

THE CANNABIS INDUSTRY INFORMATION MEMO

NOVEMBER 15, 2022

Federal Court Blocks OCM From Issuing Conditional Adult-Use Retail Dispensary Licenses

On Thursday, November 10, Judge Gary L. Sharpe of the U.S. District Court for the Northern District of New York, [granted a preliminary injunction](#) restraining the New York State Office of Cannabis Management (the OCM) from issuing any conditional adult-use retail dispensary (CAURD) licenses in the Finger Lakes, Central New York, Western New York, Mid-Hudson and Brooklyn geographic areas.

By way of background, regulations governing the CAURD application process (the Regulations) were adopted on August 3, 2022, and eligible applicants had from August 25 to September 26, 2022, to submit applications. As we [previously wrote](#), the Regulations require CAURD applicants to have a “significant presence in New York state, either individually or by having a principal corporate location in the state; is incorporated or otherwise organized under the laws of this state; or a majority of the ownership are residents of this state.” Additionally, at least 51% of the applicant must be owned, in the aggregate, by a “justice-involved individual,” which requires a connection to a marijuana-related conviction in New York state. Plaintiff Variscite NY One, Inc. (Variscite) filed its motion for a preliminary injunction after it was found to be ineligible for a CAURD license because it is owned by an individual who has a cannabis conviction under Michigan law and no “significant connection” to New York.

Judge Sharpe found that Variscite had established a likelihood of success on the merits of their Dormant Commerce Clause claim because the Regulations directly discriminate against out-of-state applicants. He also found that Variscite would be irreparably harmed if the preliminary injunction was not issued because Variscite would be excluded from New York’s retail cannabis market and lose advantages only available to early entrants in the same, “such as access to customers who have not developed loyalty to other business.”

Judge Sharpe’s decision is effective immediately and bars the OCM from issuing CAURD licenses only in the five specific geographic regions mentioned above. Importantly, the OCM can proceed with its licensing process in the Capital, Long Island, Manhattan, Mohawk Valley, North Country, Queens, Southern Tier, Staten Island and Bronx regions.

Bond’s cannabis attorneys continue to closely monitor developments to the rules and regulations surrounding New York’s cannabis industry. For questions about the information provided above or about the cannabis industry in general, please contact [Dustin M. Dorsino](#), [Jeffrey B. Scheer](#) or the Bond attorney with whom you are regularly in contact.



Bond has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences. For information about our firm, practice areas and attorneys, visit our website, www.bsk.com. Attorney Advertising. © 2022 Bond, Schoeneck & King PLLC.