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

Dated: June 17, 2026



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 e-mail on June 17, 2026, to the following:

Anthony Pitnell, Esq.

Nickolas Perry

Sheila Wagner

This decision was mailed on June 17, 2026, to the following:

216 Queens Smoke, Inc.
216 Quaker Rd.
Queensbury, NY 12804