

## Empire State Cannabis Update: Two Takeaways from CCB Meeting Two



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October 22, 2021 | **CORPORATE**

On Thursday, October 21, 2021, New York's newly formed Cannabis Control Board (CCB) held its [second public meeting](#) during which it made additional progress in developing the regulatory landscape contemplated by the Marijuana Regulation and Taxation Act (MRTA). As detailed below, the CCB (i) previewed home grow regulations for medical marijuana patients and (ii) issued a stern warning to New Yorkers currently selling cannabis products without a license.

### **Medicinal Home Grow Coming Soon**

Pursuant to the MRTA, the Office of Cannabis Management (OCM) was required to “issue rules and regulations governing the home cultivation of cannabis by certified [medical marijuana] patients . . . no later than six months after the effective date of the MRTA.” The six-month deadline expired on September 30, 2021 with no regulations drafted. As explained in [our previous post](#), this was caused by the delay in the appointment of the five-member CCB, which has the power to staff the OCM. Due to political infighting after the passage of the MRTA, the CCB staff was finalized just seven days prior to the deadline for issuance of medical home grow regulations.

Now, with the CCB fully staffed, and the OCM filling out, the CCB is starting to tick off its responsibilities, which start with medical home grow regulations. The regulations, which are expected to be published shortly, are summarized by the CCB's slide below:



After publication of the regulations, New Yorkers will have sixty (60) days to submit comments to the CCB, which may incorporate appropriate comments at its discretion prior to finalizing the regulations. However, cannabis cultivation by non-medical patients will remain illegal until no later than 18 months after adult-use retail sales go live to permit the adult-use market to get up and running before non-medical patients can begin to cultivate their own cannabis.

### **Chair Tremaine Wright Condemns Non-Licensed Sales, Threatens “Severe Financial Penalties”**

New York cannabis entrepreneurs currently operating without a license were issued a warning by Board Chair Wright.

When the MRTA was passed on March 31, 2021, adults over the age of 21 were immediately entitled to possess, obtain, transport, or gift up to 3 ounces of cannabis or up to 24 grams of concentrated cannabis in a public place without penalty. While the MRTA legalized possession and gifting of cannabis within these limits, it did not legalize the sale of cannabis products. All non-medical cannabis cultivated, processed, distributed, and sold within New York State is required to be from licensed entities, and without the issuance of licenses, all non-medical cannabis sales remain “illicit.”

Nevertheless, certain vendors and retailers have sought to skip the licensing line by either gifting cannabis by tying it to the sale of non-cannabis products (e.g., selling a t-shirt for \$65 and gifting cannabis flower) or by selling cannabis products at private pop-up events. Prior to the meeting, no state entity had approved of or condemned these activities. However, Chair Wright took this conduct head on in her opening remarks just five minutes into CCB's second meeting:

[A]ny unlicensed sale or distribution of cannabis remains illegal. While gifting or transferring cannabis under the possession limit between adults . . . is legal, gifting does not include instances when 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. . . . The cannabis being exchanged in the transactions just described—those remain **illicit**. . . . This conduct is not legal and must stop. Individuals who do not cease run the risk of **severe financial penalties**.

Wright made no mistake in using the term “illicit.” “Illicit cannabis” is defined in MRTA § 492 as “cannabis flower, concentrated cannabis, cannabis edible product and cannabis plant on which any tax required to have been paid . . . has not been paid.” Importantly, the cultivation, processing, distribution, and/or sale of “illicit cannabis” (read: unlicensed and untaxed cannabis) in New York State carries with it clearly delineated penalties.

First, under MRTA § 107 any violation of the MRTA “may be punishable by a civil penalty of not more than one thousand dollars for a first violation; not more than five thousand dollars for a second violation within three years; and not more than ten thousand dollars for a third violation and each subsequent violation thereafter, within three years.” But § 107 is just the tip of the iceberg. The “severe financial penalties” Chair Wright was referring to are contained in MRTA § 496-c, entitled “Illicit Cannabis Penalties,” which punishes offenders based on the amount of illicit cannabis possessed, as outlined in the chart below:

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Given that a stated goal of the MRTA was to bring about a new source of tax revenue for the state, Wright’s denunciation of the sale of unlicensed cannabis comes as no surprise. Gray market operators pose a significant threat of undercutting adult-use tax revenue which the state hopes to realize.

While certain vendors have enjoyed a period of non-enforcement since the MRTA was passed, there is now a greater likelihood of enforcement against operators in the coming months. It is also possible that a future applicant’s decision to operate in the gray market may put their license application in jeopardy.

## Conclusion

In just over two weeks the CCB has shown significant progress towards accomplishing the prescribed goals of the MRTA. With medicinal home grow regulations imminent, the CCB is likely to publish the long-awaited adult-use cannabis regulations. Further, the CCB’s condemnation of gray market sales signals that it intends to take control of the state’s adult-use market to shepherd in retail sales under the direction of the MRTA.

Lippes Mathias’ [Cannabis Practice Team](#) will continue to monitor the developments in New York’s cannabis industry, including when the CCB regulations are published and when applications are expected to be released. If you have any questions, please contact one of our attorneys.

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