

CANNABIS CONTROL BOARD SERIOUS ABOUT SHUTTING DOWN ILLEGAL SALES

Hodgson Russ Cannabis & Hemp Alert
October 26, 2021

On Tuesday, October 5, 2021, the New York Cannabis Control Board held its first meeting. During the meeting, the Board focused on key administrative tasks that it needed to address as it begins its work of overseeing the licensing of cannabis businesses and the approval of actions taken by the [Office of Cannabis Management](#).

Although the MRTA passed in late March 2021, adult-use retail dispensaries are not yet legal. Just last week, Board Chair Tremaine Wright took a strong stance on a “gray area” that recently surfaced involving the “gifting” of cannabis products. She stated: “We are hearing many examples of sales of marijuana products by individual vendors and retail locations, however they are not licensed nor are they selling regulated products.” Specifically, customers were purchasing a separate, non-cannabis item, and receiving a cannabis “gift” with the purchase. This practice appeared to be mirroring practices that have taken off in jurisdictions like Washington, D.C., which permits possession and use of adult-use cannabis, but prohibits commercial sales.

Chairwoman Wright explicitly said that this “gifting” loophole will not be tolerated. “We have not authorized recreational sales,” Wright stated. “Gifting does not include instances in which cannabis is given away at the same time as another transaction nor when it is offered or advertised in conjunction with an offer for the sale of goods or services.” As a result, the so-called “gray market,” and the operation of unlicensed adult-use dispensaries is illegal. Given the Board’s firm stance on the matter, a cannabis business found to be operating illegally as an unlicensed, adult-use dispensary may face severe repercussions, including criminal prosecution, financial penalties, and denial of a recreational dispensary license application once they become available.

Businesses hoping to enter the industry must wait to apply for and become licensed before selling adult-use cannabis products. While it is unclear how this specific guidance will be enforced, the Board has made clear that gray market “gifting” is illegal and will be subject to severe financial penalties should they continue.

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