

Empire State Cannabis Update: NYS Fights to Modify Injunction Blocking Conditional Dispensary Licensing



By Ryan V. Stearns

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The below provides a brief status update on the *Variscite NY One, Inc. v. State of New York; New York State Office of Cannabis Management; and Christopher Alexander* – the case that is currently enjoining the Office of Cannabis Management (“OCM”) from issuing Conditional Adult-Use Retail Dispensary (“CAURD”) licenses in five of New York’s fourteen economic development regions.

As a brief recap, on November 10, 2022, the United States District Court for the Northern District of New York (“NDNY”) granted Plaintiff Variscite NY One, Inc.’s (“Variscite” or the “Plaintiff”) motion for a preliminary injunction to enjoin the State of New York, the OCM, and OCM Executive Director Christopher Alexander (collectively, the “Defendants”) from issuing certain licenses pursuant to its CAURD program because the Court determined the program unconstitutionally discriminated against citizens from other states by considering only those with New York State cannabis convictions as eligible to apply for and receive such license. Accordingly, the Court’s decision prohibited the OCM from issuing CAURD licenses in the five economic development regions Variscite intended to apply for (Brooklyn, Central New York, Finger Lakes, Mid-Hudson, and Western New York), thus temporarily

blocking 63 of the 150 CAURD licenses the OCM is permitted to award. While the OCM appealed this decision to the Second Circuit Court of Appeals on December 8, 2022, the status of the appeal remains in limbo based on the motion practice at the NDNY level discussed below.

Notwithstanding this decision, on November 21, 2022, the Cannabis Control Board (CCB) issued 36 of the remaining 87 eligible CAURD licenses in the 9 regions not affected by the injunction. That same day, the CCB also released its first draft of the adult-use regulations, including those relating to permanent adult-use retail dispensary licenses. The regulations are currently open for public comment until February 13, 2023. Based on the required public comment period(s) and anticipated revisions to these draft regulations, it is our expectation that permanent dispensary license applications should be going live sometime in late summer or fall 2023.

The following day, November 22, 2022, the Defendants filed a motion to modify the NDNY's injunction so that it would apply to only to Variscite's first-ranked region—the Finger Lakes. Notably, the Defendant's chief argument was that after the OCM received and evaluated all 900+ CAURD applications, it decided that “all CAURD Program applicants are being considered for their first preferred region *only*” because “there are currently more applications for *each* region . . . than the number of available license[s]” such that “only an applicant's first pick will be considered and scored.” Variscite submitted its response on December 13, 2022 and the Defendants filed their reply on December 20, 2022. As of January 9, 2023, the parties are still awaiting a return date.

The Lippes Mathias [Cannabis Practice Team](#) will continue to monitor the progress of this case as it relates to the ongoing rollout of New York's adult-use cannabis marketplace and licensing scheme. Should you have any questions, please contact one of our attorneys.

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